

31.3.14 Permits – Particular Uses – Churches. 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).

31.3.14 Permits – Particular Uses – Churches. LUBA will decline to render an advisory interpretation of ORS 215.441, which extends certain protections to a “church or other nonresidential place of worship” in county zones allowing such uses, where LUBA concludes that the applicable Wildlife Area (WA) overlay zone does not allow churches at all, and thus there is no need to resolve the parties’ dispute regarding whether locating a proposed church within an existing dwelling results in a “nonresidential place of worship.” *Central Oregon Landwatch v. Deschutes County*, 75 Or LUBA 284 (2017).

31.3.14 Permits – Particular Uses – Churches. 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).

31.3.14 Permits – Particular Uses – Churches. 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).

31.3.14 Permits – Particular Uses – Churches. LUBA will reject an interpretation of a county Wildlife Area overlay zone, which implements Statewide Planning Goal 5 to protect winter range in part by prohibiting new churches in winter range, to the effect that the WA overlay zone prohibits churches in winter range areas only where the underlying base zone categorizes churches as a conditional use, but that interpretation would allow churches in winter range areas if the underlying base zone categorizes churches as something other than a conditional use, given that conflicts between churches and winter range are the same whether churches are categorized as permitted or conditional uses. *Central Oregon Landwatch v. Deschutes County*, 75 Or LUBA 284 (2017).

31.3.14 Permits – Particular Uses – Churches. A hearings officer Misconstrues the text and context of a county’s Wildlife Area (WA) overlay zone, in concluding that prohibitions on certain new uses, including churches, in winter range areas are limited exclusively to

areas where the underlying base zone categorizes such uses as conditional uses, where other provisions of the WA overlay zone make it clear that the prohibition on new uses in winter range is not limited to uses categorized as conditional uses in the underlying base zone. *Central Oregon Landwatch v. Deschutes County*, 75 Or LUBA 284 (2017).

31.3.14 Permits – Particular Uses – Churches. LUBA will reject arguments that applying a county prohibition on churches in deer winter range would cause the county to violate the “equal terms” provision of the Religious Land Use and Institutionalized Persons Act (RLUIPA), because the county has allegedly allowed wedding event venues and similar uses on nearby properties, where the applicant does not argue or demonstrate that nearby properties are also subject to winter range restrictions or otherwise similarly zoned and situated as the subject property. *Central Oregon Landwatch v. Deschutes County*, 75 Or LUBA 284 (2017).

31.3.14 Permits – Particular Uses – Churches. ORS 215.441(1) requires a two step analysis. The first step requires that a county determine whether its zoning ordinance allows a “church, synagogue, temple, mosque, chapel, meeting house or other nonresidential place of worship” on property. The words “or other nonresidential place of worship” were the legislature’s attempt to recognize that the words “church, synagogue, temple, mosque, chapel, meeting house” might not adequately describe all religions’ places of worship. *Catholic Diocese of Baker v. Crook County*, 60 Or LUBA 157 (2009).

31.3.14 Permits – Particular Uses – Churches. ORS 215.441(1) requires a two step analysis. The second step requires that counties allow “activities customarily associated with the practices of the religious activity.” The words “the practices of the religious activity” in ORS 215.441(1) do not encompass religious or other activities that a particular religion may engage in, if those activities are not customary at the “church, synagogue, temple, mosque, chapel, meeting house or other nonresidential place of worship” that is identified in step one. *Catholic Diocese of Baker v. Crook County*, 60 Or LUBA 157 (2009).

31.3.14 Permits – Particular Uses – Churches. A church office that would house administrative functions for a 17-county diocese, as well as some religious functions, is not a “church, synagogue, temple, mosque, chapel, meeting house or other nonresidential place of worship,” within the meaning of ORS 215.441(1). *Catholic Diocese of Baker v. Crook County*, 60 Or LUBA 157 (2009).

31.3.14 Permits – Particular Uses – Churches. Where the record does not establish that it is customary for a Catholic Church to locate its diocesan offices next to a rural retreat center and chapel, ORS 215.441(1) does not require that a county approve an application for approval of such offices in an EFU zone. *Catholic Diocese of Baker v. Crook County*, 60 Or LUBA 157 (2009).

31.3.14 Permits – Particular Uses – Churches. A county’s refusal to approve a diocesan office building next to a rural retreat center and chapel on EFU-zoned land does not result in a “substantial burden” on “religious exercise,” within the meaning of the Religious Land

Use and Institutionalized Persons Act. *Catholic Diocese of Baker v. Crook County*, 60 Or LUBA 157 (2009).

31.3.14 Permits – Particular Uses – Churches. Where LUBA affirms a county’s decision that a proposed church will require a reasons exception and, in dicta, rejects the applicant’s claim under the equal terms provision of the Religious Land Use And Institutionalized Persons Act (RLUIPA), that dicta does not preclude the applicant from challenging the county’s subsequent denial of the applicant’s request for a reasons exception as being inconsistent with the RLUIPA equal terms provision. *Young v. Jackson County*, 58 Or LUBA 64 (2008).

31.3.14 Permits – Particular Uses – Churches. For purposes of the equal terms provision of the Religious Land Use And Institutionalized Persons Act, an “assembly” is a place where groups or individuals dedicated to similar social, educational or recreational purposes meet to pursue those interests, and includes golf courses, and private or public parks. *Young v. Jackson County*, 58 Or LUBA 64 (2008).

31.3.14 Permits – Particular Uses – Churches. The legal question under the equal terms provision of the Religious Land Use And Institutionalized Persons Act (RLUIPA) is whether the applicable zoning scheme allows religious assemblies on less equal terms than non-religious assemblies, with respect to the regulatory objective. That question is primarily resolved by examining the text of the applicable zoning scheme, and a claimant under RLUIPA is not generally required to produce traffic studies or other evidence comparing the adverse impacts of religious and non-religious assemblies. *Young v. Jackson County*, 58 Or LUBA 64 (2008).

31.3.14 Permits – Particular Uses – Churches. While the state may have a compelling interest in preserving agricultural land and the integrity of urban growth boundaries, that interest does not justify an administrative rule that prohibits churches on agricultural land within three miles of an urban growth boundary while allowing golf courses and similar non-religious assemblies that appear to impact the state interest to the same degree. Therefore, the rule prohibition on churches on agricultural land within three miles of an urban growth boundary is inconsistent with the equal terms provision of the Religious Land Use And Institutionalized Persons Act. *Young v. Jackson County*, 58 Or LUBA 64 (2008).

31.3.14 Permits – Particular Uses – Churches. A county does not violate the Religious Land Use and Institutionalized Persons Act (RLUIPA) by requiring that an applicant for a church on exclusive farm use land within three miles of an urban growth boundary apply for a statewide planning goal exception as required by OAR 660-033-0130. The exceptions process does not in itself impose a substantial burden on a person’s religious exercise and does not constitute unfair delay. *Young v. Jackson County*, 49 Or LUBA 327 (2005).

31.3.14 Permits – Particular Uses – Churches. The term “existing facilities” in OAR 660-033-0130 is limited to a facility that will continue in the same use. The rule does not allow an existing residence to be converted to a church merely because it is an existing facility. *Young v. Jackson County*, 49 Or LUBA 327 (2005).

31.3.14 Permits – Particular Uses – Churches. An argument that unspecified land use regulations and siting standards must be complied with prior to approving a church on EFU-zoned lands is insufficient to apprise the decision maker that petitioner believes that the county must consider an exception to the administrative rule prohibition on churches on high-value farmland before considering whether that prohibition is inconsistent with federal law. *1000 Friends of Oregon v. Clackamas County*, 46 Or LUBA 375 (2004).

31.3.14 Permits – Particular Uses – Churches. Even assuming that an administrative rule prohibition on churches on high-value farmland violates the federal Religious Land Use and Institutionalized Persons Act (RLUIPA), nothing in RLUIPA requires that the local government must go further and relieve the applicant from the obligation to comply with other land use standards that apply to uses allowed in the zone and that do not impose a “substantial burden” on religious exercise. *1000 Friends of Oregon v. Clackamas County*, 46 Or LUBA 375 (2004).

31.3.14 Permits – Particular Uses – Churches. Because Congress intended the Religious Land Use and Institutionalized Persons Act (RLUIPA) to subject land use regulations to at least the same level of scrutiny as would apply under the Free Exercise Clause of the U.S. Constitution, analysis of whether an administrative rule prohibition on churches on high-value farmland violates RLUIPA is also dispositive of the same claim under the Free Exercise Clause. *1000 Friends of Oregon v. Clackamas County*, 46 Or LUBA 375 (2004).

31.3.14 Permits – Particular Uses – Churches. Prohibiting uses that are inconsistent with agriculture on high-value farmland, such as churches, while allowing agricultural-supportive structures and uses on high-value farmland, such as barns, wineries and farm stands, is rationally related to the policy of preserving high-value farmland for agricultural use, and neither treats religious assemblies on unequal terms with nonreligious assemblies nor discriminates against assemblies on the basis of religion in violation of the Religious Land Use and Institutionalized Persons Act (RLUIPA). *1000 Friends of Oregon v. Clackamas County*, 46 Or LUBA 375 (2004).

31.3.14 Permits – Particular Uses – Churches. Prohibiting establishment of new uses on high-value farmland, such as churches or golf courses, while allowing expansion of existing churches or golf courses on high-value farmland does not treat religious assemblies on unequal terms with nonreligious assemblies or discriminate against assemblies on the basis of religion in violation of the Religious Land Use and Institutionalized Persons Act (RLUIPA). *1000 Friends of Oregon v. Clackamas County*, 46 Or LUBA 375 (2004).

31.3.14 Permits – Particular Uses – Churches. An administrative rule that prohibits new churches and schools on land within three miles of an urban growth boundary (UGB), while allowing community centers “operated primarily by and for residents of the local rural community” within three miles of a UGB, does not violate the “equal terms” and nondiscrimination clauses of the Religious Land Use and Institutionalized

Persons Act (RLUIPA), where the membership of the proposed church is primarily composed of people who reside within the UGB. *1000 Friends of Oregon v. Clackamas County*, 46 Or LUBA 375 (2004).

31.3.14 Permits – Particular Uses – Churches. The Religious Land Use and Institutionalized Persons Act (RLUIPA) does not require local governments to provide for churches in all zones within its jurisdiction, or prohibit local governments from excluding churches from some zoning districts. *1000 Friends of Oregon v. Clackamas County*, 46 Or LUBA 375 (2004).

31.3.14 Permits – Particular Uses – Churches. Whether a zoning prohibition on churches imposes a “substantial burden” on religious exercise under the Religious Land Use and Institutionalized Persons Act (RLUIPA) depends on whether the jurisdiction’s zoning scheme as a whole fails to provide adequate opportunity to site a church within the jurisdiction. *1000 Friends of Oregon v. Clackamas County*, 46 Or LUBA 375 (2004).

31.3.14 Permits – Particular Uses – Churches. The actual financial circumstances of a religious assembly, its financial ability to acquire land zoned for a church, and the existence of market-based constraints that apply equally to religious and non-religious land users, have no bearing on whether exclusion of churches in some zones within a jurisdiction imposes a “substantial burden” on religious exercise under the Religious Land Use and Institutionalized Persons Act (RLUIPA). *1000 Friends of Oregon v. Clackamas County*, 46 Or LUBA 375 (2004).

31.3.14 Permits – Particular Uses – Churches. Evidence that a church is unable to acquire land with desired characteristics at a desirable price within an urban growth boundary is insufficient as a matter of law to demonstrate that an administrative rule prohibiting churches on high-value farmland owned by the church imposes a “substantial burden” on the church’s free exercise rights, under the Religious Land Use and Institutionalized Persons Act (RLUIPA). *1000 Friends of Oregon v. Clackamas County*, 46 Or LUBA 375 (2004).

31.3.14 Permits – Particular Uses – Churches. Given the subjectivity of criteria requiring that (1) the subject property be of adequate size to allow for “aesthetic design treatment,” (2) the proposed building be “compatible” in scale and mass with adjoining structures, and (3) the site plan provide for “adequate” buffers, the testimony of residential neighbors that a proposed church on a 3.85-acre parcel fails to comply with these criteria is adequate to support the city’s finding of noncompliance. *Corporation Presiding Bishop v. City of West Linn*, 45 Or LUBA 77 (2003).

31.3.14 Permits – Particular Uses – Churches. Conclusory testimony by an acoustic engineer that a proposed church will not violate “maximum allowable noise levels” is insufficient to show compliance as a matter of law with code standards that require a demonstration that proposed uses will not exceed specific decibel levels within a specified distance from adjoining residential uses. *Corporation Presiding Bishop v. City of West Linn*, 45 Or LUBA 77 (2003).

31.3.14 Permits – Particular Uses – Churches. Subjective, discretionary conditional use and design review criteria are precisely the type of land use regulations that Congress intended to regulate, as applied to religious practices and institutions, in enacting the Religious Land Use and Institutionalized Persons Act (RLUIPA). Although such standards may be “generally applicable” in the sense that they apply broadly to a number of secular and non-secular uses, their application to approve or deny a proposed church requires an “individualized assessment” and thus is subject to RLUIPA. *Corporation Presiding Bishop v. City of West Linn*, 45 Or LUBA 77 (2003).

31.3.14 Permits – Particular Uses – Churches. Application of discretionary design review criteria to proposed religious buildings involves the “proposed use” of land within the meaning of, and is thus subject to, the Religious Land Use and Institutionalized Persons Act (RLUIPA), where the local government may deny a proposed church if the applicant fails to demonstrate compliance with such design review criteria. *Corporation Presiding Bishop v. City of West Linn*, 45 Or LUBA 77 (2003).

31.3.14 Permits – Particular Uses – Churches. A city’s denial of a proposed church based on highly discretionary conditional use and design review standards constitutes imposition of a “substantial burden” on religious exercise within the meaning of the Religious Land Use and Institutionalized Persons Act (RLUIPA), at least where the city’s land use scheme does not include zones where a church is allowed outright without an “individualized assessment,” or where the record fails to show that there are more suitable sites in the city where the proposed church would likely be approved. *Corporation Presiding Bishop v. City of West Linn*, 45 Or LUBA 77 (2003).

31.3.14 Permits – Particular Uses – Churches. The regulatory effect of the Religious Land Use and Institutionalized Persons Act (RLUIPA) is not limited to prohibiting discrimination against religious institutions. Rather, Congress intended RLUIPA to require local governments to treat development proposals for buildings intended for religious exercise more favorably, if necessary, than other development proposals. *Corporation Presiding Bishop v. City of West Linn*, 45 Or LUBA 77 (2003).

31.3.14 Permits – Particular Uses – Churches. Where the petitioner demonstrates that denial of a proposed church imposes a “substantial burden” on religious exercise under Religious Land Use and Institutionalized Persons Act (RLUIPA), the burden of persuasion shifts to the local government to show that denial is the least restrictive means of furthering a compelling governmental interest. That showing is not made where the record indicates that the proposed church might satisfy local regulations with imposition of reasonable conditions of approval. *Corporation Presiding Bishop v. City of West Linn*, 45 Or LUBA 77 (2003).

31.3.14 Permits – Particular Uses – Churches. A hearings officer does not err in evaluating the adequacy of the “approach” to an intersection, rather than individual turning movements in the intersection, where the applicable code provisions do not specify a particular method for evaluating intersection adequacy, and that method is consistent with the highway capacity

manual and county highways standards cited by the code provisions. *Noble v. Clackamas County*, 45 Or LUBA 366 (2003).

31.3.14 Permits – Particular Uses – Churches. Substantial evidence supports a hearings officer’s conclusion that only five percent of traffic generated by a proposed church would turn south at an affected intersection, and that traffic counts performed in February are indicative of summer peak traffic loads, where it is undisputed that few if any church members reside south of the intersection, and the applicant’s traffic engineer testified that the affected intersection is not subject to seasonal fluctuations in traffic levels. *Noble v. Clackamas County*, 45 Or LUBA 366 (2003).

31.3.14 Permits – Particular Uses – Churches. Absent a criterion requiring that the city consider the height of an existing church in approving the height of a proposed addition to that church, the height of the existing structure has no bearing on the city’s decision. That the city calculated the height of the proposed addition based in part on the grade elevation of the existing structure does not compel the city to consider the height of the existing structure in approving the proposed addition. *Sattler v. City of Beaverton*, 41 Or LUBA 106 (2001).

31.3.14 Permits – Particular Uses – Churches. The OAR 660-033-0130(18) requirement that expansions of existing nonfarm uses on high-value soils must be limited to the “same tract” prohibits expansion of a church septic system onto a different tract, and the fact that DEQ rules permit such cross-boundary septic system expansions in certain circumstances does not modify or obviate the obligation to comply with OAR 660-033-0130(18). *Weaver v. Linn County*, 40 Or LUBA 203 (2001).

31.3.14 Permits – Particular Uses – Churches. A church-owned parcel and an adjoining parcel on which the church owns an easement are not within the “same tract” for purposes of OAR 660-033-0130(18), which limits expansion of existing nonfarm uses on high-value soils to the “same tract.” To constitute a “tract,” the parcels must be in the same ownership, and the easement is legally insufficient to establish an identity of ownership in the two parcels. *Weaver v. Linn County*, 40 Or LUBA 203 (2001).

31.3.14 Permits – Particular Uses – Churches. An unsupported assurance by the applicant’s attorney that the entire septic system necessary to support a proposed church expansion can be located on a church-owned parcel is not substantial evidence supporting a finding to that effect, where all the other evidence in the record regarding the feasibility of the septic system assumes that part of it will be located on an adjoining parcel. *Weaver v. Linn County*, 40 Or LUBA 203 (2001).

31.3.14 Permits – Particular Uses – Churches. A finding that a proposed church expansion doubling the capacity of the church will not have greater adverse traffic impacts is inadequate, where the finding relies solely on the church’s current plan to consolidate multiple daily services into a single service, and fails to explain why concentrating traffic from multiple services will not result in greater impacts or to address the possibility that future growth in church membership associated with the expansion may require additional services. *Weaver v. Linn County*, 40 Or LUBA 203 (2001).

31.3.14 Permits – Particular Uses – Churches. Without findings explaining why, for purposes of a conditional use approval, a 13,660 square foot church 33 feet high is "essentially the same size and height" as a "12,000 +/-" square foot church 29 feet high, LUBA cannot affirm that it is. *Southeast Neighbors United v. Deschutes County*, 32 Or LUBA 227 (1996).

31.3.14 Permits – Particular Uses – Churches. Churches are not inherently urban in nature. A church that does not require urban services, serves a primarily rural congregation, and is used for religious services and educational programs is not an urban use requiring an exception from Goal 14. *Cox v. Yamhill County*, 29 Or LUBA 263 (1995).

31.3.14 Permits – Particular Uses – Churches. 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).

31.3.14 Permits – Particular Uses – Churches. 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).

31.3.14 Permits – Particular Uses – Churches. Where a church is proposed to be located in an EFU zone, and a county code provision requires that there be "no other feasible location" for the proposed use that satisfies a code standard requiring that certain nonfarm uses in the EFU zone be located on land "generally unsuitable" for farm use, the county may interpret the code provision to require that there be no other feasible location for the proposed church *in the EFU zone* that is generally unsuitable for agricultural production. *Simmons v. Marion County*, 25 Or LUBA 647 (1993).

31.3.14 Permits – Particular Uses – Churches. Where a county code provision requires that there be no other "feasible location" for a proposed church, and the challenged decision establishes that there is a present need for the proposed church, the county is within its discretion to interpret "feasible location" not to include sites that are not currently available for sale. *Simmons v. Marion County*, 25 Or LUBA 647 (1993).

31.3.14 Permits – Particular Uses – Churches. Under the EFU zoning statute, counties may allow churches as outright permitted uses. However, where a particular EFU zone requires case-by-case findings that proposed nonfarm uses, including churches, will be compatible with farm uses and consistent with state Agricultural Land Use Policies, such findings must be made. *Avgeris v. Jackson County*, 23 Or LUBA 124 (1992).

31.3.14 Permits – Particular Uses – Churches. A finding that a proposed Buddhist temple complies with a code requirement that "the nature of the use requires a rural setting * * * even though the use may not provide primarily for the needs of rural residents" will be sustained, where there is substantial evidence in the record of a long standing tradition

of locating temples serving a particular lineage of Buddhism in rural locations, and that intermediate and advanced techniques of that religion requiring a rural setting will be practiced at the proposed temple. *Avgeris v. Jackson County*, 23 Or LUBA 124 (1992).

31.3.14 Permits – Particular Uses – Churches. Where the record shows that a proposed church will not require urban services and will be located within a designated rural service center, adjacent to existing commercial and public uses, and is otherwise surrounded by large parcels in commercial farm use, a determination that the proposed church will not materially alter the stability of the land use pattern in the area is supported by substantial evidence *Simmons v. Marion County*, 22 Or LUBA 759 (1992).