BEFORE THE LAND USE BOARD OF APPEALS

OF THE STATE OF OREGON

JAMES M. GRIFFIN and SHARRI M. GRIFFIN,
Petitioners,

and

BOB HART,
Intervenor-Petitioner,

vs.

JACKSON COUNTY,
Respondent.

LUBA No. 2004-084

FINAL OPINION
AND ORDER

Appeal from Jackson County.

Matthew G. Fawcett, Medford, filed the petition for review and argued on behalf of petitioners.

Bob Hart, Rogue River, filed the petition for review and argued on his own behalf.

No appearance by Jackson County.

DAVIES, Board Member; HOLSTUN, Board Chair; BASSHAM, Board Member, participated in the decision.

REMANDED 10/04/2004

You are entitled to judicial review of this Order. Judicial review is governed by the provisions of ORS 197.850.

Opinion by Davies.

NATURE OF THE DECISION

Petitioners James Griffin and Sharri Griffin appeal a denial by Jackson County of a dwelling not provided in conjunction with farm use on a portion of a 12.11-acre parcel zoned Exclusive Farm Use (EFU).

MOTION TO INTERVENE

Bob Hart moves to intervene on the side of petitioners. There is no opposition to the motion, and it is allowed.[1]

FACTS

The subject property has a history of farm use, including cropping for hay, pasture and stabling horses. The property continues to be used for hay production and pasture. There is no dwelling on the property, although there are several structures related to the prior use of stabling horses. A large part of the property is irrigated Class I and irrigated Class II soils, and the entire property is on farm tax deferral. Nearby properties are used for orchards, row crops, hay, pasture, cattle and horse ranching. The farming operations in the area range from small scale farms to larger commercial farms.

Petitioners James Griffin and Sharri Griffin seek to site a dwelling not provided in conjunction with farm use, commonly referred to as a nonfarm dwelling, on a one-half to one-acre portion of the subject property. The "portion" underlies the area currently occupied by agricultural outbuildings. The Griffins submitted an application for approval of a nonfarm dwelling on November 25, 2003. The application included a study conducted by a soils scientist evaluating the existing outbuilding area, the extent of damage to the soils structure and the potential to rehabilitate the area. Record 275. The study concluded that the soils on

[1] Petitioners James Griffin and Sharri Griffin and intervenor-petitioner Bob Hart both filed petitions for review. Their assignments of error, although numbered and organized differently, are essentially the same. Therefore, we do not set out their arguments separately, and we refer to them collectively as petitioners. Where there is a need to identify them separately, we will do so.

the subject property in the area currently consisting of horse stalls have been compacted by the foundation of the horse stalls and cannot be reclaimed for agricultural endeavors. *Id*.

On February 5, 2004, the county planning division tentatively denied the application, and on February 17, 2004, the Griffins requested a hearing. Following that tentative denial, the applicants' soils scientist conducted further studies, which were made part of the local record. Record 38. On April 5, 2004, a hearing was held, and on May 3, 2004, the hearings officer denied the application. This appeal followed.

FIRST AND SECOND ASSIGNMENTS OF ERROR (GRIFFIN)
THIRD AND FOURTH ASSIGNMENTS OF ERROR (HART)

The EFU statute and the statute's implementing administrative rule set out the criteria for approval of a nonfarm dwelling. ORS 215.284(2); OAR 660-033-0130(4)(c).[2]

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[2] ORS 215.284(2) provides:

> "(2) In counties not described in subsection (1) of this section, a single-family residential dwelling not provided in conjunction with farm use may be established, subject to approval of the governing body or its designee, in any area zoned for exclusive farm use upon a finding that:
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> > "(a) The dwelling or activities associated with the dwelling will not force a significant change in or significantly increase the cost of accepted farming or forest practices on nearby lands devoted to farm or forest use;
> >
> > "(b) The dwelling is situated upon a lot or parcel or portion of a lot or parcel that is generally unsuitable land for the production of farm crops and livestock or merchantable tree species, considering the terrain, adverse soil or land conditions, drainage and flooding, vegetation, location and size of the tract. A lot or parcel or portion of a lot or parcel may not be considered unsuitable solely because of size or location if it can reasonably be put to farm or forest use in conjunction with other land;
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> > "(c) The dwelling will be sited on a lot or parcel created before January 1, 1993;
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> > "(d) The dwelling will not materially alter the stability of the overall land use pattern of the area; and
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> > "(e) The dwelling complies with such other conditions as the governing body or its designee considers necessary."

OAR 660-033-0130(4)(c) provides that, in counties located outside the Willamette Valley, a single-family residential dwelling, not provided in conjunction with farm use, may be approved, after required review, upon a finding that:

Specifically, the statute and rule provide that a county may approve a nonfarm dwelling if the county finds, among other things, that the portion of a lot or parcel upon which an applicant seeks to site a nonfarm dwelling is "generally unsuitable * * * for the production of farm crops and livestock or merchantable tree species." *See* n 2.

The local code recites the language of the statute that requires a demonstration that the portion "is generally unsuitable land for the production of farm crops and livestock or merchantable tree species." Jackson County Land Development Ordinance (LDO)

> "(A) The dwelling or activities associated with the dwelling will not force a significant change in or significantly increase the cost of accepted farming or forest practices on nearby lands devoted to farm or forest use;
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> "(B) (i) The dwelling is situated upon a lot or parcel, or a portion of a lot or parcel, that is generally unsuitable land for the production of farm crops and livestock or merchantable tree species, considering the terrain, adverse soil or land conditions, drainage and flooding, vegetation, location and size of the tract. A lot or parcel or portion of a lot or parcel shall not be considered unsuitable solely because of size or location if it can reasonably be put to farm or forest use in conjunction with other land; and
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> "(ii) A lot or parcel or portion of a lot or parcel is not 'generally unsuitable' simply because it is too small to be farmed profitably by itself. If a lot or parcel or portion of a lot or parcel can be sold, leased, rented or otherwise managed as a part of a commercial farm or ranch, then the lot or parcel or portion of the lot or parcel is not 'generally unsuitable'. A lot or parcel or portion of a lot or parcel is presumed to be suitable if, in Western Oregon it is composed predominantly of Class I-IV soils or, in Eastern Oregon, it is composed predominantly of Class I-VI soils. Just because a lot or parcel or portion of a lot or parcel is unsuitable for one farm use does not mean it is not suitable for another farm use; or
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> "* * * * *
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> "(C) The dwelling will not materially alter the stability of the overall land use pattern of the area. In determining whether a proposed nonfarm dwelling will alter the stability of the land use pattern in the area, a county shall consider the cumulative impact of nonfarm dwellings on other lots or parcels in the area similarly situated by applying the standards set forth in paragraph (4)(a)(D) of this rule. If the application involves the creation of a new parcel for the nonfarm dwelling, a county shall consider whether creation of the parcel will lead to creation of other nonfarm parcels, to the detriment of agriculture in the area by applying the standards set forth in paragraph (4)(a)(D) of this rule; and
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> "(D) The dwelling complies with such other conditions as the governing body or its designate considers necessary."

218.090(7)(C).[3] However, in further explaining how that determination is to be made, the code lists several factors that shall be considered in determining "whether a lot or parcel, or a portion of a lot or parcel, is unsuitable *for farm use*." LDO 218.090(7)(C)(i) (emphasis added); *see* n 3.

The hearings officer interpreted LDO 218.090(7)(C)(i) as a refinement of the statutory requirement and the general requirement in LDC 218.090(7)(C) that the portion of a property be generally unsuitable for the production of farm crops and livestock or merchantable tree

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[3] LDO 218.090(7) provides:

"Nonfarm Dwelling: A nonfarm dwelling as permitted under Subsection 218.040(6) may be approved subject to the following findings:

"A) The dwelling or activities associated with the dwelling will not force a significant change in or significantly increase the cost of accepted farming or forest practices on nearby lands devoted to farm or forest use. *[ORS 215.284(2)(a) & ORS 215.284(3)(a); OAR 660-33-120 & OAR 660-33-130(4)(c)(A)]*

"B) The dwelling will not materially alter the stability of the overall land use pattern of the area, considering the cumulative impacts of nonfarm dwellings similarly situated in the area. *[ORS 215.284(2)(d) & ORS 215.284(3)(d); OAR 660-33-120 & OAR 660-33-130(4)(c)(C)]*

"C) The dwelling is situated upon a lot or parcel, or portion of a lot or parcel, that is generally unsuitable land for the production of farm crops and livestock or merchantable tree species based upon the following*: [ORS 215.284(2)(b) & ORS 215.284(3)(b); OAR 660-33-120 & OAR 660-33-130(4)(c)(B)]*

"i) In determining whether a lot or parcel, or a portion of a lot or parcel, is unsuitable *for farm use*, terrain, adverse soil or land conditions, drainage and flooding, vegetation, location, and size of the tract shall be considered.

"a) A lot or parcel is presumed to be suitable if it is composed predominantly of Class I-IV soils.

"b) A lot or parcel is not 'generally unsuitable' simply because it is too small to be farmed profitably by itself.

"c) If a lot or parcel can be sold, leased, rented or otherwise managed as a part of a commercial farm or ranch, it is not 'generally unsuitable.'

"d) Unsuitability of a lot or parcel for one farm use does not mean it is unsuitable for another farm use." (Emphasis added).

species. The challenged decision concludes: "[LDO 218.090(7)(C)(i)] refines the test by characterizing it as determining 'whether a lot or parcel, or a portion of a lot or parcel, is unsuitable for *farm use* * * *.'" Record 10 (emphasis added). The hearings officer then turns to the statutory definition of "farm use," which includes "the current employment of land for the primary purpose of obtaining a profit in money by stabling or training equines * * *."[4] Because the historical use of the subject property was for this very purpose, the hearings officer concludes:

> "Specifically, ORS 215.203(2)(b)(F) further establishes that '[c]urrent employment' of land for farm use includes '[e]xcept for land under a single family dwelling, land under buildings supporting accepted farm practices * * *.' The Portion * * * clearly cannot be found 'generally unsuitable [for] farm use'. The fact that farm use is not the production of crops is not material. LDO 218.090(7)(C)(d) declares that the '[u]nsuitability of a lot or parcel for one farm use does not mean it is unsuitable for another farm use.'
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> "Clearly this area, compacted and damaged as its soils may be, is either already in farm use or, at the least, generally suitable for it." Record 12 (footnote omitted).

Petitioners argue that LDO 218.090(7)(C) implements ORS 215.284(2) and OAR 660-033-0130(4)(c) and, therefore, must be consistent with those provisions. We agree with petitioners that the county's discretion to interpret its code provisions that parallel and implement state standards is constrained. Any interpretation of LDO 218.090(7)(C) must be consistent with the statutory standards that the local provision implements. *DLCD v. Crook County*, 34 Or LUBA 243, 248 (1998). Petitioners argue that the hearings officer's

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[4] ORS 215.203(2)(a) provides, in part:

> "* * * 'farm use' means the current employment of land for the primary purpose of obtaining a profit in money by raising, harvesting and selling crops or the feeding, breeding, management and sale of, or the produce of, livestock, poultry, fur-bearing animals or honeybees or for dairying and the sale of dairy products or any other agricultural or horticultural use or animal husbandry or any combination thereof. * * * 'Farm use' also includes the current employment of land for the primary purpose of obtaining a profit in money by stabling or training equines including but not limited to providing riding lessons, training clinics and schooling shows. * * *"

interpretation is not a refinement of the statutory standard, but rather an expansion of it, and that the county erred in interpreting its code provision in a manner that is inconsistent with the state statute. Griffin Petition for Review 16.

It bears noting that the statutory standard does not require a demonstration that the portion of a lot or parcel upon which a nonfarm dwelling is sited is generally unsuitable for farm use. It requires that the portion be generally unsuitable *for the production of farm crops and livestock or merchantable tree species*. Admittedly, caselaw discussing this particular statutory provision uses the language loosely, referring in many instances to "unsuitability for farm use."[5] This shorthand phraseology, however, cannot change the meaning of the statutory standard. We are aware of no case holding that the general unsuitability standard in ORS 215.284(2)(b) means general unsuitability for farm use. As far as we are made aware, this is the first case where the suitability standard has been interpreted to mean unsuitable for farm use and the first case where that distinction is critical.

For the following reasons, we agree with petitioners that the county's interpretation is inconsistent with the statute. First, quite simply, the statute does not require a demonstration that the portion be "generally unsuitable for farm use." If the legislature had intended that meaning, it certainly could have written the statute to more accurately reflect that intent.

Second, the county's interpretation is inconsistent with the purposes of the statute. We have held that the statutory scheme reflects two conflicting purposes: to preserve large blocks of land zoned EFU for farm use; and to permit non-farm dwellings with respect to relatively unproductive portions of land zoned EFU. *Dorvinen v. Crook County*, 33 Or LUBA 711, 719 (1997), *aff'd* 153 Or App 391, 957 P2d 180 (1998) (discussing at length legislative history of nonfarm dwelling and partition provisions of ORS 215.284 and

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[5]*For simplicity only*, we have referred to the ORS 215.284(2)(b) standard and identically worded standards as requiring a showing that the portion be "generally unsuitable for farm use." *See Geiselman v. Clackamas County*, 26 Or LUBA 260, 262 nn 1, 3 (1993) ("For simplicity, in this context, we refer to this standard as requiring the relevant portion of an EFU zoned parcel be 'generally unsuitable' for farm use.")

215.263). As the hearings officer points out, "current employment of land for farm use" includes "land under buildings supporting accepted farm practices." ORS 215.203(2)(b)(F). The hearings officer's interpretation would make it extremely difficult, if not impossible, to obtain approval for a nonfarm dwelling because almost any land is generally suitable for the siting of a building supporting accepted farm practices. Similarly, almost any land is generally suitable for siting a facility to stable or train equines. The county's interpretation would virtually eviscerate the statute's purpose of allowing nonfarm dwellings on less productive land.

The language and purpose of the statute require a more literal reading of the "generally unsuitable for the production of farm crops and livestock or merchantable tree species" standard. In order to construe the county code provisions consistently with the statute, the language, "unsuitable for farm use," in LDO 218.090(7)(C)(i) must be read as a shorthand reference to the overriding "generally unsuitable" criterion in LDO 218.090(7)(C). Under the statutory standard and the properly construed local code provisions, the inquiry focuses on the suitability of land for the production of crops and livestock or merchantable tree species, not on suitability of land for the whole universe of farm uses.[6] The county erred in concluding otherwise.

Petitioners James Griffin and Sharri Griffin request reversal of the portion of the hearings official's decision concluding that the property does not meet the "general unsuitability" test. Griffin Petition for Review 21. This Board may reverse a land use

[6] Petitioners assert this inquiry is largely, if not wholly, directed at the productive capability of the soils. (*Citing Stefan v. Yamhill County*, 21 Or LUBA 18 (1991)). We do not necessarily agree that soils capability is the sole inquiry. *See King v. Washington County*, 42 Or LUBA 400, 406-07 (2002) (in determining the property was "generally unsuitable" under this standard, the hearings official did not misconstrue the applicable law in considering all of the relevant factors of ORS 215.213(3)(b), including topography, access to irrigation water, parcel size, size of farmable area on subject property and inability to combine farm operations on subject property with other farm operations). *See also* ORS 215.284(2)(b) (portion must be "generally unsuitable," considering "terrain, adverse soil or land conditions, drainage and flooding, vegetation, location and size of the tract.")

decision only where the governing body exceeded its jurisdiction, the decision is unconstitutional or the decision violates a provision of applicable law and is prohibited as a matter of law. OAR 661-010-0071(1). Petitioners have not attempted to demonstrate that the county exceeded its jurisdiction or that the challenged decision is unconstitutional. We cannot say that, as a matter of law, the suitability criterion, as properly applied, is satisfied.[7] Remand, not reversal, is therefore appropriate.

Petitioners James Griffin and Sharri Griffin's first and second assignments of error are sustained. Petitioner Hart's third and fourth assignments of error are sustained.

THIRD ASSIGNMENT OF ERROR (GRIFFIN)
FIRST ASSIGNMENT OF ERROR (HART)

A dwelling not in conjunction with farm use may be allowed where, among other things, the county finds that the dwelling or activities associated with the dwelling "will not force a significant change in or significantly increase the cost of accepted farming or forest practices on nearby lands devoted to farm or forest use." OAR 660-003-0130(4)(c)(A); *see also* ORS 215.284(2), n 2.

The nonfarm dwelling application submitted by applicants identifies the farm practices on surrounding properties as follows:

> "wind machines * * *, truck mounted sprayers for insecticide application, liquid and solid fertilizer applied by mechanized equipment, hand spray of insecticides, plowing and disc turning of fields that cause dust, normal hay cutting, turning and bailing using tractor pulled equipment, harvesting is some hand pick and some mechanized depending on the crop." Record 256.

The application then offers the following explanation of compliance with this criterion:

> "The location of the dwelling is separated from the farm use * * * by the road system and the river. No alteration of management practices will be required with the addition of this dwelling. * * * The proposed dwelling will be

[7] The expert testimony by applicants' soils expert appears to focus exclusively on the ability of the land to produce crops. The applicable criterion, however, also refers to production of livestock and merchantable tree species.

> situated so that no conflicts will occur with current resource managed lands. Thus no change in current practices will occur and therefore no cost increases will be realized." Record 245.

The hearings officer questions the accuracy of these statements, noting that there is no river in the study area and that roads in the study area are "small farm/rural residential streets." He concludes that this criterion is not satisfied, stating:

> "Especially given that mechanized application of sprayed pesticides and liquid fertilizers is practiced in the vicinity of the Parcel, it is difficult to understand how one can simply conclude that a nonfarm dwelling surrounded by active farm operations will not generate such conflicts." Record 7.

Petitioners assign error to that conclusion, arguing that it is not supported by substantial evidence, or any evidence, in the record. Griffin Petition for Review 21. We agree with petitioners. Their statement that "[n]o alteration or management practices will be required with the addition of this dwelling" remains uncontroverted. While it may be "difficult to understand" how a dwelling surrounded by farm operations will not generate conflicts, the hearings officer's conclusion that the criterion has not been complied with is not supported by substantial evidence, because there is no evidence in the record, at least none that we are made aware of, that the proposed use will force a significant change in or significantly increase the cost of accepted farm practices on nearby lands devoted to farm use.[8]

These assignments of error are sustained.

FOURTH ASSIGNMENT OF ERROR (GRIFFIN)
SECOND ASSIGNMENT OF ERROR (HART)

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[8] Two petitions for review were filed in this appeal, and the county chose not to appear. Respondents that do not appear by filing a response brief before this Board are at a distinct disadvantage where the evidentiary support for a conclusion is not specifically cited in the challenged decision. *See Johns v. City of Lincoln City*, 35 Or LUBA 421, 428, *rev'd and rem'd on other grounds*, 161 Or App 224, 984 P2d 864 (1999) (where a land use decision is challenged on evidentiary grounds, LUBA relies on the parties to direct it to relevant evidence in the record so that LUBA can determine whether there is substantial evidence in the record to support the challenged decision). Where, as here, there is no argument in support of the hearings officer's decision and no recitation of evidence that would support the hearings officer's conclusions, we have no choice but to remand.

A dwelling not in conjunction with farm use may be allowed where, among other things, the county finds that the dwelling "will not materially alter the stability of the overall land use pattern of the area." OAR 660-033-0130(4)(c)(C); *see* n 2. That administrative rule requires that the county consider "the cumulative impact of nonfarm dwellings on other lots or parcels in the area similarly situated by applying the standards set forth in [OAR 660-033-0130(4)(a)(D)]."[9] Subsection (D) requires the county to (1) identify a study area, (2) describe

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[9] OAR 660-033-0130(4)(a)(D) provides in relevant part:

> "(D) The dwelling will not materially alter the stability of the overall land use pattern of the area. In determining whether a proposed nonfarm dwelling will alter the stability of the land use pattern in the area, a county shall consider the cumulative impact of possible new nonfarm dwellings and parcels on other lots or parcels in the area similarly situated. To address this standard, the county shall:
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> > "(i) Identify a study area for the cumulative impacts analysis. The study area shall include at least 2000 acres or a smaller area not less than 1000 acres, if the smaller area is a distinct agricultural area based on topography, soil types, land use pattern, or the type of farm or ranch operations or practices that distinguish it from other, adjacent agricultural areas. Findings shall describe the study area, its boundaries, the location of the subject parcel within this area, why the selected area is representative of the land use pattern surrounding the subject parcel and is adequate to conduct the analysis required by this standard. Lands zoned for rural residential or other urban or nonresource uses shall not be included in the study area;
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> > "(ii) Identify within the study area the broad types of farm uses (irrigated or nonirrigated crops, pasture or grazing lands), the number, location and type of existing dwellings (farm, nonfarm, hardship, etc.), and the dwelling development trends since 1993. Determine the potential number of nonfarm/lot-of-record dwellings that could be approved under subsections (3)(a), (3)(d) and section (4) of this rule, including identification of predominant soil classifications, the parcels created prior to January 1, 1993 and the parcels larger than the minimum lot size that may be divided to create new parcels for nonfarm dwellings under ORS 215.263(4). The findings shall describe the existing land use pattern of the study area including the distribution and arrangement of existing uses and the land use pattern that could result from approval of the possible nonfarm dwellings under this subparagraph;
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> > "(iii) Determine whether approval of the proposed nonfarm/lot-of-record dwellings together with existing nonfarm dwellings will materially alter the stability of the land use pattern in the area. The stability of the land use pattern will be materially altered if the cumulative effect of existing and potential nonfarm dwellings will make it more difficult for the existing types of farms in the area to continue operation due to diminished opportunities to

the land use pattern within the study area, and (3) determine whether approval of the proposed nonfarm dwelling together with existing nonfarm dwellings will materially alter the stability of the land use pattern in the area. *See DLCD v. Crook County*, 34 Or LUBA at 249, *citing Blosser v. Yamhill County*, 18 Or LUBA 253, 263 (1989) (where there are similarly situated properties in the area for which similar nonfarm dwelling applications might be encouraged, "precedential effect" of approving an additional nonfarm dwelling is relevant to demonstrating compliance with stability criterion).

The planning staff initially denied the application based, in part, on noncompliance with the stability standard. Staff determined that the study area contained sixteen parcels, including the subject property, that contained nonresidential buildings and that approval could create a precedent for siting nonfarm dwellings on land under existing nonresidential structures. The staff concluded:

> "If we accept the applicants' supposition that areas containing [nonresidential] buildings can be used to site nonfarm dwellings in spite of prime soils designation, then the standard application of OAR 660-033-0130(4)(c)(C) is fundamentally flawed. The flaw being that the predominant soil classification has no bearing on whether a nonfarm dwelling could be approved. The County does not have the resources to analyze the soils on every parcel in the study area to identify any possible inclusions. In order to determine the number of potential nonfarm dwellings as required by OAR 660-033-0130(4)(c)(C), using the applicants' reasoning, the best method would be to use the 2001 color air photos of the study area. Every parcel with a nonresidential building where significant soil compaction is likely would have the potential for a nonfarm dwelling." Record 274.

The applicants' soils scientist subsequently analyzed the soils on approximately 16 properties that contained nonresidential buildings to determine whether those other parcels could qualify for nonfarm dwellings, thus creating a precedent and destabilizing the area with

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> expand, purchase or lease farmland, acquire water rights or diminish the number of tracts or acreage in farm use in a manner that will destabilize the overall character of the study area * * *."

future nonfarm dwelling approvals. The study concluded that approving the subject application would have no precedential effect. The challenged decision summarized the conclusion of the study as follows:

> "[T]he Parcel is nearly unique among the 16 properties that have agricultural structures but no dwellings. With the possible exception of one other parcel, the soils in the Portion are so badly degraded that they cannot be put to productive use for crops. The soils in the other 14 or 15 are barely compacted by use and can readily be returned [to] growing crops. The Applicant argues, therefore, that a nonfarm dwelling on the Parcel would have no precedential value for other similarly [situated] properties in the Study Area." Record 8-9.

The county does not attempt to contradict or question the conclusions of that soils study. Rather, the hearings officer relies on the suitability analysis discussed earlier in this opinion to conclude that approval of the subject proposal would have a precedential effect.[10] We have already determined that the county erred in interpreting its code provision to require a demonstration that the portion is generally unsuitable for "farm use." The county necessarily erred in relying on that erroneous interpretation to conclude that the stability criterion is not satisfied.

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[10] The challenged decision provides:

> "[T]he question does not turn solely on the character of the soils on the Parcel or the Portion. As the discussion of [the suitability standard] demonstrates, the ground on the Portion is no less employed for 'farm use' than the soils on the other properties are or could be if the agricultural structures were removed. Given this conclusion, allowing a nonfarm dwelling on the Portion would have a direct impact on the consideration of similar applications on the other 14 or 15. Approval of a nonfarm dwelling on a farm use portion of one property would be precedential on farm use portions of others.
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> "The appropriate focus of this consideration is the language of LDO 218.090(7)(C) itself. It requires that for a nonfarm dwelling to be approved, there must be a finding that '[t]he dwelling is situated upon a * * * portion of a lot or parcel, that is generally unsuitable land for the production of farm crops and livestock * * *.' Subsection (C) goes on to specify various considerations in this analysis, of which soils is just one – a very important one to be sure. However, subsection (C)(d) declares that the '[u]nsuitability of a lot or parcel for one farm use does not mean it is unsuitable for another farm use.' It is on the issue of general suitability for farm use and what kind of farm use that the analysis in this matter should focus." Record 9 (footnote omitted).

These assignments of error are sustained.

The county's decision is remanded.