

1 BEFORE THE LAND USE BOARD OF APPEALS
2 OF THE STATE OF OREGON

3
4 LANDWATCH LANE COUNTY
5 and ROBERT EMMONS,
6 *Petitioners,*

7
8 vs.

9
10 LANE COUNTY,
11 *Respondent,*

12
13 and

14
15 TRAVIS BAMFORD,
16 *Intervenor-Respondent.*

17
18 LUBA No. 2014-070

19
20 FINAL OPINION
21 AND ORDER

22
23 Appeal from Lane County.

24
25 Sean T. Malone, Eugene, filed the petition for review and argued on
26 behalf of petitioners.

27
28 H. Andrew Clark, County Counsel, Eugene, filed a response brief and
29 argued on behalf of respondent.

30
31 Michael E. Farthing, Eugene, filed a response brief and argued on behalf
32 of intervenor-respondent.

33
34 HOLSTUN, Board Member; RYAN, Board Chair; BASSHAM, Board
35 Member, participated in the decision.

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37 AFFIRMED 11/12/2014

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39 You are entitled to judicial review of this Order. Judicial review is

1 governed by the provisions of ORS 197.850.

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NATURE OF THE DECISION

Petitioners appeal a county decision approving intervenor’s application for special use permit approval for a nonfarm dwelling on land zoned Exclusive Farm Use (EFU).

MOTION TO INTERVENE

Travis Bamford, the applicant below, moves to intervene on the side of respondent. There is no opposition to the motion, and it is granted.

INTRODUCTION

It is an understatement to say the statutes, administrative rules, and local law governing county approval of nonfarm dwellings are quite complicated. They distinguish between property in eastern and western Oregon. They distinguish between high value farm land and non-high value farm land. Some statutes apply only in the Willamette Valley. They also distinguish between what are referred to as “marginal lands” counties and “non-marginal lands counties.” As is potentially significant in this appeal, under some (but not all) of those statutory standards, the lot or parcel on which the nonfarm dwelling would be sited must have been created before a specified date.

The subject parcel includes 2.9 acres and is zoned EFU.¹ There is no dispute that under Land Conservation and Development Commission (LCDC) rules governing the date of lot or parcel creation, the subject parcel was created after 1993. OAR 660-033-0020(4). There is no dispute that the subject parcel

¹ The county EFU zoning designation for the subject property is E-40/RCP. The E is an abbreviated reference for exclusive farm use. The 40 means a new lot or parcel must include 40 acres. Lane Code (LC) 16.212(9)(a). The RCP is an abbreviated reference to the Lane County Rural Comprehensive Plan.

1 is not composed of predominantly high value farm land.² There is no dispute
2 that the subject parcel is located in the Willamette Valley, which is in western
3 Oregon. Finally, there is no dispute that Lane County is a “marginal lands”
4 county. Our task is to determine whether the county correctly selected the set
5 of statutory approval criteria that it applied to approve the disputed nonfarm
6 dwelling, from the several possible sets of statutory approval criteria that
7 authorize such dwellings.

8 There are two primary disputes in this appeal. The first dispute is
9 whether the county erred by failing to apply ORS 215.284(1) in approving the
10 disputed nonfarm dwelling.³ Petitioners contend the county should have
11 applied ORS 215.284(1), which expressly applies within the Willamette
12 Valley. Because ORS 215.284(1) requires that parcels for a nonfarm dwelling
13 authorized under that section of the statute must have been created before 1993,
14 petitioners contend the application should have been denied. Respondent
15 county and intervenor-respondent (respondents) contend the dwelling was
16 approved pursuant to a different statute, ORS 215.213(3), which authorizes
17 “marginal lands” counties to approve nonfarm dwellings on certain lands,
18 without regard to whether the lands are inside or outside the Willamette Valley,
19 and does not include a date of creation requirement for the parcel that is to be

² In this opinion, our reference to parcels that are “not predominantly high value farmland” is a reference to parcels that are predominantly composed of class IV-VIII soils.

³ As we explain in more detail later in this opinion, ORS 215.284(1) authorizes what are referred to as “non-marginal lands” counties to approve nonfarm dwellings on parcels located in the Willamette Valley, provided the parcel (1) is not composed of predominantly high value farmlands, and (2) was created before January 1, 1993.

1 developed with a nonfarm dwelling.⁴ Respondents contend that ORS
2 215.284(1), which applies to “non-marginal lands” counties, does not apply to
3 Lane County.

4 Assuming that ORS 215.284(1) does not apply, the second dispute is
5 whether subsection (3) or (4) of ORS 215.213 applies. Petitioners contend that
6 ORS 215.213(4) applies and, since that subsection of ORS 215.213 requires
7 that the parcel to be developed with the nonfarm dwelling must have been
8 created between 1948 and 1993, the application should have been denied.
9 Respondents contend that ORS 215.213(3) applies, which includes no date of
10 creation requirement for the receiving parcel, and that the county neither
11 applied nor was required to apply ORS 215.213(4).

12 For the reasons explained below, we agree with respondents regarding
13 both disputes. However, understanding the parties’ arguments and our
14 resolution of those arguments requires some understanding of the statutory
15 scheme that governs approval of nonfarm dwellings in “marginal lands” and
16 “non-marginal lands” counties. We therefore discuss the key features of the
17 relevant statutes before turning to petitioners’ assignments of error.

18 **STATUTORY OVERVIEW**

19 **A. The Statutes Governing Nonfarm Dwellings in Marginal**
20 **Lands Counties and in Non-Marginal Lands Counties**

21 In 1983, the legislature authorized LCDC to promulgate administrative
22 rules to allow counties to designate “marginal lands,” if those lands met certain

⁴ As we explain later, ORS 215.213(3) authorizes marginal lands counties to approve nonfarm dwellings on parcels that are not predominantly high value farm lands, provided certain statutory standards and any applicable local conditions are satisfied.

1 criteria set out in the 1983 legislation. Or Laws 1983, ch 826, § 2.⁵ Lane
2 County is one of two Oregon counties that designated some of its lands as
3 marginal lands (hereafter marginal lands counties). The other 34 Oregon
4 counties (hereafter non-marginal lands counties) did not designate any lands as
5 marginal lands under the 1983 legislation before the legislature repealed that
6 authorization in 1993.

7 The marginal lands legislation, the rules that LCDC adopted over the
8 years to implement that legislation, and the local standards that have been
9 adopted to implement the statutes and rules are nuanced and quite complicated.
10 However, as relevant here, the uses authorized on EFU-zoned lands in marginal
11 lands counties are generally set out in subsections of ORS 215.213, whereas
12 the uses authorized on EFU-zoned lands in non-marginal lands counties are
13 generally set out in subsections of ORS 215.283. Or Laws 1983, ch 826, § 16
14 (codified at ORS 215.288; repealed by Or Laws 1993, ch 792, § 55).⁶ The
15 regulation of dwellings under ORS 215.213 was intended to be slightly more
16 restrictive than under ORS 215.283, as the *quid pro quo* for more liberal
17 allowance for dwellings on designated marginal lands under ORS 215.317.

⁵ The standards that govern approval of residences on designated marginal lands are less stringent in some regards than the standards that marginal lands counties are required to apply to their EFU zoned lands. ORS 215.317; LC 16.214 (Marginal Lands Zone).

⁶ While the text of the headings of ORS 215.213 and ORS 215.283 is not part of the statute enacted by the legislature, ORS 215.213 states that it applies “in counties that adopted marginal lands system prior to 1993” and ORS 215.283 states that it applies “in non-marginal lands counties.” The text of ORS 215.213(1), (2), (3) and (4) all expressly provide that those subsections of ORS 215.213 apply to marginal lands counties.

1 Edward Sullivan and Ronald Eber, *The Long and Winding Road: Farmland*
2 *Protection in Oregon 1961-2009*, 18 San Joaquin Agricultural Law Review 22,
3 32 (2008-2009).

4 Prior to 1993 legislative amendments, ORS 215.213, which applies to
5 marginal lands counties, authorized non-farm dwellings with certain
6 restrictions. *Former* ORS 215.213(3)-(9) (1991). Similarly, prior to the 1993
7 legislative amendments, ORS 215.283(3) authorized non-farm dwellings in
8 EFU zones in non-marginal lands counties with fewer restrictions. *Former*
9 ORS 215.283(3) (1991).⁷

10 HB 3661 enacted a number of changes to the land use laws in 1993. Or
11 Laws 1993, ch 792. Those changes included non-substantive changes to the
12 ORS 215.213(3)-(9) authority for nonfarm dwellings in marginal lands
13 counties. Or Laws 1993, ch 792, § 29a(3)-(4). However, the HB 3661 changes
14 to the ORS 215.283(3) authorization for nonfarm dwellings were more
15 substantive, and new subsections (4)-(8) were added to ORS 215.283 to impose
16 further regulation of nonfarm dwellings in non-marginal lands counties. Or
17 Laws 1993, ch 792, § 14(3)-(8). HB 3661, as adopted by the legislature,
18 adopted the new nonfarm dwelling standards that were to apply under ORS
19 215.283 to non-marginal lands counties *as subsections of ORS 215.283*.
20 However, for unknown reasons, the Office of Legislative Counsel renumbered
21 those 1993 legislative changes to ORS 215.283(3) and new sections ORS

⁷ Actually, we are simplifying somewhat. Prior to its repeal in 1993, ORS 215.288(1) authorized some “non-marginal lands” counties to apply ORS 215.213(1)-(3) in limited circumstances. But ORS 215.288(2) required that counties that designated marginal lands, such as Lane County, *must* apply “ORS 215.213(1)-(3) to land zoned for exclusive farm use.”

1 215.283(4)-(8), and codified them into a new statute, *ORS 215.284(1)-(6)*,
2 where they remain codified today.⁸

3 Legislative Counsel’s decision to renumber the new and amended
4 nonfarm dwelling legislation as new sections ORS 215.284(1)-(7) presumably
5 was made pursuant to ORS 173.160.⁹ However, under ORS 173.160,
6 Legislative Counsel’s decision to renumber as ORS 215.284(1)-(6) what the
7 legislature adopted as ORS 215.283(3)-(8) does not affect the meaning or
8 substance of the legislature’s enactment. In other words, Legislative Counsel’s
9 renumbering decision does not change the fact that what is now codified at
10 ORS 215.284(1)-(6) was enacted by the legislature as subsections (3)-(8) of
11 ORS 215.283, and ORS 215.283 is the statutory regulatory regime that applies
12 to non-marginal lands counties rather than marginal lands counties.

⁸ HB 3661 also repealed the statutory authorization for counties to designate marginal lands in 1993. Or Laws 1993, ch 792, § 55. However, the two counties that had already designated marginal lands, Lane County and Washington County, were permitted to retain their marginal lands designations and continue to operate under ORS 215.213 rather than ORS 215.283. Or Laws 1993, ch 792, § 29(1).

⁹ ORS 173.160 provides in part:

“In preparing editions of the statutes for publication and distribution, the Legislative Counsel shall not alter the sense, meaning, effect or substance of any Act, but, within such limitations, may:

“(1) Renumber sections and parts of sections of the Acts[.]”

1 **B. The Statutes, Administrative Rules and LC regulations at**
2 **Issue in This Appeal**

3 We set out and briefly describe the statutes, rules and LC regulations that
4 are at the center of the parties’ dispute in this appeal.

5 **1. ORS 215.284(1)**

6 ORS 215.284(1) authorizes non-marginal lands counties to approve
7 nonfarm dwellings on parcels in the Willamette Valley if certain statutory
8 standards are met, including the requirement of ORS 215.284(1)(c) that the
9 dwelling will be sited on a “parcel that was created before January 1, 1993.”¹⁰

¹⁰ The text of ORS 215.284(1) is set out below:

“In the Willamette Valley, 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:

“(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 will be sited on a lot or parcel that is predominantly composed of Class IV through Class VIII soils that would not, when irrigated, be classified as prime, unique, Class I or Class II soils;

“(c) *The dwelling will be sited on a lot or parcel created before January 1, 1993;*

“(d) The dwelling will not materially alter the stability of the overall land use pattern of the area; and

“(e) The dwelling complies with such other conditions as the governing body or its designee considers necessary.” (Emphasis added.)

1 LCDC has adopted an administrative rule that elaborates somewhat on ORS
2 215.284(1). OAR 660-033-0130(4)(a).

3 **2. ORS 215.213(3)**

4 In pertinent part, ORS 215.213(3) authorizes counties “that have adopted
5 marginal lands” to approve a nonfarm dwelling on parcels that are not
6 predominantly composed of high value farm lands if certain standards are
7 met.¹¹ LCDC has not adopted an administrative rule that parallels ORS

¹¹ The relevant text of ORS 215.213(3) is set out below:

“In *counties that have adopted marginal lands provisions* under ORS 197.247 (1991 Edition), a single-family residential dwelling not provided in conjunction with farm use may be established on a lot or parcel with soils predominantly in capability classes IV through VIII as determined by the Agricultural Capability Classification System in use by the United States Department of Agriculture Soil Conservation Service on October 15, 1983. A proposed dwelling is subject to approval of the governing body or its designee in any area zoned for exclusive farm use upon written findings showing all of the following:

“(a) The 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 devoted to farm use.

“(b) The dwelling is situated upon generally unsuitable land for the production of farm crops and livestock, considering the terrain, adverse soil or land conditions, drainage and flooding, location and size of the tract. A lot or parcel shall not be considered unsuitable solely because of its size or location if it can reasonably be put to farm use in conjunction with other land.

1 215.213(3).¹² LC 16.212(7)(f) is the county regulation that parallels ORS
2 215.213(3).¹³ For the most part, petitioners do not appear to dispute that ORS
3 215.213(3) and LC 16.212(7)(f) apply in this case. Neither do petitioners
4 challenge the hearings officer’s findings that the proposal complies with ORS
5 215.213(3) and LC 16.212(7)(f). Rather, petitioners appear to contend that the
6 county should also have applied ORS 215.213(4) and 215.284(1) and that the
7 hearings officer erred by concluding otherwise.

8 **3. ORS 215.213(4)**

9 As relevant here, ORS 215.213(4) authorizes marginal lands counties to
10 approve a nonfarm dwelling on an EFU-zoned parcel if the parcel was created
11 between “January 1, 1948 and July 1, 1983” and “is not larger than three acres”
12 if certain statutory standards are satisfied.¹⁴ As was the case with ORS

“(c) [The dwelling c]omplies with such other conditions as the governing body or its designee considers necessary.” (Emphasis added.)

¹² Instead, OAR 660-033-0130(4)(e) simply provides:

“Counties that have adopted marginal lands provisions before January 1, 1993, shall apply the standards in ORS 215.213(3) through 215.213(8) for nonfarm dwellings on lands zoned exclusive farm use that are not designated marginal or high-value farmland.”

¹³ Setting out the text of LC 16.212(7)(f) would needlessly lengthen and complicate this opinion.

¹⁴ The relevant text of ORS 215.213(4) is set out below:

“In counties that have adopted marginal lands provisions under ORS 197.247 (1991 Edition), one single-family dwelling, not provided in conjunction with farm use, may be established in any

1 215.213(3), LCDC has not adopted an administrative rule that parallels ORS
2 215.213(4). However, as noted earlier at n 10, OAR 660-033-0130(4)(e)
3 directs that marginal lands counties “shall apply the standards in ORS
4 215.213(3) through 215.213(8) for nonfarm dwellings on lands zoned
5 exclusive farm use that are not designated marginal or high-value farmland.”
6 LC 16.212(7)(g) is the county regulation that parallels ORS 215.213(4).

7 **FIRST ASSIGNMENT OF ERROR**

8 In their first assignment of error, petitioners argue the county erred by
9 failing to apply ORS 215.284(1) and by failing to deny the application because
10 the subject parcel was not created “before January 1, 1993,” as ORS
11 215.284(1)(c) requires. Petitioners argue that ORS 215.284 applies by its terms
12 within the Willamette Valley, which includes much of Lane County, and there
13 is nothing in the text of ORS 215.284 suggesting that it does not apply to

area zoned for exclusive farm use on a lot or parcel [“created between January 1, 1948 and July 1, 1983”] that is not larger than three acres upon written findings showing:

“(a) The 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 devoted to farm use;

“(b) If the lot or parcel is located within the Willamette River Greenway, a floodplain or a geological hazard area, the dwelling complies with conditions imposed by local ordinances relating specifically to the Willamette River Greenway, floodplains or geological hazard areas, whichever is applicable; and

“(c) The dwelling complies with other conditions considered necessary by the governing body or its designee.” (Emphasis added.)

1 marginal lands counties. *See State v. Gaines*, 346 Or 160, 171-172, 206 P3d
2 1042 (2009), and *PGE v. BOLI*, 317 Or 606, 859 P2d 1143 (1993) (first level
3 of statutory construction begins with examination of the text and context along
4 with any relevant legislative history).

5 Petitioners’ argument has traction only if the text of ORS 215.284 is
6 considered in isolation, and its context and legislative history are ignored.
7 Respondents contend, and we agree, that it is absolutely clear that Lane
8 County, as a marginal lands county, is authorized to apply ORS 215.213(3) and
9 (4) in approving nonfarm dwellings. OAR 660-033-0130(4)(e) expressly
10 directs that marginal lands counties “shall apply the standards in ORS
11 215.213(3) through 215.213(8)” to non-high value farm land zoned EFU. *See*
12 n 12. ORS 215.213(3) and (4) themselves expressly state that they apply to
13 marginal lands counties. *See* ns 11 and 14. There is simply nothing in the
14 language of the relevant statutes that suggests the legislature intended to
15 impose the duplicative and cumbersome regulatory scheme that would result if
16 Lane County was required to apply *both* ORS 215.213(3) and 215.284(1) to
17 lands within the Willamette Valley. If there is could be any doubt that applying
18 both ORS 215.213(3) and ORS 215.284(1) would be duplicative and
19 cumbersome, a comparison of those two statutes would quickly dispel any such
20 doubt. *See* ns 10 and 11.

21 Moreover, the codification history of ORS 215.284 makes it very clear
22 that the legislature intended that statute to operate only on non-marginal lands
23 counties. As we noted earlier, what Legislative Counsel codified at ORS
24 215.284(1) was enacted as an amendment to ORS 215.283(3). Or Laws 1993,
25 ch 792, § 14(3). At oral argument in this appeal, petitioners conceded that if
26 ORS 215.284(1) was part of ORS 215.283 it would not apply to Lane County

1 because it is a marginal lands county. ORS 215.284(1) was enacted as an
2 amendment to ORS 215.283(3), and that is likely why the legislature did not
3 bother to expressly provide that it applies only to non-marginal lands counties.
4 Legislative Counsel’s decision to codify the ORS 215.283 amendments at ORS
5 215.284 does not alter that fact.

6 Petitioners’ first assignment of error is denied.

7 **SECOND ASSIGNMENT OF ERROR**

8 Under their second assignment of error, petitioners contend the county
9 erred by applying ORS 215.213(3) rather than ORS 215.213(4). *See* ns 11 and
10 14. Petitioners make two arguments in support of that position.

11 **A. The “Suitability Standard” versus the “Stability Standard”**

12 First, petitioners point out that ORS 215.213(3) imposes a “suitability
13 standard.” By that, petitioners mean ORS 215.213(3)(b) requires the county to
14 find that the proposed nonfarm dwelling will be located on “generally
15 unsuitable land for the production of farm crops and livestock.” *See* n 11.
16 Petitioners argue that the “suitability standard never applies” within the
17 Willamette Valley and therefore that ORS 215.213(3) does not apply within
18 Lane County, which is located within the Willamette Valley. Petition for
19 Review 14. According to petitioner, ORS 215.213(4) is the only other
20 authority in ORS 215.213 for Lane County to approve a nonfarm dwelling, and
21 therefore ORS 215.213(4) rather than (3) governs. As noted earlier, ORS
22 215.213(4) allows a nonfarm dwelling only on parcels created between January
23 1, 1948 and July 1, 1983.

24 In support of this argument petitioners point out that ORS 215.284(2)
25 and (3), which apply outside the Willamette Valley, include the “suitability
26 standard,” whereas ORS 215.284(1) and (4), which apply inside the Willamette

1 Valley, apply the “stability standard,” and do not apply the “suitability
2 standard.” Petitioners’ reference to the “stability standard” is a reference to the
3 requirement under ORS 215.284(1)(d) and 215.284(4)(d) that the county must
4 find that a proposed nonfarm dwelling inside the Willamette Valley “will not
5 materially alter the stability of the overall land use pattern of the area[.]” Based
6 on this context, petitioners suggest that the legislature intends the suitability
7 test to apply only outside the Willamette Valley, and because ORS 215.213(3)
8 includes the suitability test, that statute therefore does not apply within the
9 Willamette Valley.

10 Petitioners are correct that ORS 215.284, which applies to non-marginal
11 lands counties, distinguishes between lands inside the Willamette Valley and
12 lands that are not, and imposes the “stability standard” inside the Willamette
13 Valley and the “suitability standard” outside the Willamette Valley. But
14 petitioners’ attempt to import a parallel regulatory distinction in ORS 215.284,
15 which does not apply to marginal lands counties, to support a conclusion that
16 ORS 215.213(3) does not apply within the Willamette Valley, simply because
17 it imposes a “suitability standard,” is without merit. There is absolutely no text
18 in ORS 215.213(3) to support that conclusion. The text of ORS 215.213(3)
19 simply does not distinguish between lands inside the Willamette Valley and
20 lands outside the Willamette Valley.

21 **B. The Reference in ORS 215.213(4) to the Willamette River**
22 **Greenway**

23 Petitioners’ second argument under the second assignment of error relies
24 on context provided by ORS 215.213(4)(b), which provides that “[i]f the lot or
25 parcel is located within the Willamette River Greenway, a floodplain or a
26 geological hazard area, the dwelling [must comply] with conditions imposed by

1 local ordinances relating specifically to the Willamette River Greenway,
2 floodplains or geological hazard areas, whichever is applicable[.]” Petitioners
3 point out there is no similar reference to the Willamette River Greenway in
4 ORS 215.213(3).

5 There is no dispute that the Willamette River Greenway is located within
6 the Willamette River Valley. Because ORS 215.213(4) includes provisions
7 that reference the Greenway, which is located within the Willamette Valley,
8 and because ORS 215.213(3) does not reference the Greenway, petitioners
9 argue that this supports the inference that the legislature intended ORS
10 215.213(4) to apply exclusively within the Willamette Valley, while it intended
11 ORS 215.213(3) to apply exclusively outside the Willamette Valley. However,
12 it certainly does not follow that a single reference to the Willamette River
13 Greenway in ORS 215.213(4) means that ORS 215.213(4) applies exclusively
14 within the much larger Willamette Valley. Further, the lack of reference to the
15 Greenway in ORS 215.213(3) does not suggest that that statute is intended to
16 apply exclusively outside the Willamette Valley. Neither does it follow that
17 ORS 215.213(4) applies to the exclusion of ORS 215.213(3) in the Willamette
18 Valley. ORS 215.213(3) includes no language that would support a conclusion
19 that ORS 215.213(3) does not apply with the Willamette Valley.

20 The second assignment of error is denied.

21 **THIRD ASSIGNMENT OF ERROR**

22 Petitioners’ third assignment of error is based on OAR 660-033-
23 0130(4)(e), which was set out earlier in this opinion and is reproduced again
24 below:

25 “Counties that have adopted marginal lands provisions before
26 January 1, 1993, shall apply the *standards* in ORS 215.213(3)
27 through 215.213(8) for nonfarm dwellings on lands zoned

1 exclusive farm use that are not designated marginal or high-value
2 farmland.” (Emphasis added.)

3 From the plural reference in OAR 660-033-0130(4)(e), petitioners argue the
4 hearings officer erred in applying only ORS 215.213(3) and not applying all of
5 the standards in ORS 215.213(3) through (8).¹⁵

6 We reject the argument. The plural reference to “standards” simply
7 recognizes that there are multiple standards in ORS 215.213(3) through
8 215.213(8); that reference does not mean that the county must apply *all* the
9 standards in ORS 215.213(3) through 215.213(8) to all applications. OAR
10 660-033-0130(4)(e) simply does not say “all the standards in ORS 215.213(3)
11 through 215.213(8)” must be applied to “all applications.” As the hearings
12 officer recognized, ORS 213.213(3) authorizes the county to approve nonfarm
13 dwellings in certain circumstances if certain standards are satisfied, and ORS
14 213.213(4) through (7) authorize the county to approve nonfarm dwellings in
15 other circumstances, if certain standards are met. The plural reference in OAR
16 660-033-0130(4)(e) to “standards” lends no support to petitioners’ position that
17 the county should have applied ORS 215.213(4) through (7) in addition to, or
18 instead of, ORS 215.213(3).

19 The third assignment of error is denied.

20 The county’s decision is affirmed.

¹⁵ Despite the reference to ORS 215.213(8) in OAR 660-033-0130(4)(e), ORS 215.213(8) is not an approval *standard*; rather it extends a right to retain a life estate when transferring property in EFU zones.