

**3.3.8 EFU Statute/Ordinances – Nonfarm Uses – No Significant Change/Increase Std.** Remand is necessary where the local government’s approval of an asphalt batch plant fails to address issues raised regarding the impact of emissions on especially sensitive crops grown nearby. *Rickreall Community Water Assoc. v. Polk County*, 53 Or LUBA 76 (2006).

**3.3.8 EFU Statute/Ordinances – Nonfarm Uses – No Significant Change/Increase Std.** The scope of “accepted farming or forest practices” that must be evaluated under the no significant change/increase standard is a fact-specific inquiry. A hearings officer does not err in evaluating the scope and intensity of “accepted forest practices” on adjacent lands based on the forest uses currently or recently occurring in the area, and need not assume that forest practices on adjacent parcels will occur at the most intensive level possible. *Central Oregon Landwatch v. Deschutes County*, 53 Or LUBA 290 (2007).

**3.3.8 EFU Statute/Ordinances – Nonfarm Uses – No Significant Change/Increase Std.** ORS 215.284(2)(a) requires a demonstration that a proposed nonfarm dwelling or “activities associated with the dwelling” will not force a significant change in or significantly increase the cost of accepted farming practices on nearby lands. Improvements such as driveways, wells and septic systems are not “activities associated with the dwelling.” However, such improvements must be considered part of the proposed dwelling and thus must be considered when determining compliance with ORS 215.284(2)(a). *Wetherell v. Douglas County*, 51 Or LUBA 699 (2006).

**3.3.8 EFU Statute/Ordinances – Nonfarm Uses – No Significant Change/Increase Std.** For purposes of determining whether a nonfarm dwelling proposed in the middle of an existing vineyard will force a significant change in or significantly increase the cost of accepted farming practices on “nearby lands,” the county’s determination of the dwelling’s impact on nearby lands must include consideration of the impact of the dwelling on the existing vineyard on the subject property itself. *Wetherell v. Douglas County*, 51 Or LUBA 699 (2006).

**3.3.8 EFU Statute/Ordinances – Nonfarm Uses – No Significant Change/Increase Std.** An allegation that the county failed to consider the potential impact of a proposed nonfarm dwelling on wells located on nearby properties that serve *domestic* purposes does not provide a basis to reverse or remand the approval of a nonfarm dwelling, where the applicable approval criterion requires a demonstration of whether the proposal will force a significant change in or significantly increase the cost of accepted *farming practices*. *Wetherell v. Douglas County*, 51 Or LUBA 699 (2006).

**3.3.8 EFU Statute/Ordinances – Nonfarm Uses – No Significant Change/Increase Std.** Under a code standard requiring that a proposed forest dwelling not significantly change or increase the cost of farm or forest practices on nearby resource lands, the hearings officer’s failure to separately analyze more distant properties in the study area or identify its outer boundaries is not reversible error, where the hearings officer found no significant impacts on parcels adjacent to the subject property and, given the

homogeneity of the surrounding area, significant impacts on non-adjointing parcels are unlikely. *Sisters Forest Planning Comm. v. Deschutes County*, 48 Or LUBA 78 (2004).

**3.3.8 EFU Statute/Ordinances – Nonfarm Uses – No Significant Change/Increase Std.** Testimony that approval of a non-farm dwelling will increase agricultural land costs because of the parcel’s increased value as a building site is at best indirect evidence of an increase in the cost of “farm practices” within the meaning of ORS 215.296(1). *Frazer v. Jackson County*, 45 Or LUBA 263 (2003).

**3.3.8 EFU Statute/Ordinances – Nonfarm Uses – No Significant Change/Increase Std.** Findings concluding that adjacent farms do not use pesticides or aerial spraying and will not cause conflicts with proposed nonfarm dwellings are sufficient to show compliance with the no significant change/increase standard, where petitioners do not identify other farm practices or conflicts that the county’s findings fail to address, and do not challenge the findings regarding pesticide use and aerial spraying. *Hanna v. Crook County*, 44 Or LUBA 386 (2003).

**3.3.8 EFU Statute/Ordinances – Nonfarm Uses – No Significant Change/Increase Std.** Where a party during local proceedings advises the county that an existing or prior farm use on surrounding lands is in the process of being abandoned, and plans for the new farm use are sufficiently developed to allow the new farm use to be described in sufficient detail to allow the farm practices that will be associated with the new farm use to be identified, an applicant for a nonfarm use that is subject to ORS 215.296(1) must address the accepted farming practices that will be associated with that new farm use. *Dierking v. Clackamas County*, 38 Or LUBA 106 (2000).

**3.3.8 EFU Statute/Ordinances – Nonfarm Uses – No Significant Change/Increase Std.** Organic farming is not properly viewed as either a “farm use” or an “accepted farm practice.” However, organic farmers may employ accepted farming practices that are not normally associated with other types of farming. *Dierking v. Clackamas County*, 38 Or LUBA 106 (2000).

**3.3.8 EFU Statute/Ordinances – Nonfarm Uses – No Significant Change/Increase Std.** Impacts on “farm families, residents and workers” are not impacts on “accepted farm practices,” that must be considered under ORS 215.296(1). *Dierking v. Clackamas County*, 38 Or LUBA 106 (2000).

**3.3.8 EFU Statute/Ordinances – Nonfarm Uses – No Significant Change/Increase Std.** ORS 215.286 does not require a guarantee that aggregate mining on land zoned for exclusive farm use will cause no adverse impacts on the water table on surrounding lands. *Jorgensen v. Union County*, 37 Or LUBA 738 (2000).

**3.3.8 EFU Statute/Ordinances – Nonfarm Uses – No Significant Change/Increase Std.** Petitioners’ argument that the county used a different definition of “accepted farming practices” than the definition provided in ORS 215.203(2)(c) does not provide a basis for reversal or remand, where petitioners do not demonstrate that the county’s definition is inconsistent with the statutory definition, or that application of the county’s

definition supports a different result than would application of the statutory definition. *Wilbur Residents v. Douglas County*, 37 Or LUBA 156 (1999).

**3.3.8 EFU Statute/Ordinances – Nonfarm Uses – No Significant Change/Increase Std.** It is inconsistent with ORS 215.296(1) to arbitrarily limit the scope of analysis to properties within 500 feet of the subject property, where doing so results in failure to consider substantial evidence in the record of significant impacts from the proposed use to accepted farming practices on lands beyond 500 feet. However, where petitioners fail to challenge a finding that there are no significant impacts within 500 feet, and an extrapolation of that finding to lands beyond 500 feet, the county's error does not provide a basis for reversal or remand. *Wilbur Residents v. Douglas County*, 37 Or LUBA 156 (1999).

**3.3.8 EFU Statute/Ordinances – Nonfarm Uses – No Significant Change/Increase Std.** Petitioners' argument at LUBA that using agricultural land for a golf course buffer violates the ORS 215.296(1) prohibition against forcing a significant change in farm practices on surrounding lands devoted to farm use was waived, where petitioners' arguments during the local proceedings concerning the proposed buffers were not sufficient for the decision maker to understand and respond to that issue. *DLCD v. Jackson County*, 36 Or LUBA 88 (1999).

**3.3.8 EFU Statute/Ordinances – Nonfarm Uses – No Significant Change/Increase Std.** A local provision requiring compatibility between a proposed use and development of abutting properties by outright permitted uses does not require an exhaustive listing and discussion of every subcategory of use permitted in the area. A county's general description of permitted uses and explanation why the proposed use is compatible with types of permitted uses is adequate. *Thomas v. Wasco County*, 35 Or LUBA 173 (1998).

**3.3.8 EFU Statute/Ordinances – Nonfarm Uses – No Significant Change/Increase Std.** Adequate findings of compliance with a local standard requiring that proposed nonresource uses not significantly increase the cost of accepted farm and forest practices must identify the farm and forest practices in the area, even if the local standard does not implement and thus need not be consistent with the similar statutory standard. *Thomas v. Wasco County*, 35 Or LUBA 173 (1998).

**3.3.8 EFU Statute/Ordinances – Nonfarm Uses – No Significant Change/Increase Std.** In applying a local provision based on the no significant change/increased cost standard, the local government is not required to perform the impossible task of proving a negative or to quantify how much imposed conditions will reduce conflicts with farm uses below a certain threshold. It need only affirmatively consider the impacts of a proposed use on farm or forest practices, and in so doing, consider whether the use will force a significant change or significantly increase the cost of those practices. *Gutoski v. Lane County*, 34 Or LUBA 219 (1998).

**3.3.8 EFU Statute/Ordinances – Nonfarm Uses – No Significant Change/Increase Std.** Under ORS 215.296(1), the applicant bears the burden to demonstrate that the proposed use will force no significant change in accepted farming practices or their cost,

and the local government's findings must affirmatively explain why it believes there are no such significant adverse impacts. *Just v. Linn County*, 32 Or LUBA 325 (1997).

**3.3.8 EFU Statute/Ordinances – Nonfarm Uses – No Significant Change/Increase Std.** In order to demonstrate compliance with ORS 215.296(1), county findings must: (1) describe the farm and forest practices on surrounding lands devoted to farm or forest use; (2) explain why the proposed use will not force a significant change in those practices; and (3) explain why the proposed use will not significantly increase the cost of those practices. *Brown v. Union County*, 32 Or LUBA 168 (1996).

**3.3.8 EFU Statute/Ordinances – Nonfarm Uses – No Significant Change/Increase Std.** Under ORS 215.296(1), the county may not assume from an absence of information in the record that there are no adverse farm impacts. The burden is on the county to identify and explain why it believes there are no significant adverse impacts and why it believes the cost of accepted farm practices would not be increased. *Brown v. Union County*, 32 Or LUBA 168 (1996).

**3.3.8 EFU Statute/Ordinances – Nonfarm Uses – No Significant Change/Increase Std.** Where the only use approved by the challenged decision is mineral and aggregate extraction on a 186-acre site, and no uses on the remainder of intervenor's 490-acre parcel are subject to review under ORS 215.296, the county's findings correctly limit the evaluation of compliance with ORS 215.296 to the 186-acre area of mineral and aggregate extraction. *Mission Bottom Assoc. v. Marion County*, 32 Or LUBA 56 (1996).

**3.3.8 EFU Statute/Ordinances – Nonfarm Uses – No Significant Change/Increase Std.** ORS 215.296(1) does not require of the local government the impossible task of proving a negative; rather, the local government must affirmatively consider the impacts of a proposed use on farm or forest practices, and in consideration of those impacts, consider whether the use will force a significant change or significantly increase the cost of those practices. *Mission Bottom Assoc. v. Marion County*, 32 Or LUBA 56 (1996).

**3.3.8 EFU Statute/Ordinances – Nonfarm Uses – No Significant Change/Increase Std.** Where the local code requires that a proposed use will not force a significant change in, or significantly increase the cost of, accepted farm or forest practices on surrounding land, the applicant has the burden of identifying the relevant accepted farm and forest practices and producing evidence showing those practices will not be significantly changed or their costs significantly increased. *Lyon v. Linn County*, 28 Or LUBA 402 (1994).

**3.3.8 EFU Statute/Ordinances – Nonfarm Uses – No Significant Change/Increase Std.** Findings of fact stating that accepted farm practices which occurred on adjoining properties have continued after a golf course was constructed do not constitute an improper interpretation of ORS 215.296(1) as being met simply because those past accepted farm practices have continued. *Von Lubken v. Hood River County*, 28 Or LUBA 362 (1994).

**3.3.8 EFU Statute/Ordinances – Nonfarm Uses – No Significant Change/Increase Std.** Findings that it is possible to apply agricultural sprays with little or no drift if label restrictions are followed do not constitute findings that spray drift is not an accepted farm practice. *Von Lubken v. Hood River County*, 28 Or LUBA 362 (1994).

**3.3.8 EFU Statute/Ordinances – Nonfarm Uses – No Significant Change/Increase Std.** Where impacts on an individual accepted farm practice are such that they almost force a significant change in that practice, additional impacts on other accepted farm practices may lead to a conclusion that there is a cumulative significant change in accepted farm practices, but such is not necessarily the case. *Von Lubken v. Hood River County*, 28 Or LUBA 362 (1994).

**3.3.8 EFU Statute/Ordinances – Nonfarm Uses – No Significant Change/Increase Std.** An applicant may not construct a golf course, prior to receipt of a decision approving such construction that is sustained on appeal, and thereafter rely on the fact that construction has already occurred to avoid showing that the impacts on accepted farm practices and the costs thereof during construction of the golf course are not significant. *Von Lubken v. Hood River County*, 28 Or LUBA 362 (1994).

**3.3.8 EFU Statute/Ordinances – Nonfarm Uses – No Significant Change/Increase Std.** Findings that an orchard's accepted farming practices have not been significantly affected by trespassing golf balls are supported by substantial evidence where the evidence shows no orchard employees have been hit by golf balls, tree buffers are effective in deflecting golf balls and petitioner's testimony was discredited by video tape of petitioner collecting golf balls on the golf course property. *Von Lubken v. Hood River County*, 28 Or LUBA 362 (1994).

**3.3.8 EFU Statute/Ordinances – Nonfarm Uses – No Significant Change/Increase Std.** Where there is conflicting evidence concerning the effectiveness of a condition requiring golf course closures during spraying operations to avoid significant effects on or cost increases in such spraying, a finding that the condition has been effective is supported by substantial evidence. *Von Lubken v. Hood River County*, 28 Or LUBA 362 (1994).

**3.3.8 EFU Statute/Ordinances – Nonfarm Uses – No Significant Change/Increase Std.** Where the aerial spray applicator formerly used by an orchard will not spray orchards surrounded by a golf course and the only sprayer who will charges 2000 dollars more to do so, the county's findings must explain why this cost increase, viewed cumulatively with any other cost increases attributable to the golf course, is not significant. *Von Lubken v. Hood River County*, 28 Or LUBA 362 (1994).

**3.3.8 EFU Statute/Ordinances – Nonfarm Uses – No Significant Change/Increase Std.** Petitioner's argument that the county failed to address evidence that escaped dogs can cause great damage in rural areas provides no basis for reversal or remand, where the county found the proposed kennel will comply with a code standard requiring no significant increase in the cost of accepted farm and forest practices because the design of

the kennel will result in no dogs escaping from the facility. *Larry Kelly Farms, Inc. v. Marion County*, 26 Or LUBA 401 (1994).

**3.3.8 EFU Statute/Ordinances – Nonfarm Uses – No Significant Change/Increase Std.** Where testimony below does not refer to ORS 215.296 by its statutory citation, title or any recognized abbreviation for either, and does not employ any of the operative terms of the statute, a reasonable local decision maker would not have understood that compliance with ORS 215.296 was raised below, and petitioner may not raise this issue before LUBA. *Spiering v. Yamhill County*, 25 Or LUBA 695 (1993).

**3.3.8 EFU Statute/Ordinances – Nonfarm Uses – No Significant Change/Increase Std.** Where a golf course adjoining an orchard will force alterations in accepted farming practices and increase the costs associated with such practices, the relevant question under ORS 215.296(1) is whether such alterations and increased costs will be *significant*. Where there is evidence in the whole record that would allow a local government decision maker to answer that question either way, LUBA is required by ORS 197.835(7)(a)(C) to defer to the local government's judgment. *Von Lubken v. Hood River County*, 24 Or LUBA 271 (1992).

**3.3.8 EFU Statute/Ordinances – Nonfarm Uses – No Significant Change/Increase Std.** Where there is evidence in the local government record that the number of golf balls claimed to have landed in adjoining orchards is exaggerated, a decision approving a golf course and imposing a condition requiring the planting of trees to contain golf balls on-site and installation of a fence and screen to prevent golfers and golf balls from entering adjoining orchard property, is supported by substantial evidence. *Von Lubken v. Hood River County*, 24 Or LUBA 271 (1992).

**3.3.8 EFU Statute/Ordinances – Nonfarm Uses – No Significant Change/Increase Std.** Where the aerial application of chemicals on an orchard adjoining a proposed golf course will be rendered more difficult, although possible, in that at least one aerial sprayer indicates he would be willing to spray the affected orchard, and the decision approving the golf course requires the operator to close the golf course to facilitate such spraying, there is substantial evidence in the record that the golf course will not force a significant change in or significantly increase the cost of aerial spraying of the adjoining orchard. *Von Lubken v. Hood River County*, 24 Or LUBA 271 (1992).

**3.3.8 EFU Statute/Ordinances – Nonfarm Uses – No Significant Change/Increase Std.** A decision that a golf course will not significantly change or increase the cost of ground spraying of an adjoining orchard is supported by substantial evidence, where there is conflicting evidence concerning the magnitude of ground spraying drift expected to travel onto adjoining properties, and the decision imposes a condition requiring that the golf course operator provide monitors to prevent golfers from coming into contact with ground spray drift. *Von Lubken v. Hood River County*, 24 Or LUBA 271 (1992).

**3.3.8 EFU Statute/Ordinances – Nonfarm Uses – No Significant Change/Increase Std.** Where petitioners do not specifically challenge county findings which (1) identify a

specific area surrounding a proposed golf course as the "surrounding lands" to be considered in determining compliance with ORS 215.296(1) and identical local code provisions, and (2) explain how the area was chosen, but rather assert a larger area should have been chosen, LUBA will uphold the county's identification of "surrounding lands." *Schellenberg v. Polk County*, 22 Or LUBA 673 (1992).

**3.3.8 EFU Statute/Ordinances – Nonfarm Uses – No Significant Change/Increase Std.** ORS 215.296(1), and identical local code provisions, require that a county consider the impacts of a proposed nonfarm use on *all* "surrounding lands devoted to farm or forest use," whether that use is commercial or noncommercial. *Schellenberg v. Polk County*, 22 Or LUBA 673 (1992).

**3.3.8 EFU Statute/Ordinances – Nonfarm Uses – No Significant Change/Increase Std.** A county may properly base its identification of "accepted farm or forest practices," as those terms are used in ORS 215.296(1), on the definition of "accepted farming practice" in ORS 215.203(2)(c). *Schellenberg v. Polk County*, 22 Or LUBA 673 (1992).

**3.3.8 EFU Statute/Ordinances – Nonfarm Uses – No Significant Change/Increase Std.** Where the evidence establishes a reasonable farmer would not significantly change the manner in which the farm is managed due to a proposed golf course, and the opponents' evidence shows only that there is a remote possibility that there could be some impacts from such proposed golf course, the county's determinations that the proposed golf course will not seriously interfere with, force a significant change in, or significantly increase the cost of accepting farming practices in the area, are supported by substantial evidence. *Washington Co. Farm Bureau v. Washington County*, 22 Or LUBA 540 (1992).

**3.3.8 EFU Statute/Ordinances – Nonfarm Uses – No Significant Change/Increase Std.** Under ORS 215.296(1), the burden is on the applicant to show a proposed golf center will force no significant change in accepted farming practices or their cost, and on the county to so find. *Berg v. Linn County*, 22 Or LUBA 507 (1992).

**3.3.8 EFU Statute/Ordinances – Nonfarm Uses – No Significant Change/Increase Std.** Findings which fail to identify the farm practices employed on surrounding properties devoted to farm use cannot explain why the proposed use will not cause a significant change in or increase the cost of such practices, and are inadequate to comply with ORS 215.296(1). *Berg v. Linn County*, 22 Or LUBA 507 (1992).

**3.3.8 EFU Statute/Ordinances – Nonfarm Uses – No Significant Change/Increase Std.** Although the EFU zoning statutes do not establish specific approval standards for golf courses in EFU zones, ORS 215.296(1) establishes standards applicable to nonfarm uses in EFU zones generally, and requires that approval of such uses not force a significant change in, or significantly increase the cost of, accepted farm or forest practices on surrounding lands. *Von Lubken v. Hood River County*, 22 Or LUBA 307 (1991).

**3.3.8 EFU Statute/Ordinances – Nonfarm Uses – No Significant Change/Increase Std.** Under ORS 215.296(1) and similar local code provisions, the burden is on the applicant to show the proposed use will force no significant change in accepted farming practices or their cost, and on the county to so find. *Schellenberg v. Polk County*, 21 Or LUBA 425 (1991).

**3.3.8 EFU Statute/Ordinances – Nonfarm Uses – No Significant Change/Increase Std.** ORS 215.296(1) and similar local code provisions require a county to consider all issues relevant to whether the proposed use will force a significant change in accepted farm or forest practices on surrounding lands or significantly increase the cost of such practices. *Schellenberg v. Polk County*, 21 Or LUBA 425 (1991).

**3.3.8 EFU Statute/Ordinances – Nonfarm Uses – No Significant Change/Increase Std.** In order to demonstrate compliance with ORS 215.296(1) and similar code standards, county findings must (1) describe the farm and forest practices on surrounding lands devoted to farm or forest use, (2) explain why the proposed use will not force a significant change in those practices, and (3) explain why the proposed use will not significantly increase the cost of those practices. *Schellenberg v. Polk County*, 21 Or LUBA 425 (1991).

**3.3.8 EFU Statute/Ordinances – Nonfarm Uses – No Significant Change/Increase Std.** Without an adequate identification of the accepted farming practices on surrounding lands, the county's findings cannot explain why the proposed use will not cause a significant change in or increase the cost of such practices, as required by ORS 215.296(1) and the local code. *Schellenberg v. Polk County*, 21 Or LUBA 425 (1991).

**3.3.8 EFU Statute/Ordinances – Nonfarm Uses – No Significant Change/Increase Std.** Findings of compliance with a standard that a proposed golf course will not "force a significant change in," or "significantly increase the cost of," accepted farm or forest practices on surrounding lands do not necessarily satisfy a standard that the proposed golf course will not "interfere seriously" with accepted farming practices. *Washington Co. Farm Bureau v. Washington Co.*, 21 Or LUBA 51 (1991).

**3.3.8 EFU Statute/Ordinances – Nonfarm Uses – No Significant Change/Increase Std.** The requirement that conditions imposed to ensure that a proposed nonfarm use will not force a significant change in, or significantly increase the cost of, accepted farm or forest practices on surrounding lands "be clear and objective," does not necessarily require a local government to adopt *findings* explaining why conditions imposed for this purpose are clear and objective. *Washington Co. Farm Bureau v. Washington Co.*, 21 Or LUBA 51 (1991).

**3.3.8 EFU Statute/Ordinances – Nonfarm Uses – No Significant Change/Increase Std.** Whether a proposed dwelling (1) is permitted outright in an EFU zone, (2) is "accessory" to an underlying nonconforming use, and (3) complies with ORS 215.296(1), are determinations which require "interpretation or the exercise of factual, policy or legal

judgment" within the meaning of ORS 197.015(10)(b)(A) and (C). *Komning v. Grant County*, 20 Or LUBA 481 (1990).