

8.1 Goal 4 – Forest Lands/ Goal 4 Rule – Generally. Where property includes a soil type that produces no wood fiber and another soil type that will produce some wood fiber, in determining whether the property qualifies as forest land because it is suitable for commercial forest uses, a local government does not err by considering that the property has both soil types. OAR 660-006-0010 is silent about how a local government must go about deciding whether a property with soils of differing productivity qualifies as suitable for commercial forest uses, and a local government does not err by considering the average productivity of those soils. *Anderson v. Coos County*, 62 Or LUBA 38 (2010).

8.1 Goal 4 – Forest Lands/ Goal 4 Rule – Generally. Because OAR 660-006-0010 and 660-006-0005(2) require that local governments collect information about the cf/ac/year wood fiber productivity of land, it is appropriate to infer that the Land Conservation and Development Commission intended that that information actually be used in determining whether land qualifies as land that is suitable for commercial forest use. But it is not appropriate to infer that those rules require that only the required information may be considered in deciding whether land is suitable for commercial forest uses. *Anderson v. Coos County*, 62 Or LUBA 38 (2010).

8.1 Goal 4 – Forest Lands/ Goal 4 Rule – Generally. Where LUBA determines that land with wood fiber productivity of 40 cf/ac/yr to 80 cf/ac/yr is “unlikely to be unsuitable for commercial forest use unless there are additional factors that render those moderately productive soils unsuitable for commercial forest use,” a county may not fail to appeal LUBA’s decision and in its decision following LUBA’s remand of the county’s first decision reverse the suitability presumption for land with that level of wood fiber productivity and place the burden of proof on opponents of the applicant seeking a second county decision that the land is not suitable for commercial forest uses. *Anderson v. Coos County*, 62 Or LUBA 38 (2010).

8.1 Goal 4 – Forest Lands/ Goal 4 Rule – Generally. An argument that a decision approving a boundary line adjustment under an acknowledged comprehensive plan and land use regulations violates Goal 4 provides no basis for reversal, where petitioner offers no legal theory for why Goal 4 applies to such a decision. Generally, unless a land use decision adopts new or amended comprehensive plan or land use regulation provisions, a post-acknowledgement land use decision is governed by the acknowledged comprehensive plan and land use regulations and need not apply the statewide planning goals directly. *Lulay v. Linn County*, 60 Or LUBA 432 (2010).

8.1 Goal 4 – Forest Lands/ Goal 4 Rule – Generally. OAR 660-006-0010, which requires that a forest land inventory include a mapping of forest site class, applies both to a local government’s initial inventory of forest lands and to subsequent county decisions that modify that inventory, such as designating forest land as “marginal lands” under ORS 197.247 (1991). *Herring v. Lane County*, 54 Or LUBA 417 (2007).

8.1 Goal 4 – Forest Lands/ Goal 4 Rule – Generally. A county’s conclusion that OAR 660-010-0010 does not apply to a decision designating forest land as marginal

lands under ORS 197.247 (1991) is harmless error, where the decision is supported by an analysis that is based on objective, empirical measurements of forest productivity consistent with the rule's requirements. *Herring v. Lane County*, 54 Or LUBA 417 (2007).

8.1 Goal 4 – Forest Lands/ Goal 4 Rule – Generally. Where an empirical study conducted according to any applicable Oregon Department of Forestry standards determines that National Resource Conservation Service (NRCS) timber productivity ratings for particular soils do not accurately reflect the actual productivity of soils on the subject parcel, the local government may choose to rely on that study rather than on the NRCS ratings in determining whether the parcel is suitable for commercial forest uses under Goal 4. *Just v. Linn County*, 52 Or LUBA 145 (2006).

8.1 Goal 4 – Forest Lands/ Goal 4 Rule – Generally. That National Resource Conservation Service timber productivity ratings for certain soils lists typical characteristics and limitations of such soils, such as southern exposure and rock outcrops, does not mean that a particular parcel may not exhibit more severe limitations than reflected in those ratings. *Just v. Linn County*, 52 Or LUBA 145 (2006).

8.1 Goal 4 – Forest Lands/ Goal 4 Rule – Generally. That an Oregon Department of Forestry (ODF) publication requires a “higher intensity soil survey” by a “soil scientist” where there are no trees available for site index calculations does not mean that such a survey is necessary to determine whether property without trees is suitable for commercial forest species under Goal 4, where the survey requirement appears to apply to circumstances in which there is doubt regarding the accuracy of the National Resource and Conservation Service (NRCS) soil maps. The survey requirement has no bearing where it is not disputed that the NRCS soil maps are accurate. *Just v. Linn County*, 52 Or LUBA 145 (2006).

8.1 Goal 4 – Forest Lands/ Goal 4 Rule – Generally. A study that evaluates the actual timber productivity of the property, using methods that generate quantitative site index and cubic feet per acre per year data is sufficient to determine whether the property is “suitable for commercial forestry,” notwithstanding the absence of published NRCS data for the soils on the property. *Just v. Linn County*, 52 Or LUBA 145 (2006).

8.1 Goal 4 – Forest Lands/ Goal 4 Rule – Generally. Absent countervailing evidence, expert testimony expressing doubt that Ponderosa pine can be established on a parcel even under intensive management techniques is substantial evidence supporting the local government's conclusion that the property cannot produce Ponderosa pine. *Just v. Linn County*, 52 Or LUBA 145 (2006).

8.1 Goal 4 – Forest Lands/ Goal 4 Rule – Generally. A parcel consisting almost entirely of scattered trees interspersed with brush and open areas is not “other forested land” within the meaning of the Goal 4 definition of “forest lands.” *Just v. Linn County*, 52 Or LUBA 145 (2006).

8.1 Goal 4 – Forest Lands/ Goal 4 Rule – Generally. Counties have no inherent authority to allow uses in forest zones free of restrictions imposed by the Goal 4 rule, although counties may regulate more restrictively than required by the rule. *Central Oregon Landwatch v. Deschutes County*, 52 Or LUBA 582 (2006).

8.1 Goal 4 – Forest Lands/ Goal 4 Rule – Generally. OAR 660-004-0025 divides the universe of uses allowed in forest zones into outright permitted and conditional uses, with limitations on the types of auxiliary and accessory uses allowed. It is inconsistent with the rule for a county to allow as an outright permitted “accessory” use a use that the rule expressly categorizes as a conditional use. *Central Oregon Landwatch v. Deschutes County*, 52 Or LUBA 582 (2006).

8.1 Goal 4 – Forest Lands/ Goal 4 Rule – Generally. Where a county’s zoning code, like the Goal 4 rule, categorizes certain less intensive uses as outright permitted uses and similar but more intensive or permanent uses as conditional uses allowable on forest lands, an interpretation that the more intensive use is allowed outright as an accessory use to forest operations free of restrictions imposed on the less-intensive use is inconsistent with the structure of the code. *Central Oregon Landwatch v. Deschutes County*, 52 Or LUBA 582 (2006).

8.1 Goal 4 – Forest Lands/ Goal 4 Rule – Generally. Determining whether a “permanent logging equipment repair and storage” structure that is a listed conditional use under the Goal 4 rule but is not provided for at all under the county’s forest zone is allowed as an outright permitted “accessory” use to forest operations requires interpretation of the text and context of the zoning code. Accordingly, LUBA’s review of that interpretation is governed by ORS 197.829(1)(d) rather than the principle described in *Friends of Neabeack Hill v. City of Philomath*, 139 Or App 39, 911 P2d 250 (1996). *Central Oregon Landwatch v. Deschutes County*, 52 Or LUBA 582 (2006).

8.1 Goal 4 – Forest Lands/ Goal 4 Rule – Generally. Contamination of drinking water through application of herbicides, pesticides and fertilizers on adjacent resource lands is not an occasional inconvenience accompanying rural life that rural residents must be willing to accept, and might provide the basis for a committed exception to Goal 4. *Anderson v. Coos County*, 51 Or LUBA 454 (2006).

8.1 Goal 4 - Forest Lands/ Goal 4 Rule - Generally. Where a county has developed a rate of return methodology for distinguishing between forest lands and nonresource lands, but it did not rate some soils that the Natural Resource Conservation Service noted were not suitable for commercial tree production, it may not assume the unrated soils are nonresource lands that fall outside the broad Goal 4 definition of forest land. *Sommer v. Josephine County*, 49 Or LUBA 134 (2005).

8.1 Goal 4 – Forest Lands/ Goal 4 Rule – Generally. While OAR 660-006-0005(2) allows a county to rely upon an “alternative method” for determining forest productivity of soils instead of the method provided by the Natural Resource Conservation Service, the alternative methodology must be described or set forth in the record, and there must

be evidence that the Oregon Department of Forestry has approved the methodology. *Just v. Lane County*, 49 Or LUBA 456 (2005).

8.1 Goal 4 – Forest Lands/ Goal 4 Rule – Generally. It is consistent with OAR 660-006-0005(2) to rely upon timber productivity data generated by the Oregon Department of Forestry (ODF), notwithstanding that the (1) methodology ODF used is not described in the record, and (2) there is no indication that the methodology used conforms to that described in a 1998 ODF publication. ODF is free to follow or approve a different methodology for determining timber productivity than that described in the 1998 ODF publication. *Just v. Lane County*, 49 Or LUBA 456 (2005).

8.1 Goal 4 – Forest Lands/ Goal 4 Rule – Generally. Arguments that an acknowledged comprehensive plan policy that rates certain soils as unsuitable for commercial forestry is inconsistent with the county soil survey or uses inaccurate figures are impermissible collateral attacks on the policy. *Doob v. Josephine County*, 48 Or LUBA 227 (2004).

8.1 Goal 4 – Forest Lands/ Goal 4 Rule – Generally. Although it may be appropriate to focus exclusively or preponderantly on the poor quality of soils for farm and forest use in deciding whether a particular tract qualifies as agricultural lands or forest lands, such an exclusive or preponderant focus on the tract itself is not appropriate in considering an irrevocably committed exception, where the focus is on the relationship of the adjoining properties to the tract. *Friends of Linn County v. Linn County*, 42 Or LUBA 235.

8.1 Goal 4 – Forest Lands/ Goal 4 Rule – Generally. Speculative impacts on an adjoining rural subdivision from possible future aerial application of herbicides, pesticides and fertilizer and future movement of trucks to and from a 39-acre parcel for future farm and forest use are the occasional inconveniences that rural residents must be willing to accept and do not provide a basis for a committed exception to Goals 3 and 4. *Friends of Linn County v. Linn County*, 42 Or LUBA 235.

8.1 Goal 4 – Forest Lands/ Goal 4 Rule – Generally. A reasons exception for rural housing is not “necessary” under the last sentence of OAR 660-004-0022(2), if the county fails to demonstrate that land inside nearby urban growth boundaries or on nearby exception lands could not accommodate any identified market demand for housing, as required by OAR 660-004-0020(2)(b). *Friends of Linn County v. Linn County*, 42 Or LUBA 235.

8.1 Goal 4 – Forest Lands/ Goal 4 Rule – Generally. "Forest lands," as that term is used in Goal 4, are not limited to lands that have been acknowledged as forest lands. *Dept. of Transportation v. Coos County*, 35 Or LUBA 285 (1998).

8.1 Goal 4 – Forest Lands/ Goal 4 Rule – Generally. Where a soil study is needed for approval of a forest template dwelling, OAR 660-006-0005(2) requires that determination of soil capability be based on NRCS data, unless the local government finds that data inaccurate or unavailable, in which case it may consider "equivalent data" generated by

an approved method of determining the capability of soils to produce wood fiber. *Carlson v. Benton County*, 34 Or LUBA 140 (1998).

8.1 Goal 4 – Forest Lands/ Goal 4 Rule – Generally. The absence of an NRCS productivity rating for a particular soil means only that NRCS data regarding that soil are "not available" within the meaning of OAR 660-006-0005(2). *Carlson v. Benton County*, 34 Or LUBA 140 (1998).

8.1 Goal 4 – Forest Lands/ Goal 4 Rule – Generally. ORS 215.750 does not, through its text, context or legislative history, limit the meaning of the term "wood fiber" to Douglas fir wood fiber, to the exclusion of other commercial tree species. *Carlson v. Benton County*, 34 Or LUBA 140 (1998).

8.1 Goal 4 – Forest Lands/ Goal 4 Rule – Generally. Where a soil study, intended to be an alternative method allowed by OAR 660-006-0005, fails to determine the capability of non-rated soils for producing wood fiber other than Douglas fir, the standard in OAR 660-006-0005 for determining the productivity of the soil by generating equivalent data, has not been met. *Carlson v. Benton County*, 34 Or LUBA 140 (1998).

8.1 Goal 4 – Forest Lands/ Goal 4 Rule – Generally. Where an NRCS soil survey does not rate certain soils, that nonrating cannot be used to determine the capacity of the soil for producing wood fiber and cannot be the basis of a conclusion that such soils produce 0-49 cf/ac/yr. The nonrating says nothing in quantitative terms or otherwise about the soil's capacity to produce wood fiber, and therefore is not "equivalent data" as required by OAR 660-006-0005 for an alternative method of soil assessment. *Carlson v. Benton County*, 34 Or LUBA 140 (1998).

8.1 Goal 4 – Forest Lands/ Goal 4 Rule – Generally. To comply with OAR 660-06-025(5)(a), a local government's findings must describe the farm or forest practices on adjacent and nearby forest lands, as well as explain why the proposed use does not significantly affect those practices. Findings that do not address all nearby lands and that simply refer to an adjacent property as a "woodlot" where a "small flock of sheep" is raised are inadequate. *Donnelly v. Curry County*, 33 Or LUBA 624 (1997).

8.1 Goal 4 – Forest Lands/ Goal 4 Rule – Generally. Goal 4 does not apply to the adoption of a city tree-cutting regulation that has no application to acknowledged forestlands or lands suitable for commercial forest uses. *Ramsey v. City of Portland*, 30 Or LUBA 212 (1995).

8.1 Goal 4 – Forest Lands/ Goal 4 Rule – Generally. Where a county zoning district was acknowledged by LCDC as a forest zone, not a farm/forest zone, a regulation subsequently adopted by LCDC to apply immediately to uses in forest zones applies to uses within that zoning district. *Testa v. Clackamas County*, 29 Or LUBA 383 (1995).

8.1 Goal 4 – Forest Lands/ Goal 4 Rule – Generally. The general prohibition in the Forest Practices Act against counties applying their land use regulations to forest

practices on forestlands located outside an urban growth boundary does not apply to a land use regulation prohibiting or regulating the siting or alteration of dwellings. *Sanchez v. Clatsop County*, 29 Or LUBA 26 (1995).