

1 BEFORE THE LAND USE BOARD OF APPEALS
2 OF THE STATE OF OREGON
3

4 KNEE DEEP CATTLE COMPANY, BILL)
5 STEVENSON, LOIS STEVENSON, and)
6 MIKE STEVENSON,)
7)
8 Petitioners,)

9)
10 vs.)

11) LUBA Nos. 94-108, 94-125
12 LANE COUNTY,) and 94-126
13)
14 Respondent,)

15) FINAL OPINION
16 and) AND ORDER
17)

18 PARK DEVELOPMENT GROUP, L.L.C.,)
19 BANDAC, LTD., and BOB HARRISON,)
20)
21 Intervenors-Respondent.)

22
23
24 Appeal from Lane County.

25
26 Bill Kloos, Eugene, filed the petition for review and
27 argued on behalf of petitioners. With him on the brief was
28 Johnson & Kloos.

29
30 Stephen L. Vorhes, Lane County Counsel, Eugene; and
31 Glenn Klein and Anne C. Davies, Eugene, filed the response
32 brief. With them on the brief was Harrang Long Gary &
33 Rudnick. Stephen L. Vorhes argued on behalf of respondent.
34 Glenn Klein argued on behalf of intervenors-respondent.

35
36 SHERTON, Referee; HOLSTUN, Chief Referee; KELLINGTON,
37 Referee, participated in the decision.

38
39 DISMISSED (LUBA Nos. 94-108 and 94-125)
40 AFFIRMED (LUBA No. 94-126) 11/16/94

41
42 You are entitled to judicial review of this Order.
43 Judicial review is governed by the provisions of ORS
44 197.850.

1 Opinion by Sherton.

2 **NATURE OF THE DECISIONS**

3 In LUBA No. 94-108, petitioners challenge a letter by
4 the county planning director, dated June 1, 1994, concerning
5 whether the proposed expansion of a recreational vehicle
6 (RV) park requires a county special use permit.¹
7 Record I 14.² In LUBA No. 94-125, petitioners challenge the
8 county planning department's June 29, 1994 approval of a
9 building permit for "installation of sand filter
10 containment/dosing tanks" to serve the expanded RV park.
11 Record II 1. In LUBA No. 94-126, petitioners challenge a
12 "Land Use Compatibility Statement" signed by the planning
13 department on June 29, 1994, stating the proposed "upgrade
14 of [the] existing wastewater treatment facility" is an
15 "allowed outright use" under the county comprehensive plan
16 and code. Record II 3.

17 **MOTION TO INTERVENE**

18 Park Development Group, L.L.C., Bandac, Ltd., and Bob
19 Harrison, the applicants below, move to intervene in this
20 proceeding on the side of respondent. There is no
21 opposition to the motion, and it is allowed.

¹The letter also addresses whether the proposed RV park expansion requires county site review approval. However, petitioners do not raise any issue concerning county site review in this consolidated proceeding.

²"Record I" refers to the record submitted by the county for LUBA No. 94-108. "Record II" refers to the consolidated record submitted by the county for LUBA Nos. 94-125 and 94-126.

1 **FACTS**

2 Intervenor owners own and operate a 68-space RV park
3 adjoining Interstate-5 to the east, south of the Van Duyen
4 Road exit. The subject property is zoned Park and
5 Recreation (PR) and is within an area for which a committed
6 exception to Statewide Planning Goal 3 (Agricultural Land)
7 has been adopted as part of the county's acknowledged
8 comprehensive plan.³ The other properties within this
9 exception area, adjoining the subject property to the north,
10 are zoned Rural Commercial (C-R).

11 A report in the record describes the existing uses in
12 this area and their sewerage services:

13 * * * This area, referred to as the Vira Plat,
14 has been used for interstate related commercial
15 use for more than 25 years. The existing
16 development includes the Econolodge Motel complex,
17 the Brave Bull Tavern, an old gas station (no
18 longer in use), and a 68 Unit RV Park. * * *

19 * * * * *

20 "Wastewater treatment for the entire Vira Plat is
21 currently provided by an on-site mechanical
22 treatment plant which is owned and operated by
23 [intervenor] Bandac Ltd. This plant was installed
24 when the area was first developed and operates
25 under a National Pollution Discharge Elimination
26 System (NPDES) [p]ermit * * * issued by the Oregon
27 Department of Environmental Quality (DEQ).
28 Treated effluent is discharged to an unnamed
29 tributary of Muddy Creek during the winter months

³As discussed in more detail below, the record indicates intervenors and the county did not realize the subject property is within a Goal 3 exception area until some time after intervenors applied for a special use permit to expand the RV park.

1 (November - April) and stored in on-site holding
2 ponds during the summer (May - October). The
3 treatment plant has reached its useful life
4 expectancy and has experienced increasing
5 hydraulic, mechanical and operational problems
6 over the past several years. This has resulted in
7 DEQ taking enforcement action against Bandac Ltd.
8 [Intervenors] have negotiated a Stipulation and
9 Final Order (SFO) with DEQ which will require the
10 wastewater treatment facilities to be upgraded by
11 October 1994. * * *." Record I 87.

12 On January 19, 1994, intervenors filed an application
13 for a special use permit to expand the RV park. The
14 proposed expansion is described as follows:

15 "[The RV park will be expanded] from its existing
16 68 spaces to 215 spaces. This expansion will be
17 accomplished in 2 phases. Phase I, which is
18 planned to open in the Fall of 1994, will add 80
19 spaces. The final build-out in Phase II will be
20 completed in 1995 if market conditions are
21 suitable.

22 "In addition to increasing the number of spaces,
23 Phase I of the proposed expansion will include a
24 second service building with laundromat, restrooms
25 and showers; a new garage/equipment storage
26 building; and a combination office, manager's
27 residence and recreation building. * * *

28 "In conjunction with the expansion, [intervenors]
29 will make the following improvements to the
30 existing facilities:

31 "1. Replace the aging mechanical wastewater
32 treatment facilities with a Recirculating
33 Gravel Filter system.

34 "* * * * *" Record I 88.

35 Intervenors' consultant describes how the effluent from the
36 proposed new wastewater treatment facility will be disposed
37 of:

1 "The reclaimed water produced by the [new
2 wastewater] treatment facilities will be used for
3 irrigation at the Coburg Hills Golf Course which
4 is being developed just south of the [subject]
5 property. The treated water will be pumped to
6 storage ponds on the golf course and mixed with
7 other irrigation water. * * * During the winter
8 months, from December through April, the treated
9 effluent will continue to be discharged to Muddy
10 Creek in accordance with the limitations contained
11 in the existing NPDES permit * * *. One of the
12 existing ponds on the [subject] property will be
13 retained and used for backup storage for the golf
14 course ponds."⁴ Record I 45.

15 On April 27, 1994, the planning department gave notice
16 of the planning director's "pending land use decision" on
17 intervenors' special use permit application. Record I 32.
18 The notice stated the pending decision would become final on
19 May 9, 1994, unless an appeal to the hearings official was
20 filed. Record I 33. On May 9, 1994, petitioners filed an
21 appeal to the hearings official, and a hearing was scheduled
22 for June 16, 1994.

23 However, on May 31, 1994, intervenors' attorney sent a
24 letter to the planning director, stating intervenors had
25 learned the subject property is within a developed and
26 committed goal exception area. Intervenors stated that
27 under Lane Code (LC) 16.215(6)(a),⁵ the expansion of an RV

⁴Petitioners explain they are concerned about past and possible future violations of intervenors' NPDES permit by release of polluted effluent during the summer months, because petitioners' cattle drink from Muddy Creek in the summer.

⁵LC 16.215(6) provides, in relevant part:

1 park in the PR zone is permitted outright if the RV park is
2 within an acknowledged developed and committed exception
3 area. Intervenors therefore requested that the hearing
4 concerning their special use permit application be
5 postponed, and that the special use permit application "be
6 withdrawn upon final issuance of a building permit" for the
7 proposed RV park expansion. Record I 17.

8 On June 1, 1994, the planning director replied to
9 intervenors' letter by sending intervenors the letter
10 challenged in LUBA No. 94-108. That letter states:

11 " * * * I agree with you that the proposed RV park
12 expansion, and structures/improvements incidental
13 to its operation, are permitted uses pursuant to
14 [LC] 16.215(6).

15 " * * * * *

"Permitted Uses Within An Exception Area. The following uses
and activities are permitted [in the PR zone] whenever the
subject property is included within an area for which a built
upon or committed exception has been taken to a Statewide
Planning Goal and incorporated into the Lane County Rural Area
Comprehensive Plan * * *:

"(a) Any of the uses permitted within * * * LC 16.215(3).

" * * * * *"

LC 16.215(3) lists uses in the PR zone that are allowed subject to approval
by the Planning Director (i.e. require a special use permit).
LC 16.215(3)(d) describes certain "campgrounds" as being in this category.

There is no real dispute between the parties that under LC 16.215(6)(a)
a "campground," as described in LC 16.215(3)(d), is an outright permitted
use in a PR-zoned developed and committed goal exception area. However,
whether the existing or proposed expanded RV park constitute a
"campground," as described in LC 16.215(3)(d), is one of the issues
petitioners seek to raise in this appeal proceeding.

1 "[The special use permit application] will be
2 removed from the June 16, 1994 Hearings Official
3 agenda. Following your withdrawal of [the
4 application], a fee refund will be processed."
5 Record I 14.

6 On June 8 and 17, 1994, petitioners' attorney sent
7 letters to the planning director, explaining why petitioners
8 believe some or all parts of the proposed RV park expansion
9 are not uses permitted outright in the PR zone, even though
10 the subject property is in an acknowledged developed and
11 committed exception area. The planning director replied to
12 petitioners in a letter dated June 22, 1994. That letter
13 states:

14 "[My June 1, 1994 letter] simply agreed to
15 postpone the scheduled hearing and recognized the
16 potential for withdrawal of the Special Use Permit
17 (SUP) application. If it is withdrawn, review of
18 the proposed RV park expansion will occur in the
19 context of building permit applications. Until
20 then, no final determination of compliance with
21 applicable land use regulations will be made.

22 "* * * * *

23 "* * * Each of [the structures proposed as part
24 of the RV park expansion] will be the subject of a
25 building permit application. It will be necessary
26 to review individual building permit applications
27 for consistency with the [PR] zone at the time a
28 permit application is filed.

29 "* * * A building permit to construct sanitary
30 facilities for the proposed RV park expansion will
31 include review to determine the facility satisfies
32 the requirements of the DEQ. As far as I
33 understand it, the sanitary waste disposal system
34 is subordinate and incidental to the proposed RV
35 park expansion. In any event, we will review that
36 in the context of building permit applications."

1 (Emphases added.) Record I 2-3.

2 Intervenor applied for a building permit to add an
3 additional 148 spaces to the RV park. That building permit
4 (hereafter RV space permit) was approved by the planning
5 department on June 29, 1994, and has not been appealed.
6 Record II 24. Intervenor also applied for a building
7 permit to install "Sand Filter Containment/Dosing Tanks."
8 Record II 1. That building permit (hereafter sand filter
9 tanks permit) was also approved by the planning department
10 on June 29, 1994, and is appealed in LUBA No. 94-125.

11 Intervenor also applied to DEQ to modify their NPDES
12 permit to reflect the proposed "upgrade of [the] existing
13 wastewater treatment facility." Record II 3. On June 29,
14 1994, the planning department signed a DEQ Land Use
15 Compatibility Statement (hereafter compatibility statement),
16 indicating the proposed wastewater treatment facility is "an
17 allowed outright use." Id. This decision is appealed in
18 LUBA No. 94-126.

19 **JURISDICTION**

20 The county and intervenors (respondents) contest our
21 jurisdiction over the challenged decisions. Respondents
22 contend the three decisions challenged in this consolidated
23 proceeding are not "land use decisions."⁶

⁶LUBA's review jurisdiction also includes "limited land use decisions," as defined in ORS 197.015(12). ORS 197.825(1). However, no party contends any of the challenged decisions is a limited land use decision, and we do not see that they are.

1 A county decision is a "land use decision" if it meets
2 either (1) the statutory definition of "land use decision"
3 in ORS 197.015(10); or (2) the significant impact test
4 established by City of Pendleton v. Kerns, 294 Or 126,
5 133-34, 653 P2d 996 (1982). Billington v. Polk County, 299
6 Or 471, 479, 703 P2d 232 (1985); City of Portland v.
7 Multnomah County, 19 Or LUBA 468, 471 (1990). Under either
8 the statutory test or the significant impact test, a "land
9 use decision" must be a final decision. McKenzie River
10 Guides Assoc. v. Lane County, 19 Or LUBA 207, 212-13 (1990);
11 Hemstreet v. Seaside Improvement Comm., 16 Or LUBA 748, 752,
12 aff'd 93 Or App 73 (1988).

13 **A. June 1, 1994 Planning Director Letter**

14 Petitioners contend the director's June 1, 1994 letter
15 is a final determination by the county that the proposed RV
16 park expansion and incidental improvements are outright
17 permitted uses under LC 16.215(6). According to
18 petitioners, this determination is the application of a land
19 use regulation to a discrete land use question and,
20 therefore, the June 1, 1994 letter is a land use decision.
21 Weeks v. City of Tillamook, 113 Or App 285, 832 P2d 1246
22 (1992); Hart v. Jefferson County, 27 Or LUBA 688, 693-94
23 (1994).

24 If the director's June 1, 1994 letter stood alone, we
25 might agree with petitioners. However, the director's
26 June 1, 1994 letter was either superseded or qualified by

1 the director's June 22, 1994 letter.⁷ The June 22, 1994
2 letter explains that the county's final determination on
3 whether each of the uses proposed in the special use permit
4 application is an outright permitted use of the subject
5 property will be made in the building permit process.
6 Therefore, the statement in the director's June 1, 1994
7 letter that the proposed uses are permitted under
8 LC 16.215(6) either (1) is not final, or (2) is made moot by
9 the director's June 22, 1994 letter. In either case, LUBA
10 No. 94-108 must be dismissed.

11 **B. Sand Filter Tanks Permit**

12 The planning department decision approving the building
13 permit for the sand filter tanks states:

14 "Special Use Permit not required for construction
15 of proposed sand filter containment/dosing tanks.
16 Construction of this proposed use for a sewage
17 treatment facility pursuant to DEQ requirements
18 for permitted uses (including tavern, motel, and
19 RV park/ campground including expansion [approved
20 by RV space permit] for 148 RV spaces) in the
21 existing rural zones (PR, CR) is permitted.
22 * * *" Record II 1.

23 We understand the above to state the county approves
24 the installation of sand filter tanks as part of a sewage
25 treatment facility to serve permitted uses that already
26 exist (motel, tavern, RV park) or have been approved

⁷We note that although the June 1 letter was addressed to intervenors' attorney and the June 22 letter was addressed to petitioners' attorney, a copy of each letter was sent to the other parties' attorney.

1 (additional 148 RV spaces approved by the RV space permit).
2 Specifically, the sand filter tanks permit relies on
3 previous determinations by the county that those uses are
4 permitted in the PR and CR zones, including the
5 determination made by the county in approving the RV space
6 permit, which was not appealed.⁸ Therefore, the only
7 determination made by the planning department in approving
8 the sand filter tanks permit is that a special use permit is
9 not required for the tanks themselves.⁹ We address below
10 whether this determination satisfies either the statutory or
11 significant impact test for a land use decision.

12 **1. Statutory Test**

13 Petitioners contend the sand filter tanks permit is a
14 land use decision under ORS 197.015(10)(a)(A)(i), because it
15 concerns the application of the Statewide Planning Goals
16 (goals). Petitioners argue ORS 197.829(4) makes the goals
17 standards for local government interpretations of their
18 regulations implementing those goals. According to

⁸In approving the unchallenged RV space permit, the planning department states:

"Special Use Permit not required for construction of proposed RV park/campground expansion of 148 RV spaces. Construction of RV park/campground is permitted use pursuant to LC 16.215(6)."
Record II 24.

⁹The decision also finds the tanks are part of a sewage treatment facility intended to serve existing and approved permitted uses pursuant to DEQ requirements. There is no dispute the tanks are intended for such a purpose. That the approved 148 additional RV spaces are a permitted use was determined in the unchallenged decision approving the RV space permit.

1 petitioners, the county's interpretation of the LC as not
2 requiring a special use permit for the proposed sewage
3 treatment system is contrary to Goal 6 (Air, Land, and Water
4 Resources Quality).

5 ORS 197.829(4) allows this Board to reverse or remand a
6 local government's interpretation of its comprehensive plan
7 or land use regulations if that interpretation "[i]s
8 contrary to a state statute, land use goal or rule that the
9 comprehensive plan provision or land use regulation
10 implements." ORS 197.829 governs this Board's scope of
11 review over local government interpretations of their own
12 enactments.¹⁰ That this Board may consider a statewide
13 planning goal that is implemented by a particular plan or
14 code provision, in determining whether the local
15 government's interpretation of that provision should be
16 affirmed, does not make that goal an approval standard for
17 decisions made under an acknowledged plan and land use
18 regulations.

19 Petitioners also contend the sand filter tanks permit
20 is a land use decision under ORS 197.015(10)(a)(A)(iii),

¹⁰Whether ORS 197.829(4) has any applicability to this Board's review of a decision by a local decision maker other than the governing body is, at best, doubtful. In Gage v. City of Portland, 319 Or 308, 316-17, ___ P2d ___ (1994), the Oregon Supreme Court decided that the interpretive deference required by Clark v. Jackson County, 313 Or 508, 514-15, 836 P2d 710 (1992), applies only to interpretations by local governing bodies. ORS 197.829(1) to (3) codify Clark. In a case where ORS 197.829(4) was not at issue, the court of appeals stated that it interprets ORS 197.829 the same as the supreme court interpreted Clark in Gage. Watson v. Clackamas County, 129 Or App 428, 431-32, ___ P2d ___ (1994).

1 because it concerns the application of the LC. Petitioners
2 argue the new sewage treatment facility, including the
3 approved sand filter tanks, is a separate "use" of land
4 subject to regulation under the LC, and cannot be allowed
5 simply as incidental to other, outright permitted uses.
6 Petitioners point to the following definition of "use":

7 "The purpose for which land, submerged land or
8 submersible lands, the water surface or a building
9 is arranged, designed or intended, or for which
10 either land or building is or may be occupied or
11 maintained." LC 16.090.

12 Petitioners argue that under LC 16.090, "building" is
13 defined the same as "structure" and, therefore, any
14 structure which is part of the sewage treatment system is
15 within the definition of "use." Petitioners also point to
16 LC 16.004(1), which provides:

17 "A tract of land may be used or developed, by land
18 division or otherwise, and a structure may be used
19 or developed, by construction, reconstruction,
20 alteration, occupancy or otherwise, only as this
21 Chapter permits."

22 For a decision to concern the application of a land use
23 regulation, as provided in ORS 197.015(10)(a)(A)(iii), it is
24 not enough that the decision touch on some aspect of a land
25 use regulation; the land use regulation must contain
26 provisions that are standards or criteria for making the
27 challenged decision. See Price v. Clatsop County, 25
28 Or LUBA 341, 347 (1993); City of Portland v. Multnomah
29 County, 19 Or LUBA 468, 474 (1990).

30 Petitioners contend that under the LC, structures such

1 as the proposed sand filter tanks, and the new sewage
2 treatment system in general, must be regulated as separate
3 uses, apart from the uses they serve. However, petitioners
4 do not identify any provisions in the LC which specifically
5 control the construction of the subject sand filter tanks or
6 the proposed new sewage treatment system. As far as we can
7 see, nothing in the LC mandates petitioners' suggested
8 interpretation. We are cited to no LC provisions that
9 regulate onsite sewage treatment facilities separately from
10 the uses they serve. We therefore agree with the county
11 that a decision to allow construction of an onsite sewage
12 treatment facility to serve a use determined to be an
13 outright permitted use by other county decisions, is not a
14 decision concerning the application of the LC.

15 The sand filter tanks permit does not satisfy the
16 statutory test for a land use decision.

17 **2. Significant Impact Test**

18 To satisfy the significant impact test, a decision must
19 have a significant impact on present or future uses of land.
20 City of Pendleton v. Kerns, supra; Billington v. Polk
21 County, supra. Additionally, there must be both a
22 demonstrated relationship between the decision and the
23 expected impacts, and evidence demonstrating that the
24 expected impacts are likely to occur as a result of the
25 decision. Keating v. Heceta Water District, 24 Or LUBA 175,
26 181-82 (1992); Anderson Bros. v. City of Portland, 18

1 Or LUBA 462, 471 (1989). Finally, as the party seeking
2 review by LUBA, petitioner has the burden of establishing
3 that the challenged decision satisfies the significant
4 impact test. Billington v. Polk County, supra, 299 Or
5 at 475; City of Pendleton v. Kerns, supra, 294 Or at 134
6 n 7; Miller v. City of Dayton, 22 Or LUBA 661, 665, aff'd
7 113 Or App 300, rev den 314 Or 573 (1992).

8 Petitioners rely on the affidavit of petitioner Mike
9 Stevenson to establish the sand filter tanks permit
10 satisfies the significant impact test. That affidavit
11 asserts that past problems with the operation of the
12 existing, decrepit sewage treatment plant have had
13 significant impacts on petitioners' use of their exclusive
14 farm use zoned land for a cattle operation. However, the
15 affidavit does not explain why the installation of the
16 proposed sand filter tanks, or the proposed new sewage
17 treatment system designed to remedy past problems, will have
18 significant impacts on petitioners' use of their land.
19 Petitioners' concerns in this regard appear to be based on
20 apprehension that intervenors will operate the new system
21 improperly or knowingly disregard DEQ limitations.
22 Petitioners fail to demonstrate that significant impacts on
23 their use of land will result from the decision to allow
24 installation of the subject sand filter tanks, as part of
25 the proposed new sewage treatment system.

26 Because the sand filter tanks permit does not satisfy

1 either the significant impact test or statutory test for a
2 land use decision, LUBA No. 94-125 must be dismissed.

3 **C. Land Use Compatibility Statement**

4 **1. Final Decision**

5 A local government's determination of compatibility
6 with its acknowledged comprehensive plan and land use
7 regulations, made as part of a state agency permit approval
8 process, is a "final" decision applying the local
9 government's plan and regulations if (1) the state agency is
10 required, by statute, rule or other legal authority, to
11 assure that the permit is compatible with the local plan and
12 regulations; and (2) the state agency is authorized to rely
13 on the local government's determination of compatibility.
14 Flowers v. Klamath County, 17 Or LUBA 1078, 1083 (1989).
15 Under OAR 660-31-012(2)(b)(B), a NPDES permit is a "Class B"
16 permit. With regard to a Class B permit, OAR 661-31-035(2)
17 states a state agency is entitled to rely on a local
18 government's determination of compatibility with its
19 acknowledged plan and regulations "when the local government
20 makes written findings demonstrating * * * compatibility
21 with the acknowledged [comprehensive] plan in accordance
22 with OAR 660-31-026(2)(b)(B)."¹¹ OAR 660-31-026(2)(b)(B)

¹¹As used in OAR Chapter 660, Division 31, "acknowledged comprehensive plan" means a comprehensive plan and implementing ordinances that the Land Conservation and Development Commission has found to be in compliance with the Statewide Planning Goals pursuant to ORS 197.251. OAR 660-31-010(1). We also note that OAR 340-18-050(2)(a)(B) provides that DEQ "shall rely on

1 provides that such findings "may simply reference the
2 specific plan policies, criteria, or standards which were
3 relied on in rendering the decision and state why the
4 decision is justified based on the plan policies, criteria
5 or standards."

6 Respondents contend the compatibility statement
7 challenged in this appeal does not satisfy the second part
8 of the Flowers test described above, because the county did
9 not make the findings required by OAR 660-31-035(2) and
10 660-31-026(2)(b)(B).¹² According to respondents, the
11 county's compatibility determination is nothing more than a
12 check in a box labeled "[i]s an allowed outright use."
13 Record II 3.

14 The compatibility statement form for the subject NPDES
15 permit modification identifies the "type of business"

an affirmative [local government compatibility statement] as a
determination of compatibility with the acknowledged comprehensive plan
unless otherwise obligated by statute."

¹²Whether respondents contend the compatibility statement fails to
satisfy the first part of the Flowers test is at best unclear. Respondents
merely comment that the compatibility statement "may not even be required
by DEQ." Respondents' Brief 6. To the extent respondents make such a
contention, we note that OAR 660-31-040 provides that renewal of a state
agency permit requires a determination of compatibility with the
acknowledged plan (and implementing ordinances) where the proposed permit
would allow "a substantial modification or intensification of the permitted
activity." As relevant here, under DEQ rules a modification of an NPDES
permit requires such a compatibility statement if the permitted activity
"relates to the use of additional property or a physical expansion on the
existing property" or "involves a significant increase in discharge to
state waters or into the ground." OAR 340-18-050(2)(b)(B). We therefore
conclude the challenged compatibility statement is required by
administrative rule to assure the modified NPDES permit is compatible with
the county plan and regulations, as required by the first part of the
Flowers test.

1 involved as "RV Park" and the facility requiring permit
2 approval as "wastewater treatment facility." Record II 3.
3 Item 9 requires the local government to indicate whether the
4 "business/facility":

5 "A. ___ Is an allowed outright use.

6 "B. ___ Is allowed subject to siting, design,
7 construction or operational standards.

8 "C. ___ Is allowed subject to conditional use or
9 review requirements which require public
10 notice.

11 "D. ___ Is prohibited by the plan.

12 "E. ___ Is not addressed by the plan." Id.

13 Here, the county indicated "A." Id. The subsequent section
14 provides "[i]f A applies, identify or provide duplicate copy
15 of applicable zoning provisions and state specific name of
16 the designated allowed use applied to this
17 business/facility."¹³ Record II 4. In this space, the
18 county entered:

19 "The wastewater treatment facility is incidental
20 to the RV park. The RV park is a 'campground'
21 under LC 16.215(3)(d). Because the property falls
22 within a developed and committed exception area,
23 the campground is a permitted use under
24 LC 16.215(6). * * *" Id.

25 The above statement identifies the LC provisions relied
26 on by the county in determining that the subject

¹³The next section of the DEQ form provides a space for "written findings * * * required for determinations checked under section 9.B, C, D and E." Record II 4. This space is blank.

1 business/facility is an outright allowed use and explains
2 the basis for the county's determination, as required by
3 OAR 660-31-026(2)(b)(B). That the statement is not located
4 in a space on the compatibility statement form that
5 specifically calls for "findings" is of no consequence. We
6 agree with petitioners that the county statements quoted
7 above constitute written findings supporting the county's
8 determination of the proposal's compatibility with the
9 acknowledged county plan and land use regulations.
10 Therefore, the challenged compatibility statement is a final
11 decision under the Flowers test.

12 **2. Statutory Test**

13 Respondents contend that even if the challenged
14 compatibility statement is a final decision concerning the
15 application of the county's land use regulations, it does
16 not satisfy the statutory test for a land use decision
17 because a "determination that the sewage disposal facility
18 is included within the authorization for the RV
19 park/campground expansion does not require interpretation or
20 the exercise of any significant factual, legal or policy
21 judgment." Respondents' Brief 7.

22 Under ORS 197.015(10)(b)(A), "land use decision" does
23 not include a local government decision which "is made under
24 land use standards which do not require interpretation or
25 the exercise of policy or legal judgment." The challenged
26 compatibility statement includes determinations that (1) the

1 RV park to be served by the proposed wastewater treatment
2 facility is a "campground" under LC 16.215(3)(d); and
3 (2) the proposed wastewater treatment facility is incidental
4 to the RV park. Respondents fail to contend the first
5 determination does not require discretion and, in any case,
6 we believe that determining whether a particular RV park is
7 a "campground," as set out in LC 16.215(3)(d), requires
8 interpretation and legal judgment.¹⁴ Additionally, under
9 section B.1 of this opinion, supra, we address whether the
10 LC can be interpreted to allow the proposed wastewater
11 treatment facility as part of, or incidental to, the uses
12 that it serves, or whether it requires the proposed
13 wastewater treatment facility to be regulated as a separate
14 use. That discussion demonstrates that the second
15 determination made in the compatibility statement also
16 requires interpretation and judgment. Consequently, the
17 exception provided by ORS 197.015(10)(b)(A) does not apply.
18 We conclude the challenged compatibility statement
19 satisfies the statutory test for a "land use decision" and,

¹⁴LC 16.215(3)(d) describes the following use:

"Campgrounds for areas devoted to overnight temporary use for vacation, recreational or emergency purposes, but not for residential purposes and not including recreational uses such as swimming pools, tennis courts, retail stores or gas stations. A camping site may be occupied by a tent, travel trailer or recreational vehicle."

1 therefore, is subject to review by this Board.¹⁵ Because we
2 determine the June 1, 1993 planning director letter and the
3 sand filter tanks permit are not land use decisions, we
4 address petitioners' assignments of error below only with
5 regard to the compatibility statement challenged in LUBA No.
6 94-126.

7 **SECOND ASSIGNMENT OF ERROR**

8 LC Chapter 16 is entitled "Lane County Land Use and
9 Development Code." LC 16.008 provides:

10 "Interpretation. When in the administration of
11 this Chapter there is doubt regarding the intent
12 of the Chapter or the suitability of uses not
13 specified, the Director shall request an
14 interpretation of the provision by the Board of
15 County Commissioners. The Board [of County
16 Commissioners] shall issue an interpretation to
17 resolve the doubt, but such interpretation shall
18 not have the effect of amending the provisions of
19 this Chapter. Any interpretation of this Chapter
20 [by the Board of County Commissioners] shall be
21 deemed an administrative action[.]

22 * * * * *

23 "Copies of such interpretations shall be indexed
24 and kept on file in the [Planning] Department and
25 may be reviewed by the public upon request."

26 Petitioners contend that under the above provisions of
27 LC 16.008, the planning director lacks authority to
28 interpret LC Chapter 16. Petitioners argue LC 16.008 makes

¹⁵Because we conclude the compatibility statement satisfies the statutory test, we do not consider whether it also satisfies the significant impact test.

1 referral of a matter to the board of commissioners mandatory
2 when an interpretation of LC Chapter 16 is needed.
3 According to petitioners, they requested such a referral
4 with regard to interpretations concerning whether the
5 proposed wastewater treatment facility is regulated as a
6 separate use under LC Chapter 16 and whether the established
7 RV park and approved expansion of the RV park constitute a
8 "campground" under LC 16.215(3)(d). Record I 7.

9 Petitioners further contend the alleged error is not
10 procedural, but rather a matter of the planning director
11 exceeding his authority. However, even if the alleged error
12 is considered procedural, petitioners argue it prejudiced
13 their substantial right under LC 16.008 to have land use
14 policy made by the county governing body, rather than the
15 planning director.

16 In issuing the challenged compatibility statement, the
17 planning director implicitly interpreted LC Chapter 16 as
18 giving him authority to make the determinations contained
19 therein.¹⁶ Respondents argue that under LC 16.008, the
20 initial determination of whether doubt exists in the
21 administration of LC Chapter 16, requiring a referral to the
22 board of commissioners, rests with the planning director.
23 Respondents further argue that LC 16.008 does not divest the

¹⁶The compatibility statement was signed by a member of the planning department staff. However, LC 16.090 defines "Director" as including "the Director's delegated representative within the Department."

1 planning director of authority to interpret LC Chapter 16 in
2 the course of carrying out the planning director's duties
3 thereunder.

4 As explained, supra, in n 10, a planning director's
5 interpretation of local regulations is not owed the
6 deference a governing body's interpretation of local
7 regulations is afforded under Clark v. Jackson County. Gage
8 v. City of Portland, supra; Watson v. Clackamas County,
9 supra. Rather, we review an interpretation of local
10 regulations by a planning director to determine whether that
11 interpretation is reasonable and correct. McCoy v. Linn
12 County, 90 Or App 271, 752 P2d 323 (1988).

13 Many of the zoning districts set out in LC Chapter 16,
14 including the PR district at issue here, list a number of
15 uses as "Uses Subject to [Planning] Director Approval."
16 These uses are subject to discretionary approval criteria.
17 LC 16.100 incorporates into LC Chapter 16 the procedures set
18 out in LC Chapter 14 (Application Review and Appeal
19 Procedures). These procedures include a process for review
20 of certain development applications by the planning
21 director. LC 14.100. It would be impossible for the
22 planning director to carry out these functions if he could
23 not routinely interpret the provisions of LC Chapter 16. On
24 the other hand, LC 16.008 creates a process whereby the
25 planning director may refer interpretive questions regarding
26 LC Chapter 16 to the board of commissioners, for an

1 interpretation in a process akin to a declaratory ruling.
2 Interpreting these provisions together, LC 16.008 does not
3 divest the planning director of the authority to interpret
4 LC Chapter 16 in carrying out his duties.

5 We agree with respondents that the initial
6 determination of whether there is sufficient doubt regarding
7 the correct interpretation of LC Chapter 16 to warrant
8 referral to the board of commissioners rests with the
9 planning director. The planning director did not exceed his
10 authority by issuing the challenged compatibility statement
11 without a referral to the board of commissioners for an
12 interpretation of relevant provisions of LC Chapter 16.

13 The second assignment of error is denied.

14 **FIRST ASSIGNMENT OF ERROR**

15 **A. RV Park**

16 The compatibility statement determines the "RV Park" is
17 a "campground" under LC 16.215(3)(d). Record II 4. We
18 understand "RV Park" in this context to refer only to the
19 existing RV park facility and the approved additional 148 RV
20 spaces, not other structures (e.g., laundromat, recreation
21 building) that were initially proposed as part of
22 intervenors' special use permit application.

23 The only argument made by petitioners with regard to
24 the existing RV park and the approved additional 148 RV
25 spaces is that the challenged decision fails to establish
26 that the RV park is "devoted to overnight temporary use for

1 vacation, recreational or emergency purposes," as required
2 by LC 16.215(3)(d), rather than prohibited residential uses.
3 Petitioners argue that in their correspondence with the
4 planning director prior to issuance of the compatibility
5 statement, they raised this issue, alleging the existing RV
6 park operates as a residential development and that the
7 local school district has added the RV park to its bus
8 routes.

9 Respondents reply that an RV park is clearly included
10 within the "campgrounds" allowed under LC 16.215(3)(d), as
11 that provision states a "camping site" in a "campground" may
12 be occupied by "a tent, travel trailer or recreational
13 vehicle." According to respondents, the question of whether
14 RV spaces in a "campground" are being used for temporary,
15 recreational purposes or for permanent, residential purposes
16 is an issue for enforcement. Respondents argue that if
17 petitioners believe the disputed RV spaces are being used
18 for residential purposes, they can ask the county to enforce
19 its code provision or pursue a code enforcement action under
20 ORS 197.825(3)(a). We agree with respondents.

21 This subassignment of error is denied.

22 **B. Wastewater Treatment Facility**

23 The compatibility statement determines the proposed
24 wastewater treatment facility requiring modification of
25 intervenors' NPDES permit is incidental to, or part of, the
26 "RV Park." Record II 4. Petitioners argue the proposed

1 wastewater treatment facility is a separate "use" of land
2 subject to regulation under the LC Chapter 16, and cannot be
3 allowed simply as incidental to other uses. We reject this
4 argument for the reasons explained, supra, in our discussion
5 of whether the sand filter tanks permit satisfies the
6 statutory test for a land use decision.

7 This subassignment of error is denied.

8 The first assignment of error is denied.

9 LUBA Nos. 94-108 and 94-125 are dismissed. The county
10 decision challenged in LUBA No. 94-126 is affirmed.