BEFORE THE LAND USE BOARD OF APPEALS

OF THE STATE OF OREGON

CAROL N. DOTY,
*Petitioner,*

vs.

COOS COUNTY,
*Respondent,*

and

HANK WESTBROOK,
*Intervenor-Respondent.*

LUBA No. 2001-202

FINAL OPINION
AND ORDER

Appeal from Coos County.

Carol N. Doty, Bandon, filed the petition for review and argued on her own behalf.

No appearance by Coos County.

Daniel A. Terrell, Eugene, filed the response brief and argued on behalf of intervenor-respondent. With him on the brief was the Law Office of Bill Kloos.

BRIGGS, Board Member; HOLSTUN, Board Chair; BASSHAM, Board Member, participated in the decision.

REMANDED 04/25/2002

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

Opinion by Briggs.

## NATURE OF THE DECISION

Petitioner appeals a county decision that amends the comprehensive plan map and rezones two parcels from Industrial to Recreation.

## MOTION TO INTERVENE

Hank Westbrook (intervenor), the applicant below, moves to intervene on the side of respondent. There is no opposition to the motion and it is allowed.

## REQUEST TO TAKE OFFICIAL NOTICE

Intervenor requests that we take official notice of Department of Land Conservation and Development (DLCD) acknowledgement documents, including notices of proposed adoption of the challenged decision, and the notice of adoption. There is no opposition to the request and it is allowed.

## FACTS

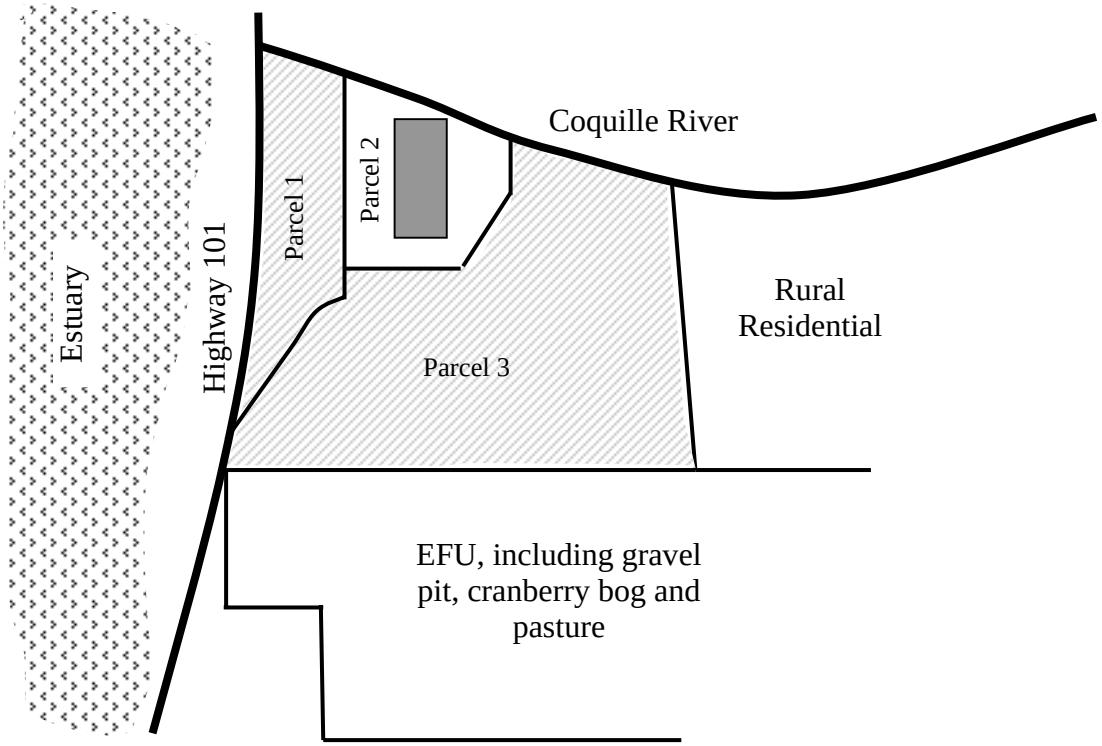
The subject property includes two parcels totaling 21.18 acres, located approximately one mile north of the City of Bandon. The property is bordered by Highway 101 to the west, the Coquille River on the north, rural residential property to the east, and EFU-zoned property to the south. Across Highway 101 to the west lies the Bandon Marsh, an estuary managed by the U.S. Fish and Wildlife Service. Farm and water-dependent uses lie across the Coquille River to the north. At least a portion of the subject property is within the Coastal Shorelands boundary, and is subject to the regulations implementing Statewide Planning Goal 17 (Coastal Shorelands).

The two parcels were originally part of a 25.6-acre parent parcel. In 1915, the parent parcel was developed with a lumber mill and associated facilities.[1] In 1983, the county

[1]The mill closed sometime after 1983.

adopted a physically developed and irrevocably committed exception to Statewide Planning Goal 3 (Agricultural Lands) and zoned the property Industrial.

In 1996, the property was partitioned into three parcels. Parcel 1 is bordered by Highway 101 to the west and Parcel 2 to the east. Parcel 3 borders Parcel 1 to the south. Parcel 2 is located in the north central portion of the parent property and is bordered by Parcels 1 and 3 on the east, south and west and by the Coquille River on the north. The former mill buildings that are currently used for finishing and storing Port Orford cedar are located on Parcel 2.[2] Below is a diagram, not to scale, of the subject property and surrounding area.




Intervenor has placed fill on Parcels 1 and 3, and has removed mill debris in preparation for redevelopment of the two parcels. The property that is subject to the challenged decision affects a portion of Parcel 1 and all of Parcel 3. Intervenor plans to

[2]At this time, there are no plans to rezone Parcel 2.

develop a 150-space RV park on Parcels 1 and 3. Because the Industrial zone does not permit RV parks, intervenor applied to amend the county zoning map and comprehensive plan map to redesignate the property to Recreation.

The planning commission recommended that the board of county commissioners approve the request, on the condition that intervenor apply for and receive a conditional use permit and site review for the proposed RV park. The board of county commissioners approved intervenor's application to rezone the subject property from Industrial to Recreation. As part of its decision, the board of county commissioners concluded that a new irrevocably committed exception was not required. The board of county commissioners also determined that a conditional use permit was not necessary to allow RV park use. This appeal followed.

**PRELIMINARY MATTER**

In Coos County, lands subject to Goal 17 are located within a "Coastal Shorelands Boundary" (CSB) and are divided into management segments. Each shoreland management segment is subject to the provisions of the Coquille River Estuary Management Plan (CREMP). A CREMP designation limits the types of uses that may be conducted within each segment to those that are consistent with CREMP policies. Each shoreland management segment receives a primary zoning designation and a CREMP overlay designation. The subject property is located within Shorelands Segment 16. According to petitioner, the entire property is located within Shorelands Segment 16 and is designated CREMP-Industrial. According to intervenor, only a 2.5-acre portion of Parcel 1 is designated CREMP-Industrial.

Coos County Zoning and Land Development Ordinance (CCZLDO) 4.1.450 "Interpretation of Coastal Shorelands Boundary" provides, in relevant part:

> "When development action is proposed in the immediate vicinity of the [CSB] and when such proposed development action relies on a precise interpretation of the CSB, the Planning Director shall establish the precise location of the CSB using the seven criteria specified in the Coastal Shorelands goal. Establishment of the exact location may require an on-site inspection. If the

> location of the CSB as shown on the Plan maps or Coastal Shorelands Inventory map is subsequently found to be inaccurate or misleading, the Planning Director shall make the appropriate minor adjustments to the maps and provide a copy of any map revision to the County Clerk." (Emphasis in original.)

Intervenor relies on a copy of the county zoning map to show that as a result of a "zoning interpretation" performed in conjunction with the 1996 partition the county planning director clarified the location of the CREMP boundary. As a result of the interpretation, intervenor argues that only a small portion of the subject property is currently located within Shoreland Segment 16 and only that small portion is therefore subject to plan policies pertaining to development within the CREMP.

Petitioner relies on the same map to show that the CREMP boundary encompasses the entire property, and argues that her interpretation is supported by a map contained within the CREMP, which depicts the entire property as being located in Shoreland Segment 16.

While the matter is not entirely free from doubt, we believe that intervenor's explanation is consistent with the county's zoning map and corresponds with the county's finding that only 2.5 acres of the subject property are currently subject to the CREMP-Industrial designation. The county zoning map depicts two coastal shoreland boundaries in the vicinity of the subject property. One follows the boundary of the original 25.6-acre parent parcel. The other cuts across Parcel 1 at its northwest corner. The zoning map includes a numeric designation on the property, which corresponds to the following handwritten notation, which is shown at the bottom of the map:

> "Coastal Shorelands Boundary Interpretation by Planning Director P.E. 2-1-96. Basis: FIRM 100 yr. Flood Plain Map[;] Sterio of 1992 Air Photos[;] 15' Quad Map[.] Located in Section 17[,] 12-18-96/LNW."

The interpretation occurred at the same time as the partition, which is a development action that may need to rely on a precise interpretation of the CSB within the meaning of CCZLDO 4.1.450. It is not clear to us why the planning director revised the official zoning

map, but apparently did not revise the map contained in the CREMP. However, petitioner attaches no significance to that apparent omission.

The county's decision approves intervenor's request to rezone only the portions of the subject property that are not subject to the CREMP-Industrial designation. As the county found and we affirm, 2.5 acres of Parcel 1 are zoned CREMP-Industrial, and that portion of the property is not affected by the challenged decision. Therefore, to the extent petitioner relies on the CREMP-Industrial designation to support her arguments in her assignments of error, we disregard those arguments.

**FIRST ASSIGNMENT OF ERROR**

In its approval, the county concluded that the proposed rezoning does not require a new exception to the goals. In addition, the county determined that the proposed uses fall within the range of uses described in OAR 660-004-0018(2)(a).[3] Nevertheless, the county

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[3]OAR 660-004-0018(1) and (2) provide, in relevant part:

> "(1) * * * Physically developed or irrevocably committed exceptions under OAR 660-004-0025 and 660-004-0028 are intended to recognize and allow continuation of existing types of development in the exception area. Adoption of plan and zoning provisions that would allow changes in existing types of uses, densities, or services requires the application of the standards outlined in this rule.
>
> "(2) For 'physically developed' and 'irrevocably committed' exceptions to goals, plan, and zone designations shall authorize a single numeric minimum lot size and shall limit uses, density, and public facilities and services to those:
>
> "(a) Which are the same as the existing land uses on the exception site; or
>
> "(b) Which meet the following requirements:
>
> "(A) The rural uses, density, and public facilities and services will maintain the land as 'Rural Land' as defined by the goals and are consistent with all other applicable goal requirements; and
>
> "(B) The rural uses, density, and public facilities and services will not commit adjacent or nearby resource land to nonresource use as defined in OAR 660-004-0028; and
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> "(C) The rural uses, density, and public facilities and services are compatible with adjacent or nearby resource uses."

also addressed the requirements found in OAR 660-004-0018(2)(b), concluding that the proposed Recreation zoning will not result in rural lands being converted to urban lands and that the proposed uses will be compatible with existing resource uses.[4]

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[4]The county's findings state, in relevant part:

"1. For the purpose of this application the applicable portion of [OAR 660-004-0018] is [OAR 660-004-0018](2)(a).

"2. The 'exception site' consists of the entire ownership (Parcels 1, 2 and 3).

"3. The existing zoning on the exception site is a combination of CREMP Industrial and Industrial.

"4. One of the existing conditionally allowed uses on the CREMP Industrial zoned portion of the site is 'high intensity recreation.' Other uses that are the same in the existing Industrial zones and the proposed Recreation zone include: farm uses, farm buildings, forestry, low intensity recreation, off road vehicle rental, race track, modification of historic structures, temporary residences, watchman/caretaker residence, partitions and subdivisions.

"5. Pursuant to Table 4.4-c of the CCZLDO the existing Industrial zone does not have a minimum lot size. Pursuant to Section 4.4.200(2)(A) the proposed Recreation zone does not have a minimum lot size.

"6. Pursuant to Policy 5.18(3), Appendix 1, [Coos County Comprehensive Plan (CCCP)], Volume I, the extension of existing public water and sewer systems to the designated Industrial site is allowed.

"7. Pursuant to Policy 5.18(5) 'Coos County shall permit self contained community water and sewer systems' for recreational PUDs and industrial sites.

"8. Pursuant to Policy 5.18(6) 'Coos County shall permit self contained community water systems in documented "committed" areas.'

"9. The 'exception site' is an acknowledged physically developed and irrevocably committed exception site.

"10. The existing and historic Industrial operations on the site have been served by on site water and sewer systems.

"11. The proposed Recreation development will be served by on site water and sewer systems.

"12. The development density under the existing Industrial zone is determined by the carrying capacity of the site to provide adequate water and adequate sewer disposal.

"13. The development density under the proposed Recreation zone will be determined by the same carrying capacity of the site to provide adequate water and sewer disposal.

"14. The proposed 'Recreation' zone is an acknowledged zone designation in the [CCCP] and an acknowledged zon[ing] district in the [CCZLDO].

"15. The subject property is not located within an Urban Growth Boundary.

"16. The county's acknowledged 'Recreation' zone is based on Statewide Planning Goal 8: 'To satisfy the recreational needs of the citizens of the state and visitors and, where appropriate, to provide for the siting of necessary recreational facilities including destination resorts.'

"17. The subject property is bordered to the north by the Coquille River, to the east by developed Rural Residential Two land, to the south by Exclusive Farm Use land with pasture, cranberries and a sand pit, and to the west by Highway 101 which separates the subject property from CREMP estuary lands.

"18. The proposed acknowledged zone designation and uses within the zone are rural in nature and exist in other rural parts of Coos County (both farm and forest zoned areas).

"19. The density and development standards are already established by the [CCZLDO] for the proposed Recreation zone.

"20. The level of service from public facilities for the Recreation zone is the same as the level of service allowed under the existing Industrial zone.

"21. The existing uses, density, and public facilities for the Industrial zone have co-existed with the adjacent rural uses since land use came into existence. The uses, density and public services for the Recreation zone are the same or less intensive.

"Conclusions:

"1. The subject property is already an acknowledged physically developed and irrevocably committed exception area that allows a wide range of heavy to light industrial and manufacturing uses. * * *

"2. The proposed Recreation zone designation and the allowed uses within the zone are already acknowledged and exist in other 'rural' areas of Coos County.

"3. The level of public facilities and services allowed on the existing Industrial and the proposed Recreation zone are the same; therefore there will be no change in these factors.

"4. The existing Industrial zone has not had the effect of 'committing' any adjacent resource lands to non-resource use. Therefore, allowing the acknowledged Recreation zone and uses will not affect the EFU zoned land to the south of the subject property.

"5. The acknowledged Recreation zone and uses were found to be consistent with applicable Goal requirements and this request does not change any of the acknowledged development requirements or uses.

In the first subassignment of error, petitioner contends that the proposed RV park is not an allowed use within the Industrial zone and, therefore, the county must adopt a new or amended physically developed or irrevocably committed exception to support the zone change. In the second subassignment of error, petitioner contends that the county's findings fail to adequately address OAR 660-004-0018(2)(a) and (b)(A). In the third subassignment of error, petitioner contends that the county's decision fails to comply with OAR 660-004-0018(2)(b)(B) and (C) and CCZLDO 5.1.400, pertaining to compatibility with adjacent and nearby uses. In the fourth subassignment of error, petitioner contends that the county's decision fails to demonstrate that the Recreation designation and the resulting RV park are consistent with Goals 3 and 14 (Urbanization). We address the first three subassignments of error under the first assignment of error. We address the fourth subassignment of error in conjunction with our disposition of the second assignment of error, below.

### A. Need for a New or Revised Physically Developed or Irrevocably Committed Exception

Petitioner argues that the types of uses allowed within the Recreation zone are different than those that may be allowed in the Industrial zone and, as a result, the county must take a new exception to Goal 3.

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> "6. The proposed zone change from Industrial to Recreation does limit uses, density, public facilities and services which are the same as the existing land uses on the exception site.
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> "7. The proposed zone change from Industrial to Recreation will maintain the land as rural based on the fact that the acknowledged development standards in the CCZLDO will apply to the property.
>
> "8. The acknowledged Recreation uses and development standards are designed to be compatible with adjacent resource uses.
>
> "9. The proposed zone change is consistent with OAR 660-004-0018(2)(a) based on the findings and conclusions.
>
> "10. The proposed zone change is consistent with OAR 660-004-0018(2)(b) based on these findings and conclusions." Record 64-66.

In *Friends of Yamhill County v. Yamhill County*, __ Or LUBA __ (LUBA No. 2001-114, January 10, 2002), slip op 7, we addressed whether OAR 660-004-0018(2) required that a county adopt a new exception in order to change the zoning for land that is already subject to a committed exception for rural residential uses. The decision at issue in that appeal rezoned land within the exception area to higher density rural residential uses. We held that OAR 660-004-0018(2) did not require a new exception to Goals 3 and 4, although the county was required to apply the provisions of OAR 660-004-0018(2). *Id.*

In this case, the parties agree that the subject property is subject to a physically developed and irrevocably committed exception to Goal 3. Petitioner argues that the uses to which the rezoned property may be put are not consistent with the uses that justified the original exception. However, as we concluded in *Friends of Yamhill County*, a change in the uses allowed on land that is already subject to an irrevocably committed or physically developed exception does not require a new exception to Goal 3. The first subassignment of error is denied.

**B. Compliance with OAR 660-004-0018(2)**

**1. Applicability of OAR 660-004-0018(2)(a)**

As we stated above, while the county does not have to take a new exception to Goal 3, the county must apply OAR 660-004-0018. Here, the county appears to rely primarily on OAR 660-004-0018(2)(a) and concludes that the rule is satisfied because the uses that may be allowed on the subject property after it is designated Recreation are the same as uses that are allowed in the Industrial zone. *See* n 4. However, that is not responsive to the requirement that OAR 660-004-0018(2)(a) imposes. OAR 660-004-0018(2)(a) requires that a zoning designation that is applied as a result of the exception must

> "limit uses, density, and public facilities and services to those [*w*]*hich are the same as the existing land uses on the exception site*." (Emphasis added.)

The Recreation zone does not "limit uses, density and public facilities and services" to those industrial uses that are existing on the site. Therefore, the only mechanism under which the county may apply the Recreation zoning is OAR 660-004-0018(2)(b). *See Leonard v. Union County*, 15 Or LUBA 135, 138 (1986) (Goal 3 exception on the grounds that resource property is physically developed or irrevocably committed to nonresource use does not permit placement of uses different from those existing at the time the exception was taken unless the new uses are rural uses meeting the requirements of OAR 660-004-0018(2)(b)(A)-(C)).

**2. Compliance with OAR 660-004-0018(2)(b)(A)**

As stated earlier, OAR 660-004-0018(2)(b)(A) requires that the county zoning designation must "limit uses, density, and public facilities and services" so that the "rural uses, density, and public facilities and services will maintain the land as 'Rural Land' as defined by the goals and are consistent with all other applicable goal requirements."

The county's findings cite three reasons in support of its conclusion that the proposed zoning designation will retain the subject property as rural land: (1) there is some overlap in the uses that are allowed in the Industrial zone and the Recreation zone and all of those uses have been acknowledged as rural uses; (2) the Recreation zone has been acknowledged as a rural zone; and (3) the density and service levels will be limited to the carrying capacity of the subject property itself. *See* n 4. Petitioner argues that these findings are inadequate to support the county's conclusion that a 150-space RV park with attendant water and sewage facilities, among other amenities, is properly viewed as a rural use. Petitioner also contends that other uses, such as "coastal resorts" and "water-oriented restaurants," are also allowed in the Recreation zone, and argues that those uses certainly have urban attributes.

We agree with petitioner that the county's findings are inadequate to demonstrate compliance with OAR 660-004-0018(2)(b)(A). The acknowledgment of a zone as being generally in compliance with the goals does not *ipso facto* mean that all uses that may be

approved under that zone are necessarily rural in nature. *See DLCD v. Klamath County*, 40 Or LUBA 221, 227 (2001) (that a zone has been applied to rural property and acknowledged does not necessarily mean that zone can be applied to any rural property in the future without allowing an urban use in violation of Goal 14). In addition, OAR 660-004-0018(2) requires that zone designations shall "authorize a single numeric minimum lot size." The Recreation zone does not have a minimum lot size.

Similarly, the county's findings state that the type and intensity of public water and sewer will be dependent on the "carrying capacity" of the parcel. Record 65. *See* n 4. The findings do not explain how that carrying capacity will ensure rural service levels on the property or ensure that the uses that result from the level of service will not be urban in nature. Finally, the findings suggest that the proposed RV park will be rural because it will comply with OAR chapter 918, division 650. However, OAR chapter 918, division 650 does not limit density or otherwise establish that RV parks allowed under that rule are necessarily consistent with land use laws.

### 3. Compliance with OAR 660-004-0018(2)(b)(B) and (C) and CCZLDO 5.1.400

OAR 660-004-0018(2)(b)(B) and (C) require findings that demonstrate that the proposed zoning designation will not commit adjacent or nearby resource land to nonresource use and that the rural uses, density, and public facilities and services will be compatible with those same resource uses. *See* n 3. CCZLDO 5.1.400 sets out the county's criteria for rezoning property that is not subject to a CREMP overlay. CCZLDO 5.1.400(1)(b) provides that the hearings body considering a rezoning application may recommend that the board of county commissioners approve an application to rezone property when "the rezoning will not seriously interfere with permitted uses on other nearby parcels."

Petitioner argues that the findings the county adopted to demonstrate that the proposed Recreation zone complies with OAR 660-004-0018(2)(b)(B) and (C) and CCZLDO

5.1.400(1)(b) are inadequate and fail to address issues raised by the City of Bandon and the county's own planning department as well as petitioner questioning whether agricultural or industrial uses could continue to exist adjacent to a 150-space RV park. Petitioner contends that the county's findings rely on the faulty assumption that recreational uses have to be less intensive and cause less impact on agricultural and estuarine uses than the industrial use that has existed on the property for many years. Petitioner argues that the uses are dissimilar, and result in different impacts that must be analyzed individually. According to petitioner, the county's blanket assumption that recreational uses are less likely to commit adjacent resource land to nonresource uses is belied by the fact that the recreational uses on the property will invite persons to the area who are unfamiliar with agricultural and industrial activities and may interfere with those activities. In addition, petitioner argues that the findings fail to consider the impact of the proposed zoning on Bandon Marsh, and the likely impact the RV park users would have on the uses that may be permitted on the adjacent industrial zone.

Intervenor responds that the county's findings are adequate to satisfy OAR 660-004-0018(2)(b)(B) and (C) and that those findings are supported by substantial evidence. In addition, intervenor argues that under the rule, the county is not obliged to consider nonresource uses that may be permitted on lands adjacent or near to the subject property. To the extent that the county's zoning code requires some consideration of the impact of the proposed zoning on existing nonresource uses, intervenor argues, that consideration is given in the context of the planning commission's review and recommendation to approve the rezoning, and is not a criterion that may be considered by this Board in its review of the board of commissioners' decision.

The county's findings are inadequate to address OAR 660-004-0018(2)(b)(B) and (C) and do not respond to issues petitioner and others raised below regarding the impact the proposed rezoning would have on adjacent and nearby resource use. The county's unexplained assumption that the impacts on resource land that flow from a lumber mill are

comparable to the impacts that could result from the establishment of an RV park is questionable. As petitioner stated below, it is possible that the clientele of an RV park, especially if the clientele remains at the park for any length of time, will cause some change in the resource activities in the area. It also is possible that the types of services required or desired by the patrons of a recreational establishment would result in the commitment of adjacent resource lands to nonresource uses. The county's findings do not address these concerns.

We also disagree with intervenor that we are precluded from reviewing the county's determination that the proposed use will not seriously interfere with permitted uses on adjacent properties because that determination was made by the planning commission. We review final land use decisions made by local governments. ORS 197.825(1). Those decisions frequently include interlocutory decisions that may be made to support the decision by the ultimate decision maker. Here, the planning commission's action is a *recommendation* to the board of county commissioners. The recommendation alone may not result in an amendment to the zoning and comprehensive plan maps. CCZLDO 5.1.450. Because the application must comply with all applicable criteria, CCZLDO 5.1.400(1)(b) is an applicable criterion, and the board of commissioners' decision results in approval of that application, we may review the county's findings regarding compliance with CCZLDO 5.1.400(1)(b). We conclude that the county's findings are inadequate to address petitioner's and others' concerns about the impact of the proposed designation on the adjacent industrial use and Bandon Marsh.

The second and third subassignments of error are sustained.

The first assignment of error is sustained, in part.

**SECOND ASSIGNMENT OF ERROR**

An amendment to an acknowledged comprehensive plan must be consistent with the statewide planning goals. *Ludwick v. Yamhill County*, 72 Or App 224, 231, 696 P2d 536

(1985); ORS 197.175(2)(a).[5] Petitioner argues that the county's findings are inadequate to demonstrate that the proposed map amendment is consistent with Goals 3, 5 (Open Spaces, Scenic and Historic Areas and Natural Resources), 14, 16 (Estuarine Resources) and 17. According to petitioner, the county (1) must address Goal 3, because the rezoning would allow new uses on property that was formerly agricultural land and is bordered by agricultural lands to the south; (2) must address Goal 5, because the site contains inventoried archeological and riparian resources that could be affected by a rezoning to Recreation; (3) must address Goal 14 or take an exception to that goal because some of the uses allowed by the Recreation zone, including the anticipated use of the property, are urban uses; (4) must address Goal 16, because adjacent property contains estuarine resources that could be affected by the change in designation; and (5) must address Goal 17, because the affected property lies within Shorelands Segment 16 and Aquatic Unit 17 and may be affected by intensive recreational uses.

Intervenor responds that the county found that the proposed amendment will not implicate Goal 3, because the subject property is already subject to an exception to Goal 3. Intervenor concedes that there are inventoried Goal 5 resources on the subject parcel, but argues that the measures that were adopted to protect the Goal 5 resources from industrial uses will be adequate to protect the resources when the property is zoned Recreation. With respect to Goal 14, intervenor contends that (1) the property is located outside an urban growth boundary and (2) the county's findings are adequate to demonstrate that the uses that may be allowed on the property are rural. Finally, intervenor argues that Goals 16 and 17 are not implicated because there will be no change to the use of the portion of the property that is within the coastal shorelands and contains estuarine resources.

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[5]ORS 197.175(2)(a) provides that each city and county of this state shall:

> "* * * [A]mend * * * comprehensive plans in compliance with goals approved by [the Land Conservation and Development Commission.]"

We agree with intervenor that the county's findings with respect to Goals 3, 5, 16 and 17 are adequate to establish that the proposed rezoning is consistent with those goals, in the absence of a focused argument by petitioner that those goals are directly implicated by the map amendment. Petitioner's Goal 3 argument under this assignment of error is based on agricultural activities that are occurring on adjacent properties, not on the subject property. Those impacts are addressed under OAR 660-004-0018.

Under Goal 5, petitioner argues that the county's findings are inadequate to demonstrate that development that may be approved under a Recreation zoning will not affect the county's program to implement the goal, especially with regard to archaeological resources.[6] We have held that when a local government amends its ordinance such that Goal

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[6]CCZLDO Appendix 1, CCCP Policies, Volume I provides, in relevant part:

> "HISTORICAL, CULTURAL AND ARCHAEOLOGICAL RESOURCES, NATURAL AREAS AND WILDERNESS
>
> "Plan Implementation Strategies
>
> "1. Coos County shall manage its historical, cultural and archaeological areas, sites, structures and objects so as to preserve their original resource value.
>
> "* * * * *
>
> "3. Coos County shall continue to refrain from wide-spread dissemination [of] site-specific inventory information concerning identified archaeological sites. Rather, Coos County shall manage development in these areas so as to preserve their value as archaeological resources.
>
> "This strategy shall be implemented by requiring development proposals to be accompanied by documentation that the proposed project would not adversely impact the historical and archeological values of the project's site. 'Sufficient documentation' shall be a letter from a qualified archaeologist/historian and/or a duly authorized representative of a local Indian tribe(s). The Coos County Planning Department shall develop and maintain a list of qualified archaeologists and historians. In cases where adverse impacts have been identified, then development shall only proceed if appropriate measures are taken to preserve the archaeological value of the site. 'Appropriate measures' are deemed to be those which do not compromise the integrity of the remains, such as (1) paving over the sites; (2) incorporating cluster-type housing design to avoid the sensitive areas; or (3) contracting with a qualified archaeologist to remove and re-inter the cultural remains or burial(s) at the developer's expense. * * *

5 protections are implicated, the local government must review its program to achieve the goal to ensure those protections are still consistent with the government's policy decision to either protect the resource fully, protect the resource in part against conflicting uses, or allow conflicting uses fully. *Home Builders Assoc. v. City of Eugene*, __ Or LUBA __ (LUBA Nos. 2001-059/063, February 28, 2002), slip op 62. Here, the county's decision allows new uses that could conflict with an acknowledged Goal 5 resource, rather than amend the county's Goal 5 protections. *See* OAR 660-023-0250(3)(b). However, the county's findings explain that the existing Goal 5 protections are adequate to protect the identified resources from conflicts with uses allowed in the Recreation zone.[7] Absent a focused challenge to those findings, we do not see that Goal 5 requires more.

Petitioner's arguments regarding Goals 16 and 17 are based on her initial premise that the entire property is within the Coastal Shorelands boundary or, in the alternative, that the recreational uses that may be allowed on the property may in some unspecified way affect the portions of the property that are closest to Aquatic Unit 17. The county found that the proposed Recreation designation will not have an impact on those portions of the property

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> "This strategy is based on the recognition that preservation of such archaeologically sensitive areas is not only a community's social responsibility but is also a legal responsibility pursuant to Goal #5 and ORS 97.745. It also recognizes that historical and archaeological sites are non-renewable cultural resources." CCZLDO Appendix 1, 19-20.

[7]The county's Goal 5 findings state, in relevant part:

> "The subject property is subject to a riparian buffer pursuant to the development standards contained in the CCZLDO. The proposed rezone will not change or affect the existing Goal 5 protection applicable to the subject property.
>
> "According to the Coos County inventory of 'Special Considerations,' [a] portion of the property is in a designated archeological site. The property is already zoned as a committed development site. The CCZLDO contains acknowledged provision[s] designed to protect the integrity of sensitive archeological sites. The proposed amendment and rezone will not change the level of protection provided under the current regulations. Any development under the proposed zone designation and uses will be subject to the same protection standards that currently exist. Therefore, the proposal is consistent with the provisions of Goal 5 pertaining to archaeological sites." Record 67.

that are subject to Goals 16 and 17.[8] Again, without a more focused argument from petitioner, we agree with intervenor that those findings are adequate.

However, we agree with petitioner that the county's findings with respect to Goal 14 are inadequate. In addition to the findings set out at n 4, the county concluded that Goal 14 is not implicated because

> "[t]he subject property is outside of the City of Bandon UGB. The property is serviced by an existing state highway. Urban uses are not allowed in the existing Industrial or the proposed Recreation zone. Therefore, urbanization issues are not applicable." Record 72.

As we noted in our discussion of the county's findings addressing OAR 660-004-0018(2)(b)(A), the county may not rely on its application of the Recreation zone to rural property in the past to establish that uses that would be permitted on the subject property after it is zoned Recreation are not urban. *See Kaye/DLCD v. Marion County*, 23 Or LUBA 452, 465-66 (1992) (particular effects of applying a zoning designation to a particular parcel must be analyzed under Goal 14). Here, among the uses that may be allowed outright is a 150-space RV park, with attendant water and sewer service, and capacity to serve a clientele

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[8]The county's findings state, in relevant part:

> "**Goal 16: Estuarine Resources:** To recognize and protect the unique environmental, economic, and social values of each estuary and associated wetlands; and to protect, maintain, where appropriate develop, and where appropriate restore the long-term environmental, economic, and social values, diversity and benefits of Oregon's estuaries.
>
> "**Response:** There are no proposed changes to the existing estuarine designations or uses on the site.
>
> "**Goal 17: Coastal Shorelands:** To conserve, protect, where appropriate, develop and where appropriate restore the resources and benefits of all coastal shorelands, recognizing their value for protection and maintenance of water quality, fish and wildlife habitat, water-dependent uses, economic resources and recreation and aesthetics. The management of these shoreland areas shall be compatible with the characteristics of the adjacent waters; and to reduce the hazard to human life and property, and the adverse effects upon water quality and fish and wildlife habitat, resulting from the use and enjoyment of Oregon's coastal shorelands.
>
> "**Response:** There are no proposed changes to the coastal shoreland designations or use on the site." Record 73.

that resides on the grounds for up to six months at a time. The property is one mile from the Bandon city limits and its UGB. Under these circumstances, the county's findings must consider whether the uses allowed in the Recreation zone, particularly the proposed RV park, will not result in urban uses or uses that will undermine the effectiveness of nearby urban growth boundaries. *DLCD v. Klamath County*, 40 Or LUBA at 227; *Brown v. Jefferson County*, 33 Or LUBA 418, 445 (1997). The county's findings are inadequate to address these issues.

The fourth subassignment of error of the first assignment of error and the second assignment of error are sustained, in part.

**THIRD ASSIGNMENT OF ERROR**

ORS 197.763(3)(b) provides that a local government's hearing notice pertaining to a quasi-judicial land use application shall, among other things:

> "List the applicable criteria from the ordinance and the plan that apply to the application at issue[.]"

If the local government fails to list all applicable criteria, a party may raise issues pertaining to the omitted criteria in an appeal to LUBA. ORS 197.835(4)(a).

In this case, petitioner argues that the county omitted criteria relating to the CREMP designation on the property. According to petitioner, the county must address comprehensive plan policies and zoning provisions that limit the types of uses that may be permitted within industrial and recreational zones as a result of the CREMP overlay. Petitioner argues that these policies and provisions demonstrate that the applicant is obliged to submit new or revised exceptions addressing Statewide Planning Goals 3, 5, 14, 16 and 17. Because the county failed to adopt any findings regarding the CREMP designation, petitioner contends that the decision must be remanded to address the policies, regulations and the goals.

Intervenor responds that petitioner has failed to allege that her rights were substantially prejudiced by the county's failure to identify plan policies and zoning

regulations pertaining to the CREMP, because the CREMP does not apply to the portion of the parcels that is subject to the challenged decision. Even if the CREMP designation supplies relevant policy and approval criteria, intervenor argues that petitioner raised issues below pertaining to compliance with administrative rules pertaining to exception areas and to Coastal Shoreland boundary-related policies. Finally, intervenor contends that petitioner's assignment of error fails to identify any particular zoning ordinance provisions that the county failed to address and, therefore, petitioner's arguments provide no basis for reversal or remand.

Petitioner's arguments provide no basis for reversal or remand. Even if the CREMP designation is relevant in some way to the challenged decision, the remedy provided by ORS 197.835(4)(a) for failing to list relevant criteria in the notice of hearing is to allow petitioner to assign error to the county's decision based upon the omitted criteria in an appeal to LUBA without first raising the issues below. *Eppich v. Clackamas County*, 26 Or LUBA 498, 504 (1994). The failure to list all applicable decisional criteria does not provide a reason in and of itself for reversal or remand, unless petitioner demonstrates that the failure to list the applicable criteria prejudiced her substantial rights. *Roth v. Jackson County*, 38 Or LUBA 894, 897 (2000). Petitioner has not demonstrated that the county's failure to list the CREMP provisions in its notice of hearing prejudiced her substantial rights.

The third assignment of error is denied.

**FOURTH ASSIGNMENT OF ERROR**

ORS 197.615 and administrative rules implementing that statute require that a local government provide notice of post-acknowledgment plan amendments prior to and

immediately after their adoption.[9] *See* OAR 660-018-0040(1).[10] Petitioner argues that the county's notice to DLCD failed to comply with DLCD's rules pertaining to the contents of the notice and as a result failed to inform DLCD of all of the ramifications of the proposed development.

Petitioner's argument in this assignment of error also fails to provide a basis for reversal or remand. A local government's failure to comply with the provisions of OAR 660-018-0040(1) provides DLCD and other parties subject to notice under ORS 197.615 an opportunity to appeal the county's decision beyond the deadline established in ORS 197.830 for filing an appeal at LUBA. *See Craig Realty Group v. City of Woodburn*, 37 Or LUBA 1041, 1047 (2000) (city's failure to comply with OAR 660-018-0040(1) results in tolling of

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[9]ORS 197.615 provides in part:

> "(1) A local government that amends an acknowledged comprehensive plan or land use regulation or adopts a new land use regulation shall mail or otherwise submit to the Director of the Department of Land Conservation and Development a copy of the adopted text of the comprehensive plan provision or land use regulation together with the findings adopted by the local government. The text and findings must be mailed or otherwise submitted not later than five working days after the final decision by the governing body. If the proposed amendment or new regulation that the director received under ORS 197.610 has been substantially amended, the local government shall specify the changes that have been made in the notice provided to the director.
>
> "(2)(a) On the same day that the text and findings are mailed or delivered, the local government also shall mail or otherwise submit notice to persons who:
>
> "(A) Participated in the proceedings leading to the adoption of the amendment to the comprehensive plan or land use regulation or the new land use regulation; and
>
> "(B) Requested of the local government in writing that they be given such notice."

[10]OAR 660-018-0040(1) provides in part:

> "Amendments to acknowledged comprehensive plans or land use regulations, new land use regulations adopted by local government, and findings to support the adoption shall be mailed or otherwise submitted to the Director [of DLCD] within five working days after the final decision by the governing body and shall be accompanied by appropriate forms provided by the Department. * * *"

time for filing LUBA appeal). In this case, petitioner filed a timely appeal, notwithstanding the alleged defects in the county's notice to DLCD.

In addition, petitioner's argument appears to be based on her mistaken premise that the subject property is subject to Goal 17 and the CREMP. We have already concluded that the CREMP designation does not apply to the subject property.

The fourth assignment of error is denied.

The county's decision is remanded.