

3.6 EFU Statute/Ordinances – Lot of Record 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).

3.6 EFU Statute/Ordinances – Lot of Record Dwellings. Under a local code definition of “same ownership” for purposes of applying the local government’s lot of record standards, a life estate is a “greater than possessory interest” where, in addition to possession, the life estate holder has the right alienate or encumber the property and to retain rents, profits, and other income generated by the property, and where the life estate is not, by the terms of the conveyance or reservation, qualified and limited to only a possessory interest. *Ellis v. Multnomah County*, 81 Or LUBA 84 (2020).

3.6 EFU Statute/Ordinances – Lot of Record Dwellings. A lot or parcel is not ineligible for a lot of record dwelling under ORS 215.705(1)(a) because it was transferred from a pre-1985 owner to a qualifying relative or business entity under ORS 215.705(6) by deed when the pre-1985 owner was still alive, *i.e.*, an *inter vivos* transfer, rather than by devise or intestate succession after their death. *Central Oregon Landwatch v. Deschutes County*, 81 Or LUBA 75 (2020).

3.6 EFU Statute/Ordinances – Lot of Record Dwellings. A family trust that the record shows was formed for the purpose of managing and eventually disposing of a pre-1985 owner’s assets, including real estate, to family members may qualify as a “business entity owned by any one or combination of these family members,” within the meaning of ORS 215.705(6), and, therefore, an “owner” of a lot or parcel, within the meaning of ORS 215.705(1)(a), for purposes of establishing a lot of record dwelling. *Central Oregon Landwatch v. Deschutes County*, 81 Or LUBA 75 (2020).

3.6 EFU Statute/Ordinances – Lot of Record Dwellings. A lot or parcel is not ineligible for a lot of record dwelling under ORS 215.705(1)(a) because it was transferred from a pre-1985 owner first to a family trust and then to a qualifying relative under ORS 215.705(6) as part of an estate plan; nothing in ORS 215.705(1)(a) limits the number of transfers of an otherwise qualifying parcel to a single transfer. *Central Oregon Landwatch v. Deschutes County*, 81 Or LUBA 75 (2020).

3.6 EFU Statute/Ordinances – Lot of Record Dwellings. Two parcels are not “under the same ownership” and, therefore, not a “tract,” within the meaning of ORS 215.010(2), where one is owned by a person individually and the other is owned by a trust, with the same person serving as trustee. *Central Oregon Landwatch v. Deschutes County*, 81 Or LUBA 75 (2020).

3.6 EFU Statute/Ordinances – Lot of Record Dwellings. A parcel “include[s] a dwelling,” making other parcels in the same tract ineligible for a lot of record dwelling under ORS 215.705(1)(b), where a lot of record dwelling has been approved on that parcel, even if construction of it has not yet started. *Central Oregon Landwatch v. Deschutes County*, 81 Or LUBA 75 (2020).

3.6 EFU Statute/Ordinances – Lot of Record 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).

3.6 EFU Statute/Ordinances – Lot of Record 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).

3.6 EFU Statute/Ordinances – Lot of Record Dwellings. Some of the ORS 215.705(1) standards to approve a lot of record dwelling, such as the requirement that the parcel be “lawfully created,” that the dwelling comply with applicable comprehensive plan provisions, and that the dwelling be consistent with big-game habitat limitations on residential density, require the exercise of policy or legal judgment, and therefore a decision approving or denying a lot of record dwelling under such standards is a land use decision as defined at ORS 197.015(10)(a), and does not fall within the exception for ministerial decisions at ORS 197.015(10)(b)(A). *Jones v. Douglas County*, 63 Or LUBA 261 (2011).

3.6 EFU Statute/Ordinances – Lot of Record Dwellings. Approval of a lot of record dwelling under the standards at ORS 215.705(1) constitutes the “discretionary approval of a proposed development of land” and is thus a “permit” decision subject to ORS 215.416, a conclusion made even clearer under ORS 215.417, which specifically describes dwellings provided under a number of statutes, including ORS 215.705(1), as permits approved under ORS 215.416. *Jones v. Douglas County*, 63 Or LUBA 261 (2011).

3.6 EFU Statute/Ordinances – Lot of Record Dwellings. ORS 215.705(7) provides that when a local government approves an application for a dwelling under ORS 215.705, including a lot of record dwelling by a qualifying owner under ORS 215.705(1)(a), the “application may be transferred” to any other person after the effective date of the land use decision.” The legislature was presumably aware that such decisions could be appealed and potentially remanded following a transfer to a person who does not qualify for a lot of record dwelling. In such circumstances, the subsequent purchaser can pursue the application on remand as if the property were still owned by the qualifying owner for purposes of ORS 215.705(1)(a). *Jones v. Douglas County*, 63 Or LUBA 261 (2011).

3.6 EFU Statute/Ordinances – Lot of Record Dwellings. A hearings officer correctly determines that adjoining parcels do not constitute a “tract” where the parcels are not in the same ownership, and the definition of “owner” found in ORS 215.705 is inapposite to that determination. *Craven v. Jackson County*, 135 Or App 250, 253-4, 898 P2d 809 (1995). *Lenox v. Jackson County*, 55 Or LUBA 538 (2008).

3.6 EFU Statute/Ordinances – Lot of Record Dwellings. Under local legislation that was adopted to implement lot of record provisions at ORS 215.705, once a dwelling is authorized on one of two parcels that makes up a tract in single ownership, a second dwelling may not be

approved on the remaining parcel in the tract. *Randall v. Klamath County*, 48 Or LUBA 321 (2004).

3.6 EFU Statute/Ordinances – Lot of Record Dwellings. For land to constitute “high-value farmland” under OAR 660-033-0020(8)(d), the land must be (1) west of the Coast Range summit, (2) used in conjunction with a dairy operation on January 1, 1993, and (3) part of a “tract,” one or more contiguous parcels in the same ownership, composed predominantly of listed soils. Separately owned parcels are not part of the same “tract” for purposes of OAR 660-033-0020(8)(d), even if those parcels were used together as part of a dairy operation on January 1, 1993. *Tallman v. Clatsop County*, 47 Or LUBA 240 (2004).

3.6 EFU Statute/Ordinances – Lot of Record 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).

3.6 EFU Statute/Ordinances – Lot of Record 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).

3.6 EFU Statute/Ordinances – Lot of Record 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).

3.6 EFU Statute/Ordinances – Lot of Record 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).

3.6 EFU Statute/Ordinances – Lot of Record 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).

3.6 EFU Statute/Ordinances – Lot of Record Dwellings. Seven lot of record dwellings on lots that range in size from as small as two acres to as large as eight acres are properly viewed as rural land uses. *Friends of Yamhill County v. Yamhill County*, 39 Or LUBA 478 (2001).

3.6 EFU Statute/Ordinances – Lot of Record Dwellings. Findings that rely on factors such as soil acidity, poor drainage, traffic conflicts, and the availability of irrigation that are conditions common to the area are inadequate to explain why farming cannot practicably be managed on a parcel due to “extraordinary circumstances” that do not generally apply to other lands in the vicinity, as required by ORS 215.705(2). *Friends of Linn County v. Linn County*, 37 Or LUBA 844 (2000).

3.6 EFU Statute/Ordinances – Lot of Record Dwellings. A county’s findings of compliance with the stability standard are inadequate, where the county fails to explain or justify a study area that places the subject property at the margin of the identified study area, and excludes from the study large EFU-zoned parcels adjacent to the subject property. *Friends of Linn County v. Linn County*, 37 Or LUBA 844 (2000).

3.6 EFU Statute/Ordinances – Lot of Record Dwellings. A county’s findings under the stability standard are inadequate, where the county fails to identify any uses on most of the EFU-zoned parcels within the study area, but merely assumes that the dominant land use in the area is residential because of the small size of most parcels and the fact that most dwellings in the area predated zoning restrictions. *Friends of Linn County v. Linn County*, 37 Or LUBA 844 (2000).

3.6 EFU Statute/Ordinances – Lot of Record Dwellings. A county’s finding that a proposed lot of record dwelling on high-value soils will not materially alter the stability of the overall land use pattern is inadequate, where the county considers only the stability of the *nonfarm* land uses in the area, and fails to consider whether the proposed dwelling will encourage additional nonfarm development in a manner that destabilizes remaining farm uses. *Friends of Linn County v. Linn County*, 37 Or LUBA 844 (2000).

3.6 EFU Statute/Ordinances – Lot of Record Dwellings. LCDRC has authority to adopt administrative rules that limit types of nonfarm uses otherwise allowed by statute. Therefore, OAR 660-033-0020(4), which establishes November 4, 1993, as the date a county must use for determining whether a dwelling exists on a tract for purposes of lot-of-record dwelling, is valid, notwithstanding that it prohibits some lot-of-record dwellings otherwise allowed by ORS 215.710. *Bruggere v. Clackamas County*, 37 Or LUBA 571 (2000).

3.6 EFU Statute/Ordinances – Lot of Record 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).

3.6 EFU Statute/Ordinances – Lot of Record Dwellings. 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).

3.6 EFU Statute/Ordinances – Lot of Record Dwellings. A parcel that qualifies as “high-value farmland” under the criteria established by statute is not disqualified as “high value farmland” because it is subject to “frost threat.” *DLCD v. Umatilla County*, 34 Or LUBA 703 (1998).

3.6 EFU Statute/Ordinances – Lot of Record Dwellings. Findings that a parcel “cannot practically be managed for farm use due to extraordinary circumstances” under ORS 215.705(a)(C)(i) are inadequate where the parcel has been used for an apple orchard for the past 18 years and the findings simply show that allowing a dwelling on the property would facilitate on-site management of the orchard. *DLCD v. Umatilla County*, 34 Or LUBA 703 (1998).

3.6 EFU Statute/Ordinances – Lot of Record Dwellings. A county’s findings addressing the requirement of ORS 215.705(a)(C)(iii) that a dwelling not “materially alter the stability of the overall land use pattern of the area” must limit the analysis to EFU-zoned lands. Where LUBA cannot determine whether the analysis was so limited, the decision will be remanded. *DLCD v. Umatilla County*, 34 Or LUBA 703 (1998).

3.6 EFU Statute/Ordinances – Lot of Record 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).

3.6 EFU Statute/Ordinances – Lot of Record Dwellings. The legislative intent of ORS 215.705 lot-of-record provisions is to allow property owners who acquired property prior to 1985 to subsequently transfer the lot to designated family members or entities without losing the right to build a dwelling on that property. *DLCD v. Yamhill County*, 33 Or LUBA 362 (1997).

3.6 EFU Statute/Ordinances – Lot of Record Dwellings. An *inter vivos* transfer of a parcel from the present owner who held the property prior to January 1, 1985, to a family member as defined in ORS 215.705(6) will preserve the expectation of the right to site a lot of record dwelling on the parcel as provided under ORS 215.705(1)(a). *DLCD v. Yamhill County*, 33 Or LUBA 362 (1997).

3.6 EFU Statute/Ordinances – Lot of Record Dwellings. When a unit of land is divided between two zones, the local government must apply the lot-of-record standards appropriate to the predominant use of that unit. *Phillips v. Yamhill County*, 32 Or LUBA 308 (1997).

3.6 EFU Statute/Ordinances – Lot of Record Dwellings. The requirement stated in ORS 215.705(1)(b) that the tract on which a proposed lot-of-record dwelling is to be sited not include a dwelling, and the consolidation requirement in ORS 215.705(1)(g) operate to prohibit approval of a lot-of-record dwelling unless (1) the tract of which the lot is a part contains no dwellings; and (2) all lots within the tract are consolidated at the time of approval. *DeBates v. Yamhill County*, 32 Or LUBA 276 (1997).

3.6 EFU Statute/Ordinances – Lot of Record Dwellings. ORS 215.705 precisely states comprehensive criteria that govern when a lot-of-record dwelling may be allowed. Under ORS

183.400 and ORS 215.304(3), OAR 660-33-020(4) cannot be interpreted to prohibit what the statute otherwise allows. *DeBates v. Yamhill County*, 32 Or LUBA 276 (1997).

3.6 EFU Statute/Ordinances – Lot of Record Dwellings. Because ORS 215.705 mentions only the date of creation or existence of a *lot or parcel*, the reconfiguration of a *tract* containing the lot or parcel has no significance in determining when, for purposes of qualifying for a lot-of-record dwelling, the lot or parcel was created. *DeBates v. Yamhill County*, 32 Or LUBA 276 (1997).

3.6 EFU Statute/Ordinances – Lot of Record Dwellings. ORS 215.705 cannot be interpreted or supplemented by LCDC rule to provide that the reconfiguration of a tract through the sale of one or more lots extinguishes the right to build a dwelling on at least one of the lots of record within the original tract. *DeBates v. Yamhill County*, 32 Or LUBA 276 (1997).

3.6 EFU Statute/Ordinances – Lot of Record Dwellings. A county that wishes to limit lot-of-record dwellings to protect agricultural lands cannot rely on policies and regulations implementing ORS 215.283(3)(d), which protects agricultural land, but must legislatively adopt new policies and regulations pursuant to ORS 215.705(5). However, policies and regulations with an apparent purpose other than to protect agricultural land are not superseded by ORS 215.705. *DeBates v. Yamhill County*, 32 Or LUBA 276 (1997).

3.6 EFU Statute/Ordinances – Lot of Record Dwellings. A lot-of-record dwelling is not precluded by ORS 215.705 where an applicant voluntarily relinquishes irrigation rights to one acre of his property in order to remove it from the definition of “high-value farmland” under ORS 215.710(1). *Younger v. Jackson County*, 32 Or LUBA 177 (1996).

3.6 EFU Statute/Ordinances – Lot of Record Dwellings. Lot-of-record provisions should be interpreted as limited in their application to property owners who had a reasonable expectation in 1985 of a right to build a home. *Walz v. Polk County*, 31 Or LUBA 363 (1996).

3.6 EFU Statute/Ordinances – Lot of Record Dwellings. The term “present owner,” as it is used in ORS 215.705(1)(a), refers to a land sale contract vendee, not a land sale contract vendor. *Walz v. Polk County*, 31 Or LUBA 363 (1996).

3.6 EFU Statute/Ordinances – Lot of Record Dwellings. The word “owner,” as it is used in ORS 215.705, is not defined, and when applied to land generally, has no fixed and inflexible meaning. *Walz v. Polk County*, 31 Or LUBA 363 (1996).

3.6 EFU Statute/Ordinances – Lot of Record Dwellings. A county may rely on the current ownership of the subject and contiguous parcels in determining whether a proposed “lot of record” dwelling is located on a “tract” that does not include a dwelling, as required by ORS 215.705(1)(b). *Craven v. Jackson County*, 29 Or LUBA 125 (1995).

3.6 EFU Statute/Ordinances – Lot of Record Dwellings. The expansive definition of “owner” in ORS 215.705(6) explicitly applies only to ORS 215.705(1)(a), which refers to when the subject lot or parcel “was acquired by the present owner.” The ORS 215.705(6) definition of “owner” does

not apply to the term “tract,” as used in ORS 215.705(1)(b), or to the term “ownership,” as used in the ORS 215.010(2) definition of “tract.” *Craven v. Jackson County*, 29 Or LUBA 125 (1995).

3.6 EFU Statute/Ordinances – Lot of Record Dwellings. Under ORS 197.746(3) and appellate court decisions, the provisions of ORS 215.705 are directly applicable to a county decision to approve a “lot of record” dwelling in an exclusive farm use zone, and the county cannot apply comprehensive plan or code criteria that are inconsistent with, or less restrictive than, the applicable statutory standards. *Blondeau v. Clackamas County*, 29 Or LUBA 115 (1995).

3.6 EFU Statute/Ordinances – Lot of Record 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).

3.6 EFU Statute/Ordinances – Lot of Record Dwellings. ORS 215.705(1)(c) does not allow a county to deny a “lot of record” dwelling because it fails to comply with code provisions previously adopted to implement ORS 215.283(3) (1991) or with comprehensive plan provisions generally requiring protection of agricultural land. *Blondeau v. Clackamas County*, 29 Or LUBA 115 (1995).

3.6 EFU Statute/Ordinances – Lot of Record Dwellings. A code provision allowing establishment of a dwelling on certain “lots of record,” if the “lot or parcel” does not already have a dwelling, is impermissibly less strict than ORS 215.705(1)(b), which requires that the “tract” not have a dwelling. ORS 215.010(2) defines “tract” as “one or more contiguous lots or parcels under the same ownership.” *DLCD v. Josephine County*, 28 Or LUBA 459 (1994).

3.6 EFU Statute/Ordinances – Lot of Record Dwellings. With regard to siting a lot of record dwelling on high-value farmland, a county does not have authority to require that an Oregon Department of Agriculture hearings officer make determinations other than those specified in ORS 215.705(2)(c). *DLCD v. Josephine County*, 28 Or LUBA 459 (1994).

3.6 EFU Statute/Ordinances – Lot of Record 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).

3.6 EFU Statute/Ordinances – Lot of Record Dwellings. ORS 215.705(1)(a) does not allow lot-of-record dwellings on EFU-zoned lots or parcels that were created after January 1, 1985, even if the parent lot or parcel was acquired prior to January 1, 1985. *DLCD v. Douglas County*, 28 Or LUBA 242 (1994).

3.6 EFU Statute/Ordinances – Lot of Record Dwellings. ORS 215.705(1)(a) does not allow lot-of-record dwellings on EFU-zoned lots or parcels that were illegally created before January 1, 1985, even if action was taken after January 1, 1985 to legalize the illegally created lots or parcels. *DLCD v. Douglas County*, 28 Or LUBA 242 (1994).