

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 MODIFIED DECISION
PARTITION CASE NO. 23-002**

APPLICATION: Application of Cascadia Planning and Development Services, on behalf of Karen M. and Joseph M. Brady, under approvals granted by ORS 197.352 (Measure 37/49), to partition a 49.92-acre parcel into three parcels containing 1.96 acres, 1.99 acres, and 45.97 acres each in a Farm/Timber (FT) zone located at 20521 Bridge Creek Road SE, Silverton (T8S, R1E, Section 1B, Tax Lot 100). Review is subject to the criteria contained in State Final Order #H134287.

DECISION: The Planning Director for Marion County has **MODIFIED AND APPROVED** the above-described Partition, subject to certain conditions.

EXPIRATION DATE: This approval is valid only when the final partitioning plat is recorded by **March 28, 2025**, unless an extension is granted. The effective period may be extended for an additional year subject to approval of an extension. Request for an extension must be submitted to the Planning Division prior to expiration of the approval (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 approve.

WARNING: A decision approving the proposed use is for land use purposes only. Due to other requirements, such as well requirements, septic requirements, and drain field replacement areas, this parcel may not be able to support the proposed use. To ensure 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 applicants shall submit a final partition plat to the Marion County Surveyor's Office. Following plat approval, it shall be recorded with the Marion County Clerk (plat instructions enclosed). **This shall be accomplished prior to the issuance of any building permit(s) on the resulting parcels.**
2. Per the Marion County Surveyor's Office, the following requirements will apply:

Per ORS 92.055, parcels over 10 acres can be un-surveyed. Parcels ten acres and less must be surveyed. Per ORS 92.050, the plat must be submitted for review, a checking fee and recording fee will be required, and a 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.
3. Per Marion County LDEP, the following requirements will apply:
 - A) **Prior to plat approval**, obtain a PW Engineering Permit, and under the Permit close one of two driveway approaches serving the parent parcel, referenced as proposed Parcel 1. Residential properties are generally allowed a total of one (1) access point.
 - B) At the time of application for building permits for each developable parcel, an Access Permit will be required to install the driveway approach.
 - C) Transportation System Development Charges will be assessed at the time of application for building permits.
 - D) Permits from MCPW Engineering are required for utility service extensions in the Bridge Creek Road public right-of-way.

4. Per Marion County Septic: Applicant should determine if a septic easement was granted to neighboring parcel 20761 Bridge Creek Rd. All lots without septic approval will require a site evaluation. The existing system serving the current dwelling will need to be located and staked out to show that the system will fall within the proposed parcel. Please contact Marion County Septic team and review their comments further under the Findings & Conclusions.
5. Per Marion County Building Division: permits are required prior to any new development and/or utilities on private property.
6. The proposed "Parcel 1" (containing the existing dwelling) shall remain addressed **20521 Bridge Creek Road SE**. The proposed "Parcel 2" (vacant) shall be addressed **20541 Bridge Creek Road SE**. The proposed "Parcel 3" (vacant) shall be addressed **20651 Bridge Creek Road SE**. Addresses will be finalized at the time that building permit applications are reviewed and may change if alterations are made to the property or nearby properties.
7. Prior to the issuance of building permits on the resultant parcels, the applicant shall sign and submit a Farm/Forest Declaratory Statement for each 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.
8. Per the Measure 49 Final Order, the resultant parcels shall not exceed two (2) acres in size with exception to the "remnant parcel."

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

9. After the final partition plat 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 another 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 thereon. It is recommended that the agencies mentioned in the Findings and Conclusions section 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 Office. The Tax Office may be contacted at (503) 588-5215 for more information.
11. The applicants should contact the Drakes Crossing 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 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 in the Marion County Planning Division, 5155 Silverton Road NE, Salem, by 5:00 p.m. on **March 28, 2023**. If you have questions about this decision, contact the Planning Division at (503) 588-5038 or at the office. This decision is effective **March 29, 2023**, unless further consideration is requested.

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

1. The subject property is designated Farm/Timber in the Marion County Comprehensive Plan and correspondingly zoned Farm/Timber (FT). The intent of this zone is to designate land for a mixture of agricultural, forest management, and acreage homesite uses; the zone is intended to also allow other uses that are compatible with agricultural activities, to protect forests, scenic resources and fish and wildlife habitat, and to maintain and improve the quality of air, water, and land resources of the county.
2. The property is located approximately 1.75 miles southeast of the intersection Powers Creek Loop NE & Bridge Creek Road SE. The property consists of approximately 49.92 acres according to the applicant's preliminary survey. Surrounding properties to the south and southeast are zoned Acreage Residential. Properties to the east and northeast are zoned Timber Conservation. The remaining properties to the west and northwest are zoned Farm/Timber. The surrounding properties' current use is reflected by their zoning: a mixture of large timber properties, acreage homesites, and smaller farm/forest operations.
3. The parcel is developed with one dwelling and a few accessory structures. Per Marion County Tax Assessor records, the dwelling was built around 1946. That dwelling pre-dates modern zoning regulations. It appears, therefore, that the dwelling was legally established.
4. The subject parcel was created as a result of a 1977 Minor Partition application (MNP77-010). The application proposed 3 parcels, with the largest being the subject parcel of this application. The partition was approved, and it appears was fully executed. Therefore, this parcel is considered legal for the purposes of land use per Marion County Code 17.110.427.
5. Soil Survey for Marion County, Oregon, indicates that approximately 0% of the soils on the subject tax lot are classified as high value farmland. In other words, 100% of the soils are non-high value for farming uses. The soil survey tool does not, however, indicate whether these soils are high-value forestland. This will be examined under later findings.
6. Marion County Building Inspection commented: Permits are required prior to any new development and/or utilities on private property. No additional Building Inspection concerns with the adjustment to parcel sizes and/or property line locations.
7. Marion County Septic Division commented: Proposed Parcel 3 has proposed septic in area promised to 20761 Bridge Creek Rd SE. Customer should see if an easement was granted in Assessor's record and re-present. A septic easement will require a septic installer to stake out the area that is shown as the repair area, and then a surveyor will need to create a same owner easement with a map and all required documents before the partition is done. It will need to be approved by the county surveyor, and once approved it will be recorded with the county clerk. Please contact the septic office for documents required. In addition, the existing system serving the current dwelling will need to be located and staked out to show that the system will fall within the proposed parcel. All other lots without septic approval will require a site evaluation.
8. Marion County LDEP Division commented:

ENGINEERING CONDITION

A – Prior to plat approval, obtain a PW Engineering Permit, and under the Permit close one of two driveway approaches serving the parent parcel, referenced as proposed Parcel 1.

Residential properties are generally allowed a total of one (1) access point.

ENGINEERING REQUIREMENTS

B - At the time of application for building permits for each developable parcel, an Access Permit will be required to install the driveway approach.

C - Transportation System Development Charges will be assessed at the time of application for building permits.

D - Permits from MCPW Engineering are required for utility service extensions in the Bridge Creek Road public right-of-way.

9. Marion County Surveyor's Office commented:

Per ORS 92.055, parcels over 10 acres can be un-surveyed. Parcels ten acres and less must be surveyed. Per ORS 92.050, the plat must be submitted for review, a checking fee and recording fee will be required, and a 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.

10. Marion County Tax Assessor's Office provided information regarding property taxes on the subject properties.

11. All other contacted agencies either failed to comment or stated they had no comments on the proposal.

12. The subject property is identified in Final Order H134287. The Final Order states in Section III:
Based on the documentation provided by the claimants and information from Marion County, 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 claimants qualify for under Section 6 of Measure 49 will authorize the claimants to establish up to two additional lots or parcels and two additional dwellings on the Measure 37 property.

The applicants propose in this partition to establish two additional parcels, with one dwelling on each new parcel (two additional dwellings). Their proposal matches this section of the Final Order.

13. The Final Order contains further requirements under Section IV:

1. *Each dwelling must be on a separate lot or parcel and must be contained within the property on which the claimants are 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 two additional parcels and two additional dwellings will be configured such that each dwelling is located on a separate parcel. The final result will be three dwellings and three parcels (two new, one existing/remnant), with only one dwelling on each parcel. Each parcel and dwelling will be contained within the 49.92-acre property on which the applicants are eligible for Measure 49 relief. Building permits will be reviewed according to this criterion. The criterion is met.

Standards for development will be discussed in later findings found below.

2. *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).*

There is no evidence that the proposed parcels and dwellings will violate a land use regulation or other regulation as described in ORS 195.305(3) and ORS 195.300(14). The criterion is met.

3. *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 a claimant owns or how many claims a claimant filed. If the claimants have developed the limit of twenty home sites under Measure 49, the claimants are no longer eligible for the home site approvals that are the subject of this order.*

A review of the DLCD Measure 49 Analyzer tool suggests that the claimant did not receive any other Measure 49 home site approvals. Therefore, it appears that the claimants have not come close to the home site approval limit. The criterion is met.

- 4. The number of lots, parcels, or dwellings a claimant may establish under this home site authorization is reduced by the number of lots, 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.*

A review of the adjacent properties' ownership history suggests that there were not any additional contiguous properties under the same ownership which were not disclosed to the department. The final order's home site authorization appears to be correct. The criterion is met.

- 5. 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.*

A review of the application, current Marion County Assessor's data, and other land use applications shows there are no temporary dwellings on the property. The claimant is not proposing to convert any temporary dwellings as a part of this application. This section does not apply to this application, but the applicant will abide by these requirements if any temporary dwellings are placed before the completion of the claim. The criterion is met.

- 6. 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 new parcels and home sites are located within the bounds of the Measure 49 eligible parcel. No other development is being proposed. The proposed vacant parcels will include dwelling sites that will be established pursuant to the home site approval of the Measure 49 final order. The criterion is met.

- 7. The claimants 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 claimants do not have, nor are they proposing to convert lots, parcels, or dwellings to be authorized home sites. The claimant's proposal does not exceed the number of lots, parcels, or dwellings dictated in the Measure 49 final order. The criterion is met.

- 8. The claimants may not implement the relief described in this Measure 49 home site authorization if a claimant has been determined to have a common law vested right to a use described in a Measure 37 waiver for the property. Therefore, if a claimant has been determined in a final judgment or final order that is not subject to further appeal to have a common law vested right as described in Section 5(3) of Measure 49 to*

any use on the Measure 37 claim property, then this Measure 49 Home Site Authorization is void. However, so long as no claimant has been determined in such a final judgment or final order to have a common law vested right to a use described in a Measure 37 waiver for the property, a use that has been completed on the property pursuant to a Measure 37 waiver may be converted to an authorized home site.

The claimants did not complete a vested rights determination and do not have a common law vested right to a use described in a Measure 37 waiver for the property. The Measure 49 final order would therefore still be valid. The criterion is met.

9. *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 applicant is proposing new parcels that each contain one new dwelling. The existing dwelling will be located on one of the smaller parcels (proposed Parcel 1), while the other two parcels will contain one new dwelling each. The result is one dwelling per parcel. Therefore, the criterion is met.

10. *If the property described in a claim is divided by an urban growth boundary, any new dwelling, lot, or parcel established on the property pursuant to a home site approval must be located on the portion of the property outside the urban growth boundary.*

The property is not divided by an urban growth boundary, and therefore this section does not apply.

11. *Because the property is located in a mixed farm and forest zone, the home site authorization does not authorize new lots or parcels that exceed five acres. However, existing or remnant 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 or remnant lots or parcels may exceed two acres.*

The property is in a mixed farm and forest zone. The soils data from Marion County's soil survey tool indicates that the parcel is 0% high-value farmland. The property is also not located within a ground water restricted area. However, per ORS 195.300 (11), the property appears to meet the definition of high-value forestland. The dominant soils based on USDA and Marion County data are MUF, MUE, and KCF. Each of these soil types can produce around 172 cubic feet per acre per year of timber per USDA data. Because the parcel is 49.92 acres, the parcel would therefore be capable of producing approximately 8,586 cubic feet per year of timber based on these data. Therefore, the new parcels cannot exceed two acres in size (with exception of the remnant parcel). The applicant modified their proposal to meet these requirements. Lastly, the requirements of ORS 215.293 will be made a condition of approval. The criterion is met.

12. *Because the property is located in a mixed farm and forest 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 lots, parcels, or dwellings that would be otherwise 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 proposed new parcels and home sites will be generally clustered near an existing public right-of-way and neighboring homes on adjacent parcels. The applicant does not have other Measure 37 claim properties and is not applying to re-locate dwellings onto other Measure 37 claim properties. The criterion is met.

13. *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 Measure 37/49 claimants were Kenneth and Susara Robinson. These individuals did not transfer their ownership interest in the property prior to the date of the Measure 49 final order. Based on deed records, it appears that the claimants transferred the property to a trust in 2018, with themselves as trustees. Whether that was a revocable trust or not is unclear. Later, in 2022, the claimants transferred their interest to the current owners. Either way, even if the 2018 transfer started the 10-year time-limit, the current applicants are within the timeframe to establish the new lots and home sites. If the 2018 transfer was indeed the trigger for the time-limit, then the applicants will have until November 21, 2028, to complete the development described under this Measure 49 approval. The criterion is met.

14. *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 claimants first obtain 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.*

As a condition of approval, the applicants will be required to obtain building permits and/or other permits to establish the home sites. The criterion is met.

14. As stated previously in the Final Order, the authorization must still comply with all applicable standards. Marion County has standards for partitions and siting of dwellings found throughout Title 17 Rural Zoning of the Marion County Code. The relevant sections that currently can be reviewed based on the applicant materials are discussed below:
- *MCC 17.139.100 Development standards.*
 - *Maximum Height*
 - *Dwellings: 35 feet*
 - *Minimum Setbacks*
 - *Rear Yard: A minimum of 20 feet.*
 - *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 feet.*
 - *Front Yard: A minimum of 20 feet. When by ordinance a greater setback or a front yard of a greater depth is required than specified in this section, then such greater setback line or front yard depth shall apply.*
 - *MCC 17.118.050 Off-street automobile parking requirements.*
 - *Off-street automobile parking shall be provided in the amounts listed below except that the approving authority may alter the number of parking spaces as part of a land use permit review.*
 - *Residential Uses. Residential uses in any zone shall provide two spaces per dwelling unit.*
 - *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.

The applicant's site plans and documents show that the dwellings will meet the development standards of the Farm/Timber zone, including a minimum of 20-foot setback from all property lines. The applicant states that they will meet all other standards, such as height limits, and so forth. In addition, the proposal and applicant statement illustrate that the new homesites will meet the off-street parking requirement (2 spaces per dwelling unit for residential uses in any zone). The proposed parcels also meet the access standards by maintaining at least 20 feet of frontage on a public right-of-way. The applicants have also stated that they will meet the domestic water supply, fire protection, fire hazard reduction and other requirements of MCC 17.139.070.

There are a variety of other standards which would not apply to the resulting parcels and home sites. The non-farm dwelling special setback standards, for example, will not apply. The proposed home sites are also located outside of Marion County's Geologically Hazardous Area Overlay Zone and Sensitive Groundwater Overlay Zone.

15. Based on the above findings, it has determined that the proposed partition satisfies all applicable criteria and is, therefore, **APPROVED**, subject to conditions.

Brandon Reich
Planning Director/Zoning Administrator

Date: March 13, 2023

If you have any questions regarding this decision contact Daniel Jansen 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.