

7.8 Goal 3 – Agricultural Lands/ Goal 3 Rule – Nonfarm Uses. In determining whether a property is generally unsuitable for the production of farm crops and livestock or merchantable tree species, a county’s conclusion that any historic agricultural use on the property before that time does not provide a substantial hurdle is supported by substantial evidence where the county chooses to rely on an expert’s opinion that proposed nonfarm parcels have not been used for agricultural operation in the past 20 years. *Peterson v. Crook County*, 52 Or LUBA 160 (2006).

7.8 Goal 3 – Agricultural Lands/ Goal 3 Rule – Nonfarm Uses. Where the record reflects that 10 acres of irrigation rights were removed from two 20-acre parcels because (1) irrigating with that water was extremely inefficient, (2) the nonfarm parcels consist of 85 percent bare ground, and (3) moving the irrigation rights back would provide no benefit, county’s findings that returning irrigation rights to the property would not render the nonfarm parcels generally suitable for the production of farm crops or livestock is supported by substantial evidence. *Peterson v. Crook County*, 52 Or LUBA 160 (2006).

7.8 Goal 3 – Agricultural Lands/ Goal 3 Rule – Nonfarm Uses. Where the record reflects that at least 75 percent of the parcels proposed for nonfarm dwellings are incapable of supporting grazing, the county is not required to specifically consider whether neighboring ranchers could use the proposed nonfarm parcels in conjunction with other ranch land. *Peterson v. Crook County*, 52 Or LUBA 160 (2006).

7.8 Goal 3 – Agricultural Lands/ Goal 3 Rule – Nonfarm Uses. Where a portion of a lot or parcel is predominantly composed of Class I-IV soils, OAR 660-033-0130(4)(c)(B)(ii) provides that the portion is presumed generally suitable for the production of farm crops and livestock or merchantable tree species; where the portion is predominantly composed of soils that are not Class I-IV, but the entire subject property is predominantly composed of Class I-IV soils, the presumption provided for in OAR 660-033-0130(4)(c)(B)(ii) does not apply. *Wetherell v. Douglas County*, 51 Or LUBA 699 (2006).

7.8 Goal 3 – Agricultural Lands/ Goal 3 Rule – Nonfarm Uses. Where local land use regulation implements the statutory requirement in ORS 215.284(2)(b) that a portion of a lot or parcel on which a nonfarm dwelling will be located be generally unsuitable for the production of farm crops, the local regulation must be interpreted to be consistent with the statutory requirement it implements. An interpretation that improvements such as driveways, septic systems and wells may be located on the portion of the property that is suitable for production of farm crops is not consistent with the legislative intent of ORS 215.284(2)(b). *Wetherell v. Douglas County*, 51 Or LUBA 699 (2006).

7.8 Goal 3 – Agricultural Lands/ Goal 3 Rule – Nonfarm Uses. ORS 215.284(2)(a) requires a demonstration that a proposed nonfarm dwelling or “activities associated with the dwelling” will not force a significant change in or significantly increase the cost of accepted farming practices on nearby lands. Improvements such as driveways, wells and septic systems are not “activities associated with the dwelling.” However, such improvements must be considered part of the proposed dwelling and thus must be

considered when determining compliance with ORS 215.284(2)(a). *Wetherell v. Douglas County*, 51 Or LUBA 699 (2006).

7.8 Goal 3 – Agricultural Lands/ Goal 3 Rule – Nonfarm Uses. For purposes of determining whether a nonfarm dwelling proposed in the middle of an existing vineyard will force a significant change in or significantly increase the cost of accepted farming practices on “nearby lands,” the county’s determination of the dwelling’s impact on nearby lands must include consideration of the impact of the dwelling on the existing vineyard on the subject property itself. *Wetherell v. Douglas County*, 51 Or LUBA 699 (2006).

7.8 Goal 3 – Agricultural Lands/ Goal 3 Rule – Nonfarm Uses. An allegation that the county failed to consider the potential impact of a proposed nonfarm dwelling on wells located on nearby properties that serve *domestic* purposes does not provide a basis to reverse or remand the approval of a nonfarm dwelling, where the applicable approval criterion requires a demonstration of whether the proposal will force a significant change in or significantly increase the cost of accepted *farming practices*. *Wetherell v. Douglas County*, 51 Or LUBA 699 (2006).

7.8 Goal 3 – Agricultural Lands/ Goal 3 Rule – Nonfarm Uses. Although a local land use regulation may not specifically require the justification of a 2,000 acre study area for purposes of determining whether a proposed nonfarm dwelling will “materially alter the stability of the overall land use pattern of the area,” that regulation implements a statutory requirement, ORS 215.284(2)(d), which has been interpreted to require justification of the scope and contours of any study area used in applying the stability test. To the extent *Epp v. Douglas County*, 46 Or LUBA 480 (2004) concludes otherwise, it is overruled. *Wetherell v. Douglas County*, 51 Or LUBA 699 (2006).

7.8 Goal 3 – Agricultural Lands/ Goal 3 Rule – Nonfarm Uses. For purposes of determining whether a proposed nonfarm dwelling will “materially alter the stability of the overall land use pattern of the area,” OAR 660-033-0130(4)(a)(D)(ii) requires identification of the “number, location and type” of existing dwellings in an identified study area. Where a petitioner fails to explain why the county’s alleged errors in identifying existing dwellings on nearby properties as nonfarm dwellings rather than farm dwellings would render its conclusion regarding the resulting stability of the area inadequate, it fails to provide a basis for reversal or remand of the challenged decision. *Wetherell v. Douglas County*, 51 Or LUBA 699 (2006).

7.8 Goal 3 – Agricultural Lands/ Goal 3 Rule – Nonfarm Uses. Findings that the subject property is generally unsuitable for the production of farm crops and livestock or merchantable tree species are inadequate where the findings are based on the presence of rock outcroppings and shallow soils, but the findings do not indicate the percentage of the property covered by rock outcroppings and shallow soils. *Peterson v. Crook County*, 49 Or LUBA 223 (2005).

7.8 Goal 3 – Agricultural Lands/ Goal 3 Rule – Nonfarm Uses. Where a property had water rights that the applicant transferred to other property, the county must consider the possibility of transferring those rights back to the property and the potential capability of the soils if the water rights were transferred back in determining whether the subject property satisfies the “generally unsuitable” standard under ORS 215.263(5). *Peterson v. Crook County*, 49 Or LUBA 223 (2005).

7.8 Goal 3 – Agricultural Lands/ Goal 3 Rule – Nonfarm Uses. A herbaceous forage survey is not substantial evidence upon which a county may rely in determining that a property is “generally unsuitable” for the production of farm crops and livestock or merchantable tree species pursuant to ORS 215.263(5), where it is impossible to ascertain what area the surveys studied and where the survey does not consider potential herbaceous forage capacity if the properties were irrigated. *Peterson v. Crook County*, 49 Or LUBA 223 (2005).

7.8 Goal 3 – Agricultural Lands/ Goal 3 Rule – Nonfarm Uses. A county’s conclusion that a proposed nonfarm dwellings will not alter the stability of the land use pattern in the area is not supported by substantial evidence where that conclusion is based on an estimate that 4 or 5 additional nonfarm dwellings could be approved, and that estimate is not supported by any evidence in the record. *Peterson v. Crook County*, 49 Or LUBA 223 (2005).

7.8 Goal 3 – Agricultural Lands/ Goal 3 Rule – Nonfarm Uses. 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).

7.8 Goal 3 – Agricultural Lands/ Goal 3 Rule – Nonfarm Uses. Where a local code criterion requires that a nonfarm dwelling be situated on a portion of a lot or parcel that is “generally unsuitable for the production of farm crops and livestock or merchantable tree species,” and the code then spells out the considerations for determining whether a portion of a lot or parcel is “unsuitable for farm use,” the term “farm use” is not properly read to require evaluation of the suitability for farm uses other than the production of farm crops and livestock or merchantable tree species. *Griffin v. Jackson County*, 48 Or LUBA 1 (2004).

7.8 Goal 3 – Agricultural Lands/ Goal 3 Rule – Nonfarm Uses. For land to constitute “high-value farmland” under OAR 660-033-0020(8)(d), the land must be (1) west of the Coast Range summit, (2) used in conjunction with a dairy operation on January 1, 1993, and (3) part of a “tract,” one or more contiguous parcels in the same ownership, composed predominantly of listed soils. Separately owned parcels are not part of the same “tract” for purposes of OAR 660-033-0020(8)(d), even if those parcels were used together as part of a dairy operation on January 1, 1993. *Tallman v. Clatsop County*, 47 Or LUBA 240 (2004).

7.8 Goal 3 – Agricultural Lands/ Goal 3 Rule – Nonfarm Uses. 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).

7.8 Goal 3 – Agricultural Lands/ Goal 3 Rule – Nonfarm Uses. 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).

7.8 Goal 3 – Agricultural Lands/ Goal 3 Rule – Nonfarm Uses. OAR 660-004-0000(2) does not, as a matter of law, impose a requirement that an applicant for an exception to Goal 3 to permit a single-family dwelling on a 10-acre parcel first exhaust all other potential avenues to obtain approval for that single-family dwelling. *DLCD v. Yamhill County*, 42 Or LUBA 126.

7.8 Goal 3 – Agricultural Lands/ Goal 3 Rule – Nonfarm Uses. Comparative cost is an inherent consideration in determining under OAR 660-012-0065(5)(a) whether alternative road alignments can be constructed at “reasonable cost.” *Friends of Yamhill County v. Yamhill County*, 41 Or LUBA 476 (2002).

7.8 Goal 3 – Agricultural Lands/ Goal 3 Rule – Nonfarm Uses. In determining under OAR 660-012-0065(5)(a) whether alternative road alignments can be constructed at “reasonable cost,” possible benefits to properties that are unrelated to the application need not be considered. *Friends of Yamhill County v. Yamhill County*, 41 Or LUBA 476 (2002).

7.8 Goal 3 – Agricultural Lands/ Goal 3 Rule – Nonfarm Uses. In determining under OAR 660-012-0065(5)(a) whether alternative road alignments to serve seven existing lots can be constructed at “reasonable cost,” a county does not err by rejecting as unreasonable an alternative alignment that would cost \$285,000 where another alternative could be constructed at \$93,000. *Friends of Yamhill County v. Yamhill County*, 41 Or LUBA 476 (2002).

7.8 Goal 3 – Agricultural Lands/ Goal 3 Rule – Nonfarm Uses. 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).

7.8 Goal 3 – Agricultural Lands/ Goal 3 Rule – Nonfarm Uses. 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).

7.8 Goal 3 – Agricultural Lands/ Goal 3 Rule – Nonfarm Uses. The limitations on activities in public parks imposed by OAR 660-034-0035 do not apply to private parks allowed on agricultural and forest lands under ORS 215.283(2)(c), OAR 660-033-0120 and OAR 660-006-0025(4)(e). *Utsey v. Coos County*, 38 Or LUBA 516 (2000).

7.8 Goal 3 – Agricultural Lands/ Goal 3 Rule – Nonfarm Uses. Unlike Goal 4 and the Goal 4 rule, which limit recreational activities on forest lands to those “appropriate for a forest environment,” ORS 215.283(2)(c) and OAR 660-033-0120 contain no express language restricting the scope or intensity of activities allowed in “private parks” on agricultural land. *Utsey v. Coos County*, 38 Or LUBA 516 (2000).

7.8 Goal 3 – Agricultural Lands/ Goal 3 Rule – Nonfarm Uses. Where a neighboring farmer identifies significant changes and significant cost increases to his ranching operation from a proposed motocross race track and off-road vehicle park, the county must find that the proposed park, as conditioned, will not cause those impacts. Such findings are inadequate where the county does not address those identified impacts or explain why the proposed park, as conditioned, will not cause those impacts. *Utsey v. Coos County*, 38 Or LUBA 516 (2000).

7.8 Goal 3 – Agricultural Lands/ Goal 3 Rule – Nonfarm Uses. Conditions imposed on a proposed motocross race track and off-road vehicle park that noise from the park must comply with DEQ standards and not exceed 99 decibels are inadequate to support a finding of compliance with the noninterference standard, where the county does not determine whether compliance with DEQ standards will prevent identified impacts on surrounding farm and forest practices, and the only mechanism for achieving compliance is to limit the noise from individual vehicles to 99 decibels. Without addressing the cumulative noise impacts of multiple vehicles, the county is no position to conclude that identified impacts will not occur. *Utsey v. Coos County*, 38 Or LUBA 516 (2000).

7.8 Goal 3 – Agricultural Lands/ Goal 3 Rule – Nonfarm Uses. A water utility’s proposal to solve a water shortage by drilling wells and constructing related facilities on EFU-zoned land need not demonstrate that it is not feasible to solve the water shortage in some other way than drilling wells. *Dayton Prairie Water Assoc. v. Yamhill County*, 38 Or LUBA 14 (2000).

7.8 Goal 3 - Agricultural Lands/ Goal 3 Rule – Nonfarm Uses. Once a water utility decides to solve a water shortage by drilling wells and constructing related facilities, the wells and related facilities must be located on non-EFU-zoned land, unless it is not

feasible to do so. *Dayton Prairie Water Assoc. v. Yamhill County*, 38 Or LUBA 14 (2000).

7.8 Goal 3 - Agricultural Lands/ Goal 3 Rule – Nonfarm Uses. A utility facility may be located on EFU-zoned land if it is not feasible to locate the utility facility on non-EFU-zoned land and, in that circumstance, ORS 215.213(1)(d) and 215.283(1)(d) do not require that the utility facility be located on the “least suitable” EFU-zoned land. *Dayton Prairie Water Assoc. v. Yamhill County*, 38 Or LUBA 14 (2000).

7.8 Goal 3 - Agricultural Lands/ Goal 3 Rule – Nonfarm Uses. In reviewing alternatives to locating a proposed utility facility on a proposed EFU-zoned site, a county is not required to examine alternatives that would also involve using EFU-zoned lands. *Dayton Prairie Water Assoc. v. Yamhill County*, 38 Or LUBA 14 (2000).

7.8 Goal 3 – Agricultural Lands/ Goal 3 Rule – Nonfarm Uses. Because OAR 660-033-0120 and 660-33-0130 prohibit establishment of a church on high-value farmland, the only procedure available to site a church on high-value farmland is to apply for an exception to the applicable goals under Goal 2. *Corp. of Presiding Bishop v. Klamath County*, 34 Or LUBA 131 (1998).

7.8 Goal 3 – Agricultural Lands/ Goal 3 Rule – Nonfarm Uses. Under ORS 215.296(1), a local government must identify farm and forest uses on land surrounding the subject parcel and examine the practices necessary to continue those uses. The absence of findings sufficient to demonstrate compliance with ORS 215.296(1) undermines the conclusion that there will be no conflicts with surrounding farm or forest uses under Goal 5. *Sanders v. Yamhill County*, 34 Or LUBA 69 (1998).

7.8 Goal 3 – Agricultural Lands/ Goal 3 Rule – Nonfarm Uses. The only difference between ORS 215.284(2) and 215.284(3) is that ORS 215.284(2) permits a nonfarm dwelling on an existing parcel, while ORS 215.284(3) permits a nonfarm dwelling on a newly created parcel. *Dorvinen v. Crook County*, 33 Or LUBA 711 (1997).

7.8 Goal 3 – Agricultural Lands/ Goal 3 Rule – Nonfarm Uses. A new nonfarm parcel is not subject to minimum parcel size under ORS 215.780 where the new nonfarm parcel is created from a parent parcel under ORS 215.263(4) and 215.283(3). *Dorvinen v. Crook County*, 33 Or LUBA 711 (1997).

7.8 Goal 3 – Agricultural Lands/ Goal 3 Rule – Nonfarm Uses. OAR 660-33-120 and 660-33-130, which prohibit churches on high-value EFU land, are valid because the uses allowed under the rules are not less restrictive than the uses that would otherwise be allowed under ORS 215.283. *DLCD v. Clackamas County*, 33 Or LUBA 675 (1997).

7.8 Goal 3 – Agricultural Lands/ Goal 3 Rule – Nonfarm Uses. Where a statute and local land use ordinance restricts personal use airports to "use by the owner," the applicant may utilize the airport for uses *incidental* to conducting private business, but not for the applicant's commercial aviation enterprise. *Berto v. Jackson County*, 33 Or LUBA 658 (1997).

7.8 Goal 3 – Agricultural Lands/ Goal 3 Rule – Nonfarm Uses. Before a nonfarm dwelling on agricultural land can be approved, findings must be made showing the subject property satisfies the "generally unsuitable" standard and other standards stated in OAR 660-33-130(4)(c)(B). *Krieger v. Wallowa County*, 31 Or LUBA 96 (1996).

7.8 Goal 3 – Agricultural Lands/ Goal 3 Rule – Nonfarm Uses. A county must incorporate into its exclusive farm use zones, or otherwise implement, the restrictions on uses of high-value farmland required by OAR 660-33-020(8), 660-33-080, 660-33-090 and 660-33-120. *DLCD v. Josephine County*, 28 Or LUBA 459 (1994).

7.8 Goal 3 – Agricultural Lands/ Goal 3 Rule – Nonfarm Uses. Findings of fact stating that accepted farm practices which occurred on adjoining properties have continued after a golf course was constructed do not constitute an improper interpretation of ORS 215.296(1) as being met simply because those past accepted farm practices have continued. *Von Lubken v. Hood River County*, 28 Or LUBA 362 (1994).