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

MARK HUTTO and ANDREA HUTTO,
Petitioners,

vs.

JACKSON COUNTY,
Respondent.

LUBA No. 2024-088

FINAL OPINION
AND ORDER

Appeal from Jackson County.

Mark Hutto and Andrea Hutto filed the petition for review and Mark Hutto argued on behalf of themselves.

Peter Philbrick filed the respondent's brief and argued on behalf of respondent.

BASSHAM, Board Member; ZAMUDIO, Board Chair; WILSON, Board Member, participated in the decision.

AFFIRMED 07/09/2025

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

Opinion by Bassham.

NATURE OF THE DECISION

Petitioners appeal a county planner's decision approving with conditions their application for a Temporary Forest Labor Camp.

MOTION TO TAKE EVIDENCE

Petitioners move to take evidence outside the record, in the form of four documents, pursuant to OAR 661-010-0045(1).[1] The four documents consist of three letters or emails from a county code enforcement officer and a "case activity listing" from a code enforcement file on petitioners' property. Petitioners contend

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[1] OAR 661-010-0045 provides, in relevant part:

> "(1) Grounds for Motion to Take Evidence Not in the Record: The Board may, upon written motion, take evidence not in the record in the case of disputed factual allegations in the parties' briefs concerning unconstitutionality of the decision, standing, ex parte contacts, actions for the purpose of avoiding the requirements of ORS 215.427 or 227.178, or other procedural irregularities not shown in the record and which, if proved, would warrant reversal or remand of the decision.* * *
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> "(2) Motions to Take Evidence:
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> "(a) A motion to take evidence shall contain a statement explaining with particularity what facts the moving party seeks to establish, how those facts pertain to the grounds to take evidence specified in section (1) of this rule, and how those facts will affect the outcome of the review proceeding. * * *"

that LUBA should accept the four documents as evidence of "other procedural irregularities not shown in the record[.]" OAR 661-010-0045(1).

All four documents arise from and relate to a code enforcement action against petitioners. As discussed below, the code enforcement action prompted petitioners to submit a land use application for a Temporary Forest Labor Camp, resulting in the land use decision on review. However, the code enforcement action was a separate proceeding that was resolved separately. All four documents are dated prior to the date petitioners submitted their land use application and, as far as petitioners have shown, have no material bearing on the land use application or the issues on review.

Three of the documents allegedly show misconduct or misstatements made by county code enforcement staff. However, the actions of county code enforcement staff, in a different proceeding not before us, are outside our scope of review, and therefore cannot affect the outcome of this review proceeding. With respect to the email from code enforcement staff, petitioners cite that email to show that staff understood that an Oregon Department of Forestry (ODF) permit that petitioners submitted would remedy an alleged grading violation, which was one of the alleged code violations addressed in the code enforcement proceeding. Petitioners also submitted the same ODF permit to land use planning staff as part of the land use application for a Temporary Forest Labor Camp. As discussed below, the decision-maker on the land use application relied on the ODF permit to determine the expiration date for the land use permit for a

Temporary Forest Labor Camp. We understand petitioners to argue that the email from the county code enforcement officer clarifies that the ODF permit has a bearing only on the alleged grading violation, not on the expiration date for the land use permit. But petitioners do not explain why the understanding of a code enforcement officer regarding the significance of the ODF permit is somehow binding on the decision-maker in the separate land use application proceeding. Petitioners have not demonstrated how LUBA's consideration of these four documents would affect the outcome of this review proceeding. Accordingly, the motion to take evidence is denied.

Petitioners also submitted the affidavit of one of the petitioners, recounting conversations the petitioner had with two ODF employees, regarding the county's regulation of Temporary Forest Labor Camps. However, no motion accompanies the affidavit, and it is unclear what basis in our rules would allow us to consider the affidavit. To the extent that affidavit relates to the petitioners' motion to take evidence, petitioners do not explain how the affidavit is concerned with any of the grounds for taking evidence outside the record listed in OAR 661-010-0045(1). Subsequently, petitioners filed a motion to correct several typographic and factual errors in the affidavit. That motion is denied as moot.

FACTS

Petitioners own a 40-acre parcel zoned Woodland Resource (WR), which is a county zone applied to land acknowledged as Forest Land under Statewide Planning Goal 4 (Forest Lands). The property is also located within an area

mapped for wildfire hazard. The property is developed with 9-10 structures of various kinds, including several storage sheds. In December 2023, the county received a complaint about the use of the property and its structures, and opened a code enforcement investigation. As part of that investigation, county staff discussed with petitioners the possibility of applying for a county approval of a Temporary Forest Labor Camp, which would allow the structures on the property to be used for temporary living facilities for workers employed in logging petitioners' property. In this opinion, we will sometimes use the acronym TFLC for Temporary Forest Labor Camp.

On August 8, 2024, petitioners followed up on the staff suggestion and filed an application for a TFLC. On August 15, 2024, the county advised petitioners by letter that their application was incomplete, and requested that petitioners submit additional information, including information on the "duration of need" for the TFLC. Record 36. On August 23, 2024, petitioners submitted additional information. In relevant part, petitioners submitted a "Notification of Operations Permit" (NOAP) to operate logging machinery issued by the Oregon Department of Forestry, and an associated screenshot indicating that petitioners were conducting a salvage logging operation beginning August 8, 2024, and ending December 31, 2024. Record 30. Petitioners' submittal states that "[a]ll

structures will be removed upon project completion, adhering to OAR 660-006-0025(2)(b)."[2] Record 27.

On August 27, 2024, the county advised petitioners that the application was complete. On the same date, the county issued a staff decision summarily denying the application, based on a code provision requiring denial of a land use application on property with outstanding code violations, unless the application would remedy the violations. The county concluded the application for a TFLC would remedy some, but not all, of the alleged code violations. That initial denial was appealed to LUBA, but the county belatedly discovered that some of the citations were based on evidence obtained by a county code enforcement officer's alleged entry onto the subject property without petitioners' permission. The county dismissed the citations, and canceled all code enforcement proceedings. The parties stipulated to a voluntary remand of the denial decision to reconsider the land use application for a Temporary Forest Labor Camp. LUBA issued its final opinion and order remanding the denial decision on November 14, 2024. *Hutto v. Jackson County*, LUBA No. 2024-056 (Nov 14, 2024).

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[2] OAR 660-006-0025(2)(b) refers to a category of temporary uses that counties "shall" allow outright on forest lands: temporary on-site structures that are auxiliary to and used during the term of a particular forest operation. As discussed below, a Temporary Forest Labor Camp or TFLC under OAR 660-006-0025(3) is a different category of uses allowed outright on forest lands that counties "may" choose to allow on forest lands.

On remand, county staff asked petitioner Mark Hutto by email if he wanted to submit any additional information in support of the application. Petitioner did not submit any additional information, but requested the right to be present at the county review meeting. The county advised petitioner that the application was being processed pursuant to the county's "Type I" procedure, which provides for a staff decision based on review of the file, without any meeting or hearing.

On November 21, 2024, county staff issued the decision challenged in this appeal, approving petitioners' application for a Temporary Forest Labor Camp, with conditions. The decision provides that the authorization to operate the camp expires on December 31, 2024, based on the NOAP petitioners submitted indicating that their logging operation terminated on December 31, 2024. The decision also requires firebreaks and other measures to protect against wildfire hazards.

This appeal followed.

FIRST ASSIGNMENT OF ERROR

Petitioners argue that the county arbitrarily imposed an expiration date of December 31, 2024, effectively limiting the duration of the Temporary Forest Labor Camp approval to a little over a month. Petitioners contend that the December 31, 2024 expiration date was imposed over their express objection, and that that expiration date is not based on or authorized by any county code provision or state law.

The county responds that the December 31, 2024 expiration date was based on the only information petitioners provided regarding the duration of their logging operation. According to the county, a Temporary Forest Labor Camp is necessarily temporary in duration, and must cease when the predicate logging or forest operation ends. In response to the county's request for information regarding the "duration of need" for the TFLC, petitioners supplied in relevant part the NOAP permit, which indicated that petitioners' logging operation would terminate on December 31, 2024. The county argues that, although petitioners objected to that termination date, petitioners never supplied the county with any other termination date or information the county could use to establish a different expiration date for the TFCL approval.

OAR 660-006-0025(3) lists uses that a county may choose to allow on forest lands, as uses allowed outright, including Temporary Forest Labor Camps at OAR 660-006-0025(3)(l). The rule provides no definition or explanation of that use category. The county implemented OAR 660-006-0025(3)(l) as a so-called "Type 1" use, which the Jackson County Land Development Ordinance (LDO) describes as a use that is "authorized by right, requiring only non-discretionary staff review to demonstrate compliance with the standards of this Ordinance[.]" LDO 3.1.2.

LDO Table 4.3-1 provides that the only standards a Temporary Forest Labor Camp is subject to are "Ch[apter] 13 definitions." In turn, LDO 13.3(108) defines a Temporary Forest Labor Camp as follows:

> "FOREST LABOR CAMP (temporary): An area of land that provides temporary living facilities for workers employed for forest management, forestry operations, or fire suppression purposes. Portable or pre-existing sanitation, bathing and cooking facilities may be provided in conjunction with temporary living facilities, which may include tents, yurts, recreational vehicles or other types of shelter suitable and intended for use in a temporary or seasonal manner. *Forest labor camps may be used throughout the term of an operation or activity (e.g., forest fire) and must cease once the operation or activity is concluded.*" (Emphasis added.)

To implement the requirement that forest labor camps are temporary, used only during the term of a forest operation, and cease once the operation is concluded, the county apparently relies on the applicant to supply information regarding the expected duration of the forest operation, in this case, petitioners' salvage logging operation. Based on that information, the county then imposes an expiration date on the forest labor camp approval.

We disagree with petitioners that the county's reliance on the NOAP to determine the ending date of petitioners' logging operation was "arbitrary." Petitioners claim that they did not submit the NOAP with the intent of establishing an ending date for their forest operation. We have no reason to doubt petitioners have accurately stated their intention to us. However, petitioners do not point to anything in the materials that petitioners submitted to the county planning staff that otherwise indicates the duration of the predicate forest operation. In response to a county request for information regarding the "duration of need," petitioners submitted the NOAP, which on its face identifies a beginning and end date for petitioners' salvage logging operation. Record 30.

Petitioners may be correct that the end date reflected on the NOAP is not intended to represent an estimated end date for the logging operation itself, but rather reflects the ODF practice of terminating all NOAP permits at the end of the calendar year, subject to potential renewal in the following year. However, even if so, petitioners apparently never informed the county that the end date stated in the NOAP reflected the ODF practice rather than an estimate of the logging operation's duration.

More importantly, petitioners never provided the county with any other estimated end date for their logging operation. In a September 3, 2024 email to the county, petitioner Mark Hutto noted that the county's initial decision denying the TFLC permit included an expiration date of December 24, 2024, and that that date aligned with the expiration of petitioners' current logging permit. Record 165. Petitioner objected that that date "does not seem appropriate" but did not offer any other estimated end date to their logging operation. *Id.* County staff responded on September 4, 2024, noting petitioner's comment and observing that "[n]o other expiration date was provided with the application." Record 164. As noted, after remand of the initial decision the county offered petitioners an additional opportunity to provide information. Record 62. Despite those invitations, petitioners failed to provide the county any other estimated termination date for their logging operation.

Thus, we agree with the county that, far from acting arbitrarily in this respect, the county chose the *only* expiration date supported by the record. Had

the county selected any other date than the one petitioners provided to determine the end date of the logging operation, that date would not have been based on evidence in the record.

Petitioners next argue that, in the absence of a code-specified expiration date for TFLCs, county planning staff lacked the delegated authority to impose an expiration date. Petitioners cite provisions of the county charter for the proposition that county powers are generally vested in the board of commissioners, and such powers can be exercised by other persons only if acting under the commissioners' delegated authority. Petitioners argue that the commissioners may have delegated general authority to planning staff to issue land use permits such as for TFLCs, but the commissioners did not adopt any legislation or express authorization that would permit planning staff to set an expiration date for TFLC permits. We understand petitioners to argue that, absent legislation that adopts an expiration date for TFLCs, or that delegates authority to planning staff to determine an expiration date, planning staff lacked authority to impose the December 31, 2024 expiration date, or perhaps any expiration date.

As petitioners note, some counties that have also chosen to allow TFLCs on forest lands have adopted legislation setting forth a one-size-fits-all expiration date, for example, one year from the date the TFLC permit is issued. *See, e.g.,* Clackamas County Zoning and Development Ordinance (ZDO) Table 406.1. Jackson County has instead adopted legislation, namely LDO 13.3(108), that effectively links the permit duration to the duration of the predicate forest

operation or activity. To the extent there is any question about planning staff's delegated authority to establish an expiration date for a TFLC permit, based on information the applicant provides regarding the duration of the predicate forest operation, we agree with the county that LDO 13.3(108) provides sufficient authority.

Petitioners' remaining arguments under the first assignment of error provide no basis for reversal or remand.

The first assignment of error is denied.

SECOND ASSIGNMENT OF ERROR

Petitioners argue that the county committed procedural error prejudicing petitioners' substantial rights. ORS 197.835(9)(a)(B) (LUBA shall reverse or remand a land use decision if it finds that the local government failed to follow the applicable procedures in a manner that prejudiced the substantial rights of the petitioner). Petitioners argue that the county violated petitioners' procedural due process rights under the Fourteenth Amendment to the United States. Constitution, and Article I, Section 10, of the Oregon Constitution.

Petitioners identify four alleged procedural errors. The first three alleged errors concern actions or statements made by code enforcement staff, during the code enforcement proceeding. For example, petitioners argue that code enforcement staff entered the subject property without permission, and that code enforcement staff were biased against them. However, as explained above, the code enforcement proceeding was a separate proceeding that preceded and

terminated separately from the land use proceeding on petitioners' land use application for TFLC approval, which was decided by the county planning manager, not code enforcement staff. Only the land use decision resulting from that land use proceeding is before us, and, as far as petitioners have established, only that decision and proceeding is subject to our limited jurisdiction and limited scope of review. *See generally* ORS 197.825 (setting out LUBA's limited jurisdiction) and ORS 197.835 (LUBA's scope of review). Accordingly, petitioners' arguments regarding alleged procedural errors committed during the separate code enforcement proceeding do not provide a basis to reverse or remand the land use decision before us on review in this appeal.

The fourth alleged procedural error involves an email from the planning manager to petitioner Mark Hutto dated November 20, 2024, responding to petitioner's request to attend the "review meeting" on remand. The planning manager responded that "[t]here is no review meeting that is scheduled for your proposed forest labor camp. The Type 1 application process only includes review of the file with a written staff report for a tentative decision that will be sent to you." Record 10. Petitioners argue that the email erroneously stated that the county's decision would be "tentative," implying some opportunity to review and appeal the decision locally before the decision became final. Instead, petitioners argue, the Type 1 review process does not provide for a tentative decision subject to local appeal, but rather for a final decision issued by the planning manager.

Petitioners argue that this misstatement "created confusion" and denied petitioners a meaningful process.

The county agrees that the planning manager misspoke in stating that the forthcoming decision would be "tentative," because nothing in the LDO provides for local appeal of a Type 1 decision. *See* LDO Table 2.7-1. However, the county argues that petitioners fail to explain why any misstatement prejudiced petitioners' substantial rights. According to the county, petitioners do not explain what would have been different had the planning manager not described the forthcoming decision as "tentative."

We agree with the county. The planning manager followed the correct procedure in issuing a final decision on a Type 1 application, and petitioners have not argued otherwise. The planning manager's misstatement in describing the forthcoming decision as "tentative" did not, as far as petitioners have established, prejudice any of their substantial rights in the proceeding. Petitioners have not argued that they relied upon that misstatement to their detriment, or otherwise were denied any procedural opportunities they were entitled to under the LDO, or the state or federal constitutions.

The second assignment of error is denied.

THIRD ASSIGNMENT OF ERROR

As noted, the subject property is within an area mapped as Wildfire Hazard. Generally, any structures within Wildfire Hazard areas must comply with mitigation measures set forth in LDO 8.7. In its decision, the county applied LDO

8.7 and imposed a number of conditions requiring compliance with wildfire hazard mitigation standards, including fuelbreaks around the 9-10 structures depicted on petitioners' site plan. Under the third assignment of error, petitioners argue that the county erred in applying LDO 8.7 and imposing the related conditions, for six reasons.

First, petitioners argue that LDO 8.7 applies only to proposed permanent structures, not temporary structures such as the 9-10 buildings located on the subject property. The county responds that LDO 8.7 does not distinguish between permanent and temporary structures. The county appears to be correct. LDO 13.3 defines the operative term "structure" in broad language that includes both permanent and temporary structures.[3] We understand petitioners to argue that

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[3] LDO 13.3(272) provides the following definition:

> "STRUCTURE: A building or other major improvement that is built, constructed, or installed, not including minor improvements such as fences, utility poles, flagpoles, or irrigation system components that are not customarily regulated through zoning ordinances. For land use regulatory purposes, the term structure also includes gas or liquid storage tanks and anything of substantial value that requires permanent location on the ground. Swimming pools, fences, uncovered patios, tents, vehicles and travel trailers are not however considered structures. A permanent structure is built of materials in a manner that would commonly be expected to remain useful for a substantial period of time. A temporary structure is built of materials in a manner that would commonly be expected to have relatively short useful life, or is built for a purpose that would be expected to be relatively short-term in duration."

forest operations can last a relatively long time, and thus even "temporary" structures inhabited by forest workers can be in place for a significant period of time. Nothing cited to us in LDO 8.7 or elsewhere suggests that wildfire hazard protections are not appropriately applied to the type of temporary living quarters at issue in this case.

Second, petitioners contend that the county erred in requiring compliance with the fire hazard mitigation conditions prior to operating the forest labor camp, while at the same time imposing an expiration date that effectively terminates the permit approval before petitioners have an opportunity to comply with the fire hazard mitigation conditions. Petitioners argue that the combination of those two sets of conditions constitutes an effective denial rather than an approval with conditions.

As explained above, petitioners were responsible for supplying the county with information regarding the expected duration of the logging operation, and hence the expected duration of the forest labor camp. The county relied on the information petitioners provided to determine an expiration date for the TFLC approval. Petitioners' failure to provide more accurate information about the duration of their logging operation was the proximate cause of the relatively short operative life of the TFLC approval. While that compressed timeframe presented obvious practical problems, petitioners have not demonstrated that the county erred in both (1) requiring compliance with the mandatory wildfire mitigation

standards, and (2) setting an expiration date on the TFLC approval based on the information provided by petitioners.

Third, petitioners challenge application of some of the wildfire mitigation standards. As noted, the decision imposes conditions that require fuelbreaks around each of the proposed structures. However, petitioners point to a finding that "[n]o understory vegetation or tree canopy may be removed in order to comply with the fuelbreak requirements of Section 8.7.1(B), which are superseded by the requirements of this Section within the area in which the riparian setback applies." Record 1. Understandably, petitioners express puzzlement about how they are to establish a fuelbreak without removing understory vegetation or tree canopy, and also whether this prohibition would impact their proposed logging, which necessarily entails removing vegetation and tree canopy.

The county responds that the above-quoted language from the decision is speaking to removal of vegetation and tree canopy in riparian areas under LDO 8.6.4(B).[4] However, the county notes, there are no riparian areas on the subject

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[4] LDO 8.6.4(B) provides:

> "No understory vegetation or tree canopy may be removed in order to comply with the fuelbreak requirements of Section 8.7.1(B), which are superseded by the requirements of this Section within the area in which the riparian setback applies."

property, so the county argues that the finding restating the language of LDO 8.6.4(B) was inapplicable boilerplate and therefore surplusage.

The county appears to be correct that LDO 8.6.4(B) is inapplicable, and that the finding restating the terms of that code provision was inadvertently added to or retained as boilerplate in the findings. With that understanding, it seems clear that the finding is surplusage and does not act as a condition of approval or mandatory requirement that would limit establishment of the fuelbreaks required by the conditions of approval, or limit the logging operation itself.

Fourth, petitioners argue that a condition of approval requiring installation of spark arrestors on any chimneys is redundant, as the state Forest Practices Act imposes a similar requirement on all forest operations. LDO 8.7.1(E) requires that "[a]ll chimneys will have a spark arrester." Compliance with that code mandate is required, even if there are similar state law requirements imposed on forest operations. The county did not err in imposing a condition based on LDO 8.7.1(E).

Fifth, petitioners argue that the county did not impose any wildfire mitigation requirements on its initial decision to deny the TFLC application. Because those requirements were imposed only in the decision on remand to approve the application, petitioners argue that the county violated the "goalpost" rule at ORS 215.427(3).

ORS 215.427(3) provides that approval or denial of an application for a permit, limited land use decision, or zone change must be based on the

acknowledged standards and criteria that were in place on the date the application was submitted, or deemed complete.[5] Essentially, ORS 215.427(3) prohibits counties from "moving the goalposts" by approving or denying an application based on standards or criteria that were not in effect at the time the application was submitted, but which later came into effect.

ORS 215.427(3) does not assist petitioners. As the county argues, the fire mitigation standards at LDO 8.7 have been in effect as part of the county's acknowledged land use code since 2011. Application of those pre-existing standards to an application submitted in 2024 did not violate ORS 215.427(3). The city's initial decision summarily denied the TFLC application under a code provision that allows approval of a land use application only if the application would correct all outstanding code violations. That summary denial decision did not impose any conditions regarding LDO 8.7 wildfire mitigation standards, which would have been appropriate only if the decision were approving the use,

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[5] We assume for purposes of this opinion that the challenged decision might constitute a "permit" for purposes of ORS 215.427(3). However, ORS 215.402(4) defines "permit" in relevant part as the "discretionary approval of a proposed development of land" under various statutes. Generally, "permits" involve standards or criteria that require the exercise of discretion, and are subject to procedures requiring a hearing or the opportunity to request a hearing, as well as an opportunity for local appeal. In addressing petitioners' "goal-post" argument, we do not mean to suggest that approving a forest labor camp under LDO 13.3(108) or applying the wildfire hazard mitigation standards at LDO 8.7 would necessarily constitute a "discretionary approval" for purposes of ORS 215.427(3).

at least contingently. On remand, the county approved the use, addressing compliance with LDO 8.7 and imposing conditions of approval. That course of events does not implicate ORS 215.427(3) or represent a shifting of goal posts.

Sixth, and finally, petitioners argue that the county's decision was "ultra vires" because it linked the expiration date for the TFLC approval to a separate ODF NOAP, notwithstanding no "legal mechanism to tie these unrelated processes together under ORS 477.625 or ORS 215.416." Petition for Review 16-17. ORS 477.625 is a statute requiring that forestry operations using power-driven machinery obtain an ODF permit. ORS 215.416 is part of a statutory series concerning the procedures, approval and denial of land use "permit" decisions.

The county did not rely upon the NOAP for its value as a state permit to operate machinery. The county understood petitioner to have submitted the NOAP as evidence to support its land use application for a TFLC, specifically, to provide information regarding the duration of its forest operation. That information could have been provided in many different forms, including a simple statement from petitioners. That the county relied on the information that petitioners submitted in the form of the NOAP did not legally "link" the NOAP to the land use application in any substantive way that we can understand. That is, while the county relied on the NOAP expiration date as evidence of the duration of the operation, the county did not otherwise base its approval on the ODF NOAP approval. Petitioners have not demonstrated that the county's

decision is "ultra vires" or otherwise that the county erred in relying on information in the NOAP to establish the expiration date for the TFCL approval.

The third assignment of error is denied.

FOURTH ASSIGNMENT OF ERROR

Under the fourth assignment of error, petitioners allege that the county has engaged in a "pattern of bias and administrative misconduct" that undermines the legitimacy of the decision. Petition for Review 17.

It is difficult to follow the arguments in this assignment of error. Some of the arguments turn on alleged misconduct or misstatements by code enforcement staff, which we have previously discussed and rejected, as irrelevant to the land use proceeding and decision before us. Petitioners then repeat some of their arguments addressed under other assignments of error, and add the gloss that the county's conduct throughout the land use proceeding seems intended to thwart the application and effectively deny it, rather than objectively address the applicable standards. We understand petitioners to allege that the decision-maker in this case, the county planning manager, was biased against petitioners and prejudged the application, based on considerations unrelated to the approval criteria.

Petitioners do not cite any caselaw on bias, or set forth the applicable standard of review for claims of bias in a quasi-judicial land use proceeding. The county responds that to establish bias or prejudgment on the part of the decision-maker, the petitioner must provide evidence that the decision-maker was *actually*

biased, and incapable of deciding the land use application based on the record and the applicable standards. *Columbia Riverkeeper v. Clatsop County*, 267 Or App 578, 341 P3d 790 (2014). Evidence of bias must be proven in a "clear and unmistakable manner." *Halvorson-Mason Corp. v. City of Depoe Bay*, 39 Or LUBA 702, 710 (2001).

Petitioners' arguments and evidence fall far short of establishing "actual bias" in a clear and unmistakable manner. Central to petitioners' perception of bias and *de facto* denial is the expiration date, which left the TFLC approval operative for only 40 days. However, as explained above, imposition of that expiration date was not a product of malfeasance on the part of county staff, but rather petitioners' failure to appreciate that the county was relying on petitioners to supply information regarding the duration of the logging operation, and hence the duration of the TFLC approval. Given the limited information petitioners provided, the planning manager necessarily based the expiration date on the only information in the record. That course of conduct, however impractical the result, was not indicative of bias or prejudgment.

The fourth assignment of error is denied.

The county's decision is affirmed.