

**31.3.9 Permits – Particular Uses – Waste Disposal Facilities.** ORS 215.283(2)(k) restricts a solid waste disposal facility from being “established” prior to Department of Environmental Quality (DEQ) permitting, but does not prohibit local government approval of a facility that is conditioned on receipt of the DEQ permit prior to establishment or building of the facility. *Crocker v. Jefferson County*, 60 Or LUBA 317 (2010).

**31.3.9 Permits – Particular Uses – Waste Disposal Facilities.** Under ORS 215.283(2)(k), buildings “necessary” for the operation of a waste disposal facility are permitted. Where the findings are insufficient, but the record includes evidence which clearly establishes that proposed buildings are “necessary,” and no contrary evidence in the record is cited, LUBA will affirm the conclusion that the proposed buildings are “necessary.” *Crocker v. Jefferson County*, 60 Or LUBA 317 (2010).

**31.3.9 Permits – Particular Uses – Waste Disposal Facilities.** A finding that a proposed solid waste disposal operation will have “no significant effect” on farm or forest uses is not sufficient to also demonstrate that the operation will have “no adverse effect.” While the two standards are similar, they are not the same, and separate findings are required. *Crocker v. Jefferson County*, 60 Or LUBA 317 (2010).

**31.3.9 Permits – Particular Uses – Waste Disposal Facilities.** A facility where fruit process water is trucked to a lagoon, stored and later used to irrigate a hay crop is not properly viewed as a “utility facility,” within the meaning of 215.213(1)(d) and ORS 215.283(1)(d), simply because aerators are employed in the lagoon to control odors. *Farrell v. Jackson County*, 41 Or LUBA 1 (2001).

**31.3.9 Permits – Particular Uses – Waste Disposal Facilities.** A Land Use Compatibility Statement requirement that a proposal to apply process water from a fruit processing operation to EFU-zoned land must “comply with all applicable local land use requirements” requires at a minimum that the county determine whether the proposal is a farm use and whether it is a utility facility. These determinations require the exercise of sufficient discretion that the county’s decision is both a “land use decision” and a “permit,” as those terms are defined by statute. *Farrell v. Jackson County*, 39 Or LUBA 149 (2000).

**31.3.9 Permits – Particular Uses – Waste Disposal Facilities.** Where industrial effluent is applied to poplar trees in an exclusive farm use zone so that heavy metals and nitrogen compounds in the effluent will bind to the soil and be taken up into the poplar trees, rather than being deposited into a creek, the proposed use is properly viewed as an extension of the city’s sewerage treatment system and thus as a “utility facility,” within the meaning of ORS 215.283(1)(d). *Cox v. Polk County*, 39 Or LUBA 1 (2000).

**31.3.9 Permits – Particular Uses – Waste Disposal Facilities.** A proposed use of land may be both a “farm use” and a “utility facility,” and where it qualifies as both, the proposed use must meet the approval criteria for both farm uses and utility facilities. *Cox v. Polk County*, 39 Or LUBA 1 (2000).

**31.3.9 Permits – Particular Uses – Waste Disposal Facilities.** The scope of the “solid waste disposal facility” subject to county regulation under ORS 215.283(2)(j) is coextensive with the scope of the facility for which DEQ grants a permit pursuant to ORS 459.245. Where the DEQ permit issued pursuant to ORS 459.245 governs only the septic treatment ponds on the subject property and does not govern the land application of treated wastes on adjacent parcels, the “solid waste disposal facility” subject to compliance with the county’s conditional use criteria does not include those adjacent parcels. *Wilbur Residents v. Douglas County*, 37 Or LUBA 156 (1999).

**31.3.9 Permits – Particular Uses – Waste Disposal Facilities.** ORS 215.283(2)(j) authorizes a county to allow infrastructure such as equipment, facilities or buildings necessary for the operation of a solid waste disposal facility, but does not require a county to consider or approve off-site infrastructure that is not necessary for that facility. An adjacent farm parcel on which treated waste from the facility will be applied as fertilizer and for irrigation purposes is not “necessary” for the operation of the facility, and thus is not subject to the county’s regulation under ORS 215.283(2)(j). *Wilbur Residents v. Douglas County*, 37 Or LUBA 156 (1999).

**31.3.9 Permits – Particular Uses – Waste Disposal Facilities.** A decision that disposal of sewage effluent by applying it to farm land constitutes a “utility facility necessary for public service” within the meaning of ORS 215.283(1)(d) requires the exercise of policy or legal judgment and for that reason the decision does not qualify for the exception to the statutory definition of land use decision provided by ORS 197.015(10)(b)(A) for certain ministerial decisions. *Friends of the Creek v. Jackson County*, 36 Or LUBA 562 (1999).

**31.3.9 Permits – Particular Uses – Waste Disposal Facilities.** A decision that disposal of sewage effluent by applying it to farm land constitutes a “farm use” within the meaning of ORS 215.203 requires the exercise of policy or legal judgment and for that reason the decision does not qualify for the exception to the statutory definition of “land use decision” provided by ORS 197.015(10)(b)(A) for certain ministerial decisions. *Friends of the Creek v. Jackson County*, 36 Or LUBA 562 (1999).

**31.3.9 Permits – Particular Uses – Waste Disposal Facilities.** A decision authorizing construction of facilities necessary to apply sewage effluent to farm land constitutes the approval of a “proposed development of land” and thus is a “permit” within the meaning of ORS 215.215.402(4) if the decision involves the exercise of discretion. *Friends of the Creek v. Jackson County*, 36 Or LUBA 562 (1999).

**31.3.9 Permits – Particular Uses – Waste Disposal Facilities.** A decision that a proposal to transport treated effluent to an EFU-zoned parcel and apply that effluent to poplar trees constitutes a “farm use” within the meaning of ORS 215.283(1)(d) requires the exercise of policy or legal judgment and for that reason the decision does not qualify for the exception to the statutory definition of land use decision provided by ORS 197.015(10)(b)(A) for certain ministerial decisions. *Friends of Clean Living v. Polk County*, 36 Or LUBA 544 (1999).

**31.3.9 Permits – Particular Uses – Waste Disposal Facilities.** A decision authorizing construction of a lagoon on EFU-zoned land to store treated effluent constitutes the approval of a “proposed development of land” and thus constitutes a “permit” within the meaning of ORS 215.402(4) if the decision involves the exercise of discretion. *Friends of Clean Living v. Polk County*, 36 Or LUBA 544 (1999).

**31.3.9 Permits – Particular Uses – Waste Disposal Facilities.** Where a city interprets its zoning ordinance as requiring that a “recycling center” have the “primary purpose” of extracting recyclables from a waste stream, but not requiring that any particular percentage of the waste stream will be recycled, the city’s conclusion that a proposed facility is a “recycling center” is supported by substantial evidence, notwithstanding the absence of evidence quantifying the percentage of recyclables in the waste stream. *Sequoia Park Condo. Assoc. v. City of Beaverton*, 36 Or LUBA 317 (1999).

**31.3.9 Permits – Particular Uses – Waste Disposal Facilities.** Substantial evidence supports a city’s finding that the primary purpose of a proposed facility is to recover recyclables from a waste stream, where there is evidence that the most significant function and justification of the proposed facility is to recover recyclables, notwithstanding that the proposed facility might also serve or facilitate other economic purposes. *Sequoia Park Condo. Assoc. v. City of Beaverton*, 36 Or LUBA 317 (1999).

**31.3.9 Permits – Particular Uses – Waste Disposal Facilities.** That a proposed use meets the definition of a “materials recovery facility” at OAR 340-093-0030(57) is neither relevant nor controlling in determining whether the local government correctly categorized the proposed use as a “recycling center” under its development ordinance, where the development ordinance was not adopted to implement the rule. *Sequoia Park Condo. Assoc. v. City of Beaverton*, 36 Or LUBA 317 (1999).

**31.3.9 Permits – Particular Uses – Waste Disposal Facilities.** The city was clearly correct in classifying a proposed recycling processing center as a "waste and/or recycling transfer operation" which is an allowed conditional use under local ordinance. *Canby Quality of Life Committee v. City of Canby*, 30 Or LUBA 166 (1995).

**31.3.9 Permits – Particular Uses – Waste Disposal Facilities.** Where petitioner appealed a planning director determination that a solid waste transfer station is an outright permitted use in a particular zone, the city was neither required nor authorized to expand the scope of the local appeal hearing to include consideration of whether a solid waste transfer station is also an appropriate use in that zone. *Pend-Air Citizen's Comm. v. City of Pendleton*, 29 Or LUBA 362 (1995).

**31.3.9 Permits – Particular Uses – Waste Disposal Facilities.** Evidence that a solid waste transfer station may conflict with neighboring residential uses is not relevant to the issue of whether a solid waste transfer station is an outright permitted use in a particular zone. *Pend-Air Citizen's Comm. v. City of Pendleton*, 29 Or LUBA 362 (1995).

**31.3.9 Permits – Particular Uses – Waste Disposal Facilities.** Where a local code allows recycling and other incidental uses, LUBA will defer to a local government

interpretation of the code as allowing a recycling facility that accepts waste material including both solid waste and recyclable material, where approximately 70 percent of the material accepted will be recycled and approximately 30 percent will be disposed of at a landfill. *Linebarger v. City of The Dalles*, 24 Or LUBA 91 (1992).

**31.3.9 Permits – Particular Uses – Waste Disposal Facilities.** Where there is uncontradicted evidence that up to 70 percent of the waste material to be accepted at a proposed recycling facility will be recycled, and that some recycling facilities accept material that includes both solid waste that cannot be recycled as well as recyclable material, a local government's finding that the solid waste transfer component of the proposed facility is "customarily incidental" to the recycling component of the facility is supported by substantial evidence in the record. *Linebarger v. City of The Dalles*, 24 Or LUBA 91 (1992).

**31.3.9 Permits – Particular Uses – Waste Disposal Facilities.** Where the evidence identified in the record concerning the acreage required to be included in a landfill site due to factors such as rights-of-way, buffers, setbacks, longer lifespan, need to accommodate waste from outside the county, etc. is unclear, LUBA may not, pursuant to ORS 197.835(9)(b), overlook the county's failure to adopt findings justifying the number of acres included in a goal exception for the landfill. *Dyke v. Clatsop County*, 18 Or LUBA 787 (1990).