

Attention Property Owner: A land use proposal has been submitted for property near where you live or near property you own elsewhere. State law requires that the county notify property owners within a certain distance from this property. The proposal and address of the property is described in the "Application" section below. The decision in this case does not directly affect the zoning or use of your property. If you object to the decision, refer to the "Appeal" section. If you have questions, contact the staff person listed at the end of this report.

**NOTICE OF DECISION  
PARTITION/VARIANCE CASE NO. 22-017**

**APPLICATION:** Application of Pohlschneider Family Farm, LLC to partition a 516.70-acre parcel into three parcels consisting of 339.30 acres, 97.40 acres, and 80.00 acres and a variance of the minimum lot size of 140 acres to 80 acres in an Exclusive Farm Use (EFU) zone located at the 17900 Block of French Prairie Road NE, Saint Paul (T4S; R2W; Section 33; Tax Lot 500).

**DECISION:** The Planning Director for Marion County has **APPROVED** the above-described Partition application subject to certain conditions.

**EXPIRATION DATE:** This approval is valid only when the final partition plat is recorded by **March 10, 2025**. 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 proposed use 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 before a building permit can be obtained or the approved use established:

**Prior to recording the final plat:**

1. Per ORS 92.050, plat must be submitted for review.
2. A 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.
4. 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 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 restrictions or conditions. It is recommended that the agencies mentioned in Finding #5 below be contacted to identify restrictions or necessary permits. The applicant is advised of the following:

5. 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).

**APPEAL PROCEDURE:** The Marion Zone Code provides that certain applications be considered first by the County Planning Director. If there is any doubt that the application conforms with adopted land use policies and regulations the Director must condition or deny the application. Anyone who disagrees 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, together with the appeal fee, in the Marion County Planning Division, 5155 Silverton Rd. NE, Salem, by 5:00 p.m. on

**March 10, 2023**. If you have questions about this decision, contact the Planning Division at (503) 588-5038 or at the office. This decision is effective **March 11, 2023**, unless further consideration is requested.

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

1. The property is designated Primary Agriculture in the Marion County Comprehensive Plan. The purpose of this designation and the corresponding EFU (Exclusive Farm Use) zone is to provide areas for continued practice of commercial agriculture.
2. The subject parcel is located on the east and western sides of HWY 219 (French Prairie Rd NE), approximately 0.5 miles south of its intersection with Vachter Rd NE. The parcel contains multiple fields of row crops, namely grass seed and hay on the western side of HWY 219. On the eastern side lies a nursery, row crops and West Champoeg Creek. The parcel is almost entirely in commercial agriculture production. The parcel is described by Volume 69, Page 28 recorded January 17<sup>th</sup>, 1898, and is therefore considered legal for land use.
3. Surrounding uses are farm use in all directions. The area is characterized by some of the largest farm tracts in Marion County with many acres of hay, grass seed and hops.
4. Marion County Soils Analysis indicated that 92.4% of the subject property is high value farm soils.
5. The applicant proposes to partition a 516.70-acre parcel into three parcels consisting of 339.30 acres, 97.40 acres, and 80.00 acres and for a variance of the minimum lot size of 140 acres to 80 acres
6. Marion County Surveyor commented:
  1. Per ORS 92.055 – Parcels over 10 acres can be un-surveyed.
  2. Per ORS 92.050, plat must be submitted for review.
  3. Checking fee and recording fees required.
  4. A 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.

Marion County Tax Assessor provided comments related to the subject property's property taxes.

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

7. The following regulations apply when property line adjustments and partitioning of land within an EFU zone subject to the provisions of Chapter 17.172 MCC are proposed:

Minimum Parcel Size for Newly Created Parcels:

*1. Farm Parcels. The minimal parcel size for new farm parcels shall be calculated as follows:*

*a. All parcels wholly or in part within 500 feet of the subject parcel shall be identified.*

The applicant has identified 12 surrounding parcels within 500 feet, this is shown in the applicant statement. The criterion is met.

*b. The average (mean) size of all parcels larger than 40 acres identified in subsection (A)(1)(a) of this section shall be determined.*

The total acreage is 1,732.72 acres which provides a mean of 144.89 acres. The criterion is met.

- c. *The acreage size calculated in subsection (A)(1)(b) of this section, rounded to the nearest 10 acres, is the minimum parcel size unless such parcel size is less than 80 acres, in which case the minimum parcel size is 80 acres.*

Rounded to the nearest to acres yields a mean of 140 acres. The criterion is met.

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

The applicant is proposing to create three farm parcels, the use will not change. The criterion does not apply.

8. The criteria for granting a variance are contained within MCC 17.122.020 (A), they are as follows:

1. *There are unnecessary, unreasonable hardships or practical difficulties which can be relieved only by modifying the literal requirements of this title; and*

The applicant has submitted evidence to show that adhering to the minimum parcel size would create difficulties by forcing them to extend the new parcels across West Champoeg Creek. The applicant proposes to divide the property along natural boundaries and use areas. The criterion is met.

2. *There are unusual circumstances or conditions applying to the land, buildings, or use referred to in the application, which circumstances or conditions do not apply generally to land, buildings, or uses in the same zone; however, nonconforming land uses or structures in the vicinity or violations of land use regulations or standards on the subject property shall not in themselves constitute such circumstances or conditions; and*

The large size of the parent parcel, the two streams and one state highway that cross it create unusual circumstances on the subject property. These conditions are not generally found across parcels in Marion County. This division would better align the property with these natural boundaries. The criterion is met.

3. *The degree of variance from the standard is the minimum necessary to permit development of the property for the proposed use; and*

This degree of variance is the minimum to meet the minimum parcel size and match natural features and boundaries on the subject property. The criterion is met.

3. *The variance will not have a significant adverse effect on property or improvements in the neighborhood of the subject property; and*

While the variance would allow properties to be under the mean lot size in the area, the commercial practice of agriculture is not proposed to be stopped and the parcels will remain in the Polhschneider Family ownership and will continue to be farmed. The criterion is met.

4. *The variance will not have a significant adverse effect upon the health or safety of persons working or residing in the vicinity; and*

This variance will not adversely affect the health of persons in the area as it does not affect the use of the parcel or create new circumstances for adjacent owners. The criterion is met.

5. *The variance will maintain the intent and purpose of the provision being varied.*

This variance maintains the intent of the provision by maintain the minimum parcel size of 80 acres as outline in state law. The criterion is met.

9. Based on the above findings, the proposed partition complies with the applicable criteria and is, therefore **APPROVED.**

Brandon Reich  
Planning Director/Zoning Administrator

Date: February 23, 2023

If you have any questions regarding this decision contact Austin Barnes 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.