BEFORE THE BOARD OF COMMISSIONERS OF LANE COUNTY, OREGON

ORDER
NO: 16-10-18-06

In the Matter of Electing Whether or Not to Hear an Appeal of a Hearings Official Affirmed Decision Approving Forest Template Dwelling in the Impacted Forest Lands Zone (F-2); Assessor's Map 22-03-30, Tax Lot 703 (File No. 509-PA16-05161/Weyerhaeuser).

WHEREAS, the Lane County Hearings Official has made a decision approving a forest template dwelling application in Department File No. 509-PA16-05161; and

WHEREAS, the Lane County Planning Director has an appeal of the Hearings Official's Decision to the Board of County Commissioners pursuant to LC 14.515(3)(f)(ii); and

WHEREAS, the Lane County Hearings Official has affirmed his decision on the application after reviewing the appeal in File No. 509-PA16-05161; and

WHEREAS, Lane Code 14.600 provides the procedure and criteria which the Board follows in deciding whether or not to conduct an on the record hearing for an appeal of a decision by the Hearings Official; and

WHEREAS, the Board of County Commissioners has reviewed this matter at a public meeting of the Board.

NOW, THEREFORE, the Board of County Commissioners of Lane County finds and ORDERS as follows:

1. That the appeal does not comply with the criteria of Lane Code 14.600(3) and arguments on the appeal should therefore not be considered. Findings in support of this decision are attached as Exhibit "A."

2. That the Lane County Hearings Official decision dated September 7, 2016, and the letter affirming the decision dated September 22, 2016, attached as Exhibit "B," that found relevant approval criteria are met are affirmed and adopted by the Board of County Commissioners as the County's final decision. The Board of County Commissioners has reviewed the appeal and the Hearings Official decision and expressly agrees with and adopts the interpretations of Lane Code 16.211(5) made by the Hearings Official in the decision.

ADOPTED this 18th day of October, 2016.

Faye Stewart, Chair
Lane County Board of Commissioners

APPROVED AS TO FORM

Date 10-12-16 Lane County

OFFICE OF LEGAL COUNSEL
Order Exhibit “A”

FINDINGS IN SUPPORT OF THE ORDER

1. The property subject to this application, hereinafter referred to as the "subject property," is located on tax lot 703, assessor's map 22-03-30, and is located approximately 4.0 miles southwest of Cottage Grove Lake and the Community of London. The parcel is approximately 3.46 acres in size, and is vacant, forested, and does not have a site address. The property is within the Lane County Rural Comprehensive Plan boundary designated Forest and is Zoned Impacted Forest Lands (F-2) consistent with the designation.

2. The subject property is identified as Legal Lot #4 in Legal Lot Verification 509-PA14-05139 and as Property #4 in Serial Property Line Adjustment 509-PA14-05139. According to RLID, the surrounding parcels are in different ownership.

3. The forest template dwelling sought by the applicant is processed under Lane Code 16.211(5)(c)(iii). Under subsection (aa)(A) of this provision, the applicant must demonstrate that all or part of at least eleven lots or parcels existed on January 1, 1993 within a 160–acre square template centered on the subject property. Under subsection (bb)(A), the applicant must demonstrate that there were three dwellings that existed on January 1, 1993 and continue to exist within the 160–acre square template. On August 11, 2016, the applicant submitted a revised template diagram, which rotated the 160–acre square template differently that the original diagram.

In its revised forest template dwelling analysis, the applicant is counting 15 parcels as being in existence on January 1, 1993 and that lie within the forest template. The following analysis addresses the evidence relied upon by the applicant to show conformance with Lane Code 16.211(5)(c)(iii)(aa):

- **Template Parcel #1:** Tax Lot 701, Assessor's Map 22–03–30. This is the eastern portion of a parcel created by the quitclaim deed recorded in Book 68, Page 375, Lane County Deeds and Records (O&C to Moxley) on March 5, 1906. It was reduced in size by warranty deed (Moxley to Jones) on July 7, 1907 (See Book 69, Page 627 Lane County Deeds and Records.) It was divided off from the eastern portion by intervening fee ownership with Quit Claim Deed on April 2, 1934 (Sutherlin to Lane County) (See Book 178, Page 486, Lane County Deeds and Records.) The legal lot status of this template parcel was verified in PA 13–05076.

- **Template Parcels #2 & #3:** Tax Lot 300, Assessor's Map 22–03–31. This is the parent parcel that was created in 1960. Originally it was 3.85 acres in size and shaped like a boot with its toe pointing south. (See Reel 132, Page 6643, Lane County Deeds and Records.)

  **Template Parcel #2** – Created on January 9, 1965 and recorded on November 9, 1967. (Graham to Walters) (See Reel 369, Page 4412, Lane County Deeds and Records.)

  **Template Parcel #3** – Created in January 10, 1959 and recorded on May 1, 1959. (Clark to Cox) (See Book 132, Page 66643, Lane County Deeds and Records.) It was later reduced in size on January 9, 1965. (See Book 364, Page 4412, Lane County Deeds and Records.)
• **Template Parcel #4**: Tax Lot 200, Assessor’s Map 22–03–31. Created in 1967 by warranty deed (Quigley to Walters). (See Reel 359, Page 95616, Lane County Deeds and Records.)

• **Template Parcels #5, #6 & #7**: Tax Lot 100, Assessor’s Map 22–03–31.

  **Template Parcels #6 and #7** – Both parcels created by the same bargain and sales deed on September 15, 1943 and recorded October 9, 1943. (Jones to Campbell) (Book 255, Page 314 Lane County Deeds and Records.)

  **Template Parcel #5** – This is a bargain and sale deed (Jones to Woodard Lumber Co.) that was created on March 27, 1937 and recorded June 2, 1937 that intervenes between Template Parcels #6 and #7. (See Book 189, Page 443, Lane County Deeds and Records.)

• **Template Parcel #8**: Tax Lot 400, Assessor’s Map 22–03–31. This parcel was created by deed out of U.S. Government Ownership by ORORAA 000413 Serial Patent on December 3, 1894 as part of a 229,099.38 acre deed per BLM/GLO records. Tax lot 400 was apparently created in 1941. (See Book 184, Page 294 Lane County Deeds and Records.)

• **Template Parcel #9**: Tax Lot 800, Assessor’s Map 22–03–30. Template Parcel #9 was created by quitclaim deed on January 17, 1957 and recorded February 19, 1957 (Woodard Lumber Co. to Weyerhaeuser Timber Company). (See Book 95, Page 6410 Lane County Deeds and Records.)

• **Template Parcel #10**: Tax Lot 1100, Assessor’s Map 22–03–30. Template Parcel #10 was created by warranty Deed (Chambers to Weyerhaeuser Timber Company) on November 20, 1957 and recorded November 22, 1957. (See Book 107, Page 26454, Lane County Deeds and Records; later reduced on August 6, 1958 (See Book 127, Page 57781, Lane County Deeds and Records.) The parcel was sold by Warren Hansen to David and Sharyl Roser on August 16, 1972 via a bargain and sale deed recorded May 29, 1975. (See Reel 744, Page 7520749, Lane County Deeds and Records.)

• **Template Parcel #11**: Tax Lot 1101, Assessor’s Map 22–03–30. On August 16, 1972, David and Sharyl Roser transfer to G.S.A.R.M, Inc. the real estate contact they had with Warren Hansen. This bargain and sale deed was recorded on May 29, 1975 on Reel 744, Page 7520749, Lane County Deeds and Records. This transfer was for a portion of the property transferred to the Rosers from Warren Hansen and agrees with the legal description contained in the Assessor’s card.

• **Template Parcel #12**: This is the North section of the Weyerhaeuser Logging Road and can be identified as tax lot 1200, assessor's map 22–03–30. While the staff and Appellant argue that roads cannot be counted towards the template dwelling test. However, the Code definition of "a lawfully created unit of land" is not defined by its use after creation but rather the act of creation itself. This parcel was created by deed on January 17, 17, 1957. (See Reel 93, Page 4013 Lane County Deeds and Records.)
• **Template Parcel #13:** This is the South section of the Weyerhaeuser Logging Road that can be identified as tax lot 600, assessor's map 22–03–31. As noted above in the discussion under Template Parcel #12, the Code definition of "a lawfully created unit of land" is not defined by its use after creation but rather the act of creation itself. This parcel was created by deed on May 27, 1937 (See Book 189, Page 443 Lane County Deeds and Records.) and may be counted as a parcel towards the template dwelling test.

• **Template Parcel #14:** This lot can be identified as being a portion of tax lot 200, assessor's map 22–03–31 and is a part of Fire Clay Road. This parcel was created by deed (George Sutherland to Lane County) recorded on April 2, 1934. (See Book 178, Page 486 Lane County Deeds and Records.)

• **Template Parcel #15:** Tax Lot 700, Assessor's Map 22–03–30. Created in by land sale contract on September 23, 1974 (Brown to Paterson) and recorded on September 24, 1974. (See Reel 709, Page 7441210, Lane County Deeds and Records.) The contract was re–recorded on the same day to correct the legal description. (See Reel 709, Page 7519053, Lane County Deeds and Records.) The parcel was 20 acres in size when created in 1974 and 24.75 acres after correction. The parcel was reduced in size by a deed recorded on September 24, 1974. (See Reel 709, Page 7441210 Lane County Deeds and Records.)

In its revised template diagram, the applicant is counting four template parcels that contained a dwelling as of January 1, 1993 and that continue to exist. The following analysis addresses the evidence relied upon by the applicant to show conformance with Lane Code 16.211(5)(c)(iii)(bb):

• Tax Lot 500, Assessor's Map 22–03–30 – House built in 1950. This dwelling cannot be counted as the parcel that it occupies was not used by the applicant to satisfy Lane Code 16.211(5)(c)(iii)(aa) in its modified template diagram.


• Tax Lot 300, Assessor's Map 22–03–31 (Template Parcel #2) – House was deemed to have been created via PA 3701–92 prior to January 1, 1993.

• Tax Lot 200, Assessor's Map 22–03–31 (Template Parcel #4) – House built in 1923.


4. **On February 26, 2016,** the applicant submitted a request to establish a forest template dwelling in the Impacted Forest Lands (F–2) zone to Lane County Land Management Division. On March 24, 2016, staff reviewed the application materials and deemed the application complete. On June 30, 2016, the Planning Director issued a determination that the subject property complied with the applicable standards and criteria for a forest template dwelling pursuant to LC 16.211(5) and (8). Notice of the determination was mailed to surrounding property owners. On July 12, 2016, a timely appeal was submitted by LandWatch Lane County.
5. On August 4, 2016, the Lane County Hearings Official conducted a public hearing. The written record was held open until August 11, 2016. On September 7, 2016 the Lane County Hearings Official issued a decision approving the application. Notice of the Hearings Official’s decision was mailed to the applicant and all parties of record on September 7, 2016.

6. On September 19, 2016, the appellant filed a timely appeal and requested that the Board of County Commissioners not conduct a hearing on the appeal and deem the Hearings Officer’s decision the final decision of the County, pursuant to LC 14.515(3)(f)(ii).

7. On September 22, 2016, the Hearings Official reviewed the appeal and affirmed his decision without further consideration pursuant to LC 14.535(1).

8. In order for the Board to hear arguments on the appeal, Lane Code 14.600(3) requires one or more of the following criteria to be found by the Board to apply to the appeal:
   • The issue is of Countywide significance.
   • The issue will reoccur with frequency and there is a need for policy guidance.
   • The issue involves a unique environmental resource.
   • The Planning Director or Hearings Official recommends review.

9. The Planning Director and subsequently on appeal, the Hearings Official, have consistently found that the “date of creation” language is not applicable to template dwelling approvals. In his decision on this application, the Hearings Official found that in Parsons v. Clackamas County, 32 Or LUBA 147 (1996), “LUBA held that the ‘date of creation’ provisions of OAR 660–06–005(5) do not apply to the template dwelling provisions of ORS 215.750 and OAR 660–006–0027(3).”

   The Planning Director and subsequently on appeal, the Hearings Official, have consistently found that evidence of the legal creation of parcels, but not a formal legal lot verification application, is sufficient to demonstrate compliance with Lane Code 16.211(5)(c)(iii).

Both the Hearings Official’s original decision dated September 7, 2016 and his decision not to further consider the application dated September 22, 2016 support these practices.

Furthermore, with regards to other issues incorporated by reference into the appeal statement, the Hearings Official found in his decision not to further consider the application dated September 22, 2016 that allegations of error have been adequately addressed in the decision and that reconsideration is not warranted.

The Hearings Official’s decision presents a reasonable interpretation of Lane Code 16.211(5)(c)(iii)(aa) with regard to the issues raised in this appeal, should other forest template dwelling applications with similar fact patterns be proposed. Therefore, the Planning Director does not find that the implications of the decision are of countywide significance.

10. Forest template dwelling applications are a common land use application made to the Land Management Division. Irrespective of the frequency of this type of application, when these issues have been presented, the Planning Director and subsequently on appeal, the Hearings Official, have consistently found that the “date of creation” language is not applicable to template dwelling approvals. Additionally, the Planning Director and subsequently on appeal, the Hearings Official, have consistently found that legal lot verification application is not required to evaluate whether parcels relied upon in the 160-acre template area comply with Lane Code 16.211(5)(c)(iii). The Hearings Official's decision supports these practices. Therefore, the Planning Director finds that the issue involved in this appeal will not reoccur with frequency.
In the event that a comparable proposal and fact pattern comes before the Land Management Division, the Hearings Official’s decision presents a reasonable interpretation of Lane Code 16.211(5)(c)(iii)(aa). If these issues arise in the future, the Hearings Official’s decision provides guidance. The Planning Director finds that there is not a need for further policy guidance.

11. The subject property does not constitute a unique environmental resource. To the extent that the forested areas of the property constitute a unique environmental resource, the provisions of Lane Code 16.211(5) implement the intent of the Impacted Forest Lands Zone (F-2).

12. The Hearings Official has not recommended review of the appeal on the record.

13. The Planning Director does not recommend review of the appeal on the record for the reasons cited above.

14. To meet the requirements of Lane Code 14.600(2)(b), the Board is required to adopt a written decision and Order electing to have a hearing on the record for the appeal or declining to further review the appeal.

15. The Board has reviewed this matter at its meeting of October 18, 2016, and finds that the appeal does not comply with the criteria of Lane Code Chapter 14.600(3), declines further review, and elects not to hold an on the record hearing for the appeal.

16. The Board affirms and adopts the Hearings Official decision of September 7, 2016, as the County's final decision in this matter, has reviewed that decision, and expressly agrees with and adopts the interpretations of Lane Code 16.211(5) made by the Hearings Official in the decision.
CERTIFICATE OF MAILING

509-PA16-05161
WEYERHAEUSER/ KEEPERS
9/7/2016

This is to certify that I, Lisa Lansbery, mailed notification of

Hearing Officer’s Decision

To the person(s) shown on the attached copy of mailing label &/or attached letter & delivered said information to the authorized for the US Post Office in Springfield, Oregon on

Date Mailed: 9/7/16

End of Comment Period: 9/19/16

Appeal Deadline: 9/19/16

Hearing Date:

[Signature]

LISA LANSBERY

NOTE: Surrounding property owners listed are "the owners of record of all property on the most recent property tax assessment rolls" on RLID as per Lane Code 14,300(3)(d). If a tax lot appears on the notice list & there are no corresponding addresses than the tax records have not been updated; therefore, these property owners were not notified.
September 7, 2016

Ms. Lydia McKinney, Division Manager
Land Management Division
3050 N. Delta Highway
Eugene, OR 97408

Re: Appeal of Planning Director approval of the request (PA 16-05161) by the Weyerhaeuser NR Company for a template forest dwelling on tax lot 703, assessor’s map 22-07-01.

Dear Ms. McKinney:

Please find the Lane County Hearings Official’s decision affirming the Planning Director’s approval of the request (PA 16-05161) by the Weyerhaeuser NR Company for a template dwelling on tax 703, assessor’s map 22-07-01.

Sincerely,

[Signature]
Gary L. Darnelle
Lane County Hearings Official

cc: Amber Bell (file)
LANE COUNTY HEARINGS OFFICIAL
APPEAL OF A PLANNING DIRECTOR APPROVAL OF A TEMPLATE DWELLING WITHIN THE F–2 DISTRICT

Application Summary

On February 26, 2016, a request to establish a dwelling in the Impacted Forest Lands (F–2) zone was submitted to Lane County Land Management Division by Jeremy Keepers, an agent the Weyerhaeuser NR Company. On March 24, 2016, staff reviewed the application materials and deemed the application complete. On June 30, 2016, the Director issued a determination that the subject property complied with the applicable standards and criteria for a Forest Template Dwelling pursuant to LC 16.211(5) and (8). Notice of the determination was mailed to surrounding property owners. On July 12, 2016, a timely appeal was submitted by LandWatch Lane County (LandWatch).

On August 11, 2016, the Applicant submitted an alternative template. LandWatch was given an additional week to review this new information.

Parties of Record

Weyerhaeuser NR Company    LandWatch Lane County    Jeremy Keepers
Sean Malone                Robert Emmons              Lauri Segel–Vaccher

Application History

Hearing Date: August 4, 2016
               (Record Held Open Until September 1, 2016)

Decision Date: September 7, 2016

Appeal Deadline

An appeal must be filed within 12 days of the issuance of this decision, using the form provided by the Lane County Land Management Division. The appeal will be considered by the Lane County Board of Commissioners.

Statement of Criteria

Lane Code 16.211(5) &(8)

Findings of Fact

1. The property subject to this application, hereinafter referred to as the “subject property,” is located on tax lot 703, assessor’s map 22–03–30, and is located
approximately 4.0 miles southwest of Cottage Grove Lake and the Community of London. The parcel is approximately 3.46 acres in size, is vacant, is forested, and does not have a site address. The property is within the Lane County Rural Comprehensive Plan boundary designated Forest and is Zoned Impacted Forest Lands (F–2) consistent with the designation.

2. The subject property is identified as Legal Lot #4 in Legal Lot Verification 509–PA14–05139 and as Property #4 in Serial Property Line Adjustment 509–PA14–05139. According to RLID, the surrounding parcels are in different ownership.

3. The forest template dwelling sought by the Applicant is processed under Lane Code 16.211(5)(c)(iii). Under Subsection (aa)(A) of this provision, the Applicant must demonstrate that all or part of at least eleven lots or parcels existed on January 1, 1993 within a 160–acre square template centered on the subject property. Under Subsection (bb)(A) the Applicant must demonstrate that there were three dwellings that existed on January 1, 1993 and continue to exist within the 160–acre square template. On August 11, 2016 the Applicant submitted a revised template diagram, which rotated the 160–acre square template differently that the original diagram.

In its revised template diagram, the Applicant is counting four template parcels that contained a dwelling as of January 1, 1993 and that continue to exist. See Attachment A for information about these template dwellings.

In its revised forest template dwelling analysis, the Applicant is counting 15 parcels as being in existence on January 1, 1993 and that lie within the forest template. See Attachment A for a description of these template parcels.

**Decision**

THE PLANNING DIRECTOR DECISION APPROVING THE REQUEST (PA 16–05161) BY THE WEYERHAUSE NR COMPANY FOR A TEMPLATE FOREST DWELLING ON TAX LOT 703, ASSESSOR’S MAP 22–03–30 IS AFFIRMED.

**Justification for the Decision (Conclusion)**

The subject property is zoned F–2 Impacted Forest Land. The applicant is requesting approval to construct a single–family dwelling as provided by Lane Code 16.211(5)(c). Dwellings authorized by this provision are known as “forest template” dwellings because some of the applicable approval criteria of Lane Code 16.211(5) must be analyzed through the placement of a 160–acre square template centered on the center of the subject property (tract). Additionally, the placement of a dwelling on impacted forest land must meet the siting standards provided by Lane Code 16.211(8).

Under the template dwelling regulations, the standards differ depending upon the soil productivity of the property upon which the dwelling is to be placed. In the present case,
the soils on the subject property are capable of producing about 154 cubic feet per acre per year of wood fiber. Therefore, Lane Code 16.211(5)(c)(iii) is applicable. Under Subsection (aa) of this standard, the Applicant must demonstrate that all or a part of at least eleven other lots or parcels that existed on January 1, 1993 are within a 160-acre square centered on the center of the subject tract. Under Subsection (bb) of this standard, the Applicant must demonstrate that there were three dwellings that existed on January 1, 1993 and continue to exist that are located within the 160-acre square template that is centered on the subject tract.

The allegations of error raised by the Appellant in its appeal are as follows:

**The eleven-parcel count required by Lane Code 16.211(5)(c)(iii)(aa) has not been met.**

The Appellant has challenged most of the template parcels relied upon by the Applicant to satisfy Lane Code 16.211(5)(c)(iii)(aa). Each of these challenges are addressed below:

**Template Parcel #1 (Tax lot 701, Assessor's Map 22–03–30) –** The Appellant argues that this parcel may not be counted as it was reconfigured through a property line adjustment after January 1, 1993. I believe that the Appellant is reading the standard found in the "date of creation and existence" definition of OAR 660–06–005(5) into ORS 215.750(1)(c)(A), OAR 660–06–0027(3)(c)(A), and Lane Code 16.211(5)(c)(iii)(aa).

OAR 660–06–005(5) states that:

"When a lot, parcel or tract is reconfigured pursuant to applicable law after November 4, 1993, the effect of which is to qualify a lot, parcel or tract for the siting of a dwelling, the date of the reconfiguration is the date of creation or existence. Reconfigured means any change in the boundary of the lot, parcel, or tract."

I do not believe that this interpretation is consistent with case law or with a reading of the statute. First, in the Parsons case, LUBA held that the "date of creation" provisions of OAR 660–06–005(5) do not apply to the template dwelling provisions of ORS 215.750 and OAR 660–006–0027(3). This opinion is consistent with the plain language of the statute and administrative rule that only requires that all or part of a lot or parcel existed on January 1, 1993 and is located within the template diagram. Second, even if the language of OAR 660–06–005(5) was interpreted to apply to the template dwelling process, it wouldn't automatically disqualify a parcel from the analysis of Lane Code 16.211(5)(c)(iii)(bb). The "reconfiguration" must have the effect of qualifying the parcel for the siting of a dwelling. The property line adjustment of tax lot 701 did not have the effect of qualifying that parcel for a dwelling. This allegation of error is dismissed.

**Template Parcels #2 & #3 (Tax lot 300, Assessor's Map 22–03–31) –** The Appellant argues that this tax lot has not been verified as containing two legal lots. I believe that the

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1 Parsons v. Clackamas County, 32 Or LUBA 147 (1996)
Appellant is correct in the sense that no formal legal lot verification has been applied to tax lot 300. However, a formal verification process is not required; merely a showing that one or more legal lots exist.

The Applicant has submitted deeds that demonstrate that tax lot 300 contains two legal lots. The record indicates a transfer from Graham to Walters in 1965, subsequently recorded in 1967, and a transfer from Clark to Cox in January of 1959, subsequently recorded later that year. The dotted line on the assessor's map is an indication that tax lot 300 consists of two legal lots. This allegation of error is dismissed.

Template Parcel #4 (Tax lot 200, Assessor's Map 22–03–31)

The Appellant states that this is one legal lot and the Applicant has counted this parcel as being one legal lot. The record shows that this parcel was created in 1967 by warranty deed. This allegation of error is dismissed.

Template Parcels #5, #6 & #7 (Tax lot 100, Assessor's Map 22–03–31)

The Appellant has argued that this tax lot has not been verified as being three legal lots. Again, the Appellant is correct that no formal legal lot verification has been conducted for tax lot 100. However, as stated above, I do not believe a formal verification is necessary if the evidence in the record adequately demonstrates that a parcel or parcels were lawfully created prior to January 1, 1993. In this respect, two of the parcels were created by a bargain and sale deed in 1943 and the third parcel by a bargain and sale deed in 1937. Absent any evidence to the contrary, I must conclude that these parcels were lawfully created prior to January 1, 1993. This allegation of error is dismissed.

Template Parcel #8 (Tax lot 400, Assessor's Map 22–03–31)

The Appellant states that this is one legal lot and the Applicant has counted this parcel as being one legal lot. The record shows that this parcel was created in 1894 by deed from U.S. Government ownership. Tax lot 400 itself was created in 1941. The ownership of the parcel by BLM is irrelevant. This allegation of error is dismissed.

Template Parcel #9 (Tax lot 800, Assessor's Map 22–03–30)

The Appellant states that this is one legal lot and the Applicant has counted this parcel as being one legal lot. Template Parcel #9 was created by quitclaim deed on January 17, 1957 from the Woodard Lumber Co. to the Applicant. This allegation of error is dismissed.

Template Parcel #10 (Tax lot 1100, Assessor's Map 22–03–30)

The Appellant states that this is not a legal lot and the Applicant leaves out the "out of #27028–1–1" description included on the Lane County Assessor's deed card for this tax
lot. I don't know what this declaration means although it is the heading on a portion of the deed card that has been stamped "CANCELLED" by the Assessor.

The deeds relied upon by the Applicant precede the first entry on the Assessor's deed card for tax lot 1100, presumably because tax lot 300 was created after those transfers. The 1957 transfer by warranty deed has the same legal description as contained in the Assessor's deed card so there is no confusion about the identity of the property that was being transferred. In addition, the 1975 conveyance of the property by warranty deed is represented on the deed card. This allegation of error is dismissed.

Template Parcel #11 (Tax lot 1101, Assessor's Map 22–03–30)

The Appellant claims tax lot 1101 is not a legal lot and that the Assessor's deed card conflicts with the Applicant's statement that the parcel was created in 1972 in Reel 744, Page 20749 Lane County Deeds and Records. Evidence of this lot's legal creation can be found in a bargain and sale deed that was recorded on May 29, 1975 on Reel 744, Page 7520749 of Lane County Deeds and Records. This allegation of error is dismissed.

Template Parcel #12 (Tax lot 1200, Assessor's Map 22–03–30)

This is the north section of the Weyerhaeuser logging road. The Appellant and the staff argue that roads do not qualify as meeting the forest template approval criteria but do not explain the legal basis upon which this conclusion is based. As pointed out in Attachment A to this decision, the Lane Code definition of "a lawfully created unit of land" is not defined by a parcel's use after creation but rather by the act of creation itself. This allegation of error is dismissed.

Template Parcel #13 (Tax lot 600, Assessor's Map 22–03–31)

This is the south section of the Weyerhaeuser logging road. The record supports a conclusion that this parcel was lawfully created prior to January 1, 1953 and its use as a road is irrelevant to whether it may qualify in a template dwelling count. This allegation of error is dismissed.

Template Parcel #14 (Tax lot 200, assessor's map 22–03–31, Fire Clay Road)

This is Fire Clay Road. It was lawfully created by deed that was recorded on April 2, 1934 and may be counted towards the template dwelling test. This allegation of error is dismissed.

Template Parcel #15 (Tax lot 700, Assessor's Map 22–03–30)

The Appellant argues that this parcel is not a legal lot as it was created by deed in 1957, reduced by deed in November 1975 after Lane County's land division regulations were adopted on March 19, 1975. In fact, the reduction of the parcel occurred prior to 1975 as evidenced by a deed recorded in 1974. This allegation of error is dismissed.
Summary

The Appellant and the Planning Director disagree upon several fundamental issues regarding whether a parcel may be counted towards the forest template dwelling test. First, it is important to understand that the Lane County Assessor's deed cards are based upon tax lots, which are not the same as legal lots. In some cases, the deed history on a deed card may disclose underlying legal lots but in many cases they do not. This is why each counted parcel must be verified through evidence of creation.

Second, the Appellant has consistently argued that a parcel that has undergone a property line adjustment after January 1, 1993 may not be counted in the forest template dwelling test. The statute, administrative rule and Lane Code provisions only require that the parcel "exist" prior to January 1, 1993. The applicable provisions do not require that the parcel "continue to exist in its 1993 configuration." By law, a property line adjustment may not create a new lot or parcel; it may only relocate or eliminate a common boundary line. All of the property line adjustments identified by the Appellant have merely relocated a common property line.

Third, the Appellant argues that to be counted towards the forest template dwelling test, a parcel must have been verified as being a legal lot. There is no foundation for this assumption in the law. The only requirement is that lots or parcels counted toward the template test be lawfully established. Lane Code 16.090 provides four methods by which a lot or parcel may be lawfully established and legal lot verification is only one of those four methods. In all cases related to this application, the parcels and lots used in the template count were either created by an approved land division process prior to 1993 or were created by deed or land sales contract at a time when there were no planning, zoning or subdivision or partition ordinances or regulations in effect.

Finally, staff and the Appellant agree that roads may not be counted in the forest template dwelling test although there is some evidence in the record that this is not a consistent position by planning staff. Regardless, there is nothing in statute, administrative rule, or the Lane Code that requires (or forbids) that a certain type of use or size of a parcel is determinate as to whether it can be counted in the template test. The only test is that it be lawfully established prior to 1993.

For the evidence cited in the above-listed findings and the conclusions presented in this summary, I find that the Planning Director's approval of the application for a template dwelling should be affirmed.

Respectfully Submitted,

Gary Darnuelle
Lane County Hearings Official
ATTACHMENT A
(16–05161)

The following analysis addresses the evidence relied upon by the Applicant to show conformance with Lane Code 16.211(5)(c)(iii)(aa):

Template Parcel #1

Tax Lot 701, Assessor’s Map 22–03–30. This is the eastern portion of a parcel created by the quitclaim deed recorded in Book 68, Page 375, Lane County Deeds and Records (O&C to Moxley) on March 5, 1906. It was reduced in size by warranty deed (Moxley to Jones) on July 7, 1907 (See Book 69, Page 627 Lane County Deeds and Records.) It was divided off from the eastern portion by intervention fee ownership with Quit Claim Deed on April 2, 1934 (Sutherlin to Lane County) (See Book 178, Page 486, Lane County Deeds and Records.) The legal lot status of this template parcel was verified in PA 13–05076.

Template Parcels #2 & #3


This is the parent parcel that was created in 1960. Originally it was 3.85 acres in size and shaped like a boot with its toe pointing south. (See Reel 132, Page 6643, Lane County Deeds and Records.)

Template Parcel #2 – Created on January 9, 1965 and recorded on November 9, 1967. (Graham to Walters) (See Reel 369, Page 4412, Lane County Deeds and Records.)

Template Parcel #3 – Created in January 10, 1959 and recorded on May 1, 1959. (Clark to Cox) (See Book 132, Page 66643, Lane County Deeds and Records.) It was later reduced in size on January 9, 1965. (See Book 364, Page 4412, Lane County Deeds and Records.)

Template Parcel #4

Tax Lot 200, Assessor’s Map 22–03–31. Created in 1967 by warranty deed (Quigley to Walters). (See Reel 359, Page 95616, Lane County Deeds and Records.)

Template Parcels #5, #6 & #7

Tax Lot 100, Assessor’s Map 22–03–31.

Template Parcels #6 and #7 – Both parcels created by the same bargain and sales deed on September 15, 1943 and recorded October 9, 1943. (Jones to Campbell) (Book 255, Page 314 Lane County Deeds and Records.)

Template Parcel #5 – This is a bargain and sale deed (Jones to Woodard Lumber Co.) that was created on March 27, 1937 and recorded June 2, 1937 that intervenes between Template Parcels #6 and #7. (See Book 189, Page 443, Lane County Deeds and Records.)
**Template Parcel #8**

Tax Lot 400, Assessor’s Map 22–03–31. This parcel was created by deed out of U.S. Government Ownership by ORORAA 000413 Serial Patent on December 3, 1894 as part of a 229,099.38 acre deed per BLM/GLO records. Tax lot 400 was apparently created in 1941. (See Book 184, Page 294 Lane County Deeds and Records.)

**Template Parcel #9**

Tax Lot 800, Assessor’s Map 22–03–30. Template Parcel #9 was created by quitclaim deed on January 17, 1957 and recorded February 19, 1957 (Woodard Lumber Co. to Weyerhaeuser Timber Company). (See Book 95, Page 6410 Lane County Deeds and Records.)

**Template Parcel #10**

Tax Lot 1100, Assessor’s Map 22–03–30. Template Parcel #10 was created by warranty Deed (Chambers to Weyerhaeuser Timber Company) on November 20, 1957 and recorded November 22, 1957. (See Book 107, Page 26454, Lane County Deeds and Records; later reduced on August 6, 1958 (See Book 127, Page 57781, Lane County Deeds and Records.) The parcel was sold by Warren Hansen to David and Sharyl Roser on August 16, 1972 via a bargain and sale deed recorded May 29, 1975. (See Reel 744, Page 7520749, Lane County Deeds and Records.)

**Template Parcel #11**

Tax Lot 1101, Assessor’s Map 22–03–30. On August 16, 1972, David and Sharyl Roser transfer to G.S.A.R.M, Inc. the real estate contact they had with Warren Hansen. This bargain and sale deed was recorded on May 29, 1975 on Reel 744, Page 7520749, Lane County Deeds and Records. This transfer was for a portion of the property transferred to the Rosers from Warren Hansen and agrees with the legal description contained in the Assessor's card.¹

**Template Parcel #12**

This is the North section of the Weyerhaeuser Logging Road and can be identified as tax lot 1200, assessor's map 22–03–30. While the staff and Appellant argue that roads cannot be counted towards the template dwelling test. However, the Code definition of "a lawfully created unit of land" is not defined by its use after creation but rather the act of creation itself. This parcel was created by deed on January 17, 17, 1957. (See Reel 93, Page 4013 Lane County Deeds and Records.)

**Template Parcel #13**

This is the South section of the Weyerhaeuser Logging Road that can be identified as tax lot 600, assessor's map 22–03–31. As noted above in the discussion under Template Parcel #12, the Code definition of "a lawfully created unit of land" is not defined by its use after creation but rather the act of creation itself. This parcel was created by deed on May 27, 1937 (See Book 189, Page 443 Lane County Deeds and Records,) and may be counted as a parcel towards the template dwelling test.

¹ It should be noted that one call direction in the deed card for Tax Lot 1100 does not agree with the deed itself but it is clear that this is a typographical error on the part of the Assessor's Office.
Template Parcel #14

This lot can be identified as being a portion of tax lot 200, assessor's map 22–03–31 and is a part of Fire Clay Road. This parcel was created by deed (George Sutherland to Lane County) recorded on April 2, 1934. (See Book 178, Page 486 Lane County Deeds and Records.)

Template Parcel #15

Tax Lot 700, Assessor’s Map 22–03–30. Created in by land sale contract on September 23, 1974 (Brown to Paterson) and recorded on September 24, 1974. (See Reel 709, Page 7441210, Lane County Deeds and Records.) The contract was re–recorded on the same day to correct the legal description. (See Reel 709, Page 7519053, Lane County Deeds and Records.) The parcel was 20 acres in size when created in 1974 and 24.75 acres after correction. The parcel was reduced in size by a deed recorded on September 24, 1974. (See Reel 709, Page 7441210 Lane County Deeds and Records.)

The following analysis addresses the evidence* relied upon by the Applicant to show conformance with Lane Code 16.211(5)(c)(iii)(bb):

Tax Lot 500, Assessor's Map 22–03–30 – House built in 1950. This dwelling cannot be counted as the parcel that it occupies was not used by the Applicant to satisfy Lane Code 16.211(5)(c)(iii)(aa) in its modified template diagram.


Tax Lot 300, Assessor's Map 22–03–31 (Template Parcel #2) – House was deemed to have been created via PA 3701–92 prior to January 1, 1993.


September 22, 2016

Ms. Lydia McKinney, Manager
Land Management Division
3050 N. Delta Highway
Eugene, OR 97408

Re: Appeal of Hearings Official decision affirming the Planning Director’s approval of the Weyerhaeuser request (PA 16-05161) for a template forest dwelling on tax lot 703, assessor’s map 22-03-30.

Dear Ms. McKinney:

On September 7, 2016, I affirmed the Planning Director’s approval of the Weyerhaeuser NR Company’s request (PA 16-05161) for a template forest dwelling on tax lot 703, assessor’s map 22-03-30. On September 19, 2016 LandWatch Lane County appealed my decision. Upon a review of this appeal, I find that the allegations of error have been adequately addressed in that decision and that a reconsideration is not warranted.

Accordingly, on the authority of Lane Code 14.535(1), I shall affirm my September 7, 2016 decision without further consideration. Please advise interested parties of this decision.

Sincerely,

Gary L. Darnelle
Lane County Hearings Official

cc: Amber Bell (file)
ATTACHMENT 3

LAND MANAGEMENT DIVISION

APPEAL OF A
HEARING'S OFFICIAL DECISION

PUBLIC WORKS DEPARTMENT 3050 NORTH DELTA HIGHWAY, EUGENE OR 97408
PLANNING: 541-682-3577 BUILDING: 541-682-4651 SANITATION: 541-682-3754

For Office Use Only: FILE # CODE: FEE: $250.00

Appellant: LWLC/Robert Emmons
Mailing address: See attached
Phone: Email:
Signature: See attached Date:

Appellant's Representative: Lauri Seigel
Mailing address: P.O. Box 5347
Phone: 541-517-4459 Email: fourhope6@comcast.net
Signature: Lauri Seigel Date: 9-19-16

LOCATION (subject property)
22-07-38 W05 Township - Range - Section - Tidlot Subdivision/Partition lot/parcel: 07-03

You have one of two appeal options. Your appeal application will be rejected if it does not contain all the required submittals.

Required Option 1 submittals:

Option 1 (The appellant requests Hearing's Official Reconsideration OR Board of Commissioner Review in a Hearing.)
1. Fee is $3,712 appeal fee, payable to Lane County. (See the reverse side for important fee information)
2. A copy of the decision being appealed, with the Department file number. File # 5091
3. Indicate the deadline to submit the appeal. (Found in the Hearing Official's Decision)
4. Check one of the items below to identify your party status with the right to appeal the Hearings Official's decision:
   _ I am the owner or contract purchaser of the subject property;
   _ I am the applicant for the subject application;
   _ Prior to the decision by the Hearings Official, I submitted written testimony into the record
   _ I am not one of the persons mentioned above, but wish to appeal the Hearings Official’s decision for the reasons explained in my letter.

5. A letter that addresses each of the following three standards:
   a. The reason(s) why the decision of the Hearings Official was made in error or why the Hearings Official should reconsider the decision;

Revised on 1/2016
b. An identification of one or more of the following general reasons for the appeal, or request for reconsideration:
   - The Hearings Official exceeded his or her authority;
   - The Hearings Official failed to follow the procedure applicable to the matter;
   - The Hearings Official rendered a decision that is unconstitutional;
   - The Hearings Official misinterpreted the Lane Code, Lane Manual, State Law, or other applicable criteria.

   c. The Hearings Official should reconsider the decision to allow the submittal for additional evidence not in the record that addresses compliance with the applicable standards or criteria.

6. Any additional information in support of your appeal.

EXPLANATION OF THE APPEAL PROCESS UNDER OPTION 1

There are 3 steps involved in an appeal of a Hearings Official decision. Each requires a fee for services.

Step 1

When the appeal is submitted, the Hearings Official has the option to reconsider the decision (Refer to LC 14.535). If the Hearings Official reconsiders the decision, the fee is $1,152.

Step 2

If the Hearings Official elects not to reconsider the decision, the appeal is forwarded to the Board of County Commissioners. The fee is $1,484.80. The Board then decides whether or not to hear the appeal (Refer to LC 14.600)

Step 3

If the Commissioners elect to hear the appeal, the fee for the Board hearing is $2,227.20. If the Board does not elect to hear the appeal, the parties of record may appeal the decision to the Land Use Board of Appeals (LUBA). If the Commissioners do not hear the appeal, $150 of the $1,484.80 fee (Step 2 above) will be refunded, in addition to the $2,227.20, for a total refund of $2,377.20.

Explanation of the Appeal Fee Under Option 1

The total due when submitting the appeal is $3,712. You will get a refund if the Hearings Official reconsiders the decision, or the County Commissioners elect not to hear the appeal.

If the Hearings Official reconsiders the decision, the refund is $2,560.

If the County Commissioners elect not to hear the appeal, the refund is $2,377.20.

If the Board elects to hear the appeal, there is no refund.

Required Option 2 submittals:

Option 2: The appellant requests that the Board not conduct a hearing on the appeal and deem the Hearing’s Official decision the final decision of the County. (Note, the Board may still choose to review the appeal pursuant to Lane Code 14.500(2) or the Hearing’s Official may still reconsider the decision pursuant to LC 14.535).

1. Fee is a non-refundable $250 appeal fee, payable to Lane County.

2. A copy of the decision being appealed, with the department file number. File # PAN/16-05161

3. Indicate the deadline to submit the appeal. (Found in the Hearing Official’s Decision) 9-19-16

4. Check one of the items below to identify your party status with the right to appeal the Hearing Official’s decision:

   [ ] I am the owner or contract purchaser of the subject property;
September 19, 2016

Lane County Hearings Official
Public Works Department
3060 North Delta Highway
Eugene OR 97408
(541) 682-3577

Re: Appeal Addendum, Option 2 Appeal of Hearings Officer Decision in Weyerhaeuser NR Company, 509-PA16-05161

Appellant’s Name
LandWatch Lane County
PO Box 5347
Eugene OR 97405
fourhope@comcast.net
hopsbran@aol.com

Authorized Representative
Sean T. Malone
Attorney at Law
259 E. 5th Ave, Ste 200-G
Eugene OR 97401
(303) 859-0403
seanmalone8@hotmail.com

Identification of the Decision Sought to Be Reviewed

Appellants hereby appeals the Hearing Officer’s September 7, 2016 decision denying the Appellant’s appeal of the Director’s decision regarding a forest template dwelling. (PA16-05161)

Appeal Option
Appellants requests Option 2 as set forth in the County’s attached appeal form. Appellants request that the Board of Commissioners not conduct a hearing on the appeal and deem the Hearings Officer decision the final decision of the County pursuant to LC14.515(3)(f)(ii).

Standing

Appellants have standing to appeal because appellants appeared before the Hearings Officer in writing and in person at the hearing.

Appeal Fee

Please find attached a check in the amount of $250.00 for the appeal fee.

Copy of the Decision

A copy of the decision being appealed is attached.

Grounds for Appeal

The grounds on which appellants rely as the basis for their appeal include but are not limited to the attached documentation from the record before the Hearings Official:

- August 3 Landwatch appeal narrative
- August 8 email from staff to Hearings Official and parties of record
- August 25 Landwatch rebuttal document

For the reasons provided for in the attached, the Hearings Officer’s decision should be reversed and the application denied.

As noted above, through this appeal and the incorporation of all prior testimony - written and oral – Appellant intends to preserve all arguments raised below.

Sincerely,

\[Signature\]

Robert Emmons
President
September 7, 2016

Ms. Lydia McKinney, Division Manager  
Land Management Division  
3050 N. Delta Highway  
Eugene, OR 97408

Re: Appeal of Planning Director approval of the request (PA 16-05161) by the Weyerhaeuser NR Company for a template forest dwelling on tax lot 703, assessor’s map 22-07-01.

Dear Ms. McKinney:

Please find the Lane County Hearings Official’s decision affirming the Planning Director’s approval of the request (PA 16-05161) by the Weyerhaeuser NR Company for a template dwelling on tax 703, assessor’s map 22-07-01.

Sincerely,

[Signature]  
Gary L. Darnelle  
Lane County Hearings Official

cc: Amber Bell (file)
LANE COUNTY HEARINGS OFFICIAL
APPEAL OF A PLANNING DIRECTOR APPROVAL OF A TEMPLATE DWELLING WITHIN THE F-2 DISTRICT

Application Summary

On February 26, 2016, a request to establish a dwelling in the Impacted Forest Lands (F-2) zone was submitted to Lane County Land Management Division by Jeremy Keepers, an agent the Weyerhaeuser NR Company. On March 24, 2016, staff reviewed the application materials and deemed the application complete. On June 30, 2016, the Director issued a determination that the subject property complied with the applicable standards and criteria for a Forest Template Dwelling pursuant to LC 16.211(5) and (8). Notice of the determination was mailed to surrounding property owners. On July 12, 2016, a timely appeal was submitted by LandWatch Lane County (LandWatch).

On August 11, 2016, the Applicant submitted an alternative template. LandWatch was given an additional week to review this new information.

Parties of Record

Weyerhaeuser NR Company  LandWatch Lane County  Jeremy Keepers
Sean Malone  Robert Emmons  Lauri Segel-Vaccher

Application History

Hearing Date: August 4, 2016
(Record Held Open Until September 1, 2016)

Decision Date: September 7, 2016

Appeal Deadline

An appeal must be filed within 12 days of the issuance of this decision, using the form provided by the Lane County Land Management Division. The appeal will be considered by the Lane County Board of Commissioners.

Statement of Criteria

Lane Code 16.211(5)&(8)

Findings of Fact

1. The property subject to this application, hereinafter referred to as the “subject property,” is located on tax lot 703, assessor’s map 22-03-30, and is located
approximately 4.0 miles southwest of Cottage Grove Lake and the Community of London. The parcel is approximately 3.46 acres in size, is vacant, is forested, and does not have a site address. The property is within the Lane County Rural Comprehensive Plan boundary designated Forest and is Zoned Impacted Forest Lands (F–2) consistent with the designation.

2. The subject property is identified as Legal Lot #4 in Legal Lot Verification 509–PA14–05139 and as Property #4 in Serial Property Line Adjustment 509–PA14–05139. According to RLID, the surrounding parcels are in different ownership.

3. The forest template dwelling sought by the Applicant is processed under Lane Code 16.211(5)(c)(iii). Under Subsection (aa)(A) of this provision, the Applicant must demonstrate that all or part of at least eleven lots or parcels existed on January 1, 1993 within a 160-acre square template centered on the subject property. Under Subsection (bb)(A) the Applicant must demonstrate that there were three dwellings that existed on January 1, 1993 and continue to exist within the 160-acre square template. On August 11, 2016 the Applicant submitted a revised template diagram, which rotated the 160-acre square template differently than the original diagram.

In its revised template diagram, the Applicant is counting four template parcels that contained a dwelling as of January 1, 1993 and that continue to exist. See Attachment A for information about these template dwellings.

In its revised forest template dwelling analysis, the Applicant is counting 15 parcels as being in existence on January 1, 1993 and that lie within the forest template. See Attachment A for a description of these template parcels.

Decision

THE PLANNING DIRECTOR DECISION APPROVING THE REQUEST (PA 16–05161) BY THE WEYERHAEUSER NR COMPANY FOR A TEMPLATE FOREST DWELLING ON TAX LOT 703, ASSESSOR’S MAP 22–03–30’ IS AFFIRMED.

Justification for the Decision (Conclusion)

The subject property is zoned F–2 Impacted Forest Land. The applicant is requesting approval to construct a single-family dwelling as provided by Lane Code 16.211(5)(c). Dwellings authorized by this provision are known as “forest template” dwellings because some of the applicable approval criteria of Lane Code 16.211(5) must be analyzed through the placement of a 160-acre square template centered on the center of the subject property (tract). Additionally, the placement of a dwelling on impacted forest land must meet the siting standards provided by Lane Code 16.211(8).

Under the template dwelling regulations, the standards differ depending upon the soil productivity of the property upon which the dwelling is to be placed. In the present case,
the soils on the subject property are capable of producing about 154 cubic feet per acre per year of wood fiber. Therefore, Lane Code 16.211(5)(c)(iii) is applicable. Under Subsection (aa) of this standard, the Applicant must demonstrate that all or a part of at least eleven other lots or parcels that existed on January 1, 1993 are within a 160-acre square centered on the center of the subject tract. Under Subsection (bb) of this standard, the Applicant must demonstrate that there were three dwellings that existed on January 1, 1993 and continue to exist that are located within the 160-acre square template that is centered on the subject tract.

The allegations of error raised by the Appellant in its appeal are as follows:

**The eleven-parcel count required by Lane Code 16.211(5)(c)(iii)(aa) has not been met.**

The Appellant has challenged most of the template parcels relied upon by the Applicant to satisfy Lane Code 16.211(5)(c)(iii)(aa). Each of these challenges are addressed below:

**Template Parcel #1 (Tax lot 701, Assessor's Map 22–03–30)** — The Appellant argues that this parcel may not be counted as it was reconfigured through a property line adjustment after January 1, 1993. I believe that the Appellant is reading the standard found in the "date of creation and existence" definition of OAR 660–06–005(5) into ORS 215.750(1)(c)(A), OAR 660–006–0027(3)(c)(A), and Lane Code 16.211(5)(c)(iii)(aa).

OAR 660–06–005(5) states that:

"When a lot, parcel or tract is reconfigured pursuant to applicable law after November 4, 1993, the effect of which is to qualify a lot, parcel or tract for the siting of a dwelling, the date of the reconfiguration is the date of creation or existence. Reconfigured means any change in the boundary of the lot, parcel or tract."

I do not believe that this interpretation is consistent with case law or with a reading of the statute. First, in the Parsons case, LUBA held that the "date of creation" provisions of OAR 660–06–005(5) do not apply to the template dwelling provisions of ORS 215.750 and OAR 660–006–0027(3). This opinion is consistent with the plain language of the statute and administrative rule that only requires that all or part of a lot or parcel existed on January 1, 1993 and is located within the template diagram. Second, even if the language of OAR 660–06–005(5) was interpreted to apply to the template dwelling process, it wouldn't automatically disqualify a parcel from the analysis of Lane Code 16.211(5)(c)(iii)(bb). The "reconfiguration" must have the effect of qualifying the parcel for the siting of a dwelling. The property line adjustment of tax lot 701 did not have the effect of qualifying that parcel for a dwelling. This allegation of error is dismissed.

**Template Parcels #2 & #3 (Tax lot 300, Assessor's Map 22–03–31)** — The Appellant argues that this tax lot has not been verified as containing two legal lots. I believe that the

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\[1\] Parsons v. Clackamas County, 32 Or LUBA 147 (1996)
Appellant is correct in the sense that no formal legal lot verification has been applied to tax lot 300. However, a formal verification process is not required; merely a showing that one or more legal lots exist.

The Applicant has submitted deeds that demonstrate that tax lot 300 contains two legal lots. The record indicates a transfer from Graham to Walters in 1965, subsequently recorded in 1967, and a transfer from Clark to Cox in January of 1959, subsequently recorded later that year. The dotted line on the assessor's map is an indication that tax lot 300 consists of two legal lots. This allegation of error is dismissed.

Template Parcel #4 (Tax lot 200, Assessor's Map 22–03–31)

The Appellant states that this is one legal lot and the Applicant has counted this parcel as being one legal lot. The record shows that this parcel was created in 1967 by warranty deed. This allegation of error is dismissed.

Template Parcels #5, #6 & #7 (Tax lot 100, Assessor's Map 22–03–31)

The Appellant has argued that this tax lot has not been verified as being three legal lots. Again, the Appellant is correct that no formal legal lot verification has been conducted for tax lot 100. However, as stated above, I do not believe a formal verification is necessary if the evidence in the record adequately demonstrates that a parcel or parcels were lawfully created prior to January 1, 1993. In this respect, two of the parcels were created by a bargain and sale deed in 1943 and the third parcel by a bargain and sale deed in 1937. Absent any evidence to the contrary, I must conclude that these parcels were lawfully created prior to January 1, 1993. This allegation of error is dismissed.

Template Parcel #8 (Tax lot 400, Assessor's Map 22–03–31)

The Appellant states that this is one legal lot and the Applicant has counted this parcel as being one legal lot. The record shows that this parcel was created in 1894 by deed from U.S. Government ownership. Tax lot 400 itself was created in 1941. The ownership of the parcel by BLM is irrelevant. This allegation of error is dismissed.

Template Parcel #9 (Tax lot 800, Assessor's Map 22–03–30)

The Appellant states that this is one legal lot and the Applicant has counted this parcel as being one legal lot. Template Parcel #9 was created by quitclaim deed on January 17, 1957 from the Woodard Lumber Co. to the Applicant. This allegation of error is dismissed.

Template Parcel #10 (Tax lot 1100, Assessor's Map 22–03–30)

The Appellant states that this is not a legal lot and the Applicant leaves out the "out of #27028–1–1" description included on the Lane County Assessor's deed card for this tax
lot. I don't know what this declaration means although it is the heaving on a portion of the deed card that has been stamped "CANCELLED" by the Assessor.

The deeds relied upon by the Applicant precede the first entry on the Assessor's deed card for tax lot 1100, presumably because tax lot 300 was created after those transfers. The 1957 transfer by warranty deed has the same legal description as contained in the Assessor's deed card so there is no confusion about the identify of the property that was being transferred. In addition, the 1975 conveyance of the property by warranty deed is represented on the deed card. *This allegation of error is dismissed.*

**Template Parcel #11 (Tax lot 1101, Assessor's Map 22–03–30)**

The Appellant claims tax lot 1101 is not a legal lot and that the Assessor's deed card conflicts with the Applicant's statement that the parcel was created in 1972 in Reel 744, Page 20749 Lane County Deeds and Records. Evidence of this lot's legal creation can be found in a bargain and sale deed that was recorded on May 29, 1975 on Reel 744, Page 7520749 of Lane County Deeds and Records. *This allegation of error is dismissed.*

**Template Parcel #12 (Tax lot 1200, Assessor's Map 22–03–30)**

This is the north section of the Weyerhaeuser logging road. The Appellant and the staff argue that roads do not qualify as meeting the forest template approval criteria but do not explain the legal basis upon which this conclusion is based. As pointed out in Attachment A to this decision, the Lane Code definition of "a lawfully created unit of land" is not defined by a parcel's use after creation but rather by the act of creation itself. *This allegation of error is dismissed.*

**Template Parcel #13 (Tax lot 600, Assessor's Map 22–03–31)**

This is the south section of the Weyerhaeuser logging road. The record supports a conclusion that this parcel was lawfully created prior to January 1, 1993 and its use as a road is irrelevant to whether it may qualify in a template dwelling count. *This allegation of error is dismissed.*

**Template Parcel #14 (Tax lot 200, assessor's map 22–03–31, Fire Clay Road)**

This is Fire Clay Road. It was lawfully created by deed that was recorded on April 2, 1934 and may be counted towards the template dwelling test. *This allegation of error is dismissed.*

**Template Parcel #15 (Tax lot 700, Assessor's Map 22–03–30)**

The Appellant argues that this parcel is not a legal lot as it was created by deed in 1957, reduced by deed in November 1975 after Lane County's land division regulations were adopted on March 19, 1975. In fact, the reduction of the parcel occurred prior to 1975 as evidenced by a deed recorded in 1974. *This allegation of error is dismissed.*
Summary

The Appellant and the Planning Director disagree upon several fundamental issues regarding whether a parcel may be counted towards the forest template dwelling test. First, it is important to understand that the Lane County Assessor's deed cards are based upon tax lots, which are not the same as legal lots. In some cases, the deed history on a deed card may disclose underlying legal lots but in many cases they do not. This is why each counted parcel must be verified through evidence of creation.

Second, the Appellant has consistently argued that a parcel that has undergone a property line adjustment after January 1, 1993 may not be counted in the forest template dwelling test. The statute, administrative rule and Lane Code provisions only require that the parcel "exist" prior to January 1, 1993. The applicable provisions do not require that the parcel "continue to exist in its 1993 configuration." By law, a property line adjustment may not create a new lot or parcel; it may only relocate or eliminate a common boundary line. All of the property line adjustments identified by the Appellant have merely relocated a common property line.

Third, the Appellant argues that to be counted towards the forest template dwelling test, a parcel must have been verified as being a legal lot. There is no foundation for this assumption in the law. The only requirement is that lots or parcels counted toward the template test be lawfully established. Lane Code 16.090 provides four methods by which a lot or parcel may be lawfully established and legal lot verification is only one of those four methods. In all cases related to this application, the parcels and lots used in the template count were either created by an approved land division process prior to 1993 or were created by deed or land sales contract at a time when there were no planning, zoning or subdivision or partition ordinances or regulations in effect.

Finally, staff and the Appellant agree that roads may not be counted in the forest template dwelling test although there is some evidence in the record that this is not a consistent position by planning staff. Regardless, there is nothing in statute, administrative rule, or the Lane Code that requires (or forbids) that a certain type of use or size of a parcel is determinate as to whether it can be counted in the template test. The only test is that it be lawfully established prior to 1993.

For the evidence cited in the above-listed findings and the conclusions presented in this summary, I find that the Planning Director's approval of the application for a template dwelling should be affirmed.

Respectfully Submitted,

[Signature]

Gary Darnelle
Lane County Hearings Official
ATTACHMENT A  
(PA 16-05161)

The following analysis addresses the evidence relied upon by the Applicant to show conformance with Lane Code 16.211(5)(c)(iii)(aa):

**Template Parcel #1**

Tax Lot 701, Assessor’s Map 22-03-30. This is the eastern portion of a parcel created by the quitclaim deed recorded in Book 68, Page 375, Lane County Deeds and Records (O&C to Moxley) on March 5, 1906. It was reduced in size by warranty deed (Moxley to Jones) on July 7, 1907 (See Book 69, Page 627 Lane County Deeds and Records.) It was divided off from the eastern portion by intervening fee ownership with Quit Claim Deed on April 2, 1934 (Sutherlin to Lane County) (See Book 178, Page 486, Lane County Deeds and Records.) The legal lot status of this template parcel was verified in PA 13-05076.

**Template Parcels #2 & #3**

Tax Lot 300, Assessor’s Map 22-03-31.

This is the parent parcel that was created in 1960. Originally it was 3.85 acres in size and shaped like a boot with its toe pointing south. (See Reel 132, Page 6643, Lane County Deeds and Records.)

**Template Parcel #2 – Created on January 9, 1965 and recorded on November 9, 1967. (Graham to Walters) (See Reel 369, Page 4412, Lane County Deeds and Records.)**

**Template Parcel #3 – Created in January 10, 1959 and recorded on May 1, 1959. (Clark to Cox) (See Book 132, Page 66643, Lane County Deeds and Records.) It was later reduced in size on January 9, 1965. (See Book 364, Page 4412, Lane County Deeds and Records.)**

**Template Parcel #4**

Tax Lot 200, Assessor’s Map 22-03-31. Created in 1967 by warranty deed (Quigley to Walters). (See Reel 359, Page 95616, Lane County Deeds and Records.)

**Template Parcels #5, #6 & #7**

Tax Lot 100, Assessor’s Map 22-03-31.

Template Parcels #6 and #7 – Both parcels created by the same bargain and sales deed on September 15, 1943 and recorded October 9, 1943. (Jones to Campbell) (Book 255, Page 314 Lane County Deeds and Records.)

**Template Parcel #5 – This is a bargain and sale deed (Jones to Woodard Lumber Co.) that was created on March 27, 1937 and recorded June 2, 1937 that intervenes between Template Parcels #6 and #7. (See Book 189, Page 443, Lane County Deeds and Records.)**
Template Parcel #8

Tax Lot 400, Assessor’s Map 22–03–31. This parcel was created by deed out of U.S. Government Ownership by ORORAA 000413 Serial Patent on December 3, 1894 as part of a 229,099.38 acre deed per BLM/GLO records. Tax lot 400 was apparently created in 1941. (See Book 184, Page 294 Lane County Deeds and Records.)

Template Parcel #9

Tax Lot 800, Assessor’s Map 22–03–30. Template Parcel #9 was created by quitclaim deed on January 17, 1957 and recorded February 19, 1957 (Woodard Lumber Co. to Weyerhaeuser Timber Company). (See Book 95, Page 6410 Lane County Deeds and Records.)

Template Parcel #10

Tax Lot 1100, Assessor’s Map 22–03–30. Template Parcel #10 was created by warranty Deed (Chambers to Weyerhaeuser Timber Company) on November 20, 1957 and recorded November 22, 1957. (See Book 107, Page 26454, Lane County Deeds and Records; later reduced on August 6, 1958 (See Book 127, Page 57781, Lane County Deeds and Records.) The parcel was sold by Warren Hansen to David and Sharyl Roser on August 16, 1972 via a bargain and sale deed recorded May 29, 1975. (See Reel 744, Page 7520749, Lane County Deeds and Records.)

Template Parcel #11

Tax Lot 1101, Assessor’s Map 22–03–30. On August 16, 1972, David and Sharyl Roser transfer to G.S.A.R.M., Inc. the real estate contact they had with Warren Hansen. This bargain and sale deed was recorded on May 29, 1975 on Reel 744, Page 7520749, Lane County Deeds and Records. This transfer was for a portion of the property transferred to the Rosers from Warren Hansen and agrees with the legal description contained in the Assessor’s card.¹

Template Parcel #12

This is the North section of the Weyerhaeuser Logging Road and can be identified as tax lot 1200, assessor’s map 22–03–30. While the staff and Appellant argue that roads cannot be counted towards the template dwelling test. However, the Code definition of “a lawfully created unit of land” is not defined by its use after creation but rather the act of creation itself. This parcel was created by deed on January 17, 17, 1957. (See Reel 93, Page 4013 Lane County Deeds and Records.)

Template Parcel #13

This is the South section of the Weyerhaeuser Logging Road that can be identified as tax lot 600, assessor’s map 22–03–31. As noted above in the discussion under Template Parcel #12, the Code definition of “a lawfully created unit of land” is not defined by its use after creation but rather the act of creation itself. This parcel was created by deed on May 27, 1937 (See Book 189, Page 443 Lane County Deeds and Records.) and may be counted as a parcel towards the template dwelling test.

¹ It should be noted that one call direction in the deed card for Tax Lot 1100 does not agree with the deed itself but it is clear that this is a typographical error on the part of the Assessor’s Office.
Template Parcel #14

This lot can be identified as being a portion of tax lot 200, assessor’s map 22-03-31 and is a part of Fire Clay Road. This parcel was created by deed (George Sutherland to Lane County) recorded on April 2, 1934. (See Book 178, Page 486 Lane County Deeds and Records.)

Template Parcel #15

Tax Lot 700, Assessor’s Map 22-03-30. Created in by land sale contract on September 23, 1974 (Brown to Paterson) and recorded on September 24, 1974. (See Reel 709, Page 7441210, Lane County Deeds and Records.) The contract was re-recorded on the same day to correct the legal description. (See Reel 709, Page 7519053, Lane County Deeds and Records.) The parcel was 20 acres in size when created in 1974 and 24.75 acres after correction. The parcel was reduced in size by a deed recorded on September 24, 1974. (See Reel 709, Page 7441210 Lane County Deeds and Records.)

The following analysis addresses the evidence* relied upon by the Applicant to show conformance with Lane Code 16.211(5)(c)(iii)(bb):

Tax Lot 500, Assessor’s Map 22-03-30 – House built in 1950. This dwelling cannot be counted as the parcel that it occupies was not used by the Applicant to satisfy Lane Code 16.211(5)(c)(iii)(aa) in its modified template diagram.


Tax Lot 300, Assessor’s Map 22-03-31 (Template Parcel #2) – House was deemed to have been created via PA 3701-92 prior to January 1, 1993.

Tax Lot 200, Assessor’s Map 22-03-31 (Template Parcel #4) – House built in 1923.

Tax Lot 1101, Assessor’s Map 22-03-30 (Template Parcel #11) – House built in 1976.

* Dwellings/Manufactured Structures Identified by the Regional Land Information Database (RLID) Summary Property Report located in Assessor’s Maps 17-07-01 and 17-07-12.
August 3, 2016

Lane County Hearings Official
c/o Lane County Land Management Division
Public Works Department
3050 N Delta Highway
Eugene, OR 97408

This is an appeal of Director's Decision 509- PA16-05161, map # 22-03-30-00-00703, approval of a dwelling in the Impacted Forest Lands (F-2) zone pursuant to the "Template Dwelling" provision in Lane Code Chapter 16.211(5) and siting standards, 16.211(8).

Appellants Names and Mailing Address:

LandWatch Lane County
PO Box 5347
Eugene OR 97405

Robert Emmons
40093 Little Fall Creek Rd.
Fall Creek OR

Decision subject to this review:

Director's decision of June 29, 2016 approving a forest template dwelling in the F-2 (impacted forestland) zone.
Introduction

Please note that Landwatch representatives are not available on the morning of August 4th, and requested this hearing be rescheduled. Citing no authority, staff denied our request. There is nothing in LC Chapter 14 that provides for rescheduling of HO appeal hearings, nor any general discretionary provision that provides direction or authority to staff to deny such a request. In fact, requests from applicants to reschedule appeal hearings are always honored, with the new 'agreement' that staff will also check in with the appellant before setting a new date. Landwatch objects to this practice, that is without apparent policy direction, of allowing only applicants to be granted a new appeal hearing date, even when they are not also the appellant.

Using the same discretion, staff allowed the applicant to submit new material into the record 2 weeks after the filing of this appeal, information LW did not know about until reviewing the Staff Report for this hearing. However, even though the applicant failed to meet the July 22 deadline for new material established by staff in their Notice of Appeal document, submitting their new material on July 26, staff still relied on the new information to further justify the PD approval.

Landwatch objects to being treated differently from the applicant, as expressed above, and regret we are unable to present out appeal in person.

Because we are unable to attend, we must ask outright to hold the record open for a week to allow us to respond to any new material or other information that is presented or that comes to light at the hearing.

Statement of errors

I. LC 16.211 (5) Template Dwelling

One single-family dwelling is allowed subject to prior submittal of an application pursuant to LC 14.050, approval of the application pursuant to LC 14.100 with the options for the Director to conduct a hearing or to provide written notice of the decision and an opportunity for appeal, and compliance with the general provisions and exceptions in LC Chapter 16, LC 16.211(5)(a) through (f) and LC 16.211(8) below

- The code provisions of LC Chapter 14 (14.050 and 14.100) are not addressed in the staff findings

14.050 Application Requirements, Acceptance and Investigation.

(1) Contents. Applications subject to any of the review procedures of this chapter shall:

2
(c) Address the appropriate criteria for review and approval of the application and shall contain the necessary supporting information.

- Regarding (c), above, the appropriate criteria for review and approval of the application are not noted on the application itself.

- Neither the Referral Notice, the Notice of Decision, nor the application form identifies which subsection of LC 16.211(5) or OAR 660-006-0027 (3) the application is pursuant to.

16.211(5) Template Dwelling approval criteria:

NOTE: The following bolded language is copied and pasted directly from LC 16.211, and also reflected verbatim in the HO Staff Report. The italicized language, found only in the Decision Staff Report, indicates added words that are not part of the Code, and in one case is inconsistent with ORS 215. The BOLDED CAPITALIZED HIGHLIGHTED language from the code is omitted from the Decision Staff Report.

One single-family dwelling or manufactured dwelling is allowed subject to prior submittal of an application pursuant to LC 14.050, approval of the application pursuant to LC 14.100 with the options for the Director to conduct a hearing or to provide written notice of the decision and an opportunity for appeal, and compliance with the general provisions and exceptions in LC Chapter 16, LC 16.211(5)(a) through (f) and LC 16.211(8) below.

(a) The tract upon which the dwelling or manufactured dwelling will be located has no other dwellings on it. As used in LC 16.211(5), "tract" means one or more contiguous lots or parcels 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. NOTE: THE ITALICIZED, BOLDED LANGUAGE, ABOVE, IS INCONSISTENT WITH ORS 215.750, Alternative forestland dwellings and OAR 660-006-0027(3); THE LANGUAGE APPLIES ONLY TO ORS 215.740, and OAR 660-006-0027(2), Large tract forestland dwellings.

*(c) The lot or parcel upon which the dwelling or manufactured dwelling will be located:

(iii) Is predominantly composed of soils that are capable of producing 85 cubic feet per acre per year of wood fiber; and
(aa) All or part of at least eleven other lots or parcels that existed on January 1, 1993, are within a 160 acre square centered on the center of the subject tract measured and counted as follows:

- The applicant's template 'map' is a TurboCAD LTE diagram that assumedly represents a version of a 1993 tax map because the existing 2016 parcel configurations are not reflected in the template diagram. The configurations of the parcels that are to be counted within that template are difficult to make out and requires a comparison to an older than current tax map to make sense of. The subject parcel did not exist in 1993, so it is drawn in, no indication of it's scale or any way to determine if it is correctly 'placed'. Considering that 3 of the lots/parcels being counted as within the template (#'s 1, 8, 6) barely fall within the template, if at all, a more accurate representation than was relied on by staff should have been required in order to find the application is consistent with the approval criteria.

(bb) At least three dwellings or manufactured dwelling existed on January 1, 1993, AND CONTINUE TO EXIST on the other lots or parcels described in LC 16.211(5)(c)(i)(aa) above.

Landwatch does not understand the intent behind these code language 'changes' that are not adopted. Whether or not the changes have any effect on this PD decision is not the main issue; rather, the effect of an unlawful tweaking of the code in such a 'back door' manner is that it subverts, to some extent, the ability of the public to participate effectively. Who would notice that the Code said one thing, the Decision Staff Report said another and that it differed from the HO Staff Report?

We discovered the discrepancies after multiple readings of the associated documents.

II. Parcel and Dwelling Count Evaluation

- The HO staff report refers to the parcels that are the subject of this appeal as:
  "Legal Lot 6 and 7 identified in PA14-05139 and Legal Lot 1, 2, and 3 identified in PA13-05076 ."

These 5 parcels are actually map #’s:
20-03-30- 706 (1), 705 (2), 704 (3), 00601 (6), 00602(7)

The staff report does not address what happened to 'legal lot #4' in the 2014 serial PLA shuffle.

From the HO staff report: "The applicant only counts parcels that existed within the 160-acre square template area on January 1, 1993. Furthermore, those property line adjustments
did not have the effect of qualifying the subject parcel for siting of a dwelling, as the property line adjustments in PA14-05139 did not create a new parcel within the 160-acre template square."

LWLC disagrees with staff’s conclusion above. None of the pre-property line adjusted 'legal lots' were shown as individual units of land on the County's tax maps or zoning maps prior to approval of the LLV's, and after the serial PLA of tl#'s 600 and 701, the only two parcels identifiable as individual units land on County maps prior to the 2013 and 2014 LLV's, there are five additional parcels that fall within the template, all of which are eligible to apply for a forest template dwelling. Whereas only tl#'s 600 and 701 should have been eligible for forest template dwellings, the serial property line adjustments of underlying consolidated lots, essentially unconsolidated as a result of the LLV's, had the effect of adding tl#'s 601, 703 (subject parcel), 704, 705 and 706 within the 160 acre template.

Staff relies on the Hearings Official’s decision in PA15-05569 in finding that the application meets the approval criteria. In PA15-05569 the HO concluded: "the 'date of creation' provisions of OAR 660-06-005(5) do not apply to template dwelling provisions". It should be noted here that PA15-05569 is under appeal and should not be relied on to justify a conclusion, as was done here, that the “date of creation” provisions do not apply. However, the HO went on to conclude in PA15-05569 that "even if OAR 660-006-005(5) did apply, it wouldn’t automatically disqualify" a taxlot "from the analysis of LC 16.211(5)(c)(iii)(b). The “reconfiguration” must have the effect of qualifying the lot, parcel, or tract for the siting of a dwelling or creating a new parcel within the template square."

Landwatch disagrees with staff’s conclusion that the HO decision in PA15-05569 supports the PD approval in the subject proposal. The PLA actions had the effect of qualifying 5 additional parcels for dwelling applications, including the subject parcel, and there are an additional 5 parcels that fall within the template that were not known to exist in 1993.

- Tax lot #700

The Decision Staff Report does not include tl# 700 in the parcel count analysis or refer to it being within the template square, but does include the dwelling on tl# 700 in the dwelling count analysis.

However, in the HO Staff Report tl#700 is included in both the parcel and dwelling count analysis.

This discrepancy is noted by staff in the HO Staff Report as a scrivener’s error.

Landwatch disagrees with staff’s justification for relying on tl# 700 as a legal parcel.
TL #700 was reduced in size from 110.36 acres to 25.57 acres in 1975 by land sales
document # 1975-50873 and was recorded on November 19, 1975. The land division
regulations of LC Chapter 13 became effective on March 26, 1975.

Because this land division occurred via a land sales contract and was recorded almost 8
months after Lane County's adoption of land division regulations (Chapter 13) Tax Lot 700,
is not a legal lot.

ORS 215.750, alternative forestland dwellings, establishes that qualifying dwellings must
be on the other lots or parcels within the template. The pertinent language is:

"(a) Capable of producing *** cubic feet per acre per year of wood fiber if:
(A) All or part of at least *** other lots or parcels that existed on January 1, 1993,
are within a 160-acre square centered on the center of the subject tract; and
(B) At least three dwellings existed on January 1, 1993, on the other lots or parcels;

In other words, a dwelling can't be counted if it's parcel isn't counted. In this case tl #700 is
not a legal lot and the dwelling sited there cannot be counted either because it is not sited on
a qualifying parcel.

- The applicant submitted new material on July 26, 4 days after staff's July 22 deadline
  for new material and 2 weeks after the filing of this appeal

The applicant's new material include a statement noting their original application materials
showed "there are additional underlying legal lots that can be supplied if necessary." The
applicant's new Exhibit C supposedly illustrates "the original 14 qualifying parcels as well
as three additional parcels that may be counted (15, 16, and 17)." The map numbers for
these 3 parcels are not noted in the staff reported or in the applicant's new material, other
than indicating that #'s for parcels 15, 16 & 17 "have been handwritten onto the
application."

Staff has not reviewed #15, 16, or 17; Landwatch is unable to review them because the
identifying information is not provided with the HO Staff Report or in the applicants' July
26 materials, Exhibit C.

The 'template parcel count' list provided by the applicant on July 26 has 2 errors: parcel #14
does not indicate a tax lot number and parcel # 12 is a duplicate of parcel #5. That leaves
12 remaining parcels on the list, but the HO Staff report indicates there are 13. This
discrepancy arises because staff refers to tl# 701 including 4 'legal lots', while the applicant's parcel count list, new information July 26, counts tl# 701 three times rather than 4:

From HO Staff Report:
• Map 22-03-30: Tax Lot 500, 600*, 700, 701*
• Map 22-03-31: Tax Lot 100, 200, 300, 400, 600

*Including two (2) legal lots identified as Legal Lot 6 and 7 in PA14-05139
*Including four (4) legal lots identified as Legal Lot 1, 2, 3, and 5 of PA13-05076

Based on our analysis, above, only 8 of the thirteen parcels noted by staff can be counted toward the 11 parcel count: 22-03-30-00-00500, 00600, 00701 and 22-03-31-00-00100, 00200, 00300, 00400, 00600.

IV. Conclusion

Based on our review described above, the subject parcel does not meet the template parcel and dwelling count approval criteria at LC 16.211(5)(c)(iii), and OAR 660-006-0027(3)(c).

For these reasons, Landwatch requests that the Hearings Official reverse the Planning Director approval.

Thank you.

Robert Emmons, President
To clarify, counting both Parcels 5 and 6 that are within Tax Lot 100, staff find that there are at least 13 parcels that satisfy Lane Code 16.211(5)(c)(iii)(aa). Where Tax Lot 600 on Map 22-03-31 is listed in staff’s findings under Lane Code 16.211(5)(c)(iii)(aa), Tax Lot 100 should be counted twice, thus not changing the number of staff-verified parcels.

My apologies for this typo.

Amber Bell, Planner
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From: BELL Amber R
Sent: Monday, August 08, 2016 4:16 PM
To: DARNIELLE Gary L
Cc: 'Jeremy Keepers'; FARTHING Michael (SMTP); 'jamannllc@comcast.net'; SEGEL-VACHER Lauri (SMTP); SEBBA Rafael
Subject: PA16-05161 Parcel Count Criteria and Staff Report Clarification

Hello Mr. Hearings Official:

Regarding file no. PA16-05161 -

As noted in the July 27, 2016 Staff Report to the Hearings Official, except for Legal Lot 5, additional parcels have not been evaluated by staff at this time for compliance with LC 16.211(5)(c)(iii)(aa). However, staff note that both the original application and additional materials submitted by the applicant on July 26, 2016 identify one or more road(s) as parcels within the 160-acre template square area. Typically, roads are not counted as a "lot or parcel" in the parcel count analysis found in Lane Code 16.211(5)(c).
Additionally, staff note that Tax Lot 600 on Map 22-03-31 is listed as Parcel 6 in the applicant's materials, and is identified in the Staff Report to the Hearings Official as one of 13 parcels that satisfy Lane Code 16.211(5)(c)(iii)(aa). However, upon further review, it has come to staff's attention that Tax Lot 600 was created by an intervening fee title deed (R93-4013) in 1957, Parcel 6 is in fact a portion of Assessor's Map and Tax Lot 22-03-31-00-00100 and should be identified as such in staff report findings, and Tax Lot 600 is in fact identified as Parcel 14 in the application. Parcel 14 can also be identified as Londonweyerhaeuser Road and it was not staff's intention to include a road in the staff report findings. It does not appear that the application includes a copy of Deed R93-4013.

If it cannot be determined that the easterly most portion of Tax Lot 100 to the east of Londonweyerhaeuser Road is a separate legal lot that existed on January 1, 1993, staff still find that at least 12 parcels satisfy Lane Code 16.211(5)(c)(iii)(aa), and thus still recommend that the Hearings Official affirm the Planning Director's decision in PA16-05161.

Amber

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August 25, 2016

Lane County Hearings Official
c/o Lane County Land Management Division
Public Works Department
3050 N Delta Highway
Eugene, OR 97408

Mr. Darnielle,

Please include these rebuttal materials in the record of PA16 05161

Regarding Applicants new "Alternative Template" Supplemental Material, Landwatch has reviewed the new material and based on the table, below, find five qualifying parcels within the applicants template.

Regarding template #’s 10 and 11, it is unclear why the applicant's explanation is inconsistent with the deed cards; if template 10 and 11 are legal lots, we find seven qualifying parcels within the applicants template.
<table>
<thead>
<tr>
<th>Template # (per applicant materials)</th>
<th>Map #</th>
<th>Discussion</th>
<th>Rebuttal</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>2203300000701</td>
<td>Created by deed November 1975 82.79 acres, increased to 83.79, reduced to current 9.03 acres by 3 separate segregation actions in 2016</td>
<td>Applicant's diagram on pdf page 11 represents the pre-2016 reconfiguration; This parcel does not qualify because it was reconfigured after January 1, 1993</td>
</tr>
<tr>
<td>2 and 3</td>
<td>2203310000300</td>
<td>Has not been verified as 2 legal lots and tax maps and planning action related maps show only a vacated property boundary within tl# 300</td>
<td>One legal lot</td>
</tr>
<tr>
<td>4</td>
<td>2203310000200</td>
<td></td>
<td>One legal lot</td>
</tr>
<tr>
<td>5, 6, 7</td>
<td>2203310000100</td>
<td>Has not been verified as 3 legal lots</td>
<td>One legal lot</td>
</tr>
<tr>
<td>8</td>
<td>2203310000400</td>
<td>F-1 zoned Blm land</td>
<td>One legal lot</td>
</tr>
<tr>
<td>9</td>
<td>2203300000800</td>
<td>Created by 1944 deed</td>
<td>One legal lot</td>
</tr>
<tr>
<td></td>
<td>Parcel Number</td>
<td>Description</td>
<td>Status</td>
</tr>
<tr>
<td>---</td>
<td>---------------</td>
<td>--------------------------------------------------------------------------------------------------</td>
<td>-----------------------------</td>
</tr>
<tr>
<td>10</td>
<td>2203300001100</td>
<td>Applicant's explanation of parcel creation leaves out the &quot;out of #27028-1&quot; description included on the deed card</td>
<td>Not a legal lot</td>
</tr>
<tr>
<td>11</td>
<td>22033001101</td>
<td>Deed card conflicts with applicant's statement that parcel was created in 1972 by R744/20749; card shows out of &quot;#27028-1-1, 1960;&quot;</td>
<td>Not a legal lot</td>
</tr>
<tr>
<td>12</td>
<td>2203300001200</td>
<td>North section of Weyerhaeuser logging road; August 8th staff email to the record clarifies that roads do not qualify as meeting the forest template approval criteria</td>
<td>Does not meet approval criteria</td>
</tr>
<tr>
<td>13</td>
<td>2203310000600</td>
<td>South section of Weyerhaeuser logging road; staff email notes #600 was created by an intervening fee title deed</td>
<td>Does not meet approval criteria; not a legal lot</td>
</tr>
<tr>
<td>14</td>
<td>Fire Clay Road</td>
<td>August 8th staff email to the record clarifies that roads do</td>
<td>Does not meet approval criteria</td>
</tr>
<tr>
<td>15</td>
<td>2203300000700</td>
<td>Created by deed in 1957, reduced by deed #41210 in November 1975 after adoption of Lane County land Division Ordinance on 3/19/75</td>
<td>Not a legal lot</td>
</tr>
</tbody>
</table>

Robert Emmons, President