

Attention Property Owner: A land use proposal has been submitted for property near where you live or 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. 16-013**

APPLICATION: Application of the John and Susan Hatch Trust, under approval granted by ORS 197.352 (Measure 37/49), to divide a 3.41 acre parcel into two parcels containing 2.00 acres and 1.42 acre each in an AR (Acreage Residential) zone located at 8231 Macleay Road SE, Salem. (T8S; R2W; Section 02A; tax lot 801).

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 **August 23, 2018**. 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:

Prior to recording the final plat:

1. The applicant shall have the resulting parcels surveyed and platted per ORS 92.050. The survey shall be filed with the County Surveyor and shall contain the notation that the survey is the result of Partition Case 16-013. (Final Plat Instructions enclosed).
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 final plat for recordation until the following conditions have been satisfied:

***Condition A** - Prior to plat approval, record a Non-Remonstrance Agreement with Marion County for future removal of the boulders within the Macleay Road public right-of-way.*

***Condition B** - Prior to plat approval, Applicant shall meet MCPW Engineering requirements for improving the existing access approach to Macleay Road.*

4. The applicant is advised that a Partition Plant Service Report from a title company will be required upon submission of the final mylar to the County Surveyor.

Prior to issuance of building permits on the resulting parcels:

5. The partition plat shall be recorded.

6. The applicant shall sign and submit a Farm/Forest Declaratory Statement (enclosed) to the Planning Division. This statement shall be recorded by the applicant with the Marion County Clerk after it has been reviewed and signed by the Planning Director.

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

7. The resulting parcels shall significantly conform to the site plan submitted with the proposal. Minor variations are permitted upon review and approval by the Planning Director, however, the smaller lots shall be a maximum two acres in size.
8. After the final Partition plat has been recorded no alteration of property lines shall be permitted without first obtaining approval from the Planning Director.

OTHER PERMITS, FEES, AND RESTRICTIONS: This approval does not remove or affect covenants or restrictions imposed on the subject property by deed or other instrument. The proposed use may require permits and/or fees from other local, State or Federal agencies. This decision does not take the place of, or relieve the responsibility for, obtaining other permits or satisfying any restrictions or conditions. It is recommended that agencies mentioned in Finding #5 be contacted to identify restrictions or necessary permits. The applicant is advised of the following:

9. Prior to recording the plat all taxes due must be paid to the Marion County Tax Department (contact the Marion County Tax Department at 503-588-5215 for verification of payments).
10. The applicants should contact Marion County Fire District #1 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. Contact Paula Smith at MCFD#1 at (503) 588-6513 for more information.

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. Persons who disagree 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 **August 23, 2016**. If you have any questions about this decision contact the Planning Division at (503) 588-5038. This decision is effective **August 24, 2016** unless further consideration is requested.

FINDINGS AND CONCLUSIONS: Findings and conclusions which the Director based his decisions are noted below.

1. The property is designated Rural Residential in the Marion County Comprehensive Plan. The purpose of this designation and the corresponding AR (Acreage Residential) zone is to allow creation of acreage homesites at a density that maintains the character and environmental quality of rural residential areas.
2. The property is located on the north side of Macleay Rd SE approximately 130 feet east of its intersection with 82nd Av SE. The property contains an existing dwelling, accessory structures, well and septic system. The property was created in its current configuration by Partition Case 98-47 (P98-47). The applicants filed a Measure 49 claim and were approved under State final order #E134105 for one additional lot and one additional dwelling.
3. Under provisions in ORS 195.300 to ORS 195.336 (Measure 49) the State of Oregon issued Final Order and Home Site Authorization E134105 for the subject property. In Section III the order concludes:

“Based on analysis above, the claimant qualifies for up to two 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 claimants and information from Marion County, the Measure 37 claim property includes one lot or parcel and one dwelling. As demonstrated by the supplemental information submitted by the claimants and Marion County deed records, the claimants also own tax lot 800 (T82 R2W S2A) which is contiguous to the Measure 37 claim property. The contiguous property under the same ownership includes one lot or parcel and no dwellings. Together, the Measure 37 claim property and the contiguous property in the same ownership include two lots or parcels and one dwelling. The number of lots, parcels or dwellings the claimants may be able to establish on the Measure 37 claim property pursuant to the two home site approvals is not reduced by the contiguous lot or parcel in the same ownership because the total number of lots, parcels or dwellings that would exist on the Measure 37 claim property and the contiguous property in the same ownership would not exceed three if the claimants established one additional lot or parcel and one additional dwelling on the Measure 37 claim property. Therefore, the two home site approvals the claimants qualify for under Section 6 of Measure 49 will authorize the claimants to establish one additional lot of parcel and one additional dwelling on the Measure 37 claim property.”

4. The applicant proposes to implement the Measure 49 order by dividing the 3.41 acre parcel into two parcels containing 2.0 acres and 1.42 acres each. The 2.0 acre parcel would contain the existing dwelling and accessory structures and the other parcel would be developed with a dwelling in the future.
5. Public Works Land Development Engineering and Permits (LDEP) requested that Conditions A and B be included in the land use decision. LDEP also commented on requirements that are not part of the land use decision and available for review in the planning file. LDEP will not approve the final plat for recordation until the following condition has been met:

*“**Condition A** – Prior to plat approval, record a Non-Remonstrance Agreement with Marion County for future removal of the boulders within the Macleay Road public right-of-way.*

Applicant has expanded their level ground into the public right-of-way by placement of a boulder rip rap retaining wall despite being verbally advised not to do so upon their inquiry. A Removal Agreement stipulates property owner responsibility to remove a non-conforming, fixed object from within the right-of-way within 45 days of notification by the governing jurisdiction for such reasons as pending road maintenance, utility installation, other improvements or a traffic safety issue, etc. If the object(s) is not removed within the stipulated timeframe, then the governing jurisdiction may remove/dispose of the object and attempt to recoup incurred expenses from the property owner [MCC 16.27.21(c)].

***Condition B** – Prior to plat approval, Applicant shall meet MCPW Engineering requirements for improving the existing access approach to Macleay Road.*

In accordance with Marion County Driveway Ordinance #651, driveways must meet sight distance, design, spacing, and safety standards. A driveway culvert is needed at the existing access to proposed parcel #1 to facilitate the eastward downstream conveyance of stormwater runoff. Applicant shall obtain an Access Permit and gain final inspection on the culvert installation. This Engineering Requirement, that by Condition must be satisfied prior to plat approval, is the result of a re-inspection of the access subsequent to a passing inspection under Access Review #10-06633 in 2010. During the current re-inspection, evidence of stormwater drainage pattern was observed, which has led to the Requirement in order to promote flow and minimize erosion.”

Marion County Surveyor commented: “Parcels ten acres and less must be surveyed. Per ORS 92.050, plat must be submitted for review. Checking fee, second mylar fee, and recording fee required. A current or updated title report must be submitted at the time of review. Title reports shall be no less than 15 days old at the time of approval of the plat by the Surveyor’s Office, which may require additional updated reports.”

Marion County Building Inspection commented that permits are required for new construction or placement of a manufactured home.

Marion County Tax Assessor provided information regarding taxes on the subject properties.

6. Under provisions in # E134105, Section IV Home Site Authorization, the claimant qualifies for one homesite approval subject to the following terms:

A. *Each dwelling must be on a separate lot or parcel, and must be contained within the property on which the claimant is eligible for Measure 49 relief. The establishment of a land division or dwelling based on this home site authorization must comply with all applicable standards governing the siting or development of the land division or dwelling. However, those standards must not be applied in a manner that prohibits the establishment of the land division or dwelling, unless the standards are reasonably necessary to avoid or abate a nuisance, to protect public health or safety, or to carry out federal law.*

As proposed, the new dwelling will be on a separate parcel.

There are no specific approval criteria for partitions in the AR zone. MCC 17.128.070 requires a minimum lot size of two acres and the one of new parcels is consistent with this standard. In addition, the resulting undeveloped parcel, if it can obtain septic approval and access, is of sufficient size and shape to meet the development standards in the AR zone.

Based on the site plan submitted by the applicant, the proposed parcels are of adequate size and shape to meet all required setbacks.

MCC 17.128.050 establishes special siting standards for dwellings near resource zones:

- (a) *Any new dwelling in an AR zone shall be required to maintain a special setback from any parcel in the EFU, SA, FT, or TC zones when necessary to minimize potential conflicts with farm or forest uses. A 100-foot setback is the standard adjacent to farm use and 200 feet is the standard adjacent to forest uses.*
- (b) *The owner of a proposed dwelling to be located within 500 feet of the EFU, SA, FT, TC zones shall be required to concur in the filing of the Declaratory Statement prescribed in the respective resource zone.*

Although the proposed partition is appropriate, the County requires that a Declaratory Statement be recorded with the property deed because the subject property is near a resource zone. This serves to notify the applicant and subsequent owners that there are farm or timber operations in the area. The 20 foot setback requirement from the west property line is sufficient in this instance. The provision of this Declaratory Statement can be made a condition of any approval.

B. *This home site authorization will not authorize the establishment of a land division or dwelling in violation of a land use regulation described in ORS 195.305(3) or in violation of any other law that is not a land use regulation as defined by ORS 195.300(14).*

This proposal creates one additional parcel and permits a new dwelling on the undeveloped parcel and does not violate ORS 195.305(3) or any other local, state, or federal law. This term is met.

C. *The number of lots, parcels or dwellings a claimant may establish under this home site authorization is reduced by the number of lot, parcels and dwellings currently in existence on the Measure 37 claim property and contiguous property in the same ownership, regardless of whether evidence of their existence has been provided to the department. If lots, parcels or dwellings currently exist on the Measure 37 claim property or on contiguous property under the same ownership and the lots, parcels or dwellings have not been disclosed to the department, then the number of additional lots, parcels or dwellings a claimant may establish pursuant to this home site authorization must be reduced according to the methodology stated in Section 6(2)(b) and 6(3) of Measure 49.*

Under # E134105 the claimant is entitled to two home sites. The Measure 37 claim property is currently developed with one dwelling. Under the proposal, the existing parcel will be partitioned into two parcels and a dwelling may be placed on the undeveloped parcel. This term is met by the proposal.

D. Temporary dwellings are not considered in determining the number of existing dwellings currently on the property. The claimant may choose to convert any temporary dwelling currently located on the property on which the claimant is eligible for Measure 49 relief to an authorized home site pursuant to a home site approval. Otherwise, any temporary dwelling is subject to the terms of the local permit requirements under which it was approved, and is subject to removal at the end of the term for which it is allowed. The property contains no temporary dwellings; this term is satisfied.

E. A home site approval only authorizes the establishment of a new lot, parcel or dwelling on the property on which the claimant is eligible for Measure 49 relief. No additional development is authorized on contiguous property for which no Measure 37 claim was filed or on Measure 37 claim property on which the claimant is not eligible for Measure 49 relief. A lot or parcel established pursuant to a home site approval must either be the site of a dwelling that is currently in existence or be the site of a dwelling that may be established pursuant to the home site approval.

The proposed parcels and home sites are entirely on property authorized by the claim. This term is satisfied.

F. The claimant may use a home site approval to convert a lot, parcel or dwelling currently located on the property on which the claimant is eligible for Measure 49 relief to an authorized home site. If the number of lots, parcels, or dwellings existing on the property on which the claimant is eligible for Measure 49 relief exceeds the number of home site approvals the claimant qualifies for under a home site authorization, the claimant may select which existing lots, parcels, or dwellings to convert to authorized home sites; or may reconfigure existing lots, parcels or dwellings so that the number is equivalent to the number of home site approvals.

The claim authorizes a total of two home sites and the proposal by the claimant will result in one existing and one new home site. This term is met.

G. A home site approval does not authorize the establishment of a new dwelling on a lot or parcel that already contains one or more dwellings. The claimant may be required to alter the configuration of the lots or parcels currently in existence on the Measure 37 claim property and contiguous property so that each additional dwelling established on the property on which the claimants are eligible for Measure 49 relief, pursuant to this home site authorization, is sited on a separate lot or parcel.

The proposal will result in a total of two lots with only one dwelling on each, this term is satisfied.

H. If the claimant transferred his ownership interest in the Measure 37 claim property prior to the date of this order, this order is rendered invalid and authorizes no home site approvals. Provided this order is valid when issued, a home site approval authorized under this order runs with the property and transfers with the property. A home site approval will not expire, except that if a claimant who received this home site authorization later conveys the property to a party other than the claimant's spouse or the trustee of a revocable trust in which the claimant is the settlor, the subsequent owner of the property must establish the authorized lots, parcels and dwellings within 10 years of the conveyance. A lot or parcel lawfully created based on this home site authorization will remain a discrete lot or parcel, unless the lot or parcel lines are vacated or the lot or parcel is further divided, as provided by law. A dwelling lawfully created based on a home site approval is a permitted use.

The property ownership has not been transferred since E134105 was issued. This term is met.

I. To the extent that any law, order, deed, agreement or other legally enforceable public or private requirement provides that the subject property may not be used without a permit, license or other form of authorization or consent, this home site authorization will not authorize the use of the property unless the

claimant first obtains that permit, license or other form of authorization or consent. Such requirements may include, but are not limited to: a building permit, a land use decision, a permit as defined in ORS215.402 or 227.160, other permits or authorizations from local, state or federal agencies, and restrictions on the use of the subject property imposed by private parties.

There are no public or private easements, conditions or restrictions applying to the subject property that would prohibit or otherwise restrict this proposal. Conditions of approval will require the property owner to obtain all necessary permits and approvals prior to implementing this order. This term is satisfied.

7. Based on the above findings and conclusions, the applicants' proposal meets the terms in Final Order and Home Site Authorization E134105 approved under provisions in ORS 195.300 to ORS 195.336 (Measure 49) for the subject property. The partitioning request is, therefore, **APPROVED** subject to conditions.

Warren Jackson
Director-Planning Division

Date: August 8, 2016

If you have any questions please contact Patty Dorr 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.