BEFORE THE LAND USE BOARD OF APPEALS

OF THE STATE OF OREGON

OREGON COAST ALLIANCE,
Petitioner,

vs.

CURRY COUNTY,
Respondent,

and

ELK RIVER PROPERTY
DEVELOPMENT LLC,
Intervenor-Respondent.

LUBA No. 2018-021

FINAL OPINION
AND ORDER

Appeal from Curry County.

Sean T. Malone, Eugene, filed the petition for review and argued on behalf of petitioner.

John R. Huttl, Curry County Counsel, Gold Beach, filed a response brief and argued on behalf of respondent.

Bill Kloos, Eugene, filed a response brief and argued on behalf of intervenor-respondent. With him on the brief was the Law Office of Bill Kloos, PC.

BASSHAM, Board Member; RYAN, Board Chair; ZAMUDIO, Board Member, participated in the decision.

AFFIRMED 08/14/2018

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 a decision approving a pipeline carrying reclaimed city wastewater to a golf course for irrigation.

FACTS

In 2015, the county approved a conditional use permit (CUP) to construct a golf course on a portion of the Knapp Ranch, located on agricultural land near the City of Port Orford. On appeal, LUBA ultimately affirmed the county's decision to approve the golf course. *ORCA v. Curry County*, 71 Or LUBA 297 (2015). To irrigate the golf course, the applicant, intervenor-respondent Elk River Property Development LLC (intervenor), proposed to use water from a combination of groundwater and surface water sources. For various reasons, including petitioner's opposition to intervenor's applications for state agency permits to obtain rights to groundwater and surface water sources, intervenor eventually decided to irrigate the golf course using reclaimed wastewater from the City of Port Orford.

Intervenor proposes to construct a pipeline from city facilities, along several public rights-of-way and across private property, to the subject golf course site, including on-site construction of a storage reservoir and associated facilities. Intervenor obtained city approval for the pipeline, and initiated a permit process before the Oregon Department of Environmental Quality (DEQ) pursuant to ORS 215.246, discussed below. Intervenor then filed the subject

application with the county, seeking county land use approval of the pipeline. The county planning commission conducted public hearings on the proposal. As discussed below, ORS 215.246(3) requires the applicant to explain in writing how alternatives identified in public comments are considered and, if not used, explain the reasons for not using the alternative. Intervenor identified preferred and alternative routes for the pipeline. Petitioner proposed two other alternative pipeline routes, which intervenor considered and rejected in writing. Petitioner also suggested that intervenor should go back to the original proposal to obtain irrigation from groundwater and surface water sources, or simply not use any irrigation water at all for the golf course. Among the issues in the present appeal is whether intervenors were required to respond to these suggestions and, if so, whether intervenor did in fact respond.

The planning commission denied the application, in part because the planning commission concluded the CUP for the golf course had expired, and the planning commission believed that the county could not approve the pipeline application until DEQ had issued its permit.

Intervenor appealed the planning commission decision to the county board of commissioners. After conducting a *de novo* hearing on the appeal, the commissioners approved the application, after concluding that the CUP had not expired, and that the county could issue its approval prior to issuance of the DEQ permit. This appeal followed.

FIRST ASSIGNMENT OF ERROR

ORS 215.283(1) lists a number of uses that may be established in areas zoned for exclusive farm use (EFU), including ORS 215.283(1)(v), which provides in relevant part for the "land application of reclaimed water * * * for irrigation in connection with a use allowed in an EFU zone under this chapter."[1] Approval under ORS 215.283(1)(v) is subject to, among other things, standards set out in ORS 215.246.

ORS 215.246, which was adopted in 2001 as part of the same legislation that adopted ORS 215.283(1)(v), provides in subsection (3) that the applicant must "explain in writing how alternatives identified in public comments on the land use decision were considered and, if the alternatives are not used, explain in writing the reasons for not using the alternatives."[2]

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[1] ORS 215.283(1)(v) provides, in relevant part:

> "Subject to the issuance of a license, permit or other approval by the [DEQ] under ORS 454.695, 459.205, 468B.050, 468B.053 or 468B.055, or in compliance with rules adopted under ORS 468B.095, and as provided in ORS 215.246 to 215.251, the land application of reclaimed water, agricultural or industrial process water or biosolids, or the onsite treatment of septage prior to the land application of biosolids, for agricultural, horticultural or silvicultural production, or for irrigation in connection with a use allowed in an [EFU] zone under this chapter. * * *"

[2] ORS 215.246 provides, as relevant:

> "(1) The uses allowed under ORS 215.213 (1)(y) and 215.283 (1)(v):

"(a) Require a determination by [DEQ], in conjunction with the department's review of a license, permit or approval, that the application rates and site management practices for the land application of reclaimed water, agricultural or industrial process water or biosolids ensure continued agricultural, horticultural or silvicultural production and do not reduce the productivity of the tract.

"(b) Are not subject to other provisions of ORS 215.213 or 215.283 or to the provisions of ORS 215.274, 215.275 or 215.296.

"* * * * *

"(3) When a state agency or a local government makes a land use decision relating to the land application of reclaimed water, agricultural or industrial process water or biosolids under a license, permit or approval by [DEQ], the applicant shall explain in writing how alternatives identified in public comments on the land use decision were considered and, if the alternatives are not used, explain in writing the reasons for not using the alternatives. The applicant must consider only those alternatives that are identified with sufficient specificity to afford the applicant an adequate opportunity to consider the alternatives. A land use decision relating to the land application of reclaimed water, agricultural or industrial process water or biosolids may not be reversed or remanded under this subsection unless the applicant failed to consider identified alternatives or to explain in writing the reasons for not using the alternatives.

"(4) The uses allowed under this section include:

"(a) The treatment of reclaimed water, agricultural or industrial process water or biosolids that occurs as a result of the land application;

As noted, intervenor addressed in writing the two alternative pipeline routes that petitioner suggested, and on appeal petitioner does not advance any claims of error regarding those alternatives. However, petitioner argues that the applicant and county erred in apparently believing that the scope of "alternatives identified in public comments" under ORS 215.246(3) is limited to alternative *routes* for transporting reclaimed wastewater to the site. According to petitioner, ORS 215.246(3) refers only to "alternatives" and does not limit the scope of alternatives to transportation routes. Petitioner argues

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> "(b) The establishment and use of facilities, including buildings, equipment, aerated and nonaerated water impoundments, pumps and other irrigation equipment, that are accessory to and reasonably necessary for the land application to occur on the subject tract;
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> "(c) The establishment and use of facilities, including buildings and equipment, that are not on the tract on which the land application occurs for the transport of reclaimed water, agricultural or industrial process water or biosolids to the tract on which the land application occurs if the facilities are located within:
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> "(A) A public right of way; or
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> "(B) Other land if the landowner provides written consent and the owner of the facility complies with ORS 215.275 (4); and
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> "(d) The transport by vehicle of reclaimed water or agricultural or industrial process water to a tract on which the water will be applied to land."

that contextual support for its interpretation that the scope of alternatives is not limited to alternative transportation routes is found in the ORS 215.246(3) requirement that the applicant consider suggested alternatives with respect to "agricultural * * * process water," which might well be produced *and* applied to land on the same farm property, without being transported at all from one site to another. Petitioner contends that the scope of alternatives for purposes of ORS 215.246(3) is broad enough to include alternative *sources* and *methods* for obtaining the desired irrigation or fertilization.

The county rejected that interpretation in its findings:

> "The applicant has met its burden to address alternative routings for the facilities. Its application showed a preferred and alternative route for the facilities. The applicant also has addressed other alternative routings that were suggested by opponents of the proposal. Nothing more is required of the applicant to be entitled to an approval of its application." Record 8.

On appeal, intervenor responds that the text and context of ORS 215.246 indicate that the legislature intended to limit the scope of "alternatives" to alternative *means* and *routes* of transporting reclaimed wastewater, agricultural or industrial process water, or biosolids to the application site. First, intervenor notes that the legislature chose to make the land application of reclaimed wastewater a use under ORS 215.283(1), meaning that it is a use that may be established on land zoned for exclusive farm use as a permitted use, free of supplemental county regulation. *See Brentmar v. Jackson County*, 321 Or 481, 496-97, 900 P2d 1030 (1995) (discussing the difference between ORS

215.283(1) and (2) uses).[3] Had the legislature intended to impose more rigorous or discretionary requirements on applicants seeking to apply wastewater on farm land, intervenor argues, the legislature would have chosen to categorize that use as a use under ORS 215.283(2), which would be subject to additional and more discretionary standards.

Second, intervenor notes that ORS 215.246(4) describes the "uses allowed under this section" to include the (1) post-application treatment, (2) on-site facilities necessary for the land application, (3) off-site facilities for the transportation of reclaimed wastewater, and (4) the transportation by vehicle of reclaimed wastewater, etc. *See* n 2. Each of these identified elements, intervenor argues, concerns equipment, facilities and transportation methods for wastewater, process water or biosolids, and none of them concern *sources*

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[3] Two categories of uses in the EFU zone are set out at ORS 215.213(1) and 215.283(1) (hereafter subsection (1) uses) and ORS 215.213(2) and 215.283(2) (hereafter subsection (2) uses). The Oregon Supreme Court has drawn a distinction between subsection (1) and subsection (2) uses. The court described subsection (1) uses as uses that are allowed by right, which may not be subject to additional local criteria. *Brentmar*, 321 Or at 496. But subsection (2) uses may be subject to additional local criteria and are subject to additional statutory criteria as well. In a subsequent decision, the court further clarified that the prohibition against applying additional local government criteria to subsection (1) uses did not apply to the Oregon Land Conservation and Development Commission (LCDC). *Lane County v. LCDC*, 325 Or 569, 583, 942 P2d 278 (1997). LCDC is therefore free to enact administrative rules that regulate both subsection (1) and (2) uses more stringently than the EFU statutes, even if the rules "have the effect of prohibiting uses otherwise permissible under the applicable statue." *Id.*

of water or fertilizer. Given this context, intervenor argues, the most reasonable conclusion is that the legislature intended to similarly limit the scope of alternatives that must be considered under ORS 215.246(3) to alternative equipment, facilities, or transportation routes or methods that might be suggested in public comments.

Finally, even if ORS 215.246(3) is understood to require the applicant to consider and explain why it does not choose to use alternative sources of water for irrigation, intervenor argues that in fact intervenor adequately considered and addressed the alternatives suggested by petitioner. With respect to petitioner's suggestion that no irrigation at all be used, intervenor notes that it submitted a letter explaining that such a proposal was not feasible because irrigation was necessary to establish native grasses and to prevent the land from being reclaimed with invasive gorse. Record 625.

With respect to petitioner's suggestion to return to intervenor's original proposal to use water from new groundwater sources or from transferred surface water rights, intervenor argues that there is no possible dispute that intervenor considered those sources. There is also no possible dispute that intervenor revised that original proposal in favor of using reclaimed wastewater, given the clear advantages of the latter source. Intervenor notes that the findings relate:

> "After LUBA affirmed the county [CUP] approval, the developer determined that reclaimed wastewater from the Port Orford treatment facility could be used to irrigate the golf course. Using

> reclaimed water would support the golf course, benefit the City, and reduce the impact on groundwater resources." Record 7.

In addition to reducing the impact on groundwater resources, intervenor argues that its submittals describe other advantages of using reclaimed wastewater. Record 177 (describing the environmental benefits of using reclaimed wastewater for irrigation, which provides additional treatment and avoids discharge into the "fragile marine environment"). Further, intervenor submitted into the record the county's findings in support of the CUP approval for the golf course, which describes the difficulties of obtaining transferred water rights, among them that petitioner is actively contesting the proposed transfer. Record 244.

We assume for purposes of this opinion that petitioner is correct that the scope of "alternatives" under ORS 215.246(3) is broad enough to include alternative *sources* for irrigation water, such as new groundwater wells, or transferred surface water rights.[4] But even with that assumption, intervenor is correct that the burden of consideration and explanation under ORS 215.246(3) is not particularly onerous. The applicant's choice to use reclaimed wastewater for irrigation is not subject to any substantive standard before the county, and

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[4] The parties do not cite or supply any relevant legislative history regarding the intended scope of alternatives as used in ORS 215.246(3), which was adopted, along with ORS 215.283(1)(v), in 2001 as part of Senate Bill (SB) 212. Our limited review of the minutes of the legislative proceedings on SB 212 did not identify any useful indications of legislative intent regarding the scope of alternatives that must be considered under ORS 215.246(3).

the county is not required to adopt any findings approving that choice. The last sentence of ORS 215.246(3) makes clear that the county's role, indeed LUBA's review itself, is confined to ensuring that the applicant (1) considered in writing any sufficiently-identified alternatives, and (2) explained in writing the reasons for not using them. *See* n 2.

In our view, the applicant's burden under ORS 215.246(3) is even less onerous where, as here, the proposed land application of wastewater replaces an earlier county-approved proposal to obtain irrigation water from new groundwater wells or transfer of surface water rights, and in public comments a party suggests that the applicant simply return to that original proposal. In such circumstances, the applicant has already considered that original proposal, and indeed has presented that option in a public proceeding to gain county approval of the underlying land use, as well as initiated state agency proceedings to obtain the necessary state agency approvals. It is also abundantly clear in such circumstances that the applicant no longer wishes to obtain irrigation water from groundwater or surface water sources, but instead wishes to obtain irrigation water from reclaimed wastewater. If the record includes some written explanation for that choice, then we do not see that ORS 215.246(3) requires more.

In the present case, we agree with intervenor that the record includes written explanations for intervenor's clear preference for obtaining irrigation water from wastewater over the original proposal for using groundwater or

surface water sources. The record demonstrates that intervenor believed that land application of wastewater would be beneficial for the golf course, for the city, and for the environment, and that it was a superior choice to either groundwater or surface water, in part because it reduces impacts on groundwater resources and avoids the complications of obtaining state agency permission to transfer surface water rights to a different use. Further, as intervenor notes, intervenor explained why petitioner's suggestion to use no irrigation water at all was not a feasible alternative. Given that virtually any written explanation would suffice under the very limited obligation imposed by ORS 215.246(3) in the present circumstances, and our very limited scope of review over the performance of that obligation, petitioner has not demonstrated that the county erred in concluding that ORS 215.246(3) was satisfied.

The first assignment of error is denied.

SECOND ASSIGNMENT OF ERROR

As noted, ORS 215.246(1)(a) requires that the applicant under ORS 215.283(1)(v) obtain "a determination by [DEQ], in conjunction with the department's review of a license, permit or approval, that the application rates and site management practices for the land application of reclaimed water * * * ensure continued agricultural, horticultural or silvicultural production and do not reduce the productivity of the tract." *See* n 2. In its final decision, the county imposed a condition requiring intervenor to receive DEQ approval prior to construction of the pipeline.

On appeal, petitioner argues that the condition of approval the county imposed is insufficient. Petitioner contends that the county is required to adopt findings that it is "feasible" for intervenor to satisfy DEQ that application rates and site management practices will ensure continued agricultural production and do not reduce the productivity of the tract. Relatedly, petitioner argues that the county erred in failing to impose a condition requiring further public hearings on compliance with ORS 215.246(1)(a).

However, the cases petitioner cites for those propositions all involve compliance with local government land use approval standards.[5] ORS 215.246(1)(a) is not a land use standard at all, or even a standard that is directed at a local government. Instead, it provides a standard that is directed solely at DEQ, to be applied as part of a DEQ permit process. Petitioner has not cited any authority requiring the county to adopt findings, impose any particular conditions, or conduct any particular proceedings, regarding the feasibility of satisfying the statutory standard that DEQ will address as part of its permit process.

The second assignment of error is denied.

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[5] Petitioner cites *Meyer v. City of Portland*, 7 Or LUBA 184 (1983), *aff'd* 67 Or App 274 (1984), *Rhyne v. Multnomah County*, 23 Or LUBA 442 (1992), *Gillette v. Lane County*, 52 Or LUBA 1 (2006), and *Gould v. Deschutes County*, 216 Or App 150, 171 P3d 1017 (2007).

THIRD ASSIGNMENT OF ERROR

As noted, ORS 215.283(1)(v) authorizes the county to approve the proposed land application of reclaimed water, "[s]ubject to the issuance of a license, permit, or other approval by [DEQ.]" *See* n 1. Petitioner contends that the phrase "subject to" indicates that DEQ approval must be in place before the county approves the proposal, and therefore the county erred in approving the pipeline subject only to a condition of approval requiring intervenor to obtain the DEQ permit prior to construction.

According to petitioner, the text of ORS 215.246 supports this reading of ORS 215.283(1)(v), in providing that

> "[w]hen a state agency or a local government makes a land use decision relating to the land application of reclaimed water, agricultural or industrial process water or biosolids *under a license, permit or approval* by [DEQ], the applicant shall explain in writing * * *." *See* n 2 (emphasis added).

Petitioner argues that the phrase "under a license, permit or approval" suggests that the DEQ approval must precede the county approval.

The county rejected petitioner's argument in its findings, noting that under the relevant statutes the county process requires consideration of alternatives suggested in public comments, which suggests that the county process must precede the DEQ permit process. The findings also cite to an e-mail from a DEQ Water Quality Permitting Manager, taking the position that the county process must precede the DEQ approval. Record 17.

On appeal, petitioner faults the county findings for failing to address the text of the relevant statutes, particularly the "subject to" and "under" language petitioner cites. Petitioner also objects to language in the findings suggesting that the applicant must explain to DEQ what alternatives were considered during the county process, as support for the conclusion that the county process must precede the DEQ process. On the contrary, petitioner argues, the statutes and DEQ rules require no such explanation to DEQ, and in fact the consideration and explanation of alternatives is confined to the county process. Finally, petitioner argues that the e-mail from DEQ staff does not address the text of the statutes or explain the basis for DEQ staff's position that the county process may precede the DEQ permit.

Intervenor argues, and we agree, that petitioner has not demonstrated that ORS 215.283(1)(v) or ORS 215.246(3) require that the DEQ permit be in hand before county approval. The phrases "subject to" and "under" certainly indicate that DEQ approval is necessary for the county approval to be effective, but do not state or necessarily imply that DEQ approval must precede the county approval. Further, as petitioner acknowledges, under ORS 215.246(3) the requirement to consider alternatives is limited to the county process, and nothing in the statutes requires consideration or explanation of alternatives as part of the DEQ process. If anything, the language of ORS 215.246(3) suggests an intent for the county process to precede the DEQ process.

Finally, as intervenor notes, the record includes a DEQ publication regarding implementation of SB 212, the legislation that adopted ORS 215.283(1)(v) and 215.246, which describes DEQ's understanding of the appropriate procedures required under those statutes. Record 287-88. The publication describes a typical and familiar process followed under most state agency coordination programs, in circumstances where both a state agency permit and local government land use review are required: (1) the applicant obtains from DEQ a land use compatibility statement (LUCS) form, and submits that form to the county for review; (2) the county completes the LUCS form and issues whatever county decision is required, after conducting the appropriate county process, and (3) the applicant then submits the DEQ permit application and completed LUCS form (or equivalent county decision) to DEQ, which then conducts the DEQ permit process and approves or denies the DEQ permit based on whatever DEQ standards and rules apply. The applicant and the county followed that process in the present case. Petitioner does not identify anything in ORS 215.283(1)(v) or ORS 215.246 demonstrating a legislative intent to require DEQ and counties to depart from that commonplace sequence in approving proposals for the land application of wastewater. *See Crocker v. Jefferson County*, 60 Or LUBA 317, 322, *aff'd* 235 Or App 188, 230 P3d 999 (2010) (a county may approve a CUP for a solid waste disposal facility, conditioned upon obtaining a DEQ permit before the use is established,

where nothing in the applicable statutes requires that the DEQ permit precede county approval).

The third assignment of error is denied.

FOURTH ASSIGNMENT OF ERROR

As explained, the proposed land application of reclaimed wastewater is intended to irrigate a golf course that the county approved in 2015. The county's CUP for the golf course included Condition of Approval 1 (Condition 1), which stated: "This [CUP] is valid for one (1) year unless the Applicant applies for and receives an extension of this approval." Record 548. It is undisputed that at no point has intervenor sought or obtained an extension for the 2015 CUP. Petitioner argued below, and the planning commission agreed, that under Condition 1 the permit for the CUP had expired in the absence of intervenor's request for an extension, which therefore deprived the county of the necessary legal basis to approve the proposed land application of wastewater.

The county board of commissioners rejected that conclusion, finding that (1) approval of the proposed land application of wastewater under ORS 215.283(1)(v) does not depend upon the existence of a valid land use permit for the golf course and, alternatively, (2) the CUP for the golf course has not expired under Condition 1. Under the fourth assignment of error, petitioner challenges both conclusions. We address only the challenges to the alternative conclusion that the golf course permit has not expired, which is dispositive.

The commissioners found that in their 2015 decision they imposed Condition 1 to implement the time limits in the then-current version of Curry County Zoning Ordinance (CCZO) 7.050(4) (2015), which in relevant part provided that a discretionary decision approving development on agricultural land is void two years from the date of the final decision unless development is initiated within that period.[6] CCZO 7.050(4) (2015) apparently also provided

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[6] As quoted in the county's decision, in 2015 CCZO 7.050 provided, in relevant part:

> "1. Authorization of a conditional use, in general, shall become null and void after one year unless substantial construction has taken place or an extension has been granted under Section 7.050(4). Substantial construction in this case means obtaining all necessary permits required by governmental agencies to commence construction of any structures or to commence the principal activity permitted by the [CUP].
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> "* * * * *
>
> "4. The Director or [Planning] Commission may at its discretion issue [CUPs] which must be periodically reviewed to ascertain that the conditions of the permit are being complied with on a continuing basis. A discretionary decision approving development on agricultural or forest outside an Urban Growth Boundary (UGB) is void two years from the date of the final decision if the development is not initiated in that period." Record 15.

for potential extensions, in circumstances where no development has been initiated within the two-year time period.[7] The commissioners found:

> "Condition 1 is ambiguous because it is not explicit about when an extension request is no longer needed. Condition 1 is to be read and understood in conjunction with the code language it was intended to implement. That code language is quoted above [*see* n 5].
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> "Subsection 1 quoted above applies to [CUPs] 'in general.' Subsection 4 applies more particularly to [CUPs] issued for agricultural land and outside of [UGBs]. Subsection 4 is more relevant here because the golf course use was approved on agricultural land outside of an [UGB]. Although subsection 4 establishes a two-year period for the validity of a permit, Condition 1 reduced that to a one-year period of validity.
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> "Reading the code sections above together with the language of Condition 1 on the golf course approval, the Board [of Commissioners] determines that Condition 1 on the approval required the permit holder to apply for an extension of the approval within one year if development was not initiated in the first year.
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> "The Board finds, based on the evidence in the record, that the approved development was initiated during the first year of the approval. Therefore, the [CUP] remains valid under Condition 1 of the 2015 approval." Record 15.

On appeal, petitioner argues that the county misconstrues Condition 1, which simply provides that the 2015 permit becomes void unless an extension

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[7] CCZO 7.050 has since been revised, presumably to conform more closely with the requirements of OAR 660-033-0140, which provides expiration dates, with potential for extensions, for discretionary permit approvals on agricultural or forest lands.

is granted within one year, with no mention of initiating development. If in 2015 the county had intended to allow the applicant to avoid the one-year time limit imposed based on initiating development, petitioner argues, it would have inserted words to that effect into Condition 1.

Intervenor responds that the county commissioners' interpretation of CCZO 7.050 (2015) is entitled to deference under ORS 197.829(1), and can be reversed only if the interpretation is inconsistent with the express language, purpose or policy underlying the relevant code language.[8] According to intervenor, petitioner makes no attempt to demonstrate that the commissioners' understanding of CCZO 7.050 (2015) or Condition 1 is reversible under ORS 197.829(1). Further, intervenor argues that petitioner has not demonstrated

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[8] ORS 197.829(1) provides:

> "[LUBA] shall affirm a local government's interpretation of its comprehensive plan and land use regulations, unless the board determines that the local government's interpretation:
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> "(a) Is inconsistent with the express language of the comprehensive plan or land use regulation;
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> "(b) Is inconsistent with the purpose for the comprehensive plan or land use regulation;
>
> "(c) Is inconsistent with the underlying policy that provides the basis for the comprehensive plan or land use regulation; or
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> "(d) Is contrary to a state statute, land use goal or rule that the comprehensive plan provision or land use regulation implements."

error in the commissioners' conclusion that Condition 1 was intended to implement CCZO 7.050 (2015), and should be interpreted in light of that code provision.

Under CCZO 7.050 (2015), the county apparently believed it had the discretion to reduce the time period to one year, instead of the two-year period set out in CCZO 7.050(4) (2015) for permit decisions on agricultural land, as evidenced by the fact that it expressly imposed a one-year period. It is less clear that the county also intended the wording of Condition 1 to impliedly eliminate the possibility of vesting the permit by initiating development within the prescribed time period, as CCZO 7.050(4) (2015) allows. Condition 1 is ambiguous on that point, as its failure to mention initiating development and reference only to an extension could, but need not, be understood as an intent to impliedly eliminate the possibility of vesting the permit by initiating development, as otherwise provided under CCZO 7.050(4) (2015). The commissioners' interpretation of Condition 1 itself may not be subject to the deferential standard of review set out in ORS 197.829(1). But even under a non-deferential standard of review petitioner has not demonstrated that the commissioners' interpretation of Condition 1 is reversible. The drafters of Condition 1 may have simply provided an incomplete list of the applicant's options for avoiding expiration of the permit under the applicable code provisions. Because Condition 1 does not purport to expressly modify or eliminate the possibility of vesting the permit via initiation of development, as

it expressly modified the two-year period, the commissioners could reasonably conclude that Condition 1 was not intended to have that effect. Accordingly, petitioner's arguments to the contrary do not provide a basis for reversal or remand.

The fourth assignment of error is denied.

The county's decision is affirmed.