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

LANDWATCH LANE COUNTY,
Petitioner,

vs.

LANE COUNTY,
Respondent,

and

BRYAN CARD and LEAH CARD,
Intervenors-Respondents.

LUBA No. 2025-080

FINAL OPINION
AND ORDER

Appeal from Lane County.

Sean T. Malone filed the petition for review and reply brief and argued on behalf of petitioner.

No appearance by Lane County.

Micheal M. Reeder filed the intervenors-respondents' brief and argued on behalf of intervenors-respondents.

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

AFFIRMED 06/01/2026

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

Opinion by Wilson.

NATURE OF THE DECISION

Petitioner appeals a hearings official decision approving a forest template dwelling.

FACTS

Intervenors-respondents (intervenors) along with two co-owners own a tract consisting of two lots, Tax Lots 200 and 302, approximately six miles east of Triangle Lake. The tract is designated Forest, is zoned Impacted Forest Land (F-2), and is slightly over 80 acres. Although the tax lots were originally in different ownerships, through a series of deed conveyances the tract came under the same ownership in 2025. Intervenors applied for a forest template dwelling on the tract, and the planning director approved the dwelling.[1] Petitioner appealed the planning director's decision to the hearings official, who denied the appeal and approved the dwelling. This appeal followed.

FIRST ASSIGNMENT OF ERROR

Petitioner argues that the hearings official misconstrued the applicable law in determining that the application complied with ORS 215.750(5)(h).[2] The appropriate standard of review is whether the interpretation is legally correct,

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[1] A forest template dwelling refers to a dwelling that may be approved where, among other things, a certain number of other dwellings exist within a 160-acre square or rectangle (the template) centered on the subject property.

[2] OAR 660-006-0027(6)(h) has identical language.

applying the general rules of statutory construction set out at ORS 174.010 and in cases such as *State v. Gaines*, 346 Or 160, 206 P3d 1042 (2009), and *PGE v. Bureau of Labor and Industries*, 317 Or 606, 859 P2d 1143 (1993). This involves evaluating first text and context, then legislative history and, if necessary, applicable canons of statutory construction.

ORS 215.750(5) provides approval criteria for forest template dwellings:

"A proposed dwelling under this section is allowed only if:

"* * * * *

> "(h) *If the lot or parcel on which the dwelling will be sited was part of a tract on January 1, 2019,* no dwelling existed on the tract on that date, and no dwelling exists or has been approved on another lot or parcel that was part of the tract." (Emphasis added.)

There is no dispute that the application satisfies ORS 215.750(5)(a) through (g). The only subsection at issue in this appeal is ORS 215.750(5)(h), concerning whether the lot or parcel on which the proposed template forest dwelling will be sited "was part of a tract on January 1, 2019." Although the statute provides that "if" the lot or parcel was part of a tract on January 1, 2019, certain conditions must be satisfied, petitioner argues that the statute *prohibits* a forest template dwelling *unless* the lot or parcel was part of tract on January 1, 2019. In other words, petitioner argues that ORS 215.750(5)(h) establishes an approval criterion that the lot or parcel on which the forest template dwelling will be sited must have been part of a tract on January 1, 2019. According to

petitioner, the lot or parcel must have been part of a tract on or before January 1, 2019, even if no dwelling existed on the tract on that date or has been approved on another lot or parcel that was part of the tract. As there is no dispute that in the present case, the subject property was not part of a tract on January 1, 2019, according to petitioner, intervenors are prohibited as a matter of law from obtaining a forest template dwelling.

Intervenors argue that ORS 215.750(5)(h) is a conditional approval criterion – one that only comes into play if the lot or parcel was part of a tract on January 1, 2019. According to intervenors, if the lot or parcel was not part of a tract on January 1, 2019, then the subsection is not applicable. The hearings official agreed with intervenors:

> "[Petitioner] claims ORS 215.750(5)(h) prohibits a [forest template dwelling] on the subject property because TL 200 and TL 302 were not part of a 'tract' on January 1, 2019. * * *
>
> "* * * * *
>
> "[Intervenors] acknowledge that TLs 200 and 302 were not a 'tract' on January 1, 2019, because different parties owned each of the tax lots on that date. However, [intervenors] assert the fact that the subject property was not a tract on January 1, 2019, does not mean, as [petitioner] claims, that ORS 215.750(5)(h) prohibits a dwelling on the property. According to [intervenors], [petitioner] misreads or ignores the express language of subsection (5)(h), which begins with 'if' and therefore only applies if TLs 200 and 302 were a 'tract' on January 1, 2019. Because they were not under the same ownership on that date, [intervenors] assert that subsection (5)(h) does not apply. [Intervenors] also argue that even if the subject property qualified as a 'tract' on that date, subsection (5)(h) would not prohibit the [forest template dwelling] because both tax lots were

vacant as of that date and remain so.

> "The Hearings Official agrees with [intervenors]. The plain language of ORS 215.750(5)(h) is a conditional statement. The subsection only applies 'if' TLs 200 and 302 were under the same ownership (i.e., a 'tract') on January 1, 2019. The record is clear that they were not under the same ownership on that date, a fact [intervenors] have emphasized, and [petitioner] has acknowledged. Moreover, even if the subject property qualified as a tract on January 1, 2019, ORS 215.750(5)(h) would not preclude a [forest template dwelling] because nothing in the record demonstrates that a dwelling existed on that date or that the county has otherwise approved one since." Record 5-6 (footnotes omitted).

Text is the most persuasive evidence of the legislature's intent. *Warren v. Washington County*, 296 Or App 595, 599, 439 P3d 581, *rev den*, 365 Or 502, 451 P3d 988 (2019) (citing *TriMet v. Amalgamated Transit Union Local 757*, 362 Or 484, 493, 412 P3d 162 (2018)). In the present case, the text demonstrates that the hearings official's interpretation is legally correct.

There can be no doubt that read in isolation ORS 215.750(5)(h) is conditional. The initial inquiry is to determine whether the property was part of a tract on January 1, 2019. If the answer to that inquiry is yes, then additional requirements apply: (1) that no other dwelling existed on the tract on that date, and (2) that no other dwelling exists or has been approved on another lot or parcel that was part of the tract. If the answer to the initial inquiry is no, then the inquiry ends and no further requirements apply.

Petitioner attempts to obstruct the plain and obvious meaning of this subsection by proposing a "double if" conundrum. Petitioner argues that because

ORS 215.750(5)(h) is preceded by the introduction of ORS 215.750(5), which provides "[a] proposed dwelling under this section is allowed only if," the "if" in ORS 215.750(5)(h) is effectively erased. Under petitioner's reasoning, the statute would read:

> "A proposed dwelling under this section is allowed only if: ~~if~~ the lot or parcel on which the dwelling will be sited was part of tract on January 1, 2019 * * *."

Petitioner argues that the "double if" conundrum results in ORS 215.750(5)(h) making the lot or parcel being part of a tract on January 1, 2019, a requirement to obtain a forest template dwelling. Petitioner appears to assume, like spell check, that if a word is repeated twice in a row then one of the words must be deleted. However, when a statute does this this is not always the result. Petitioner invests too much significance in the "double if" conundrum.

ORS 215.750(5) sets out a list of requirements to obtain a forest template dwelling. In other words, a forest template dwelling may only be obtained if the succeeding subsections are satisfied. As the full text of ORS 215.750(5) demonstrates, the first five subsections involve requirements that apply in all circumstances, and the last three subsections involve requirements that only apply in certain circumstances:

> "(a) It will comply with the requirements of an acknowledged comprehensive plan, acknowledged land use regulations and other provisions of law;
>
> "(b) It complies with the requirements of ORS 215.730;

"(c) No dwellings are allowed on other lots or parcels that make up the tract and deed restrictions established under ORS 215.740(3) for the other lots or parcels that make up the tract are met;

"(d) The tract on which the dwelling will be sited does not include a dwelling;

"(e) The lot or parcel on which the dwelling will be sited was lawfully established;

"(f) Any property line adjustment to the lot or parcel complied with the applicable property line adjustment provisions in ORS 92.192;

"(g) Any property line adjustment to the lot or parcel after January 1, 2019, did not have the effect of qualifying the lot or parcel for a dwelling under this section; and

"(h) If the lot or parcel on which the dwelling will be sited was part of a tract on January 1, 2019, no dwelling existed on the tract on that date, and no dwelling exists or has been approved on another lot or parcel that was part of the tract."

Subsections (a) through (e) provide requirements that apply in all circumstances. Subsection (f) only comes into play if a property line adjustment was made to the property. If there was no property line adjustment then subsection (f) is not applicable. Subsection (g) only comes into play if a property line adjustment was made to the property after January 1, 2019. If no property line adjustments occurred after January 1, 2019, then subsection (g) is not applicable. Similarly, subsection (h) only comes into play if the lot or parcel was part of a tract on January 1, 2019. If the property was not part of a tract at that point, as in the present case, then subsection (h) does not apply. While legislative

drafting is rarely of Shakespearean eloquence, and ORS 215.750(5)(h) is certainly no exception, the "double if" does not have the effect of reading the second "if" out of existence. ORS 215.750(5)(h) means precisely what it says – if the property was part of a tract on January 1, 2019, then extra requirements apply. If the property was not part of a tract on January 1, 2019, then the subsection does not apply.[3]

While the meaning of ORS 215.750(5)(h) is apparent from the text, we also find that the legislative history does not support petitioner's argument. ORS 215.750(5)(h) was added to ORS 215.750(5) with the 2019 amendments – hence, the January 1, 2019 date in the statute. We largely agree with petitioner's explanation of the purpose of the amendments. As petitioner states, the amendments were designed to address a practice where applicants had learned to "game the system" by: (1) reconfiguring properties by way of property line adjustments and (2) manipulating ownership deeds – "deed shuffling" – to gain approval for forest template dwellings. According to petitioner, the present case

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[3] Petitioner also argues that the hearings official erred by finding that ORS 215.750(5)(h) did not apply *at all*. The hearings official, however, merely found that ORS 215.750(5)(h) did not apply because the property was not part of a tract on January 1, 2019. That is different than completely ignoring the subsection. Similarly, petitioner faults the hearings official for explaining that even if the property had been part of a tract on January 1, 2019, that it nonetheless satisfied the additional requirements. The hearings official was merely explaining that the situation ORS 215.750(5)(h) was designed to prevent would not have occurred even if the property had been part of a tract on January 1, 2019.

involves deed shuffling. The problem with petitioner's argument is that the 2019 amendments further that legislative goal under either petitioner's or intervenors' interpretation. ORS 215.750(5)(e) and (f) address property line adjustments, and ORS 215.750(5)(h) addresses deed shuffling. The legislative history provided to us is completely silent as to, let alone supportive of, petitioner's argument that no forest template dwellings are allowed on tracts created after 2019. The legislative history is of no assistance to petitioner.

The first assignment of error is denied.

SECOND ASSIGNMENT OF ERROR

Petitioner argues that the hearings official's findings are inconsistent and therefore not supported by substantial evidence. Petitioner's arguments are based on two documents incorporated into the hearings official's decision. According to petitioner, because the incorporated documents are inconsistent with the hearings official's decision the decision must be remanded.

A. September 25, 2025 Response Letter

As discussed earlier, the tract includes Tax Lots 200 and 302. There is no doubt that the hearings official found that the subject tract consists of Tax Lots 200 and 302. Record 2, 6. Petitioner argues that the findings are inconsistent because the hearings official incorporated a document stating that "TL 200 was not part of a tract that is relevant to this application because that tract is not part of this application." The hearings official incorporated a September 25, 2025

response letter from one of intervenors' consultants, which stated in pertinent part:

> "The applicant has established that the subject property (TL 200/302 combined) was not part of a tract in 2019. Subsection (h) is not applicable.
>
> "Finally, *to further address LandWatch's assertions, TL 200 was not part of a tract that is relevant to this application because that tract is not part of this application.* Exhibit N shows road ownership from County data, confirming it is county owned. There is no evidence in the record to the contrary. County data is evidence a reasonable person would rely on. However, out of an abundance of caution, the applicant clarifies that *even if TL 200/309 was a tract in 2019, neither TL 200 nor TL 309 contained or was approved for a dwelling at that time*. Both were and are vacant. * * * Thus, the assertion, even if true, would not be a basis for denial under ORS 215.750(5)(h)." Record 30 (emphases added).

Below, petitioner raised the issue that an additional tax lot, Tax Lot 309, may have been part of the tract including Tax Lots 200 and 302. Tax Lot 309 is apparently separated from Tax Lots 200 and 302 by a county road. The incorporated findings are not inconsistent with the hearings official's decision when read in that light. When considering the entire response rather than the mere language that "TL 200 was not part of a tract that is relevant to this application," it is clear that the consultant's letter was addressing petitioner's argument that Tax Lot 309 was part of the tract. The full text of the letter demonstrates that it is not referring to the present tract – Tax Lots 200 and 302 – but rather a potential tract from 2019 also including Tax Lot 309. The findings are not inconsistent.

B. October 2, 2025 Final Response

There is no dispute that Tax Lots 200 and 302 are contiguous. Petitioner argues that the findings are inconsistent because the hearings official incorporated intervenors' October 2, 2025 final response below stating "[b]ecause TL 200 and TL 302 are not contiguous, they were not part of a tract now or in 2019." Record 16. According to petitioner, because the incorporated quote is inconsistent with the hearings official's decision, the findings are inconsistent. The incorporated document provides the following broader context:

> "Landwatch asserts that *TL 200, which is only a portion of the subject property, may have been a part of a tract (with TL 309) on January 1, 2019, but these properties are not contiguous*. They are intervened by County right of way. Further, County assessment and taxation data confirms that the right of way is owned by Lane County. * * * County data on ownership is the type of evidence a reasonable person would rely on and there is no evidence in the record to the contrary. *Because TL 200 and TL 302 are not contiguous, they were not part of a tract now or in 2019*." Record 16 (emphases added).

The emphasized portions demonstrate that intervenors' attorney mistakenly stated Tax Lots 200 and 302 are not contiguous when he meant Tax Lots 200 and *309* are not contiguous. This was also apparent to petitioner's attorney, who stated "[t]he applicant's attorney was likely intending to refer to tax lot 309 and wrote 302. Tax lots 200 and 309 are not part of a tract, and tax lot 309 is not at issue here." Petition for Review 15.

The hearings official's decision is clear that Tax Lots 200 and 302 are contiguous and are a tract. Record 2, 6. Where an incorporated finding does not

accurately reflect a decision maker's decision, an inconsistency does not necessarily warrant remand when it is reasonably clear what the decision found regarding an issue. *O'Rourke v. Union County*, 54 Or LUBA 614, 620, *aff'd*, 217 Or App 1, 175 P3d 485 (2007). In the present case, it is more than reasonably clear that: (1) the hearings officer found that Tax Lots 200 and 302 are contiguous and part of a tract and (2) that the inconsistency in the incorporated final response letter was a scrivener's error. Under these circumstances, remand is not warranted. *Central Bethany Dev. Co. v. Washington County*, 33 Or LUBA 463, 466 (1997) ("No purpose would be served by remanding to allow the county to make explicit what is already obvious.").

The second assignment of error is denied.

The city's decision is affirmed.

Certificate of Mailing

I hereby certify that I served the foregoing Final Opinion and Order for LUBA No. 2025-080 on June 1, 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:

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Dated this 1st day of June, 2026.

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