

COLUMBIA COUNTY LAND DEVELOPMENT SERVICES

- STAFF REPORT

December 29, 2023

Resource Dwelling in the Forest Zone

FILE NUMBER: RDF 23-10

**APPLICANTS/
OWNERS:** Trisha Barnett & Douglas McGilvra
P.O. Box 701
St Helens, OR 97051

LOCATION: The subject property is at the intersection of Kissel Camp Road and Rays Way two existing private roads off Hankey Road near St. Helens

TAX MAP ID: 5131-D0-00201

TAX NO.: 15742

ZONING: Forest-Agriculture (FA-80)

SIZE: ~15.22

REQUEST: To site a single-family forest dwelling using the template test option provided for in Section 506.4 of the Columbia County Zoning Ordinance that are based on provisions in the OAR 660-06-027.

APPLICATION COMPLETE: 9/28/2023

150 DAY DEADLINE: 3/1/2024

REFERRED TO PLANNING COMMISSION: On October 13, 2023, Colleen DeShazer the property owner of 60471 Rays Way expressed concerns about Rays Ways' limited access and paid the fee for this **REFERRAL** of RDF 23-10 to the Planning Commission for their review at a public hearing.

APPLICABLE REVIEW CRITERIA:

<u>Columbia County Zoning Ordinance (CCZO)</u>	PAGE
Section 402 Forest-Agriculture Predominant Use Test	7
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SUMMARY:

The applicants, Trisha Barnett and Douglas McGilvra, are requesting approval to site a single-family forest dwelling on an approximate 15.22-acre property in the Forest Agriculture (FA-80) Zone per the provisions in Section 506.4 of the Columbia County Zoning Ordinance (CCZO). The submitted site plan indicates the applicants intend to develop the NW approximate 2-acre portion of the property within 150' of Rays Way which is a private road that is owned and maintained by private property owners, not Columbia County.

The submitted documentation states that the subject parcel will be served by a private well and a septic system, neither of which are currently installed. Land Development Services records indicate that the applicants have yet to submit a Site Evaluation Permit that will allow the County Sanitarian to process, review and approve a proposed method of sewage disposal for the proposed forest dwelling. Consequently, as conditions of approval prior to building permit issuance, the applicant will be required to:

- Drill a well and record a well log with the Oregon Department of Water Resources
- Obtain a Septic Site Evaluation for the subject property; and
- Apply for a Septic Construction Permit to install the new septic system.

Electrical and other utilities can be extended to the subject property from Rays Way as shown on the Site Plan. Emergency services are provided to the subject site by the Columbia River Fire & Rescue and the Columbia County Sheriff.

On the submitted Site Plan on Page 4, the applicants show that the proposed dwelling will be approximately 150' from the north and west property lines in the far NW corner of the 15.22-acre forest tract. At this location it appears the applicants will be able to establish and maintain full 30' primary firebreak and 100' secondary firebreak areas surrounding all sides of the new dwelling on the subject tract.

Natural characteristics of the site are as follows and are shown on Page 3's Aerial Map. According to FEMA Flood Insurance Rate Map (FIRM) No. 41009C0451D and the Oregon DSL Wetlands Inventory Maps, there are no identified flood hazard areas associated with the identified wetlands located in the SE portion of the subject tract which is at least 400' away from the intended building site. According to the Oregon Department of Forestry Statewide Streams Map, this water is not identified as a fish-bearing stream. The St Helens – Columbia City CPAC Beak Map indicate that the site is located in an area designated as Peripheral Big Game Habitat

Area. Staff conducted a site visit on October 5, 2023 and confirmed the information on the county maps was accurate and consistent with the documentation submitted for RDF 23-10.

Referral to Planning Commission submitted by Colleen DeShazer who owns the adjacent FA-80 property addressed at 60471 Rays Way

On October 13, 2023, Land Development Services received from Colleen DeShazer the attached timely email with fees requesting a **Referral to Planning Commission** for RDF 23-10 in response to her being notified of the attached October 3, 2023 *Administrative Notice Resource Dwelling in a Forest Zone for RDF 23-10*.

These concerns are summarized below.

First Item: Ms. DeShazer expressed frustration with the 10 -day deadline in CCZO 1609.4 for interested parties to submit written requests for a public hearing before the Planning Commission. Staff finds that Ms. DeShazer’s email dated October 13, 2023 complies with this 10-day deadline.

Second Item: Ms. DeShazer also expressed frustration that this Notice did not include the entire RDF application. On October 13, 2023 Ms. Deshazer was informed that if she wanted a copy of the entire RDF 23-10 application LDS would be able to provide her with an electronic copy of a hard copy.

Third Item: Stated “...*We have concerns regarding safety, fire access and the location of the power pole located on the east side of Rays Way as shown on the limited drawing that was paid for by my mother.*” These concerns will be addressed in the discussions related to Finding 11.

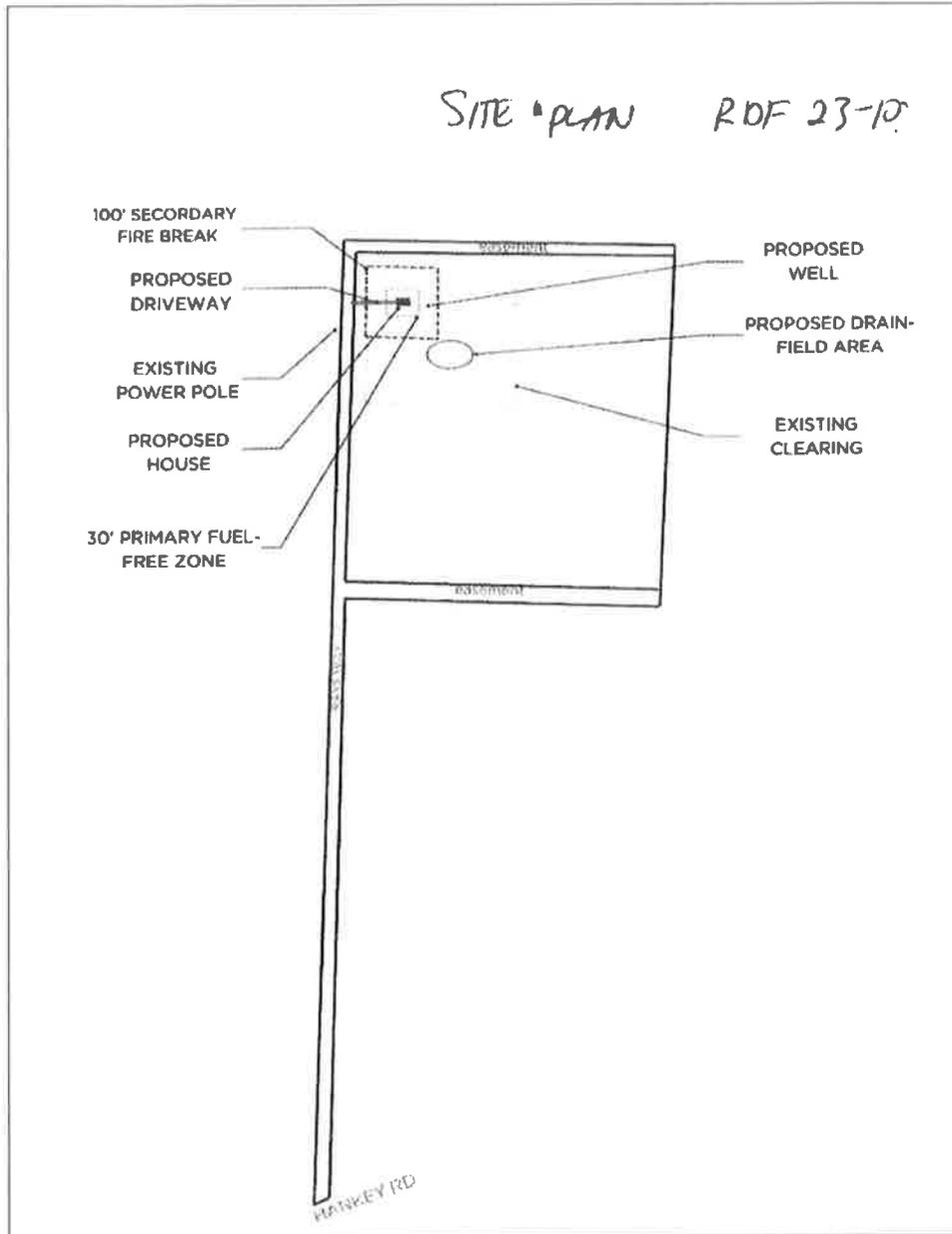
Fourth Item: Stated concerns that fire trucks were not able to “*make it up the road and the last time one attempted, it had to be pulled up the road with a tow truck,*” These concerns will also be addressed in the discussion related to Finding 31

The remainder of this report will evaluate to what extent the applicant’s proposal conforms to the applicable criteria listed in the Columbia County Zoning Ordinance and will also address the concerns brought forth by Ms. DeShazer in her Referral of RDF 23-10 to the Planning Commission requesting a quasi-judicial review, rather than the County Planning Manager’s administrative review.

FA-80 Zoning & Aerial Maps of Subject Property



Submitted Site Plan for RDF 23-10



REVIEW CRITERIA, FACTS, ANALYSIS & FINDINGS:

Beginning with the applicable provisions in the Columbia County Zoning Ordinance's (CCZO) Section 400: Forest-Agriculture (FA-80):

Section 400 FOREST/AGRICULTURE - 80 FA - 80

402 Predominant Use Test [(OAR 660-06-0050 (2))]. The uses, activities and development in the Forest/Agriculture Zone, except provisions identified in Section 404 for land divisions, are based on a determination of the predominant use of a tract as of January 1, 1993 as either Farm or Forest land. These uses, activities, and development are authorized subject to review and approval under applicable regulatory standards for either the Primary Agriculture (PA-80) Zone or the Primary Forest (PF-80) Zone property. A "tract" is defined as one (1) or more contiguous lots or parcel(s) under the same ownership.

Site Visit Photos

\Access to site from Rays Way



Proposed homesite in far NW portion



Finding 1: According to the records of both County Land Development Services (LDS) and Assessors Office that are also demonstrated above, the subject property has been forested since at least 1993. According to the Soil Survey of Columbia County, Oregon, the property's soils include Cascade silt loam (Types 10B and 10C) which are well-suited to the production of Douglas-fir. The growth at the culmination of the mean annual increment (CMAI) for Douglas-fir is greater than 85 cubic feet per acre for 60-year-old trees 1.5 inches or larger in diameter at breast height. With the subject property's historical forestry use and soil types, staff finds this forest dwelling permit application can be processed according to the applicable provisions in Section 500 of the CCZO related to Template Forest Dwellings in the Primary Forest (PF-80) zoning district.

Continuing with the applicable provisions of CCZO Section 500: Primary Forest (PF-80):

Section 500 PRIMARY FOREST ZONE - 80 PF-80

501 .1 Purpose. The purpose of this zone is to retain forest land for forest use and to encourage the management of forest land for the growing, harvesting, and processing of forest crops consistent with the Oregon Forest Practices Act. Uses in this zone will also provide for other forest uses including watershed protection, soil protection, maintenance of clean air and water, wildlife and fisheries habitat, outdoor recreation activities, open space and scenic preservation, and agricultural activities free from the encroachment of conflicting non-forest uses and influences.

502 Table of Authorized Uses & Development. The following uses, activities, and development are authorized in the Primary Forest Zone, subject to review and approval under applicable regulatory standards:

Key

- P Permitted outright.
- AR Subject to administrative review pursuant to Section 1601.
- CUP/PC Subject to Planning Commission review and approval as a conditional use pursuant to Section 1503.

SINGLE-FAMILY RESIDENCES	AUTHORIZATION	PF - 80 SECTION
"Template" Forest Land Dwelling	AR	504.1, 506.4, 506.5, 507- 510

504 Uses Subject to Administrative Review. The following uses are permitted, subject to review and approval under prescriptive standards specified herein and as may otherwise be indicated by federal, state and local permits or regulations using the process contained in Section 1601. All authorized

dwellings and permanent structures shall meet the standards listed in Sections 506, 507, 508, 509 and 510 of this Ordinance.

- .1 Single-family dwelling, as authorized under Section 506 of this Ordinance and such accessory buildings and uses as are normally associated with a single- family dwelling.

Finding 2: Staff finds that the May 9, 2022 Template Test (TT 22-45) conducted for the subject property authorizes the applicant's proposed Forest Dwelling Permit. If this forest dwelling permit is approved, the applicant will be able to develop the subject tract for residential use, as described in the submitted site plan. The site's proposed residential use is consistent with the various authorized resource and non-resource related uses identified as one Purpose of the Primary Forest Zone. The remainder of this report will evaluate the submitted application according to the provisions in Sections 506 through 510 of the Zoning Ordinance. If the research and subsequent Findings determine the proposed Template Test Forest Dwelling complies with the necessary provisions of Sections 506 through 510, the Planning Manager will be able to conditionally approve the proposal requested for RDF 23-10.

Continuing with CCZO, Section 506- Standards for Dwellings:

506 Standards for Dwellings. Dwellings are authorized in the Primary Forest Zone subject to standards found in Sections 507, 508, 509, 510 and documentation of meeting either the Small Tract, Large/Multi-Tract, or Template Dwelling criteria as follows.

.4 Template Dwelling for Tracts Smaller than 80 Acres. A dwelling may be authorized on a tract that satisfies and meets all the following criteria:

- A. The tract is composed of soils that meets one of the following:
 1. Soils that are capable of annually producing more than 85 cubic feet per acre of wood fiber if:
 - a. All or part of at least 11 other lots or parcels that existed on January 1, 1993 and are not within an Urban Growth Area are within a 160 acre square centered on the center of the subject tract. (Note: 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
 - b. At least three (3) dwellings existed on January 1, 1993 and continue to exist on the other lots or parcels;

Finding 3: As demonstrated in Finding 1, the subject tract's soils are capable of producing more than 85 cubic feet per acre of wood fiber/timber which requires a proposed forest dwelling to have at least eleven (11) lots or parcels and three (3) dwellings that existed on January 1, 1993 all within a 160-acre template centered on the tract.

The 5/9/2022 Template Test (TT 22-45) for the subject property determined that within a 160-acre square template area, 12 dwellings and 17 parcels were in existence on January 1, 1993. The results of this template test meet the minimum requirements in Section 506.4(A1) for proposed forest dwellings on tracts with these soil types. For these reasons, staff finds the submitted proposal has satisfied the criteria in Section 506.4(A1).

B. If the tract under subsection (A) of this section abuts a road that existed on January 1, 1993, the measurement may be made by creating a 160-acre rectangle that is one mile long and one-fourth mile wide centered on the center of the subject tract and that is to the maximum extent possible, aligned with the road.

Finding 4: The associated Template Test (TT 22-45) did not use the rectangular template option to qualify this proposed forest dwelling. Staff finds this criterion is not applicable.

C. Lots or parcels within urban growth boundaries may not be used to satisfy the eligibility requirements of the subject tract;

Finding 5: TT 22-45 conducted for the subject utilized the County GIS database and staff verified that no lots or parcels within any Urban Growth Boundary (UGB) were used to qualify this proposed forest dwelling. Staff finds this criterion is met.

D. The lot or parcel on which the dwelling will be sited was lawfully established and contains no dwelling;

Finding 6: According to Land Development Services (LDS) and County Assessor records, the subject tract contains no dwellings and was lawfully established. The county Assessor records show that the parcel was conveyed separately from all other parcels prior to the effective date of the County's first Subdivision and Partitioning Ordinance on 1/10/1975.

E. No dwellings are allowed on other lots or parcels that make up the tract and deed restrictions established under ORS 215.740(3) for the other lots or parcels that make up the tract are met;

F. 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

Finding 7: According to the County Assessor and Land Development Services (LDS) records as well as materials submitted with the application, the subject parcel is not currently part of a tract as required by Section 506.4(E).

Pertaining to the tract's 2019 ownership criteria in Section 506.4(F), the subject property's 1/1/2019 ownership was the same as the adjacent west FA-80 property addressed at 35000 Kissel Camp Road. However, on March 16, 2022 through the Columbia County Board of Commissioners adoption of Ordinance No. 2022-01, the provisions of Oregon House Bill 2225 were incorporated into Section 506.4(J) and 506.4(K) of the CCZO pertaining to Standards for Forest Dwellings. These amendments allowed tracts with a single dwelling in 1/1/2019 to be approved for only one (1) more Template Test Dwelling provided the necessary Resource Dwelling Permit in the Forest Zone was submitted to LDS prior to November 1, 2023. These specific criteria will be covered for Finding 10 with staff's evaluation of this component of HB 2225 codified in Section 506.4(J) and 506.4(K).

G. Any property line adjustment to the lot or parcel complied with the applicable property line adjustment provisions in ORS 92.192; and

H. 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.

Finding 8: LDS approved PLA 23-15 (Attached) in July 2023 for the subject property was required to accurately convey the authorized ownership of the subject 15.22-acre property through the *General Judgement Approving Final Accounting and Authorizing Final Distribution of the Estate of Nathan James McGilvra Case No. 21PB01514*. Staff finds that PLA 23-15 was consistent with the provisions Section 506.4(G) and that the effect of this PLA did not have the effect of qualifying the subject property for a Template Test Dwelling per the results of TT 22-45. For these reasons, staff finds RDF 23-10 complies with the required criteria in Section 506.4(G) and 506.4(H).

I. Parcels 10 acres or greater in size shall be required to submit and obtain approval of a Forest Land Assessment and Stocking Compliance application prior to receiving a permit for the dwelling as authorized by this subsection.

Finding 9: Because the subject tract is greater than 10 acres, the applicant will be required to file a Forest Land Assessment and Timber Stocking Survey with LDS as one condition of approval to satisfy this criterion.

J. Prior to November 1, 2023, Columbia 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 hat was part of the tract; and

2. The lot or parcel qualifies, notwithstanding ORS 215.750 (5) (h), for a dwelling under ORS 215.750. [2019 c.433 §2]

K. The provisions in Section 506.4 (J) are repealed on January 2, 2024, pursuant to Oregon Laws 2019 Chapter 433.

Finding 10: As discussed for Finding 7, according to County Assessor records, the subject property parcel was part of a larger tract on January 1, 2021 which included the adjacent west FA-80 zoned property that is addressed at 35000 Kissel Camp Road. Per the criteria in 506.4(J)(1), this larger tract was in the Estate of Nathan James McGilvra until the current applicants/owners acquired in 2022 and this larger tract only included the single dwelling according to the County Clark records.

Pertaining to the criteria in 506(J)(2), the results of TT 22-35 qualify this 15.22-acre tract for the forest dwelling requested for RDF 23-10 that was submitted to LDS on September 28, 2023 in compliance with the November 1 2023 and January 2, 2024 deadlines in 506.4 (J) and 506.4(K). For these site-specific tract characteristics, staff finds that the submitted proposal complies with these provisions in Section 506.4 of the CCZO.

Continuing with Section 507 of the Zoning Ordinance:

507 Siting of Dwellings and Structures

- .1 All new dwellings and structures are subject to the siting standards in this section. Relevant physical and locational factors including, but not limited to, topography, prevailing winds, proximity to existing roads, access, surrounding land use and source of domestic water shall be used to identify a site which:
 - A. Has the least impact on nearby or adjacent lands zoned for forest or agricultural use;
 - B. Ensures that forest operations and accepted farming practices on the tract will not be curtailed or impeded by locating dwellings and structures as near to each other and to existing developed areas as possible considering topography, water features, required setbacks and firebreaks;
 - C. Minimizes the amount of forest lands used for building sites, road access and service corridors;



As mentioned in the Summary, the Appellant’s **third concern** is related to the applicants extending electrical utilities from the existing power pole across Rays Way is related to the criteria in Section 507.1 (C) which is for new forest dwellings to “*Minimize the amount of forest lands used for building sites, road access and service corridors.*” Although this power pole is not the only pole on Rays Way, it is the closest pole to the proposed new access to Rays Way and will allow the site to be served by a single access and electrical service corridor rather than two separate corridors, as shown above.

The Columbia River PUD has not submitted any comments or concerns for RDF 23-10 which indicates to LDS that they will not have any difficulties extending the necessary utility line(s) to the subject property from any existing power pole along Rays Way. In addition, staff finds the Appellant’s concerns about the applicant’s right to use the existing power pole will be determined when the applicant submit permits to LDS and the CRPUD for the extension of utility line/service facilities to the subject tract which are regulatory requirements of the Oregon Building Code, not the County’s Zoning Ordinance. For these reasons, staff finds the Appellant’s concerns about the applicant’s use of the existing electrical power pole are not consistent with the criteria in Section 507.1 (C) which is to minimize the amount of land used for building sites, road access and service corridors.

Finally, one condition of approval shall state that all development, on the property should be clustered together to minimize the impacts on the site's remaining natural areas, and all utilities should be clustered within the access and driveway corridors.

With these conditions of approval and building permit issuance, Staff finds these criteria will be met.

- D. Is consistent with the provisions of Section 510 related to Fire Siting Standards and minimizes the risk associated with wildfire; and

Finding 12: The proposed home site will be located in the NW portion of the subject tract. The submitted site plan shows that the proposed dwelling is at least 130' from all property lines, allowing the establishment of both primary and secondary firebreaks entirely within the subject property. A comprehensive analysis will be conducted later in this report (Findings 29-33) to evaluate the extent to which the proposal submitted for RDF 23-10 complies with the regulatory requirements of Section 510 that are necessary to minimize the proposed forest dwelling's increased wildfire risk. This criterion will be satisfied with conditions that will be discussed later in this report.

- E. Is consistent with other requirements contained in the Comprehensive Plan or implementing ordinances, including, but not limited to, regulations which apply to flood, steep slopes, and landslide hazard areas, development within the Willamette River Greenway, development in forested areas or development in significant resource and natural areas, such as wetland riparian and slide-prone areas.

[...]

15-acre tract's identified wetlands



Finding 13: As seen above, the tract has no identified flood hazard areas, nor does it contain any natural hazard areas associated with the identified wetlands per the Oregon DSL Wetlands Inventory Map that will limit its intended single family residential use. These wetlands are not fish-bearing, are in the SE portion of the tract, and are at least 400' away from the intended building site. Crystalyn Bush from the Columbia County Soil and Water Conservation District attached comments encourage the applicant to use erosion control measures during construction to prevent sediment from entering headwater stream in the SE corner of the property.

All future site development will be reviewed by a County Planner for compliance with the applicable Wetlands provisions of Section 1170 of the CCZO prior to the issuance of any building permits on the subject property. With this condition, Staff finds this criterion and the criteria in Sections 507.1(E) will be satisfied for RDF 23-10.

2. The applicant shall provide evidence consistent with OAR 660-006-0029(3) that domestic water supply is from a source authorized in accordance with the Department of Water Resources' administrative rules for the appropriation of ground water or surface water in OAR Chapter 690 and not from a Class II stream as defined in the Forest Practices Rule in OAR Chapter 629. If the water supply is unavailable from public sources or sources located entirely on the subject property, then the applicant shall provide evidence that a legal easement has been obtained permitting domestic water lines to cross the properties of affected owners.

Finding 14: The submitted application states that the proposed source of potable water will be a private well, which is not yet installed. Therefore, a condition of approval will require the applicant to drill a well and provide LDS documentation that an associated well log has been recorded with the State of Oregon Department of Water Resources. The District 18 Watermaster has not submitted any comments in response to the Referral and Acknowledgement. With this condition of approval, staff finds this criterion will be met.

3. 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 or the U.S. Bureau of Land management, 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.



Location of Rays Way – entirely within the boundary of the subject tract

Finding 15: The application indicates the property will access Rays Way by a new driveway in the far NW portion of the tract. Rays Way is an existing private road that also happens to be located entirely on the subject tract as demonstrated here. The terms of use, maintenance and upkeep of private roads are the responsibility of the affected users of said private road, and not the County Department of Public Works. For these reasons, staff finds the proposal presented for RDF 23-10 complies with these provisions of the CCZO.

4. Pursuant to OAR 660-006-0029 (5), approval of a dwelling shall be subject to the following requirements:
 - A. The owner of the tract 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 the Department of Forestry administrative rules;
 - B. Land Development Services shall notify the Columbia County Assessor of the above condition at the time the dwelling is approved;
 - C. If the property is over 10 acres the owner shall submit a stocking survey report or a Forest Land Assessment and Stocking Compliance Application to the Columbia County Assessor and the Assessor shall verify that the minimum stocking requirements have been met by the time required by the Department of Forestry administrative rules;
 - D. Upon notification by the Assessor, the Department of Forestry shall 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 shall notify the owner and the Assessor that the land is not being managed as forest land. The Assessor shall then remove the forest land designation pursuant to ORS 321.359 and impose additional tax pursuant to ORS 321.372; and
 - E. A waiver of remonstrance shall be recorded with the County Clerk certifying that the owner will not remonstrate against or begin legal action or suit proceeding to cause or persuade the owner or operator of any farm and forest lands to modify the conduct of legal and accepted farm and forest operations.

Finding 16: As explained in Finding 9, the applicant will be required to file a Timber Stocking Survey as the subject property exceeds 10 acres in size. To satisfy 507.4(E), the applicant will be required to submit a signed and recorded *Waiver of Remonstrance* to LDS that prohibits taking legal actions against accepted ongoing farm and forest operations occurring on adjacent resource zoned properties. The County Assessor was notified of the applicant's requested proposal on October 3, 2023 and has yet to submit any comments to LDS. With this requirement as a condition of approval, staff finds that all criteria in 507.4 will be satisfied.

- .5 Dwellings and other structures to be located on a parcel within designated Big Game Habitat areas pursuant to the provisions of Section 1190 are subject to the additional siting criteria contained in Section 1190.

Finding 17: The criteria of Section 1190 will be addressed later in this report.

Continuing with CCZO Section 508:

508 **General Review Standards.** The Planning Director or hearings body shall determine that a use authorized by Sections 504 and 505 meets all of the following requirements:

- .1 The proposed use will not force significant change in, or significantly increase the cost of, accepted farming or forest practices on agriculture or forest lands;

Finding 18: As shown on the Zoning and Aerial Maps on Page 3, the subject property is bordered by Primary Forest (PF-80) and Forest Agriculture (FA-80) zoned properties on all sides, most of which are already developed with single-family dwellings. This historical development pattern demonstrates that this area consists of resource related and residential development in close proximity of one another. To further ensure protection of forestry and agricultural operations, the applicants will be required to record a **Waiver of Remonstrance** against ongoing accepted forest and agricultural practices on adjacent properties and record this notarized document with the County Clerk's office. With this Waiver required as a condition of approval, staff finds the criterion in Section 508.1 are met.

2. The proposed use will not significantly increase fire hazard or significantly increase fire suppression costs or significantly increase risks to fire suppression personnel;

Finding 19: The County Building Official will ensure the proposed home complies with the minimum requirements of the Oregon Structural Specialty and Fire Codes prior to building permit issuance. The County Building Official submitted comment on October 4, 2023 stating that the proposed dwelling must obtain all required structural, electrical, plumbing, and mechanical permits.

The submitted Site Plan delineates the 30' primary firebreak and 100' secondary firebreak surrounding the proposed dwelling. A more in-depth siting analysis will occur for Findings 29 – 33 of this report during the discussion related to fire siting standards

for dwellings and structures in the forest zone. Staff finds that this criterion will be satisfied by imposed conditions of approval discussed elsewhere in this report.

3. A waiver of remonstrance shall be recorded with the County Clerk certifying that the owner will not remonstrate against or begin legal action or suit proceeding to cause or persuade the owner or operator of any farm or forest lands to modify the conduct of legal and accepted farm or forest operations; and
4. The proposed use is consistent with requirements contained in the Comprehensive Plan or implementing ordinances, including, but not limited to, regulations which apply to flood hazard areas, development within the Willamette River Greenway, development in forested areas or development in significant resource areas, such as riparian, wetlands or slide-prone areas.

Finding 20: These two requirements of Section 508.3 and 508.4 are the same respective criteria in Section 507.1(E) (consistency with Overlay Zones) and Section 507.4(E) *Waiver of Remonstrance* that have been satisfied with conditions already covered.

Continuing with CCZO Section 509:

509 Standards of Development

- .1 The minimum average lot or parcel width and minimum average lot or parcel depth shall be 100 feet for all activities except farming or forestry.

Finding 21: Staff finds that the subject property's average width, excluding the location of Rays Way in the SW, is approximately 750' with an average depth of approximately 800', both of which satisfy the dimensional requirements for PF-80 zoned properties.

2. Access to parcels in this zone shall meet Fire Safety Design Standards for Roads in the County Road Standards and access standards found in Section 510 of the Zoning Ordinance.

Finding 22: The site access issues related to Fire Safety Standards are addressed in detail later in this report. Staff finds these criteria will be satisfied with conditions that will be discussed later.

3. There shall be no height limitation for forest operation and management-related structures unless otherwise permitted in the Primary Forest Zone. The maximum building height for all non-farm, non-forest structures shall be

50 feet or 2 ½ stories, whichever is less.

Finding 23: No building plans were submitted with RDF 23-10. A condition of approval shall state that the height limitation for all non-resource structures will be the lesser of 50 feet or 2 ½ stories. Compliance with CCZO 509.3 can be reviewed and satisfied at time of building permit review.

4. The Oregon Department of Fish & Wildlife shall be notified and provided with the opportunity to comment on any development within major and Peripheral Big Game Habitat.

Finding 24: The Oregon Department of Fish and Wildlife was notified of this proposal on October 3, 2023. As of the date of this Staff Report, no response has been received by LDS. Staff finds this criterion is met.

5. Setbacks:

- A. There shall be a minimum setback of 50' for front, side, and rear yards for all development in the Primary Forest Zone.
- B. When this Ordinance or any other ordinance requires a greater or lesser setback than is required by this subsection, the greater setback shall apply.
- C. All structures are subject to any special setbacks when adjacent to arterial or collector streets designated in the County Transportation Systems Plan.

Finding 25: The submitted site plan indicates there is adequate area on the 15.22-acre tract to safely support all authorized future development for primary and accessory structures in compliance with the applicable PF-80 siting standards at time of future building permit issuance. There are no other ordinances that require any different setbacks for this property. For these reasons and without any additional evidence, Staff finds these criteria can be met at the time of building permit issuance.

- D. No structure or use shall be established in a manner likely to cause contamination of a stream, lake or other body of water. Riparian and natural hazard setbacks set forth in Sections 1170 and 1182 of the Zoning Ordinance shall apply.

Finding 26: The Wetlands provisions in Section 1170 were discussed in Finding 13 of this report. Staff finds these criteria are met.

- E. The owner shall provide and maintain primary fuel-free fire break and secondary fire break areas on land surrounding the dwelling and primary fuel-free break areas surrounding accessory structures in the Primary Forest Zone pursuant to the provisions in Subsections 510.2 and .3.

Finding 27: These provisions will be discussed and evaluated in-depth later in this report. Staff finds this criterion will be satisfied with conditions that will be discussed later.

Continuing with CCZO Section 509:

- 6. Approval Period for Use Permits. For all uses approved under sections 504 and 505, the approval period shall be valid for four (4) years. At a minimum, a development construction permit must be issued by the Land Development Services within the approval period. If a construction permit is not issued within the approval period, the land use permit expires. An extension of two years on the approval period may be granted by the Director if a written request is received prior to its expiration and the reason for the delay is beyond the control of the owner.

Finding 28: This Resource Forest Dwelling Permit shall remain valid for four (4) years from the date of the final decision and shall become void unless the proposal has commenced in conformance with all conditions and restrictions established herein within the four-year validity period. A 2-year extension of time may be granted by the Planning Director, if requested in writing with the appropriate fee before the expiration date, given the applicant is not responsible for failure to develop. Staff finds this criterion will be satisfied with conditions.

Continuing with CCZO Section 510:

510 Fire Siting Standards for Dwellings, Structures and Roads:

The following fire siting standards or their equivalent shall apply to new dwellings in this zone:

- .1 If a water supply is available, suitable and acceptable for fire protection by the fire protection district, such as a swimming pool, pond, stream, or lake, then road access to within 15 feet of the water's edge shall be provided for pumping units. The road access to the dwelling and access to the on-site water supply shall accommodate the turnaround of firefighting equipment during the fire season. 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. Permanent signs shall be posted along the access route to indicate the location of the emergency water source.

Finding 29: LDS has not received any request from the Columbia River Fire & Rescue for road access to the Wetlands in the SW portion of the tract which is its only existing waterway. Staff finds this criterion does not apply to RDF 23-10.

- .2 The owner of the dwelling shall establish and maintain a primary fuel-free fire break surrounding the dwelling and accessory structure(s) no less than 30 feet wide in accordance with the provisions in "Protecting Your Home From Wildfire" published by the National Fire Protection Association. The owner may be required to increase the primary fuel-free fire break if the dwelling or structure is located on a 10% or greater slope. The primary fuel-free fire break could include a lawn, low ornamental shrubbery less than 24" in height and/or individual or groups of trees separated by a distance equal to the diameter of the crowns adjacent to each other, or 15 feet, whichever is greater. All existing tree limbs shall be pruned from the base to at least eight feet in height. Dead fuels shall also be removed.
- .3 A secondary fire break of 100 feet outside the primary fuel-free fire break, or its equivalent allowed by Columbia County Board Order No. 239-97 Firebreak Equivalents, shall also be provided and maintained for the dwelling in accordance with the provisions in "Protecting Your Home From Wildfire" published by the National Fire Protection Association. All existing trees shall be pruned from the base to at least 8 feet in height. Dead fuels shall be removed from the secondary fire break area. If the placement of the proposed dwelling cannot meet the secondary fire break due to physical constraints of the land or parcel size, the applicant may apply to obtain a secondary fire break easement from a neighbor or build the structure to a Class 1 or 2 Ignition Resistance Construction as allowed by Board Order No. 239-97, Firebreak Equivalents.

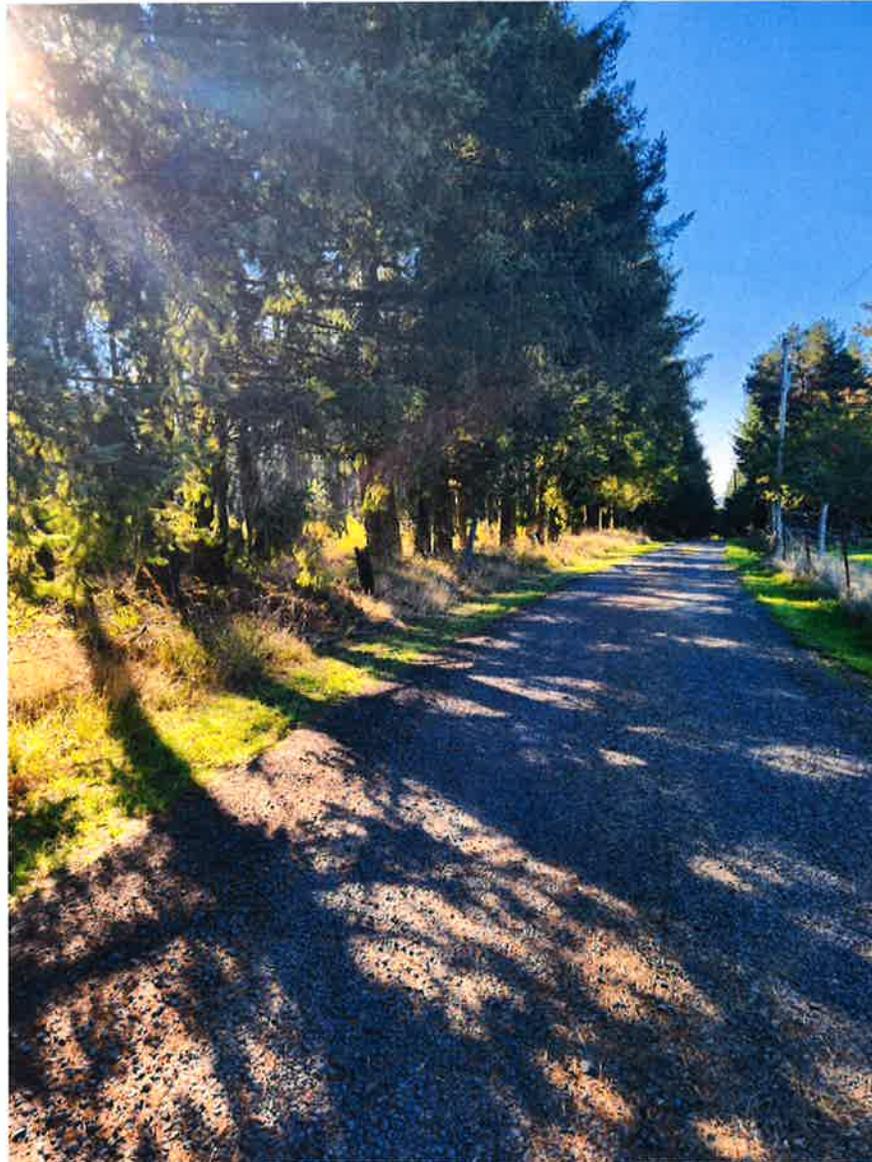
Finding 30: The Oregon Department of Forestry's March 1991 Recommended Fire Siting Standards for Dwellings & Structures & Fire Safety Design Standards for Roads requires property owners in forest zones to "maintain a primary fuel-free break area surrounding all structures; clear and maintain a secondary fuel-free break area; and maintain adequate access to the dwelling for fire-fighting equipment vehicles in accordance with the provisions in Protecting Your Home from Wildfire (National Fire Protection Association)."

As indicated in the submitted application and verified by Planning Staff during the site visit, the proposed location of the new forest dwelling will be at least 130 feet from all property lines and will allow the applicant to establish and maintain both a primary and a secondary firebreak entirely on the subject 15.22-acre tract. If at the time of development, the property owner cannot site their new home at least 130' from all property lines, they will have the option of reducing the 100' secondary firebreak according to the provisions of Equivalent Fire Buffers that was adopted through Columbia County Board Order No. 239-97. The reduction in the secondary firebreak area will, in turn, require the forest dwelling to be constructed to Class I or Class II Ignition

Resistant Standards. With this as a condition of approval, Staff finds that a full firebreak or its equivalent can be established and maintained and that these criteria will be satisfied.

- .4 All roads in this zone, except private roads and bridges for commercial forest uses, shall be constructed so as to provide adequate access for firefighting equipment according to the standards provided by the local rural fire protection district, the County Road Department, or the State Department of Forestry.

Existing condition at the end of Rays Way along tract's western boundary



Finding 31: The application indicates the property will access Rays Way by a new driveway located on the tract's NW portion as shown on Page 23. Scott Toenjes, from the Public Works Department submitted the attached comments on 11/29/23 and stated their staff conducted a site visit and determined that it substantially meets the private road standards as currently constructed. Mr. Toenjes statement that Public Works Department *“will not require additional road improvements beyond what we will require for improvements to the access point onto Hankey Road (through the Road Access) permitting process, which will include proper signage.”*

Consequently, one condition of approval will require the applicants to obtain a Road Access Permit from the Public Works Department at which time any improvements to the intersection of Rays Way and Hankey Road will be necessary for the applicants to install to Public Works specifications. As of the date of this report, the Columbia River Fire & Rescue (CRF&R) have yet to submit any concerns about the inadequacy of Rays Way.

These comments from Scott Toenjes further specifically relate to the Appellant's Forth concern identified in the Summary: *“That fire trucks were not able to make it up the road and the last time one attempted, it had to be pulled up the road with a tow truck,”* Staff would like to bring it to the Commission's attention that neither the Public Works Department of CRF&R expressed any concerns indicating that Rays Way does not comply with the minimum Private Road specifications identified in the County Road Standards Ordinance.

If the new driveway to Rays Way exceeds 150' in length, one condition of building permit issuance will require the applicants to obtain temporary access approval from the CRF&R. These specifications will be enforced at time of building permit issuance for the proposal presented for RDF 23-10. Additionally, prior to final occupancy for the newly proposed dwelling, the applicants will need to obtain final access approval from the CRF&R. As previously stated, the applicant must obtain a Road Access Permit from the Public Works Department prior to building permit issuance.

Without any additional evidence, staff finds that the Appellants' fourth item has been addressed and that any improvements to Rays Way will be installed by the applicants' and approved by the Department of Public Works prior to the issuance of a new Road Access Permit for the subject tract. With these requirements as conditions of approval and others listed within this report, Staff finds that this criterion in Section 510.4 related to improvements to Rays Way will be satisfied for RDF 23-10. .

Continuing with CCZO Section 510:

- .5 No portion of a tree or any other vegetation shall extend to within 15 feet

of the outlet of a stove pipe or chimney.

- .6 A dwelling shall meet all of the following requirements:
 - A. The dwelling shall have a fire retardant roof;
 - B. The dwelling shall not be sited on a slope of greater than 40 percent;
 - C. If the dwelling has a chimney or chimneys, each chimney shall have a spark arrester; and
 - D. The dwelling shall be located upon a parcel within a fire protection district unless the applicant meets the criteria of subsection 510.7.

Finding 32: At time of building permit issuance, the County Building Official will ensure the new forest dwelling complies with the applicable provisions of the Oregon Residential and Fire Codes. The subject tract is located within the CRF&R service area. A condition of approval shall state that the authorized forest dwelling shall be required to have a fire-retardant roof, not be sited on a slope greater than 40 percent, and all chimneys shall be required to have a spark arrester. With these conditions, staff finds the above criteria will be met.

- .7 If the dwelling is not within a fire protection district, the applicant shall provide written documentation to the County of residential fire protection. The applicant shall provide evidence that the applicant has asked to be included within the nearest such district. If the County determines that inclusion within a fire protection district or contracting for residential fire protection is impracticable, the County and fire protection district may provide an alternative means for protecting the dwelling from fire hazards which may include a fire sprinkling system, onsite equipment and water storage or other methods that are reasonable given the site conditions.

Finding 33: This criterion does not apply to RDF 23-10, since the subject parcel is within the CRF&R service area.

Continuing with CCZO Section 516:

516 Notification of State Agencies. The Oregon Department of Forestry's Columbia Unit Office and The Oregon Department of Fish and Wildlife's Forest Grove Office shall be notified and requested to comment on all conditional use requests filed under Section 503 of this Zone and all building or placement permit applications filed under the Primary Forest Zone. Responses should be received within 10 days of the date of mailing to be assured consideration.

Finding 34: The applicant's submitted proposal for RDF 23-10 is authorized and will be reviewed and approved under prescribed conditions by the Planning Commission with

the Appellant's Referral. The Oregon Department of Forestry and Department of Fish & Wildlife were notified of the submitted proposal on October 3, 2023. As of the date of this report, no comments from either agency have been received. Staff finds this criterion has been met.

Section 1190 BIG GAME HABITAT OVERLAY BGR

[Amended by Ordinance 2003-06, eff. 7/30/03].

- 1191 Purpose: To protect sensitive habitat areas for the Columbian white-tailed deer and other Big Game by limiting uses and development activities that conflict with maintenance of the areas. This section shall apply to all areas identified in the Comprehensive Plan as a major and peripheral big game range or Columbian white-tailed deer range, as shown on the 1995 Beak Consultant's map, entitled "Wild Game Habitat" in the Comprehensive Plan in Appendix Part XVI, Article VIII (A). *[Amended by Ordinance 2003-06, eff. 7/30/03].*
- 1192 Permitted Uses: All uses permitted in the underlying zone either outright or conditionally shall be permitted IN THE Big Game Range Overlay provided that such use or development is consistent with the maintenance of Big Game and Columbian White-tailed Deer Habitat identified in the Comprehensive Plan. *[Amended by Ordinance 2003-06, eff. 7/30/03].*
- 1193 Development Siting Standards: *[Amended by Ordinance 2003-06, eff. 7/30/03].* All new residential development and uses located in Major and Peripheral Big Game or Columbian White-tailed Deer Habitat shall be subject to following siting standards:
- A. Dwellings and structures shall be located as near each other and existing developed areas as possible considering topography, water features, required setbacks, and firebreaks.
 - B. Dwellings and structures shall be located to avoid habitat conflicts and utilize least valuable habitat areas.
 - C. Road development shall be minimized to that which is necessary to support the proposed use and the applicants shall utilize existing roads as much as possible.
 - D. The owner/occupant of the resource parcel shall assume responsibility for protection from damage by wildlife.
 - E. Riparian and Wetland areas shall be protected in accordance with Sections 1170 and 1180.
1194. The County shall notify the Oregon Department of Fish and Wildlife (ODFW) of all proposed uses or development activities which require a permit and are located in Major or Peripheral Big Game Habitat. The County will consider the

comments and recommendations of ODFW, if any, before making a decision concerning the requested use or activity. *[Added by Ordinance 2003-06, eff. 7/30/03].*

1195. The County shall notify the Oregon Department of Fish and Wildlife (ODFW) and the U.S. Fish and Wildlife (USFW) of all proposed uses or development activities which require a permit and are located in Columbian White-tailed Deer Habitat. The County will consider the comments and recommendations of ODFW and USFW, if any, before making a decision concerning the requested use or activity. *[Added by Ordinance 2003-06, eff. 7/30/03].*

Finding 35: The subject parcel is located in an area designated as Peripheral Big Game Habitat per the St Helens – Columbia City CPAC Beak Maps. The development of the subject forest tract will be concentrated in the NW portion of the site, leaving the other portions in their existing natural state. The Oregon Department of Fish and Wildlife (ODFW) was notified of this request and as of the date of this report, has not submitted any comments. To satisfy 1193(A), a condition of approval shall require all proposed and future site development to be clustered together with the home site. Additionally, to satisfy 1193(D), a condition of approval shall require the owner to assume responsibility for protection from damage by wildlife. Regarding Section 1193(E), the wetlands on the subject property will be protected at time of future building permit issuance. With these conditions, Staff finds that the subject tract’s proposed forest dwelling is consistent with the applicable criteria in CCZO 1190.

COMMENTS:

County Building Official: Applicant will be required to obtain all structural, electrical, plumbing, and mechanical permits for this project.

District 18 Watermaster: No comments have been received as of the date of this report.

County Public Works Department: The comments have been incorporated into the report in the discussion leading to Finding 31 and will be required as conditions of approval.

County Sanitarian: No comments have been received as of the date of this report.

Columbia County Soil & Water Conservation: Use erosion control measures during construction to prevent sediment from entering headwater stream in the SE corner of the property.

Columbia River PUD: No comments have been received as of the date of this report.

St. Helens – Columbia City CPAC: No comments have been received as of the date of this report.

Oregon Department of Fish & Wildlife: No comments have been received as of the date of this report.

County Assessor: No comments have been received as of the date of this report.

No other comments have been received as of the date of this report.

CONCLUSION, RECOMMENDATION, & CONDITIONS:

Based upon research about the property and findings in the Staff Report for **RDF 23-10 that also address the Appellant's Concerns identified in the Referral**, staff recommends the Planning Commission **APPROVE** this request to site a single-family dwelling on the subject 15.22-acre FA-80 zoned property, subject to the following conditions.

CONDITIONS OF APPROVAL:

- 1. This Forest Dwelling Permit shall remain valid for four (4) years from the date of the final decision.** This permit shall become void unless the proposal has commenced in conformance with all conditions and restrictions established herein within the four-year validity period. One 2-year extension may be granted by the Planning Director if requested in writing with the appropriate fee before the expiration date, given the applicants are not responsible for failure to develop.
2. This Forest Dwelling Permit allows a non-resource related dwelling on the subject property, which, in turn, enables the applicant(s) to apply for Building Permits (including septic) and other permits necessary for development. This Forest Dwelling Permit addresses and allows this land use only and does not guarantee approval of any other permits necessary for the future development of the subject property.
3. Primary and secondary fuel-free fire breaks shall be established and maintained for the dwelling allowed by this Forest Dwelling Permit and all accessory structures pursuant to OAR 660-006-0035 and the March 1991 Recommended Fire Siting Standards for Dwellings & Structures & Fire Safety Design Standards for Roads, published by the Oregon Department of Forestry (or) Equivalent Fire Buffers approved by Columbia County Board Order No. 239-97.
4. The applicant shall submit a Lot Evaluation Permit for the subject property and the County Sanitarian shall approve a proposed method of onsite sewage disposal for the proposed forest dwelling.

5. The applicants shall drill a well and provide LDS documentation that an associated well log has been recorded with the State of Oregon Department of Water Resources.
6. The dwelling allowed by this Forest Dwelling Permit and all accessory structures shall: 1) have a fire-retardant roof, 2) not be sited on a slope greater than 40 percent, and 3) have a spark arrester for any and all chimneys, fireplaces and pellet stoves.
7. The responsibility for protection from wildlife damage on the property shall be assumed by the dwelling's owner and/or occupant.
8. All non-resource structures shall be the lesser of 50 feet or 2 ½ stories.
9. The following shall be completed prior to issuance of Building Permits for the new home:
 - a. The applicant shall obtain an approved Road Access Permit from the Public Works Department for the new access to Rays Way.
 - b. The applicant shall provide to LDS documentation from the Columbia River Fire & Rescue confirming that the driveway is adequate for temporary access by Fire Service equipment.
 - c. The property owner shall sign and record in the deed records of Columbia County a *Waiver of Remonstrance* regarding past, current or future accepted farm or forest operations of adjacent and nearby lands. The original copy of this recorded document shall be submitted to LDS.
 - d. The applicant or property owner shall complete and submit a Timber Stocking Survey & Assessment with LDS.
 - e. The applicant shall apply for a Septic Construction Permit to install the proposed septic system.
10. All future site development on the tract shall be clustered together with the home site and shall be reviewed for consistency with the applicable provisions in Section 500 and 1170 of the Zoning Ordinance related to development of PF-80 zoned properties.
11. Prior to Final Occupancy: Documentation shall be submitted to LDS confirming the subject property has final access approval from the Columbia River Fire and Rescue.

Attachments:

Submitted application & proposed site plan

Zoning, Aerial, Address, and Vicinity Maps

Waiver of Remonstrance

Timber Stocking Survey

Colleen's DeShazer's Referral of RDF 23-10 to Planning Commission dated October 13, 2023

Final Approval of PLA 23-15

Comments received from Scott Toenjes- Public Works Department, Don VanDomelen- County Building

Official, Crystalyn Bush -County Soil & Water Conservation

cc: Colleen DeShazer: deshazerfarm@msn.com