

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

3
4 NORTHWEST AMERICAN INDIAN COALITION,
5 OREGON SHORES CONSERVATION COALITION,
6 and DR. DIANE HENNACY POWELL,
7 *Petitioners,*

8
9 vs.

10
11 CURRY COUNTY,
12 *Respondent,*

13
14 and

15
16 DONALD MCINTYRE and ROBIN MCINTYRE,
17 *Intervenors-Respondents.*

18
19 LUBA No. 2025-081

20
21 FINAL OPINION
22 AND ORDER

23
24 Appeal from Curry County.

25
26 Kelsey Dunn filed the petition for review and reply brief and argued on
27 behalf of petitioners. Also on the brief were Eric Wriston and Crag Law Center.

28
29 No appearance by Curry County.

30
31 Garrett K. West filed the intervenor-respondent's brief and argued on
32 behalf of intervenors-respondents. Also on the brief was O'Connor West, LLC.

33
34 BASSHAM, Board Member; ZAMUDIO, Board Chair; WILSON, Board
35 Member, participated in the decision.

36
37 REVERSED

05/07/2026

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

NATURE OF THE DECISION

Petitioners appeal a county board of commissioners' approval of a conditional use permit for an RV park located on coastal shorelands adjacent to the Rogue River estuary.

FACTS

The 5.2-acre subject property is located on the north shore of the Rogue River estuary, within the urban growth boundary of the city of Gold Beach. The site is flat and graveled, and developed with a storage shed that was built in 1966, as part of a former industrial use. The shed has pre-existing county approval for indoor storage of boats and recreational vehicles (RVs). The site includes a concrete slab, a remnant of the former industrial use, that is sometimes used as a makeshift launch spot for kayaks, paddleboards and similar watercraft. Record 421.

The subject property is within one of only three areas in the county that the county's comprehensive plan designates as being "Especially Suited for Water-Dependent Use" or ESWD. The ESWD designation is implemented by the Marine Activity (MA) zone. As discussed below, the ESWD designation and the MA zone both implement Statewide Planning Goal 17 (Coastal Shorelands), which in relevant part restricts non-water-dependent uses in coastal shoreland areas that are suited for water-dependent uses, to preserve those areas for water-

1 dependent and certain water-related uses.¹ The entire property was once zoned
2 MA, but at some point not shown in the record, the county approved rezoning the
3 upland portion of the property to Light-Commercial (C-1). We refer to that area
4 as the upland area or upland portion in this decision. The property is thus split-
5 zoned, with roughly half zoned C-1 and the other half zoned MA.

6 In addition to the MA and C-1 base zones, the entire property is subject to
7 the Shoreland Overlay (SO) zone, which is an overlay zone that implements Goal
8 17. The SO zone specifies additional land use requirements for lands within the
9 coastal shorelands boundaries, which in this area correspond to the 100-year
10 floodplain. The SO zone generally allows uses that are allowed in the base zones,
11 subject to additional restrictions. Finally, the portion of the property 75 feet from
12 the top of the riverbank is subject to the Riparian Corridor Buffer Overlay zone
13 (RB), which restricts development, grading, and vegetation removal within the
14 riparian buffer area.

15 Intervenors-respondents (intervenors) applied to the county to approve a
16 “Recreational Vehicle Park/Urban,” or RV park for short. The proposed RV park
17 consists of 50 spaces for transient lodging, 26 of which would have permanently
18 placed “Park Model RVs” located on them, and 24 of which would have RV

¹ As relevant here, Goal 17 is “[t]o conserve, protect, where appropriate, develop and where appropriate restore the resources and benefits of all coastal shorelands, recognizing their value for protection and maintenance of water quality, fish and wildlife habitat, water-dependent uses, economic resources and recreation and aesthetics.”

1 parking pads with utilities. The 26 Park Model RVs would be located on the
2 upland portion of the property, while the 24 RV pads would be located on the
3 portion closer to the river. The RV park would include a caretaker dwelling and
4 restroom, shower, and laundry facilities, all located on the upland portion. The
5 RV park office would be located in the existing storage shed, with the remainder
6 of the shed continuing to provide boat and RV storage.

7 An RV park is a permitted use in the C-1 zone. Curry County Zoning
8 Ordinance (CCZO) 3.150. An RV park is not listed as a permitted or
9 conditionally allowed use in the MA zone, at CCZO 3.190 to 3.196, or the SO
10 zone, at CCZO 3.241-3.245. However, intervenors argued to the county that due
11 to its location along the water, the RV park will attract tourists who tend to engage
12 in water-dependent activities in the area such as boating and fishing. For that
13 reason, intervenor argued that the RV park should be viewed as supportive of
14 water-dependent uses, and hence approved as a “water-related” use. Record 424-
15 25, 428.

16 The county planning director administratively approved the application,
17 with conditions. Petitioners appealed the planning director’s decision to the board
18 of county commissioners, which conducted a *de novo* evidentiary hearing. On
19 November 12, 2025, the commissioners approved the application, with
20 conditions, based on findings that the proposed RV park qualified both as a water-
21 dependent and a water-related use, as those use categories are defined in the
22 county code. This appeal followed.

1 **FIRST AND SECOND ASSIGNMENTS OF ERROR**

2 Under the first assignment of error, petitioners argue that the county
3 misconstrued and misapplied the MA zone provisions at CCZO 3.190 to 3.196
4 and the conditional use standards at CCZO 7.040, and failed to adopt adequate
5 findings under both sets of criteria, in concluding that the proposed RV park
6 qualifies as a “water-dependent” use in the MA zone. Under the second
7 assignment of error, petitioners advance similar challenges to the county’s
8 conclusion that the proposed RV park qualifies as a “water-related” use for
9 purposes of the SO zone. Because the findings tend to conflate the two use
10 categories of water-dependent and water-related uses, and because petitioners
11 raise very similar challenges under both these assignments of error, we address
12 both assignments together.

13 **A. Water-Dependent Use versus Water-Related Use**

14 CCZO 3.191 lists the uses permitted outright in the MA zone.² As noted,
15 that list of permitted uses does not include an RV park or anything similar. CCZO

² CCZO 3.191 provides:

- “The following uses and their accessory uses are permitted outright:
1. Boat launching or moorage facilities, shoreline facilities related
to marinas, boat charter service. 2. Marine fuel storage and sale. 3.
Seafood processing, storage, and sales including restaurants
incidental to the water dependent use. 4. Boat, marine equipment
and marine products, sales, service, storage, rental, repair, or
manufacturing. 5. Fishing supply storage and sales. 6. Dredging and
fill maintenance. 7. Offices which are related to marine activity. 8.

1 3.192 lists the uses allowed conditionally in the MA zone, including a catchall
2 provision for “[u]ses not listed as permitted but shown to be water-dependent.”
3 CCZO 3.192(10). Under that catchall provision, a use not listed in CCZO 3.191
4 may be conditionally approved, if shown to be water-dependent. CCZO
5 7.040(13) sets out conditional use standards in the MA zone, and similarly
6 provides that “[u]ses not listed as permissible may be allowed upon a
7 demonstration by the applicant that the uses are in fact water-dependent
8 consistent with the criteria set forth in the definitions.”

9 In relevant part, CCZO 1.030(160) defines the term “water-dependent” as
10 “[a] use or activity which can be carried out only on, in, or adjacent to water areas
11 because the use requires access to the water body for water-borne transportation,
12 recreation, energy production, or source of water.”³

Experimental laboratory for research of marine coastal production or resources but not including experimental laboratories for research of offshore oil, gas or marine mineral resources. 9. Aquaculture and accessory facilities. 10. Open recreation areas, including public waterfront access. 11. Aids to navigation. 12. Storage of products and materials transported by means of estuarine waters such as logs or gravel not including storage facilities for offshore oil, gas or marine mineral resources.”

³ In full, CCZO 1.030(160) provides:

“Water-dependent. A use or activity which can be carried out only on, in, or adjacent to water areas because the use requires access to the water body for water-borne transportation, recreation, energy production, or source of water.

1 Notably, the MA zone does not permit or conditionally allow “water-
2 related uses,” which CCZO 1.030(161) defines as:

3 “Water-related. Uses which are not directly dependent upon access
4 to a water body, but which provide goods or services that are directly
5 associated with water-dependent land or waterway use, and which
6 if not located adjacent to water, would result in a public loss of
7 quality in the goods or services offered. Except as necessary for
8 water-dependent or water-related uses of facilities, residences,
9 parking lots, spoil and dump sites, roads and highways, restaurants,
10 businesses, factories, and trailer parks are not generally considered
11 dependent on or related to water location needs.”

“It includes uses that are in conjunction with and incidental to a water-dependent use. Examples of uses that are in conjunction with and incidental to water-dependent uses include a restaurant on the second floor of an existing seafood processing plant or a retail sales room as a part of a seafood processing plant. Generally, to be in conjunction with and incidental to a water dependent use, a non water-dependent use may be constructed at the same time or after the water-dependent use of the site is established and be carried out together with the water dependent use. Incidental means that the size of the non-water-dependent use is small in relation to the water-dependent operation and that it does not interfere with conduct of the water-dependent use.”

The second and succeeding sentences in CCZO 1.030(161) concern non-water-dependent uses that can be approved as part of a water-dependent use if found to be in conjunction with and incidental to that water-dependent use. There is no dispute that this language implements nearly identical language in Goal 17, Guideline F. Because the county did not rely upon this language to conclude that the proposed RV park can be approved in conjunction with and incidental to a water-dependent use, and no party advances any arguments regarding this language, we do not consider it further.

1 Thus, a key difference between water-dependent and water-related uses is
2 that the latter are not dependent on direct access to the water. Still, water-related
3 uses must provide goods or services that are “directly associated” with water-
4 dependent uses, and the applicant must demonstrate that if the proposed use is
5 not located adjacent to water, it would result in a public loss of quality in the
6 goods or services offered. The second sentence of CCZO 1.030(161) lists a
7 number of uses that are not “generally” considered either water-dependent or
8 water-related, unless “necessary for water-dependent or water-related uses of
9 facilities[.]” The prohibited list includes “trailer parks.”

10 In sum, the MA zone that applies to roughly half the property allows, as a
11 conditional use, a water-dependent use not listed as a permitted use in the MA
12 zone, if the applicant can demonstrate that the proposed use is in fact “water-
13 dependent” as that term is defined at CCZO 1.030(160).

14 The SO zone that applies to the entire property allows as a conditional use
15 “water-dependent commercial” uses, “water-related” uses, as well as uses
16 permitted in the underlying base zone, subject to conditional use standards at
17 CCZO 7.040(16). CCZO 3.242.

18 **B. The County’s Findings that the Proposed RV Park is a Water-**
19 **Dependent Use**

20 The county’s findings addressing the MA zone conclude that the proposed
21 RV park is water-dependent under the catchall provision at CCZO 3.192(10), as
22 that term is defined at CCZO 1.030(160):

1 “The Board finds that CCZO §§ 1.030(160)-(161) provide the
2 controlling definitions for ‘water-dependent’ and ‘water-related’
3 uses, as incorporated into Curry County’s Comprehensive Plan and
4 applied to permit reviews for shoreland properties. The Board
5 interprets the language in § 1.030(161)-which states that uses such
6 as ‘trailer parks’ are ‘not generally considered’ water-dependent-to
7 establish a rebuttable presumption rather than a categorical
8 exclusion. The Board finds that a case-specific showing of
9 functional dependence on the water may overcome this
10 presumption.

11 “The applicant has provided substantial evidence that the proposed
12 RV park directly supports water-related tourism activities-such as
13 boating, fishing, and waterside recreation-that require immediate
14 access to the Rogue River, including launch facilities and amenities
15 for river-oriented tourists. The Board finds that such uses
16 correspond with the definition of ‘water-dependent’ in [CCZO]
17 1.030(160), which includes recreation alongside industrial and
18 transportation functions.”

19 “The Board further finds that the term ‘Recreational Vehicle Park’
20 as defined in §§ 1.030(122)-(123) describes a short-term, visitor-
21 serving facility distinct from the outdated ‘trailer park’ reference in
22 § 1.030(161). The evidence demonstrates that the project serves
23 transient visitors engaged in river recreation, not long-term
24 residential tenants. Accordingly, the Board finds that the proposed
25 use cannot be equivalently accommodated at an upland site and
26 therefore functionally depends on direct river access. This
27 functional dependence rebuts the general presumption in CCZO §
28 1.030(161) regarding ‘trailer parks’ and supports classification of
29 the proposed RV park as a water-dependent recreational use
30 consistent with the purpose and intent of the Marine Activity (MA)
31 zone.” Record 61-62.

32 The county also addressed CCZO 7.040(13)(a), a conditional use approval
33 criterion providing that, within the MA zone, “uses not listed as permissible may
34 be allowed upon a demonstration by the applicant that the uses are in fact water-

1 dependent consistent with the criteria set forth in the definitions.” However, the
2 county did not here find that the proposed use qualifies as a water-dependent use.
3 Instead, for reasons that are unclear the county found that it qualifies as a “water-
4 related” use, which is not a use allowed in the MA zone or pursuant to CCZO
5 7.040(13)(a).⁴ Specifically, in addressing CCZO 7.040(13)(a) the county found:

6 “The proposal is for an RV Park specifically designed to cater to
7 water-recreational tourists, who make up a substantial portion of the
8 regional economy along the Rogue River. The park’s proximity to
9 the river enhances the experience for visitors engaging in water-
10 dependent activities like boating, fishing, waterside relaxation, and
11 other water-dependent uses. These activities are integral to the local
12 economy’s tourism sector and are directly supported by the park’s
13 location and services. If not located adjacent to the water, the park
14 would lack the immediate access necessary to serve this key
15 demographic effectively, diminishing the quality of service
16 available to water-based recreational users. For this reason, the
17 proposed RV Park should be considered water-related. * * *”
18 Record 79.

19 **C. Petitioners’ Arguments**

20 On appeal, petitioners argue that the county misconstrued and misapplied
21 the definition at CCZO 1.030(160), and relatedly CCZO 3.192(10) and CCZO
22 7.040(13)(a), in concluding that the proposed RV park qualifies as a “water-
23 dependent” use in the MA zone. According to petitioners, the findings do not

⁴ The quoted findings at Record 79 are identical to findings at Record 81, which address the SO zone requirements at CCZO 7.040(16). As noted, the SO zone does allow water-related uses, so possibly the findings at Record 79 addressing CCZO 7.040(13)(a) were inadvertently copied from those addressing the SO zone conditional use standards at CCZO 7.040(16).

1 address key definitional terms, including whether the proposed RV park “can be
2 carried out *only* on, in, or adjacent to water areas because the use *requires access*
3 to the water body *for* water-borne transportation, recreation, energy production,
4 or source of water.” Petitioners argue that, instead of addressing those key terms,
5 the county reasons that the RV park will tend to attract water-oriented tourists,
6 many of whom visit the area in order to recreate somewhere on the river or nearby
7 ocean, that such tourists prefer lodging near the water, and that providing lodging
8 to these tourists will “support” use of the water and “functionally depend” on a
9 location adjacent to the river. Petitioners argue that the county’s understanding
10 of “water-dependent use” is inconsistent with the text of CCZO 1.030(160), as
11 well as contrary to the Goal 17 provisions that the definition implements.
12 According to petitioners, the proposed RV park is simply a form of transient
13 lodging, similar to a hotel or motel, and that as a matter of law under Goal 17
14 transient lodging is not a “water-dependent” use.

15 **D. LUBA’s Standard of Review**

16 Initially, intervenors respond that the board of commissioners’
17 interpretation of CCZO 1.030(160) is entitled to the deferential standard of
18 review set out in ORS 197.829(1)(a) to (c) and *Siporen v. City of Medford*, 349
19 Or 247, 243 P3d 776 (2010). Intervenors argue that, under that deferential
20 standard of review, LUBA should affirm the county’s interpretations of the
21 definitions at CCZO 1.030(160) and 1.030(161), because those interpretations

1 are plausible and not inconsistent with the express language, purpose or policy
2 underlying the definitions.

3 ORS 197.829(1) sets out LUBA's standards of review in reviewing a
4 governing body's interpretations of its comprehensive plan or land use
5 regulations:

6 "[LUBA] shall affirm a local government's interpretation of its
7 comprehensive plan and land use regulations, unless the board
8 determines that the local government's interpretation:

9 "(a) Is inconsistent with the express language of the
10 comprehensive plan or land use regulation;

11 "(b) Is inconsistent with the purpose for the comprehensive plan
12 or land use regulation;

13 "(c) Is inconsistent with the underlying policy that provides the
14 basis for the comprehensive plan or land use regulation; or

15 "(d) Is contrary to a state statute, land use goal or rule that the
16 comprehensive plan provision or land use regulation
17 implements."

18 Generally, where ORS 197.829(1)(a) to (c) provide the applicable standard
19 of review, LUBA must defer to a governing body's code interpretation as long as
20 it is "plausible" and not inconsistent with the express language, purpose or
21 underlying policy of the code provision. *Siporen*, 349 Or 247. However,
22 petitioners argue that the appropriate standard of review in the present case is
23 ORS 197.829(1)(d), for local standards that implement a statute, goal or rule, and
24 that under that standard LUBA owes no deference to the county's interpretation

1 of its local standard. *Oregon Shores Cons. Coalition v. Coos County*, 51 Or
2 LUBA 500, 519-20 (2006).

3 Generally, the statewide planning goals and administrative rules do not
4 directly apply when a local government applies its acknowledged land use
5 regulations. ORS 197.175(2)(d), *Friends of Neabeack Hill v. City of Philomath*,
6 139 Or App 39, 46, 911 P2d 350 (1996). However, petitioners are correct that,
7 where a local government interprets ambiguous terms in its acknowledged land
8 use regulations that implement statutes, goals or administrative rules, it must
9 ensure that its interpretations are not contrary to the statutes, goals or
10 administrative rules that the regulations implement. *White v. Lane County*, 68 Or
11 LUBA 423, 435 (2013). That includes interpretations of local definitions
12 implementing goal requirements concerning water-dependent and water-related
13 uses. *Johnson v. Jefferson County*, 56 Or LUBA 25, 48 (2006), *aff'd*, 221 Or App
14 190, 189 P3d 34 (2008) (addressing riparian protection measures required by
15 OAR 660-023-0090, implementing Goal 5).

16 Goal 17 uses the term “water-dependent” 32 times, and assigns high
17 priority to that use in coastal shorelands. No party disputes that the MA zone
18 standards at CCZO 3.192(10) and CCZO 7.040(13)(a), and the SO zone
19 provisions at CCZO 3.240 and CCZO 7.040(16) all implement Goal 17.
20 However, the parties dispute whether and to what extent the definitions of “water-
21 dependent” and “water-related” at CCZO 1.030(160) and (161) implement Goal
22 17.

1 Despite the ubiquitous use of the term “water-dependent” in Goal 17, and
2 the less frequent usage of the term “water-related,” the goal itself does not include
3 a definition of either term. Intervenors argue that in the absence of a definition of
4 “water-dependent” that is imposed by Goal 17 itself, the first sentence of the
5 county definition of that term at CCZO 1.030(160) should not be understood to
6 “implement” that goal, for purposes of ORS 197.829(1)(d). If the first sentence
7 of CCZO 1.030(160) is not directly implementing mandatory language in the goal
8 itself, intervenors argue, then ORS 197.829(1)(a) to (c) would supply the relevant
9 standard of review over the county’s interpretation of that sentence.

10 We disagree with intervenors. The first sentence of CCZO 1.030(160), like
11 the remaining sentences in that definition, is clearly intended to be applied when
12 rendering decisions under the county’s acknowledged Goal 17 regulations. The
13 definition of “water-dependent” in the first sentence of CCZO 1.030(160) clearly
14 represents the county’s attempt to implement Goal 17 and other goals that use
15 that term,⁵ as applied to the MA zone and other zones and regulations that
16 indisputably implement Goal 17.

17 Further, it is evident that in adopting CCZO 1.030(160) the county was not
18 attempting to craft its own definition based on policy views irrespective of Goal

⁵ We note that the term “water-dependent” is used in two other goals besides Goal 17, namely Goals 15 (Willamette River Greenway) and 16 (Estuarine Resources), and also plays a role in protecting riparian resources under rules implementing Goal 5 (Natural Resources, Scenic and Historic Areas, and Open Spaces).

1 17. As noted, the bulk of CCZO 1.030(160) is drawn directly from Goal 17,
2 Guideline F. More importantly, the first sentence at issue here, defining the term
3 “water-dependent,” is identical, word for word, to a definition of “water-
4 dependent” that has long been associated with Goal 17. As petitioner argues, the
5 Oregon Department of Land Conservation and Development (DLCD) has long
6 published a document entitled “Oregon Statewide Planning Goals and
7 Guidelines,” which includes the text of all 19 Oregon Goals, and also includes a
8 definition section of terms used in the goals. That document and the associated
9 definitions have a long history in the state’s land use program. *See Oregon Shores*
10 *Cons. Coalition v. Lincoln County*, 36 Or LUBA 288, 299 (1999) (citing a
11 definition of “coastal shoreland” from the 1995 version of the “Oregon Statewide
12 Planning Goals and Guidelines”). LUBA has cited definitions from that
13 document numerous times. *See, e.g., Columbia Riverkeeper v. Clatsop County*,
14 61 Or LUBA 96, 109, *aff’d*, 238 Or App 439, 243 P3d 82 (2010) (applying the
15 definition of “protect” as used in Goals 16 and 17). The definition section of that
16 document includes the following:

17 “WATER-DEPENDENT. A use or activity which can be carried out
18 only on, in, or adjacent to water areas because the use requires
19 access to the water body for water-borne transportation, recreation,
20 energy production, or source of water.”

21 That definition is identical to the first sentence of CCZO 1.030(160).

22 That the first sentence of CCZO 1.030(160) is identical to the definition of
23 “water-dependent” found in “Oregon Statewide Planning Goals and Guidelines”

1 is not a coincidence. In all probability, the county based the first sentence of
2 CCZO 1.030(160) on the DLCD definition. The fact that the county adopted the
3 DLCD definition verbatim is a strong indication that the county intended the first
4 sentence of CCZO 1.030(160), like the remaining sentences of that definition, to
5 implement Goal 17.

6 Nonetheless, intervenors argue that it is unclear whether the definitions
7 included in the document entitled “Oregon Statewide Planning Goals and
8 Guidelines” have ever been adopted or promulgated by the Land Conservation
9 and Development Commission (LCDC), the policy-making body that is
10 statutorily authorized to adopt the statewide planning goals and the
11 administrative rules that implement the goals. *See generally* ORS 197.255 to
12 197.245. We understand intervenors to argue that unless and until LCDC has
13 adopted the definition of “water-dependent” found in those definitions, and
14 embodied that definition in a duly promulgated goal or administrative rule, then
15 it is not a “land use goal or rule” that CCZO 1.030(160) could implement, for
16 purposes of ORS 197.829(1)(d).

17 However, as intervenors acknowledge, in 1999 LCDC adopted OAR
18 chapter 660, Division 037, an administrative rule entitled “Water-Dependent
19 Shorelands” that implements Goal 17. OAR 660-037-0040 adopts by reference a
20 definition for “water-dependent use.” OAR 660-037-0040(6)(a) provides that
21 “[t]he definition of ‘water-dependent’ contained in the Statewide Planning Goals

1 (OAR chapter 660 division 015) applies.”⁶ The rule then goes on to provide sub-
2 definitions of several terms used in that incorporated definition, notably the terms
3 “access,” “requires” and “recreation.” In addition, OAR 660-037-040(6)(b)
4 provides several examples of recreational water-dependent uses.⁷ OAR 660-037-

⁶ OAR 660-037-0040 provides, in relevant part:

“For purposes of division 037, the definitions contained in ORS 197.015 and the Statewide Planning Goals (OAR chapter 660, division 015) apply. In addition, the following definitions apply:

“* * * * *

“(6) ‘Water-Dependent Use.’

“(a) The definition of ‘water-dependent’ contained in the Statewide Planning Goals (OAR chapter 660, division 015) applies. In addition, the following definitions apply:

“(A) ‘Access’ means physical contact with or use of the water.

“(B) ‘Requires’ means the use either by its intrinsic nature (e.g., fishing, navigation, boat moorage) or at the current level of technology cannot exist without water access.

“* * *

“(D) ‘Recreation’ means water access for fishing, swimming, boating, etc. Recreational uses are water dependent only if use of the water is an integral part of the activity.”

⁷ OAR 660-037-0040(6)(b) provides, as relevant:

1 0040(6)(c) provides equally useful examples of uses that are not “water-
2 dependent.”⁸

3 The rule referenced in OAR 660-037-0040(6)(a), OAR chapter 660,
4 division 015, adopts as administrative rules all 19 statewide planning goals. For
5 example, OAR 660-015-0010 adopts the coastal goals, Goals 16 to 19, as
6 administrative rules. OAR 660-037-0040(6)(a) clearly reflects LCDC’s
7 understanding that the statewide planning goals “contain” a definition of the term
8 “water-dependent,” as used in Goal 17. Moreover, it is reasonably clear that the
9 referenced definition is the same as that set out in the definition section of the
10 document “Statewide Planning Goals and Guidelines.” That is evident from the
11 fact that OAR 660-010-0040(6) goes on to define the terms “access” and
12 “requires,” two key terms in both the DLCD definition and CCZO 1.030(160).
13 However, it is true that, as intervenors argue, neither Goal 17 nor any other goal

“Typical examples of water dependent uses include the following:

“* * * * *

“(C) Recreational — e.g., recreational marinas, boat ramps, and support.

⁸ OAR 660-037-0040(6)(c) provides:

“For purposes of this division, examples of uses that are not ‘water dependent uses’ include restaurants, hotels, motels, bed and breakfasts, residences, parking lots not associated with water-dependent uses, and boardwalks.”

1 or administrative rule promulgated by LCDC of which we are aware includes
2 within its text a definition of the terms “water-dependent” or “water-related.”

3 A possible explanation for LCDC’s evident belief that the goals include a
4 definition of “water-dependent” is that at some point prior to 1999 LCDC adopted
5 that definition as part of the goals, but chose not to embody the definition in the
6 text of any specific goal or administrative rule. The legislative history of OAR
7 chapter 660, division 037 or 015 might be revealing on this point, but no party
8 offers any legislative history and our own limited research has not yielded any
9 insight. Other explanations are also possible.

10 But for present purposes we need not explore that question further. As
11 explained above, the operative terms that require interpretation in this case are
12 “water-dependent” and “water-related” as those terms are used in the land use
13 standards at CCZO 3.192(10), CCZO 7.040(13)(a), etc., all of which are
14 regulations that indisputably implement the operative terms of Goal 17. For
15 purposes of deciding whether ORS 197.829(1)(a) to (c) or (1)(d) supplies our
16 standard of review, we believe it is the operative goal terms and their local
17 cognates that are more determinative, not the source or provenance of local code
18 definitions of those terms.

19 Accordingly, we agree with petitioners that ORS 197.829(1)(d) supplies
20 our standard of review over the county’s interpretations, and the question under
21 these assignments of error is whether the county’s interpretations of “water-

1 dependent” and “water-related” as those terms are used in the operative code
2 standards are contrary to Goal 17 and rules implementing the goal.

3 **E. Water-Dependent Uses in the MA zone**

4 On the merits, intervenors argue that even under a non-deferential standard
5 of review LUBA should affirm the county’s interpretations of the term “water-
6 dependent” as used in the applicable CCZO regulations, because those
7 interpretations are reasonable and not contrary to Goal 17 or any administrative
8 rule implementing Goal 17. Intervenors argue that under Goal 17 and the relevant
9 definitions at OAR 660-037-0040(6)(a), a “water-dependent” use is defined not
10 as a category with fixed boundaries, but functionally, whether a proposed use
11 depends on or “requires” water access to carry out its purpose. Intervenors
12 contend that the proper question is not whether the proposed RV park constitutes
13 “lodging” as an abstract use category, or whether similar “lodging” could be
14 located elsewhere and still provide transient accommodations. According to
15 intervenors, the proper question is whether the location of the proposed use
16 adjacent to the river enables and enhances river access for boating, fishing and
17 similar water-based recreation. Intervenors argue that the county properly found
18 that the proposed RV park, because of its location and design, performs that
19 function, and therefore the proposed use constitutes a “water-dependent” use
20 consistent with Goal 17.

21 We disagree with intervenors that the county’s interpretations of “water-
22 dependent” as used in the applicable CCZO provisions are consistent with Goal

1 17 and implementing rules. Initially, we note that the MA zone is exclusively
2 applied to coastal shoreland areas deemed “especially suited” for water-
3 dependent uses, and accordingly designated ESWD. Only three of these special
4 areas exist in the county. To protect these special areas from non-water-
5 dependent uses, the county has chosen to prohibit even “water-related” uses in
6 the MA zone, a use category that Goal 17 itself would otherwise permit in coastal
7 shorelands. In other words, in ESWD areas subject to the MA zone, the county
8 has chosen to be even more restrictive and protective of water-dependent uses
9 than Goal 17 requires.

10 Further, as petitioners argue, the county’s findings do not meaningfully
11 address the actual language of the CCZO 1.030(160) definition of “water-
12 dependent.” As noted, that definition limits water-dependent uses to those that
13 can be “carried out only on, in, or adjacent to water areas because the use requires
14 access to the water body” for a limited set of uses, including certain recreational
15 uses. While we generally agree with intervenors that abstract categorical labels
16 such as “lodging,” “transient accommodations,” etc., are not necessarily
17 determinative of whether a proposed use qualifies as a “water-dependent” use as
18 defined at CCZO 1.030(160) and as used in Goal 17, any competent
19 determination must be based on the relevant definitions, and consistent with Goal
20 17 and its implementing rules. The county’s findings do not address key
21 functional terms in CCZO 1.030(160), including the qualification that the
22 proposed use itself must “require access” to the water body.

1 As petitioners note, OAR 660-037-0040(6)(a)(B) defines the term
2 “requires” to mean the use by its intrinsic nature cannot exist without water
3 access. The definition provides three examples: fishing, navigation, boat
4 moorage. OAR 660-037-0040(6)(a)(A) defines the term “access” to mean
5 “physical contact with or use of the water.” Nothing cited to us in the county’s
6 decision or record attempt to demonstrate that the proposed RV park, by its
7 intrinsic nature, cannot exist without water access, that is, without physical
8 contact or use of the water.

9 Perhaps the closest the county comes to this point is to conclude that the
10 proposed RV park “directly supports water-related tourism activities[.]” Record
11 61. But that a use “directly supports” water-dependent activities does not mean
12 that the use is itself a water-dependent use. A use that supports water-oriented
13 tourism activities could conceivably be approved as incidental and subordinate
14 to a water-dependent use on the property, if it met the qualifications set out in
15 CCZO 1.030(160) that implement Goal 17, Guideline F. But the present findings
16 and record do not provide any basis to conclude that a use that merely “supports”
17 water-dependent recreational uses is itself a water-dependent recreational use
18 allowed in the MA zone.

19 Relatedly, petitioners argue that the county’s expansive view of what
20 constitutes a water-dependent use is undercut by the examples of recreational
21 water-dependent and non-water-dependent uses set out in OAR 660-037-
22 0040(6)(b) and (c). OAR 660-037-0040(6)(a)(D) defines “recreation” to mean

1 “water access for fishing, swimming, boating, etc.” and clarifies that recreational
2 uses are water-dependent only if “use of the water is an integral part of the
3 activity.” OAR 660-037-0040(6)(b) provides three examples of recreational
4 water-dependent uses: “recreational marinas, boat ramps and support.” We agree
5 with petitioners that the county’s findings fail to demonstrate that the use of water
6 is an integral part of the proposed RV park, or that it bears any resemblance in
7 form or function to a marina, boat ramp, or support for either of those facilities.

8 OAR 660-037-0040(6)(c) provides that water-dependent uses do not
9 include “hotels, motels, bed and breakfasts, residences, parking lots not
10 associated with water-dependent uses, and boardwalks.” Petitioners argue that
11 the proposed RV park is functionally similar to a hotel or motel, one that happens
12 to cater to river-oriented patrons. Intervenors dispute this characterization,
13 arguing that hotels and motels fundamentally differ from the proposed RV park,
14 offering only generic lodging accommodations that, unlike the proposed RV
15 park, are not designed to support use of the river. Intervenors argue that patrons
16 of the proposed RV park can engage in water-oriented activities on the site, such
17 as fishing from the riverbank, or launching kayaks from the concrete slab left
18 over from the former industrial use.

19 However, we agree with petitioners that for purposes of OAR 660-37-
20 0040(6)(c) there seems no functional or categorical difference between operating
21 a hotel or motel on the property and operating the proposed RV park. Like the
22 proposed RV park, a hotel or motel offers transient lodging, and could be

1 marketed to patrons drawn to the area to engage in fishing, boating or similar
2 activities. Like patrons lodging in the RV park, a patron lodging in a hotel or
3 motel room on the property could choose to fish from the riverbank, or launch a
4 kayak from the shoreline. Intervenors offer no principled reason why, under the
5 county's expansive view of what constitutes a water-dependent use, hotels,
6 motels or similar transient accommodations could not be approved as primary
7 uses within the MA zone, contrary to OAR 660-037-0040(6)(c) and Goal 17.

8 **F. Water-Related Uses in the SO Zone**

9 Under the second assignment of error, petitioners challenge the county's
10 conclusion that the proposed RV park qualifies as a "water-related" use. As
11 noted, Goal 17 itself allows certain water-related uses of coastal shorelands, but
12 the MA zone does not allow water-related uses at all. Pursuant to CCZO 3.242,
13 water-dependent and water-related uses are allowed in the SO zone as a
14 conditional use, subject to standards set out in CCZO 7.040(16). The SO zone
15 applies to the entire property, including the upland portion on which intervenors
16 propose placing park model RVs, restrooms, shower and laundry facilities, and a
17 caretaker dwelling. In relevant part, we understand the county to conclude that
18 the proposed upland development subject to the SO zone can be conditionally
19 approved as a "water-related" use.

20 CCZO 1.030(161): defines "water-related" as follows:

21 "Water-related. Uses which are not directly dependent upon access
22 to a water body, but which provide goods or services that are directly
23 associated with water-dependent land or waterway use, and which

1 if not located adjacent to water, would result in a public loss of
2 quality in the goods or services offered. Except as necessary for
3 water-dependent or water-related uses of facilities, residences,
4 parking lots, spoil and dump sites, roads and highways, restaurants,
5 businesses, factories, and trailer parks are not generally considered
6 dependent on or related to water location needs.”

7 The CCZO 1.030(161) definition is identical to that found in the definitions
8 section of the “Statewide Planning Goals and Guidelines.”⁹ As discussed above,
9 because the operative term is “water-related” as used in CCZO 3.242 and
10 7.040(16), which both clearly implement Goal 17, any uncertainties regarding
11 the provenance of CCZO 1.030(161) is not determinative of our standard of
12 review, which lies under ORS 197.829(1)(d).

13 The first sentence of CCZO 1.030(161) states that water-related uses need
14 not be directly dependent on access to a water body, but must provide “goods or
15 services that are directly associated with water-dependent land or waterway use,”
16 goods and services which “if not located adjacent to water, would result in a
17 public loss of quality in the goods or services offered.” The second sentence sets

⁹ The goal definition states:

“WATER-RELATED. Uses which are not directly dependent upon access to a water body, but which provide goods or services that are directly associated with water-dependent land or waterway use, and which, if not located adjacent to water, would result in a public loss of quality in the goods or services offered. Except as necessary for water-dependent or water-related uses or facilities, residences, parking lots, spoil and dump sites, roads and highways, restaurants, businesses, factories, and trailer parks are not generally considered dependent on or related to water location needs.”

1 out examples of uses that are not “generally considered” water-related uses,
2 “[e]xcept as necessary for water-dependent or water-related facilities.” The
3 examples include residences, businesses, and “trailer parks.”

4 In its findings, the county responded to arguments that the proposed RV
5 park is a “trailer park” and thus does not qualify as a water-related use, except if
6 found to be necessary for water-dependent or water-related facilities. The county
7 rejected that argument’s premise, interpreting the term “trailer park” to describe
8 only RV parks with long-term residential tenants, and not to include an RV park
9 with short-term, transient visitors. Regardless, the findings go on to find that the
10 proposed RV park qualifies for the “rebuttable presumption” that applies to trailer
11 parks and other listed examples. According to the county, that presumption may
12 be rebutted based on a “case-specific showing of functional dependence on the
13 water[.]” Record 61.

14 Petitioners first argue that to the extent the county distinguished an RV
15 park from a “trailer park” based on short-term or long-term tenancy, with the
16 consequence that an RV park is not among the list of uses that do not generally
17 qualify as “water-related,” that distinction is contrary to Goal 17, as well as the
18 county’s code, which treats RV parks and trailer parks interchangeably.
19 Intervenors do not respond to this argument. We agree with petitioners that the
20 findings identify nothing in the CCZO or elsewhere suggesting that a “trailer

1 park” as a use category is limited to residential or long-term tenancy.¹⁰ We also
2 agree with petitioners that distinguishing between otherwise identical RV/trailer
3 parks based solely on length of tenancy has no basis in Goal 17, or how water-
4 related uses are identified and evaluated under the goal.

5 The county’s attempted distinction on this point may be framed as an
6 alternative, because the findings go on to apply the “rebuttable presumption” that
7 the county understood to govern the uses listed in the second sentence of CCZO
8 1.030(161). We understand the county to conclude that even if the proposed use
9 is listed in the second sentence of CCZO 1.030(161), the presumption that the
10 use is not a water-related use is rebutted by the fact that the proposed RV park is
11 “functionally dependent” on the water.

12 Petitioners argue that the county misconstrued the second sentence of
13 CCZO 1.030(161) and failed to adopt adequate findings addressing the

¹⁰ Petitioners cite to a number of CCZO definitions that appear to treat RVs and trailers, and RV parks and trailer parks, interchangeably. The term “trailer park” is used three times in the CCZO, once in the CCZO 1.030(161) definition of “water-related,” once in the definition of “tourist facility” at CCZO 1.030(148), and a third time under the C-1 zone at CCZO 3.151(6), which allows a “Recreational vehicle trailer park/rural or urban, or campground.” The CCZO language cited to us suggests that code references to recreational vehicle parks and trailer parks are overlapping, if not interchangeable, and that “trailer parks,” at least those treated as “tourist facilities,” can be oriented toward transient tourist use. It is also worth noting that the list in CCZO 1.030(161) includes “residences,” which would seem to render the inclusion of “trailer parks” redundant if that term were confined to RV parks used for residential or long-term tenancy.

1 requirement that a listed use can be considered water-dependent or water-related
2 only if it is “necessary for water-dependent or water-related uses of facilities.”
3 Petitioners argue that the county’s interpretation effectively ignores the
4 requirement that a listed use be “necessary” for water-dependent or water-related
5 uses of facilities to occur, and replaces it with a different test: whether the
6 proposed use itself is “functionally dependent” on water access.

7 We agree with petitioners that the county misconstrued the second
8 sentence of CCZO 1.030(161) and that misconstruction of law is contrary to Goal
9 17. Under the second sentence of CCZO 1.030(161), the relevant question is not
10 whether some function or aspect of a listed use depends on or is related to water
11 access. The question under the second sentence is whether a listed use is
12 “necessary” for the water-dependent or water-related use of a facility to occur. If
13 so, then the listed use itself can be considered a water-dependent or water-related
14 use (depending on the nature of the facility), notwithstanding that that use
15 category is “generally” not a water-dependent or water-related use. Here, the
16 county’s findings do not identify any water-dependent or water-related “facility,”
17 on the property or elsewhere, or attempt to explain why the proposed RV park is
18 “necessary” for the use of that facility.

19 We understand intervenors to argue that the concrete slab that serves as a
20 kayak and paddleboard launching site on the property could constitute a “facility”
21 for purposes of the second sentence of CCZO 1.030(161). Certainly, a boat ramp
22 or similar boat launching structure could constitute a water-dependent “facility”

1 for purposes of Goal 17 and implementing rules and regulations. *See* OAR 660-
2 037-0040(5) (defining the term “structure or facility that provides water-
3 dependent access” to include piers, docks, mooring pilings, and boat ramps,
4 regardless of present condition). But even if the concrete slab could be viewed as
5 a “facility” for purposes of the second sentence of CCZO 1.030(161), the county
6 made no findings, and intervenors offer no basis for the county to conclude, that
7 the proposed RV park is “necessary” for the use of that facility. Petitioners argue,
8 and we agree, that nothing in the decision or the record cited to us suggests that
9 the proposed RV park is necessary for the concrete slab to continue functioning
10 as a launch site.

11 In sum, we agree with petitioners that the county misconstrued the second
12 sentence of CCZO 1.030(161) by interpreting “trailer parks” to include only
13 residential RV parks. That distinction has no basis in the CCZO. More
14 importantly, narrowing the scope of “trailer parks” based solely on whether
15 tenancy of occupied RV sites is less or greater than 30 days is, in our view,
16 contrary to Goal 17. Accordingly, the county could approve the proposed RV
17 park as a water-related use in the SO zone only if it fits within the exception for
18 listed uses that are “necessary for the water-dependent or water-related use of a
19 facility.” While the findings purport to address the “rebuttable presumption” for
20 listed uses, the findings do not in fact address the “necessary for the water-
21 dependent or water-related use of a facility” test, but instead seem to apply an
22 invented “functional dependence” test. To the extent the county interpreted the

1 second sentence of CCZO 1.030(161) to substitute its “functional dependence”
2 formulation for the “necessary” test, that interpretation is simply inconsistent
3 with the express language of that provision, and could not be affirmed even under
4 a deferential standard of review. The county’s interpretations on this point are
5 inconsistent with the CCZO provisions regarding water-related uses, and
6 contrary to the goal those provisions implement.

7 **G. First Sentence of CCZO 1.030(161): Directly Associated with**
8 **Water-Dependent Land or Waterway Use**

9 The first sentence of CCZO 1.030(161) sets out definitional criteria for
10 what constitutes a “water-related” use. To qualify, the use need not be “directly
11 dependent upon access to a water body,” however, (1) the use must “provide
12 goods or services that are directly associated with water-dependent land or
13 waterway use,” and (2) locating the use somewhere other than adjacent to water
14 “would result in a public loss of quality in the goods or services offered.” The
15 county’s findings do not address the first sentence of CCZO 1.030(161) directly,
16 but in findings on conditional use standards at CCZO 7.040(13) and (16) that
17 govern water-dependent and water-related uses in the MA and SO zones,
18 respectively, the county addressed somewhat similar themes. Record 79, 81 (“If
19 not located adjacent to the water, the park would lack the immediate access
20 necessary to serve this key demographic effectively, diminishing the quality of
21 service available to water-based recreational users.”).

1 As part of the second assignment of error, petitioners argue that the county
2 misconstrued the applicable law and adopted inadequate findings to the extent it
3 concluded that the proposed RV park would “provide goods or services that are
4 directly associated with water-dependent land or waterway use.” Petitioners
5 argue that the proposed RV park would provide only one good or service,
6 transient lodging, which is not “directly associated” with any identified water-
7 dependent land or waterway use. Petitioners contend that, under the county’s
8 apparent and expansive understanding of “directly associated,” any use that is
9 marketed toward tourists who wish to recreate on the river could be deemed
10 “directly associated” with water-dependent uses and allowed as a water-related
11 use in any coastal shoreland site zoned SO.

12 Intervenors respond that, while the findings may not explicitly describe
13 how the proposed RV park is “directly associated” with an identified water-
14 dependent land or waterway use, it is clear from the findings as a whole that the
15 county views direct access to the waterfront associated with the proposed
16 transient lodging to be supportive of water-dependent and waterway recreational
17 use of the river.

18 We agree with petitioners that the findings are inadequate for failure to
19 address the “directly associated” definitional element. To the extent the findings
20 can be said to address that element, the county appears to adopt an expansive
21 interpretation, under which virtually any development marketed to tourists with
22 any connection to recreational use of the river could be viewed as “directly

1 associated” with water-dependent land or waterway use, and hence qualify for
2 that element of a water-related use. Such an expansive view is inconsistent with
3 the language of CCZO 1.030(161), as well as contrary to the limited role “water-
4 related” uses play under Goal 17. The phrase “directly associated” is not further
5 defined in the CCZO or in any goal definition, but under any plain understanding
6 of those terms it denotes a close relationship between the goods or services
7 offered—here, transient lodging—and an identified water-dependent land or
8 waterway use. Providing transient lodging marketed toward water-recreational
9 tourists, with the general aim of supporting water-borne activities on the river, is
10 an insufficiently close relationship to qualify under this element.

11 **H. Upland Location Would Result in Public Loss of Quality in**
12 **Goods and Services**

13 Petitioners also challenge the findings that address whether an upland
14 location outside the coastal shorelands would result in a “public loss of quality”
15 in the transient lodging provided by the proposed RV park.

16 Again, the findings do not directly address this definitional element, but
17 the county’s adopted findings address conditional use standards that also require
18 evaluation of upland locations. CCZO 7.040(16) generally requires that, except
19 where “findings are contained in the Comprehensive Plan,” water-related uses
20 “shall require affirmative findings that the proposed use satisfies a need that
21 cannot be satisfied on uplands[.]” CCZO 7.040(16) (a) and (b). The county
22 concluded that the comprehensive plan, namely, the ESWD designation, provides

1 the requisite “findings” to avoid a locational or “needs” analysis, and therefore
2 no analysis of upland locations or need is required under CCZO 7.040(16).¹¹
3 Record 63. Nonetheless, apparently as an alternative, the county concluded that
4 “[i]f not located adjacent to the water, the park would lack the immediate access
5 necessary to serve this key [tourist] demographic effectively, diminishing the
6 quality of service available to water-based recreational users.” Record 63, 81.

7 In part of the second assignment of error, petitioners argue that the
8 county’s finding on this point is insufficient to demonstrate that the proposed RV
9 park qualifies as a water-related use under this element of the CCZO 1.030(161)
10 definition. Petitioners argue that, particularly given the absence of any “direct
11 association” between the proposed transient lodging and any water-dependent
12 land or waterway use, discussed above, the county lacks a foundation to conclude
13 that there would be a “public loss of quality” in the proposed transient lodging if
14 that lodging were located outside the coastal shoreland area.

15 We generally agree with petitioners that the two elements of the CCZO
16 1.030(161) definition of “water-related” work in tandem, and that the goods or
17 services evaluated for public loss of quality, if located outside coastal shorelands,
18 are the same goods or services that must be “directly associated” with water-
19 dependent land or waterway uses. The above quoted finding suggests that the

¹¹ Petitioners challenge this conclusion under the third assignment of error, which we do not reach, for reasons explained below.

1 service of transient lodging located outside coastal shorelands would be less
2 appealing to tourists drawn to the area for water recreation, presumably because
3 such tourists prefer to lodge near the water. Although no evidence is cited for that
4 supposition, it may well be the case. However, as explained, the county has failed
5 to identify a direct association between the proposed transient lodging service
6 and any identified water-dependent land or waterway use. We agree with
7 petitioners that, without that foundation, the conclusion that an upland location
8 would “diminish[] the quality of service available to water-based recreational
9 users” is insufficient to address the “public loss in quality” element of CCZO
10 1.030(16).

11 **I. Summary**

12 For the foregoing reasons, we agree with petitioners that the county
13 misconstrued the definitions of water-dependent and water-related uses as
14 defined at CCZO 1.030(160) and (161), in ways that are contrary to Goal 17 and
15 its implementing rules. ORS 197.829(1)(d). We also agree that the findings are
16 inadequate in several important respects. Accordingly, the first and second
17 assignments of error are sustained.

18 **REMAINING ASSIGNMENTS OF ERROR**

19 The third, fourth and fifth assignments of error are styled as alternatives,
20 assuming that the proposed RV park qualifies as a water-dependent use in the
21 MA zone, and a water-related use in the SO zone. We understand petitioners to
22 argue that if the first and second assignments of error are sustained, resolution of

1 the remaining assignments of error becomes unnecessary and potentially
2 advisory.

3 Under the third assignment of error, petitioners challenge the adequacy of
4 the county's findings of compliance with the conditional use standards at CCZO
5 7.040(16). Under the fourth and fifth assignments of error, petitioners challenge
6 findings addressing the requirements of the Riparian Buffer Corridor, at CCZO
7 3.282(1), with respect to proposed grading and alterations within the corridor.
8 Under the sixth assignment of error, petitioners argue that the county erred in
9 failing to identify the boundary between the MA and C-1 zones, and thus failed
10 to identify in which zones the proposed uses would be located, or ensure that uses
11 and structures not allowed in the MA zone would be limited to the C-1 zoned
12 portion.

13 We agree with petitioners that, given our resolution of the first and second
14 assignments of error, no purpose would be served by addressing the remaining
15 assignments of error. Accordingly, we do not reach those assignments.

16 **DISPOSITION**

17 Petitioners request that, if the first and second assignments of error are
18 sustained, the county's decision be reversed rather than remanded. OAR 661-
19 010-0071(1) provides in relevant part that LUBA shall reverse a land use decision
20 where the "decision violates a provision of applicable law and is prohibited as a
21 matter of law." OAR 661-010-0071(1)(c). Correspondingly, OAR 661-010-
22 0071(2)(d) provides that LUBA shall remand a land use decision for further

1 proceedings when the “decision improperly construes the applicable law, but is
2 not prohibited as a matter of law[.]”

3 When compliance with an applicable approval criterion would require
4 more than insignificant changes to the application, if not a new application,
5 reversal is the appropriate remedy. *Rogue Advocates v. City of Ashland*, LUBA
6 No 2021-009 (May 12, 2021) (slip op at 20) (citing *Richmond Neighbors v. City*
7 *of Portland*, 67 Or LUBA 115, 129 (2013)). As we explained in *Richmond*
8 *Neighbors*:

9 “[W]hether reversal or remand is appropriate depends on whether it
10 is the decision or the proposed development that must be corrected.
11 If the identified errors can be corrected by adopting new findings or
12 accepting new evidence, * * * then remand is appropriate. If the
13 identified errors require a new or amended development application,
14 then reversal is appropriate.” 67 Or LUBA at 129 (citing *Angius v.*
15 *Washington County*, 35 Or LUBA 462, 465-66 (1999); *Seitz v. City*
16 *of Ashland*, 24 Or LUBA 311, 314 (1992)).

17 As discussed, the county’s misconstruction of CCZO provisions
18 implementing Goal 17 are substantial enough that we agree with petitioners that
19 the county’s decision “violates a provision of applicable law and is prohibited as
20 a matter of law.” The proposed RV park cannot, at least on this record and in the
21 form proposed, be approved on the subject property, consistent with the CCZO
22 provisions implementing Goal 17, when those provisions are construed to avoid
23 conflict with the goal, as they must. Accordingly, reversal is the appropriate
24 disposition.

25 The county’s decision is reversed.