

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

3  
4 FRANKTON NEIGHBORHOOD ASSOCIATION,) )  
5 JOSEPH VITAL and JEANNETTE VITAL,    )  
6    )  
7                           Petitioners,    )  
8    )  
9           vs.    )  
10    )  
11 HOOD RIVER COUNTY,    )  
12    )  
13                           Respondent,    )  
14    )  
15           and    )  
16    )  
17 HOUSING FOR PEOPLE (HOPE),    )  
18    )  
19                           Intervenor-Respondent.                                    )

LUBA No. 93-021  
FINAL OPINION  
AND ORDER

20  
21  
22           Appeal from Hood River County.

23  
24           Stuart K. Cohen, Portland, filed the petition for  
25 review and argued on behalf of petitioners. With him on the  
26 brief were Cohen & Wu.

27  
28           Wilford K. Carey, Hood River, filed a response brief  
29 and argued on behalf of respondent. With him on the brief  
30 was Annala, Carey & Vankoten.

31  
32           David Thornburgh, Portland, filed a response brief and  
33 argued on behalf of intervenor-respondent. With him on the  
34 brief was Oregon Legal Services Corp.

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

38  
39                           AFFIRMED   05/28/93

40  
41           You are entitled to judicial review of this Order.  
42 Judicial review is governed by the provisions of ORS  
43 197.850.

1 Opinion by Sherton.

2 **NATURE OF THE DECISION**

3 Petitioners appeal a county decision approving a  
4 conditional use permit for a mobile home park.

5 **MOTION TO INTERVENE**

6 Housing for People (HOPE), the applicant below, moves  
7 to intervene in this proceeding on the side of respondent.  
8 There is no opposition, and the motion is allowed.

9 **FACTS**

10 The subject parcel is 6.31 acres in size and is located  
11 within the urban growth boundary (UGB) of the City of Hood  
12 River (city). Both the subject and adjacent properties are  
13 designated and zoned Medium Density Residential (R1-7000).  
14 The subject parcel slopes moderately from south to north. A  
15 tributary of Phelps Creek runs through the parcel.

16 Intervenor proposes a 40-unit mobile home park,  
17 including spaces for 15 single wide mobile homes and 25  
18 double wide mobile homes. The proposal also includes a  
19 recreation/play area to be used by the residents of the  
20 mobile home park. Sewer and water service will be provided  
21 by the Frankton Sewer Local Improvement District and the Ice  
22 Fountain Water District, respectively. Access to the  
23 proposed mobile home park will be from Frankton Road, a  
24 collector street adjoining the subject parcel to the north.

25 **FIRST, SECOND, FOURTH (PART C) AND FIFTH (PARTS C AND D)**  
26 **ASSIGNMENTS OF ERROR**

27 In these assignments of error, petitioners contend that

1 with regard to the issues of access, storm drainage,  
2 wetlands, feasibility and amendments to the master plan, the  
3 challenged decision variously violates approval standards,  
4 lacks adequate findings, is not supported by substantial  
5 evidence or improperly delegates discretionary decision  
6 making. We address each issue separately.

7 **A. Access**

8 Petitioners contend the challenged decision fails to  
9 find that access to the site is feasible. Petitioners  
10 further contend the decision is not supported by substantial  
11 evidence that safe access will be provided to the subject  
12 site. Petitioners also argue that a condition of approval  
13 imposed by the board of county commissioners improperly  
14 delegates the task of resolving access problems to the  
15 county public works department and the city engineer. That  
16 condition states:

17 "The Planning Commission has concerns over access  
18 as shown on the schematic diagram. Review and  
19 approval of improvement plans, including driveway  
20 access shall be received from County Public Works  
21 and the City Engineer. The final development plan  
22 shall be signed by the City Engineer. The  
23 improvement plans will be implemented." Record 5.

24 This Board can grant relief only if petitioners  
25 demonstrate that an applicable legal standard is violated by  
26 the challenged decision. Schellenberg v. Polk County, 22  
27 Or LUBA 673, 679 (1992); Weist v. Jackson County, 18 Or LUBA  
28 627, 641 (1990); Lane School District 71 v. Lane County, 15  
29 Or LUBA 150, 153 (1986). The only applicable approval

1 standard relating to access identified by petitioners is  
2 Hood River County Zoning Ordinance (HRCZO) 16.15.F.6, which  
3 requires that mobile home parks have "[d]irect access to a  
4 collector or arterial street."<sup>1</sup> The challenged decision  
5 includes the following finding addressing HRCZO 16.15.F.6:

6 "Access -- Direct access to a collector or  
7 arterial street is required. Access to the  
8 proposed site would include a driveway to Frankton  
9 Road, a collector." Record 234.<sup>2</sup>

10 The above quoted finding is adequate to demonstrate  
11 compliance with HRCZO 16.15.F.6 and is supported by  
12 substantial evidence in the record. In addition, the  
13 condition of approval challenged by petitioners does not  
14 delegate or defer any determination required by  
15 HRCZO 16.15.F.6. Rather, it addresses the future review and  
16 approval of a driveway access permit for the proposed mobile  
17 home park.

18 This subassignment of error is denied.

19 **B. Storm Drainage**

20 Petitioners contend a county finding that "a storm  
21 drainage plan is feasible [for] the property" is not  
22 supported by substantial evidence in the record. Record 4.

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<sup>1</sup>As is explained in more detail under the third assignment of error, infra, HRCZO 60.10.D.7 requires the county to "consider" access, but does not establish an approval standard concerning adequacy of access.

<sup>2</sup>The board of commissioners' order approving the subject conditional use permit application incorporates by reference the findings of fact and conclusions of law contained in two county planning commission decisions and three planning staff reports. Record 4.

1 Petitioners also argue that a condition of approval  
2 improperly delegates approval of a storm drainage plan for  
3 the proposed mobile home park to the county public works  
4 department and city engineer.

5 That a particular finding is not supported by  
6 substantial evidence provides a basis for remanding a  
7 challenged decision only if that finding is critical to  
8 demonstrating compliance with an applicable approval  
9 standard. Terra v. City of Newport, \_\_\_ Or LUBA \_\_\_ (LUBA  
10 No. 92-068, January 22, 1993), slip op 5; Cann v. City of  
11 Portland, 14 Or LUBA 254, 257, aff'd 80 Or App 246 (1986).  
12 Petitioners identify no applicable approval standard  
13 requiring a storm drainage plan for the proposed  
14 development. Consequently, the finding challenged by  
15 petitioners is surplusage. Also, the condition of approval  
16 does not delegate any decision required by an approval  
17 standard applicable to the subject conditional use permit  
18 application.

19 This subassignment of error is denied.

20 **C. Wetlands**

21 Petitioners argue that under Stephens v. Clackamas  
22 County, 8 Or LUBA 172 (1983), the county's findings fail to  
23 adequately address the issue of whether there are wetlands

1 located on the subject property.<sup>3</sup> Petitioners argue there  
2 are wetlands on the subject parcel, and contend the county's  
3 findings to the contrary are not supported by substantial  
4 evidence in the record.

5 Petitioners also contend the county failed to analyze  
6 the economic, social, environmental and energy (ESEE)  
7 impacts of the proposed development on the wetlands located  
8 on the subject property, as required by Columbia Steel  
9 Castings Co. v. City of Portland, 314 Or 422, 799 P2d 1142  
10 (1992), and to demonstrate the proposed development will not  
11 have adverse impacts on the wetlands. Petitioners further  
12 contend the challenged decision violates Hood River County  
13 Comprehensive Plan (plan) Goal 5(G)(4)(c)(5), which  
14 prohibits development on wetlands that are saturated for a  
15 period exceeding four months per year.<sup>4</sup> Finally,  
16 petitioners contend an approval condition requiring  
17 "[c]ompliance with Division of State Lands [(DSL)] Wetlands  
18 requirements, if applicable" improperly delegates the  
19 resolution of issues concerning wetlands to DSL. Record 5.

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<sup>3</sup>Petitioners' additional argument that the challenged decision does not sufficiently address "natural resources," as required by HRCZO 60.10.D.8, is addressed under the third assignment of error, infra.

<sup>4</sup>Petitioners also assert the county failed to comply with plan Goal 5(G) with regard to addressing the creek on the subject property. Petition for Review 11. Plan Goal 5(G) occupies seven pages and includes a total of 49 goals, policies, strategies and land use standards. Petitioners' argument is not sufficiently developed to allow review. Deschutes Development Co. v. Deschutes County, 5 Or LUBA 218, 220 (1982).

1           We first consider whether petitioners identify any  
2 approval standards concerning wetlands that are applicable  
3 to the challenged decision. In Columbia Steel Castings Co.  
4 v. City of Portland, supra, the court reviewed an amendment  
5 to the city's comprehensive plan. The requirement discussed  
6 in that opinion for an ESEE consequences analysis with  
7 regard to conflicting uses for areas such as wetlands, stems  
8 from Statewide Planning Goal 5 (Open Space, Scenic and  
9 Historic Areas, and Natural Resources). The county's  
10 comprehensive plan and land use regulations have been  
11 acknowledged by the Land Conservation and Development  
12 Commission (LCDC) under ORS 197.251. Consequently, the  
13 acknowledged county plan and land use regulations, not the  
14 statewide planning goals, govern permit decisions such as  
15 the one at issue here.<sup>5</sup> ORS 197.175(2)(d); Byrd v.  
16 Stringer, 295 Or 311, 316-17, 666 P2d 1332 (1983); O'Mara v.  
17 Douglas County, \_\_\_ Or LUBA \_\_\_ (LUBA No. 92-166, March 10,  
18 1993), slip op 7.

19           Plan Goal 5(G)(4) is entitled "Land Use Designations  
20 and Standards." Paragraph (c) provides, in relevant part:

21           "If specific wetlands are identified in the future  
22 inventorying processes the following general  
23 standards shall be reviewed and applied and, if  
24 deemed necessary, ordinances shall be developed to

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<sup>5</sup>In addition, our decision with regard to the adequacy of findings concerning the existence of wetlands in Stephens v. Clackamas County, supra, was based solely on the specific requirements of the Clackamas County code and is not applicable in this case.

1 include these standards.

2 \* \* \* \* \*

3 "(5) No development will occur on lands saturated  
4 for a period exceeding four months per year,  
5 such as marshlands, swamps, bogs, and other  
6 wetlands.

7 \* \* \* \* \* (Emphasis added.)

8 The other standards of plan Goal 5(G)(4)(c) set out the  
9 public objectives of a regulatory program designed to  
10 protect wetlands, list activities considered compatible or  
11 incompatible with wetlands, express policy towards public  
12 acquisition and management of wetlands and state that  
13 additional tax relief incentives for maintenance of wetlands  
14 are needed.

15 The challenged decision addresses plan  
16 Goal 5(G)(4)(c)(5) as follows:

17 "This item is not applicable. No wetland has been  
18 identified \* \* \*. Furthermore, Goal 5 of the Hood  
19 River County Comprehensive Plan includes an  
20 inventory of Goal 5 resources which was  
21 acknowledged by LCDC. The [plan] does not  
22 identify a wetland or any other Goal 5 resource on  
23 the subject parcel. Therefore there is no reason  
24 to apply an ESEE [consequences analysis]."  
25 Record 20-21.

26 We agree with the county that the above findings constitute  
27 an interpretation that plan Goal 5(G)(4)(c)(5) is  
28 inapplicable to a permit decision if the subject property  
29 contains no wetlands identified on the county's acknowledged  
30 plan inventory of Goal 5 resources.

31 We are required to defer to a local government's



1 interpretation of its plan so long as the proffered  
2 interpretation is not "clearly contrary to the enacted  
3 language," or "inconsistent with express language of the  
4 [plan] or its apparent purpose or policy." Clark v. Jackson  
5 County, 313 Or 508, 515, 836 P2d 710 (1992). Because plan  
6 Goal 5(G)(4)(c) specifically refers to wetlands identified  
7 in "future inventorying processes" (e.g., in periodic plan  
8 updates), it is reasonable for the county to interpret plan  
9 Goal 5(G)(4)(c)(5) as inapplicable to individual permit  
10 decisions where there are no wetlands identified on the  
11 county's acknowledged inventory. Here, there is no dispute  
12 that no wetlands on the subject property are identified on  
13 the plan inventory.

14 In conclusion, petitioners identify no standard  
15 concerning wetlands that applies to the challenged decision.  
16 However, one additional point merits comment. Although  
17 there are no approval standards concerning wetlands  
18 applicable to the challenged county decision, it is  
19 certainly possible that the DSL may have adopted standards  
20 concerning wetlands that are applicable to the subject  
21 property. The approval condition challenged by petitioners  
22 simply requires compliance with any such DSL requirements.  
23 It does not defer the making of any decision or  
24 determination that is required of the county.

25 This subassignment of error is denied.

1           **D.    Feasibility**

2           Petitioners contend there is no finding in the  
3 challenged decision that the proposed development is  
4 feasible and there is inadequate evidence in the record to  
5 demonstrate the proposed development is feasible. However,  
6 petitioners identify no applicable standard requiring a  
7 determination that the proposed development is "feasible."<sup>6</sup>  
8 Accordingly, we do not consider this issue further.

9           This subassignment of error is denied.

10           **E.    Amendments to Master Plan**

11           Approval condition A provides:

12           "Approval is for a 40 space mobile home park, as  
13 shown on the submitted Master Plan dated March 4,  
14 1992. Any changes to the plan will require review  
15 and approval by the Planning Department."  
16 (Emphasis added.) Record 5.

17           Petitioners contend the above emphasized portion of  
18 approval condition A, allowing the planning department to  
19 approve amendments to the master plan without a hearing, is  
20 inconsistent with the following provision of HRCZO 60.14  
21 (Conditions of Approval):

22           "The following limitations shall be applicable to  
23 conditional approval:

24           "\* \* \* \* \*

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<sup>6</sup>The only citation to any standard in this section of the petition for review is to HRCZO "Section 60." Petition for Review 25. HRCZO Article 60 (Administrative Procedures) occupies some eight pages and contains 20 individual sections. If petitioners intend to argue that some provision in HRCZO Article 60 requires a determination that the proposed development is feasible, that argument is not sufficiently developed to allow review.

1 "C. Changes or alterations of conditions shall be  
2 processed as a new administrative action.

3 "\* \* \* \* \*"

4 The county agrees with petitioners that under  
5 HRCZO 60.14.C, any amendment to the approved mobile home  
6 park master plan must be processed as a new administrative  
7 action.<sup>7</sup> Under HRCZO 60.02, the planning director reviews  
8 and makes decisions concerning applications for  
9 administrative actions, including conditional use permits,  
10 pursuant to HRCZO Article 72 (Planning Director's Review  
11 Procedure). Notice of the application for an administrative  
12 action must be mailed to owners of property within 250 ft.  
13 of the subject property and to affected state and federal  
14 agencies and local governments. HRCZO 72.20. Notice of the  
15 planning director's decision must be mailed to all parties.  
16 HRCZO 72.35. The planning director's decision may be  
17 appealed to the planning commission, in which case a public  
18 hearing must be held. HRCZO 72.40, 60.04.

19 We see nothing inconsistent between approval  
20 condition A and the HRCZO provisions governing review of  
21 administrative actions. Approval condition A simply states  
22 that an amendment to the approved master plan must be  
23 reviewed and approved by the planning department, as is

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<sup>7</sup>We note that although HRCZO 16.15.F.1 requires a master plan for a mobile home park, HRCZO 16.15 (Mobile Home Parks) contains no provisions regarding amendments to such master plans after the mobile home park is approved.

1 required by HRCZO 60.02 and 60.14.C in any case. Approval  
2 condition A does not eliminate the right to appeal such a  
3 decision by the planning director to the planning commission  
4 pursuant to HRCZO 72.40.

5 This subassignment of error is denied.

6 The first, second, fourth (Part C) and fifth (Parts C  
7 and D) assignments of error are denied.

8 **THIRD ASSIGNMENT OF ERROR**

9 **A. HRCZO 60.10.D**

10 Petitioners contend the county's findings are  
11 inadequate to comply with certain provisions of  
12 HRCZO 60.10.D. HRCZO 60.10.D provides, in relevant part:

13 "[C]onsideration will be given to the following  
14 factors:

15 "\* \* \* \* \*

16 "2. The suitability of the subject area for the  
17 type of development in question.

18 "3. Trends in land development.

19 "\* \* \* \* \*

20 "7. Access.

21 "8. Natural Resources.

22 "9. Public need for healthful, safe and aesthetic  
23 surroundings and conditions."

24 We previously determined that HRCZO 60.10.D does not  
25 establish mandatory approval standards for county decisions,  
26 but rather merely lists "factors" which the county is  
27 directed to consider. Von Lubken v. Hood River County, 18

1 Or LUBA 18, 31 (1989). Nothing in the challenged decision  
2 indicates the county now interprets HRCZO 60.10.D  
3 differently. The decision includes numerous findings  
4 concerning factors quoted above, including ones specifically  
5 addressed to these factors. Record 238-40, 458.  
6 Petitioners' argument under this assignment of error does  
7 not establish the county failed to consider any of the  
8 factors listed above.

9 This subassignment of error is denied.

10 **B. Plan Goal 14(II)(A)(2)**

11 Plan Goal 14(II)(A)(2) provides:

12 "Future urban expansion shall be from the Hood  
13 River City limits outward or adjacent to the  
14 sanitary sewer and water lines. To help implement  
15 this, at the time zoning is adopted there will be  
16 two zones for the area designated as 'Medium  
17 Density Residential' on the plan map within the  
18 [UGB]: a zone closer to the city limits or  
19 adjacent to sewer and water lines with small  
20 minimum lot sizes allowed, and a zone further from  
21 the city limits with only larger minimum lot sizes  
22 allowed." (Emphasis added.)

23 Petitioners argue that by "placing a high density  
24 development on property adjacent to the UGB<sup>[8]</sup> and over a  
25 mile from city limits, the County has violated the [above  
26 quoted] policy of establishing medium density residential  
27 development away from the city center." Petition for  
28 Review 28.

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<sup>8</sup>The UGB touches the subject property at its southwest corner.  
Record 465.

1           The challenged decision includes the following findings  
2 addressing plan Goal 14(II)(A)(2):

3           "a. The sewer district lines and water lines will  
4           be either adjacent to or brought to the  
5           subject property, therefore, the proposal  
6           complies with the above policy.

7           "b. Based upon the City's capabilities and  
8           responsibilities for providing urban services  
9           within the [UGB], the City determined that it  
10          is in [its] best interest to construct  
11          sanitary sewer facilities that will serve the  
12          area. The mobile home park property will be  
13          adjacent to the sewer lines." Record 125.

14          We agree with the county that plan Goal 14(II)(A)(2)  
15 allows urban level development adjacent to sanitary sewer  
16 and water lines. The above quoted findings are sufficient  
17 to demonstrate compliance with this plan provision.

18          This subassignment of error is denied.

19          The third assignment of error is denied.

20         **FOURTH (PART B) ASSIGNMENT OF ERROR**

21          Plan Goal 14(II)(B) establishes the following policy:

22          "Public Facilities and Services:

23          "The City of Hood River is the basic provider of  
24          urban services in the [UGB]. Therefore, a consent  
25          to annexation shall precede the extension and  
26          connection of any new sanitary sewer line, the  
27          only exception shall be [in] the case of a \* \* \*  
28          documented health hazard \* \* \*. An extension may  
29          take place provided a consent to annexation is  
30          signed."

31          Petitioners point out the proposed mobile home park  
32 requires the extension of a new sanitary sewer line by the  
33 Frankton Sewer Local Improvement District. Petitioners

1 contend the challenged decision violates plan Goal 14(II)(B)  
2 because the county did not find that a consent to annexation  
3 to the city was signed or that a health hazard exists.

4 The county's decision includes the following finding:

5 "The subject parcel was required[, ] as a condition  
6 of approved County Major Partition #91-21[, ] to  
7 sign an Agreement for Annexation with the City of  
8 Hood River. The agreement was signed December 13,  
9 1991, recorded, and runs with the land."<sup>9</sup>  
10 Record 126.

11 The annexation agreement referred to above is at Record  
12 213-14.

13 Petitioners fail to explain why the above quoted  
14 finding, supported by the annexation agreement in the  
15 record, does not demonstrate compliance with plan  
16 Goal 14(II)(B).

17 The fourth (Part B) assignment of error is denied.

18 **FIFTH (PART B) ASSIGNMENT OF ERROR**

19 HRCZO 60.10.D requires that "[t]he factors set forth in  
20 applicable Oregon Law were consciously considered."  
21 Petitioners contend the challenged decision violates two  
22 provisions of the Oregon statutes made applicable to the  
23 county's decision by HRCZO 60.10.D.

24 **A. ORS 446.100(1)(a)**

25 ORS 446.100(1) provides in relevant part:

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<sup>9</sup>The major partition referred to apparently divided a parcel of land into three new parcels, one of which is the parcel that is the subject of the conditional use permit application here. Record 465.

1 "No person shall:

2 "(a) Construct a mobile home or manufactured  
3 dwelling park at a place that is unsuitable  
4 due to swampy terrain, lack of adequate  
5 drainage or proximity to the breeding places  
6 of insects or rodents.

7 "\* \* \* \* \*"

8 Petitioners argue the challenged decision improperly  
9 fails to include "specific findings relating to the wetlands  
10 and creeks on the property, the status of drainage, and the  
11 proximity to breeding places of insects and rodents \* \* \*."  
12 Petition for Review 33.

13 The county contends ORS 446.100(1)(a) is not part of  
14 the "applicable Oregon Law" referred to in HRCZO 60.10.D.  
15 The county points out that ORS 446.003 to 446.145 sets out a  
16 comprehensive scheme for state regulation of mobile home  
17 parks. The county argues that HRCZO Article 16 (Mobile Home  
18 Parks, Individual \* \* \* Single-Wide Mobile Homes) expresses  
19 an intent that county approval standards for mobile homes  
20 and mobile home parks not duplicate or incorporate state  
21 standards:

22 "The purpose and intent of this ordinance shall be  
23 to prescribe procedures and standards under which  
24 mobile home parks [and individual] single-wide  
25 mobile homes may be submitted for review and  
26 approval by Hood River County. The intent of this  
27 ordinance is to recognize that although mobile  
28 homes are required to meet State standards, Hood  
29 River County further requires mobile homes to  
30 comply with local siting standards, to ensure  
31 acceptability and compatibility with adjacent land  
32 uses and in recognition of an identified need to  
33 provide an adequate diversity of housing types and



1 environments for local residents."<sup>10</sup> HRCZO 16.00.  
2 The county further argues that in view of the policy  
3 expressed in HRCZO 16.00, it may permissibly interpret the  
4 "applicable Oregon Law" provision of HRCZO 60.10.D not to  
5 include the approval standards for state decisions  
6 established in ORS 446.100(1), and that such an  
7 interpretation is indicated in the following finding:

8 "Hood River County adopted Mobile Home Park  
9 Standards pursuant to concerns and requests from  
10 the private sector and to further avoid  
11 duplication of State requirements. The State  
12 still has the primary role regarding approval of  
13 Mobile Home Parks." Record 451.

14 This Board is required to defer to a local government's  
15 interpretation of its own enactments, unless that  
16 interpretation is "clearly wrong." Goose Hollow Foothills  
17 League v. City of Portland, 117 Or App 211, 217, \_\_\_ P2d \_\_\_  
18 (1992); West v. Clackamas County, 116 Or App 89, 93, 840 P2d  
19 1354 (1992). In view of the intent expressed in HRCZO 16.00  
20 not to duplicate state mobile home park approval standards,  
21 we defer to the county's interpretation that the state  
22 approval standard established by ORS 446.100(1)(a) is not  
23 part of the "applicable Oregon Law" referred to in  
24 HRCZO 60.10.D.

25 This subassignment of error is denied.

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<sup>10</sup>We also note HRCZO 16.15.E provides that "although County approval is required, the primary [approval] authority for mobile home parks is the [state] Department of Commerce."

1           **B.    ORS 538.200(31)**

2           ORS 538.200 provides in relevant part:

3           "The following streams and waters thereof forming  
4           waterfalls or cascades in view of, or near, the  
5           Columbia River Highway, \* \* \* are withdrawn from  
6           appropriation or condemnation and shall not be  
7           diverted or interrupted for any purpose whatsoever  
8           \* \* \*:

9           "\* \* \* \* \*

10          "(31) Phelps Creek, except those creeks which are  
11           tributary to Phelps Creek and which arise in  
12           the north one-half of section 5, township  
13           2 north, range 10 east of the Willamette  
14           meridian, subject to prior rights."

15          There is no dispute the subject property contains a  
16          tributary of Phelps Creek that does not "arise" in the area  
17          exempted under ORS 537.200(31).     Petitioners argue the  
18          approved mobile home park master plan shows mobile homes  
19          sited directly on top of this tributary to Phelps Creek.  
20          According to petitioners, the challenged decision violates  
21          ORS 538.200(31) because the county failed to impose  
22          conditions adequate to protect the creek.

23          The county contends ORS 538.200(31) is a state standard  
24          and is not applicable to the county's decision.   The county  
25          argues that the subject application does not seek to divert  
26          or use water from the creek.   The county further argues that  
27          approval condition D(1) is adequate to protect the creek:

28          "The applicant will provide the Planning  
29          Department with documentation showing approval  
30          [of] or no impact regarding effects of the mobile  
31          home park on the creek [and] any diversion  
32          anticipated.   This documentation shall come from

1 the Division of State lands and Department of Fish  
2 and Wildlife prior to final approval. \* \* \*"  
3 Record 5.

4 The county also concedes that if compliance with state  
5 standards requires an amendment to the approved master plan,  
6 such amendment would be processed as a request for a new  
7 administrative action. HRCZO 60.14.C.

8 ORS 538.200 is part of a comprehensive scheme, found in  
9 ORS chapters 536 to 543, for state regulation of the water  
10 resources of the state. Under ORS 537.130, any use, storage  
11 or diversion of the waters of the creek on the subject  
12 property requires an appropriation permit from the state  
13 Water Resources Department. However, even if ORS 538.200  
14 were a standard directly applicable to the challenged county  
15 decision, which we do not decide, we do not believe the  
16 challenged decision violates ORS 538.200. The subject  
17 application does not request permission from the county to  
18 divert or interrupt the flow of the creek. Further, the  
19 decision itself does not purport to grant approval for any  
20 such action. Rather, approval condition D(1) requires  
21 documentation of no impacts on, or state approval of any  
22 impacts on, the creek.<sup>11</sup> In addition, to the extent that  
23 HRCZO 60.10.D may require "consideration" of ORS 538.200(31)  
24 as "applicable Oregon Law," we find approval condition D(1)

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<sup>11</sup>We believe the term "impacts" on the creek, as used in approval condition D(1), includes both diversion and interruption of the creek's flow.

1 adequately demonstrates such consideration.

2 This subassignment of error is denied.

3 The fifth (Part B) assignment of error is denied.

4 The county's decision is affirmed.