

BEFORE THE BOARD OF COUNTY COMMISSIONERS

FOR COLUMBIA COUNTY, OREGON

In the Matter of an Application (No. TT 13-12))
by Weyerhaeuser Real Estate Development)
Company for a Template Test on a 10-acre)
Parcel in the PF-80 Zone (Primary Forest-80 Acres)) **AMENDED**
FINAL ORDER NO. 50-2014

WHEREAS, on July 21, 2014, the Director of Land Development Services issued an administrative decision on application TT 13-12 by Weyerhaeuser Real Estate Development Company (WREDCO); and

WHEREAS, the Director concluded that the subject property failed to meet a template test for establishing forest dwelling on the approximately 10-acre parcel in the PF-80 Zone (Primary Forest - 80 Acres) (Tax Map ID 5130-00-002800); and

WHEREAS, on July 30, 2014, the applicant timely appealed the Director's decision; and

WHEREAS, on August 6, 2014, the Board of County Commissioners took jurisdiction over the appeal, and the matter was scheduled for a public hearing on September 24, 2014; and

WHEREAS, notice of the hearing was mailed to those entitled on September 5, 2014, and a Staff report recommending denial of the application was made available on September 17, 2014; and

WHEREAS, on September 23, 2014, Staff issued a revised staff report recommending that the application be approved; and

WHEREAS, the applicant submitted written testimony on September 23, 2014, in support of the revised Staff recommendation; and

WHEREAS, on September 24, 2014, the Board held a public hearing on the appeal at its regularly scheduled meeting. The Board received evidence into the record, a list of which is provided in Attachment1, attached hereto and incorporated herein by this reference; and

WHEREAS, the Board then deliberated and voted unanimously to tentatively approve the application; and

WHEREAS, the Board issued Final Order No. 50-2014 approving the application with conditions on October 22, 2014. Notice of the Final Order was mailed to those entitled on October 23, 2014; and

WHEREAS, on October 30, 2014, the applicant requested reconsideration of the Final

Order No. 50-2014 to correct certain findings; and

WHEREAS, the Board considered the applicant's request on November 12, 2014, and voted unanimously to withdraw Final Order No. 50-2014 for reconsideration. The Board directed staff to schedule the matter for the next available hearing; and

WHEREAS, following proper notice, the Board held a hearing on January 14, 2015, and approved amendments to the order, as shown below in ~~striketrough~~ and **bold**, to correct the findings in Final Order No. 50-2014.

NOW, THEREFORE, based on the evidence submitted and received into the record on this matter, the Board of County Commissioners makes the following findings:

1. The Board finds that the subject property meets the criteria for a Template Dwelling for Tracts Smaller than 80 Acres (Columbia County Zoning Code ("CCZO"), Section 506.4). For the subject property to qualify for a template dwelling under CCZO Section 506.4, all or part of at least 11 other parcels and at least three dwellings must be within a 160-acre rectangle (also referred to as the "template") centered on the subject property. The parcels and dwellings must have existed on January 1, 1993. The table, below, identifies ~~the 14~~ **12** parcels currently within the 160-acre template, along with their creation date. Parcels with a qualifying dwelling – one that existed on January 1, 1993 and continues to exist – are identified with a "dw." The parcels within the template are as follows:

Parcels within the 160-Acre Template

Twelve (12) Parcels that qualify for "other parcels" within the template are:

	<u>Tax Map No</u>	<u>Acres</u>	<u>Date Parcel Created Deed Book/Page</u>
	1. 5130-00-02100	20 Ac	< 1973 D/B 131/219
	2. 5130-00-02700	10 Ac	< 1977 D/B 212/951
dw	3. 5130-00-02600	13.78 Ac	< 1973 D/B 156/570
dw	4. 5130-00-02601	5.12 Ac	< 1975 D/B 202/61
dw	5. 5130-00-02501	4.92 Ac	1974 D/B 190/1018
	6. 5131-00-00400	14.9 Ac	< 1973 D/B 181/214
	7. 5131-00-00100	20 Ac	< 1973 D/B 130/218
	8. 5130-00-03200	20 Ac	< 1973 D/B 173/541
	9. 5130-00-03000	10 Ac	< 1973 D/B 131/219
	10. 5130-00-03400	30 Ac	< 1973 D/B 173/541
	11. 5130-00-02900	20 Ac	< 1973 D/B 173/541
	12. 5131-00-00200	118 Ac	< 1973 D/B 173/541

~~Two (2) Parcels that do not qualify for "other parcels" within the template are:~~

~~13. 5130-00-03100 30 Ac 1998 D/B 98/15147~~

~~reconfigured
with TL 2000,
now 40 Ac
14. 5131-00-00401 26.49 Ac 1994 Dec. 5-72063-A
reconfigured
with TL 600~~

~~Of the 14 other parcels that are within or partially within the 160-acre square template, 12 parcels and three dwellings existed on January 1, 1993. Two were reconfigured through property line adjustments after January 1, 1993 and thus did not exist on January 1, 1993. The Board thus finds that at least 11 other parcels and three dwellings, all of which existed on January 1, 1993 and continue to exist, are within the 160-acre template. The subject property (Tax Lot ID No. 5130-00-02800) therefore qualifies for a template dwelling under CCZO Section 506.4. **Because the subject property qualifies for a template dwelling without counting any property-line-adjusted parcels, the Board declines to consider at this time whether a property line adjustment establishes a new parcel creation date.**~~

2. The Board adopts the findings and conclusions in the Staff Report as revised by Staff Memorandum dated September 23, 2014, to the extent that those findings are consistent with the findings herein and the Board's decision. **The Board does not adopt those findings that address whether property line adjustments establish a new parcel creation date, because the Board did not address that issue as part of this proceeding.** The Staff Report is attached hereto as Attachment 2 and incorporated herein by this reference. The Staff Memorandum is attached hereto as Attachment 3 and incorporated herein by this reference.
3. The Board adopts the recitals, above, as additional findings in support of its decision.

NOW, THEREFORE, based on the evidence in the record and the findings and conclusions herein, the Board of County Commissioners hereby **APPROVES** this application for a template test (TT 13-12), subject to the following conditions:

1. A template test approval does not constitute an approval for forest dwelling. A Columbia County Forest Dwelling Permit is required to site a forest dwelling on the subject property.

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2. This approval is specific to the facts presented as part of this application. Staff will reexamine the template area at the time of application for a Forest Dwelling Permit. Accordingly, any changes to the parcels or the number of dwellings within the template area after the date of this Order may invalidate this approval.

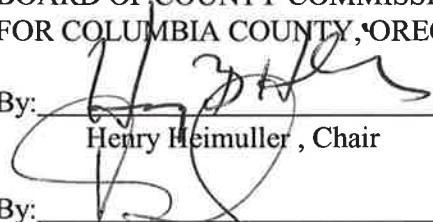
Dated this 14th day of January, 2015

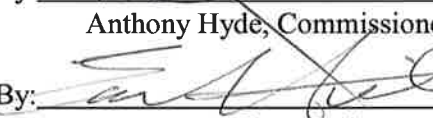
[Amended as shown in ~~strike through~~ and **bold** to clarify the Board's findings.]

BOARD OF COUNTY COMMISSIONERS
FOR COLUMBIA COUNTY, OREGON

Approved as to form

By: 
Office of County Counsel

By: 
Henry Heimuller, Chair

By: 
Anthony Hyde, Commissioner

By: 
Earl Fisher, Commissioner

ATTACHMENT 1

List of Items in the Record

#	Date	Description
1	9/23/14	Email from Kimberly O'Dea
2	9/23/14	Revised Staff Recommendation from Glen Higgins
3	9/17/14	Board Communication from Todd Dugdale and Staff Report
4	9/5/14	Notice of Public Hearing by Publication and Mailing and Affidavits of Mailing and Publication
5	8/6/14	Minutes of Board Staff Meeting on 8/6/14
6	8/1/14	Board Communication from Todd Dugdale
7	7/30/14	Notice of Appeal
8	7/24/14	Letter from Kim O'Dea for WREDCO, with the following attachments: 1) Notice of Administrative Decision and Appeal Form 2) Letter from Kim O'Dea, dated 7/2/14 3) Letter from Deborah Jacob to Don Wallace, dated 6/13/14, with attached Template Test Map
9	7/21/14	Notice of Administrative Decision and Certificate of Mailing dated 8/7/2014
10	6/13/13	Letter from Deborah Jacob to Don Wallace
11	6/13/13	Template Test Maps
12	6/6/13	Template Test Request from Don Wallace
13	6/6/13	Receipt for Template Test

COLUMBIA COUNTY BOARD OF COMMISSIONERS

Staff Report

September 17, 2014

APPEAL ofDirector Decision of Denial for TEMPLATE DWELLING

HEARING DATE: September 24, 2014

FILE NUMBER: TT 13-12

**SUBJECT PROPERTY
TAX MAP NO.** 5130-00-02800, 10 acres, Zoned Primary Forest (PF-80)

APPLICANT: Don Wallace, Weyerhaeuser Real Estate Development Co.

REQUEST: Appeal of the Administrative Denial of a Template Test for a dwelling Qualification on Tax Lot No. 5130-00-02800, Zoned PF-80 (Primary Forest)

APPLICABLE REVIEW CRITERIA:PageColumbia County Zoning Ordinance

Section 506.4 Template Dwelling for Small Tracts	2
Section 1609 Notice of Review by the Director	4
Section 1702 Appeal of Planning Director's Action	4
Section 1612 Special Hearings	5

Oregon Administrative Rule

OAR 660-006-0005(5)	Definition - Date of Creation and Existence	5
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Oregon Revised Statutes

ORS 215.750(1)	Alternative Forestland Dwellings; Criteria	6
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BACKGROUND:

In 1993, under HB 3661, the State Legislature adopted major changes in ORS Chapter 215 regarding uses and dwellings allowed in farm and forest zones within Oregon. For siting of dwellings, two

adopted concepts were, first the Legislature thought if a parcel had been owned by the same person or been in the family for a very long time, and the owner wanted to build a single family dwelling on it, then they should be able to build on it; but, only one dwelling per tract of parcels. This concept became known as the Lot of Record dwelling. Second, the Legislature thought it made sense to allow a dwelling in forest zoned areas where the area was already built and committed, compromised with numerous parcels and other dwellings. During the state hearing process a test was developed in order to determine if a proposed parcel was in an area already developed with non-forest uses, became known as the Template Test dwelling. If the subject property soil type was good for growing Douglas fir a more strict standard was adopted requiring more parcels and dwellings existing within the 160 acre square template.

Under both concepts for approval of a dwelling in farm or forest zones a date was established. Staff is recalling both types of allowable dwellings because each has a requirement as to the date of creation and/or existence of a parcel. Under the Lot of Record dwelling the present owner or family member had to have owned the parcel since January 1, 1985. This 1985 date represented a fairly long ownership history. Under the Template Test dwelling, the Legislature did not want future development to encourage continued development into our forest zones, i.e. one approved dwelling would act as another parcel and dwelling for yet another future dwelling, thereby adding more and more dwellings as time went on. So, to be counted, the other parcels and dwellings in the template 160 acre square had to exist prior to January 1, 1993 and continue to be in existence. This 1993 date was the date of the legislation.

REVIEW CRITERIA:

Columbia County Zoning Ordinance Section 500

Section 500 Primary Forest Zone - 80

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

- A. The tract is composed of soils that meets one of the following:
 - 1. Soils that are capable of annually producing more than 85 cubic feet per acre of wood fibre if:
 - a. All or part of at least 11 other lots or parcels that existed on January 1, 1993 and are not within an Urban Growth Area are within a 160 acre square centered on the center of the subject tract. (Note: If the tract abuts a road that existed as of January 1, 1993, the measurement may be made by creating a 160-acre rectangle that is one mile long and one-

quarter mile wide centered on the center of the subject tract and aligned with the road to the maximum extent possible); and

- b. At least three (3) dwellings existed on January 1, 1993 and continue to exist on the other lots or parcels; or

Finding 1: The soils on the subject property as classified by USDA, Soil Survey for Columbia County, are predominately Cascade silt loam with a 162 cu ft per acre growth CMAI. This soil is very good for tree growth, far exceeding 85 cu ft per acre. The Planning Division conducted a Template Test and issued the results on Jun 13, 2013 (Attachment 4). Staff found that only 7 other qualifying parcels and 3 dwellings that existed on those parcels prior to January 1, 1993 were within the 160 acre square template. The application TT 13-12 fails to meet the minimum qualifications for the subject parcel, T/L 5130-00-02800, to be approved for a dwelling.

Parcels Within a 160 Acre Square, Centered in the Center of the Subject Parcel

Seven (7) Parcels that qualify for "other parcels" within the template are:

	<u>Tax Map No</u>	<u>Acres</u>	<u>Date Parcel Created Deed Book/Page</u>
	1. 5130-00-03100	30 Ac	< 1973 D/B 95/580
	2. 5130-00-02100	20 Ac	< 1973 D/B 131/219
	3. 5130-00-02700	10 Ac	< 1977 D/B 212/951
dw	4. 5130-00-02600	13.78 Ac	< 1973 D/B 156/570
dw	5. 5130-00-02601	5.12 Ac	< 1975 D/B 202/61
dw	6. 5130-00-02501	4.92 Ac	1974 D/B 190/1018
	7. 5131-00-00100	20 Ac	< 1973 D/B 130/218

Two (2) Parcels that do not qualify for "other parcels" within the template are:

- | | |
|------------------|--|
| 8. 5131-00-00400 | 14.9 Ac (reconfigured) 1994 December 5-72063-A |
| 9. 5131-00-00401 | 26.49 A (reconfigured) same & 16694 02 |

Five (5) Parcels applicant specifically requested to be omitted are:

10. 5130-00-03200	20 Ac	< 1973 D/B 173/541
11. 5130-00-03000	10 Ac	< 1973 D/B 131/219
12. 5130-00-03400	30 Ac	< 1973 D/B 173/541
13. 5130-00-02900	20 Ac	< 1973 D/B 173/541
14. 5131-00-00200	118 Ac	< 1973 D/B 173/541

Staff finds that of the 14 other parcels that are within or partially within the 160 acre square template, two did not exist on January 1, 1993 and were not counted as qualifying parcels; and, five were not counted as per request of the applicant. Staff finds that if those 5 other parcels would have been counted as qualifying "other parcels," then application TT 13-12 would have been approved as

having at least 11 other qualifying parcels in the template. The applicant purposely caused their application to be denied by requesting that valid "other parcels" not to be counted. Staff also finds that even if the two disputed parcels that were not counted because of the date of existence, were counted, the total would only come to 9 existing parcels, lacking enough to qualify the subject property for a dwelling. So, the issue being appealed is not pertinent to the outcome of the Template Test, (TT 13-12).

Continuing with Columbia County Zoning Ordinance Section 1609

1609 Notice of Review by the Director: The submittal of an application which may be approved by the Director requires that notice of the review of such an application be given to affected persons. This means that notice of this review will be mailed to all property owners within 250 feet of the subject property and to the Citizen Planning Advisory Committee for the area. These notices shall contain:

- .1 A description of the subject property, reasonably calculated to give notice as to its actual location, including but not to be limited to metes and bounds descriptions or the tax map designations of the County Assessor;
- .2 The nature of the proposed action;
- .3 Interested parties have 10 calendar days in which to respond in writing or in person with any comment regarding the proposed action;
- .4 Interested parties have 10 calendar days to request in writing a public hearing before the Planning Commission or the Hearings Officer;
- .5 If no request for a public hearing has been received, the Director may approve the proposed action and the applicant shall be issued a permit upon meeting any conditions attached to this approval.

Finding 2: Notice Administrative Decision was mailed to property owners within 250 feet of the subject property and to the applicant on July 21, 2014 (Attachment 3). It contained the information required above. Notice of review (before the decision) was not mailed to affected persons, because a Template Test by itself is not considered a land use decision per ORS 197.015(10). When a template test determination is attached to, and made part of, an application for a Resource Dwelling; then, the Resource Dwelling application is a land use decision requiring notification prior to the decision. A Notice of Administrative Decision was mailed to parties anticipating this appeal.

Continuing with Columbia County Zoning Ordinance Section 1702

1702 Appeal of a Planning Director's Action: Any land use decision by the Director, or Design Review Board may be appealed to the Planning Commission by persons

who appeared before the lower decision making body, either in person or in writing. The appeal may concern the approval or denial of an application or any conditions attached to the approval of an application.

Finding 3: An Appeal Information for Final Order TT 13-12 was attached to the front page of the Notice of Administrative Decision, dated July 21, 2014. Parties were given 12 calendar days of the Notice Date to file an appeal. An appeal was filed in timely fashion by Don Wallace on behalf of WREDCO at the Clerks Office on July 30, 2014. (Attachment 1)

Continuing with Columbia County Zoning Ordinance Section 1612 Special Hearings

1612 **Special Hearings:** The Board of County Commissioners, in its discretion, may order any quasi-judicial land use application or type of quasi-judicial land use application to be heard at a Special Hearing in lieu of a hearing before the Planning Commission or the Board of County Commissioners.

Finding 4: The Board of County Commissioners took jurisdiction of this appeal at the August 6, 2014 meeting. A hearing date of September 24, 2014 was scheduled. (Attachment 5)

Continuing with Oregon Administrative Rule (OAR)

Department of Land Conservation and Development – Division 6 Forest Lands

OAR 660-006-0005 Definitions

(5)"Date of Creation and Existence." 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.

Finding 5: In the Oregon Revised Statutes there are two places where an established date is used for qualifying a lot or parcel for a dwelling, or for other lots or parcels within close proximity to the qualifying lot or parcel :

- 1) ORS 215.705(1)(a) states in part ... "A dwelling under this section may be allowed if:
 - (a) The lot or parcel on which the dwelling will be sited was lawfully created and was acquired by the present owner: (emphasis added)
 - (A) Prior to January 1, 1985; or
 - (B) By devise or by intestate succession from a person who acquired the lot or parcel

prior to January 1, 1985.”

- 2) ORS 215.750(1) states in part ... “Alternative forestland dwellings; criteria.
 - (1) 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 comprised of soils that are:
 - c) Capable of producing more than 85 cu ft 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 (emphasis added)
 - (B) At least three dwellings existed on January 1, 1993, on the other lots or parcels.

Note: In the two statutes above, there are different dates that a parcel must meet, under two distinct circumstances, the first under Lot of Record dwelling the creation date of the subject parcel is defined as before January 1, 1985. In the Template Test dwelling, the other lots or parcels in the template area must have existed on January 1, 1993 and are within the 160-acre template.

Since the above definition “Date of Creation and Existence” includes the same terminology as the state statute “creation” and “existence,” it follows that the definition was meant to be used for both concepts for approving a dwelling in the forest zone. The “date of creation and existence” definition applies to both ORS 215.705(1), a parcel for a lot of record dwelling, and to ORS 215.750(1), the other parcels in a template area surrounding the parcel for the dwelling.

The Board deliberation for this case is to determine if a property line adjustment creates a new parcel, and thereby eliminates the prior parcel that existed in the template area. By state definition OAR 660-006-0005(5) above, the reconfiguration of a parcel through property line adjustment is the new date of creation or existence. Staff would like to make another practical point, in this appealed case where WREDCO identifies many parcels created by deed, some as early as 1887, for either to build a dwelling or to count as another parcel within a template, clearly none of these parcels, to be counted as other parcels in the template test, were created by subdivision or partition. They were created by lawful conveyance through a deed instrument. A parcel created prior to subdivision and partitioning law is a described unit of land conveyed by deed (or other instrument). The description of the unit of land does not grow or shrink in time. The description of the unit of land is the parcel; it means no less or no more than what is described. If a property line adjustment is applied to that unit of land, the described unit of land becomes different and must be conveyed via a different conveyance document and with an alternate description. The altered parcel is not the same as the original; it is a different parcel, described unit of land.

REBUTTAL TO ARGUMENTS PRESENTED BY APPELLANT (ATTACHMENT 3)

Response to Applicant's arguments:

As an initial matter and for the sake of simplicity and consistency in responding to the applicant's arguments, the parcel on which the applicant seeks to site a dwelling will be referred to as the "subject parcel." The parcels that are necessary to qualify the subject property for a dwelling under the template test will be referred to as the "other parcels." The issue in this appeal is whether there are at least 11 "other parcels" within the 160-acre template area to qualify the subject parcel for a forest dwelling.

Because 2 parcels were reconfigured through property line adjustments after 1993, the Director found that those "other parcels" did not count toward the required 11. The applicant appeals that decision, arguing that the County must apply the template test to the area as it existed on January 1, 1993, and that subsequent property line adjustments do not establish a new date of creation and existence for those "other parcels."

In a letter from its attorney, dated July 2, 2014, the applicant relies on *Parsons v. Clackamas County*, 32 Or LUBA 147 (1996), *Gambee v. Yamhill County*, 38 Or LUBA 420 (2000), and an unpublished Lane County Hearings Officer decision (PA 06-6795) establish the following three rules regarding forest template dwellings:

- "1. The date of creation definition does not apply to the lot or parcel being qualified for a forest template dwelling because no date of creation requirement exists in the statute or rule.
2. The scope of the date of creation definition is limited to the subject property (the property being qualified for the template dwelling). It does not extend to the qualifying parcels.
3. As quoted from *Parsons*, "we find no foundation upon which the hearings officer could find that the significance of OAR 660-06-005(4) as it applies to lot-of-record dwelling applications should be imparted to template dwelling applications."
"Unlike the lot of record statutes, the forest template dwelling provisions of ORS 215.750 specify no date by which parcels qualifying for template dwellings must have been created; thus the lot of record rules set forth in OAR 660-06-005(4) regarding the parcels' date of creation do not apply to forest template dwellings."

Staff does not disagree with the applicant's first and third rules, which establish that the "date of creation and existence" definition does not apply to the "subject parcel." However, the applicant's second rule clearly misconstrues the forest template test provisions and is inconsistent with LUBA's holding in *Parsons*, *Gambee* and other cases. The "date of creation and existence" definition, which does not apply to the subject parcel, does apply to the "other parcels."

First, LUBA's holdings do not support the applicant's assertion that the date of creation

definition does not apply to “other parcels” within the template area. As the applicant states in its third rule, above, LUBA stated in *Parsons* that for the subject parcel – the parcel on which the dwelling would be sited – ORS 215.750 requires no date of creation for that parcel to qualify for a dwelling. But, as LUBA further explained:

“The only date to which ORS 215.750 refers is January 1, 1993. That date, however, does not establish a qualifying date of creation for the parcel on which a dwelling is proposed. Rather, *it is the qualifying date for determining the number of dwellings and the number of lots or parcels within the template area.*” *Parsons* at 152 n 5 (Emphasis added).

Thus, contrary to the applicant’s assertion, LUBA clearly stated in *Parsons* that the date of creation definition applies to the “other parcels” within the template area. Recall that under the definition, for parcels that are reconfigured after November 4, 1993, the date of creation and existence is the date of reconfiguration. Because the “other parcels” in this case were reconfigured after 1993, they did not exist on January 1, 1993 within the meaning of ORS 215.750(1)(c).

Second, *Gambee* is not on point and does not support the applicant’s position. If anything, *Gambee* supports staff’s interpretation. In *Gambee*, the issue was whether the subject property, zoned mixed farm-forest, was predominantly in a forest use on January 1, 1993 and thus, subject to siting standards for dwellings in forest zones. The County in *Gambee* made its determination based on the configuration of the property as it existed in 1993, which was considerably larger than its size at the time of application. LUBA held that the County erred and that the proper analysis required identification of the property as it exists at the time of application, followed by a determination of the predominant use of that property in 1993. *Gambee* at 426. Similarly here, the applicant urges the Board to apply the template test to the “other parcels” as they existed in 1993, regardless of any subsequent reconfiguration. But the applicant has not provided statutory, regulatory or LUBA support for that interpretation.

Third, the applicant urges the Board to consider a Lane County hearings officer decision, which presumably supports the applicant’s position. An unpublished Lane County hearings officer decision is not binding on this County. Although another county’s reasoning might be illuminating here, the Lane County decision was not submitted into the record and staff does not have access to it.

Finally, the applicant’s second rule contradicts its first rule, and in any event fails under the general rule of statutory construction as stated in ORS 174.010, which provides:

“In the construction of a statute, the office of the judge is simply to ascertain and declare what is, in terms or substance, contained therein, not to insert what has been omitted or to *omit what has been inserted*; and where there are several provisions or particulars such construction is, if possible, to be adopted as will *give effect to all.*” (Emphases added.)

The applicant states in its first rule that the date of creation definition does not apply to the subject

parcel. The applicant then states in its second rule that the date of creation definition is limited to the subject parcel. Applying that logic, the date of creation definition is thus canceled out and does not apply to anything. Yet, the definition appears in the Goal 4 rules for forest lands. The applicant thus urges the Board to adopt a construction that omits a provision and does not give effect to all of its particulars. The Board does not have that authority.

Conversely, the Director's interpretation of the template test and the date of creation and existence definition does not omit what has been inserted and gives effect to all applicable provisions. Furthermore, the Director's interpretation is consistent with LUBA's interpretation – that the date of creation and existence definition applies to the “other parcels.” In this case, two of the “other parcels” were reconfigured after 1993, only seven “other parcels” within the 160-acre template existed on January 1, 1993. Because the template does not contain 11 “other parcels” that existed on January 1, 1993, the subject parcel does not qualify for a template dwelling.

RECOMMENDATION

Based on the findings contained in the Staff Report, staff recommends that the Board deny the appeal and uphold the Planning Director's decision and opinion stated in the July 21, 2014 Notice of Administrative Decision

Attachments:

Board Communication dated September 17, 2014 with Attachments:

- 1) Appeal filed by Don Wallace on behalf of WREDCO;
- 2) Letters dated July 22&24, 2014 by Kim O'Dea, WREDCO attorney;
- 3) Notice of Administrative Decision dated July 21, 2014;
- 4) Land Development Services letter of template test determination dated June 13, 2013 and Template test Map;
- 5) Board Communication for BOC to take original jurisdiction;
- 6) Staff Report dated September 17, 2014.

MEMORANDUM

Land Development Services Department

TO: Board of Commissioners

FROM: Glen Higgins
Columbia County Planning Manager

RE: REVISION TO STAFF REPORT DATED SEPTEMBER 17, 2014
APPEAL OF DIRECTOR DECISION
Denial for Template Test TT 13-12

DATE: September 23, 2014

REVISED STAFF RECOMMENDATION

Staff refers to Finding 1, page 3 of 9, of the Staff Report for TT 13-12:

Since writing of the Staff Report, we have determined the applicant can not have the County omit qualifying parcels from the 160 acre square template. Other qualifying parcels of the template must be within or partially within the template area; there is no discretion. A Template Test application is a non-discretionary application allowing a decision from the Director; no public hearing is required.

Therefore by adding the five (5) qualifying parcels, not counted by staff at the request of the applicant, the results of TT 13-12 are:

<u>Subject Property</u>	<u>Dwellings prior to 1/1/93</u>	<u>Parcels prior to 1/1/93</u>
5130-00-02800	3	12

Based on the findings in the Staff report and the above additional Finding, Staff recommends that the Board **Reverse the Planning Director decision** of July 21 2014, and **Approve Template Test** TT 13-12.