

# Landmark ruling issued in Oregon landfill dispute

## Oregon Supreme Court clarifies test for non-farm development

By **MATEUSZ PERKOWSKI**  
Capital Press

Negative impacts from non-farm developments can't be offset by making payments to surrounding farmers, according to the Oregon Supreme Court.

The state's highest court has also concluded that such developments can't significantly change agricultural practices or costs for individual growers in "exclusive farm use" zones.

A longstanding legal battle over a planned landfill expansion in Yamhill County has led to the landmark ruling, which requires such developments to be analyzed "practice by practice and farm by farm."

The decision has determined that it's not enough for such developments to avoid reducing the "overall supply of agricultural land" — they must also refrain from disrupting "particular farms and farming practices."

In 2017, the Oregon Court of Appeals found that the Riverbend Landfill's expansion is permissible under state land use law because it doesn't "decrease the supply of agricultural land, the profitability of the farm or the provision of food."

The Court of Appeals also held that Yamhill County's "conditions of approval" for the landfill expansion — such as payments for litter cleanup and damaged fruit crops — were sufficient to prevent significant changes to agriculture.

The Oregon Supreme Court has now reversed that opinion and adopted an interpretation of land use law supported by local opponents of the landfill, as well as the Oregon Farm Bureau and the 1,000 Friends of Oregon conservation group.

If a non-farm development results in the "inability of the farmer to engage in an accepted farming practice," simply paying him for the



Mateusz Perkowski/Capital Press File

**Ramsey McPhillips, a farmer near McMinnville, Ore., discusses the impacts of a nearby landfill on his property. A landmark ruling in a lawsuit over the landfill's expansion was recently issued by the Oregon Supreme Court.**

adverse effect "contravenes the legislature's long-term policy of preserving agricultural land," the state's highest court said.

The ruling upholds Oregon's land use goal of preserving large blocks of farmland that are necessary for the healthy functioning of the agricultural economy, said Ramsey McPhillips, an adjacent farmer who opposes the landfill expansion.

"This isn't just about McPhillips Farm, it's about

all the farmland in Oregon being encroached on by non-farm entities who could just pay off their trespass," he said.

Under the Oregon Supreme Court's ruling, opponents can seek to block non-farm developments for causing significant impacts to the "individual farmer," said Meriel Darzen, rural lands attorney for 1,000 Friends of Oregon.

"They don't have to show there will be a decrease in the

land supply," she said.

This test is employed by county governments whenever they encounter conditional use permit applications for non-farm developments in "exclusive farm use zones," Darzen said.

"The way the standard is applied is really important. It's how farmers can protect their farm uses from impact," she said. "The standard is applied more often than almost anything in land use."

The Oregon Supreme Court's decision is "very instructive" and sets a "high bar" for non-farm development, re-emphasizing the farmland preservation policies enacted by Oregon lawmakers, said Tim Bernasek, an attorney who represented the Oregon Farm Bureau in the case.

"They have to apply it on a farm-by-farm basis," he said. "It needs to be a much more specific analysis regarding the concerns that are raised."

Waste Management, the owner of the Riverbend Landfill, is reviewing the Oregon Supreme Court's ruling, said Jackie Lang, the company's senior area manager for public affairs and

communications.

The expansion plan was shaped by public input over eight years, during which the project was "thoroughly vetted and scrutinized," Lang said in an email.

"The final plan was approved by Yamhill County after an open and transparent process that included more than 25 public meetings," she said. "Waste Management has approached this process with a steady commitment to being a strong local employer and community partner."

The Supreme Court's ruling doesn't block the expansion from moving forward but rather remands the decision to the state's Land Use Board of Appeals, which reviews such conditional use permit decisions.

McPhillips said he's optimistic the new composition of Yamhill County's board of commissioners will yield a different result from past approvals.

"When it comes back to the county, there's a farmer on the commission who understands the importance of preserving large sections of farmland," he said.

## Tree fruit plant fire causes millions in losses

By **DAN WHEAT**  
Capital Press

PESHASTIN, Wash. — Two days after a fire broke out in a fruit warehouse in this community 19 miles northwest of Wenatchee, a pall of smoke lingered over the town and people wore respiratory masks or scarves outside.

Portions of a blackened roof hung above a corner of rubble still burning while icicles clung to unburned roofing just a few feet away.

The fire at Blue Bird Inc., a fruit cooperative, was reported at 7:06 p.m. Sunday. Firefighters arrived to find the west end of a 35,000-square-foot warehouse on fire. Through the night, firefighters from four fire districts fought the blaze in single-digit temperatures. They lost the warehouse but saved adjoining warehouses and the packing plant containing two pear and one apple packing line.

"We couldn't have asked for anything more from the firefighters. We're truly grateful for their efforts through the night and into the next day," said Ron Gonsalves, Blue Bird general manager.

The threat to other buildings continued into Monday.

"There's only 80 feet between the building that was on fire and our main packing building. It was an extreme effort. Firefighters saved the whole campus," Gonsalves said.

There were no injuries. The cause is under investigation. Gonsalves said there's no indication of anything suspicious or of mechanical failure.

The warehouse that



Photos by Dan Wheat/Capital Press

**Fire still burns in a corner of a Blue Bird fruit storage warehouse in Peshastin, Wash., March 5, while icicles hang from unburned roofing. The fire was first reported March 3.**

burned was built in 1982 and contained about 300,000, 44-pound box equivalents of packed d'Anjou pears valued at about \$8 million, Gonsalves said.

The average asking price of premium d' Anjou pears in Wenatchee and Yakima was \$17 to \$25 per box, depending on size, on March 4, according to USDA.

The fruit was in 10 of 12 controlled-atmosphere storage rooms and was late-term, meaning it was scheduled for sales from early April to July. It was about one-third of Blue Bird's total d'Anjou crop, Gonsalves said.

The cooperative packs just under 3 million boxes of pears and apples and 1 million, 20-pound boxes of cherries annually, he said.

There was smoke and water damage to apples and pears in an adjoining warehouse, he said.

The building and fruit



**Workers inspect a wall at one end while flames still burn at the other of a Blue Bird warehouse in Peshastin, Wash., the morning of March 5. The fire started the evening of March 3.**

were fully insured so growers will be made whole, Gonsalves said. It will be rebuilt in time for harvest starting in August, he said. The cooperative has 205 grower-members.

Packing has been disrupted for a few days but will resume soon, he said.

A June 28, 2015, wildfire, driven by wind into Wenatchee, destroyed 110,000-square-feet of Blue Bird facilities there containing three cherry packing lines and an

organic apple line. The \$53 million loss was fully covered by insurance with no expense to grower-members, Gonsalves said. The facility was rebuilt the next year.

The cooperative, and its Washington Cherry Growers division, have packing and storage facilities in Wenatchee and Peshastin.

It also owns fruit storage warehouses in Tonasket and George. The fruit is sold through Domex Superfresh Growers in Yakima.

## Senate budget committee OKs H-2A fees on Wash. farmers

By **DON JENKINS**  
Capital Press

OLYMPIA — The Senate Ways and Means Committee has endorsed new fees for Washington farmers who hire H-2A foreign guestworkers, passing a bill that has drawn more vocal opposition from agriculture than any other legislation this session.

The Democratic-controlled committee approved Senate Bill 5438 on a party-line vote, recommending its adoption by the full Senate.

The bill authorizes the Employment Security Department to begin collecting within two years up to \$75 per H-2A worker and an application fee of up to \$500.

Democrats rejected Republican-sponsored amendments to eliminate the application fee or cap it at \$25.

The bill stems from a proposal by the employment department to collect \$2 million a year for a new 14-employee "Office of the State Monitor Advocate." The department originally proposed last fall to go beyond what it has done in the past to ensure foreign workers aren't abused.

Since then, the department has shifted its emphasis, arguing it just needs more money to do what the federal government expects it to do.

The department says it receives about \$300,000 a year from the U.S. Department of Labor for tasks such as inspecting farms, investigating complaints, surveying wages and verifying U.S. workers aren't available.

The federal funding has

been flat, while the workload has increased, according to the department. The department projects Washington farms will hire about 30,000 H-2A workers this year, almost 6,000 more than last year.

Labor groups and activists continue to say the employment department needs more money to curb abuses.

At a hearing Tuesday, Community to Community Development organizer Edgar Franks told the committee that more state oversight would head off labor lawsuits against farms.

"We need adequate oversight and monitoring from our state agencies to ensure workers are treated fairly and growers get their fruits and vegetables picked," he said.

At the same hearing, farmers defended their industry.

John Huibregtse, chief financial officer of Sundquist Fruit in Yakima, said the farm gets most of its H-2A workers from the Mexican state of Durango. They are not a captive workforce, he said.

"Our experience in our seven years in the program (is that) nearly all of our H-2A workers return to us every single year," he said. "And they have lists of their friends they bring to us to get into the program."

The Senate committee amended the bill to rein in the employment department's original ambition.

Fees would have to be spent on what the department does now, rather than the "additional work" the department envisioned in its proposal to the governor's office last fall.

## Research underway to study fire behavior

By **GEORGE PLAVEN**  
Capital Press

CORVALLIS, Ore. — Researchers are working to better understand how large wildfires behave on the landscape.

Last year, firefighters battled 2,019 blazes across Oregon, burning more than 1,400 square miles — an area larger than Rhode Island. Another 1,744 fires burned approximately 685 square miles in Washington, according to the Northwest Interagency Coordination Center.

As fires grow in size, the U.S. Department of Defense is funding a four-year, \$2.1 million project through the agency's Strategic Environmental Research Development Program to study the burning of live trees. David Blunck, an assistant professor of mechanical engineer-

ing at Oregon State University who was chosen to lead the team.

"Live fuels are basically trees that are green and living," Blunck said. "These trees are often what torches, but historically, dead fuels have primarily been studied."

Studying live fuels is a newer area of wildfire research, Blunck said. In the past, research has focused mostly on burning characteristics of a single species at a specific time of year. The challenge for fire managers is predicting how blazes will interact with a new fuel, in terms of ignition and burning.

"We have a finite number of live fuels we've tested," Blunck said. "Do you create a different model for each fuel? If I can create a model that's predictive over a wide number of live fuels ... that model would be a lot more

advantageous."

To achieve that model, Blunck theorizes that just a handful of processes cause differences in burning behavior when live fuels burn — including temperature and flammable gases given off by different trees. If researchers can understand what those are, they can better predict how new species will burn, Blunck said.

Oregon State University will collaborate with the Forest Service on field work during controlled burns later this year. Laboratory samples will also be analyzed, burning pencil-sized tree limbs and shining lasers to determine which gases are given off.

Blunck is also wrapping up another three-year study looking at how the live trees spread embers when they are engulfed in flames.

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