BEFORE THE LAND USE BOARD OF APPEALS

OF THE STATE OF OREGON

DALE GREENHALGH and KONNIE WHEELER,
Petitioners,

and

PATRICIA J. ZIMMERMAN,
Intervenor-Petitioner,

vs.

COLUMBIA COUNTY,
Respondent,

and

KEVIN BENDER, FRED BENDER and
WESTERN STATES DEVELOPMENT CORPORATION,
Intervenor-Respondents.

LUBA Nos. 2007-043 and 2007-044

FINAL OPINION
AND ORDER

Appeal from Columbia County.

Daniel Kearns, Portland, filed the petition for review and argued on behalf of petitioners. With him on the brief was Reeve Kearns, PC.

Patricia J. Zimmerman, Scappoose, represented herself.

No appearance by Columbia County.

Dorothy S. Cofield, Portland, filed the response brief and argued on behalf of intervenor-respondents.

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

REMANDED 07/27/2007

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

provisions of ORS 197.850.

Opinion by Ryan.

NATURE OF THE DECISION

In these consolidated appeals, petitioners appeal two decisions by the county approving a total of three dwellings on three separate parcels in a forest zone.

FACTS

The three parcels that are the subject of this appeal are 27 acres, 65 acres, and 96 acres in size and are zoned Primary Forest-76. The properties are also located within the county's Big Game Overlay zone. Intervenors applied for a forest template dwelling on the 27 acre parcel according to the provisions of Columbia County Zoning Ordinance (CCZO) 503.9. Intervenors also applied for a forest template dwelling on each of the 65-acre parcel and the 96-acre parcel according to the provisions of CCZO 402.3.[1]

The planning commission denied all three dwelling applications. Intervenors appealed the denial to the board of commissioners, and the board of commissioners approved the three dwelling applications, subject to additional conditions. These consolidated appeals followed.

FIRST ASSIGNMENT OF ERROR

In their first assignment of error, petitioners argue that the county misconstrued CCZO 505.1 and Columbia County Comprehensive Plan (CCCP) Forest Lands Policy 7 (Policy 7). Petitioners contend that the county's findings regarding those provisions were inadequate with regard to the non-forest dwelling on the 27-acre parcel and that the county's findings are not supported by substantial evidence. CCZO 505.1 generally requires that non-forest dwellings be placed on land that is "generally unsuitable for commercial forestry or agriculture," and Policy 7 requires that non-forest dwellings be sited on land "generally unsuitable for forest uses." The crux of petitioners' argument, and the one that is most

[1] CCZO 503.9 sets forth the requirements for obtaining a non-resource template dwelling, and CCZO 402.3 sets forth the requirements for obtaining a template dwelling subject to a forest management plan.

relevant to our decision under the first assignment of error, is that the county did not correctly apply the arguably more stringent requirement of Policy 7 in determining whether to approve a non-forest dwelling on the 27-acre parcel.[2]

Intervenors maintain that the issue presented in the first assignment of error was not raised prior to the close of the final evidentiary hearing below, and thus petitioners are precluded by ORS 197.763(1) and ORS 197.835(3) from raising it for the first time in this appeal.[3] At oral argument, petitioners put forth two responses to intervenors' waiver assertion.

First, petitioners responded that the issue set forth in their first assignment of error was raised below and is not waived. Petitioners cited to multiple pages in the record to demonstrate that the issue raised in their first assignment of error was raised prior to the close of the evidentiary record. While we agree with petitioners that the cited record pages generally contain references to the applicable approval standards set forth in CCZO 505.1 and Policy 7, we do not understand the issue that petitioners now raise in their first assignment of error, namely that Policy 7 is not satisfied, to have been raised below in any of those record pages. The cited record pages contain statements regarding the suitability of the three parcels for forest use, and contain arguments that when the parcels are viewed in the

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[2] Specifically, petitioners maintain that the county's findings regarding Policy 7 are inadequate to explain why the parcel is "unsuitable for forest uses generally."

[3] ORS 197.763(1) provides:

> "An issue which may be the basis for an appeal to the Land Use Board of Appeals shall be raised not later than the close of the record at or following the final evidentiary hearing on the proposal before the local government. Such issues shall be raised and accompanied by statements or evidence sufficient to afford the governing body, planning commission, hearings body or hearings officer, and the parties an adequate opportunity to respond to each issue."

ORS 197.835(3) provides:

> "Issues shall be limited to those raised by any participant before the local hearings body as provided by ORS 197.195 or 197.763, whichever is applicable."

aggregate, together they are capable of producing more than 5000 cubic feet per acre per year. Those statements do not raise an issue that the county's analysis under Policy 7 was incorrect.

Second, petitioners argued that the county's notice of the hearing found at Record 1317 did not reference CCZO 505.1 or Policy 7 and therefore, ORS 197.835(4) allows petitioners to raise a new issue based upon that code and plan provision. We agree with petitioners that the notice of hearing found at Record 1317 does not specifically list CCZO 505.1 or Policy 7. However, the notice of hearing that petitioners rely on was dated March 30, 2006. After that notice was sent, at least three staff reports referenced and discussed CCZO 505.1 and proposed findings related to that provision, and at least one staff report discussed Policy 7 and proposed findings related to that policy. Record 379, 385, 807, 824. Under ORS 197.835(4)(a), LUBA may refuse to allow an issue to be raised for the first time on appeal if it finds that the issue could have been raised before the local government but was not raised.[4] Those staff reports provided petitioners with notice that the standards set forth in CCZO 505.1 and Policy 7 applied to the applications, and petitioners could have raised an issue regarding those provisions below.

We find that the issue set forth in the first assignment of error was not raised prior to the close of the record below and thus petitioners are precluded under ORS 197.835(3) from raising it for the first time on appeal.

The first assignment of error is denied.

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[4] ORS 197.835(4) provides in relevant part:

> "(4) A petitioner may raise new issues to the board if:
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> > "(a) The local government failed to list the applicable criteria for a decision under ORS 197.195 (3)(c) or 197.763 (3)(b), in which case a petitioner may raise new issues based upon applicable criteria that were omitted from the notice. *However, the board may refuse to allow new issues to be raised if it finds that the issue could have been raised before the local government* * * *." (Emphasis added).

SECOND AND SEVENTH ASSIGNMENTS OF ERROR

In their second and seventh assignments of error, petitioners challenge the county's finding that the applications satisfy the requirements of CCZO 1193.A and B, which are development standards in the Big Game Overlay Zone. CCZO 1193.A provides:

> "Dwellings and structures shall be located as near each other and existing developed areas as possible considering topography, water features, required setback and firebreaks."

CCZO 1193.B provides:

> "Dwellings and structures shall be located to avoid habitat conflicts and utilize least valuable habitat areas."

Petitioners complain that the applicant first selected a site for the dwelling on each parcel, and then attempted to justify that pre-selected site. Petitioners argue that the above development standards require evaluation of several alternative sites to determine which site best meets the requirements of CCZO 1193.A and B. Petitioners also argue, more generally, that the county's findings do not adequately explain why the proposed dwelling sites comply with the development standards. Intervenors respond that the above development standards do not mandate the formulaic type of evaluation of alternative sites that petitioners claim is required, and that the supplemental findings adopted by the county as part of the decision adequately addressed all of the issues that petitioners raise under the second and seventh assignments of error. Record 56A, 57, 98, 99.

The county interpreted CCZO 1193.A and B as requiring a balancing test between siting proposed dwellings near existing development to preserve big game habitat, and recognizing site constraints. Petitioners do not challenge that interpretation or any of the supplemental findings. Those supplemental findings rely on evidence presented by intervenors' experts that the buildings would be sited close to existing structures and development, considering topography, water features, required setbacks and firebreaks. The county concluded that the proposed dwelling locations meet the criteria of CCZO 1193.A

and B. Absent a challenge to those findings from petitioners, we find no basis for reversing or remanding the county's decision under the second and seventh assignments of error.

The second and seventh assignments of error are denied.

THIRD ASSIGNMENT OF ERROR

In their third assignment of error, petitioners argue that the county's findings regarding the non-forest dwelling application on the 27-acre parcel are inadequate to explain why the standards set forth in CCZO 1503.5(E) are met. The CCZO requires a conditional use permit for a non-forest dwelling, and CCZO 1503.5(E) requires the applicant to demonstrate that:

> "The proposed use will not alter the character of the surrounding area in a manner which substantially limits, impairs, or precludes the use of surrounding properties for the primary uses listed in the underlying district."

In addressing CCZO 1503.5(E), the county found:

> "All surrounding properties are zoned either Primary Forestland * * * or Rural Residential * * *. The 160 acre rectangular template used in this application indicates the presence of 18 other parcels with 13 dwellings. The proposed residence will not alter the character of the area or limit, impair, or preclude the use of surrounding properties for the primary uses listed in the underlying district. The table below indicates properties and uses within 750' of the subject parcel." Record 88.

The above-quoted findings are conclusory and are inadequate to demonstrate that the disputed dwelling will not "substantially limit[], impair[], or preclude[] the use of surrounding properties for the primary uses listed in the underlying district." However, intervenors answer that the county's findings regarding CCZO 504.3, which contains almost identical language to CCZO 1503.5(E), required the same analysis by the county regarding whether a proposed use will substantially limit the permitted uses of surrounding properties. Intervenors maintain that the findings regarding that criterion are adequate to explain how

the county concluded that the proposed use would not alter the character of the surrounding area.[5]

We agree with intervenors that CCZO 1503.5(E) and CCZO 504.3 essentially require the same analysis in determining whether the proposed dwellings will substantially affect the permitted uses of the surrounding properties. The county's findings regarding CCZO 504.3 defined the surrounding area, and identified the zoning of each identified parcel within that area and the uses allowed in the applicable zones within the area. Relying on evidence in the record from applicants' experts, the county found that the proposed use would be similar to surrounding uses because the proposed dwellings would be clustered near other dwellings and sited to create minimal impacts on adjacent forest zoned land. Record 82, 88, 92, 524, 611. Those findings are adequate to demonstrate that the proposed dwelling complies with CCZO 1503.5(E) and CCZO 504.3.

The third assignment of error is denied.

FOURTH ASSIGNMENT OF ERROR

In their fourth assignment of error, petitioners assert that the county's findings regarding CCZO 1503.5(G) are inadequate and are not supported by substantial evidence. CCZO 1503.5(G) provides in relevant part that a conditional use permit for the dwelling on the 27 acre parcel may be granted if, among other things, "[t]he proposal will not create any hazardous conditions."

Intervenors initially respond that petitioners did not raise any question regarding the proposal's compliance with CCZO 1503.5(G) below, and they are precluded from raising the issue for the first time on appeal to LUBA. However, we find that issues regarding erosion,

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[5] CCZO 504.3 provides:

> "The use will be limited to a site no larger than necessary to accommodate the activity, and as such will not materially alter the stability of the overall land use pattern of the area or substantially limit or impair the permitted uses of surrounding properties. If necessary, measures will be taken to minimize potential negative effects on adjacent forest lands."

unstable slopes and the existing logging road on the property were raised at Record 147, 149 and 152.

Intervenors next respond that the county's findings viewed in their totality are adequate to show that the dwelling and driveway will not create hazardous conditions. Intervenors maintain that when the county's findings regarding CCZO 1503.5(G) are read in conjunction with the county's supplemental findings found at Record 100-102, the findings are more than adequate to explain why the county found that the proposed dwelling and driveway would not create any hazardous conditions.

CCZO 1503.5.G allows the county to grant a conditional use permit for a dwelling if "*the proposal* will not create any hazardous conditions." The "proposal" before the county was an application for a dwelling and a driveway leading to the dwelling. The county adopted findings, and supplemental findings, to address concerns about hazardous conditions being created as a result of developing the dwelling and driveway. In the supplemental findings, the county relied on evidence in the record from the fire chief and the applicant's experts, a licensed geotechnical engineer and a civil engineer, to conclude that the driveway and dwelling could be constructed to meet fire department standards without risk to slope stability or neighboring properties. The county imposed a condition requiring construction in accordance with a slope stability plan as required by the county's building code.

Petitioners do not explain why the county's findings and supplemental findings described above are inadequate to show compliance with CCZO 1503.5(G).

The fourth assignment of error is denied.

FIFTH AND EIGHTH ASSIGNMENTS OF ERROR

In their fifth and eighth assignments of error, petitioners argue that the county's decision that the proposed dwellings comply with the provisions of OAR 660-006-0029 is not supported by substantial evidence in the record, and that the county's findings are inadequate regarding these approval standards. Intervenors respond that petitioners failed to

raise an issue regarding OAR 660-006-0029 with sufficient specificity to allow the county to respond, and that the issue is waived under ORS 197.763(1). Petitioners have not responded to intervenors' contention.

Intervenors note that issues were raised regarding the siting of the dwelling, but that the issues were raised in relation to the siting requirements of the CCZO 1193.A and B, as discussed in our resolution of the second and seventh assignments of error. After reviewing the record, we agree with intervenors that although issues regarding the siting of the dwellings were raised below, the issues were raised in the context of compliance with CCZO 1193.A and B, and not in the context of compliance with the standards of OAR 660-06-0029. In order to preserve the right to challenge the adequacy of findings addressing an approval criterion, a party must demonstrate that the proposal's compliance with that criterion was raised below accompanied by statements or evidence sufficient to afford other parties an adequate opportunity to respond. *Bruce Packing Company v. City of Silverton*, 45 Or LUBA 334, 352-53, *aff'd* 191 Or App 305, 82 P3d 653 (2003). Raising siting issues in the context of compliance with CCZO 1193.A and B did not put the county or applicants on notice that an issue was being raised with regard to compliance with the siting standards of OAR 660-006-0029, which differ from those in CCZO 1193. Accordingly, under ORS 197.763(1), petitioners are precluded from raising those issues for the first time on appeal.

The fifth and eighth assignments of error are denied.

SIXTH ASSIGNMENT OF ERROR

In their sixth assignment of error, petitioners argue that the county misconstrued the applicable law when it found that the applications for dwellings on the 65-acre and 96-acre parcels comply with CCZO 502.3, which provides that the following are permitted uses in the applicable forest zone:

> "Structures and facilities necessary for and accessory to commercial forest management * * *. The uses served by such structures and facilities may include, but are not limited to: administration, equipment storage and

maintenance, communications, fire protection, fish rearing, and residences for property owners, employers or full- time employees directly accessory to and required for commercial forest management * * *."

The county adopted the following supplemental findings regarding CCZO 502.3:

"The Board has interpreted the 'necessary for and accessory to' provision in Final Order No. 45-2002 (Robert Andreotti) which is part of this record * * *. The 'necessary for and accessory to' standard has the same meaning in CCZO § 502 (PF-76 District) as it does in CCZO § 402 (FA-19 District). The Board has applied the Andreotti interpretation to other PF-76 dwelling applications as shown in Legal Counsel's File Exhibit 1.15.A-C. *The Board's interpretation in the Andreotti decision is that in order to be necessary, the dwelling must be on the same property which is proposed to be forested, and the dwelling must make forest management more efficient and convenient for the owner/operator of the forest land.* The Board finds that it has applied the Andreotti interpretation in similar template dwelling applications in the PF-76 district and it must apply its ordinances consistently with past approvals and its adopted interpretation of the necessary standard. The Board finds its interpretation of the necessary standard as set out in the Andreotti final order is different than the state standard for forest management dwellings which was abolished in 1993. The Board finds without a parallel state standard, the Board may legally interpret a local code standard independent of any prior case law on the state standard. *The Board rejects the idea that the dwelling must be a proven necessity because in Andreotti, the Board adopted a standard of efficiency and convenience.*

"The Board finds that there is substantial evidence in the record that the proposed dwelling is accessory and necessary to the proposed forest use *using the Andreotti standard of 'convenience and efficiency.'* * * *

"* * * * *

"In applying its necessary standard above, the Board concludes the county's zoning ordinance is more restrictive than [current] state law which [has now] abolished the 'necessary standard.' The Board finds that during its Goal 5 ordinance discussions seeking public comment, the public input showed that it did not want its local laws to be more restrictive than state statute. The Board finds that its forest land ordinance has not been updated since the state statute at ORS 215.705-.750 was adopted in 1993. The Board finds the State changed state law to delete the 'necessary and accessory standard' when it adopted its template dwelling provisions but the county ordinance was not likewise changed. The Board finds the 'necessary' standard is too difficult to apply and the template dwelling criteria is adequate to protect forestland. The Board finds that onsite stewardship is very important because it promotes better management of forests: Imposing a strict interpretation of the 'necessary' standard could disallow the small woodland owner from living on

his own lands which the Board does not support." Record 53-56A, 61-65 (emphases added).

Petitioners challenge the county's interpretation of CCZO 502.3, arguing that its interpretation of the phrase "necessary for and accessory to" is contrary to the ordinary meaning of the word "necessary" and to the underlying purpose and policies of CCZO 502.3, as well as Statewide Planning Goal 4.[6] Intervenors first respond that the county's interpretation of the "necessary and accessory" standard is entitled to deference under ORS 197.829(1). As an adjunct argument, intervenors maintain that because the county approved the proposed dwellings under the "forest template dwelling" statute found at ORS 215.750, and that statute eliminated the prior "necessary and accessory" approval standard formerly found in state law, the county is free to interpret its code provision without regard to prior case law interpreting the "necessary and accessory" standard.

Intervenors cite our decision in *Blondeau v. Clackamas County*, 29 Or LUBA 115 (1995) in support of their argument. In *Blondeau*, the applicant applied for a dwelling on farmland under the provisions of ORS 215.700 *et seq*. That statute was enacted in 1993. In denying the application in *Blondeau*, the county relied on ORS 215.705(1)(c) and applied local code standards that had originally been adopted to comply with the nonfarm dwelling standards at ORS 215.283(3) (1991).[7] ORS 215.283(3) was repealed in 1993. In *Blondeau*,

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[6] Petitioners also argue that the county's interpretation is contrary to the Oregon Forest Practices Act; but they do not develop that argument, and we do not address it.

[7] ORS 215.705(1)(c) provides:

> (1) A governing body of a county or its designate may allow the establishment of a single-family dwelling on a lot or parcel located within a farm or forest zone as set forth in this section and ORS 215.710, 215.720, 215.740 and 215.750 after notifying the county assessor that the governing body intends to allow the dwelling. A dwelling under this section may be allowed if:
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> "* * * * *

the applicant argued that under ORS 215.705(5), the county could not rely on county nonfarm dwelling approval standards, which mirrored the nonfarm dwelling approval standards in ORS 215.283(3) (1991), to deny an application under the new 1993 lot of record legislation.[8] ORS 215.705(5) expressly authorized counties to adopt three standards under which counties could deny lot of record applications. While one of the three standards set out in ORS 215.705(5) replicated the prior nonfarm dwelling standards at ORS 215.283(3) (1991), the other nonfarm dwelling standards were not set out at ORS 215.705(5).

LUBA agreed with the applicant in *Blondeau*, finding that although ORS 215.705(5) allowed counties to adopt by ordinance standards that would allow counties to deny a lot of record dwelling that otherwise must be approved under ORS 215.705, the county had not adopted such standards by ordinance, and the county could not rely on its nonfarm dwelling standards to deny a dwelling that otherwise must be approved under ORS 215.705. *Blondeau*, 29 Or LUBA at 123-124.

Blondeau is inapposite. The applications in *Blondeau* were for "lot of record" dwellings under ORS 215.705. As noted above, ORS 215.705(5) allows counties to deny lot of record dwellings on three specified grounds, if the county specifically adopts such standards by ordinance, which the county had not done. In *Blondeau*, we read ORS

> "(c) The proposed dwelling is not prohibited by, and will comply with, the requirements of the acknowledged comprehensive plan and land use regulations and other provisions of law."

[8] ORS 215.705(5) provides:

> "A county may, by application of criteria adopted by ordinance, deny approval of a dwelling allowed under this section in any area where the county determines that approval of the dwelling would:
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> "(a) Exceed the facilities and service capabilities of the area;
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> "(b) Materially alter the stability of the overall land use pattern in the area; or
>
> "(c) Create conditions or circumstances that the county determines would be contrary to the purposes or intent of its acknowledged comprehensive plan or land use regulations."

215.705(5) in context to prohibit application of local nonfarm dwelling standards to deny a lot of record dwelling that otherwise complies with all statutory criteria applicable to lot of record dwellings. Citing legislative history, we concluded that the legislature intended that counties allow otherwise compliant lot of record dwellings even though such dwellings may not comply with nonfarm dwelling standards.

In the present case, the applications were for forest "template" dwellings under ORS 215.750. ORS 215.750 contains a section that is nearly identical to ORS 215.705(1)(c), but does not contain a section similar to ORS 215.705(5).[9] *See* ns 7 and 8. If the county does not want to apply the "necessary and accessory" standard found in CCZO 502.3, it is free to repeal that section of the CCZO. But ORS 215.750 does not prohibit the county from applying that standard, and ORS 215.750(4)(a) requires the applications to comply with CCZO 502.3.[10]

Intervenors also argue that since 2002, the county has consistently interpreted the CCZO 502.3 "necessary for and accessory to commercial forest management" standard to mean convenient, efficient, and requiring at least 765 hours of work on the forest parcel per year to implement the forest management plan. Citing *Bemis v. City of Ashland*, 48 Or LUBA 42 (2004), *aff'd* 197 Or App 124, 107 P3d 83, *rev den* 339 Or 66 (2005), intervenors maintain that the county could not change the interpretation of the "necessary and accessory"

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[9] ORS 215.750(4)(a) provides:

> "(4) A proposed dwelling under this section is not allowed:
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> > "(a) If it is prohibited by or will not comply with the requirements of an acknowledged comprehensive plan and acknowledged land use regulations or other provisions of law."

[10] In any event, we question the relevance that ORS 215.705(5) has in the present appeal, since the county *approved* the dwelling application. ORS 215.705(5) comes into play when a county desires to apply "criteria adopted by ordinance" to *deny* an application for a dwelling if it determines certain criteria for denial are met. ORS 215.705(5).

standard for intervenors' applications without violating the fixed goal post rule established by ORS 215.427(3).[11] Intervenors state:

> "*Bemis* stands for two propositions: An unappealed, local interpretation of a governing body is binding * * *. And, had respondent changed its official interpretation of 'necessary and accessory' * * * the county would have violated intervenors' right to stationary goal posts. *See e.g. Holland v. City of Cannon Beach*, 154 Or App 450, 962 P2d 701 (1998) * * *." Response Brief 37 (citations in original).

We address each of these contentions in turn.

First, we disagree with intervenors' characterization of *Bemis* and *Holland* as standing for the proposition that all unappealed local interpretations of a governing body are binding on subsequent applications. *Bemis* involved a city's interpretation of a code provision in such a different way from previous interpretations that, petitioners argued, their rights under the ORS 227.178(3)(a) fixed goal post rule were violated.[12] We found that local governments are not categorically precluded from changing prior interpretations of their code provisions in an ongoing application process, even if a legislative clarification process is occurring at the same time. 48 Or LUBA at 51-52. However, we explained that under certain circumstances the "fixed goal post" statutes and judicial doctrine limit the authority of a local government to change an existing interpretation of a code provision in the course of a quasi-judicial permit proceeding. Discussing the petitioners' reliance on *Holland*, we explained:

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[11] ORS 215.427(3) provides:

> "If the application was complete when first submitted or the applicant submits the requested additional information within 180 days of the date the application was first submitted and the county has a comprehensive plan and land use regulations acknowledged under ORS 197.251, approval or denial of the application shall be based upon the standards and criteria that were applicable at the time the application was first submitted."

[12] ORS 227.178(3)(a) applies to cities and is substantively identical to the ORS 215.427(3) fixed goal post rule for counties. *See* n 11.

> "We have consistently declined to read *Holland* or the statute more broadly to prohibit local governments from reinterpreting the *meaning* of indisputably applicable approval criteria. That much broader and categorical view of the statute is not compelled by the text or logic of ORS 227.178(3), nor the facts or holding of *Holland*. It is in fact contrary to language in *Holland* accepting, at least as an abstract proposition, the premise that a local government may correct earlier interpretations of its legislation. * * * We again see no textual or other basis to read the statute as compelling local governments as a matter of law to adhere to prior interpretations of indisputably applicable approval criteria that the local government now believes are erroneous.
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> "That does not mean that local governments have unfettered discretion to change prior existing interpretations. The new interpretation is of course subject to challenge under ORS 197.829(1) and *Church v. Grant County*, 187 Or App 518, 524, 69 P3d 759 (2003).* * *" *Id*. at 55-56 (emphasis in original, footnotes omitted).

We reject intervenors' assertion that the county was categorically bound by ORS 215.427(3) to interpret CCZO 502.3 in the manner that it had been interpreted in prior quasi-judicial proceedings.

As explained above, the county's interpretation of the "necessary and accessory" standard found in CCZO 502.3 is subject to review under ORS 197.829(1).[13] LUBA must affirm the county's interpretation of CCZO 502.3 if it is consistent with the express language, purpose or underlying policy of that code section. ORS 197.829(1)(a)—(c). In reviewing a local government's interpretation, we consider both the text and context of the

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[13] ORS 197.829(1) provides:

> "The Land Use Board of Appeals shall affirm a local government's interpretation of its comprehensive plan and land use regulations, unless the board determines that the local government's interpretation:
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> "(a) Is inconsistent with the express language of the comprehensive plan or land use regulation;
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> "(b) Is inconsistent with the purpose for the comprehensive plan or land use regulation;
>
> "(c) Is inconsistent with the underlying policy that provides the basis for the comprehensive plan or land use regulation; or
>
> "(d) Is contrary to a state statute, land use goal or rule that the comprehensive plan provision or land use regulation implements."

ordinance at issue, under the framework provided in *PGE v. Bureau of Labor and Industries*, 317 Or 606, 610-612, 859 P2d 1143 (1993). *Church v. Grant County*, 187 Or App 518, 524, 69 P3d 759 (2003). Under *PGE*, our first level of analysis includes the text and relevant context of CCZO 502.3.

Turning to the text of CCZO 502.3, petitioners argue that the county's interpretation of the word "necessary" is contrary to the ordinary, dictionary definition of the word.[14] With respect to the context of the provision, petitioners also argue that the county's interpretation is contrary to the underlying purpose and policy of CCZO 502.3, as shown by CCCP Forest Lands Policy 6 and Policy 8.[15]

Intervenors respond that the word "necessary" is ambiguous and that the county's interpretation is entitled to deference. Intervenors respond to petitioners' assertion that the county's interpretation of CCZO 502.3 is inconsistent with the underlying purpose and policy of the provision by arguing:

> "[t]he context and policy that is relevant are the four template dwelling decisions in the record that discuss and apply the county's interpretation of 'necessary' in the important context of being after [ORS 215.700-755 was enacted] when the state standard on 'necessary and accessory' was abolished." Response Brief 35.

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[14] Webster's Third New International Dictionary (Unabridged) (1981) 1511 defines "necessary" to mean in part "2 : that cannot be done without: that must be done or had: absolutely required."

[15] CCCP Forest Lands Policy 6 provides in relevant part:

> "6. Allow residential uses when it can be shown that such uses are necessary for and accessory to the resource activity occurring on the same lot or parcel, and where it can be shown that siting standards exist which insure compatibility of the proposed residence with adjacent resource uses."

CCCP Forest Lands Policy 8 provides in relevant part:

> "8. Allow resource related dwellings to exist in Primary Forest zones or on Forest-Agriculture zones when it can be shown that such uses are necessary for and accessory to the forest use or forest-agriculture use of the respective zones."

At the outset, we note that we assume that CCZO 502.3 was enacted in order to comply with Goal 4 and previous statutory or rule requirements for approving dwellings on forest land. No party disputes that after those requirements were repealed when the current forest dwelling statutes were enacted, the county was free to amend its comprehensive plan and CCZO 502.3 to eliminate the "necessary and accessory" standard. No party argues that the county has repealed CCZO 502.3 or the plan policies that it apparently was adopted to implement. No party argues that CCZO 502.3 does not apply to the applications.

Although it is not entirely clear, we understand intervenors to argue that the contextual elements that are more important than the purpose and policies underlying CCZO 502.3 are the county's prior interpretations of the provision in other decisions, and the 1993 enactment of ORS 215.700-755. To the extent intervenors suggest that the county is categorically bound by its prior interpretations of the standard, we reject that argument for the reasons set forth above. To the extent that intervenors suggest that in the wake of the enactment of ORS 215.700-755, the county was free to interpret CCZO in a way that is contrary to the express language of the standard, we reject that suggestion as well.[16]

We agree with petitioners that the county's interpretation of the phrase "necessary for and accessory to * * * commercial forest management" to mean "convenient and efficient" to forest management is contrary to the ordinary meaning of the word "necessary" and thus, contrary to the express language of CCZO 502.3. "Convenient" is defined as:

> "2 a: suited to personal ease or comfort or to easy performance of some act or function * * * b: suited to the needs or the circumstances of a particular situation." Webster's Third New International Dictionary (Unabridged) (1981) 497.

"Efficient" is defined as:

[16] In addition, to the extent intervenors argue that the intent of the *county* in enacting CCZO 502.3 was modified by the legislature's enactment of statutes that had the effect of abolishing the "necessary and accessory" standard in state law, we disagree with that argument. Response Brief 39-40.

> "3 : marked by qualities or characteristics or equipment that facilitate the serving of a purpose or the performance of a task in the best possible manner." Webster's Third New International Dictionary (Unabridged) (1981) 725.

Neither definition is remotely synonymous with the ordinary meaning of the word "necessary." *See* n 14.

Beyond the ordinary meaning of the word "necessary," there is other text in CCZO 502.3 that a dwelling must supply something more than convenience and efficiency. We quote the relevant provisions of CCZO 502.3 again:

> "Structures and facilities *necessary for and accessory to commercial forest management* * * *. The uses served by such structures and facilities may include, but are not limited to: * * * residences * * *directly accessory to *and required for* commercial forest management * * *." CCZO 502.3 (emphases added).

The last part of CCZO 502.3, emphasized above, states that the dwelling must be "required for commercial forest management." To construe CCZO to allow a residence that is merely convenient or efficient for forest management ignores the use of the phrase "required for," which connotes something more than mere convenience or efficiency and is closer in meaning to "necessary." *See Champion International v. Douglas County*, 16 Or LUBA 132, 138-39 (1987) (substantially more than convenience, enhancement, and cost efficiencies are required to show a dwelling is necessary for forest use under Goal 4). The county erred in interpreting CCZO 502.3 in the way that it did.

In their second subassignment of error under the sixth assignment of error, petitioners argue that there is not substantial evidence in the record to conclude that the proposed dwellings comply with CCZO 502.3 under the county's "convenient and efficient" interpretation of the language in the provision. Because we reject the county's interpretation of CCZO 502.3 as requiring a showing that the dwellings are "convenient and efficient" to forest management, we need not address petitioners' second subassignment of error.

The sixth assignment of error is sustained.

The county's decision is remanded.