

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

3  
4 DENNIS TYLKA and JOYCE TYLKA,    )  
5    )  
6                    Petitioners,        )  
7    )  
8            vs.                            )  
9    )  
10 CLACKAMAS COUNTY,                    )  
11    )  
12                    Respondent,        )  
13    )  
14            and                            )  
15    )  
16 LINDA WAGNER,                         )  
17    )  
18                    Intervenor-Respondent.        )

LUBA No. 91-080  
  
FINAL OPINION  
AND ORDER

19  
20  
21            Appeal from Clackamas County.

22  
23            John M. Wight, Portland, filed the petition for review  
24 and argued on behalf of petitioners. With him on the brief  
25 was Glasgow & Wight, P.C.

26  
27            Michael E. Judd, Oregon City, filed a response brief  
28 and argued on behalf of respondent.

29  
30            Daniel Kearns, Portland, filed a response brief on  
31 behalf of intervenor-respondent.

32  
33            SHERTON, Referee; KELLINGTON, Chief Referee; HOLSTUN,  
34 Referee, participated in the decision.

35  
36                    REMANDED    10/15/91

37  
38            You are entitled to judicial review of this Order.  
39 Judicial review is governed by the provisions of ORS  
40 197.850.

1 Opinion by Sherton.

2 **NATURE OF THE DECISION**

3 Petitioners appeal a Clackamas County hearings  
4 officer's decision approving a gravel driveway and  
5 recreational vehicle (RV) parking pad in a Principal River  
6 Conservation Area (PRCA).

7 **MOTION TO INTERVENE**

8 Linda Wagner moves to intervene in this appeal on the  
9 side of respondent. There is no objection to the motion,  
10 and it is allowed.

11 **FACTS**

12 The subject property is zoned Recreational Residential  
13 (RR), and lies between a road and the Salmon River. The  
14 subject property includes approximately 17,000 sq. ft. and  
15 is somewhat irregularly shaped, having 140 ft. of frontage  
16 along the road, a property line of approximately 200 ft.  
17 paralleling the river, and a depth of approximately 100 ft.  
18 Record 384. The distance between the property and the river  
19 varies from approximately 10 ft., at the end of the property  
20 where the driveway and RV parking pad are proposed to be  
21 located, to 60 ft.

22 There are no structures on the property. However, in  
23 May 1989, intervenor constructed a gravel driveway and RV  
24 parking pad on the property. The construction included  
25 removal of a stump, brush and alder trees 6 inches or less  
26 in diameter, moving aside boulders and placing 60 cubic

1 yards of crushed rock in the driveway and parking area.  
2 Record 357. The driveway and parking pad are located on the  
3 portion of the subject property which is closest to the  
4 river. The parking pad is approximately 48 ft. by 12 ft. in  
5 size, and ranges from 15 to 30 ft. from the edge of the  
6 river. Record 82.

7 On November 29, 1989, intervenor-respondent  
8 (intervenor) applied to the county planning department for  
9 approval of a gravel driveway and RV parking pad in the PRCA  
10 of the Salmon River. An administrative decision approving  
11 the application was issued, and was appealed by petitioners.  
12 On June 26, 1990, after a public hearing, the hearings  
13 officer issued a decision remanding the application to the  
14 planning director for certain further determinations.<sup>1</sup>

15 After a subsequent decision by the planning  
16 department,<sup>2</sup> petitioners again appealed to the hearings  
17 officer. Record 121-24. On June 10, 1991, after further  
18 public hearings, the hearings officer issued the challenged  
19 decision approving intervenor's application. The decision  
20 imposes conditions requiring the gravel driveway and RV  
21 parking pad to be setback 50 ft. from the vegetation line

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<sup>1</sup>Petitioners also appealed the decision of the hearings officer to this Board. However, that appeal was dismissed because we determined the hearings officer's June 26, 1990 decision was not a final decision on intervenor's application. Tylka v. Clackamas County, \_\_\_ Or LUBA \_\_\_ (LUBA No. 90-099, November 21, 1990).

<sup>2</sup>The second decision by the planning department apparently is not in the local record filed by respondent.

1 along the Salmon River.<sup>3</sup> It also requires that existing  
2 gravel within the 50 ft. setback be removed, and the area  
3 reseeded.

4 **FIRST ASSIGNMENT OF ERROR**

5 "The County improperly construed the applicable  
6 law when it decided that construction of a  
7 driveway and parking pad for use by a [RV] is not  
8 a regulated use in a [RR] zone."

9 **SECOND ASSIGNMENT OF ERROR**

10 "The County improperly construed the applicable  
11 law when it failed to apply the standards for  
12 recreational vehicle camping facilities to a  
13 driveway and parking pad for a [RV]."

14 **THIRTEENTH ASSIGNMENT OF ERROR**

15 "The County made a decision not supported by  
16 substantial evidence in the whole record and  
17 improperly construed the applicable law when it  
18 failed to apply the conditional use standards of  
19 ZDO Section 1203."

20 Clackamas County Zoning and Development Ordinance (ZDO)  
21 305.03, 305.04 and 305.05 list "primary uses," "accessory  
22 uses" and "conditional uses" in the RR zoning district.  
23 "Uses of structures and land not specifically permitted in  
24 [ZDO] 305 are prohibited in all [RR] districts." ZDO  
25 305.06A. "Use" is defined by the ZDO as:

26 "The purpose for which land or a building is  
27 arranged, designed or intended, or for which  
28 either land or a building is or may be occupied."  
29 ZDO 202.

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<sup>3</sup>At this location, the vegetation line is close to the water line of the river. Record 43.

1 The challenged decision provides:

2 "Section 305 of the ZDO controls land use in the  
3 RR zoning district. This application is a request  
4 to gravel an access driveway and parking area on  
5 the subject property, to be utilized for the  
6 intermittent use of a motor home. This use is not  
7 regulated by [ZDO] Section 305. The access drive  
8 and parking area do not constitute a structure,  
9 and the intermittent occupation of a motor home is  
10 not a regulated use.

11 "The Planning Director has previously interpreted  
12 the ZDO to the effect that a self-contained motor  
13 home used for recreational purposes for a short  
14 period of time and removed when not in use is not  
15 a regulated use in the RR zoning district. \* \* \*  
16 In the continuum of possible land use on this  
17 property, ranging from walking across the property  
18 on rare occasions to enjoy the aesthetics  
19 provided, to construction of a permanent  
20 year-around dwelling, a line must be drawn as to  
21 what usage of the land requires zoning approval.  
22 \* \* \* The line drawn by the Planning Director  
23 seems appropriate.

24 "[Intervenor's] proposed use comes within the  
25 interpretation of the Planning Director. The  
26 applicant proposes to locate her motor home on the  
27 property on occasional weekends or for other short  
28 periods of time, and to remove the motor home on  
29 all other occasions. The applicant's proposed use  
30 is recreational in nature." Record 3.

31 Petitioners contend the county mischaracterized  
32 intervenor's application as being merely "to gravel an  
33 access driveway and parking area." Id. Petitioners argue  
34 intervenor actually requests permission to grade and level a  
35 portion of the subject property with heavy equipment, remove  
36 natural vegetation including trees up to 6 inches in  
37 diameter and place fill on a portion of the subject

1 property, all within the Salmon River PRCA and floodplain.  
2 Petitioners contend the term "use," as defined in the ZDO,  
3 is broad enough to include such development of the subject  
4 property.<sup>4</sup> Therefore, according to petitioners, the  
5 proposed use is prohibited if it is not listed as a  
6 permitted, accessory or conditional use in ZDO 305.

7 Petitioners argue the proposed use clearly is not  
8 listed as a permitted or accessory use in the RR zone under  
9 ZDO 305.03 or 305.04. Petitioners note that conditional  
10 uses in the RR zone include "service recreational  
11 facilities" and "campgrounds." ZDO 305.05A.6 and .9.  
12 However, petitioners contend the proposed use is  
13 specifically listed as a conditional use, namely  
14 "recreational vehicle camping areas and facilities," in the  
15 Transition Timber District, General Timber District and  
16 General Timber 40 Acre District. ZDO 403.06B.12,  
17 404.06B.11, 405.06B.13. Petitioners argue that where a use  
18 is expressly permitted in one district and not named in  
19 another, rules of construction mandate an interpretation  
20 that the use is not permitted in the other district. See  
21 Clatsop County v. Morgan, 19 Or App 173, 178-79, 526 P2d

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<sup>4</sup>Petitioners also contend the planning director's previous interpretation of the ZDO, adopted on February 21, 1980 and referred to in the portion of the decision quoted in the text, supra, should not have been relied on by the hearings officer, as the ZDO was not adopted until June 26, 1980, and has been significantly amended since that date. However, we agree with the county that the hearings officer did not simply rely on the prior planning director interpretation, but rather made an independent decision interpreting the relevant ZDO provisions.

1 1393 (1974). Accordingly, petitioners conclude the proposed  
2 use is not permitted in the RR district, and argue the  
3 county's decision must be reversed.

4 In the alternative, petitioners contend that if the  
5 proposed use is allowable in the RR district, it is only  
6 allowable as a conditional use under ZDO 305.05A.6 or .9.  
7 Therefore, petitioners argue, because the county failed to  
8 apply the conditional use approval criteria of ZDO 1203, the  
9 decision must be remanded. Petitioners further argue that  
10 if the proposed use is a potentially allowable conditional  
11 use under ZDO 305.05A.6 or .9, the county erroneously failed  
12 to require compliance with the standards of ZDO 813.01D for  
13 recreational vehicle camping facilities.

14 The ZDO definition of "use" is very broad. We can  
15 agree with the county that some de minimus or transitory  
16 purposes for which land is "arranged, designed[, ] intended  
17 [or] occupied" (e.g., strolling for nature appreciation) do  
18 not come under the regulation of the ZDO. However, we do  
19 not believe the proposed use of the subject property as a  
20 part time site for a motor home, involving grading, tree  
21 removal and deposition of 60 cubic yards of gravel, is  
22 properly included in such an exception.

23 Uses not listed as permitted, accessory or conditional  
24 in the RR zone are prohibited. ZDO 305.06A. No party  
25 contends the proposed use is a permitted or accessory use.  
26 If the proposed use is allowable in the RR zone, it can only

1 be as a conditional use. In their briefs, the parties  
2 dispute whether the proposed use can be considered a  
3 "service recreational facility" or "campground or similar  
4 recreational operation" under ZDO 305.05B.6 or .9, and  
5 whether the standards of ZDO 813.01D for "recreational  
6 vehicle camping facilities" are applicable.

7 It is the county which should interpret its own  
8 ordinances in the first instance. Fifth Avenue Corp. v.  
9 Washington Co., 282 Or 591, 599, 581 P2d 50 (1974). Because  
10 the hearings officer erroneously concluded the proposed use  
11 is not subject to regulation under the ZDO, he did not  
12 interpret or apply ZDO 305.05B.6 and .9, ZDO 813.01D, or the  
13 approval standards for conditional uses found in ZDO 1203.  
14 We must, therefore, remand the challenged decision to the  
15 county, so it can make determinations on whether the  
16 proposed use is a potentially allowable conditional use in  
17 the RR zone and, if so, whether the proposed use complies  
18 with ZDO 1203 and, if applicable, the standards of ZDO  
19 813.01D. See Mental Health Division v. Lake County, 17  
20 Or LUBA 1165, 1176 (1989).

21 The first, second and thirteenth assignments of error  
22 are sustained, in part.

23 **THIRD ASSIGNMENT OF ERROR**

24 "The County improperly construed the applicable  
25 [law] when it failed to apply the standards of  
26 development of [ZDO] 704.03 to a RV parking pad as  
27 required by [ZDO] 704.03D."

1 ZDO 704.03D imposes the following standard on  
2 development in PRCA's:

3 "Commercial or industrial structures, parking and  
4 storage areas and signs shall be screened from  
5 view of the river by an appropriate vegetative  
6 buffer and shall meet the siting requirements of  
7 [ZDO] 704.03A."

8 Petitioners point out the challenged decision describes  
9 the proposed use as "an access driveway and parking area."  
10 (Emphasis added.) Record 3. According to petitioners,  
11 because the proposed use includes a parking area, ZDO  
12 704.03D is applicable, and the county erred by not requiring  
13 compliance with ZDO 704.03D and the siting requirements of  
14 ZDO 704.03A.

15 The challenged decision states that ZDO 704.03D is not  
16 applicable because "[n]o commercial or industrial use is  
17 proposed." Record 6. The county argues the adjective  
18 phrase "commercial or industrial" modifies "structures,  
19 parking and storage areas and signs" and therefore, because  
20 the proposed parking area is not commercial or industrial in  
21 nature, it is not subject to ZDO 704.03D. We agree with the  
22 county's interpretation.

23 The third assignment of error is denied.

24 **FOURTH ASSIGNMENT OF ERROR**

25 "The County made a decision not supported by  
26 substantial evidence in the whole record and  
27 improperly construed the applicable law by failing  
28 to make a finding that the applicant's proposed  
29 location for a driveway and RV parking pad would  
30 maintain the Salmon River in its natural state to

1 the maximum extent practicable and preserve the  
2 scenic quality and recreational potentials of the  
3 river."

4 ZDO 704.01 ("Purpose") lists the purposes of the ZDO's  
5 PRCA provisions. These purposes include, as relevant:

6 "A. To maintain the integrity of the rivers in  
7 Clackamas County by \* \* \* preserving scenic  
8 quality and recreational potentials;

9 "B. To maintain rivers in their natural state to  
10 the maximum extent practicable, thereby  
11 recognizing their natural, scenic, historic,  
12 economic, cultural and recreational qualities  
13 \* \* \*

14 "\* \* \* \* \*."

15 Petitioners argue:

16 "In order to comply with [ZDO] Section 704,  
17 [intervenor] must show and there must be a finding  
18 that [intervenor's] proposed development and use  
19 will maintain the Salmon River in its natural  
20 state to the maximum extent practicable in light  
21 of its natural, scenic, historic, economic,  
22 cultural and recreational qualities. There is no  
23 such finding and there is no evidence in the  
24 record to support such a finding." (Emphasis in  
25 original.) Petition for Review 13.

26 The county argues that it is clear from the general and  
27 aspirational nature of the purpose statements in ZDO 704.01  
28 that they are not intended to be approval criteria for  
29 individual land use decisions in a PRCA. According to the  
30 county, the approval criteria for such decisions are set out  
31 in ZDO 704.03 through 704.05.

32 Whether the provisions of a zoning ordinance "purpose"  
33 section are approval criteria for individual land use

1 decisions depends on the wording of the specific provisions  
2 and their context. Randall v. Washington County, 17 Or LUBA  
3 1202, 1207 (1989); see Standard Insurance Co. v. Washington  
4 County, 16 Or LUBA 30, 34 (1987). Here, we agree with the  
5 county that the provisions of the PRCA purpose section  
6 quoted above are descriptive and aspirational in nature.  
7 There is no indication in their wording or context that they  
8 are intended to apply to individual decisions made under the  
9 development standards set out in ZDO 704.03 through 704.05.  
10 Further, no other provision of ZDO section 704 requires that  
11 compliance with the purpose statements in ZDO 704.01 be  
12 demonstrated. We conclude the county did not err by failing  
13 to address ZDO 704.01.

14 The fourth assignment of error is denied.

15 **SEVENTH ASSIGNMENT OF ERROR**

16 "The County exceeded its jurisdiction, made a  
17 decision not supported by substantial evidence in  
18 the whole record and failed to make findings by  
19 not requiring [intervenor] to submit a site plan  
20 as required by [ZDO] 704.06B.1."

21 ZDO 704.06B provides in relevant part:

22 "Development or tree-cutting activity [in a PRCA]  
23 shall be reviewed pursuant to a building or  
24 grading permit submitted to the Planning Division.  
25 The permit application shall be accompanied by  
26 such materials as are reasonably necessary for  
27 adequate review. Examples of such materials  
28 include:

29 "1. A site plan showing existing vegetation and  
30 development, and locations of proposed  
31 development or tree-cutting activity[.]

1           "\* \* \* \* \*" (Emphasis added.)

2           Petitioners argue that ZDO 704.06B.1 requires  
3 intervenor to submit a site plan showing existing vegetation  
4 and the location of proposed development and tree-cutting as  
5 part of her application. According to petitioners, because  
6 intervenor did not submit such a site plan, and the  
7 challenged decision does not find compliance with ZDO  
8 704.06B.1, the decision must be reversed or remanded.

9           The above emphasized provisions of ZDO 704.06B require  
10 that an applicant for development in a PRCA submit "such  
11 materials as are reasonably necessary for adequate review"  
12 of the application. ZDO 704.06B does not impose an absolute  
13 requirement that a site plan as described in ZDO 704.06B.1  
14 be submitted with an application, but rather lists such a  
15 site plan as an example of the type of information which can  
16 satisfy the requirement of ZDO 704.06B. Petitioners do not  
17 contend the information submitted by intervenor was  
18 insufficient to allow for adequate review of intervenor's  
19 application. In the absence of such a contention,  
20 petitioners' argument does not provide a basis for  
21 concluding ZDO 704.06B is violated.

22           The seventh assignment of error is denied.

23           **FIFTH ASSIGNMENT OF ERROR**

24           "The County made a decision not supported by  
25 substantial evidence in the whole record, failed  
26 to make findings and improperly construed  
27 applicable law by finding that a 50 [ft.] buffer  
28 strip would be adequate to meet the requirements

1 of [ZDO] 704.05."

2 Subsection A of ZDO 704.05 ("Vegetation Preservation  
3 Requirements") imposes the following requirement in a PRCA:

4 "A buffer or filter strip of existing vegetation  
5 shall be preserved along all river banks. The  
6 depth of this buffer strip need not exceed 150  
7 feet, and shall be determined by evaluation of the  
8 following:

9 "1. The character and size of the proposed  
10 development and its potential for adverse  
11 impact on the river;

12 "2. The width of the river;

13 "3. The topography of the area;

14 "4. The type and stability of the soils; and

15 "5. The type and density of the existing  
16 vegetation."

17 Petitioners argue the decision relies on a county  
18 planner's report in finding a 50 ft. buffer complies with  
19 ZDO 704.05A. Record 6, 81-83. Petitioners contend the  
20 planner's report is inadequate to support the decision  
21 because, although it does mention the five factors set out  
22 in ZDO 704.05A.1 through .5, it does not explain why  
23 evaluation of those factors leads to the conclusion that 50  
24 ft. is an adequate buffer, as opposed to 10 ft. or 100 ft.  
25 Petitioners further argue the planner's report is not  
26 substantial evidence because oral testimony by the planner  
27 indicates that when he prepared the report, he was under a  
28 mistaken impression that it had previously been determined  
29 the subject property is not deep enough to allow the county

1 to require more than a 50 ft. buffer. Record 72-73  
2 (corrected). Finally, petitioners argue both the findings  
3 and the planner's report improperly rely on the fact that  
4 existing adjacent residences maintain a 50 ft. vegetative  
5 buffer. According to petitioners, under ZDO 704.05A,  
6 adjacent development is not a factor relevant to determining  
7 the width of the required buffer.

8 The county agrees the challenged decision relies on the  
9 planner's report in determining a 50 ft. buffer is  
10 appropriate under ZDO 704.05A. However, the county argues  
11 this report is expert opinion and, therefore, is substantial  
12 evidence supporting the decision, particularly as there is  
13 no opposing evidence in the record.

14 The challenged decision states:

15 "[The planner's report] discusses each of the  
16 factors of [ZDO 704.05A]. His determination is  
17 that the buffer depth requirement is the same as  
18 the river corridor, 50 feet.<sup>[5]</sup> No substantial  
19 evidence disputes the factual bases of [the  
20 planner's] analysis. Further, no persuasive  
21 evidence exists in this record to demonstrate that  
22 the analysis is incorrect. The Hearings Officer  
23 accepts that analysis as correct. The Hearings  
24 Officer also notes that the 50-foot buffer is  
25 consistent with the adjoining developed property  
26 upstream, and far exceeds that of developed  
27 properties across the river in the area of the  
28 subject property." (Emphasis added.) Record 6.

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<sup>5</sup>The planner's report determines both the "stream corridor area," as that term is defined in ZDO 202 and identified pursuant to ZDO 1002.05B, and the buffer strip required by ZDO 704.05A, should extend inland 50 ft. from the water's edge Record 82, 83.

1 With regard to the findings, we agree with petitioners  
2 that the location of development on adjacent properties is  
3 not, in itself, a factor relevant to determining the buffer  
4 depth required by ZDO 704.05A. However, fairly read, the  
5 above quoted findings state the hearings officer's  
6 determination that a buffer of 50 ft. is required by ZDO  
7 704.05A is based solely on the planner's report. The  
8 sentence in the findings emphasized above states only that  
9 the hearings officer "also notes" the buffers of existing  
10 development in the area. It is merely surplussage.

11 We next turn to petitioners' substantial evidence  
12 challenge. The parties agree the decision relies on the  
13 facts and reasoning of the planner's report. No party cites  
14 any evidence in the record relevant to compliance with ZDO  
15 704.05A other than the planner's report. We therefore must  
16 determine whether the planner's report constitutes  
17 substantial evidence in support of the county's decision.

18 The planner's report addresses the five factors of  
19 ZDO 704.05A with regard to the subject property. Record 83.  
20 However, the planner's report does not state these factors  
21 lead to a conclusion that under ZDO 704.05A, a 50 ft.  
22 vegetation preservation buffer is warranted. Rather, the  
23 report states that the already constructed RV parking area  
24 conflicts with the vegetation preservation requirement of  
25 ZDO 704.05A because (1) it is within a 50 ft. setback  
26 required by ZDO 1002.05B to protect water quality, and

1 (2) adjacent properties have maintained a 50 foot buffer of  
2 native vegetation. Record 83. Furthermore, the planner's  
3 March 20, 1991 oral testimony indicates that at the time he  
4 conducted his investigation, he was under a misconception  
5 that the hearings officer's June 26, 1990 decision (which  
6 remanded the matter to the planning department) had  
7 determined that development on the subject property could  
8 not be required to be set back as far as 100 ft. from the  
9 river. Record 72-73 (corrected).

10 Substantial evidence is evidence a reasonable person  
11 would rely upon in reaching a decision. City of Portland v.  
12 Bureau of Labor and Ind., 298 Or 104, 119, 690 P2d 475  
13 (1984); Douglas v. Multnomah County, 18 Or LUBA 607, 617  
14 (1990). While the planner's report addresses the five  
15 factors of ZDO 704.05A, it does not constitute evidence that  
16 consideration of these facts would lead a reasonable person  
17 to conclude that under ZDO 704.05A, a 50 ft. vegetation  
18 preservation buffer should be required on the subject  
19 property. The only two reasons given by the planner's  
20 report for requiring a 50 ft. vegetation preservation  
21 buffer, that a 50 ft. setback for water quality protection  
22 should be required under ZDO 1002.05B,<sup>6</sup> and that adjacent  
23 properties have a 50 ft. buffer, are not relevant to ZDO

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<sup>6</sup>We also note that under the eighth through twelfth assignments of error, infra, we agree with the county that the setback requirement of ZDO 1002.05B, and other development standards of ZDO section 1000, do not apply to the proposed use.

1 704.05A. Further, we agree with petitioners that the  
2 planner's oral testimony indicates he may have erroneously  
3 believed he could not recommend more than a 50 ft.  
4 vegetation preservation setback and, therefore, detracts  
5 from the credibility of his report.

6 The fifth assignment of error is sustained.

7 **SIXTH ASSIGNMENT OF ERROR**

8 "The County made a decision not supported by  
9 substantial evidence in the whole record, failed  
10 to make findings and improperly construed the  
11 applicable law when it failed to require  
12 [intervenor] to obtain a conditional use permit  
13 for filling, grading, excavation or clearing of  
14 vegetation in a stream corridor area as required  
15 by [ZDO] 305.05A.12."

16 ZDO 305.05A.12 lists the following as a conditional use  
17 in the RR district:

18 "Any of the following activities: filling,  
19 grading, excavating, or clearing of vegetation  
20 \* \* \* in stream corridor areas, as defined in  
21 [ZDO] 202[.]"

22 ZDO 202 provides that a "stream corridor area" includes "the  
23 streambed and a required strip or buffer of land on each  
24 side of the streambed necessary to maintain streamside  
25 amenities and existing water quality." ZDO 202 further  
26 states the width of a stream corridor area "varies with site  
27 conditions and shall be determined by on-the-ground  
28 investigation, as provided under [ZDO] 1002.05B."

29 The challenged decision concludes that pursuant to  
30 ZDO 1002.05B, "the stream corridor of the Salmon River at

1 the subject property includes the stream bed and a 50-foot  
2 buffer of natural vegetation." Record 4. The decision also  
3 states that intervenor's modified proposal is to locate the  
4 proposed access drive and RV parking pad entirely outside  
5 this stream corridor area and, therefore, does not require a  
6 conditional use permit under ZDO 305.05A.12. Id. The  
7 decision also imposes the following relevant conditions:

8 "1. The gravel driveway and [RV] parking pad  
9 shall have at least a 50-foot setback from  
10 the vegetation line along the property  
11 frontage with the Salmon River.

12 "2. The existing gravel within this 50-foot  
13 setback shall be removed, and the area within  
14 this setback shall be reseeded. Natural  
15 vegetation typical to this site shall be  
16 allowed to reestablish itself within this  
17 setback area \* \* \*.

18 "3. All tree cutting and grading within the  
19 50-foot setback is prohibited, except  
20 diseased trees or trees in danger of falling  
21 may be removed.

22 "\* \* \* \* \*" Record 8.

23 Petitioners argue that even if the county's  
24 determination that only 50 ft. of land outside the river bed  
25 is included in the "stream corridor area" at the subject  
26 site is correct, intervenor has admittedly removed  
27 vegetation, graded and filled within this area. Therefore,  
28 according to petitioners, the county erred by not requiring  
29 that intervenor obtain a conditional use permit for filling,  
30 grading and clearing of vegetation in a stream corridor area  
31 under ZDO 305.05A.12.

1           The county argues the modified application before the  
2 hearings officer proposes to locate the driveway and RV  
3 parking pad entirely outside the 50 ft. stream corridor  
4 area.     Therefore, according to the county, it has no  
5 authority or obligation to act concerning any existing  
6 development within the stream corridor area.     The county  
7 contends, however, that such existing development could be  
8 the subject of a separate enforcement action.

9           Intervenor's original proposal was to place a gravel  
10 driveway and RV parking pad within the stream corridor area,  
11 where intervenor had already constructed such a driveway and  
12 RV parking pad.     When intervenor learned the county would  
13 require a 50 ft. buffer or setback from the river,  
14 intervenor modified her proposal to relocate the driveway  
15 and RV parking pad to place them outside the stream corridor  
16 area.     However, the portion of the stream corridor area  
17 where intervenor has already constructed a driveway and RV  
18 parking pad is part of the property which is the subject of  
19 this application, and the existing development thereon is  
20 integrally related to intervenor's approved proposal.     We  
21 therefore disagree with the county's position that the  
22 hearings officer had no authority over that existing  
23 development within the stream corridor area.

24           The challenged decision does impose conditions  
25 requiring the existing development within the stream  
26 corridor area to be removed, to the extent of removing any

1 gravel and "reseeding" the area. However, the challenged  
2 decision does not specifically require that the stream  
3 corridor area be restored as closely as possible to its  
4 original state. For instance, it does not require that the  
5 area within the stream corridor area be returned to its  
6 original grade, or that the area be replanted with native  
7 vegetation.

8 This decision must be remanded to the county in any  
9 case, for the reasons stated supra. If, in a subsequent  
10 decision on the subject application, the county chooses not  
11 to require the stream corridor area affected by the existing  
12 unauthorized development to be restored to its original  
13 state, the county must approve a conditional use permit for  
14 any filling, grading or vegetation clearing which its  
15 decision allows to remain in effect in the stream corridor  
16 area.

17 The sixth assignment of error is sustained, in part.

18 **EIGHTH THROUGH TWELFTH ASSIGNMENTS OF ERROR**

19 Under these assignments of error, petitioners argue the  
20 county erred by failing to apply various development  
21 standards found in ZDO section 1000<sup>7</sup> to the subject  
22 application.

23 Subsection A of ZDO 1001.02 ("Application of These  
24 Standards") provides:

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<sup>7</sup>Under the numbering system used in the ZDO, section 1000 ("Development Standards") includes ZDO 1001 through 1015.

1           "The standards set forth in [ZDO] Section 1000  
2           shall apply to major and minor partitions;  
3           subdivisions; commercial and industrial projects;  
4           multi-family and common-wall structures of three  
5           (3) or more dwellings. Single-family detached  
6           residences and two-family common wall structures  
7           shall be subject to [certain listed development  
8           standards in ZDO section 1000.]"

9           The county states in the challenged decision, and argues in  
10          its brief, that the proposed development is not one  
11          identified by ZDO 1002.02A as subject to the development  
12          standards of ZDO section 1000.

13          Petitioners argue that if the county's interpretation  
14          of ZDO 1001.02A is correct, none of the development  
15          standards of ZDO section 1000 are applicable to a  
16          development which is not a partition, subdivision,  
17          commercial or industrial project, multi-family residence or  
18          single family dwelling. Petitioners contend such an  
19          interpretation would unreasonably exclude uses such as  
20          churches, schools, day care centers and public facilities  
21          from application of the development standards of ZDO  
22          section 1000. According to petitioners, it is inconceivable  
23          that the county did not intend, e.g., for ZDO 1003 ("Hazards  
24          to Safety") or 1004 ("Historic Protection") to apply to the  
25          approval of a school or church.

26          The language of ZDO 1001.02A is clear and unambiguous.  
27          Petitioners point to no other provisions in ZDO 1001 to 1015  
28          which conflict with this clear statement of the  
29          applicability of ZDO section 1000.           The development

1 standards of ZDO section 1000 apply only to major and minor  
2 partitions, subdivisions, commercial and industrial  
3 projects, multi-family residences and, with regard to  
4 certain development standards, single-family detached  
5 residences and two-family common wall structures. The  
6 proposed development fits none of these categories and,  
7 therefore, the county correctly declined to apply ZDO  
8 section 1000 development standards in making the challenged  
9 decision.

10 The eighth through twelfth assignments of error are  
11 denied.

12 The county's decision is remanded.