

1 Opinion by Gustafson.

2 **NATURE OF THE DECISION**

3 Petitioner appeals the county's denial of his application
4 to establish seasonal farmworker housing on property zoned
5 exclusive farm use (EFU).

6 **FACTS**

7 The subject property is a 63-acre berry farm designatec
8 agricultural and zoned EFU. It is currently developed with a
9 single-family dwelling, occupied by petitioner, and a four-
10 plex used for farm worker housing, each lawfully established.

11 In addition, the property contains four mobile homes, one
12 egg house converted to living quarters, and one chicken house
13 converted into five farmworker housing units, all placed or
14 converted without obtaining county approval. This case
15 concerns petitioner's application to the county seeking
16 approval to use the illegally established buildings to house
17 up to 100 seasonal farmworkers.

18 Petitioner proposes that seasonal farmworkers housed on
19 his property will work an unspecified amount of time as needed
20 on his berry operations, but contemplates that most or all of
21 the seasonal workers will work primarily off his farm,
22 apparently on other farms in the area. Petitioner proposes to
23 charge farmworkers \$275 per month to occupy the mobile homes,
24 and \$100 per month to occupy a bed in the other converted
25 units.

26 The county planning department approved the application,

1 which was appealed to a county hearings officer. The hearings
2 officer reversed that approval, denying the application on the
3 grounds that "seasonal farmworker housing" allowed under
4 ORS 215.283(1)(p) and corresponding local provisions must
5 house seasonal farmworkers who are employed almost exclusively
6 on petitioner's farm, rather than on other farms in the area.¹

7 This appeal followed.

8 **FIRST AND SECOND ASSIGNMENTS OF ERROR**

9 Petitioner challenges the hearings officer's
10 determination that, under applicable statutes and the local
11 ordinance, seasonal farmworker housing may house only
12 farmworkers who are employed almost exclusively on
13 petitioner's farm.²

14 Petitioner argues that the county's interpretation of
15 ORS 215.283(1)(p), to require that seasonal farmworkers work
16 almost exclusively on the farm where they reside, violates
17 statutory policies and adds a supplementary requirement to a

¹The decision does not use the phrase "almost exclusively." Instead, it states that farmworkers who work a "significant" or "substantial" amount of time on other farms than the one on which they reside are not "seasonal farmworkers" residing in "seasonal farmworker housing" within the meaning of the applicable statutes and local provisions. Record 10-11. That standard is stated in the negative and defies easy reference. Both parties offer various circumlocutions. For purposes of our discussion, we characterize the standard as requiring qualified seasonal farmworkers to work "almost exclusively" on the farm where they reside. We refer to this standard as the "employment standard."

²The second assignment of error challenges the hearings officer's interpretation of applicable statutes to incorporate the employment standard. The first assignment of error challenges a similar interpretation of the local ordinance that is derived wholly from the hearings officer's interpretation of the applicable statutes. We address both assignments of error together.

1 use permitted under ORS 215.283(1), in violation of the ruling
2 in Brentmar v. Jackson County, 321 Or 481, 900 P2d 1030
3 (1995). In general terms, Brentmar establishes that nonfarm
4 uses in EFU zones permitted by ORS 215.283(1) are "uses as of
5 right" that are not subject to county regulations that go
6 beyond those set forth in the statutes.

7 The county responds (1) that Brentmar does not apply to
8 this case, because ORS 215.283(1)(p), read in context,
9 expressly permits a local government to apply supplementary
10 approval standards; and (2) even if the county cannot apply
11 supplementary criteria, the hearings officer correctly
12 interpreted ORS 215.283(1)(p) to permit an employment
13 standard, and thus the county's application of the employment
14 standard is not inconsistent with or supplementary to
15 ORS 215.283(1)(p), but rather implements a limitation already
16 contained in the statute.

17 **A. Supplementary Standards**

18 ORS 215.283(1) provides that:

19 "The following uses may be established in any area
20 zoned for exclusive farm use:

21 * * * * *

22 "(p) Seasonal farmworker housing as defined in ORS
23 197.675."

24 ORS 197.675 defines both "seasonal farmworker housing"
25 and "seasonal farmworker" for purposes of ORS 215.283(1)(p):

26 "(1) 'Seasonal farmworker' means any person who, for
27 an agreed remuneration or rate of pay, performs
28 temporary labor for another to work in
29 production of farm products or planting,

1 cultivating or harvesting of seasonal
2 agricultural crops or in forestation or
3 reforestation of lands, including but not
4 limited to, the planting, transplanting,
5 tubing, precommercial thinning and thinning of
6 trees and seedlings, the clearing, piling and
7 disposal of brush and slash and other related
8 activities.

9 "(2) 'Seasonal farmworker housing' means housing
10 limited to occupancy by seasonal farmworkers
11 and their immediate families which is occupied
12 no more than nine months a year."

13 The context of the definitions at ORS 197.675 includes
14 ORS 197.685, which states in relevant part:

15 "(2) When a need has been shown for seasonal
16 farmworker housing within the rural area of a
17 county, needed housing shall be permitted in a
18 zone or zones with sufficient buildable land to
19 satisfy that need. Counties shall consider
20 rural centers and areas committed to
21 nonresource uses in accommodating the
22 identified need.

23 "(3) Subsection (2) of this section shall not be
24 construed as an infringement on a local
25 government's prerogative to:

26 "(a) Set approval standards under which
27 seasonal farmworker housing is permitted
28 outright;

29 "(b) Impose special conditions upon approval of
30 a specific development proposal; or

31 "(c) Establish approval procedures.

32 "(4) Any approval standards, special conditions and
33 procedures for approval adopted by a local
34 government shall be clear and objective and
35 shall not have the effect, either in themselves
36 or cumulatively, of discouraging needed housing
37 through unreasonable cost or delay." (Emphasis
38 added.)

39 The county argues that the express language of
40 ORS 197.685 permits local governments to apply supplementary

1 approval standards with respect to seasonal farmworker
2 housing, at least ones that are "clear and objective." The
3 county relies on Lindquist v. Clackamas County, 146 Or App 7,
4 932 P2d 1190 (1997), for the proposition that the rule
5 announced in Brentmar does not apply where a statute allowing
6 an otherwise permitted use expressly provides for
7 supplementary local standards.

8 At issue in Lindquist was whether the county could apply
9 a supplementary standard to a nonfarm dwelling permitted under
10 ORS 215.284. ORS 215.284(1)(e) expressly allows the local
11 government to apply other conditions of approval it considers
12 necessary. The Court of Appeals upheld application of the
13 county's supplementary standard, relying on a similar
14 distinction drawn in Brentmar between the "uses as of right"
15 or permitted uses listed in ORS 215.283(1), and the
16 conditional uses listed in ORS 215.283(2). 146 Or App at 11.
17 We understand the county to assert that Lindquist refines that
18 distinction by allowing a county to apply certain
19 supplementary conditions to what is otherwise a use of right,
20 where the statutory text or context creates such an exception.

21 The court in Brentmar determined that a county could
22 apply supplementary standards to uses listed in
23 ORS 215.283(2), but not uses permitted under ORS 215.283(1),
24 because the terms of ORS 215.283(2) and ORS 215.296(10)
25 contain language that the court read to permit supplementary
26 local standards, whereas ORS 215.283(1) lacked such language

1 in its text or context. 321 Or at 488-89. Based on that
2 analysis and legislative history, the court in Brentmar
3 concluded that the entire category of uses listed in
4 ORS 215.283(1) were "uses as of right" to which a county could
5 not apply supplementary local standards.

6

1 The county argues that the court in Brentmar had no
2 occasion to consider, and did not consider, whether a subset
3 of the permitted uses in ORS 215.283(1) might refer to other
4 statutes that grant a county a degree of discretion in
5 approving those uses. The county suggests that Brentmar's
6 blanket pronouncement about the entire category of uses listed
7 at ORS 215.283(1) was not intended to and should not exclude
8 consideration of a specific exception to that general rule.

9 We agree with the county that neither the reasoning nor
10 result of Brentmar prohibits a specific exception to the broad
11 rule announced there. We note that the court in Brentmar
12 found the text of ORS 215.283(1) ambiguous, and relied heavily
13 upon legislative history from the 1973 legislative session for
14 the distinction it draws between permitted uses and
15 conditional uses at ORS 215.283(1) and (2), respectively. See
16 311 Or at 490-96. We note also that each of the seasonal
17 farmworker statutes at issue here, including the putative
18 exception at ORS 197.685, became law in 1989. The county
19 argues that the legislature created in 1989 a specific
20 exception to the permitted use/conditional use dichotomy that
21 it set up in 1973. We agree that such a result would not be
22 inconsistent with Brentmar's analysis or holding.
23 Accordingly, we address the merits of the county's argument
24 that ORS 197.685 allows the county to apply supplementary
25 standards to requests for seasonal farmworker housing.

26

1 The meaning and scope of ORS 215.283(1)(p), 197.675 and
2 197.685 are matters of statutory interpretation. In
3 interpreting a statute, we first examine the text and context
4 to determine the legislature's intent. PGE v. Bureau of Labor
5 and Industries, 317 Or 606, 610-11, 859 P2d 1143 (1993). The
6 initial task of statutory interpretation is to determine
7 whether the text permits one and only one plausible
8 construction. State v. Allison, 143 Or App 241, 247, 923 P2d
9 1224 (1996). If textual analysis fails to reveal only one
10 plausible construction, we may then proceed to examine
11 legislative history. PGE, 311 Or at 610-11.

12 By their terms, ORS 197.685(3) and (4) expressly permit
13 local governments to establish approval standards or impose
14 special conditions with respect to particular seasonal
15 farmworker housing proposals, as long as such standards and
16 conditions are "clear and objective" and do not have the
17 effect of discouraging needed housing through unreasonable
18 cost or delay. The context of ORS 197.685 is consistent with
19 this straightforward textual analysis.³

³The context of ORS 197.675 and 197.685 includes the following:

ORS 197.312(2):

"No city or county may impose any approval standards, special conditions or procedures on seasonal and year-round farm-worker housing that are not clear and objective or have the effect, either in themselves or cumulatively, of discouraging seasonal and year-round farmworker housing through unreasonable cost or delay or by discriminating against such housing."

ORS 197.677:

1 At oral argument, petitioner conceded that, if Brentmar
2 poses no barrier, ORS 197.685 does permit a county to impose
3 at least some supplementary approval standards. In our view,
4 ORS 197.685 creates a hybrid situation, one where the local
5 government's discretion to regulate and even deny seasonal
6 farmworker housing still exists, but is significantly
7 constrained. We conclude that ORS 197.685 permits the county

"In that the agricultural workers in this state benefit the social and economic welfare of all of the people in Oregon by their unceasing efforts to bring a bountiful crop to market, the Legislative Assembly declares that it is the policy of this state to insure adequate agricultural labor accommodations commensurate with the housing needs of Oregon's workers that meet decent health, safety and welfare standards. To accomplish this objective in the interest of all of the people in this state, it is necessary that:

- "(1) Every state and local government agency that has powers, functions or duties with respect to housing, land use or enforcing health, safety or welfare standards, under this or any other law, shall exercise its powers, functions or duties consistently with the state policy declared by ORS 197.307, 197.312, 197.675 to 197.685, 215.213, 215.277, 215.283, 215.284 and 455.380 and in such manner as will facilitate sustained progress in attaining the objectives established;
- "(2) Every state and local government agency that finds farmworker activities within the scope of its jurisdiction must make every effort to alleviate insanitary, unsafe and overcrowded accommodations;
- "(3) Special efforts should be directed toward mitigating hazards to families and children; and
- "(4) All accommodations must provide for the rights of free association to seasonal farmworkers in their places of accommodation."

ORS 215.277:

"It is the intent of the Legislative Assembly that the provision of seasonal farm-worker housing, as defined in ORS 197.675, not allow other types of dwellings not otherwise permitted in exclusive farm use zones and that such seasonal farmworker housing be consistent with the intent and purposes set forth in ORS 215.243. To accomplish this objective in the interest of all people in this state, enforcement of the occupancy limits in ORS 197.675 (4) is necessary."

1 to impose a limited range of supplementary land use approval
2 standards on "seasonal farmworker housing" otherwise permitted
3 outright under ORS 215.283(1)(p).

4 **B. Employment Standard**

5 Petitioner contends that the employment standard the
6 county imposed here is not a supplementary approval standard
7 allowed by ORS 197.685, because it is fundamentally
8 inconsistent with both the text and the purpose of the
9 seasonal farmworker statutes, expressed at ORS 197.677, to
10 provide for needed seasonal farmworker housing. We understand
11 petitioner to argue that the employment standard so limits the
12 utility of seasonal farmworker housing that it effectively
13 discourages and discriminates against such housing and against
14 seasonal farmworkers.

15 The hearings officer derived the employment standard from
16 his interpretation of the seasonal farmworker statutes
17 described above, read in context with statutes governing
18 "farmworker camps" at ORS 658.705 to 658.850, finding that:

19 "[t]he farm labor housing units proposed for
20 approval under this application do not constitute
21 "seasonal farmworker housing," as that term is
22 defined in ORS 197.675(2). The persons who would be
23 housed in the proposed housing units do not
24 constitute "seasonal farmworkers," as that term is
25 defined in ORS 197.675(1). This record makes clear
26 that the proposed housing units would constitute a
27 farm-worker camp, regulated under ORS Chapter 658.
28 The applicant intends to charge rent to the
29 occupants of the four mobile homes at \$275 per
30 month. The applicant intends to charge rent for the
31 housing units in the converted chicken house at a
32 rate of \$100 per person per month, with 10-12 beds
33 per room in the front units and six beds in the back
34 units. The farm workers who would reside in these

1 units would assist in the farm operation on the
2 subject property for a portion of time, but this
3 record makes clear that these workers would be
4 employed for a significant portion of the time as
5 temporary workers on other farm operations in the
6 general area, merely paying rent to live on the
7 subject property." Record 9-10.

8 The hearings officer concludes that ORS 215.283(1)(p) is not
9 met, because

10 "[u]nder these circumstances, the proposed housing
11 units will not be used as housing for farm workers
12 and their immediate family who will provide farm
13 work assistance for the applicant in the operation
14 of the farm use on the subject property, and the
15 farm workers do not constitute seasonal farmworkers,
16 as they will not be employed by the applicant to
17 perform labor in the production of farm products on
18 the subject property." Record 10.

19 That conclusion rests on the hearings officer's reading
20 of ORS 213.283(1)(p) and the definitions at ORS 197.675, read
21 in context with the farmworker camp provisions at ORS
22 658.705(7).⁴ The hearing officer reasons that a key
23 difference between "seasonal farmworker housing" permitted
24 under ORS 215.283(1)(p) and "farmworker camps" permitted and

⁴ORS 658.705(7) defines "Farm-worker camp" as follows:

"'Farm-worker camp' means any place or area of land where sleeping places, mobile home sites or other housing is provided by a farmer, farm labor contractor, employer or other person in connection with the recruitment or employment of workers to work in the production or harvesting of farm crops or in the reforestation of lands, as described in ORS 658.405. 'Farm-worker' camp does not include:

"(a) A single, isolated dwelling occupied solely by members of the same family, or by five or fewer unrelated individuals; or

"(b) A hotel or motel which provides housing with the same characteristics on a commercial basis to the general public on the same terms and conditions as housing is provided to such workers."

1 regulated under ORS Chapter 658 is that the former are
2 restricted to housing intended for farmworkers employed almost
3 exclusively on the farm during their residence there, while
4 the latter are not so restricted. Accordingly, the hearings
5 officer concludes that the proposed use constitutes a
6 "farmworker camp" rather than "seasonal farmworker housing,"
7 and as such is not permitted under ORS 215.283(1)(p).

8 Petitioner argues that nothing in ORS 215.283(1)(p) or
9 197.675(1) or (2) requires that seasonal farmworkers work at
10 all, much less almost exclusively, on the farms on which
11 seasonal farmworker housing is located. The county responds
12 that the definition of "seasonal farmworker" in ORS 197.675(1)
13 limits the term to any person who "performs temporary labor
14 for another to work in production of farm products * * *."
15 (emphasis added). The county argues that ORS 197.675(1)
16 clearly contemplates a single employment relationship;
17 otherwise the statute would have defined seasonal farmworker
18 as a person who performs temporary labor "for others."

19 The context of the pertinent seasonal farmworker statutes
20 includes the "farmworker camp" statutes at ORS 658.705 to
21 658.850. The relationship between the two statutory schemes
22 is not readily apparent. The most obvious difference is that
23 "seasonal farmworker housing" is limited to occupancy not
24 exceeding nine months in the year, i.e. to seasonal
25 farmworkers. "Farmworker camps" do not appear to be limited
26 to occupancy by seasonal farmworkers. Other apparent

1 differences include that "farmworker camps" must be operated
2 by a registered farmworker camp operator, which can be either
3 a licensed farm labor contractor or a farmer. ORS 658.715(1).
4 Further, ORS 215.283(1) permits "seasonal farmworker housing"
5 on lands zoned EFU, but nothing in ORS 215.283 provides for
6 "farmworker camps" as either permitted or conditional uses on
7 EFU lands.

8 In our view, the text and context of the seasonal
9 farmworker statutes do not provide a definitive answer to
10 whether ORS 215.283(1)(p), read in context, incorporates the
11 employment standard. Petitioner's position, that ORS
12 215.283(1)(p) permits him to rent out farmworker housing to
13 seasonal workers employed primarily on other farms, threatens
14 to create a housing pattern seemingly inconsistent with the
15 policy at ORS 215.277, and something resembling a "farmworker
16 camp" that is prohibited on EFU land. The county's
17 interpretation, premised on the view that "seasonal farmworker
18 housing" and "farmworker camps" are mutually exclusive
19 concepts, is, however, not the only plausible reading. We see
20 nothing in the relevant statutes that prohibits a farmer from
21 operating a "farmworker camp" regulated under ORS Chapter 658
22 that also qualifies as "seasonal farmworker housing."

23 Accordingly, we turn to legislative history. Each of the
24 seasonal farmworker statutes cited above stems from SB 735,
25 adopted as Oregon Laws 1989, Chapter 964. The "farmworker
26 camp" statute derives from SB 732, adopted as Oregon Laws

1 1989, Chapter 962. Both bills were part of an comprehensive
2 five-bill effort to improve farmworker housing and work
3 conditions, sponsored at the request of the Coalition of
4 Farmworker Advocates.⁵

5 The proponents of SB 735 argued that it was necessary to
6 make seasonal farmworker housing a uniformly permitted use in
7 EFU zones, and remove certain restrictions that some counties
8 had placed on seasonal farmworker housing in EFU zones.
9 According to proponents, one such restriction was county
10 provisions that limited occupancy to farmworkers employed on
11 the resident farm:

12 "Assuming that farmworker housing is an allowable
13 use in an EFU zone, some counties question whether
14 such housing must only be used for the benefit of
15 the farmer owning the land, or whether several
16 farmers can share housing built on one farmer's
17 land. To make such housing economically feasible,
18 the statutes should be clarified to allow several
19 farmers to share housing built on one farmer's land.
20 It should also make clear that, providing a need is
21 shown, others besides growers (for examples,
22 nonprofit housing development organizations) can
23 also build such housing in EFU zones." Testimony of
24 Charlie Harris, Executive Director, Community and
25 Shelter Assistance (CASA) of Oregon, before the
26 Senate Business, Housing and Finance Committee,
27 February 23, 1989 (Exhibit E, 2) (emphasis added).

28 During the hearing on February 23, 1989, Senator Bunn
29 questioned proponent Charlie Harris whether, under SB 735, a
30 person could buy EFU land and build seasonal farmworker
31 housing and rent it without ever using the land as a farm.

⁵SB 731 (Oregon Laws 1989, Chapter 164), SB 732 (Oregon Laws 1989, Chapter 962), SB 733 (Oregon Laws 1989, Chapter 165), SB 734 (Oregon Laws 1989, Chapter 963) and SB 735 all govern various aspects of farmworker housing and work conditions.

1 Harris replied:

2 "You could require that the workers a grower houses
3 are needed for the grower's farm. The concern that
4 doesn't get at is if there is a non-profit or
5 another agency that wants to build housing out in an
6 EFU zone, do they have to show that they are using
7 the workers themselves, or can they show that
8 workers are needed in the county and they are simply
9 providing that housing." Minutes, Senate Business,
10 Housing and Finance Committee, February 23, 1989, 8.

11 Senator Bunn dropped the inquiry, and the subsequent
12 legislative record does not reflect any discussion or
13 amendments directed at Senator Bunn's question.

14 Further testimony on this issue is consistent with an
15 understanding that SB 735 would prevent restrictions on off-
16 site work by occupants of seasonal farmworker housing:

17 "The first problem that SB 735 addresses is the
18 issue of land use planning. * * * Planning and
19 zoning practices vary widely among local
20 jurisdictions with respect to farm labor housing.
21 Some counties took the position that current state
22 law did not permit farm labor housing in [EFU]
23 areas. Others made siting of such housing very
24 difficult, imposing requirements that may be
25 impossible to meet in rural areas, or limiting
26 occupancy to workers employed by a single farmer."
27 Testimony of Debbie Woods, Housing Policy Analyst,
28 State Housing Council, before the Senate Business,
29 Housing and Finance Committee, March 2, 1989
30 (Exhibit L, 2) (emphasis added).

31 One farmer testified in favor of SB 735 because "it would
32 be excellent for several farmers to join together on a joint
33 project for farm worker housing." Minutes, Senate Business,
34 Housing and Finance Committee, March 2, 1989, 6.

35 A sponsor of the bill, Senator Larry Hill, explained the
36 need for and the impact of SB 735 to the House Committee on
37 Housing and Urban Development:

1 "There is considerable confusion [among the
2 counties] whether seasonal migrant farmworker
3 housing is a permitted use or not. It is clearly
4 related to farm use, but the question is could
5 housing be provided off the farm? There is a
6 serious question whether farm labor housing should
7 be on EFU lands. We address that crystal clear in
8 this bill." Minutes, May 31, 1989, 3 (emphasis
9 added).

10 The county points to the following exchange as evidence
11 that the legislature did not intend farmers to operate the
12 type of seasonal farmworker housing petitioner proposes:

13 Sen. Larry Hill: "Our intent is that the housing
14 would be vacant for 3 months. * * * We do not
15 contemplate permitting a rolling occupancy 12
16 months out of the year."

17 Chair Minnis: "What about emergency housing
18 situations? This is a tough issue."

19 Sen. Larry Hill: A farmer could charge rent, but we
20 do not want to permit that to happen. Most
21 farmers subsidize housing." Minutes, May 31,
22 1989, 5 (emphasis added).

23 We agree with the county that the legislature might not
24 have envisioned the precise profit-oriented rental scheme
25 petitioner proposes here. However, the legislative history,
26 taken as a whole, demonstrates that the legislature did not
27 intend that seasonal farmworker housing be restricted to
28 seasonal farmworkers employed onsite. The strongest evidence
29 is that proponents represented that SB 735 permits a nonfarmer
30 to purchase EFU land and build seasonal farmworker housing
31 without conducting any farming at all on the parcel. No
32 participant or committee thereafter expressed a desire to
33 prohibit that result or proposed amendments to SB 735
34 prohibiting that result. It is clear from the foregoing that

1 the legislature did not intend SB 735 to limit seasonal
2 farmworker housing to farmworkers employed exclusively on the
3 resident farm.

4 In sum, we conclude that the hearings officer erred in
5 interpreting ORS 215.283(1)(p) and ORS 197.675 to embody the
6 employment standard. Because the employment standard is
7 inconsistent with the applicable statutes, it follows that the
8 hearings officer also erred in applying that standard in the
9 local provision, ZDO 401.05(J)(2).

10 The first and second assignments of error are sustained.

11 **THIRD ASSIGNMENT OF ERROR**

12 Petitioner's third assignment of error challenges the
13 decision's use of the definition of "farmworker camps" at ORS
14 658.705(7) to interpret the meaning of "seasonal farmworker
15 housing" under ORS 197.675. As our discussion above
16 demonstrates, ORS 658.705(7) is properly considered part of
17 the context of the seasonal farmworker statutes, and the
18 hearings officer did not err in considering it. Accordingly,
19 we deny the third assignment of error without further
20 discussion.

21 Petitioner seeks reversal of the challenged decision.
22 Our rules require us to reverse a land use decision when, in
23 relevant part, "the decision violates a provision of
24 applicable law and is prohibited as a matter of law."
25 OAR 661-10-071(1)(c). We have determined that the decision
26 was based on an erroneous interpretation of the applicable

1 statutes. However, the decision itself to deny the
2 application is not necessarily one that is "prohibited as a
3 matter of law." As our discussion above indicates, the county
4 may apply supplementary land use approval standards that are
5 "clear and objective," and the county may deny applications
6 for seasonal farmworker housing that do not meet such
7 standards. Under these circumstances, we remand the decision
8 to the county for correct application of the statutory
9 standard.

10 The county's decision is remanded.