

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. 24-004**

**APPLICATION:** Application of Andrey and Claudia Kaya, under approval granted by ORS 197.352 (Measure 37/49), to partition a 19.44-acre parcel into three parcels of 15.44-acres, 2-acres, and 2-acres each in an EFU (Exclusive Farm Use) zone located at 18936 Butteville Rd NE, Woodburn (T4S, R1W, Section 30B, Tax lot 100) for approval under a claim granted by ORS 195.300 to ORS 195.336 (Measure 49). Review is subject to the criteria contained in State final order #E132930B.

**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 **July 3, 2026**. 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. Per the Marion County Surveyor's Office: Parcels outside an urban growth boundary and greater than 10 acres can be un-surveyed, but parcels ten acres and less must be surveyed. Per ORS 92.050, the plat must be submitted for review. A checking fee and recording fees 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.
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. 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 – Prior to plat approval, under an Access Permit from PW Engineering restrict the public road open frontage as-directed, and pave a shared access approach with HMAC to serve all 3 parcels unless an access easement is able to be obtained from the adjacent flag lot property paved access to the south.*
4. Prior to the Planning Department signing the partition plat, the mobile home established as part of CU11-009 shall be removed from the property.
5. 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.

6. The Marion County Planning Division, in coordination with the 9-1-1 Emergency System has named the proposed private access easement **Kaya 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**.
7. The proposed remnant parcel containing the remnant area of tax lot 100 and the existing dwelling shall remain addressed **18936 Butteville Rd NE**. The proposed southernmost parcel shall be addressed **9584 Kaya LN NE**. The proposed northernmost parcel shall be addressed **9588 Kaya LN NE**.
8. The applicant shall sign and submit a Farm/Forest Declaratory Statement to the Planning Division for each new parcel. This statement shall be recorded by the applicant with the Marion County Clerk after it has been reviewed and signed by the Planning Director.
9. 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 new lots established shall not exceed 2.0-acres in size with the exception of the “remnant parcel”.

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

10. 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 #5 below be contacted to identify restrictions or necessary permits. The applicant is advised of the following:

11. 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).
12. The applicants should contact the Woodburn 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.
13. The applicants should contact Marion County Land Development and Engineering (503-584-7714) for additional Engineering Requirements and Advisories, listed in Finding #5 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 **July 3, 2024** If you have questions about this decision contact the Planning Division at (503) 588-5038 or at the office. This decision is effective **July 4, 2024** 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 is correspondingly zoned EFU (Exclusive Farm Use). The primary intent of both the designation and zone is to promote and protect commercial agricultural operations.
2. The property is located on the east side of Butteville Rd Ne approximately 500 feet south of the intersection with St. Paul Highway. The 19.44-acre parcel contains a dwelling built in 1915, several farm structures, well and septic system. Aerial imagery shows a structure in the same location near the southern property line as a mobile home established as part of a temporary medical hardship by case CU11-009, which is no longer an active hardship. The parcel was most recently the subject of property line adjustment case PLA16-021, which was approved but never implemented, and has remained in the configuration described in the findings of that case. The property is legal for land use purposes.
3. While all but one of the surrounding parcels are zoned EFU, the uses on these surrounding parcels are diverse and unique compared to similar areas in the county. To the south there are several smaller parcels, some in use as small field farm sites, but the majority are acting as large acreage home sites and do not appear to be engaged in commercial agriculture. Additionally, there is a convenience store at the Broadacres and Butteville road intersection that pre-dates the adoption of planning and zoning ordinances. To the north are some larger properties engaged in commercial agriculture but also several smaller lots only acting as home sites not engaged in agriculture. On the parcel directly to the east, there is a 2-acre photovoltaic solar power generation facility and an approved site for a commercial seed cleaning plant (CU/P22-035). The approved seed cleaning plant and proposed new house sites would use the same road access entrance to Butteville Rd based on the proposed site plan. Just beyond that developed area flows the Senecal Creek, a significant perennial creek in the area. Finally, immediately to the west of the parcel are Butteville Rd and a railway line, with a road crossing of the railway line roughly 40-feet from the current driveway access to the parcel. On the other side of Butteville Rd is a large commercial and industrial complex that is the site of Marion Ag Service Inc., which provides related to soil health and nutrient delivery (fertilizer) services to local farmers.
4. The Soil Survey tool for Marion County, Oregon, indicates that 100% of the soils on the property are considered high value for farmland. This is relevant to the maximum lot size for the proposed new parcels and is discussed further in following sections.
5. Various agencies were contacted about the proposal and given an opportunity to comment:

Public Works Land Development and Engineering Permits (LDEP) requested that the following be included in the land use decision.

**Conditions:**

- A. *Prior to plat approval, under an Access Permit from PW Engineering restrict the public road open frontage as-directed, and pave a shared access approach with HMAC to serve all 3 parcels unless an access easement is able to be obtained from the adjacent flag lot property paved access to the south.*

**Requirements:**

- A. The shared access will need to be distanced from the rail crossing by a minimum of 100 feet as measured along the centerline of Butteville Road.
- B. On the plat depict any necessary access and utility easements.
- C. An access permit will be required for each new dwelling.
- D. Transportation System Development & Parks charges will be assessed upon application for building permits for new dwellings. Replacement dwellings eligible for credit within 12-months of last occupancy.
- E. Utility extension work in the public right-of-way requires permits from PW Engineering.

Marion County Surveyor's Office commented:

1. Per ORS 92.055 – Parcels outside an urban growth boundary and greater than 10 acres can be un-surveyed.
2. Parcels ten acres and less must be surveyed.
3. Per ORS 92.050, plat must be submitted for review.
4. Checking fee and recording fees required.
5. 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.

Marion County Building commented: "Permits are required to be obtained prior to development and/or utilities installation on private property."

Marion County Septic commented: A Site Evaluation is required on both proposed 2-acre parcels.

Woodburn Fire District commented: "The access to the new road needs to meet 28' inside and 48' outside turning radius and the width of the road needs to be at least 20' wide, all the way to where the houses will be on the two different 2 acres back lots. A turnaround will also be required for the back lots. Any structures under one roof over 3,600-sf will require water supply per NFPA 1142." Additionally, "Since this is only related to a partition the fire access criteria provided is the main fire district concern. However, the back two lots for houses can be a concern requiring water supply, fire sprinkler system or fire rated separation in addition to fire access concerns noted (when houses are a project for the two back lots)."

All other agencies contacted stated no objections to the proposal or failed to respond.

6. Under provisions in ORS 195.300 to ORS 195.336 (Measure 49) the State of Oregon issued Final Order and Home Site Authorization E132930B for the subject property. In Section III the order concludes:

*"Based on analysis above, the claimant qualifies for up to three home sites on tax lot 100 of the Measure 37 claim property. 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 analysis above, the claimants do not qualify for Measure 49 home site approvals on tax lot 200 of the Measure 37 claim property because the claimants were not lawfully permitted to establish the lots, parcels or dwellings on the claimants' date of acquisition.*

*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 tax lot 100 of the Measure 37 claim property. Each dwelling must be on a separate lot or parcel, and must be contained within tax lot 100 of the Measure 37 claim property.*

*The claimant will be required to alter the configuration of the lots or parcels currently in existence on the Measure 37 claim property and contiguous property if they intend to develop two additional dwellings 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, and that the total number of lots or parcels located on the Measure 37 claim property and contiguous property does not exceed three.*

7. The applicant proposes to implement the Measure 49 order by establishing two new additional parcels, with one dwelling on each new parcel (two additional dwellings) all within the area of tax lot 100 of the Measure 37 claim. This proposal at first appears to be in conflict with the section of the final order, as the final order specifies: "*that the total number of lots or parcels located on the Measure 37 claim property and contiguous property does not*

*exceed three*". Tax lot 200, located at the southwest corner of tax lot 100, is identified as part of the Measure 37 claim and contains a dwelling. However, the final order also authorizes the claimants to establish "2 *additional dwellings on tax lot 100*" in addition to the dwelling already established on tax lot 100 the property and specifies that each dwelling must be on a separate lot or parcel.

This language is very clear and specific, as it approves a total number of 3 dwellings within the area of tax lot 100 and requires them to all be on separate lots while not allowing for enough additional lots within the specified area. With the requirement that all new dwelling sites approved under the Measure 49 order be located within tax lot 100, and the primary intention of Measure 49 to grant additional homesites, the applicants are allowed to establish two additional lots within the area of tax lot 100 to allow the applicants to establish the two additional dwellings and have each of them on their own separate parcel. Therefore, the proposal matches this section of the final order.

8. Under provisions in order E132930B, Section IV Home Site Authorization, the claimant qualifies for two homesite approvals subject to the following terms:

1. *Each dwelling must be on a separate lot or parcel. and must be contained within tax lot 100 of the Measure 37 claim property. 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 our federal law.*

As proposed, the existing dwelling and the two new dwellings will each be on separate parcels in the final configuration. All of the new lots and home sites are located within the existing area of tax lot 100 of the Measure 37 claim. Building permits will be reviewed according to this criterion. The criterion is met.

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 DLCDC Measure 49 Analyzer tool found that the claimant filed one other Measure 37 claim (M06-296) and received Measure 49 home site approvals for 1 new lot and 3 new home sites located on the tax lots involved in that claim. The total number of approved home sites between the claims in M06-295 and M06-296 is a maximum of 6 total home sites, meaning the claimants cannot exceed the limit of 20 developed home sites under this criterion. 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 o 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, based on the information available to the department, the department has calculated the number of currently existing lots, parcels or dwellings to be either greater than or less than the number of lots, parcels or dwellings actually in existence on the Measure 37 claim property or contiguous property under the same ownership, then the number of additional lots, parcels or dwellings a claimant may establish pursuant to this home site authorization must be adjusted according to the methodology stated in Section 6(2)(b) and 6(3) of Measure 49. Statements in this final order regarding the number of lots, parcels or dwellings currently existing on the Measure 37 claim*

*property and contiguous property are not a determination on the current legal status of those lots, parcels or dwellings.*

Review of the adjacent properties' ownership suggests that there were not any additional contiguous parcels under the same ownership other than the those identified in the final order. The Measure 49 approval was for up to three dwellings located on tax lot 100. While tax lot 200 was discussed, it was excluded from the home site approvals of the Measure 49 final order, which specifies that the home site approvals were to be located within the boundary of tax lot 100. 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 claimants may choose to convert any temporary dwelling currently located on the property on which the claimants are 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 subject property was previously the focus of two land use cases (CU03-004 & CU11-009) which each approved the placement of a manufactured home for use in a medical hardship. Both instances were temporary and neither dwelling was factored into the calculation of the number of dwellings. In a comparison of the aerial imagery with the site plan from CU11-009, it appears that the mobile home is still on the property, but the medical hardship is no longer active. Since the applicants are not proposing to convert the mobile home to a permanent residence as part of the Measure 49 home site approvals, the old mobile home will need to be removed from the property to comply with the conditions of approval for case CU11-009. This shall be made a condition of approval.

6. *A home site approval only authorizes the establishment of a new lot, parcel or dwelling on the property on which the claimants are 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 claimants are 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 applicants are proposing to establish new lots and home sites within the existing area of tax lot 100, which is the only lot included in the Measure 49 claim. No other development is being proposed outside of the eligible Measure 49 parcel and each of the vacant lots created by the proposed partition will contain dwelling sites approved pursuant to the home site approvals granted by 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 claimants are 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 claimants are eligible for Measure 49 relief exceeds the number of home site approvals the claimants qualify for under a home site authorization, the claimants 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 are not proposing to convert any lots, parcels or dwellings currently located on the property eligible for Measure 49 relief to an authorized home site. The previously existing manufactured structure that was placed as part of a temporary medical hardship is not part of their proposal and will be removed. The number of lots, parcels or dwellings existing on the property does not exceed the number of home site approvals granted by 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 judgement 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 judgement 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 claimants 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 claimants are proposing to create 2 additional 2-acre lots within the existing area of tax lot 100 to accommodate the proposed new dwellings. The remainder of tax lot 100 would contain the existing 1915 dwelling. Each lot would have no more than 1 home site based on this proposal and they would all be located within the part of the Measure 37 claim eligible for Measure 49 relief. The criterion is met.

10. *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 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.*

According to the Marion County Soils Analysis Report 100% of the soils are considered high-value farmland. As such, new lots or parcels cannot exceed 2.0-acres in size (with the exception of the remnant parcel). The applicant is proposing to create 2 new lots that are each 2.0-acres and only the remnant parcel would be larger than 2-acres. Lastly, the requirements of ORS 215.293 will be made a condition of approval (filing a farm/forest declaratory statement). The criterion is met.

11. *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 lots, 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 proposed new parcels and home sites will be generally clustered near the west end of the existing tax lot 100, relatively near 2 existing dwellings on neighboring properties to the south. The existing home site on tax lot 100 is not clustered with the new home sites but is also not moving based on the submitted site plan. The proposed configuration of the parcels would keep the remainder of the fields on the remnant parcel in a solid block, which is the best configuration for commercial agriculture use going forward. The applicant is not applying to relocate dwellings from other Measure 37 claims onto this property. The criterion is met.

12. *If the claimants transferred 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 original applicants of the Measure 37 claim were Agustin and Maria Palacios. 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, the property remained in the ownership of Agustin and Maria (and then just Maria after the passing of Agustin) until the ownership interest was transferred to the current owners on February 27<sup>th</sup>, 2024. The 10-year timeframe for the establishment of the lots and home sites began on the date of sale to the current owners, the applicants will have until February 27<sup>th</sup>, 2034 to complete the development described under this Measure 49 approval. The criterion is met.

13. *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 authorizations 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.

9. As stated previously in the final order, the authorizations 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 17.136.100:*

(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.*

(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).*

(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 a declaratory statement can be made a condition of any approval. The applicant will be required to comply with the height and setback standards when applying for building permits with Marion County Building. These criteria are met and the filing of a farm/forest declaratory statement shall be made a condition of approval.

*MCC 17.172.340 PRIVATE STREETS In the event the subdivider or developer elects to provide private streets or thoroughfares, they shall be maintained by the Homeowners Association and a maintenance agreement shall be submitted to Marion County for review and approval prior to recording the final plat.*



Comments by Public Works LDEP identified conditions for establishing a new private roadway access from Butteville Rd to the two new 2-acre lots. These will be made conditions of approval.

*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 and as the property is not located in an SGO (Sensitive Groundwater Overlay) zone the standards in Chapter 181 do not apply.

*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, **Kaya 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. This shall be made a condition of approval.

- 9. Based on the above findings, the applicant's proposal meets the terms in Final Order and Home Site Authorization E132930B approved under provisions in ORS 195.300 to ORS 195.336 (Measure 49) that the State of Oregon issued for the subject property. The request is, therefore, **APPROVED** subject to meeting certain conditions.

Brandon Reich  
Planning Director/Zoning Administrator

Date: June 18, 2024

If you have any questions regarding this decision contact Alexander Seifer 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.