BEFORE THE LAND USE BOARD OF APPEALS

OF THE STATE OF OREGON

DAYTON PRAIRIE WATER ASSOCIATION
and TIMOTHY KREDER,
Petitioners,

vs.

YAMHILL COUNTY,
Respondent,

and

CITY OF DAYTON and CITY OF LAFAYETTE,
Intervenors-Respondent.

LUBA No. 99-123

FINAL OPINION
AND ORDER

Appeal from Yamhill County.

Steven M. Claussen, Portland, filed the petition for review. With him on the brief was Williams, Fredrickson and Littlefield.

Fredric Sanai, Assistant County Counsel, McMinnville, filed a response brief and argued on behalf of respondent.

Pamela J. Beery, Portland, and Christopher A. Gilmore, Portland, filed a response brief. With them on the brief was Beery and Elsner. Pamela J. Beery argued on behalf of intervenors-respondent.

HOLSTUN, Board Member; BASSHAM, Board Chair; BRIGGS, Board Member, participated in the decision.

REMANDED 05/11/2000

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

Opinion by Holstun.

NATURE OF THE DECISION

Petitioners appeal the county's approval of an application to place water intake facilities, treatment facility buildings, storage facility buildings, and pumping stations in an exclusive farm use district.

MOTION TO INTERVENE

The City of Dayton and the City of Lafayette, the applicants below, move to intervene on behalf of respondent. There is no opposition to their motion and it is allowed.

FACTS

In November 1998, the Cities of Dayton and Lafayette (intervenors) filed an application with the county planning department for site design review approval to establish water intake facilities (wells), treatment facilities, a 1.5 million gallon storage reservoir, pump stations and related distribution lines for a municipal water system serving both communities. The proposed development is on land zoned exclusive farm use (EFU) that is currently used for grass seed or grain production. The five wells will be located approximately 2,000 feet from each other with the closest well approximately two miles outside the City of Dayton urban growth boundary (UGB). Each well site will contain a small pump house along with the necessary electrical service to power the pump. The treatment facilities and storage reservoir will be located approximately one mile from the closest well and approximately one mile from the City of Dayton UGB. The treatment facility is proposed to be on approximately 2.5 acres. Four of the wells are proposed to be located on individual sites of approximately one acre, the other is proposed for a site of 1.45 acres.

The planning director approved the request subject to conditions. Petitioners appealed that decision to the board of county commissioners (commissioners). On *de novo* review, the commissioners concluded that utility facilities are allowed in the EFU zone

provided that it is necessary to locate the proposed utility facility on EFU-zoned land in order for the service to be provided. The commissioners concluded that the evidence in the record demonstrates that it is necessary for the municipal water system to be located in the EFU zone. The commissioners also concluded that the request is consistent with the county's site design standards. Accordingly, the commissioners denied the appeal and approved the site design review with conditions. This appeal followed.

FIRST AND SECOND ASSIGNMENTS OF ERROR

Petitioners contend that the county erred in determining that the alternatives to placing the proposed facilities on EFU-zoned land are not feasible. Petitioners contend that there exist four feasible alternatives to placing the facilities on EFU-zoned land. First, petitioners contend that wells drawing water from the Willamette River could provide water without using EFU-zoned land. Second, petitioners contend that more efficient use of existing sources would obviate some or all of the need for the cities to obtain new sources of water. Third, petitioners argue that, as an alternative to drilling wells on EFU-zoned land, the applicants could purchase water from the City of McMinnville. Finally, petitioners argue that the cities could drill their wells on non-EFU-zoned land at the McMinnville Airport.[1]

Because petitioners misread the alternatives analysis that is required by ORS 215.283(1)(d) and the Court of Appeals' decision in *McCaw Communications, Inc. v. Marion County*, 96 Or App 552, 555-56, 773 P2d 779 (1989), we turn to that issue first.

A. The Requirement that the County Consider Feasible Alternative Sites that are not Zoned EFU

As relevant, both ORS 215.213(1)(d) and 215.283(1)(d) allow "[u]tility facilities necessary for public service" to be sited on EFU-zoned land.[2] In *McCaw Communications,*

[1] The county found that none of these alternatives are feasible, for a variety of reasons. The county also found that the first and second of these alternatives would also require use of EFU-zoned lands and, therefore, were not alternatives to siting the proposed facilities on EFU-zoned lands.

[2] Yamhill County is subject to ORS 215.283(1)(d).

Inc. v. Marion County, 17 Or LUBA 206, 222 (1988), LUBA held that these statutory provisions do not require that an applicant show "that it is necessary to locate the facility at the particular [EFU-zoned] location proposed." Rather, we held that "'necessary for public service' means a facility that is necessary in order for the entity to provide a public service[.]"[3] On judicial review, the Court of Appeals rejected our reading of the statute and explained:

> "In the abstract, LUBA's choice among the * * * interpretative options it described in *Meland* might have been as linguistically supportable as either of the others. Given the legislative purpose, however, we are unable to agree that the word 'necessary' has no relationship to the proposed location of the use on land zoned for agriculture. We conclude that, for a 'utility facility' to be permitted under [a land use regulation that implements ORS 215.283(1)(d)], *the applicant must establish and the county must find that it is necessary to situate the facility in the agricultural zone in order for the service to be provided*." *McCaw Communications, Inc.*, 96 Or App at 555-56 (emphasis added, footnote omitted).

The Land Conservation and Development Commission (LCDC) has adopted rules that codify the above-emphasized language of *McCaw Communications, Inc.*[4]

The Court of Appeals' decision in *McCaw Communications, Inc.*, and the above-emphasized language in OAR 660-033-0130(16), is susceptible to more than one interpretation. Petitioners read the language broadly to require that the applicants and county explore all feasible approaches that might have the result of avoiding a need to use EFU-

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[3]In reaching this conclusion, we relied on our decision in *Meland v. Deschutes County*, 10 Or LUBA 52, 56-57 (1984), where we concluded the statute simply distinguishes "necessary facilities from unnecessary ones, such as advertising signs or possibly storage yards."

[4]OAR 660-033-0120 duplicates the statutory language in ORS 215.213(1)(d) and 215.283(1)(d) and refers to a table that lists the following use as allowed, subject to OAR 660-033-0130(16):

> "Utility facilities necessary for public service, except commercial facilities for the purpose of generating power for public use by sale and transmission towers over 200 feet in height."

Codifying the Court of Appeals' holding in *McCaw Communications, Inc.*, OAR 660-033-0130(16) provides:

> "A facility is necessary if it must be situated in an agricultural zone in order for the service to be provided."

zoned lands for a utility facility. If that is the proper construction of OAR 660-033-0130(16) and *McCaw Communications, Inc.*, the county would be required to demonstrate that none of the four alternatives that petitioners identify are "'feasible alternatives' for constructing the utility facility on non-EFU-zoned lands." *Clackamas Co. Svc. Dist. No. 1 v. Clackamas County*, 35 Or LUBA 374, 386 (1998).

Although there is language in our decision in *Clackamas Co. Svc. Dist. No. 1 v. Clackamas County* that also can be read to support petitioners' broad construction of the statutes and rules, the *need* for the proposed stormwater collection and detention facility (as opposed to some other solution to the stormwater problem) was not an issue in that case. The issue in *Clackamas Co. Svc. Dist. No. 1 v. Clackamas County* was whether the proposed facility needed to be sited on EFU-zoned land, as opposed to other available non-EFU-zoned land.

The ultimate question under these assignments of error is the meaning of ORS 215.213(1)(d) and 215.283(1)(d), because the Court of Appeals' decision in *McCaw Communications, Inc*. is based on the court's interpretation of those statutes and OAR 660-033-0130(16) codifies the court's interpretation of what the statutes require. *Clackamas Co. Svc. Dist. No. 1 v. Clackamas County*, 35 Or LUBA at 380. Petitioners' reading of the statutes would require that all other legitimate public policy concerns that might be weighed in deciding what kind of facility would best respond to an identified utility need must be subjugated to the legislative policy favoring protection of agricultural lands, if it is feasible to do so. For example, if an electrical power utility wished to develop wind-driven turbines on EFU-zoned lands, the utility would first have to demonstrate (1) that energy conservation measures are not a feasible way to address the identified need; (2) that fossil fuel, nuclear, hydro, solar or other alternative ways of generating power on non-EFU zoned lands are not feasible alternatives, and (3) that there are no other non-EFU-zoned sites that could feasibly accommodate the wind-driven turbine. We believe that ORS 215.213(1)(d) and

215.283(1)(d), as interpreted by the Court of Appeals in *McCaw Communications, Inc.* and by LCDC in OAR 660-033-0130(16), impose the third requirement, but do not impose the first two requirements. As we interpret the statutes, the decision about what kind of facility is appropriate to respond to an identified utility need may be guided by a number of public policy concerns that have little or nothing to do with exclusive farm use zoning or the policies that underlie such zoning. However, once the decision is made to construct a particular kind of utility facility to respond to an identified need, that facility may only be located on EFU-zoned lands if there are no feasible sites for the proposed facility that are not zoned EFU.

In this case, intervenors' decision to respond to the identified water shortage by drilling wells and constructing related facilities to expand water production and storage capacity, as opposed to responding to that shortage in some other way, is not governed by ORS 215.213(1)(d), 215.283(1)(d), and OAR 660-033-0130(16). However, once the cities make a decision to respond to the identified water need in that way, the proposed facilities must be sited on non-EFU-zoned land, unless there is no feasible non-EFU-zoned site. We therefore reject petitioners' arguments that ORS 215.213(1)(d), 215.283(1)(d), and OAR 660-033-0130(16) require that the county demonstrate that (1) direct use of the Willamette River as a water source (without drilling wells), (2) making improvements or other additions to the existing water system, or (3) purchase of water from the City of McMinnville are not feasible alternatives to drilling new wells as a source of water. Although the cities' and county's decision to respond to the identified water shortage by constructing wells and related facilities rather than by pursuing other options is not governed by ORS 215.213(1)(d), 215.283(1)(d), and OAR 660-033-0130(16), the decision concerning the appropriate site to locate those wells and related facilities is.

With the above understanding of what ORS 215.213(1)(d), 215.283(1)(d), and OAR 660-033-0130(16) require, we must consider whether the county adequately demonstrated

(1) that drilling wells that would be hydrologically connected to the Willamette River and located on non-EFU-zoned land is not a feasible alternative to the cities' proposal; (2) that the McMinnville Airport site is not a feasible alternative site for the wells, treatment facilities, and reservoir; and (3) that the treatment facilities and reservoir cannot feasibly be located on non-EFU-zoned lands. However, before turning to those arguments, we first briefly note and reject one additional argument petitioners make, based on language in the Court of Appeals' decision in *McCaw Communications, Inc.*

Petitioners argue at several points in the petition for review that under *McCaw Communications, Inc.* non-agricultural use of agricultural land must be as "nondisruptive of farm use" as possible, based on the "overriding policy of preventing 'agricultural land from being diverted to non-agricultural use.'" 96 Or App at 555. We understand petitioners to argue that a local government approving a proposed utility facility necessary for public service in an EFU zone must compare alternative EFU-zoned sites for the proposed utility facility and ensure that the site that is least disruptive to agriculture is selected.

Petitioners' argument apparently is based on the following language in *McCaw Communications, Inc.*:

> "Section 137.020, like its statutory analog, defines non-farm uses which are permitted in farm zones. However, state and local provisions of that kind *must be construed*, to the extent possible, as being consistent with the overriding policy of preventing 'agricultural land from being diverted to non-agricultural use.' Therefore, when possible, the non-agricultural uses which the provisions allow *should be construed* as ones that are 'related to and [promote] the agricultural use of farm land.' When no such direct supportive relationship can be discerned between agriculture and a use permitted by the provisions, the use *should be understood* as being as nondisruptive of farm use as the language defining it allows." 96 Or App at 555 (emphases added, citations omitted).

That language articulates the court's view of how EFU zoning statutes and land use regulations that implement those statutes should be interpreted, where they are capable of more than one interpretation. That language does not say there is a generally applicable

"least suitable EFU-zoned land" requirement that must be applied in approving nonfarm uses on EFU-zoned land.

We now turn to the portions of the challenged decision that reject certain non-EFU-zoned lands as alternative sites for the proposed facilities.

B. Wells Drawing Water from the Willamette River

Petitioners argue that wells that would be hydrologically connected to the Willamette River, and thereby considered to be drawn from the river by the Water Resources Department, could provide a feasible source of drinking water. Petitioners contend that the county's determination that the Willamette River could not provide a practical source of water without using EFU-zoned land is not supported by substantial evidence.[5]

LUBA's review of the evidence is limited to determining whether a reasonable person could reach the decision the county reached, considering all of the evidence in the record. *Dodd v. Hood River County*, 317 Or 172, 179, 855 P2d 608 (1993); *Younger v. City of Portland*, 305 Or 346, 358-60, 752 P2d 262 (1988); *1000 Friends of Oregon v. Marion County*, 116 Or App 584, 588, 842 P2d 441 (1992). If the evidence in the whole record is such that a reasonable person could reach the decision the county reached, LUBA will defer to the decision, notwithstanding that reasonable people could also draw different conclusions from the evidence. *Carsey v. Deschutes County*, 21 Or LUBA 118, 123, *aff'd* 108 Or App 339, 815 P2d 233 (1991); *Douglas v. Multnomah County*, 18 Or LUBA 607, 617 (1990).

The county found that drilling wells for withdrawal from the Willamette River was not a feasible alternative to the application and that use of the Willamette River water would require utility facilities in the EFU zone. Record 9-10. Petitioners contend that the record contains testimony that refutes this finding. Petitioners cite the testimony of petitioner

[5]Although the parties treat this as a substantial evidence question, it is a question that could have easily been resolved in a much more straightforward manner had any party provided us with the relevant county zoning map. Because no party did so, we consider the parties' substantial evidence arguments as presented in their briefs.

Kreder at the May 13, 1999 hearing before the commissioners. Kreder testified "there is non-EFU land on the bend of the river next to Dayton. It's listed on some maps as a state park." Petition for Review, Appendix 3-33. Petitioners also argue that wells could be drilled in the Willamette River Greenway.

Intervenors cite the county staff report, which states:

> "The property between Dayton and the Willamette [River] is zoned EF-80 exclusive farm use, the same as that of the subject request. A system designed to take water from the Willamette, either by pumping directly from the river or drilling wells within close proximity to the river would be located in the exclusive farm use zone and would need to satisfy the same criteria as that of the subject request. Therefore, the opponents argument that the Willamette [River] can be used to meet the cities' water needs appears to contradict the argument that this facility should not be located in the exclusive farm use zone." Record 365.

We agree with intervenors that, notwithstanding the testimony cited by petitioners, the above staff report constitutes evidence that a reasonable person would rely on to support a finding that the use of the Willamette River as a water supply by drilling wells requires the use of EFU-zoned land, and thus is not a non-EFU-zoned alternative to the proposal.

C. The McMinnville Airport Site

Petitioners argue that the county's decision is not supported by law and must be remanded. The decision states:

> "Opponents of the project contend that the cities have the authority to condemn the McMinnville Airport property and therefore, a feasible alternative exists on non-EFU zoned land. The power to condemn property already devoted to a public use must be granted expressly or by necessary implication by the legislature. *Little Nestucca Road Co. v. Tillamook County*, 31 Or 1, 48 P 465 (1897); *Emerald PUD v. PP&L*, 76 Or App 583, 591, 711 P2d 179 (1985), *aff'd* 302 Or 256, 729 P2d 552 (1986). This is a long held principle of common law. *Pacificorp v. City of Ashland*, 88 Or App 15, 24-25, 744 P2d 257 (1987). Opponents fail to cite to the specific authority granting the cities of Lafayette and Dayton the power to condemn *public* property being devoted to a public use. ORS 225.020 grants authority to condemn private property, not public property. Without specific authority, [the county] finds that the cities of Dayton and Lafayette may not condemn property owned by another public entity for the purpose of developing a municipal water supply. Furthermore, because funds from the Federal

> Aviation Administration may be involved in the operation of the airport, the authority of the cities is cast in further doubt. As a result, the [county] finds that condemning property owned by the McMinnville Airport is not a feasible alternative to the proposed project. The [county] evaluated the analysis provided by both sides' legal counsel and finds the applicants' position to be correct." Record 12.

The county in its decision and both parties in their briefs rely on *Little Nestucca Road Co.* That case involved the proposed condemnation of a private toll road by the county for use as a county road. The court discussed the applicable law:

> "The appropriation of land to a public use is an exercise of the sovereign power, which the state may delegate to a municipal or private corporation, and land already appropriated and used by its trustee, under the authority delegated, may be taken by legislative enactment for other public uses, in which case it is always presumed that the new use is of more importance and greater value to the public than the original appropriation. It is a rule, however, of universal application that the subsequent delegation of power to appropriate land which has once been appropriated must be in express terms, or must arise from necessary implication." 31 Or at 5-6 (citations omitted).

In the present case, petitioners contend that ORS 225.020 provides the authority to condemn property. ORS 225.020 provides in relevant part:

> "(1) When the power to do so is conferred by or contained in its charter or act of incorporation, any city may build, own, operate and maintain waterworks, water systems * * * within and without its boundaries for the benefit and use of its inhabitants and for profit. To that end it may:
>
> "(a) Acquire water systems and use, sell and dispose of its water for domestic, recreational, industrial, and public use and for irrigation and other purposes within and without its boundaries.
>
> "* * * * *
>
> "(c) Acquire right of way, easements or real property within and without its boundaries for any such purpose.
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> "(2) In exercising such powers, any city may bring actions for the condemnation or taking of *private* property for public use in the same manner as private corporations are now authorized or permitted by law to do." (Emphasis added)

ORS 225.020(2) provides a city the power to condemn private property for public use. It does not expressly provide a city the power to condemn public property for public use.

We agree with intervenors that ORS 225.020(2) does not provide the cities the express power to condemn the public property at the McMinnville Airport. *Little Nestucca Road Co.* clearly sets out the requirement that the authority to condemn land that is already put to public use must either be express or must arise from necessary implication. Petitioners do not argue to this Board that the cities' authority to condemn the airport land arises from necessary implication in any manner, nor is the authority express in ORS 225.020(2).

D. Treatment Facility and Reservoir

As noted earlier, the approved treatment facility and a reservoir to serve the needs of the City of Dayton are to be located at an EFU-zoned site next to an existing power substation. That site is approximately one mile from the wells and approximately one mile from the City of Dayton. The treatment facility and reservoir are located at a point where the water lines connecting the proposed wells to the Cities of Lafayette and Dayton separate. Petitioners argue that the county failed to demonstrate that it is necessary to site the treatment facility and reservoir on EFU-zoned land rather than on lands located within the cities' UGBs. We understand petitioners to challenge the adequacy of the county's findings and the evidence supporting those findings.

The only county findings that we have been able to locate concerning this issue state:

> "In considering the location of the treatment facility/reservoir the applicant states that it is necessary to be located near the water source. The ability to easily provide water to both jurisdictions as well as being as nondisruptive as possible to farmland are further considerations regarding location. The site that was chosen is near the PGE substation. The applicant states:
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> > "'The site was specifically designed to allow the maximum continued use of the available farmland while avoiding interference and safety concerns associated with the adjacent power transmission lines.'
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> "The applicant also submitted evidence concerning other sites for the reservoir within the city limits of Dayton. All appropriately zoned sites were

> discussed and information has been provided to explain why they were rejected. The [county] finds that it is necessary for the combination treatment facility/reservoir to be located in the proposed location within an EFU District in order for the service to be provided." Record 12-13.

These findings are clearly inadequate to establish that potential sites inside the City of Dayton UGB are not feasible alternative sites for the reservoir needed by the City of Dayton or that it is not feasible for needed treatment facilities to be located inside the City of Dayton, the City of Lafayette or both. We agree with intervenors that cost and technical difficulties in constructing needed utility facilities on non-EFU-zoned lands may make use of such non-EFU-zoned sites infeasible. *See Clackamas Co. Svc. Dist. No. 1 v. Clackamas County*, 35 Or LUBA at 386 (stating principle). However, the county's findings simply acknowledge certain statements made in the application. The findings do not explain what the county believes the relevant facts to be and do not explain why those facts lead the county to conclude it is not feasible to locate either the reservoir or the treatment facility or both those facilities on non-EFU-zoned lands. Such findings are inadequate. *See Le Roux v. Malheur County*, 30 Or LUBA 268, 271 (1995) (findings are adequate if they (1) identify the relevant approval standards, (2) set out the facts relied upon, and (3) explain how the facts lead to the conclusion that the request satisfies the approval standard).

Intervenors cite a portion of a memorandum in the record and a portion of the cities' application as evidence that the treatment facility and reservoir must be located together as proposed on EFU-zoned land. Record 160-61; 1415-17. We understand the cited memorandum and application to take the position that certain publicly owned sites that were considered for the reservoir for the City of Dayton present safety problems, are too small, have soils problems, or present technical and cost problems due to their location. The application does not dispute that treatment facilities could be located inside one or both cities. However, intervenors take the position that placing treatment facilities near the wells, rather than inside one or both of the cities, would "reduce potential corrosive effects from untreated water on the physical systems for each city." Record 1416. Intervenors also take

the position that citing the treatment facilities inside one or both cities would require additional piping and pumps and would increase costs. Finally, intervenors identify certain other cost advantages that would be lost if the reservoir and treatment facilities are not located next to each other. Record 1417.

Under ORS 197.835(11)(b), we are authorized to affirm a land use decision, despite defective findings, where the evidence "clearly supports the decision." Although the cited evidence may provide a basis for the county to adopt adequate findings that demonstrate that non-EFU-zoned sites for the proposed reservoir and treatment facilities are not feasible, in the absence of such findings, we cannot say that the evidence clearly supports that conclusion. *See Marcott Holdings, Inc. v. City of Tigard*, 30 Or LUBA 101, 122 (1995) (interpreting ORS 197.835(11)(b) as allowing LUBA to affirm a decision notwithstanding inadequate findings only where the relevant evidence is such that it is "obvious" or "inevitable" that the decision is consistent with applicable law).

Accordingly, we sustain petitioners' challenge to this part of the county's decision.

E. Conclusion

For the reasons explained above, we affirm the portion of the county's decision that concludes that it is necessary to site the proposed wells on EFU-zoned lands. However, we conclude the county has not adequately demonstrated that it is necessary to site the proposed treatment facility and reservoir on EFU-zoned land.

The first and second assignments of error are sustained in part.

THIRD AND FOURTH ASSIGNMENTS OF ERROR

In these assignments of error petitioners challenged the county's findings that the proposal satisfies the Yamhill County Zoning Ordinance (YCZO) site design review criteria (third assignment of error) and its findings that certain Yamhill County Comprehensive Plan (YCCP) policies do not apply (fourth assignment of error). We do not agree with the reasons the county gives in the disputed decision for concluding that its comprehensive plan policies

do not apply.[6] However, respondent advances an argument in its response to petitioners' third assignment of error that bears directly on the question of whether the comprehensive plan policies cited by petitioners could have been applied to deny the disputed facilities. We turn to that argument first.

Respondent argues that under *Brentmar v. Jackson County*, 321 Or 481, 900 P2d 1030 (1995), the uses allowed by ORS 215.283(1) are uses "*of right* which counties may not abridge nor make conditional upon additional criteria." Respondent's Brief 8. In *Brentmar*, the Oregon Supreme Court held:

> "[U]nder ORS 215.213(1) and 215.283(1), a county may not enact or apply legislative criteria of its own that supplement those found in ORS 215.213(1) and 215.283(1)." 321 Or at 496.

We understand the county to argue that under *Brentmar*, the county may not deny applications for uses that are authorized by ORS 215.283(1), or impose conditions on such uses, based on criteria in local land use legislation that go beyond the inquiry required by ORS 215.283(1)(d) itself, *i.e.*, whether it is necessary to site the proposed facilities on EFU-zoned lands.

We note that the holding in *Brentmar* was clarified in *Lane County v. LCDC*, 325 Or 569, 942 P2d 278 (1997). In *Lane County v. LCDC*, the court held that LCDC rules or statewide planning goals may independently require that counties regulate the uses that must otherwise be allowed outright without county restriction under ORS 215.213(1) and 215.283(1) and *Brentmar*. 325 Or at 582. However, it does not appear that the cited plan policies fall within the principle articulated in *Lane County v. LCDC*, and petitioners do not

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[6]In the challenged decision, the county takes the position that the fact that the YCCP and YCZO are acknowledged *necessarily* means that the cited comprehensive plan policies *could not* apply to individual site design review decisions. The applicability or non-applicability of comprehensive plan policies to individual land use decisions generally depends on the language of the comprehensive plan and land use regulations themselves and the status that those documents assign to plan policies. *Eskandarian v. City of Portland*, 26 Or LUBA 99, 103-04 (1993); *Bennett v. City of Dallas*, 17 Or LUBA 450, 456, *aff'd* 96 Or App 645, 773 P2d 1340 (1989). The county's findings do not even discuss the language of the cited comprehensive plan provisions.

argue that they do. Absent some reason to question respondent's argument, we agree with respondent that under *Brentmar* petitioners' arguments under the fourth assignments of error that certain YCCP policies should have been applied to deny the disputed application must be rejected.

The fourth assignment of error is denied.

Our conclusion regarding the effect of *Brentmar* on the county's comprehensive plan policies would appear to apply with equal force to bar application of the county's site design review criteria and, therefore, require that the third assignment of error be denied for the same reason. Nevertheless, the county did adopt findings applying those criteria and concluded that the proposal satisfies those criteria. Therefore, we consider petitioners' challenge to the county's findings concerning the site design review criteria below.

The site design review criteria that the county applied in this matter appear at YCZO 1101.02.[7] Before turning to petitioners' arguments, we note that YCZO 1101.02 does not, as

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[7]YCZO 1101.02 provides:

"A. The review of a site development plan shall be based upon consideration of the following:

"1. Characteristics of adjoining and surrounding uses;

"2. Economic factors relating to the proposed use;

"3. Traffic safety, internal circulation and parking;

"4. Provisions for adequate noise and/or visual buffering from noncompatible uses;

"5. Retention of existing natural features on site;

"6. Problems that may arise due to development within potential hazard areas;

"7. Comments and/or recommendations of adjacent and vicinity property owners whose interests may be affected by the proposed use.

"B. All development applications for site design review are subject to the development standards of the underlying zoning district and may be modified pursuant to satisfaction of the considerations provided in subsection 1101.02(A). The Director may waive submittal requirements consistent with the scale of the project being

petitioners suggest, impose a requirement that the county must ensure that the challenged utility facilities have no adverse impacts on nearby agricultural uses. Rather, the site design review criteria require that "review of a site development plan shall be based upon consideration of" certain specified factors. The county argues, and we agree, that the county satisfies YCZO 1101.02 if its findings demonstrate that it reviewed the site development plan and considered the specified factors. YCZO 1101.02 does not require that the county ensure that the disputed facilities will have no adverse impacts on adjoining uses.

A. Characteristic of Surrounding Use

YCZO 1101.02(A)(1) requires that review of a site development plan be based upon consideration of the "[c]haracteristics of adjoining and surrounding uses." Petitioners first contend the county's findings are inadequate because they fail to acknowledge that "the placement of urban utilities in the middle of fields that are currently and actively devoted to agricultural production is entirely inconsistent with the characteristics of that current and active use." Petition for Review 25. Petitioners next argue that the county must impose "conditions that will minimize the depletion of water available for agriculture, as such depletion has the potential to make continued agricultural use of the affected properties difficult or impossible." *Id.* at 26. Petitioners also argue that the county's findings fail to address the issues of wellhead protection and the fact that a stream within the subject area is presently designated "water quality limited" by the state.

1. Impacts on Agricultural Uses and Wells

The county's findings address YCZO 1101.02(A)(1) as follows:

> "The applicants have demonstrated how they designed the system to minimize the impacts on area farm activities. These design features include spacing the wells 1500 feet from existing agricultural wells. The well sites will be surrounded by a one-acre site. They are located close to existing roads and property lines. This is to be as nondisruptive as possible to existing farm uses.

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reviewed, upon determining that requirements requested to be waived are not necessary for an effective evaluation of the site development plan."

> The greatest concern expressed to date is that taking groundwater will deplete the aquifer and prevent farmers from using water for irrigation. * * * [The county] finds that the modified conditions of approval requiring the applicants to obtain a water right from the [Water Resources Department] prior to use of the water address impacts to surrounding uses. * * *
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> "The site of the proposed treatment facility/pump station/reservoir is also located close to the PGE substation. The applicant[s state] this location was selected to try and minimize the impact on adjacent farming activities. Siting the facility next to the existing substation, at the edge of a farm parcel, will cluster the utility uses. This will have less of an impact on farm use than if the facility was places near the center of a farm parcel." Record 15-16.

The county's findings on the characteristics of adjoining and surrounding uses identify YCZO 1101.02(A)(1) as an approval criterion and interpret that criterion to require that impacts on adjoining or surrounding uses be minimized. Record 15. The county characterizes the surrounding uses as farm uses in grass or grain production. Record 6. The county details facts from the application that lead the county to conclude that the proposal is designed to minimize the impact on surrounding uses. Record 15-16. The record supports that conclusion.

2. Wellhead Protection

Petitioners contend that the county erred in not making a finding on whether the wellhead protection program administered by the state Department of Environmental Quality (DEQ) would unduly restrict farming practices. Petitioners argue that DEQ suggests a large protection area and that the area required to protect the proposed wells would be substantial. As a result, petitioners argue "agriculture in the entire area could be markedly curtailed or lost as a result of wellhead protection." Petition for Review 27.

The county responds that wellhead protection is not a relevant issue in this case. The county argues that it has not adopted DEQ's voluntary wellhead protection program. The site design review application discusses the wellhead protection program as follows:

> "The State wellhead protection program is *voluntary*. There are no plans to make it mandatory. If the Cities decide to implement a wellhead protection program, they would work cooperatively with the DEQ, landowners, and

> farmers to promote land use practices that are consistent with best management practices. Typical farming practices would *not* be restricted. Any controls would likely involve limiting the storage of fuel and large quantities of pesticides within the wellhead protection area." Record 1324 (emphases in original).

In *Heiller v. Josephine County*, 23 Or LUBA 551, 556 (1992), the Board held that "findings must address and respond to specific issues relevant to compliance with applicable approval standards that were raised in the proceedings below." We agree with the county that in considering the "[c]haracteristics of adjoining and surrounding uses" under YCZO 1101.02(A)(1), consideration of a voluntary wellhead protection program that the county has not adopted was not required, and the county was not obligated under YCZO 1101.02(A)(1) to adopt findings specifically addressing that program.

3. Palmer Creek

Petitioners state that the proposed wells are located in the west fork of the Palmer Creek basin and that DEQ identified Palmer Creek as a water quality limited stream. Petitioners argue that the county's findings "fail to address the fact that the characteristics of adjoining and surrounding uses have likely caused toxic contamination [of] the watershed where the applicants intend to develop their wells." Petition for Review 28.

As the county points out, the Water System Predesign Report generally discusses the issue of water quality in the well siting area. Record 856, 873, 881, 885, and 890-97. However, petitioners are correct that the county's findings do not specifically address the question of whether surrounding agricultural uses have produced the water quality problems DEQ identified in Palmer Creek or whether such problems may have consequences for the proposed wells. Nevertheless, petitioners do not explain why such specific findings are required by YCZO 1101.02(A)(1) and we do not believe that such findings are required.

This subassignment of error is denied.

B. Economic Factors

YCZO 1101.02(A)(2) requires that review of a site development plan shall take into consideration "[e]conomic factors relating to the proposed use." The decision states:

> "Regarding [YCZO 1101.02(A)(2), the county] finds that the cost of the project will be covered by grants and ratepayers from each jurisdiction. There is no evidence that development could not be completed with the economic resources of each jurisdiction. In addition, as noted above, the cost of other identified potential water sources would be prohibitive. The selected alternative is consistent with this criterion.
>
> "As demonstrated in the application and public hearing, the applicant cities have an immediate need for water to supply current demand. In addition, this project will meet demands based on projected growth in both cities for the next fifteen to twenty years. State law requires cities to accommodate growth by providing public facilities including water. Maintaining a growing county population within urban areas achieves important state and county objectives of preserving farmland. Yamhill County in particular has an active, healthy agricultural base, as confirmed by testimony at the public hearing. The [county] finds that preserving that agricultural base by assuring the provision of public facilities to a growing urban population meets the criterion requiring evaluation of economic consideration of the request." Record 16.

Petitioners argue that there is "no mention in the county's findings of the economic impact that the proposed wells will have on the farms where they will be located." Petition for Review 28. The county contends that, although the findings quoted above do not refer to the impacts petitioners identify, other portions of the decision address concerns about minimizing disruption to the surrounding farms and that those findings are adequate to comply with YCZO 1101.02(A)(2). Record 12, 13, 15, and 16. We agree with the county.

This subassignment of error is denied.

C. Adjacent and Vicinity Property Owners

YCZO 1101.02(A)(7) requires that review of a site development plan shall take into consideration "[c]omments and/or recommendations of adjacent and vicinity property owners whose interests may be affected by the proposed use." The decision states:

> "Regarding [YCZO 1101.02(A)(7)], Planning Department staff received comments from interested parties regarding this application. As stated in

> Finding D-3, the comments submitted focused on the appropriation of water which is not governed by the county but by the Water Resources Department. Additional comments were addressed during the public hearing on appeal and are addressed in this final decision." Record 17.

Petitioners argue that "[w]hile the county does not control the appropriations, it does have the power through the site design review process to approve or deny development applications where such development would deprive property in an EFU zone of a key resource needed for continued agricultural use of the property." Petition for Review 29. Assuming without deciding that petitioners are correct in their argument, their argument falls short of showing that the county failed to base its review, in part, upon consideration of comments of surrounding property owners, as YCZO 1101.02(A)(7) requires.

Petitioners also argue that the county did not consider comments regarding pesticide contamination of the Palmer Creek watershed in which the wells are proposed, or the impact of wellhead protection. Although the county did not adopt findings specifically addressing comments about Palmer Creek or wellhead protection, we do not believe that YCZO 1101.02(A)(7) requires that the county adopt findings that address every comment or recommendation that the vicinity property owners made during the local proceedings. The finding quoted above is sufficient to demonstrate that the county's review was based on consideration of comments received by planning department staff. That is all that YCZO 1101.02(A)(7) requires.

This subassignment of error is denied.

D. Parcel Size and Dimension

YCZO 1101.02(B) provides that site design review applications "are subject to development standards of the underlying zoning district." Petitioners argue that the cities will partition land into lots smaller than allowed in the EF-80 zone and that the county erred in finding that "[t]he proposal will utilize existing property." Record 17. The county responds, and we agree, that the cities are not proposing new lots. Rather they propose to

purchase easements on existing parcels for placement of the wells and the combination treatment/storage facility. Utility facilities necessary for public service are permitted uses on existing parcels in the EFU zone. ORS 215.283(1)(d).

This subassignment of error is denied.

The third assignment of error is denied.

The county's decision is remanded.