

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

3  
4                   1000 FRIENDS OF OREGON,  
5                   *Petitioner,*

6  
7                   and

8  
9                   DENNIS TYLKA,  
10                  *Intervenor-Petitioner,*

11  
12                  vs.

13  
14                  CLACKAMAS COUNTY,  
15                  *Respondent.*

16  
17                  LUBA No. 2021-003

18  
19                  FINAL OPINION  
20                  AND ORDER

21  
22                  Appeal from Clackamas County.

23  
24                  Andrew Mulkey filed a petition for review and reply brief and argued on  
25                  behalf of petitioner.

26  
27                  Dennis Tylka filed a petition for review and argued on behalf of  
28                  themselves.

29  
30                  Nathan K. Boderman and Alyxandria Peterson filed the response brief and  
31                  argued on behalf of respondent. Also on the brief was Stephen L. Madkour.

32  
33                  RUDD, Board Member; ZAMUDIO, Board Chair; RYAN, Board  
34                  Member, participated in the decision.

35  
36                  REMANDED

01/24/2022

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

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**NATURE OF THE DECISION**

Petitioner appeals the board of county commissioners’ adoption of Ordinance ZDO-273, which amends the county’s zoning and development ordinance to authorize the short-term rental use of dwelling units and guest houses.

**BACKGROUND**

In 2019, the county began a two-part project to authorize and regulate the short-term rental use of dwelling units and guest houses. In November 2020, the county concluded the first part of the project with the adoption of Ordinance 09-2020, amending Clackamas County Code (CCC) title 8, Business Regulations. Record 41, 93. The CCC title 8 amendments established a registration program for short-term rentals in the county and set out standards addressing elements such as maximum occupancy, minimum parking requirements, and compliance with the county’s general noise control, parking, and towing ordinances, and garbage requirements. Under the CCC title 8 amendments, short-term rentals are exempt from the registration program if they qualify for an exception to the county’s transient room tax under CCC 8.02.060(C) as an incidental use of property.<sup>1</sup> Record 99.

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<sup>1</sup> CCC 8.02.060 provides that the county’s transient room tax shall not be imposed upon:

1           In December 2020, the county completed the second part of the project  
2 with the adoption of Ordinance ZDO-273. Ordinance ZDO-273 amends  
3 Clackamas County Zoning and Development Ordinance (ZDO) 202 and 833.01  
4 to modify the definition of dwelling unit and expand the allowed use of guest  
5 houses (the ZDO amendments). The amendments to ZDO 202 add to the  
6 definition of “dwelling unit” the italicized language shown below:

7           “A building, or portion thereof, with one or more rooms designed  
8 for residential occupancy by one family. *A dwelling unit may be*  
9 *occupied by one family or, except as otherwise provided in this*

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- “A. Any person who rents a room or facility for more than thirty (30) successive calendar days; (a person who pays for lodging on a monthly basis, irrespective of the number of days in such month, shall not be deemed a transient);
  - “B. Any person whose rent is of a value less than \$15.01 per day;
  - “C. Any person who rents a private home, vacation cabin, or like facility from any owner who personally rents such facilities incidentally to the owner’s use thereof. A personal rental is not incidental to an owner’s own use if the private home, vacation cabin, or like facility is publicly advertised for rent by the owner or any other person or entity including, but not limited to, rental management agencies or transient lodging intermediaries, as defined by ORS 320.300;
  - “D. Any occupant whose rent is paid for a hospital room or to a medical clinic, convalescent home or home for aged people, that are licensed, registered, or certified by the Oregon Department of Human Services; or
  - “E. Employees, officials or agents of the U. S. Government occupying a hotel in the course of official business.”

1           *Ordinance, may be used for residential occupancy by no more than*  
2           *15 persons for a period that does not exceed 30 consecutive nights*  
3           *by any one person.”* Record 9 (emphasis added).

4           The amendments to ZDO 833.01 remove from ZDO 833.01(A) a  
5 prohibition on generating rental income from a “guest house,” which is defined  
6 in ZDO 202 as “[a]n accessory building, or portion thereof, that includes at least  
7 one bedroom and is—with the exception of bathrooms, closets, and halls—  
8 constructed as habitable space under the Oregon Residential Specialty Code,”  
9 and which, pursuant to ZDO 833.01(E), as amended, “may contain one bathroom  
10 plus one additional sink, but shall not include laundry facilities, a stove, oven, or  
11 other cooking appliances.”<sup>2</sup> The amendments to ZDO 833.01 also remove from  
12 ZDO 833.01(E) a requirement that “[o]ccupants of the guest house and the  
13 primary dwelling shall live together as one housekeeping unit.” Record 31.

14           Petitioner appeals the county’s adoption of the ZDO amendments.

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<sup>2</sup> The amendments to ZDO 833.01 add to ZDO 833.01(A) the italicized language shown below:

“A guest house shall be used only by members of the family residing in the primary dwelling, their nonpaying guests, or their nonpaying employees who work on the premises, *or for residential occupancy by one or more paying guests for a period that does not exceed 30 consecutive nights by any one person. Residential occupancy by paying guests plus occupants of the primary dwelling shall not exceed 15 persons.*” Record 31 (emphasis added).

1 **PETITIONER’S FIRST ASSIGNMENT OF ERROR AND**  
2 **INTERVENOR-PETITIONER’S FIRST AND SECOND ASSIGNMENTS**  
3 **OF ERROR**

4 Petitioner’s assignments of error are directed at the ZDO amendments’  
5 impact on the county’s zones that implement Statewide Planning Goals 3  
6 (Agricultural Lands) and 4 (Forest Lands).<sup>3</sup> To the extent that intervenor-  
7 petitioner’s first and second assignments of error are also directed at those county  
8 zones, we address them here as well.<sup>4</sup>

9 The ZDO amendments allow the short-term rental use of dwelling units  
10 and guest houses throughout the county, including in the county’s Exclusive  
11 Farm Use (EFU) zone, governed by ZDO 401; Timber (TBR) zone, governed by  
12 ZDO 406; and Ag/Forest (AG/F) zone, governed by ZDO 407.<sup>5</sup> ORS 215.203(1)

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<sup>3</sup> Goal 3 is “[t]o preserve and maintain agricultural lands.” Goal 4 is:

“To conserve forest lands by maintaining the forest land base and to protect the state’s forest economy by making possible economically efficient forest practices that assure the continuous growing and harvesting of forest tree species as the leading use on forest land consistent with sound management of soil, air, water, and fish and wildlife resources and to provide for recreational opportunities and agriculture.”

<sup>4</sup> Generally, intervenor-petitioner’s assignments of error challenge the county’s decision more broadly. They are discussed later in this opinion.

<sup>5</sup> ZDO 401 is “adopted to implement the policies of the Comprehensive Plan for Agriculture areas” and applies to land zoned EFU. ZDO 401.01; ZDO 401.02. ZDO 406 and 407 are “adopted to implement the policies of the Comprehensive

1 provides, in part, “Zoning ordinances may be adopted to zone designated areas  
2 of land within the county as [EFU] zones. *Land within such zones shall be used*  
3 *exclusively for farm use except as otherwise provided in ORS 215.213, 215.283*  
4 *or 215.284.”* (Emphasis added.) Certain dwellings are allowed on land zoned  
5 EFU under ORS 215.283(1) and others under ORS 215.283(2).<sup>6</sup> ORS 215.284  
6 restricts the establishment of single-family dwellings not provided in conjunction  
7 with farm use on land zoned EFU. ORS 215.283(1)(e) allows accessory  
8 structures associated with farm and forest use. The uses that are allowed on forest  
9 land are set out in OAR 660-006-0025 and include the dwellings authorized by  
10 ORS 215.705 to 215.757 as well as other dwellings under prescribed conditions.  
11 OAR 660-006-0025(1)(d), (e).<sup>7</sup>

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Plan for Forest and Agriculture areas.” ZDO 406.01; ZDO 407.01. ZDO 406  
applies to land zoned TBR. ZDO 407 applies to land zoned AG/F.

<sup>6</sup> ORS 215.213 contains parallel provisions for marginal lands counties.

<sup>7</sup> Goal 4 provides:

“Forest operations, practices and auxiliary uses are allowed on forest  
lands subject only to such regulation of uses as are found in ORS  
527.722.

“Uses which may be allowed subject to standards set forth in [Goal  
4 and its implementing] administrative rule are: (1) uses related to  
and in support of forest operations; (2) uses to conserve soil, water  
and air quality, and to provide for fish and wildlife resources,  
agriculture and recreational opportunities appropriate in a forest  
environment; (3) locationally dependent uses; (4) dwellings  
authorized by law.”

1           The parties’ central dispute is whether a short-term rental is a permitted  
2 use of a dwelling unit or guest house on farm or forest land where the dwelling  
3 unit or guest house is otherwise allowed under applicable law.

4           **A.     ORS chapter 215 and OAR chapter 660, division 6**

5           Petitioner argues in the first subassignment of error under its first  
6 assignment of error that the ZDO amendments impermissibly allow uses of  
7 dwellings and guest houses on farm and forest land that are not consistent with  
8 the uses of dwellings and accessory structures allowed by ORS 215.283(1) and  
9 (2) and OAR chapter 660, division 6, and impermissibly allow a commercial use  
10 of resource land. Intervenor-petitioner argues generally in their first assignment  
11 of error that the county must demonstrate “that allowing [short-term rentals]  
12 within the zones in the unincorporated parts of the county is consistent with the  
13 Statewide Planning Goals” and that “[t]he county cannot ignore the requirements  
14 of statewide planning goals simply by changing the definitions of ‘Dwelling  
15 Units’ to include the use of Short Term Rentals as an additional residential  
16 occupancy use in a dwelling unit in all Residential and Natural Resource Zones.”<sup>8</sup>  
17 Intervenor-Petitioner’s Petition for Review 3-5. Intervenor-petitioner also argues  
18 in their first assignment of error that the county has subverted Statewide Planning  
19 Goal 2 (Land Use Planning) because, while bed and breakfasts, campgrounds,

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<sup>8</sup> Intervenor-petitioner does not develop an argument that the amendments are inconsistent with Goals 3 and 4.



1 guest ranches, lodges, and recreational vehicle camping facilities all have  
2 implementing regulations in the ZDO, there are no findings explaining why short-  
3 term rentals, described by intervenor-petitioner as “a new commercial and  
4 business use,” are not also provided implementing regulations. Intervenor-  
5 Petitioner’s Petition for Review 6-7.

6 As we understand it, the county’s position is that the ZDO amendments  
7 cannot and do not authorize the short-term rental use of an existing dwelling unit  
8 if that use would be prohibited by the decision that initially approved the dwelling  
9 unit. The findings assert that “[d]wellings that are approved with specific  
10 restrictions on occupancy and/or usage would remain ineligible for use as [a  
11 short-term rental]. Examples of such dwellings include temporary dwellings for  
12 care (‘hardship dwellings’), accessory farmworker dwellings, or caretaker  
13 dwellings.” Record 46.

14 ORS 215.283 lists the uses that are allowed on EFU land, and a county  
15 cannot allow uses that are not listed under the statute in an EFU zone. OAR  
16 chapter 660, division 6, similarly identifies the limited uses that are allowed on  
17 forest land. We discuss each below.

18 The uses listed in ORS 215.283(1) are authorized as of right, and counties  
19 may not restrict those uses through additional local standards. *Brentmar v.*  
20 *Jackson County*, 321 Or 481, 496, 900 P2d 1030 (1995). ORS 215.283(2) lists  
21 nonfarm uses and structures that are conditionally authorized and that must  
22 satisfy ORS 215.296(1), which we refer to as the farm impacts test. The farm

1 impacts test requires the local governing body or its designee to find that the use  
2 will not:

3       “(a) Force a significant change in accepted farm or forest practices  
4           on surrounding lands devoted to farm or forest use; or

5       “(b) Significantly increase the cost of accepted farm or forest  
6           practices on surrounding lands devoted to farm or forest use.”  
7       ORS 215.296(1).

8 The nonfarm uses listed under ORS 215.283(2) may also be subject to any local  
9 standards enacted pursuant to ORS 215.296(10).

10       ORS 215.283 regulates the use of EFU land. Accordingly, if the county  
11 wants to allow the nonfarm short-term rental *use* of a dwelling unit on EFU land,  
12 that *use* must be allowed pursuant to either ORS 215.283(1) or (2). For the  
13 reasons explained below, we agree with petitioner and intervenor-petitioner that,  
14 absent any identification by the county of the authority in ORS 215.283, or the  
15 Land Conservation and Development Commission’s rules implementing that  
16 statute, for allowing the short-term rental use of dwelling units or guest houses  
17 on EFU land, that use is not allowed under ORS 215.283. The uses that are  
18 allowed on forest land are similarly restricted by OAR 660-006-0025 and, absent  
19 any identification of authority under OAR 660-006-0025 for allowing the short-  
20 term rental use of dwelling units or guest houses on forest land, that use is not  
21 allowed.<sup>9</sup>

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<sup>9</sup> In addition, OAR 660-006-0050 provides:

1 We will reverse or remand a land use decision if the local government  
2 exceeded its jurisdiction or improperly construed the applicable law. ORS  
3 197.835(9)(a)(A), (D). Petitioner argues that the county’s decision improperly  
4 construes applicable portions of ORS chapter 215 and OAR 660-006-0025.

5 In construing the law, we will consider the text and context of the law at  
6 issue to determine the intent of the enacting legislature. *PGE v. Bureau of Labor*  
7 *and Industries*, 317 Or 606, 610-11, 859 P2d 1143 (1993); *State v. Gaines*, 346  
8 Or 160, 171, 206 P3d 1042 (2009). We are required to correctly interpret the  
9 legislature’s intent, independently of the parties’ arguments. *See* ORS 197.805  
10 (providing the legislative directive that LUBA “decisions be made consistently  
11 with sound principles governing judicial review”); *Stull v. Hoke*, 326 Or 72, 77,  
12 948 P2d 722 (1997) (“In construing a statute, this court is responsible for

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“(1) Governing bodies may establish [AG/F] zones in accordance with both Goals 3 and 4, and OAR chapter 660, divisions 6 and 33.

“(2) *Uses authorized in [EFU] Zones in ORS Chapter 215, and in OAR 660-006-0025 and 660-006-0027, subject to the requirements of the applicable section, may be allowed in any [AG/F] zone. The county shall apply either OAR chapter 660, division 6 or 33 standards for siting a dwelling in an [AG/F] zone based on the predominant use of the tract on January 1, 1993.*

“(3) Dwellings and related structures authorized under section (2), where the predominant use is forestry, shall be subject to the requirements of OAR 660-006-0029 and 660-006-0035.” (Emphases added.)

1 identifying the correct interpretation, whether or not asserted by the parties.”) We  
2 must interpret the statutes governing the uses that are allowed in EFU zones, “to  
3 the extent possible, as being consistent with the overriding policy of preventing  
4 ‘agricultural land from being diverted to non-agricultural use.” *McCaw*  
5 *Communications, Inc. v. Marion County*, 96 Or App 552, 555, 773 P2d 779  
6 (1989) (quoting *Hopper v. Clackamas County*, 87 Or App 167, 172, 741 P2d 921  
7 (1987), *rev den*, 304 Or 680 (1988)).

8 We begin with the text. ORS chapter 215 provides no generally applicable  
9 definition of “dwelling” or “residence,” and we therefore look to the plain,  
10 ordinary meaning of those words. “Dwelling” means “a building or construction  
11 *used for a residence*” and “residence” means “a building *used as a home* :  
12 DWELLING.” *Webster’s Third New Int’l Dictionary* 706, 1931 (unabridged ed  
13 2002) (boldface in original; emphases added). As the county points out, the term  
14 “dwelling,” considered alone, does not necessarily require owner occupancy or  
15 occupancy of a given duration. However, the term “residence” refers to “a  
16 building used as a home,” and “home” is defined not only as “a private dwelling  
17 : HOUSE” but also as “the house and grounds with their appurtenances habitually  
18 occupied by a family : one’s principal place of residence : DOMICILE.” *Webster’s*  
19 at 1082 (boldface in original). The various terms connote a distinction between a  
20 building used as a “home” and a building used as something other than a “home,”  
21 for example, a hotel. The text does not, however, resolve the question of whether  
22 a short-term rental is an allowed use of a dwelling or residence in a resource zone.

1           We next consider the context. As noted, some dwellings are allowed under  
2   ORS chapter 215. For example, ORS 215.283(1)(e) permits on EFU land  
3   “primary or accessory dwellings \* \* \* customarily provided in conjunction with  
4   farm use.” ORS 215.283(1)(d) permits “[a] dwelling on real property used for  
5   farm use if the dwelling is occupied by a relative of the farm operator or the farm  
6   operator’s spouse.” The county has not, however, identified a provision under  
7   ORS 215.283(1) that expressly authorizes the short-term rental use of a dwelling.

8           The types of uses of dwellings that are allowed under ORS 215.283(2)  
9   suggest that, if a short-term rental is an allowed use of an existing dwelling, it is  
10   an ORS 215.283(2)-type use. ORS 215.283(2) identifies the uses of existing  
11   dwellings that are conditionally allowed on EFU land. ORS 215.283(2)(o)  
12   provides that a county may conditionally allow “[r]esidential homes as defined  
13   in ORS 197.660, in existing dwellings.”<sup>10</sup> ORS 215.283(2)(u) provides that a  
14   county may conditionally allow “[r]oom and board arrangements for a maximum

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<sup>10</sup> ORS 197.660(2) defines “residential home” as

“a residential treatment or training home, as defined in ORS 443.400, a residential facility registered under ORS 443.480 to 443.500 or an adult foster home licensed under ORS 443.705 to 443.825 that provides residential care alone or in conjunction with treatment or training or a combination thereof for five or fewer individuals who need not be related. Staff persons required to meet licensing requirements shall not be counted in the number of facility residents, and need not be related to each other or to any resident of the residential home.”

1 of five unrelated persons in an existing residence.”<sup>11</sup> ORS 215.283(2)(i)  
2 authorizes “home occupations,” and it is at least possible that a short-term rental  
3 could be characterized as a home occupation. However, home occupations are  
4 authorized only “as provided in ORS 215.448.” ORS 215.283(2)(i).<sup>12</sup>  
5 Importantly, those provisions expressly allow and regulate certain uses and living  
6 arrangements within existing dwellings, which undermines the county’s broad  
7 contention that *any* residential use of an existing dwelling is allowed, subject only  
8 to existing statutory restrictions.

9 Moreover, uses that are allowed pursuant to ORS 215.283(2) must satisfy  
10 the farm impacts test and, pursuant to ORS 215.296(10), any additional standards  
11 that the local government has elected to impose. Under the current version of the  
12 ZDO, this requires a review process with notice and an opportunity for comment.  
13 ZDO 401.05 and Table 401-1, for example, establish that the farm impacts test is  
14 applied to room and board and residential home uses in the EFU zone through a

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<sup>11</sup> ORS chapter 215 does not define “room and board.” *Webster’s* provides that “room and board” means “lodging and food usu. specifically earned or furnished <receives wages plus *board and room*>.” *Webster’s* at 1972 (emphasis in original). Definitions of “lodging” include “a place to live,” “a place in which to settle or come to rest,” and “a temporary place to stay.” *Id.* at 1329. As illustrated by these examples, some definitions of “lodging” have an element of temporariness and others do not.

<sup>12</sup> We do not address whether a short-term rental could be conditionally permitted as an accessory use through a home occupation approval pursuant to ORS 215.283(2)(i).

1 Type II review.<sup>13</sup> Here, the ZDO amendments may allow the short-term rental  
2 use of resource land without any requirement to obtain specific authorization at  
3 all, let alone a requirement to satisfy the farm impacts test.

4 As additional context, we look to the uses that are allowed on Goal 4 land  
5 under OAR 660-006-0025(1)(d), namely the dwellings authorized by ORS  
6 215.705 to 215.757. For example, ORS 215.705 to 215.730 govern lot-of-record  
7 dwellings, ORS 215.740 governs large-tract dwellings, and ORS 215.750  
8 governs template dwellings. ORS 215.755 allows replacement dwellings,  
9 hardship dwellings, and caretaker residences for public parks and public fish  
10 hatcheries. In addition, OAR 660-006-0025(1)(e) authorizes “[o]ther dwellings

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<sup>13</sup> ZDO 1307.09 sets out the requirements for Type II reviews, requires notice that the application is under consideration, and further provides:

“B. Decision: The review authority shall consider the record of the application and approve, approve with conditions, or deny the application based on the applicable standards and criteria. The review authority shall issue a written decision that explains the standards and criteria considered relevant to the decision, states the facts relied upon in rendering the decision, and explains the justification for the decision based on the standards, criteria, and facts set forth. \* \* \*

“\* \* \* \* \*

“C. Notice of Decision: A copy of the decision shall be mailed to those identified in Subsection 1307.09(A)(1).

“D. Appeal: The review authority’s decision is the final decision of the County, unless an appeal is filed pursuant to Subsection 1307.13.” (Underscoring in original.)

1 under prescribed conditions,” and OAR 660-006-0025(4) authorizes a variety of  
2 uses that may be allowed subject to review under the standards in OAR 660-006-  
3 0025(5), including hunting lodges and fishing accommodations with guest  
4 rooms. OAR 660-006-0025(4)(p), (w). OAR 660-006-0025(5)(a) requires a  
5 finding similar to the farm impacts test, that “[t]he proposed use will not force a  
6 significant change in, or significantly increase the cost of, farming or forest  
7 practices on agriculture or forest lands.”<sup>14</sup>

8 ORS 215.757, adopted in 2019, allows, subject to restrictions, county  
9 approval of an accessory dwelling supporting family forestry on a lot or parcel  
10 zoned for forest use containing exactly one existing single-family dwelling. ORS  
11 215.757(3) provides, “If a new single-family dwelling unit is constructed under  
12 this section, a county may not allow the new or existing dwelling unit to be used  
13 for vacation occupancy as defined in ORS 90.100.” Although this express  
14 prohibition lends some support to the argument that the legislature expressly  
15 *prohibits* vacation occupancy of single-family dwellings when that is the

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<sup>14</sup> The uses other than dwellings that are allowed on forest land are listed in OAR 660-006-0025 and include, but are not limited to, “[u]ses related to and in support of forest operations;” “[u]ses to conserve soil, air and water quality and to provide for fish and wildlife resources, agriculture and recreational opportunities appropriate in a forest environment;” “locationally-dependent uses, such as communication towers, mineral and aggregate resources, etc;” and “[t]emporary forest labor camps.” OAR 660-006-0025(1)(a) - (c), (3)(l).



1 legislature’s intent, we are persuaded that other provisions of ORS chapter 215  
2 are properly read to limit short-term, vacation-style uses.

3 A variety of vacation and recreation activities are expressly identified as  
4 being conditionally allowed in farm and forest zones, subject to a demonstration  
5 that the use meets the farm impacts test. For example, ORS 215.283(2)(cc)  
6 conditionally allows “[g]uest ranches in eastern Oregon, as described in ORS  
7 215.461.” “‘Guest ranch’ means a facility for guest lodging units, passive  
8 recreational activities described in [ORS 215.461(6)] and food services described  
9 in [ORS 215.461(7)] that are incidental and accessory to an existing and  
10 continuing livestock operation that qualifies as a farm use.” ORS 215.461(1)(b).  
11 “‘Guest lodging unit’ means *a guest room in a lodge, bunkhouse, cottage or cabin*  
12 *used only for transient overnight lodging and not for a permanent residence.*”  
13 ORS 215.461(1)(a) (emphasis added).

14 Temporary occupancy of private campgrounds and private seasonal  
15 accommodations for hunting and fishing are conditionally allowed under ORS  
16 215.283(2)(c); OAR 660-006-0025(4)(e), which defines campground as “an area  
17 devoted to *overnight temporary use for vacation, recreational or emergency*  
18 *purposes, but not for residential purposes;*” OAR 660-006-0025(4)(p),  
19 subparagraph (C) of which requires that private seasonal accommodations for  
20 hunting be “*occupied temporarily* for the purpose of hunting during either or both  
21 game bird or big game hunting seasons authorized by the Oregon Fish and  
22 Wildlife Commission;” and OAR 660-006-0025(4)(w), subparagraph (C) of

1 which requires that private seasonal accommodations for fishing be “*occupied*  
2 *temporarily* for the purpose of fishing during fishing seasons authorized by the  
3 Oregon Fish and Wildlife Commission.”<sup>15</sup> (Emphases added.)

4 Although ORS 215.283 and OAR 660-006-0025 do not directly address  
5 the short-term rental use of a dwelling on resource land, the treatment of private  
6 campgrounds and hunting and fishing lodges as conditionally allowed uses, along  
7 with the fact that providing “room and board” accommodations is a conditional  
8 use under ORS 215.283(2)(u), suggests a legislative intent to strictly regulate  
9 transient lodging on resource land with consideration of its effects on accepted  
10 farm and forest practices.

11 The regulation of destination resorts provides additional context for our  
12 conclusion that the legislature specifically provides for vacation rentals when it  
13 intends to allow that use in a resource zone, including within a dwelling. The  
14 conditional uses that are allowed in EFU zones include “[a] destination resort that  
15 is approved consistent with the requirements of any statewide planning goal  
16 relating to the siting of a destination resort.” ORS 215.283(2)(t). “Destination  
17 resorts reviewed and approved pursuant to ORS 197.435 to 197.467 and  
18 [Statewide Planning] Goal 8 [(Recreational Needs)]” are allowed on forest land  
19 under OAR 660-006-0025(3)(n). ORS 197.435(5) defines “overnight lodgings”

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<sup>15</sup> The definitions of “accommodation” include “lodging, food, and services (as at a hotel).” *Webster’s* at 12.

1 as “permanent, separately rentable accommodations *that are not available for*  
2 *residential use*, including hotel or motel rooms, cabins and time-share units” but  
3 not including “[t]ent sites, recreational vehicle parks, manufactured dwellings,  
4 dormitory rooms and similar accommodations.” (Emphasis added.) In western  
5 Oregon, “[i]ndividually owned units may be considered overnight lodgings if  
6 they are available for overnight rental use by the general public for at least 45  
7 weeks per calendar year through a central reservation and check-in service.” ORS  
8 197.435(5)(a) (emphasis added). In eastern Oregon, as defined in ORS 321.805,  
9 “[i]ndividually owned units may be considered overnight lodgings  
10 if they are available for overnight rental use by the general public  
11 for at least 38 weeks per calendar year through a central reservation  
12 system operated by the destination resort or by a real estate property  
13 manager, as defined in ORS 696.010.” ORS 197.435(5)(b)  
14 (emphasis added).

15 Therefore, destination resorts may include individually owned residences and  
16 hotel/motel units. Individually owned units may be considered part of the  
17 “overnight lodging” pool of accommodations if they are available for occupancy  
18 by the general public for at least 38 or 45 weeks per calendar year, based on  
19 whether the destination resort is located in eastern or western Oregon and based  
20 on the use of some sort of central reservation system.<sup>16</sup>

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<sup>16</sup> The county’s findings recognize that “[s]hort-term rentals are often advertised on websites such as Airbnb, HomeAway, VRBO, VacationRentals.com, or Booking.com.” Record 45.

1           The above definition of “overnight lodgings” and the legislature’s strict  
2 regulation of vacation and recreational uses on resource land indicate that the  
3 duration of occupancy is relevant to the characterization of the use. The county’s  
4 allowance of the short-term rental use of dwelling units and guest houses allows  
5 overnight, transient lodging as an outright permitted use on resource lands, and,  
6 as noted, the county has not identified a provision in ORS 215.283(1) or (2) or  
7 OAR chapter 660, division 6, that allows such a use.

8           Ordinance ZDO-273 includes a recital that, “except under specific  
9 circumstances that require land use approvals, such as temporary dwellings for  
10 care or farmworker dwellings, there is nothing in state or county regulations that  
11 limit dwellings to owner-occupancy or specifies a minimum time for rental.”  
12 Record 1. The findings assert that “[d]wellings that are approved with specific  
13 restrictions on occupancy and/or usage would remain ineligible for use as [a  
14 short-term rental]. Examples of such dwellings include temporary dwellings for  
15 care (‘hardship dwellings’), accessory farmworker dwellings, or caretaker  
16 dwellings.” Record 46. The county argues that, once a dwelling is allowed on  
17 resource land, with limited exceptions such as hardship dwellings, accessory  
18 farmworker dwellings, and caretaker dwellings, the occupancy of the dwelling is  
19 not a relevant consideration under ORS 215.283. Record 19. According to the  
20 county, if a dwelling *was* approved subject to use restrictions, then those  
21 restrictions remain. Response Brief 22. In other words, if any applicable code  
22 provision, rule, statute, or related condition of approval restricts the use of an

1 existing dwelling to specific living arrangements that preclude short-term rental  
2 use, then a short-term rental use could be subject to an enforcement action.

3 The problem with that argument is that it approaches the issue from the  
4 wrong direction. As we explained above, ORS 215.283 and related statutes  
5 demonstrate that state law strictly regulates transient lodging on resource land  
6 with consideration of its effects on accepted farm and forest practices. The  
7 question is not whether the short-term rental use of dwellings is expressly  
8 *prohibited* on land zoned for resource uses. Instead, the question is whether state  
9 law expressly *allows* the short-term rental use of dwellings on land zoned for  
10 resource uses. The county has not demonstrated that it does.

11 According to the county, its position “that the leasing of one’s private  
12 residence is a fundamentally residential, and not commercial, use of land is  
13 consistent with” the court’s holding in *City of Portland v. Carriage Inn*, 67 Or  
14 App 44, 676 P2d 943 (1984). Response Brief 12. In *Carriage Inn*, the city sued  
15 to enjoin the defendant’s use of an apartment building for transient occupancy.  
16 The area was zoned Apartment Residential (AO), and the city argued that the AO  
17 zone, which allowed “apartment dwellings,” prohibited the use of the apartment  
18 building for transient occupancy. The court interpreted the zoning code,  
19 recognizing that the primary function of the courts is to discern and declare the  
20 intent of the legislature. The zoning code defined “apartment dwelling” as “a  
21 building or portion thereof, designed for occupancy by three or more families  
22 living independently of each other.” The zoning code defined “dwelling unit” as

1 a “single unit providing complete, independent living facilities for one or more  
2 persons, including permanent provisions for living, sleeping, eating, cooking and  
3 sanitation.” Duration of occupancy was not part of the zoning code, and the court  
4 concluded that the fact that hotels and motels were conditionally allowed in the  
5 AO zone did not mean that the transient use of an apartment building was  
6 prohibited. The court concluded that, *in the context of the city’s zoning code*,  
7 “residential” referred to a facility in which one could stay as little as a week.

8 *Carriage Inn* did not involve resource land stringently regulated by ORS  
9 chapter 215. For that reason, it provides little assistance to the county here, where  
10 the ZDO amendments must be consistent with ORS chapter 215, Goals 3 and 4,  
11 and their implementing regulations. The ZDO amendments allow a person to stay  
12 in a dwelling unit or guest house overnight on a transient basis. For the reasons  
13 explained above, we agree with petitioner that the county has not identified any  
14 provision of ORS 215.283(1) or (2) or OAR chapter 660, division 6, that allows  
15 short-term, transient occupancy of a dwelling on resource land.<sup>17</sup>

16 Intervenor-petitioner’s second assignment of error is that Goal 2 requires  
17 that short-term rentals be listed “as a new separate and distinct allowable primary,  
18 accessory, or conditional land use that is regulated with clear and precise ‘Land  
19 use regulation.’” Intervenor-Petitioner’s Petition for Review 8. We explained

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<sup>17</sup> We do not address the lawfulness of the rental of dwellings on resource land for longer than 30 days because that issue is not presented in this appeal.

1 above why the ZDO amendments are inconsistent with ORS 215.283 and OAR  
2 660-006-0025. To the extent that intervenor-petitioner argues that Goal 2  
3 required the county to adopt implementing regulations as part of the ZDO  
4 amendments, we agree that, if short-term rentals are allowed pursuant to ORS  
5 215.283(2) or OAR 660-006-0025, a review process considering the farm  
6 impacts test must be incorporated into the ZDO.

7 The first subassignment of error under petitioner’s first assignment of error  
8 is sustained. Intervenor-petitioner’s first and second assignments of error are  
9 sustained, in part.

10 **B. ZDO 401, 406, and 407**

11 ZDO 401, 406, and 407 implement state law applicable to farm and forest  
12 land. The second subassignment of error under petitioner’s first assignment of  
13 error is that the ZDO amendments effectively authorize hotel and motel uses in  
14 the EFU, TBR, and AG/F zones in contravention of ZDO 401.06, 406.06, and  
15 407.05, which prohibit hotels and motels in those zones. ZDO 202 defines  
16 “hotel,” in part, as a “building which is designed or used to offer short-term  
17 lodging for compensation, with or without meals, for six or more people.” ZDO  
18 202 defines “motel,” in part, as a “building or series of buildings in which lodging  
19 only is offered for compensation[,] \* \* \* which may have more than five sleeping  
20 units for this purpose,” and which “provid[es] direct independent access to and  
21 adjoining parking for each rental unit designed primarily for automobile tourist  
22 and transient persons.”

1 We sustained the first subassignment of error under petitioner’s first  
2 assignment of error because the ZDO amendments allow overnight, transient  
3 lodging on resource land without authorization in ORS 215.283(1) or (2) or OAR  
4 660-006-0025. Accordingly, the ZDO amendments are inconsistent with ZDO  
5 401, 406, and 407 to the extent that they authorize a hotel or motel on resource  
6 land.

7 The second subassignment of error under petitioner’s first assignment of  
8 error is sustained.

9 Petitioner’s first assignment of error is sustained. Intervenor-petitioner’s  
10 first and second assignments of error are sustained, in part.

11 **PETITIONER’S SECOND ASSIGNMENT OF ERROR**

12 Petitioner’s second assignment of error is that the ZDO amendments (1)  
13 do not comply with the county’s comprehensive plan policies for agriculture and  
14 forest areas, which implement Goals 3 and 4, and, relatedly, (2) are not in  
15 compliance with the statewide planning goals. Petitioner’s Petition for Review  
16 28. Pursuant to ORS 197.835(7), we may reverse or remand an amendment to a  
17 land use regulation if:

18 “(a) The regulation is not in compliance with the comprehensive  
19 plan; *or*

20 “(b) The comprehensive plan does not contain specific policies or  
21 other provisions which provide the basis for the regulation,  
22 and the regulation is not in compliance with the statewide  
23 planning goals.” (Emphasis added.)



1           **A.     Second Subassignment of Error**

2           Petitioner argues that the ZDO amendments are not in compliance with  
3 Clackamas County Comprehensive Plan (CCCP) Agriculture Policy 4.NN.3 and  
4 Forest Policy 4.OO.3. CCCP Agriculture Policy 4.NN.3 provides, “Land uses  
5 that conflict with agricultural uses shall not be allowed.” CCCP Forest Policy  
6 4.OO.3 is to “[p]rohibit land uses that conflict with forest uses.” The county  
7 repeats its position that short-term rentals are residential uses, which are already  
8 allowed in residential structures such as dwelling units and guest houses, and they  
9 therefore do not conflict with agricultural and forest uses.

10           We concluded in our resolution of the first assignment of error that the  
11 ZDO amendments are not consistent with ORS 215.283(1) and (2) and OAR  
12 chapter 660, division 6, absent identification by the county of something in those  
13 provisions that allows the short-term rental use of dwelling units or guest houses  
14 on resource land. We conclude that the ZDO amendments are also inconsistent  
15 with the CCCP policies implementing those provisions. For that reason, we also  
16 agree with petitioner that the allowance of the short-term rental use of dwelling  
17 units and guest houses, a nonfarm and nonforest use, on resource land is not in  
18 compliance with CCCP policies prohibiting uses that conflict with agricultural  
19 and forest uses.

20           The second subassignment of error under petitioner’s second assignment  
21 of error is sustained.

1           **B.     First Subassignment of Error**

2           Petitioner also argues that the CCCP does not contain specific policies or  
3 other provisions that provide the basis for the ZDO amendments. The county  
4 apparently agrees, stating, “Petitioner has identified nothing in the [CCCP] that  
5 would be applicable to the ZDO amendments adopted by the [board of county  
6 commissioners].” Response Brief 25. We therefore conclude, for purposes of  
7 ORS 197.835(7)(b), that the CCCP does not contain specific policies or other  
8 provisions that provide the basis for the ZDO amendments.

9           The first subassignment of error under petitioner’s second assignment of  
10 error is sustained.

11           **C.     Third Subassignment of Error**

12           Petitioner states that it “challenges the following findings made by the  
13 county in its decision to avoid conflict with Petitioner’s other assignments of  
14 error.” Petitioner’s Petition for Review 34-35. The challenged findings include  
15 the county’s finding that Goals 3 and 4 are not applicable and that the ZDO  
16 amendments are consistent with the CCCP and statewide planning goals. We  
17 understand those findings to be derivative of and dependent on the county’s  
18 central premise that ORS 215.283 and OAR chapter 660, division 6, do not  
19 regulate short-term rentals. For the reasons set forth above in our resolution of  
20 petitioner’s first assignment of error, we sustain this assignment of error.

21           The third subassignment of error under petitioner’s second assignment of  
22 error is sustained.

1 Petitioner's second assignment of error is sustained.

2 **REMAINDER OF INTERVENOR-PETITIONER'S FIRST AND**  
3 **SECOND ASSIGNMENTS OF ERROR AND INTERVENOR-**  
4 **PETITIONER'S THIRD AND FIFTH ASSIGNMENTS OF ERROR**

5 Intervenor-petitioner argues in their first, second, third, and fifth  
6 assignments of error that the ZDO amendments fail to comply with Goal 2  
7 because (1) the county did not identify CCCP provisions demonstrating that there  
8 is an unmet need for short-term, overnight tourist accommodations; (2) unlike  
9 uses such as hotels, motels, and bed and breakfast lodging, regulations  
10 implementing the short-term rental provisions were not adopted into the ZDO;  
11 and (3) certain CCCP policies are not met. We addressed intervenor-petitioner's  
12 first and second assignments of error to the extent that they concern resource  
13 lands above. We address the remainder of those assignments of error, and  
14 intervenor-petitioner's third assignment of error, together. We address  
15 intervenor-petitioner's fifth assignment of error separately.

16 We will reverse or remand a land use decision if it is not in compliance  
17 with the goals. ORS 197.835(6). As explained above, we will also reverse or  
18 remand a new or amended land use regulation under ORS 197.835(7) if:

19 "(a) The regulation is not in compliance with the comprehensive  
20 plan; or

21 "(b) The comprehensive plan does not contain specific policies or  
22 other provisions which provide the basis for the regulation,

1 and the regulation is not in compliance with the statewide  
2 planning goals.”<sup>18</sup>

3 Intervenor-petitioner argues generally that the county must demonstrate  
4 that allowing short-term rentals “within the zones in the unincorporated parts of  
5 the county is consistent with Statewide Planning Goals” and specifically that the  
6 county’s decision is inconsistent with Goal 2. Intervenor-Petitioner’s Petition for  
7 Review 3. Goal 2 is “[t]o establish a land use planning process and policy  
8 framework as a basis for all decision and actions related to use of land and to  
9 assure an adequate factual base for such decisions and actions.” Intervenor-  
10 petitioner argues that the county was required “to cite some factual basis such as  
11 Policies or Goals within [the CCCP] that demonstrates there was a need for short-  
12 term overnight tourist accommodations that wasn’t being met by current  
13 allowable regulated short-term overnight accommodations.” Intervenor-  
14 Petitioner’s Petition for Review 3. As we explained in *OCAPA v. City of Mosier*,

15 “the Goal 2 requirement for an adequate factual base is not met  
16 unless a legislative land use decision is supported by substantial  
17 evidence, *i.e.*, evidence a reasonable person would believe.

18 “[However,] the Goal 2 requirement for an adequate factual base  
19 does not exist in a vacuum. In alleging a Goal 2 factual base  
20 inadequacy at LUBA, a petitioner must establish that some  
21 applicable statewide planning goal or other criterion imposes  
22 obligations that are of such a nature that a factual base is required to  
23 determine if the zoning ordinance amendment is consistent with the

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<sup>18</sup> A land use regulation is required to comply with ORS 197.835(7)(a) or (b), not both.

1 goal or other criterion.” 44 Or LUBA 452, 462 (2003).

2 We agree with the county that intervenor-petitioner does not identify any  
3 criterion in a goal or elsewhere providing that a use may only be allowed if a need  
4 for the use is established. This element of the assignments of error is denied.

5 Intervenor-petitioner also argues that the amendments are inconsistent  
6 with Goal 2 because the county amended its code to allow short-term rentals  
7 without incorporating implementing regulations into the ZDO. We understand  
8 intervenor-petitioner to argue that implementing regulations are required by the  
9 following CCCP Amendments and Implementation Policies:

10 “11.B.6 Implement this Plan through appropriate ordinances and  
11 action.

12 “11.B.6.1 Amend existing ordinances and adopt new  
13 ordinances to carry out the policies of this  
14 Plan.

15 “11.B.6.2 Apply zoning in a timely manner that is  
16 consistent with this Plan.

17 “11.B.6.3 Require all zoning and subdivision  
18 ordinances to be consistent with the intent of,  
19 and based on, this Plan.

20 “11.B.6.4 Require all actions of the County on  
21 conditional uses, variances, and zone changes  
22 to be consistent with the intent of this Plan.”

23 Intervenor-petitioner argues that implementing regulations are also required by  
24 CCCP Housing Policy 6.C.1, which is to “[p]rovide for a variety of housing types  
25 that are complimentary or compatible with existing neighborhoods.” Intervenor-  
26 petitioner maintains that those CCCP policies are not met because (1) no

1 implementing provisions were added to the ZDO, (2) similar uses such as hotels,  
2 motels, and bed and breakfast operations are regulated as commercial uses in the  
3 ZDO, and (3) residential neighborhoods are not protected from short-term rentals,  
4 which intervenor-petitioner argues are a conflicting use. The county found, “Goal  
5 2 does not apply to Ordinance ZDO-273 because its text amendments do not  
6 change the County’s land use planning process. The County will continue to have  
7 a comprehensive land use plan and implementing regulations consistent with that  
8 plan.” Record 48. Although we agree with the county that the adopted  
9 amendments do not change the land use planning process and that implementing  
10 regulations were adopted into CCC title 8, that does not end our inquiry, and we  
11 discuss intervenor-petitioner’s arguments in more detail below.

12 In resolving petitioner’s first assignment of error, we explained that ORS  
13 215.283 and OAR 660-006-0025 restrict the use of dwellings located on resource  
14 lands and that the farm impacts test must be applied to uses that are conditionally  
15 allowed on those lands. Intervenor-petitioner has not, however, identified any  
16 requirement in statute, the CCCP, or the ZDO that restricts short-term rentals on  
17 nonresource land. Intervenor-petitioner also argues that “[t]he fact that [short-  
18 term rentals] are regulated as a business use demonstrates that they are not a  
19 ‘residential’ use,” but they do not explain why a short-term rental may not be  
20 considered by the county to be a residential use in the ZDO and also be subject  
21 to regulation as a business in CCC title 8. Intervenor-Petitioner’s Petition for  
22 Review 7.

1           Intervenor-petitioner argues that (1) Goal 2 requires that short-term rentals  
2 be separately identified as a permitted use in the various sections of the ZDO that  
3 regulate different zoning districts, as opposed to identified and passively allowed  
4 pursuant to a definition, and (2) the regulations governing short-term rentals must  
5 be located within the ZDO so that they are easily located by interested parties.  
6 “Goal 2 does not dictate the manner in which a local government must make its  
7 ultimate policy choices or the form in which the [local government] must express  
8 ultimate policy choices.” *Home Builders Assoc. v. City of Eugene*, 52 Or LUBA  
9 341, 366 (2006). Intervenor-petitioner does not develop their argument that Goal  
10 2 prohibits authorizing a use within a zoning code definition or requires, on  
11 nonresource lands, that hotel, motel, and bed and breakfast operations and short-  
12 term rentals generally be regulated in a similar fashion. Accordingly, we do not  
13 address those arguments further. *Deschutes Development v. Deschutes Cty.*, 5 Or  
14 LUBA 218, 220 (1982). These elements of the assignments of error are denied.

15           In their fifth assignment of error, intervenor-petitioner argues that the ZDO  
16 amendments are inconsistent with the following CCCP Affordable Housing  
17 Policies:

18           “6.B.1   Encourage development of affordable housing (including  
19                   public subsidized housing) to produce a range of housing  
20                   prices and rent ranges commensurate with the range of the  
21                   County’s household incomes.

22           “6.B.2   Encourage the development of low- and moderate-income  
23                   housing with good access to employment opportunities.”

1 Intervenor-petitioner argues that the ZDO amendments are inconsistent with  
2 those policies because the county did not address the adverse impacts of short-  
3 term rentals on affordable housing.<sup>19</sup>

4 A local government is not necessarily required to adopt findings  
5 supporting a legislative decision; nonetheless, the record on appeal must be  
6 sufficient to demonstrate that “required considerations were indeed considered.”  
7 *Citizens Against Irresponsible Growth v. Metro*, 179 Or App 12, 16 n 6, 38 P3d  
8 956 (2002). The county’s decision incorporates the November 16, 2020 staff  
9 report to the planning commission as findings, and those findings include  
10 conclusions relevant to the provision of housing in the county. Record 1. The  
11 November 16, 2020 staff report findings conclude that short-term rentals already  
12 exist. Record 45. The November 16, 2020 staff report also concludes that families  
13 may need the supplemental income generated by short-term rentals in order to  
14 improve their primary dwellings. Record 52. As we explained in *Columbia*  
15 *Pacific v. City of Portland*,

16 “given the generally-worded language of most of the goals and  
17 policies at issue, and the leeway a governing body has in balancing  
18 and weighing consistency of a zoning text amendment with a variety  
19 of sometimes competing policy objectives, petitioners and  
20 [intervenor-petitioner] must do more than simply disagree with the  
21 [local government’s] conclusions. Petitioners and [intervenor-

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<sup>19</sup> Intervenor-petitioner argues that allowing the short-term rental use of any dwelling within the county will decrease the stock of affordable housing by increasing the cost of home purchases and long-term rental rates.



1 petitioner] must demonstrate that the [governing body] failed to  
2 meaningfully consider a reasonably specific and pertinent  
3 [comprehensive plan] goal or policy.” 76 Or LUBA 15, 27-28  
4 (2017), *rev'd and rem'd on other grounds*, 289 Or App 739, 412 P3d  
5 258, *rev den*, 363 Or 390 (2018).

6 The county considered housing impacts generally, but it did not address  
7 *affordable housing*. Intervenor-petitioner has established that the county did not  
8 meaningfully consider the CCCP Affordable Housing Policies that it was  
9 required to consider.

10 The remainder of intervenor-petitioner’s first and second assignments of  
11 error and intervenor-petitioner’s third assignment of error are denied. Intervenor-  
12 petitioner’s fifth assignment of error is sustained.

### 13 **INTERVENOR PETITIONER’S FOURTH ASSIGNMENT OF ERROR**

14 Intervenor-petitioner’s fourth assignment of error is that the ZDO  
15 amendments are

16 “not supported by substantial evidence within the record because the  
17 County’s decision does not make a distinction as to when a  
18 ‘Dwelling Unit’ being used for a [short-term rental] is a private  
19 personal use incidental to the owner’s use of the Dwelling for  
20 Residential Occupancy and when the [short-term rental] use is a  
21 more intense rental use where the intent is a short term transient  
22 lodging for the conduct of a business of Lodging as a Commercial  
23 Use.” Intervenor-Petitioner’s Petition for Review 25.

24 Intervenor-petitioner also argues that the county was required by ORS  
25 197.835(9)(a)(C) to adopt findings or rely on substantial evidence to conclude  
26 that all short-term rentals are residential uses, as opposed to commercial uses.  
27 Intervenor-Petitioner’s Petition for Review 26.

1           Although intervenor-petitioner describes their fourth assignment of error  
2 as a substantial evidence challenge, we understand them to argue, at least in part,  
3 that the county misconstrued the law. ORS 320.300 to 320.365 address transient  
4 lodging taxes, and ORS 320.300(11) provides that, as used therein, “transient  
5 lodging” means:

6           “(a) Hotel, motel and inn dwelling units that are used for  
7           temporary overnight human occupancy;

8           “(b) Spaces used for parking recreational vehicles or erecting tents  
9           during periods of human occupancy; or

10          “(c) Houses, cabins, condominiums, apartment units or other  
11          dwelling units, *or portions of any of these dwelling units*, that  
12          are used for temporary human occupancy.” (Emphasis  
13          added.)

14          Intervenor-petitioner argues that the county erred because the ZDO definition of  
15          “dwelling unit” is not congruent with the definition in ORS 320.300(11).  
16          Intervenor-Petitioner’s Petition for Review 29. Intervenor-petitioner cites the  
17          November 16, 2020 staff report, which explains that the board of county  
18          commissioners directed staff to “look into the most effective ways to potentially  
19          allow and regulate [short-term rentals],” in part because some existing short-term  
20          rentals were not paying the county’s transient room tax, which is applicable to  
21          short-term rentals, hotels, motels, and other lodging establishments. Record 45.  
22          The November 16, 2020 staff report goes on to say, “*Establishing a [short-term*  
23          *rental] registration program, linking the registration to a requirement to pay the*  
24          *[county’s transient room tax]*, and funding the enforcement of the new

1 regulations could help level the playing field for all lodging establishments,  
2 ensuring they are all paying their fair share.” Record 45 (emphasis added). The  
3 staff report then explains that the registration and regulation program is proposed  
4 for inclusion in CCC title 8, with enabling amendments to the ZDO.<sup>20</sup> Intervenor-  
5 petitioner does not develop their argument that the definition of “transient  
6 lodging” in ORS 320.300(11) bars the amended definition of “dwelling unit” in  
7 the ZDO, and we do not address that argument further.

8 Intervenor-petitioner also argues that, to the extent that short-term rentals  
9 are charged transient lodging taxes, they are commercial uses and therefore  
10 cannot be considered residential uses within the ZDO. The county’s Business  
11 Regulations in CCC title 8 require operators of short-term rentals to register their  
12 facilities and pay the county’s transient room tax unless the short-term rental is  
13 an incidental use of the operator’s private home, vacation cabin, or like facility.  
14 According to intervenor-petitioner, nonincidental use of a dwelling as a short-  
15 term rental is a commercial occupancy, similar to occupancy of a hotel or motel,  
16 and should be subject to additional regulations, such as those found in ZDO 800,  
17 which governs special uses. Intervenor-Petitioner’s Petition for Review 28-31.  
18 Intervenor-petitioner argues that nonincidental short-term rentals are a

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<sup>20</sup> The “enabling amendments” to the ZDO allow the short-term rental use of dwelling units and guest houses but do not require payment of the county’s transient room tax. Rather, it is CCC title 8 that links the operation of a short-term rental to the requirement to pay the county’s transient room tax.

1 commercial use and, therefore, cannot be considered residential uses for ZDO  
2 purposes. *Id.*

3 We sustained petitioner's first assignment of error concerning the county's  
4 allowance of the short-term rental use of dwelling units and guest houses on  
5 resource lands because ORS 215.283 and OAR chapter 660, division 6, strictly  
6 regulate the uses that are allowed on resource land. Intervenor-petitioner  
7 maintains, but does not develop their argument, that short-term rentals are also  
8 restricted by law on nonresource land. Legislative decisions are not required to  
9 be supported by findings, and intervenor-petitioner has not identified any  
10 provision of law requiring that the ZDO regulate nonincidental short-term rentals  
11 in the same manner as uses such as hotels and motels. As discussed above in our  
12 resolution of intervenor-petitioner's Goal 2 argument, Goal 2 does not restrict the  
13 form in which local governments must express ultimate policy choices. Here, the  
14 county elected to require the registration of and tax short-term rentals in CCC  
15 title 8, and to regulate them as residential uses in the ZDO. Intervenor-petitioner  
16 may intend to argue that the decision must provide an explanation for why short-  
17 term rentals are not regulated in the same manner as hotels or motels, but  
18 intervenor-petitioner does not develop an argument establishing that the law  
19 requires short-term rental uses to be regulated in the same manner as hotel or  
20 motel uses or requires the county to explain its reasoning for a different approach.

21 Intervenor-petitioner's fourth assignment of error is denied.

22 The county's decision is remanded.