

7.7.2 Goal 3 – Agricultural Lands/ Goal 3 Rule – Farm Uses – Farm Dwellings. A farm dwelling is permitted under OAR 660-033-0135(7)(a) only if the property is “currently employed for the farm use * * * that produced” the requisite \$80,000 income in farm products. As worded, the rule does not permit a farm dwelling if the current farm use of the property is significantly different from the farm use that produced the requisite income. *Chapman v. Marion County*, 60 Or LUBA 377 (2010).

7.7.2 Goal 3 – Agricultural Lands/ Goal 3 Rule – Farm Uses – Farm Dwellings. A hearings officer does not err in rejecting as not credible testimony that a 19-acre farm produced over \$80,000 in revenue from hay grown on the property, where the applicant provided no evidence of how much hay was grown on the property, or documentation distinguishing revenue from the sale of hay grown on the property from revenue derived from the resale of \$83,000 in hay that the applicant purchased that year, and substantial evidence in the record indicated that to derive \$80,000 in revenue solely from hay grown on the property would mean the applicant achieved yields and prices several times higher than average for the county. *Chapman v. Marion County*, 60 Or LUBA 377 (2010).

7.7.2 Goal 3 – Agricultural Lands/ Goal 3 Rule – Farm Uses – Farm Dwellings. A code provision that allows a farm dwelling on a 160-acre rangeland parcel, rather than the minimum 320 acres specified in OAR 660-033-0135(1)(a), may be inconsistent with the rule. However, the county may rely on its code, acknowledged in 2001 to comply with Goal 3 and the Goal 3 rule, notwithstanding any inconsistency with the rule. *Oregon Natural Desert Assoc. v. Harney County*, 42 Or LUBA 149.

7.7.2 Goal 3 – Agricultural Lands/ Goal 3 Rule – Farm Uses – Farm Dwellings. OAR 660-033-0135(1)(c) allows a farm dwelling only if the occupant(s) will be “principally engaged” in farm use, as opposed to principally engaged in nonfarm uses. Consequently, in allowing a farm dwelling under OAR 660-033-0135(1)(c), it is not sufficient for the county to determine that the occupants, as opposed to someone else, will be the primary actors in farm use of the property, where the record shows that the occupants’ primary economic livelihood is a nonfarm use. *Oregon Natural Desert Assoc. v. Harney County*, 42 Or LUBA 149.

7.7.2 Goal 3 – Agricultural Lands/ Goal 3 Rule – Farm Uses – Farm Dwellings. OAR 660-033-0135(1) provides that a dwelling may be considered customarily provided in conjunction with farm use if it satisfies four standards set forth in the rule. Nothing in the rule requires the county to make a separate determination, in addition to applying the four standards, that the predicate farm use is of the type that is customarily associated with a dwelling. *Oregon Natural Desert Assoc. v. Harney County*, 42 Or LUBA 149.

7.7.2 Goal 3 – Agricultural Lands/ Goal 3 Rule – Farm Uses – Farm Dwellings. Income and activities pursuant to a nonfarm business that is authorized by a conditional use permit on land zoned EFU may not be considered, for purposes of determining whether the farm uses proposed to support a farm dwelling are “at a commercial scale.” *Oregon Natural Desert Assoc. v. Harney County*, 42 Or LUBA 149.

7.7.2 Goal 3 – Agricultural Lands/ Goal 3 Rule – Farm Uses – Farm Dwellings. The OAR 660-033-0140 provisions imposing time limits on and providing standards for extension of certain EFU zone permits, including farm dwelling permits, expressly apply only to permits approved after August 7, 1993. OAR 660-033-0140 does not prohibit extension of farm dwelling permits that were approved prior to August 7, 1993 and does not require that the standards adopted by that rule be applied to any extensions of such previously approved farm dwelling permits. *Rochlin v. Multnomah County*, 35 Or LUBA 333 (1998).

7.7.2 Goal 3 – Agricultural Lands/ Goal 3 Rule – Farm Uses – Farm Dwellings. OAR 660-033-0135 and 660-033-0140 have no legal effect on the continued validity of farm dwelling permits approved prior to the adoption of those rules or the county's authority to impose time limits on those previously approved permits or to adopt standards for extending those new time limits. *Rochlin v. Multnomah County*, 35 Or LUBA 333 (1998).

7.7.2 Goal 3 – Agricultural Lands/ Goal 3 Rule – Farm Uses – Farm Dwellings. Under ORS 215.428(3), OAR 660-033-0140 may not be applied to applications for farm dwelling permits that were filed prior to the effective date of the rule and were pending on the date the rule became effective. *Rochlin v. Multnomah County*, 35 Or LUBA 333 (1998).

7.7.2 Goal 3 - Agricultural Lands/ Goal 3 Rule - Farm Uses - Farm Dwellings. The county's findings are inadequate to establish compliance with OAR 660-05-030(4) where they do not show that once the proposed level of farm activity is established on the subject property, the property will be "currently employed for the primary purpose of obtaining a profit in money" as required by ORS 215.203. *Still v. Marion County*, 32 Or LUBA 40 (1996).

7.7.2 Goal 3 - Agricultural Lands/ Goal 3 Rule - Farm Uses - Farm Dwellings. Where a local code requires that a second farm dwelling be shown to be "necessary," absent a definition to the contrary or contrary legislative history, the term "necessary" has the same meaning in the Goal 3 context that it has in the Goal 4 context. *Louks v. Jackson County*, 28 Or LUBA 501 (1995).

7.7.2 Goal 3 - Agricultural Lands/ Goal 3 Rule - Farm Uses - Farm Dwellings. While adding dwellings to the existing dwellings on one parcel of a multi-parcel commercial orchard may provide additional deterrence to trespass, vandalism and theft on that parcel, those dwellings will not provide deterrence on the other parcels and are not "necessary" for continuation of the commercial farm. *Louks v. Jackson County*, 28 Or LUBA 501 (1995).

7.7.2 Goal 3 - Agricultural Lands/ Goal 3 Rule - Farm Uses - Farm Dwellings. Following 1993 legislative amendments, small scale farm or forest dwellings are not allowable under Goals 3 and 4, and ORS 215.304(1) prohibits LCDC from adopting or

implementing any rule which would permit counties to allow such small scale farm or forest dwellings. *DLCD v. Douglas County*, 28 Or LUBA 242 (1994).