

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. 23-032**

APPLICATION: Application of the Connor Living Trust and Bruce Ernst for a property line adjustment to adjust the property lines on a 44.98-acre parcel, a 35.75-acre parcel and a 2.27-acre parcel to create a 45.63-acre parcel, a 35.08-acre parcel and a 2.67-acre parcel in an EFU (Exclusive Farm Use) zone located at 20693 and 20853 Riverside Dr NE, St. Paul (T4S; R3W; Section 13; Tax Lots 200 & 400; Section 13D; Tax Lots 300, 500 & 800).

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

EXPIRATION DATE: Title transfer instruments accomplishing the property adjustments shall be recorded by the applicants with the Marion County Clerk by **October 10, 2025** (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 drain field 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. 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.
2. Per Marion County Surveyor's Office, no survey is required for properties greater than ten acres outside of an Urban Growth Boundary per ORS 92.060 (8), but properties 10 acres or less must be surveyed per ORS 92.060 (7) and the survey submitted for review. There will be a survey checking fee required at the time of review and property line adjustment deeds shall be recorded with the Marion County Clerk's Office. 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.

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

3. 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.

4. Prior to recording the deed all taxes due must be paid to the Marion County Tax Office, which can be reached at (503) 588-5215 for verification of payments.

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 **October 10, 2023**. If you have questions about this decision, contact the Planning Division at (503) 588-5038 or at the office. This decision is effective **October 11, 2023**, 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 on the eastern and western side of Riverside Dr NE, approximately 1,700 feet south of its intersection with Mission Rd NE. Tax lot 200 is bare land in commercial farm use, has a strip along the northwest boundary within the Greenway Management Overlay zone, a small section of the northwest corner is identified as wetland, and with very little exception, is entirely within the floodway, 100-year floodplain or 500-year floodplain. Also, the western boundary of this tax lot is a perennial stream.

Tax lot 300 is developed with two legal dwellings. The primary dwelling was built in 1901, while the secondary farm dwelling is a 1,264 square foot 1984 Golden West Somerset double wide manufactured home that was granted via Conditional Use 84-050 as a secondary farm dwelling. There are also numerous farm/accessory buildings on tax lot 300. Tax lot 300 is divided by publicly dedicated right-of-way (Mission Rd NE), however, this section of the right-of-way does not appear to have ever been built. Most of the property lies south of the road. The portion north of the road is a triangular shape roughly 0.16 acres in size.

Tax lot 400 is bare land that is in commercial agriculture production. Tax lot 400 is divided by Riverside Dr NE. It has a perennial creek running slightly offset and along its western boundary.

Tax lot 500 is bare land, mostly treed, and has a section identified as a 3-point value in Marion County's Geologically Hazardous Overlay zone. Approximately a little more than half of the property (the western half) lies within either the 100 year or 500-year floodplain. Tax lot 500 is approved for a replacement dwelling via Administrative Review Case AR23-003.

Tax lot 800 is developed and includes two legal dwellings built in 1960 and 1971, as well as accessory/farm structures. It is commercially farmed, and the western portion falls within either the 100-year or 500-year floodplain.

3. Tax lot 200 (Section 13) and 300 (Section 13D) were described as part of a larger parcel of land in Vol. 382 Page 323, recorded on Jan. 20, 1948. This larger parcel of land also included tax lots 04-3W-13D-00400, 04-3W-13-00300, and 04-3W-13-00301. Tax lot 400 was conveyed out of the larger parcel in Vol. 565 Page 794, recorded on Nov. 20, 1962. Tax lots 300 and 301 (of Section 13) were conveyed out in Vol. 771 Page 468, recorded on Feb. 13, 1974. The current deed's legal description includes a Save and Except for both Vol. 565 Page 794 and Vol. 771 Page 468. Therefore, because tax lots 400 (Section 13D), 300, and 301 (Section 13) were described separately prior to Sept. 1, 1977, and no further alterations have been found by staff since, Marion County Planning finds that, together, tax lots 200 (Section 13) and 300 (Section 13D) are **one legal parcel** for the purposes of land use.

Tax lot 500 has had an approved land use case (Administrative Review 23-003) on it, and therefore, per the definitions in Marion County Code 17.110.427 and 17.110.680, is considered legal for land use purposes.

Tax lot 400 (Section 13) and 800 (Section 13D) were described as part of a larger parcel of land, Tract 2 in Vol. 545 Page 282, recorded on May 29, 1961. This original parcel also included tax lots 400, 401, and 500 of Section 13 in Township 4 South, Range 3 West, as well as tax lot 1300 in Section 19B of Township 4 South, Range 2 West. Tax lot 1300 was taken by the City of St. Paul via eminent domain in 1981 and Minor Partition 82-019 followed. Tax lot 500 was adjusted out of the larger parcel to a neighboring property in Lot Line Adjustment 84-013, and tax lot 401 was adjusted out of the larger parcel to a neighboring property in Lot Line Adjustment 88-036. These were all Planning approved land use decisions. After these cases tax lots 400 and 800 are left as the remanent parcel. Therefore, per the definitions in Marion County Code 17.110.427 and 17.110.680, these two tax lots are deemed to be **one legal parcel** for land use purposes.

4. Adjacent properties in all directions are medium to large commercial farms zoned EFU (Exclusive Farm Use).
5. Soil Survey for Marion County, Oregon, indicates that approximately 96.6% of tax lot 200, 70.1% of tax lot 300, 90.5% of tax lot 400, 61.5% of tax lot 500, and 68.9% of tax lot 800 is classified as high value soils.
6. Various agencies were contacted about the proposal and given an opportunity to comment.

Marion County Surveyor's Office commented:

- A. No survey required for properties greater than ten acres outside of an Urban Growth Boundary per ORS 92.060 (8).
- B. Properties 10 acres or less must be surveyed per ORS 92.060 (7) and the survey submitted for review.
- C. Survey checking fee required at the time of review.
- D. Property line adjustment deeds shall be recorded with the Marion County Clerk's Office. 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 Building Division commented: "No Building Inspection concerns. Permits are required to be obtained prior to development and/or utilities installation on private property."

Marion County Assessor's Office provided comments relating to the subject parcels' property taxes.

All other contacted agencies either failed to comment or stated no objection or no comment 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:
 1. *When one or more lots or parcels subject to a proposed property line adjustment are larger than the minimum parcel size pursuant to subsection (A)(1) of this section, 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.*

Subject parcels are 38.69 acres (tax lots 200 and 300 as one legal lot), 2.35 acres (tax lot 500), and 35.6 acres (tax lots 400 and 800 as one legal lot). As all are under 80 acres in size this criterion does not apply.

2. *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.*

All subject parcels are under 80 acres in size. Therefore, this criterion does not apply.

3. *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 adjustments proposed between the parcels are negligible amounts to create and improve access, will aide in the movement of farm equipment, and no impact on the lands ability to be farmed is foreseen. The criterion is met.

4. *A property line adjustment may not be used to:*

- a. *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;*
- b. *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*
- c. *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.*
- d. *Adjust a property line that resulted from a subdivision or partition authorized by a Measure 49 waiver so that any lawfully established unit of land affected by the property line adjustment is larger than the size granted by the waiver.*

No existing homesite is being moved via these adjustments. All dwellings on the subject properties were built prior to land use and zoning law and therefore were not granted via an income or acreage standard. No new homesites will be granted, nor will any parcel qualify for a new homesite, via this land use decision. There are no Measure 37 or 49 Claims on the subject properties. The criteria is met.

5. *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:*

- a. *Does not increase the any adverse impacts on the continued practice of commercial agriculture on the resulting parcels; and*
- b. *Does not increase the potential number of dwellings on the resulting parcels.*

No dwellings will be located on a different parcel, nor will the adjustment allow for additional dwellings. This section does not apply.

8. Based on the above findings, the applicants' proposal meets the criteria for a property line adjustment in a EFU zone. The property line adjustment request is, therefore, **APPROVED**.

Brandon Reich
Planning Director/Zoning Administrator

Date: September 25, 2023

If you have any questions regarding this decision contact Nicole Inman 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.