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

LANDWATCH LANE COUNTY,
Petitioner,

vs.

LANE COUNTY,
Respondent,

and

KIM HELSEL,
Intervenor-Respondent.

LUBA No. 2023-037

FINAL OPINION
AND ORDER

Appeal from Lane County.

Sean T. Malone filed the petition for review and reply brief and argued on behalf of petitioner.

No appearance by Lane County.

Bill Kloos filed the intervenor-respondent's brief and argued on behalf of intervenor-respondent.

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

ZAMUDIO, Board Member, concurring.

REMANDED 08/29/2023

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

Opinion by Ryan.

NATURE OF THE DECISION

Petitioner appeals a decision by the county hearings officer approving an application for a relative farm help dwelling on land zoned Exclusive Farm Use (EFU).

MOTION TO INTERVENE

Kim Helsel, the applicant below, moves to intervene on the side of the county in this appeal. The motion is unopposed and is allowed.

MOTIONS TO TAKE OFFICIAL NOTICE

Petitioner moves for us to take official notice of testimony in the legislative history of Senate Bill (SB) 1051 (2017), Oregon Laws 2017, chapter 745, section 5, codified at ORS 197.307(4). Intervenor-respondent (intervenor) moves for us to take official notice of testimony in the legislative history of House Bill 3197 (2023) (HB 3197), Oregon Laws 2023, chapter 533.

We may take official notice of relevant law as defined in ORS 40.090. OAR 661-010-0046(1). The parties ask that we take notice of the provided legislative history under ORS 40.090(2), as the public and private official acts of the legislative department of the state. We regularly consider legislative history in interpreting state statutes and administrative rules, consistent with the legislative directive that LUBA "decisions be made consistently with sound principles governing judicial review." ORS 197.805. In addition, ORS 174.020(1) provides:

> "(a) In the construction of a statute, a court shall pursue the intention of the legislature if possible.
>
> "(b) To assist a court in its construction of a statute, a party may offer the legislative history of the statute."

The motions are granted.

FACTS

Intervenor applied to the county for approval of a relative farm help dwelling on an approximately 60-acre parcel zoned EFU (E-30) located outside of any urban growth boundary (UGB) of a city. ORS 215.213(1)(d) allows on property zoned EFU:

> "[a] dwelling on real property used for farm use if the dwelling is occupied by a relative of the farm operator or the farm operator's spouse, which means a child, parent, stepparent, grandchild, grandparent, stepgrandparent, sibling, stepsibling, niece, nephew or first cousin of either, if the farm operator does or will require the assistance of the relative in the management of the farm use and the dwelling is located on the same lot or parcel as the dwelling of the farm operator."

The Land Conservation and Development Commission (LCDC) has adopted rules governing relative farm help dwellings on EFU land at OAR 660-033-0120 and OAR 660-033-0130(9).[1] The county has adopted provisions implementing LCDC's rules at Lane Code (LC) 16.212(8)(b).

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[1] The LCDC is empowered to adopt rules further restricting uses on agricultural land "so long as [LCDC's rules] are not less restrictive than [ORS 215.213]." *Lane County v. LCDC*, 325 Or 569, 583, 942 P2d 278 (1997) (emphasis omitted).

The planning director issued a written decision approving the application without a hearing, concluding that the applicable LC provisions that implement OAR 660-033-0130(9) were satisfied. Petitioner appealed the decision to the hearings officer.

Petitioner argued that the application failed to satisfy OAR 660-033-0130(24)(b), which requires an applicant for an "accessory farm dwelling" to produce evidence of gross annual income from the sale of farm products on the subject tract in each of the last two years, three of the last five years, or in an

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OAR 660-033-0130 provides standards that apply to the uses specified in the Table in OAR 660-033-0120, including relative farm help dwellings:

> "(9)(a) To qualify for a relative farm help dwelling, a dwelling shall be occupied by relatives whose assistance in the management and farm use of the existing commercial farming operation is required by the farm operator. However, farming of a marijuana crop may not be used to demonstrate compliance with the approval criteria for a relative farm help dwelling. The farm operator shall continue to play the predominant role in the management and farm use of the farm. A farm operator is a person who operates a farm, doing the work and making the day-to-day decisions about such things as planting, harvesting, feeding and marketing.
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> "(b) A relative farm help dwelling must be located on the same lot or parcel as the dwelling of the farm operator and must be on real property used for farm use.
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> "(c) For the purpose of subsection (a), 'relative' means a child, parent, stepparent, grandchild, grandparent, stepgrandparent, sibling, stepsibling, niece, nephew or first cousin of the farm operator or the farm operator's spouse."

average of three of the last five years. In testimony before the hearings officer, petitioner also challenged the planning director's decision that intervenor had provided evidence that the farm activity on the subject property qualifies as an "existing commercial farming operation" within the meaning of OAR 660-033-0130(9)(a) and LC 16.212(8)(b)(i), and that the farming activity on the subject property requires the help of the relative as required by that rule and LC provision. Record 128-32. Intervenor argued that ORS 197.307(4) (2017), which we set out and discuss later in this opinion, prohibits the county from applying any of the LC provisions that apply to an application for a relative farm help dwelling on EFU land because those criteria are not "clear and objective."

The hearings officer agreed with intervenor that ORS 197.307(4) (2017) prohibits the county from applying the approval criteria in the statute, LCDC's rules at OAR 660-033-0130, or the LC provisions that implement the statute and rule because the criteria are not "clear and objective." Record 7. Accordingly, the hearings officer affirmed the planning director's decision to approve the application, without addressing petitioner's challenges that argued that the LC provisions that implement OAR 660-033-0130 were not met. This appeal followed.

LEGAL FRAMEWORK

We first describe and set out relevant provisions of the two separate chapters of the Oregon Revised Statutes (ORS) that are at issue in this appeal before turning to petitioner's single assignment of error.

A. Farmland Protection

ORS chapter 215 addresses the authority of counties to zone land, and regulates uses on agricultural land and, more particularly, in exclusive farm use zones. ORS 215.243(2), a part of the state's agricultural land use policy and first enacted in 1973, provides, in part, "The preservation of a maximum amount of the limited supply of agricultural land is necessary to the conservation of the state's economic resources * * *." ORS 215.700(2), part of the state's resource land dwelling policy and first enacted in 1993, is to "[l]imit the future division of and the siting of dwellings upon the state's more productive resource land."

ORS chapter 215 restricts the uses that are allowed on agricultural land to farm uses and specified nonfarm uses. ORS 215.203(1), (2)(a) (providing that land within an EFU zone "shall be used exclusively for farm use except as otherwise provided in ORS 215.213, 215.283 or 215.284."). As noted above, ORS 215.213(1)(d) and LCDC rules allow a relative farm help dwelling on land zoned EFU if the circumstances in the statute and LCDC's rules are met. ORS 215.213(1)(d) was first enacted in 1981 and the statutory language has remained virtually unchanged since that time. *See* Or Laws 1981, ch 748, § 44.

In ORS 197.225, the legislature directed LCDC to adopt "goals and guidelines for use by state agencies, local governments and special districts in preparing, adopting, amending and implementing existing and future comprehensive plans." Statewide Planning Goal 3 (Agricultural Lands) promotes preservation of agricultural land for "farm use" and "maximum agricultural

productivity" and limits nonfarm uses of agricultural lands to those "that will not have significant adverse effects" on accepted farming or forest practices.

B. Needed Housing Statutes

ORS 197.303 to ORS 197.314 are sometimes referred to as the "needed housing statutes." ORS 197.307(1) addresses, as "a matter of statewide concern," the "availability of affordable, decent, safe and sanitary housing opportunities for persons of lower, middle and fixed income, including housing for farmworkers." With their initial enactment forty-two years ago, in 1981, the statutes incorporated into law the "St. Helens Policy," which was adopted as a policy by the LCDC in 1979. *See* Or Laws 1981, ch 884, §§ 5-6; *see also Robert Randall Company v. City of Wilsonville*, 15 Or LUBA 26, 32 (1986) (so explaining). The initial purpose behind the St. Helens Policy was to address local government attempts to exclude certain housing types that met lower, moderate or "least cost" housing needs. *Rogue Valley Assoc. of Realtors v. City of Ashland*, 35 Or LUBA 139, 148 (1998), *aff'd*, 158 Or App 1, 970 P2d 685, *rev den*, 328 Or 594 (1999).

Prior to 2017, ORS 197.307(4) provided that "a local government" generally could restrict development of "needed housing" on "buildable land" only through the adoption or application of regulations and procedures that were "clear and objective."[2] ORS 197.307(4) (2011). In *Warren v. Washington*

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[2] ORS 197.015(13) provides that as used in ORS chapter 197, "local government" means "any city, county or metropolitan service district formed

County, 78 Or LUBA 375, 379 (2018), *aff'd*, 296 Or App 595, 439 P3d 581, *rev den* 365 Or 502 (2019) (*Warren*), we explained the 2017 legislative changes to ORS 197.307(4):

> "In 2017, the legislature enacted and the Governor signed Senate Bill 1051 (SB 1051), which amended several statutes, including, as relevant here, ORS 197.307(4). Prior to the enactment of SB 1051, ORS 197.307(4) [2015] provided:
>
> > "'Except as provided in subsection (6) of this section, a local government may adopt and apply only clear and objective standards, conditions and procedures *regulating the development of needed housing on buildable land described in subsection (3) of this section*. The standards, conditions and procedures may not have the effect, either in themselves or cumulatively, of discouraging needed housing through unreasonable cost or delay.'
>
> "Among many other changes, SB 1051 amended ORS 197.307(4), as follows:
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> > "'Except as provided in subsection (6) of this section, a local government may adopt and apply only clear and objective standards, conditions and procedures regulating *the development of housing, including needed housing*. The standards, conditions and procedures:
> >
> > "'(a) May include, but are not limited to, one or more provisions regulating the density or height of a development.

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under ORS chapter 268 or an association of local governments performing land use planning functions under ORS 195.025."

> "'(b) May not have the effect, either in themselves or cumulatively, of discouraging needed housing through unreasonable cost or delay.'
>
> "SB 1051 made two changes to the statute that are relevant here. First, SB 1051 deleted the requirement that, in order for ORS 197.307(4) to apply and allow the local government to apply only clear and objective standards, the proposed development must be 'needed housing' as defined in ORS 197.303(1). The statute now applies to 'the development of housing, including needed housing[.]' Second, SB 1051 deleted the phrase 'on buildable land.'" (Emphases in original, internal parentheticals omitted.)

Thus, ORS 197.307(4) (2017) no longer refers to "needed housing on buildable land," and, by its terms, provides that a local government can regulate the development of "housing" only through clear and objective standards, conditions, and procedures.

As we discuss later in this opinion, ORS 197.307(4) was amended again in 2023 by House Bill (HB) 3197, and now provides, as relevant here:

> "Except as provided in subsection (6) of this section, a local government may adopt and apply only clear and objective standards, conditions and procedures regulating the development of housing, including needed housing, *on land within [a UGB].*" ORS 197.307(4) (2023) (emphasis added).

HB 3197 took effect on July 31, 2023.

ASSIGNMENT OF ERROR

Petitioner's single assignment of error argues that the hearings officer's conclusion that ORS 197.307(4) prohibits the county from applying the ambiguous and subjective criteria in ORS 215.213(1)(d), the LCDC rules, and the LC provisions that implement ORS 215.213(1)(d), at LC 16.212(8)(b), to

intervenor's application for a relative farm help dwelling improperly construes the statute.[3] As explained above, the hearings officer concluded that LUBA and the Court of Appeals' decisions in *Warren* prohibit the county from applying the ambiguous and subjective standards in LC 16.212(8)(b) to the application.[4] Record 5-7. Petitioner first argues that hearings officer's understanding of ORS 197.307(4) (2017) fails to account for context provided by other statutes, including ORS 215.243. Petitioner also argues that the hearings officer's understanding fails to account for legislative history that petitioner maintains supports an interpretation of SB 1051 that the legislature did not intend to prohibit

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[3] We do not understand petitioner to dispute that the application for a dwelling is for "housing" as defined in ORS 197.307(4).

[4] The hearings officer found:

> "However, the Hearings Official is bound by the text and context of applicable legislation and rulings of the Court of Appeals. The Hearings Official's duties in interpreting language of the legislature, in an attempt to ascertain intent, can only go so far when the language of a statute is clear. The Court has made it abundantly clear that the 2017 legislature expanded the dictate that only clear and objective criteria be applied to applications for housing on all lands, not just buildable lands, and thus includes lands such as the subject property, outside the UGB and zoned for farming. To the extent LandWatch argues that the ruling in *Warren* does not apply because it involved lands zoned for residential use, and the subject property is farm lands, the Hearings Official does not see that the legislature made that distinction or that the Court's ruling in *Warren* allows for such a distinction. If the legislature realizes the implications of the amendments it made in 2017, then it is incumbent on the legislature to provide a remedy." Record 7.

counties from applying ambiguous and subjective criteria to applications for housing on EFU land.[5]

Intervenor responds that the plain language of the statute supports the hearings officer's interpretation that the statute prohibits the county from applying the ambiguous and subjective criteria in ORS 215.213(1)(d) and OAR 660-033-0130 to intervenor's application. Intervenor also argues that *Warren* and our decision in *Community Participation Organization 4M v. Washington County*, ___ Or LUBA ___ (LUBA No 2020-110, Sept 29, 2021), *aff'd*, 316 Or App 577, 500 P3d 677 (2021) (*CPO 4M*), which we discuss below, support their interpretation.

Finally, intervenor relies on HB 3197 (2023) which, as noted, amended ORS 197.307(4). According to intervenor, the only reason for the legislature to enact HB 3197 was to "roll the effect of [SB 1051] back to within UGBs." Respondent's Brief 12.

A. Statutory Analysis

We review the hearings officer's interpretation of state law and local law that implements state law to determine whether the interpretation is correct, affording no deference to the interpretation. *Kenagy v. Benton County*, 115 Or App 131, 838 P2d 1076, *rev den*, 315 Or 271 (1992). To determine the

[5] We need not and do not address the scope of ORS 197.307(4) (2017) outside of the narrow circumstances presented by this appeal.

applicability of the restrictions in ORS 197.307(4) (2017) to an application for a relative farm help dwelling on EFU land authorized under ORS 215.213(1)(d), we examine the text of the relevant statutes in context, along with any germane legislative history, relevant case law, and if needed, other rules of construction. *State v. Gaines*, 346 Or 160, 171-73, 206 P3d 1042 (2009); *Warren v. Washington County*, 296 Or App 595, 599, 439 P3d 581 (2019) (*Warren II*).

1. Text

Read in isolation, the text of ORS 197.307(4) (2017) could be construed to broadly prohibit the application of ambiguous or subjective standards by "a local government" in reviewing any application for "housing."[6] However, even though ORS 197.307(4) (2017) describes its application to "housing" in clear, and broad, terms, sometimes, on closer examination, ostensibly clear language turns out to be ambiguous. *See Gaines*, 346 Or at 172 (legislative history may establish that "superficially clear language actually is not so plain at all—that is, that there is a kind of latent ambiguity in the statute"). That is the case here. In addition, it does not automatically follow that the legislature intended "the most expansive meaning possible." *Lake Oswego Preservation Society v. City of Lake Oswego*, 360 Or 115, 129, 379 P3d 462 (2016) (citing *State v. Walker*, 356 Or 4, 17, 333 P3d 316 (2014)).

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[6] ORS 197.307(4) states that it limits local government regulation of housing except as provided in ORS 197.307(6).

2. Context in Other Statutes

Moreover, "we do not consider the meaning of a statute in a vacuum; rather, we consider all relevant statutes together, so that they may be interpreted as a coherent, workable whole." *Unger v. Rosenblum*, 362 Or 210, 221, 407 P3d 817 (2017) (citing *Lane County v. LCDC*, 325 Or 569, 578, 942 P2d 278 (1997) ("[W]e construe each part [of a statute] together with the other parts in an attempt to produce a harmonious whole.")). As explained below, other relevant statutes that were amended in SB 1051 provide context for interpretating the meaning of ORS 197.307(4) (2017). *See State v. Ortiz*, 202 Or App 695, 698-99, 124 P3d 611 (2005) (so stating).

ORS 215.416 contains the application, hearing, and review requirements and procedures that apply to county action on applications for a "permit." "Permit" is defined in ORS 215.402 as "the discretionary approval of a proposed development of land *under ORS 215.010 to 215.311*, 215.317, 215.327 and 215.402 to 215.438 and 215.700 to 215.780 or county legislation or regulation adopted pursuant thereto." (Emphasis added.) The county processed intervenor's application according to the procedures in ORS 215.416, as implemented in the LC.

SB 1051 amended ORS 215.416 to add the following new provisions:

> "(4)(b)(A) A county may not deny an application for a housing development *located within the [UGB]* if the development complies with clear and objective standards, including but not limited to clear and objective design standards contained in the county comprehensive plan or land use regulations.

"(B) This paragraph does not apply to:

"(i) Applications or permits for residential development in areas described in *ORS 197.307 (5)*; or

"(ii) Applications or permits reviewed under an alternative approval process adopted under *ORS 197.307 (6)*."[7] Or Laws 2017, ch 745, § 2 (emphases added).

ORS 215.416(4)(b)(A) informs our understanding of ORS 197.307. The provisions of SB 1051 codified at ORS 215.416(4)(b)(A) specifically limit county actions on an application for "a housing development located within [a UGB]" to only clear and objective "standards." The 2017 amendments to ORS 215.416 also specifically recognize the exceptions to the mandate in ORS 197.307(4) that are contained in ORS 197.307(5) (located in an area with a central city plan, and historic resources), and (6) (local government has adopted an alternative non-clear and objective track). Oregon Laws 2017, chapter 745, section 2's limited application to county action on applications for a permit for "housing development located within [a UGB]," together with the cross references in section 2 to other provisions of ORS 197.307, strongly suggest that the legislature understood the amendments in ORS 197.307(4), ORS 215.416, and ORS 227.175 to work together, and to subject only permit applications for "housing development located in the [UGB]" to the application of the same clear

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[7] SB 1051 added the identical language to the companion statute that applies to city actions on an application for a permit at ORS 227.175(4). *See* Or Laws 2017, ch 745, § 3.

and objective "standards" referred to in ORS 197.307(4) (2017).[8] Here, there is no dispute that intervenor's property is agricultural land zoned EFU and that it is not located in a [UGB], so ORS 215.416(4)(b)(A) does not limit the county's application of ambiguous and subjective criteria to intervenor's application for a relative farm help dwelling.

3. Context in the Existing Regulatory Framework

Relevant context also includes the existing regulatory framework in statutes and rules in effect at the time a statute is enacted. *Lake Oswego Preservation Society*, 360 Or at 130. The Supreme Court's decision in *Lake Oswego Preservation Society* provides useful guidance for considering the effect of the regulatory context of the state's farmland protection statutes and rules in place when ORS 197.307(4) (2017) was enacted. In *Lake Oswego Preservation Society*, the court first explained that the statute at issue, ORS 197.772(3), "was drafted against the backdrop of a well-developed set of related statutes and rules concerning the preservation of historic properties [in Statewide Planning Goal 5 (Natural Resources, Scenic and Historic Areas, and Open Spaces)] and was intended to change one aspect of that regulatory scheme." 360 Or at 130. The court concluded that the context of the legislative enactment of the statute at issue demonstrated that the legislature chose to "strike a more equitable balance

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[8] Neither party raises any issue regarding whether ORS 215.213(1)(d) includes "conditions, or procedures" within the meaning of ORS 197.307(4) that are not clear and objective.

between the countervailing interests of historic preservation and property rights." *Id.* at 138. Of note, the court explained, was that "the legislature, presented with the opportunity to modify the existing statutory and regulatory framework that governed local historic preservation programs under Goal 5, chose to leave that framework intact." *Id.* at 139. The court concluded that the legislature's inaction in modifying the existing historic preservation regulatory framework at all, either by statutory amendment or by direction to LCDC to modify its rules, suggested "that the legislature intended ORS 197.772(3) to operate in a way that would not significantly impact the overall scheme for historic preservation pursuant to Oregon's statewide planning goals and process as it existed at that time." *Id.*

Similarly, here, as explained above, the existing regulatory framework for farmland protection and for uses that are allowed on EFU land was in place when SB 1051 was enacted, and had been in place since the enactment of ORS 215.243 in 1973. *Stop the Dump Coalition v. Yamhill County*, 364 Or 432, 441-444, 435 P3d 698 (2019) (explaining the state's regulatory framework for regulating uses, including dwellings, on farmland). The legislature presumably was aware of and could have chosen to modify that existing framework when it enacted SB 1051, but instead chose to leave it intact, without modifying a single statute or LCDC rule regulating uses, including dwellings, on farmland.

4. Legislative History

Petitioner also cites legislative history regarding SB 1051 to support its argument. Petitioner cites testimony from then-Speaker Kotek that described the bill:

> "[House Bill 2007] will require cities and counties to approve applications that meet clear and objective standards as outlined in local zoning or planning codes within urban growth boundaries. I understand that some cities have concerns about having to state clear and objective standards, but I have also heard from cities that have no issue with this requirement because it is their status quo. It is possible to have a permitting process that allows for local control regarding design and clear and objective standards related to those design preferences." Testimony, House Committee on Human Services and Housing, HB 2007, Apr 13, 2017 (statement of Speaker Tina Kotek) (underscoring and boldface omitted).[9]

Petitioner additionally quotes testimony from Representative Stark:

> "Think of the alternative [to the bill], if we need more homes, we have a couple of options, we can build inside the UGB or we can build outside it. And I haven't seen a lot of fans in this state that want to go out on farmlands, that want us to sprawl out in the rural communities; and instead, let's make it difficult * * * outside those limits but also that there are good productive thought-out strategic ways to build within the [UGB]." Audio Recording, Joint Subcommittee on Natural Resources, HB 2007, June 22, 2017, at 39:08-39:50 (comments of Rep Duane Stark).

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[9] The operative provisions of House Bill 2007 were ultimately inserted into SB 1051 late in the legislative session. *See State v. Norris*, 188 Or App 318, 342, 72 P3d 103 (2003) (explaining that a "gut and stuff" is a trade term for when the text of one bill is inserted into another bill).

We agree with petitioner that, while not dispositive, the legislative history tends to support petitioner's construction of ORS 197.307(4) (2017) as not applying to an application for a relative farm help dwelling in the EFU zone.

5. Newly Enacted Statutes

Finally, intervenor points to HB 3197, enacted in 2023, amending ORS 197.307(4) to apply "on land within [a UGB]."[10] Intervenor argues that petitioner's interpretation of ORS 197.307(4) (2017) "would render part of [HB 3197] mere surplusage[]" in violation of ORS 174.010, because according to intervenor it was unnecessary for the legislature to enact HB 3197 if ORS 197.307(4) already meant what petitioner alleges it means. Respondent's Brief 13. Intervenor argues that in enacting HB 3197, the legislature could only have intended to "roll the effect of [SB 1051] *back to within UGBs*." Respondent's Brief 12 (emphasis added).

First, it is doubtful that legislation enacted six years after SB 1051 was enacted provides useful context for interpreting the meaning of SB 1051. *Stull v. Hoke*, 326 Or 72, 79-80, 326 P2d 722 (1997). However, even if we consider intervenor's arguments regarding HB 3197, we reject them.[11]

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[10] We understand intervenor's argument to rely on rules of statutory construction. Respondent's Brief 12.

[11] Another rule of construction that the legislature has codified in ORS 174.020 provides that:

In support of their argument, intervenor cites the staff measure summaries that accompanied HB 3197. Respondent's Brief App, at 17-21. Staff measure summaries can be pertinent legislative history. *State Treasurer v. Marsh & McLennan Companies, Inc.*, 353 Or 1, 12-14, 292 P3d 525 (2012).

HB 3197 was introduced at the request of Washington County, to address LUBA's decision in *CPO 4M*, discussed below. Respondent's Brief App, at 1, 18. The May 4, 2023, staff measure summary describes a "2021 decision by [LUBA]" that, according to the summary, concluded that ORS 197.307(4) applies to "all housing development, regardless of location." Respondent's Brief App, at 18. However, as explained below, our decision in *CPO 4M* was not nearly so sweeping as the staff measure summary's description.

The summary next explains that HB 3197 "clarifies" that ORS 197.307(4) applies to land within a UGB. *Id.* In other words, HB 3197 was introduced to

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> "(2) When a general provision and a particular provision are inconsistent, the latter is paramount to the former so that a particular intent controls a general intent that is inconsistent with the particular intent."

Here, the specific statute is ORS 215.213(1)(d), which provides the specific intent of the legislature to authorize the use intervenor seeks on EFU land. ORS 197.307(4) (2017), on the other hand, contains the legislature's general intent to prohibit applying standards other than clear and objective standards to "housing." If we resorted to rules of construction, and if we concluded that ORS 215.213(1)(d) and ORS 197.307(4) (2017) are inconsistent provisions, we would conclude that the specific intent in the provisions of ORS 215.213(1)(d) controls over the general intent in the provisions of ORS 197.307(4) (2017).

clarify that provisions of ORS 197.307(4) (2017) apply only to housing within a UGB. "Clarify" is a transitive verb that means in relevant part "to make understandable." *Webster's Third New Int'l Dictionary* 415 (unabridged ed 2002). Intervenor's argument is, essentially, that HB 3197 changed the meaning of ORS 197.307(4) (2017) to make it inapplicable to housing on EFU land. However, nothing in the legislative history provided by intervenor indicates an intent to "roll" the applicability of ORS 197.307(4) from EFU land "back" to only land within the UGB. Respondent's Brief 12. Stated differently, legislation that is introduced to clarify, or "make understandable," the meaning of prior legislation is not presumed to change the meaning of the previous legislation. Sometimes, as here, legislation simply clarifies the meaning of the previous legislation.

B. Other Decisions

As noted above, intervenor points to *Warren* in support of their interpretation that ORS 197.307(4) (2017) restricts the county from applying ambiguous and subjective criteria in the statute and LCDC rule to their application. We disagree with intervenor that *Warren* supports their interpretational argument. In *Warren*, the issue presented to LUBA (and the Court of Appeals) was whether 197.307(4) (2017) restricted Washington County from applying ambiguous and subjective Community Development Code (CDC) standards that implemented the county's Goal 5 program to an application for the subdivision of property that was zoned residential and located within the Metro

UGB. Notably, in a footnote the court explained that its holding was limited to the factual circumstances presented in that appeal:

> "Laws other than ORS 197.307(4) may or may not have [prior to 2017] restricted local governments' ability to apply standards or regulations that were not 'clear and objective' to lands other than buildable lands. *This opinion concerns only the 'clear and objective' requirement imposed by ORS 197.307(4), before and after the 2017 legislation at issue, and this opinion should not be read to express any view on the effect of other statutes on the development of housing in this state.*" *Warren II*, 296 Or App at 598 n 3 (emphasis added).

Intervenor also argues that LUBA decided in *CPO 4M* that ORS 197.307(4) applies outside of urban growth boundaries. However, *CPO 4M* involved a challenge to the county's legislative decision amending CDC standards that were previously adopted to implement the county's Goal 5 program, that applied to development in Goal 5 protected areas, called Significant Natural Resource (SNR) areas. *CPO 4M*, ___ Or LUBA at ___ (slip op at 2). The county argued to us that it did not need to amend its SNR areas standards for "rural areas" to be clear and objective because ORS 197.307(4) did not preclude it from applying ambiguous and subjective standards that implement its Goal 5 Program to applications for residential development in rural areas. *Id.* at ___ (slip op at 15-16). We rejected that argument. *Id.* at ___ (slip op at 16-17). However, the issue presented and our resolution of it was confined to whether the county's local standards that implement its Goal 5 program were required to be clear and objective. We were not presented with arguments about, and therefore did not

specifically address, ambiguous and subjective standards other than locally adopted standards that implemented the county's Goal 5 program. Here, the disputed standards are statutory, and LCDC standards that implement ORS 215.213(1)(d) and Goal 3, and are unrelated to Goal 5. Accordingly, *CPO 4M* does not assist intervenor in this appeal.

The assignment of error is sustained.

CONCLUSION

In sum, for the reasons explained above, we agree with petitioner that ORS 197.307(4) (2017) does not limit the county's application of LC provisions that implement ORS 215.213 and the LCDC rules at OAR 660-033-0130(9) to intervenor's application for a relative farm help dwelling.

The county's decision is remanded.

Zamudio, Board Member, concurring.

I agree with the majority decision. I write separately because I would remand for a different reason. In my view, the statutory interpretation issue in this appeal raises two distinct questions: (1) whether the clear and objective requirement applies to housing that is allowed by statute on resource land; and (2) whether the clear and objective requirement applies to housing outside UGBs. In my view, we need not conclude that the 2017 legislature intended to limit the clear and objective requirement to the development of housing on land within an UGB. Even if ORS 197.307(4) (2017) is not confined to land within an UGB, it does not apply on land zoned EFU.

Here, the hearings official concluded that ORS 197.307(4) (2017) applied to relative farm help dwellings on EFU land. Thus, some of the requirements that apply to those types of dwellings could not be applied. ORS 215.213(1)(d) requires a finding that "the farm operator does or will require the assistance of the relative in the management of the farm use." OAR 660-033-0130(9)(a) provides:

> "To qualify for a relative farm help dwelling, a dwelling shall be occupied by relatives whose assistance in the management and farm use of the existing commercial farming operation is required by the farm operator. However, farming of a marijuana crop may not be used to demonstrate compliance with the approval criteria for a relative farm help dwelling. The farm operator shall continue to play the predominant role in the management and farm use of the farm. A farm operator is a person who operates a farm, doing the work and making the day-to-day decisions about such things as planting, harvesting, feeding and marketing."

Petitioner argued to the hearings official that intervenor failed to establish (1) that that the farm operation qualifies as a "commercial farming operation"; (2) that the operation is "existing" as opposed to planned; and (3) that help is required. Record 7. The hearings official agreed with intervenor that "all of the approval criteria that form the basis of these arguments are not clear and

objective. Accordingly, pursuant to state law and the needed housing statute, they cannot be applied to the subject application." *Id.*[12]

My understanding is that land within a UGB might be zoned EFU and land outside a UGB might be zoned for residential use (not only rural residential use). Thus, there is a potential for conflict between ORS 197.307(4) (2017) and ORS 215.213(1)(d), which allows development of a relative farm help dwelling on land zoned EFU. I would find a conflict between ORS 197.307(4) (2017) and ORS 215.213(1)(d) (and OAR 660-033-0130(9)) and conclude that the specific controls over the general. *See* ORS 174.020(2) ("When a general and particular provision are inconsistent, the latter is paramount to the former so that a particular intent controls a general intent that is inconsistent with the particular intent."); *see also Wilson v. Tri-Met*, 234 Or App 615, 625, 228 P3d 1225, *rev den*, 348 Or 669 (2010) (explaining "the two basic rules governing the * * * resolution of a conflict between statutes: The first rule is that statutory provisions must be construed, if possible, in a manner that 'will give effect to all' of them. The second rule is that, if the full effect cannot be given to both statutes, the more specific statute will control over the more general one" (internal citations omitted; quoting ORS 174.010; citing ORS 174.020(2))).

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[12] Petitioner does not challenge on appeal the hearings official's conclusion that those applicable criteria are not clear and objective. I assume for purposes of this concurrence that they are not.

The Court of Appeals recently described the statutory scheme regulating dwellings on EFU land.

"ORS 215.203(1) provides, in part:

> "'Zoning ordinances may be adopted to zone designated areas of land within the county as exclusive farm use zones. Land within such zones shall be used exclusively for farm use except as otherwise provided in ORS 215.213, 215.283 or 215.284.'[6]

"* * * * *

"We have previously explained that '[t]he "exclusively" and "except as otherwise provided" language [in ORS 215.203(1)] evidences a legislative intent to encourage the use of EFU-zoned land solely for farm use and to treat the permitted nonfarm uses in the listed statutes as exceptions to the use of that land for farming activities.' *Warburton v. Harney County*, 174 Or App 322, 328, 25 P3d 978, *rev den*, 332 Or 559 (2001). ORS 215.283(1) contains a list of uses that 'may be established in any area zoned for exclusive farm use.' ORS 215.283(2) contains a list of nonfarm conditional uses that a county may allow in an EFU zone if the county determines that the use will not significantly affect surrounding lands devoted to farm use under ORS 215.296—the 'farm impacts test.' That is, the uses permitted in ORS 215.283(2) are conditionally allowed if they meet the farm impacts test. In *Warburton*, we stated that 'subsection (1) of ORS 215.283 delineates *exceptions* to what normally would be allowed in EFU zones' and that '[i]n keeping with [the legislature's intent], the listed nonfarm uses in ORS 215.283(1) should not be expansively interpreted to encompass uses that would subvert the goal of preserving land for agriculture use.' 174 Or App at 328, 25 P3d 978 (emphasis in original); *see also Central Oregon LandWatch v. Deschutes County*, 276 Or App 282, 289, 367 P3d 560 (2016) (applying same legislative intent to subsection (2) of ORS 215.283).

> "[6] ORS 215.213 applies in counties that adopted a marginal lands system prior to 1993, and ORS 215.283 applies in non-marginal lands counties. * * * ORS 215.284 restricts the establishment of single-family dwellings not provided in conjunction with farm use on land zoned EFU; the meaning of that statute is not implicated by the parties' arguments on review before us." *1000 Friends of Oregon v. Clackamas County.*, 320 Or App 444, 455-56, 514 P3d 553 (2022) (brackets in original, footnote omitted).

The farm impacts test allows uses to be approved

> "only where the local governing body or its designee finds that the use will not:
>
> (a) Force a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest use; or
>
> (b) Significantly increase the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use." ORS 215.296(1).

ORS 215.284 applies a similar standard to nonfarm dwellings and imposes an additional requirement in some circumstances that the nonfarm dwelling be "situated upon a lot or parcel or portion of a lot or parcel that is generally unsuitable land for the production of farm crops and livestock or merchantable tree species, considering the terrain, adverse soil or land conditions, drainage and flooding, vegetation, location and size of the tract." ORS 215.284(2)(b), (3)(b).

As the majority decision observes, the above-described statutory scheme, and attendant LCDC and county regulations, predated SB 1051 and we can assume that the legislature was aware of it when it amended ORS 197.307(4) in

2017.[13] I see no indication that the 2017 legislature intended to limit standards regulating dwellings on EFU land to only clear and objective standards. Even if ORS 197.307(4) (2017) is not confined to areas within a UGB, it does not apply to dwellings on land zoned EFU and counties may impose statutory standards that are not clear and objective to dwellings that are allowed by statute on resource land. The authority to adopt such standards extends to LCDC, to the extent that the legislature delegated that rulemaking authority to LCDC. Moreover, if the pertinent statute permits the county to apply additional standards for a certain type of dwelling, then the county standards are not required to be clear and objective.

I respectfully concur in the Board's decision.

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[13] This appeal concerns only a relative farm help dwelling. Other types of dwellings authorized by statute in EFU zones include: primary or accessory farm dwellings, temporary hardship dwellings, replacement dwellings, non-farm dwellings, and lot-of record dwellings. ORS 215.213(1)(f), (i), (n), (q); ORS 215.213(3)-(4); ORS 215.705. Types of dwellings authorized by statute in forest zones include: lot-of record dwellings, large tract dwellings, template dwellings, replacement dwellings, and temporary hardship dwellings. ORS 215.705; ORS 215.750; ORS 215.755(1)-(2).