

**NOTICE OF DECISION
PARTITION CASE NO. 18-020**

APPLICATION: Application of Bell Northside LLC to divide a 16.69 acre parcel into two parcels of 5.51 acres and 11.18 acres each in an EFU (Exclusive Farm Use) zone located at 3151 Waconda Road NE, Gervais. (T6S; R3W; Section 1; tax lot 900).

DECISION: Notice is hereby given that the Planning Director for Marion County has **APPROVED** the request to subject to certain conditions.

EXPIRATION DATE: This approval is valid only when the final partition plat is recorded by **August 31, 2020**. The effective period may be extended for an additional year subject to approval of an 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 division is for land use purposes only. Due to septic, well, and drain field replacement areas, these parcels may not be able to support a dwelling. To be sure the subject property can accommodate the proposal the applicant should contact the Building Inspection Division, (503) 588-5147.

This decision does not include approval of a building permit.

CONDITIONS: The following conditions must be met to the Department's satisfaction before a building permit can be obtained or the approved use established:

Prior to recording the final plat:

1. The applicant shall have the resulting parcels platted per ORS 92.050. The plat shall be filed with the County Surveyor and shall contain the notation that the survey is the result of Partition Case 18-020. (Final Plat Instructions enclosed).
2. Public Works Land Development Engineering and Permits Division (LDEP) will not approve the final plat for recordation until the following condition has been satisfied:

Condition A - Prior to plat approval applicant shall obtain an Access Permit, and under the permit, complete PW Engineering Access Requirements that pertain to access management and surfacing.
3. Prior to submitting the final partition plat, the applicant shall, if required by the Marion County Onsite Wastewater Specialist, obtain an existing system evaluation from Marion County Building Inspection Division. **The applicant is strongly encouraged to contact Building Inspection, (503) 588-5147, regarding septic sites before having the property surveyed. Septic site requirements may affect the proposed property line or lot locations.**
4. The applicant is advised that a Partition Plant Service Report, from a title company, will be required upon submission of the final mylar to the County Surveyor.

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

5. 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.
6. After the property line adjustment and partition have 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. It is recommended that the agencies mentioned below in #6 of the Findings section be contacted to identify restrictions or necessary permits. The applicant is advised of the following:

7. Prior to recording the plat, all taxes due must be paid to the Marion County Tax Department. Contact the Assessor's Office at 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 to adopted land use policies and regulations the Director must condition or deny the application. Persons who disagree 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 Rd. NE, Salem, by 5:00 p.m. on **August 31, 2018**. If you have questions about this decision contact the Planning Division at (503) 588-5038 or at the office. This decision is effective **September 1, 2018** unless further consideration is requested.

FINDINGS AND CONCLUSIONS: Findings and conclusions on which the decision was based are noted below.

1. The subject property is designated Primary Agriculture in the Marion County Comprehensive Plan. The major purpose of this designation and the corresponding EFU (Exclusive Farm Use) zone is to promote the continuation of commercial agricultural operations.
2. The property is located on the north side of Waconda Road NE in the 3100 block. The property was previously approved for a commercial activity in conjunction with farm use to process maraschino cherries in Conditional Use Case #15-047.
3. Surrounding properties in all directions are zoned EFU and consist primarily of properties in farm use.
4. Soil Survey of Marion County Oregon indicates 96% of the subject property is high-value farm soils.
5. The applicant is proposing to divide a 16.69 acre parcel into two parcels of 5.51 acres and 11.18 acres each for a non-farm use.
6. Public Works Land Development Engineering and Permits requested that Condition A be included in the land use decision. LDEP also commented on requirements that are not part of the land use decision and available for review in the planning file. LDEP will not approve the final plat for recordation until the following condition has been met:

“Condition A - Prior to plat approval applicant shall obtain an Access Permit, and under the permit, complete PW Engineering Access Requirements that pertain to access management and surfacing.

Access work is typically an Engineering Requirement; however, it is being elevated to condition status as a matter of timing. All Engineering Requirements previously defined under CU11-013 REVISED, enclosed, must be re-completed and documented. In addition, the western-most access to the home with the carport shall be permanently closed and consolidated into the access immediately to the east.

This *Condition* comes from observations by Public Works that the blocks used to restrict the access are too far apart to act as restrictors, such that a vehicle can pass between the blocks. This is not an effective method to restrict access.”

Marion County Tax Assessor provided information regarding the taxes on the subject property.

Marion County Building Inspection commented that the septic system requires an existing system evaluation.

Marion County Surveyor commented: “No survey required on parcels created over ten acres. Parcels ten acres and less must be surveyed. Per ORS 92.050, plat must be submitted for review. Checking fee and recording fees required. A current or updated title report must be submitted at the time of review. Title reports shall be no more than 15 days old at the time of approval of the plat by the Surveyor’s Office, which may require additional updated reports.”

7. The criteria for reviewing division of lands for a non-farm parcel within an EFU zone are listed in Chapter 17.136.090 of the Marion County Code (MCC). These criteria are as follows:

A. *Minimum Parcel Size for Newly Created Parcels.*

2. *Non-Farm Parcels. A new non-farm parcel created pursuant to subsection (B) of this section shall only be as large as necessary to accommodate the use and any buffer area needed to ensure compatibility with adjacent farm uses.*

The applicant provided a drawing showing how the proposed new parcel will be the minimum size necessary to accommodate the entire non-farm use. This criterion is met.

B. *Requirements for Creation of New Non-Farm Parcels.*

1. *A new non-farm parcel may be created for uses listed in MCC 17.136.040(C) and (K) and MCC 17.136.050, except the residential uses in MCC 17.136.050(A) and (B).*

The non-farm use previously approved, for a commercial activity in conjunction with farm use, is found in MCC 17.136.050. This criterion is met.

2. *The criteria in MCC 17.136.060 applicable to the use shall apply to the parcel.*

The applicable portions of MCC 17.136.060 were previously applied to the request for the commercial activity in conjunction with farm use and the use was found to meet the criteria. This criterion is met.

3. *A non-farm parcel shall not be approved before the non-farm use is approved.*

The non-farm use was approved by Conditional Use Case #15-047. This criterion is met.

4. *A division of land for non-farm use shall not be approved unless any additional tax imposed for the change has been paid, or payment of any tax imposed is made a condition of approval.*

Planning will not require the property be disqualified from farm deferral on property taxes. However, any taxes owing, or if the property no longer qualifies for farm deferral, it will be made a condition of approval that those taxes be paid prior to platting. As conditioned, this criterion can be met.

8. Based on the above findings and conclusions, the applicant’s proposal meets the criteria for partitioning for a non-farm use in an EFU zone is, therefore, **APPROVED** subject to meeting certain conditions.

Joe Fennimore
Director-Planning Division

Date: August 16, 2018

If you have any questions please contact Brandon Reich 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.