

7.2.1 Goal 3 – Agricultural Lands/ Goal 3 Rule – Agricultural Land Definition – Generally.

In Western Oregon, where a ranch leases the subject property and adjacent properties for grazing, and where the adjacent properties are in capability classes I-IV, the subject property is both within and adjacent to a “farm unit,” and is therefore “agricultural land” under OAR 660-033-0020(1)(b). That the lease is not in writing, the owner of the subject property receives “de minimis” compensation from the ranch, the ranch does not object to an application to amend the subject property’s comprehensive plan designation and rezone the subject property for residential uses, and the subject property adds “no significant economic value to grazing operations on the adjacent properties” does not affect the subject property’s qualification as “agricultural land.” *Friends of Douglas County v. Douglas County*, 81 Or LUBA 644 (2020).

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In the context of an application to remove property from a county’s Goal 5 inventory of significant aggregate resources, where the county has previously determined, in two separate final, acknowledged decisions—one based on area-specific soils mapping and the other based on periodic review which resulted in an updated inventory—that the property should not be included on the county’s Goal 3 inventory of agricultural lands; where the county zoned the property for surface mining, a zone that does not implement Goal 3, after one of those previous determinations; and where the ESEE analysis for the property does not specify a post-mining zoning designation or use, a conclusion that the property is not agricultural land is supported by substantial evidence. The county, having previously determined that the property is not agricultural land, is not required to revisit whether the property is agricultural land. *Central Oregon Landwatch v. Deschutes County*, 80 Or LUBA 252 (2019).

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In the context of an application to change the comprehensive plan designation of property to Rural Residential Exception Area, where a comprehensive plan provision provides that “any new Rural Residential Exception Areas need to be justified through initiating a non-resource plan amendment and zone change by demonstrating that the property does not meet the definition of agricultural * * * land,” a county correctly determines that an applicant satisfies that provision by producing copies of the county’s adopted and acknowledged agricultural lands inventories, which do not include the property. Even where an opponent submits an NRCS soils map into the record, which the opponent argues shows the property’s soils constitute agricultural lands, where the NRCS website that the opponent used to prepare the soils map includes a disclaimer regarding the large scale of mapping, stating that “[e]nlargement of maps beyond the scale of mapping can cause misunderstanding of the detail of mapping and accuracy of soil line placement,” a reasonable decision-maker would rely on the inventories to conclude that the property is not agricultural land, and a reasonable decision-maker could determine that the NRCS soils map is less credible than the inventories. *Central Oregon Landwatch v. Deschutes County*, 80 Or LUBA 252 (2019).

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OAR 660-033-0030(5) permits use of “[m]ore detailed data on soil capability than is contained in the National Resource Conservation Service” soil maps and surveys to determine whether particular soils qualify as agricultural soils. A more detailed soils study of a 21.59-acre parcel that uses 43 soil data points, five transects and 276 site observations is substantial evidence that the parcel contains predominantly Class VII and VIII soils rather than predominantly Class VI soils

as shown by the National Resource Conservation Service soil survey. *Central Oregon Landwatch v. Deschutes County*, 74 Or LUBA 156 (2016).

7.2.1 Goal 3 – Agricultural Lands/ Goal 3 Rule – Agricultural Land Definition – Generally. As defined by OAR 660-033-020(8), “High Value Farmland” includes tracts with soils that are predominantly prime, unique, Class I and Class II farmland. The OAR 660-033-020(8) definition of High Value Farmland includes all subclassifications of Class II soils, and a tract that has predominantly Class II soils therefore is High Value Farmland. *Gottman v. Clackamas County*, 64 Or LUBA 358 (2011).

7.2.1 Goal 3 – Agricultural Lands/ Goal 3 Rule – Agricultural Land Definition – Generally. Where the petitioner fails to challenge findings that explain why the county chose to rely on a consultant’s report that estimates the costs of putting land to farm use based on certain assumptions, the petitioner’s evidentiary arguments that the county should have used other assumptions fails to establish that the report is flawed or that the county erred in relying on the report. *Wetherell v. Douglas County*, 60 Or LUBA 131 (2009).

7.2.1 Goal 3 – Agricultural Lands/ Goal 3 Rule – Agricultural Land Definition – Generally. When considering the profitability of land for farm use, the fair market value of property zoned for agricultural use incorporates a host of nonfarm economic values in addition to the value of the property attributable to its suitability for farm use. Property owned in fee simple grants the owner a bundle of rights and investment potentials, only some of which are related to the economic use of the land in general, or for farm use in particular. The fair market value of any EFU-zoned parcel presumably reflects its potential for nonfarm uses as well. *Wetherell v. Douglas County*, 60 Or LUBA 131 (2009).

7.2.1 Goal 3 – Agricultural Lands/ Goal 3 Rule – Agricultural Land Definition – Generally. Even though the county relied on an erroneous calculation of potential mortgage carrying costs associated with attempting to farm the property, because even without the losses from mortgage costs, evidence in the record indicates that the property could not be profitably farmed, the county did not err in finding that the property could not be profitably farmed. *Wetherell v. Douglas County*, 60 Or LUBA 131 (2009).

7.2.1 Goal 3 – Agricultural Lands/ Goal 3 Rule – Agricultural Land Definition – Generally. Unlike OAR 660-033-0020(1)(a)(B), OAR 660-033-0120(1)(b) does not refer to profitability, so whether a “farm unit” has been or can be farmed “profitably” is not a consideration for purposes of the “farm unit” prong. The question under OAR 660-033-0120(1)(b) is whether the subject property is properly viewed as part of a “farm unit,” despite the recent cessation of joint use. *Wetherell v. Douglas County*, 60 Or LUBA 131 (2009).

7.2.1 Goal 3 – Agricultural Lands/ Goal 3 Rule – Agricultural Land Definition – Generally. When there is no dispute that a former ranch was part of a farm unit with a long and recent history of farm use, it is difficult to adopt a sustainable conclusion that the property is no longer part of the farm unit absent a finding that something fundamental has changed that would preclude a resumption of a farm operation using the elements of the former ranch. *Wetherell v. Douglas County*, 60 Or LUBA 131 (2009).

7.2.1 Goal 3 – Agricultural Lands/ Goal 3 Rule – Agricultural Land Definition – Generally. Testimony that the applicant has not shown why a parcel formerly part of a larger ranch cannot be used in conjunction with adjacent and nearby farm properties is sufficient to raise the issue of compliance with OAR 660-033-0030(3), notwithstanding that the petitioner failed to cite the rule. *Wetherell v. Douglas County*, 58 Or LUBA 101 (2008).

7.2.1 Goal 3 – Agricultural Lands/ Goal 3 Rule – Agricultural Land Definition – Generally. LUBA will remand a decision determining that a parcel is not Goal 3 agricultural land for findings under OAR 660-033-0030(3), which requires that the county examine nearby or adjacent land, regardless of ownership, in determining whether a parcel is agricultural land, where the county adopted no findings addressing the rule, and there is evidence in the record that the subject property was formerly used in conjunction with adjacent farm lands and can be so used again. *Wetherell v. Douglas County*, 58 Or LUBA 101 (2008).

7.2.1 Goal 3 – Agricultural Lands/ Goal 3 Rule – Agricultural Land Definition – Generally. 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).

7.2.1 Goal 3 – Agricultural Lands/ Goal 3 Rule – Agricultural Land Definition – Generally. 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).

7.2.1 Goal 3 – Agricultural Lands/ Goal 3 Rule – Agricultural Land Definition – Generally. 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).

7.2.1 Goal 3 – Agricultural Lands/ Goal 3 Rule – Agricultural Land Definition – Generally. A 160-acre parcel that was partitioned from and ceased concurrent farm operations with the parent parcel three years prior to being sold for non-farm purposes is not part of a "farm unit" with the parent parcel, and hence "agricultural land" under OAR 660-033-0020(1)(b), where different farming regimes operated on each parcel, there is a subsequent history of independent farm operations, and the county determined in allowing the partition that the 160-acre parcel either was the appropriate size for an agricultural operation or that it met the statutory minimum size for an agricultural operation. *Wetherell v. Douglas County*, 50 Or LUBA 167 (2005).

7.2.1 Goal 3 – Agricultural Lands/ Goal 3 Rule – Agricultural Land Definition – Generally. A finding that land is not subject to Goal 3 is inadequate, where it does not address the definition of “agricultural land” at OAR 660-033-0020(1) or explain why land with Class III agricultural soils is not “agricultural land” under that definition. *Oregon Shores Cons. Coalition v. Coos County*, 50 Or LUBA 444 (2005).

7.2.1 Goal 3 – Agricultural Lands/ Goal 3 Rule – Agricultural Land Definition – Generally. Lands that are planned and zoned for resource use under Goals 3 and 4 may be redesignated for nonresource use by applying an acknowledged comprehensive plan policy that establishes standards for such redesignations. Where such a specific policy and local standards have been acknowledged, they apply in place of more general statewide planning goals standards that would otherwise apply to such a redesignation. *Sommer v. Josephine County*, 49 Or LUBA 134 (2005).

7.2.1 Goal 3 – Agricultural Lands/ Goal 3 Rule – Agricultural Land Definition – Generally. Property that is: (1) comprised of land in Natural Resources Conservation Service (NRCS) soils classes other than I-IV; (2) is farmed and intermingled with adjacent lands in capability classes I-IV; (3) contains a barn and farmhouse; and (4) satisfies the farm unit test, is agricultural land, and may not be redesignated as nonresource land. *Emmons v. Lane County*, 48 Or LUBA 457 (2005).

7.2.1 Goal 3 – Agricultural Lands/ Goal 3 Rule – Agricultural Land Definition – Generally. Where the question of whether a property qualifies as agricultural land, so that it cannot be considered for a comprehensive plan Rural Use map designation, is governed by the same legal standard that governed a prior local government finding in an earlier decision on the same application that the subject property does not qualify as agricultural land subject to Goal 3, the same issue is presented. If that issue was conclusively resolved in the earlier decision, a different resolution of that issue in the later decision is barred by the *Beck v. City of Tillamook* waiver principle. *Rutigliano v. Jackson County*, 47 Or LUBA 470 (2004).

7.2.1 Goal 3 – Agricultural Lands/ Goal 3 Rule – Agricultural Land Definition – Generally. An ambiguous county code provision that allows lands that were incorrectly identified as agricultural or forest land under Goals 3 and 4 to be rezoned for rural residential use is correctly interpreted to require that an applicant show that a particular property is neither agricultural land nor forest land because land will frequently qualify as both agricultural and forest land and the Land Conservation and Development Commission’s rules allow such lands to be zoned for either for exclusive farm use or for forest use. *Rutigliano v. Jackson County*, 47 Or LUBA 470 (2004).

7.2.1 Goal 3 – Agricultural Lands/ Goal 3 Rule – Agricultural Land Definition – Generally. Where county comprehensive plan standards for identifying agricultural land implement the Goal 3 definition of agricultural land, and an evidentiary challenge to a finding under the comprehensive plan standards that certain land is agricultural land is inseparable from the question of whether that land is agricultural land under Goal 3, LUBA lacks jurisdiction to address the challenge under the county’s comprehensive plan standards. *Manning v. Marion County*, 45 Or LUBA 1 (2003).

7.2.1 Goal 3 – Agricultural Lands/ Goal 3 Rule – Agricultural Land Definition – Generally. Any lands designated as “marginal lands” pursuant to ORS 197.247 retain that status, notwithstanding repeal of that statute. Where the local government is considering lands for

inclusion in urban reserves that might include marginal lands, it must correctly identify those lands and assign them second priority status pursuant to OAR 660-021-0030(3)(b). Failure to do so is inconsistent with the urban reserve rule because it treats second priority marginal lands as fourth priority resource lands. *D.S. Parklane Development, Inc. v. Metro*, 35 Or LUBA 516 (1999).

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A local government may include third priority “secondary lands” within urban reserves under OAR 660-021-0030(3)(c) only if such lands have been designated as secondary lands pursuant to a statutory or rule-based definition. *D.S. Parklane Development, Inc. v. Metro*, 35 Or LUBA 516 (1999).

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In determining whether a parcel is agricultural land under Goal 3, a local government must: (1) evaluate the soils and suitability of the entire subject property under applicant’s ownership, and (2) determine whether the entire subject property is necessary to permit farm practices on nearby lands under OAR 660-33-020(1)(a)(C). *DLCD v. Curry County*, 33 Or LUBA 728 (1997).

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County findings do not justify a conclusion that the subject property is part of a “farm unit” within the definition of agricultural land set forth in OAR 660-33-020(1)(b) where the findings do not address whether the subject property is intermingled with lands in capability classes I-IV, and do not explain the relationship between the subject property and the remainder of the parcel. *Brown v. Coos County*, 31 Or LUBA 142 (1996).

7.2.1 Goal 3 – Agricultural Lands/ Goal 3 Rule – Agricultural Land Definition – Generally.

Where a local government properly determines certain land is not farm or forestland subject to Statewide Planning Goals 3 and 4, an exception to Goals 3 and 4 is *not* required to support comprehensive plan and zone map amendments designating such property for residential use. *Bates v. Josephine County*, 28 Or LUBA 21 (1994).