

7.7.1 Goal 3 – Agricultural Lands/ Goal 3 Rule – Farm Uses – Generally. When considering if a piece of property is “suitable for farm use” within the meaning of OAR 660-033-0020(1)(a)(B), the county must consider the parcel in full; it cannot exclude a portion of the property being constrained from farm use from consideration until it evaluates if a reasonable farmer would put the subject property to farm use and/or grazing using the applicable criteria. *Friends of Douglas County v. Douglas County*, 78 Or LUBA 180 (2018).

7.7.1 Goal 3 – Agricultural Lands/ Goal 3 Rule – Farm Uses – Generally. When deciding if a property is “suitable for farm use” the county must consider the adjacent or intermingled properties, and property lines or land ownership are not the sole deciding factors. *Friends of Douglas County v. Douglas County*, 78 Or LUBA 180 (2018).

7.7.1 Goal 3 – Agricultural Lands/ Goal 3 Rule – Farm Uses – Generally. While counties may use discretion to determine whether an operation is a “commercial farming operation,” that does not mean that a county may equate an “existing commercial farming operation” with “farm use.” *Wachal v. Linn County*, 78 Or LUBA 227 (2018).

7.7.1 Goal 3 – Agricultural Lands/ Goal 3 Rule – Farm Uses – Generally. ORS 215.203(2)(a) provides that “farm use” includes the “preparation” of “products or by-products raised on * * * land for human or animal use[.]” A straw pressing operation that compresses straw that is initially baled in the field after it is cut such that the bales are easier to transport to their eventual end use as feed but that does not change the straw in any way or change the fact that it is ready for use as feed after it is baled and remains ready for use as feed after it is compressed is “preparation” of the straw within the meaning of ORS 215.203(2)(a). *Gilmour v. Linn County*, 73 Or LUBA 90 (2016).

7.7.1 Goal 3 – Agricultural Lands/ Goal 3 Rule – Farm Uses – Generally. A building accessory to farm use that is allowed under ORS 215.213(1)(e) as a building “customarily provided in conjunction with farm use” is not itself a farm use. *Bratton v. Washington County*, 65 Or LUBA 461 (2012).

7.7.1 Goal 3 – Agricultural Lands/ Goal 3 Rule – Farm Uses – Generally. Determining whether a proposed building is allowed in the EFU zone under ORS 215.213(1)(e) or 215.283(1)(e) as a building “customarily provided in conjunction with farm use” requires the local government to determine whether the land is currently employed for farm use and whether the proposed building is of the type that is customarily combined with the farm use in question. Because those determinations are not clear and objective, a building permit to approve such a building is not subject to the ORS 197.015(10)(b)(B) exception for “building permits issued under clear and objective standards.” *Bratton v. Washington County*, 65 Or LUBA 461 (2012).

7.7.1 Goal 3 – Agricultural Lands/ Goal 3 Rule – Farm Uses – Generally. The Supreme Court’s decision in *Brentmar v. Jackson County*, 321 Or 481, 900 P2d 1030 (1995), that uses listed in ORS 215.203(1) may not be subject to local criteria more restrictive than the statute, did not automatically invalidate all final, unappealed land use decisions or conditions attached to those decisions that were issued and final prior to 1995, even if those decisions were inconsistent with the holding in *Brentmar*. *Just v. Linn County*, 59 Or LUBA 233 (2009).

7.7.1 Goal 3 – Agricultural Lands/ Goal 3 Rule – Farm Uses – Generally. The considerations listed in OAR 660-033-0020(1)(a)(B)—soil fertility, suitability for grazing, climatic conditions, existing and future availability of water for farm irrigation purposes, existing land use patterns, technological and energy inputs required, and accepted farming practices—are the primary drivers of any determination under the rule whether land is “suitable for farm use” as defined in ORS 215.203(2)(a). *Wetherell v. Douglas County*, 58 Or LUBA 638 (2009).

7.7.1 Goal 3 – Agricultural Lands/ Goal 3 Rule – Farm Uses – Generally. While profitability is a permissible consideration in determining whether land is agricultural land under OAR 660-033-0020(1)(a)(B), it is a relatively minor consideration, and one with a large potential for distracting the decision maker and the parties from the primary considerations listed in the rule—soil fertility, suitability for grazing, climatic conditions, existing and future availability of water for farm irrigation purposes, existing land use patterns, technological and energy inputs required, and accepted farming practices. *Wetherell v. Douglas County*, 58 Or LUBA 638 (2009).

7.7.1 Goal 3 – Agricultural Lands/ Goal 3 Rule – Farm Uses – Generally. Substantial evidence supports a county’s finding that a 160-acre parcel is not suitable for an independent grazing operation, where the property has never supported an independent grazing operation, and an agricultural consultant’s study details significant capital inputs needed to establish a new, independent grazing operation that could not be recovered from income reasonably expected from such a grazing operation. *Wetherell v. Douglas County*, 58 Or LUBA 638 (2009).

7.7.1 Goal 3 – Agricultural Lands/ Goal 3 Rule – Farm Uses – Generally. In evaluating whether a 160-acre parcel that was grazed for 70 years in conjunction with nearby lands as part of a larger grazing operation is “other suitable land” under OAR 660-033-0020(1)(a)(B) because it can be put to farm use in conjunction with nearby agricultural lands, the testimony of nearby ranchers that they have successfully ranched the subject property as part of their grazing operation in the past, are willing to do so again, and believe they can do so profitably is generally more than sufficient to establish that the property can be used in conjunction with nearby farm lands. *Wetherell v. Douglas County*, 58 Or LUBA 638 (2009).

7.7.1 Goal 3 – Agricultural Lands/ Goal 3 Rule – Farm Uses – Generally. A county could reasonably choose to rely on a consultant’s economic analysis to conclude that a 160-acre parcel is not “other suitable land” under OAR 660-033-0020(1)(a)(B) because it cannot be profitably combined with nearby grazing operations, notwithstanding that nearby ranchers testified that they had successfully used the property in conjunction with their grazing operation in the past and believe they can do so again, where the economic analysis sets out a detailed, if hypothetical, budget demonstrating that such combined use could not be conducted with the primary purpose of obtaining a profit in money, and the nearby ranchers do not provide any similar budget or explanation for why they believe a combined operation would be financially beneficial to them. *Wetherell v. Douglas County*, 58 Or LUBA 638 (2009).

7.7.1 Goal 3 – Agricultural Lands/ Goal 3 Rule – Farm Uses – Generally. Where no issue was raised during the initial proceedings or initial appeal to LUBA regarding whether a property could be used as a “woodlot” and thus be put to “farm use” for purposes of ORS 215.203(2), that issue

cannot be raised for the first time on appeal of the decision on remand, pursuant to *Beck v. City of Tillamook*, 313 Or 148, 153, 831 P2d 678 (1992). *Wetherell v. Douglas County*, 58 Or LUBA 638 (2009).

7.7.1 Goal 3 – Agricultural Lands/ Goal 3 Rule – Farm Uses – Generally. A local government errs in concluding that the uses specified in OAR 660-004-0028(3) are impracticable because the property is not capable of supporting commercial levels of agriculture. The test under the rule is not whether the property is capable of supporting commercial levels of agriculture. *Gordon v. Polk County*, 55 Or LUBA 57 (2007).

7.7.1 Goal 3 – Agricultural Lands/ Goal 3 Rule – Farm Uses – Generally. Pasturing livestock is a “farm use” as that term is defined in ORS 215.203(2), even though the owner’s primary purpose in pasturing cattle on the property is to reduce fire potential by reducing ground cover. *DLCD v. Wallowa County*, 37 Or LUBA 105 (1999).

7.7.1 Goal 3 – Agricultural Lands/ Goal 3 Rule – Farm Uses – Generally. LUBA does not independently analyze the evidence, but reviews evidence in the record solely to determine whether it was reasonable for the decision maker to rely on that evidence in making a decision. Where the written evidence is conflicting and a video tape makes it clear that only small remnants of past farming or Christmas tree growing efforts on the subject property remain among the piles of debris that have been scattered over the subject property, it is reasonable for a hearings officer to conclude there is no current farm use of the property. *Best Buy in Town, Inc. v. Washington County*, 35 Or LUBA 446 (1999).

7.7.1 Goal 3 – Agricultural Lands/ Goal 3 Rule – Farm Uses – Generally. Whether composting qualifies as a farm use under ORS 215.203(2)(a) is a question of statutory interpretation, not a question of whether agricultural experts believe composting, in the abstract, falls within a scientific definition of farm use. *Best Buy in Town, Inc. v. Washington County*, 35 Or LUBA 446 (1999).

7.7.1 Goal 3 – Agricultural Lands/ Goal 3 Rule – Farm Uses – Generally. A composting operation where all the compost inputs are produced off-site and all of the compost produced is sold for use off-site does not involve “current employment of the land” and for that reason is not a “farm use” as defined by ORS 215.203(2)(a). *Best Buy in Town, Inc. v. Washington County*, 35 Or LUBA 446 (1999).

7.7.1 Goal 3 – Agricultural Lands/ Goal 3 Rule – Farm Uses – Generally. The 80,000 dollars gross annual income requirement stated in OAR 660-33-135(7) for farm dwellings on high-value farmland is not inconsistent with ORS 215.283(1)(f), although it conflicts with ORS 215.213(2)(b) under *Lane County v. LCDC*, 138 Or App 635, 910 P2d 414, *adh’d to as modified on recons*, 140 Or App 368, 914 P2d 1114 (1996), *rev’d*, 325 Or 569, 942 P2d 278 (1997). *Nichols v. Clackamas County*, 32 Or LUBA 113 (1996).