31.3.5 Permits – Particular Uses – Nonresource Dwellings. ORS 215.750 and OAR 660-006-0027(3) authorize local governments to approve forest template dwellings if at least three dwellings existed within a specified 160-acre area and those dwellings continue to exist at the time forest template dwelling approval is requested. But neither the statute nor the rule defines the key term "dwelling" and neither the statute nor the rule explicitly addresses whether a long abandoned, derelict structure may qualify as a "dwelling," for purposes of qualifying for a forest template dwelling. *West v. Multnomah County*, 70 Or LUBA 235 (2014).

31.3.5 Permits – Particular Uses – Nonresource Dwellings. ORS 215.750 and OAR 660-006-0027(3) authorize local governments to approve forest template dwellings if at least three dwellings existed within a specified 160-acre area and those dwellings continue to exist at the time forest template dwelling approval is requested. A hearings officer's interpretation of the word "dwelling" in local laws adopted to implement ORS 215.750 and OAR 660-006-0027(3) such that a former dwelling that has been vacant for many years and is in a state of disrepair that would preclude use as a residence does not qualify as a "dwelling" for purposes of satisfying ORS 215.750 and OAR 660-006-0027(3) is more consistent with the underlying purpose of the statute and rule. That underlying purpose is to allow forest template dwellings in circumstances where there is existing limited residential development on forest lands, and the hearings officer's interpretation is more consistent with that underlying purpose than interpreting the word "dwelling" to include long abandoned structures, no matter how derelict and uninhabitable as a dwelling in its current condition. *West v. Multnomah County*, 70 Or LUBA 235 (2014).

31.3.5 Permits – Particular Uses – Nonresource Dwellings. ORS 215.750 and OAR 660-006-0027(3) authorize local governments to approve forest template dwellings if at least three dwellings existed within a specified 160-acre area and those dwellings continue to exist at the time forest template dwelling approval is requested. Where the record supports a hearings officer's finding that a dwelling that was constructed in 1906 has been unoccupied for many years prior to an application for approval of a forest template dwelling, the hearings officer correctly found that the 1906 dwelling was a nonconforming use in the county's forest zone that was first applied long after the 1906 dwelling was constructed. And the hearings officer correctly found that under local laws adopted to implement ORS 215.750 and OAR 660-006-0027(3), the forest template dwelling applicant must establish that the right to continue residential use of the 1906 dwelling was not lost through interruption or abandonment for two years or more before the 1906 dwelling could be counted as a dwelling that "continues to exist" at the time the application for approval of a forest template dwelling was filed. *West v. Multnomah County*, 70 Or LUBA 235 (2014).

31.3.5 Permits – Particular Uses – Nonresource Dwellings. A hearings officer does not err in concluding that connecting a dwelling to a rural sewer service district's existing system constitutes either the establishment of a "new community sewer system" or a "new extension of a sewer system from within an urban growth boundary." *Purtzer v. Jackson County*, 67 Or LUBA 205 (2013).

31.3.5 Permits – Particular Uses – Nonresource Dwellings. When a previous approval for a partition required that the parcels not be used for residential purposes unless legal access was provided to the parcels, a current application for a lot of record dwelling cannot be approved unless the proposed dwelling satisfies the access standards that applied at the time of the partition or

satisfies current standards. The fact that the applicant has an easement for residential use does not mean that the easement satisfies the local government standards for legal access. *Estremado v. Jackson County*, 61 Or LUBA 148 (2010).

31.3.5 Permits – Particular Uses – Nonresource 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).

31.3.5 Permits – Particular Uses – Nonresource 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).

31.3.5 Permits – Particular Uses – Nonresource 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).

31.3.5 Permits – Particular Uses – Nonresource Dwellings. Where a local code allows a non-farm dwelling only on land that is not predominantly composed of Class I through Class VI soils, and the property is composed predominantly of Class VI soils, a local government errs in finding that an application complies with that code provision. *Ott v. Lake County*, 54 Or LUBA 502 (2007).

31.3.5 Permits – Particular Uses – Nonresource Dwellings. In determining whether a property is generally unsuitable for the production of farm crops and livestock or merchantable tree species, a county's conclusion that any historic agricultural use on the property before that time does not provide a substantial hurdle is supported by substantial evidence where the county chooses to rely on an expert's opinion that proposed nonfarm parcels have not been used for agricultural operation in the past 20 years. *Peterson v. Crook County*, 52 Or LUBA 160 (2006).

31.3.5 Permits – Particular Uses – Nonresource Dwellings. Where the record reflects that 10 acres of irrigation rights were removed from two 20-acre parcels because (1) irrigating with that water was extremely inefficient, (2) the nonfarm parcels consist of 85 percent bare ground, and (3) moving the irrigation rights back would provide no benefit, county's findings that returning irrigation rights to the property would not render the nonfarm parcels generally suitable for the

production of farm crops or livestock is supported by substantial evidence. *Peterson v. Crook County*, 52 Or LUBA 160 (2006).

31.3.5 Permits – Particular Uses – Nonresource Dwellings. Where the record reflects that at least 75 percent of the parcels proposed for nonfarm dwellings are incapable of supporting grazing, the county is not required to specifically consider whether neighboring ranchers could use the proposed nonfarm parcels in conjunction with other ranch land. *Peterson v. Crook County*, 52 Or LUBA 160 (2006).

31.3.5 Permits – Particular Uses – Nonresource Dwellings. Where two parcels are divided by a fee interest in a strip of land owned by the county for use as a public roadway, the two parcels are not contiguous and are not part of the same "tract." In that circumstance, where one of the parcels already contains a dwelling, the approval of a forest template dwelling on the other parcel does not violate ORS 215.750(4)(d), which prohibits the approval of a forest template dwelling on a "tract" that already includes a dwelling. *Lovinger v. Lane County*, 51 Or LUBA 29 (2006).

31.3.5 Permits – Particular Uses – Nonresource Dwellings. Where a strip of land was transferred in fee title to the county for roadway purposes, the resulting units of land lying on either side of that strip do not violate the requirement in ORS 92.014 (1955) that "[n]o person shall create a street or way for the purpose of partitioning a parcel of land without the approval of the agency or body authorized to give approval of plans for subdivision," where the record does not indicate that the roadway was created "for the purpose of partitioning land." Accordingly, the county does not err in determining that one of those resulting units of land is a lawfully created "parcel," and complies with the requirement in ORS 215.705(1)(a) that the lot or parcel on which a forest template dwelling is proposed was lawfully created. *Lovinger v. Lane County*, 51 Or LUBA 29 (2006).

31.3.5 Permits – Particular Uses – Nonresource Dwellings. Where local code criteria applicable to approval of a forest template dwelling do not include any reference to local floodplain regulations, and those floodplain regulations appear to regulate the actual construction and placement of structures within a floodplain zone, and are more properly addressed at the time a building permit is issued, the county does not err in failing to adopt findings addressing those floodplain regulations in approving a forest template dwelling. *Lovinger v. Lane County*, 51 Or LUBA 29 (2006).

31.3.5 Permits – Particular Uses – Nonresource Dwellings. Where the local code fire siting standards require that secondary fuel breaks (*i.e.*, a fuel break extending 130 feet in all directions around structures) "or their equivalent" apply to new residences, the county does not err in determining that secondary fuel breaks are not required in the riparian setback area, where the findings adopted in support of the riparian vegetation setback regulations acknowledge that riparian vegetation provides a sufficient natural barrier against the spread of fire. *Lovinger v. Lane County*, 51 Or LUBA 29 (2006).

31.3.5 Permits – Particular Uses – Nonresource Dwellings. Findings that the subject property is generally unsuitable for the production of farm crops and livestock or merchantable tree species are inadequate where the findings are based on the presence of rock outcroppings and shallow

soils, but the findings do not indicate the percentage of the property covered by rock outcroppings and shallow soils. *Peterson v. Crook County*, 49 Or LUBA 223 (2005).

31.3.5 Permits – Particular Uses – Nonresource Dwellings. Where a property had water rights that the applicant transferred to other property, the county must consider the possibility of transferring those rights back to the property and the potential capability of the soils if the water rights were transferred back in determining whether the subject property satisfies the "generally unsuitable" standard under ORS 215.263(5). *Peterson v. Crook County*, 49 Or LUBA 223 (2005).

31.3.5 Permits – Particular Uses – Nonresource Dwellings. Under ORS 215.705(4), an application for a dwelling in a mixed farm/forest zone must comply with the siting standards appropriate for the predominant use of the tract on January 1, 1993. A showing that no farm use of the property, as that term is defined in ORS 215.203(2), was occurring on the tract as of January 1, 1993, does not mean that, by default, the property was predominantly in forest use on that date. *Gambee v. Yamhill County*, 38 Or LUBA 420 (2000).

31.3.5 Permits – Particular Uses – Nonresource Dwellings. ORS 215.705(4) requires that a county must determine whether farm or forest uses predominated on a "tract" on January 1, 1993. However, the configuration of the tract is considered as it exists as of the time an application for a dwelling is submitted. Once the scope of the tract is identified, the inquiry turns to whether farm or forest uses predominated on that tract on January 1, 1993. *Gambee v. Yamhill County*, 38 Or LUBA 420 (2000).

31.3.5 Permits – Particular Uses – Nonresource Dwellings. In considering which of two uses, farm or forest, predominate on a tract as of January 1, 1993, a county may consider more than the number of acres devoted to farm or forest use to determine predominant use. However, those considerations must flow from the use that was made of the tract on January 1, 1993. Thus, income from farm and forest uses and the amount of activity directed at those uses may be considered, but historic uses and soil capability may not. *Gambee v. Yamhill County*, 38 Or LUBA 420 (2000).

31.3.5 Permits – Particular Uses – Nonresource Dwellings. Portions of a tract that are used for nonfarm or nonforest activities have no relevance to the inquiry under ORS 215.705(4), which requires a county to determine whether farm or forest uses predominated on a tract as of January 1, 1993. If only a small portion of the property can reasonably be considered to be in farm or forest use, the county need only consider that portion in its determination of predominant use. *Gambee v. Yamhill County*, 38 Or LUBA 420 (2000).

31.3.5 Permits – Particular Uses – Nonresource Dwellings. In challenging a denial on evidentiary grounds, petitioner must demonstrate that the county's reliance on one method to determine the center of a parcel, rather than an alternative method, is either contrary to law or is so unreasonable that only petitioner's alternative can be believed as a matter of law. *Linker v. Multnomah County*, 38 Or LUBA 84 (2000).

31.3.5 Permits – Particular Uses – Nonresource Dwellings. Where a statute or a county code does not define "center" or specify a procedure for determining the "center of the subject tract,"

the local government can choose any reasonable method to locate the center of the tract. *Linker v. Multnomah County*, 38 Or LUBA 84 (2000).

31.3.5 Permits – Particular Uses – Nonresource Dwellings. A local government's method of determining the center of a lot or parcel does not have to be mathematically precise, so long as it is sufficiently accurate that a reasonable decision maker could have relied on it. *Linker v. Multnomah County*, 38 Or LUBA 84 (2000).

31.3.5 Permits – Particular Uses – Nonresource Dwellings. A parcel that lies wholly outside the 160-acre template required to site a nonforest dwelling under ORS 215.750 may not be counted as a qualifying parcel, even if that parcel is part of a tract, some part of which lies inside the template. *Smith v. Jackson County*, 37 Or LUBA 779 (2000).

31.3.5 Permits – Particular Uses – Nonresource Dwellings. Petitioners fail to establish compliance with all mandatory approval criteria for a special medical hardship permit allowing a temporary mobile home on their property in a forest zone where they fail to present any evidence indicating that no reasonable housing alternatives exist that could meet one petitioner's needs for special medical attention. *Lopatin v. Clackamas County*, 32 Or LUBA 158 (1996).

31.3.5 Permits – Particular Uses – Nonresource Dwellings. 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).

31.3.5 Permits – Particular Uses – Nonresource Dwellings. To establish that a nonfarm dwelling will not materially alter the stability of the land use pattern in the area, the county must (1) select an appropriate area for consideration; (2) examine the types of uses existing in the selected area; and (3) determine that the proposed nonfarm use will not materially alter the stability of the existing uses in the selected area. *Thomas v. Wasco County*, 30 Or LUBA 302 (1996).

31.3.5 Permits – Particular Uses – Nonresource Dwellings. A county may interpret a zoning ordinance to regulate the establishment of nonforest dwellings more stringently than is required under ORS 215.750. *Dilworth v. Clackamas County*, 30 Or LUBA 279 (1996).

31.3.5 Permits – Particular Uses – Nonresource 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).

31.3.5 Permits – Particular Uses – Nonresource 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).

31.3.5 Permits – Particular Uses – Nonresource Dwellings. A local decision erroneously concludes a previous local decision did not grant conditional use approval for a nonfarm dwelling where (1) the previous decision states it approves a nonfarm dwelling, and (2) the local government treated the previous application as requesting nonfarm dwelling approval. *Rodriguez v. Marion County*, 26 Or LUBA 50 (1993).

31.3.5 Permits – Particular Uses – Nonresource 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).

31.3.5 Permits – Particular Uses – Nonresource Dwellings. Where a "generally unsuitable" approval standard for nonforest dwellings established by an LCDC enforcement order provides that land with certain soil types is presumed *not* to be "generally unsuitable," unless findings explain why "other factors" make the land generally unsuitable, it is reasonable to interpret such "other factors" to be limited to the physical characteristics listed in the first part of the approval standard. *DLCD v. Klamath County*, 25 Or LUBA 355 (1993).

31.3.5 Permits – Particular Uses – Nonresource Dwellings. Where an approval standard requires that a proposed nonforest dwelling "not interfere seriously with the accepted forestry practices on adjacent lands," a local government must first determine what those accepted forestry practices are. Statements that "logging practices" which have occurred on adjacent properties are "logging" or "salvage logging" are not adequate descriptions of accepted forestry practices. *DLCD v. Klamath County*, 25 Or LUBA 355 (1993).

31.3.5 Permits – Particular Uses – Nonresource 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).

31.3.5 Permits – Particular Uses – Nonresource Dwellings. A code standard requiring that a proposed nonfarm/nonforest dwelling in a farm/forest zone not materially alter the stability of the land use pattern of the area, requires findings (1) identifying an area for consideration, (2) identifying the farm and forest practices occurring in the identified area, and (3) explaining of how the proposal will affect those practices. *Veach v. Wasco County*, 23 Or LUBA 492 (1992).

31.3.5 Permits – Particular Uses – Nonresource Dwellings. A code requirement that a proposed nonresource dwelling not be incompatible or interfere with adjacent farm and forest uses requires findings (1) identifying an area zoned for farm and forest uses, (2) determining what farm and forest uses occur within that identified area, and (3) evaluating whether the proposed nonresource dwelling will be "incompatible" or will "interfere" with those practices. *Veach v. Wasco County*, 23 Or LUBA 492 (1992).

31.3.5 Permits – Particular Uses – Nonresource Dwellings. Evidence that soils on a particular parcel are not particularly good for farming does not clearly support a determination that a proposed nonresource dwelling will not materially alter the stability of the land use pattern of the

area, or be incompatible or interfere with adjacent farm or forest uses. *Veach v. Wasco County*, 23 Or LUBA 492 (1992).

31.3.5 Permits – Particular Uses – Nonresource Dwellings. Forestlands containing soils that are below the national average for timber productivity are nevertheless suitable for timber production where the soils have a timber productivity rating which applicable law establishes as presumptively suitable for timber production. *DLCD v. Klamath County*, 23 Or LUBA 264 (1992).

31.3.5 Permits – Particular Uses – Nonresource Dwellings. Pine beetle infestation does not render land generally unsuitable for timber production where it is not established that such an infestation represents a permanent or long-term limitation on the timber productivity of the property. *DLCD v. Klamath County*, 23 Or LUBA 264 (1992).

31.3.5 Permits – Particular Uses – Nonresource Dwellings. The small size of a lot does not render the lot unsuitable for timber production where the lot is part of a larger parcel and adjoins other larger forest parcels with which the lot could be managed for forest purposes. *DLCD v. Klamath County*, 23 Or LUBA 264 (1992).

31.3.5 Permits – Particular Uses – Nonresource Dwellings. 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 (3) 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).