

BEFORE THE MARION COUNTY HEARINGS OFFICER

In the Matter of the Application of) **Case No. 25-017**
)
 D. and J.F. Vineyards, LLC) **PARTITION**

ORDER

I. Nature of the Application

This matter comes before the Marion County Hearings Officer on the Application of D. and J.F. Vineyards, LLC, LLC to partition a 26.93-acre parcel into three parcels consisting of 6-acres, 6-acres, and 14.93-acres in an SA (Special Agriculture) zone and an AR (Acreage Residential) zone located at 7412 Liberty Road S, Salem (T8S; R3W; Section 28A, Tax lot 2000).

II. Relevant Criteria

The standards and criteria relevant to this application are found in the Marion County Code, Marion County Code (MCC) Chapter 17, particularly MCC 17.128 (Acreage Residential Zone), MCC 17.137 (Special Agriculture Zone); and MCC 17.181 (Sensitive Groundwater Overly Zone)

III. Public Hearing

A public hearing was held on this matter on November 6, 2025. At the hearing, the Planning file was made a part of the record. The following persons appeared at the hearing and provided testimony and/or argument on the Application.

1.	Gillian Peden	Marion County Planning Division
2.	Alan M. Sorem	Attorney for Applicant
3.	Greg Fries	Applicant
4.	Dean V. Backer	Appellant / Opponent
5.	David Gillies	Opponent
6.	Wendy Poling	Opponent
7.	Karl Johnson	Opponent
8.	Austin Barnes	Marion County Planning Division

No objections were made to notice, jurisdiction, or conflict of interest. Applicant submitted one exhibit during the hearing, which was admitted without objection:

Exhibit 1: Aerial Overlay of Property of Parcel from Assessor Map

Exhibit 2: Written Statement of Dean Backer

Exhibit 3: Warning on Champion Hill Rd.

IV. Executive Summary

Applicant seeks to partition a 26.93-acre parcel into three parcels consisting of 6-acres, 6-acres, and 14.93-acres in an SA (Special Agriculture) zone and an AR (Acreage Residential) zone located at 7412 Liberty Road S, Salem. There are no specific criteria for partitioning a property in the AR zone. Each of the parcels resulting from the proposed partition would meet this standard. The SA-zoned portion of the property is approximately 14.93 acres, and this portion of the property will not be partitioned.

Appellants/Opponents raise concerns with surface water, sufficient groundwater supply, traffic safety issues, and the requirement of a fire suppression system that would further deplete available groundwater. MCC 17.181 establishes provisions for partitioning property in an SGO zone. In the SGO-5 zone, creating a parcel greater than five acres does not require applicants to demonstrate sufficient groundwater supply. However, Marion County requires a Declaratory Statement be recorded with the property deed prior to the issuance of building permits. Appellant/Opponents concerns focus on development issues, and at this point, the Application is solely for partition.

The Planning Director for Marion County approved the application, subject to certain conditions. Applicant meets all criteria for approval of the Application subject to certain conditions. Applicant challenges a condition of approval requiring a right of way dedication. Applicant's challenge preserves any appellate issues or constitutional claims under ORS 197.796. Application for Partition is APPROVED subject to certain conditions, including the right of way dedication as required by the Marion County Code.

V. Findings of Fact

The hearings officer, after careful consideration of the testimony and evidence in the record, issues the following findings of fact:

1. The property is designated Rural Residential and Special Agriculture in the Marion County Comprehensive Plan. The purpose of the Rural Residential designation and the corresponding AR (Acreage Residential) zone is to allow the creation of acreage homesites at a density that maintains the character and environmental quality of rural residential areas. The Special Agriculture designation and the corresponding SA zone is applied to areas characterized by small farm operations or areas with a mixture of good and poor farm soils.
2. The subject property is located directly east of Liberty Rd S, approximately 400 feet north of its intersection with Hylo Rd SE. The southeast portion of the property can be accessed off Hylo Rd SE. The property contains five farm buildings and one manufactured home. The staff report initially indicated that there were no dwellings on the property. At the hearing, staff made a correction to include that there is a manufactured home on the parcel. The entire property is used for farming operations.

The subject property was described in 1962 recorded deed (Vol. 726 Pg. 87) and has been described in this configuration since. The subject property is, therefore, legal for land use purposes.

3. Surrounding uses consist of AR parcels to the west and southwest. Directly north, east, and southeast of the property consist of large, SA zoned parcels in active farm use.
4. The applicant proposes to divide a 26.93-acre parcel into three parcels consisting of 6-acres, 6-acres, and 15.93-acres.
5. Various agencies were contacted with requests for comments.

Marion County LDEP requested the following be included:

ENGINEERING CONDITIONS

- A. On the partition plat dedicate a 30-foot R/W half-width over the two subject property 6-acre parcels Cole Road property frontages to meet the County Local road standard, and including a 30-foot property corner radius at the intersection of Liberty Road and Cole Road [MCC 17.172.240 & 17.172.200, respectively].
- B. Prior to partition plat approval, notarize a Road Maintenance Agreement to be recorded concurrently with the partition plat for collective maintenance of the proposed private easement drive [MCC 17.172.340].

ENGINEERING REQUIREMENTS

- C. The developable parcel shall share an existing, permitted driveway paved approach connection to Hylo Road via private access easement. The Liberty Road driveway approach was required to be gated and restricted to seasonal harvest use by larger farm equipment under the same Access Permit #10-02228 due to limited Intersection Sight Distance (ISD). In the alternative to the Hylo Road access, a new shared residential access could be installed under a permit within the Cole Road unopened R/W where there is anticipated sufficient ISD at the Liberty Road connection.
- D. Transportation System Development Charges (SDCs) & Parks fee will be assessed upon application for building permits for a new dwelling.
- E. Utility extension work in the public right-of-way requires permits from PW Engineering.

Marion County Surveyor's Office commented:

- a. Per ORS 92.055 – Parcels over 10 acres can be unsurveyed, if outside of an urban growth boundary.
- b. Parcels 10 acres or less must be surveyed and monumented.
- c. Per ORS 92.050, plat must be submitted for review.
- d. Checking fee and recording fees required.
- e. 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.

Salem Fire Department commented: "Salem Fire Department has no concerns with the partition. Items including fire department access and water supply will be required per the Oregon Fire Code at the time of development.

Marion County Septic commented: "Parcel A will require an Existing System Evaluation Report and designate a future septic repair area. Based on the history of the existing system and aerial photo, the system appears to have had the potential for a road placed over it, vineyard and potentially a structure. Parcel B will require a Septic Site Evaluation. Parcel C does not require any septic action at this time."

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

All other contacted agencies either failed to comment or stated no objection to the proposal.

- 6. Gillian Peden, Marion County Planning, presented the Staff Report. Ms. Peden stated that there are no specific approval criteria for partitioning property in the AR zone, but there is a minimum lot size

requirement of two acres. Ms. Peden also stated that in the SGO-5 zone, creating a parcel greater than five acres does not require Applicant to demonstrate sufficient groundwater supply.

7. Alan Sorem, Attorney for Applicant, states that there is substantial evidence to demonstrate compliance with all applicable approval criteria, and argues that the appeal does not provide a basis for denial of the Application. Mr. Sorem stated that the Appellants' concerns regarding water, septic, and traffic are outside the scope of this hearing which is only focused on criteria for a tentative plat review. Additional review would be required for development. Because the lot in the SGO exceeds five acres, a water rights analysis is outside the scope of the County's jurisdiction for this land use application. No hydrological review is required by the MCC. Mr. Sorem addressed Applicant's concern with a condition requiring a right of way dedication for an undeveloped access at Cole Road, addressed further below.

Planning Staff intended to incorporate Engineering Conditions A and B as condition of approval. Applicant stated an objection to an engineering condition to dedicate a 30-foot R/W half-width over the two 6-acre parcels Cole Road property frontages to meet the County Local road standard and including a 30-foot property corner radius at the intersection of Liberty Road and Cole Road (Engineering Condition A). Mr. Sorem stated that a right of way dedication as a condition of approval would not meet a Nollan/Dolan analysis. Mr. Sorem raised the constitutional concern with SDC methodology and argued that the local government must ensure that fees or permit conditions are supported by an analysis showing a nexus between the fee and the actual impact of development. Mr. Sorem also addressed an impacts analysis under Nollan/Dolan analysis (Addressed below in Paragraph 11). If Cole Road were to be extended, Applicant understands that dedication of the roadway as a condition of approval is a taking that would demand compensation. Applicant wants to use the private easement rather than lose additional land to a ROW dedication.

VI. Additional Findings of Fact and Conclusions of Law

1. Applicant has the burden of proving all applicable standards and criteria are met by a preponderance of the evidence that all applicable standards and criteria are met as explained in *Riley Hill General Contractor, Inc. v. Tandy Corporation*, 303 Or 390, 394-395(1987).

"Preponderance of the evidence" means the greater weight of evidence. It is such evidence that when weighed with that opposed to it, has more convincing force and is more probably true and accurate. If, upon any question in the case, the evidence appears to be equally balanced, or if you cannot say upon which side it weighs heavier, you must resolve that question against the party upon whom the burden of proof rests. (Citation omitted).

2. Applicant must prove, by substantial evidence in the record, it is more likely than not that each criterion is met. If the evidence for any criterion is equal or less, applicants have not met their burden and the application must be denied. If the evidence for every criterion there's a hair or breath in applicant's favor the burden of proof is met and the application is approved.
3. Applicant submitted a Statutory Warranty Deed recorded at Reel 4237, Page 88 evidences that the subject property is held by D. & J.F. Vineyards, LLC. The Oregon Secretary of State indicates that Joann Fries and Douglas Fries are members of D. & J.F. Vineyards, LLC, an active Oregon limited liability company. Applicant submitted its Articles of Organization and Operating Agreement, which also evidence that Douglas B. Fries and Jo Ann Fries are initial members of D. & J.F. Vineyards, LLC.

PARTITION

4. There are no specific approval criteria for partitioning property in the AR zone. MCC 17.128.070 requires a minimum lot size of two acres. Each of the parcels resulting from the proposed partition would meet this standard. The criterion is met.
5. MCC 17.137.090(A)(1) requires a minimum parcel size of 80-acres in the SA zone. The subject property is zoned both SA and AR. The SA-zoned portion of this property is approximately 14.93-acres, and this portion of the property will not be partitioned. The criterion is met.
6. MCC 17.181 establishes provisions for partitioning property in an SGO zone. In the SGO-5 zone, creating a parcel greater than five acres in size does not require Applicant to demonstrate sufficient groundwater supply. However, the County requires a Declaratory Statement be recorded with the property deed prior to the issuance of building permits. This notifies Applicant and subsequent owners that there may be long-term groundwater supply problems and that the County is not responsible for deepening or replacing wells. The criteria are met.
7. Appellants express concerns about the availability of groundwater. Appellants states that the area is “already short of sufficient ground water supply to support” existing residents.” Appellants are not “willing to accept the addition of possibly six new two-acre parcels” tapping into their water tables. However, Appellants do not identify applicable approval criteria which requires an evaluation of the general availability of groundwater for potential future development. Applicant does not propose any development as part of the Application for Partition.
8. Appellants express concerns about potential contamination from septic systems on the subject property. Appellants note that there is a drop in elevation of approximately 50 feet from the top of the existing D. & J.F. Vineyards, LLC to where the Green Patch Lane SE development would be considered. Appellants state that with the 50-foot drop in elevation, there is concern that if septic leach lines were are usually installed with a downhill grade will have a potential contamination to Rodger Creek. However, as Applicant states, the decision does not include the approval of any building permits, including any permits for new septic system or changes to existing septic systems. Applicant will be required to comply with all applicable Marion County and DEQ standards regarding the existing systems and any systems proposed in the future. All conditions of approval must be satisfied before a building permit can be obtained.
9. Appellants express concerns about potential traffic impacts based on the pre-existing traffic level in the area and safety concerns about the visibility at the proposed private 30-foot access easement, Green Patch Lane, SE. Appellants state that with other developments from Kuebler Road South along Liberty Road, the vehicle traffic has increased because of the lack of crossroads to access Sunnyside Road, Commercial Street, and access to I-5. Appellants note that the character of Hylo Road, with its ups and downs, does not provide sufficient visibility to the new Green Patch Lane SE to avoid accidents. Applicant correctly argues that pre-existing traffic concerns are outside the scope of the application, and that Appellants have not identified any approval criteria which would require an evaluation of potential traffic impacts from the Application.
10. Appellants express concerns about the potential stormwater impacts from future development of the subject property. Appellants do not identify any specific approval criteria which have not been satisfied. Applicant states that there will be no adverse impact to surrounding properties due to stormwater runoff. At the time that Applicant proposes development of the resulting parcels, Applicant will be required to demonstrate compliance with all applicable development standards in order to obtain building permits, including the Department of Public Works Engineering Standards for stormwater management systems.

Applicant states that Marion County Department of Public Works Engineering Standards, which describe the specifications for residential stormwater management systems. Applicant establishes that the resulting AR zoned parcels would be 6 acres each, which is adequate to accommodate a stormwater detention basin. Applicant states that in compliance with MCC 17.172.430, there will be no adverse impacts from stormwater runoff as a result of the partition itself. Appellants' concerns about stormwater impacts do not provide a basis for denial for the Application for Partition.

11. Applicant has raised a constitutional objection to Engineering Condition A, and Applicant preserves an action for damages. ORS 197.796(3). A Nollan/Dolan analysis provides the relevant constitutional requirements for imposing a condition of approval derived from *Nollan v. California Coastal Comm'n*, 483 US 825 (1987) and *Dolan v. City of Tigard*, 512 US 374 (1994). The Nollan/Dolan analysis assessed the constitutionality of a government exaction of a dedication of private property.

In this Partition Application and Staff Report, there is no indication that the County intends to extend or improve Cole Road. Upon a review of relevant legal standards and Oregon case law, a required right of way dedication imposed as a condition of approval for a land use approval is an exaction, and therefore, must satisfy the Nollan/Dolan "essential nexus" and "rough proportionality" tests. The Partition Application generates only two additional parcels, and there is no evidence of increased traffic prior to development.

A right of way dedication as a condition of a land use approval is treated as an exaction and is potentially subject to a Nollan/Dolan "essential nexus" and "rough proportionality" analysis. LUBA will uphold an exaction requiring the dedication of right-of-way where the city's findings demonstrate that the exaction is roughly proportional to the impacts caused by the development, including any benefits the development received by virtue of the exaction. *McClure v. City of Springfield*, 39 LUBA 329 (2001).

A proportionality analysis is premature. There is no application for development at this time. There is no indication that Cole Road will be extended or that the County is seeking to bank land for future use.

MCC 17.172.240 provides that if land to be subdivided or partitioned will cause the termination of a roadway or borders a roadway right of law less than standard width, the applicant shall dedicate sufficient land to provide for a cul-de-sac or to increase the half (or halves) of right of way bordering the subject parcel to one-half of the standard width. Unless otherwise specified for an individual street in the zoning ordinance, standard right-of-way widths are subject to the standards of the Marion County department of public works.

Austin Barnes, Marion County Planning, stated that safe access is the most important issue with respect to the right-of-way dedication. The right-of-way dedication preserves further analysis of safe access, and is required under MCC 17.172.240.

The hearings officer is bound to follow the mandatory language of MCC 17.172.240.

VII. Order

It is hereby found that Applicant has met its burden of proving the proposed partitioning complies with the above criteria and is therefore **APPROVED**, subject to the following conditions:

1. Conditions Required by Marion County LDEP:
 - a. On the partition plat dedicate a 30-foot R/W half-width over the two subject property 6-acre parcels Cole Road property frontages to meet the County Local road standard, and including a 30-foot

property corner radius at the intersection of Liberty Road and Cole Road [MCC 17.172.240 & 17.172.200, respectively].

- b. Prior to partition plat approval, notarize a Road Maintenance Agreement to be recorded concurrently with the partition plat for collective maintenance of the proposed private easement drive [MCC 17.172.340].

Engineering Requirements by Marion County LDEP:

- c. The developable parcel shall share an existing, permitted driveway paved approach connection to Hylo Road via private access easement. The Liberty Road driveway approach was required to be gated and restricted to seasonal harvest use by larger farm equipment under the same Access Permit #10-02228 due to limited Intersection Sight Distance (ISD). In the alternative to the Hylo Road access, a new shared residential access could be installed under a permit within the Cole Road unopened R/W where there is anticipated sufficient ISD at the Liberty Road connection.

- d. Transportation System Development Charges (SDCs) & Parks fee will be assessed upon application for building permits for a new dwelling.

- e. Utility extension work in the public right-of-way requires permits from PW Engineering.

2. Conditions Required by Marion County Surveyor's Office:

- a. Parcels 10 acres or less must be surveyed and monumented.
- b. Per ORS 92.050, plat must be submitted for review.
- c. Checking fee and recording fees required.
- d. 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.

- 3. 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. All AR zoned parcels shall be a minimum of two acres in size.
- 4. Prior to the issuance of building permits on the new parcels, the owners shall sign and submit a Sensitive Groundwater Overlay Zone (SGO) Declaratory Statement to the Planning Division. This statement shall be recorded by the applicant with the Marion County Clerk after it has been reviewed and signed by the Planning Director.
- 5. Marion County Planning Division, in coordination with the 9-1-1 Emergency System has named the proposed private access easement Green Patch Ln SE. The name must be shown on the final partition plat, and a work order for the street sign installation, with appropriate fee, must be submitted to Marion County Department of Public Works prior to the plat being recorded.
- 6. The parcels shall be addressed as shown on the marked site plan and are as follows: (parcels correspond to those on the site plan.)

Parcel A shall retain the address 7412 Liberty Road S.
Parcel B shall be addressed 202 Green Patch Ln SE.
Parcel C shall not be addressed.

- 8. After the final Partition plat has been recorded no alteration of property lines shall be permitted without first obtaining approval from the Planning Director.

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VIII. Other Permits

It is advised that the use of the property proposed in this application may require additional permits from other local, state or federal agencies the Marion County land use review and approval process does not take the place of or relieve the Applicant of responsibility for acquiring such other permits or satisfy any restrictions or conditions thereon the land use permit approved here and does not remove alter or impair in any way covenants or restrictions imposed on this property by deed or other instrument.

It is recommended that the agencies mentioned in Finding of Fact No. 5 herein be contacted to identify restrictions or necessary permits. Applicants are advised to check with Marion County Building Inspection for any building or septic requirements.

Applicant is advised of the following:

- a. Prior to recording the plat all taxes due must be paid to the Marion County Tax Department (contact the Marion County Tax Department at 503-588-5215 for verification of payments).
- b. The applicant should contact the Salem Suburban Fire District to obtain a copy of the District's Recommended Building Access and Premise Identification regulations and the Marion County Fire Code Applications Guide. Fire District access standards may be more restrictive than County standards

IX. Effective Date

The application approved herein shall become effective on the 8th day of January, 2025, unless the Marion County Board of Commissioners, on its own motion or by appeal timely filed, is asked to review this order in case of board review, this order shall be stayed and shall be subject to final action as is taken by the board

X. Appeal Rights

An appeal of this decision may be taken by anyone aggrieved or affected by this order. An appeal must be filed with the Marion County Clerk (555 Court St. NE, Suite 2130, Salem, OR 97301) by 5:00 p.m. on the 7th day of January, 2025. The appeal must be in writing, must be filed in duplicate, must be accompanied by a payment of \$500, and must state wherein this order fails to conform to the provisions of the applicable ordinance. If the Board denies the appeal, \$300 of the appeal fee will be refunded.

DATED this 23rd day of December, 2025.


Jill F. Foster
Marion County Hearings Officer

CERTIFICATE OF MAILING

I hereby certify that I served the foregoing order on the following persons:

Alan Soreur
250 Church St. S.
Suite 200
Salem, OR 97302

Greg Fries
4676 Commercial St. SE
No. 64
Salem, Oregon 97302

Karl Johnson
152 Hylo Rd. SE
Salem, OR 97306

James McAteer
7532 Champion Hill Rd. SE
Salem, OR 97306

Peggy Gantt
254 Hylo Rd. SE
Salem, OR 97306

John and Della Edwards
261 Hylo Rd. SE
Salem, OR 97306

Chester L. Shesley
172 Hylo Rd. SE
Salem, OR 97306

Dean Backer
4742 Liberty Rd. S #231
Salem, OR 97302

Wendy Poling
153 Hylo Rd. SE
Salem, OR 97306

Paul Gillis
141 Hylo Rd. SE
Salem, OR 97306

Jeffrey Sims
282 Hylo Rd. SE
Salem, OR 97306

City: Salem (via email)
developmentservices@cityofsalem.net

Area Advisory Committee 1 (via email)
Aileen Kaye
arkaye@gmail.com
10095 Parrish Gap Rd.
Turner, OR 97392

1000 Friends of Oregon
340 SE 6th Ave
Portland, OR 97214

County Agencies Notified:

Assessor's Office (via email)
assessor@co.marion.or.us

Tax Collector (via email)
NMcVey@co.marion.or.us

Surveyor's Office (via email)
KInman@co.marion.or.us

Fire District: (via email)
salem fire@cityofsalem.net

Planning Division (via email)
breich@co.marion.or.us
abarnes@co.marion.or.us
jspeckman@co.marion.or.us
ediaz@co.marion.or.us
GPeden@co.marion.or.us

Building Inspection (via email)
pwolterman@co.marion.or.us
Kaldrich@co.marion.or.us
CTate@co.marion.or.us

Public Works LDEP Section (via email)
jrasmussen@co.marion.or.us
mcldep@co.marion.or.us

JShanahan@co.marion.or.us

School District: (via email)
fridenmaker_david@salkeiz.k12.or.us

Code Enforcement (via email)
CGoffin@co.marion.or.us

State Agencies Notified: (via email)
Mike.l.mccord@wrdd.state.or.us
Gregory.j.wacker@oregon.gov

By mailing to them copies thereof. I further certify that said copies were placed in sealed envelopes addressed as noted above, that said copies were deposited in the United States Post Office at Salem, Oregon, on the 23rd day of December, 2025 and that the postage thereon was prepaid.



Administrative Assistant to the
Hearings Officer