

1 BEFORE THE LAND USE BOARD OF APPEALS
2 OF THE STATE OF OREGON

3
4 KARYN HANSON,
5 *Petitioner,*

6
7 vs.

8
9 YAMHILL COUNTY,
10 *Respondent,*

11
12 and

13
14 RED HILLS FARM, LLC,
15 *Intervenor-Respondent.*

16
17 LUBA No. 2024-065

18
19 FINAL OPINION
20 AND ORDER

21
22 Appeal from Yamhill County.

23
24 Gregory S. Hathaway filed the petition for review and reply brief and
25 argued on behalf of petitioner. Also on the brief were Trinh C. Tran and
26 Hathaway Larson LLP.

27
28 Jodi M. Gollehon filed the respondent's brief on behalf of respondent.

29
30 Megan D. Lin filed the intervenor-respondent's brief and argued on behalf
31 of intervenor-respondent. Also on the brief were Steven L. Pfeiffer and Perkins
32 Coie LLP.

33
34 RYAN, Board Member; ZAMUDIO, Board Chair, participated in the
35 decision.

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37 RUDD, Board Member, did not participate in the decision.
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DISMISSED

01/27/2025

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

NATURE OF THE DECISION

Petitioner appeals a land use compatibility statement (LUCS) issued to the Oregon Water Resources Department by the county planning director and upheld on appeal by the board of commissioners, concluding that a water impoundment to store water is a permitted use on property zoned Agriculture-Forestry 20.

MOTION TO INTERVENE

Red Hills Farm, LLC, the applicant below, moves to intervene on the side of respondent in this appeal. The motion is unopposed and is allowed.

BACKGROUND

We begin with a description of the facts before turning to the jurisdictional posture of this appeal.

A. Facts

The subject property is an approximately 26-acre parcel zoned Agriculture-Forestry 20 (AF-20). It is undisputed that the AF-20 zone is an exclusive farm use (EFU) zone. Intervenor-respondent Red Hills Farm, LLC (intervenor) operates a commercial vineyard on 270 acres of property adjacent to the subject property and plans to cultivate a vineyard on the subject property. Intervenor applied to the Oregon Water Resources Department (OWRD) for a permit to store 40 acre-feet of surface water in a reservoir and dam to be constructed on the subject property, for future irrigation of vineyards on the

1 subject property and intervenor’s contiguous vineyard.¹ Record 10. We refer to
2 the reservoir and dam in this opinion as the Water Impoundment.

3 Pursuant to OWRD’s administrative rules, intervenor filed with the county
4 an application for a LUCS on a form provided by OWRD.² The LUCS application
5 asks the county to evaluate whether intervenor’s request for the Water
6 Impoundment is consistent with the county’s comprehensive plan and land use
7 regulations. The county planning director checked the box on the LUCS form
8 that states that “[l]and uses to be served by the proposed water use(s), including
9 proposed construction, are allowed outright or are not regulated by your
10 comprehensive plan. Cite applicable ordinance section(s)[.]” Record 11. The
11 planning director filled in “403 of the Yamhill County Zoning Ordinance.” *Id.*

12 Petitioner and others appealed the county planning director’s LUCS to the
13 board of commissioners. The board of commissioners held a public hearing on
14 the appeal and voted to uphold the LUCS. As we explain in more detail below,
15 the board of commissioners’ decision upholding the LUCS adopted the planning
16 director’s conclusion that the Water Impoundment “constitutes a ‘farm use’”

¹ The LUCS states that the source of the water is “a) diffuse surface runoff[;]
b) an unnamed tributary of an unnamed tributary of Cedar Creek; and, c) an
unnamed tributary of Cedar Creek.” Record 10.

² Intervenor originally applied for a conditional use permit for the Water
Impoundment. That conditional use permit application is not at issue in this
appeal.

1 pursuant to Yamhill County Zoning Ordinance (YCZO) 403.12(E) and ORS
2 215.203(2)(a). Record 9. The county hearings officer found:

3 “Based on the information included with the conditional use
4 application and the testimony presented recently at the April 4,
5 2024, [p]lanning [c]ommission hearing, the proposed on-site
6 irrigation improvements for application on contiguous vineyard
7 lands owned by [intervenor] constitutes a ‘farm use’ pursuant
8 [s]ection 403.12(E) of the YCZO and ORS 215.203(2)(a). As such,
9 a conditional use permit approval is not required for this specific
10 proposed farm use pursuant to [s]ection 403 of the [YCZO] and
11 ORS 215.203. This conclusion is supported by the ruling in
12 *Brentmar v Jackson County*, 321 Or 481, 900 P2d 1030 (1995) that
13 uses listed in ORS 215.203 may not be subject to local criteria more
14 restrictive than the statute. Therefore, our office has signed the
15 attached Land Use Information Form for [intervenor] to apply for
16 permitting from the [OWRD].” *Id.*

17 This appeal followed.

18 **B. Jurisdiction**

19 ORS 197.180(1) obligates state agencies to take actions “in compliance
20 with the goals” and “in a manner compatible with acknowledged comprehensive
21 plans and land use regulations.” A LUCS is a state agency’s means of ensuring
22 that a state agency action – in this case, an OWRD authorization of a permit to
23 store water in the Water Impoundment – complies with the statewide planning
24 goals and local comprehensive plans and land use regulations. *See Gould v.*
25 *Deschutes County*, LUBA No 2021-060 (June 16, 2022) (describing the LUCS
26 analysis); *Zenith Energy Terminal Holdings LLC v. City of Portland*, LUBA No
27 2021-083 (Feb 3, 2022), *aff’d*, 319 Or App 538, 509 P3d 120, *rev den*, 370 Or

1 303 (2022) (describing the same); *Bishop v. Deschutes County*, 75 Or LUBA 504,
2 514-15 (2017) (same).

3 ORS 197.825(1) provides that LUBA has exclusive jurisdiction over “any
4 land use decision.” ORS 197.015(10)(a) defines “land use decision,” in relevant
5 part, to include a local government decision that concerns the application of a
6 comprehensive plan provision or land use regulation. However, ORS
7 197.015(10)(b)(H) excludes from the definition of “land use decision” a decision
8 by a local government

9 “[t]hat a proposed state agency action subject to ORS 197.180(1) is
10 compatible with the acknowledged comprehensive plan and land use
11 regulations implementing the plan, if:

12 “(i) The local government has already made a land use decision
13 authorizing a use or activity that encompasses the proposed
14 state agency action;

15 “(ii) The use or activity that would be authorized, funded or
16 undertaken by the proposed state agency action is allowed
17 without review under the acknowledged comprehensive plan
18 and land use regulations implementing the plan; or

19 “(iii) The use or activity that would be authorized, funded or
20 undertaken by the proposed state agency action requires a
21 future land use review under the acknowledged
22 comprehensive plan and land use regulations implementing
23 the plan[.]”³

³ Intervenor and the county (together, respondents) included in their briefs challenges to LUBA’s jurisdiction under ORS 197.015(10)(b)(A) (Ministerial Exception) and under ORS 197.015(10)(b)(H). LUBA instructed respondents to file a separate motion to dismiss in order to comply with OAR 661-010-0065(3),

1 We refer to that statutory provision as the LUCS Exclusion. The LUCS Exclusion
2 thus excludes from LUBA’s jurisdiction decisions that fall within one or more of
3 the three categories described in subparagraph (H).

4 In *Bishop v. Deschutes County*, we explained that the LUCS Exclusion is
5 worded so that

6 “in order to determine whether an exclusion applies, LUBA must
7 address at least some of the likely merits of the appeal, and
8 determine whether the local government correctly categorized the
9 proposed action so as to bring it within the terms of the relevant
10 exclusion.” 72 Or LUBA 103, 113 (2015) (citing *McPhillips Farm*
11 *Inc. v. Yamhill County*, 66 Or LUBA 355, 360-62 (2012), *aff’d*, 256
12 Or App 402, 300 P3d 299 (2013)).

13 Accordingly, in order to determine whether the LUCS Exclusion applies, we are
14 required to determine whether the county correctly concluded that the Water
15 Impoundment is “allowed without review” under YCZO section 403. ORS
16 197.015(10)(b)(H)(ii). For the reasons explained below, we conclude that the
17 county correctly concluded that the Water Impoundment is permitted outright,
18 *i.e.*, allowed without review, under YCZO section 403 and, more importantly,
19 under ORS 215.203(2)(b)(G).

which they subsequently did, and to which petitioner has filed a response. We
have considered all of the parties’ pleadings related to jurisdiction. Because we
conclude that the LUCS Exclusion applies, we need not address respondents’
other challenge to our jurisdiction under the Ministerial Exception.

1 **FIRST AND SECOND ASSIGNMENTS OF ERROR**

2 The issue presented in petitioner’s first and second assignments of error is
3 whether the county has the authority to subject the Water Impoundment to the
4 conditional use criteria in YCZO 1202 and the criteria in YCZO 403.07. The
5 assignments of error present related and overlapping arguments and we address
6 them here together. However, before we address the assignments of error, an
7 explanation of the state laws governing uses in EFU zones is necessary to frame
8 the parties’ dispute.⁴

9 **A. ORS Chapter 215**

10 Under Statewide Planning Goal 3 (Agricultural Lands), as implemented in
11 the Land Conservation and Development Commission’s (LCDC) rule at OAR
12 660-033-0090(1), counties are required to zone lands EFU that fall within the
13 Goal 3 definition of “Agricultural Lands.”⁵ State law restricts the uses that are

⁴ Petitioner does not dispute that the AF-20 zoning district is an EFU zone.

⁵ LCDC is empowered to adopt rules further restricting uses on agricultural land “so long as [LCDC’s rules] are not less restrictive than [ORS 215.283].” *Lane County v. LCDC*, 325 Or 569, 583, 942 P2d 278 (1997) (emphasis omitted). LCDC’s rule at OAR 660-033-0120 classifies “[f]arm use as defined in ORS 215.203” as an “A – [u]se is allowed,” which means that it can be subjected to local criteria “only to the extent authorized by law[:.]”

“A – Use is allowed. Authorization of some uses may require notice and the opportunity for a hearing because the authorization qualifies as a land use decision pursuant to ORS chapter 197. Minimum standards for uses in the table that include a numerical reference are specified in OAR 660-033-0130. Counties may prescribe additional

1 allowed on EFU-zoned land to farm uses, as defined in ORS 215.203, and
2 specified uses set out in ORS 215.283 and ORS 215.284.⁶

3 ORS 215.203 provides as relevant here:

4 “(1) Zoning ordinances may be adopted to zone designated areas
5 of land within the county as exclusive farm use zones. *Land*
6 *within such zones shall be used exclusively for farm use*
7 *except as otherwise provided in ORS 215.213, 215.283 or*
8 *215.284.* Farm use zones shall be established only when such
9 zoning is consistent with the comprehensive plan.

10 “(2)(a) As used in this section ‘farm use’ means *the current*
11 *employment of land* for the primary purpose of obtaining a
12 profit in money by raising, harvesting and selling crops or the
13 feeding, breeding, management and sale of, or the produce of,
14 livestock, poultry, fur-bearing animals or honeybees or for
15 dairying and the sale of dairy products or any other
16 agricultural or horticultural use or animal husbandry or any
17 combination thereof. ‘Farm use’ includes the preparation,
18 storage and disposal by marketing or otherwise of the
19 products or by-products raised on such land for human or
20 animal use. * * * ‘Farm use’ includes the on-site construction
21 and maintenance of equipment and facilities used for the
22 activities described in this subsection. * * *”

23 “(b) As used in this subsection, ‘current employment’ of
24 land for farm use includes:

25 “* * * * *

limitations and requirements to meet local concerns only to the extent authorized by law.”

⁶ ORS 215.213 does not apply to this county. ORS 215.284 regulates the types of dwellings allowed in exclusive farm use zones and is not relevant to this appeal.

1 “(G) Water impoundments lying in or adjacent to and in
2 common ownership with farm use land[.]”

3 There is no dispute that the Water Impoundment is a farm use described in ORS
4 215.203(2)(b)(G).

5 ORS 215.283(1) lists 26 farm-related and nonfarm uses that counties must
6 allow on EFU land, subject to standards adopted by LCDC. *See* OAR 660-033-
7 0130 (setting out standards applicable to permitted and conditional uses on
8 agricultural land). Uses authorized in ORS 215.283(1) are allowed “as of right”
9 and are not subject to additional local criteria. *Brentmar*, 321 Or at 496.

10 ORS 215.283(2) contains a list of “nonfarm” uses that a county may allow
11 as conditional uses in an EFU zone, if the county concludes that the use will not
12 significantly affect surrounding lands devoted to farm use under ORS 215.296,
13 the “farm impacts test.” The county may adopt additional local criteria for uses
14 listed in ORS 215.283(2). ORS 215.296(10); *Brentmar*, 321 Or at 487-88.

15 **B. County Provisions Implementing ORS Chapter 215**

16 YCZO 403 implements ORS chapter 215. Because the AF-20 zone is an
17 EFU zone, YCZO 403 must be consistent with ORS chapter 215 and LCDC’s
18 rules governing uses in EFU zones. *Kenagy v. Benton County*, 112 Or App 17,
19 20 n 2, 826 P2d 1047 (1992).

20 YCZO 403.02 lists uses that are permitted in the AF-20 zone, and subjects
21 them to, as relevant here, “any other applicable provisions of this [o]rdinance[.]”
22 YCZO 403.02. YCZO 403.02(A) allows “[f]arm uses as defined in [YCZO]

1 403.12(E).” YCZO 403.12(E) mirrors the statutory definition of “farm use” at
2 ORS 215.203, which we set out above.

3 YCZO 403.04 lists uses that are conditionally allowed in the AF-20 zone.
4 YCZO 403.04(S) allows “[r]eservoirs and water impoundments[]” as conditional
5 uses in the AF-20 zone, which require application and satisfaction of the
6 conditional use criteria in YCZO 1202 and YCZO 403.07.

7 **C. Assignments of Error**

8 Petitioner’s first and second assignments of error argue that the board of
9 commissioners improperly construed YCZO 403.02 in concluding that the Water
10 Impoundment is not required to satisfy conditional use criteria in YCZO 1202
11 and YCZO 403.07. ORS 197.835(9)(a)(D). In both the assignments of error,
12 petitioner challenges the county’s interpretation of a local code provision that
13 implements state laws regulating uses in EFU zones. The questions presented in
14 this appeal are questions of statutory interpretation. Although the parties’
15 sometimes seem to recognize the controlling nature of the relevant statutes, at
16 other times they couch their arguments as though the questions involve
17 interpretations of local law. Although counties adopt their own EFU zones, the
18 EFU zone is a creature of statute. In cases where a county’s EFU zone deviates
19 from the statutory EFU zone in ways that conflict with the statute, the statute
20 controls. *Riggs v. Douglas County*, 167 Or App 1, 9-10, 1 P3d 1042 (2000).
21 Accordingly, our review in this case is not dictated by ORS 197.829(1), under
22 which we are required to grant appropriate deference to a local government’s

1 interpretation of its own land use legislation. Rather, our review in this case
2 proceeds under ORS 197.835(9)(a)(D), and requires that we determine whether
3 the county correctly interpreted the applicable statutes. *Collins v. Klamath*
4 *County*, 148 Or App 515, 520, 941 P2d 559 (1997) (citing *Marquam Farms Corp.*
5 *v. Multnomah County*, 147 Or App 368, 380, 936 P2d 990 (1997); *Forster v. Polk*
6 *County*, 115 Or App 475, 478, 839 P2d 241 (1992)); see also *Leathers v. Marion*
7 *County*, 144 Or App 123, 131, 925 P2d 148 (1996). We review the county’s
8 interpretation of state law, and local law that implements state law, to determine
9 whether the county’s interpretation is correct, with no deference to the county’s
10 interpretation. ORS 197.835(9)(a)(D); *Kenagy v. Benton County*, 115 Or App
11 131, 134-35, 838 P2d 1076, *rev den*, 315 Or 271 (1992).

12 In interpreting a statute, we examine text, context, and legislative history
13 with the goal of discerning the intent of the governing body that enacted the law.
14 *State v. Gaines*, 346 Or 160, 171-72, 206 P3d 1042 (2009); *PGE v. Bureau of*
15 *Labor and Industries*, 317 Or 606, 859 P2d 1143 (1993). We are required to
16 correctly interpret the legislature’s intent, independently of the parties’
17 arguments. See ORS 197.805 (providing legislative directive that LUBA
18 “decisions be made consistently with sound principles governing judicial
19 review.”); *Weldon v. Bd. of Lic. Pro. Counselors and Therapists*, 353 Or 85, 91,
20 293 P3d 1023 (2012) (court has the obligation to correctly construe statutes,
21 regardless of parties’ arguments); *Stull v. Hoke*, 326 Or 72, 77, 948 P2d 722

1 (1997) (“In construing a statute, this court is responsible for identifying the
2 correct interpretation, whether or not asserted by the parties.”).

3 The board of commissioners found that the Water Impoundment is a “farm
4 use” as defined in ORS 215.203(2)(b)(G) (as implemented in YCZO 403.12(E)),
5 and that the county is prohibited from applying its conditional use criteria to the
6 Water Impoundment:

7 “[T]he [b]oard [of commissioners] concurs with the analysis and
8 interpretative determination by the [d]irector that the proposed on-
9 site irrigation storage reservoir and dam constructed and operated
10 for the sole purpose of providing irrigation to contiguous
11 commercial vineyard lands owned by [intervenor] constitutes both
12 a ‘farm use’ pursuant [s]ection 403.12.E and ORS 215.203(2)(a), as
13 well as the ‘current employment’ of land for ‘farm use.’” Record 19
14 (emphasis added).

15 The board of commissioners also found that:

16 “Further, the [b]oard [of commissioners] concurs with the
17 [d]irector’s determination that the ruling by the Oregon Supreme
18 Court in *Brentmar v Jackson County*, 321 Or 481, 900 P2d 1030
19 (1995) that uses listed in ORS 215.203(1) may not be subject to local
20 criteria more restrictive than the statute is applicable in this instance
21 to prohibit as a matter of law any interpretation of [s]ection 403 by
22 the [c]ounty that the proposed use and improvements, which clearly
23 constitute a ‘farm use’ under [s]ection 403 and ORS [chapter] 215,
24 requires conditional use authorization by the [c]ounty.” Record 21.

25 In the second assignment of error, petitioner argues that the county’s
26 interpretation is inconsistent with the express language of YCZO 403.02, which
27 provides that “[f]arm uses as defined in [YCZO] 403.12(E)” are “subject to other
28 applicable provisions” of the YCZO. According to petitioner, one of the “other

1 applicable provisions” of the YCZO is YCZO 403.04(S), which subjects
2 “[r]eservoirs and water impoundments[.]” on AF-20 zoned land to conditional use
3 approval procedures and criteria.

4 Respondent and intervenor (together, respondents) respond by pointing to
5 the express language of ORS 215.203(1), which provides in relevant part that
6 “[I]and within [EFU] zones *shall be used* exclusively for farm use except as
7 otherwise provided in * * * ORS 215.283.” Intervenor-Respondent’s Brief 17
8 (underscoring omitted, emphasis added). Respondents argue that it would be
9 incongruous to interpret ORS 215.203(2) to subject farm uses to local regulations
10 that limit those uses while the 26 uses enumerated in ORS 215.283(1), many of
11 which are not farm uses, are not subject to local regulation. Intervenor-
12 Respondent’s Brief 21-23.

13 In *Friends of Jefferson v. Jefferson County*, a case which no party cites,
14 the county adopted a finding to support its approval of a proposed farm use,
15 positing that “if the nonfarm uses enumerated in ORS 215.283(1) are permitted
16 outright, then certainly in Jefferson County, the farm uses specified in ORS
17 215.203 are interpreted to be permitted outright.” 48 Or LUBA 107, 122 (2004).
18 In *Friends of Jefferson County*, we did not need to reach the issue because the
19 petitioners identified no local regulations that would apply to the proposed farm
20 uses. However, we noted:

21 “While there is some logic to the county’s * * * finding * * *, neither
22 *Brentmar* nor subsequent decisions have extended the ‘as of right’
23 status that the court found for nonfarm uses under ORS 215.213(1)

1 and ORS 215.283(1) to farm uses. *Collins* * * *, 148 Or App at 520-
2 21; *Lindquist v. Clackamas County*, 146 Or App 7, 13-14, 932 P2d
3 1190 (1997). The statutory command in ORS 215.203(1) that EFU
4 zones ‘shall be used exclusively for farm use except as otherwise
5 provided in ORS 215.213, 215.283 and 215.284’ may well provide
6 a contextual basis for a conclusion like the one the county reaches
7 in its * * * finding.” *Id.* at 124.

8 Here, the issue is squarely presented to us in the second assignment of error,
9 which assigns error to the county’s interpretation of YCZO 403.02(A), which
10 implements ORS 215.203(2). As explained above, the issue is one of statutory
11 interpretation.

12 We conclude that the board of commissioners correctly interpreted ORS
13 215.203 to prohibit the proposed Water Impoundment from being subjected to
14 additional local criteria. The Court of Appeals has previously explained the
15 hierarchical nature of ORS 215.203:

16 “The ‘exclusively’ and ‘except as otherwise provided’ language [in
17 ORS 215.203(1)] evidences a legislative intent to encourage the use
18 of EFU-zoned land solely for farm use and to treat the permitted
19 nonfarm uses in the listed statutes as exceptions to the use of that
20 land for farming activities.” *Warburton v. Harney County*, 174 Or
21 App 322, 328, 25 P3d 978, *rev den*, 332 Or 559 (2001).

22 The express language of ORS 215.203(1) requires that land in EFU zones “*shall*
23 *be* used exclusively for farm use,” except for the uses provided in ORS
24 215.283(1), which “*may be established* in any area zoned for exclusive farm
25 use[]” and in ORS 215.283(2), which “*may be established, subject to the*

1 *approval of the governing body or its designee[.]*”⁷ (Emphases added.) Although
2 the holding in *Brentmar* is not directly apposite to the issue presented here,
3 because *Brentmar* was concerned with uses listed in ORS 215.283(1) and (2),
4 and not with farm uses as defined in ORS 215.203, ORS 215.283 as interpreted
5 in *Brentmar* provides support for interpreting ORS 215.203 to require counties
6 to allow farm uses without subjecting them to additional local criteria. In
7 *Brentmar*, the Supreme Court interpreted ORS 215.283(1)’s list of certain farm-
8 related and nonfarm uses that “may be established” in areas zoned EFU as a
9 mandatory requirement that counties allow those uses and a prohibition on
10 counties from enacting local land use ordinances more restrictive than state law.
11 On the other hand, the court held, the list of nonfarm uses in ORS 215.283(2) that
12 “may be established, subject to the approval of the governing body or its
13 designate” are uses that counties may regulate more stringently than state law.

14 *Brentmar* supports the logical conclusion that ORS 215.203’s mandatory
15 language that land in EFU zones “*shall be used exclusively* for farm use except
16 as otherwise provided in * * * ORS 215.283” means that farm uses are required
17 to be allowed on EFU land, and that local governments are prohibited from
18 imposing more stringent criteria on farm uses. (Emphasis added.) To hold
19 otherwise would be incongruous, given the hierarchy of uses in ORS 215.203,

⁷ As is often the case with legislation, the language of the two statutes is not perfectly symmetrical.

1 ORS 215.283(1), and (2). Accordingly, the county correctly concluded that farm
2 uses as defined in ORS 215.203 are not subject to additional local criteria in the
3 YCZO. The Water Impoundment is “allowed without review” within the
4 meaning of ORS 197.015(10)(b)(H)(ii).

5 Finally, we briefly address petitioner’s first assignment of error, which is
6 that the board of commissioners improperly relied on the Supreme Court’s
7 holding in *Brentmar* because *Brentmar* was concerned only with uses described
8 in ORS 215.213 and 215.283 and did not address farm uses as defined in ORS
9 215.203 at all. Respondents respond, initially, that petitioner failed to raise the
10 issue raised in the first assignment of error prior to the close of the initial
11 evidentiary hearing and is precluded from doing so for the first time at LUBA.
12 ORS 197.835(3); ORS 197.797.

13 In the preservation section of the petition for review, petitioner cites
14 “Appendix 9” to the petition for review and argues that petitioner argued during
15 the proceedings below that “it was error for [r]espondent to rely on *Brentmar* in
16 concluding that [*Brentmar*] prohibited [r]espondent from requiring [i]ntervenor
17 to obtain [c]onditional [u]se approval for its proposed Water Impoundment as
18 required by YCZO 403.04(S). App [at] 9.” Petition for Review 9-10. Appendix
19 9 is Record 13, which is a page from the board of commissioners’ findings and
20 conclusions. That page from the findings quotes the planning director’s previous
21 conclusion that ORS 215.203(2) and *Brentmar* prohibit the county from applying
22 local criteria to the Water Impoundment. That page from the findings also

1 summarizes the issues that were identified in the appeal of the LUCS to the board
2 of commissioners.

3 We agree with respondents that the issue raised in the first assignment of
4 error was not preserved. Appendix 9 demonstrates that the issue that was raised
5 was that the AF-20 zone is not an exclusive farm use zone, which is not an issue
6 in this appeal.⁸ Nothing on Record 13 identifies the issue petitioner raises in the
7 first assignment of error, which is whether *Brentmar* provides support for the
8 board of commissioners' conclusion that the county may not apply additional
9 local criteria to the Water Impoundment.

10 However, even if the issue was preserved, we would reject petitioner's
11 argument. The board of commissioners' reliance on *Brentmar* is appropriate

⁸ Record 13 provides:

“An appeal of the [d]irector’s decision was filed on May 13, 2024, by appellant Karen Hansen [*sic*] (‘Appellant’). The subject appeal raises the following issues for review by the [b]oard [of commissioners]:

“The [d]irectors decision that the proposed impoundment and reservoir ‘* * * is inconsistent and contrary to the clear and unambiguous text that any proposed Reservoir and Water Impoundments in the AF-20 District requires conditional use approval under the [YCZO]. Section 403.04 S.’

“The [d]irector’s ‘* * * reliance on *Brentmar v. Jackson County* to support the interpretation is misplaced. *Brentmar applies to property zoned EFU. Here, [intervenor’s] propriety is zoned AF-20.*” (Emphasis added.)

1 because as we explain above, *Brentmar* does provide contextual support for the
2 county's interpretation of ORS 215.203 as implemented in the YCZO.

3 The assignments of error are denied.

4 **DISPOSITION**

5 As explained above, the county correctly concluded that the Water
6 Impoundment is "allowed without review under the acknowledged
7 comprehensive plan and land use regulations implementing the plan" within the
8 meaning of the LUCS Exclusion. ORS 197.015(10)(b)(H)(ii). The LUCS
9 Exclusion to our jurisdiction applies, and we lack jurisdiction over the appeal.

10 The appeal is dismissed.