

**3.2.3 EFU Statute/Ordinances – Farm Uses – Other Uses.** Counties are not prohibited as a matter of law from applying separation buffers to marijuana production facilities in EFU zones. *Waveeater of Oregon, LLC v. Deschutes County*, 81 Or LUBA 583 (2020).

**3.2.3 EFU Statute/Ordinances – Farm Uses – Other Uses.** 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).

**3.2.3 EFU Statute/Ordinances – Farm Uses – Other Uses.** 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).

**3.2.3 EFU Statute/Ordinances – Farm Uses – Other Uses.** 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).

**3.2.3 EFU Statute/Ordinances – Farm Uses – Other Uses.** When an applicant chooses to use reclaimed wastewater on farmland, a written explanation of alternatives to water uses is a very limited obligation imposed by ORS 215.246(3). The county’s role, indeed LUBA’s review itself, is confined to ensuring that the applicant (1) considered in writing any sufficiently identified alternatives, and (2) explained in writing the reasons for not using them. *Oregon Coast Alliance v. Curry County*, 78 Or LUBA 81 (2018).

**3.2.3 EFU Statute/Ordinances – Farm Uses – Other Uses.** When ORS 215.283(1)(o) was enacted in 1993 to expressly authorize farm stands in EFU zones the statute authorized, among other things, “sale of retail incidental items,” but limited such sales to “25 percent of the total sales of the farm stand.” *Greenfield v. Multnomah County*, 67 Or LUBA 407 (2013).

**3.2.3 EFU Statute/Ordinances – Farm Uses – Other Uses.** Legislation enacted in 2001 amended ORS 215.283(1)(o) concerning farm stands to expressly authorize “fee-based activity to promote sale of farm crops and livestock sold at the farm stand,” subject to the limitation that such sales and incidental retails could not exceed 25 percent of farm stand sales. Legislative history shows that the legislature intended to authorize farm product food contests and farm product food

preparations, but did not intend to authorize banquets, restaurants, or cafes. *Greenfield v. Multnomah County*, 67 Or LUBA 407 (2013).

**3.2.3 EFU Statute/Ordinances – Farm Uses – Other Uses.** The ORS 215.283(1)(o) authorization for farm stands authorizes structures that are designed and used for the sale of farm products and livestock, and also authorizes those structures to be used for “sale of retail incidental items and fee-based activity to promote sale of farm crops or livestock.” The EFU statute is correctly interpreted also to authorize farm stand activities to be conducted outside the authorized structures. *Greenfield v. Multnomah County*, 67 Or LUBA 407 (2013).

**3.2.3 EFU Statute/Ordinances – Farm Uses – Other Uses.** A farm stand permit that authorizes up to 22 al fresco dinners for up to 75 diners each year is inconsistent with the express prohibition in ORS 215.283(1)(o) and OAR 660-033-0130(23) against farm stand structures for banquets. Although the statute and rule are expressly directed at “structures for banquets,” the prohibition extends to such large and frequent al fresco dinners, which fall within the meaning of “banquets,” as that term is used in the statute and rule, and the prohibition extends to outdoor banquets. *Greenfield v. Multnomah County*, 67 Or LUBA 407 (2013).

**3.2.3 EFU Statute/Ordinances – Farm Uses – Other Uses.** ORS 215.283(1)(o) and OAR 660-033-0130(23) authorize the “sale of retail incidental items and fee-based activity to promote the sale of farm crops or livestock” inside structures that are “designed and used for sale of farm crops and livestock,” but they do not authorize structures that are specifically designed and used for retail sales and fee-based promotional activity. *Greenfield v. Multnomah County*, 67 Or LUBA 407 (2013).

**3.2.3 EFU Statute/Ordinances – Farm Uses – Other Uses.** A county’s condition of approval that farm stand “wholesale sales” be separately accounted and not included in applying the ORS 215.283(1)(o) requirement that “sale of retail incidental items and fee-based activity to promote sale of farm crops or livestock” not exceed “25 percent of the total annual sales of the farm stand,” while an imperfect way to ensure that farm stand sales are not inflated with nonfarm stand sales to inflate the permissible sales from retail and fee-based activity, is a permissible condition under the statute. *Greenfield v. Multnomah County*, 67 Or LUBA 407 (2013).

**3.2.3 EFU Statute/Ordinances – Farm Uses – Other Uses.** A farm stand permit that (1) authorizes “small-scale gatherings such as birthdays, picnics, and similar activities” and requires that such gatherings “shall promote the farm stand and contemporaneous crops sold in the farm stand” does not exceed the ORS 215.283(1)(o) and OAR 660-033-0130(23) authority for farm stands. *Greenfield v. Multnomah County*, 67 Or LUBA 407 (2013).

**3.2.3 EFU Statute/Ordinances – Farm Uses – Other Uses.** A farm stand permit that authorizes multiple food carts to sell a variety of prepared food at up to 24 events per year cannot be characterized as “incidental retail sales,” and exceeds the authority granted by ORS 215.283(1)(o) and OAR 660-033-0130(23). *Greenfield v. Multnomah County*, 67 Or LUBA 407 (2013).

**3.2.3 EFU Statute/Ordinances – Farm Uses – Other Uses.** ORS 215.283(1)(o) and OAR 660-033-0130(23) do not categorically prohibit food carts in all circumstances. If a permit authorizing

a farm stand appropriately limited food carts so that they could be characterized as “incidental retail sales,” they could be authorized at a farm stand. *Greenfield v. Multnomah County*, 67 Or LUBA 407 (2013).

**3.2.3 EFU Statute/Ordinances – Farm Uses – Other Uses.** ORS 215.283(1)(o) and OAR 660-033-0130(23) do not prohibit all concessions at farm stands. The statute and rule only prohibit “large concessions.” *Greenfield v. Multnomah County*, 67 Or LUBA 407 (2013).

**3.2.3 EFU Statute/Ordinances – Farm Uses – Other Uses.** Where an applicant’s engineering report and environmental consultant identified technical and engineering challenges and public health and safety issues associated with several alternatives to replacing a currently failing waste water treatment system that are independent of the costs of replacing that system, the county’s findings are inadequate to explain its conclusion that an applicant considered only the cost of replacing the existing waste water treatment system in eliminating other alternative facility options. *Falcon Heights WSD v. Klamath County*, 64 Or LUBA 390 (2011).

**3.2.3 EFU Statute/Ordinances – Farm Uses – Other Uses.** 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).

**3.2.3 EFU Statute/Ordinances – Farm Uses – Other Uses.** A hearings officer does not err in interpreting a code provision that allows the “preparation of land for cultivation” that is a “customarily accepted agricultural activity” without a permit in agricultural zones to require the landowner to demonstrate that a proposal to cover an existing landfill with 100,000 cubic yards of soil not only involves “preparation of land for cultivation” but is also a “customarily accepted agricultural activity.” *Ehler v. Washington County*, 52 Or LUBA 663 (2006).

**3.2.3 EFU Statute/Ordinances – Farm Uses – Other Uses.** Any inquiry into whether a proposal to place 100,000 cubic yards of soil on an existing landfill is a “customarily accepted agricultural activity” is necessarily a fact-specific inquiry. In answering that question, a hearings officer does not err in considering as relevant facts the absence of ongoing agricultural activity on the property and the lack of specificity in the landowner’s plans for post-fill agricultural use. *Ehler v. Washington County*, 52 Or LUBA 663 (2006).

**3.2.3 EFU Statute/Ordinances – Farm Uses – Other Uses.** Any inquiry into what is a customarily accepted agricultural activity necessarily requires whether other similar farms have engaged in the proposed activity. A hearings officer does not err in considering the absence of evidence that other farms have placed 100,000 cubic yards of fill in a 13-acre area to prepare the land for cultivation. *Ehler v. Washington County*, 52 Or LUBA 663 (2006).

**3.2.3 EFU Statute/Ordinances – Farm Uses – Other Uses.** Given the history of the subject property as a landfill, a hearings officer does not err in considering the lack of evidence that it is customary for farmers to charge a fee to persons to deposit soil on farm land, in determining

whether a proposal to place 100,000 cubic yards of fill on farm land is a “customarily accepted agricultural activity” allowed without a permit, or something else that requires a permit. *Ehler v. Washington County*, 52 Or LUBA 663 (2006).

**3.2.3 EFU Statute/Ordinances – Farm Uses – Other Uses.** The only limitations placed on uses that may be permitted as “commercial uses in conjunction with farm use” within the meaning of ORS 215.283(2)(a) are that the proposed use must: (1) enhance the farming enterprises of the local agricultural community to which the EFU land hosting that commercial activity relates; and (2) satisfy ORS 215.296. *Hiebenthal v. Polk County*, 45 Or LUBA 297 (2003).

**3.2.3 EFU Statute/Ordinances – Farm Uses – Other Uses.** Testimony from fruit growers that a fruit processing facility provides a market for their fruit and, as a result, provides incentive to those growers to continue their agricultural operations and a condition of approval that requires the operator of the fruit processing facility to grow fruit on its property that will be processed at the facility is sufficient to establish that the proposed fruit processing facility will enhance the farming enterprises of the local agricultural community. *Hiebenthal v. Polk County*, 45 Or LUBA 297 (2003).

**3.2.3 EFU Statute/Ordinances – Farm Uses – Other Uses.** The fact that wineries are a permitted use in EFU zones under ORS 215.213(1) and 215.283(1) does not mean that wineries are “agricultural uses” permitted in a rural residential zone, where the code definition of “agricultural uses” does not include wineries, and wineries are not among the uses allowed in the rural residential zone. *Roth v. Jackson County*, 40 Or LUBA 531 (2001).

**3.2.3 EFU Statute/Ordinances – Farm Uses – Other Uses.** 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).

**3.2.3 EFU Statute/Ordinances – Farm Uses – Other Uses.** ORS 197.685(3) and (4) *allow* local governments to adopt clear and objective approval criteria for seasonal farmworker housing that do not have the result of discouraging needed seasonal farmworker housing, but do not *require* local governments to adopt additional approval criteria, and do not make unrelated approval criteria applicable in the absence of legislation incorporating those criteria. *Durig v. Washington County*, 40 Or LUBA 1 (2001).

**3.2.3 EFU Statute/Ordinances – Farm Uses – Other Uses.** Nothing in the context of the term “kennel” as used in ORS 215.283(2)(m) demonstrates that the intended meaning of that term is narrower than the plain dictionary definition, which refers to establishments for the breeding and boarding of dogs. A proposal to breed and propagate dogs for sale is thus a “kennel” subject to county regulation and not a “farm use” allowed outright in an EFU zone. *Tri-River Investment Co. v. Clatsop County*, 37 Or LUBA 195 (1999).

**3.2.3 EFU Statute/Ordinances – Farm Uses – Other Uses.** The definition of “farm use” in ORS 215.203(2)(a) does not include the extraction, processing and bottling of a mineral resource such as water. *DLCD v. Curry County*, 32 Or LUBA 358 (1997).

**3.2.3 EFU Statute/Ordinances – Farm Uses – Other Uses.** The county’s findings classifying livestock sales and shows as a “farm use” rather than as “stockyard and animal sales” are inadequate when the challenged decision does not relate the general findings to the property at issue, and therefore does not establish that the proposed use complies with the approval standards. *Collins v. Klamath County*, 32 Or LUBA 338 (1997).

**3.2.3 EFU Statute/Ordinances – Farm Uses – Other Uses.** Where the county determines that an apparent conflict exists between state statute and county code regarding whether livestock sales and shows are permitted on EFU land, LUBA will defer to the county’s decision to clarify the nature of the use through a quasi-judicial use classification hearing. *Collins v. Klamath County*, 32 Or LUBA 338 (1997).

**3.2.3 EFU Statute/Ordinances – Farm Uses – Other Uses.** The breeding and raising of one’s own horses is a farm use. *Moody v. Deschutes County*, 22 Or LUBA 567 (1992).

**3.2.3 EFU Statute/Ordinances – Farm Uses – Other Uses.** Where a code separately lists “boarding of horses for profit” and “commercial activities in conjunction with farm use” as distinct conditional uses in certain exclusive farm use zones that another zone lists “commercial activities in conjunction with farm use” but does not list “boarding of horses for profit” as a conditional use, it is reasonable to infer that the latter use was not intended to be allowed in the other zone. *Moody v. Deschutes County*, 22 Or LUBA 567 (1992).