COLUMBIA COUNTY BOARD OF COMMISSIONERS
SUPPLEMENTAL FINDINGS
December 20, 2022
Supplemental Findings in Response to Comments Received

BOC HEARING DATE: December 21, 2022

FILE NUMBER: RDF 22-04

PROPERTY OWNER/ APPLICANT: Timothy and Tamara Carleton, 74340 Elk Creek Rd., Rainer, OR 97048

PROPERTY LOCATION: The subject property is located off of Price Road near Rainer, Oregon.

TAX MAP ID/ACCT: 7315-B0-02500/20776

ZONING: Primary Forest (PF-80)

SIZE: Approximately 17.52 acres

REQUEST: Supplemental findings in response to a letter dated December 16, 2022 (Attachment 1) submitted by Andrew Mulkey of 1000 Friends of Oregon.

APPLICABLE DISCUSSION CRITERIA:

Columbia County Zoning Ordinance (CCZO)

Section 509 Standards of Development
Section 510 Fire Siting Standards for Dwellings, Structures, and Roads

Oregon Revised Statues (ORS)

ORS Chapter 92 – Subdivisions & Partitions

SUMMARY

On December 16, 2022, Andrew Mulkey of 1000 Friends of Oregon, submitted a letter in response to the timely appeal of RDF 22-04 included as Attachment 1. A summary of Mr. Mulkey's assertions of the County's and applicants' errors are summarized below and are evaluated for this Report's Findings:

The application and Findings did not include documentation confirming that both the subject parcel and the other parcels relied on for determining the results of the template test were lawfully established units of land on January 1, 1993 as required in the ORS 215.750(2)(c) and the Applicant has not demonstrated that the private access for the subject property is capable of meeting the Private Road Standards and Fire Safety Design Standards for Road in the County Road Standards Ordinance.

The following includes Supplemental Staff Findings to the Board of Commissioner's Appeal Staff Report dated December 14, 2022.

DISCUSSION CRITERIA

Oregon Revised Statutes (ORS) Chapter 92 - Subdivisions & Partitions

92.010 Definitions for ORS 92.010 to 92.192.

(3)(a) "Lawfully established unit of land" means:

(A) A lot or parcel created pursuant to ORS 92.010 to 92.192; or

(B) Another unit of land created:

(i) In compliance with all applicable planning, zoning and subdivision or partition ordinances and regulations; or

(ii) By deed or land sales contract, if there were no applicable planning, zoning or subdivision or partition ordinances or regulations.

Columbia County Subdivision & Partitioning Ordinances Summary

April 8, 1963 Ordinance: Columbia County's first subdivision ordinance addressed the subdivision of land into four or more lots and was limited in nature.

December 11, 1974 Subdivision and Partitioning Ordinance: Repealed the previous subdivision ordinance. This ordinance included provisions for the partitioning of land (dividing into two or three parcels) and subdividing of land (dividing into four or more lots). This ordinance required County approval for all land divisions regardless of the size or number of proposed lots/parcels. This ordinance became effective on January 10, 1975.

1982 & 1990 Ordinances: Amended certain provisions of previous ordinances, but maintained the requirement that land be divided by partition or subdivision.

1984 Columbia County Zoning Ordinance: Columbia County's First Zoning Ordinance is adopted regulating lot sizes and land uses.

Discussion: As of January 10, 1975, all land divisions within Columbia County, regardless of how many lots or parcels are involved and the size of those lots or parcels, require that the County approve a partition or subdivision. Any other means of land division after this date without partition or subdivision approval is unlawful and the property does not constitute a lot of record.

Columbia County acknowledges property created before January 10, 1975 as a lot of record if:

(1) It was created by a legal plat (i.e. subdivision); or

(2) It was conveyed separately from all other property by deed for the purpose of the buyer's enjoyment and development.

Mr. Mulkey first assertion on Page 3 that "*The record does not contain substantial evidence that the properties shown in the template (including the subject property) are lawfully established units of land as required in ORS 215.750(2)(c).*"

215.750 Alternative forestland dwelling; criteria.

(1) As used in this section, "center of the subject tract" means the mathematical centroid of the tract.

(2) In western Oregon, a governing body of a county or its designate may allow the establishment of a single-family dwelling on a lot or parcel located within a forest zone if the lot or parcel is predominantly composed of soils that are:

[…]

(c) Capable of producing more than 85 cubic feet per acre per year of wood fiber if:

(A) All or part of at least 11 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.

Finding 1: Mr. Mulkey's first assertion is that "*the record does not contain substantial evidence that the subject property is a lawfully established unit of land*." According to the County Clerk's records, on January 15, 1974 a Warranty Deed shown as Attachment 2 was recorded in Deed Book 138 Page 795 describing the land conveyance of the subject property (Tax Map ID # 7315-B0-02500) from Arthur and Mildred Lewis to Charles and Mary Holden. A copy of the deed is included in the record of this proceeding and can be found as Attachment 2 to these materials. Because the January 15, 1974 Warranty Deed pre-dates the January 10, 1975 effective date of the Columbia County Subdivision and Partitioning Ordinance, Staff finds the subject property is a lawfully established unit of land, contrary to Mr. Mulkey's assertion, and that the record contains substantial evidence of such.

Finding 2: The second part of this assertion is that "*the record does not contain substantial evidence that the properties shown in the template are lawfully established units of land*". Attachment 3 titled "**Updated List of Properties and 1993 Dwellings For TT 21-06"** lists 18 properties of the *original 30 properties* and 6 of *the original 12 dwellings* that were included in the original 8/28/2020 Template Test 21-06 Approval Letter.

Staff conducted additional research on the 30 original properties and 12 dwellings and eliminated the properties that were conveyed after January 10, 1975 without recorded Partition Plat or Subdivision for consistency with the minimum statutory requirements for Template Test Dwellings. Any parcels that required more information in order to be counted in the Template Test count have been eliminated from the count for clarity in evaluating the application. Also, any dwellings on these properties were also eliminated.

The County's **Updated List of Properties and 1993 Dwellings** clarifies and confirms that the proposal requested for RDF 22-04 meets the minimum criteria in ORS 215.750(2)(c) and in Section 506.4(A) of the Zoning Ordinance for properties with soils that are capable of annually producing more than 85 cubic feet per acre of wood fiber. Specifically, these revisions confirm that the subject property's Revised Template Test includes 18 other lots/parcels/properties and 6 dwellings that existed on January 1, 1993 both of which well exceed the minimum 11 other lots/parcels and 3 dwelling requirements in the ORS and County Zoning Ordinance.

Staff further finds that Mr. Mulkey's concerns about the legality of other properties identified in the original 8/28/2020 Template Test have been addressed with this simplified and updated list confirming that 18 other properties and 6 dwellings were in existence on January 1, 1993 and continue to exist. Based on this record evidence, Staff finds that the requirements of ORS 215.750(2)(c) are met.

Continuing with the referenced Section 509 of the Zoning Ordinance – Standards of Development and Section 510 – Fire Siting Standards for Dwellings, Structures, and Roads:

509 Standards of Development

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

510 Fire Siting Standards for Dwellings, Structures and Roads:

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

Finding 3: The submitted comments from Mr. Mulkey state, in part, that Clatskanie Fire Chief, Steve Sharek, commented on the proposal and stated that this approval will result in the third dwelling on a shared access, and thus private road standards must apply to the development. Furthermore, Mr. Mulkey states that the current 20' easement does not meet the typical standard of a 40' easement for private roads and cannot accommodate a 20' travel surface with a 4' wide "clear zone" outside of the travel surface on each side. The comments state that "Neither the application nor the County's findings address how the current 20-foot access easement will satisfy this requirement."

In response to this issue raised by Mr. Mulkey, staff would like to direct the Board of Commissioners to Section I(A) of the Columbia County Road Standards. This section describes the standards and process of "*Development of one existing parcel of land by construction of a*

home or business not in conjunction with a partition or subdivision". Subsection 2, in its entirety, states (emphasis added):

> *2) Private or nonexclusive access easement. Access to the property may also be partially located on a private or nonexclusive easement. The access on such easement must be constructed according to "Private Road Standards" (Section IV)* ***to the extent feasible within the limits of the easement****. Improvements to roads on easements currently in use by other residents shall be apportioned such that the cost of the necessary improvements to construct the road within the easement will be divided between the potential undeveloped lots and parcels along the easement. Owners of undeveloped properties shall be required to pay or make improvements to the road only after making application to the Land Development Services Office of the County for development of the property.* ***Therefore, it is the intent that the road will be in compliance with the standards to the extent feasible (as determined by the Public Works Director) upon development of all the properties along the easement****. Property owners along such easement will be required to construct such improvements up to a maximum expense of $3,000, in conjunction with development of the property.*

Staff finds that the Columbia County Road Standards specifically delegate to the Public Works Director the authority to make such a determination of "*compliance to the extent feasible within the limits of the easement*" for a private or nonexclusive access easement. The Planning Commission is not delegated the authority to make such a determination or use the discretion reserved fort the Public Works Director when determining if an access meets the standards of Section I(A)2 of the County Road Standards. With this information, Staff finds that Condition 7.c. of the original Planning Commission approval will ensure that the proposed access meets the applicable standards required in the Columbia County Road Standards as well as providing the Public Works Director the necessary authority based on the specific proposal as provided in these Road Standards.

In addition to this, Mr. Mulkey states that the "Columbia County Fire Services Fire Apparatus Access Roads & Driveways Standard require that access roads used for fire apparatus be at least 20 feet wide." Again, Staff would like to point out that Condition 7.c. of the original Planning Commission approval requires the access road to be reviewed and approved by the Clatskanie Fire District prior to building permit issuance of the proposed dwelling. In the Planning Commission meeting held on August 1, 2022, Clatskanie Fire Chief, Steve Sharek, stated that there are "exceptions" to the access standards in some circumstances. Due to these exceptions, the Planning Commission does not have the authority to make the conclusion that the proposed access can never meet the required Fire Apparatus and Access Standards. Staff finds that this condition of approval as originally imposed will satisfy Sections 509.2 and 510.4 of the Columbia County Zoning Ordinance, while not denying the authoritative entities the ability to exercise discretion as reserved to them in the applicable codes.

CONCLUSION AND RECOMMENDATION

Based upon the Staff analysis and Supplemental Findings as stated above, the three points of issue as stated in the December 16, 2022 letter from Andrew Mulkey do not change Staff's recommendation, and should not change the final decision of the Board of Commissioners, as originally discussed in the Appeal Staff Report dated December 14, 2022.

Supplemental Findings Attachments:

Attachment 1: Letter dated December 16, 2022 from Andrew Mulkey

Attachment 2: Subject Parcel's Original Deed Conveyance

Attachment 3: Updated List of Properties and 1993 Dwellings For TT 21-06

Attachment 1

December 16, 2022

By electronic mail
Columbia County Board of Commissioners
c/o Deborah S. Jacob
230 Strand St.
County Courthouse Room 338
St. Helens, OR 97051
Deborah.jacob@columbiacountyor.gov

Re: Hearing Comments on Carleton Application for a Forest Template, Dwelling, RDF 22-04, Tax Map Identification Number 7315-B0-02500

Dear Commissioners:

On behalf of 1000 Friends of Oregon, please accept the comments below for the record in the following forest template dwelling application: RDF 22-04 (Tax Map Identification Number 7315-B0-02500). The property owner and applicant for the application are Timothy and Tamara Carleton ("applicant"). **Please confirm receipt of these comments, and please notify me of any future hearings, opportunities to comment, or decisions on this application.**

1000 Friends requests that the Board of Commissioners deny the application. The applicant and Planning Commission fail to demonstrate compliance with approval criteria for forest template dwellings under ORS 215.750(2)(c) and Columbia County Zoning Ordinance (CCZO) 506.4(A)(1). Both of those requirements implement the template test. The staff report's findings do not provide any additional evidence to rectify these errors. The Planning Commission decision also violates roadway design and fire safety standards that apply. CCZO 509.2 (parcels must meet Fire Safety Design Standards for Roads in the County Road Standards), 510.4 (all roads shall be constructed to provide adequate access for fire-fighting equipment according to relevant standards).

In this case, the applicants have the burden to submit evidence required to demonstrate compliance with the approval criteria. The applicants have failed to meet their burden. The applicants have not provided the county with the evidence required to comply with the dwelling "template test" or the road design and fire safety standards.

1000 Friends of Oregon participates in the land use system to create livable communities, protect family farms and forestlands, and to conserve Oregon's natural and scenic areas. We seek to uphold the integrity of the land use system by enforcing the legal requirements established in state and local land use laws. Across multiple applications for forest template dwellings, we have

observed a systematic failure to require applicants to provide the evidence necessary to demonstrate compliance with *all* of the approval criteria for forest template dwellings. 1000 Friends of Oregon has members in all parts of Oregon, including Columbia County, and believes that enforcing these criteria and requiring applicants to submit the appropriate evidence is essential to protecting forestland and creating livable communities in Columbia County.

1000 Friends briefly describes the reasons why the Board of Commissioners should deny the applicants' request for a template dwelling. First, the application and findings do not demonstrate that the subject parcel or parcels relied on for the template test were lawfully established units of land. *See* ORS 215.010(1) (defining the term "parcel" used in ORS chapter 215 to mean a lawfully established unit of land described in ORS 92.010). To qualify for a forest template dwelling, the template test requires an applicant to locate a certain number of parcels within a square or rectangular template centered on the subject property. ORS 215.750(2)(c) (template test for characteristics matching applicant's parcel requires that at least 11 other lots or parcels and 3 other dwellings that existed on January 1, 1993 be contained within a 160-acre square centered on the center of the subject tract; allowance for rectangular template under section 6); CCZO 506.4(A)(1) (same; allowance for rectangular template under section B).

To rely on the properties shown within the template, an applicant must demonstrate that the properties are lawfully established units of land or "parcels" created in compliance with all applicable planning, zoning, and partitioning ordinances and regulations. ORS 215.010(1)(a); ORS 92.010(3)(a); *Friends of Yamhill County v. Yamhill County*, 229 Or App 188, 198, 211 P3d 297 (2009) (definitions in ORS 215.010 and ORS 92.010 apply to template dwelling statute; applicants must demonstrate that properties included for test were lawfully established units of land). Only if no other planning, zoning, or partitioning laws applied at the time the property was created can the applicant rely on a deed to demonstrate that a property within the template qualifies as a lawfully established "parcel." *Id.* Even then, the applicant must provide evidence that no other relevant laws applied at that time. ORS 215.010(1)(a)(C).

At a minimum, the record must contain information that shows when and how the properties within the template were created. For the properties counted by the applicant, the record does not contain that information. The record does not contain the evidence needed to establish that at least 11 properties within the template are "parcels," *i.e.*, lawfully established units of land. The record also fails to demonstrate that the dwellings identified by the county within the template are located on lawfully established parcels. In short, neither the applicant nor the county provide the evidence required to show that the properties within the template are lawfully established units of land. ORS 215.010(1)(a); ORS 92.010(3)(a). Without that information the county lacks the ability to make adequate findings that demonstrate that the application meets the criteria for a

forest template dwelling. *See Heiller v. Josephine County*, 23 Or LUBA 551, 556 (1992) (establishing criteria for adequate findings).

To compound this error, the county has not listed or made available the applicable laws that determine whether the properties shown within the template were lawfully created. Statute requires the planning staff to provide notice of and make available the applicable approval criteria for a permit. ORS 197.797(3)(b) and (h), 197.797(5) (*formerly* ORS 197.763). The standards for adequate findings also require the county to identify and apply applicable law. *Heiller*, 23 Or LUBA 551, 556. In this case, the planning staff failed to provide notice of, make publicly available, or apply the specific criteria that determine whether the template in this case includes the required number of lawfully created parcels. A "parcel" must have been created "[i]n compliance with all applicable planning, zoning and subdivision or partition ordinances and regulations." ORS 215.010(1)(a)(B). That means the county must make available and apply the specific laws that applied to land divisions at the time the properties shown within the template were created. ORS 197.797(3), (5). The planning staff failed to comply with those requirements.

Finally, the applicant has not demonstrated that the access road to the dwelling has satisfied access requirements and fire safety standards as required by CCZO 509.2, CCZO 510.4, and the Columbia County Road Standards (CCRS). The parameters of the access road meet the definition of a private road, not a driveway, and must adhere to private road standards. The existing access easement is too narrow to accommodate the roadway width required by the county's standards for a private road.

The following paragraphs explain why the applicants have failed to meet their burden in this case and why the Planning Commission and staff report findings are inadequate and not supported by substantial evidence in the record. Without the additional information and analysis required by law, the county cannot approve the applicants' request. The applicants have failed to demonstrate that they meet the requirements for approval of a template dwelling. For that reason, 1000 Friends asks the Board of Commissioners to deny the template dwelling application.

A. The record does not contain substantial evidence that the properties shown in the template (including the subject property) are lawfully established units of land.

1000 Friends requests that the Board of Commissioners deny this Forest Template Dwelling Application because it fails to demonstrate compliance with the approval criteria in ORS 215.750(2)(c) and CCZO 506.4(A)(1). The applicant must show that the subject property was lawfully established. *Id.*; ORS 215.705(1)(a) (requiring that the lot or parcel where a forest dwelling is sited be lawfully created); OAR 660-006-0027(6)(a), (e) (template dwelling only

permitted if the subject parcel was lawfully established). All parcels counted within the template or otherwise used to qualify the subject parcel for a dwelling must also be lawfully established parcels. *Yamhill County*, 229 Or App at 198.

A lawfully established parcel is one that was created pursuant to ORS chapter 92 (subdivisions and partitions), created in compliance with all applicable land use laws, or created by deed or land sales contract prior to the passage of land use laws. ORS 215.010(1); ORS 92.010(3); *Yamhill County*, 229 Or App at 198. The applicants have not submitted any evidence, let alone substantial evidence, demonstrating that the subject parcel or parcels included in the template test were lawfully established. ORS 197.835(9)(a)(c) (requiring that local governments support decisions with substantial evidence in the whole record); *1000 Friends of Oregon v. LCDC* (Lane County), 305 Or 384, 405 (1988) (local governments cannot use unsupported assertions to justify planning decisions). The county's findings fail to identify the laws that applied at the time the properties located within the template were created, identify the properties' creation dates, or demonstrate that the properties' creation complied with the applicable laws that governed divisions of land.

1. The Applicant Has Not Demonstrated That the Subject Parcel Was Lawfully Established

The application and findings do not include the required evidence or analysis needed to demonstrate that the subject parcel was lawfully established. To demonstrate that the subject property was lawfully created, the applicant must (1) establish the creation date of the subject property, and (2) demonstrate that the division that created the property complied with applicable planning, zoning, and land division laws or show that such laws did not yet apply. *Yamhill County*, 229 Or App at 198 (holding that ORS 215.010's definition of parcel applies to forest template dwellings). The county's decision does not meet those requirements.

The Planning Commission and staff report findings do not address criteria that require the subject property to be a lawfully created parcel, and the applicant has not submitted evidence to support that requirement. ORS 215.705(1)(a) (requiring that the lot or parcel where a forest dwelling is sited be lawfully created); OAR 660-006-0027(6)(a), (e) (template dwelling only permitted if the subject parcel was lawfully established); *Yamhill County*, 229 Or App at 198. The record includes a 1959 warranty deed that conveyed the subject property and access easement. Staff Report, Att. 5. The record also includes a 2006 statutory warranty deed that conveyed the subject property to the applicants. *Id*. However, the record does not include the information needed to determine whether any planning, zoning, and/or land division laws were in effect at the time of the original creation of the parcel. For instance, the record does not show

whether the 1959 deed created the subject property by division from a parent parcel and what planning, zoning, or partition laws, if any, would have applied at that time.

Assuming that the subject property was created in 1959, the applicants and county must show that either a division by deed in 1959 complied with applicable laws, or that no laws governing land divisions were in effect at that time. For reference, the first statewide subdivision law was passed in 1947. OCLA 95-1396a. Prior to the establishment of the land use planning system in 1974, many counties had their own laws regarding zoning and land division. In some cases, the applicable law may have required the applicant to demonstrate that the parent parcel for the subject property was not subject to additional divisions by deed within a single calendar year.

To summarize, the applicant must show that the subject property was created as an approved subdivision or partition, created pursuant to local laws that applied to property divisions, or that no local or state subdivision laws were in effect at the time. To make those findings, the county must (1) provide substantial evidence establishing the date the subject property was first created, (2) determine what laws did or did not apply when the property was created, and (3) make adequate findings that show that the property qualifies as a "parcel." Although it is likely that the subject property was lawfully established, the record does not contain the necessary evidence to support that conclusion, and the county's findings are inadequate.

2. The Applicant Has Not Demonstrated that the Parcels Included in the Template Test Were Lawfully Established

The application and findings do not include the required evidence or analysis needed to demonstrate that the properties included for the template test were lawfully established. The applicant must demonstrate that all properties included in the template to justify the dwelling were lawfully created according to the parameters for demonstrating lawful establishment described above. *Yamhill County*, 229 Or App at 198 ("[O]nly parcels lawfully created may be counted in determining whether the requirements of the forest template dwelling statute have been met.").

The findings do not address criteria that require the properties included in the template test to be a lawfully created parcel, and the applicant has not submitted evidence to support that requirement. To reiterate the applicable requirements, the applicant must show that at least 11 properties and 3 dwellings included in the template were lawfully established by (1) providing evidence of the creation date (for example, by providing deed or subdivision or partition approval), and (2) demonstrate that the division complied with the applicable laws by providing an excerpt of the applicable zoning and land use division laws. *Id.* All parcels and dwellings

included in the template must also be demonstrated to have existed prior to January 1, 1993. ORS 215.750(2)(c); CCZO 506.4(A)(1). The county cannot establish that fact without providing documentation that shows when and how the parcels were created. ORS 215.750(2)(a)(A); CCZO 506.4(A)(1). Without that evidence, the applicant has not demonstrated that the parcels within the template qualify the subject property for a template dwelling. ORS 215.750; CCZO 506.4(A).

The applicant has not submitted any evidence to demonstrate that the properties included in the template were lawfully established. Template Test 21-06 (TT 21-06) submitted by the applicant does not include any evidence establishing when or how the parcels included in the rectangular template were created. The report provided with TT 21-06 states, without providing evidentiary support, that the test revealed 30 "parcels prior to Jan. 1, 1993" and 12 "dwellings prior to 1/1/93," with no indication that only lawfully established parcels created prior to January 1, 1993 were included in the template count. The actual template test consists only of a map with a rectangular template around the subject property without any identifying information for any of the properties. This is not sufficient to establish that the properties included in the test were lawfully created as required for purposes of ORS 215.750. *Yamhill County*, 229 Or App at 198. Without the proper supporting documentation, the Planning Commission's findings are not adequate and fail to demonstrate whether any of the properties included in the template test were lawfully created. Staff Report at 7, Finding 2 (finding, without further support regarding lawful establishment, that the template test "determined that within a 160-acre rectangular template area, 12 dwellings and 30 parcels were in existence on January 1, 1993.").

The Board of Commissioners must deny the application because it lacks the necessary evidence and required findings to demonstrate compliance with the template test as described in ORS chapter 215 and CCZO 506.4(A)(1). The record does not contain deeds or records of approved divisions that establish when the properties located in the template were first created. The record does not contain any evidence about the applicable subdivision, partition, or land division laws that applied at the time of the properties' creation. And finally, the county's findings are inadequate and do not demonstrate that the parcels counted within the template were lawfully established.

3. The County failed to make available all documents submitted by or on behalf of the applicant.

In this case, the record contains an assertion by county planning staff in TT 21-06 report that the properties shown within the template were lawfully established parcels, created prior to January 1, 1993. That document, TT 21-06, was not subject to any proceedings required for a

land use decision, such as notice or opportunity for public comment pursuant to a hearing. It also appears that the template test document itself is not a final decision but simply a report provided by the planning staff. Based on staff's response to 1000 Friends' inquiries, these proceedings appear to be the public's first and only opportunity to review and comment on TT 21-06. However, staff also states that it does not provide (and does not have collected as part of the record) any documentation that supports the conclusion made by staff in the template test report TT 21-06.

The failure to make available the documents used to support the conclusion violates ORS 197.797(3)(h), (3)(b), and (5). The documents and evidence "submitted by or on behalf of the applicant" must be made available to the public. As explained above, a conclusion that a property's creation was lawful also depends on the laws in effect at the time. The county's failure to make available what laws applied when these properties were created also violates ORS 197.797(3)(h), which requires that the county make available the "applicable criteria."

The lack of the documentation that supports the legal conclusions made in TT 21-06 means that the county's decision that the applicant meets the requirements for a template dwelling is not supported by any evidence in the record. An assertion—even one made by someone with expertise at reviewing deeds—is still an assertion that lacks support of evidence required by law. The statute requires the county to provide supporting documents, and it has failed to do so. The county and the applicant must provide the deeds, other documents of creation, and applicable laws that they claim support their conclusion that the properties shown in the template qualify as lawfully established units of land. The county's failure to do so violates ORS 197.797(3)(h), (3)(b), and (5). The failure also means that the county's decision is not supported by substantial evidence in the record.

B. The Applicant Has Not Demonstrated That the Access Road Can Meet Minimum Road Design and Fire Safety Standards

The applicant has not demonstrated that the access road for this parcel is capable of meeting the Fire Safety Design Standards for Roads in the County Road Standards and access standards required for the PF-80 zone. CCZO 509.2 (access to parcels must meet Fire Safety Design Standards for Roads in the County Road Standards and access standards found in section 510), 510.4 ("All roads in this zone . . . shall be constructed so as to provide adequate access for fire fighting equipment according to" applicable standards); Final Order RDF 22-04 Condition of Approval 7.c (access road "shall comply with applicable provisions of Sections II, III, and IV of the County Road Standards Ordinance related to Fire Service Requirements, Access Approach, and Private Roads[.]"). The standards require a minimum width that exceeds the terms of the

access easement applicants intend to use for an access road. The applicant and Planning Commission have not addressed this applicable criteria or provided evidence that the proposed access road is capable of conforming to these road standards.

Although the Planning Commission left the question unanswered as to whether the access road qualified as a driveway or private road, the access to the subject parcel crossing the easement does not meet the definition of a driveway and must instead comply with private road standards. Staff Report, Finding 10 (indicating that there is some ambiguity about whether the access road will be a private road and allowing applicant to meet either the driveway or private road standards). Columbia County Road Standards (CCRS) at 26 (defining driveway as "an access from a road that serves up to two lots or parcels."). Per the Clatskanie Fire District, the proposed dwelling would establish the third residence served by the access road. 6/30/2022 Comments submitted by Steven Sharek, Clatskanie Fire District. The access road does not qualify as a "driveway," and the access road must comply with the private road standards.

That the access road must comply with private road standards is corroborated by other provisions of the CCRS. In addition to failing to meet the definition of a "driveway," any portion of an access to a property that is located on a private easement must adhere to private road standards to the extent feasible within the limits of the easement rather than driveway standards. CCRS I.A.2. In this case, the access road triggers both requirements. The proposed access road serves more than two lots or parcels and utilizes a private easement. The county must apply the private road standards in CCRS IV to the access roadway and demonstrate compliance to satisfy CCZO 509.2 and 510.4.

As currently configured, the applicants' access road does not meet the requirements for a private roadway. The minimum easement width for a private road is 40 feet, and additional right-of-way "will be required to be dedicated from developers of property if the easement is not currently 40 feet wide or if additional right-of-way is required for the necessary improvements within the limits of the property being developed." CCRS IV.A.2. Neither the application nor the County's findings address how the current 20-foot access easement will satisfy this requirement.

The proposed easement is too narrow to allow applicants to comply with the County Road Standards. When serving 3 to 6 lots, private roads require a 20-foot wide travel surface along with a four-foot-wide clear zone outside of the travelled surface. CCRS IV.B.1. The applicant has not addressed how the access road to the subject property will meet these standards considering that the easement required for access is only 20 feet wide. The easement cannot accommodate the 28 feet needed for the 20-foot wide travel surface and two additional 4-foot

clear zones on either side of the road. *See* CCRS IV.C (showing diagram of required road surface and clear zone) (page 38).

Even if the standards could be applied in a way that satisfies the terms of the easement, the applicant must still demonstrate that the road will provide adequate access for fire-fighting equipment and that it will minimize wildfire risk. CCZO 510.4. CCRS II.A and the Columbia County Fire Services Fire Apparatus Access Roads & Driveways Standard require that access roads used for fire apparatus be at least 20 feet wide. The applicant fails to demonstrate how the access road crossing the easement can satisfy this requirement while also adhering to the private road standards requiring clear zones beyond these 20 feet. Without such a demonstration, the County cannot find that the access standards required for a dwelling in the PF-80 zone can be satisfied. CCZO 509.2, 510.4.

The applicant has failed to demonstrate that the access road satisfies CCZO 509.2 and 510.4, requiring compliance with county road standards. The Planning Commission's findings that these provisions are satisfied is not supported by substantial evidence in the whole record. For that reason, the Board of Commissioners must deny the application.

Sincerely,

Andrew Mulkey
Rural Lands Staff Attorney
1000 Friends of Oregon
(503) 497-1000x138
andrew@friends.org

1000 Friends of Oregon is a 501(c)(3) non-profit organization founded by Governor Tom McCall shortly after the Legislature passed Senate Bill 100, which created the land use planning rules that shape Oregon's communities. Since its founding in 1974, 1000 Friends has served Oregon by defending Oregon's land use system—a system of rules that creates livable communities, protects family farms and forestlands, and conserves the natural resources and scenic areas that make Oregon such an extraordinary place to live. 1000 Friends accomplishes this mission by monitoring local and statewide land use issues, enforcing state land use laws, and working with state agencies and the Legislature to uphold the integrity of the land use system.

Attachment 2

OFFICIAL RECORDS OF DESCRIPTIONS OF REAL PROPERTIES

COLUMBIA COUNTY ASSESSOR

R1573-31-1

CODE AREA NUMBER	TWP	RGE	SEC	1/4	1/16	PARCEL NUMBER	TYPE	NO
32-03 / 32-02	7	3	15	2		2500	R	1
	MAP NUMBER						SPEC	INT
	TAX LOT NUMBER							

FORMERLY PART OF

Name and Tax Lot Information	DATE OF ENTRY ON THIS CARD	DEED RECORD VOL	DEED RECORD PAGE	ACRES REMAINING
HOLDEN, CHARLES R. & MARY F.	1-15-74	138	795	20.02
Pt To 2501 (2.50 Ac)	10/27/78	220	527 372	17.52
Holden, Stephen E.	1-15-86	260	371 memo cont.	
% Mike Pihl Logging Co., Inc.	10-14-97	F97	11080	17.52

BOOK 138 PAGE 795

FORM No. 401—WARRANTY DEED

STEVENS-NESS LAW PUB. CO., PORTLAND, OREGON

KNOW ALL MEN BY THESE PRESENTS, That Mr. ARTHUR H. LEWIS & MILDRED A. LEWIS, husband and wife, grantor, in consideration of Ten & 00/100 Dollars, to us paid by CHARLES B. HOLDEN & MARY F. HOLDEN, husband and wife, grantee, do hereby grant, bargain, sell and convey unto the said grantee, their heirs and assigns, all the following real property, with the tenements, hereditaments and appurtenances, situated in the County of Columbia and State of Oregon, bounded and described as follows, to-wit:

South half of Southeast quarter of Northeast quarter of Section 15, Township 7 North, Range 3 West, Willamette Meridian, Columbia County, Oregon.
Together with an Easement for a 20 feet right-of-way over and across the West 20 feet of the North half of the Southeast quarter of the Northeast quarter of said Section 15, Township 7 North of Range 3, East of Willamette Meridian, Columbia County, Oregon.

[redacted]

To Have and to Hold the above described and granted premises unto the said grantee, their heirs and assigns forever.

And We the grantors do covenant that We are lawfully seized in fee simple of the above granted premises free from all encumbrances,

and that We will and our heirs, executors and administrators, shall warrant and forever defend the above granted premises, and every part and parcel thereof, against the lawful claims and demands of all persons whomsoever.

Witness our hands and seals this 16th day of January, 1959.

X Arthur H. Lewis (Seal.)

X Mildred A. Lewis (Seal.)

(Seal.)

(Seal.)

STATE OF OREGON, County of Columbia } ss. On this 16th day of January, 1959, before me, the undersigned, a Notary Public in and for said County and State, personally appeared the within named Arthur H. Lewis and Mildred A. Lewis who

known to me to be the identical individuals described in and who executed the within instrument, and acknowledged to me that they executed the same freely and voluntarily.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal the day and year last above written.

NOTARY PUBLIC

Notary Public for Oregon.
My commission expires 7-18-60

WARRANTY DEED

Arthur H. Lewis, grantor

to

Charles B. Holden, grantee

AFTER RECORDING RETURN TO

Jas. D. Keller
Rainier, Ore.

STATE OF OREGON, County of Columbia } ss.

I certify that the within instrument was received for record on the 19th day of February, A.D. 59 at 1:30 o'clock P.M., and recorded in book 138 on page 795 Record of Deeds of said county.

Witness my hand and seal of County affixed.

[illegible] Jensen
[illegible] Recorder.
By [illegible] Deputy.

Deed 6.15
1.50

Updated List of Properties & 1993 Dwellings For TT 21-06

TAX LOT	Tax Account #	Date of Creation	Zoning	1993 Dwelling	Deed Book & Page/Instrument
7315-00-00300	20996	1/6/1974	PF-80	0	DB 109 Page 227
7315-B0-02500	20776	1/16/1974	PF-80	n/a	DB 109 Page 227
7315-B0-01800	20768	1/15/1974	RR-5	1	DB 165 Page 503
7315-A0-00302	20737	10/2/1992	RR-5	0	Partition Plat (PP) 1992-31
7315-A0-00303	20736	10/2/1992	RR-5	0	PP 1992-31
7315-B0-01700	20766	1/15/1974	RR-5	1	DB 165 Page 503
7315-A0-00301	20735	10/2/1992	RR-5	0	PP1992-31
7315-B0-01300	20762	1/15/1974	RR-5	1	DB 165 page 503
7315-B0-01200	**20760**	**1/15/1974**	**RR-5**	**0**	**DB 162 Page 573**
7315-B0-01600	**20765**	**1/15/1974**	**RR-5**	**1**	**DB 151 Page 134**
7315-A0-00300	20734	1/11/1974	RR-5	0	DB 181 Page 498
7315-B0-01500	**20763**	**1/15/1974**	**RR-5**	**1**	**DB 157 Page 22**
7315-B0-01400	**20764**	**1/15/1974**	**RR-5**	**0**	**DB 162 Page 460**
7315-B0-01100	**20759**	**1/15/1974**	**RR-5**	**0**	**DB 149 Page 206**
7315-B0-01000	**20758**	**1/15/1974**	**RR-5**	**0**	**DB 176 Page 178**
7315-A0-00200	20733	1/11/1974	RR-5	1	DB 181 Page 960
7315-B0-00300	20748	1/15/1974	Rural Community (RC)	0	DB 162 Page 615
7315-B0-00100	20744	1/15/1974	RR-5	0	DB 191 Page 944
7315-B0-00200	29399	1/15/1974	RC	0	DB 177 Page 730
7315-B0-00400	29400	1/15/1974	RC	0	DB 136 Page 69
7310-C0-01100	20718	12/21/1973	RR-5	0	DB 187 Page 125
7310-C0-01000	20714	12/21/1973	RR-5	0	DB 112 Page 92
Totals	**18 Properties**			**6 Dwellings**	

KEY Subject Property **One Property**