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MARION COUNTY PUBLIC WORKS

MEMORANDUM

TO: Marion County Hearings Officer
FROM: Marion County Planning Division/Seifer
DATE: March 10, 2026
SUBJECT: Zone Change/Comprehensive Plan Change 26-001

The Marion County Planning Division has reviewed the above-named case and offers the following comments:

FACTS:

1. Application of TIBA Inc to change the zone from SA (Special Agriculture) to C (Commercial) and to change the Comprehensive Plan designation from Special Agriculture to Commercial on 24.88-acres, located at 5355 Gaffin Road SE, Salem (T8S; R2W; Section 05A; tax lot 100).
2. The property is located on the north side of Gaffin Rd SE, approximately 2,900 feet northeast of Gaffin Road's interchange onto SR22. The property was the subject of two previous land use cases, CU92-018 and CU20-038, and is legal for land use purposes.
3. Properties directly to the west and north are zoned SA (Special Agriculture), which contain a mix of small acreage residences and small-scale farming operations, essentially all being less than 15-acres in size. All other adjacent parcels are located within Salem City limits and developed with industrial uses. These include an Amazon Locker facility, RV storage, and a Salem-Keizer School District transportation center.
4. Agency Comments:

Marion County Public Works Land Development and Engineering (LDEP) provided the following comments:

ENGINEERING ADVISORIES

Applicant should also be aware of the following:

- A. PW Engineering has no action items for the proposed Zone Change itself.
- B. The following are PW Engineering advisories for future further development:
 - A storm water detention system had been designed, permitted (#UR05-055) and constructed serving the two rear (northern) buildings. Based upon review of aerial imagery, the detention system has likely been either partially or completely obliterated as a result of undocumented land clearing and grading activities over time. Future development will need to address recouping any loss of that system as well as for any new development.
 - The subject property is situated within the County’s Stormwater Management Area (SWMA). Future development, as well as any required recoupment of the original system described above, will need to include water quality treatment as part of an overall stormwater system.
 - Marion County has jurisdiction over construction erosion permitting for total ground disturbances within the SWMA ranging from 0.25-acre to just under 5-acres.
 - Authorization for permanent full-time Culver Road access is not anticipated. However, secondary, gated fire-only access to Culver Road could potentially be authorized if required by the local fire department.
 - Transportation System Development Charges (SDCs) will be assessed at the time of application for building permits, including for any required Change-in-Occupancy of an existing structure.
 - County GIS depicts a mapped seasonal ditch traversing the subject property that appears from review of aerial imagery to have been realigned in conjunction with the aforementioned undocumented grading activities.

Marion County Building commented the following: “No Building Inspection concerns. Permit(s) are required to be obtained prior to any proposed development of structures and/or utilities installation on private property. Permit history appears to indicate the existing structures on the subject property were properly permitted as commercial agricultural structures. A more thorough review of these records can be performed to provide a more formal determination

of these structures, if necessary. Please contact Marion County Building Inspection to request this information.”

Friends of Marion County: provided comments in opposition to the proposal. Their comments argue that the applicants provide insufficient evidence to demonstrate the parcel cannot be farmed and that there will be a cascading effect of committing additional resource lands in the area to non-resource use.

At the time of this staff report all other contacted agencies either failed to respond or stated no objection to the proposal.

STAFF FINDINGS AND ANALYSIS:

5. In land use actions of this type, the applicant has the burden of proving compliance with all applicable criteria. This report will outline the criteria that must be satisfied in order for an approval to be granted. If the applicant supplied argument or evidence to address specific criteria, the response will be summarized. The comprehensive plan criteria will be addressed first, followed by the zone change criteria.

GOAL EXCEPTION

6. Land use applications of this nature must be consistent with Statewide Planning Goals. In this specific case, the subject parcel is covered by Statewide Goal 3 (Agriculture Land). There is a mechanism, however, for not applying the Goal to areas with certain characteristics. This mechanism is the Goal exception process that requires specific findings justifying why such lands are not available for resource use. There are three types of exceptions to Statewide Goals that may be granted. The first two are based on the concept that the subject property is “physically developed” or “irrevocably committed” to a certain use. The third is a “reasons” exception where there is a demonstrated need for the proposed use or activity. In this case, the applicant indicated that the proposal qualifies for an irrevocably committed and physically developed exception.

STATEWIDE PLANNING GOALS

7. Proposals to amend the comprehensive plan must be consistent with the Statewide Planning Goals:
 - **Goal 1: Citizen Involvement.** The notice and hearings process provides an opportunity for citizen involvement.
 - **Goal 2: Land use Planning.** The subject application to amend the Comprehensive Plan is considered under the regulations for this goal.
 - **Goal 3: Agricultural Lands.** The applicant is proposing an exception to this goal. If approved this goal does not apply.
 - **Goal 4: Forest Lands.** The subject property has not been determined to be forest land. This goal does not apply.

- **Goal 5: Open Spaces, Scenic and Historic Areas and Natural Resources.** The Marion County Comprehensive Plan does not identify any significant open spaces, scenic and historic areas and natural resources on the subject property. This goal does not apply.
- **Goal 6: Air, Water and Land Resources Quality.** The subject property is not within an identified air quality area. The property is not located in the Sensitive Groundwater Overlay Zone. No activities have been proposed on the property that would use significant amounts of groundwater. Any single commercial use of water using less than 5,000 gallons per day is exempt from water right permitting requirements of the Oregon Department of Water Resources, as long as the water is used for a “beneficial purpose without waste” and may be subject to regulation in times of water shortage. The parcel is within Marion County’s Stormwater Management Area and will be required to construct stormwater detention systems.
- **Goal 7: Areas Subject to Natural Disasters and Hazards.** The subject property is not within an identified floodplain or geologic hazards area. This goal is not applicable.
- **Goal 8: Recreation Needs.** No Goal 8 resources are identified on the property. This goal does not apply.
- **Goal 9: Economic Development.** Because this goal focuses on commercial and industrial development, primarily within an urban growth boundary, it does not apply to this proposal. However, this zone change will provide future economic development and jobs to the area.
- **Goal 10: Housing.** This goal applies to housing within an urban growth boundary and, thus, does not apply to this proposal.
- **Goal 11: Public Facilities and Services.** The subject parcels do not require an extension of services with a Commercial zone uses, this goal is met.
- **Goal 12: Transportation.** Were the rezone granted to Commercial, the existing development will not have a significant impact on the roadway system in this area because of the minimal number of trips associated with the existing uses and the adequacy of the roadway to accommodate the probable level of additional traffic.
- **Goal 13: Energy Conservation.** The proposal will result in an increase in commercial activity in the area and will require additional energy consumption. However, the increase in energy consumption will not be beyond what can be handled by existing infrastructure. The presence of a substation and the ability of the existing infrastructure to handle more energy intensive uses on neighboring properties demonstrate the sufficiency of the system. This goal is met.
- **Goal 14: Urbanization.** The applicant is proposing to rezone Special Agriculture land to Commercial outside of the urban growth boundary. Therefore, goal 14 does not apply.

COMPREHENSIVE PLAN AMENDMENT

8. All Comprehensive Plan changes are subject to review by the State Department of Land Conservation and Development (DLCD). The DLCD was notified as required by State Law and did not comment prior to this report being prepared.
9. The Marion County Comprehensive Plan (MCCP) establishes procedures to be used when considering plan amendments. Plan changes directly involving 5 or fewer property owners will be considered a quasi-judicial amendment. The amendment will be reviewed by the zone change procedures established in MCC 17.123. A plan amendment of this type may be processed simultaneously with a zone change request with the zone change procedure outlined in Chapter 17.123 of the MCRZO. The subject property is comprised of one tax lot with one property owner. The proposal can therefore be considered under the quasi-judicial amendment process.
10. The MCCP does not contain specific review criteria for plan amendments; however, any amendment must be consistent with its applicable goals and policies. The goals and policies that apply in this case are located in the Rural Development Chapter and include policies for areas designated Commercial:
 - A. *“Strip-type” commercial or residential development along roads in rural areas shall be discouraged.*
 - B. *Rural industrial, commercial, and public uses should be limited primarily to those activities that are best suited to a rural location and are compatible with existing rural developments and agricultural goals and policies.*

No strip-type development is proposed. The majority of the parcel is currently developed, and any additional development would not be expected to have any additional impact on surrounding agricultural and rural residential lands. The applicant did not show any additional proposed development on the site plan but indicated that the proposal will utilize the existing structures developed on the property for previously approved commercial use. Gaffin Road is a paved Marion County jurisdiction road that changes to a City of Salem jurisdiction road at the end of the subject parcel’s frontage along Gaffin Rd. Access is currently granted and controlled by Marion County LDEP. Currently there are established industrial uses that generate significant traffic located on the city jurisdiction parcels to the southeast, primarily in the form of an Amazon Locker facility and Salem-Keizer School District Transportation Center. The proposed change to commercial zoning will have an impact on the traffic on Gaffin Rd, but the area is already commercially developed with roads that are capable of handling the expected increases in traffic. Additionally, Marion County LDEP has not identified any concerns and not requested any road upgrades or a TIA, therefore indicating the existing rural road development is suited for this proposal. Lastly, the rural Commercial zone permits uses that do not require public facilities such as sewer or water in order to allow for commercial development outside of urbanized areas, allowing it to be in harmony with Goal 14. As such, the new zone will restrict new uses to only those that can be supported without requiring connections to utilities and services found only in urban areas.

11. OAR 660-004-0018 (2) requires that “physically developed” and “irrevocably committed” exceptions to goals, plan, and zone designations shall authorize a single numeric minimum lot size and shall limit uses, density, and public facilities and services to those:

A. That are the same as the existing land uses on the exception site;

B. That meet the following requirements:

i. The rural uses, density, and public facilities and services will maintain the land as “Rural Land” as defined by the goals and are consistent with all other applicable Goal requirements; and

ii. The rural uses, density, and public facilities and services will not commit adjacent or nearby resource uses to nonresource use as defined in OAR 660-004-0028; and

iii. The rural uses, density, and public facilities and services are compatible with adjacent or nearby resource uses;

C. For which the uses, density, and public facilities and services are consistent with OAR 660-022-0030, ‘Planning and Zoning of Unincorporated Communities’, if applicable, or

D. That are industrial development uses, and accessory uses subordinate to the industrial development, in buildings of any size and type, provided the exception area was planned and zoned for industrial use on January 1, 2004, subject to the territorial limits and other requirements of ORS 197.713 and 197.714.

A majority of the subject parcel is currently developed—the applicant’s analysis found that about 17 of the 24.88 acres are dedicated to an existing commercial use. It is not within an unincorporated community and is not in industrial use. Marion County has adopted a rural commercial zone which has been acknowledged as complying with Goal 14, Urbanization. The zone ensures that rural uses will not exceed density limitations on rural land and will not commit rural uses to requiring an urban level of public facilities. The commercial uses which would be allowed under the county’s Commercial zone would be able to be supported on solely a rural level of public services, including rural septic service, and would be similar to the types of uses found in the surrounding land to the east, which is zoned for industrial uses by the City of Salem. While there are parcels to the north and west that are zoned Special Agriculture, because of the existing development in the immediate area, most in the vicinity are in residential or commercial use and are not being farmed, or are being farmed at a small scale. The property cannot be farmed in conjunction with any other parcels in the area easily, as the portions of the subject property abutting neighboring farm uses consist of hydric soils not suitable for commercial agriculture or are the sections of the property developed with the existing commercial use. No urban public services will be needed to serve the site. The parcels in the area already consist of commercial or residential use. Based on the evidence and findings provided by the applicant and summarized here, the proposal meets the criteria under the above section.

12. OAR 660-004-028 specifies that a local government may adopt an exception to a goal when the land subject to the exception is irrevocably committed to uses not allowed by the applicable goal because existing adjacent uses and other relevant factors make the uses allowed by the applicable goal impracticable. It further stipulates that whether land is irrevocably committed depends on the relationship between the exception area and the lands adjacent. The findings for a committed exception therefore, must address the following:

- A. The characteristics of the exception area;*
- B. The characteristics of the adjacent area and the lands adjacent to it; and*
- C. The relationship between the exception area and the lands adjacent to it; and*
- D. The other relevant factors set forth in OAR 660-04-028(6).*

OAR 660-004-028(6) referenced above indicates that findings of fact for a committed exception shall address the following factors:

- A. Existing adjacent uses;*
- B. Existing public facilities and services (water and sewer lines, etc.);*
- C. Parcel size and ownership patterns of the exception area and adjacent lands:*
 - (i) Consideration of parcel size and ownership patterns shall include an analysis of how the existing development pattern came about and whether findings against the Goals were made at the time of partitioning or subdivision. Past land divisions made without application of the Goals do not in themselves demonstrate irrevocable commitment of the exception area. Only if development (e.g., physical improvements such as roads and underground utilities) on the resulting parcels or other factors makes unsuitable their resource use or the resource use of nearby lands can the parcels be considered to be irrevocably committed. Resource and non-resource parcels created pursuant to the applicable goals shall not be used to justify a committed exception. For example, the presence of several parcels created for non-farm dwellings or an intensive commercial agricultural operation under the provisions of an exclusive farm use zone cannot be used to justify a committed exception for land adjoining those parcels.*
 - (ii) Existing parcel sizes and contiguous ownership shall be considered together in relation to the land's actual use. For example, several contiguous undeveloped parcels (including parcels separated only by a road or highway) under one ownership shall be considered as one farm or forest operation. The mere fact that small parcels exist does not in itself constitute irrevocable commitment. Small parcels in separate ownerships are not likely to be irrevocably committed if they stand alone amidst larger farm or forest operations, or are buffered from such operations.*
- D. Neighborhood and regional characteristics;*

E. Natural or manmade features or other impediments separating the exception area from adjacent resource land. Such features or impediments include but are not limited to roads, watercourses, utility lines, easements, or rights-of-way that effectively impede practicable resource use of all or part of the exception area;
F. Physical Development according to OAR 660-004-025; and
G. Other relevant factors.

The applicants have addressed the characteristics and relationship of the exception area and the lands adjacent to it, consistent with OAR 660-004-028, as shown in 12 (A), (B), (C) and (D) above. The subject parcel is bordered on all sides by features that act as barriers to other farmland in the area. To the northeast is the right-of-way for Culver DR and to the southwest is the right-of-way for Gaffin Rd. To the southeast are industrial parcels within the City of Salem that are developed with a substation and Amazon locker facility. The parcels to the west are still zoned SA and contain some farm uses, but most of these farm uses are small operations consisting of less than 10-acres, and the rest of the parcels are either developed as small acreage residences or are made up of hydric soils with low viability for farm use. To that point, the soils on the subject parcel that border these SA zoned parcels are also hydric and are not desirable for farm use, further limiting potential for use with contiguous properties. Looking broader, there are close to 185-acres of commercial or industrial zoned parcels in the area between Culver DR and SR22, as compared to about 150-acres of SA zoned parcels, demonstrating that the majority of the local area is dedicated to industrial or commercial uses. If this zone change were to be approved, the subject property would be consistent with this zoning and match existing development that dominates the local area.

The subject property's relationship with other lands in the area is that it acts as a transitional parcel between the smaller farm and residentially used parcels and the fully developed industrial and commercial parcels in the City of Salem's jurisdiction. While it contains open space, those undeveloped areas contain the most hydric soils and are the least suitable soils for farming in the area. The fact is that it is also significantly developed with structures that allow it to serve commercial uses and attempting to farm the subject parcel in conjunction with a neighboring property would require a specialized type of agricultural not requiring available soil.

As explained in Finding #11 above, the rural Commercial zone permits uses that do not require public facilities such as sewer or water.

Additionally, the subject property is the largest SA zoned parcel in the local area with the exception of a 91.10-acre parcel roughly 2,500 feet to the northeast. The applicant addresses this outlier in their analysis, showing that this one large parcel is significantly disconnected from the local area of the subject parcel by several small properties and 2 different road rights-of-way. The rest of the parcels in their area of analysis are around 10-acres or less in size and almost none are under contiguous ownership. The applicant contests that none of the parcels in farm use within their area of analysis constitute significant farming operations because of this parcel size and ownership pattern, further isolating the subject property as far as being able to incorporate into a larger farming operation.

With limited space available on the parcel for traditional farming methods, natural and development barriers to other farm parcels in the area, and the land use pattern in the immediate area consisting mostly of uses not involving commercial agriculture, the subject parcel is, through this confluence of factors, irrevocably committed to non-farm use. The criterion is met. The applicant argues that the exception area is characterized by existing development that is not being farmed due to soils and topography. No immediately adjacent parcels except one to the west are in farm production, and the one in farm production appears only to contain bee boxes and does not appear to utilize the soil for crop production. The property is bordered on the southwest and northeast by public roads and industrially zoned parcels to the southeast. The parcels to the northwest are either small parcels in residential use or contain a significant amount of hydric soils that make farming difficult (see applicant's Exhibits 1, 2, & 4).

13. The requirements for zone changes are found in MCC (Marion County Code) 17.123.060 and include:

- A. *The proposed zone is appropriate for the Comprehensive Plan land use designation on the property and is consistent with the goals and policies of the Comprehensive Plan and the description and policies for the applicable land use classification in the Comprehensive Plan; and*
- B. *The proposed change is appropriate considering the surrounding land uses and the density and pattern of development in the area; and*
- C. *Adequate public facilities, services, and transportation networks are in place, or are planned to be provided concurrently with the development of the property; and*
- D. *The other lands in the county already designated for the proposed use are either unavailable or not as well suited for the anticipated uses due to location, size or other factors; and*
- E. *If the proposed zone allows uses more intensive than uses in other zones appropriate for the land use designation, the new zone will not allow uses that would significantly adversely affect allowed uses on adjacent properties zoned for less intensive uses.*

The Commercial zone is the only zone that implements the rural Commercial designation in the Marion County Comprehensive Plan (MCCP). The MCCP policies that address designating property as Commercial were addressed earlier and the proposal is in compliance based on the evidence presented in the goal exception section of this report. The proposal is consistent with surrounding uses that comprise commercial, residential, and quasi-public uses on surrounding lands. Based on the information submitted by the applicant, it appears the criteria for a zone change are satisfied by the proposal.

CONCLUSION

Based on the above discussion, staff recommends the proposed Comprehensive Plan designation change from Special Agriculture (SA) to Commercial (C) and the zone change from Special Agriculture (SA) to Commercial (C) be approved subject to the following recommended conditions of approval:

1. The applicant shall obtain all permits required by the Marion County Building Inspection Division, including any permits for septic.
2. All future development on the property must satisfy the specific development standards in the rural C zone, Chapter 17.145, and the general development standards found in chapter 17.112, 17.113, and 17.118 of the Marion County Code.
3. Landscaping or screening shall be provided in the manner described by MCC 17.145.090 (B) adjacent to property lines that abut Special Agriculture zones or other resource zones, in addition to residential zones, when new commercial development is proposed.
4. The applicants should contact Marion County Land Development and Engineering (503-584-7714) for additional Engineering Requirements and Advisories, listed in Finding #4 above, that may be required.