

BEFORE THE BOARD OF COMMISSIONERS OF LANE COUNTY, OREGON

**ORDER NO: 18-06-19-08** IN THE MATTER OF ELECTING WHETHER OR NOT TO HEAR AN APPEAL OF A HEARINGS OFFICIAL DECISION APPROVING A DWELLING IN THE IMPACTED FOREST LANDS (F-2) ZONE PURSUANT TO LANE CODE 16.211(5) & (8) ON ASSESSOR'S MAP AND TAX LOT 19-06-02-00605; (FILE NO. 509-PA17-05773/NIELSEN/DORSEY).

**WHEREAS**, the Lane County Hearings Official has made a decision to affirm a Planning Director decision approving a dwelling within the Impacted Forest Lands (F-2) zone on Assessor's Map and Tax Lot 19-06-02-00-00605, pursuant to Lane Code 16.211(5) & (8), in Department File No. 509-PA17-05773; and

**WHEREAS**, the Lane County Planning Director has received an appeal of the Hearings Official's decision to the Board of County Commissioners pursuant to LC 14.515(3)(f)(ii); requesting that the Board elect not to further hear the appeal and to deem the Hearings Official decision as the final decision of the County; and

**WHEREAS**, on April 23, 2018, the Lane County Hearings Official affirmed his April 6, 2018 decision on the application after reviewing the appeal; and

**WHEREAS**, Lane Code 14.600 provides the procedure and criteria that 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 **ORDERS** as follows:

1. That the appeal does not comply with the criteria of Lane Code 14.600(3) and therefore, the Board declines to further review the appeal and consider arguments therein. Finding of fact in support of this determination are attached as Exhibit "A."
2. That the Lane County Hearing's Official decision dated April 6, 2018, and the letter affirming the decision dated April 23, 2018, attached as Exhibit "B," which found relevant approval criteria are met, are ratified and affirmed by the Board of County Commissioners as the County's final decision and the Board expressly agrees and adopts the Hearings Official's interpretations and application of Lane Code.

**ADOPTED** this 19th day of June, 2018.



Jay Bozievich, Chair  
Lane County Board of Commissioners

APPROVED AS TO FORM

Date 6-7-18



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 identified as tax lot 605, assessor's map 19-06-02. The subject property is owned by Kathleen Nielsen and is zoned F-2 Impacted Forest Lands. The subject property is vacant and is approximately 5 acres in size. The property is located approximately 4.5 miles southwest of the Rural Unincorporated Community of Crow and west of Marsh Road.
2. The applicant requests approval for a template dwelling in the forest zone pursuant to the dwelling provisions of Lane Code 16.211(5) & (8). The template dwelling is a dwelling option in the F-2 zone that is allowed on a property that meets certain soil capabilities and minimum parcelization in the surrounding area meeting thresholds within a 160 acre area.
3. The findings of fact regarding the seven assignments of error have been incorporated in the Hearings Official's narrative justification of the decision.
4. On September 8, 2017, the request for a Director review of a Template Dwelling application was submitted. On October 4, 2017, the application was deemed incomplete. On November 13, 2018 the applicant submitted supplemental information and the application was deemed complete on November 14, 2017. On November 17, 2017, notice of the application was sent to adjacent property owners and agencies. On January 30, 2018, the Planning Director approved the application. Notice of the determination was mailed to surrounding property owners. On February 12, 2018, a timely appeal was submitted by LandWatch Lane County, represented by attorney Andrew Mulkey.
5. On March 15, 2018, the Lane County Hearings Official conducted a public hearing. The hearing was closed but the record was held open to allow for additional testimony. On April 6, 2018, the Lane County Hearings Official issued a decision approving the Planning Director's decision with modification of conditions of approval No. 1. Notice of the Hearings Official's decision was mailed to the applicant and all parties of record on April 9, 2018.
6. On April 18, 2018, LandWatch Lane County, represented by attorney Andrew Mulkey, filed a timely appeal. The Appellants request 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 April 23 2018, 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 election to hear the appeal in a public hearing must be completed within the time constraints of ORS 215.427(2). As of the Elect to Hear meeting, a total of 217 days will have elapsed since the application was deemed complete. The Planning Director acknowledges the issue may be of some Countywide significance and likely recur.



However, it would not be feasible for the Board to hold a hearing on this matter without surpassing the statutory timelines and exposing the County to a possible Writ of Mandamus. Furthermore, the Hearings Official's decision is sufficient in order for the County to retain deference if this matter is appealed to the Land Use Board of Appeals.

10. The issues raised in this appeal do not relate to, or involve, a unique or Goal 5 inventoried resource. The appeal involves the legal lot status of the subject property. In general, issues raised in the appeal concern procedural or criteria specific issues related to the Template Dwelling provisions.
11. The Planning Director recommends that the Board elect not to conduct an on-the-record hearing for the appeal, affirm and ratify the Lane County Hearings Official decision as the County's final decision, and expressly agree with and adopt the Hearings Official's interpretations of Lane Code. Additionally, the Hearings Official's decision and letter of affirmation does not include a recommendation that the Board of Commissioners conduct an on-the-record hearing for the appeal.
12. 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. The Board has reviewed this matter at its meeting on June 19, 2018, finds that the appeal does not comply with the criteria of Lane Code 14.600(3), declines to further review the application, and elects not to hold an on-the-record hearing for the appeal.
13. The Board therefore elects not to conduct an on-the-record hearing for the appeal, to affirm and ratify the Lane County Hearings Official decision as the County's final decision, and expressly agree with and adopt the Hearings Official's interpretations and application of Lane Code.



April 23, 2018

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

Re: *Appeal of a decision affirming the Planning Director approval of the request (PA 17-05773) by Cammas Dorsey for a forest template dwelling on Tax Lot 605, Assessor's Map 19-06-02.*

Dear Ms. Kaye:

On April 6, 2018, I issued a decision affirming the Planning Director's approval of the request (PA 17-05773) by Cammas Dorsey for a forest template dwelling on Tax Lot 605, Assessor's Map 19-06-02. On April 17, 2018 this decision was appealed by LandWatch Lane County. 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 April 6, 2018 decision without further consideration. Please advise interested parties of this decision.

Sincerely,

  
Gary L. Darnielle  
Lane County Hearings Official

cc: Deanna Wright (file)

ATTACHMENT 1

EXHIBIT B

**LANE COUNTY HEARINGS OFFICIAL  
APPEAL OF A PLANNING DIRECTOR APPROVAL OF A TEMPLATE  
DWELLING WITHIN AN F-2 DISTRICT**

**Application Summary**

On September 8, 2017, a request to establish a dwelling in the Impacted Forest Lands (F-2) zone was submitted to Lane County Land Management Division by Cammas Dorsey. The application was deemed complete on November 14, 2017. On January 30, 2018, 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 and interested parties. On February 12, 2018, a timely appeal was submitted by LandWatch Lane County.

**Parties of Record**

Cammas Dorsey	LandWatch Lane County	Andrew Mulkey
Lauri Segel-Vaccher	Kathleen Nielsen	

**Application History**

Hearing Date:            March 15, 2018  
                                  (Record Held Open Until April 5, 2018)

Decision Date:            April 6, 2018

**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 605, assessor's map 19-06-02, west of Wolf Creek Road on Marsh Road, about 4.5 miles southwest of the Community of Crow. The subject property is vacant, is about 4.95 acres in size, and is zoned F-2 Impacted



Forest Lands. The subject property was created as Parcel 2 of Partition M167-79. Its configuration has not changed since its creation.

Surrounding properties in the vicinity are of a similar size and many are developed with a single-family dwelling. Parcels to the south are zoned RR-5 Rural Residential and parcels to the north and east across Marsh Road are zoned F-2 Impacted Forest Land. Property to the west is zoned F-1 Non-Impacted Forest Land. None of the surrounding parcels are under the same ownership as the subject property. The proposed site of the template dwelling is 100 feet from the northern property line, 160 feet from the southern property line, 160 feet from the eastern property line and 560 feet from the western property line.

2. The subject property contains the following soils:

Soil Map Unit #	Soil Type Description	% of Tax Lot	Cu.Ft./Ac./Yr.
46	Eilertsen silt loam	35%	199
93	Nestucca silt loam	65%	130

3. All of the subject property's soils are estimated to produce more than 85 cubic feet per acre per year of wood fiber per NRCS data. Therefore, the 11-parcel template test required by Lane Code 16.211(5)(c)(iii)(aa) is applicable to this application. In addition, Lane Code 16.211(5)(c)(iii)(bb) requires that at least three dwellings existed on January 1, 1993, and continue to exist on lots located within a 160 acre square centered on the subject property. The following table documents the 14 parcels relied upon by the Applicant to satisfy Lane Code 16.211(5)(c)(iii):

Count	Assessor's Map	Tax Lot	Date of Creation	Documentation / Deed / LLV / Partition
1	18-06-35	100	1941	BLM Deed 1941 NC
2	18-06-35	800	1951	Reel 420/Instrument 492
3	18-06-35	501	1978	Deed 1978
4	18-06-35	600	1974	Parcel 3, Partition M319-78
5	18-06-35	500	1978	Parcel 2, Partition M319-78
6	19-06-02	200	1962	Reel 1616, Instrument 9007687
7	19-06-02	1100	1980	Circuit Court 78-3169
8	19-06-02	800	1977	BP 77-353 issued
9	19-06-02	600	1979	Parcel 1, Partition M167-79
10	19-06-02	601	1977	Partition M759-77
11	19-06-02	604	1979	Parcel 3, Partition M167-79
12	19-06-02	1000	1955	R28694 NCM52-83, Parcel 1
13	19-06-02	700	1974	Deed 1974
14	19-06-35	603	1978	Parcel 1, Partition M319-78

4. Lane Code 16.211(5)(c)(iii)(bb) requires that at least three dwellings existed on January 1, 1993, and continue to exist on lots located within a 160 acre square centered on the subject property. The Applicant has relied upon the following dwellings/tax lots:

Count	Assessor's Map	Tax Lot	Year	Date of Dwelling on Property
1	18-06-35	800	1951	1940
2	18-06-35	600	1974	1979
3	19-06-02	200	1962	1962
4	<del>19-06-02</del>	<del>800</del>	<del>1977</del>	<del>1977</del>
5	19-06-02	600	1979	1963
6	19-06-02	601	1977	1941
7	19-06-02	604	1979	1978
8	19-06-02	1000	1955	1960

5. Lane County's land division regulations affected the subject property and surrounding properties on April 2, 1962.
6. The subject property is served by the Lane Fire Authority. The Authority has nine tanker trucks and one ladder truck at its disposal as well as several ambulance vehicles. The response time to the subject property is about 6 minutes. The Authority's fire chief has viewed the subject property and the Applicant's site plan. He has observed that the proposed driveway will not provide any access problems due to the flat surface and lack of trees and brush.

### Decision

THE PLANNING DIRECTOR DECISION APPROVING THE REQUEST (PA 17-05773) BY CAMMAS DORSEY FOR A TEMPLATE FOREST DWELLING ON TAX LOT 605, ASSESSOR'S MAP 19-06-02 IS AFFIRMED with the following modification to Condition of Approval #1:

1. Approval of **509-PA17-05600** is valid for a **four-year** period from the final date of approval. Lane County may grant an extension period of **two years** if:
  - a. *An applicant makes a written request with the required fee for an extension of the development approval period;*
  - b. *The request is submitted to the county prior to the expiration of the development approval period; and*
  - c. *The applicable criteria for the decision have not changed.*



Approval of an extension granted under this rule is an administrative decision, is not a land use decision as described in ORS 197.015 and is not subject to appeal as a land use decision.

**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 non-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, a majority of the soils on the subject property are capable of producing more than 85 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 an applicant must demonstrate that there were eleven lots or parcels that existed on January 1, 1993 with a 160-acre square template that is centered on the subject property. In addition, under Subsection (bb) of this standard, an 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 property.

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

***1. The subject property is not a lawfully established unit of land.***

One argument is that because Partition M167-79, which created the subject property, divided a parcel approved by Partition M319-78 within 11 months of the latter’s approval, Partition M167-79 violated the ORS 92.010(9) definition of “Partitioning land” as it represented the creation of over three lots within a year. Not only is this argument incorrect, it also represents a misunderstanding of the statute.

First, the ORS 92.010(9) defines partitioning land as dividing land into three or fewer pieces within a “calendar” year [*emphasis mine*]. A calendar year is a year that begins on January 1 and ends on December 31. This means that a partition can be finally approved on December 31 of one year and one of the newly created parcels can be again partitioned on January 1 of the next year.



Second, a partition is finalized when the final plat is recorded or, in the case of M-partitions<sup>1</sup>, when the final plan was approved by the County. A partition is not considered approved at the quasi-judicial, preliminary approval stage. It is considered finalized at the time the final plat or plan is approved, which occurs after conditions of approval have been completed. In the case of Lane County's "M" partitions, a partition plan is subject to preliminary approval, the plan (not plat) is sometimes recorded (although not then required by the Code), and the County issues a final approval letter once it has verified that all conditions of approval have been completed.

Preliminary approval was granted for Partition M759-77 on December 22, 1977 and the partition map was recorded on December 30, 1977. (See Reel 879, Instrument 7783985, Lane County Deeds and Records.) Final approval was issued by Lane County on January 17, 1978.

Preliminary approval was granted for Partition M319-78 on May 25, 1978 and the partition map was recorded on February 5, 1980. (See Reel 1054, Instrument 8006158, Lane County Deeds and Records.) Final approval was issued by Lane County on February 22, 1980.

Preliminary approval was granted Partition M167-79 on April 5, 1979 and the partition map was recorded on February 5, 1980. (See Reel 1054, Instrument 8006157, Lane County Deeds and Records.) Final approval was issued by Lane County on February 22, 1980.

Figure 1, attached to this decision and incorporated by reference, shows the chronology of the three partitions in question. What this figure depicts is that Partition M 319-78 further divided Parcel 3 of Partition M 759-77. Final approval for the latter occurred in January of 1978. Final approval of the former partition occurred in February 1980. Thus, property subject to Partition M 759-77 was not further partitioned within the same calendar year.

Figure 1 also shows that Partition M 167-79 further divided Parcel 2 of Partition M 759-77. Final approval for the latter occurred in January of 1978. Final approval of the former partition occurred in February 1980. Thus, property subject to Partition M 759-77 was not further partitioned within the same calendar year.

In summary, the partitioning the series of partitions that affected the subject property did not violate ORS 92.010(9) or (16).

*This allegation of error is dismissed.*

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<sup>1</sup> Lane County did not require the platting of partitions until 1989 when Chapter 772, Oregon Laws 1989 removed the plat/plan distinction between subdivisions and partitions.

2. ***Parcel 2 of Partition M319-78 was unlawfully divided by deed prior to January 1, 1993 to create tax lot 500, assessor's map 18-06-35 and tax lot 603, assessor's map 18-06-02.***

Tax lot 603, assessor's map 18-06-35 was created as Parcel 2 of Partition M 319-78 not tax lot 500. It is unclear from the record when or how tax lot 500, assessor's map 18-06-35 was created. The Appellant argues that Parcel 2 of Partition M319-78 was divided by deed in 1988. (See Deed 2013-031416) Therefore, tax lot 500 may not be counted by the Applicant to satisfy Lane Code 16.211(5)(c)(iii)(aa). This seemingly illegal deed transaction did not compromise or vacate the legal status of Parcel 2 although it altered the configuration of that parcel. The record indicates that the Applicant has 13 remaining parcels that qualify for this standard.

*This allegation of error is affirmed, in part, and dismissed, in part.*

3. ***Tax Lot 800, assessor's map 18-06-02 was illegally created by deed in 1984.***

The Appellant relies upon the Lane County Assessor's deed card for tax lot 800 to support this assertion. The Applicant relies upon the issuance of a building permit (BP 77-353) to verify the lawful creation of this parcel. Absent actual proof of the lawful creation of tax lot 800, that parcel cannot be used to satisfy Lane Code 16.211(5)(c)(iii)(aa). The record indicates that the Applicant has 12 remaining parcels necessary to satisfy this standard.

*This allegation of error is affirmed*

4. ***The proposed conditions violate ORS 215.417 and OAR 660-033-0140(5) and (6).***

Condition #1 of the Planning Director decision states that the approval is valid for a four-year period and that it may be extended for two years under certain conditions. ORS 215.417 applies, in part, to forest dwellings located outside of urban growth boundaries and permitted under ORS 215.750 (forest template dwelling statute). It states that a permit is valid for four years and an extension shall be valid for two years.

OAR 660-033-0140(1) limits discretionary land use decisions on forest land located outside of urban growth boundaries to two years with the allowance of one one-year extension. However, this limitation only applies to development allowed under ORS 215.010 to 215.293 and 215.317 to 215.438 or county regulations implementing these statutory provisions. As mentioned above, the authorization for forest template dwellings comes from ORS 215.750. Therefore, OAR 660-033-0140(5)(a) and (b) are applicable. These provisions provide that the permit shall be valid for four years and an extension of the permit shall be valid for two years.



I do not read the administrative rule to prevent multiple extensions although OAR 660-033-0140(1) explicitly restricts extensions to one one-year extension while OAR 660-033-0140(5)(b) does not. I believe that the failure of subsection (5)(b) to limit the number of extensions is an indication of a legislative intent not to place that limitation on the current application. Having said that, I do agree with the Appellant that the language used by the Director, which states that "... Lane County may grant an initial extension ..." does imply that multiple extensions are possible.

This is an issue that is not required to be addressed at this stage. Condition #1 can be amended to remove the word "initial" and retain the wording of the statute. The question of whether a second extension will ever be requested or granted is speculative and is not necessary to be addressed in this decision.

*This allegation of error is dismissed.*

**5. *The site plan fails to comply with the fire siting standards in Lane Code 16.211(8).***

Lane Code 16.211(8)(e) concerns fire safety design standards for roads and driveways on Impacted Forest Lands. This provision reads, in part:

*"Evidence of compliance with the standards specified in LC 16.211(8)(e) below should include objective information about the fire fighting equipment, the physical nature of the access route, the nature of any proposed improvements to the access route, and it may also include a written verification of compliance from the agency providing fire protection, or a written certification of compliance from an Oregon Registered Professional Engineer."*

The Lane Fire Authority, which serves the subject property, has reviewed the Applicant's site plan and is familiar with the route of the proposed access driveway. The record contains information regarding the Authority's fire-fighting equipment and its estimated response time to the subject property. The application complies with Lane Code 16.211(8)(e).

*This allegation of error is dismissed.*

**5. *Partitions M319-78 and M167-79 were conditionally approved within 11 months, in violation of the definition of "partition" in ORS 92.010(8).***

ORS 92.010(8) defines the term "Partition plat" and says nothing about the timeframes regarding when partitions can occur. The correct citation is to ORS 92.010(9) which defines "Partitioning land." Regardless, this allegation of error was addressed above under Allegation of Error #1.



*This allegation of error is dismissed.*

**7. *Inadequate fuel breaks.***

The Applicant has addressed Lane Code 16.211(8)(a) – (d) regarding the siting of the proposed dwelling in regard to setbacks. Findings weighing these factors were determinate in establishing the location of the dwelling and they have not been collectively challenged. The only challenge was to Lane Code 16.211(8)(c)(i).

The Planning Director's decision required the Applicant to establish a 30-foot primary fuel break around the proposed forest template dwelling and a secondary fuel break for at least 100 feet or to the nearest adjacent property lines, whichever was greater. This is consistent with Lane Code 16.211(8)(c)(i) which limits the size of the secondary fuel break to “... *land surrounding the dwelling or manufactured dwelling that is owned or controlled by the owner in compliance with these requirements.*” The slopes around the dwelling site do not exceed 20 percent and therefore the primary fuel break does not have to be expanded. Lane Code 16.211(8)(c)(i) is identical to and implements the language of OAR 660-00-0035(3).

*This allegation of error is dismissed*

**Summary**

The applicant has satisfied the standards of Lane Code 16.211(5)(c)(iii)(aa), demonstrating that 12 parcels within the template square were lawfully created prior to January 1, 1993; the standards of Lane Code 16.211(5)(c)(iii)(bb), demonstrating that there were at least 3 dwellings that existed on January 1, 1993 and continue to exist within the template square; and the applicable siting standards of Lane Code 16.211(8).

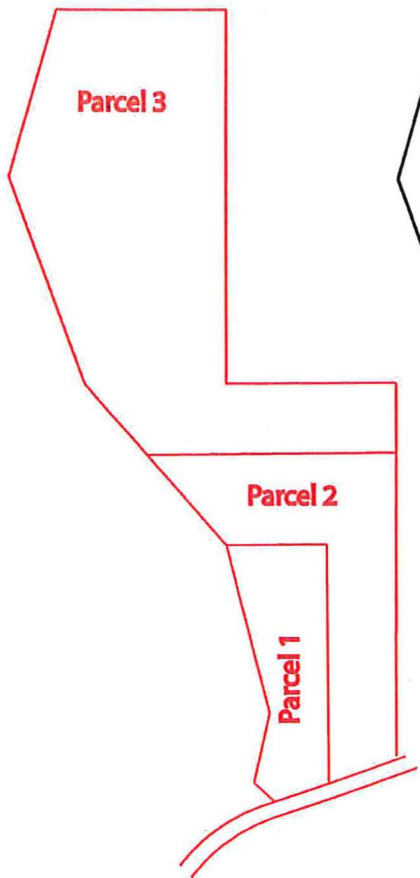
**Respectfully Submitted,**

  
**Gary Darnielle**  
**Lane County Hearings Official**

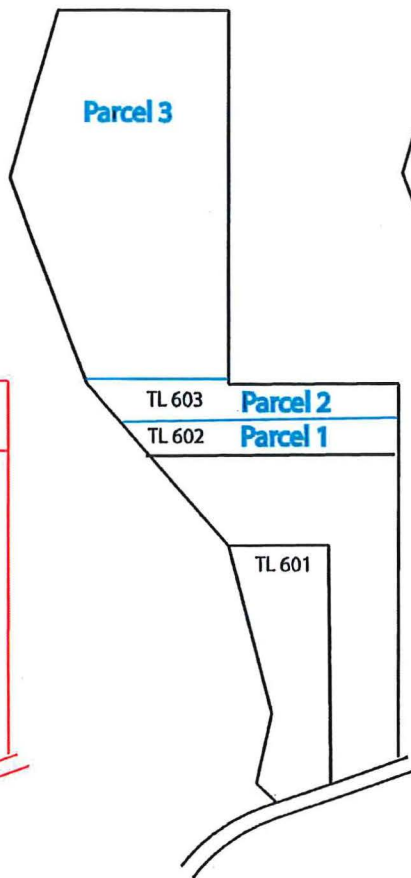
# FIGURE 1

(PA 17-05773)

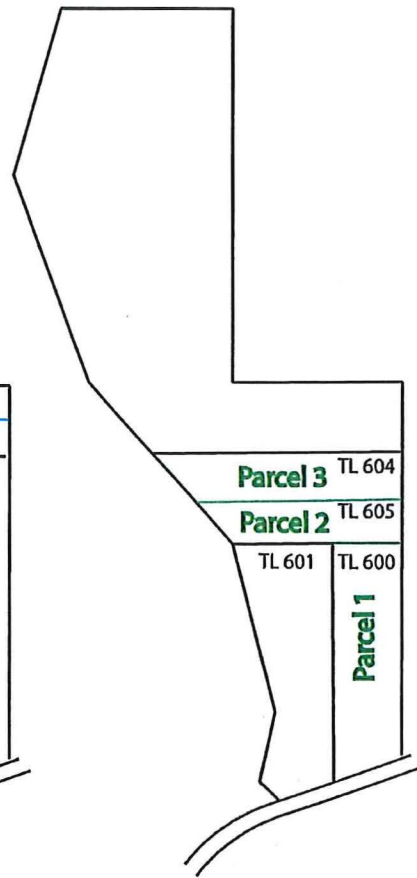
Partition M 759-77



Partition M 319-78



Partition M 167-79



# Andrew Mulkey

Attorney at Law

1375 W. 13th Ave., Eugene, OR 97402 • (208) 596-3235 • afmulkey@gmail.com

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April 18, 2018

*Via Hand Delivery*

Lane County Public Works Department  
3050 North Delta Highway  
Eugene, OR 97408  
(541) 682-6900

**Re: Option 2 appeal of the Hearings Official's decision on the Dorsey/Nielsen application (509-PA17-05773) for a forest template dwelling on Tax Lot 605, Map No. 19-06-02.**

**Appellant's Name**

Landwatch Lane County  
PO Box 5347  
Eugene OR 97405  
(541) 741-3625

**Authorized Representative**

Andrew Mulkey  
1375 W 13th Avenue  
Eugene, OR 97402  
(208) 596-3235

**Identification of the Decision Sought to Be Reviewed**

Appellant hereby appeals the Hearings Official's April 6, 2018 decision that affirms the Planning Director's approval of the Dorsey/Nielsen application, 509-PA17-05773, for a forest template dwelling on Tax Lot 605, Map No. 19-06-02, pursuant to Lane Code 16.211(5) and (8). The Hearings Official's decision is attached hereto.

**Appeal Deadline**

Lane Code 14.510 sets a 12-day appeal deadline from the "date of signing of the decision provided notice of the decision occurs as required by law." The Hearings Official signed his opinion on April 6, 2018. This appeal is filed within the 12-day deadline on April 18, 2018.

**Appeal Option**



Appellant requests Option 2 as set forth in the County's attached appeal form. Appellant requests that the Board of Commissioners not conduct a hearing on the appeal and deem the Hearings Officials decision the final decision of the County.

### **Standing**

Appellant has standing to appeal because appellant 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 hereto.

### **Grounds for Appeal**

For an Option 2 appeal, Appellant notes that the form does not require that the appellant raise all issues to preserve those issues on appeal. However, Appellant incorporates all prior testimony, including written and oral. Appellant also sets forth the following specific issues on appeal, but this list is not exhaustive.

The Hearings Official misinterpreted and misapplied the provisions in ORS chapter 92 and the Hearings Official's findings are not supported by substantial evidence. The record shows that Parcel 3 and Parcel 2 of the M759-77 partition were under single ownership in 1980 when the owner further divided those parcels into 6 lots. The 1980 divisions divided "an area or tract of land into four or more lots within a calendar year," and for that reason, the divisions qualified as a subdivision. ORS 92.010(12) (1977, 1979); *see* ORS 92.010(16), (17) (2017). Because the landowner at the time failed to obtain approval for the subdivision, the resulting lots do not qualify as lawfully established units of land. ORS 92.010(3). The Hearings Official erred by approving a forest template dwelling on an unlawfully created lot. The Hearings Official also erred by counting lots within an unlawful subdivision within the "template count" for the purpose of qualifying the subject property for a forest template dwelling.

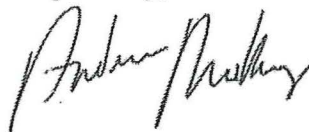
The Hearings Official erred by failing to exclude Tax Lot 603 and 500 from the applicant's template count. Parcel 2 of the M319-78 partition contains Tax Lots 603 and 500. Parcel 2 of the M319-78 partition was unlawfully divided by deed in 1988. The Hearings Official excluded Tax Lot 500 from the "template count," but erred by failing to exclude Tax Lot 603. The Hearings Official also erred by allowing the applicant to rely on Parcel 2 of the M319-78 partition. The applicant cannot rely on Parcel 2 of the M319-78 partition because that unit of land was unlawfully divided in 1988. The division vacated Parcel 2 and left in its place, two unlawfully created parcels.

The Hearings Official misinterpreted and misapplied the fuel break requirements in Lane Code 16.211(8). The evidence in the record does not show that the applicant established adequate fuel breaks.

The Hearings Official erred by failing to explicitly limit the applicant's ability to request a permit extension to a single request.

Appellant intends to preserve all arguments raised below. For the above reasons, the Hearings Officer's decision must be reversed and the application denied.

Respectfully,

A handwritten signature in black ink, appearing to read "Andrew Mulkey". The signature is written in a cursive, somewhat stylized font.

Andrew Mulkey

Attorney at Law

On behalf of LandWatch Lane County