3.2.1 EFU Statute/Ordinances – Farm Uses – Generally. A petitioner may not also operate an exotic animal rescue facility, which is undisputedly not a "farm use," on EFU land where the petitioner uses his or her EFU-zoned property for certain "farm uses," under ORS 215.203. The existing "farm use[s]" do not "legitimize" the concurrent unpermitted uses, nor do they shield the unpermitted uses from county code enforcement action. *A Walk on the Wild Side v. Washington County,* 78 Or LUBA 356 (2018).

3.2.1 EFU Statute/Ordinances – Farm Uses – 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 farm land 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).

3.2.1 EFU Statute/Ordinances – Farm Uses – 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).

3.2.1 EFU Statute/Ordinances – Farm Uses – Generally. A building accessory to farm use that is allowed under ORS 215.213(1)(e) as a building "customarily provided in conjunction with farm use" is not itself a farm use. *Bratton v. Washington County,* 65 Or LUBA 461 (2012).

3.2.1 EFU Statute/Ordinances – Farm Uses – Generally. Determining whether a proposed building is allowed in the EFU zone under ORS 215.213(1)(e) or 215.283(1)(e) as a building "customarily provided in conjunction with farm use" requires the local government to determine whether the land is currently employed for farm use and whether the proposed building is of the type that is customarily combined with the farm use in question. Because those determinations are not clear and objective, a building permit to approve such a building is not subject to the ORS 197.015(10)(b)(B) exception for "building permits issued under clear and objective standards." *Bratton v. Washington County,* 65 Or LUBA 461 (2012).

3.2.1 EFU Statute/Ordinances – Farm Uses – Generally. Where a property is to be developed with a commercial or industrial use, the internal driveway on that property that connects the commercial or industrial buildings to the nearest public right-of-way is properly viewed as part of the commercial or industrial use, whether that driveway is labeled as "accessory" to the business or an integral part of the use itself. *Wilson v. Washington County,* 63 Or LUBA 314 (2011).

3.2.1 EFU Statute/Ordinances – Farm Uses – Generally. The Supreme Court's decision in *Brentmar v. Jackson County*, 321 Or 481, 900 P2d 1030 (1995), that uses listed in ORS 215.203(1) may not be subject to local criteria more restrictive than the statute, did not automatically invalidate all final, unappealed land use decisions or conditions attached to those decisions that were issued and final prior to 1995, even if those decisions were inconsistent with the holding in *Brentmar*. *Just v. Linn County*, 59 Or LUBA 233 (2009).

3.2.1 EFU Statute/Ordinances – Farm Uses – Generally. Whether the county tax assessor in 1971 applied preferential tax assessment to properties that were zoned to allow for agricultural use has little bearing on whether that zone was an "exclusive farm use" zone subject to the limitations of ORS 215.203(1971). Rather, the text and context of the county's zoning ordinance in 1971 is the best evidence. *Reeves v. Yamhill County*, 55 Or LUBA 452 (2007).

3.2.1 EFU Statute/Ordinances – Farm Uses – Generally. LUBA will affirm a county's determination that the Agriculture-A zone adopted in 1971 was not an "exclusive farm use" zone subject to the limitations of ORS 215.203 (1971), for purposes of determining whether proposed dwellings under a Ballot Measure 37 waiver must be "in conjunction with farm use," where the 1971 ordinance included a separate "exclusive farm use" zone that permitted only the uses allowed under ORS 215.203 (1971), the Agriculture-A zone in contrast permitted a large number of nonfarm uses that bore no relationship to the uses allowed in the statute, and the obvious inference is that the county did not intend the Agriculture-A zone to implement ORS 215.203 (1971). *Reeves v. Yamhill County*, 55 Or LUBA 452 (2007).

3.2.1 EFU Statute/Ordinances – Farm Uses – Generally. Pursuant to *Wetherell v. Douglas County*, 342 Or 666, 160 P3d 614 (2007), a local government may consider "profitability" in determining whether land is "suitable for farm use" under OAR 660-033-0020(1)(a)(B). *Wetherell v. Douglas County*, 54 Or LUBA 646 (2007).

3.2.1 EFU Statute/Ordinances – Farm Uses – Generally. That a farm use is not commercial-scale in size, intensity or profitability is not a sufficient basis to conclude that land is not suitable for farm use under OAR 660-033-0020(1)(a)(B). *Wetherell v. Douglas County*, 54 Or LUBA 646 (2007).

3.2.1 EFU Statute/Ordinances – Farm Uses – Generally. Under OAR 660-033-0030(3), a local government must consider whether land may be used in conjunction with nearby or adjacent farm lands. *Wetherell v. Douglas County*, 54 Or LUBA 646 (2007).

3.2.1 EFU Statute/Ordinances – Farm Uses – Generally. OAR 660-033-0030(5) prohibits consideration of "profitability or gross farm income" in determining whether land is agricultural land. That prohibition de-emphasizes if not eliminates the role that the "primary purpose of obtaining a profit in money" language in ORS 215.203(2)(a) definition of farm use might otherwise play in determining whether land is agricultural land. *Wetherell v. Douglas County*, 50 Or LUBA 167 (2005).

3.2.1 EFU Statute/Ordinances – Farm Uses – Generally. "Employment of land for the primary purpose of obtaining a profit in money," within the meaning of ORS 215.203(2)(a), includes a proposal for a feedlot where: (1) calves that are bred off-site are brought to the property, (2) they are fed with feed produced both on-site and off-site, (3) the calves are cared for on-site, and (4) waste is collected and used in conjunction with on-site hay production. *Friends of Jefferson County v. Jefferson County*, 48 Or LUBA 107 (2004).

3.2.1 EFU Statute/Ordinances – Farm Uses – Generally. *Moore v. Coos County*, 144 Or App 195, 925 P2d 927 (1996), lends indirect support for the principle that feeding of livestock in pens does not constitute "the produce of livestock," within the meaning of ORS 215.203(2)(a), where there are "no other indices of production." *Friends of Jefferson County v. Jefferson County*, 48 Or LUBA 107 (2004).

3.2.1 EFU Statute/Ordinances – Farm Uses – Generally. ORS 215.203(2)(a) provides that "feeding, breeding, management and sale of livestock" is a farm use. A proposed use that will carry out fewer than all four of those activities may still qualify as a farm use, if it nevertheless constitutes "the produce of * * * livestock," which is also listed as a farm use under ORS 215.203(2)(a). *Friends of Jefferson County v. Jefferson County*, 48 Or LUBA 107 (2004).

3.2.1 EFU Statute/Ordinances – Farm Uses – Generally. Where a regulation specifically authorizes a use in one zone and does not authorize that specific use in a second zone, a more general authorization of uses in the second zone should not be interpreted to include the more specifically authorized use in the first zone. However, that principle would not apply to bar finding a particular feedlot qualifies as a "farm use" rather than a "commercial activity * * * in conjunction with farm use," where the legislature's authorization of "commercial activities that are in conjunction with farm use" is no more specific than its authorization of "farm uses." *Friends of Jefferson County v. Jefferson County*, 48 Or LUBA 107 (2004).

3.2.1 EFU Statute/Ordinances – Farm Uses – Generally. A county's error in finding that ORS 215.253 imposes an absolute bar on adopting and applying local land use regulations to farm uses provides no basis for remand of land use decision approving a feedlot, where petitioners identify no existing, applicable local land use regulations that apply to county approval of a feedlot. *Friends of Jefferson County v. Jefferson County*, 48 Or LUBA 107 (2004).

3.2.1 EFU Statute/Ordinances – Farm Uses – Generally. A hearings officer's interpretation of a local code to conclude that a "wholesale nursery" is properly viewed as an "agricultural use" is consistent with the text of the code's definition of "agricultural use," where the term is expressly defined to include "horticultural use." *Lorenz v. Deschutes County*, 45 Or LUBA 635 (2003).

3.2.1 EFU Statute/Ordinances – Farm Uses – Generally. Absent some argument or evidence that calls into question a hearings officer's conclusion that growing plants in a greenhouse is an "accepted agricultural practice," LUBA will reject petitioners' contention that the hearings officer's decision must be remanded for a more detailed explanation of that conclusion. *Lorenz v. Deschutes County*, 45 Or LUBA 635 (2003).

3.2.1 EFU Statute/Ordinances – Farm Uses – Generally. As long as the primary purpose of grazing livestock is to obtain a profit from money, that activity is a farm use as defined at ORS 215.203(2), even if the profit obtained is not directly from grazing or selling livestock, but instead from using the livestock as part of a nonfarm business on the property. *Oregon Natural Desert Assoc. v. Harney County*, 42 Or LUBA 149 (2002).

3.2.1 EFU Statute/Ordinances – Farm Uses – Generally. A 1995 amendment to the ORS 215.203(2)(a) definition of "farm use" clarified that "riding lessons, training clinics and schooling shows" are activities commonly associated with facilities for "stabling or training equines." However, the legislature did not intend that such activities be properly viewed as "farm uses" in themselves, in isolation from "stabling or training equines." *Oregon Natural Desert Assoc. v. Harney County*, 42 Or LUBA 149 (2002).

3.2.1 EFU Statute/Ordinances – Farm Uses – Generally. A facility where fruit process water is trucked to a lagoon, stored and aerated to prevent odors and later used to irrigate a hay crop is properly viewed as a "farm use," within the meaning of ORS 215.203(2). *Farrell v. Jackson County*, 41 Or LUBA 1 (2001).

3.2.1 EFU Statute/Ordinances – Farm Uses – Generally. The requirement in ORS 215.203(2) that land must be employed "for the primary purpose of obtaining a profit in money" by one of the uses specified in the statute in order to be considered in "farm use" is an objective test that focuses on the activities that are occurring on the land rather than on the actual motivation of the owner or operator. *Cox v. Polk County*, 39 Or LUBA 1 (2000).

3.2.1 EFU Statute/Ordinances – Farm Uses – Generally. 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).

3.2.1 EFU Statute/Ordinances – Farm Uses – Generally. When a local ordinance creates an exemption from additional approval criteria for uses permitted in the underlying zone, and the ordinance distinguishes between permitted uses and uses subject to administrative review, it is incorrect to determine that wineries, which are uses subject to administrative review, are permitted uses in the exclusive farm use zone, and thus not subject to the additional approval criteria. *Roth v. Jackson County*, 38 Or LUBA 894 (2000).

3.2.1 EFU Statute/Ordinances – Farm Uses – Generally. An access road to a winery is an accessory use to the winery. When the zoning for the location of the proposed access road does not allow wineries, the access road cannot be established as an accessory use on that part of the property. *Roth v. Jackson County*, 38 Or LUBA 894 (2000).

3.2.1 EFU Statute/Ordinances – Farm Uses – Generally. Under ORS 215.705(4), an application for a dwelling in a mixed farm/forest zone must comply with the siting standards appropriate for the predominant use of the tract on January 1, 1993. A showing that no farm use of the property, as that term is defined in ORS 215.203(2), was occurring on the tract as of January 1, 1993, does

not mean that, by default, the property was predominantly in forest use on that date. *Gambee v. Yamhill County*, 38 Or LUBA 420 (2000).

3.2.1 EFU Statute/Ordinances – Farm Uses – Generally. ORS 215.705(4) requires that a county must determine whether farm or forest uses predominated on a "tract" on January 1, 1993. However, the configuration of the tract is considered as it exists as of the time an application for a dwelling is submitted. Once the scope of the tract is identified, the inquiry turns to whether farm or forest uses predominated on that tract on January 1, 1993. *Gambee v. Yamhill County*, 38 Or LUBA 420 (2000).

3.2.1 EFU Statute/Ordinances – Farm Uses – Generally. In considering which of two uses, farm or forest, predominate on a tract as of January 1, 1993, a county may consider more than the number of acres devoted to farm or forest use to determine predominant use. However, those considerations must flow from the use that was made of the tract on January 1, 1993. Thus, income from farm and forest uses and the amount of activity directed at those uses may be considered, but historic uses and soil capability may not. *Gambee v. Yamhill County*, 38 Or LUBA 420 (2000).

3.2.1 EFU Statute/Ordinances – Farm Uses – Generally. Portions of a tract that are used for nonfarm or nonforest activities have no relevance to the inquiry under ORS 215.705(4), which requires a county to determine whether farm or forest uses predominated on a tract as of January 1, 1993. If only a small portion of the property can reasonably be considered to be in farm or forest use, the county need only consider that portion in its determination of predominant use. *Gambee v. Yamhill County*, 38 Or LUBA 420 (2000).

3.2.1 EFU Statute/Ordinances – Farm Uses – Generally. A county must consider all farm uses in the area, including "hobby farm" uses located on adjacent properties, in determining whether property can practicably be managed for farm use, as required by ORS 215.705(2)(a)(C)(i). *Friends of Linn County v. Linn County*, 37 Or LUBA 297 (1999).

3.2.1 EFU Statute/Ordinances – Farm Uses – Generally. County findings that a parcel has been managed for "private use" rather than for "profit" fail to demonstrate that a parcel "cannot be practicably managed for farm use." Although the statutory definition of "farm use" requires that property be used "for the purpose of obtaining a profit in money," the term "profit" in this context does not mean profit in the ordinary sense, but rather refers to gross income. *Friends of Linn County v. Linn County*, 37 Or LUBA 280 (1999).

3.2.1 EFU Statute/Ordinances – Farm Uses – Generally. Pasturing livestock is a "farm use" as that term is defined in ORS 215.203(2), even though the owner's primary purpose in pasturing cattle on the property is to reduce fire potential by reducing ground cover. *DLCD v. Wallowa County*, 37 Or LUBA 105 (1999).

3.2.1 EFU Statute/Ordinances – Farm Uses – Generally. The statutory definition of "farm use" which requires in part that the land be used "for the primary purpose of obtain a profit in money" by farming, does not require an inquiry into the primary actual motivation of particular landowners. *Friends of the Creek v. Jackson County*, 36 Or LUBA 562 (1999).

3.2.1 EFU Statute/Ordinances – Farm Uses – Generally. ORS 215.203(2)(a) expressly defines "farm use" to permit "on-site * * * equipment and facilities" used for "farm use," even if it is possible to locate such equipment and facilities on land outside the EFU zone. *Friends of the Creek v. Jackson County*, 36 Or LUBA 562 (1999).

3.2.1 EFU Statute/Ordinances – Farm Uses – Generally. An irrigation reservoir may be considered a farm use, notwithstanding that the reservoir is sized to accommodate the needs of the supplier rather than the farm user. *Friends of the Creek v. Jackson County*, 36 Or LUBA 562 (1999).

3.2.1 EFU Statute/Ordinances – Farm Uses – Generally. The grazing of livestock on property in conjunction with a larger livestock operation on other lands constitutes the current employment of land for the produce of livestock under ORS 215.203. *Pekarek v. Wallowa County*, 36 Or LUBA 494 (1999).

3.2.1 EFU Statute/Ordinances – Farm Uses – Generally. A property need not be capable of supporting a commercial farm by itself to be capable of being put to "farm use" as that term is defined in ORS 215.203. *Pekarek v. Wallowa County*, 36 Or LUBA 494 (1999).

3.2.1 EFU Statute/Ordinances – Farm Uses – Generally. LUBA does not independently analyze the evidence, but reviews evidence in the record solely to determine whether it was reasonable for the decision maker to rely on that evidence in making a decision. Where the written evidence is conflicting and a video tape makes it clear that only small remnants of past farming or Christmas tree growing efforts on the subject property remain among the piles of debris that have been scattered over the subject property, it is reasonable for a hearings officer to conclude there is no current farm use of the property. *Best Buy in Town, Inc. v. Washington County*, 35 Or LUBA 446 (1999).

3.2.1 EFU Statute/Ordinances – Farm Uses – Generally. Whether composting qualifies as a farm use under ORS 215.203(2)(a) is a question of statutory interpretation, not a question of whether agricultural experts believe composting, in the abstract, falls within a scientific definition of farm use. *Best Buy in Town, Inc. v. Washington County*, 35 Or LUBA 446 (1999).

3.2.1 EFU Statute/Ordinances – Farm Uses – Generally. A composting operation where all the compost inputs are produced off-site and all of the compost produced is sold for use off-site does not involve "current employment of the land" and for that reason is not a "farm use" as defined by ORS 215.203(2)(a). *Best Buy in Town, Inc. v. Washington County*, 35 Or LUBA 446 (1999).

3.2.1 EFU Statute/Ordinances – Farm Uses – Generally. Where petitioners argue that the statutory definition of "farm use" is void for vagueness but make no attempt to develop that argument, LUBA will reject the argument. *Best Buy in Town, Inc. v. Washington County*, 35 Or LUBA 446 (1999).

3.2.1 EFU Statute/Ordinances – Farm Uses – Generally. The suitability standard requires that the local government consider whether the subject parcel or portion thereof can reasonably be put to farm use in conjunction with adjacent or nearby lands, including land under the same ownership.

The local government must consider not only the property's suitability for producing crops but also its suitability for producing livestock, both alone and in conjunction with adjoining and nearby properties. *DLCD v. Crook County*, 34 Or LUBA 243 (1998).

3.2.1 EFU Statute/Ordinances – Farm Uses – Generally. There is no indication in the language of ORS 215.203(2)(a) that "other agricultural use" includes uses other than those relating to plants or animals. *DLCD v. Curry County*, 32 Or LUBA 358 (1997).

3.2.1 EFU Statute/Ordinances – Farm Uses – Generally. An operation that requires land for grazing horses employs that land for the production of livestock within the meaning of ORS 215.284(2)(b); therefore, a county errs when it concludes that consideration of the potential use of a parcel for grazing horses is not required in determining whether the parcel is generally unsuitable for farm use. *Moore v. Coos County*, 31 Or LUBA 347 (1996).

3.2.1 EFU Statute/Ordinances – Farm Uses – Generally. The prohibitions against unreasonable restriction or regulation of farm uses stated in ORS 215.253(1) are not limited to local government legislative enactments, but may apply as well to local government quasi-judicial land use decisions. *Mission Bottom Assoc. v. Marion County*, 29 Or LUBA 281 (1995).

3.2.1 EFU Statute/Ordinances – Farm Uses – Generally. ORS 215.253 must be read in context with ORS 215.203(1) and ORS 215.283(2)(b), which specifically permit mineral and aggregate operations on EFU-zoned land. Mineral and aggregate operations do not per se unreasonably restrict or regulate farm structures or practices. *Mission Bottom Assoc. v. Marion County*, 29 Or LUBA 281 (1995).

3.2.1 EFU Statute/Ordinances – Farm Uses – Generally. A condition imposed on a mineral and aggregate operation does not violate ORS 215.253(1) simply because it has the potential of impacting some farm uses. *Mission Bottom Assoc. v. Marion County*, 29 Or LUBA 281 (1995).

3.2.1 EFU Statute/Ordinances – Farm Uses – Generally. A potential, temporary impact on farm structures or practices on the subject property, caused by an aggregate operation allowed in the EFU zone, is not an unreasonable restriction or regulation under ORS 215.253**.** *Mission Bottom Assoc. v. Marion County*, 29 Or LUBA 281 (1995).

3.2.1 EFU Statute/Ordinances – Farm Uses – Generally. Where the term "farm use" is defined in a rural residential zone to include noncommercial farms, and it appears from the challenged decision that the hearings officer may not have considered noncommercial farms in determining whether a landscaping business qualifies as a commercial or processing activity "in conjunction with timber and farm uses," the decision will be remanded. *Stroupe v. Clackamas County*, 28 Or LUBA 107 (1994).

3.2.1 EFU Statute/Ordinances – Farm Uses – Generally. Even if a local government may establish the level of profitability necessary to qualify as a "farm use," as that term is defined by ORS 215.203, such level may not be set at the same level that would qualify a farm use as a commercial agricultural enterprise. *1000 Friends of Oregon v. Yamhill County*, 27 Or LUBA 508 (1994).

3.2.1 EFU Statute/Ordinances – Farm Uses – Generally. Evidence which establishes there are markets for farm products from the subject property, but does not address whether products of the proposed farm will "contribute substantially" to those markets, agricultural processors and the local agricultural economy does not "clearly support" a determination that the proposed farm use satisfies a code standard requiring that "products from the farm unit contribute substantially to the agricultural economy, to agricultural processors and [to] farm markets." *Kunze v. Clackamas County*, 27 Or LUBA 130 (1994).

3.2.1 EFU Statute/Ordinances – Farm Uses – Generally. A local government decision maker exercises both policy and legal judgment in determining whether the raising of large numbers of pigs in a confined area is a use "similar" to farm uses permitted in an EFU zone. Therefore, such a decision is a land use decision subject to LUBA's jurisdiction. *Derry v. Douglas County*, 26 Or LUBA 25 (1993).

3.2.1 EFU Statute/Ordinances – Farm Uses – Generally. There is substantial evidence to support a local government's determination that a parcel is in farm use, where the parcel is a pasture for livestock and poison oak is burned on the property to retain that pasture. *Leabo v. Marion County*, 24 Or LUBA 495 (1993).

3.2.1 EFU Statute/Ordinances – Farm Uses – Generally. The definition of "accepted farming practices" in ORS 215.203(2)(c) is relevant to whether land under certain buildings is "currently employed for farm use." ORS 215.203(2)(b)(F). This definition has no relevance to whether an undeveloped parcel is currently in "farm use," as defined by ORS 215.203(2)(a). *Forster v. Polk County*, 22 Or LUBA 380 (1991).

3.2.1 EFU Statute/Ordinances – Farm Uses – Generally. A finding that "the use of the parcel is farm related" does not satisfy a local standard requiring that the parcel is "currently employed for farm use where the day-to-day activities are principally directed to the farm use of the land." *Forster v. Polk County*, 22 Or LUBA 380 (1991).

3.2.1 EFU Statute/Ordinances – Farm Uses – Generally. Both the first sentence of the definition of farm use in ORS 215.203(2)(a) and the county code identify as farm use only the *production* of farm products for sale or otherwise obtaining a monetary profit. *J and D Fertilizers v. Clackamas County*, 20 Or LUBA 44 (1990).

3.2.1 EFU Statute/Ordinances – Farm Uses – Generally. Under ORS 215.203(2)(a) and the county code, "the preparation and storage of [farm] products raised on such land for man's use * * * and disposal by marketing or otherwise," i.e. "farm use," does not require that *all* agricultural products involved in such an operation be produced on the land where the preparation and storage takes place. However, an operation for the preparation or storage of agricultural products where *none* of the products are produced on the land where the preparation or storage takes place does not constitute farm use. *J and D Fertilizers v. Clackamas County*, 20 Or LUBA 44 (1990).