7.8 Goal 3 – Agricultural Lands/ Goal 3 Rule – Nonfarm Use. A county fails to correctly apply the farm impacts test at ORS 215.296(1) where it concludes that there are only a few farm or forest uses in the area but does not identify and discuss each farm or forest use, where it does not describe the operations on each of the surrounding properties devoted to farm or forest use, where it does not identify evidence of the unmitigated impacts of the proposed nonfarm use, and where it concludes that such impacts will be reduced but does not identify evidence that significant impacts are avoided. *Currie v. Douglas County*, 79 Or LUBA 585 (2019).

7.8 Goal 3 – Agricultural Lands/ Goal 3 Rule – Nonfarm Uses. 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 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).

7.8 Goal 3 – Agricultural Lands/ Goal 3 Rule – Nonfarm Uses. 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).

7.8 Goal 3 – Agricultural Lands/ Goal 3 Rule – Nonfarm Uses. Although it is not clear a proposed "parsonage," which is a portion of a church to include a bedroom, kitchen and bathroom for use by the church's pastor, must be evaluated and approved or denied under the criteria that apply to a nonfarm dwelling under the county's land use ordinance implementing ORS 215.284, those land use standards require the exercise of discretion in approving the development of land. Further, it is possible, even probable, that any application for a proposed residential use associated with a church must be evaluated under the standards at ORS 215.441, and accordingly the county must process such an application according to its procedures that apply to permits. *Wetherell v. Douglas County*, 78 Or LUBA 33 (2018).

7.8 Goal 3 – Agricultural Lands/ Goal 3 Rule – Nonfarm Uses. 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).

7.8 Goal 3 – Agricultural Lands/ Goal 3 Rule – Nonfarm Uses. 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).

7.8 Goal 3 – Agricultural Lands/ Goal 3 Rule – Nonfarm Uses. Based on an ESEE consequences analysis regarding conflicting uses, under OAR 660-023-0040(4) and (5), a county must develop a program to achieve Goal 5, and determine whether to allow, limit, or prohibit conflicting uses. A local government errs in its ESEE analysis and in its ultimate decision to modify its acknowledged Goal 5 program to eliminate the prohibition on churches in the Wildlife Area Combining Zone, when it relied in part on the cost of defending its existing Goal 5 program against a hypothetical Religious Land Use and Institutionalized Persons Act (RLUIPA) lawsuit to support its decision to achieve Goal 5 by allowing without limits a new conflicting use, without providing an analysis establishing the county's Goal 5 program would be legally vulnerable to losing a hypothetical RLUIPA lawsuit if one were brought. *Central Oregon Landwatch v. Deschutes County*, 77 Or LUBA 395 (2018).

7.8 Goal 3 – Agricultural Lands/ Goal 3 Rule – Nonfarm Uses. To allow a conflicting use without limit under OAR 660-023-0040(5)(c), a county's ESEE analysis must (1) demonstrate that the conflicting use is of sufficient importance relative to the resource site, and (2) must indicate why measures to protect the resource "to some extent should not be provided." OAR 660-023-0040(5)(c) does not prohibit the county from allowing a conflicting use without limit, if there is another option that would both fully protect the resource at issue and satisfy the motivations prompting the county to decide in favor of the conflicting use. Instead, OAR 660-023-0040(5)(c) requires the county to justify its choice to allow a conflicting use without limit, and that justification must include a demonstration that alternatives, such as imposing limits or measures to provide some protection for the resource consistent with OAR 660-023-0040(5)(b) should not be provided. Assuming that demonstration is made, OAR 660-023-0040(5) and Goal 5 do not compel the local government to choose alternatives that fully or partially protect the resource. *Central Oregon Landwatch v. Deschutes County*, 77 Or LUBA 395 (2018).

7.8 Goal 3 – Agricultural Lands/ Goal 3 Rule – Nonfarm Uses. In the context of a county's Goal 5 analysis, LUBA will reject the county's argument that there are no measures that the county could adopt to protect wildlife habitat from the negative impacts of churches without running afoul of a Religious Land Use and Institutionalized Persons Act (RLUIPA) requirement–that governments not impose a "substantial burden" on religious exercise–where the county's ESEE analysis includes no evaluation of any measures or any findings on this point, and without actually evaluating any measures that would provide some protection to wildlife resources, it is difficult to understand how the county could reach a conclusion that no measures could be adopted to protect wildlife resources without also imposing a "substantial burden" on religious exercise. In such a circumstance, remand is necessary for the county to adopt an ESEE analysis that either does not rely on the mere threat of RLUIPA litigation, or that actually evaluates whether the county's existing Goal 5 program is inconsistent with the RLUIPA Equal Terms or Substantial Burden requirements, so that the county can consider whether there are measures it can adopt pursuant to OAR 660-023-0040(5)(b) and (c) to reduce impacts on wildlife resources and include those

evaluations in the revised ESEE analysis. As part of that analysis, the county may consider, if necessary, whether identified measures would impose a "substantial burden" on the free exercise of religion. *Central Oregon Landwatch v. Deschutes County*, 77 Or LUBA 395 (2018).

7.8 Goal 3 – Agricultural Lands/ Goal 3 Rule – Nonfarm Uses. Legislative history supports an interpretation of Oregon Laws 2013, chapter 462 (2013 Act), which amended ORS 215.213(2)(b)(A) and (B) (and its counterpart ORS 215.283(2)(b)(A) and (B)), that the default, and longest, assessment look-back period possible to allow a property owner to build a "replacement dwelling" on Exclusive Farm Use (EFU)-zoned land is five years. Section 2 of the 2013 Act provides that a dwelling may be replaced if the dwelling it replaces was assessed *ad valorem* taxes for the *lesser* of: (1) the previous five tax years, (2) the previous five tax years except those years where the dwelling had no value as a result of destruction or demolition of the dwelling, or (3) where the dwelling was constructed within the last 5 years, for the rest of that 5-year period. The five-year look-back therefore may not be more than five years and applies to dwellings that were destroyed or demolished. *Landwatch Lane County v. Lane County*, 76 Or LUBA 250 (2017).

7.8 Goal 3 – Agricultural Lands/ Goal 3 Rule – Nonfarm Uses. OAR 660-033-0180(8), the Land Conservation and Development Commission (LCDC) rule that implements Oregon Laws 2013, chapter 462 (the 2013 Act), combines the first part of the 2013 Act's Section 2(2)(b)(A) and Section 2(2)(b)(B) into the rule's Section (B), and ties the first part of Section 2(2)(b)(B) to the five-year tax assessment look-back. Then, the rule's Section (C)(i) eliminates the duplication in the statute and achieves the same limitation the statute achieves, but the rule does not eliminate the statutory requirement to impose a look-back period of five years, essentially giving effect to the "lesser of" language that is not included in the rule. *Landwatch Lane County v. Lane County*, 76 Or LUBA 250 (2017).

7.8 Goal 3 – Agricultural Lands/ Goal 3 Rule – Nonfarm Uses. OAR 660-033-0140(1) provides that a discretionary permit on resource land is void two years from the date of the final decision "if the development action is not initiated within that period." However, reading OAR 660-033-0140(1) to allow the permit approval to remain valid indefinitely once it is initiated within the two-year period is inconsistent with OAR 660-033-0140(2), which allows an extension for one year if the applicant was unable to begin or "continue development during the approval period." The requirement to show that the application was unable to "continue development during the approval period" indicates that simply initiating the development within the two-year period is not sufficient in itself to render the permit valid indefinitely, without the need to seek an extension. *Landwatch Lane County v. Lane County*, 74 Or LUBA 299 (2016).

7.8 Goal 3 – Agricultural Lands/ Goal 3 Rule – Nonfarm Uses. Interpreting OAR 660-033-0140(1) to allow a discretionary permit approval to remain valid indefinitely once it is initiated within the initial two-year approval period is inconsistent with OAR 660-033-0140(4), which provides that additional extensions beyond one year may be authorized where applicable criteria have not changed. *Landwatch Lane County v. Lane County*, 74 Or LUBA 299 (2016).

7.8 Goal 3 – Agricultural Lands/ Goal 3 Rule – Nonfarm Uses. Where in 2005 an applicant receives discretionary permit approval for three school buildings, and initiates the development action within the initial two-year period set forth in OAR 660-033-0140(1) by constructing two

school buildings, but fails to seek extension of the permit or obtain building permits for the third building until seven years after the two-year period expired, long after the school use became a nonconforming use, the applicant can no longer rely on the 2005 approval to authorize issuance of building permits for the third building. *Landwatch Lane County v. Lane County*, 74 Or LUBA 299 (2016).

7.8 Goal 3 – Agricultural Lands/ Goal 3 Rule – Nonfarm Uses. Hallways that are intended for human transit rather than human occupancy need not be counted toward the limit prescribed by OAR 660-033-0130(2)(a) on structures with a "design capacity" no greater than 100 people. *Oregon Coast Alliance v. Curry County*, 73 Or LUBA 52 (2016).

7.8 Goal 3 – Agricultural Lands/ Goal 3 Rule – Nonfarm Uses. A local government's determination of the design capacity of a locker room that is based on the number of lockers and projected number of golfers using the locker room lockers at one time is supported by substantial evidence in the record where the applicant's architect provides testimony to support the determination. *Oregon Coast Alliance v. Curry County*, 73 Or LUBA 52 (2016).

7.8 Goal 3 – Agricultural Lands/ Goal 3 Rule – Nonfarm Uses. OAR 660-033-0130(2)(a) excludes structures that are not "enclosed structures" from the required maximum "design capacity" calculation and a county's exclusion of outdoor decks and patios that are not enclosed is consistent with the express language of the rule. *Oregon Coast Alliance v. Curry County*, 73 Or LUBA 52 (2016).

7.8 Goal 3 – Agricultural Lands/ Goal 3 Rule – Nonfarm Uses. The text and context of ORS 215.283(2)(c), which allows "private parks, playgrounds, hunting and fishing preserves and campgrounds" on EFU-zoned land, indicate that the qualifier "private" refers to private ownership, not private access. Accordingly, a "private park" for purposes of ORS 215.283(2)(c) is not limited to parks that exclude the public. *Central Oregon Landwatch v. Deschutes County*, 72 Or LUBA 61 (2015).

7.8 Goal 3 – Agricultural Lands/ Goal 3 Rule – Nonfarm Uses. The primary use of a "park" allowed under ORS 215.283(2)(c) on EFU-zoned land must be a recreational use of some kind. A proposed wedding event center is not a "park," because weddings and other focal events are not "recreational" uses, even if incidental activities associated with such events, such as dancing and lawn games, could be viewed as recreational activities. *Central Oregon Landwatch v. Deschutes County*, 72 Or LUBA 61 (2015).

7.8 Goal 3 – Agricultural Lands/ Goal 3 Rule – Nonfarm Uses. OAR 660-033-0130(18)(a) authorizes expansion of "[e]xisting facilities wholly within a farm use zone," but does not expressly require that the facility existed wholly within a farm use zone in 1996, on the date the rule language was adopted. As written, the rule includes no such temporal qualification, and would allow expansion of a facility that currently exists wholly within a farm use zone, but that did not in 1996. *Stop the Dump Coalition v. Yamhill County*, 72 Or LUBA 341 (2015).

7.8 Goal 3 – Agricultural Lands/ Goal 3 Rule – Nonfarm Uses. ORS 215.283(2)(k) allows a solid waste disposal facility on EFU-zoned land for which a DEQ permit has been granted. Where

the record shows that a currently operating facility proposed for expansion had a DEQ permit that has been extended, but does not include a copy of the current DEQ permit, remand is not necessary to remedy that evidentiary defect where the petitioner offers no reason to believe that the landfill is operating without a current permit, and the county imposed a condition requiring the applicant to provide a copy of the current permit prior to undertaking any expansion. *Stop the Dump Coalition v. Yamhill County*, 72 Or LUBA 341 (2015).

7.8 Goal 3 – Agricultural Lands/ Goal 3 Rule – Nonfarm Uses. OAR 660-033-0130(20)(a)'s description of a regular 18-hole golf course permitted as a conditional use on EFU-zoned land, as "generally characterized by a site of about 120 to 150 acres of land," does not impose a strict upper limit of 150 acres. *Oregon Coast Alliance v. Curry County*, 71 Or LUBA 297 (2015).

7.8 Goal 3 – Agricultural Lands/ Goal 3 Rule – Nonfarm Uses. OAR 660-033-0130(2)(a) prohibits certain enclosed structures, including a clubhouse associated with a golf course, with a "design capacity" greater than 100 people, if located within three miles of an urban growth boundary. "Design capacity" denotes the capacity for human occupation that a structure is designed for, not the number of people anticipated to use the structure at any one time. *Oregon Coast Alliance v. Curry County*, 71 Or LUBA 297 (2015).

7.8 Goal 3 – Agricultural Lands/ Goal 3 Rule – Nonfarm Uses. "Design capacity" as used in OAR 660-033-0130(2)(a), which limits the design capacity of certain structures on EFU-zoned land within three miles of an urban growth boundary, is not the same concept as "maximum occupancy" as that term is used for purposes of fire and safety codes in issuing a building permit for structures. *Oregon Coast Alliance v. Curry County*, 71 Or LUBA 297 (2015).

7.8 Goal 3 – Agricultural Lands/ Goal 3 Rule – Nonfarm Uses. Structures or portions of a structure that are not intended for human occupancy need not be counted toward the limit prescribed by OAR 660-033-0130(2)(a) on structures with a "design capacity" no greater than 100 people. *Oregon Coast Alliance v. Curry County*, 71 Or LUBA 297 (2015).

7.8 Goal 3 – Agricultural Lands/ Goal 3 Rule – Nonfarm Uses. Establishing that the "design capacity" of a structure does not exceed the 100-person limit prescribed in OAR 660-033-0130(2)(a) will likely require the testimony of an architect or designer, together with any necessary calculations or explanations regarding the designed capacity of the structure. Remand is necessary where the applicant proposes a 10,000-square-foot golf clubhouse structure with restaurant, lounge, pro shop, etc., but provides no design or other evidence regarding the designed capacity of the clubhouse, other than testimony that the applicant expects no more than 50 golfers to use the clubhouse at any one time. *Oregon Coast Alliance v. Curry County*, 71 Or LUBA 297 (2015).

7.8 Goal 3 – Agricultural Lands/ Goal 3 Rule – Nonfarm Uses. OAR 660-033-0140 provides that certain permits on agricultural and forest land are void after two years if the use is not initiated within that time period. Where the county development code includes language that is nearly identical to much of the language in OAR 660-033-0140, it is reasonable to conclude the code was adopted to implement OAR 660-033-0140. *Gould v. Deschutes County*, 67 Or LUBA 1 (2013).

7.8 Goal 3 – Agricultural Lands/ Goal 3 Rule – Nonfarm Uses. Where a county makes it sufficiently clear that it adopted its similarly worded version of OAR 660-033-0140 to apply in all county zones, including those that apply to agricultural and forest lands, the county code version of OAR 660-033-0140 applies in place of OAR 660-033-0140 on agricultural and forest lands after the county code version of OAR 660-033-0140 is acknowledged. *Gould v. Deschutes County*, 67 Or LUBA 1 (2013).

7.8 Goal 3 – Agricultural Lands/ Goal 3 Rule – Nonfarm Uses. Under 2010 legislation, wineries authorized by ORS 215.283(1)(n) and 215.452 may offer "[s]ervices directly related to the sale and promotion of wine," and host "private events." ORS 215.452 limits "gross income from the sale of incidental items and services" to "25 percent of the gross income from the retail sale on-site of wine produced in conjunction with the winery." *Friends of Yamhill County v. Yamhill County*, 66 Or LUBA 212 (2012).

7.8 Goal 3 – Agricultural Lands/ Goal 3 Rule – Nonfarm Uses. The legislature in 2010 enacted amendments to ORS 215.452, which governs wineries that are a permitted use under ORS 215.283(1)(n), and those amendments failed to adopt a proposal to expressly preserve statutory authority to approve wineries under ORS 215.283(2)(a) as "commercial activities that are in conjunction with farm use." However, LUBA will not infer from that failure a legislative intent to eliminate ORS 215.283(2)(a) as basis for winery approval on EFU-zoned land, where it was common practice before 2010 to approve wineries under ORS 215.283(2)(a) as "commercial activities that are in conjunction with farm use" and the 2010 legislative history suggests that the legislature did not intended to eliminate that common practice. *Friends of Yamhill County v. Yamhill County*, 66 Or LUBA 212 (2012).

7.8 Goal 3 – Agricultural Lands/ Goal 3 Rule – Nonfarm Uses. Approval of wineries under ORS 215.283(2)(a) as "commercial activities that are in conjunction with farm use" and approval of wineries under ORS 215.283(1)(n) and 215.452, which specifically authorize "wineries" on EFU-zoned land, are *alternative* ways to seek approval for a winery. Approval under ORS 215.283(2)(a) for expansions to an existing winery that was originally approved under ORS 215.283(1)(n) and 215.452 that are not permitted under ORS 215.452, has the legal effect of converting ORS 215.283(1)(n) and 215.452 winery into an ORS 215.283(2)(a) winery. Therefore the expanded winery as a whole must comply with the limits imposed on ORS 215.283(2)(a) wineries. *Friends of Yamhill County v. Yamhill County*, 66 Or LUBA 212 (2012).

7.8 Goal 3 – Agricultural Lands/ Goal 3 Rule – Nonfarm Uses. ORS 215.283(1)(r) authorizes "processing of farm crops" as a permitted use in EFU zones. While a winery that only produces wine from wine grapes might qualify for approval under ORS 215.283(1)(r), a winery that includes a tasting room and hosts numerous events at the winery to promote sale of wine is more than "processing of farm crops" and must be approved under ORS 215.283(1)(n), which authorizes wineries that are limited in accordance with ORS 215.452 and 215.453 or under ORS 215.283(2)(a), which authorizes "commercial activities that are in conjunction with farm use." *Friends of Yamhill County v. Yamhill County*, 66 Or LUBA 212 (2012).

7.8 Goal 3 – Agricultural Lands/ Goal 3 Rule – Nonfarm Uses. A winery that is authorized to hold up to 44 public or private events annually to promote and sell wine produced at the winery

and to prepare and serve meals at those events, but must limit sale of incidental items and services at the events and winery to no more than "25 percent of the gross income from the on-site sale of wine produced in conjunction with the winery," is permissible under the Supreme Court's and Court of Appeals' decisions in *Craven v. Jackson County*, because the events, food service and sale of incidental items and services are properly viewed as "incidental" and "secondary" to the winery. However, such a winery is approaching the point where the events, food service and sale of incidental items and services can no longer be said to be "incidental" and "secondary" to the winery. *Friends of Yamhill County v. Yamhill County*, 66 Or LUBA 212 (2012).

7.8 Goal 3 – Agricultural Lands/ Goal 3 Rule – Nonfarm Uses. A comprehensive plan policy implementing Statewide Planning Goal 3, which states that the county's policy is to "continue to preserve" for farm use lands with agricultural soils, does not impliedly preclude the county from adopting a text amendment that authorizes in the EFU zone one of the non-farm uses allowed on EFU land under ORS 215.283(2). Authorizing on EFU land non-farm uses listed in ORS 215.283(2) is consistent with Goal 3 as a matter of law. *Waste Not of Yamhill County v. Yamhill County*, 65 Or LUBA 142 (2012).

7.8 Goal 3 – Agricultural Lands/ Goal 3 Rule – Nonfarm Uses. In approving a public recreational vehicle (RV) campground under OAR 660-035-0035 and 0040, a local government need not limit infrastructure such as septic RV dumps, water and electric services to the most minimally intensive infrastructure that is possible, to avoid the necessity of taking an exception to Goal 3. *Linn County Farm Bureau v. Linn County*, 63 Or LUBA 347 (2011).

7.8 Goal 3 – Agricultural Lands/ Goal 3 Rule – Nonfarm Uses. A county does not err in concluding that providing central septic dump sites for recreational vehicles (RVs) in a public RV campground does not require an exception to Statewide Planning Goal 3, where if the county did not provide central RV dump sites it would have to increase the size or number of communal restrooms to meet campers' needs, offsetting any reduction in septic infrastructure. *Linn County Farm Bureau v. Linn County*, 63 Or LUBA 347 (2011).

7.8 Goal 3 – Agricultural Lands/ Goal 3 Rule – Nonfarm Uses. A county does not err in concluding that providing a water spigot and an electrical outlet in individual campsites in a public recreational vehicle campground does not require an exception to Goal 3, where providing necessary services to campers requires a dispersed water and electric grid in any event, and the additional infrastructure to supply water and electricity to individual sites is not significantly greater than that otherwise required to provide basic services. *Linn County Farm Bureau v. Linn County*, 63 Or LUBA 347 (2011).

7.8 Goal 3 – Agricultural Lands/ Goal 3 Rule – Nonfarm Uses. It is inappropriate to simply apply the restrictions that govern private park/campgrounds under OAR 660-033-0130(19) to public park/campgrounds governed by a different set of rules, because for whatever reason LCDC has chosen to treat public park/campgrounds more favorably than private park/campgrounds. Nonetheless, the rule governing private campgrounds is the only analogous area of law in which LCDC has attempted to delineate the type or intensity of uses allowed in a campground on EFU land as a conditional use without taking an exception to Goal 3, and is useful context in attempting

to determine which local public park uses on EFU land require a Goal 3 exception in the absence of a local master park plan. *Linn County Farm Bureau v. Linn County*, 61 Or LUBA 323 (2010).

7.8 Goal 3 – Agricultural Lands/ Goal 3 Rule – Nonfarm Uses. The term "dwelling," as used in ORS 215.284 regarding nonfarm dwellings on farmland, includes any essential or accessory improvements or structures such as a well and septic system, and therefore, like the dwelling itself, those essential or accessory improvements or structures are authorized only on portions of the farm parcel that are generally unsuitable for farm use. *Wetherell v. Douglas County*, 56 Or LUBA 120 (2008).

7.8 Goal 3 – Agricultural Lands/ Goal 3 Rule – Nonfarm Uses. Under ORS 215.284, unlike the nonfarm dwelling itself or essential or accessory improvements or structures, driveways or access roads serving the nonfarm dwelling do not have to be located on a portion of the parcel that is generally unsuitable for farm use. *Wetherell v. Douglas County*, 56 Or LUBA 120 (2008).

7.8 Goal 3 – Agricultural Lands/ Goal 3 Rule – Nonfarm Uses. While a parcel may not be considered generally unsuitable "based solely on size or location" without considering whether it can be used in conjunction with other lands, if size or location are not the sole basis for a finding of general unsuitability, then a local government is just required to determine whether the parcel can be used in conjunction with other lands. *Williams v. Jackson County*, 55 Or LUBA 223 (2007).

7.8 Goal 3 – Agricultural Lands/ Goal 3 Rule – Nonfarm Uses. The proper inquiry under ORS 215.284(3)(b) is whether land is generally unsuitable "for the production of farm crops and livestock or merchantable tree species," not whether the land is generally unsuitable for "farm use." *Williams v. Jackson County*, 55 Or LUBA 223 (2007).

7.8 Goal 3 – Agricultural Lands/ Goal 3 Rule – Nonfarm Uses. A parcel can satisfy the generally unsuitable standard even if portions of the parcel contain areas that, if considered alone, do not satisfy the standard. *Williams v. Jackson County*, 55 Or LUBA 223 (2007).

7.8 Goal 3 – Agricultural Lands/ Goal 3 Rule – Nonfarm Uses. OAR 660-034-0035—and by cross-reference OAR 660-034-0040—provide a list of uses that are allowed in state and local parks, some of which are generally not allowed on resource lands without an exception to the resource goals. However, no exception is required if the uses are authorized in a state or local park master plan. *Rural Thurston Inc. v. Lane County*, 55 Or LUBA 382 (2007).

7.8 Goal 3 – Agricultural Lands/ Goal 3 Rule – Nonfarm Uses. By implication, some of the park uses listed in OAR 660-034-0035(2) do not require a goal exception, even if there is no acknowledged park master plan. However, the rule does not specify which uses do or do not require a goal exception in the absence of a park master plan. *Rural Thurston Inc. v. Lane County*, 55 Or LUBA 382 (2007).

7.8 Goal 3 – Agricultural Lands/ Goal 3 Rule – Nonfarm Uses. Park uses listed in OAR 660-034-0035(2) that are passive, low-intensity uses similar to those allowed in campgrounds in resource zones do not require a goal exception to be placed in state or local parks. *Rural Thurston Inc. v. Lane County*, 55 Or LUBA 382 (2007).

7.8 Goal 3 – Agricultural Lands/ Goal 3 Rule – Nonfarm Uses. 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).

7.8 Goal 3 – Agricultural Lands/ Goal 3 Rule – Nonfarm Uses. Where the record reflects that 10 acres of irrigation rights were removed from two 20-acre parcels because 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).

7.8 Goal 3 – Agricultural Lands/ Goal 3 Rule – Nonfarm Uses. 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).

7.8 Goal 3 – Agricultural Lands/ Goal 3 Rule – Nonfarm Uses. Where a portion of a lot or parcel is predominantly composed of Class I-IV soils, OAR 660-033-0130(4)(c)(B)(ii) provides that the portion is presumed generally suitable for the production of farm crops and livestock or merchantable tree species; where the portion is predominantly composed of soils that are not Class I-IV, but the entire subject property is predominantly composed of Class I-IV soils, the presumption provided for in OAR 660-033-0130(4)(c)(B)(ii) does not apply. *Wetherell v. Douglas County*, 51 Or LUBA 699 (2006).

7.8 Goal 3 – Agricultural Lands/ Goal 3 Rule – Nonfarm Uses. Where local land use regulation implements the statutory requirement in ORS 215.284(2)(b) that a portion of a lot or parcel on which a nonfarm dwelling will be located be generally unsuitable for the production of farm crops, the local regulation must be interpreted to be consistent with the statutory requirement it implements. An interpretation that improvements such as driveways, septic systems and wells may be located on the portion of the property that is suitable for production of farm crops is not consistent with the legislative intent of ORS 215.284(2)(b). *Wetherell v. Douglas County*, 51 Or LUBA 699 (2006).

7.8 Goal 3 – Agricultural Lands/ Goal 3 Rule – Nonfarm Uses. ORS 215.284(2)(a) requires a demonstration that a proposed nonfarm dwelling or "activities associated with the dwelling" will not force a significant change in or significantly increase the cost of accepted farming practices on nearby lands. Improvements such as driveways, wells and septic systems are not "activities associated with the dwelling." However, such improvements must be considered part of the proposed dwelling and thus must be considered when determining compliance with ORS 215.284(2)(a). *Wetherell v. Douglas County*, 51 Or LUBA 699 (2006).

7.8 Goal 3 – Agricultural Lands/ Goal 3 Rule – Nonfarm Uses. For purposes of determining whether a nonfarm dwelling proposed in the middle of an existing vineyard will force a significant change in or significantly increase the cost of accepted farming practices on "nearby lands," the county's determination of the dwelling's impact on nearby lands must include consideration of the impact of the dwelling on the existing vineyard on the subject property itself. *Wetherell v. Douglas County*, 51 Or LUBA 699 (2006).

7.8 Goal 3 – Agricultural Lands/ Goal 3 Rule – Nonfarm Uses. An allegation that the county failed to consider the potential impact of a proposed nonfarm dwelling on wells located on nearby properties that serve *domestic* purposes does not provide a basis to reverse or remand the approval of a nonfarm dwelling, where the applicable approval criterion requires a demonstration of whether the proposal will force a significant change in or significantly increase the cost of accepted *farming practices*. *Wetherell v. Douglas County*, 51 Or LUBA 699 (2006).

7.8 Goal 3 – Agricultural Lands/ Goal 3 Rule – Nonfarm Uses. Although a local land use regulation may not specifically require the justification of a 2,000-acre study area for purposes of determining whether a proposed nonfarm dwelling will "materially alter the stability of the overall land use pattern of the area," that regulation implements a statutory requirement, ORS 215.284(2)(d), which has been interpreted to require justification of the scope and contours of any study area used in applying the stability test. To the extent *Epp v. Douglas County*, 46 Or LUBA 480 (2004), concludes otherwise, it is overruled. *Wetherell v. Douglas County*, 51 Or LUBA 699 (2006).

7.8 Goal 3 – Agricultural Lands/ Goal 3 Rule – Nonfarm Uses. For purposes of determining whether a proposed nonfarm dwelling will "materially alter the stability of the overall land use pattern of the area," OAR 660-033-0130(4)(a)(D)(ii) requires identification of the "number, location and type" of existing dwellings in an identified study area. Where a petitioner fails to explain why the county's alleged errors in identifying existing dwellings on nearby properties as nonfarm dwellings rather than farm dwellings would render its conclusion regarding the resulting stability of the area inadequate, it fails to provide a basis for reversal or remand of the challenged decision. *Wetherell v. Douglas County*, 51 Or LUBA 699 (2006).

7.8 Goal 3 – Agricultural Lands/ Goal 3 Rule – Nonfarm Uses. 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).

7.8 Goal 3 – Agricultural Lands/ Goal 3 Rule – Nonfarm Uses. 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).

7.8 Goal 3 – Agricultural Lands/ Goal 3 Rule – Nonfarm Uses. A herbaceous forage survey is not substantial evidence upon which a county may rely in determining that a property is "generally unsuitable" for the production of farm crops and livestock or merchantable tree species pursuant to ORS 215.263(5), where it impossible to ascertain what area the surveys studied and where the survey does not consider potential herbaceous forage capacity if the properties were irrigated. *Peterson v. Crook County*, 49 Or LUBA 223 (2005).

7.8 Goal 3 – Agricultural Lands/ Goal 3 Rule – Nonfarm Uses. A county's conclusion that a proposed nonfarm dwellings will not alter the stability of the land use pattern in the area is not supported by substantial evidence where that conclusion is based on an estimate that 4 or 5 additional nonfarm dwellings could be approved, and that estimate is not supported by any evidence in the record. *Peterson v. Crook County*, 49 Or LUBA 223 (2005).

7.8 Goal 3 – Agricultural Lands/ Goal 3 Rule – Nonfarm Uses. The term "existing facilities" in OAR 660-033-0130 is limited to a facility that will continue in the same use. The rule does not allow an existing residence to be converted to a church merely because it is an existing facility. *Young v. Jackson County*, 49 Or LUBA 327 (2005).

7.8 Goal 3 – Agricultural Lands/ Goal 3 Rule – Nonfarm Uses. Where a local code criterion requires that a nonfarm dwelling be situated on a portion of a lot or parcel that is "generally unsuitable for the production of farm crops and livestock or merchantable tree species," and the code then spells out the considerations for determining whether a portion of a lot or parcel is "unsuitable for farm use," the term "farm use" is not properly read to require evaluation of the suitability for farm uses other than the production of farm crops and livestock or merchantable tree species. *Griffin v. Jackson County*, 48 Or LUBA 1 (2004).

7.8 Goal 3 – Agricultural Lands/ Goal 3 Rule – Nonfarm Uses. For land to constitute "high-value farmland" under OAR 660-033-0020(8)(d), the land must be (1) west of the Coast Range summit, (2) used in conjunction with a dairy operation on January 1, 1993, and (3) part of a "tract," one or more contiguous parcels in the same ownership, composed predominantly of listed soils. Separately owned parcels are not part of the same "tract" for purposes of OAR 660-033-0020(8)(d), even if those parcels were used together as part of a dairy operation on January 1, 1993. *Tallman v. Clatsop County*, 47 Or LUBA 240 (2004).

7.8 Goal 3 – Agricultural Lands/ Goal 3 Rule – Nonfarm Uses. Prohibiting uses that are inconsistent with agriculture on high-value farmland, such as churches, while allowing agricultural-supportive structures and uses on high-value farmland, such as barns, wineries and farm stands, is rationally related to the policy of preserving high-value farmland for agricultural use, and neither treats religious assemblies on unequal terms with nonreligious assemblies nor discriminates against assemblies on the basis of religion in violation of the Religious Land Use and Institutionalized Persons Act (RLUIPA). *1000 Friends of Oregon v. Clackamas County*, 46 Or LUBA 375 (2004).

7.8 Goal 3 – Agricultural Lands/ Goal 3 Rule – Nonfarm Uses. Prohibiting establishment of new uses on high-value farmland, such as churches or golf courses, while allowing expansion of existing churches or golf courses on high-value farmland does not treat religious assemblies on

unequal terms with nonreligious assemblies or discriminate against assemblies on the basis of religion in violation of the Religious Land Use and Institutionalized Persons Act (RLUIPA). *1000 Friends of Oregon v. Clackamas County*, 46 Or LUBA 375 (2004).

7.8 Goal 3 – Agricultural Lands/ Goal 3 Rule – Nonfarm Uses. OAR 660-004-0000(2) does not, as a matter of law, impose a requirement that an applicant for an exception to Goal 3 to permit a single-family dwelling on a 10-acre parcel first exhaust all other potential avenues to obtain approval for that single-family dwelling. *DLCD v. Yamhill County*, 42 Or LUBA 126 (2002).

7.8 Goal 3 – Agricultural Lands/ Goal 3 Rule – Nonfarm Uses. Comparative cost is an inherent consideration in determining under OAR 660-012-0065(5)(a) whether alternative road alignments can be constructed at "reasonable cost." *Friends of Yamhill County v. Yamhill County*, 41 Or LUBA 476 (2002).

7.8 Goal 3 – Agricultural Lands/ Goal 3 Rule – Nonfarm Uses. In determining under OAR 660-012-0065(5)(a) whether alternative road alignments can be constructed at "reasonable cost," possible benefits to properties that are unrelated to the application need not be considered. *Friends of Yamhill County v. Yamhill County*, 41 Or LUBA 476 (2002).

7.8 Goal 3 – Agricultural Lands/ Goal 3 Rule – Nonfarm Uses. In determining under OAR 660-012-0065(5)(a) whether alternative road alignments to serve seven existing lots can be constructed at "reasonable cost," a county does not err by rejecting as unreasonable an alternative alignment that would cost $285,000 where another alternative could be constructed at $93,000. *Friends of Yamhill County v. Yamhill County*, 41 Or LUBA 476 (2002).

7.8 Goal 3 – Agricultural Lands/ Goal 3 Rule – Nonfarm Uses. The OAR 660-033-0130(18) requirement that expansions of existing nonfarm uses on high-value soils must be limited to the "same tract" prohibits expansion of a church septic system onto a different tract, and the fact that DEQ rules permit such cross-boundary septic system expansions in certain circumstances does not modify or obviate the obligation to comply with OAR 660-033-0130(18). *Weaver v. Linn County*, 40 Or LUBA 203 (2001).

7.8 Goal 3 – Agricultural Lands/ Goal 3 Rule – Nonfarm Uses. A church-owned parcel and an adjoining parcel on which the church owns an easement are not within the "same tract" for purposes of OAR 660-033-0130(18), which limits expansion of existing nonfarm uses on high-value soils to the "same tract." To constitute a "tract," the parcels must be in the same ownership, and the easement is legally insufficient to establish an identity of ownership in the two parcels. *Weaver v. Linn County*, 40 Or LUBA 203 (2001).

7.8 Goal 3 – Agricultural Lands/ Goal 3 Rule – Nonfarm Uses. The limitations on activities in public parks imposed by OAR 660-034-0035 do not apply to private parks allowed on agricultural and forest lands under ORS 215.283(2)(c), OAR 660-033-0120 and OAR 660-006-0025(4)(e). *Utsey v. Coos County*, 38 Or LUBA 516 (2000).

7.8 Goal 3 – Agricultural Lands/ Goal 3 Rule – Nonfarm Uses. Unlike Goal 4 and the Goal 4 rule, which limit recreational activities on forest lands to those "appropriate for a forest

environment," ORS 215.283(2)(c) and OAR 660-033-0120 contain no express language restricting the scope or intensity of activities allowed in "private parks" on agricultural land. *Utsey v. Coos County*, 38 Or LUBA 516 (2000).

7.8 Goal 3 – Agricultural Lands/ Goal 3 Rule – Nonfarm Uses. Where a neighboring farmer identifies significant changes and significant cost increases to his ranching operation from a proposed motocross race track and off-road vehicle park, the county must find that the proposed park, as conditioned, will not cause those impacts. Such findings are inadequate where the county does not address those identified impacts or explain why the proposed park, as conditioned, will not cause those impacts. *Utsey v. Coos County*, 38 Or LUBA 516 (2000).

7.8 Goal 3 – Agricultural Lands/ Goal 3 Rule – Nonfarm Uses. Conditions imposed on a proposed motocross race track and off-road vehicle park that noise from the park must comply with DEQ standards and not exceed 99 decibels are inadequate to support a finding of compliance with the noninterference standard, where the county does not determine whether compliance with DEQ standards will prevent identified impacts on surrounding farm and forest practices, and the only mechanism for achieving compliance is to limit the noise from individual vehicles to 99 decibels. Without addressing the cumulative noise impacts of multiple vehicles, the county is no position to conclude that identified impacts will not occur. *Utsey v. Coos County*, 38 Or LUBA 516 (2000).

7.8 Goal 3 – Agricultural Lands/ Goal 3 Rule – Nonfarm Uses. A water utility's proposal to solve a water shortage by drilling wells and constructing related facilities on EFU-zoned land need not demonstrate that it is not feasible to solve the water shortage in some other way than drilling wells. *Dayton Prairie Water Assoc. v. Yamhill County*, 38 Or LUBA 14 (2000).

7.8 Goal 3 – Agricultural Lands/ Goal 3 Rule – Nonfarm Uses. Once a water utility decides to solve a water shortage by drilling wells and constructing related facilities, the wells and related facilities must be located on non-EFU-zoned land, unless it is not feasible to do so. *Dayton Prairie Water Assoc. v. Yamhill County*, 38 Or LUBA 14 (2000).

7.8 Goal 3 – Agricultural Lands/ Goal 3 Rule – Nonfarm Uses. A utility facility may be located on EFU-zoned land if it is not feasible to locate the utility facility on non-EFU-zoned land and, in that circumstance, ORS 215.213(1)(d) and 215.283(1)(d) do not require that the utility facility be located on the "least suitable" EFU-zoned land. *Dayton Prairie Water Assoc. v. Yamhill County*, 38 Or LUBA 14 (2000).

7.8 Goal 3 – Agricultural Lands/ Goal 3 Rule – Nonfarm Uses. In reviewing alternatives to locating a proposed utility facility on a proposed EFU-zoned site, a county is not required to examine alternatives that would also involve using EFU-zoned lands. *Dayton Prairie Water Assoc. v. Yamhill County*, 38 Or LUBA 14 (2000).

7.8 Goal 3 – Agricultural Lands/ Goal 3 Rule – Nonfarm Uses. Because OAR 660-033-0120 and 660-33-0130 prohibit establishment of a church on high-value farmland, the only procedure available to site a church on high-value farmland is to apply for an exception to the applicable goals under Goal 2. *Corp. of Presiding Bishop v. Klamath County*, 34 Or LUBA 131 (1998).

7.8 Goal 3 – Agricultural Lands/ Goal 3 Rule – Nonfarm Uses. Under ORS 215.296(1), a local government must identify farm and forest uses on land surrounding the subject parcel and examine the practices necessary to continue those uses. The absence of findings sufficient to demonstrate compliance with ORS 215.296(1) undermines the conclusion that there will be no conflicts with surrounding farm or forest uses under Goal 5. *Sanders v. Yamhill County*, 34 Or LUBA 69 (1998).

7.8 Goal 3 – Agricultural Lands/ Goal 3 Rule – Nonfarm Uses. The only difference between ORS 215.284(2) and 215.284(3) is that ORS 215.284(2) permits a nonfarm dwelling on an existing parcel, while ORS 215.284(3) permits a nonfarm dwelling on a newly created parcel. *Dorvinen v. Crook County*, 33 Or LUBA 711 (1997).

7.8 Goal 3 – Agricultural Lands/ Goal 3 Rule – Nonfarm Uses. A new nonfarm parcel is not subject to minimum parcel size under ORS 215.780 where the new nonfarm parcel is created from a parent parcel under ORS 215.263(4) and 215.283(3). *Dorvinen v. Crook County*, 33 Or LUBA 711 (1997).

7.8 Goal 3 – Agricultural Lands/ Goal 3 Rule – Nonfarm Uses. OAR 660-33-120 and 660-33-130, which prohibit churches on high-value EFU land, are valid because the uses allowed under the rules are not less restrictive than the uses that would otherwise be allowed under ORS 215.283. *DLCD v. Clackamas County*, 33 Or LUBA 675 (1997).

7.8 Goal 3 – Agricultural Lands/ Goal 3 Rule – Nonfarm Uses. Where a statute and local land use ordinance restricts personal use airports to "use by the owner," the applicant may utilize the airport for uses *incidental* to conducting private business, but not for the applicant's commercial aviation enterprise. *Berto v. Jackson County*, 33 Or LUBA 658 (1997).

7.8 Goal 3 – Agricultural Lands/ Goal 3 Rule – Nonfarm Uses. Before a nonfarm dwelling on agricultural land can be approved, findings must be made showing the subject property satisfies the "generally unsuitable" standard and other standards stated in OAR 660-33-130(4)(c)(B). *Krieger v. Wallowa County*, 31 Or LUBA 96 (1996).

7.8 Goal 3 – Agricultural Lands/ Goal 3 Rule – Nonfarm Uses. A county must incorporate into its exclusive farm use zones, or otherwise implement, the restrictions on uses of high-value farmland required by OAR 660-33-020(8), 660-33-080, 660-33-090 and 660-33-120. *DLCD v. Josephine County*, 28 Or LUBA 459 (1994).

7.8 Goal 3 – Agricultural Lands/ Goal 3 Rule – Nonfarm Uses. Findings of fact stating that accepted farm practices which occurred on adjoining properties have continued after a golf course was constructed do not constitute an improper interpretation of ORS 215.296(1) as being met simply because those past accepted farm practices have continued. *Von Lubken v. Hood River County*, 28 Or LUBA 362 (1994).