

31.3.2 Permits – Particular Uses – Farm Dwellings. A county may not allow unlimited, successive one-year extensions of permits for residential development on resource land where state statute and regulation provide that such permits “shall be valid for four years” and that “[a]n extension” thereof “shall be valid for two years,” where nothing in the legislative history suggests an intent to allow more than one extension. *Landwatch Lane County v. Lane County*, 79 Or LUBA 96 (2019).

31.3.2 Permits – Particular Uses – Farm Dwellings. OAR 660-033-0130(8)(a)(A)(i) to (iv) provide in relevant part that a lawfully established dwelling may be repaired, altered or replaced if the dwelling “has, or formerly had” indoor plumbing. The rule’s requirements are disjunctive and an applicant can satisfy the rule by demonstrating that a mobile home “has” or “formerly had” indoor plumbing. *Treadway v. Jefferson County*, 72 Or LUBA 122 (2015).

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

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

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

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

31.3.2 Permits – Particular Uses – Farm Dwellings. A county errs in finding that a farm dwelling will be occupied by persons principally engaged in farm use of the land at a “commercial scale” for purposes of OAR 660-033-0135(1)(c) based on evidence of ranching activities on a 17,000-acre ranch that the subject tract is associated with, instead of the tract on which the proposed

dwelling will be located. *Oregon Natural Desert Assoc. v. Harney County*, 65 Or LUBA 246 (2012).

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

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

31.3.2 Permits – Particular Uses – Farm Dwellings. A county decision concerning whether to extend or terminate a permit authorizing construction of a farm dwelling based on whether there has to be “substantial compliance with the approved farm management plan” constitutes “discretionary approval” of a “proposed development of land” and, therefore, is a “permit” within the meaning of ORS 215.402(4). *Rochlin v. Multnomah County*, 35 Or LUBA 333 (1998).

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

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

31.3.2 Permits – Particular Uses – Farm 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).

31.3.2 Permits – Particular Uses – Farm Dwellings. Conditioning approval of a farm dwelling on the applicant obtaining a zoning permit with the board of county commissioners acting as initial decision maker on the zoning permit rather than the planning director is at most a procedural error, which provides a basis for reversal or remand only if petitioner’s substantial rights are violated. *Louisiana Pacific v. Umatilla County*, 26 Or LUBA 247 (1993).

31.3.2 Permits – Particular Uses – Farm Dwellings. A county decision approving a dwelling on a lot or parcel that is a woodlot capable of producing 10,000 dollars or more in average gross annual income, as provided in ORS 215.213(2)(b)(B), is “discretionary” and is a “permit,” as

defined by ORS 215.402(4). *McKay Creek Valley Assoc. v. Washington County*, 24 Or LUBA 187 (1992).

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

31.3.2 Permits – Particular Uses – Farm Dwellings. Nothing in ORS 215.213(2) requires a local government to find that a proposed dwelling in conjunction with farm use be “necessary” to the farm use of the property. *Harwood v. Lane County*, 23 Or LUBA 191 (1992).

31.3.2 Permits – Particular Uses – Farm Dwellings. Where there is neither a local code nor a statutory definition of the term “perennial,” the commonly understood meaning of that term is applied. Under the commonly understood meaning of “perennial,” a Christmas tree is a perennial under ORS 215.213(2)(b)(A). *Harwood v. Lane County*, 23 Or LUBA 191 (1992).

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