

3.2.2 EFU Statute/Ordinances – Farm Uses – Farm Dwellings. In considering an application for a relative farm help dwelling, a local government is not limited to considering the commercial farming operation occurring on the property on the date the application is filed, and the local government does not err by considering whether a new crop planted after the application is filed, either alone or in combination with the existing operation, is an “existing commercial farming operation” within the meaning of OAR 660-033-0130(9)(a). *Wachal v. Linn County*, 81 Or LUBA 561 (2020).

3.2.2 EFU Statute/Ordinances – Farm Uses – Farm Dwellings. A reasonable person would rely on an applicant’s testimony regarding their activities managing a farm and their status as the state license holder for an industrial hemp-growing operation to conclude that the applicant is a farm operator and continues to play the “predominant role” in management and farm use of the farm, for purposes of OAR 660-033-0130(9)(a), even where they have hired another company to prepare the farmland for planting hemp seed and to provide consultation regarding hemp growing. *Wachal v. Linn County*, 81 Or LUBA 561 (2020).

3.2.2 EFU Statute/Ordinances – Farm Uses – Farm Dwellings. Any permits for residential development on resource land that were issued prior to the effective date of HB 2106 (2019) are eligible for the five one-year extensions provided in ORS 215.417(2) (2019) only if, on the effective date of that legislation, those permits were still in the initial four-year period of validity or the one two-year extension period provided in ORS 215.417 (2017). *Landwatch Lane County v. Lane County*, 81 Or LUBA 279 (2020).

3.2.2 EFU Statute/Ordinances – Farm Uses – Farm Dwellings. On remand, where LUBA instructed the county to resolve whether the project applicant’s farm operation qualifies as a “commercial farming operation” for purposes of applying for an accessory farm dwelling for a relative, LUBA established that certain findings and evidence are necessary to establish compliance with OAR 660-033-0130(9). The county’s findings fall short of establishing that the applicant’s farm operation qualifies as a “commercial farming operation,” because it is an undefined term, and it is the county’s obligation to attempt to articulate the thresholds that separate a “commercial” from a non-commercial farming operation, and to determine those thresholds in the first instance. Although the county has some discretion to determine the thresholds, that determination will necessarily constitute a mixed question of fact and law, subject to LUBA’s review for legal error and evidentiary sufficiency. *Richards v. Jefferson County*, 79 Or LUBA 171 (2019).

3.2.2 EFU Statute/Ordinances – Farm Uses – Farm Dwellings. The focus of OAR 660-033-0130(9) and county code that implements it regarding whether the “farm operator * * * continue[s] to play the predominant role in the management and farm use of the farm,” is on the farm operator’s involvement in farm operations *on the subject property*, not on off-farm businesses that may relate to the farm operation. The commercial farm operator’s involvement in off-farm businesses do not help establish any element of OAR 660-033-0130(9). The commercial farm operator’s involvement in off-farm businesses are relevant to establishing the elements of OAR 660-033-0130(9) only in so much as the time spent on those businesses and away from the farm operation might undermine the claim that the farm operator will continue to play the “predominant role” in

the farm operation and requires assistance in running the farm operation. *Richards v. Jefferson County*, 79 Or LUBA 171 (2019).

3.2.2 EFU Statute/Ordinances – Farm Uses – Farm Dwellings. A finding that the applicant qualifies as a “farm operator” as defined at OAR 660-033-0130(9)(a) is inadequate, where the finding merely assumes the applicant is the farm operator, and does not address issues raised below that the applicant leases the land to a third person who is the actual farm operator. *Richards v. Jefferson County*, 77 Or LUBA 152 (2018).

3.2.2 EFU Statute/Ordinances – Farm Uses – Farm Dwellings. To qualify as a “farm operator” as defined at OAR 660-033-0130(9)(a), in order to gain approval of a farm relative dwelling, the applicant must establish that he or she will “continue to play the predominant role” in farm use of the property. That qualification may not be met if the reason the applicant requires the assistance of a relative is because the applicant is substantially employed off the farm and does not have enough time to conduct farm operations. *Richards v. Jefferson County*, 77 Or LUBA 152 (2018).

3.2.2 EFU Statute/Ordinances – Farm Uses – Farm Dwellings. To gain approval of a farm relative dwelling, the applicant must qualify as the “farm operator” and demonstrate, among other things, that he or she would “continue to play the predominate role” in farm operations. That demonstration requires some evidence regarding the proportionate contributions of the farm operator and the relative to the farm operation. *Richards v. Jefferson County*, 77 Or LUBA 152 (2018).

3.2.2 EFU Statute/Ordinances – Farm Uses – Farm Dwellings. Where the record includes no evidence or findings regarding whether a 119-acre parcel with a hay-growing operation constitutes a “commercial farm operation,” for purposes of approving a farm relative dwelling under OAR 660-033-00130(9), remand is necessary to address that issue. *Richards v. Jefferson County*, 77 Or LUBA 152 (2018).

3.2.2 EFU Statute/Ordinances – Farm Uses – Farm Dwellings. An occupant of a proposed accessory farm dwelling who is employed full-time as a long-haul trucker is not “principally engaged” in farm use of the property, and therefore cannot be used to qualify the dwelling as an accessory farm dwelling. *Aplin v. Deschutes County*, 69 Or LUBA 174 (2014).

3.2.2 EFU Statute/Ordinances – Farm Uses – Farm Dwellings. Determining whether a person is “principally engaged” in farm use of the property for purposes of qualifying an accessory farm dwelling requires the applicant to submit, and the county to evaluate, evidence that, to the extent necessary, describes or quantifies the amount of time that the occupant will be engaged in farm use of the property, and compare it to the average amount of time typically required for a full time employee of the relevant farm use. *Aplin v. Deschutes County*, 69 Or LUBA 174 (2014).

3.2.2 EFU Statute/Ordinances – Farm Uses – Farm Dwellings. Activities that a county may consider in determining whether a person is “principally engaged” in farm use must be activities related to “farm use” as that term is defined at ORS 215.203(2)(a). Activities that are inseparable from general rural residential living do not constitute activities that may be considered in determining whether a proposed farm dwelling will be occupied by a person who is “principally

engaged” in farm use, even if such residential activities arguably benefit the farm operation in some way. *Aplin v. Deschutes County*, 69 Or LUBA 174 (2014).

3.2.2 EFU Statute/Ordinances – Farm Uses – Farm Dwellings. LUBA will affirm a county finding that an elderly couple qualifies as the occupants of a “relative” farm dwelling because they provide “assistance” to the farm operation, where there is substantial evidence in the record that advancing age and health issues do not prevent the couple from assisting in the management of the farm. *Aplin v. Deschutes County*, 69 Or LUBA 174 (2014).

3.2.2 EFU Statute/Ordinances – Farm Uses – Farm Dwellings. In approving a property line adjustment between two EFU-zoned parcels to facilitate a proposed farm dwelling, under a standard that requires that the adjusted parcel “qualifies for a homesite,” a county may rely on a concurrent county decision approving a farm dwelling on the adjusted parcel to conclude that the “qualifies for a homesite” standard is met, and need not require farm income evidence or adopt findings as part of the adjustment decision that again demonstrate that the adjusted parcel qualifies for a farm dwelling. *Louks v. Jackson County*, 65 Or LUBA 58 (2012).

3.2.2 EFU Statute/Ordinances – Farm Uses – Farm Dwellings. A lot of record dwelling approval under ORS 215.705(1) does not have the automatic effect of consolidating parcels within the tract in which the dwelling is approved; such consolidation must occur via a formal process that has the legal effect of vacating the interior property lines. *Oregon Natural Desert Assoc. v. Harney County*, 65 Or LUBA 246 (2012).

3.2.2 EFU Statute/Ordinances – Farm Uses – Farm Dwellings. OAR 660-033-0135(1) authorizes a farm dwelling on a “parcel,” which obligates the local government to confirm that the subject property is a unit of land created in one of the ways described in ORS 92 and ORS 215.010, but it does not obligate the local government to determine whether the land use decision or process that created the property was legally correct in the sense that all applicable standards were properly applied and satisfied. Any legal errors in such decisions cannot be challenged in the appeal of a subsequent decision approving a dwelling on the parcel. *Oregon Natural Desert Assoc. v. Harney County*, 65 Or LUBA 246 (2012).

3.2.2 EFU Statute/Ordinances – Farm Uses – Farm Dwellings. The OAR 660-033-0135(1)(d) requirement allowing a farm dwelling on a parcel only if “there is no other dwelling on the subject tract” focuses on the “subject tract” as it exists when the local government approves the farm dwelling; that the parcel was once part of a different tract that included a dwelling does not prohibit approval of the farm dwelling, if the tract the parcel is currently a part of has no dwelling. *Oregon Natural Desert Assoc. v. Harney County*, 65 Or LUBA 246 (2012).

3.2.2 EFU Statute/Ordinances – Farm Uses – Farm Dwellings. OAR 660-033-0135(1)(c) allows a farm dwelling upon a finding that the dwelling will be occupied by persons principally engaged in farm use of the land at a commercial scale. Although the rule is ambiguous regarding whether the “land” means the parcel on which the dwelling would be located or the tract that includes the parcel, based on context it is reasonably clear that the unit of analysis for the “commercial scale” inquiry is the tract. *Oregon Natural Desert Assoc. v. Harney County*, 65 Or LUBA 246 (2012).

3.2.2 EFU Statute/Ordinances – Farm Uses – Farm Dwellings. A county errs in finding that a farm dwelling will be occupied by persons principally engaged in farm use of the land at a “commercial scale” for purposes of OAR 660-033-0135(1)(c) based on evidence of ranching activities on a 17,000-acre ranch that the subject tract is associated with, instead of the tract on which the proposed dwelling will be located. *Oregon Natural Desert Assoc. v. Harney County*, 65 Or LUBA 246 (2012).

3.2.2 EFU Statute/Ordinances – Farm Uses – Farm Dwellings. A county is not required to impose a condition prohibiting use of a farm dwelling if the tract on which it is located is no longer used for farm use at a commercial scale. *Oregon Natural Desert Assoc. v. Harney County*, 65 Or LUBA 246 (2012).

3.2.2 EFU Statute/Ordinances – Farm Uses – Farm Dwellings. Seasonal occupation of a farm dwelling is not necessarily inconsistent with a finding that the dwelling will be occupied by persons “principally engaged” in farm use of the property, where the property is located in a high elevation area where pasture and farm use is possible only six months of the year. *Oregon Natural Desert Assoc. v. Harney County*, 65 Or LUBA 246 (2012).

3.2.2 EFU Statute/Ordinances – Farm Uses – Farm Dwellings. Where the local notice of appeal fails to identify any issue regarding whether a proposed farm relative dwelling is “necessary,” that issue cannot be raised on appeal to LUBA, pursuant to ORS 197.825(2)(a) and *Miles v. City of Florence*, 190 Or App 500, 79 P3d 382 (2003). *Wellet v. Douglas County*, 62 Or LUBA 372 (2010).

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

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

3.2.2 EFU Statute/Ordinances – Farm Uses – Farm Dwellings. A decision maker is not required to exercise policy or legal judgment in determining whether a replacement dwelling replaces a dwelling that is “lawfully established” under ORS 215.283(1)(s), where a valid building permit was issued for the dwelling sought to be replaced. *Biggerstaff v. Yamhill County*, 58 Or LUBA 476 (2009).

3.2.2 EFU Statute/Ordinances – Farm Uses – Farm Dwellings. A local code provision that was adopted to implement the OAR 660-033-0130(9) authorization for family farm help dwellings does not require that an applicant establish that the relative’s assistance is required year-round or full-time. Where an applicant identifies varied tasks that the relative will perform and takes the position that the relative’s assistance will be particularly needed during times when the only farm operator cannot be present, the applicant adequately establishes that the relative’s assistance is “required” under the code. *Harland v. Polk County*, 44 Or LUBA 420 (2003).

3.2.2 EFU Statute/Ordinances – Farm Uses – Farm Dwellings. The question of whether a particular farm parcel size supports a farm operation that contributes to and helps maintain the “commercial agricultural enterprise” in the area, within the meaning of OAR 660-033-0020(2) and 660-033-0100, is similar to the question of whether a particular farm operation is a “commercial farm operation” under OAR 660-033-0130(9). Therefore, a county could require that an applicant for a family farm help dwelling on a commercial farm operation must establish that the farm operation “(1) “[c]ontributes in a substantial way to the area’s existing agricultural economy, and (2) “[h]elps maintain agricultural processors and established farm markets.” *Harland v. Polk County*, 44 Or LUBA 420 (2003).

3.2.2 EFU Statute/Ordinances – Farm Uses – Farm Dwellings. Because LCDC did not define the term “commercial farm operation” in OAR 660-033-0130(9) or draft the rule to expressly provide that only those farm operations that make up the county’s “[c]ommercial [a]gricultural [e]nterprise” are eligible for a family farm help dwelling, it is not appropriate to assume that LCDC intended to *require* that county’s derive a definition of “commercial farm operation” from OAR 660-033-0020(2). Rather, LCDC intended to allow the county some discretion in distinguishing “hobby” or “recreational” farms from those farms that rise to the level of a commercial farm operation. *Harland v. Polk County*, 44 Or LUBA 420 (2003).

3.2.2 EFU Statute/Ordinances – Farm Uses – Farm Dwellings. A cattle operation with from 26 to 70 head of purebred and crossbred cattle is not a large cattle operation, but a county does not err in concluding that such a cattle operation is a “commercial farm operation,” within the meaning of OAR 660-033-0130(9) and implementing local code provisions, where the cattle operation provides the sole source of taxable income for the farm operator. *Harland v. Polk County*, 44 Or LUBA 420 (2003).

3.2.2 EFU Statute/Ordinances – Farm Uses – Farm Dwellings. A code provision that allows a farm dwelling on a 160-acre rangeland parcel, rather than the minimum 320 acres specified in OAR 660-033-0135(1)(a), may be inconsistent with the rule. However, the county may rely on its code, acknowledged in 2001 to comply with Goal 3 and the Goal 3 rule, notwithstanding any inconsistency with the rule. *Oregon Natural Desert Assoc. v. Harney County*, 42 Or LUBA 149 (2002).

3.2.2 EFU Statute/Ordinances – Farm Uses – Farm Dwellings. OAR 660-033-0135(1)(c) allows a farm dwelling only if the occupant(s) will be “principally engaged” in farm use, as opposed to principally engaged in nonfarm uses. Consequently, in allowing a farm dwelling under OAR 660-033-0135(1)(c), it is not sufficient for the county to determine that the occupants, as opposed to someone else, will be the primary actors in farm use of the property, where the record

shows that the occupants' primary economic livelihood is a nonfarm use. *Oregon Natural Desert Assoc. v. Harney County*, 42 Or LUBA 149 (2002).

3.2.2 EFU Statute/Ordinances – Farm Uses – Farm Dwellings. OAR 660-033-0135(1) provides that a dwelling may be considered customarily provided in conjunction with farm use if it satisfies four standards set forth in the rule. Nothing in the rule requires the county to make a separate determination, in addition to applying the four standards, that the predicate farm use is of the type that is customarily associated with a dwelling. *Oregon Natural Desert Assoc. v. Harney County*, 42 Or LUBA 149 (2002).

3.2.2 EFU Statute/Ordinances – Farm Uses – Farm Dwellings. Income and activities pursuant to a nonfarm business that is authorized by a conditional use permit on land zoned EFU may not be considered, for purposes of determining whether the farm uses proposed to support a farm dwelling are “at a commercial scale.” *Oregon Natural Desert Assoc. v. Harney County*, 42 Or LUBA 149 (2002).

3.2.2 EFU Statute/Ordinances – Farm Uses – Farm Dwellings. In considering whether a farm management plan has been substantially complied with, a county is not required to consider issues that could have been presented in a prior, unappealed decision that authorized a property line adjustment for the two parcels that were the subject of the farm management plan. *Rochlin v. Multnomah County*, 37 Or LUBA 237 (1999).

3.2.2 EFU Statute/Ordinances – Farm Uses – Farm Dwellings. A bill to the property owner for spraying and planting of trees is substantial evidence that the required spraying was done on the property, notwithstanding that the bill refers to a different property, where the property owner explains during the local hearing that the reference to a different property is an error and LUBA concludes a reasonable person could have accepted that explanation. *Rochlin v. Multnomah County*, 37 Or LUBA 237 (1999).

3.2.2 EFU Statute/Ordinances – Farm Uses – Farm Dwellings. A property owner's explanation that required plowing and cultivation occurred at the time Christmas trees were planted is substantial evidence that required plowing and cultivation occurred, where the only contrary evidence is opponents' unsupported expressions of doubt that the required plowing and cultivation occurred. *Rochlin v. Multnomah County*, 37 Or LUBA 237 (1999).

3.2.2 EFU Statute/Ordinances – Farm Uses – Farm Dwellings. A county governing body's interpretation that a zoning ordinance requirement that “activities” specified in a farm management plan be implemented did not require that each and every task for which a cost estimate was provided in the farm management plan for each year be implemented is not “clearly wrong,” and, therefore, is not reversible under ORS 197.829(1) and *Clark v. Jackson County*, 313 Or 508, 836 P2d 710 (1992). *Rochlin v. Multnomah County*, 37 Or LUBA 237 (1999).

3.2.2 EFU Statute/Ordinances – Farm Uses – Farm Dwellings. The OAR 660-033-0140 provisions imposing time limits on and providing standards for extension of certain EFU zone permits, including farm dwelling permits, expressly apply only to permits approved after August 7, 1993. OAR 660-033-0140 does not prohibit extension of farm dwelling permits that were

approved prior to August 7, 1993 and does not require that the standards adopted by that rule be applied to any extensions of such previously approved farm dwelling permits. *Rochlin v. Multnomah County*, 35 Or LUBA 333 (1998).

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

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

3.2.2 EFU Statute/Ordinances – Farm Uses – Farm Dwellings. The 80,000 dollars gross annual income requirement stated in OAR 660-33-135(7) for farm dwellings on high-value farmland is not inconsistent with ORS 215.283(1)(f), although it conflicts with ORS 215.213(2)(b) under *Lane County v. LCDC*, 138 Or App 635, 910 P2d 414, *modified on recons*, 140 Or App 368, 914 P2d 1114, *rev allowed*, 324 Or 305 (1996). *Nichols v. Clackamas County*, 32 Or LUBA 113 (1996).

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

3.2.2 EFU Statute/Ordinances – Farm Uses – Farm Dwellings. In *Lane County v. LCDC*, 138 Or App 635, 910 P2d 414, *modified on recons*, 140 Or App 368 (1996), OAR 660-33-135(7) was invalidated as exceeding the scope of LCDC’s rulemaking authority only as the rule applies to the approval of dwellings on high-value farmland in marginal lands counties under ORS 215.213(2)(b); the *Lane County* decision did not invalidate OAR 660-33-135(7) as it applies to ORS 215.283(1). *DLCD v. Polk County*, 32 Or LUBA 16 (1996).

3.2.2 EFU Statute/Ordinances – Farm Uses – Farm Dwellings. Findings with respect to an applicant’s need for a farm dwelling do not necessarily satisfy the requirement in ORS 215.283(1)(f) that a dwelling be “customarily required in conjunction with farm use.” *Ramsay v. Linn County*, 30 Or LUBA 283 (1996).

3.2.2 EFU Statute/Ordinances – Farm Uses – Farm Dwellings. A finding under ORS 215.283(1)(f) that a proposed farm dwelling is “customarily required in conjunction with farm use” must be based on substantial evidence that goes beyond the facts of the applicants’ own farm. *Ramsay v. Linn County*, 30 Or LUBA 283 (1996).

3.2.2 EFU Statute/Ordinances – Farm Uses – Farm Dwellings. Where a local code requires that a second farm dwelling be shown “conclusively” to be “necessary for the operation of the

commercial farm,” but does not define the term necessary, it is appropriate to use the dictionary definition of the term “necessary.” *Louks v. Jackson County*, 28 Or LUBA 501 (1995).

3.2.2 EFU Statute/Ordinances – Farm Uses – Farm Dwellings. Where a local code requires that a second farm dwelling be shown to be “necessary,” absent a definition to the contrary or contrary legislative history, the term “necessary” has the same meaning in the Goal 3 context that it has in the Goal 4 context. *Louks v. Jackson County*, 28 Or LUBA 501 (1995).

3.2.2 EFU Statute/Ordinances – Farm Uses – Farm Dwellings. While adding dwellings to the existing dwellings on one parcel of a multi-parcel commercial orchard may provide additional deterrence to trespass, vandalism and theft on that parcel, those dwellings will not provide deterrence on the other parcels and are not “necessary” for continuation of the commercial farm. *Louks v. Jackson County*, 28 Or LUBA 501 (1995).

3.2.2 EFU Statute/Ordinances – Farm Uses – Farm Dwellings. Although a code definition of “high-value farmland,” unlike the definition in OAR 660-33-020(8), is prefaced by the phrase “for the purpose of locating a limited lot of record dwelling on farmland,” that the code definition is specifically incorporated into the approval standards for other types of dwellings on high-value farmland, as required by LCDC rule, is sufficient to establish that the definition must be applied in these other circumstances as well. *DLCD v. Josephine County*, 28 Or LUBA 459 (1994).

3.2.2 EFU Statute/Ordinances – Farm Uses – Farm Dwellings. Following 1993 legislative amendments, small scale farm or forest dwellings are not allowable under Goals 3 and 4, and ORS 215.304(1) prohibits LCDC from adopting or implementing any rule which would permit counties to allow such small scale farm or forest dwellings. *DLCD v. Douglas County*, 28 Or LUBA 242 (1994).

3.2.2 EFU Statute/Ordinances – Farm Uses – Farm Dwellings. A finding that simply states the farm management plan submitted by an applicant for farm dwelling approval meets the local code’s definition of “commercial farm” is impermissibly conclusory. *Kunze v. Clackamas County*, 27 Or LUBA 130 (1994).

3.2.2 EFU Statute/Ordinances – Farm Uses – Farm Dwellings. Where the local code allows a farm dwelling on EFU-zoned property that “is currently used for a commercial farm use,” the local government may interpret its code to allow it to issue a building permit for a farm dwelling when a commercial farm management plan is substantially implemented, including a situation where perennial crops capable of producing the level of income required for commercial farm use have been planted on the property. *Kunze v. Clackamas County*, 27 Or LUBA 130 (1994).

3.2.2 EFU Statute/Ordinances – Farm Uses – Farm Dwellings. The provisions of ORS 215.213 and 215.283 establishing the uses allowable on exclusive farm use zoned land apply directly to a local government decision approving a farm dwelling on such land. *Fleck v. Marion County*, 25 Or LUBA 745 (1993).

3.2.2 EFU Statute/Ordinances – Farm Uses – Farm Dwellings. A local government decision that approves a farm dwelling, but does not require that the farm use justifying the dwelling be

established on the subject property prior to issuance of a building permit for the proposed farm dwelling, violates ORS 215.283(1)(f) and OAR 660-05-030(4). *Fleck v. Marion County*, 25 Or LUBA 745 (1993).

3.2.2 EFU Statute/Ordinances – Farm Uses – Farm Dwellings. A county may reasonably interpret the term “existing commercial farm enterprises” in a code provision establishing a minimum lot size standard for farm dwellings, as not including property that is not presently operated as part of a commercial farm operation. *Giesy v. Benton County*, 25 Or LUBA 493 (1993).

3.2.2 EFU Statute/Ordinances – Farm Uses – Farm Dwellings. Where the county code requires the “farm unit” on which a farm dwelling is proposed to be located to be consistent with the size of existing commercial farm enterprises in the area, and also recognizes that commercial farms may be composed of several separate management units, it is reasonable for the county to interpret “farm unit” to include all land that is part of a farm operation, including land in different locations. *Giesy v. Benton County*, 25 Or LUBA 493 (1993).

3.2.2 EFU Statute/Ordinances – Farm Uses – Farm Dwellings. Where a farm dwelling approval standard in a local code requires a county to consider the median size of commercial farms in a specific area, as reported by certain government agencies or “other similar source,” it is within the county’s discretion to interpret the “other similar source” provision to allow it to consider relevant evidence from the county planning department, county assessor’s office or other reliable sources. *Giesy v. Benton County*, 25 Or LUBA 493 (1993).

3.2.2 EFU Statute/Ordinances – Farm Uses – Farm Dwellings. In determining compliance with a local code standard that a proposed farm dwelling be on a parcel as large as the median commercial farm unit in the area, a local government may rely on evidence that farm operations on three adjoining parcels constitute one commercial farm operation for purposes of calculating the size of the median commercial farm unit in that area. *Walker v. Clackamas County*, 25 Or LUBA 6 (1993).

3.2.2 EFU Statute/Ordinances – Farm Uses – Farm Dwellings. Under OAR 660-05-030(4), a dwelling customarily provided in conjunction with farm use may not be approved until the farm use which justifies the dwelling exists on the subject property. *Forster v. Polk County*, 24 Or LUBA 476 (1993).

3.2.2 EFU Statute/Ordinances – Farm Uses – Farm Dwellings. It is clearly contrary to the express terms of a local ordinance standard requiring a determination that “the type of farm products produced on the applicant’s farm” be unrepresented within a particular area, to determine the standard is satisfied by a showing that there are no similar farm management methodologies employed on farms in the designated area. *Giesy v. Benton County*, 24 Or LUBA 328 (1992).

3.2.2 EFU Statute/Ordinances – Farm Uses – Farm Dwellings. That area farms produce either purebred cattle or sheep, rather than a combination of purebred cattle and sheep, is not a basis for determining there are no similar farm products produced in the designated area. *Giesy v. Benton County*, 24 Or LUBA 328 (1992).

3.2.2 EFU Statute/Ordinances – Farm Uses – Farm Dwellings. The grown on “land used exclusively” requirement of ORS 215.203(2)(a) and (3)(a) and the “evidence of periodic maintenance practices” requirement of ORS 215.203(3)(d) are qualifications for particular tax treatment, and are *not* standards applicable to the approval of dwellings “customarily provided in conjunction with farm use” under ORS 215.283(1)(f). *Forster v. Polk County*, 23 Or LUBA 420 (1992).

3.2.2 EFU Statute/Ordinances – Farm Uses – Farm Dwellings. A county can approve a dwelling customarily provided in conjunction with farm use, where all or part of the proposed farm use does not yet exist on the subject property, only if it (1) determines the farm operation proposed in a farm management plan satisfies the applicable approval standards, and (2) ensures through conditions that the farm dwelling may not be built until after the county determines the farm management plan has been carried out. *Forster v. Polk County*, 23 Or LUBA 420 (1992).

3.2.2 EFU Statute/Ordinances – Farm Uses – Farm Dwellings. In approving a dwelling customarily provided in conjunction with farm use, what OAR 660-05-030(4) and equivalent local code provisions require is that the daily activities on the subject *property* be directed primarily towards farm use, rather than residential use, not that the daily activities of the *residents* be directed primarily toward farm use. *Forster v. Polk County*, 23 Or LUBA 420 (1992).

3.2.2 EFU Statute/Ordinances – Farm Uses – Farm Dwellings. Parcels in Exclusive Farm Use zones that are of insufficient size to “continue the existing commercial enterprise in the area” may be eligible for approval of a nonfarm dwelling, but are not eligible for approval of a farm dwelling. OAR 660-05-025; 660-05-030. *DLCD v. Yamhill County*, 23 Or LUBA 361 (1992).

3.2.2 EFU Statute/Ordinances – Farm Uses – Farm Dwellings. A local government may not distinguish between commercial and noncommercial farms in an area, as required by OAR 660-05-015(6), based on gross farm income only. All of the factors specified in OAR 660-05-015(6)(b) must be considered. *DLCD v. Yamhill County*, 23 Or LUBA 361 (1992).

3.2.2 EFU Statute/Ordinances – Farm Uses – Farm Dwellings. ORS 215.283(1)(e) allows a dwelling for a relative whose assistance either is *or will be* required by the farm operator. Therefore, such a dwelling may be justified on the basis of *proposed* farm activities. Neither OAR 660-10-030(4) nor ORS 215.283(1)(f), relating to approvals of primary farm dwellings in EFU zones, are applicable to the approval of a dwelling for the relative of a farm operator under ORS 215.283(1)(e). *Kenagy v. Benton County*, 23 Or LUBA 328 (1992).

3.2.2 EFU Statute/Ordinances – Farm Uses – Farm Dwellings. Where the unchallenged facts reflected in an appealed decision are that the farm operator requires assistance to perform the tasks necessary to carry out a cattle operation on a portion of the farm parcel due to his physical condition, that the proposed assistance of the farm operator’s relatives is “nominal” provides no basis for reversal or remand of the challenged decision. *Kenagy v. Benton County*, 23 Or LUBA 328 (1992).

3.2.2 EFU Statute/Ordinances – Farm Uses – Farm Dwellings. Where the local government findings are silent on the issue of whether the farm operator will continue to have significant

involvement in the farm operations, but suggest that the relative will assume all of the farm operator's duties, the decision must be remanded to determine whether the farm operator will continue to have "significant involvement" in the farm operations on the farm parcel. *Kenagy v. Benton County*, 23 Or LUBA 328 (1992).

3.2.2 EFU Statute/Ordinances – Farm Uses – Farm Dwellings. Even where a parcel is shown to be in commercial farm use, approval of a dwelling customarily provided in conjunction with farm use requires a demonstration that the proposed dwelling is customarily provided in conjunction with the particular commercial farm use. It may not be assumed that a dwelling is customarily provided in conjunction with all commercial farm uses. *Elliott v. Jackson County*, 23 Or LUBA 257 (1992).

3.2.2 EFU Statute/Ordinances – Farm Uses – Farm Dwellings. In applying the "customarily provided in conjunction with farm use" standard of OAR 660-05-030(4), only existing farm uses of the property may be considered. *Elliott v. Jackson County*, 23 Or LUBA 257 (1992).

3.2.2 EFU Statute/Ordinances – Farm Uses – Farm Dwellings. In determining whether a proposed dwelling meets the ORS 215.213(2) standards for dwellings in conjunction with a Christmas tree farm use, it is incorrect to apply the "used exclusively" and "evidence of periodic maintenance practices" standards contained in ORS 215.203(2)(a) and (3)(a) and (d). Those ORS 215.203 standards are designed to constitute qualifications for particular taxation treatment, and are not land use standards applicable to approval of dwellings in conjunction with farm use. *Harwood v. Lane County*, 23 Or LUBA 191 (1992).

3.2.2 EFU Statute/Ordinances – Farm Uses – Farm Dwellings. Nothing in ORS 215.213(2) requires a local government to find that a proposed dwelling in conjunction with farm use be "necessary" to the farm use of the property. *Harwood v. Lane County*, 23 Or LUBA 191 (1992).

3.2.2 EFU Statute/Ordinances – Farm Uses – Farm Dwellings. OAR 660-05-030(4) does not allow approval of a dwelling customarily provided in conjunction with farm use where the farm use that the dwelling would be customarily provided in conjunction with does not yet exist on the subject property. *Hayes v. Deschutes County*, 23 Or LUBA 91 (1992).

3.2.2 EFU Statute/Ordinances – Farm Uses – Farm Dwellings. A code approval standard requiring that a farm dwelling be located on a parcel "planted in perennials capable of producing upon harvest, an average of at least 10,000 dollars in gross annual income" does not require that the *site* be capable of producing the required income, but rather that the *perennials planted* on the site be capable of producing, upon harvest, the required income. *McKay Creek Valley Assoc. v. Washington County*, 23 Or LUBA 85 (1992).

3.2.2 EFU Statute/Ordinances – Farm Uses – Farm Dwellings. In approving a request for a dwelling in conjunction with farm use, under applicable local code provisions which require that the proposed farm use constitute a commercial farm, a county is not required to find that the proposed commercial farm will not have adverse environmental impacts or that the commercial farm will be successful in the short or long term. *Richards v. Marion County*, 22 Or LUBA 608 (1992).

3.2.2 EFU Statute/Ordinances – Farm Uses – Farm Dwellings. Where a local code authorizes a second farm related dwelling for a relative of a “farm operator,” whether the alleged “farm operator” owns the farm property is a relevant consideration in determining who is the “farm operator.” *Kenagy v. Benton County*, 22 Or LUBA 356 (1991).

3.2.2 EFU Statute/Ordinances – Farm Uses – Farm Dwellings. To the extent it is relevant to determine whether an alleged farm operator has “significant involvement in farm operations,” that the alleged farm operator is a property owner who retains the right to control when, whether and what crops are planted indicates “significant involvement in farm operations.” *Kenagy v. Benton County*, 22 Or LUBA 356 (1991).

3.2.2 EFU Statute/Ordinances – Farm Uses – Farm Dwellings. OAR 660-05-030(4) is applicable only to determining whether dwellings are “customarily provided in conjunction with farm use” under ORS 215.213(1)(g) and 215.283(1)(f). *McKay Creek Valley Assoc. v. Washington County*, 19 Or LUBA 421 (1990).

3.2.2 EFU Statute/Ordinances – Farm Uses – Farm Dwellings. There is no requirement in ORS chapter 215 or Statewide Planning Goal 3 that farm dwellings authorized pursuant to ORS 215.213(2)(b) be on acreages sufficient to support residents whose principal occupation is farming. To the contrary, ORS 215.213(2)(b) specifically recognizes that a farm dwelling may be allowed on a parcel capable of producing 10,000 dollars in annual gross farm income. *McKay Creek Valley Assoc. v. Washington County*, 19 Or LUBA 421 (1990).

3.2.2 EFU Statute/Ordinances – Farm Uses – Farm Dwellings. A county may rely on statistical data in establishing crop acreage and density standards for meeting the ORS 215.213(2)(b) farm income standards for dwellings in conjunction with farm use. However, the adoption of such standards must be supported by substantial evidence in the whole record upon which a reasonable person may conclude that such acreages and densities of crops are capable of producing an average of at least 10,000 dollars in gross annual farm income. *McKay Creek Valley Assoc. v. Washington County*, 19 Or LUBA 421 (1990).

3.2.2 EFU Statute/Ordinances – Farm Uses – Farm Dwellings. Where a parcel is “currently employed for farm use as defined in ORS 215.203,” the requirement of OAR 660-05-030(4) that farm use of EFU-zoned property be established prior to approval of a farm dwelling is satisfied, even where the current farm use is not the farm use which the proposed dwelling is to be “customarily provided in conjunction with.” *Rebmann v. Linn County*, 19 Or LUBA 307 (1990).

3.2.2 EFU Statute/Ordinances – Farm Uses – Farm Dwellings. Where the local code requires that a farm dwelling be “customarily provided in conjunction with farm use, as determined by [listed] factors,” the county must adopt findings addressing the factors listed in the code to determine whether it is customary to establish a dwelling for farm assistance for the proposed type of farming operation. *Rebmann v. Linn County*, 19 Or LUBA 307 (1990).

3.2.2 EFU Statute/Ordinances – Farm Uses – Farm Dwellings. Findings that the applicants “have other plans for” their nearby rental dwelling, and that immediately available live-in farm

help will make their farm more “productive,” are inadequate to establish that farm help is *required* to reside on the subject farm. *Rebmann v. Linn County*, 19 Or LUBA 307 (1990).

3.2.2 EFU Statute/Ordinances – Farm Uses – Farm Dwellings. ORS 215.283(1)(f) does not require a county to permit *outright* all dwellings customarily provided in conjunction with farm use. *Zorn v. Marion County*, 19 Or LUBA 54 (1990).

3.2.2 EFU Statute/Ordinances – Farm Uses – Farm Dwellings. Ordinance provisions which effectively require conversion of nonfarm dwellings to farm dwellings before additional farm dwellings may be approved are not mandated by ORS 215.283(1)(f), but they do further the legislative policy contained in ORS 215.243, and are consistent with ORS 215.283(1)(f) and 215.283(3). *Zorn v. Marion County*, 19 Or LUBA 54 (1990).

3.2.2 EFU Statute/Ordinances – Farm Uses – Farm Dwellings. To satisfy ORS 215.283(1)(e), a county must adopt findings, supported by substantial evidence, determining both (1) the farm operator will maintain significant involvement in farm operations, and (2) the assistance of a relative is, or will be, required by the farm operator. *1000 Friends of Oregon v. Coos County*, 18 Or LUBA 852 (1990).