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MEMORANDUM

TO: Marion County Hearings Officer
FROM: Marion County Planning Division/Lindsey King
DATE: April 27, 2023
SUBJECT: Comprehensive Plan/Zone Change 23-001

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

FACTS

1. Application of Pacific-Beaverton Land Company, LLC to change the zone from EFU (Exclusive Farm Use) to I (Industrial) and to change the comprehensive plan designation from Primary Agriculture to Industrial, with an exception to statewide planning Goal 3 (Agricultural Land) on a 2.16-acre portion of a 20.16-acre parcel located at 10590 Donald Road NE, Donald. (T4S; R1W; Section 17CB; Tax Lot 4500).
2. The property is located on the south side of Donald Rd NE at its intersection with Butteville Rd NE. The parcel is located partially within the city limits of Donald. The properties have been described by Marion County Zoning Maps and are considered legal for the purposes of land use.
3. Property directly to the east is within the city limits of Donald and zoned commercial, residential and industrial, properties to the north, south and east are zoned EFU (Exclusive Farm Use).
4. The following comments were made from various agencies regarding this case:

The Department of Land Conservation and Development made comments regarding the goal exception. These comments discuss the exception to Goal 3 and that only rural uses may be allowed pursuant to a Goal 3 exception. The entirety of the comments can be found in the file.

Marion County Tax Assessor made comments that are located in the planning file.

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

STAFF FINDINGS AND ANALYSIS

5. In land use action 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 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, second by the zone change criteria, and followed by the property line adjustment 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, with an amended applicant statement the applicant indicated that the proposal qualifies for an “irrevocably committed” goal exception.

The applicant cannot justify the “physically developed” goal exception because the previous Conditional Use Permit (CU/PLA05-029) allowed for the creation of the proposed storage and repair area for farm equipment. Because the proposed comprehensive plan/zone change area was previously approved as a commercial in conjunction with farm use, which is allowed under Goal 3, OAR 660-004-0025(2) does not allow the applicant to request a goal exception using the “physically developed” goal exception. Therefore, only the “irrevocably committed” and “reasons” goal exceptions to Goal 3 can be considered.

7. 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 non-resource 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.*
8. All of the subject properties are currently developed with existing buildings as well as large graveled areas for parking. The subject properties are adjacent to other commercial farm properties and located less than a mile from Hubbard’s UGB. These properties have been in commercial and industrial uses for a number of years, and the applicant submitted aerial photos of the developed property dated 1974. The subject property is not in an unincorporated community and was not zoned for industrial use on January 1, 2004. Marion County has adopted a rural industrial 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 industrial uses which would be allowed under the county’s Industrial 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 south, which is zoned Industrial. The property cannot be farmed in conjunction with any other parcels in the area, as it has been developed in a way that physically covers the soils on the property. The applicant states that within the exception area there is at minimum 15” of base rock and gravel compacted, precluding the exception area from being farmed. No urban public services will be needed to serve the site. There are parcels in the area already consist of properties in commercial, industrial, or residential use. Based on the evidence and findings provided by the applicant and summarized here, the proposal appears to meet the criteria for a goal exception outlined in Finding 6.

9. 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 660-004-028(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.*

10. The properties to the south and west are in agriculture use, the southern parcel being the new location of the previous tenant of the exception area. The property to the north of the subject property is in both farm and public utility use, the City of Donald owns that parcel and is the Donald Sewage treatment facility and wastewater treatment ponds. Parcels to the east are developed with higher density residential uses and are mostly developed out. All abutting

parcels except the parcels to the east are more than 100 acres in size. Staff finds that the applicant has addressed the necessary criteria and concludes that the criteria is met and recommends that the goal exception be granted.

STATEWIDE PLANNING GOALS

11. 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.
- **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.
- **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 parcel does not require an extension of services with an I (Industrial) zone use. This goal is met.
- **Goal 12: Transportation.** Though the subject parcel is zoned EFU, the parcel that is associated with it is zoned industrial inside the City of Donald. According to the applicant, the subject parcel will only be used for storage of materials and parking for company vehicles. The anticipated number of deliveries will range from 25 to 75 per day. Additionally, the anticipated number of materials delivered to the applicant’s business will be an average of five. The applicant is also anticipating that the number of employees on-site will be up to 110. To access the subject parcels, it is anticipated that most employees, deliveries to customers, and deliveries to the business will come from I-5 which will then use Ehlen Road NE, Butteville Road NE, and a small portion of Donald Road NE. Some of the roads used will be within Marion County’s jurisdiction while portions of Butteville Road NE and Donald Road NE will be with the City of Donald. Ehlen Road NE and Butteville Road NE are frequently used by a variety of vehicle traffic, including cars and trucks. It is not anticipated that use of the subject parcel will result in a use that will hinder the safety, convenience, and economics of the transportation system because that type of traffic capacity currently. Therefore, the proposal complies with Goal 12.
- **Goal 13: Energy Conservation.** There is no indication of energy use increase or decrease based on the proposed zone change and comprehensive plan change. This goal does not apply.

- **Goal 14: Urbanization.** The applicant is proposing to rezone agricultural land to a rural industrial zone outside of the urban growth boundary. Therefore, the proposal complies with Goal 14 and does not require an exception to Goal 14.

COMPREHENSIVE PLAN AMENDMENT

12. 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 commented on the proposed comprehensive plan/zone change (see file for full comments).
13. 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 MCC17.123. A plan amendment of this type may be processed simultaneously with a zone change request with the zone change procedure outlined in Chapter 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.
14. 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 Industrial:
 1. *Industrial uses in conjunction with farm or forest uses shall be evaluated to determine if they need to be located on resource lands or whether an equally suitable location is available in an urban area or on non-resource lands in a rural area.*
 2. *Rural industries should be compatible with existing development and farm or forest uses in the vicinity, should not involve a large number of employees, should not require heavy truck traffic through residential areas or on unimproved roads, and should not have the potential to exceed the environmental capacity of the site or require urban services.*
 3. *A non-resource-related industrial use should not be permitted on resource lands unless an evaluation of the relevant County and State goals and the feasibility of locating the proposed use in an urban growth boundary or rural non-resource lands show that the proposed site on resource lands is the most suitable.*
15. The applicant states that the industrial use associated with the zone change is not in conjunction with farm or forest uses and is not located on commercial agricultural land. The applicant also states the site is an isolated field not practicable for use as farmland. There are no equally suitable lands in the vicinity either in a local urban area or on available non-resource lands. Expanding the industrial use currently located on Tax Lot 800 to an equally suitable location on any other nearby land involves the conversion of the commercial agriculture occurring on Tax Lots 100, 900, 1900 and 200 that surrounds this tax lot. To further address Policy 1, the applicant states that there appears to be no industrial sites available within the Hubbard UGB that are of a size that are suitable and available to serve the current use as well as the proposed expansion (approval pending).

To address Policy 2, the applicant states that the proposed use will be compatible with surrounding uses as many of the surrounding properties to the west have been developed with commercial or industrial uses. The applicant states that the re-zone is compatible with existing development and farm uses in the vicinity and does not involve a large number of employees, nor does it require heavy truck traffic through residential areas or on unimproved roads. The applicant states that the proposed use will not exceed the carrying capacity of the site as the necessary facilities are already in place or not applicable as there is no new development requiring them proposed. The site is free of other environmental amenities, such as wetlands or floodplains, and it is not located within a sensitive groundwater area identified by the MCCP.

To address Policy 3, the applicant has requested an exception to Goal 3 under “Irrevocably Committed” exceptions. The applicant also submitted a review of available industrial lands in the county to demonstrate that there are no areas in the urban growth boundary or rural non-resource lands available that could support the proposed use. The

applicant will have the opportunity to discuss this study in more detail. Based on the evidence and findings provided, the proposal appears to comply with Industrial Policies 1-3.

16. 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.*
17. The Industrial zone is the only zone that implements the rural Industrial designation in the Marion County Comprehensive Plan (MCCP). The MCCP policies that address designating property as Industrial 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 agricultural 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 that if the goal exception criteria are satisfied, the proposed Comprehensive Plan designation change from Primary Agriculture to Industrial. The zone change from Exclusive Farm Use to Industrial and the associated property line adjustment should be approved subject to the following conditions:

- 1. The applicant shall not utilize the remaining Exclusive Farm Use lands for industrial use.
- 2. Industrial uses shall maintain compliance with development standards contained in MCC 17.165.