

LUBA Case Summaries June 2025

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Case summaries below may include references to LUBA’s headnote index. Similarly indexed headnotes can be found at <https://www.oregon.gov/luba/Pages/Headnotes.aspx>.

● ***DTL, Inc. dba Double Tee Concerts v. City of Portland*, LUBA No 2024-081 (June 4, 2025)**
(Opinion by Zamudio, Board Chair)

Petitioner appealed a city council decision approving a Major Event Entertainment conditional use and certain adjustments for a live music concert venue in an industrial zone. Held: The city plausibly interpreted the transportation system criteria to not require the elimination of all transportation risks. The city’s findings were adequate and supported by substantial evidence with regard to street intersection and rail crossing safety, street lighting, pedestrian facilities, and transit connections. The city plausibly interpreted an approval criterion to allow the city to consider only those impacts affecting the surrounding area in deciding whether the public benefits of the proposed use outweigh any impacts that cannot be mitigated. Affirmed.

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation.

1.4.1 Administrative Law – Adequacy of Findings – Generally.

1.6.1 Administrative Law – Substantial Evidence – Generally.

● ***Northwest Environmental Defense Center v. City of Portland*, LUBA No 2025-019 (June 5, 2025)**
(Opinion by Bassham, Board Member)

Petitioners appealed a city Land Use Compatibility Statement (LUCS) concluding that an existing petroleum and renewable fuel facility is a use allowed in a city industrial zone. Held: The LUCS decision is excluded from the definition of “land use decision” under ORS 197.015(10)(b)(H)(ii), and therefore is excluded from LUBA’s jurisdiction. Transferred.

26.2.10 LUBA Jurisdiction – Land Use Decision: Statutory Test – Compatibility Statement Exception.

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● ***Oregon Coast Alliance v. Coos County*, LUBA No 2025-005 (June 18, 2025)**

(Opinion by Wilson, Board Member)

Petitioner appealed a board of commissioners decision approving a conditional use permit for a golf course and accessory uses on land zoned for exclusive farm use (EFU). Held: An allegedly ineffective incorporation of findings is not an independent basis for remand where, without the allegedly ineffectively incorporated findings, the findings establish that all of the approval criteria are satisfied. The county's findings regarding the farm impacts test did not misconstrue the applicable law, were adequate and supported by substantial evidence. ORS 215.296. In the absence of agricultural expert testimony alleging significant farm impacts, a reasonable person could rely on engineer, geologist, and golf-course manager testimony regarding the absence of farm impacts from the golf course use. The county was not required to defer a finding regarding the farm impacts test until a later time when the water resources impacts have been demonstrated through the county relying on unchallenged expert evidence that the existing state water regulation program will not permit the golf course to use water in a manner that would adversely impact the surrounding farm uses. *Rhyne v. Multnomah County*, 23 Or LUBA 442 (1992). The county's findings that the proposal met the definition of "golf course" in OAR 660-033-0130(20) did not misconstrue the applicable law, were adequate and supported by substantial evidence. Affirmed.

1.4.1 Administrative Law – Adequacy of Findings – Generally.

1.6.1 Administrative Law – Substantial Evidence – Generally.

3.3.1 EFU Statute/Ordinances – Nonfarm Uses – Generally.

3.3.8 EFU Statute/Ordinances – Nonfarm Uses – No Significant Change/Increase Std.

● ***Gould v. Deschutes County*, LUBA No 2024-089/090/097/098 (June 18, 2025)**

(Opinion by Bassham, Board Member)

Petitioners appealed two land use compatibility statement (LUCS) decisions and two county decisions rejecting petitioners' attempts to file local appeals of the two LUCS decisions. Held: The decisions in these consolidated appeals were withdrawn for reconsideration. OAR 661-010-0021; ORS 197.830(13)(b). During the period the decisions were withdrawn, intervenor-respondent withdrew the underlying applications and later requested that these appeals be dismissed as moot. Dismissed.

27.17 LUBA Procedures/Rules – Withdrawal of Decision

26.6 LUBA Jurisdiction – Mootness

● ***Inglis v. Harney County*, LUBA No 2025-017 (June 20, 2025)**

(Opinion by Wilson, Board Member)

Petitioner appealed a county approval of a nonfarm dwelling on land zoned for exclusive farm use (EFU). Held: Petitioner's motion for additional authorities was denied because it did not identify any intervening new caselaw and instead offered supplemental briefing supporting their assignments of error, which is not allowed under LUBA's rules. The county did not misconstrue the farm impacts test under ORS 215.284(2)(a) and OAR 660-033-0130(4)(c)(A) by considering

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impacts to three hay/alfalfa farms and addressing them collectively, rather than analyzing the impacts on an individual farm-by-farm basis. Absent any evidence that there would be different impacts, the county's findings that the impacts would be the same and similarly insignificant due to distance are consistent with *Stop the Dump Coalition v. Yamhill County*, 364 Or 432, 435 P3d 698 (2019). The county did not misconstrue OAR 660-033-0130(4)(c)(B)(i) by relying on an independent expert soil survey to determine that the proposed non-farm dwelling will be situated on a lot or parcel, or a portion of a lot or parcel, that is "generally unsuitable" for the production of farm crops and livestock. ORS 215.211, OAR 660-033-0030(5)(b), and OAR 660-033-0045 govern a determination whether the subject property does not meet the definition of agricultural land and do not apply to an application for a nonfarm dwelling and, therefore, the county was entitled to rely on a soil survey that was not reviewed and certified by the Department of Land Conservation and Development (DLCD). Affirmed.

1.4.1 Administrative Law – Adequacy of Findings Generally

3.3.3 EFU Statute/Ordinances – Nonfarm Uses Dwellings

27.10.3 LUBA Procedures/Rules – Time Limits Petition for Review

● ***Messerle v. Coos County*, LUBA No 2025-033 (June 23, 2025)**

(Opinion by Wilson, Board Member)

Petitioners appealed a board of commissioners decision approving the designation of a road as a local access road. Held: Petitioners notice of intent to appeal (NITA) was deficient in several respects and was not accompanied by the proper filing fee required by OAR 661-010-0015(4). Petitioners failed to respond to LUBA's notice of noncompliance and order to show cause directing petitioners to correct their NITA and submit the correct fee. OAR 661-010-0015(1)(c). Dismissed.

27.1 LUBA Procedures/Rules – Generally

27.2.1 LUBA Procedures/Rules – Perfecting an Appeal Notice of Intent to Appeal

● ***Kupillas v. Clackamas County*, LUBA No 2024-015 (June 26, 2025)**

(Opinion by Zamudio, Board Chair)

On remand from the Court of Appeals. Petitioners appealed a hearings officer decision approving a conditional use permit for a home occupation event business on land in a mixed farm and forest use zone. Held: ORS 215.760 does not prohibit intervenor-respondent from converting the barn to an event facility if it obtains land use approval and a building permit for the structure. *Kupillas v. Sage and Social LLC*, 337 Or App 67, 563 P3d 394 (2024), *rev den*, 373 Or 444 (2025). The court's decision did not affect the disposition of the remaining assignments of error. *Kupillas v. Clackamas County*, LUBA No 2024-015 (July 19, 2024). Remanded.

8.4 Goal 4 Forest Lands/Goal 4 Rule – Nonforest Uses

● ***Central Oregon Landwatch v. Deschutes County*, LUBA No 2025-015 (June 26, 2025)**

(Opinion by Bassham, Board Member)

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Petitioner appealed a board of commissioners decision concluding that a 65-acre parcel is not “agricultural land,” as defined in Goal 3 (Agricultural Land), amending the comprehensive plan designation from Agriculture to Rural Residential, and rezoning the property from exclusive farm use (EFU) to residential use. Held: The county erred by failing to adopt findings addressing petitioner’s argument that the county code regulations allowing planned and cluster development facially conflict with a comprehensive plan policy that mandates a 10-acre minimum parcel size for rural residential development. The county misconstrued the applicable law and adopted inadequate findings in concluding that the subject property is not suitable for farm use because the county failed to analyze the suitability of the property for certain farm uses for which argument and evidence in the record support that the property may be suitable. OAR 660-033-0020(1)(a)(B); ORS 215.203(2)(a). The county plausibly interpreted Deschutes County Code 18.136.020(D) in determining that there was a “change in circumstances” to allow for the subject property to be rezoned based on an Order 1 soil study. ORS 197.829(1). The county did not misconstrue OAR 660-033-0030(3) when it determined that it was not required to consider the use of the subject property in conjunction with properties that are not nearby or adjacent. Remanded.

7.2.3 Goal 3 Agricultural Lands/Goal 3 Rule – Agricultural Land Definition Other Suitable Land

3.3.7 EFU Statute/Ordinances – Nonfarm Uses Unsuitability Standard

1.6.1 Administrative Law – Substantial Evidence Generally

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