

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

NOTICE OF DECISION
ADMINISTRATIVE REVIEW CASE NO. 24-024

APPLICATION: Application of Suzana and Arthur R. Mack for an administrative review to place a template dwelling on a 19.51-acre parcel in the TC (Timber Conservation) zone located at 10915 Kubin Rd SE, Lyons (T9S; R2E; Section E8; Tax lot 2000).

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 **November 12th, 2028 (four years)** unless an extension is granted. The effective period may be extended for two years subject to approval of an extension (form available from the Planning Division). Request for an extension must be submitted to the Planning Division prior to expiration of the approval.

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 ensure the subject property can accommodate the proposed use the applicant should contact the Building Inspection Division, (503) 588-5147.

This decision does not include approval of a building permit.

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

1. The applicants shall obtain all permits required by the Marion County Building Inspection Division.
2. Prior to issuance of any building permits, the applicants shall sign and submit a Farm/Forest Declaratory Statement to the Planning Division. This statement shall be recorded by the applicant with the Marion County Clerk after it has been reviewed and signed by the Planning Director.
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. The owners shall maintain a fire hazard reduction plan as recommended by the Oregon Department of Forestry.
5. The proposed dwelling shall meet the fire protection and hazard reductions as listed in MCC 17.139.070.
6. The dwelling shall maintain a special 200 foot setback from the western property line. Accessory structures shall maintain a special 100 foot setback from surrounding properties in farm or timber production.
7. 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 ground water or surface water and not from a Class II stream as defined in the Forest Practices Rules (OAR Chapter 629).
8. Prior to issuance of a building or siting permit for a dwelling, approved under the provisions in MCC 17.139.030(A), (B) or (C), 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.

9. The requirements set forth in MCC 17.138.060 (H) shall be made a condition of approval.

OTHER PERMITS, FEES AND RESTRICTIONS: This approval does not remove or affect covenants or restrictions imposed on the subject property by deed or other instrument. The proposed use may require permits and/or fees from other local, state or federal agencies. This decision does not take the place of, or relieve the responsibility for, obtaining other permits or satisfying any restrictions or conditions. The applicant is advised of the following:

10. The applicant should contact the Stayton Fire District to obtain a copy of the District's Recommended Building Access and Premise Identification regulations and the Marion County Fire Code Applications Guide. Fire District access standards may be more restrictive than County standards.

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 to 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 **November 12th, 2024**. If you have questions about this decision contact the Planning Division at (503) 588-5038 or at the office. This decision is **effective November 13th, 2024**, unless appealed.

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

1. The subject property is designated Forest in the Marion County Comprehensive Plan and zoned TC (Timber Conservation). The purpose of the TC zone is to conserve forest lands by maintaining the forest land base and to protect the forest economy by making possible economically efficient forest practices that assure the continuous growing and harvesting of forest tree species as the leading use of forest land consistent with sound management of soil, air, water, and fish and wildlife resources and to provide for recreational opportunities and agriculture.
2. The subject property is located on the north side of Kubin Rd SE, In the 10,000 block. Kubin Rd is a non-county gravel road. The property is currently vacant and was burned in the Beachie Creek Fires of 2020. A stream flows through the northeast corner of the property. The parcel was found to be legal in land use case AR03-016 which also approved a template dwelling, but it was never built, the parcel was described by deed on June 14, 1977 (Reel 86, Page 701).
3. Properties in all directions are zoned TC and used to be forested but are now recovering from the 2020 fires.
4.

<u>Soil Name</u>	<u>Total Acreage</u>	<u>CU.FT/AC/YR</u>	<u>Total Cu. FT./YR</u>
McCully	100%	171	3336.21
5. The applicant is proposing to place a dwelling on the property using the template test.
6. Marion County Building Department commented that building permits would be required for the dwelling.

All other commenting agencies stated no objection to the proposal.

A single-family dwelling, subject to the special use and siting requirements in MCC 17.139.070, may be allowed on a lot or parcel predominantly devoted to forest use on January 1, 1993, provided:

7. According to Chapter 17.138.030(B) of the Marion County Code (MCC) a single-family dwelling subject to the special use and siting requirements in MCC 17.139.070 may be allowed provided:

- (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 applicants do not own any other contiguous lands and there is not dwelling on the subject property. The criterion is met.

- (b) *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. 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 lot was owned by the applicants in 2019 and was not a part of any tract. There was no dwelling on the subject property in 2019 either. The criterion is met.

- (c) *The lot or parcel is:*

- (1) *Predominantly composed of soils that are capable of producing zero to 49 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 three 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; or*
- (2) *Predominantly composed of soils that are capable of producing 50 to 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 seven 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; or*
- (3) *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 eleven 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*
- (4) *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-fourth 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
- (5) *If the tract abuts a road that existed on January 1, 1993 and subsection (D) of this section does not apply, the measurements may be made using a 160-acre rectangle that is one mile long and one-fourth mile wide centered on the center of the subject tract and is to the maximum extent possible aligned with the road.*

The parcel can produce 3336 cubic feet per year of wood and abuts a road that did exist on January 1, 1993, Kubin Rd SE, as such, the applicants may use a square or rectangle to satisfy the template test. In this case, they have used a rectangle that is aligned to the maximum extent with Kubin Rd SE. They have counted and marked on the map where 3 dwellings are that have existed since January 1, 1993 and the rectangle touches 13 total lots. The criterion is met.

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

No lots located within an urban growth boundary were used in this analysis. The criterion is met.

- (c) *The proposed dwelling is not prohibited by and will comply with land use regulations and other provisions of law including Sections 110.830 through 110.836.*

The proposal meets the provisions stated above that are found in the General Provisions section of the MCC 17.110.830 – 17.110.836 as it is not within 1,500 feet of an aggregate site, nor will a dwelling have an adverse impact of natural areas, noise impacts or wildlife habitats where the area is already developed with dwellings. The criterion is met.

- (d) *The dwelling will be consistent with the density policy if located in the big game habitat area identified in the Comprehensive Plan.*

The parcel is located within the Major Big Game Habitat Overlay, as such, it will have to meet a density policy of one dwelling unit per 80 acres, when a 640-acre circle is centered on the proposed home site. The density standard provides:

5. Development density shall be controlled so that significant wildlife habitat will not be adversely affected in the County's resource zones. The standards for dwelling density in big game habitat, as identified on the habitat maps, shall be: one dwelling unit/80 acres in major habitat; one dwelling unit/40 acres in peripheral habitat. If dwellings are clustered within 200 feet of each other, these densities may be doubled.

This density analysis was submitted with the application and shows 15 dwellings within the study area. The limit would be 8, but this can be doubled to 16 when clustered with an adjacent dwelling. The applicants are clustering the dwelling and as such, may place their dwelling as the 16th dwelling within the circle. The criterion is met.

8. The special standards in MCC 17.138.060 include:

- (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 subsection (a)(2) of this section and subsections (b), (f) and (g) satisfies the criteria in (a)(3) of this section. Alternative sites that meet the criteria in subsection (3) of this section and may be approved as provided in MCC 17.110.680.*

(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.*

This setback will be applied only to the western property line, as the other parcels are in residential use.

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 to 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 to 195.336.*

The setbacks will not be applied in such a way, the parcel is large enough to accommodate the setbacks.

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.

The buildable partition of the property does not begin until beyond 300 feet into the parcel. As such, the applicant will be allowed to locate the dwelling further than 300 feet into the parcel.

- (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 forestlands used to site access roads, service corridors, the dwelling and structures is minimized.*
 - D. *The risks associated with wildfire are minimized.*

The applicants wish to place the home in the flattest area on the parcel, where previously a structure used to sit. This location is already disturbed and graveled and will not have an adverse effect on adjacent uses, forest or agricultural. The applicants will still be required to meet fire protection standards found in the MCC and made a condition of approval. The criterion are met.

- (b) *Declaratory Statement. The owner of property for which a dwelling, structure or other specified use has been approved shall be required to sign and allow the entering of the following declaratory statement into the chain of title for the subject lots or parcels:*

“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 which ordinarily and necessarily produce noise, dust, smoke and other impacts. The grantees, 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 I/We acknowledge the need to avoid activities that conflict with nearby farm or forest uses and practices I/We 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.”

This shall be made a condition of 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 ground water 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.*

This shall be made a condition of approval.

- (e) *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, 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.

Access is via a public road, the criterion do not apply.

(e) *Tree Planting Requirements for Lots or Parcels over 10 Acres:*

(1) *Prior to issuance of a building or siting permit for a dwelling, approved under the provisions in MCC 17.139.030(A), (B) or (C), 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.*

This shall be made a condition of approval.

(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 MCC 17.110.680, subject to the requirements of subsection (F)(3) of this section.*

The applicants are within the Stayton Fire District. The criterion are met.

(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. The following requirements apply:*

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 to the water supply required in subsection (F)(3)(A) of this section 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 posed along the access route to indicate the location of the emergency water source.*

The Stayton Fire Department has not commented regarding these requirements. At this time this section does not apply, but fire requirements may change when a building permit is applied for.

(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.*

This shall be made a condition of approval.

(h) *Road and Drainage Standards.*

(1) *Public road access to structures of more than 200 square feet in area or a dwelling shall comply with Section 4 of the Marion County Department of Public Works Engineering Standards adopted by the board of county commissioners April 11, 1990.*

(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 a dwelling 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 be those in Section 5 of the Public Works Engineering standards except that corrugated metal culverts of equivalent size and strength may be used.*

This shall be made a condition of approval.

10. Based on the above findings, it has been determined that subject to conditions the proposed dwelling request will comply with the standards for placement of a forest template dwelling in the FT zone and is **APPROVED**, subject to conditions

Brandon Reich
Planning Director/Zoning Administrator

Date: October 18th, 2024

If you have any questions regarding this decision contact Austin Barnes 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.