

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.21-025**

APPLICATION: Application of William and Linda Hammersley, under approvals granted by ORS 197.352 (Measure 37/49), to partition a 6.7 acre parcel into three parcels containing 3.8 acres, 1.45 acres, and 1.45 acres each in an EFU (Exclusive Farm Use) zone located at 22235 Butteville Road NE, Aurora. (T4S, R1W, Section 8B, Tax Lot 500). Review is subject to the criteria contained in State Final Order #E133681.

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 **January 7, 2024**. 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 21-025. 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. 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.
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 partition plat, dedicate a 30-foot right-of-way half-width on Matthieu Lane to meet the Local road standard, and, a 30-foot NE property corner radius.*

Nexus is due to the proposed land division, and to satisfy MCC 17.117.200 and 240.

Condition B – *Prior to plat approval, under an Access Permit permanently close the Butteville Road driveway approaches, or, remove the mature roadside trees and other bushy vegetation that is obscuring Intersection Sight Distance about the roadway horizontal curve.*

Per PW Engineering access ordinance, driveways shall meet design and safety standards. Sight distance field measurements indicate the Butteville Road driveway approaches have insufficient vision, which presents a vehicular safety issue.

Condition C – *Prior to plat approval, if the Butteville Road driveways are not closed, record a Removal Agreement for the non-standard installation of brick pavers in the public right-of-way at each of the two approaches that are not authorized on rural roads.*

In accordance with MCC 17.112.020(C), a Removal Agreement stipulates property owner responsibility to remove an object from within the right-of-way within 45 days of notification by the governing jurisdiction for such reasons as pending road maintenance (resurfacing) that the county would not be responsible for replacing if disturbed during that operation.

5. The Marion County Planning Division, in coordination with the 9-1-1 Emergency System has named the proposed private access easement **Double Delight Ln NE. 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. Prior issuance of building permits, the applicant shall submit either evidence that the access easement has been improved to the standards in MCC 17.172. The access easement is also to provide for utilities.
7. The applicant shall sign and submit a Farm/Forest Declaratory Statement (enclosed) 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.
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(s) 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 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

January 7, 2022. If you have questions about this decision contact the Planning Division at (503) 588-5038 or at the office. This decision is effective **January 8, 2022** unless further consideration is requested.

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

1. The subject property inside Marion County is designated Primary Agriculture in the Marion County Comprehensive Plan and correspondingly zoned EFU (Exclusive Farm Use). The primary intent of both this designation and zone is to promote and protect commercial agricultural operations.
2. The property contains a stick built dwelling and a manufactured home being used as a hardship dwelling, it also contains at least three accessory structures related to farm use. The property was the subject of CU20-017 and is therefore considered a legal parcel for land use purposes.
3. The property is located directly south of the intersection of Matthieu Ln and Butteville Rd. It is surrounded on all sides by EFU zoned lands that are in farm production.

4.	<u>Soil #</u>	<u>% of Parcel</u>	<u>SCS Soil Class</u>	<u>High Value?</u>
	Amity Silt Loam	83%	2	Yes
	Concord Silt Loam	17%	3	Yes

5. Under provisions in ORS 195.300 to ORS 195.336 (Measure 49) the State of Oregon issued Final Order and Home Site Authorization E133681 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.

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. Each dwelling must be on a separate lot or parcel, and must be contained within the Measure 37 claim property.

The claimant may 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 Measure 37 claim property, pursuant to the home site approvals, is sited on a separate lot or parcel. 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 claimant owns or how many claims a claimant filed. If claimant has developed the limit of twenty home sites under Measure 49, the claimant is no longer eligible for the home site approvals that are the subject of this order.”

6. The applicant proposes to implement the Measure 49 order by partitioning a 6.7 acre parcel into three parcels containing 3.8 acres, 1.45 acres, and 1.45 acres
7. Public Works Land Development and Engineering Permits (LDEP) requested that the following be included in the land use decision.

ENGINEERING CONDITIONS

Condition A – *On the partition plat, dedicate a 30-foot right-of-way half-width on Matthieu Lane to meet the Local road standard, and, a 30-foot NE property corner radius.*

Nexus is due to the proposed land division, and to satisfy MCC 17.117.200 and 240.

Condition B – Prior to plat approval, under an Access Permit permanently close the Butteville Road driveway approaches, or, remove the mature roadside trees and other bushy vegetation that is obscuring Intersection Sight Distance about the roadway horizontal curve.

Per PW Engineering access ordinance, driveways shall meet design and safety standards. Sight distance field measurements indicate the Butteville Road driveway approaches have insufficient vision, which presents a vehicular safety issue.

Condition C – Prior to plat approval, if the Butteville Road driveways are not closed, record a Removal Agreement for the non-standard installation of brick pavers in the public right-of-way at each of the two approaches that are not authorized on rural roads.

In accordance with MCC 17.112.020(C), a Removal Agreement stipulates property owner responsibility to remove an object from within the right-of-way within 45 days of notification by the governing jurisdiction for such reasons as pending road maintenance (resurfacing) that the county would not be responsible for replacing if disturbed during that operation.

ENGINEERING REQUIREMENTS

D. The following numbered sub-requirements pertain to access:

- 1) Access to the proposed developable parcels shall be derived from Matthieu Lane; no direct access to Butteville Road will be allowed for those parcels.
- 2) Access to Matthieu Lane must be shared via access easement; no secondary access will be allowed.
- 3) At the time of application for building permits, an Access Permit will be required for each developable parcel.

E. Transportation System Development & Parks Charges will be assessed at the time of application for building permits for the developable parcels.

F. Access and utility easements shall be shown on the plat.

G. Utility permits are required for utility extension work in the public right-of-way, such as electrical interconnection.

Marion County Septic Inspection commented:

1. A record review with a field visit by Marion County Onsite Staff is required to demonstrate that a 10' setback to the proposed property line can be met for the existing septic system at 22335 Butteville Road (proposed 3 acre lot), and to document a repair area. An existing system evaluation was performed by A&B Septic in 2020 (555-20-006046-AUTH), the documentation in this permit indicates there could be a conflict with the proposed property line.

2. A site evaluation is required at each of the two new lots for the partition.

3. OAR 340-071-0130(11) requires an easement anytime a septic system crosses a property line, or if a system and the facility it serves are on different properties. The hardship dwelling must be disconnected from the existing septic system serving 22235 Butteville no later than when it becomes a legal dwelling and no longer a hardship dwelling. The tank currently serving the hardship dwelling will be required to be decommissioned when the dwelling is no longer a hardship dwelling. The partition plat cannot be approved by Marion County Septic until the following approvals have been granted (regarding the proposed lot where the hardship dwelling is currently located):

- a) a site evaluation is approved
- b) a construction/installation permit is issued
- c) the system installation is inspected and a Certificate of Satisfactory Completion is issued.

Marion County Building Inspection commented:

It appears a lot line is proposed between an existing manufactured home and arena. If the arena is a structure regulated by the state building code, the exterior wall adjacent to the proposed property line may need additional fire protection. Please revise the proposed site plan to identify whether the arena is a structure, the setback measurement from the proposed property line to the arena, and the square footage of the arena (if a structure).

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

Marion County Surveyor commented:

1. Parcels ten acres and less must be surveyed.
2. Per ORS 92.050, plat must be submitted for review.
3. Checking fee and recording fees required.
4. 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 the proposal.

8. Under provisions in order E133681, Section IV Home Site Authorization, the claimant qualifies for two home 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.*

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

In this case the standards for dwelling placement, partition and property line adjustments are found in Chapters 17.136 and 17.172 MCC, those that apply include:

MCC 17.136.100:

(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.*

Currently both dwellings (original home and medical hardship) meet the height standard and any future dwelling will be subject to the same standard through building permit review. This criterion is met.

(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).*

Both existing dwellings meet this standard and any new dwelling will be subject to this standard through building permit reviews. This criterion is met.

- (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).*

This will be made a condition of approval.

Section 136.070(a) Special Setbacks:

- (1) *Dwellings. A special dwelling setback of 200 feet from any abutting parcel in arm use or timber production is required.*
- (2) *Accessory buildings. A special setback of 100 feet is required for buildings accessory to a dwelling from any abutting parcel in farm use or timber production.*
- (3) *Adjustments. The special setbacks in (1) and (2) may be reduced if it is determined that a lesser setback will prevent activities associated with the dwelling or accessory building from seriously interfering with farming or forest practices as provided in Section 110.680.*
- (4) *The special setback in (1) shall not be applied in a manner that prohibits dwellings approved pursuant to ORS 195.300 to 195.336 nor should the special setback in (1) prohibit a claimant's application for homesites under ORS 195.300 to 195.336.*

This will be made a condition of approval.

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 applicants are proposing an access easement to serve the new parcels. The requirements in Chapter 172.56 can be made a condition of any approval. It should be noted that the easement must also meet local Fire District Standards. Under the provisions in the Marion County Address and Street Name Ordinance, the easement must be named and all properties accessing the easement must be addressed from the roadway. A list of names was submitted to the 911 Dispatch Center for review, **Double Delight Ln NE** has been approved. **The name must be shown on the plat and prior to the recording of the plat, a work order for the street sign installation, with appropriate fee, must be submitted to Marion County Department of Public Works.**

- 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 permits a new dwelling on one parcel. One of the parcels will already have a dwelling 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 E133681 the claimant is entitled to three home sites. The Measure 37 claim property contains 1 parcel and two dwellings. Under the proposal the existing parcel will be split into three lots, lots 1 and 2 will encompass the existing homes (primary and medical hardship), leaving a third lot vacant for a new 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 a temporary dwelling in the form of a medical hardship approved by CU20-017. This medical hardship dwelling will be converted to a permanent dwelling at the time of partitioning. This term is met.

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 home sites, two existing and one 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 been transferred once since E133681 was issued. The two original claimants, William and Linda Hammersly, transferred the property into a trust with their two names on it on September 7th, 2021. This term is met.

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 only big enough to create clustered parcels. Each parcel will be adjacent to the next. 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.

9. Based on the above findings, the applicant's proposal meets the terms in Final Order and Home Site Authorization E119603 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

Brandon Reich
Planning Director

Date: December 23, 2021

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.