

**7.2.2 Goal 3 – Agricultural Lands/ Goal 3 Rule – Agricultural Land Definition – Soil Classes.**

Where the county found a boundary line adjustment application is in compliance with a county ordinance that requires that the “resulting parcel sizes do not change the existing land use” because before and after the boundary line adjustment there was one parcel conforming and one parcel non-conforming in size, LUBA will remand the decision. On remand, the county shall consider petitioners’ argument and adopt any necessary findings regarding petitioners’ argument that the ordinance could be interpreted to require the county to consider whether the “existing land use pattern” is changed when the subject parcel—that was previously deemed “generally unsuitable” for farm use due to its size and soil composition—qualifies for a nonfarm dwelling as a result of the boundary line adjustment because the parcel was expanded to include agricultural soils in a manner that possibly renders the resulting parcel suitable for farm use. *Friends of Douglas County v. Douglas County*, 78 Or LUBA 11 (2018).

**7.2.2 Goal 3 – Agricultural Lands/ Goal 3 Rule – Agricultural Land Definition – Soil Classes.**

Although the county’s approval of the boundary line adjustment for the siting of a nonfarm dwelling could effectively undercut the factual predicate for compliance with a statutory-based standard pursuant to ORS 215.263(4) designed to minimize loss of productive resource lands in exclusive farm use zones to non-resource uses, where petitioner has not cited anything in the county ordinance that constitutes an approval standard for a post-partition boundary line adjustment, even if the adjustment undercuts a factual predicate for the partition approval, this argument provides no basis for reversal or remand. *Friends of Douglas County v. Douglas County*, 78 Or LUBA 11 (2018).

**7.2.2 Goal 3 – Agricultural Lands/ Goal 3 Rule – Agricultural Land Definition – Soil Classes.**

For purposes of determining whether land in soil capability classes other than Class I-IV soils according to the U.S. Natural Resources Conservation Service (NRCS), is “agricultural land” under OAR 660-033-0020(1)(a)(B), a factor that a local government may consider in addition to the seven factors listed in the rule is whether a reasonable farmer would be motivated to put the land to agricultural use, for the primary purpose of obtaining a profit in money. The suitability for farm use inquiry must also consider the potential for use in conjunction with adjacent or nearby land. OAR 660-033-0030(3). *Landwatch Lane County v. Lane County*, 77 Or LUBA 368 (2018).

**7.2.2 Goal 3 – Agricultural Lands/ Goal 3 Rule – Agricultural Land Definition – Soil Classes.**

For purposes of determining whether land is agricultural land under OAR 660-033-0020(1)(a)(B), a county’s findings are not deficient when they do not address whether marijuana production is a viable farm use or crop on the subject property. The analysis under OAR 660-033-0020, which gives effect to Statewide Planning Goal 3, focuses on the land and its suitability for farm use, not on whether a particular crop can be grown on the site regardless of the qualities of the land. Such an analysis would be entirely removed from an analysis of the agricultural qualities of the land, which is contrary to the plain text of the rule, and therefore a county’s failure to adopt findings addressing that issue does not provide a basis for reversal or remand. *Landwatch Lane County v. Lane County*, 77 Or LUBA 368 (2018).

**7.2.2 Goal 3 – Agricultural Lands/ Goal 3 Rule – Agricultural Land Definition – Soil Classes.**

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).

**7.2.2 Goal 3 – Agricultural Lands/ Goal 3 Rule – Agricultural Land Definition – Soil Classes.** Under OAR 660-033-0020(1)(a)(B), even if land does not qualify as agricultural land under OAR 660-033-0020(1)(a)(A), because it does not meet the predominantly Class I-VI test, land may qualify as agricultural land “taking into consideration” the factors set out at OAR 660-033-0020(1)(a)(B), which include “accepted farming practices.” Additionally, under OAR 660-033-0020(1)(b), lands in other classification must be inventoried as agricultural land if they are “adjacent to or intermingled with land in capability classes \* \* \* I-VI within a farm unit \* \* \*.” *Central Oregon Landwatch v. Deschutes County*, 74 Or LUBA 156 (2016).

**7.2.2 Goal 3 – Agricultural Lands/ Goal 3 Rule – Agricultural Land Definition – Soil Classes.** A county does not err in relying on a 2007 soil study to conclude that a parcel is not agricultural land under Goal 3, notwithstanding the absence in the record of a 2001 soil study that the applicant’s consultant cites, where the 2007 study is intended to stand on its own and petitioners do not identify any critical information missing from the 2007 study that might be found in the 2001 study. *Wetherell v. Douglas County*, 58 Or LUBA 101 (2008).

**7.2.2 Goal 3 – Agricultural Lands/ Goal 3 Rule – Agricultural Land Definition – Soil Classes.** In determining whether a parcel remains “adjacent to or intermingled with” agricultural land within a “farm unit” under OAR 660-033-0020(1)(b) notwithstanding that the parcel was recently partitioned from a larger farm parcel and is no longer in common use, the most important consideration is whether there is some significant obstacle to resumed joint operation. Where a 260-acre parcel was recently divided from a 590-acre ranch and was long used in conjunction with other lands within the farm unit, and there appears no reason why the parcel cannot continue to be used in conjunction with the other parcels within the former farm unit, a county has not established that the parcel is not agricultural land under OAR 660-033-0020(1)(b). *Wetherell v. Douglas County*, 58 Or LUBA 101 (2008).

**7.2.2 Goal 3 – Agricultural Lands/ Goal 3 Rule – Agricultural Land Definition – Soil Classes.** *Flury v. Land Use Board*, 50 Or App 263, 623 P2d 671 (1981), cited and relied on *Meyer v. Lord*, 37 Or App 59, 586 P2d 367 (1978), in holding that the “predominant soils class” prong of the Goal 3 definition of agricultural lands may be applied to a portion of a parcel. *Wetherell v. Douglas County*, 50 Or LUBA 71 (2005).

**7.2.2 Goal 3 – Agricultural Lands/ Goal 3 Rule – Agricultural Land Definition – Soil Classes.** OAR 660-033-0030(2), which describes how the predominant soils class prong of the Goal 3 agricultural land definition is to be applied when inventorying agricultural land, assumes that the inventories will consider whole lots and parcels rather than portions of lots or parcels. *Wetherell v. Douglas County*, 50 Or LUBA 71 (2005).

**7.2.2 Goal 3 – Agricultural Lands/ Goal 3 Rule – Agricultural Land Definition – Soil Classes.**

At the time LCDC adopted OAR 660-033-0030(2), which describes how the predominant soils class prong of the Goal 3 agricultural land definition is to be applied when inventorying agricultural land, it also adopted OAR 660-033-0030(4)(c)(B)(i) to expressly state that the “generally unsuitable lands” nonfarm dwelling standard may be applied to a “lot or parcel or portion of a lot or parcel.” Because LCDC did not also make it clear that the inventory required by OAR 660-033-0030(2) could apply the predominant soils class prong of the Goal 3 agricultural land definition to portions of existing parcels, that prong must be applied to entire parcels and may not be applied to a portion of a parcel. *Wetherell v. Douglas County*, 50 Or LUBA 71 (2005).

**7.2.2 Goal 3 – Agricultural Lands/ Goal 3 Rule – Agricultural Land Definition – Soil Classes.**

A local government may rely on portions of two conflicting expert studies of soil classifications, although explanatory findings may be necessary to identify what portions are relied upon, and to resolve any differences or contradictions between the studies relied upon, so that LUBA may perform its review function. *Doob v. Josephine County*, 48 Or LUBA 227 (2004).

**7.2.2 Goal 3 – Agricultural Lands/ Goal 3 Rule – Agricultural Land Definition – Soil Classes.**

Land that qualifies as “agricultural land” based on soil classification cannot be classified as something other than agricultural land based on existing land use patterns or other factors listed in the definition of “agricultural land” that serve to include lands within the definition of agricultural land that do not otherwise qualify based on the soils classifications. *Friends of Yamhill County v. Yamhill County*, 47 Or LUBA 508 (2004).

**7.2.2 Goal 3 – Agricultural Lands/ Goal 3 Rule – Agricultural Land Definition – Soil Classes.**

Common ownership with adjacent agricultural lands is an indication that the parcel is part of a farm unit, as that term is used in OAR 660-033-0020(1); however, it is not determinative. *Riggs v. Douglas County*, 37 Or LUBA 432 (1999).

**7.2.2 Goal 3 – Agricultural Lands/ Goal 3 Rule – Agricultural Land Definition – Soil Classes.**

LUBA will not conclude that the statutory definition of high-value soils excludes soil complexes in which listed soils form the predominant part, where petitioner fails to establish a sufficient basis to form that conclusion. *Tri-River Investment Co. v. Clatsop County*, 37 Or LUBA 195 (1999).

**7.2.2 Goal 3 – Agricultural Lands/ Goal 3 Rule – Agricultural Land Definition – Soil Classes.**

LUBA must affirm a decision denying a permit to site a dog kennel prohibited on high-value farmland, where petitioner fails to challenge the county’s alternative finding that the subject property is high-value farmland because it is predominantly composed of a combination of two high-value soils. *Tri-River Investment Co. v. Clatsop County*, 37 Or LUBA 195 (1999).

**7.2.2 Goal 3 – Agricultural Lands/ Goal 3 Rule – Agricultural Land Definition – Soil Classes.**

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).

**7.2.2 Goal 3 – Agricultural Lands/ Goal 3 Rule – Agricultural Land Definition – Soil Classes.**

Where a county finds that the subject property’s soils constitute “high-value farmland” as that

concept is defined by statute, but there is no evidence in the record that supports that ultimate conclusion, the decision must be remanded. *Corp. of Presiding Bishop v. Klamath County*, 34 Or LUBA 131 (1998).

**7.2.2 Goal 3 – Agricultural Lands/ Goal 3 Rule – Agricultural Land Definition – Soil Classes.** In determining whether land subject to a proposed comprehensive plan and zone map change is composed of predominantly Class I-IV soils, as required by OAR 660-33-020(1)(a)(A), it is permissible for a local government to examine only the acreage under consideration. *DLCD v. Curry County*, 28 Or LUBA 205 (1994).