

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 CASE NO. 24-003**

APPLICATION: Application of Bruce and Maria Schmidlkofer, under approvals granted by ORS 197.352 (Measure 37/49), to partition a 64.85-acre parcel into three parcels containing 60.85-acres, 2.00-acres, and 2.00-acres each in an Exclusive Farm Use (EFU) zone located at 5035 Howell Prairie Rd SE, Aumsville. (T8S, R2W, Section 12, Tax Lot 600). Review is subject to the criteria contained in State Final Order #E119935.

DECISION: The Planning Director for Marion County has **APPROVED** the above-described Partition, subject to certain conditions. **PLEASE READ ALL CONDITIONS BELOW.**

EXPIRATION DATE: This approval is valid only when the final partitioning plat is recorded by **April 10, 2026**, unless an extension is granted. The effective period may be extended for an additional year subject to approval of an extension. Request for an extension must be submitted to the Planning Division prior to expiration of the approval (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 use is for land use purposes only. Due to other requirements, such as well requirements, septic requirements, and drain field replacement areas, this parcel may not be able to support the proposed use. To ensure 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:

1. The applicant shall obtain approval for all permits, including subsurface sewage, as required by the Marion County Building Inspection Division.
2. The applicant shall obtain an approved septic site evaluation from the Marion County Building Inspection Division on all undeveloped parcels. **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.**
3. The applicants shall submit a final partition plat to the Marion County Surveyor’s Office. Following plat approval, it shall be recorded with the Marion County Clerk (Final Plat Instructions enclosed). The survey shall contain the notation that the survey is the result of Partition Case 24-003.
4. Per the Marion County Surveyor’s Office, the following requirements will apply:

Per ORS 92.055, parcels outside the urban growth boundary and greater than 10 acres can be un-surveyed. Parcels in size of ten acres and less must be surveyed. Per ORS 92.050, the plat must be submitted for review, a checking fee and recording fee will be required, and 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.
5. Public Works Land Development Engineering and Permits Division (LDEP) will not approve the final plat for recordation until the following conditions have been satisfied:

Condition A – On the partition plat dedicate a 30-foot corner radius for public right-of-way purposes at the northeast property corner.

Condition B – Prior to plat approval, under an Access Permit from PW Engineering widen the existing paved access approach, to be shared, with HMAC to a width of 20 to 24 feet measured at the property line.

6. The Marion County Planning Division, in coordination with the 9-1-1 Emergency System has named the proposed private access easement **Nosara Way SE**. The name must be shown on the final partition plat and a work order for the street sign installation, with an appropriate fee, must be submitted to Marion County Department of Public Works **prior to the plat being recorded**.
7. The applicant shall meet all applicable development standards as are outlined in various chapters of Title 17.
8. The applicant shall sign and submit a Farm/Forest Declaratory Statement to the Planning Division for each of the new resultant parcels. This statement shall be recorded by the applicant with the Marion County Clerk after it has been reviewed and signed by the Planning Director.
9. The applicant shall sign and submit a Sensitive Groundwater Overlay Declaratory Statement to the Planning Division for each of the new resultant parcels. This statement shall be recorded by the applicant with the Marion County Clerk after it has been reviewed and signed by the Planning Director.

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

10. 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.
11. After the final Partition plat has been recorded 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 #6 below be contacted to identify restrictions or necessary permits. The applicant is advised of the following:

12. 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).
13. The applicants should contact Aumsville 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.

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

April 10, 2024. If you have questions about this decision contact the Planning Division at (503) 588-5038 or at the office. This decision is effective **April 11, 2024**, 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 and is correspondingly zoned EFU (Exclusive Farm Use). The primary intent of both the designation and zone is to promote and protect commercial agricultural operations.
2. The property is located directly southwest of the intersection of Howell Prairie Rd SE and Jordan St SE, with the Union Pacific Railroad bounding the subject property on the west. The property contains one legal dwelling built in 1961, as well as multiple accessory/farm structures. It has one intermittent stream running in roughly a southwest/northeast direction through it and is part of the Beaver Creek Water Control District. The southerly one-fourth or so lies within the Sensitive Groundwater Overlay.
3. The parcel has been subject to several land use cases. Most notably Measure 37/49 Claim 05-009, which the current application is predicated on. The State, in Final Order and Home Site Authorization E119935, determined the subject property to be legal for land use purposes, and its configuration has not been altered since. Therefore, Marion County Planning finds the subject property legal for land use purposes.
4. Surrounding properties to the north, east and south are zoned EFU, with the parcels to the north (across Jordan St SE) and east (across Howell Prairie Rd SE) being large-scale commercial farms. The parcels directly north-west and south of the subject property are small to medium size and are also actively being farmed. There are a few homesites scattered throughout the surrounding properties which are zoned EFU. The properties west of the subject parcel, across the Union Pacific Railroad, are zoned Acreage Residential (AR) and are developed with single family dwellings.
5. The applicant proposes to implement their Measure 49 order by dividing the 64.85 acre parcel into three, with the two new parcels containing 2.0 acres each and the remnant containing 60.85 acres. The remnant parcel would contain the existing dwelling and accessory structures while the newly created parcels would be developed with one single family dwelling each in the future.
6. Various Agencies were contacted and given the opportunity to comment on the proposal:

Public Works Land Development and Engineering Permits (LDEP) commented:

ENGINEERING CONDITIONS

Condition A – On the partition plat dedicate a 30-foot corner radius for public right-of-way purposes at the northeast property corner.

Condition B – Prior to plat approval, under an Access Permit from PW Engineering widen the existing paved access approach, to be shared, with HMAC to a width of 20 to 24 feet measured at the property line.

ENGINEERING REQUIREMENTS

- C. Access from Howell Prairie Road to all three proposed parcels shall be shared at the existing paved access approach in accordance with county transportation policy for property divisions, and to minimize the number of accesses on Major Collector roads. Furthermore, it is noted that due to the pronounced roadway crest curve the proposed secondary access depicted on the land use application site plan as approximately 250 to 300 feet south of the existing access (situated at the crest) will not have sufficient Intersection Sight Distance given the unposted speed of the road.
- D. On the plat depict any necessary access and utility easements.
- E. An access permit will be required for each new dwelling.
- F. Transportation System Development & Parks charges will be assessed upon application for building permits.
- G. Utility extension work in the public right-of-way requires permits from PW Engineering.

Marion County Surveyor's Office commented:

1. Per ORS 92.055 – Parcels outside an urban growth boundary and greater than 10 acres can be un-surveyed.
2. Parcels ten acres and less must be surveyed.
3. Per ORS 92.050, plat must be submitted for review.
4. Checking fee and recording fees required.
5. 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 Septic commented: "A septic site evaluation is required for each lot proposed to be created. Each lot must be evaluated for viable initial and repair areas; for the large 60.85 acre parcel, nothing will be required."

Marion County Building Department commented: "No Building Inspection concerns. Permits are required to be obtained prior to development and/or utilities installation on private property."

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

All other contacted agencies either failed to comment or stated no concern with/objections to the proposal.

7. Under provisions in ORS 195.300 to ORS 195.336 (Measure 49) the State of Oregon issued Final Order and Home Site Authorization E119935 for the subject property. In Section III the order concludes:

"Based on the analysis above, the claimant qualifies for up to three home sites. However, the number of lots, parcels or dwellings that a claimant may establish pursuant to a home site authorization is reduced by the number of lots, parcels or dwellings currently in existence on the Measure 37 claim property and any contiguous property under the same ownership..."

Based on the documentation provided by the claimants and information from Marion County, the Measure 37 claim property appears to currently include one lot or parcel and one dwelling. There is no contiguous property under the same ownership. Therefore, the three home site approvals the claimants appear to qualify for under Section 6 of Measure 49 will authorize the claimants to establish up to two additional lots of parcels and two additional dwellings on the Measure 37 claim property."

The applicants' proposal is to establish two additional parcels, with one dwelling on each new parcel (two additional dwellings). The proposal matches this section of the Final Order.

8. Under Section IV of the Home Site Authorization in E119935, the claimant qualifies for two homesite approvals subject to the following criteria:

1. *Each dwelling must be on a separate lot or parcel, and must be contained within the property on which the claimant is eligible for Measure 49 relief. The establishment of a land division or dwelling based on this home site authorization must comply with all applicable standards governing the siting or development of the land division or dwelling. However, those standards must not be applied in a manner that prohibits the establishment of the land division or dwelling, unless the standards are reasonably necessary to avoid or abate a nuisance, to protect public health or safety, or to carry out federal law.*

As proposed, the two additional parcels and two additional dwellings will be configured such that each dwelling is located on a separate parcel. The final result will be three dwellings and three parcels (two new, one existing/remnant), with only one dwelling on each parcel. Each parcel and dwelling will be contained within the 64.85 acre property on which the applicants are eligible for Measure 49 relief. Building permits will be reviewed according to this criterion. The criterion is met.

2. *This home site authorization will not authorize the establishment of a land division or dwelling in violation of a land use regulation described in ORS 195.305(3) or in violation of any other law that is not a land use regulation as defined by ORS 195.300(14).*

There is no evidence that the proposed parcels and dwellings will violate a land use regulation or other regulation as described in ORS 195.305(3) and ORS 195.300(14). The criterion is met.

3. *A claimant is not eligible for more than 20 home site approvals under Sections 5 to 11 of Measure 49 regardless of how many properties a claimant owns or how many claims a claimant filed. If the claimants have developed the limit of twenty home sites under Measure 49, the claimants are no longer eligible for the home site approvals that are the subject of this order.*

A review of the DLCDC Measure 49 Analyzer tool suggests that the claimant did not receive any other Measure 49 home site approvals. Therefore, the claimants are not approaching or extended beyond the home site approval limit. The criterion is met.

4. *The number of lots, parcels or dwellings a claimant may establish under this home site authorization is reduced by the number of lot, parcels and dwellings currently in existence on the Measure 37 claim property and contiguous property in the same ownership, regardless of whether evidence of their existence has been provided to the department. If lots, parcels or dwellings currently exist on the Measure 37 claim property or on contiguous property under the same ownership and the lots, parcels or dwellings have not been disclosed to the department, then the number of additional lots, parcels or dwellings a claimant may establish pursuant to this home site authorization must be reduced according to the methodology stated in Section 6(2)(b) and 6(3) of Measure 49.*

A review of the adjacent properties' ownership history suggests that there were not any additional contiguous properties under the same ownership which were not disclosed to the department. The final order's home site authorization appears to be correct. The criterion is met.

5. *Temporary dwellings are not considered in determining the number of existing dwellings currently on the property. The claimant may choose to convert any temporary dwelling currently located on the property on which the claimant is eligible for Measure 49 relief to an authorized home site pursuant to a home site approval. Otherwise, any temporary dwelling is subject to the terms of the local permit requirements under which it was approved, and is subject to removal at the end of the term for which it is allowed.*

A review of the application, current Marion County Assessor's data, and other land use applications on the subject property show there are no temporary dwellings on the parcel. The claimant is not proposing to convert any temporary dwellings as a part of this application. Therefore, this section does not apply, but the applicant will abide by these requirements if any temporary dwellings are placed before the completion of the claim. The criterion is met.

6. *A home site approval only authorizes the establishment of a new lot, parcel or dwelling on the property on which the claimants are eligible for Measure 49 relief. No additional development is authorized on contiguous property for which no Measure 37 claim was filed or on Measure 37 claim property on which the claimant is not eligible for Measure 49 relief. A lot or parcel established pursuant to a home site approval must either be the site of a dwelling that is currently in existence or be the site of a dwelling that may be established pursuant to the home site approval.*

The proposed parcels and home sites are located within the bounds of the Measure 49 eligible parcel. No other development is being proposed. The proposed vacant parcels will include dwelling sites that will be established pursuant to the home site approval of the Measure 49 final order. The criterion is met.

7. *The claimants may use a home site approval to convert a lot, parcel or dwelling currently located on the property on which the claimants are eligible for Measure 49 relief to an authorized home site. If the number of lots, parcels, or dwellings existing on the property on which the claimants are eligible for*

Measure 49 relief exceeds the number of home site approvals the claimants qualify for under a home site authorization, the claimants may select which existing lots, parcels, or dwellings to convert to authorized home sites; or may reconfigure existing lots, parcels or dwellings so that the number is equivalent to the number of home site approvals.

The claimants do not have, nor are they proposing to, convert lots, parcels, or dwellings to be authorized home sites. The claimant's proposal does not exceed the number of lots, parcels, or dwellings granted by the Measure 49 final order. The criterion is met.

8. *The claimants may not implement the relief described in this Measure 49 home site authorization if a claimant has been determined to have a common law vested right to a use described in a Measure 37 waiver for the property. Therefore, if a claimant has been determined in a final judgment or final order that is not subject to further appeal to have a common law vested right as described in Section 5(3) of Measure 49 to any use on the Measure 37 claim property, then this Measure 49 Home Site Authorization is void. However, so long as no claimant has been determined in such a final judgment or final order to have a common law vested right to a use described in a Measure 37 waiver for the property, a use that has been completed on the property pursuant to a Measure 37 waiver may be converted to an authorized home site.*

The claimants did not complete a vested rights determination and do not have a common law vested right to a use described in a Measure 37 waiver for the property. Therefore, the Measure 49 final order is still valid and the criterion is met.

9. *A home site approval does not authorize the establishment of a new dwelling on a lot or parcel that already contains one or more dwellings. The claimants may be required to alter the configuration of the lots or parcels currently in existence on the Measure 37 claim property and contiguous property so that each additional dwelling established on the property on which the claimants are eligible for Measure 49 relief, pursuant to this home site authorization, is sited on a separate lot or parcel.*

The applicants are proposing two new parcels that will each contain one new dwelling. The existing dwelling will be located on the remnant parcel. The result is one dwelling per parcel. Therefore, the criterion is met.

10. *Because the property is located in an exclusive farm use zone, the home site authorization does not authorize new lots or parcels that exceed five acres. However, existing or remnant lots or parcels may exceed five acres. Before beginning construction, the owner must comply with the requirements of ORS 215.293. Further, the home site authorization will not authorize new lots or parcels that exceed two acres if the new lots or parcels are located on high-value farmland, on high-value forestland, or on land within a ground water restricted area. However, existing or remnant lots or parcels may exceed two acres.*

The property is entirely within the EFU zone. Soils Survey of Marion County indicates that the subject parcel's soils are classified as approximately 90.2% high value. Due to this, per the Final Order, the new parcels are limited in size to a maximum of two acres each, excepting for the remnant parcel. A Farm/Forest Declaratory Statement shall be recorded into the deed record as a condition of approval, satisfying the requirements of ORS 215.293. Therefore, the criterion is met.

11. *Because the property is located in an exclusive farm use zone, Measure 49 requires new home sites to be clustered so as to maximize suitability of the remnant lot or parcel for farm or forest use. Further, if an owner of the property is authorized by other home site authorizations to subdivide, partition, or establish dwellings on other Measure 37 claim properties, Measure 49 authorizes the owner to cluster some or all of the authorized lots, parcels, or dwellings that would be otherwise located on land in an exclusive farm use zone, a forest zone, or a mixed farm and forest zone on a single Measure 37 claim property that is zoned residential use or is located in an exclusive farm use zone, a forest zone, or a mixed farm and forest zone but is less suitable for farm or forest use than the other Measure 37 claim properties.*

Per the applicant statement and site plan the proposed parcels and their corresponding home sites will be clustered near the existing dwelling's accessory structures and the public right-of-way. The applicant does not appear to have other Measure 37 claim properties, and is not applying to re-locate dwellings onto other Measure 37 claim properties. The criterion is met.

12. *If the claimants transferred ownership interest in the Measure 37 claim property prior to the date of this order, this order is rendered invalid and authorizes no home site approvals. Provided this order is valid when issued, a home site approval authorized under this order runs with the property and transfers with the property. A home site approval will not expire, except that if a claimant who received this home site authorization later conveys the property to a party other than the claimant's spouse or the trustee of a revocable trust in which the claimant is the settlor, the subsequent owner of the property must establish the authorized lots, parcels and dwellings within 10 years of the conveyance. A lot or parcel lawfully created based on this home site authorization will remain a discrete lot or parcel, unless the lot or parcel lines are vacated or the lot or parcel is further divided, as provided by law. A dwelling lawfully created based on a home site approval is a permitted use.*

The Measure 37/49 claimants were Dallas A. and Elaine W. Marckx. These individuals did not transfer their ownership interest in the property prior to the date of the Measure 49 final order. Based on deed records, the claimants transferred the property into separate individual trusts in 2012 (Reel 3441 Page 328, recorded Nov. 5, 2012), with themselves as trustees. Both trusts were established as revocable. Obituary records indicate that Elaine W. Marckx passed away on Dec. 28, 2012. On Oct. 7, 2022, Katherine Marckx Olson, listed as the Successor Trustee for both trusts, transferred interest of the subject parcel to the current owners and applicants. This deed, dated Oct. 7, 2022, started the 10 year time limit, which will end on Oct. 7, 2032. Therefore, the current applicants are within the timeframe to establish the new lots and home sites. The criterion is met.

13. *To the extent that any law, order, deed, agreement or other legally enforceable public or private requirement provides that the subject property may not be used without a permit, license or other form of authorization or consent, this home site authorization will not authorize the use of the property unless the claimant first obtains that permit, license or other form of authorization or consent. Such requirements may include, but are not limited to: a building permit, a land use decision, a permit as defined in ORS 215.402 or 227.160, other permits or authorizations from local, state or federal agencies, and restrictions on the use of the subject property imposed by private parties.*

Staff is not aware of any public or private easements, conditions or restrictions applying to the subject property that would prohibit or otherwise restrict this proposal. Conditions of approval will require the property owner to obtain all necessary permits and approvals prior to implementing this order. The criterion is met.

9. The Final Order authorization, in Section IV. Home Site Authorization Term 1, states that the dwelling must still comply with all applicable standards. Marion County has standards for partitions and siting of dwellings found throughout Title 17 Rural Zoning of the Marion County Code. The relevant sections that currently can be reviewed based on the applicant materials are:
- *MCC 17.136.100 Development standards.*
 - *Maximum Height*
 - *Dwellings: 35 feet*
 - *Minimum Setbacks*
 - *Rear Yard: A minimum of 20 feet.*
 - *Side Yard: A minimum of 20 feet, except for lots or parcels of one-half acre or smaller created prior to January 1, 1994, in which case the side yard setback shall be five feet.*
 - *Front Yard: A minimum of 20 feet. When by ordinance a greater setback or a front yard of a greater depth is required than specified in this section, then such greater setback line or front yard depth shall apply.*
 - *MCC 17.118.050 Off-street automobile parking requirements.*

