

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.21-014**

APPLICATION: Application of Earl and Margaret Ghiglia, under the approvals granted by ORS 197.352 (Measure 37/49), to divide a 20.02 acre parcel into two parcels containing 2 acres and 18.02 acres each in an EFU (Exclusive Farm Use) zone located at 12213 Silverton Road NE, Silverton (T6S; R1W; Section 33; Tax Lot 700). Review is subject to the criteria contained in State Final Order #E131055.

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 **August 4, 2023**. 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 before a building permit can be obtained or the approved use established:

1. The applicant shall submit a final partition plat to the County Surveyor's Office (5155 Silverton Road NE; (503) 588-5036) and shall contain the notation that the survey is the result of Partition Case 20-007. Following plat approval it shall be recorded with the Marion County Clerk (plat instructions enclosed). **This shall be accomplished prior to issuance of any building permit(s) on the resulting parcels.**
2. Parcels 10 acres or less must be surveyed.
3. Prior to submitting the final partition plat, 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.**
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.
5. Public Works Land Development Engineering and Permits Division (LDEP) will not approve the use final plat for recordation until the following conditions have been satisfied:

Condition A – Prior to plat approval, provide a notarized Road Maintenance Agreement (RMA) for concurrent recording with the plat regarding upkeep of the private, unnamed access easements to Silverton Road.
6. The applicant shall sign and submit a Farm/Forest 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.
7. Pursuant to MCC 17.178.040(C), the proposed dwelling may not be located in the 100 year floodplain or the floodway located along the north property line.

8. 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, however, **the small lot shall be a maximum two acres in size.**

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

9. 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 any restrictions or conditions. It is recommended that agencies mentioned in Finding # 7 below be contacted to identify restrictions or necessary permits. The applicant is advised of the following:

10. 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).
11. The applicants should contact the Silverton 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.
12. The applicants should contact Marion County Land Development and Engineering (503-584-7714) for additional Engineering Requirements and Advisories, listed in Finding #7 below, that may be required.

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 **August 4, 2021**. If you have questions about this decision contact the Planning Division at (503) 588-5038 or at the office. This decision is effective **August 5, 2021** 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 and zoned Exclusive Farm Use (EFU).
2. The subject property is undeveloped. The property was first described via deed recorded in the Marion County records as volume 737, page 22 recorded October 4, 1972, and is considered legal for the purposes of land use.
3. The property is located approximately 0.25 miles north of Silverton Road NE, on an unnamed easement. The property is located approximately 0.56 miles northeast of the intersection of Silverton Road NE and Paradise Alley Rd NE. Properties are zoned EFU in all directions and consist of medium to large scale commercial farms that are generally developed with one homesite.
4. Marion County Soil Survey reveals 100% of the property is high value soil.

5. Under provisions in ORS 195.300 to ORS 195.336 (Measure 49) the State of Oregon issued Final Order and Home Site Authorization E1301055 for the subject property. In Section III the order concludes:

“Based on 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 according to the methodology stated in Section 6(2)(b) and 6(3) of Measure 49.

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

6. The applicant proposes to implement the Measure 49 order by dividing a 20.02 acre parcel into 2 parcels containing 2 acres and 18.02 acres
7. Public Works Land Development and Engineering Permits (LDEP) requested that the following be included in the land use decision.

ENGINEERING CONDITION

Condition A – Prior to plat approval, provide a notarized Road Maintenance Agreement (RMA) for concurrent recording with the plat regarding upkeep of the private, unnamed access easements to Silverton Road.

Justification is to meet the code requirement under MCC 17.172.340. MCPW is able to furnish an executable document at no charge, aside from the Clerk recording fee. If there is already a recorded RMA in place or if maintenance is addressed in the easement language itself, then it could satisfy the Condition.

ENGINEERING REQUIREMENTS

B. An Access Permit will be required for a dwelling on the developable parcel.

C. Transportation & Parks System Development Charges (SDCs) will be assessed upon application for building permits.

D. Utility work in the public right-of-way such as electrical interconnection requires permits from MCPW Engineering.

ENGINEERING ADVISORY

- a) *The current proposed access easement configuration will create a Fire Apparatus Access Road. Applicant is advised to consult with the local fire district regarding thresholds, requirements and options.*

Marion County Survey commented:

1. Per ORS 92.055 – Parcels over 10 acres can be unsurveyed.
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 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.

Marion County Septic commented that a septic site evaluation is required for the 2 acre parcel.

Marion County Tax Assessor commented regarding taxes.

Marion County Building commented that permits are required for any proposed home or shop (over 400 square feet) or underground utilities on private property.

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

8. Under provisions in order E131055, Section IV Home Site Authorization, the claimant qualifies for two homes site approvals subject to the following terms:

A. *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.*

The property is currently undeveloped. The applicant is proposing to partition 2 acres and construct a dwelling on the 2 acre property. Based on this, the term is met.

MCC 17.137.100:

(a) *Maximum Height:*

(1) *Dwellings - 35 feet.*

(2) *Farm related structures on farm parcels - none.*

(3) *Non-residential and non-farm structures - 35 feet unless they are in conjunction with conditional uses allowed in Section 136.050, and a greater height is requested and approved as part of the conditional use permit.*

(b) *Minimum Setbacks: Except as required in Section 136.070(a), the following setback requirements shall be implemented for all new structures other than farm-exempt buildings, signs and fences:*

(1) *Rear Yard - A minimum of 20 feet.*

(2) *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 (5) feet.*

(3) *Front Yard - A minimum of 20 feet. When by ordinance a greater setback or a front yard of greater depth is required than specified in this section, then such greater setback line or front yard depth shall apply (See Section 112).*

Based on the site plan submitted by the applicant, the proposed parcels are of adequate size and shape to meet the 20 foot setback requirements.

(c) *Declaratory Statement. For all dwellings, and other uses deemed appropriate, the property owner shall be required to sign and allow the entering of a farm/forest declaratory statement into the chain of the lot(s) or parcel(s).*

The provision of this declaratory statement can be made a condition of any approval.

B. *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).*

This proposal creates two parcels and permits a new dwelling on each and does not violate ORS 195.305(3) or any other local, state, or federal law. This term is met.

C. *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.

Under E131055 the claimant is entitled to three home sites. The Measure 37 claim properties contain one dwelling and two parcels. Under the proposal, tax lot 700 which is undeveloped will be divided into two parcels which can each contain a dwelling. This term is met by the proposal.

D. 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.

The property contains no temporary dwellings, this term is satisfied.

E. A home site approval only authorizes the establishment of a new lot, parcel or dwelling on the property on which the claimant is 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 entirely on property authorized by the claim and the applicant owns no contiguous lots or parcels. This term is satisfied.

F. The claimant may use a home site approval to convert a lot, parcel or dwelling currently located on the property on which the claimant is 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 claimant is eligible for Measure 49 relief exceeds the number of home site approvals the claimant qualifies for under a home site authorization, the claimant 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 claim authorizes a total of three home sites and the proposal by the claimant will result in three potential home sites, one existing and two new. This term is met.

G. 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 claimant 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 proposal will result in a total of three lots, including tax lot 600, with only one dwelling on each, this term is satisfied.

H. If the claimant transferred his/her 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, or 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 property ownership was transferred into the Earl R & Margaret R Ghiglia Revocable Trust on May 19, 2000 and the measure 37/49 approval was issued on July 29th, 2009. The property has not been conveyed since the Measure 37/49 claim was approved. This term is satisfied.

I. 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 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 lots or parcels may exceed two acres.

The property is composed entirely of high-value farm soils and the proposed new parcels will not exceed two acres. As noted above, a condition of approval will be attached requiring the filing of a farm/forest declaratory statement that satisfies ORS 215.293. This term is satisfied.

J. 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 lot, parcels or dwellings that would otherwise be 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.

The subject property is farmed as one parcel. The proposal by the applicant is to cluster the new dwellings in the northern end of the property and continue with farm use. This term is met.

K. 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.

There are no 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. This term is satisfied.

10. Based on the above findings, the applicant's proposal meets the terms in Final Order and Home Site Authorization E131055 approved under provisions in ORS 195.300 to ORS 195.336 (Measure 49) that the State of Oregon issued for the subject property. The request is, therefore, **APPROVED** subject to meeting certain condition

Joe Fennimore
Planning Director

Date: July 20, 2021

If you have any questions regarding this decision contact Alyssa Schrems 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.