

**BEFORE THE BOARD OF COMMISSIONERS
FOR THE COUNTY OF POLK, STATE OF OREGON**

In the matter of Polk County Planning Division)
File FORD 23-01 authorizing a small tract)
“template” dwelling on an approximately)
23.1-acre parcel zoned Farm/Forest. The subject)
property is located at 13310 Monmouth)
Highway, Monmouth, OR 97361 (T8S, R5W,)
Section 28, Tax Lots 804 and 818).)

ORDER NO. 24-09

WHEREAS, on June 28, 2024 the Polk County Planning Director approved Planning Division application FORD 23-01, with conditions, authorizing a small tract “template” dwelling in the Farm/Forest zone; and

WHEREAS, a timely appeal was submitted on July 10, 2024; and

WHEREAS, on July 16, 2024 the Polk County Board of Commissioners directed staff to set the matter for a hearing before the Polk County Hearings Officer, pursuant to PCZO 111.280; and

WHEREAS, the Polk County Hearings Officer conducted a duly noticed public hearing on August 13, 2024 where an opportunity was provided for Appellants, Applicants and members of the public to submit oral and written testimony; and

WHEREAS, the Hearings Officer issued a final local decision affirming the Planning Directors decision with amended conditions on August 30, 2024; and

WHEREAS, pursuant to PCZO 111.280, the Board of Commissioners shall ratify the final local decision issued by the Hearings Officer; now therefore,

THE POLK COUNTY BOARD OF COMMISSIONERS ORDERS AS FOLLOWS:

Sec. 1. That Polk County Board of Commissioners ratify the Hearings Officer’s final local decision.

Sec. 2. An emergency is declared, and the provisions of this order become effective upon its adoption.

Dated this 11th day of September, 2024 at Dallas, Oregon.

POLK COUNTY BOARD OF COMMISSIONERS



Craig Pope, Chair



Jeremy Gordon, Commissioner



Lyle Mordhorst, Commissioner


Approved as to form:



Morgan Smith
County Counsel

First Reading: n/a

Second Reading: n/a

Recording Secretary: 

**BEFORE THE PLANNING DIVISION
FOR POLK COUNTY, OREGON**

In the Matter of the Application of:

File No: FORD 23-01

JOHN STEVEN WALKER

HEARINGS OFFICER'S DECISION

I. SUMMARY OF PROCEEDINGS

A. BACKGROUND

This matter arose on the application of John Steven Walker ("Applicant") to establish a dwelling on the subject property utilizing the "small tract template dwelling" criteria for the Farm Forest (F/F) Zoning District found in Polk County Zoning Ordinance (PCZO) 138.080(B)(3). The subject property contains approximately 23.1 acres and is located within the Farm/Forest (F/F) Zoning District. Dwellings within the F/F zone are also subject to review and approval of the "general siting standards" and "fire siting standards" for the location of the proposed dwelling. The Applicant's plot plan is included as Attachment A-1. Attachment A-2 is a map created by Polk County Community Development Staff ("County Staff") intended to depict the subject property's location and surrounding area.

The application was submitted on October 30, 2023. On November 22, 2023, County Staff sent a Letter of Incomplete to the Applicant. The application was deemed complete on April 26, 2024, when the Applicant indicated in writing that none of the missing information would be provided. On June 28, 2024, the Polk County Planning Director approved planning file FORD 23-01 with nine (9) conditions of approval and sent notice of the decision to surrounding area property owners. A timely appeal was submitted on July 10, 2024. The appeal includes concerns about the proposed dwelling's compliance with the general and fire siting standards, including the proposed dwelling's compliance with fuel break requirements, the risk of fire, and minimizing the use of forestlands. On July 16, 2024 the Polk County Board of Commissioners directed County Staff to set the matter for a hearing before the Polk County Hearings Officer, pursuant to PCZO 111.280. The Hearings Officer's decision will constitute the final County decision subject to ratification by the Board of Commissioners.

PROPERTY DESCRIPTION:

Property Size: 23.1 acres

COMPREHENSIVE PLAN AND ZONING DESIGNATIONS:

Area	Comprehensive Plan Designation	Zoning Designation
Subject Property	Farm/Forest	Farm/Forest (F/F)
Property North	Agriculture and Farm/Forest	Exclusive Farm Use (EFU) and Farm/Forest (F/F)
Property East	Farm/Forest	Farm/Forest (F/F)
Property South	Farm/Forest	Farm/Forest (F/F)
Property West	Farm/Forest	Farm/Forest (F/F)

PROPERTY DESCRIPTION: The subject property is located at 13310 Monmouth Hwy, Monmouth, Oregon (Assessment Map T8S, R5W, Section 28, Tax Lots 804 and 818). According to the 2024 Polk County Assessor's Records, the subject property is currently vacant of any structures. There are no

contiguous lots or parcels under common ownership; therefore, the Hearings Officer finds that the subject property constitutes the subject tract.

The subject property was lawfully created pursuant to Polk County Subdivision and Partition Ordinance (PCSO) 91.950(1)(b), as evidenced by a Partition Plat (County Survey 5026) recorded in Polk County Book of Record 112, Page 2467, dated August 20, 1977. This partition created the subject property as a remainder parcel. This remainder parcel was further reconfigured three times.

The first reconfiguration is evidenced by a Memorandum of Land Sale Contract recorded in Book of Record 123, Page 439, dated March 20, 1978. This deed transferred the portion of the remainder parcel that is currently identified as Tax Lot 810 of T8S, R5W, Section 28 to Brice C. Caldwell and Dorothy M. Caldwell, who were the owners of the neighboring property to the south at the time, as evidenced by Book of Record 106, Page 167, dated June 17, 1977. As of March 20, 1978, when Tax Lot 810 was transferred to the neighboring property owner, Polk County had adopted partition standards, but had not yet adopted property line adjustment standards. County Staff reviewed Polk County Community Development records and did not find any documents that indicate that a partition created Tax Lot 810 as a separate legal parcel. Based on this evidence, it appears that this transfer was intended as a property line adjustment between the subject property and the neighboring property to the south.

The second reconfiguration is evidenced by findings in Land Use Determination (LUD) 04-21, which indicates that the portion of the remainder parcel currently identified as Tax Lot 815 of T8S, R5W, Section 28 was combined with the neighboring property currently identified as Tax Lot 812 of T8S, R5W, Section 28 to create one legal parcel, pursuant to a Memorandum of Land Sale Contract recorded in Book of Record 141, Page 1607, dated August 7, 1979.

The third reconfiguration that brought the subject property to its current configuration is evidenced by a Memorandum of Agreement recorded in Polk County Book of Record 191, Page 1580, dated January 10, 1986. This deed transferred approximately nine (9) acres of a contiguous property to John S. and Yukiko Walker, who were the owners of the subject property at the time of the conveyance, as evidenced by a Memorandum of Land Sale Contract recorded in Polk County Book of Record 143, Page 430, dated September 15, 1979. This conveyance exercised a property line adjustment approved pursuant to Special Exception (SE) 86-25. County Staff reviewed Polk County Community Development records and found two (2) subsequent land use decisions, CU 86-36 and SE 87-11, that refer to the subject property as an approximately 23-acre parcel, consisting of what is currently identified on the Assessor's Map as Tax Lot 804 and Tax Lot 818 (formerly a part of Tax Lot 814) of T8S, R5W, Section 28.

The subject property is currently described in a Bargain and Sale deed recorded in Polk County Clerk Document 2001-012491, dated September 25, 2001, and a Bargain and Sale deed recorded in Polk County Clerk Document 2024-004665, dated June 21, 2024. County Staff acknowledges that the two (2) tax lots that make up the subject parcel were not under common ownership for a period of time prior to this decision, during which time the current property owner still had an interest in both portions, due to what appears to be a mistake in the legal description and/or an estate planning error. Nevertheless, County Staff determined and the Hearings Officer concurs that the subject property is currently in its lawful configuration.

Based on a review of the National Wetland Inventory (NWI) maps, Airlie North Quadrangle, there are not any wetlands located on the subject property. According to the Federal Emergency Management Agency (FEMA) Flood Insurance Rate Map (FIRM) panel number 41053C0400F, dated December 19, 2006, the subject property is not located within a Special Flood Hazard Area (SFHA). According to the Polk County Significant Resource Areas (SRA) Map, there are no inventoried significant resources located on the subject property. There are no inventoried historic sites or Willamette River Greenway areas on the subject property.

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Table 1: Soil characteristics of the subject property as identified in the Natural Resources Conservation Service (NRCS) Soil Survey of Polk County, Oregon utilizing the Polk County Geographic Information System (GIS)¹

Soil Type	Soil Name	Soil Class	High Value?	Forest Productivity	Acres
36E	Jory silty clay loam, 20 to 30 percent slopes	IVE	Yes	172	6.21
37E	Jory silty clay loam, 30 to 50 percent slopes	VIE	No	172	3.78
60C	Rickreall silty clay loam, 3 to 12 percent slopes	VIE	No	Unknown	2.82
36E	Jory silty clay loam, 20 to 30 percent slopes	IVE	Yes	172	3.90
36D	Jory silty clay loam, 12 to 20 percent slopes	IIIE	Yes	172	0.66
36E	Jory silty clay loam, 20 to 30 percent slopes	IVE	Yes	172	1.41
60D	Rickreall silty clay loam, 12 to 20 percent slopes	VIE	No	Unknown	0.93
60E	Rickreall silty clay loam, 20 to 50 percent slopes	VIIE	No	Unknown	0.51
68D	Suver silty clay loam, 12 to 20 percent slopes	IIIE	No	Unknown	0.49
37E	Jory silty clay loam, 30 to 50 percent slopes	VIE	No	172	0.01
8C	Bellpine silty clay loam, 3 to 12 percent slopes	IIIE	Yes	172	2.14

¹ Disclaimer: Information is based on NRCS soil information & Polk County Tax Assessment data. This information is provided for land use planning purposes only. Polk County is not responsible for map errors, omissions, misuse, or misinterpretation. Percent and total calculations are based on staff measurements using the Polk County GIS.

Access: The subject property has frontage along Monmouth Highway. The proposed dwelling structures would access Monmouth Highway via a proposed driveway located entirely on the subject property. Monmouth Highway is classified as a Minor Arterial in the Polk County Transportation Systems Plan, Figure 3.

Services: The subject property is within the area served by Luckiamute Domestic Water Cooperative. The proposed dwelling would be served by an on-site septic system.

School: Central School District 13J

Fire: Polk County Fire District #1

Police: Polk County Sheriff

B. COMMENTS RECEIVED

Prior to the public hearing the following comments were received:

Environmental Health: There are no septic records for the subject property. The applicant would need to apply for a site evaluation to determine septic feasibility.

Polk County Fire District No. 1: If home is being built, we would need to verify access and water supply.

II. PUBLIC HEARING

A duly advertised public hearing was held on August 13, 2024, at the Polk County Courthouse. The Hearings Officer called the meeting to order at the appointed hour. There were no objections as to notice, jurisdiction, or conflicts of interest. County Staff recited the applicable review and decision criteria and recommended approval. The Applicant appeared through his attorney, Anthony James, and he spoke in favor of the application. The Appellants spoke against the application and submitted written testimony into the record. No other public testimony was received in favor or against the application. There was no request to keep the record open, or for a continuance. The Hearings Officer thereupon declared the record closed and adjourned the hearing. All of the testimony, evidence, and arguments are a part of the record and were considered in this matter.

III. REVIEW AND DECISION CRITERIA

The authorization for a small tract "template" dwelling within the F/F zone is provided under PCZO Sections 138.070, 138.080(B)(3), 138.110, 138.120, and 138.140.

- (A) PREDOMINANT USE TEST** The siting of dwellings and certain other land uses within the Farm/Forest Zoning District are based on a determination of the predominant use of a tract as either farm or forest land. A "tract" is defined as one (1) or more contiguous lots or parcel(s) under the same ownership.

Predominant use is defined as more than 50 percent of the area of the tract. Polk County will review tax assessor records, aerial photos, soils capability data, and existing uses to determine on a case-by-case basis whether a tract was predominantly used for farm or forest purposes as of January 1, 1993. [PCZO 138.070]

The subject property is approximately 23.1 acres in size. Based on County Staff's review of Polk County Clerk records, there are no contiguous lots or parcels under common ownership. Therefore, the Hearings Officer finds that the subject property constitutes the entire subject tract. The Applicant asserts that the subject tract was predominantly in timber on January 1, 1993. County Staff reviewed the 1994 aerial image accessed through Polk County Geographic Information System (GIS), which depicts nearly all of the subject property planted in timber on the date the aerial photograph was taken. The 2022 aerial photograph accessed through Polk County GIS shows that the subject property continued to be primarily used for timber production on the date the aerial photograph was taken. The property description included in the Applicant's narrative states that the subject property is currently used for timber production. County Staff reviewed the 2024 Assessor's report for the subject property and noted that forest tax deferral was added to the subject property in 2000 for Tax Lot 804 and 2001 for Tax Lot 818. Nevertheless, the 1994 aerial photograph serves as evidence that the subject property was already in forest use prior to when the property began receiving forest tax deferral. Additionally, the NRCS soil data, found in Table 1 above, indicates that a majority (78.4%) of the soils found on the subject property are capable of producing 172 cubic feet per acre per year of wood fiber, which is considered productive forest land. Forest productivity is unknown for the remaining 21.6% of soils on the subject property. The Hearings Officer finds that based on the information provided by the Applicant, the aerial photographs of Polk County, the Assessor's report, and NRCS soil data, it is reasonable to conclude that the subject tract was predominantly used for forest purposes as of January 1, 1993.

The Hearings Officers finds the application complies with this criterion.

(B) Small Tract "Template" Dwelling A dwelling may be authorized on a tract that meets the following criteria: [PCZO 138.080(B)(3)]

(1) The tract is less than 60 acres in size; [PCZO 138.080(B)(3)(a)]

The subject tract contains approximately 23.1 acres. The Hearings Officer finds that the subject tract is less than 60 acres in size.

The Hearings Officer finds the application complies with this criterion.

(2) The tract meets one of the following:

(a) The tract is composed of soils that are capable of annually producing more than 85 cu. ft. per acre of wood fiber if:

- (i) All or part of at least 11 other lots or parcels that existed on January 1, 1993, are within a 160 acre square centered on the center of the subject tract. If the tract abuts a road that existed as of January 1, 1993, the measurement may be made by creating a 160-acre rectangle that is one mile long and one-quarter mile wide centered on the center of the subject tract and aligned with the road to the maximum extent possible; and**
- (ii) At least three (3) dwellings existed on January 1, 1993 and continue to exist on the other lots or parcels; or [PCZO 138.080(B)(3)(b)(i)]**

A soils capability analysis and "template" test are intended to determine the average forest productivity a tract of land is capable of producing, and to determine the density of dwellings and parcels surrounding the subject property that existed on January 1, 1993. Greater soil capability is equivalent to more restrictive requirements for the number of lots or parcels and dwellings that need to have existed on January 1, 1993, and continue to exist today. This correlation found in State law is intended to permit residential development based upon the degree of parcelization and development that exists in the area, and the tract's capability to produce merchantable timber.

The subject property is located at 13310 Monmouth Highway, Monmouth, Oregon (Assessment Map T8S, R5W, Section 28, Tax Lots 804 and 818). County Staff reviewed a soil composition report for the subject property, generated using Polk County's GIS tools and Natural Resource Conservation Service (NRCS) soil data. A summary of this soils report is provided in Table 1 above and full details of this report are included in the record. Based on this report, the forest productivity data reveal that 78.4% (approximately 18.1 acres) of the subject property is capable of annually producing more than 85 cubic feet of wood fiber per acre, per year. Forest productivity is unknown for the remaining approximately 21.6% of the subject property. The Applicant has not provided additional data for the soil types with no productivity data. Therefore, during the administrative review, County Staff determined that the most stringent criteria found in PCZO 138.080(B)(3)(b)(i) shall be applied with the conservative assumption that the subject property is capable of annually producing more than 85 cubic feet of wood fiber per acre, per year.

The Applicant provided a report produced using 1993 tax assessment records from Polk County's GIS tools. County Staff found, and the Hearings Officer concurs, it reasonable to conclude that tax lots under separate ownership are separate parcels for the purpose of applying the template test criteria. The "template" test provided by the Applicant indicates that on January 1, 1993, excluding the subject property, there were at least 13 other tax lots under separate ownership within a 160 acre "template" square, centered on the tract. This exceeds the minimum of eleven (11) other lots or parcels that are required to have been located within the 160 acre "template" square on January 1, 1993. According to the 1993 tax assessment records, at least 10 dwellings on lots or parcels within the 160 acre "template" square existed on January 1, 1993. County Staff's review of the 2024 Polk County Tax Assessors data confirmed that at least three (3) of the 10 dwellings continue to exist today. However, in reviewing the application materials, it appears that this "template" test provided by the Applicant depicts the subject tract as including Tax Lots 810, 818, and 804 of T8S, R5W, Section 28, which does not accurately account for the centroid of the subject tract. According to the Assessor's Map, the subject tract currently consists of Tax Lot 804 and Tax Lot 818. County Staff produced a report using Polk County GIS tools to evaluate the compliance of the current tract (Tax Lot 804 and 818) with the "template" test criteria.

The template report produced by County Staff indicates that on January 1, 1993, excluding the subject property, there were 20 other tax lots under separate ownership within a 160 acre "template" square, centered on the subject tract. This exceeds the minimum of eleven (11) other lots or parcels that are required to have been located within the 160 acre "template" square on January 1, 1993. According to the 1993 tax assessment records, 17 dwellings on lots or parcels within the 160 acre "template" square existed on January 1, 1993. County Staff's review of the 2024 Polk County Tax Assessors data confirmed that at least three (3) of the 17 dwellings continue to exist today. Only dwellings and tax lots located outside of an urban growth boundary (UGB) were counted to meet the above criteria.

Given that County Staff's review of these criteria is dependent on the size and configuration of the subject tract as evaluated in this application, County Staff recommends a condition of approval that would invalidate this dwelling approval if the tract is reconfigured prior to establishing the dwelling.

The record contains sufficient evidence to demonstrate that the "template" test map and report generated by County Staff, and based on Polk County's Assessor's Records, the subject tract would meet the above-listed criteria in its current lawful configuration. The Hearings Officer finds that with this above-mentioned condition, the application complies with this criterion.

(3) The tract contains no dwellings on other lots or parcels that make up the tract. [PCZO 138.080(B)(3)(e)]

According to the 2024 Polk County Assessor's records, the subject property is currently vacant of any dwellings. As discussed earlier, the subject property constitutes the entire subject tract; therefore the subject tract is vacant of any dwellings.

The Hearings Officer finds the application complies with this criterion.

- (4) The tract is not subject to deed restrictions established under OAR 660-006-0027(6) and Section 138.080(B)(2)(b) of this Ordinance. [PCZO 138.080(B)(3)(f)]**

Based on County Staff's review of the Polk County Community Development and Clerk records, the tract is not subject to deed restrictions established under OAR 660-006-0027(6) and PCZO 138.080(B)(2)(b).

The Hearings Officer finds the application complies with this criterion.

- (5) Parcels 10 acres or less in size shall not be required to submit a stocking report prior to receiving a permit for the dwelling as authorized by this subsection. [PCZO 138.080(B)(3)(g)]**

The subject tract is approximately 23.1 acres in size. Because the subject tract is greater than 10.0 acres in size, a condition of approval would require that the owner of the parcel plant a sufficient number of trees on the tract to demonstrate that the tract is reasonably expected to meet Department of Forestry stocking requirements. The property owner shall submit a stocking survey report to the Polk County Assessor for the Assessor to verify that the minimum stocking requirements have been met by the time required by the Oregon Department of Forestry Rules. If the property does not meet the minimum stocking requirements, the Assessor may then remove the forest land designation pursuant to ORS 321.359 and impose additional tax pursuant to ORS 321.372.

The Hearings Officer concurs with the above referenced condition and finds that with the condition the application complies with this criterion.

- (6) Lots or parcels within urban growth boundaries shall not be used to satisfy the eligibility requirements under subsections 138.080(B)(3). [PCZO 138.080(B)(3)(h)]**

Lots or parcels within a UGB were not used to satisfy the template dwelling requirements. The Hearings Officer finds the application complies with this criterion.

- (7) The lot or parcel on which the dwelling will be sited was lawfully established; [PCZO 138.080(B)(3)(i)]**

As discussed above, the subject property was lawfully created pursuant to PCSO 91.950(1)(b), as evidenced by a Partition Plat recorded in Polk County Book of Record 112, Page 2467, dated August 20, 1977. This partition created the subject property as a remainder parcel. This remainder parcel was further reconfigured three times, prior to when Polk County adopted property line adjustment standards. The subject property is currently described in a Bargain and Sale deed recorded in Polk County Clerk Document 2001-012491, dated September 25, 2001 and a Bargain and Sale deed recorded in Polk County Clerk Document 2024-004665, dated June 21, 2024.

The Hearings Officer finds the application complies with this criterion.

- (8) Any property line adjustment to the lot or parcel complied with the applicable property line adjustment provisions in ORS 92.192; [PCZO 138.080(B)(3)(j)]**
- (9) Any property line adjustment to the lot or parcel after January 1, 2019, did not have the effect of qualifying the lot or parcel for a dwelling under this section; and [PCZO 138.080(B)(3)(k)]**

As discussed above, County Staff reviewed Polk County Community Development Records and Polk County Clerk Documents and found that the subject property was reconfigured three (3) times: in 1986 pursuant to Special Exception (SE) 86-25, which was exercised by a Memorandum

of Agreement recorded in Polk County Book of Record 191, Page 1580, dated January 10, 1986; in 1978 pursuant to a Memorandum of Land Sale Contract recorded in Book of Record 123, Page 439, dated March 20, 1978; and in 1979 pursuant to a Memorandum of Land Sale Contract recorded in Book of Record 141, Page 1607, dated August 7, 1979. Polk County did not adopt property line adjustment standards until March 27, 1991. Therefore, the Hearings Officer finds that property line adjustment standards were not applicable at the time of these property line adjustments. Based on County Staff's review of Polk County Community Development Records and Polk County Clerk Records, there have not been any property line adjustments affecting the subject property after January 1, 2019.

The Hearings Officer finds the application complies with this criterion.

- (10) If the lot or parcel on which the dwelling will be sited was part of a tract on January 1, 2019, no dwelling existed on the tract on that date, and no dwelling exists or has been approved on another lot or parcel that was part of the tract. [PCZO 138.080(B)(3)(I)]**

Note: Prior to November 1, 2023, a county may allow the establishment of a single-family dwelling on a lot or parcel that was part of a tract on January 1, 2021, if:

- 1. No more than one other dwelling exists or has been approved on another lot or parcel that was part of the tract; and**
- 2. The lot or parcel qualifies, notwithstanding PCZO 138.080(B)(3)(I) for a dwelling under PCZO 138.080(B)(3).**

County Staff reviewed Polk County Clerk and Polk County Assessor's records for the tax lots contiguous to the subject property and found that the subject property was part of a tract on January 1, 2019, that contained a dwelling. This is evidenced by Polk County Clerk Document 2018-003335, dated March 20, 2018, which identifies John S. Walker as the owner of Tax Lots 818, 808, 813, and 809 of T8S, R5W, Section 28 on January 1, 2019 and Polk County Clerk Document 2001-012491, dated September 24, 2001, which identifies John S. Walker as the owner of Tax Lot 814 of T8S, R5W, Section 28 on January 1, 2019. Tax Lot 810 of T8S, R5W, Section 28 was also part of this tract, pursuant to Polk County Clerk Document 2001-010059, dated August 3, 2001, which identifies John S. Walker as the owner of the tax lot at that time. County Staff reviewed 2019 and 2021 Polk County Assessor's records for the tract and found that one (1) dwelling existed on Tax Lot 813 on January 1, 2019 and January 1, 2021. The subject property remained a part of this tract on January 1, 2021, until August 17, 2022, when Polk County Clerk Document 2022-009479 had the effect of transferring the portion of the tract that contains a dwelling to a different ownership than Tax Lot 804. Another deed was subsequently recorded in Polk County Clerk Document 2024-004665, on June 21, 2024, that corrected an error that included Tax Lot 818 in the legal description for Polk County Clerk Document 2022-009479.

The Applicant submitted the application on October 30, 2023, prior to November 1, 2023; therefore, establishment of a single-family may be allowed on the subject property, which was part of a tract on January 1, 2021, that contained no more than one dwelling. Based on the Hearings Officer's findings in this decision, the subject parcel qualifies for a small tract "template" dwelling under PCZO 138.080(B)(3), notwithstanding PCZO 138.080(B)(3)(I).

Therefore, the Hearings Officer finds the application complies with this criterion.

- (C) NON-REMONSTRANCE DEED RESTRICTION Pursuant to OAR 660-006-0029 (4)(e), for any dwelling, residential facility, private park, reservoir or water impoundment, home occupation, or private fishing or hunting accommodations approved under sections 138.050, 138.060, 138.080 and 138.090, and partitions approved under subsections 138.130(D) and (H) through (K), the landowner for the property shall be required to sign and record a deed restriction binding the**

landowner and the landowner's successors in interest, prohibiting them from pursuing a claim for relief or cause of action alleging injury from farming or forest practices for which no action or claim is allowed under ORS 30.936 to 30.937. [PCZO 138.140]

For any dwelling approved under PCZO 138.080(B)(3), the property owner shall be required to sign and record a deed restriction binding the landowner and landowner's successors in interest from pursuing a claim for relief or cause of action alleging injury from farming or forest practices for which no action or claim is allowed under ORS 30.936 to 30.937. County Staff recommends a condition of approval that requires the Applicant to record a restrictive covenant (Attachment D) that complies with PCZO 138.140, prior to the issuance of building permits. The property owner shall submit the original document to the Polk County Clerk's Office for recording in the deed history of the subject property. The property owner shall pay the applicable recording fees. The property owner shall submit a copy of the recorded deed restriction to the Planning Division for inclusion in the record of FORD 23-01, prior to the issuance of building permits.

The Hearings Officer finds that with the above-recommended condition, the application complies with this criterion.

(D) 138.110 GENERAL SITING STANDARDS FOR DWELLINGS AND STRUCTURES [OAR 660-006-0029]. The following standards apply to all new dwellings and structures:

- (1) The following siting criteria or their equivalent shall apply to all new dwellings and structures in forest and agriculture/forest zones. These criteria are designed to make such uses compatible with forest operations and agriculture, to minimize wildfire hazards and risks and to conserve values found on forest lands. Dwellings and structures shall be sited on the parcel so that:**
 - (a) They have the least impact on nearby or adjoining forest or agricultural lands;**
 - (b) The siting ensures that adverse impacts on forest operations and accepted farming practices on the tract will be minimized;**
 - (c) The amount of forest lands used to site access roads, service corridors, the dwelling and structures is minimized; and**
 - (d) The risks associated with wildfire are minimized.**
- (2) Siting criteria satisfying subsection (A) may include setbacks from adjoining properties, clustering near or among existing structures, siting close to existing roads and siting on that portion of the parcel least suited for growing trees. [PCZO 138.110(A)-(B)]**

The standards listed above are general standards intended to help determine an appropriate location for approved structures, including dwellings. According to the 2024 Polk County Assessor's Report, the subject tract is vacant. The Applicant is proposing to establish a dwelling on the subject property under the "small tract template-dwelling" criteria.

LUBA has provided guidance that the level of detail regarding the actual homesite and dwelling is much more circumscribed at this state than it will be at the building permit stage. *Neal v. Clackamas County*, LUBA No. 2006-041, 5-6 (Or. LUBA 7/14/2006). As LUBA has stated many times, in addressing an approval criterion a local government may: (1) find that the criterion is satisfied, or find that it is feasible to satisfy the criterion and adopt conditions of approval to ensure compliance; (2) deny the proposal; or (3) defer its decision regarding that criterion to a later stage that provides equivalent protections and rights of public participation. *Id. (citing Rhyne v. Multnomah County*, 23 OR LUBA 442, 447-48 (1992)).

The siting standards evaluated by the Hearings Officer are examined individually and as a whole;

minimizing impacts of the siting of the proposed dwelling is the necessary requirement. The analysis in this decision is based on the proposed dwelling and access location in this application.

Based on County Staff's review of the 2022 aerial photograph and Polk County GIS data, the subject property is primarily managed for forest use and is zoned Farm/Forest (F/F). Properties adjacent to the subject property to the south, west, and east are zoned Farm/Forest (F/F). Adjacent properties to the north of the subject property are zoned Farm/Forest (F/F) and Exclusive Farm Use (EFU). Properties adjacent to the subject tract range in size from approximately 2.4 acres to approximately 112.0 acres. Adjacent properties to the north, south, east, and west are primarily managed for forest use, with some properties being managed for a combination of farm and forest uses. According to the Assessor's Map, seven (7) of the adjacent, contiguous properties have a dwelling. Common forestry practices on neighboring properties may include, but are not limited to, spraying, thinning and harvesting timber, planting, and transporting of forest products. Common agricultural practices on neighboring properties may include, but are not limited to, plowing, seeding, fertilizing, harvesting and grazing, spraying, and planting. These practices may create dust, noise, and odors.

Based on the plot plan provided by the Applicant (Attachment A-1), the dwelling is proposed to be sited in the northwest corner portion of the subject property. The Applicant provided a plot plan depicting the general location of the proposed dwelling underlaid with an aerial image, but did not provide setbacks of the proposed dwelling to the two closest property lines. Based on the location of the rectangle on the Applicant's plot plan that represents the general location of the proposed dwelling in respect to other features of the area, the proposed dwelling would be setback approximately between 85 and 160 feet away from the western property line, and approximately between 100 and 170 feet from the northern property line. The proposed dwelling would be approximately between 615 feet and 685 feet from the closest eastern property line, and approximately between 560 feet and 620 feet from the closest southern property line. County Staff used the 2022 aerial photograph and measurement tools accessed through Polk County GIS to estimate these measurements. The location of the proposed dwelling would meet the minimum setbacks for the Farm/Forest (F/F) Zone, which are front – thirty (30) feet, side – twenty (20) feet, and rear – twenty (20) feet, pursuant to PCZO 112.430(B). According to the Applicant's plot plan (Attachment A-1), the proposed dwelling would be in the northwest corner of the subject property, close to the northern and western property lines and the "flag pole" portion of the property that provides access to Monmouth Highway, a public road. The proposed dwelling would be buffered by trees from the neighboring forest operations and dwelling to the north and west and would be buffered from the neighboring properties to the south and east by trees located on the subject property and setbacks of greater than 500 feet. Based on the Applicant's plot plan and the 2022 aerial image, access to the proposed dwelling would be taken from Monmouth Highway via a proposed private driveway located entirely on the subject property. The Applicant also states that the proposed dwelling would be sited in the area of the property least suited for growing trees. County staff recommends a condition of approval that the proposed dwelling and access shall be established substantially in the location depicted on the Applicant's plot plan (Attachment A-1). A condition of approval shall also require the dwelling to comply with the setback requirements for the Farm/Forest zone, which are front – thirty (30) feet, side – twenty (20) feet, and rear – twenty (20) feet, pursuant to PCZO 112.430(B).

County Staff reviewed the 2022 aerial image accessed through Polk County GIS and finds that the entire subject property is currently used for growing trees, with the exception of a pond on the southern portion of Tax Lot 818. The proposed dwelling location is located near the northern and western property lines, close to the "flag pole" portion of the property that has frontage along Monmouth Highway. The 2022 aerial image depicts that the entire property is forested; therefore siting the dwelling in the northwest corner of the property near the access point would reduce the amount of forestland used for the access road and would allow the remainder of the property to be managed for forestry use without fragmentation that could result if the dwelling were to be located elsewhere on the subject property.

Here, based on the existing conditions on the subject property, the Hearings Officer finds that the proposed structure and access road would impact minimal forestland, and are sited in a location that

would allow the remainder of the property to be used for farm or forestry purposes. The Hearings Officer also finds that there is no evidence in the record to suggest that neighboring forestry or farming practices would be curtailed or impeded as a result of the proposed dwelling and access locations.

The Environmental Health Division provided comments indicating that there are no septic records for the subject property and the Applicant would need to apply for a site evaluation to determine septic feasibility. County Staff recommends a condition of approval that, prior to establishing the dwelling, the property owner shall obtain all necessary permits from the Polk County Building and Environmental Health Divisions, and the Oregon Department of Transportation (ODOT). These permits may include, but are not limited to the following: building, manufactured dwelling placement, electrical, plumbing, and mechanical permits from the Building Division; septic site evaluation and construction permits from the Environmental Health Division; and a new or amended access permit from ODOT.

The Hearings Officer finds that obtaining applicable permits would ensure that the proposed development would have the least impact on adjoining farm and forest operations and satisfy the Fire Department's need for access and water. Also, in order to ensure that the risks associated with wildfire are minimized, the property owner shall be required to comply with the fire siting standards for dwellings and structures listed in PCZO 138.120.

The Hearings Officer finds the record contains substantial evidence that it is feasible for the Applicant to satisfy the general siting standards criteria and concurs with the above recommended conditions of approval; and finds that with these conditions of approval, the application complies with these criteria.

- (3) The applicant shall provide evidence to the governing body that the domestic water supply is from a source authorized in accordance with the Water Resources Department's administrative rules for the appropriation of ground water or surface water and not from a Class II stream as defined in the Forest Practices rules (OAR chapter 629). For purposes of this section, evidence of a domestic water supply means:**
- (a) Verification from a water purveyor that the use described in the application will be served by the purveyor under the purveyor's rights to appropriate water;**
 - (b) A water use permit issued by the Water Resources Department for the use described in the application; or**
 - (c) Verification from the Water Resources Department that a water use permit is not required for the use described in the application. If the proposed water supply is from a well and is exempt from permitting requirements under ORS 537.545, the applicant shall submit the well constructor's report to the county upon completion of the well. [PCZO 138.110(C)]**

The Applicant states that the proposed dwelling would receive water from Luckiamute Domestic Water Cooperative. Therefore, verification from Luckiamute Domestic Water Cooperative (LDWC) that the use described in the application will be served by the purveyor under the purveyor's rights to appropriate water would be required. Alternatively, if water is not available from LDWC, the property owner shall submit the well constructor's report to the Polk County Community Development Department upon completion of the well. This development standard would be applied at the time that the property owner applies for a building permit. To ensure compliance, County Staff recommends this criterion be listed as a condition of approval.

The Hearings Officer finds that with the above recommended condition of approval, the application complies with this criterion.

- (4) As a condition of approval, if road access to the dwelling is by a road owned**

and maintained by a private party or by the Oregon Department of Forestry, the U.S. Bureau of Land Management or the U.S. Forest Service, then the applicant shall provide proof of a long-term road access use permit or agreement. The road use permit may require the applicant to agree to accept responsibility for road maintenance. [PCZO 138.110(D)]

Based on the Applicant's plot plan and County Staff's review of the 2022 Polk County aerial photograph, access to the proposed dwelling would be from Monmouth Highway, which is a public road maintained by the Oregon Department of Transportation (ODOT), via a proposed private driveway that would be located entirely on the subject property.

Therefore, the Hearings Officer finds that road access to the dwelling is not by a road owned and maintained by a private party or by the Oregon Department of Forestry, the U.S. Bureau of Land Management or the U.S. Forest Service, and this criterion does not apply.

(5) Approval of a dwelling on a parcel or tract which is larger than 10 acres in size shall be subject to the following requirements:

- (a) Approval of a dwelling requires the owner of the tract to plant a sufficient number of trees on the tract to demonstrate that the tract is reasonably expected to meet Department of Forestry stocking requirements at the time specified in the Department of Forestry administrative rules.**
- (b) The Planning Department shall notify the Polk County Assessor of the above condition at the time the dwelling is approved.**
- (c) The property owner shall submit a stocking survey report to the Polk County Assessor and the Assessor shall verify that the minimum stocking requirements have been met by the time required by the Department of Forestry Rules.**
- (d) Upon notification by the Assessor, the Department of Forestry will determine whether the tract meets minimum stocking requirements of the Forest Practices Act. If the Department determines that the tract does not meet those requirements, the department will notify the owner and the Assessor that the land is not being managed as forest land. The Assessor will then remove the forest land designation pursuant to ORS 321.359 and impose additional tax. [PCZO 138.110(E)]**

The subject tract contains approximately 23.1 acres. Based on a review of the 2022 aerial photograph, the subject property appears to be managed for forest use. According to the 2024 Assessor's Report, the subject tract is currently receiving forest tax deferral. County Staff recommends a condition of approval that the property owner shall submit a stocking report to the Polk County Assessor for the Assessor to verify that the minimum stocking requirements for the tract have been met by the time required by the Oregon Department of Forestry (ODF) Rules. If the tract does not meet the minimum stocking requirements, the Assessor may remove the forest land designation pursuant to ORS 321.359 and impose additional tax pursuant to ORS 321.372.

The Hearings Officer finds that with the above recommended condition of approval, the application complies with this criterion.

(E) 138.120 FIRE SITING STANDARDS FOR DWELLINGS AND STRUCTURES [OAR 660-006-0035]. The following standards apply to all new dwellings and structures:

- (1) The dwelling shall be located upon a parcel within a fire protection district or shall be provided with residential fire protection by contract. If the dwelling is not within a fire protection district, the applicant shall provide evidence that the applicant has asked to be included within the nearest such district. If the**

governing body determines that inclusion within a fire protection district or contracting for residential fire protection is impracticable, the governing body may provide an alternative means for protecting the dwelling from fire hazards. The means selected may include a fire sprinkling system, onsite equipment and water storage or other methods that are reasonable, given the site conditions. If a water supply is required for fire protection, it shall be a swimming pool, pond, lake, or similar body of water that at all times contains at least 4,000 gallons or a stream that has a continuous year round flow of at least one cubic foot per second. The applicant shall provide verification from the Water Resources Department that any permits or registrations required for water diversion or storage have been obtained or that permits or registrations are not required for the use. Road access shall be provided to within 15 feet of the water's edge for firefighting pumping units. The road access shall accommodate the turnaround of firefighting equipment during the fires season. Permanent signs shall be posted along the access route to indicate the location of the emergency water source. [PCZO 138.120(A)]

The subject property is located within an area served by the Polk County Fire District #1. The Fire District provided comments indicating that they would need to verify that the subject property would have adequate access and water prior to residential development on the property.

The Hearings Officer finds that these standards would be evaluated at the time of building permits.

The Hearings Officer finds that the application complies with this criterion.

(2) Road access to the structure shall meet the County road design standards. [PCZO 138.120(B)]

The access would be from Monmouth Highway via a proposed private driveway located entirely on the subject property. County Staff recommends a condition of approval that the property owner shall be responsible for ensuring that the road access complies with Polk County Standards for Private Roads Serving Dwellings in Forest Zones (Attachment B).

The Hearings Officer finds that with the above recommended condition, the application complies with this criterion.

(3) The owners of the dwellings and structures shall maintain a primary fuel-free break area surrounding all structures and clear and maintain a secondary fuel-free break area on land surrounding the dwelling that is owned or controlled by the owner in accordance with the provisions in "Recommended Fire Siting Standards for Dwellings and Structures and Fire Safety Design Standards for Roads" dated March 1, 1991, and published by the Oregon Department of Forestry. [PCZO 138.120(C)]

According to "Recommended Fire Siting Standards for Dwellings and Structures and Fire Safety Design Standards for Roads" dated March 1, 1991, and published by the Oregon Department of Forestry (ODF), Section B "Fuel Break Standards" (Attachment C), the primary safety zone is a fire break extending a minimum of 30 feet in all directions around structures, and increasing as slope increases to 10% or greater. The Applicant did not provide setbacks from property lines or a scaled plot plan, but County Staff was able to replicate the approximate location of the proposed dwelling location using the underlaid aerial on the Applicant's plot plan (Attachment A-1). Based on the location of the rectangle on the Applicant's plot plan intended to represent the approximate area in which the proposed dwelling would be located, the proposed dwelling would be approximately between 85 and 160 feet away from the western property line, and approximately between 100 and 170 feet from the northern property line, which would be the two (2) closest property lines. County Staff used Polk County GIS tools to measure the average slope of the proposed building area and determined that it would be located on a slope of approximately 13% downhill to the west, 26% downhill to the south, 25% downhill to the southwest, and 11% downhill to the southeast. These

slopes would require an additional primary safety zone of 50 feet to the west and southeast and 100 feet to the south and southwest.

The Planning Director approved the application finding that the proposed dwelling location based on the Applicant's plot plan indicates that a primary safety zone of 80 feet could be accommodated to the west and southeast. A primary safety zone of 130 feet could be accommodated to the south and southwest. Based on County Staff's measurements using Polk County GIS tools and the Applicant's plot plan, the proposed dwelling location could accommodate the minimum primary safety zone of 30 feet in all directions and additional primary safety zone of 50 feet to the west and southeast and 100 feet to the south and southwest on land surrounding the dwelling that is owned by the subject property owner. The secondary fuel break is a fuel break extending a minimum of 100 feet in all directions around the primary safety zone.

The Appellants are neighboring property owners who own property to the north and west of the subject property. The appeal includes concerns about the proposed dwelling's compliance with the general and fire siting standards, including the proposed dwelling's compliance with fuel break requirements, the risk of fire, and minimizing the use of forestlands. The Appellants assert that a primary fuel break of 30 feet and a secondary fuel break of 100 feet would be required on the north side of the proposed dwelling, totaling 130 feet of fuel break. According to the Appellants, a 100-foot setback, which is the minimum setback proposed by the Applicant based on the plot plan provided, would not be able to accommodate a 130-foot fuel break. Similarly, the Appellants assert that a primary fuel break of 130 feet and a secondary fuel break of 100 feet would be required on the western side of the proposed dwelling. At the public hearing, the Appellants reaffirmed their written appeal and presented testimony that in order to comply with this condition, the amended dwelling location must be situated in the place that both the primary and secondary fuel break can be entirely accommodated on the subject property. The Appellants also reaffirmed the previously suggested siting of the proposed dwelling in the southern portion of the subject property. It is clear to the Hearings Officer that the Appellants are concerned about the potential of increased fire risk. At the public hearing the Appellants also requested to be notified of all building permits requested by the Applicant and to have a meeting with the director of Polk County Community Development. The Hearings Officer does not have the authority to direct meetings occur between community members and County Staff, nor to require the Applicant to provide notifications every time a building permit is requested.

The Hearings Officer must review the record in its entirety because approval for the application must be supported by substantial evidence. The Hearings Officer may also review Oregon case law for guidance. The Land Use Board of Appeals (LUBA) clarified in *Landwatch Lane County v. Lane County* (LUBA No. 2018-078) that the language in Oregon Administrative Rules (OAR) 660-006-0035(3) requires a secondary fuel break only "on land that is owned or controlled by the owner" in the case where a subject property owner does not own or control 100 feet outside of the primary fuel break. The Hearings Officer must apply the evidence in the record to the applicable law.

In response to the arguments raised by the Appellant, County Staff used Polk County Geographic Information System (GIS) tools to compare the approximate amount of additional driveway extension that would be required to access the dwelling location proposed in the application and the dwelling location proposed by the Appellant. The entirety of the northwest corner of the subject property where the proposed dwelling site would be is forested, so both the location the Applicant proposed and the location the Appellant proposed would require using forestland to access the dwelling. Based on County Staff's measurements, the dwelling location proposed by the Applicant would require approximately 50 additional feet of driveway to access the proposed dwelling compared to the dwelling location proposed by the Appellant. The Hearings Officer finds that this additional 50 feet is marginal and, in most circumstances, would not necessarily be considered inconsistent with OAR 660-006-0029(1)(c), provided justification is given for the proposed location of the dwelling that complies with the criteria in OAR 660-006-0029.

The Appellants have suggested moving the proposed “template” dwelling to the southern portion of the subject property. However, the general siting requirements, discussed in detail above, focus on reducing impact to the subject property as well as the surrounding properties. Additionally, the record contains substantial evidence that siting the dwelling in the northwest corner of the property near the access point is in the area of the property least suited for growing trees and would allow the remainder of the property to be managed for forestry use without fragmentation that could result if the dwelling were to be located elsewhere on the subject property.

The Hearings Officer finds that while requiring the proposed dwelling to be 130 feet away from the northern property line and 230 feet from the western property line is not necessary to comply with the fuel break requirements in PCZO 138.120(C) or to minimize the amount of forest lands used for development found in PCZO 138.110(A)(3); it is reasonable that increasing the setbacks of the proposed dwelling from the two closest property lines may reduce the risks associated with wildfire pursuant to PCZO 138.110(A)(4) and minimize adverse impacts to forestlands on adjoining properties pursuant to PCZO 138.110(A)(1).

On August 1, 2024, the Applicant’s representative provided comments in the record indicating that the Applicant will agree to the additional setback and fuel breaks requested by the Appellants and requested that the decision be amended to reflect additional setback requirements.

County Staff recommends the Hearings Officer amend Condition of Approval No. 1 and Condition of Approval No. 4 of FORD 23-01 to read:

1. This approval is for one (1) single-family dwelling on the subject property. The dwelling and access road shall be established substantially in the location identified in the applicant’s plot plan (Attachment A-1), in the northwest corner of the subject property, with a minimum setback of 130 feet from the northern property line and 230 feet from the western property line. This dwelling approval is specific to the size and configuration of the subject tract presented and evaluated in this application. Reconfiguration of the subject tract prior to establishing the dwelling would invalidate this approval.
4. The property owner shall maintain a primary fuel-free break area surrounding the dwelling, and clear and maintain a secondary fuel-free break area on land surrounding the dwelling in accordance with the provisions in "Recommended Fire Siting Standards for Dwellings and Structures and Fire Safety Design Standards for Roads" dated March 1, 1991, and published by the Oregon Department of Forestry, Section B “Fuel Break Standards” (Attachment C).

The Hearings Officer finds the amended setbacks of the dwelling location should be: approximately 130 foot from the northern property line, approximately 230 feet from the western property line, approximately 475 feet from the eastern property line, and approximately 530 feet from the southern property line. Additionally, County Staff used Polk County GIS tools to measure the slope of the amended dwelling location and determined that it would be located on a slope of approximately 22% downhill to the southwest, approximately 12% downhill to the northwest, approximately 5% downhill to the south, and approximately 25% downhill to the west. These slopes would require an additional primary safety zone of 50 feet to the northwest, 75 feet to the southwest, and 100 feet to the west. The Hearings Officer finds that the amended dwelling location could accommodate the primary fuel break of 30 feet and these additional primary fuel break areas, as well as a majority of the secondary fuel break on land that is owned and controlled by the subject property owner. With regards to amended Condition #4, the Hearings Officer further revises the condition of approval to be consistent with the criteria language above and sets forth revised amended Condition # 4 below:

4. The property owner shall maintain a primary fuel-free break area surrounding the dwelling, and clear and maintain a secondary fuel-free break area on land that is owned and controlled by the owner surrounding the dwelling in accordance with the provisions in "Recommended Fire Siting Standards for Dwellings and Structures and Fire Safety

Design Standards for Roads" dated March 1, 1991, and published by the Oregon Department of Forestry, Section B "Fuel Break Standards" (Attachment C).

With the amended condition #1 and revised amended condition #4, the Hearings Officer finds that the new dwelling location would continue to comply with the general siting standards and satisfies the fire siting standards found in PCZO 138.110 and 138.120.

The Hearings Officer finds there is substantial evidence in the record that with the amended conditions of approval set forth above, this application complies with the criterion.

(4) The dwelling shall meet the following requirements:

- (a) The dwelling has a fire-retardant roof.**
- (b) The dwelling will not be sited on a slope of greater than 40 percent.**
- (c) If the dwelling has a chimney or chimneys, each chimney has a spark arrester. [PCZO 138.120(D)]**

The Applicant states that the proposed dwelling would provide proof of the structure having a fire-retardant roof at the time of building permits, and any chimneys would have a spark arrester. County Staff's slope measurements using Polk County GIS tools indicate that the proposed dwelling would not be located on a slope of greater than 40%, based on the location depicted in the Applicant's plot plan (Attachment A-1). To ensure compliance, County staff recommends that the above criteria listed in PCZO 138.120(D) be included as a condition of approval.

The Hearings Officer finds that with this condition of approval, the application complies with these criteria.

IV. CONCLUSIONS

Based on the Review and Decision Criteria above, the Hearings Officer believes there is sufficient evidence in the record to APPROVE the proposed template dwelling and determine it is consistent with the Polk County Zoning Ordinance provisions for a small tract template dwelling in the F/F Zone. However, the Hearings Officer further concurs with County Staff in imposing the conditions of development discussed in Section III and listed below in order to ensure compliance with the applicable review and decision criteria.

Appeals to the Land Use Board of Appeals (LUBA) may only be based on Review and Decision Criteria contained in Section III, above.

Any modifications to conditions shall be approved in accordance with provisions of law (e.g., variance, subsequent land use application).

Conditions of Approval:

1. This approval is for one (1) single-family dwelling on the subject property. The dwelling and access road shall be established substantially in the location identified in the applicant's plot plan (Attachment A-1), in the northwest corner of the subject property, with a minimum setback of 130 feet from the northern property line and 230 feet from the western property line. This dwelling approval is specific to the size and configuration of the subject tract presented and evaluated in this application. Reconfiguration of the subject tract prior to establishing the dwelling would invalidate this approval.
2. Prior to establishing the dwelling, the property owner shall obtain all necessary permits from the Polk County Building and Environmental Health Divisions, and the Oregon Department of Transportation (ODOT). These permits may include, but are not limited to the following: building, manufactured dwelling placement, electrical, plumbing, and mechanical permits

from the Building Division; septic site evaluation and construction permits from the Environmental Health Division; and a new or amended access permit from ODOT.

3. The proposed dwelling shall comply with the yard setback standards for the Farm/Forest Zoning District listed in PCZO 112.430(B). Those setback standards are: front – thirty (30) feet, side – twenty (20) feet, and rear – twenty (20) feet.
4. The property owner shall maintain a primary fuel-free break area surrounding the dwelling, and clear and maintain a secondary fuel-free break area on land that is owned and controlled by the owner surrounding the dwelling in accordance with the provisions in "Recommended Fire Siting Standards for Dwellings and Structures and Fire Safety Design Standards for Roads" dated March 1, 1991, and published by the Oregon Department of Forestry, Section B "Fuel Break Standards" (Attachment C).
5. The dwelling shall meet the following requirements:
 - (a) The dwelling has a fire-retardant roof.
 - (b) The dwelling will not be sited on a slope of greater than 40 percent.
 - (c) If the dwelling has a chimney or chimneys, each chimney has a spark arrester.
6. The property owner shall construct and/or improve the driveway to comply with Polk County Standards for Private Roads Serving Dwellings in Forest Zones (Attachment B).
7. Prior to the issuance of building permits, the property owner shall record with the Polk County Clerk's Office a non-remonstrance deed restriction (Attachment D) that complies with PCZO 138.140. The deed restriction shall prohibit the property owner from pursuing a claim for relief or cause of action alleging injury from farming or forest practices for which no action or claim is allowed under ORS 30.936 to 30.937. The property owner shall pay the applicable recording fees. The property owner shall submit a copy of the recorded deed restriction to the Planning Division for inclusion in the record for FORD 23-01.
8. The property owner shall submit a stocking report to the Polk County Assessor for the Assessor to verify that the minimum stocking requirements for the tract have been met by the time required by the Oregon Department of Forestry (ODF) Rules. If the tract does not meet the minimum stocking requirements, the Assessor may remove the forest land designation pursuant to ORS 321.359 and impose additional tax pursuant to ORS 321.372.
9. The property owner shall provide evidence to the governing body that the domestic water supply is from a source authorized in accordance with the Water Resources Department's administrative rules for the appropriation of ground water or surface water and not from a Class II stream as defined in the Forest Practices rules (OAR chapter 629). For purposes of this section, evidence of a domestic water supply means:
 - (a) Verification from a water purveyor that the use described in the application will be served by the purveyor under the purveyor's rights to appropriate water;
 - (b) A water use permit issued by the Water Resources Department for the use described in the application; or
 - (c) Verification from the Water Resources Department that a water use permit is not required for the use described in the application. If the proposed water supply is from a well and is exempt from permitting requirements under ORS 537.545, the applicant shall submit the well constructor's report to the county upon completion of the well.

VI. ATTACHMENTS

Attachment A-1 Applicant's Plot Map

Attachment A-2 Map created by Polk County Community Development Staff

Attachment B	Polk County Standards for Private Roads Serving Dwellings in Forest Zones
Attachment C	Recommended Fire Siting Standards for Dwellings and Structures and Fire Safety Design Standards for Roads” dated March 1, 1991, and published by Oregon Department of Forestry (ODF), Section B “Fuel Break Standards”
Attachment D	Non-remonstrance Deed Restriction

VII. EFFECTIVE DATE; APPEAL

This Order takes effect upon the expiration of the time allowed for an appeal, if no appeal is filed.

If an appeal is filed, this Order does not take effect until the final decision on the appeal has taken effect. The Polk County Planning Division cannot assist in preparation of an appeal, but will provide information on how an appeal can be filed. **TIME IS OF THE ESSENCE IN FILING AN APPEAL.** The Planning Division will provide information on applicable deadlines.

Dallas, Oregon,

August 30th, 2024.

Leslie Howell

Leslie Howell

Polk County Hearings Officer