3.3.9 EFU Statute/Ordinances – Nonfarm Uses – Other Uses. Where an applicant considers an alternative and explains that the alternative was rejected because it was approximately 20 percent more costly, a reasonable person could only conclude that ORS 215.246(3) is met. *South Suburban Sanitary District v. Klamath County*, 81 Or LUBA 796 (2020).

3.3.9 EFU Statute/Ordinances – Nonfarm Uses – Other Uses. ORS 215.246(3) does not allow a county to deny an application because an alternative may be feasible in the future. *South Suburban Sanitary District v. Klamath County*, 81 Or LUBA 796 (2020).

3.3.9 EFU Statute/Ordinances – Nonfarm Uses – Other Uses. Whether a more efficient alternative possibility exists is not a valid consideration under ORS 215.246(3). *South Suburban Sanitary District v. Klamath County*, 81 Or LUBA 796 (2020).

3.3.9 EFU Statute/Ordinances – Nonfarm Uses – Other Uses. The introduction of chlorine into reclaimed water prior to its transmittal through a pipeline, the continued presence of chlorine in the water in a reservoir at the end of the pipeline, and circulation equipment to prevent stratification in the reservoir do not convert the pipeline or the reservoir into "utility facilities" for purposes of ORS 215.283(1)(c). *South Suburban Sanitary District v. Klamath County*, 81 Or LUBA 796 (2020).

3.3.9 EFU Statute/Ordinances – Nonfarm Uses – Other Uses. Where an applicant for a CUP to host events as a home occupation on land zoned EFU plans to be on-site during events to assist with general coordination, parking, and other activities, and where conditions of approval make the applicant responsible for operational matters such as maintaining the event calendar to comply with limits on the number of events as well as monitoring noise and sign removal, substantial evidence exists to support a conclusion that the applicant will "operate[]" the home occupation, within the meaning of ORS 215.448(1)(a), even where they plan to have no full-time employees and to allow customers to hire their own contractors, as necessary. *1000 Friends of Oregon v. Clackamas County*, 81 Or LUBA 664 (2020).

3.3.9 EFU Statute/Ordinances – Nonfarm Uses – Other Uses. Where an applicant for a CUP to host events as a home occupation on land zoned EFU explains how events can be conducted with no more than five employees on-site at one time by scheduling activities, preparing food off-site, utilizing buffet-style service, and planning and making arrangements in advance, and where a condition of approval limits the home occupation to no more than five employees on-site, substantial evidence exists to support a conclusion that the applicant will "employ on site no more than five full-time or part-time persons," within the meaning of ORS 215.448(1)(b), even given the complex planning and implementation that a 300-guest wedding entails. *1000 Friends of Oregon v. Clackamas County*, 81 Or LUBA 664 (2020).

3.3.9 EFU Statute/Ordinances – Nonfarm Uses – Other Uses. Where an applicant for a CUP to host events as a home occupation on land zoned EFU plans to renovate an existing barn by adding restrooms and "Brides and Grooms rooms" and by eliminating horse stalls, substantial evidence does not exist to support a conclusion that the renovated barn would "otherwise be allowed in the zone," for purposes of ORS 215.448(3). *1000 Friends of Oregon v. Clackamas County*, 81 Or LUBA 664 (2020).

3.3.9 EFU Statute/Ordinances – Nonfarm Uses – Other Uses. Where an applicant for a CUP to host events as a home occupation on land zoned EFU plans to construct a new, free-standing restroom building with septic system capacity to serve 300 people per event, substantial evidence does not exist to support a conclusion that the new restroom building would be accessory to or customarily associated with an existing dwelling on EFU land. *1000 Friends of Oregon v. Clackamas County*, 81 Or LUBA 664 (2020).

3.3.9 EFU Statute/Ordinances – Nonfarm 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).

3.3.9 EFU Statute/Ordinances – Nonfarm Uses – Other Uses. "In-home commercial activities" are not authorized by right in resource zones, even where (1) such activities are accessory to residential uses and would have minimal to no impact on resource lands, (2) such an approach would streamline local permitting by avoiding the conditional use process required for home occupations, and (3) such activities are consistent with a model ordinance prepared by DLCD. *Landwatch Lane County v. Lane County*, 80 Or LUBA 80 (2019).

3.3.9 EFU Statute/Ordinances – Nonfarm Uses – Other Uses. Where certain activities are allowed as accessory to a home occupation use, they may not be allowed through a Type I process (i.e., ministerial review of an application based on clear and objective standards and criteria) that does not provide the review that is required by ORS 215.448(1) and (4). *Landwatch Lane County v. Lane County*, 80 Or LUBA 80 (2019).

3.3.9 EFU Statute/Ordinances – Nonfarm Uses – Other Uses. Where local code amendments allow accessory uses and structures in an EFU zone, arguments that (1) the amendments improperly exempt such structures from a local code requirement that steps be taken to minimize adverse impacts on farm and forest uses and (2) the provisions governing such uses are inconsistent with ORS 215.213(3)(b) provide no basis for reversal or remand where the amended code is comparable to the prior code and where the petitioner does not develop any argument explaining why the amendments are substantive instead of technical. *Landwatch Lane County v. Lane County*, 80 Or LUBA 80 (2019).

3.3.9 EFU Statute/Ordinances – Nonfarm 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).

3.3.9 EFU Statute/Ordinances – Nonfarm 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).

3.3.9 EFU Statute/Ordinances – Nonfarm Uses – Other Uses. ORS 215.441, which provides that if county zoning allows a church or other nonresidential place of worship, the county shall also allow certain accessory uses, is not an independent authorization of churches in any county zone, and does not extend any protections to churches proposed for zones where churches are not allowed. *Central Oregon Landwatch v. Deschutes County*, 75 Or LUBA 284 (2017).

3.3.9 EFU Statute/Ordinances – Nonfarm Uses – Other Uses. A hearings officer Misconstrues the text and context of the county Wildlife Area overlay zone, which allows uses that are "permitted outright" and "permitted conditionally" in the underlying zone, by concluding that a church is a use "permitted outright" based solely on the fact that ORS 215.283(1) allows churches on lands zoned for exclusive farm use (EFU), when the question is whether churches are "permitted outright" in the *county* EFU zone, which does not list churches under the category of uses "permitted outright." *Central Oregon Landwatch v. Deschutes County*, 75 Or LUBA 284 (2017).

3.3.9 EFU Statute/Ordinances – Nonfarm Uses – Other Uses. Notwithstanding that uses listed in ORS 215.283(1), including churches, are generally allowed on lands zoned for exclusive farm use free of locally imposed restrictions, other state statutes and administrative rules can impose restrictions. Because ORS 215.441 and OAR 660-033-0130 impose restrictions on churches in EFU zones that require or authorize a county to undertake discretionary reviews of proposed churches, it is not accurate to characterize churches as uses "permitted outright" in a county EFU zone. *Central Oregon Landwatch v. Deschutes County*, 75 Or LUBA 284 (2017).

3.3.9 EFU Statute/Ordinances – Nonfarm Uses – Other Uses. The text and context of ORS 215.283(2)(c), which allows "private parks, playgrounds, hunting and fishing preserves and campgrounds" on EFU-zoned land, indicate that the qualifier "private" refers to private ownership, not private access. Accordingly, a "private park" for purposes of ORS 215.283(2)(c) is not limited to parks that exclude the public. *Central Oregon Landwatch v. Deschutes County*, 72 Or LUBA 61 (2015).

3.3.9 EFU Statute/Ordinances – Nonfarm Uses – Other Uses. The primary use of a "park" allowed under ORS 215.283(2)(c) on EFU-zoned land must be a recreational use of some kind. A proposed wedding event center is not a "park," because weddings and other focal events are not "recreational" uses, even if incidental activities associated with such events, such as dancing and lawn games, could be viewed as recreational activities. *Central Oregon Landwatch v. Deschutes County*, 72 Or LUBA 61 (2015).

3.3.9 EFU Statute/Ordinances – Nonfarm Uses – Other Uses. OAR 660-033-0130(18)(a) authorizes expansion of "[e]xisting facilities wholly within a farm use zone," but does not expressly require that the facility existed wholly within a farm use zone in 1996, on the date the rule language was adopted. As written, the rule includes no such temporal qualification, and would allow expansion of a facility that currently exists wholly within a farm use zone, but that did not in 1996. *Stop the Dump Coalition v. Yamhill County*, 72 Or LUBA 341 (2015).

3.3.9 EFU Statute/Ordinances – Nonfarm Uses – Other Uses. ORS 215.283(2)(k) allows a solid waste disposal facility on EFU-zoned land for which a DEQ permit has been granted. Where the record shows that a currently operating facility proposed for expansion had a DEQ permit that has been extended, but does not include a copy of the current DEQ permit, remand is not necessary to remedy that evidentiary defect where the petitioner offers no reason to believe that the landfill is operating without a current permit, and the county imposed a condition requiring the applicant to provide a copy of the current permit prior to undertaking any expansion. *Stop the Dump Coalition v. Yamhill County*, 72 Or LUBA 341 (2015).

3.3.9 EFU Statute/Ordinances – Nonfarm Uses – Other Uses. Filming that is incidental to a primary use of a property zoned EFU cannot legitimize that primary use if it is not otherwise allowed in the EFU zone, and such incidental filming cannot bring that primary use within the scope of "on-site filming," allowed in an EFU zone under ORS 215.306. *Smalley v. Benton County*, 71 Or LUBA 172 (2015).

3.3.9 EFU Statutes/Ordinances – Nonfarm Uses – Other Uses. An event that may or may not involve videotaping, subject to the event participants' discretion, does not constitute "on-site filming" allowed in an EFU zone under ORS 215.306 when the videotaping that occurs is not the primary use of EFU land, and is merely an incidental part of the event. Videotaping of weddings and other events does not qualify as "on-site filming" when it is the events themselves, and not the recording of them, that are the principal use of the EFU land. *Smalley v. Benton County*, 71 Or LUBA 172 (2015).

3.3.9 EFU Statutes/Ordinances – Nonfarm Uses – Other Uses. Under ORS 215.306(4)(b), "on-site filming," i.e., the production of "advertisements, documentaries, feature film, television services and other film productions," refers to production of films and television for broadcast or distribution to the public in some manner, and does not mean the production of private home videos that merely memorialize personal events of interest only to the participants. The videotaping of a wedding or similar private event does not constitute the production of a "documentary." *Smalley v. Benton County*, 71 Or LUBA 172 (2015).

3.3.9 EFU Statutes/Ordinances – Nonfarm Uses – Other Uses. Under ORS 215.306, "on-site filming" is intended to be a temporary or non-permanent use of EFU land. An event facility that operates in a continuous and apparently permanent manner over the course of 12 years, even though individual events may only last one day, does not qualify as "on-site filming" as that term is used in ORS 215.306. *Smalley v. Benton County*, 71 Or LUBA 172 (2015).

3.3.9 EFU Statute/Ordinances – Nonfarm Uses – Other Uses. A utility facility authorized in an EFU zone under ORS 215.283(1)(c) is not limited to facilities that provide utility services to local

or county residents, but includes a natural gas transmission line that connects an interstate natural gas pipeline to an export terminal. *McLaughlin v. Douglas County*, 70 Or LUBA 314 (2014).

3.3.9 EFU Statute/Ordinances – Nonfarm Uses – Other Uses. LUBA will reject an argument that a county erred in failing to deny a proposed natural gas transmission line allowed as a utility facility in an EFU zone under ORS 215.283(1)(c) based on comprehensive plan language that the petitioner argues limits utility facilities to those that serve county residents, because even if the county's comprehensive plan is interpreted to limit utility facilities, application of those limits to deny a use allowed outright under ORS 215.283(1) would exceed the county's authority, under the reasoning in *Brentmar v. Jackson County*, 321 Or 481, 900 P2d 1030 (1995). *McLaughlin v. Douglas County*, 70 Or LUBA 314 (2014).

3.3.9 EFU Statute/Ordinances – Nonfarm Uses – Other Uses. When ORS 215.283(1)(o) was enacted in 1993 to expressly authorize farm stands in EFU zones the statue 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).

3.3.9 EFU Statute/Ordinances – Nonfarm 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).

3.3.9 EFU Statute/Ordinances – Nonfarm 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).

3.3.9 EFU Statute/Ordinances – Nonfarm 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).

3.3.9 EFU Statute/Ordinances – Nonfarm 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).

3.3.9 EFU Statute/Ordinances – Nonfarm 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).

3.3.9 EFU Statute/Ordinances – Nonfarm Uses – Other Uses. A farm stand permit that authorizes "small-scale gatherings such as birthdays, picnics, and similar activities" and (2) 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).

3.3.9 EFU Statute/Ordinances – Nonfarm 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).

3.3.9 EFU Statute/Ordinances – Nonfarm 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).

3.3.9 EFU Statute/Ordinances – Nonfarm 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).

3.3.9 EFU Statute/Ordinances – Nonfarm Uses – Other Uses. Under 2010 legislation, wineries authorized by ORS 215.283(1)(n) and 215.452 may offer "[s]ervices directly related to the sale and promotion of wine," and host "private events." ORS 215.452 limits "gross income from the sale of incidental items and services" to "25 percent of the gross income from the retail sale on-site of wine produced in conjunction with the winery." *Friends of Yamhill County v. Yamhill County*, 66 Or LUBA 212 (2012).

3.3.9 EFU Statute/Ordinances – Nonfarm Uses – Other Uses. The legislature in 2010 enacted amendments to ORS 215.452, which governs wineries that are a permitted use under ORS 215.283(1)(n), and those amendments failed to adopt a proposal to expressly preserve statutory authority to approve wineries under ORS 215.283(2)(a) as "commercial activities that are in conjunction with farm use." However, LUBA will not infer from that failure a legislative intent to eliminate ORS 215.283(2)(a) as basis for winery approval on EFU-zoned land, where it was common practice before 2010 to approve wineries under ORS 215.283(2)(a) as "commercial activities that are in conjunction with farm use" and the 2010 legislative history suggests that the

legislature did not intended to eliminate that common practice. *Friends of Yamhill County v. Yamhill County*, 66 Or LUBA 212 (2012).

3.3.9 EFU Statute/Ordinances – Nonfarm Uses – Other Uses. Approval of wineries under ORS 215.283(2)(a) as "commercial activities that are in conjunction with farm use" and approval of wineries under ORS 215.283(1)(n) and 215.452, which specifically authorize "wineries" on EFU-zoned land, are *alternative* ways to seek approval for a winery. Approval under ORS 215.283(2)(a) for expansions to an existing winery that was originally approved under ORS 215.283(1)(n) and 215.452 that are not permitted under ORS 215.452, has the legal effect of converting ORS 215.283(1)(n) and 215.452 winery into an ORS 215.283(2)(a) winery. Therefore the expanded winery as a whole must comply with the limits imposed on ORS 215.283(2)(a) wineries. *Friends of Yamhill County v. Yamhill County*, 66 Or LUBA 212 (2012).

3.3.9 EFU Statute/Ordinances – Nonfarm Uses – Other Uses. ORS 215.283(1)(r) authorizes "processing of farm crops" as a permitted use in EFU zones. While a winery that only produces wine from wine grapes might qualify for approval under ORS 215.283(1)(r), a winery that includes a tasting room and hosts numerous events at the winery to promote sale of wine is more than "processing of farm crops" and must be approved under ORS 215.283(1)(n), which authorizes wineries that are limited in accordance with ORS 215.452 and 215.453 or under ORS 215.283(2)(a), which authorizes "commercial activities that are in conjunction with farm use." *Friends of Yamhill County v. Yamhill County*, 66 Or LUBA 212 (2012).

3.3.9 EFU Statute/Ordinances – Nonfarm Uses – Other Uses. A winery that is authorized to hold up to 44 public or private events annually to promote and sell wine produced at the winery and to prepare and serve meals at those events, but must limit sale of incidental items and services at the events and winery to no more than "25 percent of the gross income from the on-site sale of wine produced in conjunction with the winery," is permissible under the Supreme Court's and Court of Appeals' decisions in *Craven v. Jackson County*, because the events, food service and sale of incidental items and services are properly viewed as "incidental" and "secondary" to the winery. However, such a winery is approaching the point where the events, food service and sale of incidental items and services can no longer be said to be "incidental" and "secondary" to the winery. *Friends of Yamhill County v. Yamhill County*, 66 Or LUBA 212 (2012).

3.3.9 EFU Statute/Ordinances – Nonfarm Uses – Other Uses. In approving a building permit for a building "customarily provided in conjunction with farm use" in the EFU zone under ORS 215.213(1)(e) or 215.283(1)(e), one factual variable a county should consider is whether the building is intended to be used as an accessory building to non-farm uses authorized on the property, such as a private use airport, instead of or in addition to an accessory to farm use of the property. *Bratton v. Washington County*, 65 Or LUBA 461 (2012).

3.3.9 EFU Statute/Ordinances – Nonfarm Uses – Other Uses. LUBA will reject an argument that the alternative site study for a transmission tower proposed in an EFU zone erred in rejecting an alternative site in a light industrial area, where the petitioner cites to no evidence that the industrial area has a vacant location of the size necessary to prevent damage to other structures if the tower collapsed. *Hamilton v. Jackson County*, 63 Or LUBA 156 (2011).

3.3.9 EFU Statute/Ordinances – Nonfarm Uses – Other Uses. Under ORS 215.275, the alternative sites analysis for a utility facility proposed on EFU land evaluates alternative sites on land that is zoned other than EFU. The analysis is not required to evaluate alternative EFU-zoned sites. *Hamilton v. Jackson County*, 63 Or LUBA 156 (2011).

3.3.9 EFU Statute/Ordinances – Nonfarm Uses – Other Uses. In approving a public recreational vehicle (RV) campground under OAR 660-035-0035 and 0040, a local government need not limit infrastructure such as septic RV dumps, water and electric services to the most minimally intensive infrastructure that is possible, to avoid the necessity of taking an exception to Goal 3. *Linn County Farm Bureau v. Linn County*, 63 Or LUBA 347 (2011).

3.3.9 EFU Statute/Ordinances – Nonfarm Uses – Other Uses. A county does not err in concluding that providing central septic dump sites for recreational vehicles (RVs) in a public RV campground does not require an exception to Statewide Planning Goal 3, where if the county did not provide central RV dump sites it would have to increase the size or number of communal restrooms to meet campers' needs, offsetting any reduction in septic infrastructure. *Linn County Farm Bureau v. Linn County*, 63 Or LUBA 347 (2011).

3.3.9 EFU Statute/Ordinances – Nonfarm Uses – Other Uses. A county does not err in concluding that providing a water spigot and an electrical outlet in individual campsites in a public recreational vehicle campground does not require an exception to Goal 3, where providing necessary services to campers requires a dispersed water and electric grid in any event, and the additional infrastructure to supply water and electricity to individual sites is not significantly greater than that otherwise required to provide basic services. *Linn County Farm Bureau v. Linn County*, 63 Or LUBA 347 (2011).

3.3.9 EFU Statute/Ordinances – Nonfarm Uses – Other Uses. Driveways serving nonfarm dwellings do not have to be located on a portion of the parcel that is generally unsuitable for farm use. *Womelsdorf v. Jackson County*, 62 Or LUBA 34 (2010).

3.3.9 EFU Statute/Ordinances – Nonfarm Uses – Other Uses. A general statement of concern that a proposed campground would cause "interactions between livestock and people" is insufficient under ORS 197.763(1) to raise the issue of compliance with a local code analogue to the ORS 215.296(1) that requires a finding that the proposed use will not force a significant change in or significantly increase the cost of accepted farm practices on surrounding lands devoted to farm use. *Olstedt v. Clatsop County*, 62 Or LUBA 131 (2010).

3.3.9 EFU Statute/Ordinances – Nonfarm Uses – Other Uses. It is inappropriate to simply apply the restrictions that govern private park/campgrounds under OAR 660-033-0130(19) to public park/campgrounds governed by a different set of rules, because for whatever reason LCDC has chosen to treat public park/campgrounds more favorably than private park/campgrounds. Nonetheless, the rule governing private campgrounds is the only analogous area of law in which LCDC has attempted to delineate the type or intensity of uses allowed in a campground on EFU land as a conditional use without taking an exception to Goal 3, and is useful context in attempting to determine which local public park uses on EFU land require a Goal 3 exception in the absence of a local master park plan. *Linn County Farm Bureau v. Linn County*, 61 Or LUBA 323 (2010).

3.3.9 EFU Statute/Ordinances – Nonfarm Uses – Other Uses. ORS 215.283(2)(k) restricts a solid waste disposal facility from being "established" prior to Department of Environmental Quality (DEQ) permitting, but does not prohibit local government approval of a facility that is conditioned on receipt of the DEQ permit prior to establishment or building of the facility. *Crocker v. Jefferson County*, 60 Or LUBA 317 (2010).

3.3.9 EFU Statute/Ordinances – Nonfarm Uses – Other Uses. Where there is no evidence in the record that a proposed cell tower will have any impact on farm or forest practices, a county may simply find that, and need not conduct a *pro forma* analysis of impacts on farm and forest practices. *Seeberger v. Yamhill County*, 56 Or LUBA 656 (2008).

3.3.9 EFU Statute/Ordinances – Nonfarm Uses – Other Uses. A county cannot apply local site design standards to deny a proposed cellular tower in an exclusive farm use zone, a permitted use under ORS 215.283(1), because as explained in *Brentmar v. Jackson County*, 321 Or 481, 900 P2d 1030 (1995), state law generally prohibits local governments from imposing approval criteria on ORS 215.283(1) uses other than those authorized by statute. *T-Mobile USA v. Yamhill County*, 55 Or LUBA 83 (2007).

3.3.9 EFU Statute/Ordinances – Nonfarm Uses – Other Uses. A county errs in denying a proposed cellular tower under ORS 215.275 for failure to evaluate opponents' claims that the tower could be located on alternative sites on non-agricultural land, when none of the alternative sites were identified with sufficient specificity to allow evaluation. *T-Mobile USA v. Yamhill County*, 55 Or LUBA 83 (2007).

3.3.9 EFU Statute/Ordinances – Nonfarm Uses – Other Uses. ORS 215.283(1) and 215.275 do not permit a county to deny an application to site a proposed cellular tower in an exclusive farm use zone simply because there is already some existing cellular service in the area. A proposed cellular communication facility may be justified based on a need to improve existing service. *T-Mobile USA v. Yamhill County*, 55 Or LUBA 83 (2007).

3.3.9 EFU Statute/Ordinances – Nonfarm 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).

3.3.9 EFU Statute/Ordinances – Nonfarm 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).

3.3.9 EFU Statute/Ordinances – Nonfarm 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).

3.3.9 EFU Statute/Ordinances – Nonfarm 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).

3.3.9 EFU Statute/Ordinances – Nonfarm Uses – Other Uses. 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).

3.3.9 EFU Statute/Ordinances – Nonfarm Uses – Other Uses. Evidence that a livestock operation is conducted on a parcel for part of the year is sufficient to establish that the property contains an "existing" livestock operation, for purposes of the requirements for siting a guest ranch on EFU-zoned land, where the record shows that rotation of cattle from the property during the wet months, to allow pasture to rest, is a matter of good animal husbandry. *Durdan v. Deschutes County*, 43 Or LUBA 248 (2002).

3.3.9 EFU Statute/Ordinances – Nonfarm Uses – Other Uses. While the guest ranch statute requires an existing livestock operation on a parcel of at least 160 acres on which the proposed guest ranch and qualifying dwelling must be located, nothing in the statute requires that the livestock operation exist exclusively on that parcel, or prohibits the livestock operation from being part of a larger operation on non-contiguous properties. *Durdan v. Deschutes County*, 43 Or LUBA 248 (2002).

3.3.9 EFU Statute/Ordinances – Nonfarm Uses – Other Uses. The guest ranch statute requires that the subject parcel contain the dwelling of the livestock operator, but does not require that the dwelling exist on the date of application for approval of a guest ranch. A condition of approval requiring that the dwelling be completed prior to construction of the guest ranch is sufficient to satisfy the statute. *Durdan v. Deschutes County*, 43 Or LUBA 248 (2002).

3.3.9 EFU Statute/Ordinances – Nonfarm Uses – Other Uses. While the guest ranch statute allows provision of food services to "guests" that "visit or stay" at the ranch, and does not expressly prohibit providing food services to visitors who are not overnight guests, it is reasonably clear in context that "guests" are those persons who have paid a fee to stay at the lodge, bunkhouse or

cottage authorized by the statute, and therefore the statute does not allow provision of food services to visitors who are not overnight guests. *Durdan v. Deschutes County*, 43 Or LUBA 248 (2002).

3.3.9 EFU Statute/Ordinances – Nonfarm Uses – Other Uses. In adopting ORS 215.275, the legislature struck a particular balance between the siting of utility facilities in EFU zones and the statutory policy to preserve farmland for farm uses. Once that balance is struck, however, the county's task is to apply the terms of the statute. Nothing in ORS 215.275 requires direct consideration of agricultural land preservation policies, external to the statute, in applying its terms, or "balancing" the technical difficulty of alternatives against farmland preservation. *Sprint PCS v. Washington County*, 42 Or LUBA 512 (2002).

3.3.9 EFU Statute/Ordinances – Nonfarm Uses – Other Uses. Under ORS 215.275, a utility provider and the local government are not required to consider under ORS 215.275(2) any alternative that requires a different type of facility or that would not meet the essential features of the chosen facility, as defined by the utility provider. However, the utility provider and local government must consider under ORS 215.275(2) an alternative that appears to satisfy the applicant's defined objectives, even if the alternative is a facility in a non-EFU location that requires a different component design than the preferred EFU location. *Sprint PCS v. Washington County*, 42 Or LUBA 512 (2002).

3.3.9 EFU Statute/Ordinances – Nonfarm Uses – Other Uses. In addressing consideration of land costs in comparing "utility facilities that are not substantially similar," ORS 215.275(3) implies that the scope of "reasonable alternatives" that must be considered under ORS 215.275(2) includes non-EFU-zoned sites with conditions that may require at least some design modifications to the facility. However, nothing in the statute requires that a utility provider consider alternatives that cannot satisfy the provider's defined objectives in providing the public service. *Sprint PCS v. Washington County*, 42 Or LUBA 512 (2002).

3.3.9 EFU Statute/Ordinances – Nonfarm Uses – Other Uses. A utility provider need not consider and disqualify as "reasonable alternatives" under ORS 215.275(2) alternatives that require reassessment of its fundamental technology or its business plan, or that involve sites or facilities that would fail to provide public services to the desired coverage area. *Sprint PCS v. Washington County*, 42 Or LUBA 512 (2002).

3.3.9 EFU Statute/Ordinances – Nonfarm Uses – Other Uses. Where a telecommunications provider defines as one of its objectives building its own wireless tower in order to lease space to other providers, any alternative such as collocation on existing telephone poles will not satisfy at least one of the provider's defined objectives, and therefore need not be considered and disqualified as a "reasonable alternative" under ORS 215.275(2). *Sprint PCS v. Washington County*, 42 Or LUBA 512 (2002).

3.3.9 EFU Statute/Ordinances – Nonfarm Uses – Other Uses. ORS 215.275 does not require a utility provider to consider and disqualify as "reasonable alternatives" non-EFU locations on which the proposed utility facility would require a variance from applicable zoning standards. Such lands are either not "reasonable alternatives" or simply not "available" under ORS 215.275(2)(c), as a matter of law. *Sprint PCS v. Washington County*, 42 Or LUBA 512 (2002).

3.3.9 EFU Statute/Ordinances – Nonfarm Uses – Other Uses. Where it is unclear who would own a proposed "personal use airport" in an EFU zone, and whether the uses that the owner plans to make of the airport would be consistent with the uses allowed under ORS 215.283(2)(h), the owner must be identified and the county's findings must explain why it concludes that the proposed uses fall within the uses allowed with a personal use airport. *Oregon Natural Desert Assoc. v. Grant County*, 42 Or LUBA 9 (2002).

3.3.9 EFU Statute/Ordinances – Nonfarm 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).

3.3.9 EFU Statute/Ordinances – Nonfarm Uses – Other Uses. Absent text or contextual support in the statutes for a narrower interpretation of "community center," a mixed-use building that contains a public library, community meeting space, office space for a local nonprofit community organization and public restrooms may be properly considered a "community center" as that term is used in ORS 215.283(2)(d). *Hendrix v. Benton County*, 40 Or LUBA 362 (2001).

3.3.9 EFU Statute/Ordinances – Nonfarm Uses – Other Uses. Collocation of cellular telecommunication facilities is not a reasonable alternative to constructing a new telecommunications tower on EFU-zoned property, where the applicant's siting requirements include constructing a facility where space will be leased to other telecommunication providers and collocation with existing towers will not meet that requirement. *Jordan v. Douglas County*, 40 Or LUBA 192 (2001).

3.3.9 EFU Statute/Ordinances – Nonfarm Uses – Other Uses. In evaluating reasonable alternatives to siting a utility facility necessary for public service in an EFU zone, a county must consider alternative sites identified by opponents that appear to satisfy an applicant's siting requirements and are not located on EFU-zoned land. *Jordan v. Douglas County*, 40 Or LUBA 192 (2001).

3.3.9 EFU Statute/Ordinances – Nonfarm Uses – Other Uses. Reasonable alternatives to siting a utility facility necessary for public service in an EFU zone do not include non-EFU sites that the owner will not sell or lease to the utility provider. *Jordan v. Douglas County*, 40 Or LUBA 192 (2001).

3.3.9 EFU Statute/Ordinances – Nonfarm Uses – Other Uses. Where a permit application identifies ORS 215.275 as a criterion applicable to the county's decision approving a cellular communications tower on EFU-zoned land and proposes findings of compliance with the statute, the issue of compliance with the statute was raised below and the county's failure to address the statute can be assigned as error, notwithstanding petitioners' failure to raise that issue below. *Central Klamath County CAT v. Klamath County*, 40 Or LUBA 129 (2001).

3.3.9 EFU Statute/Ordinances – Nonfarm Uses – Other Uses. Evidence that a proposed cellular communications tower on EFU land is within an optimal area for telecommunication coverage is insufficient to allow LUBA to conclude, under ORS 197.835(11)(b), that the record "clearly supports" a finding of compliance with ORS 215.275, which requires that the local government consider reasonable alternatives to siting the tower on EFU-zoned land. *Central Klamath County CAT v. Klamath County*, 40 Or LUBA 129 (2001).

3.3.9 EFU Statute/Ordinances – Nonfarm Uses – Other Uses. The standard a county must apply under ORS 215.275 in considering siting of a public utility facility on EFU land is the same standard mandated by *Clackamas Co. Svc. Dist. No. 1 v. Clackamas County*, 35 Or LUBA 374 (1998): "whether the facility must be sited in an EFU zone in order to provide the service." The factors specified in ORS 215.275 may be used merely to demonstrate compliance with that ultimate standard. *City of Albany v. Linn County*, 40 Or LUBA 38 (2001).

3.3.9 EFU Statute/Ordinances – Nonfarm Uses – Other Uses. When considering approval of a public utility facility on EFU land, the factors listed in ORS 215.275(2) are intended to be applied not only to the proposed EFU site, but also to the non-EFU sites considered as potential alternatives. *City of Albany v. Linn County*, 40 Or LUBA 38 (2001).

3.3.9 EFU Statute/Ordinances – Nonfarm Uses – Other Uses. Justification for siting one component of a utility facility in an EFU zone does not necessarily justify siting other components in that zone. *City of Albany v. Linn County*, 40 Or LUBA 38 (2001).

3.3.9 EFU Statute/Ordinances – Nonfarm Uses – Other Uses. Under ORS 215.275, when a county considers siting of a certain type of public utility facility on EFU land, the county need not consider as a "reasonable alternative" a different type of utility facility designed to meet the same need as the proposed facility type. *City of Albany v. Linn County*, 40 Or LUBA 38 (2001).

3.3.9 EFU Statute/Ordinances – Nonfarm Uses – Other Uses. The limitations on activities in public parks imposed by OAR 660-034-0035 do not apply to private parks allowed on agricultural and forest lands under ORS 215.283(2)(c), OAR 660-033-0120 and OAR 660-006-0025(4)(e). *Utsey v. Coos County*, 38 Or LUBA 516 (2000).

3.3.9 EFU Statute/Ordinances – Nonfarm Uses – Other Uses. Unlike Goal 4 and the Goal 4 rule, which limit recreational activities on forest lands to those "appropriate for a forest environment," ORS 215.283(2)(c) and OAR 660-033-0120 contain no express language restricting the scope or intensity of activities allowed in "private parks" on agricultural land. *Utsey v. Coos County*, 38 Or LUBA 516 (2000).

3.3.9 EFU Statute/Ordinances – Nonfarm 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).

3.3.9 EFU Statute/Ordinances – Nonfarm Uses – Other Uses. The scope of the "solid waste disposal facility" subject to county regulation under ORS 215.283(2)(j) is coextensive with the scope of the facility for which DEQ grants a permit pursuant to ORS 459.245. Where the DEQ permit issued pursuant to ORS 459.245 governs only the septic treatment ponds on the subject property and does not govern the land application of treated wastes on adjacent parcels, the "solid waste disposal facility" subject to compliance with the county's conditional use criteria does not include those adjacent parcels. *Wilbur Residents v. Douglas County*, 37 Or LUBA 156 (1999).

3.3.9 EFU Statute/Ordinances – Nonfarm Uses – Other Uses. ORS 215.283(2)(j) authorizes a county to allow infrastructure such as equipment, facilities or buildings necessary for the operation of a solid waste disposal facility, but does not require a county to consider or approve off-site infrastructure that is not necessary for that facility. An adjacent farm parcel on which treated waste from the facility will be applied as fertilizer and for irrigation purposes is not "necessary" for the operation of the facility, and thus is not subject to the county's regulation under ORS 215.283(2)(j). *Wilbur Residents v. Douglas County*, 37 Or LUBA 156 (1999).

3.3.9 EFU Statute/Ordinances – Nonfarm Uses – Other Uses. Petitioners' argument that the county used a different definition of "accepted farming practices" than the definition provided in ORS 215.203(2)(c) does not provide a basis for reversal or remand, where petitioners do not demonstrate that the county's definition is inconsistent with the statutory definition, or that application of the county's definition supports a different result than would application of the statutory definition. *Wilbur Residents v. Douglas County*, 37 Or LUBA 156 (1999).

3.3.9 EFU Statute/Ordinances – Nonfarm Uses – Other Uses. It is inconsistent with ORS 215.296(1) to arbitrarily limit the scope of analysis to properties within 500 feet of the subject property, where doing so results in failure to consider substantial evidence in the record of significant impacts from the proposed use to accepted farming practices on lands beyond 500 feet. However, where petitioners fail to challenge a finding that there are no significant impacts within 500 feet, and an extrapolation of that finding to lands beyond 500 feet, the county's error does not provide a basis for reversal or remand. *Wilbur Residents v. Douglas County*, 37 Or LUBA 156 (1999).

3.3.9 EFU Statute/Ordinances – Nonfarm Uses – Other Uses. A decision that disposal of sewage effluent by applying it to farm land constitutes a "utility facility necessary for public service" within the meaning of ORS 215.283(1)(d) requires the exercise of policy or legal judgment and for that reason the decision does not qualify for the exception to the statutory definition of land use decision provided by ORS 197.015(10)(b)(A) for certain ministerial decisions. *Friends of the Creek v. Jackson County*, 36 Or LUBA 562 (1999).

3.3.9 EFU Statute/Ordinances – Nonfarm Uses – Other Uses. A decision that disposal of sewage effluent by applying it to farm land constitutes a "farm use" within the meaning of ORS 215.203 requires the exercise of policy or legal judgment and for that reason the decision does not qualify for the exception to the statutory definition of "land use decision" provided by ORS 197.015(10)(b)(A) for certain ministerial decisions. *Friends of the Creek v. Jackson County*, 36 Or LUBA 562 (1999).

3.3.9 EFU Statute/Ordinances – Nonfarm Uses – Other Uses. A decision that a proposal to transport treated effluent to an EFU-zoned parcel and apply that effluent to poplar trees constitutes a "farm use" within the meaning of ORS 215.283(1)(d) requires the exercise of policy or legal judgment and for that reason the decision does not qualify for the exception to the statutory definition of land use decision provided by ORS 197.015(10)(b)(A) for certain ministerial decisions. *Friends of Clean Living v. Polk County*, 36 Or LUBA 544 (1999).

3.3.9 EFU Statute/Ordinances – Nonfarm Uses – Other Uses. Under OAR 660-033-0130(16) a "utility facility necessary for public service" may only be located in an EFU zone if "it must be situated in the EFU zone in order for the service to be provided." *Clackamas Co. Svc. Dist. No. 1 v. Clackamas County*, 35 Or LUBA 374 (1998).

3.3.9 EFU Statute/Ordinances – Nonfarm Uses – Other Uses. An applicant for approval of a utility facility on EFU-zoned land must demonstrate that constructing the utility on non-EFU-zoned land is not a feasible alternative. *Clackamas Co. Svc. Dist. No. 1 v. Clackamas County*, 35 Or LUBA 374 (1998).

3.3.9 EFU Statute/Ordinances – Nonfarm Uses – Other Uses. It is reasonable and correct to interpret a code provision requiring that "vehicle to be repaired shall be located within an enclosed building" to require that repaired vehicles remain within an enclosed building until they are removed from the property. *Gibbons v. Clackamas County*, 35 Or LUBA 210 (1998).

3.3.9 EFU Statute/Ordinances – Nonfarm Uses – Other Uses. It is reasonable and correct to consider vehicles used to pick up and drop off customers who have vehicles waiting to be repaired as "vehicles associated with" an auto repair home occupation. *Gibbons v. Clackamas County*, 35 Or LUBA 210 (1998).

3.3.9 EFU Statute/Ordinances – Nonfarm Uses – Other Uses. Because OAR 660-033-0120 and 660-33-0130 prohibit establishment of a church on high-value farmland, the only procedure available to site a church on high-value farmland is to apply for an exception to the applicable goals under Goal 2. *Corp. of Presiding Bishop v. Klamath County*, 34 Or LUBA 131 (1998).

3.3.9 EFU Statute/Ordinances – Nonfarm Uses – Other Uses. Article I, section 20, of the Oregon Constitution does not prohibit a county from limiting park ownership in EFU zones to fee owners because such a classification is not closed to petitioner nor is it based on antecedent personal or social status or characteristics. *R/C Pilots Association v. Marion County*, 33 Or LUBA 532 (1997).

3.3.9 EFU Statute/Ordinances – Nonfarm Uses – Other Uses. Where the county's interpretation of a local ordinance allows dog kennels that were in existence in 1986 to be established as permitted uses without a showing of compliance with the ORS 215.296 farm impact standards, the county's interpretation violates ORS 215.283(2). *Marquam Farms Corp. v. Multnomah County*, 32 Or LUBA 240 (1996).

3.3.9 EFU Statute/Ordinances – Nonfarm Uses – Other Uses. 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).

3.3.9 EFU Statute/Ordinances – Nonfarm Uses – Other Uses. 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).

3.3.9 EFU Statute/Ordinances – Nonfarm Uses – Other Uses. The scope and proper construction of the term "commercial activities that are in conjunction with farm use," used in ORS 215.213(2)(c) and 215.283(2)(a), is a question of state law. LUBA is not required to defer to a local government hearings officer's understanding of the scope of that term. *City of Sandy v. Clackamas County*, 28 Or LUBA 316 (1994).

3.3.9 EFU Statute/Ordinances – Nonfarm Uses – Other Uses. Even if a commercial activity sells primarily to farm uses, it is not a "commercial activity * * * in conjunction with farm use" unless the products and services provided are "essential to the practice of agriculture." *City of Sandy v. Clackamas County*, 28 Or LUBA 316 (1994).

3.3.9 EFU Statute/Ordinances – Nonfarm Uses – Other Uses. Products and services which could be used by farm uses and farm workers, but are also used by a variety of other nonfarm uses and users, lack a sufficient connection to the "essential practice of agriculture" to be considered "commercial activities * * * in conjunction with farm use." *City of Sandy v. Clackamas County*, 28 Or LUBA 316 (1994).

3.3.9 EFU Statute/Ordinances – Nonfarm Uses – Other Uses. OAR 660-33-130(3) precludes approval of churches or public or private schools on agricultural lands "within 3 miles of an urban growth boundary." *DLCD v. Douglas County*, 28 Or LUBA 242 (1994).

3.3.9 EFU Statute/Ordinances – Nonfarm Uses – Other Uses. Where an EFU zone includes two provisions allowing churches and schools, and one of those provisions includes the OAR 660-33-130(3) restriction against approving churches and schools within three miles of an urban growth boundary but the other provision does not, LUBA will not assume the county will apply the provision that lacks the three-mile limitation as though it includes the three-mile limitation. *DLCD v. Douglas County*, 28 Or LUBA 242 (1994).

3.3.9 EFU Statute/Ordinances – Nonfarm Uses – Other Uses. OAR 660-06-025(4)(i) allows power generation facilities on forestlands without a Goal 4 exception, provided such facilities do not remove more than 10 acres of land from resource use. OAR 660-33-130(23) includes similar provisions for power generation facilities on agricultural lands without a Goal 3 exception, but requires that the power generation facilities not remove more than *20* acres of land from resource use. *DLCD v. Douglas County*, 28 Or LUBA 242 (1994).

3.3.9 EFU Statute/Ordinances – Nonfarm Uses – Other Uses. Where an EFU zone allows "golf courses" as a conditional use, it must incorporate the definition of "golf course" in OAR 660-33-130(20) or specify that the rule definition applies. *DLCD v. Douglas County*, 28 Or LUBA 242 (1994).

3.3.9 EFU Statute/Ordinances – Nonfarm Uses – Other Uses. A county does not err by interpreting a local code provision allowing "commercial or processing activities that are in conjunction with timber and farm uses," in a rural residential zone, in the same way the Oregon Supreme Court has interpreted similar language in the exclusive farm use zoning statutes. *Stroupe v. Clackamas County*, 28 Or LUBA 107 (1994).

3.3.9 EFU Statute/Ordinances – Nonfarm Uses – Other Uses. The Oregon Supreme Court's decision in *Craven v. Jackson County*, 308 Or 281, 779 P2d 1011 (1989), requires that a winery, as a commercial activity in conjunction with farm use, be primarily a buyer and processor of grapes into wine, and only incidentally a retail seller of souvenirs. *Stroupe v. Clackamas County*, 28 Or LUBA 107 (1994).

3.3.9 EFU Statute/Ordinances – Nonfarm Uses – Other Uses. Where a local code provision implementing ORS 215.283(1)(a) lists schools "including all buildings essential to the operation of a school" as a conditional use in an EFU zone, and the local government fails to interpret and apply the quoted provision in approving a conditional use permit for a school, LUBA must remand the decision for the local government to interpret its code provision in the first instance. *Eppich v. Clackamas County*, 26 Or LUBA 498 (1994).

3.3.9 EFU Statute/Ordinances – Nonfarm Uses – Other Uses. Where the relevant EFU code provisions permit boarding kennels but do not permit training kennels, a boarding kennel that includes up to three hours a day of on-site training may not be approved unless it is established that such on-site training is customary at boarding kennels. *Larry Kelly Farms, Inc. v. Marion County*, 26 Or LUBA 401 (1994).

3.3.9 EFU Statute/Ordinances – Nonfarm Uses – Other Uses. ORS 215.213(2)(q) through (s) all refer to *existing* roads. Consequently, a new bridge terminus and new road to connect that bridge to an existing road are not allowed on land designated and zoned for forest uses under OAR 660-06-025(4)(u) and ORS 215.213(2)(q) through (s). *Pacific Rivers Council, Inc. v. Lane County*, 26 Or LUBA 323 (1993).

3.3.9 EFU Statute/Ordinances – Nonfarm Uses – Other Uses. Construction of a new bridge terminus or a new road to connect that bridge to an existing road are not uses allowed on forest zoned land under OAR 660-04-025(3)(h) and ORS 215.213(1)(m) to (p). *Pacific Rivers Council, Inc. v. Lane County*, 26 Or LUBA 323 (1993).

3.3.9 EFU Statute/Ordinances – Nonfarm Uses – Other Uses. Median turn lanes are prohibited on rural lands under OAR 660-12-065(4), even on rural EFU-zoned lands where they might otherwise be permissible under ORS 215.213(1) or (2). *Bicycle Transportation Alliance v. Washington Co.*, 26 Or LUBA 265 (1993).

3.3.9 EFU Statute/Ordinances – Nonfarm Uses – Other Uses. A privately owned and managed paintball game park is potentially allowable in an EFU zone as a "park" under ORS 215.213(2)(e). *Spiering v. Yamhill County*, 25 Or LUBA 695 (1993).

3.3.9 EFU Statute/Ordinances – Nonfarm Uses – Other Uses. Under ORS 215.283, construction of new roads and road improvements other than the types identified in ORS 215.283(1)(k) to (n) and (2)(p) to (r) is not allowed in EFU zones. *Schrock Farms, Inc. v. Linn County*, 25 Or LUBA 187 (1993).

3.3.9 EFU Statute/Ordinances – Nonfarm Uses – Other Uses. In the absence of evidence in the record establishing the quantity of products delivered or dollar amount of sales by petitioners' business to farm uses within the local agricultural community, petitioners cannot demonstrate as a matter of law that their proposed use is a commercial activity in conjunction with farm use. *Chauncey v. Multnomah County*, 23 Or LUBA 599 (1992).

3.3.9 EFU Statute/Ordinances – Nonfarm Uses – Other Uses. Under ORS 215.283(1)(d) and 215.283(2)(L), transmission towers are allowable in EFU zones as "[u]tility facilities necessary for public service." Such towers may be allowed outright under ORS 215.283(1)(d), if they do not exceed 200 feet in height. Such towers may be allowed under ORS 215.283(2)(L), subject to the standards set forth at ORS 215.296(1), if they are over 200 feet in height. *Harris v. Polk County*, 23 Or LUBA 152 (1992).

3.3.9 EFU Statute/Ordinances – Nonfarm Uses – Other Uses. Where a code standard requires a determination that there is a demonstrated need for a proposed golf course "which outweighs the need for, or benefits of, the existing or potential farm or forest use," the county correctly applied that standard by determining even though there is a need for more golf courses in the county, the value of the property for farmland outweighs that need. *Barber v. Marion County*, 23 Or LUBA 71 (1992).

3.3.9 EFU Statute/Ordinances – Nonfarm Uses – Other Uses. As a matter of law, a cellular communication facility is a "utility facility" which provides "public service." However, the requirement that a cellular communication facility proposed to be located in an exclusive farm use (EFU) zone be a "utility facility *necessary* for public service" is not satisfied unless the county finds that it is necessary to locate the proposed facility in the EFU zone in order to provide that service. *McCaw Communications, Inc. v. Polk County*, 20 Or LUBA 456 (1991).