BEFORE THE LAND USE BOARD OF APPEALS

OF THE STATE OF OREGON

FRIENDS OF JEFFERSON COUNTY
and WILLIAM M. WATTS,
Petitioners,

vs.

JEFFERSON COUNTY,
Respondent,

and

OREGON DEPARTMENT OF AGRICULTURE,
OREGON DEPARTMENT OF LAND CONSERVATION
AND DEVELOPMENT, TOM GREEN
and 1000 FRIENDS OF OREGON,
Intervenors-Respondent.

LUBA No. 2004-063

FINAL OPINION
AND ORDER

Appeal from Jefferson County.

John A. Rankin, Sherwood, filed the petition for review and argued on behalf of petitioners.

No appearance by Jefferson County.

Richard M. Whitman, Assistant Attorney General, Salem, filed a response brief on behalf of intervenors-respondent Oregon Department of Agriculture and Oregon Department of Land Conservation and Development. With him on the brief were Hardy Meyers, Attorney General and Mary Williams, Solicitor General.

Edward P. Fitch, Redmond, filed a response brief and argued on behalf of intervenor-respondent Tom Green. With him on the brief was Bryant, Emerson and Fitch, LLP.

Caroline E. K. MacLaren, Portland, filed a response brief and argued on behalf of intervenor-respondent 1000 Friends of Oregon.

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

AFFIRMED 10/15/2004

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 a county decision that determines that a proposed feed lot, which would be located next to an existing livestock auction yard and on the same property where a portion of the feed for the livestock will be raised, is a farm use rather than a commercial activity in conjunction with farm use.

FACTS

Although the parties put somewhat different spins on the facts in this case, the relevant facts do not appear to be in serious dispute. The applicant proposes to build and operate a 2,500 head calf feeding lot on an approximately 128-acre property. The feedlot would be located on approximately 30 acres of the property. The remaining approximately 98 acres is currently used for hay production and would continue to be used for that purpose. The subject property adjoins an existing livestock auction yard that is located on Highway 97, approximately one mile south of the City of Madras. The calves would be fed prior to and in some cases after their sale at the auction yard. The calves would be fed in pens. That number of calves generates a fair amount of waste. The waste will be collected in a holding pond and used to fertilize and irrigate the fields on the 98 acres that will continue to be used for hay production. The hay that will continue to be grown on the 98 acres will be used on the feedlot, but much of the feed for the calves will be purchased from off-site sources.

The county initially treated the application as an application for a farm related commercial use. The county later changed its position and concluded that the proposal is a farm use, which is permitted outright under the county's zoning ordinance. The county ultimately concluded that it was without authority to impose conditions of approval on the proposed feedlot and approved the application as proposed. This appeal followed.

FIRST ASSIGNMENT OF ERROR

A. Introduction

The first assignment of error actually poses several questions. First, is the proposed feedlot a "farm use," as that term is used in ORS 215.203? Second, is the proposed use a "commercial activit[y] in conjunction with farm use," as that term is used in ORS 215.283(2)(a). Finally, did the county erroneously conclude that it is without authority to impose conditions on the proposed use? After this brief introduction, we address each of those questions.

Under Statewide Planning Goal 3 (Agricultural Lands), counties are required to zone lands that fall within the Goal 3 definition of "Agricultural Lands" for exclusive farm use. ORS chapter 215 sets out a statutory exclusive farm use (EFU) zone. The subject property is zoned Exclusive Farm Use A-1, which is an EFU zone. Under ORS 215.203(1), "[l]and within [EFU] zones shall be used exclusively for farm use except as otherwise provided in ORS 215.213, 215.283, or 215.284."[1]

The ORS 215.203(1) mandate that lands in EFU zones must "be used exclusively for farm use" is subject to lengthy lists of exceptions at ORS 215.213 and 215.283. Jefferson County is subject to ORS 215.283. ORS 215.283(1) and (2) establish two lists of nonfarm uses—one is a list of nonfarm uses that the county *must* approve in EFU zones and the second is a list of uses the county *may* approve and, in approving such uses, may subject them to local land use standards. Under the Oregon Supreme Court's decision in *Brentmar v. Jackson County*, 321 Or 481, 496, 900 P2d 1030 (1995), the nonfarm uses that are listed

[1] ORS 215.203(2)(a) provides a lengthy definition of "farm use." The part of that definition that is relevant in this appeal is set out below:

> "As used in this section, 'farm use' means the current employment of land for the primary purpose of obtaining a profit in money by raising, harvesting and selling crops or *the feeding, breeding, management and sale of, or the produce of, livestock*, poultry, fur-bearing animals or honeybees or for dairying and the sale of dairy products or any other agricultural or horticultural use or animal husbandry or any combination thereof." (Emphasis added.)

under ORS 215.283(1) are "uses as of right" and counties may not adopt local land use regulations that go beyond any limitations that may be imposed in the statutes. On the other hand, counties are free to adopt and apply supplementary local land use regulation standards to the nonfarm uses that are listed under ORS 215.283(2), because ORS 215.296(10) specifically authorizes them to do so. *Brentmar*, 321 Or at 487-88. "Commercial activities that are in conjunction with farm use" are among the nonfarm uses listed under ORS 215.283(2). The Jefferson County Zoning Ordinance (JCZO) lists commercial activities in conjunction with farm use under "Conditional Uses Permitted." JCZO 301.1(B). Such nonfarm uses are subject to limitations in JCZO 301.1(C) and the general conditional use standards at JCZO Article 6.

The questions presented in this appeal are questions of statutory interpretation. Although petitioners sometimes seem to recognize the controlling nature of the relevant statutes, at other times they couch their arguments as though the questions involve interpretations of local law. Although counties adopt their own EFU zones, and they frequently deviate in minor ways from the EFU zone that is described in ORS chapter 215, the EFU zone is a creature of statute. In cases where a county's EFU zone deviates from the statutory EFU zone in ways that conflict with the statute, the statute controls. *Riggs v. Douglas County*, 167 Or App 1, 9-10, 1 P3d 1042 (2000). Accordingly, our review in this case is not dictated by ORS 197.829(1), under which we are required to grant appropriate deference to a local government's interpretation of its own land use legislation. Rather, our review in this case proceeds under ORS 197.835(9)(a)(D), and requires that we determine whether the county correctly interpreted the applicable statutes. *Collins v. Klamath County*, 148 Or App 515, 520, 941 P2d 559 (1997) (*citing Marquam Farms Corp. v. Multnomah County*, 147 Or App 368, 380, 936 P2d 990 (1997); *Forster v. Polk County*, 115 Or App 475, 478, 839 P2d 241 (1992) and *Leathers v. Marion County*, 144 Or App 123, 131, 925 P2d 148 (1996)).

B. Is the Proposed Use a Farm Use, as that Term is Defined by ORS 215.203?

Petitioners first argue that the county erred in concluding that the proposed feed lot is properly viewed as a farm use: Although the relevant part of the ORS 215.203(2)(a) definition is set forth at n 1 above, we repeat the relevant statutory text below before turning to the parties' arguments:

> "As used in this section, 'farm use' means the current employment of land for the primary purpose of obtaining a profit in money by raising, harvesting and selling crops or *the feeding, breeding, management and sale of, or the produce of, livestock*, poultry, fur-bearing animals or honeybees or for dairying and the sale of dairy products or any other agricultural or horticultural use or animal husbandry or any combination thereof." (Emphasis added.)

Petitioners' arguments in favor of their construction of the statute include the following:

> "A complete reading of ORS 215.203(2)(a) when considered with the entire statutory scheme relative to agriculture in the State demonstrates that farm use is a combination of activities, a process, not a singular activity such as feeding. By definition, farm use includes . . . 'the feeding, breeding, management and sale of, or the production of, livestock, . . . or any other agricultural or horticultural use or animal husbandry or any combination thereof * * *. The conjunctive 'and' when coupled with the language 'or the production of …livestock', 'animal husbandry', and 'or any combination thereof', describe the more holistic and comprehensive typical farm practices we commonly associate with agricultural uses.
>
> "For instance, a rancher may operate a cow/calf operation on a number of acres of EFU land that would appropriately support his operation without obtaining County or State land use approval, because he is engaged [in] the variety of cattle husbandry activities that are typical to that use, including the feeding, breeding, management and sale of cattle. Furthermore, it is typical for that same rancher to dry feed his cattle in what could be considered a livestock feedlot during a portion of the year when pasture and grazing land are not available, but that cow/calf operation use taken as a whole is clearly a farm use currently employed on his land and is not subject to land use approval.
>
> "In contrast, this application is for [a] calf yard/feed lot, which would fall under the [JCZO 105(B)] definition of 'livestock feed yard' * * *, which defines 'livestock feed yard' as '[A]n enclosure or structure designed or used for the purpose of concentrating feeding of livestock for commercial slaughter.' The proposed use expressly includes and is inextricably linked to

> uses at the adjoining livestock auction and sales yard consistent with this JCZO definition that links a feedlot to a commercial activity. The activity proposed under this application is limited to the storing and feeding of livestock. Normally, livestock must be confined by fenced pasture or pens of some kind, so that confining livestock is required to effective[ly] feed them, and the feeding of livestock is a singular activity. It is not the interrelated process of animal husbandry defined by ORS 215.203(2)(a) as 'the feeding, breeding, management and sale of livestock.' The feeding of livestock is not the production of livestock as feeding does not cause or induce the existence of livestock. *Moore v. Coos County*, [144 Or App 195, 925 P2d 927 (1996)]. The singular activity of feeding livestock is not a 'combination thereof'. Therefore, the proposed hay-feed calf yard/feedlot, with veterinary office, bathroom, office and storage area, and runoff drain pond, which, by the [applicant's] admission is a place to store and feed calves that have been brought into the auction for future sale and/or have been sold at the auction yard and will be fattened and resold at the auction yard constitutes only the feeding of livestock [and] is not a farm use as defined by ORS 215.203(2)(a)." Petition for Review 7-8 (underlining added by petitioner; citations omitted).

Summarizing the above, we understand petitioners to make a two-part argument. First, to qualify as a "farm use" under the part of ORS 215.203(2)(a) that reads "the feeding, breeding, management and sale of * * * livestock," all four activities must be present and it is undisputed that at least one of the required activities, breeding, is missing. Second, the proposal will only feed livestock and that is insufficient to constitute "the produce of * * * livestock," within the meaning of ORS 215.203(2)(a).

Next, citing *Best Buy in Town, Inc. v. Washington County*, 35 Or LUBA 446 (1999), petitioners also argue that the proposal does not fall within the part of the definition in ORS 215.203(2)(a) that requires that a farm use include a "current employment of land," because (1) much of the feed that will be used is to be produced off-site, (2) all of the calves that will be brought onto the subject property will come from off-site breeders and (3) all of the calves will be sold off-site. According to petitioners, the proposed feedlot might occupy the land, but it will not employ the land, and for that additional reason the proposal is not properly viewed as a farm use. We address below petitioners' last argument, before turning to their first two-part argument.

1. Employment of Land for the Primary Purpose of Obtaining a Profit in Money

Petitioner misreads our decision in *Best Buy in Town* to state a far more sweeping principle than is actually stated in that case, a case that involved a fairly unusual set of circumstances. Intervenor-Respondent 1000 Friends of Oregon offers the following argument to distinguish *Best Buy in Town* and explain why it does not apply in this case in the way that petitioner suggests it does:

> "[T]his feedlot provides the 'option to start in August/September with weanlings and then turn cattle out on the grass in April/May, unless the cows are going to California where they can be put on grass in January.' During this period, the cows will be fed and managed at the feedlot, and continue to grow and gain weight. Put simply, the cattle will not be the same when they arrive at the feedlot in the fall and when they leave the spring. In fact, this feeding process is quite similar to the 'on-ranch' feedlot described in Petitioners' Brief. As such, the present case is clearly distinguishable from *Best Buy in Town* * * *, which simply involved the storage of compost on EFU-zoned land. In that case, LUBA held that where 'all of the product is produced off-site and all of the product is sold off-site,' the land is not 'employed' and therefore such activities do not constitute a farm use. Here, however, the subject parcel is directly used for the feeding, management, and sale of cattle." Intervenor-Respondent 1000 Friends of Oregon's Brief 5.

We generally agree with 1000 Friends of Oregon. Far more is involved in the operation that is proposed in this case than was involved *Best Buy in Town*. In *Best Buy in Town*, off-site material was brought to the site, placed in a pile and allowed to compost, and then sold off-site. Here calves are brought to the site, fed with feed that is produced both on-site and off-site and cared for on-site. The waste that is produced by the cattle is collected and used on-site in conjunction with on-site hay production. The proposal clearly involves the "employment of land for the primary purpose of obtaining a profit in money."

2. The Produce of Livestock

For similar reasons, we reject petitioners' suggestion that the proposal will only feed livestock and that the activities proposed do not constitute "the produce of * * * livestock," within the meaning of ORS 215.203(2)(a).

a. *Moore v. Coos County*

We understand petitioners to cite *Moore* for a general proposition that merely feeding livestock does not constitute "the produce of * * * livestock." The appeal in *Moore* concerned an application for a non-farm dwelling to be located on a one-acre parcel that the applicant had to show was "generally unsuitable for the production of farm crops and livestock," under ORS 215.284(2)(b). The permit opponents offered the following argument to show the one-acre was generally suitable for the production of livestock:

> "Although there was abundant evidence that the [one-acre] parcel itself was unsuitable for farm use, [the permit opponents] argued to the county that they were 'willing' to use [the applicant's] property as an adjunct of their neighboring boarding stable, where they board and pasture horses and provide for recreational riding. Hence, they reasoned, the property could be used 'for the production of * * * livestock,' within the meaning of ORS 215.284(2) and OAR 660-33-030(4)(c), and therefore was not 'generally unsuitable.' The county disagreed, *inter alia*, with [the opponents'] understanding that their boarding and related operations constituted the *production* of horses." 144 Or App at 197 (emphasis in original).

LUBA disagreed with the county and remanded based on the following reasoning:

> "'[T]he county erred when it concluded that consideration of the potential use of the subject property for grazing horses in conjunction with the adjacent equine operation is not required because that operation does not produce farm crops or livestock. An operation that requires land for grazing horses employs that land 'for the production of * * * livestock' as that phrase is used in ORS 215.284(2)(b). Because [opponents] raised below their willingness to use the property for grazing horses in conjunction with their equine operation, and because such activities are an aspect of the production of livestock, the county must evaluate the possible use of the subject property for grazing horses applying the general unsuitability test.'" 144 Or App at 200.

The Court of Appeals rejected LUBA's reasoning:

> "We disagree with that reasoning. 'Grazing' is a component of virtually all operations involving live horses and not just of production operations. Where no other indices of production are present, grazing alone does not demonstrate or establish the existence of a livestock production operation. For the reasons we have noted, *no other indices of production* are present in the boarding stable operation to which respondents propose to add petitioners' property as a grazing site. We hold that the potential use of petitioners' property that respondents propose is not for livestock production and that the county

> correctly concluded that the use therefore does not enter the general unsuitability calculus under ORS 215.284. * * *" *Id.* (Emphasis added.)

Moore concerned the meaning of the ORS 215.284(2)(d) requirement that a nonfarm dwelling must be sited on land "that is generally unsuitable for the production of * * * livestock." *Moore* did not concern the statutory definition of "farm use" at ORS 215.203(2)(a). Nevertheless, the language in the two statutes is similar. *Moore* lends some indirect support for the proposition that feeding livestock in pens, like grazing, may not constitute "the produce of * * * livestock," within the meaning of ORS 215.203(2)(a), where there are "no other indices of production." For purposes of this opinion, we will assume that is the case. However, as explained below, the proposal here is far different than a proposal to use one acre for grazing horses that are housed at an adjoining boarding stable.

b. Separate Meanings for "Feeding, Breeding, Management and Sale of Livestock" and "the Produce of Livestock"

We have already concluded that the proposal satisfies the requirement of ORS 215.203(2)(a) that it constitute the "employment of land for the primary purpose of obtaining a profit in money." *See* n 1. The only remaining question is whether the proposal will engage in one or more of the activities the legislature specifies in ORS 215.203(2)(a): (1) raising, harvesting and selling crops, (2) the feeding, breeding, management and sale of, or the produce of, livestock, poultry, fur-bearing animals or honeybees, (3) dairying and the sale of dairy products or (4) any other agricultural or horticultural use or animal husbandry or any combination thereof.

The fourth of the above activities is general and, if interpreted broadly, potentially renders the more specific activities listed in 1 through 3 unnecessary. If "agricultural * * * use" and "animal husbandry" were interpreted broadly, and without reference to the remaining part of ORS 215.203(2)(a), it is hard to imagine how the proposal could possibly

fail to qualify as a farm use.[2] Intervenors-Respondent Oregon Department of Agriculture (ODA) and Department of Land Conservation and Development (DLCD) argue against such an interpretation:

> "Under the rule of construction of *ejusdem generis*, where general words follow specific words in a statutory enumeration, the general words are construed to embrace only objects similar in nature to those objects enumerated by the preceding specific words. Sutherland, Statutory Construction, section 47:17 (sixth ed. 2000 revision), *Dearborn v. Real Estate Agency*, 334 Or 493, 53 P3d 436 (2002) (applying rule of construction at the text and context level of analysis); *King Estate Winery, Inc. v. Department of Revenue*, 329 Or 414, 988 P2d 369 (1999) (construing similar languge of ORS 307.400(3)). Thus ODA and DLCD agree that the last portion of the first sentence of ORS 215.203(2)(a) – the phrase 'any other agricultural or horticultural use or animal husbandry or any combination thereof' should not be read to expand the meaning of the term farm use beyond the more specific types of activities listed in the preceding clauses of the first sentence of ORS 215.203(2)(a)." Intervenors-Respondent ODA and DLCD's Brief 10.

For purposes of this opinion, we will assume that ODA's and DLCD's construction of the final phrase in the first sentence of ORS 215.203(2)(a) is correct.

Turning to the second of the activities listed by the legislature, the produce of livestock, ODA and DLCD argue for the following interpretation:

> "* * * ODA and DLCD do not agree that a farm use involving livestock must consist of all four of the specific types of activities listed, namely: feeding, breeding, management and sale. The problem with such a reading of ORS 215.203(2)(a) is that within this clause, the legislature again used a form of construction containing a list of specific activities, followed by a general 'catch-all' description of the type of activity intended to be allowed as a farm use: namely 'the produce of * * * [in this case] livestock * * *.' The ordinary meaning of the activity 'produce' in this context is 'to give being, form or shape to : to make often from raw materials : manufacture * * * b : to make something economically valuable * * * : bring in as profit * * * : bear, make, or yield that which is according to nature or intention : grow, make or furnish economically valuable products. *Webster's Third International Dictionary*, at 1810. By inserting the general term 'or the produce of' following the list of

[2] We understand intervenor-respondent 1000 Friends of Oregon to argue for such a broad construction of the final phrase of the first sentence of ORS 215.203(2)(a). Intervenor-Respondent 1000 Friends of Oregon's Brief 7.

> specific activities that may constitute farm use in the context of livestock, the legislature was simply providing that any particular activity that falls within the category of activities that is defined both by the list (feeding, breeding, management and sale) and the general descriptor (or the produce of) is a farm use. * * *" Intervenors-Respondent ODA and DLCD's Brief 10-11.

We generally agree with ODA's and DLCD's reading of the statute. Although the legislature may not have thought of the question in precisely this way, it seems obvious that a livestock operation that includes "feeding, breeding, management and sale of livestock" will always, by that fact alone, necessarily constitute "the production of * * * livestock." For such a livestock operation, the reference to "or the produce of * * * livestock" adds nothing. Presumably the legislature intended the reference to "or the produce of * * * livestock" to mean something. In this case, the record shows that the proposed use will include feeding, management and the sale of livestock. To the extent petitioners argue that a livestock operation that includes three of the four activities specified by ORS 215.203(2)(a)—but does not include on-site breeding of the livestock—cannot constitute a farm use under ORS 215.203(2)(a), we reject the argument. Rather, a livestock operation that does not include all four of the listed activities may still qualify as a farm use under ORS 215.203(2)(a), provided the operation nevertheless constitutes "the produce of * * * livestock."

The Court of Appeals' decision in *Moore v. Coos County* probably provides a pretty good example of a potential livestock operation with fewer than all four statutory attributes that does *not* constitute "the produce of livestock." The Court of Appeals concluded that feeding a few horses that are boarded in a nearby boarding stable and ridden recreationally would not constitute "the production of livestock" on the one-acre property where those horses would be fed. As we have already pointed out, the proposed use in this case is quite different. Approximately 2,500 calves will be fed on approximately 30 acres of the property. Those calves will be cared for, and their waste will be recovered and reused on-site for irrigation and fertilization. If petitioners believe these activities do not constitute

"management," they do not explain why. Therefore, unlike the proposal in *Moore* that would have only involved feeding, the proposal here involves feeding and management.

Just as importantly, the actions that will be taken under the proposal here will be taken collectively to produce larger calves so that they can then be sold at a higher price. Under any reasonable construction of "the produce of * * * livestock," the proposal constitutes the produce of livestock. We recognize that our construction of ORS 215.203(2)(a) necessitates a certain amount of line drawing to distinguish livestock operations where there are too few indicia of livestock production to qualify as a farm use. However, the more stringent construction of ORS 215.203(2)(a) that petitioners would apply fails to give effect to some of the words that the legislature inserted and could have the effect of making many livestock operations something other than a farm use—notwithstanding that they contribute substantially to the produce of livestock—simply because they do not do so from conception to sale. Even without the statutory language that belies any such legislative intent, we find it difficult to believe the legislature could have intended that result.

C. Is the Proposed Use a Commercial Activity in Conjunction with Farm Use, as that Term is Used in ORS 215.283(2)(a)?

Our resolution of the question of whether the proposal qualifies as a farm use largely disposes of petitioners' contention that the county should have treated the proposal as a commercial activity in conjunction with farm use. Much of petitioners' argument under this subassignment of error is based on provisions in the JCZO, some of which have been repealed. As we explained earlier in this opinion, the statutes control the question of whether the proposal is properly viewed as a farm use or a commercial activity in conjunction with farm use.

The current state of the definition of "farm use" at ORS 215.203(2)(a) and the legislature's failure to supply a definition for the concept of "commercial activities that are in conjunction with farm use" leaves the dividing line between some farm uses and commercial activities that are in conjunction with farm use admittedly difficult to draw in particular cases.

Nevertheless, for the reasons set out above, we believe the line in this case is appropriately drawn in a location that leaves the proposed use among farm uses, as that term is defined at ORS 215.203(2)(a).

Both LUBA and the Court of Appeals have recognized that where a regulation specifically authorizes a use in one zone and does not authorize that specific use in second zone, a more general authorization of uses in the second zone should generally not be interpreted to include the more specifically authorized use in the first zones. *Linn County v. Hickey*, 98 Or App 100, 102, 778 P2d 509 (1989); *Clatsop County v. Morgan*, 19 Or App 173, 178, 526 P2d 1393 (1974), *Roth v. Jackson County*, 40 Or LUBA 531, 535 (2001). We have applied that principle in a case where the relevant question was whether a use was accurately characterized as "animal husbandry," and therefore a farm use as defined by ORS 215.203(2)(a), or as a kennel, which is specifically allowed by ORS 215.283(2)(n). *Tri-River Investment Co. v. Clatsop County*, 37 Or LUBA 195, 198-206 (1999).[3]

However, the legislature's authorization of "commercial activities that are in conjunction with farm use" is no more specific than the legislature's authorization of "farm uses." The legislature made some attempt to define the scope of "farm use," whereas it made no attempt to define the scope of "commercial activities that are in conjunction with farm uses." Our task in this appeal is to determine which of those two general categories of uses the proposal falls within. We have already concluded that the proposal is for a farm use. We reject petitioners' argument that it is properly viewed as a commercial activity in conjunction with farm use.

[3] At the time of our decision in *Tri-River Investment Co. v. Clatsop County*, the statutory authorization for kennels was codified at ORS 215.283(2)(m).

D. Did the County Err in Concluding that it Does not Have Authority to Impose Conditions of Approval on Farm Use?

In its decision, the county adopted the following findings to explain why it believed it lacked authority to impose conditions of approval on the proposed feedlot:

> "1. The key definition of farm use applicable to this case is that contained in ORS 215.203(2)(a). That definition provides that farm use includes 'the feeding, breeding, management and sale of, or the produce of, livestock', and that the feedlot proposed by the applicant meets that statutory definition.
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> "2. The proposed feedlot is not a commercial activity in conjunction with farm use under ORS 215.283(2), and is therefore not subject to the imposition of conditions by the County as a conditional use in a farm zone.
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> "3. Although JCZO Section 301 – Exclusive Farm Use A-1 does not specifically define uses enumerated in ORS 215.203 as uses permitted outright, it does imply that the EFU A-1 zone is defined parenthetically as the uses specified therein, and continues under subsections A. & B. to distinguish between uses permitted outright under ORS 215.283(1) [uses which are not farm uses but which nevertheless by statutory definition are permitted outright], and ORS 215.283(2) [uses which a county may conditionally permit in an EFU zone]. The Board specifically finds that if the nonfarm uses enumerated in ORS 215.283(1) are permitted outright, then certainly in Jefferson County, the farm uses specified in ORS 215.203 are interpreted to be permitted outright.
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> "4. The commercial nature of any farm use that meets the definition of ORS 215.203 does not defeat its right to be considered a use permitted outright under either that statute or the Jefferson County Zoning Ordinance.
>
> "5. The public health, safety and welfare considerations under ORS 215.253, and the farming practices definitions contained in ORS 30.930, are not relevant once the proposed use is found to come under the statutory definition of ORS 215.203, as such a use is permitted outright, and the County therefore lacks the authority to condition the use." Record 5-7.

Turning to the county's fifth finding first, the county misreads ORS 215.253.[4] ORS 215.253(1) does impose a general prohibition on county regulation of farm uses and farming practices, but it provides an exception to that prohibition where "conditions from [farming] practices * * * extend into an adopted urban growth boundary in such manner as to interfere with the lands within the urban growth boundary." Although the scope of the express reservation of county power "to protect the health safety and welfare of [its] citizens" in ORS 215.253(2) is not clear, it also is a potential source of authority for counties to regulate farm uses and farm practices. However, the county's apparent misunderstanding that ORS 215.253 imposed an absolute bar on county regulation of farm uses provides no basis for reversal or remand. While ORS 215.253(1) leaves the county limited authority to adopt local regulations affecting farm uses and farming practices, petitioners do not argue that the county has adopted such regulations.[5] Whatever existing authority the county may retain to "protect the health, safety and welfare of [its] citizens" under ORS 215.253(2), petitioners do not explain why the county is compelled to assert that authority to impose conditions on the proposal to protect health, safety and welfare or how the county's refusal to do so in this case

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[4] ORS 215.253 provides

> "(1) No state agency, city, county or political subdivision of this state may exercise any of its powers to enact local laws or ordinances or impose restrictions or regulations affecting any farm use land situated within an exclusive farm use zone established under ORS 215.203 or within an area designated as marginal land under ORS 197.247 (1991 Edition) in a manner that would restrict or regulate farm structures or that would restrict or regulate farming practices *if conditions from such practices do not extend into an adopted urban growth boundary in such manner as to interfere with the lands within the urban growth boundary*. 'Farming practice' as used in this subsection shall have the meaning set out in ORS 30.930.
>
> "(2) Nothing in this section is intended to limit or restrict the lawful exercise by any state agency, city, county or political subdivision of its power *to protect the health, safety and welfare of the citizens of this state*." (Emphases added).

[5] The only such local regulations that petitioners identify are the conditional use standards that apply to conditional uses, like commercial activities in conjunction with farm use. We have already concluded that the county correctly determined that the proposal is a farm use rather than a commercial activity in conjunction with farm use. Petitioners identify no other arguably applicable local legislation that would authorize applying conditions of approval to the proposed feedlot.

fails to protect health, safety and welfare or provides a basis for reversal or remand in this case.

For similar reasons, even if the county is mistaken about whether the statutory limits on its authority to regulate the nonfarm uses listed at ORS 215.283(1) also apply to limit its authority to regulate farm uses, that mistake on the county's part would provide no basis for reversal or remand in this case. All parties recognize that the Supreme Court's decision in *Brentmar* distinguished between the long lists of nonfarm uses at ORS 215.213(1) and ORS 215.283(1), which the Supreme Court concluded counties must allow "as of right" and the long lists of nonfarm uses at ORS 215.213(2) and 215.283(2), which the Supreme Court concluded counties may subject to additional, locally-adopted standards to "supplement those found in ORS 215.213(2) and 215.283(2)."[6] 321 Or at 496. While there is some logic to the county's third finding quoted above, neither *Brentmar* nor subsequent decisions have extended the "as of right" status that the court found for nonfarm uses under ORS 215.213(1) and ORS 215.283(1) to farm uses. *Collins v. Klamath County*, 148 Or App at 520-21; *Lindquist v. Clackamas County*, 146 Or App 7, 13-14, 932 P2d 1190 (1997). The statutory command in ORS 215.203(1) that EFU zones "shall be used exclusively for farm use except as otherwise provided in ORS 215.213, 215.283 and 215.284" may well provide a contextual basis for a conclusion like the one the county reaches in its third finding.[7] However, in this case it is not necessary to reach that question. Again, while the county may misunderstand the breadth of existing statutory restrictions on its authority to adopt local land use standards that apply to farm uses and farming practices, petitioners do not identify any such existing

[6] As we noted in *Shadrin v. Clackamas County*, 34 Or LUBA 154, 159 (1998), the general prohibition on adoption of supplementary local regulations affecting ORS 215.283(1) uses under *Brentmar* does not apply where ORS 215.283(1) itself, and related statutes, expressly permit supplementary local regulations.

[7] Intervenor-Respondent 1000 Friends of Oregon presents such a contextual argument. Intervenor-Respondent 1000 Friends of Oregon's Brief 9-10.

local land use standards. Accordingly, petitioners' arguments under this subassignment of error provide no basis for reversal or remand.

The first assignment of error is denied.

SECOND ASSIGNMENT OF ERROR

Petitioner argues the county's findings are inadequate. Because the questions presented in this case are questions of statutory construction and the relevant facts are either undisputed or where they are in dispute they are not crucial to our decision, any inadequacy in the county's findings provides no basis for reversal or remand.

The second assignment of error is denied.

The county's decision is affirmed.