

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. 24-008**

APPLICATION: Application of Brent & Vanessa LaFollotte and 3-D Farms LLC for a partition and property line adjustment to adjust the property lines on a 11.2-acre parcel and 150-acre parcel to create an 8.8-acre parcel and a 152-acre parcel, and under approval granted by ORS 197.352 (Measure 37/49), to partition the 8.8-acre parcel into three parcels consisting of 2-acre, 2-acres, and 4.8-acres in an EFU (Exclusive Farm Use) zone located in the 300 block of Matheny Rd NE (T5S; R3W; Section 34; Tax lots 500 & 600).

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, 6 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. The proposed home sites are all mapped by FEMA as within the Floodway of the Willamette River. An approved LOMA (41047C0200G) from FEMA removes the portion indicated on the site plan for the homesites from the floodplain/floodway. All building permits will require inclusion of this LOMA, and the approved area shown on the site plans, to ensure no structure is build within the effective floodplain/floodway.
2. Per the Marion County Surveyor's Office regarding the Partition: Per ORS 92.055: Parcels over 10 acres can be unsurveyed. Parcels ten acres and less must be surveyed. Per ORS 92.050, plat must be submitted for review. Checking fee and recording fees required. 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.
3. Per the Marion County Surveyor's Office regarding the Property Line Adjustment: No survey required for properties greater than ten acres per ORS 92.060 (8). Properties 10 acres or less must be surveyed per ORS 92.060 (7) and the survey submitted for review. Survey checking fee required at the time of review. Property line adjustment deeds shall be recorded with the Marion County Clerk's Office. Per ORS 92.190
4. 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 proposed Lots 1, 2 & 3. **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.**
5. 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 partition plat approval, under an Access Permit pave the proposed shared access approach with hot mix asphalt and remove sight obscuring vegetation that potentially includes mature trees along the subject property Matheny Road frontage in support of adequate Intersection Sight Distance.

6. Prior issuance of building permits, the applicant shall submit either evidence that the access easement has been improved to the standards in MCC 17.172. The access easement is also to provide for utilities.
7. Prior to issuance of building permits, the applicant shall sign and submit a Farm/Forest & Floodplain 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.
8. The Marion County Planning Division, in coordination with the 9-1-1 Emergency System has named the proposed private access easement **Boysenberry Lane N**. 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**.
9. The proposed parcels shall be addressed from east to west: **1110 Boysenberry Lane N, 1150 Boysenberry Lane N and 1190 Boysenberry Lane N**
10. 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:

11. 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:

12. 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).
13. 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.
14. The applicants should contact Marion County Land Development and Engineering (503-584-7714) for additional Engineering Requirements and Advisories, listed in Finding #6 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 6, 2024**. If you have questions about this decision contact the Planning Division at (503) 588-5038 or at the office. This decision is effective **September 9, 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 eastern portion of Matheny Rd N next to the Wheatland Ferry, approximately a quarter mile north of the original site the Jason Lee mission. Subject tax lot 500 is within 150 feet of the Willamette River, and mapped by FEMA as being almost entirely within the Floodway. A survey of elevations on the tax lot 500 completed by Udell Engineering and Land Surveying indicate that an area of the subject parcel is around 112' above mean sea level. Using FEMA's Flood Insurance Rate Map for this area, Udell determined the base flood elevation is 111.2' above mean sea level for subject tax lot 500. The applicant provided these documents and has applied for a Letter Of Map Amendment from FEMA. Tax lot 500 was the subject of the approved Measure 37/49 claim M06-268.

Tax lot 600 is part of a larger 150-acre parcel created by Partition in 1986 by P86-064. This parcel was the subject of a land use case in 1992 to qualify for a farm dwelling, FD92-001.

Both subject parcels are therefore legal for land use purposes.

3. Southwest adjacent of the subject parcels is the approximate 1,100-acre Willamette Mission State Park. To the south and east of the subject parcels are EFU zoned lands in commercial agricultural use. Northeast is the Wheatland Ferry the crosses the Willamette River, and on the other side of the river is Polk County. North across Matheny Road is more land owned by the State Parks and Recreation department, and an approximately 200-acre aggregate mining site adjacent to the Willamette.
4. The Soil Survey Tool for Marion County, Oregon, indicates that 91.5% of the soils on subject tax lot 500, and 96.4% of the soils on subject tax lot 600 are high value soils.
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.

ENGINEERING CONDITION

Condition A – Prior to partition plat approval, under an Access Permit pave the proposed shared access approach with hot mix asphalt and remove sight obscuring vegetation that potentially includes mature trees along the subject property Matheny Road frontage in support of adequate Intersection Sight Distance.

ENGINEERING REQUIREMENT

- B. Utility service extensions such as electric power from within the Matheny Road public right-of-way require permits from PW Engineering.

Marion County Surveyor's Office commented:

Partition:

- Per ORS 92.055 – Parcels over 10 acres can be unsurveyed.
- Parcels ten acres and less must be surveyed.
- Per ORS 92.050, plat must be submitted for review.
- Checking fee and recording fees required.
- 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.

Property Line Adjustment:

- No survey required for properties greater than ten acres per ORS 92.060 (8).
- Properties 10 acres or less must be surveyed per ORS 92.060 (7) and the survey submitted for review.
- Survey checking fee required at the time of review.
- Property line adjustment deeds shall be recorded with the Marion County Clerk’s Office. Per ORS 92.190

Marion County Building commented: “No Building Inspection concerns with proposed property line adjustment and partition. Permit(s) are required to be obtained prior to development and/or utilities installation on private property. Depending on the proposed home and other structures locations and determination of floodway or floodplain, additional or alternative building materials and/or methods may need to be addressed.”

Marion County Septic commented: “There are currently no records of septic on either parcel. Lots 1, 2, and 3 on the proposed 8.8-acre parcel will require a site evaluation to establish septic viability. The 75.07-acre parcel is OK.”

Woodburn Fire District commented: “We will need to see a fire access plan for future development.”

Marion County Tax Assessor provided information about taxes on the subject parcels.

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 E132803 for the subject property. Section III the order states:

“Based on analysis above, the claimant qualifies for up to three home sites. However, the number of lots, parcels or dwellings that a claimant may establish pursuant to a home site authorization is reduced by the number of lots, parcels or dwellings currently in existence on the Measure 37 claim property and any contiguous property under the same ownership.

Based on the documentation provided by the claimant and Marion County, the Measure 37 claim property includes one lot or parcel and no dwellings. There is no contiguous property under the same ownership. Therefore, the three home site approvals the claimant qualifies for under Section 6 of Measure 49 will authorize the claimant to establish up to two additional lots or parcels and three dwellings on the Measure 37 claim property. Each dwelling must be on a separate lot or parcel, and must be contained within the Measure 37 claim property. The claimant may alter the configuration of the lots or parcels currently in existence on the Measure 37 claim property and contiguous property so that each additional dwelling established on the Measure 37 claim property, pursuant to the home site approvals, is sited on a separate lot or parcel.”

7. The applicant proposes to implement the Measure 49 order by establishing two new additional parcels, with one dwelling on each new parcel, and one dwelling on the remnant parcel, all within the area of subject tax lot 500 of the Measure 37 claim. The applicant also proposes to alter the southern property line by transferring approximately 2.4-acres to the adjacent property. This 2.4-acres is on the southern side of a drainage ditch and has been used for years by the adjacent parcel as part of the farming operation.

8. The criteria for reviewing property line adjustments within an EFU zone are listed in Chapter 17.136.090(C) MCC. These criteria are as follows:

(a) *When one or more lots or parcels subject to a proposed property line adjustment are larger than the minimum parcel size pursuant to MCC 17.136.090(A)(1), the same number of lots or parcels shall be as large or larger than the minimum parcel size after the adjustment. When all lots or parcels subject to the proposed adjustment are as large or larger than the minimum parcel size, no lot or parcel shall be reduced below the applicable minimum parcel size. If all lots or parcels are smaller than the minimum parcel size before the property line adjustment, the minimum parcel size pursuant to this section does not apply to those lots or parcels.*

The 150-acre parcel will grow slightly larger as a result of the proposed property line adjustment. The 11-acre parcel is below either the calculated or zone standard minimum and will be made smaller prior to partitioning. The criterion is met.

(b) *If the minimum parcel size in MCC 17.136.090(A)(1) is larger than 80 acres, and a lot or parcel subject to property line adjustment is smaller than the minimum parcel size but larger than 80 acres, the lot or parcel shall not be reduced in size through property line adjustment to less than 80 acres.*

There is one parcel above 80-acres currently, and it will grow larger as a result of this property line adjustment. The criterion is met.

(c) *Any property line adjustment shall result in a configuration of lots or parcels that are at least as suitable for commercial agriculture as were the parcels prior to the adjustment.*

The proposed property line adjustment will transfer approximately 2.4-acres of property south of a drainage ditch that has already been being farmed as part of the operation on a parcel that includes tax lot 600. The proposed configuration will be more suitable for commercial agriculture by consolidating this area into the same ownership as the agricultural operation. The criterion is met.

(d) *A property line adjustment may not be used to:*

1. *Decrease the size of a lot or parcel that, before the relocation or elimination of the common property line, is smaller than the minimum lot or parcel size for the applicable zone and contains an existing dwelling or is approved for the construction of a dwelling, if the abutting vacant tract would be increased to a size as large as or larger than the minimum tract size required to qualify the vacant tract for a dwelling;*
2. *Decrease the size of a lot or parcel that contains an existing dwelling or is approved for construction of a dwelling to a size smaller than the minimum lot or parcel size, if the abutting vacant tract would be increased to a size as large as or larger than the minimum tract size required to qualify the vacant tract for a dwelling; or*
3. *Allow an area of land used to qualify a tract for a dwelling based on an acreage standard to be used to qualify another tract for a dwelling if the land use approval would be based on an acreage standard.*

The resulting larger parcel will not be large enough to qualify for a dwelling based on an acreage standard. The smaller parcel qualifies based on a M37/49 claim. The criterion is met.

(e) *Any property line adjustment that results in an existing dwelling being located on a different parcel shall not be subject to the standards in MCC 17.136.030(A) so long as the adjustment:*

1. *Does not increase any adverse impacts on the continued practice of commercial agriculture on the resulting parcels; and*
2. *Does not increase the potential number of dwellings on the resulting parcels.*

No dwellings would be located on different parcels as a result of the proposed property line adjustment. The criterion does not apply.

9. Under provisions in order E132803, Section IV Home Site Authorization, the claimant qualifies for three homesite approvals subject to the following terms:

1. *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 subject tax lot 500 was approved for three dwellings and two additional parcels. The proposed partition will accomplish creation of the required parcels. 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 DLCD Measure 49 Analyzer tool found that the claimant only filed a Measure 37 claim on this property, 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 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, 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 and two additional parcels to accommodate one dwelling per parcel, within the land located on tax lot 500. 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.*

There are no temporary dwellings on tax lot 500. The criterion does not apply.

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 500, 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.*

There is only one lot that the Measure 49 order applies to, tax lot 500. 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 500 to accommodate the proposed new dwellings. The remainder of tax lot 500 would serve as third parcel and homesite allowed by the claim. 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 91.5% of the soils on subject tax lot 500 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 northern end of the existing tax lot 500. This clustered proposal is further supported by the limited area that appears eligible for a LOMA from FEMA. Approximately 2.4-acres of subject tax lot 500 is being currently used for agriculture along with the southern adjacent parcel, subject tax lot 600. Another aspect of this proposal is a property line adjustment to transfer that land from tax lot 500 to tax lot 600 which would maximize the suitability of this land for farm use, and isolate the proposed rural residential uses. 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 applicant of the Measure 37 claim was Byron H. LaFollette. This individual 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 same ownership until being transferred to a living trust in 2021, and subsequently transferred to Brent and Vanessa LaFollette on July 3, 2024.

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 27th, 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, and any future property owners, will have until February 27th, 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.

10. 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 will be 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 Matheny Rd across the 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, **Boysenberry Lane N** 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.

11. 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: August 22, 2024

If you have any questions regarding this decision contact John Speckman 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.