

3.1 EFU Statute/Ordinances – Generally. A county’s decision to approve the construction of a bridge and related trail improvements in an EFU zone is both a land use decision and a “permit,” as defined in ORS 215.402(4), where LUBA previously concluded that approval of the transportation project including the bridge and related trail improvements is a conditional use in the EFU zone and where the construction of the bridge and related trail improvements constitutes the “development of land” within the meaning of ORS 215.402(4). *Van Dyke v. Yamhill County*, 81 Or LUBA 427 (2020).

3.1 EFU Statute/Ordinances – Generally. LUBA will reject an argument that the construction of a pedestrian bridge and related trail approaches proposed as a part of a trail development project qualifies as a “fire service facility” under ORS 215.283(1)(s) where the record does not support the county’s assertion that the intended use of the bridge is for fire protection. *Van Dyke v. Yamhill County*, 81 Or LUBA 427 (2020).

3.1 EFU Statute/Ordinances – Generally. In determining whether proposed “agri-tourism or other commercial events or activities” are “incidental and subordinate to existing commercial farm use of the tract” for purposes of ORS 215.283(4)(d)(A), a county errs in relying on a comparison of the frequency of commercial events with the frequency of commercial farming activity on the property to the exclusion of any relevant circumstances, including the nature, intensity, and economic value of the respective uses, that bear on whether the existing commercial farm use remains the predominant use of the tract. *Friends of Yamhill County v. Yamhill County*, 81 Or LUBA 276 (2020).

3.1 EFU Statute/Ordinances – Generally. Two parcels are not “under the same ownership” and, therefore, not a “tract,” within the meaning of ORS 215.010(2), where one is owned by a person individually and the other is owned by a trust, with the same person serving as trustee. *Central Oregon Landwatch v. Deschutes County*, 81 Or LUBA 75 (2020).

3.1 EFU Statute/Ordinances – Generally. Establishing that proposed “agri-tourism or other commercial events or activities” are “necessary to support the commercial farm uses or the commercial agricultural enterprises in the area” for purposes of ORS 215.283(4)(d)(A) is a relatively high hurdle: the county must find that the events are essential in order to maintain the existence of either the commercial farm uses on the subject property or the commercial agricultural enterprises in the area. *Friends of Yamhill County v. Yamhill County*, 80 Or LUBA 135 (2019).

3.1 EFU Statute/Ordinances – Generally. A demonstration that proposed “agri-tourism or other commercial events or activities” are “necessary to support” an approved commercial activity in conjunction with farm use under ORS 215.283(2)(a), such as a brewery, is not sufficient to demonstrate that the events are “necessary to support” an “existing commercial farm use of the tract,” such as the growing of filberts, for purposes of ORS 215.283(4)(d)(A), even where revenue from the brewery “supplements” revenue from the growing of filberts. *Friends of Yamhill County v. Yamhill County*, 80 Or LUBA 135 (2019).

3.1 EFU Statute/Ordinances – Generally. ORS 215.441 does not provide an independent basis to approve a dwelling within a church on property zoned EFU, and, where a local code provision provides that “[e]xisting churches may be maintained, enhanced or expanded on the same tract,”

a construction of that provision to independently allow a residential use of a church as an enhancement to the church impermissibly conflicts with ORS 215.203, ORS 215.283, and ORS 215.441. *Wetherell v. Douglas County*, 80 Or LUBA 183 (2019).

3.1 EFU Statute/Ordinances – Generally. While a local government’s authority to regulate land use and development is generally broad under Oregon law, a local government’s authority to regulate land use on exclusive farm use (EFU)-zoned land is governed by state law. Land that is planned and zoned for exclusive farm use must be used exclusively for defined farm uses or limited listed exceptions provided by state law. Production of marijuana is an outright permitted farm use on land zoned EFU. While state law controls permitted uses on farmland and the regulation of marijuana production, local governments may adopt reasonable “time, place, and manner” regulations for marijuana production. *MJAI Oregon 5, LLC v. Linn County*, 78 Or LUBA 366 (2018).

3.1 EFU Statute/Ordinances – Generally. A county’s decision is “outside the range of discretion allowed the local government under its comprehensive plan and implementing ordinances,” pursuant to ORS 197.835(10)(a)(A), where petitioner’s application for marijuana production meets a county’s clear and objective standards for marijuana production on EFU-zoned land, no evidence was submitted that contradicted petitioner’s assertion that it could and would meet the county’s marijuana production standards, and the county relied upon factors and considerations in denying petitioner’s application that are not contained in the applicable approval criteria. Accordingly, the proper disposition of the county’s denial is reversal with an order instructing the county to grant approval of the application. *MJAI Oregon 5, LLC v. Linn County*, 78 Or LUBA 366 (2018).

3.1 EFU Statute/Ordinances – Generally. OAR 660-024-0050(6) requires that when land is added to an urban growth boundary (UGB), the local government “must assign appropriate urban plan designations to the added land, consistent with the need determination and the requirements of section (7) of this rule, if applicable.” OAR 660-024-0050(7) provides lands included with a UGB for a public facility “must be planned and zoned for the intended use and must remain planned and zoned for that use unless the city removes the land from the UGB.” A city decision to retain the land’s existing Exclusive Farm Use zoning until the land is annexed into the city is inconsistent with the OAR 660-024-0050(7) requirement to adopt concurrent plan and zone re-designation “for [that] intended use.” *Deumling v. City of Salem*, 76 Or LUBA 99 (2017).

3.1 EFU Statute/Ordinances – Generally. ORS 215.448(1)(a) to (d) provide standards that apply to a proposed home occupation in “an exclusive farm use zone, forest zone or a mixed farm and forest zone that allows residential uses,” and do not apply to an application for a proposed home occupation on property located in a rural residential zone. *Willis v. Clackamas County*, 76 Or LUBA 244 (2017)

3.1 EFU Statute/Ordinances – Generally. The uses authorized in EFU zones in counties that have designated marginal lands are generally set out in subsections of ORS 215.213, whereas the uses authorized in EFU zones in non-marginal lands counties are generally set out in ORS 215.283. The regulation of dwellings under ORS 215.213 was originally intended to be slightly more restrictive than under ORS 215.283, as the quid pro quo for more liberal allowance of dwellings

on designated marginal lands under ORS 215.317. *Landwatch Lane County v. Lane County*, 70 Or LUBA 325 (2014).

3.1 EFU Statute/Ordinances – Generally. The nonfarm dwelling standards codified at ORS 215.284 were enacted by the legislature as amendments to ORS 215.283(3) and new subsections of ORS 215.283. *Landwatch Lane County v. Lane County*, 70 Or LUBA 325 (2014).

3.1 EFU Statute/Ordinances – Generally. Legislative Counsel’s decision to renumber as ORS 215.284(1) to (6) what the legislature enacted as ORS 215.283(3) to (8) does not change the fact that what is now codified at ORS 215.284(1) to (6) was enacted by the legislature as part of ORS 215.283 and 215.283. ORS 215.283 is the statutory regime that applies to non-marginal lands counties rather than marginal lands counties. *Landwatch Lane County v. Lane County*, 70 Or LUBA 325 (2014).

3.1 EFU Statute/Ordinances – Generally. As a marginal lands county, Lane County is expressly authorized to apply ORS 215.213(3) in approving a nonfarm dwelling on non-high value farmland in the Willamette Valley. Because Lane County is a marginal lands county, it is not required to apply ORS 215.284(1) in addition to ORS 215.213(3), simply because ORS 215.284(1) expressly applies to lands in the Willamette Valley. ORS 215.284(1) applies to non-marginal lands counties. *Landwatch Lane County v. Lane County*, 70 Or LUBA 325 (2014).

3.1 EFU Statute/Ordinances – Generally. Where a planning commission almost entirely relied on the EFU zoning statutes to find that a permit applicant inadequately considered alternatives to a proposed EFU-zoned site for a transmission line, and only belatedly and obscurely relied on a comprehensive plan policy to impose a similar alternatives analysis, the permit applicant’s general challenge to the planning commission’s legal analysis on cited pages of the planning commission’s decision where the comprehensive plan policy was mentioned is sufficient to preserve the permit applicant’s right to challenge the planning commission’s reliance on the plan policy in its appeal to the board of commissioners. *WKN Chopin LLC v. Umatilla County*, 66 Or LUBA 1 (2012).

3.1 EFU Statute/Ordinances – Generally. ORS 215.275(5) requires a county to consider whether the imposition of clear and objective conditions on a proposed utility facility would prevent a significant change in accepted farm practices or prevent a significant increase in the cost of farm practices, and to approve the proposed facility with those clear and objective conditions if the conditions would minimize or mitigate the impacts. *Falcon Heights WSD v. Klamath County*, 64 Or LUBA 390 (2011).

3.1 EFU Statute/Ordinances – Generally. Goal 3 (Agricultural Lands), LCDC administrative rules concerning Goal 3 and the statutory EFU zone contain a level of detail that frequently requires that counties replicate the statutory and rule language in their EFU zones. *Friends of Umatilla County v. Umatilla County*, 58 Or LUBA 12 (2008).

3.1 EFU Statute/Ordinances – Generally. Roadways that cross exclusive farm use zoned land to connect two villages in a destination resort are properly viewed as “[a]ccessory transportation improvements for a use that is allowed” in the exclusive farm use zone, within the meaning of OAR 660-012-0065(3)(a). *Gould v. Deschutes County*, 54 Or LUBA 205 (2007).

3.1 EFU Statute/Ordinances – Generally. A local government errs in geographically limiting its inquiry regarding what constitutes a “farm operation” for purposes of ORS 197.247(1)(a) to only lands “adjacent to” or “contiguous with” the property that is the subject of the marginal lands application. *Walker v. Lane County*, 53 Or LUBA 374 (2007).

3.1 EFU Statute/Ordinances – Generally. ORS 197.247(1)(a)(1991), which allows counties to designate as marginal land property that was not managed during three of the five years preceding January 1, 1983 as part of a forest operation producing an average of \$10,000 in annual gross income, implicitly requires that counties use 1983 timber prices in estimating the annual timber revenue derived from the property. *Just v. Lane County*, 49 Or LUBA 456 (2005).

3.1 EFU Statute/Ordinances – Generally. ORS 197.247(1)(b)(C) requires that counties use the agricultural classification system in use by the Soil Conservation Service on October 15, 1983, in determining whether proposed marginal lands are predominantly composed of Class VI soils. A county is entitled to rely upon a 1987 Soil Conservation Service soil survey that is a product of the classification system in use on October 15, 1983. *Just v. Lane County*, 49 Or LUBA 456 (2005).

3.1 EFU Statute/Ordinances – Generally. A county EFU zone limit on farm recreational uses that requires that such uses “be subordinate to the commercial agricultural operation in scope, scale and impact, and shall contribute ‘added value’ to the commercial agricultural farm operation” does not necessarily prohibit a farm recreational use that generates more income than the commercial agricultural operation on the property. *Underhill v. Wasco County*, 43 Or LUBA 277 (2002).

3.1 EFU Statute/Ordinances – Generally. Counties may not impose additional local barriers to uses allowed outright in EFU zones under ORS 215.283(1) and also may not allow additional uses in the EFU zone that are not allowed by statute. *Bechtold v. Jackson County*, 42 Or LUBA 204 (2002).

3.1 EFU Statute/Ordinances – Generally. ORS 215.283(1)(b) separately authorizes churches and cemeteries in conjunction with churches, but does not separately authorize other uses that commonly are constructed in conjunction with churches. That provides at least some indication that such other uses in conjunction with churches are not authorized by ORS 215.283(1)(b). *Bechtold v. Jackson County*, 42 Or LUBA 204 (2002).

3.1 EFU Statute/Ordinances – Generally. ORS 215.283(1)(a) authorizes “[p]ublic or private schools, including all buildings essential to the operation of a school.” This language potentially allows a variety of accessory, school-related buildings, and the legislature’s failure to include similar language in ORS 215.283(1)(b) where the legislature authorized churches is some indication that the legislature did not intend to authorize a broad range of church-related accessory uses. *Bechtold v. Jackson County*, 42 Or LUBA 204 (2002).

3.1 EFU Statute/Ordinances – Generally. ORS 215.441, which limits local zoning authority over churches, but refers to churches and other places of worship as “nonresidential place[s] of worship,” provides context for ORS 215.283(1)(b) and suggests that the word “church” in ORS 215.283(1)(b) is not properly interpreted to authorize rectories, convents, or office/dormitories

which are used in large part for residential purposes. *Bechtold v. Jackson County*, 42 Or LUBA 204 (2002).

3.1 EFU Statute/Ordinances – Generally. Absent textual or contextual support for interpreting the word “church” in ORS 215.283(1)(b) as including rectories, convents and offices/dormitories, the general rule that EFU zoning statutes should be interpreted narrowly to limit approval of nonfarm uses applies and the term should be interpreted narrowly to exclude those uses. *Bechtold v. Jackson County*, 42 Or LUBA 204 (2002).

3.1 EFU Statute/Ordinances – Generally. Uses within a mixed farm/forest zone must comply with the restrictions placed on exclusive farm use zones by ORS chapter 215 and the regulations that implement it. *City of Albany v. Linn County*, 40 Or LUBA 38 (2001).

3.1 EFU Statute/Ordinances – Generally. ORS 197.685 imposes a legislative duty to consider non-EFU-zoned lands to provide areas that would supplement seasonal farmworker housing allowed outright on EFU-zoned land. ORS 197.685 does not require that an applicant for quasi-judicial approval for seasonal farmworker housing in EFU zones demonstrate that non-EFU-zoned lands are unavailable to provide such housing. *Durig v. Washington County*, 40 Or LUBA 1 (2001).

3.1 EFU Statute/Ordinances – Generally. Where the ORS 215.283(1)(w) authorization for rural fire service facilities in EFU zones had taken effect, but a county had not yet amended its zoning ordinance to reflect the statutory change, ORS 215.283(1)(w) applies directly, and the county does not violate the zoning ordinance by approving a rural fire service facility in its EFU zone. *Keicher v. Clackamas County*, 39 Or LUBA 521 (2001).

3.1 EFU Statute/Ordinances – Generally. Rural fire service facilities in EFU zones under ORS 215.283(1)(w) need not be separately approved as utility facilities necessary for public service under 215.283(1)(d) or meet the “necessity test” that is applied to such utility facilities. *Keicher v. Clackamas County*, 39 Or LUBA 521 (2001).

3.1 EFU Statute/Ordinances – Generally. In approving applications for permits for uses that are specifically allowed in rural EFU zones by ORS 215.213 and 215.283, counties are not required to apply the case-by-case urban/rural analysis that is required under Goal 14 and *1000 Friends of Oregon v. LCDL (Curry Co.)*, 301 Or 447, 724 P2d 268 (1986), on non-EFU-zoned rural lands. *Jackson County Citizens League v. Jackson County*, 38 Or LUBA 37 (2000).

3.1 EFU Statute/Ordinances – Generally. A water utility’s proposal to solve a water shortage by drilling wells and constructing related facilities on EFU-zoned land need not demonstrate that it is not feasible to solve the water shortage in some other way than drilling wells. *Dayton Prairie Water Assoc. v. Yamhill County*, 38 Or LUBA 14 (2000).

3.1 EFU Statute/Ordinances – Generally. Once a water utility decides to solve a water shortage by drilling wells and constructing related facilities, the wells and related facilities must be located on non-EFU-zoned land, unless it is not feasible to do so. *Dayton Prairie Water Assoc. v. Yamhill County*, 38 Or LUBA 14 (2000).

3.1 EFU Statute/Ordinances – Generally. A utility facility may be located on EFU-zoned land if it is not feasible to locate the utility facility on non-EFU-zoned land and, in that circumstance, ORS 215.213(1)(d) and 215.283(1)(d) do not require that the utility facility be located on the “least suitable” EFU-zoned land. *Dayton Prairie Water Assoc. v. Yamhill County*, 38 Or LUBA 14 (2000).

3.1 EFU Statute/Ordinances – Generally. In reviewing alternatives to locating a proposed utility facility on a proposed EFU-zoned site, a county is not required to examine alternatives that would also involve using EFU-zoned lands. *Dayton Prairie Water Assoc. v. Yamhill County*, 38 Or LUBA 14 (2000).

3.1 EFU Statute/Ordinances – Generally. Under *Brentmar v. Jackson County*, 321 Or 481, 900 P2d 1030 (1995), a county may not apply local land use legislation to deny or condition uses that are authorized by ORS 215.213(1) or 215.283(1), unless the county is required by statewide planning goals or LCDC rules to apply the local land use legislation to such uses. *Dayton Prairie Water Assoc. v. Yamhill County*, 38 Or LUBA 14 (2000).

3.1 EFU Statute/Ordinances – Generally. That a type of nonfarm use is listed in ORS 215.283(2) authorizes a county to allow such uses in an EFU zone, but carries no implication that a particular use is consistent with the purpose of the EFU zone as a matter of law. ORS 215.283(2) does not prohibit the county from applying a local criterion that requires a proposal to mine high-value agricultural topsoil in an EFU zone not seriously interfere with the purpose of that zone. *MacHugh v. Benton County*, 37 Or LUBA 65 (1999).

3.1 EFU Statute/Ordinances – Generally. Even assuming that a county cannot categorically prohibit all mining operations in the EFU zone, the county can apply a local standard requiring that conditional uses not seriously interfere with the purpose of the zone to deny a proposal to mine high-value agricultural topsoil, where the county’s application of its standard is limited to mining operations that permanently remove agricultural topsoil. *MacHugh v. Benton County*, 37 Or LUBA 65 (1999).

3.1 EFU Statute/Ordinances – Generally. *Brentmar v. Jackson County*, 321 Or 481, 900 P2d 1030 (1995), circumscribes a local government’s authority under ORS 215.283(1) with respect to substantive standards, but it does not prescribe the procedure the county must use when considering whether a proposed use is permitted. *Corp. of Presiding Bishop v. Klamath County*, 34 Or LUBA 131 (1998).

3.1 EFU Statute/Ordinances – Generally OAR 660-33-120 and 660-33-130, which prohibit churches on high-value EFU land, are valid because the uses allowed under the rules are not less restrictive than the uses that would otherwise be allowed under ORS 215.283. *DLCD v. Clackamas County*, 33 Or LUBA 675 (1997).

3.1 EFU Statute/Ordinances – Generally. *Brentmar v. Jackson County*, 321 Or 481, 900 P2d 1030 (1995), does not prohibit local regulations that implement uses permitted under ORS

215.283(1), and does not restrict LCDC's authority to adopt or apply rules that implement statutory language. *DLCD v. Polk County*, 32 Or LUBA 16 (1996).

3.1 EFU Statute/Ordinances – Generally. In *Lane County v. LCDC*, 138 Or App 635, 910 P2d 414, *modified on recons*, 140 Or App 368 (1996), OAR 660-33-135(7) was invalidated as exceeding the scope of LCDC's rulemaking authority only as the rule applies to the approval of dwellings on high-value farmland in marginal lands counties under ORS 215.213(2)(b); the *Lane County* decision did not invalidate OAR 660-33-135(7) as it applies to ORS 215.283(1). *DLCD v. Polk County*, 32 Or LUBA 16 (1996).

3.1 EFU Statute/Ordinances – Generally. Although a county may regulate or define “commercial activities that are in conjunction with farm use” more restrictively than required by state law, the county's EFU zones may not allow uses that are not authorized by statutory exclusive farm use zoning provisions. *City of Sandy v. Clackamas County*, 28 Or LUBA 316 (1994).

3.1 EFU Statute/Ordinances – Generally. Although nothing in ORS 215.213(1) and (2) and 215.283(1) and (2) prevents a county from adopting an EFU zone that allows uses identified in ORS 215.213(1) or 215.283(1) as outright permitted uses, those statutes do not *require* that it do so. *Brentmar v. Jackson County*, 27 Or LUBA 453 (1994).

3.1 EFU Statute/Ordinances – Generally. ORS 215.316(1) (1993) expresses a legislative intent to retroactively prohibit counties from designating resource lands as marginal lands, and from adopting plan and code provisions allowing additional nonresource uses on such marginal lands, after January 1, 1993. ORS 215.316(1) (1993) does not express an intent to retroactively prohibit counties that have *not* designated marginal lands from applying either ORS 215.283 (1991) or the supposedly stricter provisions of 215.213(1) to (3) (1991) to their exclusive farm use zones. *1000 Friends of Oregon v. Marion County*, 27 Or LUBA 303 (1994).

3.1 EFU Statute/Ordinances – Generally. County comprehensive plan and ordinance amendments affecting a county's exclusive farm use zone(s), adopted after August 7, 1993, are required to implement the requirements of OAR chapter 660, division 33, for important farmland. OAR 660-33-150(3) (1993). *1000 Friends of Oregon v. Marion County*, 27 Or LUBA 303 (1994).

3.1 EFU Statute/Ordinances – Generally. A local government's implementation of exclusive farm use zoning is not the equivalent of imposing a statutory conservation easement. *Young v. Clackamas County*, 24 Or LUBA 526 (1993).

3.1 EFU Statute/Ordinances – Generally. Counties may adopt EFU zones that are more restrictive than statutory EFU zoning requirements, but may not adopt EFU zones that are less restrictive than the statutory requirements. *Harris v. Polk County*, 23 Or LUBA 152 (1992).

3.1 EFU Statute/Ordinances – Generally. Acknowledgment under ORS 197.251 certifies that a comprehensive plan and land use regulations comply with the statewide planning goals, but does not establish that a plan and land use regulations comply with applicable statutes. *Harris v. Polk County*, 23 Or LUBA 152 (1992).

3.1 EFU Statute/Ordinances – Generally. While counties may not adopt exclusive farm use zones that are less protective of agricultural lands than required by statute, they may regulate agricultural lands more stringently. *Avgeris v. Jackson County*, 23 Or LUBA 124 (1992).

3.1 EFU Statute/Ordinances – Generally. Although counties may regulate uses within their exclusive farm use zones more stringently than required by statute, the uses that may be allowed within such zones are limited to those specified in ORS 215.313 and 215.283. *Greuner v. Lane County*, 21 Or LUBA 329 (1991).

3.1 EFU Statute/Ordinances – Generally. Absent some expression of legislative intent to the contrary, the legislature is presumed to have intended that the same term used in different sections of the exclusive farm use statute have the same meaning in both sections. *Greuner v. Lane County*, 21 Or LUBA 329 (1991).

3.1 EFU Statute/Ordinances – Generally. Where language in the EFU statutes is not precise, and therefore susceptible of more than one interpretation, the interpretation favoring farm use and discouraging non farm use should be adopted. *Smith v. Clackamas County*, 19 Or LUBA 171 (1990).