

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.22-005**

APPLICATION: Application of Paul Vasend for an administrative review to place a template test dwelling on a 5.45-acre parcel in a TC (Timber Conservation) zone located at 28195 North Fork Road SE, Lyons. (T9S, R3W, Section 18B, Tax Lot 100).

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 **March 31, 2026**, 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. Prior to issuance of any building permits, the applicant shall sign and submit a Geologic Hazard Overlay 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.
4. 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.
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.
7. The dwelling shall maintain a special 200-foot setback from all property lines when those properties are in farm or forest production. Based on aerial imagery, properties to the north and west are in forest production. Accessory structures shall maintain a special 100-foot setback from surrounding properties in farm or timber production. All structures on the property shall maintain a special setback of 50 feet plus regular front yard setbacks from the centerline of North Fork Road SE, pursuant to MCC 17.112.020(F)(2)(c).
8. 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. The dwelling shall have a

fire-retardant roof. The dwelling shall not be sited on a slope of greater than 40 percent. If the dwelling has a chimney or chimneys, each chimney shall have a spark arrester.

9. Proof of a domestic water supply meeting the requirements listed in MCC 17.138.600(c) 1, 2, and 3 shall be provided.

OTHER PERMITS, FEES AND RESTRICTIONS: This approval does not remove or affect covenants or restrictions imposed on the subject property by deed or another instrument. The proposed use may require permits and/or fees from other local, state, or federal agencies. This decision does not take the place of, or relieve the responsibility for, obtaining other permits or satisfying any restrictions or conditions. It is recommended that the agencies mentioned in finding #6 below be contacted to identify restrictions or necessary permits. 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.
11. 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 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) based on 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 **March 31, 2022**. If you have questions about this decision, contact the Planning Division at (503) 588-5038 or at the office. This decision is effective **April 1, 2022**, unless appealed.

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

1. The subject property is designated Forest Lands 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 North Fork Road SE, at the intersection of North Fork Road SE and Dogwood Lane SE. The property was previously the subject of Administrative Review 15-025 (AR15-025) and Conditional Use 97-071 (CU97-071). The property is considered legal for the purposes of land use due to the previously approved cases.
3. Properties to the north, south, and west are zoned TC and consist of parcels in timber production. Properties to the east are zoned AR and consist of small rural parcels developed with homesites.
4. The following table depicts the soil composition on the property and its capacity to produce wood fiber.

Soil Name	Total Acres	CU.FT/AC/YR	Total CU.FT./YR
Horeb gravelly silt loam, gravelly substratum 0-15% slopes (HSC)	0.15	195	29.25
McCully clay loam, 2-30% slopes (MUE)	5.30	171	906.30
Total	5.45		935.55

5. The applicant is proposing to place a template dwelling on the property subject to the standards in Marion County Code 17.138.030(B).
6. Public Works Land Development and Engineering Permits (LDEP) requested that the following be included in the land use decision.

ENGINEERING REQUIREMENTS

- a) *An Access Permit will be required at the time of application for building permits.*
- b) *It appears that gaining access to North Fork Road via Dogwood Lane as depicted on the land use application site plan will require an access easement across the neighboring property.*
- c) *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.*
- d) *Utility work in the public right-of-way requires separate PW Engineering permits.*

Marion County Building Inspection commented that permits are required for proposed future development and/or utilities on private property.

Marion County Septic commented that “Septic Site Evaluation complete under 555-21-004460, applicant may apply for construction-instillation permit to propose system in approved area”.

Various additional agencies were contacted about the proposal and given an opportunity to comment. These agencies either failed to comment or stated no objection to the proposal.

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 17.138.060 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 parcel is owned by Paul Vasend based on a deed recorded as Reel 4587, page 441 on January 10, 2022, and is not owned in a tract with any other parcels. The property was previously owned by The Violet Murdock Revocable Living Trust. Based on these facts, 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.*

As discussed, there are no other dwellings in the tract. The criterion is met.

- (c) *The lot or parcel is:*
 - (3)(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 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*
 - (e) *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.

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

Soil analysis (see finding #4) found that the parcel is predominantly composed of soils that can produce up to 171 cubic feet per acre of wood fiber and therefore qualifies under 7(c)(3)(e) above. A 160-acre rectangle was used to run the template test in accordance with the requirements above. Using this test, the applicant found that the square contained 14 other parcels, and at least 3 (total of 3) of those parcels were developed with a dwelling that was established before January 1, 1993, and continue to exist as required by ORS 215.750. None of these parcels are located within an urban growth boundary. The criteria are satisfied.

- (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.*

There is no evidence indicating that there will be a significant negative impact on water resources. There are no aggregate sites located in the areas surrounding the property. Development of a home site on the property should not create significant stormwater issues. A dwelling is a residential use and is not likely to create excessive noise in the area. The property is entirely within the Major Big Game Overlay, compliance with the Plan requirements is discussed in the finding below. The property does not contain any structures that are designated as historic in the County's Comprehensive Plan. The property is wholly within the County's Geologic Hazard Overlay; however, the area is classified as a low landslide risk. As a condition of approval, the applicant shall be required to file a declaratory statement acknowledging the risk of developing in the Geologic Hazard Overlay. Based on these facts, the criteria are satisfied.

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

The proposed dwelling is located within the Major Big Game Habitat Overlay. A 640-acre square centered on the subject property found that there were 3 dwellings within the template. Marion County Fish and Wildlife Habitat Policy 5 states "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". Based on the 3 dwellings in the square, the dwelling density with the addition of this dwelling would be one dwelling unit/160 acres. Thus, the density would not exceed the standard. Based on these facts, this criterion is met.

8. The special standards in MCC 17.139.070 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.*

- 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.*
- 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 will be minimized.*
- C. *The amount of agricultural and forest lands used to site access roads, service corridors, the dwelling and structures is minimized.*
- D. *The risks associated with wildfire are minimized.*

The site plan submitted by the applicant shows that the proposed dwelling would be located 202.50 feet from the west property line, 320 feet from the north property line, 102.18 feet from the east property line, and 262.40 feet from the south property line. Based on aerial imagery, the properties to the north and west are in commercial timber production. The applicant shall be required to maintain a 200-foot setback from these property lines. Based on this, criterion 17.139.070(a)(2)(A) is met.

The subject property is approximately 365 feet wide by 725 feet long. Based on aerial imagery, only the north and west properties are in forest production, which require a 200-foot setback from the property lines. This leaves the applicant approximately 145 feet to the east property line to develop with a dwelling (taking into consideration the required 20-foot setback in the TC zone). The applicant submitted a site plan showing that the property can be developed with a dwelling while maintaining the required 200-foot setbacks from the north and west property lines. Based on these facts, criterion 17.139.070(a)(2)(B) is met.

The applicant submitted a site plan that shows that the dwelling will be developed approximately 262 feet from the south (front) property line where it abuts North Fork Road. Based on these facts, criterion 17.139.070(a)(2)(C) is met.

The applicants site plan as submitted indicates that the property can be developed in compliance with the requirements in 17.139.070(a)(2). Because the requirements in 17.139.070(a)(2) are met, the review for alternative sites in 17.139.070(a)(3) does not apply. Based on these facts, criterion 17.139.070(a)(1) is 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 will 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.*

The applicant states that water will be provided by a proposed well and that a well constructor's report will be submitted upon completion of the well. Demonstrating compliance with the criteria in c(1), (2), and (3) prior to the issuance of any building permit for a dwelling will be made a condition of approval. There is no reason to believe that the criterion cannot be satisfied.

(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, 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 is proposed to be accessed from either Dogwood Drive (a private lane) or North Fork Road SE, a public roadway. An access permit shall be required for either option. Based on these facts, the criterion is met.

(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.*

The parcel is approximately 5.45 acres in size. Based on this fact, tree planting is not required. Based on these facts, the 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 MCC 17.110.680, subject to the requirements of subsection (F)(3) of this section.*
- (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.*

Fire protection is provided by the Stayton Fire Department. The applicant shall meet the District's access standards. Other provisions listed above should not apply unless required by the Fire District. The 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.*

Compliance with these standards shall be made a condition of approval. The applicant shall be required to indicate the primary and secondary fuel breaks on the site plan submitted for the building permit. Based on these facts, this criterion is met.

(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.*

The property owner will be required to obtain a driveway access permit from Marion County Land Development and Engineering, which will ensure compliance with the above standards. The criterion is met.

9. 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 Timber Conservation (TC) zone and is **APPROVED**, subject to conditions

Brandon Reich
Planning Director/Zoning Administrator

Date: March 17, 2022

If you have any questions regarding this decision contact Alyssa Schrems 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.