

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

ANDERSON WOODS, LLC,
Petitioner,

vs.

WALLOWA COUNTY,
Respondent.

LUBA No. 2026-010

FINAL OPINION
AND ORDER

Appeal from Wallowa County.

D. Rahn Hostetter filed the petition for review and argued on behalf of petitioner.

No appearance by Wallowa County.

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

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

REMANDED 05/27/2026

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18

NATURE OF THE DECISION

Petitioner appeals a board of commissioners decision that verifies three legal units of land for petitioner’s property, rather than the four units of land that petitioner requested.

BACKGROUND

Petitioner owns Tax Lot 8600, which is approximately 274 acres of land zoned Timber Grazing, that petitioner asserts consists of four separate legal parcels.¹ Petitioner seeks to ultimately obtain approval for the development of lot-of-record dwellings on three of the four parcels. Record 66-3; *see* ORS 215.700 - 215.705 (setting out legislative policy limiting residential development on resource land and providing exceptions, including lot-of-record dwellings). An approval criterion for lot-of-record dwellings is that the proposed lot or parcel “on which the dwelling will be sited was lawfully created * * * [p]rior to January 1, 1985[.]” ORS 215.705(1)(a).

A unit of land can be lawfully created by subdivision, partition, or “[b]y deed or land sales contract, if there were no applicable planning, zoning or subdivision or partition ordinances or regulations[.]” at the time of the deed

¹ Tax lots are units of land for tax assessment purposes only and a singular tax lot may include multiple legal units of land. *See* ORS 92.010(3)(b) (“‘Lawfully established unit of land’ does not mean a unit of land created solely to establish a separate tax account.”). As discussed later, the existence and significance of the fourth parcel is at issue.

1 conveyance. ORS 92.010(3)(a)(B)(ii). Under ORS 92.010, “[l]ot’ means a single
2 unit of land that is created by a subdivision of land[]” and “[p]arcel’ means a
3 single unit of land that is created by a partition of land.” ORS 92.010(4), (6).

4 Differently, a broader definition of the term “parcel” applies to ORS
5 chapter 215, including lot-of-record dwelling approvals. As used in ORS chapter
6 215,

7 “(1) The terms defined in ORS 92.010 shall have the meanings
8 given therein, except that ‘parcel’:

9 “(a) Includes a unit of land created:

10 “(A) By partitioning land as defined in ORS 92.010;

11 “(B) In compliance with all applicable planning, zoning and
12 partitioning ordinances and regulations; or

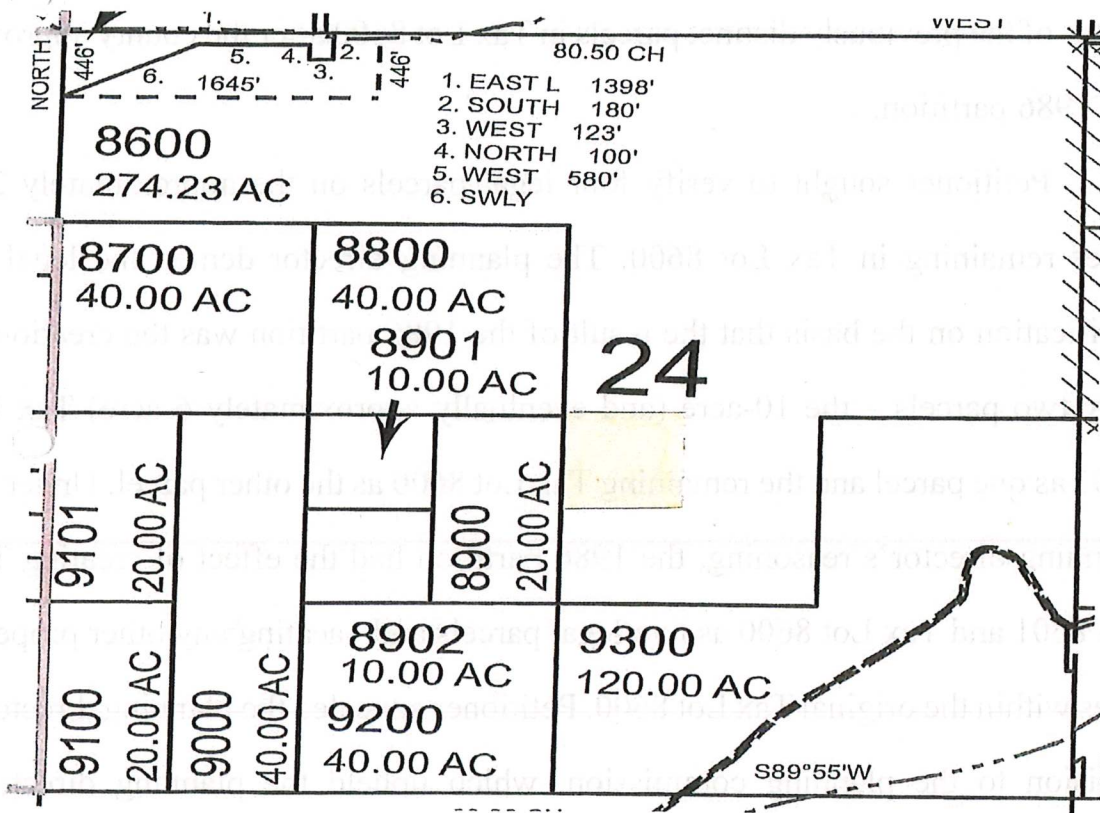
13 “(C) By deed or land sales contract, if there were no
14 applicable planning, zoning or partitioning ordinances
15 or regulations.” ORS 215.010(1).

16 In this decision, we use the term “parcel” as the county and petitioner have used
17 it, and consistently with the definition in ORS 215.010(1).

18 The county apparently does not have a separate process for verifying legal
19 lots or parcels of land.² As there is no specific process for verifying legal lots or
20 parcels, the county essentially created a separate process in this decision to verify
21 petitioner’s legal parcels of land.

² The county’s partition ordinance includes a method for verifying legal lots, but, as petitioner does not seek a partition, that process is inapplicable.

1 yellow parcel (NW 1/4, NE 1/4, and SE 1/4 of NE 1/4 of Section 24), and the red
 2 parcel (SW 1/4 of NW 1/4 of Section 24 and NW 1/4 of SE 1/4 of Section 24).
 3 As discussed later, petitioner asserts that the red parcel also includes a separate
 4 10-acre parcel (yellow square that is NW 1/4 of SE 1/4 of Section 24).⁴ This 10-
 5 acre parcel is depicted in yellow on Map 2 below:



6
 7 Record 66-14.

⁴ Tax Lot 8601, which is shown on Map 1, had not been created yet.

1 In 1985, predecessors in interest of petitioner applied to partition 10 acres
2 from the 280-acre Tax Lot 8600 for a replacement mobile home in the northwest
3 corner of the tax lot. The county approved the partition in 1986, which created a
4 separate parcel that is designated Tax Lot 8601.⁵ Record 2-7, 2-8 (describing the
5 creation of Tax Lot 8601). The issue in this appeal is what happened to the legal
6 status of the previously distinct parcels in Tax Lot 8600 after the county approved
7 the 1986 partition.

8 Petitioner sought to verify four legal parcels on the approximately 274
9 acres remaining in Tax Lot 8600. The planning director denied the legal lot
10 verification on the basis that the result of the 1986 partition was the creation of
11 only two parcels – the 10-acre (and eventually approximately 6-acre) Tax Lot
12 8601 as one parcel and the remaining Tax Lot 8600 as the other parcel. Under the
13 planning director’s reasoning, the 1986 partition had the effect of creating Tax
14 Lot 8601 and Tax Lot 8600 as two legal parcels and vacating any other property
15 lines within the original Tax Lot 8600. Petitioner appealed the planning director’s
16 decision to the planning commission, which upheld the planning director’s
17 decision. The planning director and planning commission relied on ORS
18 92.017(1), which provides: “A lawfully created lot or parcel remains a discrete

⁵ For reasons that are not entirely clear, although the partition split off 10 acres from Tax Lot 8600 – the dashed rectangle in the northwest corner of Tax Lot 8600 – when the deed was recorded Tax Lot 8601 was only approximately 6 acres – the solid line in that corner. *See* Map 2.

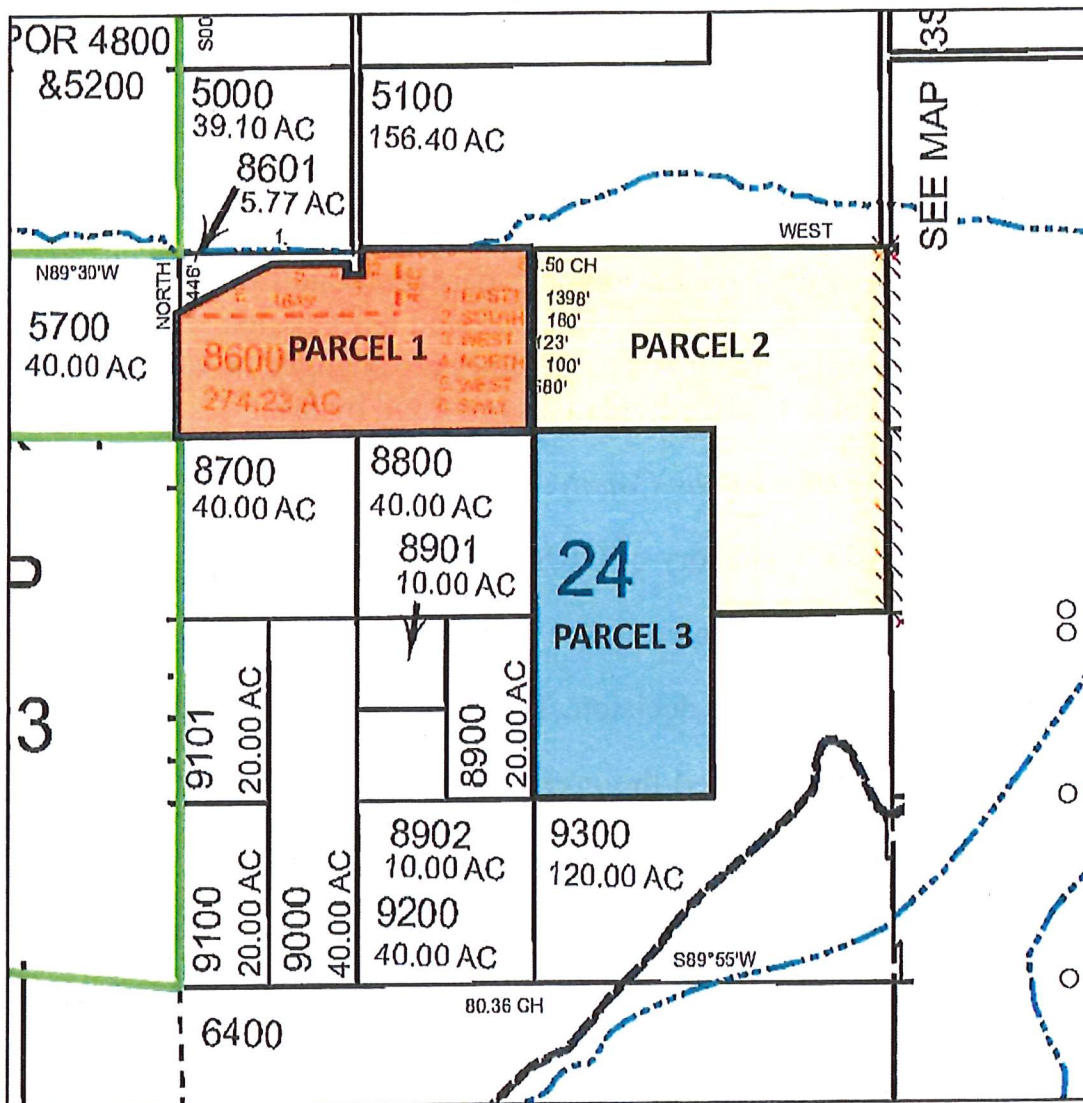
1 lot or parcel unless the lot or parcel lines are vacated or the lot or parcel is further
2 divided as provided by law.” See Record 14-7 (the planning commission’s final
3 order discussing ORS 92.017). Similarly, ORS 92.017 (1985), which was in
4 effect at the time of the 1986 partition, provided:

5 “When lawfully created lots and parcels remain discrete lots and
6 parcels. A lot or parcel lawfully created shall remain a discrete lot
7 or parcel, unless the lot or parcel lines are changed or vacated or the
8 lot or parcel is further divided, as provided by law.”

9 See *Kishpaugh v. Clackamas County*, 24 Or LUBA 164, 172 (1992) (reviewing
10 in detail the legislative history of ORS 92.017).

11 Petitioner then appealed to the board of commissioners, who overturned
12 the planning commission’s decision. The board of commissioners found that the
13 1986 partition only involved the green and orange parcels from Map 1, so the
14 result of the 1986 partition was to create Tax Lot 8601 and create a legal parcel
15 out of the remainder of the green and orange parcels. According to the board of
16 commissioners, the 1986 partition did not affect the yellow or red parcel and
17 resulted in the parcels depicted in Map 3, below.

EXHIBIT A - FINAL PARCEL DIAGRAM 03S45E

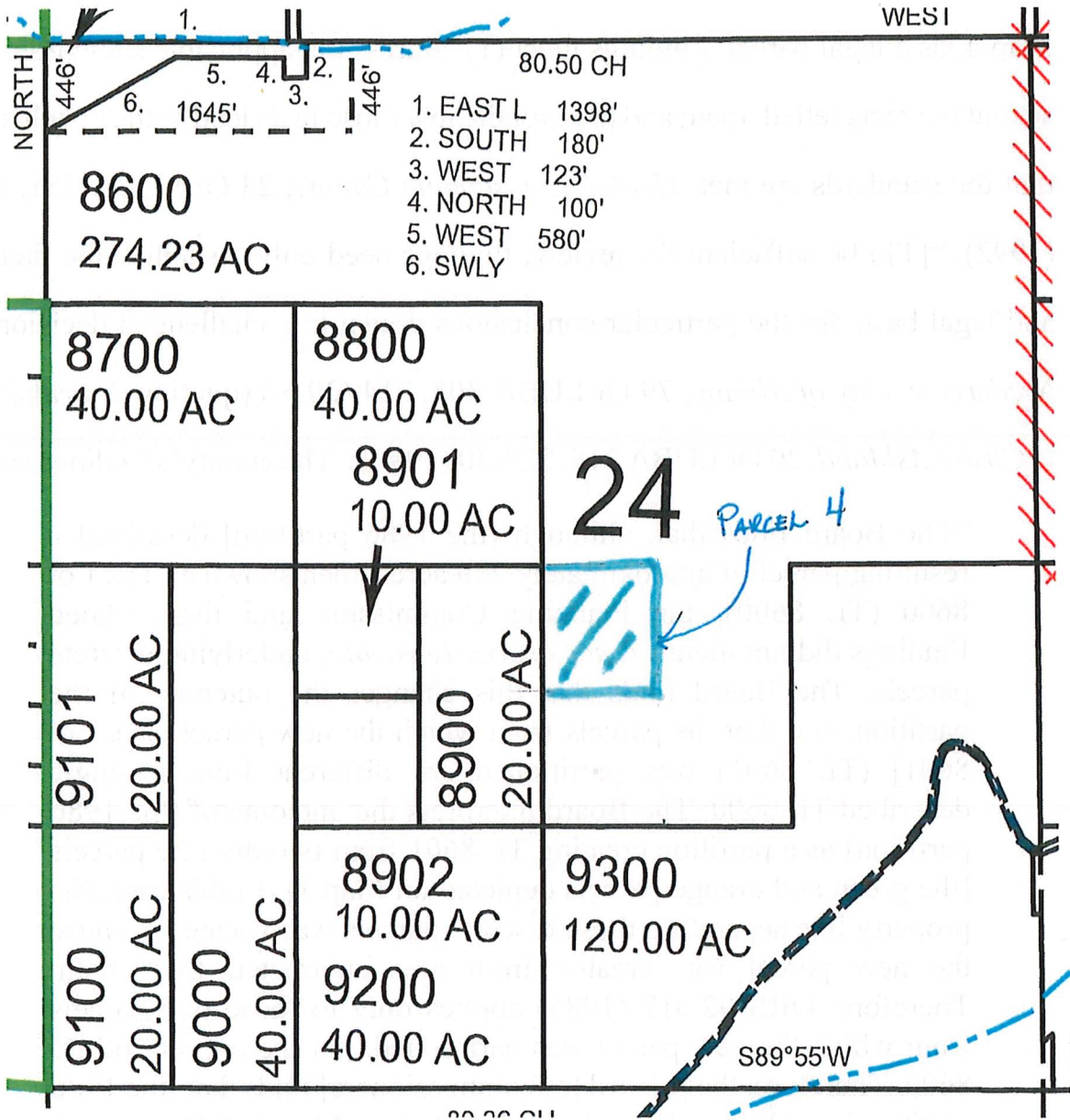


1

2 Record 5-7.

3 Although the board of commissioners agreed with petitioner that the 1986
 4 partition did not affect Parcel 2 (in yellow) or Parcel 3 (in blue) from Map 3, the
 5 decision does not recognize the fourth parcel that petitioner argues was also a
 6 legal parcel. The decision further states that “any other property lines or discrete
 7 parcels * * * within the boundaries of T[ax] L[ot] 8600 are vacated as a result of

1 this decision.” Record 5-4. According to petitioner, the county should also have
 2 recognized a fourth legal parcel – Parcel 4 – as depicted below in the blue square
 3 on Map 4.



4
 5 Petition for Review App 3.

6 This appeal followed.

1 **FIRST ASSIGNMENT OF ERROR**

2 Petitioner argues that the county’s findings are inadequate and not
3 supported by substantial evidence in failing to recognize Parcel 4, as depicted on
4 Map 4, as a legal parcel. Findings must (1) address the applicable standards; (2)
5 set out the facts relied upon; and (3) explain how those facts lead to the conclusion
6 that the standards are met. *Heiller v. Josephine County*, 23 Or LUBA 551, 556
7 (1992). “[T]o be sufficient for review, findings need only ‘establish the factual
8 and legal basis for the particular conclusions drawn in a challenged decision.’”
9 *Niederer v. City of Albany*, 79 Or LUBA 305, 314 (2019) (quoting *Thormahlen*
10 *v. City of Ashland*, 20 Or LUBA 218, 229-30 (1990)). The county’s findings state:

11 “The Board finds that, although [the 1986 partition] described a
12 resulting parcel of approximately 270 acres, then shown as Tax Lot
13 8600 (TL 8600), the Planning Commission and their signed
14 Findings did not identify, *nor expressly vacate*, underlying discrete
15 parcels. The Board finds that this changes the outcome of the
16 partition, and that the parcels from which the new parcel [Tax Lot
17 8601] (TL 8601) was partitioned are different from a single
18 described TL 8600. The Board interprets the outcome of [the 1986
19 partition] as a partition creating TL 8601 from two discrete parcels
20 [the green and orange parcels depicted on Map 1]. In this case, the
21 property line separating those discrete parcels was vacated because
22 the new parcel was created from area subtracted from both.
23 Therefore, ORS 92.017 (1985) applies only to those two parcels
24 from which the new parcel was partitioned, not the entirety of TL
25 8600. Therefore, the [b]oard [of commissioners] finds that [the 1986
26 partition] resulted in [parcels as depicted on Map 3].” Record 5-3
27 (emphasis in original).

28 As we understand it, during the local appeal, petitioner argued that Parcel
29 4 was created in 1952, when a deed from G.D. Eckley to Vern and Reita Anderson

1 conveyed 270 acres within the 280 acres that comprised former Tax Lot 8600,
2 because that 1952 deed omitted the 10 acres that petitioner argues constitutes
3 Parcel 4. Record 66-2, 66-3. Then, in 1955, Vern and Reita Anderson acquired
4 Parcel 4 by deed from Stephen and Ruth L. Kahn. Record 66-3. Petitioner argued
5 to the county that discrete legal parcels remain discrete units of land. *Id.*

6 The county's decision, however, is completely silent as to Parcel 4. The
7 decision addresses the applicable standard – what legal parcels exist in Tax Lot
8 8600. The decision does not, however, address whether Parcel 4 is a legal parcel.
9 The decision does not set out any facts regarding Parcel 4 or explain why Parcel
10 4 is not a legal parcel. The decision vacates any parcel lines not recognized in the
11 decision – which would have the effect of vacating any potential property lines
12 for Parcel 4 – but again does not set out any facts or explanation as to why any
13 other internal property lines should be vacated as part of the verification. In sum,
14 there is no explanation whatsoever regarding the sole issue in this appeal –
15 whether Parcel 4 is a legal parcel. Therefore, the findings are inadequate.⁶

16 The first assignment of error is sustained.

⁶ The county's decision agreed with petitioner's argument that the planning commission erred in determining that the 1986 partition had the effect of creating only two parcels out of the four (or five) original parcels in Tax Lot 8600. That conclusion is not challenged in this appeal, and we express no opinion on its correctness.

1 **SECOND ASSIGNMENT OF ERROR**

2 Petitioner argues that by vacating the property lines for Parcel 4 the county
3 effected an unconstitutional taking of petitioner’s property under the Fifth
4 Amendment to the United States Constitution. As we sustain petitioner’s first
5 assignment of error, we need not address petitioner’s takings argument.

6 We do not reach the second assignment of error.

7 **DISPOSITION**

8 Petitioner argues that we should reverse the county’s decision and order
9 the county to verify Parcel 4 as a legal parcel. Under OAR 661-010-0071(1)(c),
10 we will reverse a land use decision when the “decision violates a provision of
11 applicable law and is prohibited as a matter of law.” While petitioner does not
12 cite it, petitioner’s requested relief invokes ORS 197.835(10)(a), which provides,
13 in part:

14 “The [B]oard shall reverse a local government decision and order
15 the local government to grant approval of an application for
16 development denied by the local government if the [B]oard finds:

17 “(A) Based on the evidence in the record, that the local government
18 decision is outside the range of discretion allowed the local
19 government under its comprehensive plan and implementing
20 ordinances[.]”

21 In most cases in which we have reversed with an order to approve under
22 ORS 197.835(10)(a)(A), the local government has expressly relied on an
23 improper basis for denial. *Waveseer of Oregon, LLC v. Deschutes County*, 81 Or
24 LUBA 583 (2020), *aff’d*, 308 Or App 494, 482 P3d 212 (2021); *Oster v. City of*

1 *Silverton*, 79 Or LUBA 447 (2019); *Parkview Terrace Development LLC v. City*
2 *of Grants Pass*, 70 Or LUBA 37 (2014). Differently, here the county has not
3 explained its reason for denying verification of Parcel 4. Petitioner ultimately
4 bears the burden of establishing that Parcel 4 is a legal lot of record. While
5 petitioner has presented evidence and argument that Parcel 4 is a discrete legal
6 parcel, we are not persuaded that evidence establishes that Parcel 4 is a legal
7 parcel as matter of law, or that the county’s decision is prohibited as a matter of
8 law. The challenged decision does not respond to petitioner’s evidence and
9 argument regarding Parcel 4. The decision does not explain whether or why the
10 county decided Parcel 4 is not a legal parcel, or why, if Parcel 4 was previously
11 a discrete unit of land, it no longer is. In these circumstances, we conclude that
12 remand is the appropriate disposition. OAR 661-010-0071(2)(a) (“[t]he findings
13 are insufficient to support the decision”).

14 The county’s decision is remanded.

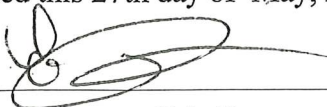
Certificate of Mailing

I hereby certify that I served the foregoing Final Opinion and Order for LUBA No. 2026-010 on May 27, 2026, by mailing to said parties or their attorney a true copy thereof contained in a sealed envelope with postage prepaid addressed to said parties or their attorney as follows:

D. Rahn Hostetter
Hostetter Law Group LLP
203 E. Main Street Suite 2
Enterprise, OR 97828

Daniel H. Kearns
Reeve Kearns PC
PO Box 13015
Portland, OR 97213

Dated this 27th day of May, 2026.



Erin Pence
Executive Assistant

Hannah Barkemeyer Baker
Executive Support Specialist