

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. 21-015**

APPLICATION: Application of Sharon and David Berekoff, under approvals granted by ORS 197.352 (Measure 37/49), to divide a 4.06 acre parcel into three parcels containing 1.40 acres, 1.33 acres, and 1.33 acre each in an AR (Acreage Residential) zone located at 3857 Starlight Drive NE, Silverton (T7S; R1E; Section 7A; Tax lot 1400). Review is subject to the criteria contained in State Final Order #E131041.

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 6, 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). 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. 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.**
3. 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.
4. 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 – On the subdivision plat, dedicate a 30-foot NE property corner radius.

Condition B – Prior to Plat approval, permit and construct a Starlight Drive widening frontage half-width improvement consisting of an additional 6-foot x 8" deep compacted crushed rock section on the property side to provide a total 20-foot wide all-weather driving surface commencing from a point located approximately 35 feet south of the intersection of the parent parcel driveway where the overall road width pinches down from approximately 24 feet, and southward to a point coincident with the projection of the southern property line, followed by a transition taper back to existing width.

Condition C – Prior to plat approval, provide a notarized Road Maintenance Agreement (RMA) for concurrent recording with the plat acknowledging that Starlight Drive is a Local Access Road not maintained by the County, with maintenance implicitly defaulting to resident users of the Road.

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.

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

6. 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 #6 below 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 Marion County Tax Department at 503-588-5215 for verification of payments).
8. The applicants should contact 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.
9. The applicants should contact Marion County Land Development and Engineering (503-584-7714) for additional Engineering Requirements and Advisories, listed in Finding #6 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 6, 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 7, 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 Rural Residential in the Marion County Comprehensive Plan. The purpose of this designation and the corresponding AR (Acreage Residential) zone is to allow creation of acreage homesites at a density that maintains the character and environmental quality of rural residential areas.
2. The property is located at 3857 Starlight Drive NE, Silverton, OR, on the corner of State Highway 214 and Starlight Drive NE. It contains a dwelling, accessory structures, and a well and septic system. The property was created as a result of the Starlight View Ranchettes Subdivision (Volume 738, Page 270) and is therefore considered legal for land-use purposes.
3. According to the Soil Survey for Marion County, Oregon, 100% of the subject property is comprised of high-value soils.

4. Under provisions in ORS 195.300 to ORS 195.336 (Measure 49) the State of Oregon issued Final Order and Home Site Authorization E131341 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 claimant, the Measure 37 claim property includes one lot or parcel and one dwelling. There is no contiguous property under the same ownership. Therefore, the three home site approvals the claimant qualifies for under Section 6 of Measure 49 will authorize the claimant to establish up to two additional lots or parcels and two additional dwellings on the Measure 37 claim property.”

5. The applicant proposes to implement the Measure 49 order E131341 by dividing a 4.06 acre parcel into three parcels containing 1.4 acres, 1.33 acres, and 1.33 acres. Upon approval of the partition, the applicant intends to apply for building permits to place a dwelling on each parcel.
6. Marion County Land Development and Engineering provided the following comments:

ENGINEERING CONDITIONS

Condition A – On the subdivision plat, dedicate a 30-foot NE property corner radius.

Nexus is to meet R/W dedication requirement for partitions in accordance with Marion County Code (MCC) Section 17.172.200. Nexus for this Condition is to achieve the Local Road standard in support of immediate construction of public road improvements to serve the development as well as traveling public, and space for utilities.

Condition B – Prior to Plat approval, permit and construct a Starlight Drive widening frontage half-width improvement consisting of an additional 6-foot x 8” deep compacted crushed rock section on the property side to provide a total 20-foot wide all-weather driving surface commencing from a point located approximately 35 feet south of the intersection of the parent parcel driveway where the overall road width pinches down from approximately 24 feet, and southward to a point coincident with the projection of the southern property line, followed by a transition taper back to existing width.

Nexus is to provide sufficient access to the development per MCC 17.172.140 & 320. The majority of the Starlight Drive driving surface is approximately 14 feet in width, insufficient to safely pass two-way traffic.

Condition C – Prior to plat approval, provide a notarized Road Maintenance Agreement (RMA) for concurrent recording with the plat acknowledging that Starlight Drive is a Local Access Road not maintained by the County, with maintenance implicitly defaulting to resident users of the Road.

Justification is to meet zone code requirement under MCC 17.172.340. MCPW is able to furnish an executable document at no charge, aside from the Clerk recording fee. Please contact John Rasmussen in Land Development Engineering in this regard.

ENGINEERING REQUIREMENTS

- D. In accordance with MCC 11.10, driveways must meet sight distance, design, spacing, and safety standards. Access Permits will be required upon application for building permits for each future dwelling on the developable parcels.
- E. The subject property is within the unincorporated area of Marion County and will be assessed Transportation & Parks System Development Charges (SDCs) upon application for building permits.

- F. Any work, including utility work within the Starlight Drive public right-of-way such as electrical interconnection for example, will require separate permits from Public Works.

ENGINEERING ADVISORY

- G. Any work within the Silver Falls Hwy (SR 214) public right-of-way will require separate permits from the Oregon Department of Transportation (ODOT).

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

Marion County Surveyor commented: “ 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.”

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

7. Under provisions in order E131341, Section IV Home Site Authorization, the claimant qualifies for two homesite 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.*

As proposed the existing dwelling and the two additional dwellings will each be on separate parcels.

In this case the standards for dwelling placement, partition and property line adjustments are found in Chapters 17.128 and 17.172 MCC, those that apply include:

MCC 17.128.060: Development standards.

A. Maximum Height.

- 1. Dwellings: 35 feet.*
- 2. Farm-related structures on farm parcels: none.*
- 3. Nonresidential and non-farm structures: 35 feet unless they are in conjunction with conditional uses allowed in MCC 17.128.030, and a greater height is requested and approved as part of the conditional use permit.*

B. Minimum Setbacks. Except as required in MCC 17.128.050(A), the following setback requirements shall be implemented for all new structures other than residential accessory structures (see Chapter 17.117 MCC), farm-exempt buildings, signs and fences:

- 1. Rear Yard. A minimum of 20 feet.*
- 2. Side Yard. A minimum of 10 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. In the case of a corner lot any side yard adjacent to a street shall be not less than 20 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 Chapter 17.112 MCC).*

The existing and proposed dwellings are able to meet these standards, which will be applied during the building permitting process. This criterion is met.

MCC 17.128.050: Special siting standards for dwellings near resource zones.

A. Any new dwelling in an AR zone shall be required to maintain a special setback from any parcel in the EFU, SA, FT, or TC zones. A 100-foot setback is the standard adjacent to farm use and 200 feet is the standard adjacent to forest uses.

The parcel directly to the west is zoned Farm/Timber A special siting standard will be applied through the building permit process. The existing dwelling is approximately 275 feet from the property to the west. The two proposed dwellings should be able to comply with this requirement.

MCC 17.172.140 ENGINEERING STANDARDS AND REQUIREMENTS Engineering standards and requirements, including but not limited to streets, drainage, access, easements, and thoroughfare improvements, shall be those currently approved by the Marion County Department of Public Works.

In its comments Marion County Land Development and Engineering identified the required improvements that will be applied to the use once building permits are applied for. These will be made conditions of approval. The term is met.

MCC 17.172.300 UTILITY EASEMENTS Utility easements meeting the approval of the Marion County Department of Public Works shall be provided to all newly created lots.

The applicant is advised that this is a requirement.

MCC 17.172.306 LOT SIZE All lots approved under this chapter shall have sufficient area to be consistent with the intent of the Comprehensive Plan and to provide adequate area for the intended structures and uses, all setbacks, access and spacing required for water supply and waste water disposal. Lots to be served by public or privately owned sewage collection and disposal system must meet the requirements and have approval of the Oregon State Department of Environmental Quality before being recorded or sold. State regulations, soil types, drainage, terrain, and location may be included as part of the criteria used by the State or county in determining appropriate lot sizes for lots using subsurface disposal of sewage. Lot size and dimension shall be as prescribed in the corresponding zone.

The proposed lot sizes should be adequate to accommodate residential uses, including the required water supply and wastewater infrastructure. The criterion is satisfied.

MCC 17.172.380 CURVED FRONT LOT LINES When front lot lines are on a curve or arc, the front line distance shall be indicated on the final plat by bearing and chord distance.

The applicant is not proposing curved front lot lines. The criterion does not apply.

MCC 17.172.400 SEWAGE DISPOSAL. All lots or parcels shall be served by an authorized sewage disposal system. Subsurface sewage disposal for individual parcels shall meet the requirements of the Department of Environmental Quality (DEQ) and the Marion County Building Inspection Division. Those subsurface sewage systems that are used by a community, sanitary district, industry, or incorporated area must be authorized by the Department of Environmental Quality (DEQ) via the Marion County Building Inspection Division. Installation and maintenance shall be in accordance with the Department of Environmental Quality's regulations and requirements. The Commission, Director, or Hearings Office may require connection to an existing sewage collection and treatment system regardless of lot suitability for subsurface disposal if the Commission, Director, or Hearings Officer deems it necessary and provided the connection is available.

As noted above, the lots are of sufficient size and shape to meet setback requirements and a condition of approval will require that septic approvals be obtained prior to the survey being filed and/or the plat being recorded.

MCC 17.172.420 WATER SUPPLY. All lots or parcels shall be served by an authorized public or private water supply system or individual private wells.

- (a) *Public or Private Systems: Public or private systems shall meet the requirements of the Oregon State Health Division with reference to chemical and bacteriological quality. In addition, such systems must meet the quantity, storage, and distribution system requirements of the State Health Division and the Marion County Department of Public Works.*
- (b) *Individual Private Wells: Individual private wells must meet the construction requirements of the Oregon State Water Resources Department and be located in accordance with requirements of the State Health Division in relation to public or private sewage disposal systems. The bacteriological quality of this water may be determined through the Marion County Health Department. Upon receiving the recommendations from the State Health Division or Marion County Health Department, the Hearings Officer or Commission may require the use of an engineered public or private water system in any proposed subdivision. Other criteria to be considered in making this determination are the recommendations contained in the Marion County Water Quality Management Plan, Marion County Comprehensive Plan, and Chapter 181 of the Marion County Rural Zoning Ordinance.*

The proposal indicates that each parcel will be served by a private well and because the property is not located in a Sensitive Groundwater Overlay zone, the standards in Chapter 181 do not apply.

MCC 17.172.430 STORMWATER MANAGEMENT. The impact of proposed subdivisions and partitions on stormwater runoff shall be evaluated and potential adverse impacts shall be mitigated. Where evidence indicates stormwater runoff will have an adverse impact on a drainage system or natural drainage network, the developer shall demonstrate that proposed stormwater management on the subject property will compensate for the proposed change per county standards. Compliance with this requirement shall be demonstrated by compliance with Department of Public Works Engineering Standards.

The proposed residential development will be reviewed for stormwater management requirements once building permits are applied for.

MCC 17.172.440 UNDERGROUND UTILITIES EASEMENTS Underground easements for utilities and overhead utility facilities shall be provided by the subdivider and set forth on the final plat. When possible, such easement shall be centered on or bordering a lot line. The subdivider shall provide easements on both sides of all road or street rights-of-way of 60 feet or less.

The applicant is advised that the final plat may need to show utility easements.

MCC 17.172.560 ACCESS STANDARDS All lots must have a minimum of 20 feet of frontage on a public right-of-way, or, when an access easement is proposed to serve one or more lots in any partitioning, the location and improvement of the roadway access shall conform to the following standards which are necessary for adequate access for emergency vehicles. Evidence that the access has been improved to these standards shall be provided prior to the issuance of building permits on the parcels served by the access easement.

- (a) *Have a minimum easement width of 20 feet;*
- (b) *Have a maximum grade of 12%;*
- (c) *Be improved with an all-weather surface with a minimum width of 12 feet;*
- (d) *Provide adequate sight-distance at intersections with public roadways;*
- (e) *Be provided with a road name sign at the public roadway as an identification for emergency vehicles in accordance with the Marion County Address and Street Name Ordinance.*

The proposed parcels will be served by Starlight Drive NE, an existing dedicated right-of-way that is not maintained by the County. The proposal meets, or can be conditioned to meet, all of the applicable development standards. This term is satisfied.

- 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 new parcels and the applicant proposes to place 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 E131341 the claimant is entitled to three parcels and three home sites. The Measure 37 claim property contains one dwelling and one parcel. Under the proposal, the existing parcel will be partitioned into three parcels. The existing dwelling will remain on one of the resulting parcels and new dwellings are proposed for the two newly created parcels. 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 a total of three 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 with only one dwelling on each, this term is satisfied.

H. If the claimant transferred his 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 property ownership has not been transferred since E131341 was issued. 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 ORS215.402 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.

8. Based on the above findings, the applicant's proposal meets the terms in Final Order and Home Site Authorization E131341 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 conditions.

Joe Fennimore
Planning Director

Date: July 22, 2021

If you have any questions regarding this decision contact Ryan Dyar 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.