

Attention Property Owner: A land use proposal has been submitted for property near where you live or near property you own. State law requires that the county notify property owners within a certain distance from this property. The proposal and address of the property is described in the "Application" section below. The decision in this case does not directly affect the zoning or use of your property. If you object to the decision, refer to the "Appeal" section. If you have questions, contact the staff person listed at the end of this report.

**NOTICE OF DECISION
ADMINISTRATIVE REVIEW CASE NO. 19-011**

APPLICATION: Application of Margery Somers for an administrative review for a forest template dwelling on a 1.5 acre parcel in a TC (Timber Conservation) zone located in the 26,200 block of Sitkum Street SE, Lyons (T9S; R2E; Section 23CC; taxlot 200).

DECISION: The Planning Director for Marion County has **APPROVED** the above-described Administrative Review, subject to certain conditions.

EXPIRATION DATE: This decision is valid only when exercised by **July 1, 2023** unless an extension is granted. The effective period may be extended for one year subject to approval of an extension. Request for an extension must be submitted to the Planning Division prior to expiration of the approval (form available from the Planning Division).

WARNING: A decision approving the proposal is for land use purposes only. Due to septic, well and drainfield replacement areas, this parcel may not be able to support the proposal. To be sure the subject property can accommodate the proposed use the applicant should check with the Building Inspection Division, (503) 588-5147.

This decision does not include approval of a building permit.

CONDITIONS: The following conditions must be met before a building permit can be obtained or the approved use established:

1. The applicant shall obtain all permits, including subsurface sewage disposal, required by the Marion County Building Inspection Division.
2. Prior to issuance of any building permits, the applicant shall sign and submit a Farm/Forest Declaratory Statement to the Planning Division (enclosed). This statement shall be recorded by the applicant with the Marion County Clerk after it has been reviewed and signed by the Planning Director.
3. The proposed dwelling shall be located substantially as indicated on the site plan submitted with the application. Minor variations may be allowed upon review and approval by the Planning Director.
4. Prior to issuance of building permits, the applicant shall provide evidence that the domestic water supply.
5. The owners shall maintain a fire hazard reduction plan as recommended by the Oregon Department of Forestry.
6. The proposed dwelling shall meet the fire protection and hazard reductions as listed in MCC 17.138.060 (G).
7. All structures, including the dwelling, shall be located within 300 feet of Sitkum Road, no closer than 20 feet from any property line, and no closer than 30 feet to the annual higher water mark of the North Santiam River.
8. The dwelling shall be located outside the 100 year floodplain of the North Santiam River.

OTHER PERMITS, FEES AND RESTRICTIONS: This approval does not remove or affect any covenants or restrictions imposed on the subject property by deed or other instrument. The proposed use may require permits and/or fees from other local, state or federal agencies. This decision does not take the place of, or relieve the responsibility for, obtaining other permits or satisfying any restrictions or conditions thereon. It is recommended that the agencies mentioned in Finding #6 below be contacted to identify restrictions or necessary permits. The applicant is advised of the following:

9. The applicant should contact the Mill City Rural Fire Protection District to obtain a copy of the District's Recommended Building Access and Premise Identification regulations and the Marion County Fire Code Applications Guide.
10. The applicants should contact Marion County Land Development and Engineering (503-584-7714) for additional Engineering Requirements and Advisories, listed in Finding #6 below, that may be required.

APPEAL PROCEDURE: The Marion County Zone Code provides that certain applications be considered first by the County Planning Director. If there is any doubt that the application conforms with adopted land use policies and regulations the Director must deny the application. Anyone who disagrees with the Director's decision may appeal the decision to a Marion County hearings officer. The applicant may also request reconsideration (one time only and a \$200.00 fee) on the basis of new information subject to signing an extension of the 150 day time limit for review of zoning applications.

A public hearing is held on appeals subject to the appellant paying a \$250.00 fee. Appeals must be in writing (form available from the Planning Division) and received in the Marion County Planning Division, 5155 Silverton Rd. NE, Salem by 5:00 p.m. on **July 1, 2019**. If you have questions about this decision contact the Planning Division at (503) 588-5038 or at the office. This decision is effective **July 2, 2019** unless appealed.

FINDINGS AND CONCLUSIONS: Findings and conclusions on which the decision was based are noted below.

1. The subject property is designated Forestland in the Marion County Comprehensive Plan and zoned TC (Timber Conservation). The purpose of the Timber Conservation zone is to maintain properties for timber use and commercial agriculture. Dwellings may be approved subject to the criteria in the zone. Approximately 20 feet of the southeast portion of the property is within the floodplain of the North Santiam River. However, no development is proposed to take place in that area of the property.
2. The subject property is located on the south side of Sitkum Street SE in the 26,200 block. The property is undeveloped.
3. Surrounding properties are zoned TC (Timber Conservation), developed with rural homesites and in timber production.
4. The applicant is proposing to place a forest template dwelling on the property.
5.

<u>Soil Name</u>	<u>Total Acreage</u>	<u>CU.FT/AC/YR</u>	<u>Total Cu. FT./YR</u>
Cumley silty clay loam (CLD)	1.2	162	194
6. Public Works Land Development and Engineering Permits (LDEP) requested the following requirements be included in the land use decision:

“A. In accordance with Marion County Code 11.10 a driveway “Access Permit” for access to the public right-of-way will be required upon application for a building permit for a new dwelling. Driveways must meet sight distance, design, spacing, and safety standards. During an initial site inspection it was noted that vegetation along the subject property frontage may cause sight distance issues and may need to be trimmed back or removed.

B. The subject property is within the unincorporated area of Marion County and will be assessed Transportation & Parks System Development Charges (SDCs) upon application for building permits, per Marion County Ordinances #00-10R and #98-40R, respectively.

C. The applicant shall provide evidence of a recorded Declaration of Covenants for Road Maintenance Agreement (RMA) for Sitkum Street SE. Public Works needs to review, approve and sign the RMA prior to recordation if a recorded RMA does not currently exist. Please contact Public Works Engineering at (503) 584-7714 for details. Sitkum Road SE is classified as a non-County Maintained local access road. Per ORS 368.031 the responsibility to upkeep and maintain a local access road defaults to the property owners using the roadway.”

Mill City Rural Fire Protection District commented on the placement of the driveway on steep terrain being able to be accessed by fire service equipment.

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

Marion County Building Inspection Onsite Wastewater Specialist commented that a site evaluation required for septic system.

7. Marion County Code (MCC) 17.138.030 permits a forest template dwelling to be approved submitted to certain criteria:

A. *The tract on which the dwelling will be sited does not include a dwelling. "Tract" means all contiguous lands in the same ownership. A tract shall not be considered to consist of less than the required acreage because it is crossed by a public road or waterway.*

The subject parcel is the only land owned by the property owner and it does not contain a dwelling. This criterion is met.

B. *No dwellings are allowed on other lots or parcels that make up the tract, and the other lots or parcels in the tract cannot be used to justify another forest dwelling. Evidence must be provided that covenants, conditions and restrictions have been recorded with the county clerk of the county or counties where the property is located for any other lot or parcel within the subject tract.*

The subject parcel is the only land owned by the property owner and it does not contain a dwelling. This criterion is met.

C. *The lot or parcel is:*

c. *Predominantly composed of soils that are capable of producing more than 85 cubic feet per acre per year of wood fiber, and there are within a 160-acre square centered on the center of the subject tract all or part of at least 11 other lots or parcels that existed on January 1, 1993, and all or part of at least three dwellings that existed on January 1, 1993, and continue to exist; and*

d. *If the tract is 60 acres or larger and abuts a road or perennial stream the measurements shall be made by using a 160-acre rectangle that is one mile long and one-quarter mile wide centered on the center of the subject tract and is to the maximum extent possible aligned with the road or stream; and*

If a road crosses the tract on which the dwelling will be located, at least one of the required dwellings shall be on the same side of the road as the proposed dwelling and be located within the 160-acre rectangle or within one-quarter mile from the edge of the subject tract and not outside the length of the 160-acre rectangle; or

e. *If the tract abuts a road that existed on January 1, 1993, and subsection (B)(3)(d) of this section does not apply, the measurements may be made using a 160-acre rectangle that is one mile long and one-quarter mile wide centered on the center of the subject tract and is to the maximum extent possible aligned with the road.*

f. *Lots or parcels within an urban growth boundary cannot be used to satisfy the requirements in this subsection.*

The subject property is comprised of soils capable of making more than 85 cubic feet per acre per year of wood fiber and is less than 60 acres in size. The applicant chose to use a 160-acre rectangle to make the required measurement. The applicant identified 16 properties and seven dwellings within the rectangle. This criterion is met.

D. *The proposed dwelling is not prohibited by and will comply with land use regulations and other provisions of law including MCC 17.110.830 through 17.110.836.*

The proposal will be reviewed below for siting standards consistent with development of a residence in the TC zone.

17.110.830 Water resource protection.

The impact of proposed land uses on water resources shall be evaluated and potential adverse impacts on the water resources shall be minimized. Where evidence indicates groundwater limitations and the development will use groundwater as a water supply, the developer shall demonstrate that adequate water can be provided without adversely affecting the groundwater resource.

The property is not within an identified groundwater limited area. This criterion does not apply.

17.110.831 Significant and potential mineral and aggregate sites.

Proposed land uses within 1,500 feet of a county-designated or approved significant or potential mineral or aggregate extraction site shall be evaluated and if the site will be adversely affected, the proposed use shall be relocated, buffered or the potential impact otherwise mitigated without imposing special requirements on the extraction operation.

There are no significant and potential mineral and aggregate sites nearby that would be affected by this proposal. This criterion does not apply.

17.110.832 Protection of scenic and natural areas and trails.

Proposed land uses regulated by Marion County within, or adjacent to, scenic and natural areas and recreational trails designated for protection in the Comprehensive Plan shall be evaluated to determine if the proposed use will adversely impact on the designated resource. If there are potential adverse impacts, the proposed use shall be modified or conditioned to mitigate the impacts.

While there are no know scenic and natural areas and trails that would be affected by this proposal, MCC 17.113.140 requires a stream setback of 30 feet from the North Santiam River to preserve any potential fish or wildlife habitat. This can be made a condition of any approval. This criterion is met.

17.110.833 Stormwater management.

The impact of proposed land uses on stormwater runoff shall be evaluated and potential adverse impacts shall be mitigated. Where evidence indicates stormwater runoff will have an adverse impact on a drainage system or natural drainage network, the developer shall demonstrate that proposed stormwater management on the subject property will compensate for the proposed change per county standards. Compliance with this requirement shall be demonstrated by compliance with department of public works engineering standards.

Any stormwater requirements will be applied at the time the dwelling is constructed through the development review process. This criterion is met.

17.110.834 Noise impacts.

A proposed residence or place of public assembly proposed in a noise impact area identified in the Comprehensive Plan shall be referred to the DEQ (Department of Environmental Quality) for comment on how serious the impact will be and how the proposal can be modified to maintain acceptable noise levels. Adequate mitigation of noise impacts shall be provided.

No significant impacts are anticipated from the proposed residential use of the property. This criterion is met.

17.110.835 Fish and wildlife habitats.

The impact of land use actions regulated by this title on fish and wildlife habitat identified in the Marion County Comprehensive Plan shall be evaluated and the proposal modified or conditioned as necessary to minimize potential adverse impacts and to preserve the existing resource.

MCC 17.113.140 requires a stream setback of 30 feet from the North Santiam River to preserve any potential fish or wildlife habitat. This can be made a condition of any approval. This criterion is met.

17.110.836 Historic structures or sites.

The historic structures and sites identified in the Marion County Comprehensive Plan are a unique resource deserving of special consideration. When the Comprehensive Land Use Plan identifies a historic use or structure,

the subject property shall be identified by a graphic symbol on the official zoning map. Designation on the official zoning map shall be amended automatically to correspond to any additions or deletions in the Comprehensive Land Use Plan designation.

There are no historic structures or site in the area that would be impacted by the proposed dwelling. This criterion does not apply.

E. The dwelling will be consistent with the density policy if located in the big game habitat area identified in the Comprehensive Plan.

While the property is within the big game habitat overlay, Oregon Department of Fish and Wildlife has previously indicated that Highway 22 is a natural barrier for wildlife and that habitat policies should not apply to the area south of the highway (for instance, Conditional Use Case #94-39). Therefore, the density policy of the big game habitat will not be applied to this property.

8. Any dwelling approved in the TC zone must also meet certain standards for development in MCC 17.138.060:

A. Special Siting Requirements

- 1. Dwellings and structures shall comply with the special requirements in subsection (A)(2) or (3) of this section. Compliance with the provisions in subsections (A)(2) and (B), (F) and (G) of this section satisfies the criteria in subsection (A)(3) of this section. Alternative sites that meet the criteria in subsection (A)(3) of this section may be approved concurrently with any land use application or as provided in Chapter 17.116 MCC.*
- 2. Siting Standards for Dwellings and Other Buildings.*
 - a. Dwellings shall be at least 200 feet from any abutting parcel in farm use or timber production. Buildings other than a dwelling shall be located at least 100 feet from any abutting parcel in farm use or timber production.*
 - b. The special setback in subsection (A)(2)(a) of this section shall not be applied in a manner that prohibits dwellings approved pursuant to ORS 195.300 through 195.336 nor should the special setback in subsection (A)(2)(a) of this section prohibit a claimant's application for homesites under ORS 195.300 through 195.336.*
 - c. The dwelling or other building shall be located within 300 feet of the driveway entrance on an abutting public road; or, if the property does not abut a public road for a distance of at least 60 feet, the dwelling or other building shall be located within 300 feet of the point where the driveway enters the buildable portion of the property.*
- 3. Review Criteria for Alternative Sites. Sites for dwellings or buildings that do not meet the siting requirements in subsection (A)(2) of this section may be approved if the proposed site will meet the following criteria:*
 - a. The site will have the least impact on nearby or adjoining forest or agricultural lands;*
 - b. The site ensures that adverse impacts on forest operations and accepted farming practices on the tract will be minimized;*
 - c. The amount of agricultural and forest lands used to site access roads, service corridors, the dwelling and structures is minimized; and*
 - d. The risks associated with wildfire are minimized.*

According to the applicant, commercial timber production takes place north of the highway, more than 200 feet from the subject property. The property abuts a public road and a dwelling can be placed within 300 feet of the road. Due to the size of the property, timber production taking place to the north across the highway, the North Santiam River to the south, and the presence of dwellings on adjacent properties, the special setback need not be applied in this case in order to reduce conflicts with agricultural or timber operations. The proposal meets the special siting standards above.

B. Declaratory Statement. For all dwellings, and other uses deemed appropriate, the property owner shall be required to sign and allow the entering of the following declaratory statement into the chain of title for the lot(s) or parcel(s):

The property herein described is situated in or near a farm or forest zone or area in Marion County, Oregon, where the intent is to encourage, and minimize conflicts with, farm and forest use. Specifically, residents, property owners and visitors may be subjected to common, customary and accepted farm or forest management practices conducted in accordance with federal and state laws that ordinarily and necessarily produce noise, dust, smoke and other impacts. The grantors, including their heirs, assigns and lessees do hereby accept the potential impacts from farm and forest practices as normal and necessary and part of the risk of establishing a dwelling, structure or use in this area, and acknowledge the need to avoid activities that conflict with nearby farm or forest uses and practices, grantors will not pursue a claim for relief or course of action alleging injury from farming or forest practice for which no action is allowed under ORS 30.936 or 30.937.

Recording of this declaratory statement can be made a condition of any approval.

C. Domestic Water Supply.

- 1. The applicant shall provide evidence that the domestic water supply is from a source authorized in accordance with the Water Resources Department's administrative rules for the appropriation of groundwater or surface water and not from a Class II stream as defined in the Forest Practices Rules (OAR Chapter 629).*
- 2. Evidence of a domestic water supply means 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; or a water use permit issued by the Water Resources Department for the use described in the application; or verification from the Water Resources Department that a water use permit is not required for the use.*
- 3. 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 upon completion of the well.*

Evidence of a domestic water supply can be made a condition of approval.

D. Road Access. 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 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.

The property has access to Sitkum Street SE, a public roadway. This condition is met.

E. Tree Planting.

- 1. Prior to issuance of a building or siting permit for the dwelling on a tract of more than 10 acres in size, the landowner shall 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 Department of Forestry administrative rules.*
- 2. At the time required by the Department of Forestry rules the owner shall submit a stocking survey report to the county assessor and the assessor shall verify that the minimum stocking requirements have been met.*

The property is less than 10 acres in size. This criterion does not apply.

F. Fire Protection.

- 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.*
- 2. If inclusion within a fire protection district or contracting for residential fire protection is impracticable, an alternative means for protecting the dwelling from fire hazards may be*

approved pursuant to the procedures set forth in Chapter 17.115 MCC, subject to the requirements of subsections (F)(3) of this subsection.

3. *Alternative means of fire protection may include a fire sprinkling system, on-site equipment and water storage or other methods that are reasonable, given the site conditions.*
 - a. *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.*
 - b. *Road access shall be provided to within 15 feet of the water's edge for fire-fighting pumping units. The road access shall accommodate the turnaround of fire fighting equipment during the fire season. Permanent signs shall be posted along the access route to indicate the location of the emergency water source.*

The property is within the Mill City Fire District. This criterion is met.

G. Fire Hazard Reduction.

1. *The owners of a dwelling, or structure occupying more than 200 square feet, shall maintain a primary fuel-free break area on land surrounding the dwelling that is owned or controlled by the owner in accordance with the provision 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.*
2. *The dwelling shall have a fire-retardant roof.*
3. *The dwelling shall not be sited on a slope of greater than 40 percent.*
4. *If the dwelling has a chimney or chimneys, each chimney shall have a spark arrester.*

These standards can be made a condition of any approval.

H. Road and Drainage Standards.

1. *Public road access to structures of more than 200 square feet in area or dwellings shall comply with the Marion County Department of Public Works Engineering Standards applicable at the time the application was filed.*
2. *Except for private roads and bridges accessing only commercial forest uses, private road or driveway access to structures of more than 200 square feet in area or dwellings shall meet the requirements of the local fire protection district or forest protection district except that the county maximum grade standard for a private road is 15 percent. A greater grade may be approved by the fire district or, if the site is not in a fire district, by the State Department of Forestry.*
3. *Drainage standards for private roadways shall comply with the Marion County Department of Public Works Engineering Standards except that corrugated metal culverts of equivalent size and strength may be used.*

These standards will be applied at the time the dwelling is constructed through the development review process. This criterion is met.

9. Based on the above findings, it has been determined that the applicant's request meets all applicable criteria for a forest templet test dwelling on the property and is, therefore, **APPROVED**, subject to conditions.

Joe Fennimore
Director-Planning Division

Date: June 14, 2019

If you have any questions regarding this decision contact Brandon Reich at (503) 588-5038

Notice to Mortgagee, Lienholder, Vendor or Seller: ORS Chapter 215 requires that if you receive this Notice, it must promptly be forwarded to the purchaser.