

BEFORE THE BOARD OF COMMISSIONERS OF LANE COUNTY, OREGON

ORDER NO: 24-01-30-04

ORDER / In the Matter of Electing to Conduct an On-the-Record Hearing to Review the Hearings Official's Denial of Three Forest Template Dwelling Proposals in the Impacted Forest Lands Zone (F-2): Assessor's Map 21-25-12, Tax Lot 843, File No. 509-PA23-05321 (E.J.K. Investments); Assessor's Map 21-35-07, Tax Lot 2900, File No. 509-PA23-05322 (E.J.K. Investments); Assessor's Map 21-35-07, Tax Lot 2800, File No. 509-PA23-05323 (Edward J King)

**WHEREAS**, the Lane County Hearings Official (the Hearings Official) has made the decision to deny three Type II Forest Template Dwelling applications elevated by the Lane County Planning Director (the Director) for Hearings Official review through a Type III procedure under Department File Nos. 509-PA23-05321, 509-PA23-05322, and 509-PA23-05323 (the Decisions); and

**WHEREAS**, pursuant to Lane Code (LC) 14.080(5)(a), the Director now requests review of the Hearings Official's Decisions by the Lane County Board of County Commissioners (the Board) in an on-the-record hearing; and

**WHEREAS**, LC 14.080(5) provides the procedures which the Director's request for Board review must follow; and

**WHEREAS**, LC 14.080(5)(b) specifies that the Board must adopt a written decision and order electing to conduct a hearing on-the-record; and

**WHEREAS**, LC 14.080(5)(b)(ii) provides that a Board order to conduct an on-the-record hearing must specify the date for the on-the-record hearing, the parties who qualify to participate in the on-the-record hearing, and whether the Board finds that an opportunity for limited additional testimony is warranted and will be provided; and


**WHEREAS**, in a duly noticed public meeting, the Board has considered materials presented by County staff including an agenda cover memorandum which recommends that the Board adopt the following Order and review the Hearings Official decision in an on-the-record hearing; and

**NOW, THEREFORE**, the Board of County Commissioners of Lane County **ORDERS** as follows:

1. The foregoing recitals are adopted herein by reference and in support of this Order.
2. The Decisions qualify for Board review pursuant to LC 14.080(5)(a)(i)-(iv). Specifically, the Decisions involve the circumstances described under subsections (i), (iii), and (iv) of LC 14.080(5)(a), as supported by the findings of fact attached hereto as Exhibit A and incorporated herein by reference. Therefore, and consistent with the Director's request, the Board elects to conduct an on-the-record hearing pursuant to the procedures in LC 14.080(5)(c).

3. After conducting an on-the-record hearing, the Board will decide whether to affirm, reverse, or modify the Decisions.
4. The tentative date for the hearing on-the-record is March 19, 2024. The hearing will be conducted in accordance with the procedures in LC 14.080(5)(c). LC 14.080(5)(c)(i). Pursuant to LC 14.080(5)(c)(i), the evidence considered by the Board in an on-the-record hearing proceeding must be confined to the record of the proceeding before the Hearings Official, with the exception of limited additional testimony as described in LC 14.080(5)(c)(i) and specified in the Board Order electing to conduct the hearing on-the-record.
5. The opportunity for limited additional testimony described in LC 14.080(5)(c)(ii) is not warranted and will not be provided. The Board may only admit additional testimony from parties of record based on LC 14.080(5)(c)(ii) if the Board is satisfied that limited additional testimony or other evidence could not have been presented before the close of record on the Hearings Official proceedings. In those proceedings, the Hearings Official accommodated requests to extend the evidentiary Hearing record to allow all parties the opportunity to present additional evidence and to respond to the new information submitted.
6. The parties that qualify to participate in the hearing on-the-record pursuant to LC 14.080(5)(c)(vii) are the Director, the applicants, and the applicants' representative.

**ADOPTED** this 30th day of January, 2024.



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Laurie Trieger, Chair  
Lane County Board of Commissioners

## ORDER EXHIBIT A

### FINDINGS IN SUPPORT OF THE ORDER

1. On May 8, 2023, the Law Office of Bill Kloos filed three applications with the Land Management Division (LMD) on behalf of Edward J. King and E.J. K. Investments, each seeking Director Approval for a dwelling in the Impacted Forest Lands (F-2) Zone pursuant to the 'Template Dwelling' provisions of LC 16.211(2)-2.4, House Bill 2225, and RCP Goal 5 Flora and Fauna Policy 11 (Policy 11), as applicable.
  - a. File No. 509-PA23-05321; Assessor's Map 21-25-12, Tax Lot 843; Owner/Applicant E.J.K. Investments
  - b. File No. 509-PA23-05322; Assessor's Map 21-35-07, Tax Lot 2900; Owner/Applicant E.J.K. Investments
  - c. File No. 509-PA23-05323; Assessor's Map 21-35-07, Tax Lot 2800; Owner/Applicant Edward J King
2. Each of the three applications seeks approval for dwellings on a parcel of less than 14 acres that directly abuts the Oakridge Airport and is located within the Airport Safety Combining Zone (IAS) area. Apart from a small corner of Tax Lot 843 of Assessor's Map 21-25-12, the subject parcels are entirely zoned Impacted Forest Lands (F-2) and are located within designated Goal 5 Major Big Game Habitat.
3. On June 7, 2023, LMD staff deemed the applications complete. The Lane County Planning Director elected to elevate the applications for Hearings Official review through a Type III procedure pursuant to LC 14.030(1)(b)(ii)(cc). Accordingly, on August 16, 2023, Lane County staff sent notice of a public hearing before the Lane County Hearings Official to occur on September 7, 2023.
4. The initial public hearings for the applications were held on September 7, 2023. The Hearings Official granted an extended record period for written testimony allowing for parties of record to the Hearings proceeding to submit additional evidence and argument with an opportunity for response and final rebuttal by the applicant by October 12, 2023.
5. During the hearing proceedings, the applicant's agent provided full timeline waivers to the applicable statutory 150-day statutory timeline requirements for final local set forth in ORS 215.427. The waivers were provided for all three applications.
6. On November 2, 2023, the Hearings Official issued decisions denying all three applications. Required notice of the Hearings Official's decision was mailed to parties of record on November 6, 2024.
7. On November 9, 2023, the LMD staff mailed notice informing parties of record of the Planning Director's request and recommendation for Board review pursuant to LC 14.080(1)(e) and LC 14.080(5)(a)(iv).
8. LC 14.080(5)(a) provides that the Director may request that the Board affirm the Hearings Official decision or conduct an on-the record hearing if the decision involves any of the following circumstances:
  - (i) *Interpretation of County policies or issues of countywide significance;*
  - (ii) *Issues that will reoccur with frequency or for which there is a need for policy guidance;*
  - (iii) *Issues involving impacts to an inventoried Goal 5 resource; or*
  - (iv) *The Director or Hearings Official recommends review.*

9. Interpretation of County policies or issues of countywide significance. Conformance with Rural Comprehensive Plan (RCP) Goal 5 Flora & Fauna Policy 11 (Policy 11) is the sole basis for the Hearing Official denial of the applications. The Oregon Land Use Board of Appeals (LUBA) and Oregon Court of Appeals held that Goal 5, Flora & Fauna Policy 11 must be applied directly as an approval criterion for new dwelling proposals on parcels within designated Major and Peripheral Big Game Habitat areas. (Nimpkish LLC (LUBA No. 2020-030 and King/EJK Investments LUBA No. 2021-047). The question of when and how Policy 11 applies directly to land use applications has been contested and these appeal rulings were made without benefit of clarification and interpretation by the Board, which would be entitled to greater degree of deference that was afforded to the Hearings Official decisions reviewed under those ruling. The need for Board policy interpretation of Policy 11 has been raised in a variety of contexts and has been requested of the Board in public comments. On June 13, 2023 meeting, the Board directed LMD staff elevate the next relevant land use application involving the interpretation of the policy for Board review and consideration of the Policy, either by affirming the Hearings Official or making its own interpretation of the Policy.
10. Issues involving impacts to an inventoried Goal 5 resource. The Hearings Official decision to deny the applications based on Policy 11 directly pertains to impacts and acknowledged protections measure for inventoried Goal 5 Big Game habitat resources.
11. The Director or Hearings Official recommends review. The Director requested Board joint Board review of the three applications based on LC 14.080(5)(a) (i), (iii), and (iv) and recommended that the Board conduct a hearing on-the-record hearing for the purpose of resolving uncertainty regarding Policy 11. The Director has indicated that new information and testimony related to the adoption and acknowledgment of Policy 11 not previously considered was placed in the record before the Hearings Official.
12. The Board agrees that the Director request for Board Review pursuant to LC 14.080(5)(a) based on LC 14.080(5)(a) (i), (iii), and (iv) is warranted.