

Attention Property Owner: A land use proposal has been submitted for property near where you live or near property you own elsewhere. State law requires that the county notify property owners within a certain distance from this property. The proposal and address of the property is described in the "Application" section below. The decision in this case does not directly affect the zoning or use of your property. If you object to the decision, refer to the "Appeal" section. If you have questions, contact the staff person listed at the end of this report.

**NOTICE OF DECISION
PROPERTY LINE ADJUSTMENT CASE NO.21-048**

APPLICATION: Application of Neils and Irma Jensen Trust and Johannes Van Dam to adjust the property lines on a 13.86 acre parcel, a 172.00 acre parcel, a 10 acre parcel, a 4.95 acre parcel, and an 18 acre parcel to create a 5.0 acre parcel, a 175.96 acre parcel, a 5.16 acre parcel, a 9.75 acre parcel, and a 23.10 acre parcel in an EFU (Exclusive Farm Use) zone located at 12451 Duckflat Road SE, 12470 Parrish Gap Road SE, and 12092 Parrish Gap Road SE, Turner. 9T9S, R2W, [Section 20, Tax lots 100, 900, and 1000], [Section 21, Tax Lots 600, 700, and 800] & [Section 20D, Tax Lot 300].

DECISION: The Planning Director for Marion County has **APPROVED** the above-listed Property Line Adjustment application subject to certain conditions.

EXPIRATION DATE: Title transfer instruments accomplishing the property adjustments shall be recorded by the applicants with the Marion County Clerk by **December 4, 2023** (two years). The effective period of an approved application may be extended for an additional year subject to approval of an extension (Extension form available from the Planning Division). **Additional extensions may not be granted if the regulations under which this decision was granted have changed since the original approval.**

WARNING: A decision approving the proposed uses is for land use purposes only. Due to septic, well and drainfield replacement areas, this parcel may not be able to support the proposed activities. To be sure the subject property can accommodate the proposed use the applicant needs to check with the Building Inspection Division, (503) 588-5147.

This decision does not include approval of a building permit.

CONDITIONS: The following conditions must be met before a building permit can be obtained or the approved use established:

1. **Property line adjustment deeds shall be recorded with the Marion County Clerk's Office prior to submitting the property line adjustment survey.** Deed recording reference numbers shall be noted on the survey map. Per ORS 92.190(4): The deed shall contain the names of the parties, the description of the adjusted line, references to original recorded documents and signatures of all parties with proper acknowledgment. **Marion County Planning requires perimeter descriptions of the resultant properties.**
2. No survey is required for the 175.96 acre parcel and the 23.1 acre parcel. The areas of the resulting properties are greater than ten acres.
3. The applicants shall have the 5, 5.16, and 9.75 acre parcels surveyed per ORS 92.060 (7). The survey shall be filed with the County Surveyor and shall contain the notation that the survey is the result of Property Line Adjustment Case 21-048. (Final Plat Instructions enclosed). **Deed recording reference numbers shall be noted on the survey map.**
4. The resulting parcels shall significantly conform to the site plan submitted with the proposal. Minor variations are permitted upon review and approval by the Planning Director.
5. One property must be a minimum of 80 acres after the adjustment.

6. The dwelling located at 12470 Parrish Gap Road SE was approved as a secondary farm dwelling pursuant to ADM97-053. On July 31, 1997, The Jensen's filed a Manufactured Home Removal Agreement (Reel 1416, page 724), acknowledging that the manufactured home must be removed if the property is sold out of the ownership of the Neils and Irma Jensen Trust. This Removal Agreement is still active and binding.
7. Prior to the Director signing off on the survey, the applicants shall sign and submit a Use of Agriculture/Forest Land for Dwelling Qualification Declaratory Statement to the Planning Division. This Statement shall be recorded by the applicant with the Marion County Clerk after it has been reviewed and signed by the Planning Director.

ADDITIONAL CONDITIONS: Once the approved use is established the following conditions must be continually satisfied:

8. After the property line adjustment has been completed, no alteration of property lines shall be permitted without first obtaining approval from the Planning Director.

OTHER PERMITS, FEES, AND RESTRICTIONS: This approval does not remove or affect any covenants or restrictions imposed on the subject property by deed or other instrument. The proposed use may require permits and/or fees from other local, State or Federal agencies. This decision does not take the place of, or relieve the responsibility for obtaining other permits or satisfying any restrictions or conditions thereon.

APPEAL PROCEDURE: The Marion County Zone Code provides that certain applications be considered first by the County Planning Director. If there is any doubt that the application conforms with adopted land use policies and regulations the Director must condition or deny the application. Anyone who disagrees with the Director's decision may request that the application be considered by a Marion County hearings officer after a public hearing. The applicant may also request reconsideration (one time only and a fee of \$200) on the basis of new information subject to signing an extension of the 150 day time limit for review of zoning applications.

A public hearing is held on appeals subject to the appellant paying a \$250.00 fee. Requests for reconsideration, or consideration by a hearings officer, must be in writing (form available from the Planning Division) and received in the Marion County Planning Division, 5155 Silverton Road NE, Salem, by 5:00 p.m. on **December 4, 2021**. If you have questions about this decision contact the Planning Division at (503) 588-5038 or at the office. This decision is effective **December 6, 2021** unless further consideration is requested.

FINDINGS AND CONCLUSIONS: Findings and conclusions on which decision was based are noted below.

1. The subject properties are designated Primary Agriculture in the Marion County Comprehensive Plan and correspondingly zoned EFU (Exclusive Farm Use). The primary intent of both this designation and zone is to promote and protect commercial agricultural operations.
2. The properties are located north of Pearson Road SE, east of Parrish Gap Road SE, south of Hunsaker Road SE, and west of Duckflat Road SE.

Parcel 1, identified as 9S2W20D000300, is undeveloped and was the subject of PLA08-44, which determined that the parcel was a separate legal parcel that had been described in its current configuration as far back as July 6, 1966 (Volume 619, page 95). The property is considered legal for the purposes of land use.

Parcel 2, identified as 9S2W200000900 and 9S2W200001000 together, and is developed with a secondary farm dwelling approved pursuant to ADM97-053. A removal agreement for the secondary farm dwelling was filed on July 31, 1997 (Reel 1416, page 724). The parcel was created in its current configuration by PLA11-18, and is considered legal for the purposes of land use.

Parcel 3, identified as 092W210000600 and 092W210000700 together, and is developed with a single family dwelling and five farm buildings. The parcel was the subject of CU83-01 to establish a medical hardship dwelling on the parcel, which determined that the properties together are legal for the purposes of land use. The medical hardship dwelling has since been removed.

Parcel 4, identified as 092W210000800, and is developed with a farm building. The parcel was approved for a composting facility by CU08-22, which determined that the property was legal for the purposes of land use.

Parcel 5, identified as 092W200000100, and is developed with a single family dwelling that was approved pursuant to FD89-18 and five farm related structures. The property was created in its current configuration by PLA11-18 and is legal for the purposes of land use.

3. Adjacent properties are zoned EFU to the north, east, and south and are in large scale commercial farm operations with farm dwellings. Properties to the west are zoned Acreage Residential (AR) and are in low density residential use. Properties to the southwest are zoned SA and are in medium sized parcels with a mix of farm and forest uses.
4. Soil Survey for Marion County, Oregon, indicates approximately 81.9% of the soils on the tract are classified as High Value Soils for agricultural production.
5. The applicants originally proposed to adjust the property lines on a 29.22-acre parcel, a 172.00-acre parcel, a 10-acre parcel, a 4.95-acre parcel, and an 18-acre parcel to create a 5-acre parcel, a 202.17-acre parcel, a 5.16-acre parcel, a 9.95-acre parcel, and a 23.10-acre parcel. After learning that Section 21C Tax Lot 100 and 200 were described together as one legal lot of record, the applicant revised the proposal to adjust the property lines on a 13.86-acre parcel, a 172-acre parcel, a 10-acre parcel, a 4.95-acre parcel, and a 18-acre parcel to create a 5-acre parcel, a 175.96-acre parcel, a 5.16-acre parcel, a 9.95-acre parcel, and a 23.8-acre parcel.
6. Marion County Surveyor's Office commented:
 1. No survey required on the 175.96 acre parcel and the 23.1 acre parcel. The areas of the resultant properties are greater than ten acres.
 2. The 5.0 acre, 5.16 acre, and 9.75 acre parcels must be surveyed per ORS 92.060(7) and the survey submitted for review.
 3. Survey checking fee required at the time of review.
 4. Property line adjustment deeds shall be recorded with the Marion County Clerk's Office prior to submitting the property line adjustment survey. Deed recording reference numbers shall be noted on the survey map. Per ORS 92.190 (4): The deed shall contain the names of the parties, the description of the adjusted line, references to original recorded documents and signatures of all parties with proper acknowledgment. [See Marion County Zoning Code MCC 16.33.140(E) and MCC 17.172.120(E)]
Marion County Planning requires perimeter descriptions of the resultant properties.

Marion County Assessor's Office provided information regarding taxes on the subject properties.

Marion County Building provided comments that permits are required for any potential future development on private property.

Marion County Septic commented that "Parcels 1 and 3 will require the owner to identify a septic drainfield repair area. The remaining proposed parcels will not require any actions for septic services.

All other contacted agencies either failed to comment or stated no objection to the proposal.

7. The criteria for reviewing lot line adjustments within an EFU zone are listed in Chapter 17.136.090(C) MCC. These criteria are as follows:
 - (a) *When one or more lots or parcels subject to a proposed property line adjustment are larger than the minimum parcel size pursuant to MCC 17.136.090(A)(1), the same number of lots or parcels shall be as large or larger than the minimum parcel size after the adjustment. When all lots or parcels subject to the*

proposed adjustment are as large or larger than the minimum parcel size, no lot or parcel shall be reduced below the applicable minimum parcel size. If all lots or parcels are smaller than the minimum parcel size before the property line adjustment, the minimum parcel size pursuant to this section does not apply to those lots or parcels.

The minimum parcel size as calculated pursuant to MCC17.136.090 (A) (1) is 100 acres. The largest parcel involved in the property line adjustment is 172.00 acres in size and is proposed to increase in size to 175.96 acres after the adjustment. Based on these facts, the criterion is met.

- (b) *If the minimum parcel size in MCC 17.136.090(A)(1) is larger than 80 acres, and a lot or parcel subject to property line adjustment is smaller than the minimum parcel size but larger than 80 acres, the lot or parcel shall not be reduced in size through property line adjustment to less than 80 acres.*

The proposal involves one parcel that is larger than 80 acres. After the adjustment, one parcel will be larger than 80 acres. The criterion is met.

- (c) *Any property line adjustment shall result in a configuration of lots or parcels that are at least as suitable for commercial agriculture as were the parcels prior to the adjustment.*

The property line adjustment is being done to better manage the farming operation. The new configuration is proposed to follow the natural boundary of a stream and to consolidate all farm land on the west side of the stream. The adjustment is also intended to consolidate farmland that is managed together into one unit of land. This criterion is met.

- (d) *A property line adjustment may not be used to:*
1. *Decrease the size of a lot or parcel that, before the relocation or elimination of the common property line, is smaller than the minimum lot or parcel size for the applicable zone and contains an existing dwelling or is approved for the construction of a dwelling, if the abutting vacant tract would be increased to a size as large as or larger than the minimum tract size required to qualify the vacant tract for a dwelling;*
 2. *Decrease the size of a lot or parcel that contains an existing dwelling or is approved for construction of a dwelling to a size smaller than the minimum lot or parcel size, if the abutting vacant tract would be increased to a size as large as or larger than the minimum tract size required to qualify the vacant tract for a dwelling; or*
 3. *Allow an area of land used to qualify a tract for a dwelling based on an acreage standard to be used to qualify another tract for a dwelling if the land use approval would be based on an acreage standard.*

One existing parcel of land is 172.00 acres in size. After the adjustment, another parcel is proposed to be 175.96 acres in size. Based on a soils survey of the area, the properties would be approximately 80% High Value Farmland, which would preclude the property from qualifying for a dwelling based on an acreage standard. In order to assure compliance with this criterion, the applicants shall be required to file a declaratory acknowledging that the land cannot be used to qualify for a dwelling based on an acreage standard. The dwelling located at 12470 Parrish Gap Road SE (092W200000900 and 092W200001000) was approved as a secondary farm dwelling and a manufactured home removal agreement was filed on July 31, 1997 (Reel 1416, page 724). This agreement is still active and binding and will require the dwelling to be removed if this property is sold out of the ownership of the Neils and Irma Jensen Trust. Based on these facts and conditions of approval, this criterion is met.

- (e) *Any property line adjustment that results in an existing dwelling being located on a different parcel shall not be subject to the standards in MCC 17.136.030(A) so long as the adjustment:*
1. *Does not increase the any adverse impacts on the continued practice of commercial agriculture on the resulting parcels; and*

2. *Does not increase the potential number of dwellings on the resulting parcels.*

The property line adjustment would result in one dwelling being located on a different parcel. The applicant states that this configuration is proposed as a way to decrease adverse impacts to farm land by consolidating the farmland together and separating off the house from the farm land. One vacant parcel is proposed to be larger than the acreage standard to qualify for a farm dwelling on non-High Value Farm land, however the soils appear to be approximately 80% HVFL, which does not allow a dwelling to be approved based on the acreage standard. In order to assure compliance with this standard, the applicant will be required to file a declaratory statement acknowledging that this land cannot be used to qualify for a dwelling based on an acreage standard. As mentioned above, the dwelling that is being separated from the farm land is approved as a secondary farm dwelling pursuant to ADM97-053, and has an active and binding manufactured home removal agreement filed with the Marion County Clerk's Office (Reel 1416, page 724). The manufactured home must be removed if the property is sold out of the ownership of the Neils and Irma Jensen Trust. Based on these facts and conditions of approval, this criterion is met.

8. Under MCC 17.172.120(E) Property line adjustment deeds shall be recorded with the Marion County clerk's office prior to submitting the property line adjustment survey, if a survey is required. Deed recording reference numbers shall be noted on the required survey.
9. The resulting lots shall significantly conform to the site plan submitted with the proposal. Minor variations are permitted upon review and approval of the Planning Director.
10. Based on the above findings, the applicants' proposal meets the criteria for a property line adjustment in an EFU zone. The property line adjustment request is, therefore, **APPROVED**, subject to conditions.

Brandon Reich
Planning Director

Date: November 19, 2021

If you have any questions regarding this decision contact Alyssa Schrems at (503) 588-5038.

Notice to Mortgagee, Lienholder, Vendor or Seller: ORS Chapter 215 requires that if you receive this Notice, it must promptly be forwarded to the purchaser.