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

PAUL SCOTT,
Petitioner,

vs.

JOSEPHINE COUNTY,
Respondent,

and

MAJESTIC DESTINATIONS LLC,
Intervenor-Respondent.

LUBA No. 2021-079

FINAL OPINION
AND ORDER

Appeal from Josephine County.

Paul Scott filed the petition for review and argued on behalf of themselves.

No appearance by Josephine County.

Corinne S. Celko filed the response brief and argued on behalf of the intervenor-respondent. Also on the brief was Alex J. Berger and Emerge Law Group.

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

ZAMUDIO, Board Chair, dissenting.

AFFIRMED 04/11/2022

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

Opinion by Rudd.

NATURE OF THE DECISION

Petitioner appeals a county board of commissioners' decision approving a conditional use permit (CUP) for a private campground.

MOTION TO TAKE OFFICIAL NOTICE

Intervenor includes in its response brief a link to a website and a request that we "take judicial notice that [one of the board of commissioners] served in the Oregon Senate." Response Brief 12. We have long acknowledged that, consistent with the legislative policy set forth in ORS 197.805, we may take official notice of law subject to judicial notice as defined in ORS 40.090. *Schaff v. City of Medford*, 79 Or LUBA 317, 319 (2019). We have also acknowledged that we are, with limited exceptions, not a fact finder and our review of facts is generally limited to the record. ORS 197.835(2)(a). Although we will take official notice of law as defined by ORS 40.090, we will not take notice of facts pursuant to ORS 40.085.[1] *Schaff*, 79 Or LUBA at 319. Intervenor identifies no basis for us to take judicial notice of the prior employment of a commissioner, an adjudicative fact.

The motion to take official notice is denied.

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[1] We have also held in the context of record objections that we will not click on a website link to obtain a document. *Oregon Shores Conservation Coalition v. Coos County*, 75 Or LUBA 534, 540-41 (2017).

MOTION TO STRIKE

Intervenor includes in its response brief a request that we strike extra record materials attached as exhibits to the petition for review. As we indicated above, subject to exceptions not applicable here, our review is limited to the record. ORS 197.835(2)(a). We will not consider the extra record exhibits or the portion of the petition for review relying on those documents.

The motion to strike is granted.

BACKGROUND

This case follows LUBA's remand in *Scott v. Josephine County*, ___ Or LUBA ___ (LUBA No 2020-080, Mar 9, 2021) (*Scott I*).

On June 26, 2019, intervenor applied for a CUP to develop a 25-space RV park on a 19.08-acre property zoned Exclusive Farm Use (EFU). The planning director approved the CUP. Petitioner appealed the planning director's decision to the county board of commissioners. The board of commissioners denied the appeal. Petitioner appealed the board of commissioners' decision to LUBA. We remanded the county's decision because it authorized individual water and electricity hookups for each RV space, in contravention of the provisions in Josephine County Code (JCC) 19.64.040(T)(7) (as well as OAR 660-033-

0130(19)(b) (May 30, 2019))[2] prohibiting the provision of "[s]eparate sewer, water or electric service hook-ups * * * to individual camp sites * * *."

On April 23, 2021, intervenor asked that the board of commissioners consider the application on remand. Intervenor requested that the remand hearing be open to new evidence and submitted a revised development plan, modifying their proposal from 25 RV spaces served by individual water and electricity hookups to 24 RV spaces with each space served by one of 12 shared pedestals providing water and electricity hookups.[3] Record 127. The board of commissioners reopened the record for the limited purpose of allowing new evidence related to the provision of individual water and electricity hookups for each RV space. Record 125.

On July 12, 2021, the board of commissioners held its remand hearing. The board of commissioners concluded that the shared utility pedestals were consistent with JCC 19.64.040(T)(7) and approved the CUP and issued their final decision on August 18, 2021.

This appeal followed.

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[2] This rule has been amended since the filing of the underlying application in this matter. The rule as cited throughout is to the rule as it was written when the application was filed in June of 2019.

[3] As we explained in *Scott I*, no septic hookups are proposed at all; rather, the application proposed a central dump station and drain field. *Scott I*, ___ Or LUBA at ___ (slip op at 19-20).

SECOND ASSIGNMENT OF ERROR

As we explained in *Scott I*,

> "Oregon land use law preserves land for agricultural uses by restricting uses allowed in EFU zones to agricultural uses and certain non-farm uses listed in ORS 215.283. ORS 215.203. ORS 215.283(2)(c) provides that, subject to ORS 215.296, counties may allow private campgrounds on land zoned EFU. OAR 660-033-0120 provides a table of uses allowed on agricultural lands 'subject to the general provisions, special conditions, additional restrictions and exceptions set forth in [OAR chapter 660, division 33].' As applicable to the CUP here, the OAR 660-033-0120 table provides that private campgrounds are allowed on non high-value farmland subject to OAR 660-033-0130(2), (5), and (19). * * *
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> "[JCC] 19.64.040(T) incorporates these provisions, [and] provides that private campgrounds are conditionally allowed on the county's EFU land[.]" *Scott I*, ___ Or LUBA at ___ (slip op at 3-5) (internal footnotes omitted).

JCC 19.64.040(T)(4) provides:

> "[a] campground is an area devoted to overnight temporary use for vacation, recreational or emergency purposes, but not for residential purposes, and is established on a site or is contiguous to lands with a park *or other outdoor natural amenity* that is accessible for recreational use by the occupants of the campground[.]" (Emphasis added).

Petitioner's second assignment of error is that the county erred in refusing to accept petitioner's evidence related to the required "outdoor natural amenity"

despite accepting such evidence from intervenor's counsel and a board commissioner.[4]

LUBA will reverse or remand a decision if it finds a local jurisdiction failed to follow applicable procedures in a manner that prejudiced petitioner's substantial rights. ORS 197.835(9)(a)(B). The county's procedural rules applicable to hearings on remand are set out in JCC 19.33.130. JCC 19.33.130(C) provides:

> "The applicant in a remand proceeding shall specify in the application whether the remand hearing will be confined to the record of the earlier proceeding or whether the remand hearing will involve the introduction of new evidence. In the event the remand hearing is confined to the earlier record, the applicant shall submit amended findings with the remand application. The remand hearing shall be confined to the earlier record unless the Review Body opens the record for new evidence pursuant to JCC 19.33.080(E) or 19.33.090(F)."

JCC 19.33.130(E) provides: "The remand hearing shall not consider any issue or issues other than those specified for remand in the remanding decision, and no other evidence, testimony or arguments shall be allowed regarding other issues

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[4] Petitioner argues that during the remand hearing, intervenor's counsel stated that the grass and rolling hills on the golf course are natural, making the golf course a natural amenity, and that one of the commissioners stated that based upon their review of the property on Google Earth, they believed the property had river access and that the river provided a natural amenity. Petition for Review 17, 20 (referencing Audio Recording, Josephine County Board of Commissioners, July 12, 2021, at 39:29 (testimony of intervenor's counsel Corinne S. Celko); *Id.* at 53:57 (comments of County Commissioner Darin Fowler)).

within the scope of the Board's original action." Taken together, these two provisions provide that the board of commissioners may only consider issues sustained on remand and that new evidence must be limited to the issues on remand.

In *Scott I*, we sustained petitioner's third assignment of error that argued that the county improperly construed JCC 19.64.040(T)(7), concluding:

> "Intervenor's project provides separate water and electric service hookups to each RV space. The county may not apply criteria which are less stringent than that set forth in state law restricting the use of EFU land. *Brentmar v. Jackson County*, 321 Or 481,497,900 P2d 1030 (1995); *Lane County v. LCDC*, 325 Or 569, 582-583, 942 P2d 278 (1997). *Intervenor's proposed use is a private campground and the county may not disregard its own code and the Oregon Administrative Rules and allow private water and electric hookups.*" *Scott I*, ___ Or LUBA at ___ (slip op at 16-17) (Emphasis added).

Petitioner argues that the statement emphasized in the above paragraph from *Scott I* means that any inconsistency with any subsection of OAR 660-033-0130(19) and JCC 19.64.040(T) is at issue on remand. We agree with intervenor that this is incorrect. Our remand in *Scott I* was limited to the issue of water and electrical hookups. Under JCC 19.33.080(E), evidence at the remand hearing was properly limited to that related to compliance with the prohibition on separate utility hookups set out in JCC 19.64.040(T)(7) (and because JCC 19.64.040(T)(7) implements it, OAR 660-033-0130(19)).

We understand petitioner to also argue that the board of commissioners committed a procedural error that prejudiced petitioner's substantial rights

because it allowed others to introduce evidence related to the "outdoor natural amenity" requirement of JCC 19.64.040(T)(4) but did not consider petitioner's evidence related to JCC 19.64.040(T)(4).

The board of commissioners explained in its findings that it would not consider petitioner's written and oral testimony concerning the ability of the golf course to serve as the required outdoor natural amenity because petitioner had not challenged that finding in *Scott I*, and we did not remand *Scott I* on that basis. The board of commissioners explained:

> "Paul Scott submitted written and oral argument and testimony alleging that the applicant had failed to comply with Section 19.64.040.T.4, which requires a private campground to be established on a site or be contiguous to lands with a park or other outdoor natural amenity that is accessible for recreational use by the occupants of the campground. Mr. Scott argued that the Applegate Golf Course was not a 'natural amenity' because it was man-made.
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> "However, as discussed below, the BCC finds that this issue is outside the scope of the remand proceedings and that Mr. Scott is precluded from raising this issue at this time. First, pursuant to JCC 19.33.130.E, the BCC finds that the remand proceedings are strictly limited to the sole issue specified for remand in LUBA's remanding decision. The BCC further finds that the sole issue specified for remand in LUBA's decision is compliance with JCC 19.64.040.T.7 and OAR 660-033-0130(19)(b), which prohibit separate utility hookups to individual campsites. Therefore, the BCC finds that Mr. Scott's argument that the golf course does not constitute an outdoor natural amenity is outside the scope of these remand proceedings.
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> "* * * [Further,] the BCC finds LUBA concluded that Mr. Scott failed to argue that the golf course does not constitute an outdoor natural amenity. [*Scott I*], p. 7, FN 3. Accordingly, the BCC finds that since Mr. Scott could have raised this issue in the proceedings

> below, but did not, and since LUBA already concluded that the applicant's proposal constituted a private campground, Mr. Scott is precluded from raising this issue now." Record 16.

We agree with intervenor that the applicable code provided that the board could not allow evidence on issues other than compliance with JCC 19.64.040(T)(7) and the utility hookups. Response Brief 24. Additionally, petitioner has not shown that they were prejudiced by statements by intervenor's counsel or a county commissioner that were unrelated to the criteria being considered on remand.

Petitioner's second assignment of error is denied.

THIRD ASSIGNMENT OF ERROR

Petitioner's third assignment of error is that the board of commissioners erred in concluding that the golf course was a natural amenity for purposes of complying with JCC 19.33.130(T)(7). Generally, we will remand a decision which improperly construes the applicable law or is not supported by substantial evidence in the whole record. ORS 197.835(9)(a)(C), (D).

Intervenor responds that this assignment of error has been waived. The board of commissioner's approval of intervenor's proposed campground identified the adjoining golf course as the required contiguous natural amenity.

We observed in a footnote in *Scott I* that petitioner did not challenge the board's reliance on the golf course in approving the private campground[5] and

> "Under *Beck* [*v. City of Tillamook,* 313 Or 148, 153-54, 831 P2d 678 (1992)], a party at LUBA fails to preserve an issue for review if, in a prior stage of a *single proceeding*, that issue is decided adversely to the party or that issue could have been raised and was not raised." *Green v. Douglas County*, 63 Or LUBA 200, 206 (2000), *rev'd on other grounds*, 245 Or App 430, 263 P3d 355 (2011).

Petitioner did not challenge the reliance on the golf course in *Scott I*. We agree with intervenor that petitioner is precluded by the law of the case doctrine from raising the issue raised in their third assignment of error.

Petitioner's third assignment of error is denied.

FIRST ASSIGNMENT OF ERROR

Petitioner argues that the county misconstrued the law and made a decision not supported by substantial evidence because intervenor's project does not comply with JCC 19.133.130(T)(7)'s prohibition on separate utility service hookups to individual RV campsites.

JCC 19.133.130(T)(7) is a local implementation of state law. ORS 215.283(2)(c) provides that counties may conditionally allow on EFU land:

> "Private parks, playgrounds, hunting and fishing preserves and campgrounds. Subject to the approval of the county governing body or its designee, a private campground may provide yurts for

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[5] Footnote 3 of *Scott I* states, "Petitioner does not argue that the golf course does not constitute an 'outdoor natural amenity' for purposes of OAR 660-033-0130(19)(b)."

> overnight camping. No more than one-third or a maximum of 10 campsites, whichever is smaller, may include a yurt. The yurt shall be located on the ground or on a wood floor with no permanent foundation. Upon request of a county governing body, the Land Conservation and Development Commission may provide by rule for an increase in the number of yurts allowed on all or a portion of the campgrounds in a county if the commission determines that the increase will comply with the standards described in ORS 215.296 (1). As used in this paragraph, 'yurt' means a round, domed shelter of cloth or canvas on a collapsible frame with no plumbing, sewage disposal hookup or internal cooking appliance."

The Land Conservation and Development Commission (LCDC) has adopted administrative rules establishing additional restrictions applicable to private campgrounds on EFU land and OAR 660-033-0130(19)(b) provides, in part, "Campsites may be occupied by a tent, travel trailer, yurt or recreational vehicle. Separate sewer, water or electric service hook-ups shall not be provided to individual camp sites except that electrical service may be provided to yurts allowed for by subsection (19)(c) of this rule."

Consistent with ORS 215.283(2)(c), the county has elected to conditionally allow private campgrounds on EFU land. Consistent with OAR 660-033-0130(19)(b), JCC 19.64.040(T)(7) provides that private campsites may be allowed on EFU land and "occupied by a tent, travel trailer, yurt or [RV]. Separate sewer, water or electric service hookups shall not be provided to individual camp sites except that electrical service may be provided to yurts[.]" The board of commissioners approved intervenor's application, concluding "that the plain language definition of 'separate' means 'not shared with another' or 'individual.' Therefore, the BCC finds that the proposal on remand complies with

the plain language of this requirement, as well as its intent, and the BCC finds that this criterion is satisfied." Record 13. Petitioner argues that the shared water and electricity pedestals violate the prohibition on utility service to individual camp sites. We disagree.

JCC 19.64.040(T)(7) implements and must be interpreted in a manner consistent with OAR 660-033-0130(19). We owe no deference to the county's interpretation of state law. *Kenagy v Benton County*, 115 Or App 131, 838 P2d 1076, *rev den*, 315 Or 271 (1992). In construing the law, we will consider the text, context and legislative history of the law at issue in order to determine the intent of the enacting legislature. *PGE v. Bureau of Labor and Industries*, 317 Or 606, 610-12, 859 P2d 1143 (1993); *State v. Gaines*, 346 Or 160, 171-172, 206 P3d 1042 (2009). We will reverse or remand a local government decision that improperly construes the law. ORS 197.835(9)(a)(D). We first consider the text of the rule.

OAR 660-033-0130(19) requires that *individual* campsites not have *separate* water or electric *hook-ups*, which are terms undefined in the administrative rule. In reviewing definitions in Webster's Dictionary we find definitions of "hookup" include "a linking of two or more items into an interacting whole" and "a group or number of items cooperating or acting together[.]" *Webster's Third New Int'l Dictionary* 1088 (unabridged ed 2002). The definition of an "individual" includes "intended for one person," *Id.* at 1152, and that of "separate" includes "not shared with another: INDIVIDUAL." *Id.* at

2069. Read together, these definitions support interpreting the rule to mean that individual campsites may not have hookups which are limited to serving the individual campsite. The hookups approved in *Scott I* allowed each RV site to hook into a utility source for water and electricity serving only that RV site. The 24 individual campsites now proposed do not have 24 distinct service locations for water and electricity. Rather, the 24 individual campsites have the ability to connect to 12 shared utility pedestals. Petitioner maintains, however, that the reduction in number of hookups from 25 to 12 still fails to satisfy state law.

We also consider context provided by other rules. We referenced OAR 660-033-0130(19) in *Linn County Farm Bureau v. Linn County*, 61 Or LUBA 323, 339-40 (2010), although that case concerned a different LCDC administrative rule, OAR 660-034-0035. *Linn County Farm Bureau* involved an application to establish a county park and to allow for the "installation of collection and distribution facilities to provide septic, water and electric service to each of the individual RV camp sites." *Linn County Farm Bureau*, 61 Or LUBA at 339. It did not address whether hookups may be shared, but it did discuss full-service hookups to individual campsites, OAR 660-033-0130(19), Goal 3 (Agricultural Lands), and uses on EFU land:

> "While it is a close question given the lack of guidance on this issue from LCDC, *we agree with petitioners and [the Department of Land Conservation and Development (DLCD)] that the county has not demonstrated that separate provision of septic, water and electric services to each of the individual RV camp sites is consistent with Goal 3. Although OAR 660-033-0130(19) does not control*

> *authorization of campgrounds in public parks in EFU zones, it does generally suggest that LCDC is concerned with the intensity of public facilities in campgrounds on agricultural lands. Providing full hook-ups to individual RV camp sites places a campground one significant step closer towards potential use as a high-density residential or quasi-residential use, and hence toward the 'urban' end of the scale.* ORS 215.243(3) suggests that provision of 'urban-like' development or services on EFU land is inconsistent with Goal 3. Consideration of Goal 3 Guideline B.1 suggests that where a local government has a choice between types of infrastructure supporting a non-farm use, to ensure consistency with Goal 3 it should 'minimize' permanent loss of agricultural potential by choosing the less intensive type of infrastructure. It is common in campgrounds, even those that accommodate RVs, to provide centrally located restrooms and water distribution sites as the sole means of providing essential septic and water services to a number of different camp sites. *The full hookup/full service system approved by the county presumably requires a significantly greater extent and intensity of infrastructure, for pipes, connections, pumping stations, etc. Given that context, we believe that it is inconsistent with Goal 3 to provide full utilities to individual RV camp sites in a public park on EFU land.* Accordingly, we agree with petitioners and DLCD that the county erred in concluding that it can authorize provision of full utilities to individual RV camp sites without an exception to Goal 3." *Id.* at 339-340 (Emphases added).

We concluded LCDC had not provided direction, but that Goal 3 supported an interpretation of the applicable rule that limited the intensity of full utility services to individual campsites in public campgrounds on EFU land. Similarly, here, the shared pedestals limit the intensity of the use.

In addition, we are persuaded by the legislature and LCDC's treatment of yurts, which demonstrates that they know how to prohibit or limit public facilities in connection with campgrounds on EFU land when that is their intent. The intent

to limit services in campgrounds on EFU land is reflected in ORS 215.283(2)(c) and OAR 660-033-0130(19)(b)'s treatment of yurts, limiting their number to one third or a maximum of 10 of the provided campsites. Importantly, yurts, by definition, have no plumbing, sewage disposal hookup or internal cooking appliances. ORS 215.283(2)(c); OAR 660-033-0130(19)(c). Yurts, by rule, may, however, have electrical service provided to them.[6] These provisions illustrate that the legislature and LCDC clearly know how to prohibit or allow certain features.[7]

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[6] OAR 660-033-0130(19)(c) provides:

> "Subject to the approval of the county governing body or its designee, a private campground may provide yurts for overnight camping. No more than one-third or a maximum of 10 campsites, whichever is smaller, may include a yurt. The yurt shall be located on the ground or on a wood floor with no permanent foundation. Upon request of a county governing body, the commission may provide by rule for an increase in the number of yurts allowed on all or a portion of the campgrounds in a county if the commission determines that the increase will comply with the standards described in ORS 215.296(1). As used in this section, 'yurt' means a round domed shelter of cloth or canvas on a collapsible frame with no plumbing, sewage disposal hook-up or internal cooking appliance."

[7] ORS 215.283(2)(c) provides that in the context of a private campground on EFU land, "'yurt' means a round, domed shelter of cloth or canvas on a collapsible frame with no plumbing, sewage disposal hookup or internal cooking appliance."

Our review of the legislative history shows that the provision for yurts was added to the statute in 1999 and the administrative rules in 2000 to provide parity between their treatment on public and private campgrounds. *See* Senate Bill (SB) 882 (1999); OAR 660-033-0130(19)(c) (Apr 24, 2000). Previously, yurts were an allowed use in public campgrounds and parks, but not private. This created what was referred to in the senate by some as a "double standard" because it was putting private property owners in resource areas at a disadvantage when located near state parks. Tape Recording, Senate Water and Land Use Committee, SB 882, Apr 20, 1999, Tape 66, Side A (comments of Sen Tarno and Sen Wilde). Specifically, a property owner in Curry County who wanted to attract eco-tourists to the area to help revitalize the county's economy testified about yurts being environmentally friendly and their wish to promote the beauty of Oregon. There is no discussion of electrifying the yurts, only a wish to be competitive with those that are already available in state parks.

The rule provides that *separate* service may not be provided *to* an individual camp site except that electrical service may be provided to yurts. However, as we described above, the rule does not state that service which is not separate may not be provided to individual campsites. Rather, the applicable ORS and OAR limit the intensity of utility services at *individual* campsites by not allowing *separate* hookups.

The example of the utility pedestal provided in the record illustrates that it has multiple connections available from one pedestal. Record 124. For example,

the photo of the pedestal provided shows two water spigots. Petitioner argues, however, that no two RVs will share anything because "no electrical outlet hookups are shared, no water faucet hookups are shared; no electricity is shared and no water is shared" and because "RVs make separate and individual hookups via self contained apparatuses (electrical cable and water hoses) to connect the individual RV to common utilities network (or grid)." Petition for Review 10.

Intervenor maintains that petitioner's interpretation fails to give effect to the language of the rule. ORS 174.010 guides our approach to the construction of a statute as it states that,

> "[i]n the construction of a statute, the office of the judge is simply to ascertain and declare what is, in terms or in substance, contained therein, not to insert what has been omitted, or to omit what has been inserted, and where there are several provisions or particulars such construction is, if possible, to be adopted as will give effect to all."

Under petitioner's interpretation, because each pedestal contains distinct outlets to provide individual camp sites with water and electrical service, the rule is violated. Petitioner's interpretation requires that we read the language providing that "*separate* sewer, water or electric service hook-ups shall not be provided to *individual* camp sites except that electrical service may be provided to yurts" without giving meaning to the words "separate" or "individual." The rule could have been drafted to say "sewer, water or electric service hookups shall not be provided to individual campsites" or "separate sewer, water or electric service hookups shall not be provided to campsites," but it was not.

We conclude that the text of the rule contemplates some level of service in the campground to campsites. It may be that the shared utility pedestals allow a greater intensity of development than, for example, one central water station or one central utility pole located in the campground but are conditionally allowed.[8]

We also look to the legislative history to ascertain the meaning of the rule.

The original language for OAR 660-033-0130(19) was adopted in 1992 and provided:

> "A campground is an area devoted to overnight temporary use for vacation, recreational or emergency purposes, but not for residential purposes. A camping site may be occupied by a tent, travel trailer or recreational vehicle. Campgrounds authorized by this rule shall not include intensively developed recreational uses such as swimming pools, tennis courts, retail stores or gas stations." OAR 660-033-0130(19) (Dec 3, 1992).

The language prohibiting separate hookups to individual campsites was adopted in a 1998 amendment, which provided:

> "Except on a lot or parcel contiguous to a lake or reservoir, private campgrounds shall not be allowed within three miles of an urban growth boundary unless an exception is approved pursuant to ORS 197.732 and OAR Chapter 660, Division 4. A campground is an area devoted to overnight temporary use for vacation, recreational or emergency purposes, but not for residential purposes and is

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[8] The dissent argues that the language in the rule providing that electricity may be provided to yurts dictates a different result. We conclude that the rule provides that an individual yurt is not required to share its electricity source with another yurt or other campsite. A yurt may be connected to a power source serving only the yurt. An RV may not be connected to a power source serving only the one RV.

> established on a site or is contiguous to lands with a park or other outdoor natural amenity that is accessible for recreational use by the occupants of the campground. A campground shall be designed and integrated into the rural agricultural and forest environment in a manner that protects the natural amenities of the site and provides buffers of existing native trees and vegetation or other natural features between campsites. Campsites may be occupied by a tent, travel trailer or recreational vehicle. *Separate sewer, water or electric service hook-ups shall not be provided to individual camp sites.* Campgrounds authorized by this rule shall not include intensively developed recreational uses such as swimming pools, tennis courts, retail stores or gas stations. Overnight temporary use in the same campground by a camper or camper's vehicle shall not exceed a total of 30 days during any consecutive 6 month period." OAR 660-033-0130(19) (June 1, 1998) (Emphasis added.)[9]

The 1998 amendments came about as a result of legislation regarding parks, with a desire to differentiate between uses allowed in public and private parks.

The original draft of the amendments to the rule, circulated February 19, 1998, by DLCD, included language that provided that "no more than one-third of the camp sites shall be designated to accommodate or provide service hook-ups to recreational vehicles." The summary for this change was to "limit the number of recreational vehicles in order to not allow recreational vehicle (RV) parks to be approved as campgrounds." Instead, the intent was to facilitate the creation of mixed use campgrounds and prevent the creation of RV-only parks on resource land.

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[9] There is no mention of yurts in this amendment; it concerned only the need for the campsite to further integrate into its surroundings and avoid the use becoming too intensive.

The revisions to include the prohibition on "Separate sewer, water or electric service hook-ups * * * to individual camp sites" were proposed, in a March 17, 1998 draft from DLCD, in response to comments that the original language authorized full-service RV parks on resource land. 1000 Friends of Oregon commented, in a March 6, 1998 letter to DLCD, that there was a statutory difference between a "campground that allows RVs" and an "RV Park," the latter of which was what they saw the original language as allowing. References were made to difficulties counties and residents were having striking a balance between allowing RVs in campgrounds and creating RV parks. The minutes from the April 1998 LCDC meeting discussed the comments received. There had been some comments submitted regarding a complete ban on RVs on resource land by preventing dump stations or impervious surfaces from being sited on resource land. In response to questions regarding these comments, DLCD representative Ron Eber stated that the "advi[c]e [DLCD] received was to prohibit full service hookups" and that "an impervious surface prohibition would be going too far." Minutes, Land Conservation and Development Commission, Apr 16-17, 1998, 9. The legislative history of the 1998 rule amendments tends to confirm that LCDC was focused on limiting the provision of *full-service* hookups, including septic, water, and electricity, in order to avoid creating RV parks.

We agree with intervenor that the text of the rule, along with context provided by the rule that applies to public campgrounds and the provision of electrical service to yurts, allows a campground authorized under the rule to

provide some level of utility services which is still less intense than the prohibited *separate* service to *individual* campsites. Again, petitioner's interpretation requires us to omit language in the rule in contravention of ORS 174.010. We also reach this conclusion because where individual facilities such as facilities in yurts are prohibited, the rule says so expressly. The legislative history includes DLCD staff testimony that the language of the rule was intended to address and prohibit "full service hook-ups," and although the term "full service hook-ups" is both undefined and absent from the adopted rule, we have interpreted that phrase to mean septic, water, and electrical service. We agree with the county and intervenor that the application does not run afoul of JCC 19.64.040(T)(7) and OAR 660-033-0130(19)(b) due to the presence of 12 shared utility pedestals serving 24 camp sites.

Petitioner's first assignment of error is denied.

The county's decision is affirmed.

Zamudio, Board Chair, dissenting.

I respectfully dissent because I am persuaded that the county's approval of shared-pedestal water and electrical hookups to RV camp sites is inconsistent with the text, context, and administrative history of OAR 660-033-0130(19)(b).[10]

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[10] At the time this decision issues, OAR 660-033-0130 has two sections (19). One of those is the version of section (19) that was in effect when the subject application was filed in June of 2019. The other was initially adopted as a temporary rule in 2020 and became permanent in 2021, as explained below. The

"When interpreting an administrative rule, we seek to divine the intent of the rule's drafters, employing essentially the same framework that we employ when interpreting a statute." *Noble v. Dept. of Fish and Wildlife*, 355 Or 435, 448, 326 P3d 589 (2014).

> "In construing statutes and administrative rules, we are obliged to determine the correct interpretation, regardless of the nature of the parties' arguments or the quality of the information that they supply * * *. *See, e.g., Dept. of Human Services v. J.R.F.*, 351 Or 570, 579, 273 P3d 87 (2012) (referring to obligation of courts 'to interpret the statutes correctly, which includes an obligation to consider relevant context, regardless of whether it was cited by any party'); *Stull v. Hoke*, 326 Or 72, 77, 948 P2d 722 (1997) ('In construing a statute, this court is responsible for identifying the correct interpretation, whether or not asserted by the parties.')." *Gunderson, LLC v. City of Portland*, 352 Or 648, 662, 290 P3d 803 (2012).

A. Text

OAR 660-033-0130(19)(b) provides, in relevant part: "Campsites may be occupied by a tent, travel trailer, yurt or recreational vehicle. Separate sewer, water or electric service hook-ups shall not be provided to individual camp sites except that electrical service may be provided to yurts allowed for by subsection (19)(d) of this rule." A "yurt" is "a round, domed shelter of cloth or canvas on a collapsible frame with no plumbing, sewage disposal hook-up or internal cooking appliance." ORS 215.283(2)(c); OAR 660-033-0130(19)(d). A yurt may not be placed on a permanent foundation. *Id.*

2019 version appears to remain in the rule as an accidental vestige. This dissent refers to the 2020 amended version of the rule.

Subsection (19)(b) provides that "[s]eparate sewer, water or electric service hook-ups *shall not be provided* to individual camp sites *except that* electrical service may be provided to yurts * * *." (Emphases added.) In my view, the text of subsection (19)(b) prohibits water and electrical service hookups to serve individual RV sites, even if those hookups are shared between two sites.

The majority reasons that petitioner's interpretation of OAR 660-033-0130(19)(b) requires us to omit the terms "separate" and "individual" in contravention of ORS 174.010. The majority reasons that DLCD could have, but did not, adopt a rule that states, without qualification, that "sewer, water or electric service hook-ups shall not be provided to individual camp sites" or "separate sewer, water or electric service hook-ups shall not be provided to camp sites." The majority's interpretation fails to account for the portion of the sentence that provides "*except that* electrical service may be provided to yurts." When read as a whole, the disputed sentence means that separate electrical service may be provided to individual yurt camp sites, but separate sewer, water, or electric service hookups shall not be provided to any other individual camp sites, including RV sites. That interpretation allows a private campground to provide sewer, water, or electric service stations that may be used and shared by campground guests, such as communal water spigots, electrical outlets in shared restrooms or service areas, and a shared sewage disposal site. However, those types of services may not be provided to individual camp sites—including individual RV parking pads.

B. Context

Because the focus of the interpretive inquiry is what the enacting agency intended at the time it adopted the rule, ordinarily, only rules that existed at the time the disputed rule was adopted provide interpretive context. *See, e.g.*, *Gaines*, 346 Or at 177 n 16 ("Ordinarily, only statutes enacted simultaneously with or before a statute at issue are pertinent context for interpreting that statute."); *Holcomb v. Sunderland*, 321 Or 99, 105, 894 P2d 457 (1995) ("The proper inquiry focuses on what the legislature intended at the time of enactment and discounts later events."). Nevertheless, we may refer to later-adopted rules as indirect evidence of what the adopting agency intended. *Halperin v. Pitts*, 352 Or 482, 490, 287 P3d 1069 (2012); *Gaines*, 346 Or at 177 n 16 (later-enacted statutes "can be of some aid in interpreting an earlier one").

On November 10, 2020, in response to a catastrophic wildfire season that destroyed many homes, DLCD temporarily amended OAR 660-033-0130(19) to authorize counties to approve emergency private campgrounds on agricultural land when an intensive wildfire "has destroyed homes or caused residential evacuations, or both within the county or an adjacent county." On August 16, 2021, DLCD made that language permanent.[11] OAR 660-033-0130(19)(c). In

[11] The 2020 amendment changed the language of subsection (19)(b) to reflect the adoption of the new subsection (19)(c) regarding emergency uses, and the old subsection (19)(c) regarding yurts was renumbered as subsection (19)(d). The 2020 amendment did not change the phrasing of the sentence in subsection (19)(b) that is disputed in this appeal.

emergency private campgrounds, "[c]ampsites may be occupied by a tent, travel trailer, yurt or recreational vehicle. Separate sewer hook-ups shall not be provided to individual camp sites." OAR 660-033-0130(19)(c)(A). Unlike subsection (19)(b), subsection (19)(c) does not expressly prohibit separate electrical and water hookups to individual camp sites in emergency campgrounds, but it does expressly prohibit separate sewer hookups to individual camp sites. In my view, that difference provides context that supports my interpretation that subsection (19)(b) prohibits sewer, water, or electric service hookups that serve individual camp sites "except that electrical service may be provided to yurts."

C. Administrative History

As explained by the majority, the minutes from the April 1998 LCDC meeting reveal that LCDC had received comments suggesting an outright ban on RV camping on resource land by prohibiting sewage dump stations and impervious surfaces on resource land. In response to LCDC questions regarding those comments, DLCD representative Ron Eber stated that the "advice [DLCD] received was to prohibit full-service hookups" and that "an impervious surface prohibition would be going too far." Minutes, Land Conservation and Development Commission, Apr 16-17, 1998, 9. In my view, the DLCD policy choice to allow RV sites in private campgrounds but prohibit full-service hookups for RVs is reflected in the first part of the disputed sentence, "[s]eparate sewer, water or electric service hook-ups *shall not be provided* to individual camp

sites * * *." (Emphasis added.) That current rule language is retained from the 1998 DLCD rule amendment.

In 1999, the legislature amended ORS 215.283(2)(c) to allow yurts in private campgrounds, in parity with public campgrounds, on resource land. On April 24, 2000, DLCD amended section (19) to reflect and implement that statutory change. That change is reflected in the second part of the disputed sentence, "except that electrical service may be provided to yurts." It appears to me that DLCD interpreted the legislature's definition of "yurt" in ORS 215.283(2)(c) to allow for electric service to individual yurt camp sites because the statutory definition of "yurt" expressly prohibits internal cooking appliances, plumbing, and sewage disposal hookups for yurts but does not prohibit electrical service.

D. Conclusion

I conclude that, based on the text, context, and administrative history of OAR 660-033-0130(19)(b), the county may not approve electrical and water hookups that serve individual RV sites, even if those hookups are shared between two camp sites. That conclusion is informed by the purpose of OAR 660-033-0130(19)(b), which is to implement Goal 3 and ORS 215.243 by protecting agricultural land for agricultural uses and to implement those nonfarm uses authorized by ORS 215.283. OAR 660-033-0010. I believe that it is inconsistent with Goal 3 and OAR 660-033-0130(19)(b) to provide electric and water hookups to individual RV camp sites in a private campground on agricultural

land. In coming to that conclusion, I observe that subsection (19)(b) ensures that private campgrounds are used for temporary recreational rather than long-term residential uses by imposing limitations on the duration of stays. *See* OAR 660-033-0130(19)(b) ("Overnight temporary use in the same campground by a camper or camper's vehicle shall not exceed a total of 30 days during any consecutive six-month period."). In my view, subsection (19)(b) separately limits the intensity of private campground use by limiting the types of infrastructure allowed to serve individual camp sites by prohibiting separate sewer, water, or electric service to individual camp sites. That limitation serves to preserve agricultural land and allow land used for private campgrounds to be more readily converted to agricultural use when the private campground uses cease. In my view, that is also the reason that yurts, which are temporary structures, may not be placed on a permanent foundation. ORS 215.283(2)(c); OAR 660-033-0130(19)(d).

I agree with petitioner that the county erred in approving the pedestal hookups. For those reasons explained above, I respectfully dissent.