BEFORE THE LAND USE BOARD OF APPEALS

OF THE STATE OF OREGON

CENTRAL KLAMATH COUNTY
COMMUNITY ACTION TEAM,
Petitioner,

vs.

KLAMATH COUNTY,
Respondent,

and

MERICOM DEVELOPMENT, INC.,
Intervenor-Respondent.

LUBA No. 2001-167

FINAL OPINION
AND ORDER

Appeal from Klamath County.

Christine M. Cook, Portland, filed the petition for review and argued on behalf of petitioner.

Reginald R. Davis, Klamath Falls, filed the response brief and argued on behalf of respondent.

Daniel J. Drazan, Portland, represented intervenor-respondent.

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

REMANDED 03/22/2002

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

Opinion by Bassham.

NATURE OF THE DECISION

Petitioner appeals county approval of a conditional use permit to construct a 200-foot wireless communication tower on land zoned for exclusive farm use (EFU).

MOTION TO FILE REPLY BRIEF

Petitioner moves for leave to file a reply brief, pursuant to OAR 661-010-0039, to address new matters raised in the response brief. There is no opposition to the motion, and it is allowed.

FACTS

This matter is before us for the second time. We recite pertinent facts from our earlier opinion:

> "Intervenor[-respondent] filed eight applications with the county for permits to construct eight communication towers for a linear network along Highway 97. Intervenor selected the site of each tower after conducting a variety of radio frequency and other analyses to determine the optimum locations for each tower. Intervenor proposed that a 200-foot tower be sited on a 6,400-square foot section of a large parcel zoned EFU (the subject property). The other towers were proposed for land zoned either Forestry or Nonresource." *Central Klamath County CAT v. Klamath County*, 40 Or LUBA 111, 114 (2001).

In our prior decision, we remanded the county's approval of the proposed tower because the county failed to address Klamath County Land Development Code (LDC) 54.030(O), which implements ORS 215.283(1)(d) in authorizing "[u]tility facilities necessary for public service" in an EFU zone. We also held that the county erred in applying general conditional use criteria at LDC 44.030 rather than criteria applicable to conditional use permits in the EFU zone at LDC 54.040.

On remand, the county board of commissioners conducted a hearing on July 24, 2001, and continued that hearing to September 25, 2001. The applicant prepared findings addressing LDC 54.030(O) and 54.040. Based on those submitted findings, planning staff

recommended approval. On September 24, 2001, petitioner submitted additional evidence, specifically propagation maps intended to show that towers constructed at five alternate sites on non-EFU land would provide adequate coverage. On October 4, 2001, the board of commissioners issued a decision approving the proposed tower, adopting the applicant's findings as its own. This appeal followed.

JURISDICTION

The county's response brief does not address the merits of petitioner's assignment of error, but argues instead that (1) petitioner lacks standing to bring an appeal to LUBA, under the reasoning announced in *Utsey v. Coos County*, 176 Or App 524, 32 P3d 933 (2001) *petition for review pending*; and (2) LUBA lacks jurisdiction over the appeal, pursuant to ORS 197.825(2)(b).

A. Justiciability

In *Utsey*, a majority of the Court of Appeals held that limitations on the exercise of the judicial power in Article III, section 1, and Article VII (Amended), section 1, of the Oregon Constitution required that a party seeking judicial review of a LUBA decision pursuant to ORS 197.850(1) demonstrate that the appeal is justiciable, *i.e.*, that the Court of Appeals' decision will have a practical effect on the party.[1]

Subsequently, LUBA has determined that the "practical effect" limitation on judicial review described in *Utsey* does not apply to LUBA's review of a land use or limited land use decision.[2] *Friends of Yamhill County v. Yamhill County*, __ Or LUBA __ (LUBA No. 2001-114, January 10, 2002), slip op 3; *Friends of Linn County v. Linn County*, __ Or LUBA __

[1]Article III, section 1, of the Oregon Constitution separates the powers of state government into three branches, "the Legislative, the Executive, including the administrative, and the Judicial[.]" Article VII (Amended), section 1, provides in relevant part that "[t]he judicial power of the state shall be vested in one supreme court and in such other courts as may from time to time be created by law."

[2]Among other reasons, we noted that the concurrence to the majority opinion in *Utsey*, joined by an apparent majority of the court, expressed the view that limitations on judicial review described in the majority opinion do not apply to LUBA. 176 Or App at 561, Edmonds, J., concurring.

(LUBA Nos. 2001-165 and 2001-168, Order, December 5, 2001), slip op 2; *Troy v. City of Grants Pass*, __ Or LUBA __ (LUBA No. 2001-133, November 28, 2001), slip op 3; *Doob v. Josephine County*, __ Or LUBA __ (LUBA No. 2001-134, Order on Motion to Dismiss, November 26, 2001), slip op 2-3. We held, in the foregoing cases, that ORS 197.830, specifically ORS 197.830(2), supplies the standing requirements for appeals to LUBA.[3]

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[3]ORS 197.830 provides, in relevant part:

> "(2) Except as provided in ORS 197.620 (1) and (2), a person may petition the board for review of a land use decision or limited land use decision if the person:
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> > "(a) Filed a notice of intent to appeal the decision as provided in subsection (1) of this section; and
> >
> > "(b) Appeared before the local government, special district or state agency orally or in writing.
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> "(3) If a local government makes a land use decision without providing a hearing, except as provided under ORS 215.416 (11) or 227.175 (10), or the local government makes a land use decision that is different from the proposal described in the notice of hearing to such a degree that the notice of the proposed action did not reasonably describe the local government's final actions, a person adversely affected by the decision may appeal the decision to the board under this section:
>
> > "(a) Within 21 days of actual notice where notice is required; or
> >
> > "(b) Within 21 days of the date a person knew or should have known of the decision where no notice is required.
>
> "(4) If a local government makes a land use decision without a hearing pursuant to ORS 215.416 (11) or 227.175 (10):
>
> > "* * * * *
> >
> > "(b) A person who is not entitled to notice under ORS 215.416 (11)(c) or 227.175 (10)(c) but who is adversely affected or aggrieved by the decision may appeal the decision to the board under this section within 21 days after the expiration of the period for filing a local appeal of the decision established by the local government under ORS 215.416 (11)(a) or 227.175 (10)(a).
>
> > "* * * * *
>
> "(5) If a local government makes a limited land use decision which is different from the proposal described in the notice to such a degree that the notice of the proposed action did not reasonably describe the local government's final actions, a person

The county appears to concede that LUBA does not exercise judicial power in any constitutional sense and that the limitation on the judicial power described in *Utsey* does not apply to LUBA directly. However, we understand the county to argue that that limitation applies *indirectly*, as a matter of legislative intent in adopting the statutes governing LUBA's review. The county argues that the context of ORS 197.830(2) includes the legislative policy governing LUBA's review set forth at ORS 197.805, specifically the policy that LUBA's decisions "be made consistently with sound principles governing judicial review."[4] According to the county, the limitation on judicial review described in *Utsey* is among the "sound principles governing judicial review." The county contends that ORS 197.805 evinces legislative intent to subject LUBA's review to the same limitations the Oregon Constitution imposes on the judicial power. Therefore, the county argues, a petitioner invoking LUBA's review must demonstrate, in addition to the requirements of ORS 197.830(2), that LUBA's decision will have a practical effect on the petitioner. Because that demonstration has not been made in the present case, the county argues, LUBA must dismiss this appeal.[5]

As framed, the county's arguments present an issue of statutory construction, specifically the legislature's intent in adopting ORS 197.805 and the current form of

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> adversely affected by the decision may appeal the decision to the board under this section:
>
> "(a) Within 21 days of actual notice where notice is required; or
>
> "(b) Within 21 days of the date a person knew or should have known of the decision where no notice is required."

[4]ORS 197.805 provides:

> "It is the policy of the Legislative Assembly that time is of the essence in reaching final decisions in matters involving land use and that those decisions be made consistently with sound principles governing judicial review. It is the intent of the Legislative Assembly in enacting ORS 197.805 to 197.855 to accomplish these objectives."

[5]Although we need not address the contentions on this point, petitioner disputes the county's assertion that the record fails to show that it or its members lack standing under the test described in *Utsey*.

ORS 197.830(2). The focus of statutory construction is on discerning the intent of the legislature. *PGE v. Bureau of Labor and Industries*, 317 Or 606, 610, 859 P2d 1143 (1993). The starting point of the analysis is the text and context of the statute. *Id.* at 610-611. If the text and context can reasonably be construed in more than one way, examination of legislative history is appropriate. *Id.* at 611-612. If legislative history is unclear, after consideration of the text, context and legislative history, then resort to general maxims of statutory construction is permissible. *Id*. at 612.

We touched briefly on the interpretational issue before us in our order in *Doob*, where we stated:

> "As a final point, we note that ORS 197.805 includes a general directive that LUBA's 'decisions be made consistently with sound principles governing judicial review.' That general directive does not mean that LUBA is part of the judicial branch. Neither do we believe it provides any basis for believing the legislature intended to limit standing to appeal land use decisions to LUBA under ORS 197.830(2) in the same way that legislative power may be constitutionally limited in establishing standing to seek judicial review." Slip op 3.

That observation was *sua sponte*, and was not responding to developed arguments of the kind the county presents here. However, for the following reasons we continue to believe that the legislature did not intend ORS 197.805 to impose additional standing requirements on appeal of land use and limited land use decisions under ORS 197.830(2).

Reduced to essentials, the county's argument is that in adopting ORS 197.805 the legislature intended that LUBA's review be governed by the same generally applicable principles and limitations that govern judicial review, including the limitation described in *Utsey*. Unless the legislature specifically provides otherwise, we understand the county to argue, such principles and limitations *must* apply to LUBA's review. According to the county, ORS 197.830(2) merely sets forth certain standing requirements, principally that the petitioner appear before the local government, but does not purport to circumscribe the universe of applicable standing requirements. Because the legislature has not specifically

provided otherwise in LUBA's statutes, the county argues, the standing requirement described in *Utsey* therefore applies, pursuant to ORS 197.805. In short, the county contends that *Doob* and the other cited cases err to the extent they interpret ORS 197.830(2) to constitute the entire set of applicable standing requirements where an appeal to LUBA is filed under ORS 197.830(2) and (9). Such an interpretation creates an unnecessary conflict between ORS 197.805 and 197.830(2), the county argues, and fails to give full effect to ORS 197.805.

The county's view of the pertinent statutes is far from untenable, as a textual matter. LUBA has invoked ORS 197.805 as statutory authority to apply a number of different principles of judicial review.[6] The most pertinent example involves the principle that LUBA will dismiss an appeal where the underlying matter has become moot. The Board has applied that principle from its earliest cases. *See, e.g., Fujimoto v. Metropolitan Service District*, 1 Or LUBA 93 (1980). Our understanding of the mootness doctrine was based on appellate case law and, like those cases, formulated the principle as requiring dismissal where a decision on the merits would have no practical effect. *See, e.g., Mobile Crushing Company v. Lane County*, 13 Or LUBA 97, 99 (1985). We subsequently identified ORS 197.805 as

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[6]For example, LUBA has invoked ORS 197.805 as authority to apply the doctrine of voluntary remand (*Mazeski v. Wasco County*, 27 Or LUBA 45, 47 (1994); *Mulholland v. City of Roseburg*, 24 Or LUBA 240, 243 (1992)), to dismiss moot appeals (*Heiller v. Josephine County*, 25 Or LUBA 555, 556 (1993)), to take official notice (*Blatt v. City of Portland*, 21 Or LUBA 337, 341, *aff'd* 109 Or App 259, 819 P2d 309 (1991)), and to apply the doctrine of waiver or law of the case (*Portland Audubon v. Clackamas County*, 14 Or LUBA 433, 436, *aff'd* 80 Or App 593, 722 P2d 745 (1986)). *See also Woosley v. Marion County*, 118 Or App 206, 846 P2d 1170 (1993) (ORS 197.805 authorizes LUBA to apply the harmless error principle).

In addition, the Board has invoked ORS 197.805 as authority to apply a variety of prudential doctrines in contexts where its statutes and rules do not supply a clear answer. *Cascade Pumice, Inc. v. Deschutes County*, 28 Or LUBA 787 (1995) (LUBA will suspend its review pending the outcome of a related circuit court proceeding); *Reusser v. Washington County*, 24 Or LUBA 652, 654-55 (1993) (intervenor-petitioner may file a cross-petition); *Schrock Farms, Inc. v. Linn County*, 24 Or LUBA 649, 650 (1993) (LUBA may respond to remand from the Court of Appeals by taking action within the 30 days specified in ORS 197.850(11)); *National Advertising Company v. City of Portland*, 20 Or LUBA 79, 84-85 (1990) (LUBA will dismiss an appeal over intervener's objection where the petitioner withdraws the notice of intent to appeal); *Stotter v. City of Eugene*, 18 Or LUBA 135, 143 (1989) (intervenor-petitioner may raise issues beyond those raised in the petition for review).

authorizing application of that principle in our review. *Barr v. Clackamas County*, 22 Or LUBA 504, 505 (1991).

As the majority opinion in *Utsey* explained, the mootness doctrine can be viewed as a temporal aspect of the fundamental principle of justiciability, that *at all times* the court's decision must have a practical effect on the rights of the parties. 176 Or App at 541. In the present case, we understand the county to argue that, just as ORS 197.805 requires LUBA to apply the mootness doctrine in its review, it also requires LUBA to apply the fundamental principle underlying that doctrine—that petitioners satisfy the practical effect standard—as a condition to invoking LUBA's review.

It may not be the case, as the county presumes, that ORS 197.805 *requires* LUBA to apply in a rote fashion each and every potentially applicable principle of judicial review, or every aspect of such principles, without regard to whether that principle is compatible with LUBA's review functions and with statutory policies governing participation in and review of land use decisions. *See Smith v. Douglas County*, 308 Or 191, 195-96, 777 P2d 1377 (1989) (although ORS 197.805 states a policy favoring expeditious review of land use decisions, that policy does not subordinate other policies favoring correct decision making, or require that LUBA take the fastest route to settling a land use dispute); *Kevedy, Inc. v. City of Portland*, 28 Or LUBA 227, 231 (1994) (recognizing that the legislature has adopted competing policies favoring both speedy land use proceedings and meaningful public participation in land use decisions); *Davis v. City of Bandon*, 19 Or LUBA 526, 529 n 5 (1990) (suggesting that the legislative policy that "time is of the essence in reaching final decisions in matters involving land use" might warrant a decision on the merits notwithstanding that the underlying dispute is moot and our decision would not have practical effect). In other words, it may be consistent with ORS 197.805 to apply existing sound principles of judicial review in a modified form to fit the particular context of LUBA's

review, and even to ignore such principles, where they are incompatible with competing principles or statutory policies.

Be that as it may, we do not understand the county to question that, even if ORS 197.805 broadly mandates that LUBA apply each and every sound principle of judicial review, potentially including the practical effect standard discussed in *Utsey*, the legislature may and indeed has adopted specific statutes that require LUBA to conduct its review in a manner that may differ from that conducted under "sound principles of judicial review." For example, ORS 197.835(11)(a) requires that, where possible, LUBA "shall decide all issues presented to it when reversing or remanding" a land use or limited land use decision. That statutory mandate is arguably contrary to a principle of judicial review that the Court of Appeals often applies in its review of LUBA, and other, decisions. *See Perkins v. City of Rajneeshpuram*, 68 Or App 726, 733-34, 686 P2d 369 (1984), *aff'd/modified* 300 Or 1, 706 P2d 949 (1985) (unlike LUBA, the court is not required to address all issues, and therefore the court may decline to reach certain assignments of error pursuant to the principle that "law should not be made unnecessarily"). For the reasons that follow, we conclude that, even assuming ORS 197.805 can be read in isolation to require that LUBA apply the practical effect standard discussed in *Utsey*, when read in context it is clear that the legislature has chosen otherwise.

As noted ORS 197.830(2) provides in relevant part that a person may petition LUBA for review of a land use or limited land use decision where the person files a notice of intent to appeal and appears before the local government. *See* n 3. ORS 197.830(2) contains no other requirements that relate to the standing of petitioners, which suggests that the legislature intended that no other such requirements apply. That suggestion is not a particularly strong one, and it does not in itself conclusively dispel the county's contrary view that ORS 197.805 may import principles of judicial review that *add to* the requirements

expressly imposed by ORS 197.830(2).[7] Nonetheless, the county's view requires reading into the terms of a statute a requirement that is present in the statutory scheme, if at all, only as an implication drawn from a general policy statement. In interpreting a statute, our task is not to "insert what has been omitted, or to omit what has been inserted." ORS 174.010. The county's proffered interpretation of ORS 197.805 and 197.830(2) is far closer to inserting "what has been omitted" than the contrary view of the statutes is to omitting "what has been inserted."

Furthermore, the history and context of ORS 197.830(2) strongly supports the view that, whatever the relationship between ORS 197.805 and 197.830(2), the legislature did not intend that a person invoking LUBA's review authority under ORS 197.830(2) be required to demonstrate that LUBA's decision would have a practical effect on that person. The original version of ORS 197.830(2), adopted as section 4 of Or Laws 1979, chapter 772, provided in relevant part that:

> "(2) Except as provided in subsection (3) of this section, any person whose interests are adversely affected or who is aggrieved by a land use decision and who has filed a notice of intent to appeal as provided for in subsection (4) of this section may petition [LUBA] for review of that decision * * *[.]
>
> "(3) Any person who has filed a notice of intent to appeal as provided in subsection (4) of this section may petition [LUBA] for review of a quasi-judicial land use decision if the person:
>
> "(a) Appeared before the city, county, or special district governing body or state agency orally or in writing; and
>
> "(b) Was a person entitled as of right to notice and hearing prior to the decision to be reviewed or was a person whose interests are adversely affected or who was aggrieved by the decision."

[7]To the extent that ORS 197.805 and 197.830(2) conflict, ORS 174.020(2) directs that the specific statute control over an inconsistent general statute.

ORS 197.830 was modified several times thereafter, but until 1989 retained substantially similar requirements calling for a demonstration that the petitioner have interests that are "adversely affected" by the decision. In 1989, the legislature amended ORS 197.830(2) into what approximates its current form. Or Laws 1989, chapter 761, section 12. Importantly, the legislature deleted any requirement that a person invoking LUBA's review under ORS 197.830(2) demonstrate that he or she is "adversely affected," retaining only the requirements that the person file a notice of intent to appeal and appear before the local government. Equally important, in the same legislation the legislature adopted a new provision, currently codified at ORS 197.830(3), that allowed appeal to LUBA in specified circumstances, but only to persons who are "adversely affected" by the decision. *See* n 3. These amendments clearly express the legislature's intent that persons invoking LUBA's review are not required to demonstrate that the decision "adversely affects" their interests, except in specified circumstances not applicable here.

Admittedly, whether a decision "adversely affects" a person's interests is not necessarily the same question as whether a decision has "practical effect" on a person's interests. Nonetheless, the two questions are sufficiently similar that the fairest inference drawn from the 1989 amendments and the current form of the statute is that the legislature did not intend that petitioners before LUBA establish, as part of the requisite demonstration of standing under ORS 197.830(2), that the challenged decision impacts their interests. Accordingly, we conclude that the text and context of ORS 197.805 establish that the legislature did not intend ORS 197.805 to import and impose standing requirements that are not set forth in ORS 197.830(2) or other applicable statutory provisions. There is no dispute in the present case that petitioner satisfies the standing requirements of ORS 197.830(2).

B. ORS 197.825(2)(b)

ORS 197.825 prescribes the scope of LUBA's jurisdiction, and sets forth specific limitations on our jurisdiction.[8] ORS 197.825(2)(b) states that LUBA's jurisdiction "is subject to the provisions of ORS 197.850 relating to judicial review by the Court of Appeals." The county argues:

> "* * * In accordance with the law as established in *Utsey*, [petitioner] does not have a justiciable claim for judicial review as they have not demonstrated that a decision in this case will have a practical effect on its rights and thus, the statutory right conferred by ORS 197.850 for judicial review is unconstitutional and in accordance with ORS 197.825(2)(b) LUBA does not have jurisdiction." Response Brief 12.

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[8]ORS 197.825 provides in relevant part:

> "(1) Except as provided in ORS 197.320 and subsections (2) and (3) of this section, the Land Use Board of Appeals shall have exclusive jurisdiction to review any land use decision or limited land use decision of a local government, special district or a state agency in the manner provided in ORS 197.830 to 197.845.
>
> "(2) The jurisdiction of the board:
>
> "(a) Is limited to those cases in which the petitioner has exhausted all remedies available by right before petitioning the board for review;
>
> "(b) *Is subject to the provisions of ORS 197.850 relating to judicial review by the Court of Appeals*;
>
> "(c) Does not include those matters over which the Department of Land Conservation and Development or the Land Conservation and Development Commission has review authority * * *;
>
> "(d) Does not include those land use decisions of a state agency over which the Court of Appeals has jurisdiction for initial judicial review * * *;
>
> "(e) Does not include any rules, programs, decisions, determinations or activities carried out under ORS 527.610 to 527.770, 527.990 (1) and 527.992;
>
> "(f) Is subject to ORS 196.115 for any county land use decision that may be reviewed by the Columbia River Gorge Commission * * *; and
>
> "(g) Does not include review of expedited land divisions under ORS 197.360." (Emphasis added.)

If we understand the county, it argues that ORS 197.825(2)(b) removes from LUBA's jurisdiction any decision over which, on appeal of LUBA's final order regarding that decision to the Court of Appeals, the court could not constitutionally exercise its judicial power under ORS 197.850. Because petitioner has not demonstrated that the decision will have a practical effect on petitioner, the county reasons, any appeal by petitioner to the Court of Appeals would be dismissed, pursuant to *Utsey*.[9] Therefore, the county argues, LUBA lacks jurisdiction over the challenged decision, pursuant to ORS 197.825(2)(b).

We again disagree with the county's view of the pertinent statutes. ORS 197.850(3)(a) states that "[j]urisdiction for judicial review of proceedings under ORS 197.830 to 197.845 is conferred upon the Court of Appeals." Jurisdiction may return to LUBA if the court remands our final order, pursuant to ORS 197.850(11). When ORS 197.825(2)(b) is read in context with these statutes, it is clear that ORS 197.825(2)(b) simply states that LUBA no longer has jurisdiction over an appeal once a party seeks judicial review of LUBA's final order in that appeal, pursuant to ORS 197.850.[10] The county would read ORS 197.825(2)(b) to state something very different, that where the Court of Appeals lacks constitutional authority to review LUBA's final order in an appeal notwithstanding the grant of authority in ORS 197.850, LUBA thereby lacks jurisdiction over that appeal. ORS 197.825(2)(b) says nothing of the kind.

The county's challenges to petitioner's standing and our jurisdiction are denied.

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[9]The county's argument seems to assume that a party cannot base or augment its showing under *Utsey* on evidence adduced after the close of the local record, either on evidence submitted to LUBA pursuant to OAR 661-010-0045 or evidence submitted to the Court of Appeals pursuant to ORS 183.482(5) and Rules of Appellate Procedure 4.25 and 4.60. Whether that assumption is correct is an unresolved question. *See Friends of Yamhill County*, slip op 4-5 (denying a motion to take evidence not in the record regarding standing under *Utsey*, because petitioner satisfied the standing requirements of ORS 197.830(2) to appeal to LUBA).

[10]Consistent with the foregoing interpretation, we have held that once we issue the final opinion in a case, LUBA lacks statutory authority to reconsider that final opinion. *DLCD v. Klamath County*, 26 Or LUBA 589, 590 (1993); *Alliance for Responsible Land Use v. Deschutes Cty.*, 23 Or LUBA 717 (1992); *Sarti v. City of Lake Oswego*, 20 Or LUBA 562 (1991).

ASSIGNMENT OF ERROR

As noted, the county does not respond to petitioner's assignment of error. The gist of that assignment is that the county erred in determining that the proposed tower is "necessary for public service," as required by LDC 54.030(O), because the county and the applicant failed to address whether it was feasible to place the proposed tower on non-EFU land.

Petitioner argues that LDC 54.030(O) implements ORS 215.283(1)(d), and therefore may not be construed in a less restrictive manner than the statute. According to petitioner, ORS 215.283(1)(d) requires that the applicant demonstrate and the county find that the proposed utility facility must be sited in an EFU zone in order to provide the service. *McCaw Communications, Inc. v. Marion County*, 96 Or App 552, 773 P2d 779 (1989); *City of Albany v. Linn County*, 40 Or LUBA 38, 46 (2001); *Clackamas Co. Svc. Dist. No. 1 v. Clackamas County*, 35 Or LUBA 374 (1998). The county's findings state that the applicant considered reasonable non-EFU alternatives, but do not identify or discuss any non-EFU alternative site. The findings also criticize petitioner for failing to suggest alternative sites with sufficient specificity. Petitioner argues that it submitted into the record five radio frequency propagation maps that identify specific non-EFU alternative sites, each of which appears to provide equivalent or better coverage than the preferred site. Supplemental Record 16-22.

Given the lack of response to petitioner's arguments, we see no need to address them in detail. We generally agree with petitioner that the county's findings are inadequate to demonstrate that the proposed tower must be sited in an EFU zone in order to provide the proposed service. The findings do not address the alternative sites submitted by petitioner, or indeed any alternative sites. Until the county has done so, it is in no position to conclude that the proposed tower is a "utility facility necessary for public service" that must be sited in an EFU zone in order to provide the proposed public service.

The assignment of error is sustained.

The county's decision is remanded.