

**POLK COUNTY BOARD OF COMMISSIONERS**

**DATE:** September 11, 2024  
**TIME:** 9:00 a.m.  
**PLACE:** Polk County Courthouse, Dallas, Oregon

**THE LOCATION OF THIS MEETING IS ADA ACCESSIBLE. PLEASE ADVISE THE BOARD OF COMMISSIONERS AT (503-623-8173), AT LEAST 24 HOURS IN ADVANCE, OF ANY SPECIAL ACCOMMODATIONS NEEDED TO ATTEND OR TO PARTICIPATE IN THE MEETING VIRTUALLY.**

**PAGE:** **AGENDA ITEMS**

- 1. CALL TO ORDER AND NOTE OF ATTENDANCE**
- 2. ANNOUNCEMENTS**
  - (a) Regular meetings of the Board of Commissioners are held on Tuesday and Wednesday each week. Each meeting is held in the Courthouse Conference Room, 850 Main Street, Dallas, Oregon. Each meeting begins at 9:00 a.m. and is conducted according to a prepared agenda that lists the principal subjects anticipated to be considered. Pursuant to ORS 192.640, the Board may consider and take action on subjects that are not listed on the agenda. The Board also holds a department staff meeting at 9:00am on every Monday in the Commissioners Conference Room at 850 Main Street, Dallas, Oregon.
  - (b) The Grand Ronde Sanitary District Board is meeting on September 18, 2024 at 9:15 a.m. The meeting will take place in the Polk County Courthouse, 850 Main Street, Dallas, OR, 97338.
- 3. COMMENTS (for items not on this agenda and limited to 3 minutes)**
- 4. APPROVAL OF AGENDA**
- 5. APPROVAL OF THE MINUTES FROM September 4, 2024**
- 6. APPROVAL OF CONSENT CALENDAR**
- 7. LENGTH OF SERVICE AWARDS – Matt Hawkins**
  - Colin Davids, 20 years of service
  - Stephanie Gilbert, 10 years of service
  - Dustin Thompson, 10 years of service
- 8. RECLASSIFICATION OF AN EMPLOYEE – Matt Hawkins**
- 9. RECLASSIFICATION OF AN EMPLOYEE – Matt Hawkins**

**CONSENT CALENDAR**

- a) Polk County Contract No. 24-147, Criminal Justice Commission  
(Jodi Merritt, Community Corrections Director)
- b) Polk County Order No. 24-09, Ratify the Hearings Officer's Decisions  
On an Appeal; Planning File FORD 23-01  
(Hannah Brickner, Associate Planner)

**THE BOARD OF COMMISSIONERS WILL MEET IN EXECUTIVE SESSION  
PURSUANT TO ORS 192.660.**

**ADJOURNMENT**

POLK COUNTY PUBLIC MEETINGS AND PUBLIC HEARINGS  
GUIDELINE FOR CITIZENS

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REGULAR MEETING AGENDA

Regular meetings of the Polk County Board of Commissioners convene at 9 a.m. each Wednesday morning. Any person wishing to bring a matter before the Board at one of these meetings may do so by mailing or delivering written notice, concisely describing the nature of the item, to the Board of Commissioners, Polk County Courthouse, Dallas, Oregon 97338, by noon on the preceding Thursday. Unless otherwise announced, meetings are held in the Main Conference Room of the Courthouse.

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APPEARANCE OF INTERESTED CITIZENS

The Board sets aside a time at each regular meeting for comment by the public on subjects not appearing on the Agenda. Individuals may come forward and make any statement they wish, but not to exceed three (3) minutes in length, except as is required to give concise answers to questions from Board members. If the subject will require a lengthier presentation, or merits inclusion as an item on the Agenda of a future meeting, the Board shall schedule it accordingly.

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PUBLIC HEARING FORMAT  
Land Use

1. Chairman opens hearing.
  - a. Reading of hearing request or appeal statement.
  - b. Call for abstentions (ex parte contact or conflict of interest).
2. County staff presents background, summary and its recommendation (20-minute limit).
3. Applicant (Appellant) presents his/her case (15-minute limit).
4. Public testimony. Note that all testimony and evidence must be directed toward the applicable factual and legal criteria as identified in the record and/or during this hearing. Do not repeat previous testimony. Simply note for the record that you are in agreement with that earlier testimony. Your time to present testimony is limited. FAILURE TO RAISE AN ISSUE IN THIS HEARING, IN PERSON OR BY LETTER, OR FAILURE TO PROVIDE ADEQUATE SPECIFICITY TO AFFORD THE BOARD AN OPPORTUNITY TO RESPOND TO THE ISSUE MAY PRECLUDE LATER APPEAL TO LUBA ON THAT ISSUE.
  - a. Individuals in favor of the application or appeal.
  - b. Individuals against the application or appeal. At the discretion of the Chairman, an attorney, consultant, or other designated representative of two or more individuals may be allowed the combined time for each represented individual who does not speak, not to exceed 20 minutes. The Chairman may require proof of designation.
5. Rebuttal by Applicant (Appellant) (10-minute limit).
6. Questions from Board (discussion limited to individuals questioned by the Board).
  - a. Staff.
  - b. Applicant (Appellant).
  - c. Individuals testifying.
7. Chairman closes hearing and announces closing of Record.
8. Chairman announces date for deliberation and decision.
9. The Board's decision is deemed the final decision of Polk County. It may be appealed to LUBA within 21 days of its issuance in written form. The address and phone number of LUBA may be obtained from the Polk County Community Development Department and will also appear on the Notice of Decision which will be mailed to all persons who testify, submit comments, or print their name and address on the hearing attendance sheet at the back of the hearing room.

**POLK COUNTY BOARD OF COMMISSIONERS**  
**MINUTES September 4, 2024**

**1. CALL TO ORDER & ATTENDANCE**

At 9:00 a.m., Commissioner Pope declared the meeting of the Polk County Board of Commissioners to be in session. Commissioner Mordhorst and Commissioner Gordon were present.

Staff present: Greg Hansen, Administrative Officer  
Morgan Smith, County Counsel  
Matt Hawkins, Administrative Services Director

**2. ANNOUNCEMENTS**

Regular meetings of the Board of Commissioners are held on Tuesday and Wednesday each week. Each meeting is held in the Courthouse Conference Room, 850 Main Street, Dallas, Oregon. Each meeting begins at 9:00 a.m. and is conducted according to a prepared agenda that lists the principle subjects anticipated to be considered. Pursuant to ORS 192.640, The Board may consider and take action on subjects that are not listed on the agenda. The Board also holds a department staff meeting at 9:00 a.m. on every Monday in the Commissioners Conference Room at 850 Main Street, Dallas, Oregon.

The Grand Ronde Sanitary District Board is meeting on September 18, 2024 at 9:15 a.m. The meeting will take place in the Polk County Courthouse, 850 Main Street, Dallas, OR, 97338.

**3. COMMENTS**

None

**4. APPROVAL OF AGENDA**

**MOTION: COMMISSIONER MORDHORST MOVED, COMMISSIONER GORDON SECONDED, TO APPROVE THE AGENDA.**

**MOTION PASSED BY UNANIMOUS VOTE OF THE BOARD.**

**5. APPROVAL OF MINUTES OF August 21, 2024**

**MOTION: COMMISSIONER GORDON MOVED, COMMISSIONER MORDHORST SECONDED, TO APPROVE THE MINUTES OF August 21, 2024.**

**MOTION PASSED BY UNANIMOUS VOTE OF THE BOARD.**

**6. APPROVAL OF CONSENT CALENDAR**

**MOTION: COMMISSIONER MORDHORST MOVED, COMMISSIONER GORDON SECONDED, TO APPROVE THE CONSENT CALENDAR.**

**MOTION PASSED BY UNANIMOUS VOTE OF THE BOARD.**

**7. PROCLAMATION NO. 24-04 IN THE MATTER OF VOTERS REGISTRATION**

Commissioner Gordon dedicated this to his grandmother, who was born in 1911, and then read aloud Proclamation No. 24-04 for the record. All Commissioners signed the proclamation.

The following items were approved by Motion under **5. APPROVAL OF CONSENT CALENDAR:**

- a) Polk County Ordinance No. 24-05, In the matter of PA 24-01 & ZC 24-01  
(Sidney Mulder, Planning Manager)
- b) Polk County Resolution No. 24-10, In the matter of adopting the updated Polk County  
Multi-Jurisdictional Natural Hazard Mitigation Plan  
(Eric Knudson, Senior Planner)
- c) Declaring Surplus Property  
(Todd Whitaker, Public Works Director)

There no need for an executive session and before Commissioner Pope adjourned the meeting he wanted to state on the record that there was another fatality on HWY 22 yesterday and the he wanted to share the Boards frustration with how long it is taking to make a safer intersection at HWY 22 and 51. Commissioner Mordhorst stated that they are moving forward with ODOT and they are close to moving into the design acceptance phase. He also shared his frustrations with having to follow all the legalities and necessary steps that they have to follow in order to get this done. Commissioner Mordhorst urged the public to send letters and emails to Washington D.C. and to their State Representatives and Senators.

Commissioner Pope then adjourned the meeting at 9:07 a.m.

**POLK COUNTY BOARD OF COMMISSIONERS**

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Craig Pope, Chair

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Jeremy Gordon, Commissioner

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Lyle Mordhorst, Commissioner



**MEMORANDUM**

**TO:** Board of Commissioners  
**FROM:** Matt Hawkins, Admin. Services Director  
**DATE:** September 6, 2024  
**SUBJECT:** Reclassification of a Community Resource Connector II

**Wednesday – September 11, 2024 (5 minutes)**

**RECOMMENDATION:**

The Board of Commissioners approve the reclassification of a Community Resource Connector II.

**ISSUE:**

Shall the Board approve the reclassifications?

**DISCUSSION:**

It is recommended that Edgar Hernandez in the Family and Community Outreach department be reclassified from a Community Resource Connector II to the Lead Community Resource Connector. Recently the Lead Community Resource Connector was promoted to a new position and Edgar has taken on the duties of the Lead Community Resource Connector. Thus, the reason we are requesting this reclassification for Edgar.

Edgar is currently at step 4 of the Community Resource Connector II position which is \$4,049 monthly. If the reclassification is approved, he will move to step 4 of the Lead Community Resource Connector position which is \$4,211.

Should the reclassification be approved it would be effective October 1, 2024.

**FISCAL IMPACT:**

This reclassification will have an impact on the budget for FY 24-25 of approximately \$3,000 including PERS contribution should it be for 12 months.



**MEMORANDUM**

**TO:** Board of Commissioners  
**FROM:** Matt Hawkins, Admin. Services Director  
**DATE:** September 6, 2024  
**SUBJECT:** Reclassification of a Health Services Administrative Specialist I

**Wednesday – September 11, 2024 (5 minutes)**

**RECOMMENDATION:**

The Board of Commissioners approve the reclassification of a Health Services Administrative Specialist I.

**ISSUE:**

Shall the Board approve the reclassifications?

**DISCUSSION:**

It is recommended that Marsha Ragan in the Health Services Department be reclassified from a Health Services Administrative Specialist I to a Health Services Administrative Specialist II. Marsha has been working out of class for many months and performed at a very high level. It is now time to make her out of class work permanent by reclassifying her to the new position of an HS Administrative Specialist II.

Marsha is currently at step 3 of the Health Services Administrative Specialist I position which is \$3,861 monthly. If the reclassification is approved, she will move to step 2 of the Health Services Administrative Specialist II position which is \$4,113.

Should the reclassification be approved it would be effective September 1, 2024.

**FISCAL IMPACT:**

This reclassification will have an impact on the budget for FY 24-25 of approximately \$4,000 including PERS contribution should it be for 12 months.



# Contract Review Sheet

Staff Contact: \_\_\_\_\_ Department: \_\_\_\_\_

Title: \_\_\_\_\_ Consent Calendar Date: \_\_\_\_\_

Contractor Name: \_\_\_\_\_

Address: \_\_\_\_\_

City, State, Zip: \_\_\_\_\_

Effective Dates - From: \_\_\_\_\_ Thru: \_\_\_\_\_

Contract Amount: \$ \_\_\_\_\_

Source Selection:

Sole Source

Personal Services

Competitive Quotes

Special/Exempt Procurement (explain below):

Formal Bid

Request for Proposals

Background/Discussion:

Fiscal Impact:

Recommendation:

Copies of signed contract should be sent to the following:

Name: \_\_\_\_\_ E-mail: \_\_\_\_\_

Name: \_\_\_\_\_ E-mail: \_\_\_\_\_

Name: \_\_\_\_\_ E-mail: \_\_\_\_\_

**BHD-25-24 GRANT AGREEMENT**  
**CRIMINAL JUSTICE COMMISSION**  
**BEHAVIORAL HEALTH DEFLECTION GRANT PROGRAM**

**Agreement Number:** BHD-25-24

This grant agreement (“Agreement”), dated as of the date the Agreement is fully executed, is between the State of Oregon, acting through its Oregon Criminal Justice Commission (“CJC” or “State”), and **Polk County** (“Recipient”). This Agreement becomes effective only when fully signed and approved as required by applicable law (“Effective Date”). Unless extended or terminated earlier in accordance with its terms, this Agreement shall expire **December 31, 2025**.

This Agreement consists of this document and the following documents, all of which are attached hereto and incorporated herein by reference:

**Exhibit A:** Contact Information, Project Description and Reporting Requirements

**Exhibit B:** Subagreement Insurance Requirements

In the event of a conflict between two or more of the documents comprising this Agreement, the language in the document with the highest precedent shall control. The precedence each of the following documents comprising this Agreement is as follows, listed from highest precedence to lowest precedence: this Agreement without Exhibits; Exhibit A; Exhibit B.

**SECTION 1: KEY GRANT TERMS**

The following capitalized terms have the meanings assigned below.

**Grant Amount:** \$239,314.00

**Completion Deadline:** June 30, 2025

**SECTION 2: FINANCIAL ASSISTANCE**

CJC shall provide Recipient, and Recipient shall accept from CJC, a grant (the “Grant”) in an aggregate amount not to exceed the Grant Amount.

CJC’s obligations are subject to the receipt of the following items, in form and substance satisfactory to CJC and its Counsel:

- (1) This Agreement duly signed by an authorized officer of Recipient; and
- (2) Such other certificates, documents, and information as CJC may reasonably require.

**SECTION 3: DISBURSEMENT**

A. Disbursement. Upon execution of this Agreement and satisfaction of all conditions precedent, CJC shall disburse Grant funds to Recipient in two equal installments of \$119,657.00 each, the first installment by October 5, 2024, and the second installment by March 31, 2025.

B. Conditions to Disbursements. CJC has no obligation to disburse Grant funds unless:

- (1) CJC has sufficient funds currently available for this Agreement; and



(2) CJC has received appropriations, limitations, allotments or other expenditure authority sufficient to allow CJC, in the exercise of its reasonable administrative discretion, to make payment. Notwithstanding any other provision of this Agreement, CJC's determination not to disburse funds due to lack of appropriations, allotments, or expenditure authority will not constitute an Event of Default.

#### SECTION 4: USE OF GRANT

As more particularly described in Exhibit A, Recipient will use the Grant to fund Behavioral Health Deflection programs (the "Project"). Recipient may only use Grant funds to cover reasonable and necessary Project costs incurred by Recipient during the period beginning July 1, 2024, and ending on the Completion Deadline, and that are allocable thereto and that are not excluded by CJC as set forth in the *Grant Administration Guide* published by CJC ("Eligible Costs"). Recipient must expend the entire Grant Amount on Eligible Costs. Such expenditure must occur no later than the Completion Deadline.

#### SECTION 5: REPRESENTATIONS AND WARRANTIES OF RECIPIENT

Recipient represents and warrants to CJC as follows:

A. Organization and Authority.

- (1) Recipient is validly organized and existing under the laws of the State of Oregon.
- (2) Recipient has all necessary right, power and authority under its organizational documents and applicable Oregon law to execute and deliver this Agreement and incur and perform its obligations under this Agreement.
- (3) This Agreement has been authorized by an ordinance, order or resolution of Recipient's governing body if required by its organizational documents or applicable law.
- (4) This Agreement has been duly executed by Recipient, and when executed by CJC, is legal, valid and binding, and enforceable in accordance with this Agreement's terms.

B. Full Disclosure. Recipient has disclosed in writing to CJC all facts that materially adversely affect the Grant, or the ability of Recipient to perform all obligations required by this Agreement. Recipient has made no false statements of fact, nor omitted information necessary to prevent any statements from being misleading. The information contained in this Agreement, including Exhibit A, is true and accurate in all respects.

C. Pending Litigation. Recipient has disclosed in writing to CJC all proceedings pending (or to the knowledge of Recipient, threatened) against or affecting Recipient, in any court or before any governmental authority or arbitration board or tribunal, that, if adversely determined, would materially adversely affect the Grant or the ability of Recipient to perform all obligations required by this Agreement.

#### SECTION 6: COVENANTS OF RECIPIENT

Recipient covenants as follows:

A. Notice of Adverse Change. Recipient shall promptly notify CJC of any adverse change in the activities, prospects or condition (financial or otherwise) of Recipient related to the ability of Recipient to perform all obligations required by this Agreement.

**B. Compliance with Laws.**

- (1) Recipient will comply with the requirements of all applicable federal, state and local laws, rules, regulations, and orders of any governmental authority, except to the extent an order of a governmental authority is contested in good faith and by proper proceedings.
- (2) Recipient is responsible for all federal or state tax laws applicable to its implementation of the Project and its use of the Grant or compensation or payments paid with the Grant.

**C. Worker's Compensation Insurance.** All employers, including Recipient, that employ subject workers who provide services in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage, unless such employers are exempt under ORS 656.126. Employer's liability insurance with coverage limits of not less than \$500,000 must be included. Recipient shall ensure that each of its subgrantees and subrecipients complies with these requirements.

**D. Return of Unexpended Grant Funds.** Recipient must return to CJC any Grant funds not expended by the Completion Deadline.

**E. Financial Records.** Recipient will cooperate with CJC to provide all necessary financial information and records to comply with reporting required in Exhibit A. Recipient will keep proper books of account and records on all activities associated with the Grant, including, but not limited to, invoices, cancelled checks, payroll records, instruments, agreements and other supporting financial records documenting the use of the Grant. Recipient will maintain these books of account and records in accordance with generally accepted accounting principles. Recipient will retain these books of account and records until six years after the Completion Deadline or the date that all disputes, if any, arising under this Agreement have been resolved, whichever is later.

**F. Inspection.** Recipient shall permit CJC, and any party designated by CJC, the Oregon Secretary of State's Office, and their duly authorized representatives, at any reasonable time, to inspect and make copies of any accounts, books and records related to the administration of this Agreement. Recipient shall supply any Agreement-related information as CJC may reasonably require, with the exception of materials protected by attorney-client privilege or the attorney work product doctrine. Further, Recipient shall neither supply, nor permit inspection of, (1) any information protected by HIPAA, ORS 192.553, or related regulations or rules, or (2) the personnel files of Recipient's employees, absent appropriate confidentiality protections, including exemption from disclosure under the Public Records Law, ORS ch. 192.

**G. Notice of Event of Default.** Recipient shall give CJC prompt written notice of any Event of Default, or any circumstance that with notice or the lapse of time, or both, may become an Event of Default, as soon as Recipient becomes aware of its existence or reasonably believes an Event of Default is likely.

**H. Recipient Subagreements and Procurements.**

- (1) **Subagreements.** Recipient may enter into agreements with subgrantees and subrecipients ("Subagreements") for implementation of portions of the Project. Recipient shall notify CJC of each Subagreement and provide CJC with a copy of a Subagreement upon request by CJC. Any material breach of a term or condition of a Subagreement relating to Grant Funds provided under this Agreement must be reported by Recipient to CJC within ten (10) days of its discovery.

(2) Subagreement indemnity; insurance.

***Each Recipient Subagreement shall require each other party to such Subagreement, that is not a unit of local government as defined in ORS 190.003, or a unit of state government as defined in ORS 174.111, to indemnify, defend, save and hold harmless the CJC and its officers, employees and agents from and against any and all claims, actions, liabilities, damages, losses, or expenses, including attorneys' fees, arising from a tort, as now or hereafter defined in ORS 30.260, caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of the other party to the Subagreement or any of such party's officers, agents, employees or contractors ("Claims"). It is the specific intention of the Parties that CJC shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the CJC, be indemnified by the other party to the Subagreement from and against any and all Claims.***

Any such indemnification shall also provide that neither the other party to such Subagreement nor any attorney engaged by such party shall defend a Claim in the name of the State of Oregon or an agency of the State of Oregon, nor purport to act as legal representative of the State of Oregon or any of its agencies, without the prior written consent of the Oregon Attorney General. The State may, at any time at its election, assume its own defense and settlement in the event that it determines that the other party to such Subagreement is prohibited from defending State or that such other party is not adequately defending State's interests, or that an important governmental principle is at issue or that it is in the best interests of State to do so. State reserves all rights to pursue claims it may have against the other party to such Subagreement if State elects to assume its own defense.

Recipient shall require each other party to each of its Subagreements, that is not a unit of local government as defined in ORS 190.003, or a unit of state government as defined in ORS 174.111, to obtain and maintain insurance of the types and in the amounts provided in Exhibit B to this Agreement.

(3) Procurements.

- i. Recipient shall make purchases of any equipment, materials, or services for the Project under procedures that comply with Oregon law, including all applicable provisions of the Oregon Public Contracting Code and rules.
- ii. All procurement transactions, whether negotiated or competitively bid and without regard to dollar value, shall be conducted in a manner so as to provide maximum open and free competition. Justification must be provided to CJC for any non-competitive or sole-source procurement. Justification should include a description of the equipment, materials or services procured, an explanation of why it was necessary to procure noncompetitively, time constraints and any other pertinent information. All sole source procurements in excess of \$100,000 must receive prior written approval from CJC in addition to any other approvals required by law applicable to Recipient. Intergovernmental agreements between units of government are excluded from this requirement to obtain CJC approval of sole source procurements.

- iii. Recipient shall be alert to organizational conflicts of interest or non-competitive practices among vendors that may restrict or eliminate competition or otherwise restrain trade. A vendor that develops or drafts specifications, requirements, statements of work, or Requests for Proposals (RFP) for a proposed procurement shall be excluded from bidding or submitting a proposal to compete for the award in such procurement. A request for a waiver of this restriction must be submitted to and approved by CJC in advance and in writing.

## SECTION 7: DEFAULT

- A. Recipient Default. Any of the following constitutes an “Event of Default” of Recipient:
  - (1) Misleading Statement. Any materially false or misleading representation is made by Recipient or a person authorized to speak on its behalf, in this Agreement or in any document provided by Recipient related to this Grant.
  - (2) Failure to Perform. Recipient fails to perform, observe or discharge any of its covenants, agreements, or obligations under this Agreement, other than those referred to in subsection A of this section, and that failure continues for a period of 30 calendar days after written notice specifying such failure is given to Recipient by CJC. CJC may agree in writing to an extension of time if it determines Recipient instituted and has diligently pursued corrective action. Acts or omissions of subgrantees shall not constitute an Event of Default unless ratified or knowingly induced by Recipient.
- B. CJC Default. CJC will be in default under this Agreement if it fails to perform, observe or discharge any of its covenants, agreements, or obligations under this Agreement.

## SECTION 8: REMEDIES

- A. CJC Remedies. Upon the occurrence of an Event of Default, CJC may pursue any remedies available under this Agreement, at law or in equity. Such remedies include, but are not limited to, termination of CJC’s obligations to make the Grant or further disbursements, return of all or a portion of the Grant Amount, payment of interest earned on the Grant Amount, and declaration of ineligibility for the receipt of future awards from CJC. If, because of an Event of Default, CJC demands return of all or a portion of the Grant Amount or payment of interest earned on the Grant Amount, Recipient shall pay the amount upon CJC’s demand.  
  
CJC may also recover all or a portion of any amount due from Recipient by deducting that amount from any payment due to Recipient from the State of Oregon under any other contract or agreement, present or future, unless prohibited by state or federal law.  
  
CJC reserves the right to turn over any unpaid debt under this Section 8 to the Oregon Department of Revenue or a collection agency and may publicly report any delinquency or default. These remedies are cumulative and not exclusive of any other remedies provided by law.
- B. Recipient Remedies. In the event of default by CJC, Recipient’s sole remedy will be for disbursement of Grant funds for Eligible Costs of the Project, not to exceed the total Grant Amount, less any claims CJC has against Recipient.

## SECTION 9: TERMINATION

- A. Mutual Termination. This Agreement may be terminated at any time by mutual written consent of the parties.
- B. Termination by CJC. In addition to terminating this Agreement upon an Event of Default as provided in Section 8, CJC may terminate this Agreement with notice to Recipient under any of the following circumstances:
- (1) If CJC anticipates a shortfall in applicable revenues or CJC fails to receive sufficient funding, appropriations or other expenditure authorizations to allow CJC, in its reasonable discretion, to continue making payments under this Agreement.
  - (2) There is a change in federal or state laws, rules, regulations or guidelines so that the uses of the Grant are no longer eligible for funding.
- C. Termination by Recipient. Recipient may terminate this Agreement with notice to CJC under any of the following circumstances:
- (1) After conferring with CJC, Recipient has determined that the requisite local funding to continue the Project is unavailable to Recipient or Recipient is unable to continue implementation of the Project as a result of circumstances not reasonably anticipated by Recipient at the time it executed this Agreement and that are beyond Recipient's reasonable control.
  - (2) There is a change in federal or state laws, rules, regulations or guidelines so that the uses of the Grant are no longer eligible for funding.

## SECTION 10: MISCELLANEOUS

- A. Contribution.
- (1) If any third party makes any claim or brings any action, suit or proceeding alleging a tort as now or hereafter defined in ORS 30.260 ("Third Party Claim") against CJC or Recipient relating to this Agreement or the Project and with respect to which the other Party may have liability, the notified Party must promptly notify the other Party in writing of the Third Party Claim and deliver to the other Party a copy of the claim, process, and all legal pleadings with respect to the Third Party Claim. Each Party is entitled to participate in the defense of a Third Party Claim, and to defend a Third Party Claim with counsel of its own choosing. Receipt by a Party of the notice and copies required in this paragraph and meaningful opportunity for the Party to participate in the investigation, defense and settlement of the Third Party Claim with counsel of its own choosing are conditions precedent to that Party's contribution obligation with respect to the Third Party Claim.
  - (2) With respect to a Third Party Claim for which CJC is jointly liable with Recipient (or would be if joined in the Third Party Claim), CJC shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by Recipient in such proportion as is appropriate to reflect the relative fault of the CJC on the one hand and of Recipient on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of CJC on the one hand and of Recipient on the other

hand shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. CJC's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law, including the Oregon Tort Claims Act, ORS 30.260 to 30.300, if CJC had sole liability in the proceeding.

- (3) With respect to a Third Party Claim for which Recipient is jointly liable with CJC (or would be if joined in the Third Party Claim), Recipient shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by CJC in such proportion as is appropriate to reflect the relative fault of Recipient on the one hand and of CJC on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of Recipient on the one hand and of CJC on the other hand shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. Recipient's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law, including the Oregon Tort Claims Act, ORS 30.260 to 30.300, if it had sole liability in the proceeding.

- B. No Implied Waiver. No failure or delay on the part of CJC to exercise any right, power, or privilege under this Agreement will operate as a waiver thereof, nor will any single or partial exercise of any right, power, or privilege under this Agreement preclude any other or further exercise thereof or the exercise of any other such right, power, or privilege.
- C. Choice of Law; Designation of Forum; Federal Forum. The laws of the State of Oregon (without giving effect to its conflicts of law principles) govern all matters arising out of or relating to this Agreement, including, without limitation, its validity, interpretation, construction, performance, and enforcement.

Any party bringing a legal action or proceeding against any other party arising out of or relating to this Agreement shall bring the legal action or proceeding in the Circuit Court of the State of Oregon for Marion County (unless Oregon law requires that it be brought and conducted in another county). Each party hereby consents to the exclusive jurisdiction of such court, waives any objection to venue, and waives any claim that such forum is an inconvenient forum.

Notwithstanding the prior paragraph, if a claim must be brought in a federal forum, then it must be brought and adjudicated solely and exclusively within the United States District Court for the District of Oregon. This paragraph applies to a claim brought against the State of Oregon only to the extent Congress has appropriately abrogated the State of Oregon's sovereign immunity and is not consent by the State of Oregon to be sued in federal court. This paragraph is also not a waiver by the State of Oregon of any form of defense or immunity, including but not limited to sovereign immunity and immunity based on the Eleventh Amendment to the Constitution of the United States.

- D. Notices and Communication. Except as otherwise expressly provided in this Agreement, any communication between the parties or notices required or permitted must be given in writing by personal delivery, email, or by mailing the same, postage prepaid, to Recipient or CJC at the

addresses listed in Exhibit A, or to such other persons or addresses that either party may subsequently indicate pursuant to this Section.

Any communication or notice by personal delivery will be deemed effective when actually delivered to the addressee. Any communication or notice so addressed and mailed will be deemed to be received and effective five (5) days after mailing. Any communication or notice given by email becomes effective 1) upon the sender's receipt of confirmation generated by the recipient's email system that the notice has been received by the recipient's email system or 2) the recipient's confirmation of receipt, whichever is earlier. Notwithstanding this provision, the following notices may not be given by email: notice of default or notice of termination.

- E. Amendments. This Agreement may not be altered, modified, supplemented, or amended in any manner except by written instrument signed by both parties.
- F. Work Product. To the extent it has the necessary rights, Recipient hereby grants to CJC a non-exclusive, irrevocable, perpetual, royalty-free, license to use, reproduce, prepare derivative works based upon, distribute copies of, perform and display for governmental purposes, all documents, reports and works of authorship created, produced or obtained as part of or in connection with the Project ("Work Product"). Recipient shall deliver copies of Work Product to CJC upon request. In addition, if applicable law requires that CJC own such intellectual property, then Recipient shall execute such further documents and instruments as CJC may reasonably request in order to assign ownership in the intellectual property to CJC.
- G. Independent Contractor. Recipient shall implement the Project as an independent contractor and not as an agent or employee of CJC. Recipient has no right or authority to incur or create any obligation for or legally bind CJC in any way. CJC cannot and will not control the means or manner by which Recipient implements the Project, except as specifically set forth in this Agreement. Recipient is responsible for determining the appropriate means and manner of implementing the Project. Recipient acknowledges and agrees that Recipient is not an "officer", "employee", or "agent" of CJC, as those terms are used in ORS 30.265, and shall not make representations to third parties to the contrary.
- H. Severability. If any provision of this Agreement will be held invalid or unenforceable by any court of competent jurisdiction, such holding will not invalidate or render unenforceable any other provision.
- I. Successors and Assigns. This Agreement will be binding upon and inure to the benefit of CJC, Recipient, and their respective successors and assigns, except that Recipient may not assign or transfer its rights, obligations or any interest without the prior written consent of CJC.
- J. Counterparts. This Agreement may be signed in several counterparts, each of which is an original and all of which constitute one and the same instrument.
- K. Integration. This Agreement (including all exhibits, schedules or attachments) constitutes the entire agreement between the parties on the subject matter. There are no unspecified understandings, agreements or representations, oral or written, regarding this Agreement.
- L. No Third-Party Beneficiaries. CJC and Recipient are the only parties to this Agreement and are the only parties entitled to enforce the terms of this Agreement. Nothing in this Agreement gives or provides, or is intended to give or provide, to third persons any benefit or right not held by or made generally available to the public, whether directly, indirectly or otherwise, unless such third persons are individually identified by name herein and expressly described as intended

beneficiaries of the terms of this Agreement. Notwithstanding the foregoing, CJC acknowledges, agrees, and intends that Recipient will expend the Grant consistent with the Project.

- M. Survival. The following provisions, including this one, survive expiration or termination of this Agreement: Sections 6.D through 6.F, 7, 8, 10.A, 10.C, 10.D, and 10.O.
- N. Time is of the Essence. The parties agree that time is of the essence under this Agreement.
- O. Public Records. CJC's obligations under this Agreement are subject to the Oregon Public Records Laws.

***The signatures of the parties follow on the next page.***



Recipient, by its signature below, acknowledges that it has read this Agreement, understands it, and agrees to be bound by its terms and conditions.



**STATE OF OREGON**  
acting by and through its  
Criminal Justice Commission

**POLK COUNTY**

By: \_\_\_\_\_  
Ken Sanchagrin, Executive Director

By: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Approved as to Legal Sufficiency in accordance with ORS 291.047:

Approved by email dated 5/9/24

Samuel B. Zeigler, Senior Assistant Attorney General

**EXHIBIT A:**  
**CONTACT INFORMATION, PROJECT DESCRIPTION AND REPORTING REQUIREMENTS**

**Contact Information:**

**CJC**

State of Oregon, acting by and through  
its Criminal Justice Commission

**Recipient**

Polk County  
820 SW Church St., Ste. 100  
Dallas, OR 97338

**Grant Administrator:** Kaysea Beck

**Contact:** Jodi Merritt

**Telephone:** (503) 602-0640

**Telephone:** (541) 282-4457

**Email:** kaysea.beck@cjc.oregon.gov

**Email:** merritt.jodi@co.polk.or.us

**Project Description:**

Pursuant to House Bill 4002 (2024), the Oregon Behavioral Health Deflection Program supports Oregon’s federally recognized tribal governments and counties in the development and operation of “deflection programs,” defined as a collaborative program between law enforcement agencies and behavioral health entities that assist individuals who may have substance use disorder, another behavioral health disorder or co-occurring disorders, to create community-based pathways to treatment, recovery support services, housing, case management or other services.

The purposes of CJC’s Behavioral Health Deflection Program include:

- Addressing the need for more deflection programs to assist individuals whose behavioral health conditions, including substance use disorder, lead to interactions with law enforcement, incarceration, conviction and other engagement with the criminal justice system; and
- Tracking and reporting data concerning deflection program outcomes in order to determine the best practices for deflection programs in Oregon.

The Grant has been awarded as an operational grant and requires the Recipient to:

- Have a program coordinator responsible for the duties outlined in HB 4002, Section 76(5)(b);
- Involve the partners described in HB 4002, Section 76(4)(c); and
- Comply with the CJC’s data tracking and reporting requirements.

Recipient shall use Grant funds to support the following program(s), its adherence to the requirements set forth in HB 4002, and its efforts toward the goals stated above: Deflection program following an officer intervention model.

**Project Period:**

Start Date: July 1, 2024

End Date: June 30, 2025

**Reporting Requirements:**Schedule

Recipient must submit to CJC quarterly expenditure reports, beginning October 25, 2024, until the earlier of thirty (30) days after Grant funds are fully expended or thirty (30) days after the Completion Date.

Recipient must submit to CJC's research partners data reports on a monthly, rolling basis, beginning no earlier than September 1, 2024, until the earlier of thirty (30) days after Grant funds are fully expended or thirty (30) days after the Completion Date.

Recipient must submit to CJC semi-annual reports on January 25 and July 25 of each year of the Project Period.

Recipient must receive prior approval from CJC to submit any required report after its due date.

Report Contents

Required reports must be submitted through CJC's grant administration system and the Research Electronic Data Capture (REDCap) data collection portal, respectively, and contain all the requested information.

1. CJC Quarterly Expenditure Report (<https://cjc-grants.smapply.io>)
  - a. Grant Funds spent during the prior calendar quarter, with brief description; and
  - b. Any quarterly information on the Project as CJC may reasonably request.
2. CJC Semi-Annual Progress Report (<https://cjc-grants.smapply.io>)
  - a. In a narrative fashion, Recipient's progress in meeting the Project's objectives during the six-month period preceding the report date, and remedial actions necessary if those objectives have not been met in any respect.
3. REDCap Monthly Data Report
  - a. Deidentified data on program participants enrolled, engaged, or served during the prior calendar month; and
  - b. Any monthly information on the Project as CJC may reasonably request.

## **EXHIBIT B: SUBAGREEMENT INSURANCE REQUIREMENTS**

Recipient shall require each of its first-tier contractors that are not units of local government as defined in ORS 190.003 (each a “Contractor”) to obtain, at the Contractor’s expense, the insurance specified in this Exhibit B before performing under this Agreement and to maintain it in full force and at the Contractor’s own expense throughout the duration of this Agreement, as required by any extended reporting period or continuous claims made coverage requirements, and all warranty periods that apply. Contractors shall obtain the following insurance from insurance companies or entities that are authorized to transact the business of insurance and issue coverage in the State of Oregon and that are acceptable to CJC. Coverage shall be primary and non-contributory with any other insurance and self-insurance, with the exception of Professional Liability and Workers’ Compensation. Contractors shall pay for all deductibles, self-insured retention and self-insurance, if any. Recipient shall require and ensure that each of its Contractors complies with these requirements and maintains insurance policies with responsible insurers, insuring against liability, in the coverages and amounts identified below.

### **WORKERS’ COMPENSATION & EMPLOYERS’ LIABILITY:**

All employers, including Contractors, that employ subject workers, as defined in ORS 656.027, shall comply with ORS 656.017 and provide workers' compensation insurance coverage for those workers, unless they meet the requirement for an exemption under ORS 656.126(2). Recipient shall require and ensure that each of its Contractors complies with these requirements. If a Contractor is a subject employer, as defined in ORS 656.023, the Contractor shall also obtain employers' liability insurance coverage with limits not less than \$500,000 each accident. If the Contractor is an employer subject to any other state’s workers’ compensation law, Contractor shall provide workers’ compensation insurance coverage for its employees as required by applicable workers’ compensation laws including employers’ liability insurance coverage with limits not less than \$500,000 and shall require and ensure that each of its out-of-state subcontractors complies with these requirements.

As applicable, each Contractor shall obtain coverage to discharge all responsibilities and liabilities that arise out of or relate to the Jones Act with limits of no less than \$5,000,000 and/or the Longshoremen’s and Harbor Workers’ Compensation Act.

### **COMMERCIAL GENERAL LIABILITY:**

☒ **Required**    ☐ **Not required**

Commercial General Liability Insurance covering bodily injury and property damage in a form and with coverage that are satisfactory to the State. This insurance shall include personal and advertising injury liability, products and completed operations, contractual liability coverage for the indemnity provided under this Agreement, and have no limitation of coverage to designated premises, project or operation. Coverage shall be written on an occurrence basis in an amount of not less than \$1,000,000 per occurrence. Annual aggregate limit shall not be less than \$2,000,000.

### **AUTOMOBILE LIABILITY INSURANCE:**

☒ **Required**   ☐ **Not required**

Automobile Liability Insurance covering each Contractor's business use including coverage for all owned, non-owned, or hired vehicles with a combined single limit of not less than \$1,000,000 for bodily injury and property damage. This coverage may be written in combination with the Commercial General Liability Insurance (with separate limits for Commercial General Liability and Automobile Liability). Use of personal automobile liability insurance coverage may be acceptable if evidence that the policy includes a business use endorsement is provided.

#### **EXCESS/UMBRELLA INSURANCE:**

Umbrella insurance coverage in the sum of \$2,000,000 shall be provided and will apply over all liability policies, without exception, including but not limited to Commercial General Liability, Automobile Liability, and Employers' Liability coverage. The amounts of insurance for the insurance required under this Agreement, including this Excess/Umbrella insurance requirement, may be met by the Contractor obtaining coverage for the limits specified under each type of required insurance or by any combination of underlying, excess and umbrella limits so long as the total amount of insurance is not less than the limits specified for each type of required insurance added to the limit for this excess/umbrella insurance requirement.

#### **ADDITIONAL INSURED:**

All liability insurance, except for Workers' Compensation, Professional Liability, and Network Security and Privacy Liability (if applicable), required under this Agreement must include an additional insured endorsement specifying the State of Oregon, its officers, employees and agents as Additional Insureds, including additional insured status with respect to liability arising out of ongoing operations and completed operations, but only with respect to a Contractor's activities to be performed under this Agreement. Coverage shall be primary and non-contributory with any other insurance and self-insurance. The Additional Insured endorsement with respect to liability arising out of your ongoing operations must be on ISO Form CG 20 10 07 04 or equivalent and the Additional Insured endorsement with respect to completed operations must be on ISO form CG 20 37 07 04 or equivalent.

#### **WAIVER OF SUBROGATION:**

Each Contractor shall waive rights of subrogation which the Contractor or any insurer of the Contractor may acquire against the CJC or State of Oregon by virtue of the payment of any loss. Each Contractor will obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the CJC has received a waiver of subrogation endorsement from the Contractor or the Contractor's insurer(s).

#### **CONTINUOUS CLAIMS MADE COVERAGE:**

If any of the required liability insurance is on a claims made basis and does not include an extended reporting period of at least 24 months, then the Contractor shall maintain continuous claims made liability coverage, provided the effective date of the continuous claims made coverage is on or before the effective date of this Agreement, for a minimum of 24 months following the later of:

- (i) The Contractor's completion and CJC's acceptance of all Services required under the Agreement, or
- (i) CJC or Recipient termination of this Agreement, or
- (ii) The expiration of all warranty periods provided under this Agreement.

**CERTIFICATE(S) AND PROOF OF INSURANCE:**

Upon request, each Contractor shall provide to CJC Certificate(s) of Insurance for all required insurance before delivering any Goods and performing any Services required under this Agreement. The Certificate(s) shall list the State of Oregon, its officers, employees and agents as a Certificate holder and as an endorsed Additional Insured. The Certificate(s) shall also include all required endorsements or copies of the applicable policy language effecting coverage required by this Agreement. If excess/umbrella insurance is used to meet the minimum insurance requirement, the Certificate of Insurance must include a list of all policies that fall under the excess/umbrella insurance. As proof of insurance CJC has the right to request copies of insurance policies and endorsements relating to the insurance requirements in this Agreement.

**NOTICE OF CHANGE OR CANCELLATION:**

Each Contractor or its insurer must provide at least 30 days' written notice to CJC before cancellation of, material change to, potential exhaustion of aggregate limits of, or non-renewal of the required insurance coverage(s).

**INSURANCE REQUIREMENT REVIEW:**

Recipient agrees to periodic review of insurance requirements by CJC under this Agreement and to provide updated requirements as mutually agreed upon by Recipient and CJC.

**STATE ACCEPTANCE:**

All insurance providers are subject to CJC acceptance. If requested by CJC, Recipient shall provide complete copies of insurance policies, endorsements, self-insurance documents and related insurance documents to CJC's representatives responsible for verification of the insurance coverages required under this Exhibit B.



# POLK COUNTY

POLK COUNTY COURTHOUSE ★ DALLAS, OREGON 97338  
(503) 623-9237

## COMMUNITY DEVELOPMENT

AUSTIN M'GUIGAN  
Director

### MEMORANDUM

**TO:** Board of Commissioners  
**FROM:** Hannah Brickner, Associate Planner  
Polk County Community Development  
**DATE:** September 5, 2024  
**SUBJECT:** Ratify the Hearings Officer's Decision on an Appeal; Planning File FORD 23-01

#### September 11, 2024 Consent Agenda

#### ISSUE:

Ratify the Hearings Officers final local decision on the appeal of Polk County Planning File FORD 23-01

#### RECOMMENDATION:

Staff recommends that the Board of Commissioners ratify the Hearings Officer's final local decision affirming, with amended conditions, the Planning Director's approval of Polk County Planning File FORD 23-01.

#### BACKGROUND:

On October 30, 2023, the applicant submitted a land use application to establish a dwelling (FORD 23-01) within the Farm/Forest (F/F) Zoning District under the small tract "template" dwelling criteria. The application also addresses the general and fire siting standards criteria, which is required for dwellings in the F/F zone. The application was deemed complete on April 26, 2024. The Planning Director found that the applicant met the applicable review and decision criteria and approved the application, subject to nine (9) conditions. On June 28, 2024, the Planning Director's decision was mailed to surrounding property owners pursuant to PCZO 111.240(A).

On July 10, 2024, the appellant filed a timely appeal for the Planning Director's decision. The appeal identified concerns primarily related to the proximity and impact of the proposed dwelling location on the neighboring property to the north/west, which the appellant owns. Specifically, the appellant identified concerns about the compliance of the proposed dwelling location with the general and fire siting standards, the risk of fire, the location of the fuel breaks, setbacks of the dwelling from the closest neighboring property, and the impact of the driveway extension on forestland.

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. A duly noticed public hearing before the Hearings Officer was conducted on August 13, 2024. An opportunity was provided for the Appellant, Applicant, and members of the public to submit oral and written testimony at the hearing. The Hearings Officer issued a final local decision affirming the Planning Directors decision on August 30, 2024, but modified Conditions of Approval No. 1 and 4. The Polk County Board of Commissioners shall ratify the final local decision issued by the Hearings Officer, pursuant to PCZO 111.280.

Upon adoption, Order Number 24-09 would become effective 21 days after the mailing of the decision.

**DISCUSSION / ALTERNATIVES:**

1. Adopt Order Number 24-09 ratifying the Hearings Officers final local decision affirming, with modifications, the Planning Directors approval of Polk County Planning Division file FORD 23-01; or
2. Other.

**FISCAL IMPACTS:**

No fiscal impacts to the County have been identified.

**ATTACHMENTS:**

Order Number 24-09

Exhibit A: Hearings Officer's Decision



**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 11<sup>th</sup> 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: \_\_\_\_\_

Second Reading: \_\_\_\_\_

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:**

<b>Area</b>	<b>Comprehensive Plan Designation</b>	<b>Zoning Designation</b>
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)**<sup>1</sup>

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

<sup>1</sup> 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 30<sup>th</sup>, 2024.

*Leslie Howell*

Leslie Howell

Polk County Hearings Officer