

7.7.2 Goal 3 – Agricultural Lands/ Goal 3 Rule – Farm Uses – Farm Dwellings. In considering an application for a relative farm help dwelling, a local government is not limited to considering the commercial farming operation occurring on the property on the date the application is filed, and the local government does not err by considering whether a new crop planted after the application is filed, either alone or in combination with the existing operation, is an “existing commercial farming operation” within the meaning of OAR 660-033-0130(9)(a). *Wachal v. Linn County*, 81 Or LUBA 561 (2020).

7.7.2 Goal 3 – Agricultural Lands/ Goal 3 Rule – Farm Uses – Farm Dwellings. A reasonable person would rely on an applicant’s testimony regarding their activities managing a farm and their status as the state license holder for an industrial hemp-growing operation to conclude that the applicant is a farm operator and continues to play the “predominant role” in management and farm use of the farm, for purposes of OAR 660-033-0130(9)(a), even where they have hired another company to prepare the farmland for planting hemp seed and to provide consultation regarding hemp growing. *Wachal v. Linn County*, 81 Or LUBA 561 (2020).

7.7.2 Goal 3 – Agricultural Lands/ Goal 3 Rule – Farm Uses – Farm Dwellings. Any permits for residential development on resource land that were issued prior to the effective date of HB 2106 (2019) are eligible for the five one-year extensions provided in ORS 215.417(2) (2019) only if, on the effective date of that legislation, those permits were still in the initial four-year period of validity or the one two-year extension period provided in ORS 215.417 (2017). *Landwatch Lane County v. Lane County*, 81 Or LUBA 279 (2020).

7.7.2 Goal 3 – Agricultural Lands/ Goal 3 Rule – Farm Uses – Farm Dwellings. 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).

7.7.2 Goal 3 – Agricultural Lands/ Goal 3 Rule – Farm Uses – Farm Dwellings. A finding that the applicant qualifies as a “farm operator” as defined at OAR 660-033-0130(9)(a) is inadequate, where the finding merely assumes the applicant is the farm operator, and does not address issues raised below that the applicant leases the land to a third person who is the actual farm operator. *Richards v. Jefferson County*, 77 Or LUBA 152 (2018).

7.7.2 Goal 3 – Agricultural Lands/ Goal 3 Rule – Farm Uses – Farm Dwellings. To qualify as a “farm operator” as defined at OAR 660-033-0130(9)(a), in order to gain approval of a farm relative dwelling, the applicant must establish that he or she will “continue to play the predominant role” in farm use of the property. That qualification may not be met if the reason the applicant requires the assistance of a relative is because the applicant is substantially employed off the farm and does not have enough time to conduct farm operations. *Richards v. Jefferson County*, 77 Or LUBA 152 (2018).

7.7.2 Goal 3 – Agricultural Lands/ Goal 3 Rule – Farm Uses – Farm Dwellings. To gain approval of a farm relative dwelling, the applicant must qualify as the “farm operator” and demonstrate, among other things, that he or she would “continue to play the predominate role” in farm operations. That demonstration requires some evidence regarding the proportionate

contributions of the farm operator and the relative to the farm operation. *Richards v. Jefferson County*, 77 Or LUBA 152 (2018).

7.7.2 Goal 3 – Agricultural Lands/ Goal 3 Rule – Farm Uses – Farm Dwellings. Where the record includes no evidence or findings regarding whether a 119-acre parcel with a hay-growing operation constitutes a “commercial farm operation,” for purposes of approving a farm relative dwelling under OAR 660-033-00130(9), remand is necessary to address that issue. *Richards v. Jefferson County*, 77 Or LUBA 152 (2018).

7.7.2 Goal 3 – Agricultural Lands/ Goal 3 Rule – Farm 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).

7.7.2 Goal 3 – Agricultural Lands/ Goal 3 Rule – Farm 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).

7.7.2 Goal 3 – Agricultural Lands/ Goal 3 Rule – Farm 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).

7.7.2 Goal 3 – Agricultural Lands/ Goal 3 Rule – Farm 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).

7.7.2 Goal 3 – Agricultural Lands/ Goal 3 Rule – Farm 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).

7.7.2 Goal 3 – Agricultural Lands/ Goal 3 Rule – Farm 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).

7.7.2 Goal 3 – Agricultural Lands/ Goal 3 Rule – Farm Uses – Farm Dwellings. A farm dwelling is permitted under OAR 660-033-0135(7)(a) only if the property is “currently employed for the farm use * * * that produced” the requisite \$80,000 income in farm products. As worded, the rule does not permit a farm dwelling if the current farm use of the property is significantly different from the farm use that produced the requisite income. *Chapman v. Marion County*, 60 Or LUBA 377 (2010).

7.7.2 Goal 3 – Agricultural Lands/ Goal 3 Rule – Farm Uses – Farm Dwellings. A hearings officer does not err in rejecting as not credible testimony that a 19-acre farm produced over \$80,000 in revenue from hay grown on the property, where the applicant provided no evidence of how much hay was grown on the property, or documentation distinguishing revenue from the sale of hay grown on the property from revenue derived from the resale of \$83,000 in hay that the applicant purchased that year, and substantial evidence in the record indicated that to derive \$80,000 in revenue solely from hay grown on the property would mean the applicant achieved yields and prices several times higher than average for the county. *Chapman v. Marion County*, 60 Or LUBA 377 (2010).

7.7.2 Goal 3 – Agricultural Lands/ Goal 3 Rule – Farm Uses – Farm Dwellings. A code provision that allows a farm dwelling on a 160-acre rangeland parcel, rather than the minimum 320 acres specified in OAR 660-033-0135(1)(a), may be inconsistent with the rule. However, the county may rely on its code, acknowledged in 2001 to comply with Goal 3 and the Goal 3 rule, notwithstanding any inconsistency with the rule. *Oregon Natural Desert Assoc. v. Harney County*, 42 Or LUBA 149 (2002).

7.7.2 Goal 3 – Agricultural Lands/ Goal 3 Rule – Farm Uses – Farm Dwellings. OAR 660-033-0135(1)(c) allows a farm dwelling only if the occupant(s) will be “principally engaged” in farm use, as opposed to principally engaged in nonfarm uses. Consequently, in allowing a farm dwelling under OAR 660-033-0135(1)(c), it is not sufficient for the county to determine that the occupants, as opposed to someone else, will be the primary actors in farm use of the property, where the record shows that the occupants’ primary economic livelihood is a nonfarm use. *Oregon Natural Desert Assoc. v. Harney County*, 42 Or LUBA 149 (2002).

7.7.2 Goal 3 – Agricultural Lands/ Goal 3 Rule – Farm Uses – Farm Dwellings. OAR 660-033-0135(1) provides that a dwelling may be considered customarily provided in conjunction with farm use if it satisfies four standards set forth in the rule. Nothing in the rule requires the county to make a separate determination, in addition to applying the four standards, that the predicate farm use is of the type that is customarily associated with a dwelling. *Oregon Natural Desert Assoc. v. Harney County*, 42 Or LUBA 149 (2002).

7.7.2 Goal 3 – Agricultural Lands/ Goal 3 Rule – Farm Uses – Farm Dwellings. Income and activities pursuant to a nonfarm business that is authorized by a conditional use permit on land zoned EFU may not be considered, for purposes of determining whether the farm uses proposed to support a farm dwelling are “at a commercial scale.” *Oregon Natural Desert Assoc. v. Harney County*, 42 Or LUBA 149 (2002).

7.7.2 Goal 3 – Agricultural Lands/ Goal 3 Rule – Farm Uses – Farm Dwellings. The OAR 660-033-0140 provisions imposing time limits on and providing standards for extension of certain EFU zone permits, including farm dwelling permits, expressly apply only to permits approved after August 7, 1993. OAR 660-033-0140 does not prohibit extension of farm dwelling permits that were approved prior to August 7, 1993 and does not require that the standards adopted by that rule be applied to any extensions of such previously approved farm dwelling permits. *Rochlin v. Multnomah County*, 35 Or LUBA 333 (1998).

7.7.2 Goal 3 – Agricultural Lands/ Goal 3 Rule – Farm Uses – Farm Dwellings. OAR 660-033-0135 and 660-033-0140 have no legal effect on the continued validity of farm dwelling permits approved prior to the adoption of those rules or the county’s authority to impose time limits on those previously approved permits or to adopt standards for extending those new time limits. *Rochlin v. Multnomah County*, 35 Or LUBA 333 (1998).

7.7.2 Goal 3 – Agricultural Lands/ Goal 3 Rule – Farm Uses – Farm Dwellings. Under ORS 215.428(3), OAR 660-033-0140 may not be applied to applications for farm dwelling permits that were filed prior to the effective date of the rule and were pending on the date the rule became effective. *Rochlin v. Multnomah County*, 35 Or LUBA 333 (1998).

7.7.2 Goal 3 – Agricultural Lands/ Goal 3 Rule – Farm Uses – Farm Dwellings. The county’s findings are inadequate to establish compliance with OAR 660-05-030(4) where they do not show that once the proposed level of farm activity is established on the subject property, the property will be “currently employed for the primary purpose of obtaining a profit in money” as required by ORS 215.203. *Still v. Marion County*, 32 Or LUBA 40 (1996).

7.7.2 Goal 3 – Agricultural Lands/ Goal 3 Rule – Farm Uses – Farm Dwellings. Where a local code requires that a second farm dwelling be shown to be “necessary,” absent a definition to the contrary or contrary legislative history, the term “necessary” has the same meaning in the Goal 3 context that it has in the Goal 4 context. *Louks v. Jackson County*, 28 Or LUBA 501 (1995).

7.7.2 Goal 3 – Agricultural Lands/ Goal 3 Rule – Farm Uses – Farm Dwellings. While adding dwellings to the existing dwellings on one parcel of a multi-parcel commercial orchard may provide additional deterrence to trespass, vandalism and theft on that parcel, those dwellings will not provide deterrence on the other parcels and are not “necessary” for continuation of the commercial farm. *Louks v. Jackson County*, 28 Or LUBA 501 (1995).

7.7.2 Goal 3 – Agricultural Lands/ Goal 3 Rule – Farm Uses – Farm Dwellings. Following 1993 legislative amendments, small scale farm or forest dwellings are not allowable under Goals 3 and 4, and ORS 215.304(1) prohibits LCDC from adopting or implementing any rule which

would permit counties to allow such small scale farm or forest dwellings. *DLCD v. Douglas County*, 28 Or LUBA 242 (1994).