

**31.3.9 Permits – Particular Uses – Waste Disposal Facilities.** A local government could reasonably conclude that a landfill expansion complies with the ORS 215.296(1) “significant change/cost” standard, notwithstanding testimony from an adjacent hay farmer regarding the need for weekly litter patrols to prevent trash entering farm soils or destroying farm equipment, based in part on a condition of approval that requires a second litter fence between the working face of the landfill and adjacent hay fields, where there is no dispute that the existing litter fence is somewhat effective at reducing the volume of wind-blown trash that escapes the landfill, and the second litter fence will reduce that volume further. *Stop the Dump Coalition v. Yamhill County*, 74 Or LUBA 1 (2016).

**31.3.9 Permits – Particular Uses – Waste Disposal Facilities.** A local government can impose conditions of approval to ensure compliance with the ORS 215.296(1) “significant change/cost” standard that require the applicant to assume the cost or burden of performing actions on nearby farms necessary to prevent a significant change in accepted farming practices on those farms or significant increase in costs on those farms. *Stop the Dump Coalition v. Yamhill County*, 74 Or LUBA 1 (2016).

**31.3.9 Permits – Particular Uses – Waste Disposal Facilities.** A local government could reasonably conclude that a landfill expansion complies with the ORS 215.296(1) “significant change/cost” standard, notwithstanding testimony from an adjacent hay farmer regarding the need for weekly litter patrols year-round to prevent trash entering farm soils or destroying farm equipment, based in part on a condition of approval that requires the landfill operator to provide, pay for, or reimburse the farmer for litter patrols prior to harvest, even if the condition does not entirely eliminate the need for litter patrols at non-harvest times. *Stop the Dump Coalition v. Yamhill County*, 74 Or LUBA 1 (2016).

**31.3.9 Permits – Particular Uses – Waste Disposal Facilities.** A local government could reasonably conclude that a landfill expansion complies with the ORS 215.296(1) “significant change/cost” standard, notwithstanding testimony that the existing intermittent falconry program simply displaces nuisance birds onto nearby farms, based on conditions of approval that require a more intensive falconry program and implementation of integrated techniques recommended by a wildlife biologist to discourage nuisance birds from remaining in the area. *Stop the Dump Coalition v. Yamhill County*, 74 Or LUBA 1 (2016).

**31.3.9 Permits – Particular Uses – Waste Disposal Facilities.** A condition requiring the landfill operator to buy at market prices the entire crop of berries and cherries produced by a nearby farmer concerned with nuisance bird impacts on her crop is sufficient to reduce to insignificance the alleged adverse impacts of the landfill on the farmer’s farm practices. *Stop the Dump Coalition v. Yamhill County*, 74 Or LUBA 1 (2016).

**31.3.9 Permits – Particular Uses – Waste Disposal Facilities.** A farmer’s reasonable apprehension about losing direct sale customers due to odor impacts of a landfill could lead the farmer to make changes in accepted farming practices or significantly increase the cost of farming practices; however, customer perceptions are not farm practices, and the feared or actual loss of direct sales customers alone, without any associated change or increased costs, is not a sufficient

basis to conclude that the ORS 215.296(1) “significant change/costs” standard is violated. *Stop the Dump Coalition v. Yamhill County*, 74 Or LUBA 1 (2016).

**31.3.9 Permits – Particular Uses – Waste Disposal Facilities.** A local government could reasonably conclude that speculative concerns regarding the possibility of transmitting avian flu to nearby chicken farms via dead birds buried at a proposed landfill are adequately addressed by statutory and regulatory requirements intended to protect against that possibility. *Stop the Dump Coalition v. Yamhill County*, 74 Or LUBA 1 (2016).

**31.3.9 Permits – Particular Uses – Waste Disposal Facilities.** The applicant has the burden to demonstrate that individual insignificant impacts under ORS 215.296(1) are not cumulatively significant, and a local government cannot shift that burden to farmer/opponents to a proposed landfill, by finding that the farmer/opponents failed to explain how multiple impacts are cumulatively significant. *Stop the Dump Coalition v. Yamhill County*, 74 Or LUBA 1 (2016).

**31.3.9 Permits – Particular Uses – Waste Disposal Facilities.** 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).

**31.3.9 Permits – Particular Uses – Waste Disposal Facilities.** 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).

**31.3.9 Permits – Particular Uses – Waste Disposal Facilities.** A county errs in applying a rigorous “compelling evidence” standard to evaluate testimony from farmers located more than one mile from a proposed landfill, regarding impacts of the landfill operation on their farm costs and practices. Nothing in ORS 215.296(1) suggests that a county can apply different evidentiary standards on different parties based on the geographic distance to the proposed non-farm use. *Stop the Dump Coalition v. Yamhill County*, 72 Or LUBA 341 (2015).

**31.3.9 Permits – Particular Uses – Waste Disposal Facilities.** A county errs in discounting the testimony of farmer/opponents that a landfill operation causes significant changes or significant costs to their farm practices, for failure to quantify or specify the degree of impacts. While the county is free to give more weight to testimony that is quantified or more detailed over less quantified or detailed testimony, requiring opponents to quantify or specify the degree of impacts, while not requiring similar quantification or specification from the applicant, who has the burden of proof, effectively shifts the burden of proof to the opponents. *Stop the Dump Coalition v. Yamhill County*, 72 Or LUBA 341 (2015).

**31.3.9 Permits – Particular Uses – Waste Disposal Facilities.** A county errs in placing “great weight” on a longitudinal study offered by the applicant to demonstrate that the proposed expansion of a landfill will not cause significant change/increase costs to surrounding farm practices, by showing that farm uses on surrounding lands have remained stable and even expanded under the impacts of the existing landfill. Farm use may have remained stable despite significant changes or significant increases in costs to farm practices, or indeed because such changes have allowed farm operations to continue despite the impacts of the landfill. *Stop the Dump Coalition v. Yamhill County*, 72 Or LUBA 341 (2015).

**31.3.9 Permits – Particular Uses – Waste Disposal Facilities.** A finding that the amount of trash that escapes a landfill onto adjoining farm land is not “significant” in volume is not sufficient to demonstrate that the changes the farmer made to avoid trash damaging equipment and crops does not reflect a significant change or increased cost for purposes of ORS 215.296(1). The question is whether the changes are significant, not whether the impacts or volume of trash is significant. *Stop the Dump Coalition v. Yamhill County*, 72 Or LUBA 341 (2015).

**31.3.9 Permits – Particular Uses – Waste Disposal Facilities.** The apparent success of a change in farming practices in mitigating or preventing lost revenue from impacts of landfill operations on surrounding farmland does not demonstrate that the change itself is not a significant change in farm practices, for purposes of ORS 215.296(1). *Stop the Dump Coalition v. Yamhill County*, 72 Or LUBA 341 (2015).

**31.3.9 Permits – Particular Uses – Waste Disposal Facilities.** That a pheasant raising operation may be a recently established farm practice on farm land adjacent to a proposed landfill does not mean that the operation is a “hobby” or noncommercial farm use such that the county need not evaluate alleged impacts from the landfill operation on the pheasant raising operation. *Stop the Dump Coalition v. Yamhill County*, 72 Or LUBA 341 (2015).

**31.3.9 Permits – Particular Uses – Waste Disposal Facilities.** To establish compliance with ORS 215.296(1), the applicant may initially survey farm uses on surrounding lands, and identify in general terms accepted farming practices associated with those farm uses. Remand is necessary where the initial survey identifies a farm stand adjacent to a proposed landfill, but does not identify, even in general terms, any accepted practices associated with the farm stand. *Stop the Dump Coalition v. Yamhill County*, 72 Or LUBA 341 (2015).

**31.3.9 Permits – Particular Uses – Waste Disposal Facilities.** Where it is undisputed that direct sales of agricultural products is an accepted farm practice, a county must address allegations that odor and visual impacts from a proposed landfill adversely impact direct sales of agricultural products, for purposes of establishing compliance with ORS 215.296(1), even if the alleged adverse impacts are based on customers’ perceptions regarding landfill impacts. *Stop the Dump Coalition v. Yamhill County*, 72 Or LUBA 341 (2015).

**31.3.9 Permits – Particular Uses – Waste Disposal Facilities.** A 1980 reasons exception and comprehensive plan and zoning amendment to allow for a waste disposal facility “authorizes” subsequent expansions of that landfill within the rezoned area for purposes of the exclusion to

LUBA's jurisdiction at ORS 197.015(10)(b)(H)(i), where the 1980 decision specifically contemplated that the facility would expand incrementally over time, with filled disposal cells capped and reclaimed, while the active landfill operation moves on to new disposal cells. *McPhillips Farm Inc. v. Yamhill County*, 66 Or LUBA 355 (2012).

**31.3.9 Permits – Particular Uses – Waste Disposal Facilities.** LUBA will affirm a planning director's interpretation that site design review standards do not apply to a proposed landfill expansion because the expansion was authorized in a 1980 decision that pre-dated the site design review standards, where nothing in the code compels application of the site design review standards to an already authorized landfill expansion. *McPhillips Farm Inc. v. Yamhill County*, 66 Or LUBA 355 (2012).

**31.3.9 Permits – Particular Uses – Waste Disposal Facilities.** A reasonable person could conclude, based on evidence that commercial farms near existing landfills are viable agricultural operations, that a text amendment allowing existing landfills to expand their geographic scope will not have additional impacts on nearby farm uses, and is consistent with a comprehensive plan policy providing that proposed rural development shall not substantially conflict with farm and forest uses. *Waste Not of Yamhill County v. Yamhill County*, 65 Or LUBA 142 (2012).

**31.3.9 Permits – Particular Uses – Waste Disposal Facilities.** 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).

**31.3.9 Permits – Particular Uses – Waste Disposal Facilities.** Under ORS 215.283(2)(k), buildings "necessary" for the operation of a waste disposal facility are permitted. Where the findings are insufficient, but the record includes evidence which clearly establishes that proposed buildings are "necessary," and no contrary evidence in the record is cited, LUBA will affirm the conclusion that the proposed buildings are "necessary." *Crocker v. Jefferson County*, 60 Or LUBA 317 (2010).

**31.3.9 Permits – Particular Uses – Waste Disposal Facilities.** A finding that a proposed solid waste disposal operation will have "no significant effect" on farm or forest uses is not sufficient to also demonstrate that the operation will have "no adverse effect." While the two standards are similar, they are not the same, and separate findings are required. *Crocker v. Jefferson County*, 60 Or LUBA 317 (2010).

**31.3.9 Permits – Particular Uses – Waste Disposal Facilities.** A facility where fruit process water is trucked to a lagoon, stored and later used to irrigate a hay crop is not properly viewed as a "utility facility," within the meaning of 215.213(1)(d) and ORS 215.283(1)(d), simply because aerators are employed in the lagoon to control odors. *Farrell v. Jackson County*, 41 Or LUBA 1 (2001).

**31.3.9 Permits – Particular Uses – Waste Disposal Facilities.** A Land Use Compatibility Statement requirement that a proposal to apply process water from a fruit processing operation to

EFU-zoned land must “comply with all applicable local land use requirements” requires at a minimum that the county determine whether the proposal is a farm use and whether it is a utility facility. These determinations require the exercise of sufficient discretion that the county’s decision is both a “land use decision” and a “permit,” as those terms are defined by statute. *Farrell v. Jackson County*, 39 Or LUBA 149 (2000).

**31.3.9 Permits – Particular Uses – Waste Disposal Facilities.** Where industrial effluent is applied to poplar trees in an exclusive farm use zone so that heavy metals and nitrogen compounds in the effluent will bind to the soil and be taken up into the poplar trees, rather than being deposited into a creek, the proposed use is properly viewed as an extension of the city’s sewerage treatment system and thus as a “utility facility,” within the meaning of ORS 215.283(1)(d). *Cox v. Polk County*, 39 Or LUBA 1 (2000).

**31.3.9 Permits – Particular Uses – Waste Disposal Facilities.** A proposed use of land may be both a “farm use” and a “utility facility,” and where it qualifies as both, the proposed use must meet the approval criteria for both farm uses and utility facilities. *Cox v. Polk County*, 39 Or LUBA 1 (2000).

**31.3.9 Permits – Particular Uses – Waste Disposal Facilities.** 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).

**31.3.9 Permits – Particular Uses – Waste Disposal Facilities.** 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).

**31.3.9 Permits – Particular Uses – Waste Disposal Facilities.** 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).

**31.3.9 Permits – Particular Uses – Waste Disposal Facilities.** 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).

**31.3.9 Permits – Particular Uses – Waste Disposal Facilities.** A decision authorizing construction of facilities necessary to apply sewage effluent to farm land constitutes the approval of a “proposed development of land” and thus is a “permit” within the meaning of ORS 215.215.402(4) if the decision involves the exercise of discretion. *Friends of the Creek v. Jackson County*, 36 Or LUBA 562 (1999).

**31.3.9 Permits – Particular Uses – Waste Disposal Facilities.** 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).

**31.3.9 Permits – Particular Uses – Waste Disposal Facilities.** A decision authorizing construction of a lagoon on EFU-zoned land to store treated effluent constitutes the approval of a “proposed development of land” and thus constitutes a “permit” within the meaning of ORS 215.402(4) if the decision involves the exercise of discretion. *Friends of Clean Living v. Polk County*, 36 Or LUBA 544 (1999).

**31.3.9 Permits – Particular Uses – Waste Disposal Facilities.** Where a city interprets its zoning ordinance as requiring that a “recycling center” have the “primary purpose” of extracting recyclables from a waste stream, but not requiring that any particular percentage of the waste stream will be recycled, the city’s conclusion that a proposed facility is a “recycling center” is supported by substantial evidence, notwithstanding the absence of evidence quantifying the percentage of recyclables in the waste stream. *Sequoia Park Condo. Assoc. v. City of Beaverton*, 36 Or LUBA 317 (1999).

**31.3.9 Permits – Particular Uses – Waste Disposal Facilities.** Substantial evidence supports a city’s finding that the primary purpose of a proposed facility is to recover recyclables from a waste stream, where there is evidence that the most significant function and justification of the proposed facility is to recover recyclables, notwithstanding that the proposed facility might also serve or facilitate other economic purposes. *Sequoia Park Condo. Assoc. v. City of Beaverton*, 36 Or LUBA 317 (1999).

**31.3.9 Permits – Particular Uses – Waste Disposal Facilities.** That a proposed use meets the definition of a “materials recovery facility” at OAR 340-093-0030(57) is neither relevant nor controlling in determining whether the local government correctly categorized the proposed use as a “recycling center” under its development ordinance, where the development ordinance was not adopted to implement the rule. *Sequoia Park Condo. Assoc. v. City of Beaverton*, 36 Or LUBA 317 (1999).

**31.3.9 Permits – Particular Uses – Waste Disposal Facilities.** The city was clearly correct in classifying a proposed recycling processing center as a “waste and/or recycling transfer operation”

which is an allowed conditional use under local ordinance. *Canby Quality of Life Committee v. City of Canby*, 30 Or LUBA 166 (1995).

**31.3.9 Permits – Particular Uses – Waste Disposal Facilities.** Where petitioner appealed a planning director determination that a solid waste transfer station is an outright permitted use in a particular zone, the city was neither required nor authorized to expand the scope of the local appeal hearing to include consideration of whether a solid waste transfer station is also an appropriate use in that zone. *Pend-Air Citizen's Comm. v. City of Pendleton*, 29 Or LUBA 362 (1995).

**31.3.9 Permits – Particular Uses – Waste Disposal Facilities.** Evidence that a solid waste transfer station may conflict with neighboring residential uses is not relevant to the issue of whether a solid waste transfer station is an outright permitted use in a particular zone. *Pend-Air Citizen's Comm. v. City of Pendleton*, 29 Or LUBA 362 (1995).

**31.3.9 Permits – Particular Uses – Waste Disposal Facilities.** Where a local code allows recycling and other incidental uses, LUBA will defer to a local government interpretation of the code as allowing a recycling facility that accepts waste material including both solid waste and recyclable material, where approximately 70 percent of the material accepted will be recycled and approximately 30 percent will be disposed of at a landfill. *Linebarger v. City of The Dalles*, 24 Or LUBA 91 (1992).

**31.3.9 Permits – Particular Uses – Waste Disposal Facilities.** Where there is uncontradicted evidence that up to 70 percent of the waste material to be accepted at a proposed recycling facility will be recycled, and that some recycling facilities accept material that includes both solid waste that cannot be recycled as well as recyclable material, a local government's finding that the solid waste transfer component of the proposed facility is "customarily incidental" to the recycling component of the facility is supported by substantial evidence in the record. *Linebarger v. City of The Dalles*, 24 Or LUBA 91 (1992).

**31.3.9 Permits – Particular Uses – Waste Disposal Facilities.** Where the evidence identified in the record concerning the acreage required to be included in a landfill site due to factors such as rights-of-way, buffers, setbacks, longer lifespan, need to accommodate waste from outside the county, etc. is unclear, LUBA may not, pursuant to ORS 197.835(9)(b), overlook the county's failure to adopt findings justifying the number of acres included in a goal exception for the landfill. *Dyke v. Clatsop County*, 18 Or LUBA 787 (1990).