

3.3.2 EFU Statute/Ordinances – Nonfarm Uses – Mineral Operations. ORS 215.301 prohibits approval of a batching operation on land zoned exclusive farm use within two miles of a planted vineyard, unless the batching operation is “under a local land use approval on October 3, 1989, or a subsequent renewal of an existing approval.” *Poto v. Linn County*, 67 Or LUBA 162 (2013).

3.3.2 EFU Statute/Ordinances – Nonfarm Uses – Mineral Operations. In considering conflicts with agricultural practices under OAR 660-023-0180(5)(b), nothing in ORS 215.301 mandates that the outcome of a county’s conflicts analysis must be that batching is a conflict that cannot be minimized. If the evidence showed absolutely no conflicts between a batching plant and a vineyard located closer than two miles from the property, under the Goal 5 rule the county could add the site to its inventory of Significant Resource Sites with All Conflicts Minimized, but would be prohibited from approving batching *under ORS 215.301* unless the exemption in ORS 215.301(2) applies. *Poto v. Linn County*, 67 Or LUBA 162 (2013).

3.3.2 EFU Statute/Ordinances – Nonfarm Uses – Mineral Operations. Read in context, the ORS 215.298 provision allowing a mining operation on EFU-zoned lands if the site is on an “inventory” in a comprehensive plan is a reference to a Goal 5 “inventory” of mineral sites. Because under the 1982 Goal 5 rule the term “inventory” referred to an inventory of *significant* mineral sites, ORS 215.298 allows mining in an EFU zone only if the site is on a comprehensive plan inventory of significant mineral sites, not if the site is on a separate list of nonsignificant sites. *Beaver State Sand and Gravel v. Douglas County*, 43 Or LUBA 140 (2002).

3.3.2 EFU Statute/Ordinances – Nonfarm Uses – Mineral Operations. In ORS 215.298, the legislature apparently balanced the conflict between preservation of agricultural soils and extraction of important mineral resources, by allowing mining in the EFU zone only if the site is on a comprehensive plan inventory of significant Goal 5 mineral inventory. It is inconsistent with that legislative intent to read ORS 215.298 more broadly to allow in the EFU zone mining of mineral resources that are insignificant in quality or quantity. *Beaver State Sand and Gravel v. Douglas County*, 43 Or LUBA 140 (2002).

3.3.2 EFU Statute/Ordinances – Nonfarm Uses – Mineral Operations. A conditional use permit standard for aggregate extraction requiring that the applicant submit “sufficient information to allow the county to set standards” regarding the location, quality and quantity of resource available allows but does not obligate the county to set such standards in approving the permit. A local government’s interpretation to that effect is consistent with the express language of the standard and is not reversible under ORS 197.829(1) or *Clark v. Jackson County*, 313 Or 508, 836 P2d 710 (1992). *Jorgensen v. Union County*, 37 Or LUBA 738 (2000).

3.3.2 EFU Statute/Ordinances – Nonfarm Uses – Mineral Operations. ORS 215.296 does not require a guarantee that aggregate mining on land zoned for exclusive farm use will cause no adverse impacts on the water table on surrounding lands. *Jorgensen v. Union County*, 37 Or LUBA 738 (2000).

3.3.2 EFU Statute/Ordinances – Nonfarm Uses – Mineral Operations. 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).

3.3.2 EFU Statute/Ordinances – Nonfarm Uses – Mineral Operations. 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).

3.3.2 EFU Statute/Ordinances – Nonfarm Uses – Mineral Operations. LUBA’s review of a local government decision applying its code mineral and aggregate resources chapter for compliance with ORS 215.283 does not extend to a review of the code chapter for compliance with ORS 215.283 in respects unrelated to the challenged decision. *Mission Bottom Assoc. v. Marion County*, 29 Or LUBA 281 (1995).

3.3.2 EFU Statute/Ordinances – Nonfarm Uses – Mineral Operations. 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).

3.3.2 EFU Statute/Ordinances – Nonfarm Uses – Mineral Operations. 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).

3.3.2 EFU Statute/Ordinances – Nonfarm Uses – Mineral Operations. 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).

3.3.2 EFU Statute/Ordinances – Nonfarm Uses – Mineral Operations. Where a county decision adds a mineral and aggregate overlay zone to the site of a pre-existing conditional use asphalt batch plant within two miles of a planted vineyard, but does not expand or alter either the operation of or area subject to the conditional use permit, and the batch plant could continue to operate regardless of the challenged decision, the continuation of the batch plant is not prohibited by ORS 215.301. *Mission Bottom Assoc. v. Marion County*, 29 Or LUBA 281 (1995).

3.3.2 EFU Statute/Ordinances – Nonfarm Uses – Mineral Operations. Nothing in ORS chapter 215 requires a conditional use process before a county can impose on the application of a mineral and aggregate overlay zone conditions requiring minor road improvements of the type listed in ORS 215.283(1)(L), which “may be established” in any EFU-zoned area. *Mission Bottom Assoc. v. Marion County*, 29 Or LUBA 281 (1995).

3.3.2 EFU Statute/Ordinances – Nonfarm Uses – Mineral Operations. The provisions of ORS 215.298, including its definition of “mining,” do not apply to zoning districts that are not exclusive farm use zones. *Williams v. Clackamas County*, 27 Or LUBA 602 (1994).

3.3.2 EFU Statute/Ordinances – Nonfarm Uses – Mineral Operations. Exclusive farm use zoning statutory requirements apply directly to uses in exclusive farm use zones. ORS 215.283(2)(b)(B) and (C) allow mining of aggregate and processing into asphalt, subject to the standards imposed by ORS 215.296. *Zippel v. Josephine County*, 27 Or LUBA 11 (1994).

3.3.2 EFU Statute/Ordinances – Nonfarm Uses – Mineral Operations. Where a county failed to interpret ORS 215.213(2)(d)(C) as allowing an aggregate processing facility that conducts part of the processing on-site but completes the process of making aggregate into asphalt or Portland cement off-site, and the party wishing to assign the county’s interpretive failure as error did not appeal the county’s decision to LUBA or file a cross-petition for review, LUBA will not consider the interpretive question. *McKay Creek Valley Assoc. v. Washington County*, 25 Or LUBA 238 (1993).

3.3.2 EFU Statute/Ordinances – Nonfarm Uses – Mineral Operations. ORS 215.213(2)(d)(D) authorizes the processing of mineral resources *other than aggregate*. Therefore, that statute does not authorize an aggregate processing facility, notwithstanding that the final processing of aggregate into asphalt or Portland cement occurs off-site. *McKay Creek Valley Assoc. v. Washington County*, 25 Or LUBA 238 (1993).

3.3.2 EFU Statute/Ordinances – Nonfarm Uses – Mineral Operations. All provisions of the act that created ORS 215.301 must be related to uses allowed in EFU zones. Therefore, ORS 215.301 applies only to asphalt plants sited in EFU zones, not to an application to site an asphalt plant in an industrial zone. *O’Mara v. Douglas County*, 25 Or LUBA 25 (1993).

3.3.2 EFU Statute/Ordinances – Nonfarm Uses – Mineral Operations. The requirement of ORS 215.298(2) that permits for mining of aggregate on EFU-zoned land only be issued for sites included on an inventory in an acknowledged comprehensive plan became effective October 3, 1989, and does not apply to a pending application submitted prior to that date. *Clark v. Jackson County*, 19 Or LUBA 220 (1990).