3.3.3 EFU Statute/Ordinances – Nonfarm Uses – Dwellings. A marginal lands county is not required to include in its code a requirement to consider the cumulative impacts from existing or potential lot-of-record dwellings in approving dwellings under OAR 660-033-0130(4)(a)(D)(ii) and (iii). *Landwatch Lane County v. Lane County*, 80 Or LUBA 80 (2019).

3.3.3 EFU Statute/Ordinances – Nonfarm Uses – Dwellings. ORS 215.441 does not provide an independent basis to approve a dwelling within a church on property zoned EFU, and, where a local code provision provides that "[e]xisting churches may be maintained, enhanced or expanded on the same tract," a construction of that provision to independently allow a residential use of a church as an enhancement to the church impermissibly conflicts with ORS 215.203, ORS 215.283, and ORS 215.441. *Wetherell v. Douglas County*, 80 Or LUBA 183 (2019).

3.3.3 EFU Statute/Ordinances – Nonfarm Uses – Dwellings. A replacement dwelling allowed under ORS 215.213(1)(q) must be located on a lawful unit of land. *Landwatch Lane County v. Lane County*, 80 Or LUBA 415 (2019).

3.3.3 EFU Statute/Ordinances – Nonfarm Uses – Dwellings. Although it is not clear a proposed "parsonage," which is a portion of a church to include a bedroom, kitchen and bathroom for use by the church's pastor, must be evaluated and approved or denied under the criteria that apply to a nonfarm dwelling under the county's land use ordinance implementing ORS 215.284, those land use standards require the exercise of discretion in approving the development of land. Further, it is possible, even probable, that any application for a proposed residential use associated with a church must be evaluated under the standards at ORS 215.441, and accordingly the county must process such an application according to its procedures that apply to permits. *Wetherell v. Douglas County*, 78 Or LUBA 33 (2018).

3.3.3 EFU Statute/Ordinances – Nonfarm Uses – Dwellings. When a hearings officer determines that a building envelope is generally unsuitable in part due to adverse soil conditions and in part due to size or location, the hearings officer is not required to consider the "used in conjunction with other lands" standard. *Central Oregon Landwatch v. Deschutes County*, 78 Or LUBA 136 (2018).

3.3.3 EFU Statute/Ordinances – Nonfarm Uses – Dwellings. The dictionary definition of "conjunction" suggests a close spatial relationship between an existing dwelling on EFU-zoned property and a temporary hardship dwelling that is allowed "in conjunction" with that existing dwelling. *Holmberg v. Deschutes County*, 77 Or LUBA 109 (2018).

3.3.3 EFU Statute/Ordinances – Nonfarm Uses – Dwellings. Interpreting ORS 215.283(2)(L), which authorizes a temporary hardship dwelling "in conjunction with" an existing dwelling, to require that the temporary hardship dwelling be sited in close proximity to the existing dwelling, so as to minimize the need for new supporting residential infrastructure, is consistent with the overriding legislative policy of preventing "agricultural land from being diverted to non-agricultural use." *Holmberg v. Deschutes County*, 77 Or LUBA 109 (2018).

3.3.3 EFU Statute/Ordinances – Nonfarm Uses – Dwellings. OAR 660-033-0130(10)'s requirement—that a temporary hardship dwelling developed "in conjunction with" an existing

dwelling on EFU-zoned land must use the existing dwelling's septic system unless it is inadequate for two dwellings—is some indication that the Land Conservation and Development Commission wants to discourage unnecessary, duplicative new supporting infrastructure. *Holmberg v. Deschutes County*, 77 Or LUBA 109 (2018).

3.3.3 EFU Statute/Ordinances – Nonfarm Uses – Dwellings. Legislative history supports an interpretation of Oregon Laws 2013, chapter 462 (2013 Act), which amended ORS 215.213(2)(b)(A) and (B) (and its counterpart ORS 215.283(2)(b)(A) and (B)), that the default, and longest, assessment look-back period possible to allow a property owner to build a "replacement dwelling" on Exclusive Farm Use (EFU)-zoned land is five years. Section 2 of the 2013 Act provides that a dwelling may be replaced if the dwelling it replaces was assessed *ad valorem* taxes for the *lesser* of: (1) the previous five tax years, (2) the previous five tax years except those years where the dwelling had no value as a result of destruction or demolition of the dwelling, or (3) where the dwelling was constructed within the last five years, for the rest of that five-year period. The five-year look-back therefore may not be more than five years and applies to dwellings that were destroyed or demolished. *Landwatch Lane County v. Lane County*, 76 Or LUBA 250 (2017).

3.3.3 EFU Statute/Ordinances – Nonfarm Uses – Dwellings. OAR 660-033-0180(8), the Land Conservation and Development Commission (LCDC) rule that implements Oregon Laws 2013, chapter 462 (the 2013 Act), combines the first part of the 2013 Act's Section 2(2)(b)(A) and Section 2(2)(b)(B) into the rule's Section (B), and ties the first part of Section 2(2)(b)(B) to the five-year tax assessment look-back. Then, the rule's Section (C)(i) eliminates the duplication in the statute and achieves the same limitation the statute achieves, but the rule does not eliminate the statutory requirement to impose a look-back period of five years, essentially giving effect to the "lesser of" language that is not included in the rule. *Landwatch Lane County v. Lane County*, 76 Or LUBA 250 (2017).

3.3.3 EFU Statute/Ordinances – Nonfarm Uses – Dwellings. Where four pre-1993 parcels are combined through property line adjustments to meet a local minimum parcel size standard, under OAR 660-033-0020(4) the date the property line adjustments created the new combined parcel is the new "date of creation." Where that new date of creation post-dates 1993, a county decision approving a nonfarm dwelling on the combined parcel does not comply with the ORS 215.284(2)(c) requirement that a nonfarm dwelling must "be sited on a lot or parcel created before January 1, 1993." *Central Oregon Landwatch v. Crook County*, 75 Or LUBA 186 (2017).

3.3.3 EFU Statute/Ordinances – Nonfarm Uses – Dwellings. A county's findings that a parcel proposed siting a nonfarm dwelling is generally unsuitable for farm use are inadequate, where the property is composed of predominantly Class I-VI soils and the findings do not address the OAR 660-033-0130(4)(c)(B)(ii) presumption that property composed of predominantly Class I-VI soils are suitable for farm use or the fact that livestock did graze on the property in the past. *Central Oregon Landwatch v. Crook County*, 75 Or LUBA 186 (2017).

3.3.3 EFU Statute/Ordinances – Nonfarm Uses – Dwellings. The uses authorized in EFU zones in counties that have designated marginal lands are generally set out in subsections of ORS 215.213, whereas the uses authorized in EFU zones in non-marginal lands counties are generally

set out in ORS 215.283. The regulation of dwellings under ORS 215.213 was originally intended to be slightly more restrictive than under ORS 215.283, as the quid pro quo for more liberal allowance of dwellings on designated marginal lands under ORS 215.317. *Landwatch Lane County v. Lane County*, 70 Or LUBA 325 (2014).

3.3.3 EFU Statute/Ordinances – Nonfarm Uses – Dwellings. The nonfarm dwelling standards codified at ORS 215.284 were enacted by the legislature as amendments to ORS 215.283(3) and new subsections of ORS 215.283. *Landwatch Lane County v. Lane County*, 70 Or LUBA 325 (2014).

3.3.3 EFU Statute/Ordinances – Nonfarm Uses – Dwellings. As a marginal lands county, Lane County is expressly authorized to apply ORS 215.213(3) in approving a nonfarm dwelling on non-high value farmland in the Willamette Valley. Because Lane County is a marginal lands county, it is not required to apply ORS 215.284(1) in addition to ORS 215.213(3), simply because ORS 215.284(1) expressly applies to lands in the Willamette Valley. ORS 215.284(1) applies to non-marginal lands counties. *Landwatch Lane County v. Lane County*, 70 Or LUBA 325 (2014).

3.3.3 EFU Statute/Ordinances – Nonfarm Uses – Dwellings. ORS 215.284(1) to (4) distinguish between lands inside the Willamette Valley and lands outside the Willamette Valley, and apply the stability standard inside the Willamette Valley and apply the suitability standard outside the Willamette Valley. However, the fact that ORS 215.213(3) imposes a suitability standard does not provide a basis for importing the Willamette Valley regulatory distinction from ORS 215.284 into ORS 215.213 and it does not provide a basis for concluding that ORS 215.213(3) does not apply to lands in the Willamette Valley. *Landwatch Lane County v. Lane County*, 70 Or LUBA 325 (2014).

3.3.3 EFU Statute/Ordinances – Nonfarm Uses – Dwellings. ORS 215.213(4) provides that a lot for a nonfarm dwelling must comply with any applicable Willamette River Greenway regulations and ORS 215.213(3) does not include a similar reference to Willamette River Greenway regulations. However, that difference in wording between ORS 215.213(3) and (4) alone does not support interpreting ORS 215.213(4) to apply, to the exclusion of ORS 215.213(3), throughout both the Willamette River Greenway and the much larger Willamette River Valley, when ORS 215.213(3) includes no language precluding its applicability within the Willamette River Valley. *Landwatch Lane County v. Lane County*, 70 Or LUBA 325 (2014).

3.3.3 EFU Statute/Ordinances – Nonfarm Uses – Dwellings. A reasonable person could infer from photographs that show the front and two sides of a dwelling that the pictured dwelling has "intact exterior walls and roof structure," as required by ORS 215.283(1)(s)(A) for approval of a replacement dwelling in an exclusive farm use zone. *Hegele v. Crook County*, 56 Or LUBA 156 (2008).

3.3.3 EFU Statute/Ordinances – Nonfarm Uses – Dwellings. Where the evidence shows that a house had a kitchen sink, toilet and bathing facilities that were connected to a pipe that exited the house and traveled underground to a holding and disposal tank of some sort, that evidence is sufficient to establish that the dwelling had indoor plumbing that was connected to "a sanitary waste disposal system," as required by ORS 215.283(1)(s)(B) for approval of a replacement

dwelling in an exclusive farm use zone. ORS 215.283(1)(s)(B) does not require that the applicant establish that the required "sanitary waste disposal system" qualifies as a "subsurface sewage disposal system," as defined by ORS 454.605(13). *Hegele v. Crook County*, 56 Or LUBA 156 (2008).

3.3.3 EFU Statute/Ordinances – Nonfarm Uses – Dwellings. Under ORS 215.283(1)(s)(A) and (B), a county may approve a replacement dwelling only if the dwelling that is to be replaced "[h]as intact walls and roof structure" and "[h]as indoor plumbing." Although ORS 215.283(1)(s)(A) and (B) can be interpreted to require that the dwelling that is to be replaced must remain intact until the county decision approving the replacement dwelling becomes final, the statute does not have to be interpreted in that way, since ORS 215.283(1)(s)(E)(i) requires that the dwelling to be replaced must ultimately be removed. *Hegele v. Crook County*, 56 Or LUBA 156 (2008).

3.3.3 EFU Statute/Ordinances – Nonfarm Uses – Dwellings. A county does not commit error by allowing access to a nonfarm dwelling in an exclusive farm use zone to be provided across a right-of-way that crosses a zoning district that does not permit nonfarm dwellings. *Central Oregon Landwatch v. Deschutes County*, 56 Or LUBA 280 (2008).

3.3.3 EFU Statute/Ordinances – Nonfarm Uses – Dwellings. OAR 660-012-0065(3) sets out "transportation improvements [that] are consistent with Goals 3, 4, 11, and 14" and allows new access roads "where the function of the road is to reduce local access to or local traffic on a state highway." The rule does not require that the reduced access must in all cases be access that is currently constructed and providing access, but the rule also does not necessarily allow new access roads where the access that is to be eliminated is an unexercised legal right to construct access. *Central Oregon Landwatch v. Deschutes County*, 56 Or LUBA 280 (2008).

3.3.3 EFU Statute/Ordinances – Nonfarm Uses – Dwellings. Relinquishing a reserved right of access does not result in a reduction of "local access to * * * a state highway," within the meaning of OAR 660-012-0065(3)(g), where the only evidence in the record suggests that ODOT would not allow access to be constructed under that reserved right of access. *Central Oregon Landwatch v. Deschutes County*, 56 Or LUBA 280 (2008).

3.3.3 EFU Statute/Ordinances – Nonfarm Uses – Dwellings. OAR 660-012-0035(10) does not *require* that projects approved under OAR 660-012-0065(3) must be included in the transportation system plan; it provides that they *may* be included in the transportation system plan, but only if they satisfy the other requirements set out in that section of the rule. *Central Oregon Landwatch v. Deschutes County*, 56 Or LUBA 280 (2008).

3.3.3 EFU Statute/Ordinances – Nonfarm Uses – Dwellings. While a parcel may not be considered generally unsuitable "based solely on size or location" without considering whether it can be used in conjunction with other lands, if size or location are not the sole basis for a finding of general unsuitability, then a local government is just required to determine whether the parcel can be used in conjunction with other lands. *Williams v. Jackson County*, 55 Or LUBA 223 (2007).

3.3.3 EFU Statute/Ordinances – Nonfarm Uses – Dwellings. The proper inquiry under ORS 215.284(3)(b) is whether land is generally unsuitable "for the production of farm crops and

livestock or merchantable tree species," not whether the land is generally unsuitable for "farm use." *Williams v. Jackson County*, 55 Or LUBA 223 (2007).

3.3.3 EFU Statute/Ordinances – Nonfarm Uses – Dwellings. A parcel can satisfy the generally unsuitable standard even if portions of the parcel contain areas that, if considered alone, do not satisfy the standard. *Williams v. Jackson County*, 55 Or LUBA 223 (2007).

3.3.3 EFU Statute/Ordinances – Nonfarm Uses – Dwellings. In *Smith v. Clackamas County*, 313 Or 519, 836 P2d 716 (1992), the court held that in applying local nonfarm dwelling standards that replicated existing statutory standards, the requirement that the dwelling be sited on "generally unsuitable land for the production of farm crops and livestock" requires that the entire farm parcel, rather than the portion of the parcel where the dwelling would be sited, must be "generally unsuitable land." ORS 215.284(3)(b) was adopted in 1993 in reaction to *Smith*, and makes the "generally unsuitable land" standard apply to "a lot, parcel or portion of a lot or parcel." *Wetherell v. Douglas County*, 50 Or LUBA 71 (2005).

3.3.3 EFU Statute/Ordinances – Nonfarm Uses – Dwellings. For jurisdictions outside the Willamette Valley, OAR 660-033-0130(4)(c) requires that an applicant for a nonfarm dwelling must demonstrate that the dwelling: (1) "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;" (2) will be "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;" and (3) "will not materially alter the stability of the overall land use pattern of the area." *Lichvar v. Jackson County*, 49 Or LUBA 68 (2005).

3.3.3 EFU Statute/Ordinances – Nonfarm Uses – Dwellings. OAR 660-033-0130(4)(c)(C) incorporates the worst-case scenario methodology for applying the stability standard that is set out at OAR 660-033-0130(4)(a)(D) and essentially requires that an applicant for a nonfarm dwelling: (1) project the worst-case scenario for development of dwellings on similarly situated parcels; and (2) determine whether the stability of the area for continued agriculture will be upset if that worst-case scenario comes true. If the worst-case scenario would upset the stability of the area for continued agriculture, the application for a nonfarm dwelling must be denied. *Lichvar v. Jackson County*, 49 Or LUBA 68 (2005).

3.3.3 EFU Statute/Ordinances – Nonfarm Uses – Dwellings. In most cases, the OAR 660-033-0130(4)(a)(D) stability standard cannot be applied until *after* the OAR 660-033-0130(4)(c)(B) generally unsuitable standard is applied because the county will need to know the salient characteristics of the subject property in order to determine whether other similarly situated parcels include generally unsuitable land that could potentially provide a site for a nonfarm dwelling under OAR 660-033-0130(4), when applying the stability standard's worst-case scenario test. If so, the potential for siting a nonfarm dwelling on that similarly situated parcel must be included in the analysis of the worst-case scenario. *Lichvar v. Jackson County*, 49 Or LUBA 68 (2005).

3.3.3 EFU Statute/Ordinances – Nonfarm Uses – Dwellings. A county finding that a site where a nonfarm dwelling could be located under OAR 660-033-0130(4)(c)(B) is too small for a dwelling is an inadequate basis for denying the application where the other nonfarm dwelling criteria are

met and the county has no minimum size or dimensional requirement for nonfarm dwellings. *Lichvar v. Jackson County*, 49 Or LUBA 68 (2005).

3.3.3 EFU Statute/Ordinances – Nonfarm Uses – Dwellings. Where an applicant takes the position that a farm driveway has compacted the underlying soils so that they are no longer suitable for the production of farm crops and livestock or trees so that the driveway is a potential site for a nonfarm dwelling under OAR 660-033-0130(4)(c)(B), and the county accepts that position, the applicant cannot fault the county for finding there are other nearby similarly situated parcels that have driveways that would also qualify for nonfarm dwellings and thereby destabilize the area for agriculture, in violation of OAR 660-033-0130(4)(a)(D). *Lichvar v. Jackson County*, 49 Or LUBA 68 (2005).

3.3.3 EFU Statute/Ordinances – Nonfarm Uses – Dwellings. OAR 660-006-0025(4)(t), which is part of the Land Conservation and Development Commission's rule governing medical hardship dwellings on land that is zoned for exclusive farm use, does not require that a "recreational vehicle" or "an existing building" be connected to the septic system that serves the existing residence. *Burton v. Polk County*, 48 Or LUBA 440 (2005).

3.3.3 EFU Statute/Ordinances – Nonfarm Uses – Dwellings. Because OAR 660-006-0025(4)(t) does not require that "existing buildings" that are to be used for hardship dwelling must be connected to the same septic system that serves the existing dwelling, it would not be inconsistent with OAR 660-006-0025(4)(t) to interpret an ambiguous zoning ordinance provision for hardship dwellings in exclusive farm use zones not to impose that requirement either. *Burton v. Polk County*, 48 Or LUBA 440 (2005).

3.3.3 EFU Statute/Ordinances – Nonfarm Uses – Dwellings. A county interpretation of its zoning ordinance to allow an existing manufactured dwelling to remain connected to the septic system that serves that existing dwelling, rather than to require the manufactured dwelling to be moved and connected to the septic system for the other dwelling on the property where the medical hardship is located is not inconsistent with the underlying purpose for medical hardship dwellings. In either case a second dwelling remains on the property for a specified period of time. *Burton v. Polk County*, 48 Or LUBA 440 (2005).

3.3.3 EFU Statute/Ordinances – Nonfarm Uses – Dwellings. When a proposed nonresource parcel is found to be unsuitable for farm or forest use based solely on terrain, adverse soils and land conditions, rather than size and location, a local government need not consider whether the parcel could be put to farm or forest use in conjunction with other land. *Epp v. Douglas County*, 46 Or LUBA 480 (2004).

3.3.3 EFU Statute/Ordinances – Nonfarm Uses – Dwellings. When an acknowledged local ordinance requires a justification of the study area for a stability analysis only when the study area is less than 2000 acres, and the study area used by the local government is over 2000 acres, no justification is required even though OAR 660-033-0130(4) would require such justification absent the acknowledged local ordinance. *Epp v. Douglas County*, 46 Or LUBA 480 (2004).

3.3.3 EFU Statute/Ordinances – Nonfarm Uses – Dwellings. ORS 215.213(1)(t) allows alteration, restoration or replacement of an existing dwelling in an EFU zone if certain requirements are met, including a requirement that the dwelling have "intact exterior walls and roof structure." This requirement is met even if the roof and wall have suffered from normal wear and tear or are damaged, so long as they continue to perform the function of separating an indoor living environment from the elements outside the dwelling. *Bradley v. Washington County*, 44 Or LUBA 36 (2003).

3.3.3 EFU Statute/Ordinances – Nonfarm Uses – Dwellings. ORS 215.213(1)(t) requires that "exterior walls" be "intact." Where an addition to a dwelling makes the original exterior wall an interior wall, it is the exterior wall of the addition that must be "intact" under ORS 215.213(1)(t). *Bradley v. Washington County*, 44 Or LUBA 36 (2003).

3.3.3 EFU Statute/Ordinances – Nonfarm Uses – Dwellings. A county may not approve a nonfarm dwelling on a parcel created after January 1, 1993, under ORS 215.284(2)(c), which requires that the parcel on which a nonfarm dwelling is to be located be created prior to January 1, 1993, in order to remedy what it perceives to be an injustice. *Harris v. Jefferson County*, 44 Or LUBA 205 (2003).

3.3.3 EFU Statute/Ordinances – Nonfarm Uses – Dwellings. A decision that approves a nonfarm dwelling on EFU land notwithstanding that the application does not comply with the applicable criteria set out at ORS 215.284(2)(c) will be reversed. *Harris v. Jefferson County*, 44 Or LUBA 205 (2003).

3.3.3 EFU Statute/Ordinances – Nonfarm Uses – Dwellings. Because a study area of 276 acres is clearly insufficient to satisfy the 1,000-to-2,000-acre study area required by OAR 660-033-0130(4)(a)(D), for purposes of the stability standard, LUBA will not address arguments that the study area is sufficient to satisfy the case law on which the rule elaborates. *Ploeg v. Tillamook County*, 43 Or LUBA 4 (2002).

3.3.3 EFU Statute/Ordinances – Nonfarm Uses – Dwellings. A local government must consider whether land can be used in conjunction with a commercial farm or ranch under OAR 660-033-0130(4)(c), unless it first finds that the subject property is generally unsuitable for farm use, regardless of size or location. Where the local government relies on a combination of factors, including size, to conclude that the subject property is generally unsuitable for farm use, it must consider whether the property can be used in conjunction with nearby commercial farms or ranches. *Ploeg v. Tillamook County*, 43 Or LUBA 4 (2002).

3.3.3 EFU Statute/Ordinances – Nonfarm Uses – Dwellings. If property has some value as farmland if used in conjunction with a neighboring commercial farm or ranch, and the owner of that farm or ranch offers to buy, lease, rent or otherwise manage the property for something approaching its actual market value as farmland, then OAR 660-033-0130(4)(c) prohibits a finding that the property is "generally unsuitable" for farm use. *Ploeg v. Tillamook County*, 43 Or LUBA 4 (2002).

3.3.3 EFU Statute/Ordinances – Nonfarm Uses – Dwellings. A finding that an EFU parcel would contribute no productive farm acreage to any neighboring farm, and thus is generally unsuitable for farm use even if used in conjunction with neighboring dairy farms, is not supported by substantial evidence, where two neighboring dairy farmers offered to buy the parcel to use in conjunction with their farms. A property's usefulness as farmland, considered on its own, is not necessarily indicative of its usefulness when combined with an existing farm or ranch. *Ploeg v. Tillamook County*, 43 Or LUBA 4 (2002).

3.3.3 EFU Statute/Ordinances – Nonfarm Uses – Dwellings. OAR 660-033-0130(4)(c)(C) requires that a county consider the "cumulative impact of nonfarm dwellings on other lots or parcels in the area similarly situated" by applying the standards of OAR 660-033-0130(4)(a)(D), in determining whether a proposed nonfarm dwelling would materially alter the stability of the overall land use pattern. That language requires that the county include in its stability analysis potential new nonfarm dwellings on existing lots or parcels. *Elliott v. Jackson County*, 43 Or LUBA 426 (2003).

3.3.3 EFU Statute/Ordinances – Nonfarm Uses – Dwellings. OAR 660-033-0130(4)(a)(D) requires that the county's stability analysis consider the potential for new nonfarm parcels in the area, whether or not the applicant proposes a new nonfarm parcel. OAR 660-033-0130(4)(c)(C) requires compliance with the standards of OAR 660-033-0130(4)(a)(D), and therefore also requires consideration of potential new nonfarm parcels, whether or not a new nonfarm parcel is proposed. *Elliott v. Jackson County*, 43 Or LUBA 426 (2003).

3.3.3 EFU Statute/Ordinances – Nonfarm Uses – Dwellings. Remand is necessary where the hearings officer cites a nonexistent requirement for "substantial and compelling findings," and appears to apply that standard in determining that the applicant does not satisfy the stability standard. *Elliott v. Jackson County*, 43 Or LUBA 426 (2003).

3.3.3 EFU Statute/Ordinances – Nonfarm Uses – Dwellings. ORS 215.236(4) requires that the applicant for a nonfarm dwelling notify the tax assessor that the parcel is no longer being used as farmland, and appears to presume that nonfarm parcels are not in farm use. Given that statutory presumption, the hearings officer did not err in assuming that a parcel disqualified for farm tax deferral is no longer in farm use, and is not required to assume that farm use will continue on portions of larger nonfarm parcels. *Elliott v. Jackson County*, 43 Or LUBA 426 (2003).

3.3.3 EFU Statute/Ordinances – Nonfarm Uses – Dwellings. OAR 660-033-0130(4)(a)(D) requires the county to assume that any property in the study area that can be divided or developed for a nonfarm dwelling will be. *Elliott v. Jackson County*, 43 Or LUBA 426 (2003).

3.3.3 EFU Statute/Ordinances – Nonfarm Uses – Dwellings. The stability standard at OAR 660-033-0130(4)(a)(D)(iii) is framed in the disjunctive, and the standard is not met if the cumulative impact of nonfarm dwellings will either (1) make it more difficult for farm use to continue due to diminished opportunities to expand, purchase or lease farmland; or (2) diminish the number of tracts or acreage in farm use in a manner that destabilizes the character of the study area. *Elliott v. Jackson County*, 43 Or LUBA 426 (2003).

3.3.3 EFU Statute/Ordinances – Nonfarm Uses – Dwellings. OAR 660-033-0130(4)(a)(D) and (c)(C) require consideration of the cumulative impact of a proposed nonfarm dwelling on lots or parcels that are "similarly situated." Because OAR 660-033-0130(4)(a)(D)(ii) expressly requires consideration of whether parcels larger than the minimum parcel size may be divided to allow nonfarm dwellings, the scope of "similarly situated" parcels is not limited to substandard parcels or parcels that are the same size as the subject property. *Elliott v. Jackson County,* 43 Or LUBA 426 (2003).

3.3.3 EFU Statute/Ordinances – Nonfarm Uses – Dwellings. Any minimum gross farm income level that a county may establish in approving a lot of record dwelling on EFU-zoned high-value farmland must be consistent with the income generated by the county's noncommercial farms, which are protected under Goal 3 (Agricultural Lands) and the EFU zoning statutes. *Friends of Linn County v. Linn County*, 39 Or LUBA 627 (2001).

3.3.3 EFU Statute/Ordinances – Nonfarm Uses – Dwellings. A county errs in relying on OAR 660-033-0135, which establishes standards to ensure that farms are large enough and generate sufficient income to warrant an assumption that a dwelling on the farm is properly viewed as "customarily provided in conjunction with farm use" within the meaning of ORS 215.283(1)(f), to also set a gross annual income threshold for determining whether farm use on high-value farmland is "impracticable" for purposes of siting a lot of record dwelling under ORS 215.705(2)(a)(C)(i). *Friends of Linn County v. Linn County*, 39 Or LUBA 627 (2001).

3.3.3 EFU Statute/Ordinances – Nonfarm Uses – Dwellings. The minimum gross income levels the legislature established at ORS 308A.071(2)(a) for non-EFU-zoned parcels to qualify for special assessment are the best available indication of the level of gross income that the legislature believes demonstrates practicable farm use. *Friends of Linn County v. Linn County*, 39 Or LUBA 627 (2001).

3.3.3 EFU Statute/Ordinances – Nonfarm Uses – Dwellings. In applying ORS 215.705(2)(a)(C)(i) to determine whether farm use of an EFU-zoned parcel with high-value soils is "impracticable," evidence that the property and nearby properties have generated limited farm income in the past is relevant evidence, but it is not determinative. *Friends of Linn County v. Linn County,* 39 Or LUBA 627 (2001).

3.3.3 EFU Statute/Ordinances – Nonfarm Uses – Dwellings. Under ORS 215.705(2)(a)(C)(i), a property's impracticability for farm use must be "due to extraordinary circumstances inherent in the land or its physical setting that do not apply generally to other land in the vicinity." A decision that does not demonstrate that cited factors are not shared by neighboring properties and does not explain why the cited factors make farm use impracticable must be remanded. *Friends of Linn County v. Linn County,* 39 Or LUBA 627 (2001).

3.3.3 EFU Statute/Ordinances – Nonfarm Uses – Dwellings. Failure to specifically describe the grazing practices on surrounding properties does not render a finding of compliance with the noninterference standard inadequate where the proposed nonfarm dwelling is one-half mile from the nearest grazing operation and buffered by a number of vacant lots, and no conceivable interference is identified. *Wolverton v. Crook County,* 39 Or LUBA 256 (2000).

3.3.3 EFU Statute/Ordinances – Nonfarm Uses – Dwellings. Vandalism and traffic impacts associated with a county road traversing petitioners' cattle ranch are insufficient to show that a proposed nonfarm dwelling will seriously interfere with grazing practices on petitioners' ranch, where the county finds that vandalism is not associated with nonfarm dwellings using the road and traffic from the proposed dwelling is not significantly greater than could occur under permitted uses. *Wolverton v. Crook County*, 39 Or LUBA 256 (2000).

3.3.3 EFU Statute/Ordinances – Nonfarm Uses – Dwellings. Although past denial of nonfarm development in the area is not necessarily an indicator that similar applications will be denied in the future, the county does not err in relying upon recent denials and its understanding of the current law to conclude that potential new nonfarm development is so limited in the area that the cumulative effect of such development will not materially alter the stability of the land use pattern. *Wolverton v. Crook County*, 39 Or LUBA 256 (2000).

3.3.3 EFU Statute/Ordinances – Nonfarm Uses – Dwellings. As construed in *Dorvinen v. Crook County*, 153 Or App 391, 957 P2d 180 (1998), ORS 215.780(1) applies the statutory minimum lot or parcel size to all parcels resulting from a partition for nonfarm dwellings, including the parcel on which the nonfarm dwelling will be sited. *Friends of Douglas County v. Douglas County*, 39 Or LUBA 156 (2000).

3.3.3 EFU Statute/Ordinances – Nonfarm Uses – Dwellings. When a local code parallels and implements an administrative rule standard for reviewing an application for a nonfarm dwelling in an EFU zone, the local government's discretion to interpret its local criteria is constrained. Its interpretation and application of its code must be consistent with the rule it implements. *Dowrie v. Benton County*, 38 Or LUBA 93 (2000).

3.3.3 EFU Statute/Ordinances – Nonfarm Uses – Dwellings. Two separate parcels do not form a "tract," as that term is defined by ORS 215.010(2), where a husband and a wife own one parcel jointly and the second parcel is owned by the husband only. *Friends of Linn County v. Linn County*, 37 Or LUBA 280 (1999).

3.3.3 EFU Statute/Ordinances – Nonfarm Uses – Dwellings. LUBA will remand rather than reverse a decision approving partitions in conjunction with a nonfarm dwelling, notwithstanding that the resulting partitions violate the minimum parcel size at ORS 215.780(1), where the decision expressly preserves an issue regarding whether the county's 20-acre minimum parcel size was adopted under one of the exceptions to ORS 215.780(1), and thus LUBA cannot determine whether the approval is prohibited as a matter of law. *Alliance for Responsible Land Use v. Deschutes Co.*, 37 Or LUBA 215 (1999).

3.3.3 EFU Statute/Ordinances – Nonfarm Uses – Dwellings. The legal effect of a "partition," as defined at ORS 92.010, is to create new parcels as of the date the partition plat is approved. The parcels resulting from a partition are thus "created" as of the date the plat is approved, for purposes of the nonfarm dwelling provisions of OAR 660-033-0130 and ORS 215.284. *Hartmann v. Washington County*, 36 Or LUBA 442 (1999).

3.3.3 EFU Statute/Ordinances – Nonfarm Uses – Dwellings. The definition of "Date of Creation" at OAR 660-033-0020(4) expands the circumstances in which parcels are "created" for purposes of siting a nonfarm dwelling to include lot line adjustments or similar reconfigurations that have the effect of qualifying the parcel for a dwelling. The definition does not impliedly narrow the set of circumstances that create a parcel to include only those events that have the effect of qualifying a parcel for a dwelling. *Hartmann v. Washington County*, 36 Or LUBA 442 (1999).

3.3.3 EFU Statute/Ordinances – Nonfarm Uses – Dwellings. A partition, as defined by ORS 92.010, is not a "reconfiguration" of the boundaries of a parcel within the meaning of OAR 660-033-0020(4) because the legal effect of partition is to create new parcels. *Hartmann v. Washington County*, 36 Or LUBA 442 (1999).

3.3.3 EFU Statute/Ordinances – Nonfarm Uses – Dwellings. Absent an identification of what specific farm and forest practices are involved on nearby lands, a local government cannot meaningfully determine whether a proposed nonfarm dwelling will cause a significant change in or increased cost to those practices. *Hearne v. Baker County*, 34 Or LUBA 176 (1998).

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

3.3.3 EFU Statute/Ordinances – Nonfarm Uses – Dwellings. A parcel that was illegally created in 1974 and then legalized by an "after-the-fact" decision in 1989 is not "lawfully created" under ORS 215.705(1), which requires that the parcel be "lawfully created * * * [p]rior to January 1, 1985." *Skrepetos v. Douglas County*, 33 Or LUBA 502 (1997).

3.3.3 EFU Statute/Ordinances – Nonfarm Uses – Dwellings. The county fails to establish that, under local code, a second dwelling is authorized as a conditional use in an EFU zone where the findings do not explain why the proposed dwelling is authorized and do not explain when the primary dwelling was established or whether its use is resource-related. *Le Roux v. Malheur County*, 32 Or LUBA 124 (1996).

3.3.3 EFU Statute/Ordinances – Nonfarm Uses – Dwellings. There is insufficient evidence in the county's findings to support a conclusion of compatibility with farm use where the findings do not include evidence regarding the surrounding farm uses in the area, and do not explain how the proposed nonfarm dwelling will be compatible with the identified farm uses. *Le Roux v. Malheur County*, 32 Or LUBA 124 (1996).

3.3.3 EFU Statute/Ordinances – Nonfarm Uses – Dwellings. The county's findings lack evidentiary support for the conclusion that a proposed dwelling will not materially alter the stability of the surrounding area where there is inadequate evidence regarding the surrounding area, inadequate evidence regarding the uses existing in the area, and no evidence regarding how the proposed dwelling will not alter the stability of those uses in the selected area. *Le Roux v. Malheur County*, 32 Or LUBA 124 (1996).

3.3.3 EFU Statute/Ordinances – Nonfarm Uses – Dwellings. In approving a conditional use permit for a nonfarm dwelling, the county must make findings required by ORS 215.284(2)(c) or 215.284(3)(c) regarding the legal creation of the subject property as a separate parcel. *O'Brien v. Lincoln County*, 31 Or LUBA 262 (1996).

3.3.3 EFU Statute/Ordinances – Nonfarm Uses – Dwellings. How petitioners believe a property should have been assessed for property taxation before approval of a nonfarm dwelling permit is not relevant in a subsequent land use proceeding. *Wakeman v. Jackson County*, 29 Or LUBA 521 (1995).

3.3.3 EFU Statute/Ordinances – Nonfarm Uses – Dwellings. ORS 215.236(2) requires that farm assessment disqualifications be filed within 120 days of approval of a nonfarm dwelling permit only when the subject property is assessed for farm use at the time of approval. A county's decision to modify a condition of approval requiring disqualification from farm assessment within 120 days after approval does not violate ORS 215.236(2) when the subject property was not assessed for farm use at the time of approval. *Wakeman v. Jackson County*, 29 Or LUBA 521 (1995).

3.3.3 EFU Statute/Ordinances – Nonfarm Uses – Dwellings. The "lot of record" dwelling provisions of ORS 215.705 provide an alternative to the nonfarm dwelling provisions of ORS 215.284, which do not allow dwellings on lots or parcels that are not composed of predominantly Class IV to VIII soils. *Blondeau v. Clackamas County*, 29 Or LUBA 115 (1995).

3.3.3 EFU Statute/Ordinances – Nonfarm Uses – Dwellings. Where amendments to an exclusive farm use (EFU) zoning district do not change the maximum allowable density of nonfarm dwellings in PUDs, but may have the effect of increasing the numbers of, and circumstances in which, residential PUDs may be approved on EFU-zoned land, the county must consider these potential secondary effects of the amendments in determining whether the EFU zone, as amended, complies with Goals 11 and 14. *1000 Friends of Oregon v. Marion County*, 27 Or LUBA 303 (1994).

3.3.3 EFU Statute/Ordinances – Nonfarm Uses – Dwellings. ORS 215.283(1)(f) and OAR 660-05-030(4) are satisfied where the farm use in conjunction with which a dwelling is customarily provided will be established prior to placement of a dwelling on the subject property. *Testa v. Clackamas County*, 26 Or LUBA 357 (1994).

3.3.3 EFU Statute/Ordinances – Nonfarm Uses – Dwellings. A local government's interpretation of its code provisions on farm dwellings is within the interpretive discretion afforded local governments by *Clark v. Jackson County* and 1993 Oregon Laws, chapter 792, section 43, so long as its interpretation does not provide less protection to EFU-zoned land than what ORS 215.283(1)(f) and OAR 660-05-030(4) provide. *Testa v. Clackamas County*, 26 Or LUBA 357 (1994).

3.3.3 EFU Statute/Ordinances – Nonfarm Uses – Dwellings. Even though LUBA might agree with a county's argument in its brief that the purpose section of its EFU zoning district is not an approval standard for a farm dwelling permit application, if the challenged decision itself does not

interpret the code provision, LUBA must remand the decision for the county to interpret the provision in the first instance. *Testa v. Clackamas County*, 26 Or LUBA 357 (1994).

3.3.3 EFU Statute/Ordinances – Nonfarm Uses – Dwellings. Where a previous local government decision approved a nonfarm dwelling, the local government cannot require the proposed nonfarm dwelling to be re-reviewed against the same standards. *Rodriguez v. Marion County*, 26 Or LUBA 50 (1993).

3.3.3 EFU Statute/Ordinances – Nonfarm Uses – Dwellings. LUBA will defer to a county's interpretation of its EFU zone provisions as not allowing approval of a nonfarm dwelling on a parcel that already has a dwelling, or approval of a partition to allow a nonfarm dwelling, if the parent parcel already has a dwelling. *Hahn v. Marion County*, 26 Or LUBA 18 (1993).

3.3.3 EFU Statute/Ordinances – Nonfarm Uses – Dwellings. ORS 215.283(3) applies to the "establishment" of a nonfarm dwelling in an EFU zone. In this context, "establishment" refers to the legal establishment of a nonfarm residential use, not merely to the construction of a nonfarm dwelling. *DLCD v. Columbia County*, 24 Or LUBA 32 (1992).

3.3.3 EFU Statute/Ordinances – Nonfarm Uses – 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).

3.3.3 EFU Statute/Ordinances – Nonfarm Uses – Dwellings. Whether a proposed dwelling (1) is permitted outright in an EFU zone, (2) is "accessory" to an underlying nonconforming use, and (3) complies with ORS 215.296(1), are determinations which require "interpretation or the exercise of factual, policy or legal judgment" within the meaning of ORS 197.015(10)(b)(A) and (C). *Komning v. Grant County*, 20 Or LUBA 481 (1990).

3.3.3 EFU Statute/Ordinances – Nonfarm Uses – Dwellings. In denying an application for a nonfarm dwelling on land zoned for exclusive farm use, a county need only adopt findings demonstrating that one or more approval standards are not met. *McNulty v. Marion County*, 19 Or LUBA 367 (1990).

3.3.3 EFU Statute/Ordinances – Nonfarm Uses – Dwellings. In reviewing a combined request for approval of a nonfarm dwelling and a partition to create a nonfarm parcel, a county must first apply applicable approval standards, including the "general unsuitability" standard, to the request for approval of the nonfarm dwelling. Only after the nonfarm dwelling is approved may the county consider the request to create a new nonfarm parcel for the dwelling. *Smith v. Clackamas County*, 19 Or LUBA 171 (1990).

3.3.3 EFU Statute/Ordinances – Nonfarm Uses – Dwellings. The "general unsuitability" standard applies to the entire parent parcel, not just to the portion of the parent parcel or the new nonfarm parcel on which a nonfarm dwelling is to be located. *Smith v. Clackamas County*, 19 Or LUBA 171 (1990).

3.3.3 EFU Statute/Ordinances – Nonfarm Uses – Dwellings. Compliance with an ordinance provision requiring that proposed nonfarm dwellings be found consistent with the policies of ORS 215.243 requires the county to explain which of the policies of ORS 215.243 are relevant and to address those relevant policies. *Stefan v. Yamhill County*, 18 Or LUBA 820 (1990).