BEFORE THE LAND USE BOARD OF APPEALS

OF THE STATE OF OREGON

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| STEPHEN C. DONNELLY, LIDIA DONNELLY, FRIENDS OF THE LOWER ROGUE RIVER and PACIFIC RIVERS COUNCIL, | ) | |
| Petitioners, | ) | |
| vs. | ) | LUBA No. 96-101 |
| CURRY COUNTY, | ) | FINAL OPINION AND ORDER |
| Respondent, | ) | |
| and | ) | |
| JOHN SPICER and LINDA SPICER, | ) | |
| Intervenor-Respondent. | ) | |

Appeal from Curry County.

Corinne C. Sherton, Salem, filed the petition for review and argued on behalf of petitioners. With her on the brief was Johnson, Kloos & Sherton.

No appearance by respondent.

David B. Smith, Tigard, filed the response brief and argued on behalf of intervenors-respondent.

GUSTAFSON, Chief Administrative Law Judge; HANNA, Administrative Law Judge, participated in the decision.

REMANDED 11/03/97

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

Opinion by Gustafson.

**NATURE OF THE DECISION**

Petitioners appeal the approval of a conditional use permit to operate a Recreational Vehicle (RV) facility on property designated and zoned Forestry/Grazing (FG).

**MOTION TO INTERVENE**

John and Linda Spicer, successors-in-interest to the applicants below, move to substitute themselves for the applicants, who had previously moved to intervene on the side of the county. There is no opposition to either motion, and both are allowed.

**MOTION TO FILE REPLY BRIEF**

Petitioners request permission to file a reply brief pursuant to OAR 661-10-039, under which the Board may allow parties to file a reply confined solely to new matters raised in a response brief. The response brief raises the issue of whether petitioners have waived some of their arguments on appeal. The reply brief is confined to that new issue, and the motion to file it is allowed.

**FACTS**

Intervenors-respondent (intervenors) own an undeveloped 40-acre parcel designated and zoned FG. Surrounding properties are zoned either FG or Timber. The subject property is adjacent to the Rogue River, one mile downstream from the terminus of the federal Wild & Scenic River section of the river. A two-lane county road, the North Bank Road,

bisects the subject property, separating a 12-acre portion adjacent to the river from the remainder of the parcel. Across the river from the subject property are lands zoned Timber and a Forest Service campground with seven primitive camping sites.

Intervenors' predecessors-in-interest sought a conditional use permit for an RV camp occupying 1.5 acres of the 12-acre portion adjacent to the river.[1] The 12-acre portion is crossed by one perennial stream and one intermittent stream. The proposed RV camp would include 51 fully serviced RV spaces (water, sewage, and electrical hookups), 10 tent camping sites, and a manager's dwelling. The development would be served by an on-site water well system and on-site septic system and drain field. Most of the proposed development is within the 100-year flood plain of the Rogue River. The development would be reached from two access points on the North Bank Road, one of them directly across from a road serving an adjoining 900-acre tree farm and sheep ranch.

The planning commission denied intervenors'

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[1]The parties dispute whether to use the value-laden terms "RV park" or "campground" for the proposed use. "RV park" is inappropriate because it is undisputed that the Curry County Zoning Ordinance (CCZO) does not permit an "RV park" on the subject property, as that term is usually defined. See CCZO 1.030(78). "Campground" is also inappropriate, because whether the proposed use is a "campground" is the issue before us. For purposes of this appeal we will term intervenor's proposed use an "RV camp." However, our use of this term should not be construed to mean that the proposed use is not an RV park.

application, on the grounds that the proposed development was too intensive to constitute a "campground," which is permitted in FG zones. Intervenors appealed to the board of commissioners (county board), which determined that the development was not too intensive a use to constitute a "campground," and approved the conditional use permit.

This appeal followed.

**FIRST ASSIGNMENT OF ERROR**

Petitioners argue that the county board's determination that the proposed use constitutes a "campground" allowed on forest land under OAR 660-04-025(4)(e) and Curry County Zoning Ordinance (CCZO) 3.052(22) improperly construes the law, is based on inadequate findings, and is unsupported by substantial evidence.

**A. Applicable Criteria**

The county's FG zone implements Statewide Planning Goal 4 (Forest Lands). CCZO 3.050(b). Goal 4 is implemented by OAR chapter 660, division 6 (Goal 4 rule). The Goal 4 rule sets forth the uses which may be allowed in forest zones, and the standards to which the uses are subject. OAR 660-06-025(1). Among conditionally allowed uses are "recreational opportunities appropriate to a forest environment." OAR 660-06-025(1)(b). Such uses include "parks and campgrounds," which the OAR 660-06-025(4)(e) defines as follows:

"For purposes of this rule a campground is an area

> devoted to overnight temporary use for vacation, recreational or emergency purposes, but not for residential purposes. A camping site may be occupied by a tent, travel trailer or recreational vehicle. Campgrounds authorized by this rule shall not include intensively developed recreational uses such as swimming pools, tennis courts, retail stores or gas stations;"

In addition, a use authorized under OAR 660-06-025 is allowed only if it meets the following requirements:

> "(a) The proposed use will not force a significant change in, or significantly increase the cost of, accepted farming or forest practices on agriculture or forest lands;
>
> "(b) The proposed use will not significantly increase fire hazard or significantly increase fire suppression costs or significantly increase risks to fire suppression personnel; and
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> "(c) A written statement recorded with the deed or written contract with the county or its equivalent is obtained from the land owner which recognizes the rights of adjacent and nearby land owners to conduct forest operations consistent with the Forest Practices Act * * *" OAR 660-06-025(5).[2]

Conditional uses allowed in FG zones are governed by CCZO 3.052. The county's definition of "campground" at CCZO 3.052(22) is identical to the definition of "campground" found at OAR 660-06-025(4)(e).

The CCZO also includes another definition of "campground" in its general definitions section at CCZO

[2]CCZO 7.040(16) reiterates, with minor differences not disputed here, the criteria at OAR 660-06-025(5).

1.030(11). CCZO 1.030(11) states that, unless the context provides otherwise, "campground" means:

> "An area in an undeveloped setting, which does not contain or provide intensively developed recreational uses or facilities, that is devoted to overnight temporary use for vacation or recreational purposes. It may be part of a larger park or park area. Sites within a campground may be occupied by tents, travel trailers or recreational vehicles." (Emphasis added.)

The parties dispute whether a general definition of "campground" at CCZO 1.030(11) applies to this proposed use, and thus whether the county erred in failing to address it. Petitioners argue that the CCZO 1.030(11) definition of "campground" adds an additional or broader prohibition on "intensively developed recreational uses or facilities" than the similar definition at CCZO 3.052(22), and that the decision fails to address this additional requirement, which petitioners raised below. See Norvell v. Portland Area LGBC, 43 Or App 849, 853, 604 P2d 896 (1979); East Lancaster Neigh. Assoc. v. City of Salem, 30 Or LUBA 147, 158 (1995), aff'd 139 Or App 333 (1996) (when an issue is raised below whether a particular code provision is an applicable approval standard, the challenged decision must determine either that the code provision is inapplicable or that it is satisfied). The challenged decision does not determine either that CCZO 1.030(11) is inapplicable or that it is satisfied.

Intervenors respond that, even if the CCZO 1.030(11) definition applies, failure to apply it is harmless error because the decision addressed the intensity of the proposed use under the similar definition at CCZO 3.052(22), which prohibits "intensively developed recreational uses such as swimming pools, tennis courts, retail stores, or gas stations."

We agree with petitioners that the definition at CCZO

1.030(11) is sufficiently different from the definition at CCZO 3.052(22) that findings under one definition cannot implicitly satisfy the other. Thus the decision's failure to address CCZO 1.030(11) is not harmless error, and renders its findings inadequate. On remand, the county board must determine whether CCZO 1.030(11) applies, and, if it does, whether the proposed use complies with it.

**B. Intensity of Use**

Petitioners argue that a fully-serviced, 51-space RV camp on 1.5 acres, including a manager's dwelling, is an "intensively developed" recreational use and is not "appropriate for a forest environment" under the criteria for campgrounds at OAR 660-06-025(4)(e) and CCZO 3.052(22).

The challenged decision addresses these criteria as follows:

> "3. The [county board] concludes that the 51-space campground on 40 acres is not too intense a use to comply with these criteria, even though the units are clustered on a minor fraction of the site's area. This number of units does not make the campground an urban use that is more dense than any other recreation site on the river. Moreover, this 51-unit campground is appropriate for a forest environment.
>
> "4. The [county board] does not believe the term 'campground' is ambiguous, requiring interpretation of the term consistent with Goal 4. The language of the definition is identical in both the [CCZO] and the administrative rule. It makes clear that intensity is a product of types of uses incorporated into the campground. The

> language also makes clear that it is the temporary use of the site by tents and recreational vehicles that distinguishes a campground.
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> "5. The [county board] does not agree that the campground is too intense a use to comply with these criteria. Although evidence was presented at a public hearing by the applicant's engineer that the camp sites would occupy an actual 1.5 acres of land, the Board notes that the portion of the subject property on which the campground will be located, between the North Bank River Road and the Rogue River, occupies 12 acres. The establishment of 51 units, with associated utilities and support facilities, on 12 acres is not too intense a use.
>
> "6. * * * We conclude that a campground that uses a septic system and a well water system, limited to temporary parking of licensed, highway-ready recreational vehicles, and in which park RV's are prohibited, is a rural use that is appropriate for the forested area wherein it is located." Record 12-13.

As a preliminary matter, we agree with petitioners that, notwithstanding statements to the contrary, the challenged decision interprets the term "campground" as used in the Goal 4 rule and CCZO 3.052(22) (conclusion 4, above). The decision determines the meaning of "campground" by analyzing concepts like "intensively developed" and "temporary use" as applied to the proposed RV camp. Determining whether a proposed use fits a criterion like that embodied in "campground" entails interpreting that criterion. See Knee Deep Cattle Company v. Lane County, 28 Or LUBA 288, 302, aff'd 133 Or App 120 (1995) (determining

whether an RV park is a "campground" under county ordinances is a discretionary land use decision because it requires interpretation and legal judgment). The decision plainly interprets "campground" and its constituent defining terms to include the proposed RV camp. The county board cannot evade appropriate review by mischaracterizing its decisions.

In reviewing interpretations of local ordinances that substantially embody and duplicate state regulations, the appropriate standard of review is whether the local interpretation is reasonable and correct. Forster v. Polk County, 115 Or App 475, 478, 839 P2d 241 (1992); McCoy v. Linn County, 90 Or App 271, 276, 752 P2d 779 (1989).

Petitioners argue that the decision's approach in determining whether the proposed RV camp is too "intensively developed" to constitute a campground is defective in several respects. Essentially, petitioners argue that the decision defines "intensively developed" to mean "densely developed similar to an urban, rather than a rural pattern." See conclusions 3, 5 and 6, Record 12-13. This mode of analysis was apparently driven by petitioners' argument below that the intensity of the proposed RV camp was such that it constituted an urban rather a rural use, a use not allowed unless the county makes a Goal 2 exception to Goal 14 (Urbanization).[3]

[3]This argument is the subject of petitioners' fifth assignment of error, discussed below.

Accordingly, the decision considers whether the density of the RV camp is comparable with urban or rural density. Thus framed, the issue turns on the scale on which density is analyzed. Reviewed against the 1.5 acres on which the 51 RV park sites are to be developed, the approximate density is an urban level of 34 units per acre. The decision chooses instead to analyze density with respect to the 12-acre portion on which

the RV camp sits, which yields a more rural density of approximately 4.25 units per acre.[4]

Based on the 12-acre scale of analysis, the decision concludes that the proposed use is not "more dense than any other recreation site on the river," and hence that the proposed use is not too intense to constitute a campground permitted on forest lands. Record 12. The other recreation sites referred to include four other RV parks, all located in exception areas zoned Rural Commercial. Record 462-63. The four other RV parks have densities ranging from 8.5 to 13 units per acre, determined by dividing the total acreage by the number of RV sites. Id.

Petitioners argue that there is no evidence in the record that any portion of the property other than 1.5 acres will be developed or even be usable by the RV camp occupants, and that the decision's finding is inadequate because it provides no explanation of why the additional 10.5 acres affects the intensity or density of the proposed use.

The finding on this point is based solely on testimony by intervenors' engineer, who, when asked how many acres of the proposed property could actually be developed for the sites, answered that "approximately 1 1/2 acres out of the 40 acres would be developed." Record 48.

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[4]The calculations of density are the parties'.

Intervenors can cite to no evidence in the record that anything other than 1.5 acres will be developed or made usable, but argue nonetheless that the county board's use of the 12-acre portion recognizes that the engineer might have meant that the RV pads would cover 1.5 acres, and that the remainder of the RV camp (roads, septic drain fields, etc.) would cover the other 10.5 acres. The challenged decision does not adopt the inference intervenors reach, and neither do we.

We agree with petitioners that there is no evidence in the record supporting a conclusion that the remainder of the 12-acre portion will be developed as a part of the RV camp. We also agree that the decision fails to explain how considering the 1.5-acre development with the remaining 10.5 acres affects the intensity or density of the proposed use. Intensity, as the decision itself points out, is a product of the types of uses incorporated into the RV camp. Record 12. In other words, it is the nature and interrelationship of the uses that determines intensity, not the accidental fact of whether the uses are situated on a larger or smaller parcel.[5]

Moreover, when assessing "density" for purposes of

[5]The fact that the parcel is larger or smaller may be relevant to the degree to which the proposed use will affect uses on surrounding lands, but we see no intrinsic relationship between the size of the parcel and whether the uses thereon are "intensively developed" for purposes of the Goal 4 Rule. A 1.5-acre development has just as much development and infrastructure on a 1.5-acre parcel as on a larger parcel.

determining whether a land use is "urban" or "rural" in character, we have held that the local government must assess density with regard to the lands actually being developed. Kaye/DLCD v. Marion County, 23 Or LUBA 452, 463-64 (1992). In Kaye/DLCD, the applicant sought to develop 85 residences on 72.5 acres of a 468-acre parcel. The decision assessed the density of the residences with respect to the entire 468 acres, and concluded that the density was rural in character. We held that the county erred in ignoring the "obviously urban nature of an 85-unit residential development occupying 72.5 acres simply because it will be surrounded by a significant amount of open space." 23 Or LUBA at 464.

We conclude that the county board misconstrued the intensity standard in assessing intensity as a product of the relative density of the proposed use with respect to the undeveloped portions of the parcel.

Petitioners argue further that the decision improperly relies on comparisons of density with the RV parks located on lands zoned Rural Commercial. The only proper comparison, according to petitioners, is the density or intensity of other campgrounds in Forestry/Grazing zones and similar resource zones. The record reflects evidence of only one campground in a resource zone: a Forest Service campground with seven primitive campsites located near the subject property.

We agree with petitioners that, for purposes of determining whether a campground is "intensively developed" and hence inappropriate "for a forest environment" under the Goal 4 Rule, the decision must compare the proposed use to other campgrounds on forest lands, or establish why it is appropriate to compare the proposed use with RV parks on nonresource lands.

This conclusion highlights a further flaw in the county board's Goal 14-driven "density" analysis, which is that it tends to equate prohibited levels of intense development with urban levels of development. The county board's approach essentially conflates Goal 4 and Goal 14, with the result that a campground is not too "intensively developed" for purposes of Goal 4 when its level of development is anything short of urban-style intensity. The question under Goal 4 is not whether a campground on forest lands is appropriately rural (i.e. non-urban) in intensity, but whether the campground's intensity of development is "appropriate in a forest environment." Quite simply, the decision's approach fails to distinguish between rural resource lands and rural non-resource lands (e.g. lands zoned Rural Commercial, Rural Residential, Rural Industrial, Rural Community Residential, etc.).

Instructive in this respect is our decision in Tice v. Josephine County, 21 Or LUBA 371 (1991). In Tice, the petitioner sought to place a motocross racetrack on a 77-

acre parcel zoned Forest Commercial under an ordinance that implemented former Goal 4 (effective December 30, 1983) and associated rules in allowing "outdoor recreational activity and related support activities" on forest lands. We held, as a matter of law, that a motocross racetrack is not a permitted "outdoor recreational activity" under former Goal 4 because it dominates and changes the character of the forest environment. Id. at 379. In a footnote, we referred to the recent adoption of the current Goal 4 and Goal 4 Rule, and stated that

> "amendments to Goal 4 and OAR 660-06-025(1) regarding permitted recreational uses in a forest zone strongly support an interpretation that in a forest zone only those recreational uses with a relatively low impact on the forest environment are contemplated." 21 Or LUBA at 378 n7 (emphasis added).

In the present case, the challenged decision makes no effort to explain how a full-service RV camp with 51 concrete RV pads, each with water, sewer and electrical hookups, is a "relatively low impact" use "appropriate in the forest environment." The decision appears to assume, without any justification, that because the Goal 4 rule provides that a camping site "may be occupied by a tent, travel trailer or recreational vehicle" that the Goal 4 rule necessarily permits a full-service RV camp in forest zones. That assumption ignores the fact that, like tents and travel trailers, RVs can occupy a camping site without the utilities and intensive infrastructure associated with a

full-service RV park.

For the foregoing reasons, we conclude that the county board's determination that the "intensity" of the proposed RV camp is consistent with CCZO 3.052(22) and the Goal 4 rule misconstrues and is contrary to the goal and rule.

**C. Overnight Temporary Use**

OAR 660-06-025(4)(e) and CCZO 3.052(22) require that a campground on forest land be limited to "overnight temporary use for vacation, recreational or emergency purposes, but not for residential purposes." (Emphasis added.) Petitioners assign error to the county board's determination that this provision is satisfied by conditions that limit stays at intervenors' RV camp to 180 days in a given year, and that require RVs to be fully-licensed and highway-ready.[6]

The challenged decision states on this point:

> "The staff has proposed that occupancy of camp sites by users be limited to no more than 180 days per year and that recreational vehicles using the camp sites be fully licensed and highway-ready. * * * Park model recreational vehicles are permanent structures and may not be allowed in the campground, except for the manager's residence. * * *" Record 12.

[6]Intervenors argue that petitioners failed to raise the issue of whether the 180-day occupancy period is consistent with "overnight temporary use" for nonresidential purposes. However, petitioners reply brief cites several places in the record where a participant below argued to the county that the RV camp would allow a semi-permanent residential opportunity. Record 192-93, 352. The decision's 180-day limit and highway-ready requirements are aimed in part at satisfying these objections. We find that this issue was adequately raised before the county, and is not waived.

The challenged decision incorporates the staff report, which cites a flood control ordinance as the apparent source of the 180 day limitation:

> "[Under Curry County Flood Damage Prevention Ordinance (CCFPDO) 9.2-4, RV's] located within a campground which is located within a 100 year flood plain must be on site for fewer than 180 days and be fully licensed and highway ready, or meet the elevation and anchoring requirements for manufactured homes. Park model RV's sited within campgrounds and RV parks which are located within the 100 year flood plain must be anchored and elevated. Campgrounds in [the Forest/Grazing] zone are specifically devoted to overnight temporary use. * * *" Record 117A.

Petitioners argue that the decision merely presumes, without explanation, that the 180-day and highway-ready requirements in the flood control ordinance are adequate to ensure that a campground subject to Goal 4 rule will be devoted to "overnight temporary use" and not for "residential purposes."[7] That presumption, petitioners argue, is contrary to the Goal 4 rule, particularly in light of other statutes which should be read in pari materia with

[7]Intervenors' only response to this point, other than arguing that petitioners waived the issue, is a reference to Dougherty v. Tillamook County, 12 Or LUBA 20 (1984), where we affirmed the county's approval of a campground conditioned upon a four-month occupancy limit. The relevant ordinance permitted campgrounds "as temporary living quarters for recreation, education or vacation purposes." 12 Or LUBA at 28. Another relevant ordinance distinguished "temporary or permanent habitation." Id. The county interpreted "temporary" to mean "four months or less," and we deferred to its interpretation of the local ordinance. Id. at 29. No such deference is required here because the decision applies standards substantially duplicated from state regulations. Moreover, unlike the present case, Dougherty did not involve forest lands, or prohibitions on using the campground for "residential purposes."

the Goal 4 rule.

Petitioners point to a statute governing private "Membership Campgrounds" that distinguishes membership campgrounds from campgrounds like the one proposed here in part on whether the right to use the campground is granted for more than 30 days. ORS 94.953(6); ORS 94.953(8)(a).[8] Petitioners suggest that making the Goal 4 rule and ORS 94.953(6) consistent with one another requires limiting periods of occupancy in campgrounds allowed under the Goal 4 rule to 30 days or less.

Petitioners' argument is strengthened by the apparent conflict the county board's interpretation creates between the Goal 4 rule and the Residential Landlord and Tenant Act (RLTA), ORS Chapter 90. Under the RLTA, a residential tenancy is created when the owner of land rents space to an

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[8]ORS 94.953 provides, in relevant part:

> "* * * * *
>
> "(6) 'Membership camping contract' means an agreement offered or sold within this state granting the purchaser the right or license to use for more than 30 days the campgrounds and facilities of a membership camping operator and includes a membership which provides for such use."
>
> "* * * * *
>
> "(8) * * * 'Membership camping operator' does not include:
>
> "(a) * * * recreational vehicle parks which are open to the general public and do not solicit purchases of membership camping contracts, but rather contain only camping sites rented for per use fee; * * *."

RV owner under an oral or written agreement. ORS 90.100(22) (defining RVs); ORS 90.100(6) (defining "dwelling unit" to include RVs renting space); ORS 90.100(24) (broadly defining "rental agreement"). Thus, unless some exception applies, any person who rents space to RV units creates a residential tenancy subject to the RLTA. This is significant because a residential tenancy is contrary on its face to the Goal 4 prohibition on using campgrounds on forest lands for "residential purposes." OAR 660-06-025(4)(e).

We note that one of the exceptions to the RLTA is "transient occupancy," defined in part as occupancy in transient lodging where the occupant is charged on a daily basis, and the period of occupancy does not exceed 30 days. ORS 90.110(4); ORS 90.100(30)(a-c). It is not clear that occupancy of an RV park space otherwise satisfies all the criteria for "transient occupancy."[9] Nonetheless, the distinction drawn between short-term occupancy of up to 30 days and long-term occupancy exceeding 30 days for purposes of whether a residential tenancy is created is useful in evaluating what "residential purposes" means under the Goal 4 rule.

The RLTA exception for "transient occupancy" is congruent with ORS 94.953(6) in treating short-term occupancy up to 30 days much differently than long-term

[9]Other requirements appear to limit the exception to hotels and motels. See ORS 90.100(30)(b); ORS 90.110(4).

residency beyond 30 days. This consistent distinction in relevant statutes between transient and non-transient occupation suggests that the RLTA, ORS 94.953, and the Goal 4 rule are consistent with each other if the Goal 4 rule reflects a similar distinction. A 180-day period of occupancy is outside any permissible quantification of that distinction.

We conclude that a 180-day period of occupancy is an incorrect interpretation of the Goal 4 rule's limitations on the use of campgrounds for "overnight temporary use" for nonresidential purposes.

**D. Nonresource Dwellings**

Petitioners assign as error the decision's approval of a permanent dwelling in the RV camp for a manager's residence. The challenged decision states on this point:

> "* * * [p]ermanent structures * * * may not be allowed in the campground except for the manager's residence. The [county board] believes that a large, permanent manager's residence is contrary to the temporary, unintensive nature of a campground. Consequently, the manager's residence shall be limited to 400 square feet in floor space." Record 12.

Petitioners argue, and intervenors appear to concede, that the county board failed to cite any authority in CCZO 3.052(22) or other applicable ordinances, rules or statutes that permits a permanent dwelling, of whatever size, in campgrounds on forest lands.

However, intervenors urge us to interpret other

sections of the CCZO to fill the gaps in the county board's decision. Specifically, intervenors point out that CCZO 7.040(6)(c) allows mobile homes for manager's residences as accessory uses in campgrounds in Rural Resort Commercial zones, CCZO 3.142(8), and Rural Commercial zones, CCZO 3.132(10). Intervenors invite us to interpret the county code to allow such a mobile home as an accessory use to the proposed campground in a Forest/Grazing zone, notwithstanding the absence of any permitting language in applicable ordinances and the inherent inconsistency of a permanent residence on a campground limited to "overnight temporary use" for nonresidential purposes and where "intensively developed" uses are prohibited. CCZO 3.052(22). We decline intervenors' invitation.

The first assignment of error is sustained.

**FIFTH ASSIGNMENT OF ERROR**

Petitioners assign as error the decision's failure to address or apply CCZO 5.030, which establishes the following exception to the requirement for an 80-acre minimum lot size in the Forest/Grazing zone:

> "If, at the time of passage of this ordinance, a lot * * * has an area or dimension which does not meet the lot size requirements of the zone in which the property is located, the lot * * * may be occupied by a use permitted in the zone provided that an urban land use is not allowed within a 'rural' or 'resource' zone without a Goal 2 exception to Goal 14." (Emphasis added.)

Petitioners argued before the county board that the proposed

51-unit fully-serviced RV camp, with a manager's dwelling, clustered onto 1.5 acres, is an urban land use that under CCZO 5.030 cannot be allowed on the 40-acre subject property without an exception to Goal 14. Record 340. Petitioners argue that the decision fails to address their argument that CCZO 5.030 applies, and that it must be remanded so the county board can undertake an analysis of whether the proposed RV camp is an urban land use in a resource zone.

As we discussed under the first assignment of error, the county board found under its "density" analysis that the proposed RV camp was a "rural" rather than an "urban" use. Record 12-13. We rejected that finding in part because it equates non-urban density with an acceptable level of intensity permitted by the Goal 4 rule for campgrounds on forest lands. With respect to the fifth assignment of error, intervenors argue that the county board's findings regarding "density" indirectly address, and reject, petitioners' argument below that CCZO 5.030 should apply.

When petitioners raised the issue below concerning whether CCZO 5.030 is an applicable approval standard, the county board was required to determine either that the code provision is inapplicable or that it is satisfied. See Norvell, 43 Or App at 853; East Lancaster Neigh. Assoc., 30 Or LUBA at 158. The county board did neither. The decision does not mention CCZO 5.030, and its conclusions regarding density for purposes of compliance with CCZO 3.052(22) are

inadequate to constitute findings that CCZO 5.030 either is inapplicable or is satisfied.

The fifth assignment of error is sustained.

**SECOND ASSIGNMENT OF ERROR**

In addition to compliance with the definition of "campground" under the Goal 4 rule and CCZO 3.052(22), approval of intervenors' proposed RV camp requires demonstration that the campground will not "force a significant change in, or significantly increase the cost of, accepted farming or forest practices on agricultural or forest lands." OAR 660-06-025(5)(a); CCZO 7.040(16)(a). This requirement is intended to "make the use compatible with forest operations and agriculture and to conserve values found on forest lands." OAR 660-06-025(5).

Petitioners and others argued and presented evidence below that the proposed RV camp would force significant changes in farming and forest practices on surrounding forest lands.[10] The county board concluded to the contrary. Record 14-17. Petitioners argue that this conclusion is

[10]Intervenors argue that petitioners failed to advise the county that its findings must study and describe farm and forest practices on surrounding forest lands, and thus petitioners have waived the right to appeal the adequacy of the county's findings on compliance with OAR 660-06-025(5) and CCZO 7.040(16)(a). We disagree. In order to preserve the right to challenge the adequacy of adopted findings to address a relevant criterion, a petitioner need only challenge the proposal's compliance with that criterion; the petitioner need not anticipate and challenge below the findings ultimately adopted. Lucier v. City of Medford, 26 Or LUBA 213, 216 (1993). Here, petitioners and others challenged the proposal's compliance with the relevant criterion. Petitioners need not anticipate and challenge below the form or method of the county's findings.

defective because the county board failed to adequately study or describe the farm and forest practices on surrounding lands. Schellenberg v. Polk County, 21 Or LUBA 425, 440 (1991); DLCD v. Klamath County, 25 Or LUBA 355, 366 (1993).

We addressed in Schellenberg a nearly identical provision in ORS 215.296(1) and held that county findings under this statute must describe the farm or forest practices on surrounding lands devoted to farm or forest use, and explain why the proposed use will not force a significant change in or significantly increase the cost of those practices. 21 Or LUBA at 440.[11]

In DLCD v. Klamath County we addressed a criterion that the proposed nonforest use not "interfere seriously with the accepted forestry practices on adjacent lands devoted to forest use," and not "significantly increase the cost of forestry operations on such lands." 25 Or LUBA at 366. We held that before the county could determine whether the nonforest use would seriously interfere with accepted

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[11]The Goal 4 Rule and ordinance at issue in this case differs from the statute at issue in Schellenberg only in that the Goal 4 Rule broadly mentions "agricultural or forest lands" without specifying whether they are "surrounding" the subject property or have another relationship (such as "adjacent" or "nearby"). However, OAR 660-06-025(5)(c), the subsection immediately following the Goal 4 Rule in question, requires the applicant to record statements recognizing the rights of "adjacent and nearby land owners to conduct forest operations * * *." (Emphasis added.) This subsection clarifies that the "agricultural or forest lands" on which the county must describe farm or forest practices includes at least agricultural or forest lands adjacent or nearby to the subject property.

forestry practices on

adjacent lands, it had to determine what those practices were. Id.

We agree with petitioners that the county board's findings must describe the farm or forest practices on adjacent and nearby forest lands, as well as explain why the proposed use does not significantly affect those practices. The county board's findings on this point identify an adjacent tree farm, but say nothing about the accepted farm or forest practices on those lands.[12] Record 14. The decision's description of accepted practices on the adjacent 900-acre Donnelly ranch consists of reference to the property as a "woodlot" on which the Donnellys raised a small flock of sheep. Record 15. Neither of these references adequately describe the accepted farm or forest practices on these adjacent lands. The decision does not address nearby lands, including the extensive forest lands zoned Timber directly across the Rogue River from the proposed RV camp.

Without an adequate description of farm and forest practices on these adjacent and nearby resource lands, the decision's finding that the proposed RV camp will not

[12]The county board's statement at record 14 that "[t]he applicants provided evidence of the forest practices ongoing on the Hancock non-industrial forest land" is puzzling. We discern nothing in the application that addresses resource practices on the Hancock lands or other lands other than conclusory statements that the RV camp will not disturb any nearby forest practices. Record 122. Intervenors do not cite to any other evidence in the record regarding forest practices on the Hancock lands, or other resource lands.

significantly affect those practices is inadequate and unsupported by substantial evidence.

The second assignment of error is sustained.

**THIRD ASSIGNMENT OF ERROR**

Petitioners assign as error the decision's finding that intervenors complied with CCZO 7.040(1)(d), which requires a conditional use applicant to provide statements from utilities showing that the utilities reviewed the proposal. CCZO 7.040(1)(d) further requires the county to adopt any conditions the utilities impose. Intervenors submitted statements from the local fire protection district and the Curry County Road Department. The county board found that both statements complied with CCZO 7.040(1)(d):

> "The applicants have provided statements from Coos-Curry Electric and Squaw Valley-North Bank Rural Fire Protection District. Both statements indicate review of the proposal, and neither requires any additional conditions or terms. The applicants have also submitted a statement from the County Road Department which does impose additional conditions regarding sight distance, turn lanes and culverts. Compliance with these conditions shall be made part of the conditions of approval." Record 13.

**A. Fire Protection Services**

The statement provided by the fire protection district simply states that "[i]f a structure were built [on the subject property], it would be our responsibility to provide fire protection to it, subject to accessibility." Record 143. Petitioners argue that a subsequent letter by the fire

protection district makes it clear that the district considered only a single dwelling, not the RV camp proposal, and hence that the statement does not comply with the CCZO 7.040(1)(d) requirement that the utility provider review the proposal. Record 515.

Intervenors respond that petitioners failed to raise this issue below with sufficient specificity to permit the county board to address the issue, and have thus waived it. Petitioners can cite only one place in the record where anyone challenged statements from the fire protection district, and that reference merely objects to the absence of those statements from the initial application. Record 341. Nothing in that objection apprises the county board that the statement submitted did not demonstrate that the fire protection district had reviewed the RV camp proposal, required by CCZO 7.040(1)(d). We find that this sub-issue is waived. ORS 197.835(3).

**B. Road Services**

The county board found that the statement of the county road department satisfies CCZO 7.040(1)(d) and required as a condition of approval compliance with the conditions that the road department imposed on the RV camp "regarding sight distance, turn lanes and culverts." Record 13. Accordingly, the decision orders compliance with road conditions identified "at Page G-2 of the Attachment to the Staff Report." Record 22.

However, the attachment at page G-2 is an access permit dated two years before the RV camp was proposed and does not refer to the RV camp. It requires a 300-foot sight distance to the east and culverts, but does not mention turn lanes. Petitioner posits that the county board instead intended to refer to page G-1 attached to the staff report, which is a memo from the county road department that reviews the RV camp and imposes 400 foot sight distance requirements in both directions, as well as turn lanes. Record 143A.

Intervenors respond in effect that even if the county board's finding on this point inadvertently refers to the wrong document, evidence in the record (the memo at Record 143A) clearly supports the finding that the road department had reviewed the proposed use. ORS 197.835(11)(b). We agree.

Petitioners' other arguments regarding the feasibility of the conditions imposed by the road department at record 143A do not demonstrate error.

This assignment of error is denied.

**FOURTH ASSIGNMENT OF ERROR**

Petitioners assign error to the decision's finding of compliance with CCZO 4.011, which requires a 50-foot setback of all structural development from the streambank of any perennial streams, unless the state Department of Fish and Wildlife (ODFW) finds that a lesser setback will not jeopardize various riparian values. The decision finds that

ODFW recommends 50-foot setbacks, but imposes a 50-foot setback from the center of a perennial stream on the subject property. Record 19A, 22. Petitioners argue that placing the setback from the bank of the stream misconstrues CCZO 4.011.

Intervenor responds that CCZO 4.011 is not an applicable criterion, because it did not appear in the county's notice of the land use hearing, Record 556, and because the challenged decision did not name CCZO 4.011 in the section describing approval criteria. Record 5-8. Rather, the county board made findings under CCZO 4.011 merely to respond to issues the petitioners raised. Record 19A.

Intervenors' argument that CCZO 4.011 is not an applicable approval criterion is belied by the decision's express finding that CCZO 4.011 applies and is satisfied by the imposed conditions of setback. Record 19A. Nor are we aware of any reason why the local government cannot state approval criteria in the body of the decision, as opposed to an introductory statement. We conclude that, whether the county board was required to or not, it applied CCZO 4.011 as an approval criterion.

Turning to petitioners' argument, we agree that the county board's prohibition on structural development within 50-feet of the streambank, as opposed to the center of the stream, is contrary to the CCZO 4.011. The challenged

decision does not make findings sufficient to impose a lesser setback, and we are not made aware of any compelling evidence in the record that would support such a conclusion.

The fourth assignment of error is sustained.

The county's decision is remanded.