Peter Finley Fry AICP Ph.D.

DRAFT

April 9, 2021

Memorandum

TO: **Multnomah County Planning Commission**
FROM: Peter Finley Fry
RE: § 39.4255 Lot Line Adjustment – Equal Area Provision

REQUEST
Amendment of Multnomah County's Zoning Code to eliminate the provision that requires adjusted lots in Exclusive Farm Use zones to remain the same size before and after adjustment - The Equal Area Provision (EAP).

REASONS FOR AMENDMENT
1. EAP is not required by State law.
2. EAP may not be practical and, if allowed, results in jagged, unpredictable lot lines.
3. Multnomah County has many rural lots created prior to 1984 resulting in issues that require adjustments.
4. Farm and conservation practice do not follow lot lines and require adjustments to accommodate the farming activity and/or habitat.

PROPOSED AMENDMENT
§ 39.4255 LOT LINE ADJUSTMENT; PROPERTY LINE ADJUSTMENT.

~~***(3) The reconfigured lot areas will each:***~~
~~***(a) Be a minimum of 80 acres, or***~~
~~***(b) Retain the same lot area that existed prior to the exchange.***~~

Replace with:

(3) The reconfigured lot areas will each:
(a) Be a minimum of 80 acres, or
(b) Neither lot is reduced to less than 2 acres and
(c) Will not separate a temporary hardship dwelling, relative farm help dwelling, home occupation or processing facility from the parcel on which the primary residential or other primary use exists.

PURPOSE
"The purposes of the Exclusive Farm Use Base Zone are to preserve and maintain agricultural lands for farm use consistent with existing and future needs for agricultural products, forests and open spaces; to conserve and protect scenic and wildlife resources, to maintain and improve the quality of the air, water and land resources of

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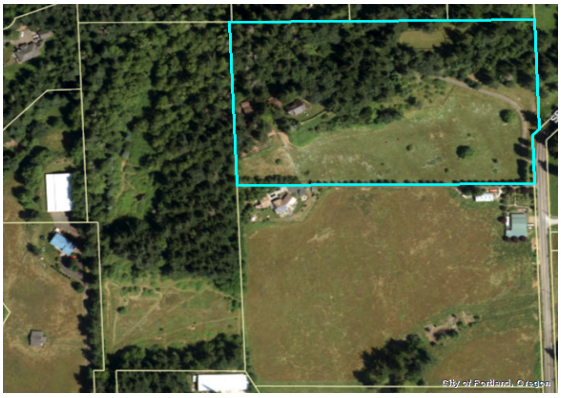
the County and to establish criteria and standards for farm uses and related and compatible uses which are deemed appropriate." (Multnomah County Zoning Code).

The amendment acknowledges the stated purpose and state laws by prohibiting the reduction of any lot that conforms to the minimum lot size of 80 acres as established by state law and county ordinance. The amendment allows the adjustment of non-conforming lots that allows lot lines to conform to the dimensions of farm practices and/or habitats, specifically riparian habitat. The amendment also allows for minor adjustments to address utility or dimension requirements.

MULTNOMAH COUNTY'S CURRENT APPROACH

Multnomah County applies the equal area rule. No other county – Columbia, Washington, Clackamas, or Hood River - that touches Multnomah County require equal area. This would not be an issue for someone in the Sandy area.

This rule results in lot lines not adjusted because it is not practical to meet the EAP rule because of the physical configuration of the lots. In this case, one lot would be adjusted to include the continuation of the end of the ridge and stream corridor but could not practically return the property gain because the two lots are connected at an angle. In this case, the provision prohibits a lot line adjustment for no practical reason.



A Common Configuration that Prevents a Lot Line Adjustment Under the Current Rules

The rule also results in unpredictable lot lines. Rural properties are large with lots lines that are often across natural area. These lot lines become predictable over time as fencing, agricultural and forest practices, and improvements provide definition. Lot lines can also be found to follow riparian and distinct habitats. The EAP rule can result in jagged and unpredictable lot lines.



A Jagged and Unpredictable Lot Line Created by the Current Rule

Multnomah County

4.A.2 – EXCLUSIVE FARM USE (EFU)

§ 39.4200- PURPOSE. The purposes of the Exclusive Farm Use Base Zone are to preserve and maintain agricultural lands for farm use consistent with existing and future needs for agricultural products, forests and open spaces; to conserve and protect scenic and wildlife resources, to maintain and improve the quality of the air, water and land resources of the County and to establish criteria and standards for farm uses and related and compatible uses which are deemed appropriate. Land within this base zone shall be used exclusively for farm uses as provided in the Oregon Revised Statutes Chapter 215 and the Oregon Administrative Rules Chapter 660, Division 33 as interpreted by this Exclusive Farm Use Subpart. One of the implementation tools to carry out the purposes of this base zone is a Lot of Record requirement to group into larger "Lots of Record" those contiguous parcels and lots that were in the same ownership on February 20, 1990. This requirement is in addition to all "tract" grouping requirements of State Statute and Rule.

§ 39.4255 LOT LINE ADJUSTMENT; PROPERTY LINE ADJUSTMENT.
(A) Pursuant to the applicable provisions in MCC 39.9300, an adjustment of the common lot line between contiguous Lots of Record may be authorized based on a finding that:
(1) All dwellings that were situated on the same lot prior to the adjustments must remain together on the reconfigured lot; and
(2) The following dimensional and access requirements are met:
(a) The relocated common property line is in compliance with all minimum yard and minimum front lot line length requirements; and
(b) If the properties abut a street, the required access requirements of MCC 39.4260 are met after the relocation of the common property line; and
(3) The reconfigured lot areas will each:
(a) Be a minimum of 80 acres, or
(b) Retain the same lot area that existed prior to the exchange.

STATE LAW

The Oregon Administrative Rules (OAR) 660-033-0100 is clear that new lots shall not be created that are less then the required 80 acres for agricultural land. Recent court cases have affirmed that this includes reducing a conforming lot to a non-conforming size through a lot line adjustment.

This section is silent on the adjustment of size between two non-conforming lots.

Oregon Administrative Rules
Chapter 660 Land Conservation and Development Department
Division 33
AGRICULTURAL LAND
660-033-0100
Minimum Parcel Size Requirements

(1) Counties shall establish minimum sizes for new parcels for land zoned for exclusive farm use. For land not designated rangeland, the minimum parcel size shall be at least 80 acres. For land designated rangeland, the minimum parcel size shall be at least 160 acres.

(2) A county may adopt a minimum parcel size lower than that described in section (1) of this rule by demonstrating to the Commission that it can do so while continuing to meet the requirements of ORS 215.243 and that parcel sizes below the 80 or 160 acre minimum sizes are appropriate to maintain the existing commercial agricultural enterprise within an area. This standard is intended to prevent division of farmland into parcels that are too small to contribute to commercial agriculture in an area. This standard does not require that every new parcel created be as large as existing farms or ranches in an area. The minimum parcel size may allow creation of parcels smaller than the size of existing farms or ranches. However, the minimum parcel size shall be large enough to keep commercial farms and ranches in the area successful and not contribute to their decline. Lots or parcels used, or to be used, for training or stabling facilities shall not be considered appropriate to maintain the existing commercial agricultural enterprise in any area where other types of agriculture occur.

(4) A minimum size for new parcels may be appropriate to maintain the existing agricultural enterprise in the area, but it may not be adequate to protect wildlife habitat pursuant to Goal 5. When farmland is located in areas of wildlife habitat, the provisions of Goal 5 continue to apply.

8) The county governing body or its designate may not approve a land division or property line adjustment of a lot or parcel that separates a temporary hardship dwelling, relative farm help dwelling, home occupation or processing facility from the parcel on which the primary residential or other primary use exists.

660-033-0145
Agriculture/Forest Zones

(2) Land divisions in agriculture/forest zones may be allowed as provided for under OAR 660-006-0055;

Division 6
FOREST LAND
660-006-0055
New Land Division Requirements in Agriculture/Forest Zones

(1) A governing body shall apply the standards of OAR 660-006-0026 and 660-033-0100 to determine the proper minimum lot or parcel size for a mixed agriculture/forest zone. These standards are designed: To make new land divisions compatible with forest operations; to maintain the opportunity for economically efficient forest and agriculture practices; and to conserve values found on forest lands.

(2) New land divisions less than the parcel size established according to the requirements in section (1) of this rule may be approved for any of the following circumstances:

(a) For the uses listed in OAR 660-006-0025(3)(m) through (o) and (4)(a) through (o) provided that such uses have been approved pursuant to OAR 660-060-0025(5) and the land division created is the minimum size necessary for the use.

(d) To allow a division of a lot or parcel zoned for mixed farm and forest use if:

(A) At least two dwellings lawfully existed on the lot or parcel prior to November 4, 1993;

(B) Each dwelling complies with the criteria for a replacement dwelling under ORS 215.213(1) or 215.283(1);

(C) Except for one lot or parcel, each lot or parcel created under this section is between two and five acres in size;

(D) At least one dwelling is located on each lot or parcel created under this section; and

(E) The landowner of a lot or parcel created under this section provides evidence that a restriction prohibiting the landowner and the land owner's successors in interest from further dividing the lot or parcel has been recorded with the county clerk of the county in which the lot or parcel is located. A restriction imposed under this section shall be irrevocable unless a statement of release is signed by the county planning director of the county in which the lot or parcel is located indicating that the comprehensive plan or land use regulations applicable to the lot or parcel have been changed so that the lot or parcel is no longer subject to statewide goal 4 (Forest Lands) or unless the land division is subsequently authorized by law or by a change in statewide goal 4 (Forest Land);

(6) A landowner allowed a land division under section (2) of this rule shall sign a statement that shall be recorded with the county clerk of the county in which the property is located, declaring that the landowner and the landowner's successors in interest will not in the future complain about accepted farming or forest practices on nearby lands devoted to farm or forest use.

APPROACHS OF A SAMPLE OF OREGON COUNTIES

All counties shall comply with state law. Compliance may differ in counties due to litigation that clarifies the legislative intent. None of the surveyed counties applied the EAP rule.

The examples provided show the range of solutions.

Hood River County

F. On land zoned Exclusive Farm Use, Forest, or Primary Forest, 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 lawfully established unit of land affected by the property line adjustment would be increased to a size as large as or larger than the minimum lot or parcel size required to qualify the other affected lawfully established unit of land for a dwelling;

2. Decrease the size of a lawfully established unit of land 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 another lawfully established unit of land affected by the property line adjustment would be increased to a size as large as or larger than the minimum lot or parcel size required to qualify the other affected lawfully established unit of land for a dwelling;

3. Allow an area of land used to qualify a lawfully established unit of land for a dwelling based on an acreage standard to be used to qualify another lawfully established unit of land for a dwelling if the land use approval would be based on an acreage standard; or

4. Adjust a property line that resulted from a subdivision or partition authorized by a waiver so that any lawfully established unit of land affected by the property line adjustment is

larger than: a. Two acres if the lawfully established unit of land is, before the adjustment, two acres in size or smaller and is high-value farmland, high-value forestland or within a ground water restricted area; or

b. Five acres if the lawfully established unit of land is, before the adjustment, five acres in size or smaller and is not high-value farmland, high-value forestland or within a ground water restricted area.

Clackamas County

1107.04 EFU, TBR, AND AG/F DISTRICT APPROVAL CRITERIA In addition to the standards and criteria in Subsection 1107.03, a property line adjustment in the EFU, TBR, or AG/F District shall be subject to the following standards and criteria:

A. A property line adjustment shall not be used to reconfigure a lot of record or tract, the effect of which is to qualify a lot of record or tract for the siting of a dwelling.

B. A property line adjustment shall not separate a temporary dwelling for care, relative farm help dwelling, home occupation, or processing facility from the lot of record on which the primary dwelling or other primary use exists.

C. A property line adjustment for a lot of record without an approved homestead, nonfarm use, nonforest use, farm management plan, or forest management plan may be approved pursuant to the following provisions:

1. A property line adjustment for a lot of record larger than 80 acres may be approved if the adjustment does not reduce the lot of record to less than 80 acres.

2. A property line adjustment for a lot of record smaller than 80 acres may be approved pursuant to the following provisions:

a. The property line adjustment will:

i. Not reduce the size of the lot of record by more than five percent; and

ii. Only one reduction is approved pursuant to this provision; or

b. Both lots of record are in the EFU District and the resulting configuration (size) is determined to be at lea b. Both lots of record are in the EFU District and the resulting configuration (size) is determined to be at least as appropriate for the continuation of the existing commercial agricultural enterprise on each lot of record, as compared to the original configuration; st as appropriate for the continuation of the existing commercial agricultural enterprise on each lot of record, as compared to the original configuration; or

c. Both lots of record are in the EFU District and the adjustment complies with the provisions for siting a dwelling not in conjunction with a farm use as required by Oregon Administrative Rules (OAR) 660-033-100(7) and Section 401, Exclusive Farm Use District.

Washington County

ARTICLE VI - LAND DIVISIONS AND PROPERTY LINE ADJUSTMENTS
601 - LAND DIVISIONS AND PROPERTY LINE ADJUSTMENTS
610 - LAND DIVISIONS AND PROPERTY LINE ADJUSTMENTS OUTSIDE A UGB 610-1
Property Line Adjustments (Property Line Relocation)
A property line adjustment is the relocation or consolidation of a common boundary line between two or more abutting properties where an additional lot or parcel is not created.
610-1.1
A. General Limitations
Property line adjustments are limited as follows:

(1) In the EFC District, no lot or parcel shall be reconfigured to qualify for a Dwelling under Section 430-37.2 E.(2) with the exception of those Type I adjustments described under Section 610-1.1 B.

(2) Property line adjustments that result in lots or parcels of less than two acres shall provide:

(a) Documentation from the Department of Health & Human Services or the Department of Environmental Quality that property(ies) less than two acres in size can accommodate a subsurface sewage disposal system and/or replacement system; and

(b) Documentation from the Water Master that property(ies) less than two acres in size can accommodate public water or an on-site water source.

(3) Existing lots or parcels reduced in size by a property line adjustment may not be reduced below the minimum lot size established by the applicable land use district, unless authorized by Section 610-1.1 B or C.

(4) For property line adjustments on lots or parcels with two or more land use districts, the minimum lot size shall be based on the predominant land use district of the parcel.

(5) Lots that were created through a Measure 49 authorization shall not be increased by a Property Line Adjustment to exceed the following size limitations established by OAR 660-041-0180(2):

(a) Two acres if the property is located on high-value farm or forest land, or on land within a ground water restricted area; or

(b) Five acres if the property is not located on high-value farm or forest land, and is not on land within a groundwater restricted area.

B. Property Line Adjustments Permitted Through a Type I Procedure

Property lines in the EFC District may be adjusted through a Type I procedure only if consistent with CDC Section 610-1.1.B. (2), (3)(a), (b) and (d) below. All other property line adjustments in the EFC District shall be reviewed under Section 610-1.1 C. Property lines in the EFU, AF-20, AF-10, AF-5, RR-5, R-COM, R-IND and MAE Districts shall be adjusted through a Type I procedure provided:

(1) Both properties meet or exceed the minimum lot or parcel size for the applicable district; or

(2) Equal land areas are exchanged;

or

(3) No lot or parcel is reduced in size below the minimum lot size for the District except for the following:

(a) When a federal, state, or local judiciary issues a court decree for adverse possession, way of necessity or a prescriptive use. The adjustment shall not be larger than the minimum size necessary to implement the court decree; or

(b) Where a parcel has a lawfully established structure which is in violation of a setback requirement. The adjustment shall not be larger than the minimum size necessary to correct the violation; or

(c) Where a parcel is being reconfigured for the purpose of a Federal project for creation of, restoration of or enhancement of wetlands; or

(d) When a parcel is reconfigured to provide adequate sight distance as determined by the County Engineer; or

(e) A lot or parcel is reconfigured to align with a road or railroad right-of-way, a power transmission line on deeded property, an urban growth boundary or a channel of a river or other watercourse or body of water that divides the lot or parcel; or

(4) For properties entirely outside the boundary of a city, one or both of the abutting properties are smaller than the minimum lot or parcel size for the applicable district before the property line adjustment and, after the adjustment, one is as large as or larger than the minimum lot or parcel size for the applicable district; or

(5) For properties entirely outside the boundary of a city, both abutting properties are smaller than the minimum lot or parcel size for the applicable district before and after the property line adjustment.

C. Property Line Adjustments Permitted Through a Type II Procedure

Except as otherwise allowed under CDC Section 610-1.1.B. (2), (3)(a), (b) and (d), in the EFC District, on lots or parcels located entirely outside the boundary of a city, property lines may be adjusted through a Type II procedure when the following standards are met:

(1) Both properties meet or exceed the minimum lot or parcel size for the applicable district; or

(2) One or both of the abutting properties are smaller than the minimum lot or parcel size before the adjustment, and after the adjustment, at least one property is as large or larger than the minimum lot or parcel size for the applicable district; or

(3) Both abutting properties are smaller than the minimum lot or parcel size for the applicable district before and after the adjustment.

(4) The adjustment shall not 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 district 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.

(5) The adjustment shall not 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.

(6) The adjustment shall not 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.

610-1.3

Review Standards

In addition to the applicable requirements of Section 610-1.1, property line adjustments shall meet the following standards:

A. No additional unit(s) of land shall be created as a result of the property line adjustment;

B. No property line adjustment shall result in a property line that violates the setback of the applicable land use district unless a variance to the standard is approved; and

C. The adjusted parcels meet the sight distance requirements of Section 501-9.5.

Columbia County

COLUMBIA COUNTY OREGON Z O N I N G O R D I N A N C E

ARTICLE II – GENERAL PROVISIONS

212 Property Line Adjustment. . . 212 Property Line Adjustment: Property lines may be adjusted between legal lots or parcels provided that no lot or parcel conforming to the minimum lot or parcel size requirement of the district is reduced below that minimum lot or parcel size, and any lot or parcel changed by the property line adjustment shall satisfy or not decrease compliance with the minimum width, depth, frontage, yard, and setback requirements of the district.

.1 Lot Line Adjustments may be allowed between undersized lots, or between an undersized lot and a complying lot, in any district provided that the resulting lots satisfy the minimum width, depth, frontage, and yard requirements of the district, and setbacks to existing structures are not reduced by the lot line adjustment below the minimum setback requirements.

ARTICLE III – RESOURCE DISTRICTS

300 PRIMARY AGRICULTURE USE ZONE - 80 PA-80

310 Property Line Adjustments.

.1 All property line adjustments require review and approval by the Planning Director or his designate, subject to compliance with the following criteria:

A. Adjustments may be made between one parcel larger than the minimum lot size and one parcel smaller than the minimum lot size as long as the exchange results in the same number of parcels larger than the minimum lot size;

B. The lot boundaries resulting from the adjustment will maintain compliance with building setbacks, access standards and environmental health regulations; and

C. The adjustment will create no additional parcels(s).

.2 Parcels greater than 10 acres do not require a survey.

.3 Property line adjustments in the PA-80 Zone 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 80 acres 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 80 acres, 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 PA - 80 -52- 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.

Jefferson County

CHAPTER 7 LAND DIVISIONS AND ADJUSTMENTS

Section 713 - Property Line Adjustments

713.3 Approval Criteria A property line adjustment may be approved if it complies with all of the following:

E. For property line adjustments involving parcels in the Exclusive Farm Use A-1, Exclusive Farm Use A-2, Range Land and Forest Management zones, if the adjustment will result in any parcel being smaller than the minimum lot size of the zone, the adjustment shall not adversely impact existing or potential resource use of the parcels.