3.3.7 EFU Statute/Ordinances – Nonfarm Uses – Unsuitability Standard. Where local code amendments allow accessory uses and structures in an EFU zone, arguments that (1) the amendments improperly exempt such structures from a local code requirement that steps be taken to minimize adverse impacts on farm and forest uses and (2) the provisions governing such uses are inconsistent with ORS 215.213(3)(b) provide no basis for reversal or remand where the amended code is comparable to the prior code and where the petitioner does not develop any argument explaining why the amendments are substantive instead of technical. *Landwatch Lane County v. Lane County*, 80 Or LUBA 80 (2019).

3.3.7 EFU Statute/Ordinances – Nonfarm Uses – No Significant Change/Increase Std. While applying pesticides and herbicides in a manner that causes overspray or drift onto adjoining properties is not an accepted farm practice for purposes of the farm impacts test at ORS 215.296(1), where the labels for some pesticides and herbicides effectively require a setback from certain sensitive uses regardless of whether drift or overspray occurs, a county will likely have to make specific factual findings about the specific setbacks required by particular chemicals on particular farming operations on surrounding farmlands, based on application methods, and whether the operation of each setback would force a significant change in farm practices. *Van Dyke v. Yamhill County*, 80 Or LUBA 348 (2019).

3.3.7 EFU Statute/Ordinances – Nonfarm Uses – No Significant Change/Increase Std. Spraying adjoining property with herbicides without permission from the property owner or another legal right to do so is not an accepted farm practice for purposes of the farm impacts test at ORS 215.296(1), even where the farm operation grows grass seed which is certified to be free of contamination from weeds and where spraying the adjoining property allows multiple fields to be treated as a single continuous field for purposes of certification and prevents the farm operator from having to create "isolation strips" on either side of the adjoining property that would shrink the scope of the certified fields. *Van Dyke v. Yamhill County*, 80 Or LUBA 348 (2019).

3.3.7 EFU Statute/Ordinances – Nonfarm Uses – No Significant Change/Increase Std. A condition of approval requiring that an applicant construct a proposed fence between a proposed trail and adjoining farms; specifying only that the proposed fence must be "capable of preventing dogs and people from entering adjacent farm fields"; punting all determinations regarding fence design, materials, construction, etc. to a subsequent master planning process that offers no opportunity for a public hearing or other public input; and allowing adjacent landowners to opt out of installing a fence on their property line is inadequate where the county relies on the proposed fence to address a wide variety of different potential impacts, which might require different fence designs, materials, construction techniques, and maintenance routines in order to ensure that the trail will not cause significant impacts on farm practices for purposes of the farm impacts test at ORS 215.296(1). Such a condition is also not clear and objective for purposes of ORS 215.296(2). *Van Dyke v. Yamhill County*, 80 Or LUBA 348 (2019).

3.3.7 EFU Statute/Ordinances – Nonfarm Uses – No Significant Change/Increase Std. Where farmers have historically crossed a right-of-way to access fields they own on either side of the right-of-way, and where the right-of-way owner proposes to construct a fence along its property line, negotiate with farmers to provide licenses to cross the applicant's property, and install gates in the fence to allow farm equipment to pass through, any delay for farmers to open, pass through,

and close the gates multiple times per day and perhaps multiple times per hour need not be evaluated as impacts on accepted farm practices for purposes of the farm impacts test at ORS 215.296(1) because using another's property to move farm equipment without a legal right or permission to do so is not an accepted farm practice. *Van Dyke v. Yamhill County*, 80 Or LUBA 348 (2019).

3.3.7 EFU Statute/Ordinances – Nonfarm Uses – No Significant Change/Increase Std. Although the impacts of nonfarm uses on surrounding farmland must be evaluated on a farm-by-farm and practice-by-practice basis, an evaluation of the cumulative impacts on all farm practices on all impacted farms is not required. *Van Dyke v. Yamhill County*, 80 Or LUBA 348 (2019).

3.3.7 EFU Statute/Ordinances – Nonfarm Uses – Unsuitability Standard. 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).

3.3.7 EFU Statute/Ordinances – Nonfarm Uses – Unsuitability Standard. The answer to whether property in eastern Oregon is generally unsuitable for farm use begins with the OAR 660-033-0130(4)(c)(B)(ii) presumption that it is suitable for farm use if its soils are predominantly Class VI. It is inconsistent with OAR 660-033-0130(4)(c)(B)(ii) to dismiss the significance of the predominant soil class simply because only 50 to 60 percent of the soils are Class VI soils. Because Class VI soils predominate, under OAR 660-033-0130(4)(c)(B)(ii) the presumption of suitability for farm use applies. *Central Oregon Landwatch v. Crook County*, 77 Or LUBA 202 (2018).

3.3.7 EFU Statute/Ordinances – Nonfarm Uses – Unsuitability Standard. In considering whether property is generally unsuitable for farm use, it is not appropriate to disregard adjoining parcels as "nonfarm" parcels, simply because there is a nonfarm dwelling on the properties, where there is evidence those adjoining parcels have been planted in winter wheat. Without some findings addressing that evidence of farm use, findings that the property is generally unsuitable for farm use are not supported by substantial evidence. *Central Oregon Landwatch v. Crook County*, 77 Or LUBA 202 (2018).

3.3.7 EFU Statute/Ordinances – Nonfarm Uses – Unsuitability Standard. If a local government finds property is generally unsuitable for farm use without considering size or location, under ORS 215.284(2)(b) and OAR 660-033-0130(4)(c)(B)(i) the county need not consider whether the property can be used for farm use in conjunction with other lands. But if the property is not generally unsuitable for farm use based on factors other than size and location, size and location must be considered and therefore size and location are to be the determining factors in establishing that the subject property is generally unsuitable for farm use. Therefore, the county must then consider whether the subject property "can reasonably be put to farm * * * use in conjunction with other land[,]" as required by ORS 215.284(2)(b) and OAR 660-033-0130(4)(c)(B)(i). *Central Oregon Landwatch v. Crook County*, 77 Or LUBA 202 (2018).

3.3.7 EFU Statute/Ordinances – Nonfarm Uses – Unsuitability Standard. Findings that property "is not necessary for the future continuation of any existing farm operation," and that

"[t]here is no evidence that the property can be put to farm use in conjunction with other land," are inadequate to establish that the property cannot "reasonably be put to farm * * * use in conjunction with other land," as required by ORS 215.284(2)(b) and OAR 660-033-0130(4)(c)(B)(i). It is entirely possible that the property could "reasonably be put to farm * * * use in conjunction with other land" even though nearby farms do not depend on such conjoined use to continue to operate. And a lack of evidence that property can be put to use in conjunction with other lands is not evidence that the subject cannot "reasonably be put to farm * * * use in conjunction with other land." *Central Oregon Landwatch v. Crook County*, 77 Or LUBA 202 (2018).

3.3.7 EFU Statute/Ordinances – Nonfarm Uses – Unsuitability Standard. 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).

3.3.7 EFU Statute/Ordinances – Nonfarm Uses – Unsuitability Standard. 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).

3.3.7 EFU Statute/Ordinances – Nonfarm Uses – Unsuitability Standard. A nonfarm dwelling must be sited on land that is "generally unsuitable for the production of farm crops and livestock." In determining whether that standard is met, a county does not err by failing to identify the precise level of beef production that would indicate suitability. *Central Oregon Landwatch v. Deschutes County*, 56 Or LUBA 280 (2008).

3.3.7 EFU Statute/Ordinances – Nonfarm Uses – Unsuitability Standard. 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).

3.3.7 EFU Statute/Ordinances – Nonfarm Uses – Unsuitability Standard. 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).

3.3.7 EFU Statute/Ordinances – Nonfarm Uses – Unsuitability Standard. 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).

3.3.7 EFU Statute/Ordinances – Nonfarm Uses – Unsuitability Standard. Where a portion of a lot or parcel is predominantly composed of Class I-IV soils, OAR 660-033-0130(4)(c)(B)(ii) provides that the portion is presumed generally suitable for the production of farm crops and livestock or merchantable tree species; where the portion is predominantly composed of soils that are not Class I-IV, but the entire subject property is predominantly composed of Class I-IV soils, the presumption provided for in OAR 660-033-0130(4)(c)(B)(ii) does not apply. *Wetherell v. Douglas County*, 51 Or LUBA 699 (2006).

3.3.7 EFU Statute/Ordinances – Nonfarm Uses – Unsuitability Standard. Even assuming a county correctly interprets local code provisions designed to implement OAR 660-033-0130(4)(c)(B) regarding the general suitability for the production of farm crops to refer to the grapes and not the vines, its determination that the portion of the property is generally unsuitable for growing grapes is not supported by substantial evidence where there is no evidence that the vines on that portion do not produce grapes. *Wetherell v. Douglas County*, 51 Or LUBA 699 (2006).

3.3.7 EFU Statute/Ordinances – Nonfarm Uses – Unsuitability Standard. Where local land use regulation implements the statutory requirement in ORS 215.284(2)(b) that a portion of a lot or parcel on which a nonfarm dwelling will be located be generally unsuitable for the production of farm crops, the local regulation must be interpreted to be consistent with the statutory requirement it implements. An interpretation that improvements such as driveways, septic systems and wells may be located on the portion of the property that is suitable for production of farm crops is not consistent with the legislative intent of ORS 215.284(2)(b). *Wetherell v. Douglas County*, 51 Or LUBA 699 (2006).

3.3.7 EFU Statute/Ordinances – Nonfarm Uses – Unsuitability Standard. 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).

3.3.7 EFU Statute/Ordinances – Nonfarm Uses – Unsuitability Standard. Statements in a county soil survey that a general class of soils is limited by risk of erosion if the vegetative cover is not maintained is not substantial evidence that specific soils within that class on the subject property are generally unsuitable for grazing, where nothing in the soil survey suggests that grazing presents a risk of erosion and the survey's specific description of the soils on the property states that those soils are used mainly for grazing. *Ploeg v. Tillamook County*, 50 Or LUBA 608 (2005).

3.3.7 EFU Statute/Ordinances – Nonfarm Uses – Unsuitability Standard. Evidence that an adjoining dairy farmer grazed 70 cows on a six-acre portion of a 25-acre parcel and exhausted the forage on that portion within six days does little to demonstrate that the parcel is generally unsuitable for farm uses, where the record provides no comparison or standard against which to measure the relative forage producing capacity of the grazed portion. *Ploeg v. Tillamook County*, 50 Or LUBA 608 (2005).

3.3.7 EFU Statute/Ordinances – Nonfarm Uses – Unsuitability Standard. The focus under the generally unsuitable standard is the land's capacity to produce crops or livestock under appropriate agricultural management. Evidence that land once maintained as pasture but neglected for 20 years currently does not produce much forage says little about its capacity for producing forage, particularly where there is evidence that forage production would dramatically improve if the land were appropriately managed. *Ploeg v. Tillamook County*, 50 Or LUBA 608 (2005).

3.3.7 EFU Statute/Ordinances – Nonfarm Uses – Unsuitability Standard. A finding that the subject property cannot be used in conjunction with neighboring commercial farms is not supported by the record, where neighboring farmers submitted affidavits expressing interest in acquiring the subject property and describing how they could use the property in conjunction with their farm operation. Evidence of actual offers to buy or lease the property is not essential, particularly where the affidavits explain that the applicant for the nonfarm dwelling has no interest in selling or leasing the property for its value as farm land. *Ploeg v. Tillamook County*, 50 Or LUBA 608 (2005).

3.3.7 EFU Statute/Ordinances – Nonfarm Uses – Unsuitability Standard. Where the record indicates that the neighboring dairy farmers could expand their herds if a particular property were available for manure disposal under a confined animal feeding (CAFO) permit, and evidence indicates that the property is suited for that use, the county must consider whether the property can be used in conjunction with adjoining dairy farms for manure disposal under a CAFO permit. *Ploeg v. Tillamook County*, 50 Or LUBA 608 (2005).

3.3.7 EFU Statute/Ordinances – Nonfarm Uses – Unsuitability Standard. Where a local code criterion requires that a nonfarm dwelling be situated on a portion of a lot or parcel that is "generally unsuitable for the production of farm crops and livestock or merchantable tree species," and the code then spells out the considerations for determining whether a portion of a lot or parcel is "unsuitable for farm use," the term "farm use" is not properly read to require evaluation of the suitability for farm uses other than the production of farm crops and livestock or merchantable tree species. *Griffin v. Jackson County*, 48 Or LUBA 1 (2004).

3.3.7 EFU Statute/Ordinances – Nonfarm Uses – Unsuitability Standard. 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).

3.3.7 EFU Statute/Ordinances – Nonfarm Uses – Unsuitability Standard. A county hearings officer does not misconstrue local code provisions designed to implement OAR 660-033-

0130(4)(c)(B) by interpreting those provisions not to require consideration of the suitability of the entire parcel that is the subject of a nonfarm dwelling application. *Frazee v. Jackson County*, 45 Or LUBA 263 (2003).

3.3.7 EFU Statute/Ordinances – Nonfarm Uses – Unsuitability Standard. Whether an EFU-zoned parcel is capable of producing "herbaceous forage" is a relevant consideration under the "generally unsuitable" standard, which requires consideration of "vegetation" on the subject property. *Hanna v. Crook County*, 44 Or LUBA 386 (2003).

3.3.7 EFU Statute/Ordinances – Nonfarm Uses – Unsuitability Standard. Because the legislature required compliance with both the "generally unsuitable" standard and the "adequate herbaceous forage" test in order to partition an EFU zoned parcel for nonfarm dwellings under ORS 215.263(5)(b), the legislature did not intend that compliance with one standard necessarily establishes compliance with the other. *Hanna v. Crook County*, 44 Or LUBA 386 (2003).

3.3.7 EFU Statute/Ordinances – Nonfarm Uses – Unsuitability Standard. A county's erroneous application of an "adequate herbaceous forage" standard in approving a nonfarm partition is not harmless error, where the county focused preponderantly on that standard and failed to adopt findings addressing the required considerations under the correct standard. *Hanna v. Crook County*, 44 Or LUBA 386 (2003).

3.3.7 EFU Statute/Ordinances – Nonfarm Uses – Unsuitability Standard. 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).

3.3.7 EFU Statute/Ordinances – Nonfarm Uses – Unsuitability Standard. 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).

3.3.7 EFU Statute/Ordinances – Nonfarm Uses – Unsuitability Standard. 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).

3.3.7 EFU Statute/Ordinances – Nonfarm Uses – Unsuitability Standard. The fact that a small portion of an EFU-zoned parcel can theoretically generate some farm income does not necessarily

compel a conclusion that the property as a whole is suitable for farm use. *King v. Washington County*, 42 Or LUBA 400 (2002).

3.3.7 EFU Statute/Ordinances – Nonfarm Uses – Unsuitability Standard. A decision approving a nonfarm dwelling does not misconstrue applicable law where the hearings officer considers all of the relevant factors of ORS 215.213(3)(b) and concludes that a parcel is generally unsuitable for farm use based on (1) the steep topography of the site; the limited access to irrigation water; (3) the relatively small parcel size; (4) the size of the farmable area on the subject parcel; and (5) the inability to combine farm operations on the subject property with other farm operations. *King v. Washington County*, 42 Or LUBA 400 (2002).

3.3.7 EFU Statute/Ordinances – Nonfarm Uses – Unsuitability Standard. 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).

3.3.7 EFU Statute/Ordinances – Nonfarm Uses – Unsuitability Standard. 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).

3.3.7 EFU Statute/Ordinances – Nonfarm Uses – Unsuitability Standard. 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).

3.3.7 EFU Statute/Ordinances – Nonfarm Uses – Unsuitability Standard. 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).

3.3.7 EFU Statute/Ordinances – Nonfarm Uses – Unsuitability Standard. 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).

3.3.7 EFU Statute/Ordinances – Nonfarm Uses – Unsuitability Standard. In adopting an irrevocably committed exception where the proposed exception area has a history of farm use and

is currently in farm use, it is not sufficient to rely solely upon long-standing site characteristics or the presence of long-standing adjacent conflicting uses. An adequate demonstration of impracticability must identify recent or imminent changes affecting the subject property that, by themselves or in combination with other factors, render continued farm use of the property impracticable. *Jackson County Citizens League v. Jackson County*, 38 Or LUBA 357 (2000).

3.3.7 EFU Statute/Ordinances – Nonfarm Uses – Unsuitability Standard. The mere presence of residential uses on EFU-zoned properties adjacent to a proposed exception area does not demonstrate that the subject property is irrevocably committed to nonfarm uses. In considering residential uses on adjacent properties, the county must identify in its findings the conflicts or other impacts between the residential uses and the subject property that make farm use of the subject property impracticable. *Jackson County Citizens League v. Jackson County*, 38 Or LUBA 357 (2000).

3.3.7 EFU Statute/Ordinances – Nonfarm Uses – Unsuitability Standard. A county must consider all farm uses in the area, including "hobby farm" uses located on adjacent properties, in determining whether property can practicably be managed for farm use, as required by ORS 215.705(2)(a)(C)(i**)**. *Friends of Linn County v. Linn County*, 37 Or LUBA 297 (1999).

3.3.7 EFU Statute/Ordinances – Nonfarm Uses – Unsuitability Standard. County findings that a parcel has been managed for "private use" rather than for "profit" fail to demonstrate that a parcel "cannot be practicably managed for farm use." Although the statutory definition of "farm use" requires that property be used "for the purpose of obtaining a profit in money," the term "profit" in this context does not mean profit in the ordinary sense, but rather refers to gross income. *Friends of Linn County v. Linn County*, 37 Or LUBA 280 (1999).

3.3.7 EFU Statute/Ordinances – Nonfarm Uses – Unsuitability Standard. A county's findings that a parcel "cannot be practicably managed for farm use" due to a ravine, road frontage, lack of irrigation and rocky soils are inadequate, where the parcel has been managed for pasture use in conjunction with a nearby 20-acre parcel in the past. That the cited factors may make the parcel unsuitable for intensive, cultivated agriculture does not establish that the parcel "cannot be practicably managed for farm use." *Friends of Linn County v. Linn County*, 37 Or LUBA 280 (1999).

3.3.7 EFU Statute/Ordinances – Nonfarm Uses – Unsuitability Standard. Under the agricultural lands definition, in western Oregon, Class V soils, when intermingled with Class IV soils, are not presumed to be nonagricultural, nor is the presence of Class V soils determinative, in itself, as to whether land is generally unsuitable for farm use. *Evenson v. Jackson County*, 36 Or LUBA 251 (1999).

3.3.7 EFU Statute/Ordinances – Nonfarm Uses – Unsuitability Standard. In addressing a code criterion requiring a finding that a parcel "cannot practicably be managed for farm use," a hearings officer's occasional use of the word "unsuitable" does not mean the hearings officer applied the wrong standard. *Jorgensen v. Clackamas County*, 34 Or LUBA 710 (1998).

3.3.7 EFU Statute/Ordinances – Nonfarm Uses – Unsuitability Standard. The suitability standard requires that the local government consider whether the subject parcel or portion thereof can reasonably be put to farm use in conjunction with adjacent or nearby lands, including land under the same ownership. The local government must consider not only the property's suitability for producing crops but also its suitability for producing livestock, both alone and in conjunction with adjoining and nearby properties. *DLCD v. Crook County*, 34 Or LUBA 243 (1998).

3.3.7 EFU Statute/Ordinances – Nonfarm Uses – Unsuitability Standard. The proper inquiry in reference to the unsuitability standard is whether the subject property can reasonably be put to farm or forest use alone or in conjunction with other land. In this context, farm use need not rise to the scale of a commercial agricultural enterprise. *Hearne v. Baker County*, 34 Or LUBA 176 (1998).

3.3.7 EFU Statute/Ordinances – Nonfarm Uses – Unsuitability Standard. Although the choice between conflicting testimony belongs to the county, where the evidence provided by petitioners reveals factual inconsistencies in intervenors' evidence, the county must at least explain a reasonable basis for its choice between the conflicting evidence. *Le Roux v. Malheur County*, 32 Or LUBA 124 (1996).

3.3.7 EFU Statute/Ordinances – Nonfarm Uses – Unsuitability Standard. Where the county's factual findings determine that the subject parcel contains soils that are presumptively suitable for farm use, but then conclude that the proposed dwelling is situated on land that is unsuitable for farm use, the county's conclusion is not supported by substantial evidence in the record. *Le Roux v. Malheur County*, 32 Or LUBA 124 (1996).

3.3.7 EFU Statute/Ordinances – Nonfarm Uses – Unsuitability Standard. An applicant carries the burden to demonstrate that a parcel is generally unsuitable for the production of farm crops and livestock. The question to be answered is whether the subject land, rather than a particular farmer, can produce crops or livestock. *Moore v. Coos County*, 31 Or LUBA 347 (1996).

3.3.7 EFU Statute/Ordinances – Nonfarm Uses – Unsuitability Standard. An operation that requires land for grazing horses employs that land for the production of livestock within the meaning of ORS 215.284(2)(b); therefore, a county errs when it concludes that consideration of the potential use of a parcel for grazing horses is not required in determining whether the parcel is generally unsuitable for farm use. *Moore v. Coos County*, 31 Or LUBA 347 (1996).

3.3.7 EFU Statute/Ordinances – Nonfarm Uses – Unsuitability Standard. In approving a nonfarm dwelling under OAR 660-33-130(4)(c), analysis is required regarding whether the parcel can be sold, leased or otherwise put to profitable agricultural use, unless the county first finds that a parcel is generally unsuitable for farm use, regardless of size. *Moore v. Coos County*, 31 Or LUBA 347 (1996).

3.3.7 EFU Statute/Ordinances – Nonfarm Uses – Unsuitability Standard. Findings that state that "property above the county road" is "unsuitable for commercial agricultural use" are insufficient because they do not clearly relate to the subject property and do not justify a conclusion

that the subject property is unsuitable for the production of farm crops, livestock or merchantable tree species. *O'Brien v. Lincoln County*, 31 Or LUBA 262 (1996).

3.3.7 EFU Statute/Ordinances – Nonfarm Uses – Unsuitability Standard. ORS 215.284(2)(b) imposes a requirement that nonfarm dwellings be located on land that is generally unsuitable for the production of both (1) "farm crops and livestock," and (2) "merchantable tree species." *DLCD v. Douglas County*, 28 Or LUBA 242 (1994).

3.3.7 EFU Statute/Ordinances – Nonfarm Uses – Unsuitability Standard. ORS 215.283(3)(d) must be independently applied to an application for division of EFU-zoned land and requires that the entire EFU-zoned parcel be found to be generally unsuitable for farm use, regardless of whether local regulations impose a more relaxed standard on homestead lot divisions. *Geiselman v. Clackamas County*, 26 Or LUBA 260 (1993).

3.3.7 EFU Statute/Ordinances – Nonfarm Uses – Unsuitability Standard. Evidence that a parcel is suitable for grazing of livestock is evidence of suitability for the production of farm products. *Alexanderson v. Clackamas County*, 26 Or LUBA 209 (1993).

3.3.7 EFU Statute/Ordinances – Nonfarm Uses – Unsuitability Standard. Where the challenged decision interprets a local code standard for nonforest dwellings to require that an entire parcel be generally unsuitable for farm or forest uses, and that interpretation is not clearly contrary to the words, policy or context of the code, LUBA will defer to it. *DLCD v. Lincoln County*, 26 Or LUBA 89 (1993).

3.3.7 EFU Statute/Ordinances – Nonfarm Uses – Unsuitability Standard. Where the record establishes only that a small portion of the subject parcel is unsuitable for forest uses, a reasonable person could not conclude the entire parcel is generally unsuitable for farm or forest uses. *DLCD v. Lincoln County*, 26 Or LUBA 89 (1993).

3.3.7 EFU Statute/Ordinances – Nonfarm Uses – Unsuitability Standard. Where a church is proposed to be located in an EFU zone, and a county code provision requires that there be "no other feasible location" for the proposed use that satisfies a code standard requiring that certain nonfarm uses in the EFU zone be located on land "generally unsuitable" for farm use, the county may interpret the code provision to require that there be no other feasible location for the propose church *in the EFU zone* that is generally unsuitable for agricultural production. *Simmons v. Marion County*, 25 Or LUBA 647 (1993).

3.3.7 EFU Statute/Ordinances – Nonfarm Uses – Unsuitability Standard. Where a code approval standard for home occupations in a resource zone requires that a home occupation be "situated upon generally unsuitable land for the production of farm and forest products," the local government may interpret the standard to require that the entire property on which the home occupation is proposed to be located be "generally unsuitable." *Smith v. Clackamas County*, 25 Or LUBA 568 (1993).

3.3.7 EFU Statute/Ordinances – Nonfarm Uses – Unsuitability Standard. Where a county interprets a forest zone requirement that nonforest uses be located on generally unsuitable land for

production of farm or forest products as requiring consideration of the suitability of the entire parcel, the county exercises its interpretive discretion to the fullest in interpreting a home occupation approval standard that incorporates the nonforest use standard by reference, as requiring consideration of only the land under the existing building where the home occupation will be located. *Weuster v. Clackamas County*, 25 Or LUBA 425 (1993).

3.3.7 EFU Statute/Ordinances – Nonfarm Uses – Unsuitability Standard. Findings that a parcel lacks water rights and does not produce sufficient forage for livestock without supplemental feed are inadequate to demonstrate the parcel is generally unsuitable land for agricultural production, where the parcel is large, has two active springs and is currently leased for grazing. *DLCD v. Crook County*, 25 Or LUBA 98 (1993).

3.3.7 EFU Statute/Ordinances – Nonfarm Uses – Unsuitability Standard. In the absence of a statutory policy pertaining to forestlands that, like the statutory policy concerning EFU land, requires the preservation of forestland in large blocks, LUBA cannot require that a local government interpret and apply its nonforest use "generally unsuitable" land approval standard in the same manner as the similarly worded statutory standard pertaining to nonfarm uses on EFU land. *DLCD v. Coos County*, 24 Or LUBA 349 (1992).

3.3.7 EFU Statute/Ordinances – Nonfarm Uses – Unsuitability Standard. Where a zoning district adopted to implement both Goal 3 and Goal 4 includes the generally unsuitable land standard that is required under statutory exclusive farm use zoning provisions, the generally unsuitable standard must be applied to the entire parent parcel and may not be limited in its application to a proposed nonforest parcel. *DLCD v. Curry County*, 24 Or LUBA 200 (1992).

3.3.7 EFU Statute/Ordinances – Nonfarm Uses – Unsuitability Standard. A proposed nonfarm dwelling will not be located on land generally unsuitable for farm use, as required by statute and local code provisions, where the evidence shows the property contains soils suitable for a variety of farm crops and, while the property is small, it can be farmed in conjunction with other nearby agricultural enterprises. *Reed v. Benton County*, 23 Or LUBA 486 (1992).

3.3.7 EFU Statute/Ordinances – Nonfarm Uses – Unsuitability Standard. A finding that a parcel is generally suitable for farm use is supported by substantial evidence where the evidence shows that, while the parcel is of limited value for farm use because it is small, the parcel is otherwise suitable for a variety of farm uses and could be used in conjunction with adjoining and nearby farming operations. *Nelson v. Benton County*, 23 Or LUBA 392 (1992).

3.3.7 EFU Statute/Ordinances – Nonfarm Uses – Unsuitability Standard. A parcel's small size cannot be relied upon, in whole or in part, to support a finding that the parcel is generally unsuitable for farm use, without also demonstrating the parcel cannot be leased or by some other arrangement be put to agricultural use in conjunction with adjoining or nearby farm uses. *Nelson v. Benton County*, 23 Or LUBA 392 (1992).

3.3.7 EFU Statute/Ordinances – Nonfarm Uses – Unsuitability Standard. In addressing the ORS 215.283(3)(d) "general unsuitability" standard for the approval of nonfarm dwellings in an EFU zone, or an equivalent standard in a local code, a local government must consider all relevant

factors listed in the standard, not just soil types. *Dority v. Clackamas County*, 23 Or LUBA 384 (1992).

3.3.7 EFU Statute/Ordinances – Nonfarm Uses – Unsuitability Standard. A determination of noncompliance with the ORS 215.283(3)(d) "general unsuitability" standard for the approval of nonfarm dwellings in an EFU zone, or an equivalent standard in a local code, does not require a finding that a reasonable and prudent farmer can put the subject property to profitable agricultural use. *Dority v. Clackamas County*, 23 Or LUBA 384 (1992).

3.3.7 EFU Statute/Ordinances – Nonfarm Uses – Unsuitability Standard. Where a parcel has historically been used for livestock grazing in conjunction with other adjoining parcels, a county must consider the subject parcel's suitability for grazing in conjunction with adjoining and nearby properties in determining whether the parcel satisfies the "generally unsuitable" standard. *Avgeris v. Jackson County*, 23 Or LUBA 124 (1992).

3.3.7 EFU Statute/Ordinances – Nonfarm Uses – Unsuitability Standard. Where evidence in the record establishes that with adequate drainage a parcel could be put to farm use, petitioner has not established as a matter of law that the proposed nonfarm use is located on land "generally unsuitable" for farm use. *Barber v. Marion County*, 23 Or LUBA 71 (1992).

3.3.7 EFU Statute/Ordinances – Nonfarm Uses – Unsuitability Standard. Local code term "generally unsuitable" is a term of art. Where a local code applies the "generally unsuitable" standard to the approval of nonforest dwellings in a forest zone, the legal interpretation of the term "generally unsuitable" developed in the context of nonfarm uses is applicable. *DLCD v. Coos County*, 23 Or LUBA 13 (1992).

3.3.7 EFU Statute/Ordinances – Nonfarm Uses – Unsuitability Standard. Where the evidence in the record establishes (1) the soils on the subject property are suitable for the production of forest and farm products, (2) the subject property has been logged, and other parcels in the area are suitable for the production of forest products or currently are used for the production of Christmas trees, there is substantial evidence that the subject property is not generally unsuitable for the production of farm and forest products. *Ralston v. Clackamas County*, 22 Or LUBA 573 (1992).

3.3.7 EFU Statute/Ordinances – Nonfarm Uses – Unsuitability Standard. In determining whether a nonforest dwelling proposed to be located on a small but otherwise suitable parcel may be approved under a "generally unsuitable for the production of farm or forest products" standard, it is proper for the local government to determine whether the subject parcel may be combined with other resource land and managed for farm or forest uses. *Samoilov v. Clackamas County*, 22 Or LUBA 446 (1991).

3.3.7 EFU Statute/Ordinances – Nonfarm Uses – Unsuitability Standard. Whether adjacent parcels are currently used for the production of farm or forest products is only indirectly relevant in determining whether such properties are suitable for farm or forest use. *Samoilov v. Clackamas County*, 22 Or LUBA 446 (1991).

3.3.7 EFU Statute/Ordinances – Nonfarm Uses – Unsuitability Standard. Evidence which establishes that a forest zoned parcel has been for sale for many years, but does not establish that the parcel was listed for sale at a price typical for farm of forest parcels, is not sufficient evidence to establish as a matter of law that the parcel cannot be combined with adjacent properties suitable for farm of forest uses. *Samoilov v. Clackamas County*, 22 Or LUBA 446 (1991).

3.3.7 EFU Statute/Ordinances – Nonfarm Uses – Unsuitability Standard. Adequate findings that the subject property is generally unsuitable for the production of farm crops and livestock regardless of size, supported by substantial evidence in the whole record, make it irrelevant whether the subject parcel may be combined with other land, as it cannot be made suitable in any event. *Stefan v. Yamhill County*, 21 Or LUBA 18 (1991).

3.3.7 EFU Statute/Ordinances – Nonfarm Uses – Unsuitability Standard. An exclusive farm use zone provision which states that a "nonfarm dwelling * * * will be located on * * * predominantly soil capability classes IV through VIII" requires that the *entire parcel* on which the proposed nonfarm dwelling will be located consist of predominantly Class IV-VIII soils. A U.S. Soil Conservation Service map can be substantial evidence for a determination of compliance with such a standard. *Adams v. Jackson County*, 20 Or LUBA 398 (1991).

3.3.7 EFU Statute/Ordinances – Nonfarm Uses – Unsuitability Standard. Where property has been used for grazing and growing of hay in the past and there is no evidence that anything about the land has changed to make it generally unsuitable for those purposes, there is substantial evidence to support a finding that the property is not generally unsuitable for the production of livestock. *Adams v. Jackson County*, 20 Or LUBA 398 (1991).

3.3.7 EFU Statute/Ordinances – Nonfarm Uses – Unsuitability Standard. Evidence that a parcel's soils are all Agricultural Class I-IV is relevant to whether the parcel is generally unsuitable for farm use. *McNulty v. Marion County*, 19 Or LUBA 367 (1990).

3.3.7 EFU Statute/Ordinances – Nonfarm Uses – Unsuitability Standard. Undisputed evidence in the record that at least half of the soils on the subject property are Agriculture Class I and II, and that at least seven of the subject parcel's eight acres have been, and continue to be, used for farm uses, is evidence which "clearly supports" a finding that the parcel is not generally unsuitable for farm use. *McNulty v. Marion County*, 19 Or LUBA 367 (1990).

3.3.7 EFU Statute/Ordinances – Nonfarm Uses – Unsuitability Standard. A statement that property is not useful for agricultural purposes because it is "heavily impacted by wetland and a drainage way" is conclusory and inadequate to establish that the subject property is unsuitable for the production of farm crops and livestock. *Reed v. Lane County*, 19 Or LUBA 276 (1990).

3.3.7 EFU Statute/Ordinances – Nonfarm Uses – Unsuitability Standard. Local code "unsuitability for the production of farm crops and livestock" standards similar to ORS 215.213(3)(b) and 215.283(3)(d) require an analysis of the physical attributes of the exclusive farm use zoned land which is the subject of a nonfarm dwelling application. Whether a particular farmer can make a profit, at a particular period in time, on a particular piece of farmland, is at best indirect

evidence of whether the land itself is suitable for the production of farm crops and livestock. *Reed v. Lane County*, 19 Or LUBA 276 (1990).

3.3.7 EFU Statute/Ordinances – Nonfarm Uses – Unsuitability Standard. Where 40 acres which produce only sparse forage of little value for grazing are generally unsuitable for grazing by themselves, but have historically been used for grazing in conjunction with the adjoining 400 acres, the adjoining 40 acres are not "generally unsuitable for farm use" within the meaning of ORS 215.213(3), 215.283(3) and county legislation implementing those statutes. *Clark v. Jackson County*, 19 Or LUBA 220 (1990).

3.3.7 EFU Statute/Ordinances – Nonfarm Uses – Unsuitability Standard. 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).

3.3.7 EFU Statute/Ordinances – Nonfarm Uses – Unsuitability Standard. 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).

3.3.7 EFU Statute/Ordinances – Nonfarm Uses – Unsuitability Standard. Where county findings determine property is suitable for the production of farm crops and livestock, but explain that the agricultural uses for which the parcel is suited are not "warranted" due to identified "substantially" limiting factors, including small parcel size, the county must determine whether the subject parcel may be put to agricultural use in combination with agricultural operations conducted in the area. *Stefan v. Yamhill County*, 18 Or LUBA 820 (1990).