

**NOTICE OF DECISION  
PARTITION CASE NO. 18-013**

**APPLICATION:** Application of ZDT, LLC, under approvals granted by ORS 197.352 (Measure 37/49), to divide a 188.67 acre parcel into three parcels containing 184.67 acres, 2.0 acres, and 2.0 acres each in a EFU (Exclusive Farm Use) zone located in the 4600 block of Victor Point Rd SE, Sublimity. (T8S; R1W; Section 12; tax lot 800) and (T8S; R1E; Section 07; tax lot 400). Review is subject to the criteria contained in State Final Order #E133751C.

**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 partitioning plat is recorded by **June 19, 2020**. 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 drainfield replacement areas, these parcels may not be able to support a dwelling. To be sure the subject property can accommodate the proposed use the applicant should contact the Building Inspection Division, (503) 588-5147.

**This decision does not include approval of a building permit.**

**CONDITIONS:** The following conditions must be met before a building permit can be obtained or the approved use established:

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 18-009. 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. 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.
3. 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 – Prior to plat approval, under an Access Permit, construct a 20 x 20 paved approach centered on the proposed access easement, and close the existing access [MCC 11.10 & 17.172.320].*  
  
*Condition B – On the partition plat, show sufficient right-of-way (R/W) to provide the public R/W half-width of 30 feet to meet the local road standard along the portion of subject property Victor Point Road frontage adjacent to the proposed 2-acre lot frontage lot(s) [MCC17.172.240].*
4. The Marion County Planning Division, in coordination with the 9-1-1 Emergency System, has named the proposed private access easement “**FESCUE LN SE**”. 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.
5. The resulting parcels shall significantly conform to the site plan submitted with the proposal, except that Minor variations are permitted upon review and approval by the Planning Director.

**Prior to issuance of building permits on the resulting parcels:**

6. The partition plat shall be recorded.

7. Prior to issuance of building permits, the applicant shall sign and submit a Sensitive Groundwater Overlay Zone Declaratory Statement to the Planning Division for each resulting parcel. This statement shall be recorded by the applicant with the Marion County Clerk's Office 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:

8. After the final Partition plat has been recorded no alteration of property lines shall be permitted without first obtaining approval from the Planning Director.
9. The home site approvals provided in State of Oregon Final Order and Home Site Authorization E133751C will expire on March 27, 2025.

**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 agencies mentioned in Finding #5 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 Sublimity 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 County 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 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 \$200.00) on the basis of new information subject to signing an extension of the 120 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 **June 19, 2018**. If you have questions about this decision contact the Planning Division at (503) 588-5038 or at the office. This decision is effective **June 20, 2018** 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 zoned EFU (Exclusive Farm Use). The intent of both designation and zone is to promote and protect commercial agricultural operations. A small portion of the property is also located in the Sensitive Ground Water Overlay Zone (SGO), an area with limited ground water resources.
2. The property is located on the east side of Victor Point Road SE approximately 2100 feet south of its intersection with Waldo Hills Drive. The property is undeveloped and the subject of Measure 37 Case M06-328, which waived specific regulations in the Marion County Rural Zone Code. The applicants also filed a Measure 49 claim and were approved under State final order #E133751C for three lots in total and three dwellings in total.

A narrow strip along the southern boundary of tax lot 800 is located within the Sensitive Groundwater Overlay zone. Marion County Code (MCC) Chapter 17.181 establishes provisions for partitioning property in an SGO zone. Since the two lots proposed to be less than five acres in size are to be located well outside the SGO zone, no proof of long term water supply is necessary. Although adequate long term water supply appears to be available, the County requires a Declaratory Statement to be recorded with the property deed. This notifies the applicant and

subsequent landowners that there may be long term groundwater supply problems and that the County is not responsible for deepening or replacing wells.

3. Properties in all directions are zoned EFU and consist primarily of various sized farming or timber operations.
4. Soil Survey for Marion County, Oregon indicates soils on the subject property are 91% high-value soils.
5. Under provisions in ORS 195.300 to ORS 195.336 (Measure 49) the State of Oregon issued Final Order and Home Site Authorization E133751C 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 two lots or parcels 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 one additional lot or parcel and two 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.”

6. The applicant proposes to implement the Measure 49 order by combining the two tax lots into one parcel and dividing the resulting 188.67 acre parcel into three parcels containing 184.67 acres, 2.0 acres, and 2.0 acres each.
7. Public Works Land Development and Engineering Permits requests that the following conditions are included in the land use case:

***Condition A*** – *Prior to plat approval, under an Access Permit, construct a 20 x 20 paved approach centered on the proposed access easement, and close the existing access [MCC 11.10 & 17.172.320].*

Marion County Rural Transportation System Plan Chapter 10 - Policy #10 b) specifies shared access for land partitions. Roadside vegetation clearing or trimming will likely be required in order to provide adequate Intersection Sight Distance.

***Condition B*** – *On the partition plat, show sufficient right-of-way (R/W) to provide the public R/W half-width of 30 feet to meet the local road standard along the portion of subject property Victor Point Road frontage adjacent to the proposed 2-acre lot frontage lot(s) [MCC17.172.240].*

LDEP also commented on requirements that are not part of the land use decision and are available for review in the Planning file.

Marion County Surveyor commented: “Parcels ten acres and less must be surveyed. Per ORS 92.050, plat must be submitted for review. Checking fee, second mylar fee, and recording fee required. A current or updated title report must be submitted at the time of review. Title reports shall be no less 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 Assessor’s Office provided comments related to taxes on the subject property.

Marion County Building Inspection commented that site evaluations are required for the two new 2-acre parcels and that any old, existing septic system must be abandoned.

8. Under provisions in # E133751C, Section IV Home Site Authorization, the claimant qualifies for three 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 new dwellings will 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 of the Marion County Code (MCC), including 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 137.050, 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.

*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.*

*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 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.*

Water will be provided by a private well. A portion of the property is located in a SGO (Sensitive Groundwater Overlay) zone and the standards in Chapter 181 have been met. The applicant will be required to record declaratory statements for each lot that provides notice that the property is in an area with limited groundwater resources.

*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 MCC 17.172.56 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 9-1-1 Dispatch Center for review and “FESCUE LN SE” was approved. The approved road 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. This will be made a condition of 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 additional parcels and permits a new dwelling on each of the undeveloped parcels 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 # E133751C the claimant is entitled to three home sites. The Measure 37 claim property contains no dwellings and two tax lots. Under the proposal the existing tax lots are treated as one parcel which will be partitioned into three parcels. A new dwelling will be placed on each of the resulting parcels, and does not violate ORS 195.305(3) or any other local, state, or federal law. This term is met.

*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 applicants own 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 new home sites. 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 since E133751C was issued. The home site approvals will expire on March 27, 2025. 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 primarily of high-value farm soils and the 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 proposal is to cluster the new 2-acre parcels on the west side of the parcel where the north property line meets Victor Point Road NE. The proposed location and clustering appears to have the least impact on farming on the subject property and in the area. 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 and conclusions, the applicant's proposal meets the terms in Final Order and Home Site Authorization E133751C approved under provisions in ORS 195.300 to ORS 195.336 (Measure 49) for the subject property. The partitioning request is, therefore, **APPROVED** subject to conditions.

Joe Fennimore  
Director-Planning Division

Date: June 4, 2018

If you have any questions please contact Lisa Milliman 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.