BEFORE THE LAND USE BOARD OF APPEALS

OF THE STATE OF OREGON

BLU DUTCH LLC,
Petitioner,

vs.

JACKSON COUNTY,
Respondent,

and

ROBIN WEST,
Intervenor-Respondent.

LUBA No. 2018-069

FINAL OPINION
AND ORDER

Appeal from Jackson County.

Garrett K. West, Medford, filed a petition for review and a cross response brief and argued on behalf of petitioner. With him on the briefs was Huycke O'Connor Jarvis, LLP.

No appearance by Jackson County.

Robin West, Rogue River, filed a response brief and a cross petition for review and argued on his own behalf.

RYAN, Board Chair; BASSHAM, Board Member, participated in the decision.

ZAMUDIO, Board Member, did not participate in the decision.

REMANDED 12/07/2018

You are entitled to judicial review of this Order. Judicial review is governed by the provisions of ORS 197.850.

Opinion by Ryan.

NATURE OF THE DECISION

Petitioner appeals a decision by the county hearings officer denying its application for a large tract forest dwelling.

REPLY BRIEF

Petitioner moves for permission to file a reply brief to respond to new matters raised in intervenor-respondent Robin West's (intervenor or West) response brief. There is no opposition to the motion, and the reply brief is allowed.

FACTS

Petitioner owns a vacant 80-acre parcel that is zoned Forest Resource (FR), located in Jackson County. We refer to that parcel as the subject property. Petitioner also owns a non-contiguous 120-acre parcel that is zoned Forestry Range, located in Klamath County. We refer to that parcel as the Klamath County parcel. The subject property is accessed from Bear Branch Road, and is surrounded by parcels also zoned FR. The properties to the northwest and south of the subject property are actively managed for forest practices.

Petitioner submitted an application to site a large tract forest dwelling on the subject property. Evans Valley Fire District commented on petitioner's application and noted that the district was willing to annex the subject property into the district and provide fire protection services upon annexation. The planning staff issued a decision approving the application, and intervenor-

respondent appealed the decision to the hearings officer. The hearings officer issued a decision denying the application because she concluded that the application failed to satisfy Jackson County Land Development Ordinance (LDO) 8.7.1(G)(4). Record 20-21. This appeal followed.

PETITIONER'S ASSIGNMENT OF ERROR

As noted, the hearings officer denied petitioner's application on a single basis, concluding that the application failed to satisfy LDO 8.7.1(G)(4). In its single assignment of error, petitioner argues that the hearings officer improperly construed LDO 8.7.1(G) in denying its application for a forest dwelling.

LDO 8.7.1 is entitled "Wildfire Safety Requirements" and provides in relevant part:

> "A) Applicability
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> "This Section contains mandatory standards for all new and existing structures not exempted through Section 8.7.2 located in areas subject to wildfire hazard as identified on the 'Hazardous Wildfire Area Map.' The official version of the 'Hazardous Wildfire Area Map' will be maintained by the Planning Division. * * * Compliance with the standards of this section will be verified through a Fire Safety Inspection as coordinated through Jackson County Development Services and shall occur prior to issuance of building permits.
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> "* * * * *
>
> "G) General Fire Safety Guidelines
>
> "The following fire safety guidelines are suggested in all rural and forested areas, and may be required by the County when a finding is made that such measures are necessary to protect public safety (see OAR 660-006-0035 for additional standards in forest zones):

"1) Bridges constructed of noncombustible materials or as otherwise approved by the local fire official having jurisdiction through a Type 1 Review;

"2) On-site water storage approved by the fire district serving the proposed use;

"3) Permanent signs posted along the access route to indicate the location of the emergency water source; and

"4) *Other measures as recommended by the fire agency commenting on the application or the County Fire Safety Inspector*."[1] (Emphasis added.)

The hearings officer interpreted LDO 8.7.1(G) to require a fire safety inspection prior to issuing a decision on the application. The hearings officer denied the application because petitioner had not provided a fire safety inspection:

> "The provisions in subsections (B) Fuelbreaks, C) Roof Coverings, (D) Access, (E) Chimneys and (F) Rural Fire Protection are objective criteria and this application can easily be conditioned upon a fires safety inspection that determines that [petitioner] has complied with these criteria. In fact, [petitioner] discussed [ ] all fuelbreaks and design features required in this section. Additionally, a condition of approval is included requiring annexation into the Evans Valley Fire District #6 prior to issuance of a building permit. Furthermore, a condition of approval is included requiring that, prior to the issuance of a building permit, [petitioner] coordinate and have conducted a fire safety [] inspection and provide evidence of compliance with the provisions in this section. Finally, [petitioner] agreed to improve the access easement to comply with any requirements of the fire safety inspection. [Petitioner] did not

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[1] The remaining provisions of LDO 8.7.1 include requirements that relate to fuelbreaks (LDO 8.7.1(B)), roof coverings (LDO 8.7.1(C)), access (LDO 8.7.1(D)), chimneys (LDO 8.7.1(E)), rural fire protection (LDO 8.7.1(F)) and address signs (LDO 8.7.1(H)).

> request any exemptions from or reductions in the Wildfire Safety or Fuelbreak requirements. Thus, it is feasible for [petitioner] to meet the criteria in subsections (B) through (F).
>
> "Subsection (G) General Fire Safety Guidelines, allows for more subjective conditions 'when a finding is made that such measures are necessary to protect public safety.' The section then lists four options for additional requirements, including implementing measures recommended by a fire agency or the County Fire Safety Inspector.
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> "The Hearings Officer agrees with [intervenor] that, without the fire safety inspection conducted prior to issuing a decision on the application, the public has no means by which to comment on whether those additional measures recommended by the fire agency or the County Fires Safety Inspector, or the lack thereof, adequately protects the public. Relying on future recommendations of a fire inspector was rejected in *Sisters Forest Planning v. Deschutes Co.*, 108 P .3d 1175, 198 Or. App. 311 (Or. App., 2005). In that case, a forester made several recommendations, but they were too vague upon which to base an approval.
>
> "In this case, we have no recommendations upon which to base an approval. The Applicant may object to one or more of the measures recommended by the fire inspector and there would be no means by which even the Applicant could make such an objection. Nothing in that provision allows for negotiations with the Applicant on those other measures. Therefore, the application does not meet the criteria in subsection (G)." Record 20-21.

Petitioner argues that the hearings officer's interpretation of LDO 8.7.1(G) as requiring a fire safety inspection at all, let alone requiring it prior to approving the forest dwelling application, is inconsistent with the express language of LDO 8.7.1(G). Petitioner also argues that context provided in other subsections of LDO 8.7.1(G) supports its interpretation.

We review the hearings officer's interpretation of LDO 8.7.1(G) to determine whether it is correct. *Gage v. City of Portland*, 319 Or 308, 317, 877 P2d 1187 (1994). In determining the meaning of local legislation, we apply the principles of statutory construction set out in *State v. Gaines*, 346 Or 160, 171-72, 206 P3d 1042 (2009). That is, our task is to determine the local government's intent in adopting the legislation, looking at the text, context and any proffered legislative history. For the reasons set forth below, we agree with petitioner that the hearings officer incorrectly interpreted LDO 8.7.1(G) to require a fire safety inspection to be submitted by an applicant.

First, the plain language of LDO 8.7.1(G) makes clear that subsections (G)(1)-(4) are merely "guidelines" that "are suggested," except in the circumstances when the county finds that "such measures are necessary to protect public safety." "Such measures" are set out in (1) through (4). Sections (1) through (3) include specific measures, and subsection (4) is a catch-all provision that allows the county to impose "[o]ther measures as recommended by the fire agency commenting on the application." However, there is nothing in subsection (G) that references or requires a fire safety inspection. As petitioner points out, the hearings officer did not find that a fire inspection was necessary to protect public safety, and no fire agency recommended a fire inspection in any comments submitted.

Second, there is no requirement that a fire safety inspection be conducted prior to a decision on the application, or included as part of the application

materials. LDO 8.7.1(A) provides that "[c]ompliance with the standards of this section will be verified through a Fire Safety Inspection as coordinated through Jackson County Development Services *and shall occur prior to issuance of building permits*."[2] (Emphasis added.) That section does contemplate a fire safety inspection occurring, in order to verify "*compliance* with the standards" in LDO 8.7.1(G). However, although LDO 8.7.1 is not a model of clarity, it is clear that the standards in LDO 8.7.1(A) - (F) and (H) are operating standards that relate to the post-land use approval design of the dwelling, rather than approval criteria. *See* n 1 (describing the provisions of LDO 8.7.1, prohibiting wood roofing, requiring a chimney to have a spark arrestor, and requiring access roads constructed to county road standards). The language that refers to verification of compliance with the standards in LDO 8.7.1 strongly suggests that if a fire safety inspection occurs at all, it is intended to occur as a post-approval condition to be satisfied after development approval but prior to issuance of building permits, when, for example the proposed roofing, access and chimney can be verified on building plans.

Third, we reject the hearings officer's interpretation of LDO 8.7.1(A) as requiring a fire safety inspection to occur prior to approval of an application for a forest dwelling in order to allow members of the public to comment on the

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[2] Although LDO 8.7.1(A) uses capital letters for the phrase "Fire Safety Inspection," that phrase is not a defined term in the LDO.

inspection results or recommendations. The only circumstance that we can contemplate in which the county could require a fire safety inspection prior to a decision on an application is if, under LDO 8.7.1(G)(4), a fire agency (1) commented on the application and (2) recommended a fire safety inspection (3) prior to development approval as an additional measure. But that is not what occurred here, and as we explained above, a fire safety inspection is not an approval criterion.[3] Rather, LDO 8.7.1(A) makes a fire safety inspection a requirement to be satisfied prior to building permit approval.

Finally, the hearings officer's reliance on the Court of Appeals' decision in *Sisters Forest Planning Committee v. Deschutes County*, 198 Or App 311, 108 P3d 1175 (2005), is misplaced. In that case, the applicant was required to satisfy an approval criterion that is nearly identical to LDO 4.3.4(B), which requires the county to find that "[t]he proposed use will not significantly increase fire hazard or significantly increase fire suppression costs or significantly increase risks to fire suppression personnel." In *Sisters Forest Planning*, in response to concerns raised during the proceedings below about fire hazard and fire suppression costs and risks to firefighters, the applicant's expert recommended several measures to decrease risks. The hearings officer in that case imposed a condition of approval that required the applicant to implement all of the recommended measures. On

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[3] Petitioner notes, and we agree, that the public had opportunity to comment on the application and on comments that the county received from the Evans Fire District, which the tentative staff decision referenced. Record 154.

appeal, the Court of Appeals agreed with the appellant's argument that some of the recommendations in the expert's letter were too imprecise or hypothetical to serve as conditions of approval. *Id.* at 319.

In the present appeal, no measures have been recommended by any expert or fire agency to satisfy either LDO 4.3.4(B) or LDO 8.7.1, and therefore the Court of Appeals' decision in *Sisters Forest Planning* is inapposite. The hearings officer concluded that LDO 4.3.4(B) was met, except that she concluded that petitioner had not demonstrated "complete compliance" with LDO 8.7.1. Record 12. However, for the reasons that we explained above, that conclusion improperly construed LDO 8.7.1(G), and was not correct.

Petitioner's assignment of error is sustained.[4]

CROSS PETITION FOR REVIEW

OAR 661-010-0030(7) authorizes "[a] respondent or intervenor-respondent who seeks reversal or remand of an aspect of the decision on appeal only if the decision on appeal is reversed or remanded under the petition for review" to file "a cross petition for review that includes contingent cross-assignments of error, clearly labeled as such." West filed a cross petition for

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[4] Petitioner moves to strike most of page 20, all of page 21, and most of page 22 of intervenor's response brief, arguing that the arguments contained therein are not responses to petitioner's assignment of error but rather arguments that expand intervenor's arguments in his cross petition for review. Because the arguments on the disputed pages of the response brief have no bearing on our resolution of petitioner's assignment of error, we decline to strike them.

review that includes two contingent cross assignments of error, clearly labeled as such. We sustain petitioner's assignment of error and conclude that the hearings officer's single basis for denial of the application was based on an improper construction of LDO 8.7.1. We understand that West's cross-assignments of error raise issues that might provide additional bases for remanding the decision, in order to correct other alleged errors on remand. Accordingly, we address those contingent cross assignments of error.

A. First Contingent Cross Assignment of Error

In his first cross assignment of error, West argues that the hearings officer erred in determining that the application satisfies ORS 215.740(3).[5] ORS 215.740 provides the criteria for a large tract forest land dwelling, and provides in relevant part:

> "(1) * * * a dwelling may be allowed on land zoned for forest use under a goal protecting forestland if it complies with other provisions of law and is sited on a tract:
>
> "(a) In eastern Oregon of at least 240 contiguous acres except as provided in subsection (3) of this section; or
>
> "(b) In western Oregon of at least 160 contiguous acres except as provided in subsection (3) of this section.
>
> " * * * * *

[5] West's petition for review does not articulate a standard of review that we are to apply to our review of his cross assignments of error.

> "(3)(a)An owner of tracts that are not contiguous but are in the same county or adjacent counties and zoned for forest use may add together the acreage of two or more tracts to total 320 acres or more in eastern Oregon or 200 acres or more in western Oregon to qualify for a dwelling under subsection (1) of this section.
>
> "(b) If an owner totals 320 or 200 acres, as appropriate, under paragraph (a) of this subsection, the owner shall submit proof of nonrevocable deed restrictions recorded in the deed records for the tracts in the 320 or 200 acres, as appropriate. The deed restrictions shall preclude all future rights to construct a dwelling on the tracts or to use the tracts to total acreage for future siting of dwellings for present and any future owners unless the tract is no longer subject to protection under goals for agricultural lands or forestlands."

We understand West to argue that the hearings officer's decision that the ownership requirement in ORS 215.740(3) was met is not supported by substantial evidence in the whole record. ORS 197.835(9)(a)(C). That is so, we understand West to argue, because at the time petitioner submitted its application and at the time the application was deemed complete, petitioner did not provide evidence that it owned the 120-acre Klamath County parcel that it relied on to meet the acreage minimum in ORS 215.740(3)(a). According to West, the existence of a copy of the deed establishing petitioner's ownership of the Klamath County parcel that was introduced into the record after petitioner's application was deemed complete is insufficient to cure that alleged error.

Petitioner responds, and we agree, that the hearings officer correctly concluded that the evidence in the record before her demonstrated that petitioner owns the Klamath County parcel. Record 7. Nothing in ORS 215.740(3) or any

LDO provision requires an applicant for a large tract forest dwelling to prove ownership of the parcels at the time an application is submitted. The hearings officer's task after the application is submitted and before reaching a decision is to determine whether an applicant has met its burden of proof to establish that all of the approval criteria are met. An applicant may satisfy that burden of proof after the application is deemed complete and while the record is open.

We also understand West to argue that the hearings officer improperly construed ORS 215.740(3)(a) in concluding that the minimum acreage requirement that applies to the application is the minimum acreage for tracts that are located in western Oregon: 200 acres. As noted, the parcel on which the dwelling is proposed to be located is in Jackson County, which ORS 321.257 designates as "western Oregon," while the non-contiguous parcel is located in an adjacent county, Klamath County, which ORS 321.700(5) designates as "eastern Oregon." The hearings officer interpreted ORS 215.740(3) to require that the controlling minimum acreage is determined by the location of the parcel on which the dwelling is proposed to be located. According to West, ORS 215.740(3) requires the hearings officer to apply the "stricter standard" for eastern Oregon if tracts in both western Oregon and eastern Oregon are relied on, because that interpretation "best achieves applicable statewide planning goals." Cross Petition for Review 7.

Petitioner responds that the hearings officer correctly concluded that the operative minimum acreage amount is determined by reference to the minimum

acreage requirements for the county in which the dwelling is proposed to be "sited." The operative language is in ORS 215.740(1)(b), which is the section of the statute that allows a large tract forest dwelling to be "sited" on forest land. That language keys the rest of the statute to the location of the tract on which the dwelling "is sited." ORS 215.740(3) merely allows an owner seeking a dwelling on a tract that is located in western Oregon to rely on non-contiguous land in another adjacent county, which may be in eastern Oregon, to meet the minimum acreage requirements. It does not require that the minimum acreage requirements for the non-contiguous county be the applicable standard. We agree with petitioner that the hearings officer's construction of ORS 215.740 is correct.

Finally, we understand West to argue that the hearings officer improperly construed ORS 215.740(3)(a) in concluding that the Klamath County parcel is "zoned for forest use" within the meaning of ORS 215.740(3)(a). According to West no commercial timber is located on the Klamath County parcel and "its soils also preclude future commercial timber production." Cross Petition for Review 8.

The hearings officer rejected West's argument below, concluding that the Klamath County parcel is zoned Forestry Range, a county zoning designation that implements Statewide Planning Goal 4 (Forest Lands), and therefore the property is "zoned for forest use" within the meaning of ORS 215.740(3)(a). Record 13. We agree with the hearings officer's conclusion that property that is

zoned Forestry Range is "zoned for forest use" within the meaning of ORS 215.740, where the Forestry Range zoning designation implements Goal 4.

West's first contingent cross assignment of error is denied.

B. Second Contingent Cross Assignment of Error

In his second contingent cross assignment of error, West argues that the hearings officer erred in concluding that the application satisfied LDO 4.3.4 and 4.3.12(A).

1. LDO 4.3.4

LDO 4.3.4, General Review Criteria for Type II Permits, requires that:

> "The use shall be approved only when the following findings can be made:
>
> "A) The use will not force a significant change in, or significantly increase the cost of, accepted farming or forest practices on agriculture or forest lands;
>
> "B) The proposed use will not significantly increase fire hazard or significantly increase fire suppression costs or significantly increase risks to fire suppression personnel. Further, it must be demonstrated that the use will comply with the fire safety requirements in Section 8.7."

We understand West to argue that the hearings officer's decision that LDO 4.3.4 is satisfied is "not supported by substantial evidence in the whole record." ORS 197.835(9)(a)(C).

Silver Butte Timber Company (Silver Butte) owns the property located to the northwest of the subject property, and its property is actively managed for timber harvest. The proposed location of the dwelling in the northwest corner of

the subject property is downslope from the Silver Butte parcel, and that portion of the Silver Butte parcel contains slopes exceeding 70 percent. Silver Butte submitted a letter into the record that raised concerns about the increased risk of wildfire from the proposed dwelling and about potential future limits on logging that may be imposed by the state forester, under a provision of the Oregon Forest Practices Act that allows the state forester to determine whether to limit harvesting where homes, roads, or structures are located below forest practices. Record 125.

The hearings officer found that LDO 4.3.4 was met:

> "The Staff's Tentative Decision adopted the Applicant's findings that begin on page 4 of the Applicant's narrative regarding these criteria. The area chosen by the Applicant for determining where the affected accepted farming or forest practices are located was the 750-foot notice area required in Subsection 2.7.6(B)(2). No one argued for a broader study area and the Hearings Officer accepts that as the appropriate area.
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> "In describing the surrounding properties, the Applicant describes forest practices observed on one given site visit and concludes that all the surrounding forest practices, if any, are passive practices. The Applicant, however, does not explain what are 'active' forest practices or how the passive nature of those observed and surmised forest practices results in a lower impact from the proposed dwelling. Additionally, the Applicant fails to explain how the lack of observed forest practices on one site visit leads to an assumption of only passive forest practices on the surrounding properties.
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> "Silver Butte Timber Co. ('Silver Butte'), however, submitted a letter stating that the company owns the entire 640-acre section of land northwest of the subject property and actively engages in forest management on that land. On the other hand, Silver Butte's

> allegations of a significant change in forest practices due to the 'High Landslide Hazards' are speculation based on the potential that the state forester will restrict forest harvesting and forest road construction on Silver Butte's property or the other surrounding properties on which commercial forest activities are occurring. Without information from the state forester as to the likelihood of such restrictions, the Hearings Officer finds that the application cannot be denied on such speculation.
>
> "Additionally, *the Applicant provided undisputed information at the hearing that the subject building site is a long distance from the Silver Butte property and that a landslide will be slowed by the road and the creek north of the subject building site.* The Hearings Officer finds that information is substantial evidence that, without more information, the state forester is not likely to restrict the forest practices on the Silver Butte property merely because of this one additional dwelling." Record 10 (emphasis added).

In his second contingent cross assignment of error, West argues that the hearings officer's finding that LDO 4.3.4 is satisfied is not supported by substantial evidence because the hearings officer's conclusions that "the subject building site is a long distance from the Silver Butte property" and that there are a road and creek north of the building site are simply inaccurate descriptions of the subject property and the proposal. Petitioner does not dispute that the hearings officer likely confused the location of the Silver Butte property with the location of different forest land located to the south of the subject property that is owned by John Hancock Insurance. Cross Response Brief 24. However, petitioner argues that the remainder of the decision demonstrates that the hearings officer understood the location of the Silver Butte property.

The hearings officer found that Silver Butte's concern about restricted forest practices was speculative, in particular given the location of West's dwelling in close proximity to the proposed dwelling and to Silver Butte's parcel, at the bottom of the same slope. But the findings quoted above specifically rely on the hearings officer's apparent misunderstanding that "the subject building site is a long distance from the Silver Butte property and that a landslide will be slowed by the road and the creek north of the subject building site" as additional evidence that the state forester would not likely restrict forest practices on the Silver Butte property, and that therefore, LDO 4.3.4 was met.[6] That description of the proposed location of the dwelling on the subject property is not accurate. On remand, the hearings officer can clarify the weight that any misunderstanding of the terrain on the subject property played in her decision that LDO 4.3.4 is met.

2. LDO 4.3.12

LDO 4.3.12(A) requires that:

"Dwellings and structures shall be sited on the parcel so that:

"1) They have the least impact on nearby or adjoining forest or agricultural lands;

"2) Adverse impacts on forest operations and accepted farming practices on the tract will be minimized;

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[6] It is undisputed that the location of the proposed dwelling is approximately 210 feet from the southeastern portion of Silver Butte's property. Record 170.

"3) The amount of forest lands used to site access roads, service corridors, dwellings and structures is minimized; and,

"4) The risks associated with wildfire are minimized."

The hearings officer also found that LDO 4.3.12(1)-(4) were met:

"As [intervenor] pointed out, however, [petitioner] inaccurately described the forest practices on the surrounding properties because several of the Silver Butte and John Hancock Insurance properties are actively managed using accepted forest practices. Also, the Applicant did not provide an alternative sites analysis. *Sisters Forest Planning Comm. v. Deschutes County*, 48, Or LUBA 78 (2004), however, does not require an in-depth analysis of alternative sites. LUBA said that, while at least an abstract analysis is required, unless other parties point out better locations, 'there is no reason to believe the preferred site would have any more or different impacts than other sites on the property.'

"[Petitioner] provided such an abstract analysis by describing the proposed site as the best location because it is in a natural clearing where the rest of the property is not cleared from trees, is in a valley such that hazards from the location to surrounding forest uses would be minimal and is a relatively flat area, and the dwelling would be protected from landslides from the slopes to the north by the road and the creek. While opponents suggested there are other sites that would be better, *no one directed the Hearings Officer's attention to those exact locations. Additionally, none of the opponents said how these other alleged locations would be any better than what is proposed given the large distances from the property of the proposed location.* Thus, the Hearings Officer has no way of knowing if those are better sites and accepts the abstract analysis in the application narrative and in the discussion at the public hearing that this is the best site on the property to least impact the forest and agricultural operations on the Parcel 1 and the surrounding properties and that the least amount of land for roads and structures is minimized.

"Subsection (4) does not require a complete elimination of wildfire danger. Any use on forest land has a potential for such a danger. The

> wildfire dangers are minimized at the proposed location because it is cleared of trees and the development can easily meet the fuelbreak and access road requirements in LDO 8.7.l (A)-(F).
>
> "As stated below, however, because the application did not provide an analysis by the fire inspector as required in LDO 8.7.l(A)-(G), we do not know if there are additional public safety issues that would necessitate additional actions to be taken by the Applicant. Therefore, the proposal has not met LDO 4.3.12(A)(4)." Record 15 (emphasis added).

West argues that the hearings officer impermissibly shifted the burden to opponents of the application to provide alternative sites that would better meet LDO 4.3.12(A)(4). Petitioner responds, and we agree, that the hearings officer did not improperly shift the burden of persuasion from petitioner to opponents. A local government does not improperly shift the burden of proof in finding that a petitioner did not present evidence showing that an approval criterion was not met, so long as the findings addressing the criterion also explain why the evidence that was submitted demonstrates that the approval criterion is satisfied. *Hannah v. City of Eugene*, 35 Or LUBA 1, 11-12, *aff'd* 157 Or App 396, 972 P2d 1230 (1998). The hearings officer evaluated the evidence in the record and correctly found that the proposed dwelling would be sited on the parcel so that the risks of wildfire would be "minimized." LDO 4.3.12(A)(4).

West's second contingent cross assignment of error is sustained, in part.

CONCLUSION

We sustained above petitioner's assignment of error that challenged the hearings officer's single basis for denying petitioner's application. We also sustained above West's second contingent cross assignment of error.

Accordingly, the county's decision is remanded.