

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.21-017**

APPLICATION: Application of Katheryn Adkins Trust, under approvals granted by ORS 197.352 (Measure 37/49), to partition a 320-acre parcel into three parcels containing 5.00 acres, 5.00 acres, and 310 acres each in an EFU (Exclusive Farm Use) zone located at 4289 Davis Creek Road NE, Silverton. (T7S, R1E, Section 4, Tax Lot 1400). Review is subject to the criteria contained in State Final Order #E130826.

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 **September 17, 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. The applicant is advised that they should contact the Oregon Department of State Lands (503-986-5200) due to the presence of wetlands on the property that are inventoried in the Statewide Wetlands Inventory.
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. 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, **only the remainder lot shall exceed five acres in size.**

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.

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:

9. 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).
10. 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.
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

September 17, 2021. If you have questions about this decision contact the Planning Division at (503) 588-5038 or at the office. This decision is effective **September 18, 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. Marion County Assessor records indicate that the subject contains a general purpose building, a lean-to, and a pump house. The applicant provided evidence that the property was described on a deed recorded December 20, 1976, located in the deed records of Marion County at Reel 67 and Page 1134. It is therefore considered a legal for land-use purposes.
3. The property is located where Davis Creek Rd. NE intersects with Porter Rd. NE. From that intersection, Davis Creek Road NE runs north through the property—splitting it functionally into two pieces. Surrounding properties are zoned EFU in all directions and consist of medium to large scale commercial farms; some of these properties are developed with home sites.
4. Marion County Soil Survey reveals 49.2% 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 is proposing to implement the Measure 49 order by dividing a 320-acre parcel into three parcels containing 5-acres, 5-acres, and 310-acres. The applicant is also proposing to develop a home site on each of the two 5-acre parcels.
7. Marion County Survey’s Office requested that the following be included in the land use decision:
 - A. Per ORS 92.055 – Parcels over 10 acres can be unsurveyed.
 - B. Parcels ten acres and less must be surveyed.
 - C. Per ORS 92.050, plat must be submitted for review
 - D. Checking fee and recording fees required.
 - E. 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 Land Development and Engineering Permits (LDEP) requested that the following be included in the land use decision:

ENGINEERING REQUIREMENTS

- A. An Access Permit will be required to put in the shared driveway approach. Access must be shared and shall be centered on the access easement. Intersection Sight Distance from the proposed access point on Davis Creek Road is limited in the north direction. Therefore, the access location may likely have to be adjusted. It is recommended to coordinate an acceptable access location with PW Engineering prior to submitting the tentative review plat.
- B. Transportation System Development & Parks Charges will be assessed at the time of application for building permits.
- C. Utility work in Davis Creek Road requires utility permitting from PW Engineering.

Marion County Septic Division provided the following comments:

- A. Both new lots must be served by an authorized onsite wastewater treatment system. Marion County records show a septic system was installed and approved in 1994 under (94-00729) to serve a residence. It appears this system was installed in the middle of the property and not where the new lots are proposed. If the applicant wishes to connect one of the future dwellings to this system (it does not appear a dwelling was ever connected to the system) an authorization notice will be required.
- B. It should be noted that the partition will be required to comply with OAR 340-071-0130(11) - if property lines are crossed by the septic system an easement must be approved by this office and recorded.

- C. If the applicant pursues connecting to the existing system, a site evaluation will be required for whichever lot will not be connected to the existing system. If the applicant does not wish to connect to the existing system, a site evaluation will be required for both lots.

Marion County Tax Assessor's Office commented regarding taxes.

Marion County Building Division provided the following commented that there are no Building Inspection issues with proposals based on information provided and that permits will be required for any future development on private property.

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

8. Under provisions in order E130826, 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.*

The property is not currently developed with any dwellings. The applicant is proposing to create two new 5-acre parcels and one 310-acre remnant parcel. The applicant proposes to place a home on each of the two 5-acre parcels and leave the remnant parcel undeveloped for now. 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.*

Height limitations can be imposed at the time building permits are applied for. The term is satisfied.

- (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. The term is satisfied.

- (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. The 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 three parcels—two new and one remainder—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 E130826 the claimant is entitled to three home sites. The Measure 37 claim properties contain no dwellings and one parcel. Under the proposal, the property will be divided into three total parcels which can each contain one dwelling. The property owner did file Measure 37 claims on other properties; however, there are no contiguous properties under the same ownership. The applicant is proposing to place a dwelling on two of the 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 the 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 two home sites. The applicant will have the opportunity in the future to develop one additional home site under the authorization terms. The proposal is consistent with this term.

- 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 and two dwellings. 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 original claimant was Kathryn Adkins and the property is currently owned by the Kathryn Adkins Revocable Trust, of which Kathryn Adkins is still a trustee. The property has not been conveyed to an outside party 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 predominantly composed of non-high-value farm soils (50.8%) and the proposed new parcels will not exceed five acres in size. 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 by the applicant is to cluster the new dwellings in the northwestern section of the property—which is currently unfarmed—and continue to farm the remainder. 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.*

The application does not indicate that there are any public or private easements, conditions or restrictions applying to the subject property that would prohibit or otherwise restrict this proposal. Based on Marion County records, no such restrictions appear to exist. 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 E130826 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: September 2, 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.