**31.3.15 Permits – Particular Uses – Schools.** With regard to school structures on non-high-value farmland that existed prior to adoption of LCDC's three-mile rule, OAR 660-033-0130(2)(c) provides that such schools may be "maintained, enhanced or expanded on the same tract subject to other requirements of law, but enclosed existing structures within a farm use zone within three miles of an urban growth boundary may not be expanded beyond the requirements of this rule." The "requirements of this rule" in OAR 660-033-0130(2)(c) is a reference to the OAR 660-033-0130(2)(a) requirement that the design capacity of enclosed structures be no "greater than 100 people," and the OAR 660-033-0130(2)(b) requirement that enclosed structures be spaced "no less than one-half mile" apart. *Landwatch Lane County v. Lane County*, 76 Or LUBA 227 (2017).

**31.3.15 Permits – Particular Uses – Schools.** HB 3099, now codified at ORS 215.135, was adopted in 2009 to address legislative concerns about the new HB 3099 requirement that schools on EFU-zoned land must be "primarily for residents of the rural area in which the school is located" and perhaps concerns about new local criteria that might be adopted and applied to such existing schools. But there is nothing in the legislative history of HB 3099 that suggests it was also concerned with LCDC's three-mile rule at OAR 660-033-0130(2), adopted in 1993. ORS 215.135 and its parallel administrative rule at OAR 660-033-0130(18)(b) to (c) were not adopted to excuse existing schools from complying with LCDC's three-mile rule. To the extent the text of OAR 660-033-0130(2)(c) is ambiguous, the legislative history confirms that LCDC intended the OAR 660-033-0130(2)(a) 100-person design limit and the OAR 660-033-0130(2)(b) "no less than one-half mile" spacing requirement to apply to expansion of such existing structures. *Landwatch Lane County v. Lane County*, 76 Or LUBA 227 (2017).

**31.3.15 Permits – Particular Uses – Schools.** Where in 2005 an applicant receives discretionary permit approval for three school buildings, and initiates the development action within the initial two-year period set forth in OAR 660-033-0140(1) by constructing two school buildings, but fails to seek extension of the permit or obtain building permits for the third building until seven years after the two-year period expired, long after the school use became a nonconforming use, the applicant can no longer rely on the 2005 approval to authorize issuance of building permits for the third building. *Landwatch Lane County v. Lane County*, 74 Or LUBA 299 (2016).

**31.3.15 Permits – Particular Uses – Schools.** Substantial evidence supports a finding that a proposed high school will not increase traffic through an affected intersection during the peak morning hour, notwithstanding failure of the traffic study to take certain trips into account, where the decision imposes conditions that effectively eliminate the possibility of those trips impacting the intersection. *Friends of Collins View v. City of Portland*, 41 Or LUBA 261 (2002).

**31.3.15 Permits – Particular Uses – Schools.** A reasonable person could conclude that a combination of conditions requiring that most classes begin outside the peak morning hour and prohibiting drop-offs during the peak morning hour is sufficient to ensure that drop-offs associated with a proposed high school will not impact a failing intersection during the peak morning hour. *Friends of Collins View v. City of Portland*, 41 Or LUBA 261 (2002).

**31.3.15 Permits – Particular Uses – Schools.** Draft transportation and parking demand plans for a proposed school are substantial evidence supporting a finding of compliance with a "safe streets" approval standard, notwithstanding that the conditions of approval require that the school submit

and city staff approve *final* plans in which the city might impose additional or different terms. *Friends of Collins View v. City of Portland*, 41 Or LUBA 261 (2002).

**31.3.15 Permits – Particular Uses – Schools.** Contextual statutory references to "public schools," "private schools" and "schools" indicate that the legislature intended the scope of "public or private schools" allowed in the EFU zone under ORS 215.283(1)(a) to include schools for elementary and secondary education, but not adult career schools. *Warburton v. Harney County*, 39 Or LUBA 398 (2001).

**31.3.15 Permits – Particular Uses – Schools.** Where the scope of "public or private schools" allowed in the EFU zone under ORS 215.283(1)(a) could be plausibly construed to include only schools for elementary and secondary education, or more broadly to include any kind of use that has an educational component, the statute should be interpreted not to include uses that would subvert the goal of preserving land for agriculture. *Warburton v. Harney County*, 39 Or LUBA 398 (2001).

**31.3.15 Permits – Particular Uses – Schools.** A county provision requiring that schools outside urban growth boundaries be "scaled to serve the rural population" is not unconstitutionally vague where a reasonable applicant would understand that to comply with that provision, the applicant must submit evidence that the school is no larger than needed to serve the anticipated number of rural students. *Christian Life Center v. Washington County*, 36 Or LUBA 200 (1999).

**31.3.15 Permits – Particular Uses – Schools.** A county provision requiring that schools outside urban growth boundaries be "scaled to serve the rural population" does not infringe directly on religious practices, and thus is not subject to strict scrutiny, absent a showing that the proposed parochial school must exist on the same rural property as its supporting church for members to exercise their rights to free exercise of religion and their right to direct their children's education. *Christian Life Center v. Washington County*, 36 Or LUBA 200 (1999).

**31.3.15 Permits – Particular Uses – Schools.** The Free Exercise Clause does not require an exemption from a county zoning ordinance that prohibits urban-sized schools on rural land, where the county has a strong interest in maintaining the boundaries between rural and urban uses, and the ordinance imposes only the minimal burden on religious practice of requiring the applicant to build a smaller parochial school than desired or locate the school on property within the nearby urban growth boundary. *Christian Life Center v. Washington County*, 36 Or LUBA 200 (1999).

**31.3.15 Permits – Particular Uses – Schools.** 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).

**31.3.15 Permits – Particular Uses – Schools.** 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).

**31.3.15 Permits – Particular Uses – Schools.** Findings which identify a lack of evidence concerning road capacity and evidence concerning traffic congestion during weekend events at existing uses and a proposed agricultural/horticultural school complex are adequate to explain why a decision maker concluded the applicant failed to carry its burden concerning a code "minimal adverse impact" standard. *Brentmar v. Jackson County*, 27 Or LUBA 453 (1994).

**31.3.15 Permits – Particular Uses – Schools.** A local government interpretation of its comprehensive plan and zoning code, that approval of a school at a particular site requires compliance with a plan policy concerning schools, is not so wrong as to be reversible under ORS 197.829, notwithstanding that the relevant zoning district lists schools as a permitted use at the subject site. *Salem-Keizer School Dist. 24-J v. City of Salem*, 27 Or LUBA 351 (1994).

**31.3.15 Permits – Particular Uses – Schools.** Where "private school" is listed as a conditional use in a particular zone, but the challenged decision does not interpret the code definitions of "private school" and "commercial school," or explain why application of those definitions to the facts leads to the conclusion that the proposed school is a "private school," LUBA must remand the challenged decision to the county to adopt the required interpretation in the first instance. *Eppich v. Clackamas County*, 26 Or LUBA 498 (1994).

**31.3.15 Permits – Particular Uses – Schools.** 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).