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May 8, 2026

Marion County Planning Division
5155 Silverton Rd., NE
Salem, OR 97305

RECEIVED

MAY 08 2026

Marion County
Planning

RE: ZC/CP 26-001 (TIBA) - Request For Denial

To the Marion County Board of Commissioners:

Friends of Marion County is an independent 501(c) (3) farmland protection organization founded in 1998. Our mission is to protect farm and forestland, parks, and open space in Marion County.

Please provide written notice of the decision of the Board of Commissioners in this case to:

Friends of Marion County, P.O. Box 3274, Salem, OR 97302; and

John D. Butterfield, 1000 Friends of Oregon, Counsel for Friends of Marion County in this matter, 340 SE 6th Ave., Portland, OR 97214

Application of TIBA INC. for a zone change and comprehensive plan change to change the zone from SA (Special Agriculture) to C (Commercial) and to change the comprehensive plan designation from Special Agriculture to Commercial, with an exception to Statewide Planning Goal 3 (Agricultural Lands) on a 24.88-acre parcel located at 5355 Gaffin Rd SE, Salem (T8S; R2W; Section 5A; Tax lot 100).

For the above referenced application, please accept the following as written comments on behalf of Friends of Marion County (FoMC).

Agriculture is a critically important component of Marion County's economy. Each year, Marion County's more than 2,400 farms produce more than \$874 million worth of agricultural products. (2022 Census of Agriculture, USDA National Agricultural Statistics Service.) These farms employ more than 10,000 people, harvesting the wide-variety of fresh food, fibers, and seeds that nourish and supply our county, our state and the nation. (*Id.*)

Protecting agricultural land in Marion County is crucial to preserving these benefits and this vital industry. Because of the concerns we outline below, FoMC urges the Board of Commissioners to reject the recommendation of the Hearing Officer and to instead deny the Comprehensive Plan Amendment and Zone Change (Application) submitted by TIBA, Inc. (Applicant).

In Section V, Finding of Fact 11, the Hearings Officer finds that the subject parcel is irrevocably committed to non-farm use, thereby qualifying the parcel for an exception to Goal 3. This legal conclusion is not supported by the evidence in the record and the Board of Commissioners should not adopt it. Instead, the Board should find that the subject parcel is not irrevocably committed to non-farm use and deny the application.

“Only if development... 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.” OAR 660-004-0028(6)(c). Parcel size and ownership patterns “shall be considered together in relation to the land’s actual use.” *Id.* at (6)(c)(B). For example, “[t]he mere fact that small parcels exist does not in itself constitute irrevocable commitment.” *Id.*

The Hearings Officer bases her conclusion that the subject parcel has been irrevocably committed to non-farm use on:

- 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.

None of these factors demonstrate that farming on the subject parcel is “impracticable.” First, the subject property had a hay compaction operation as recently as 2020. That is a farm use. There is no evidence in the record that the hay compaction business ceased because of any impact from neighboring parcels. There is no evidence in the record that the subject parcel could not, in the future, be the site of a hay compaction business due to development of adjacent parcels. This alone defeats the irrevocable commitment Goal exception.

Under OAR 660-004-0028 and ORS 197.732, compliance with the legal standards for a committed Goal 3 exception requires that farm use, the use allowed by Goal 3, is impracticable. Farm use does not require the property to be capable of supporting an economically self-sufficient agricultural operation. *Lovinger v. Lane County*, 36 Or LUBA 1, 18-19, *aff’d*, 161 Or App 198 (1999). “Even if noncommercial levels of farm use are possible on the resource land, despite adjacent uses, then the land is not irrevocably committed to nonresource use.” *MAC IV*, slip op at 45 (citing *Pfennig I*, slip op at 27-28). As such, the County cannot rely on either commercial farming or profitability as tests for whether the subject property is irrevocably committed to nonfarm use. *Id.* The Hearings Officer’s second finding concerning barriers to other farm parcels is therefore irrelevant. The parcel itself can support farm use and whether or not access to other parcels would be required for a commercially viable farm operation is not a relevant factor for this analysis.

In analyzing the relationship between the subject property and adjacent lands, the mere presence of adjoining residential or commercial uses is not sufficient to conclude that resource lands are irreversibly committed to nonresource use. *See Gordon v. Polk County*, 54 Or LUBA 351, 356 (2007). With respect to potential conflicts with adjoining residential uses, LUBA has held that right-to-farm laws protect farmers from civil claims made by neighbors alleging nuisance or trespass from farm practices. *MAC IV*, slip op at 49. LUBA has noted that: “Evidence that property is specially assessed under ORS 308A.062 because it is in farm use is certainly relevant evidence concerning whether it is impracticable to put the property to farm use.” *Friends of Yamhill County v. Yamhill County*, 38 Or LUBA 62, 73 n9 (2000). While the County is not required to find that conflicts make farming “impossible,” a Goal 3 exception is still intended to be just that – exceptional. Mere inconveniences that are easily overcome do not make farm use impracticable. For example, LUBA has found that a

risk of liability for negligent application of fertilizers on the subject property does not support a conclusion that farm use is impracticable. *Anderson v. Coos County*, 51 Or LUBA 454, 474 (2006).

Farm use includes more than just growing crops. Many of the issues identified by the Hearings Officer—barriers between the subject parcel and other farm parcels and the land use pattern in the area—do not apply to all types of crops, much less farm uses that involve livestock, poultry, honeybees, or horses. ORS 215.203(2)(a). The Hearings Officer's findings do not provide any reason why these same farm uses could not occur on the subject property. Goal 3 does not distinguish between commercial farming and smaller scale farm uses, so these alternative farm uses need only be practicable as a small-scale farm use on the subject property to demonstrate that a Goal 3 exception is not lawful.

On March 12, 2026, LUBA issued its decision in *Friends of Marion County v. Marion County (Pfennig II)*, LUBA No. 2025-062, reversing the County's approval of a similar "irrevocably committed" Goal 3 exception. LUBA noted that the relationship between the subject property and adjacent uses is the focus of the irrevocably committed analysis. *Id.* at slip op. 22. Like in this case, in *Pfennig II*, the County could not support a finding that farming the subject parcel was impracticable.

The Hearings Officer also fails to adequately address OAR 660-004-0018(2)(b)(B). Section V, Finding of Fact 10 finds that OAR 660-004-0018(2) is met, but the Hearings Officer's conclusion is not supported by substantial evidence. If the subject parcel is irrevocably committed because of commercial use happening on adjacent lands, then converting the subject parcel to commercial use would put exactly the same pressure on agricultural lands to the north and west. The Applicant and the Hearings Officer nowhere explain how the supposed impacts of commercial use will not cascade to nearby properties if the County allows the exception. See *Pfennig I* at 27-28 (citing and explaining OAR 660-004-0018(2)(b)(B)). What the Applicant still fails to explain is how the commercial uses to the east of the subject property somehow commit the property to non-farm use, but why commercial use of the exception area will not commit the properties to the north and west to non-farm use. How would additional commercial use not replicate the potential conflicts claimed by the Applicant on the properties north and west of the subject property? The impacts associated with commercial use and parcelization would be replicated and reproduced. The Applicant cannot have it both ways. Either neighboring commercial use commits a property to non-farm use, in which case, this Application violates OAR 660-004-0018(2)(b)(B), or it doesn't, in which case, there is no basis for an exception on the subject property. Either way, the Application should be denied.

Marion County's agricultural lands form the backbone of a critical part of the County's economy. Exceptions to Goal 3 are intended to be just that: exceptions. The County should discontinue what appears to be a pattern and practice of allowing dubious exceptions to remove agricultural land protections from parcels on a whim. This application should be denied.

Roger Kaye, President
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