

BEFORE THE LAND USE BOARD OF APPEALS
OF THE STATE OF OREGON

LANDWATCH LANE COUNTY,
Petitioner,

vs.

LANE COUNTY,
Respondent,

and

MCDUGAL BROS INVESTMENTS,
Intervenor-Respondent.

LUBA No. 2019-131

FINAL OPINION
AND ORDER

Appeal from Lane County.

Charles W. Woodward, IV, Eugene, filed the petition for review and a reply brief, and argued on behalf of petitioner. With him on the brief was Sean T. Malone.

No appearance by Lane County.

Bill Kloos, Eugene, filed the response brief and argued on behalf of intervenor-respondent. With him on the brief was the Law Office of Bill Kloos PC.

ZAMUDIO, Board Member; RUDD, Board Chair; RYAN, Board Member, participated in the decision.

REMANDED

05/26/2020

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

NATURE OF THE DECISION

Petitioner appeals a county hearings officer's decision approving a forest template dwelling.

BACKGROUND

The subject property and adjacent properties are generally forested and undeveloped with nonforest uses. The subject property is zoned Impacted Forest Land (F-2) and is located in an area between a developed residential area to the west (but not adjacent to the subject property) and the Lane Community College campus to the east (which is also not adjacent to the subject property).

State law generally limits the development of dwellings on forest land to preserve forest land for forest resource uses, consistent with Statewide Planning Goal 4 (Forest Lands). *See* ORS 215.700 (resource land dwelling policy). Certain dwellings may be allowed in forest zones if the development can comply with siting standards intended to conserve forest values, minimize conflicts with resource uses, and minimize wildfire hazards. *See* ORS 215.750; OAR 660-006-0029 (siting standards for dwellings and structures in forest zones). Lane Code (LC) 16.211 implements state law and governs the establishment of "forest template dwellings" and associated uses in the impacted forest lands zone.¹

¹ ORS 215.750 provides that the governing body of a county may approve the construction of a single-family dwelling "on a lot or parcel located within a forest zone" with soil capable of defined levels of timber production if, among other things, a certain number of "other lots or parcels that existed on January 1, 1993,

1 Broadly, for a forest dwelling to be approved, LC 16.211(8) requires the applicant
2 to demonstrate, and the local government to conclude, that the proposed forest
3 dwelling and associated development (such as access roads) minimizes the
4 amount of forest land used and complies with fire-safety siting and access design
5 standards.²

are within a 160-acre square centered on the center of the subject tract.” ORS
215.750(2)(a)(A). The 160-acre square is referred to as the “template.”

² LC 16.211(8) provides in pertinent part:

“Siting Standards for Dwellings, Structures and Other Uses. * * *

These standards are designed to make such uses compatible with forest operations and agriculture, to minimize wildfire hazards and risks and to conserve values found on forest lands. The standards in LC 16.211(8)(a)-through(b) [*sic*] below shall be weighed together with the requirements in LC 16.211(8)(c) and (e) below to identify the building site.

“(a) Setbacks. Residences, dwellings or manufactured dwellings and structures shall be sited as follows:

“(i) Near dwellings or manufactured dwellings on other tracts, near existing roads, on the most level part of the tract, on the least suitable portion of the tract for forest use and at least 30 feet away from any ravine, ridge or slope greater than 40 percent;

“(ii) With minimal intrusion into forest areas undeveloped by non-forest uses[.]

“* * * * *

“(b) The amount of forest lands used to site access roads, service corridors and structures shall be minimized.” (Underscoring in original.)

1 Intervenor-respondent McDougal Bros Investments (intervenor) applied to
2 the county for approval to site a forest template dwelling on the subject property.
3 The planning director approved the application and petitioner appealed that
4 approval to the county hearings officer, who approved the application. This
5 appeal followed.

6 **FIRST ASSIGNMENT OF ERROR**

7 Petitioner's argument under the first assignment of error is three-fold.
8 Petitioner argues that the hearings officer misconstrued LC 16.211(8) in a variety
9 of respects explained further below. Petitioner also argues that the hearings
10 officer failed to make adequate findings addressing whether the proposed access
11 road minimized the amount of forest land used to site the access road, as required
12 by LC 16.211(8)(b). See n 2. Petitioner also argues that the hearings officer's
13 decision is not supported by substantial evidence. Petitioner's arguments are
14 interwoven. The essential question is whether the hearings officer's decision
15 weighing the applicable dwelling siting criteria adequately establishes the factual
16 and legal bases to support the hearings officer's conclusion that LC 16.211(8) is
17 satisfied. For reasons explained below, we remand the hearings officer's
18 decision.

19 LC 16.211(8) requires the decision maker "to identify the building site" by
20 "weigh[ing] together" (1) the requirement to minimize the amount of forest land
21 used, with (2) fire-safety development design standards. In other words, the code
22 requires a balancing exercise to limit the amount of forest land used for nonforest

1 purposes while requiring the nonforest uses be developed in a manner that
2 protects adjacent resource lands from conflicting nonresource uses and potential
3 fire damage originating from the nonforest uses.

4 Specifically, LC 16.211(8)(a) requires that the forest template dwellings
5 be sited near dwellings on other tracts, near existing roads, on the most level part
6 of the tract, on the least suitable portion of the tract for forest use, at least 30 feet
7 away from any ravine, ridge, or slope greater than 40 percent, and “[w]ith
8 minimal intrusion into forest areas undeveloped by non-forest uses.” LC
9 16.211(8)(a)(ii); see n 2. LC 16.211(8)(b) requires that “[t]he amount of forest
10 lands used to site access roads, service corridors and structures shall be
11 minimized.” LC 16.211(8)(c) provides standards for fuel breaks and other
12 structural fire protection siting standards. LC 16.211(8)(e) provides road and
13 driveway design standards for fire safety.³

14 The subject property and adjacent F-2 zoned properties are currently
15 generally forested and undeveloped with nonforest uses. The hearings officer
16 found that “[t]he fact that the proposed dwelling will be the first dwelling in a
17 large area and that it will be used to legitimate future template dwellings in that
18 area suggests that the intrusion will not be minimal.” Record 18 (footnote
19 omitted). Thus, the hearings officer found that the application does not satisfy LC

³ LC 16.211(8)(d) requires the applicant to demonstrate access to a lawful domestic water supply. That criterion appears to be mandatory and is not part of the weighing exercise required by LC 16.211(8) that is at issue in this appeal.

1 16.211(8)(a)(ii). *Id.* However, the hearings officer found that failure to satisfy
2 that criterion did not preclude approval, because that criterion is one factor among
3 many to be weighed under LC 16.211(8). Petitioner does not challenge that
4 conclusion in this appeal.

5 The hearings officer found that the proposed building site is on the most
6 level part of the property and that, considering topographic constraints, the
7 building site is as close as possible to the closest dwellings. The hearings officer
8 also found that the proposed building site satisfies quantifiable siting standards,
9 such as being setback at least 100 feet from all property lines, not within 30 feet
10 of a ravine or slope greater than 40 percent, and located in a location that will
11 accommodate the minimum distances necessary for fire-safety fuel breaks.

12 The hearings officer approved residential access to the subject property
13 from the east of the property via Gonyea Road, over an existing accessway that
14 is currently developed with an “all-weather surface” and is proposed to be paved
15 (Gonyea accessway). Record 36 (site access plan). The hearings officer observed
16 that the Gonyea accessway is adjacent to the subject property and has existed
17 since 1994 and that proposed access would use existing accessways, except for a
18 300-foot driveway, which is necessary to access the building site on the flattest
19 area of the subject property. Record 17.

20 Petitioner argued that use of the Gonyea accessway does not minimize the
21 use of forest land, and that the dwelling should instead be accessed from the west
22 via an unconstructed extension of East 43rd Avenue (E. 43rd Ave. extension).

1 The hearings officer appears to have concluded that he did not need to compare
2 the amount of forest land used to site access from an E. 43rd Ave. extension with
3 the amount of forest land used for the Gonyea accessway for two reasons. First,
4 he relied on the expressed preference of the local fire district, into which the
5 property will likely be annexed, which prefers to access the subject property via
6 Gonyea Road, rather than E. 43rd Ave., due to the location of the fire department
7 and fire district boundaries. Record 17, 235, 371. Second, the hearings officer
8 relied on lay testimony in the record that suggests that topography and expense
9 make it impractical to extend E. 43rd Ave. in a manner that would satisfy fire-
10 safety road design standards. Record 17, 84.

11 The hearings officer observed that LC 16.211(8) requires balancing of all
12 siting factors and explained that his interpretation of that requirement “has been
13 to give greater weight to the satisfaction of those requirements that are the most
14 objective.” Record 18. The hearings officer concluded that “on the balance, and
15 weighing in the fact that the application is not consistent with LC 16.211(8)(a)(ii),
16 the application meets the applicable standards of 16.211(8).” *Id.*

17 Petitioner first argues that the hearings officer misconstrued LC 16.211(8)
18 because the “minimization standard” in LC 16.211(8)(b) does not permit a
19 hearings officer to consider fire department preferences or road construction costs
20 and practicability. Instead, according to petitioner, a hearings officer must
21 analyze only whether the proposed access minimizes the amount of forest land
22 used. Petitioner next argues that the hearings officer misconstrued LC 16.211(8)

1 by giving greater weight to “objective” factors because LC 16.211(8) does not
2 expressly provide variable weighing of siting requirements.

3 Intervenor responds that petitioner misinterprets the minimization standard
4 in LC 16.211(8)(b) as a stand-alone, mandatory criterion, instead of one of many
5 standards that must be weighed together. Intervenor responds that the hearings
6 officer’s variable weighing of siting criteria does not misconstrue LC 16.211(8)
7 because that section does not provide that each criterion must be given equal
8 weight. Intervenor argues that the hearings officer correctly considered the fire
9 department’s preference to determine that the Gonyea accessway is the preferred
10 access over E. 43rd Ave. Moreover, intervenor argues, even if the hearings officer
11 was required to afford each criterion equal weight, the hearings officer found that
12 all criteria were satisfied except LC 16.211(8)(a)(ii), and petitioner does not
13 argue that the hearings officer erred by approving the dwelling despite the failure
14 to satisfy LC 16.211(8)(a)(ii).

15 Intervenor observes that that LUBA will generally not reweigh evidence
16 and argues that “there is no legal basis” for LUBA to instruct the hearings officer
17 how to weigh the evidence presented to him. Response Brief 20. However,
18 petitioner’s arguments do not require us to reweigh any evidence or instruct the
19 hearings officer how to weigh evidence. Instead, petitioner’s argument asks us to
20 decide whether the hearings officer correctly interpreted and applied LC
21 16.211(8).

1 We review the hearings officer’s interpretation of LC 16.211(8) to
2 determine whether the interpretation is correct, affording no deference to the
3 hearings officer’s interpretation. ORS 197.835(9)(a)(D).⁴ In addition, findings of
4 compliance with approval criteria are sufficient for review if they “establish the
5 factual and legal basis for the particular conclusions drawn in a challenged
6 decision[.]” *Thormahlen v. City of Ashland*, 20 Or LUBA 218 (1990) (citing
7 *Sunnyside Neighborhood v. Clackamas Co. Comm.*, 280 Or 3, 21, 569 P2d 1063
8 (1977)). Generally, findings must “(1) identify the relevant approval standards,
9 (2) set out the facts which are believed and relied upon, and (3) explain how those
10 facts lead to the decision on compliance with the approval standards.” *Heiller v.*
11 *Josephine County*, 23 Or LUBA 551, 556 (1992). We conclude that the hearings
12 officer’s findings that LC 16.211(8) is satisfied are inadequate and that the
13 hearings officer’s interpretation of LC 16.211(8) is insufficient for our review.

⁴ Petitioner argues that because LC 16.211(8) implements state law the hearings officer’s interpretation is not subject to deference under ORS 197.829(1)(d) and *Siporen v. City of Medford*, 349 Or 247, 259, 243 P3d 776 (2010). Petitioner is correct that a local government interpretation of a local code provision that implements state law is not subject to deference. *Kenagy v. Benton County*, 115 Or App 131, 838 P2d 1076, *rev den*, 315 Or 271 (1992). Additionally, the deferential standard of review set out at ORS 197.829(1), and explained in *Siporen*, applies only to interpretations made by the local government governing body, here the board of county commissioners, not other decision makers such as the county hearings officer. *See, e.g., Waverly Landing Condo. Owners’ Assoc. v. City of Portland*, 61 Or LUBA 448 (2010).

1 **A. The findings are inadequate.**

2 Petitioner argues: “Nowhere does the [hearings officer’s] decision address
3 whether the proposed access road minimizes the use of forest land or whether the
4 existing access from E. 43rd Ave. more adequately minimizes the use of forest
5 land undeveloped with non-forest uses as required by the plain language of LC
6 16.211(8)(b).”⁵ Petition for Review 10.

7 Intervenor responds that the hearings officer’s decision “explains why the
8 proposed access represents the access for the property that will have the least
9 impact on forest lands (because it uses an existing road that the driveway will
10 connect to directly) * * *.” Response Brief 12. Intervenor emphasizes that the
11 hearings officer found that the Gonyea accessway has existed since 1994 and that
12 “[e]xcept for the driveway, existing accessways will be utilized.” Record 17.
13 Intervenor also argues that the hearings officer’s “global conclusion” that the
14 application meets the requirements of LC 16.211(8) includes an implicit finding

⁵ We understand petitioner’s reference to “existing access” from E. 43rd Ave. to mean legal access. It is undisputed that physical access from E. 43rd Ave. to the subject property is not currently constructed. Petitioner points to evidence that E. 43rd Ave. is a dedicated public easement, and states that that easement includes a right of access to the subject property. Record 128–49. However, a separate parcel lies between the subject property and E. 43rd Ave. The site plan at Record 481, which intervenor appended to the response brief, shows an “access easement” over a parcel that lies between the subject property and E. 43rd Ave. It is not clear to us whether access from E. 43rd Ave. to the subject property would require the creation of additional legal easements. However, we assume for purposes of this decision that the subject property could potentially be accessed via an extension of E. 43rd Ave.

1 that the Gonyea accessway minimizes the amount of forest lands use to site
2 access roads.⁶

3 The hearings officer identified the approval standard in LC 16.211(8)(b).
4 Record 16. The hearings officer found that the Gonyea accessway already exists
5 and that “existing accessways will be utilized.” However, the hearings officer did
6 not explain how that finding relates to his conclusion that LC 16.211(8) is
7 satisfied. The hearings officer did not expressly or impliedly conclude that the
8 use of the Gonyea accessway to access the forest template dwelling will minimize
9 the amount of forest lands used to site access roads. In addition, even if we accept,
10 for the sake of argument, intervenor’s position that the hearings officer’s general
11 conclusion that LC 16.211(8) is satisfied includes an implicit finding that LC
12 16.211(8)(b) is satisfied, the hearings officer failed to explain how the facts lead
13 to that conclusion. The hearings officer’s findings do not include the intervenor’s
14 response in the response brief—namely, that use of the existing Gonyea
15 accessway demonstrates that the amount of forest lands used to site access roads
16 is minimized. Because that reasoning is not in the decision on review, we express
17 no opinion on whether that reasoning would satisfy LC 16.211(8).

⁶ The hearings officer concluded: “In conclusion, I find that, on the balance, and weighing in the fact that the application is not consistent with LC 16.211(8)(a)(ii), the application meets the applicable standards of 16.211(8).” Record 18.

1 We agree with petitioner that the hearings officer's findings fail to
2 adequately address the standard in LC 16.211(8)(b). That error requires remand.

3 **B. The hearings officer's interpretation is insufficient for review.**

4 Contrary to the intervenor's argument, we do not understand petitioner to
5 argue that the hearings officer was required to deny the forest template dwelling
6 application because the proposal could not comply with the siting standards in
7 LC 16.211(8). Instead, we understand petitioner to argue that the hearings officer
8 misapplied the balancing required by LC 16.211(8), and that error requires
9 remand for further analysis. We agree.

10 Intervenor has not pointed to anything in the hearings officer's decision
11 that constitutes a reviewable interpretation of LC 16.211(8)(b). The hearings
12 officer's explanation of his interpretation of LC 16.211(8) is sparse. The hearings
13 officer did not include any interpretation or analysis of the operative term
14 "minimized" in LC 16.211(8)(b). That term is central to the parties' dispute on
15 appeal. The hearings officer's decision also does not explain his differential
16 weighing of criteria beyond stating that he gave greater weight to those
17 unspecified criteria that he deemed "most objective." Without an adequate
18 interpretation contained in the decision on review, we are limited in performing
19 our review function. *See, e.g., Dertinger v. Deschutes County*, 78 Or LUBA 483,
20 491–92 (2018) (remanding for interpretation of relevant code provision);
21 *Knutson Family LLC v. City of Eugene*, 48 Or LUBA 399, 422, *aff'd*, 200 Or App
22 292, 114 P3d 1150 (2005) (same). We conclude that remand is necessary for the

1 hearings officer to better explain his interpretation and application of the
2 weighing exercise required by LC 16.211(8), including LC 16.211(8)(b). *See*
3 *Opp v. City of Portland*, 153 Or App 10, 14, 955 P2d 768, *rev den*, 327 Or 620
4 (1998) (LUBA may remand the decision for the local government “to provide
5 any essential interpretation that the decision omits”).

6 While we do not interpret LC 16.211(8) in the first instance, we make a
7 few observations to help guide the county on remand. LC 16.211(8) implements
8 the siting standards for dwellings in forest zones found at OAR 660-006-0029,
9 which in turn implements Goal 4.⁷ “Minimized” is not defined in the LC or in
10 OAR 660. “Minimize” is a verb that means “**1** : to reduce to the smallest possible
11 number, degree, or extent.” *Webster’s Third New Int’l Dictionary* 1438
12 (unabridged ed 2002). “Reduce” is a verb that means “**1** : **a** : to draw together or

⁷ OAR 660-006-0029 provides, in part:

“(1) Dwellings and structures shall be sited on the parcel so that:

- “(a) They have the least impact on nearby or adjoining forest or agricultural lands;
- “(b) The siting ensures that adverse impacts on forest operations and accepted farming practices on the tract will be minimized;
- “(c) The amount of forest lands used to site access roads, service corridors, the dwelling and structures is minimized; and
- “(d) The risks associated with wildfire are minimized.”

1 cause to converge : condense, consolidate * * * **b (1)** : to diminish in size,
2 amount, extent, or number : make smaller : lessen, shrink.” *Id.* at 1904. The
3 determination whether the amount of forest lands used to site access roads is
4 minimized requires some analysis of alternatives, or an explanation why
5 alternatives that would reduce the amount of forest lands do not exist.

6 Intervenor argues that the hearings officer correctly relied on evidence that
7 it is impracticable and expensive to construct the alternative E. 43rd Ave. access
8 to meet fire-safety design standards and that access is not preferred by the fire
9 district. Intervenor argues that the hearings officer appropriately weighed those
10 fire-safety concerns with the minimization standard in LC 16.211(8)(b). We
11 agree with intervenor that, in evaluating appropriate access for a forest template
12 dwelling, the hearings officer may—indeed, must—identify access that
13 minimizes wildfire risks. In doing so, the hearings officer may weigh fire district
14 practices and preferences, as well as whether proposed alternative access routes
15 can be improved to specifications for fire-safety access.

16 We also agree with intervenor that the minimization standard in LC
17 16.211(8)(b) is not stand-alone approval criterion. Instead, LC 16.211(8) requires
18 the decision maker to weigh the requirements for fire-safety measures against the
19 directive to minimize the amount of forest land used to site and support a
20 nonforest use. Sometimes those two conservation measures will conflict.
21 Ultimately, the balancing exercise should result in identifying a site for the forest

1 template dwelling that allows the use to be safely sited while minimizing the
2 amount of forest lands used.

3 We remand for the hearings officer to complete the weighing exercise
4 required by LC 16.211(8), including LC 16.211(8)(b). That exercise should result
5 in a decision that contains sufficient interpretations and adequate findings.

6 **C. Lay testimony regarding the practicability of improving an**
7 **alternative access route is substantial evidence.**

8 Petitioner challenges the hearings officer's reliance on lay testimony that
9 it is impracticable to construct the alternative E. 43rd Ave. access to meet fire-
10 safety design standards. We address that argument because that issue is likely to
11 recur on remand.

12 The hearings officer rejected petitioner's argument that the subject
13 property should be accessed from E. 43rd Ave., in part based on written testimony
14 previously submitted in a different land use proceeding, "that suggests that
15 serious slope issues have prevented the extension of E. 43rd Avenue because of
16 inability or expense of meeting the road design standards of LC 16.211(8)(e)." Record 17. The hearings officer observed that no contrary evidence was
18 introduced into the record in this proceeding. *Id.*

19 Petitioner argues that lay testimony is not substantial evidence to support
20 a conclusion that E. 43rd Ave. cannot be extended to serve as access to the subject
21 property. ORS 197.835(9)(a)(C). "Substantial evidence exists to support a
22 finding of fact when the record, viewed as a whole, would permit a reasonable

1 person to make that finding.” *Dodd v. Hood River County*, 317 Or 172, 855 P2d
2 608 (1993) (citing *Younger v. City of Portland*, 305 Or 346, 351–52, 752 P2d 262
3 (1988)). Petitioner argues that whether an E. 43rd Ave. extension can meet the
4 fire-safety design standards in LC 16.211(8)(e) is a technical question that
5 requires expert testimony, citing *Oregon Coast Alliance v. City of Brookings*, 72
6 Or LUBA 222 (2015), and *Landwatch Lane County v. Lane County*, ____ Or
7 LUBA ____ (LUBA No 2019-048, Aug 9, 2019) (*Martinez*).

8 *Oregon Coast Alliance* involved a rezoning for residential use. The city
9 was required to analyze the potential impacts on estuarine resources adjacent to
10 the subject property from residential development allowed under the proposed
11 residential zoning. The National Marine Fisheries Service (NMFS) and others
12 had expressed concerns that pollution from stormwater runoff from residential
13 development could adversely impact endangered salmon species. We held that
14 the issue of whether pollution from stormwater runoff could adversely impact
15 endangered salmon species and, if so, what measures may mitigate such impacts,
16 requires “some level of scientific or professional expertise to answer.” 72 Or
17 LUBA at 232. Thus, the city could not rely solely on statements from the
18 applicant’s attorney to support conclusions regarding those technical questions.
19 *Id.*

20 In *Martinez*, the applicant was required to analyze the environmental,
21 social, economic, and energy (ESEE) consequences of residential development
22 in an identified Goal 5 resource area for big game habitat. The ESEE analysis

1 was prepared by the applicant's land use consultant, who is also an attorney. The
2 ESEE analysis included numerous plans, reports, and other documents in support
3 of the ESEE conclusions. We observed that nothing in Goal 5 or the Goal 5 rules
4 requires an ESEE study to be prepared by persons with environmental expertise.
5 However, expert testimony in the record contradicted the applicant's ESEE
6 analysis. Specifically, an Oregon Department of Fish and Wildlife (ODFW)
7 biologist letter addressed cumulative impacts of residential development on big
8 game habitat and ODFW general guidance suggested maximum residential
9 densities in big game habitat areas. We agreed with the petitioner that the ODFW
10 letter and guidance constitute expert testimony and, thus, expert testimony was
11 required to support the conflicting evidence in the applicant's ESEE. ____ Or
12 LUBA ____ at ____ (LUBA No 2019-048, Aug 9, 2019) (slip op at 21–22).

13 *Oregon Coast Alliance* and *Martinez* do not support petitioner's position.
14 Like the land use standards at issue in *Oregon Coast Alliance* and *Martinez*, LC
15 16.211(8)(e) does not expressly require expert testimony to establish compliance.
16 Instead, that subsection requires "objective information" about the access route,
17 "and *may also include* a written verification of compliance from the agency
18 providing fire protection, or a written certification of compliance from an Oregon
19 Registered Professional Engineer." LC 16.211(8)(e) (emphasis added).⁸ Unlike

⁸ LC 16.211(8)(e) provides, in part:

1 *Oregon Coast Alliance* and *Martinez*, the record in this case contains no expert
2 testimony demonstrating that an extension of E. 43rd Ave. is possible (or
3 impossible). In the absence of such expert testimony, a reasonable person would
4 rely on lay testimony from individuals with personal knowledge regarding the
5 practicability of improving an E. 43rd Ave. extension. The hearings officer did
6 not err in considering lay testimony, and that testimony is substantial evidence.

7 We remand for the hearings officer to interpret LC 16.211(8) and adopt
8 adequate findings. We held above that the hearings officer must weigh fire access
9 issues. In that weighing exercise, the hearings officer may consider lay testimony
10 regarding the practicability of improving proposed alternative accessways to
11 meet the fire-safety road design standards in LC 16.211(8)(e).

12 The first assignment of error is sustained, in part.

“The route of access for fire fighting equipment, from the fire station to the destination point, across public roads, bridges, private roads or private access easements and driveways shall comply with the standards specified below in LC 16.211(8)(e). Evidence of compliance with the standards specified in LC 16.211(8)(e) below should include *objective information* about the fire fighting equipment, the physical nature of the access route, the nature of any proposed improvements to the access route, and *it may also include* a written verification of compliance from the agency providing fire protection, or a written certification of compliance from an Oregon Registered Professional Engineer. * * *” (Emphases added.)

1 **SECOND ASSIGNMENT OF ERROR**

2 In the second assignment of error, petitioner argues that the hearings
3 officer's interpretation of LC 16.211(8) is inconsistent with Statewide Planning
4 Goal 4 (Forest Lands). We sustain the first assignment of error and remand
5 because the hearings officer's interpretation of LC 16.211(8) is insufficient for
6 our review. On remand, the hearings officer is likely to adopt a different, or more
7 complete interpretation. Accordingly, we do not reach or decide the second
8 assignment of error.

9 The county's decision is remanded.