8.8 Goal 4 – Forest Lands/ Goal 4 Rule – Forest Dwellings. A county errs in accepting with the applicant's final written argument, for purposes of determining whether at least three dwellings existed on surrounding lots or parcels on January 1, 1993, and therefore whether the subject property qualifies for a forest template dwelling under ORS 215.750, an email from a contractor who worked on one of the surrounding dwellings , even where the email is intended to provide context for evidence submitted by opponents, and thereby rebut opponents' arguments concerning that evidence. Under ORS 197.763(6)(e), new evidence may not be submitted with an applicant's final written argument and, under ORS 197.763(9), such an email is evidence rather than argument. In addition, opponents are not precluded from raising a county's admission of new evidence with the applicant's final written argument as procedural error on appeal to LUBA merely because they failed to object during the local proceedings, where the opportunity to object was provided after the county had already considered evidence, deliberated, and made its oral decision, and where the record was closed and no further testimony was allowed. *Eng v. Wallowa County*, 79 Or LUBA 421 (2019).

8.8 Goal 4 – Forest Lands/ Goal 4 Rule – Forest Dwellings. Where a county determines that a property qualifies for a forest template dwelling under ORS 215.750 because at least three dwellings existed on surrounding lots or parcels on January 1, 1993, based on a statement of the applicant, a recollection of the prior owner of one of the surrounding dwellings, an email from a contractor who worked on one of the surrounding dwellings, and a statement by the tax assessor that its records showed a dwelling in place on January 1, 1993, but where LUBA concludes that the county erred in accepting the email, where LUBA cannot determine whether the county would have reached the same conclusion without the email, and where the county's findings failed to address evidence that the tax rolls indicate existence of the dwelling as of July 1993 rather than January 1993, LUBA will remand for the county to adopt adequate findings. *Eng v. Wallowa County*, 79 Or LUBA 421 (2019).

8.8 Goal 4 – Forest Lands/ Goal 4 Rule – Forest Dwellings. Absent a legal definition for how the center point of a property must be established for purposes of determining whether it qualifies for a forest template dwelling under ORS 215.750, a county errs by not explaining the basis for its conclusion that its chosen method is the most appropriate and by not addressing opponents' arguments challenging that method. *Eng v. Wallowa County*, 79 Or LUBA 421 (2019).

8.8 Goal 4 – Forest Lands/ Goal 4 Rule – Forest Dwellings. A county errs in accepting with the applicant's final written argument, for purposes of determining whether at least three dwellings existed on surrounding lots or parcels on January 1, 1993, and therefore whether the subject property qualifies for a forest template dwelling under ORS 215.750, an email from a contractor who worked on one of the surrounding dwellings , even where the email is intended to provide context for evidence submitted by opponents, and thereby rebut opponents' arguments concerning that evidence. Under ORS 197.763(6)(e), new evidence may not be submitted with an applicant's final written argument and, under ORS 197.763(9), such an email is evidence rather than argument. In addition, opponents are not precluded from raising a county's admission of new evidence with the applicant's final written argument as procedural error on appeal to LUBA merely because they failed to object during the local proceedings, where the opportunity to object was provided after the county had already considered evidence, deliberated, and made its oral decision, and where the

record was closed and no further testimony was allowed. *Eng v. Wallowa County*, 79 Or LUBA 421 (2019).

8.8 Goal 4 – Forest Lands/ Goal 4 Rule – Forest Dwellings. Where a county determines that a property qualifies for a forest template dwelling under ORS 215.750 because at least three dwellings existed on surrounding lots or parcels on January 1, 1993, based on a statement of the applicant, a recollection of the prior owner of one of the surrounding dwellings, an email from a contractor who worked on one of the surrounding dwellings, and a statement by the tax assessor that its records showed a dwelling in place on January 1, 1993, but where LUBA concludes that the county erred in accepting the email, where LUBA cannot determine whether the county would have reached the same conclusion without the email, and where the county's findings failed to address evidence that the tax rolls indicate existence of the dwelling as of July 1993 rather than January 1993, LUBA will remand for the county to adopt adequate findings. *Eng v. Wallowa County*, 79 Or LUBA 421 (2019).

8.8 Goal 4 – Forest Lands/ Goal 4 Rule – Forest Dwellings. Absent a legal definition for how the center point of a property must be established for purposes of determining whether it qualifies for a forest template dwelling under ORS 215.750, a county errs by not explaining the basis for its conclusion that its chosen method is the most appropriate and by not addressing opponents' arguments challenging that method. *Eng v. Wallowa County*, 79 Or LUBA 421 (2019).

8.8 Goal 4 – Forest Lands/ Goal 4 Rule – Forest Dwellings. Petitioner's argument that a proposed detached accessory structure for an "art studio" is not a permissible "accessory" structure allowed in the Impacted Forest Lands (F-2) zone provides no basis for reversal or remand where petitioner cites to no local code, state statute or administrative rule governing forest lands, suggesting limitations on accessory structures to a primary dwelling that is otherwise allowed on forest lands under state law. *Landwatch Lane County v. Lane County*, 78 Or LUBA 272 (2018).

8.8 Goal 4 – Forest Lands/ Goal 4 Rule – Forest Dwellings. A petitioner's argument that locating an art studio several hundred feet from an existing dwelling on forest land instead of adjacent to the dwelling and within the dwelling's existing fire breaks does not provide a basis for reversal or remand, where the petitioner does not identify any rule or other requirement that an accessory structure be clustered with the existing dwelling. *Landwatch Lane County v. Lane County*, 78 Or LUBA 272 (2018).

8.8 Goal 4 – Forest Lands/ Goal 4 Rule – Forest Dwellings. LUBA will reject petitioner's argument that a proposed "art studio" is in reality an "accessory dwelling" in the forest zone in violation of state and local law where the county hearings officer imposed several conditions intended to ensure that the proposed "art studio" would not be used as an "accessory dwelling," and petitioner's speculation that the applicant might violate one or more conditions of approval provides no basis for reversal or remand. *Landwatch Lane County v. Lane County*, 78 Or LUBA 272 (2018).

8.8 Goal 4 – Forest Lands/ Goal 4 Rule – Forest Dwellings. A hearings officer's finding that land in the forest zone upon which development is proposed is "flat" is not supported by substantial evidence where the finding is supported only by the applicant's assertion that the relevant slope is

"less than 3" percent, but the record includes two topographic maps that appear to show that the slope exceeds 10 percent, which if so triggers additional fire safety requirements. *Landwatch Lane County v. Lane County*, 78 Or LUBA 272 (2018).

8.8 Goal 4 – Forest Lands/ Goal 4 Rule – Forest Dwellings. A county hearings officer errs in denying a forest template dwelling application on the sole basis that petitioner had not provided a fire safety inspection, where the applicable ordinance provision entitled "Wildfire Safety Requirements" requires "[o]ther measures as recommended by the fire agency commenting on the application or the County Fire Safety Inspector," and no fire agency recommended any measures or a fire inspection in any submitted comments. *Blu Dutch LLC v. Jackson County*, 78 Or LUBA 495 (2018).

8.8 Goal 4 – Forest Lands/ Goal 4 Rule – Forest Dwellings. Even though an applicant provides evidence of ownership of 200 or more acres in western Oregon after the application is deemed complete, a hearings officer correctly concludes that an application for a forest template dwelling satisfies ORS 215.740(3), where nothing in the statute or local development ordinances requires an applicant for a large tract forest dwelling to prove ownership of the parcel at the time an application is submitted. *Blu Dutch LLC v. Jackson County*, 78 Or LUBA 495 (2018).

8.8 Goal 4 – Forest Lands/ Goal 4 Rule – Forest Dwellings. A hearings officer correctly interprets ORS 215.740(3) in concluding that the minimum acreage requirement that applies to an application for a forest template dwelling is the minimum acreage for the applicant's tracts located in western Oregon where the forest template dwelling is proposed to be located, rather than the non-contiguous parcel located in an adjacent county designated as eastern Oregon. ORS 215.740 allows an owner seeking a dwelling on a tract that is located in western Oregon to rely on non-contiguous land in another adjacent county to meet the minimum acreage requirements; it does not require that the minimum acreage requirements for the non-contiguous county be the applicable standard. *Blu Dutch LLC v. Jackson County*, 78 Or LUBA 495 (2018).

8.8 Goal 4 – Forest Lands/ Goal 4 Rule – Forest Dwellings. A county decision to approve a dwelling on forest land under local land use regulations that implement ORS 215.705, 215.740 or 215.750 is a "permit" decision as defined at ORS 215.402(4), because the local code and statutes impose discretionary approval standards on such development. To remove any doubt, ORS 215.402(4) defines "permit" to include approvals of development under ORS 215.700 to 215.780, a range which includes ORS 215.705, 215.740 and 215.750. *Eng v. Wallowa County*, 76 Or LUBA 432 (2017).

8.8 Goal 4 – Forest Lands/ Goal 4 Rule – Forest Dwellings. A hearings officer's conclusion that the subject property was "lawfully created" is supported by substantial evidence in the record that includes (1) a set of receipts for 1980 recording fees for the final partition plat for submittal of a survey, (2) a set of 1980 recorded deeds, and (3) the recorded final partition plat, despite the fact that the final partition plat was not recorded until 1996, where a reasonable person could rely on that evidence to conclude the subject property was created in conformance with all applicable ordinances. *Landwatch Lane County v. Lane County*, 75 Or LUBA 151 (2017).

8.8 Goal 4 – Forest Lands/ Goal 4 Rule – Forest Dwellings. ORS 215.750 and OAR 660-006-005(5) allow a county to approve a forest template dwelling if, after applying a 160-acre template centered on the subject property, at least 11 other "lots or parcels that existed on January 1, 1993, are" within the 160-acre area. A hearings officer's finding that the applicant met the 11-lot requirement by counting three parcels with boundaries that were later reconfigured pursuant to property line adjustment after January 1, 1993, as long as the parcels as they existed on January 1, 1993 were "partly or completely within the template boundaries," and counting a fourth parcel that was partitioned into two parcels after January 1, 1993 as one parcel is consistent with the statute and the rule, where the administrative rule history of OAR 660-006-0005(5) indicates the Land Conservation and Development Commission (LCDC) did not intend to prohibit an applicant from relying on the January 1, 1993 configuration of a later-reconfigured parcel so long as "the effect of" later properly line adjustments was not "to qualify a lot, parcel or tract for the siting of a dwelling." *Landwatch Lane County v. Lane County*, 75 Or LUBA 151 (2017).

8.8 Goal 4 – Forest Lands/ Goal 4 Rule – Forest Dwellings. ORS 215.750 and OAR 660-006-0027(3) authorize local governments to approve forest template dwellings if at least three dwellings existed within a specified 160-acre area and those dwellings continue to exist at the time forest template dwelling approval is requested. But neither the statute nor the rule defines the key term "dwelling" and neither the statute nor the rule explicitly addresses whether a long abandoned, derelict structure may qualify as a "dwelling," for purposes of qualifying for a forest template dwelling. *West v. Multnomah County*, 70 Or LUBA 235 (2014).

8.8 Goal 4 – Forest Lands/ Goal 4 Rule – Forest Dwellings. ORS 215.750 and OAR 660-006-0027(3) authorize local governments to approve forest template dwellings if at least three dwellings existed within a specified 160-acre area and those dwellings continue to exist at the time forest template dwelling approval is requested. A hearings officer's interpretation of the word "dwelling" in local laws adopted to implement ORS 215.750 and OAR 660-006-0027(3) such that a former dwelling that has been vacant for many years and is in a state of disrepair that would preclude use as a residence does not qualify as a "dwelling" for purposes of satisfying ORS 215.750 and OAR 660-006-0027(3) is more consistent with the underlying purpose of the statute and rule. That underlying purpose is to allow forest template dwellings in circumstances where there is existing limited residential development on forest lands, and the hearings officer's interpretation is more consistent with that underlying purpose than interpreting the word "dwelling" to include long abandoned structures, no matter how derelict and uninhabitable as a dwelling in its current condition. *West v. Multnomah County*, 70 Or LUBA 235 (2014).

8.8 Goal 4 – Forest Lands/ Goal 4 Rule – Forest Dwellings. ORS 215.750 and OAR 660-006-0027(3) authorize local governments to approve forest template dwellings if at least three dwellings existed within a specified 160-acre area and those dwellings continue to exist at the time forest template dwelling approval is requested. Where the record supports a hearings officer's finding that a dwelling that was constructed in 1906 has been unoccupied for many years prior to an application for approval of a forest template dwelling, the hearings officer correctly found that the 1906 dwelling was a nonconforming use in the county's forest zone that was first applied long after the 1906 dwelling was constructed. And the hearings officer correctly found that under local laws adopted to implement ORS 215.750 and OAR 660-006-0027(3), the forest template dwelling applicant must establish that the right to continue residential use of the 1906 dwelling was not lost

through interruption or abandonment for two years or more before the 1906 dwelling could be counted as a dwelling that "continues to exist" at the time the application for approval of a forest template dwelling was filed. *West v. Multnomah County*, 70 Or LUBA 235 (2014).

8.8 Goal 4 – Forest Lands/ Goal 4 Rule – Forest Dwellings. As defined in ORS 215.010(1), the word "parcel" includes units of land that have been "lawfully established." When the word "parcel" is used elsewhere in ORS Chapter 215, it means that in order for a unit of land to qualify as a "parcel" it must have been created in compliance with applicable partitioning laws or created prior to the enactment of those laws. *Friends of Yamhill County v. Yamhill County*, 58 Or LUBA 315 (2009).

8.8 Goal 4 – Forest Lands/ Goal 4 Rule – Forest Dwellings. A county's conclusion that the word "parcel" used in ORS 215.750(1)(c) should not have the meaning given it in ORS 215.010(1) is without support where ORS 215.010 specifies that the word "parcel" * * * "as used in" Chapter 215 has that meaning. *Friends of Yamhill County v. Yamhill County*, 58 Or LUBA 315 (2009).

8.8 Goal 4 – Forest Lands/ Goal 4 Rule – Forest Dwellings. ORS 215.750 does not prohibit a local government from applying a local code provision requiring an applicant for a forest template dwelling to demonstrate that the dwelling is "necessary for and accessory to" the forest use. *Greenhalgh v. Columbia County*, 54 Or LUBA 626 (2007).

8.8 Goal 4 – Forest Lands/ Goal 4 Rule – Forest Dwellings. Applying the contextual analysis that is required by *Maxwell v. Lane County*, 178 Or App 210, 35 P3d 1128 (2001), *adh'd to as modified on recons*, 179 Or App 409, 40 P3d 532 (2002), even though ORS 215.750(1) does not expressly state that the references in that statute to "lots" are limited to lawfully created lots, and even though the relevant definitions in ORS 92.010 do not expressly require that a lot must be a lawfully created lot, if those statutes are read in context with ORS 92.012, 92.018(1), 92.025(1) and ORS 215.010(1)(a), it is sufficiently clear that when the legislature used the term "lot" in ORS 215.750(1) it did not mean to include unlawfully created lots. *Reeves v. Yamhill County*, 53 Or LUBA 4 (2006).

8.8 Goal 4 – Forest Lands/ Goal 4 Rule – Forest Dwellings. County authority to approve forest template dwellings derives from ORS 215.750(1). In exercising the authority granted by ORS 215.750(1), a county may not apply a county definition of "lot" to recognize lots that could not be recognized under ORS 215.750(1). The county may not set a lower standard for approving forest template dwellings under county legislation than the standard that is set by ORS 215.750. *Reeves v. Yamhill County*, 53 Or LUBA 4 (2006).

8.8 Goal 4 – Forest Lands/ Goal 4 Rule – Forest Dwellings. Findings concluding that a proposed dwelling will not significantly increase fire hazards in a forest zone are not necessarily adequate to also show that the dwelling will not significantly increase fire suppression costs or risks to fire suppression personnel. *Central Oregon Landwatch v. Deschutes County*, 53 Or LUBA 290 (2007).

8.8 Goal 4 – Forest Lands/ Goal 4 Rule – Forest Dwellings. A hearings officer errs in concluding, based on expert testimony that isolated dwellings force firefighters to choose either to abandon such homes or to devote insufficient resources to defend them, that the proposed isolated

dwelling will not significantly increase fire suppression costs or risks to fire suppression personnel because firefighters would simply abandon the dwelling. *Central Oregon Landwatch v. Deschutes County*, 53 Or LUBA 290 (2007).

8.8 Goal 4 – Forest Lands/ Goal 4 Rule – Forest Dwellings. Remand is necessary where the applicant's forest consultant recommends vegetation removal as necessary to ensure compliance with approval criteria for a large tract forest dwelling, but the hearings officer does not adopt a condition of approval to that effect or explain why such measures are not necessary to ensure compliance with approval criteria. *Central Oregon Landwatch v. Deschutes County*, 53 Or LUBA 290 (2007).

8.8 Goal 4 – Forest Lands/ Goal 4 Rule – Forest Dwellings. Under a code standard requiring that a forest dwelling be located at a site that minimizes the risks associated with wildfire, remand is necessary where the opponents' expert testified that the preferred site is isolated and will incur significantly more risk and cost to firefighters over alternative sites, there is no rebuttal of that testimony, and the findings do not state a sufficient basis to reject that testimony. *Central Oregon Landwatch v. Deschutes County*, 53 Or LUBA 290 (2007).

8.8 Goal 4 – Forest Lands/ Goal 4 Rule – Forest Dwellings. Where the purpose of code standards for siting a large tract forest dwelling is to identify a site that minimizes the loss of forest lands to non-forest uses, it is appropriate to favor sites that are already developed for non-forest uses over undeveloped sites, because developed sites do not require additional loss of forest lands to forest uses. *Central Oregon Landwatch v. Deschutes County*, 53 Or LUBA 290 (2007).

8.8 Goal 4 – Forest Lands/ Goal 4 Rule – Forest Dwellings. Under a code standard requiring that a proposed forest dwelling not significantly change or increase the cost of farm or forest practices on nearby resource lands, the hearings officer's failure to separately analyze more distant properties in the study area or identify its outer boundaries is not reversible error, where the hearings officer found no significant impacts on parcels adjacent to the subject property and, given the homogeneity of the surrounding area, significant impacts on non-adjoining parcels are unlikely. *Sisters Forest Planning Comm. v. Deschutes County*, 48 Or LUBA 78 (2004).

8.8 Goal 4 – Forest Lands/ Goal 4 Rule – Forest Dwellings. The OAR 660-006-0029(1) requirement to identify a dwelling location that "least impacts" resource operations and "minimizes" wildfire risks and adverse impacts on resource use entails some discussion of alternative locations for the dwelling on the parcel and a demonstration that the preferred location is, on balance, equal or superior to other potential locations on the parcel. *Sisters Forest Planning Comm. v. Deschutes County*, 48 Or LUBA 78 (2004).

8. 8 Goal 4 – Forest Lands/ Goal 4 Rule – Forest Dwellings. Even if a code provision is properly interpreted to require that a proposed forest dwelling be located within 300 feet of the road that provides access to the subject property, a decision that locates the dwelling within 300 feet of a road that does not currently provide access to the property is consistent with that provision, where the decision conditions approval on constructing a secondary access route from the dwelling site to that road. *Sisters Forest Planning Comm. v. Deschutes County*, 48 Or LUBA 78 (2004).

8.8 Goal 4 – Forest Lands/ Goal 4 Rule – Forest Dwellings. When viewed alone, the word "within" in a code provision that requires that dwellings must be within a template area to be counted is ambiguous, because it could mean the dwelling must be at least partially within or it could mean the dwelling must be entirely within. However, where a related provision specifies that "all or part of" a parcel must be within the template, the failure to include the "all or part of" modifier provides contextual support for interpreting the provision without the modifier as requiring that the entire dwelling must be within the template area. *Worman v. Multnomah County*, 47 Or LUBA 410 (2004).

8.8 Goal 4 – Forest Lands/ Goal 4 Rule – Forest Dwellings. Forest restocking requirements imposed by OAR 660-006-0029 do not constitute approval criteria that determine whether a dwelling may be approved on property zoned for forest use. *Hodge Oregon Properties, LLC v. Lincoln County*, 46 Or LUBA 290 (2004).

8.8 Goal 4 – Forest Lands/ Goal 4 Rule – Forest Dwellings. Under OAR 660-033-0140(5) a forest template dwelling permit is valid for four years and can be extended for two additional years. Although OAR 660-033-0140(3) provides that such an extension of a permit for a forest template dwelling "is not subject to appeal as a land use decision," a county decision that grants a one-year extension of a forest template dwelling two years after it was issued, pursuant to general local legislation that allows permits to be extended, is a land use decision and is reviewable by LUBA. *Butori v. Clatsop County*, 45 Or LUBA 677 (2003).

8.8 Goal 4 – Forest Lands/ Goal 4 Rule – Forest Dwellings. More detailed soils maps may be used to demonstrate that less detailed mapping by NRCS is "inaccurate," within the meaning of OAR 660-006-0005(2). *Carlson v. Benton County*, 37 Or LUBA 897 (2000).

8.8 Goal 4 – Forest Lands/ Goal 4 Rule – Forest Dwellings. OAR 660-006-0005(2) controls how a decision maker must apply the legal standards for approval of dwellings on forest land that are contained in ORS 215.750. *Carlson v. Benton County*, 37 Or LUBA 897 (2000).

8.8 Goal 4 – Forest Lands/ Goal 4 Rule – Forest Dwellings. Under OAR 660-006-0005(2), NRCS data must be used to demonstrate compliance with ORS 215.750 unless NRCS data are shown to be inaccurate or unavailable. *Carlson v. Benton County*, 37 Or LUBA 897 (2000).

8.8 Goal 4 – Forest Lands/ Goal 4 Rule – Forest Dwellings. The requirement of OAR 660-006-0005(2) that data from an alternative methodology must be equivalent to NRCS data means that the data must be expressed as "cubic feet per acre per year," or an equivalent measure. OAR 660-006-0005(2) does not require that the alternative methodology must be equivalent to the methodology that is employed by NRCS. *Carlson v. Benton County*, 37 Or LUBA 897 (2000).

8.8 Goal 4 – Forest Lands/ Goal 4 Rule – Forest Dwellings. Where reports submitted as an alternative method for establishing the capability of soils to grow trees under OAR 660-006-0005(2) take the position that the soils on the subject property will produce between 0 and 49 cubic feet per acre per year of wood fiber, that data is sufficiently quantified to constitute data that is equivalent to NRCS data, where the ultimate legal standard is whether the predominant soils are

capable of producing less than 49 cubic feet per acre per year of wood fiber. *Carlson v. Benton County*, 37 Or LUBA 897 (2000).

8.8 Goal 4 – Forest Lands/ Goal 4 Rule – Forest Dwellings. A county may reasonably rely on a report based on consideration of a broad sample of native tree species to determine whether the predominant soils on the property are capable of producing more than 49 cubic feet per acre per year of wood fiber of any kind where there is not reasonable basis presented for believing that planting one or more nonnative tree species on the predominate soils would produce more than 49 cubic feet per acre per year of wood fiber. *Carlson v. Benton County*, 37 Or LUBA 897 (2000).

8.8 Goal 4 – Forest Lands/ Goal 4 Rule – Forest Dwellings. The requirement for Oregon Department of Forestry (ODF) approval of an alternative method of determining soils productivity is not met by ODF approval of a report prepared in a prior proceeding where the scope of that ODF approval is uncertain. The fact that "site visits" and "library research" formed the basis for the prior report and a later report does not allow the county to assume the alternative method in the later report is approved by ODF. *Carlson v. Benton County*, 37 Or LUBA 897 (2000).

8.8 Goal 4 – Forest Lands/ Goal 4 Rule – Forest Dwellings. Where a county finds in its initial decision that the soils on a property are less productive than the same types of soils on adjoining properties due to slope and soil wetness, and no party challenges that finding, the county need not consider that issue in making a decision on remand from LUBA of its initial decision. *Carlson v. Benton County*, 37 Or LUBA 897 (2000).

8.8 Goal 4 – Forest Lands/ Goal 4 Rule – Forest Dwellings. A county's improper reliance on poor past management practices in concluding a property is not suitable for commercial forest use provides no basis for reversal or remand, where there is other evidence in the record that a reasonable person could rely on to reach that conclusion. *Dept. of Transportation v. Coos County*, 35 Or LUBA 285 (1998).

8.8 Goal 4 – Forest Lands/ Goal 4 Rule – Forest Dwellings. The permissive terms of ORS 215.750 do not prohibit a local government from adding forest template dwelling criteria that are more restrictive than statutory standards. *Yontz v. Multnomah County*, 34 Or LUBA 367 (1998).

8.8 Goal 4 – Forest Lands/ Goal 4 Rule – Forest Dwellings. A local government is not obligated by ORS 215.750(1) to allow the establishment of nonforest dwellings. If a local government chooses to allow nonforest dwellings, it is not obligated to allow nonforest dwellings under the alternative template test specified at ORS 215.750(5). *Yontz v. Multnomah County*, 34 Or LUBA 367 (1998).

8.8 Goal 4 – Forest Lands/ Goal 4 Rule – Forest Dwellings. Where a soil study is needed for approval of a forest template dwelling, OAR 660-006-0005(2) requires that determination of soil capability be based on NRCS data, unless the local government finds that data inaccurate or unavailable, in which case it may consider "equivalent data" generated by an approved method of determining the capability of soils to produce wood fiber. *Carlson v. Benton County*, 34 Or LUBA 140 (1998).

8.8 Goal 4 – Forest Lands/ Goal 4 Rule – Forest Dwellings. The absence of an NRCS productivity rating for a particular soil means only that NRCS data regarding that soil are "not available" within the meaning of OAR 660-006-0005(2). *Carlson v. Benton County*, 34 Or LUBA 140 (1998).

8.8 Goal 4 – Forest Lands/ Goal 4 Rule – Forest Dwellings. ORS 215.750 does not, through its text, context or legislative history, limit the meaning of the term "wood fiber" to Douglas fir wood fiber, to the exclusion of other commercial tree species. *Carlson v. Benton County*, 34 Or LUBA 140 (1998).

8.8 Goal 4 – Forest Lands/ Goal 4 Rule – Forest Dwellings. Where a soil study, intended to be an alternative method allowed by OAR 660-006-0005, fails to determine the capability of non-rated soils for producing wood fiber other than Douglas fir, the standard in OAR 660-006-0005 for determining the productivity of the soil by generating equivalent data, has not been met. *Carlson v. Benton County*, 34 Or LUBA 140 (1998).

8.8 Goal 4 – Forest Lands/ Goal 4 Rule – Forest Dwellings. Where an NRCS soil survey does not rate certain soils, that nonrating cannot be used to determine the capacity of the soil for producing wood fiber and cannot be the basis of a conclusion that such soils produce 0-49 cf/ac/yr. The nonrating says nothing in quantitative terms or otherwise about the soil's capacity to produce wood fiber, and therefore is not "equivalent data" as required by OAR 660-006-0005 for an alternative method of soil assessment. *Carlson v. Benton County*, 34 Or LUBA 140 (1998).

8.8 Goal 4 – Forest Lands/ Goal 4 Rule – Forest Dwellings. The statutory definition of "public road" at ORS 368.001(5) is not applicable to approval of a forest template dwelling required by ORS 215.750(5) to be located on a tract that abuts a "road." Interpretation of a local code requirement that such dwellings be located on a "public road" is controlled by local legislative intent rather than by statute. *Petersen v. Yamhill County*, 33 Or LUBA 584 (1997).

8.8 Goal 4 – Forest Lands/ Goal 4 Rule – Forest Dwellings. Under ORS 215.750(4) and OAR 660-06-027(5)(a), contiguous parcels that would otherwise qualify for forest template dwellings on each parcel may qualify for only one dwelling if the parcels are part of a tract. *Parsons v. Clackamas County*, 32 Or LUBA 147 (1996).

8.8 Goal 4 – Forest Lands/ Goal 4 Rule – Forest Dwellings. The mere conveyance of three contiguous parcels in a tract does not reconfigure the parcel boundaries for purposes of OAR 660-06-005(4). *Parsons v. Clackamas County*, 32 Or LUBA 147 (1996).

8.8 Goal 4 – Forest Lands/ Goal 4 Rule – Forest Dwellings. Unlike the lot-of-record statutes, the forest template dwelling provisions of ORS 215.750 specify no date by which parcels qualifying for template dwellings must have been created; thus, the lot-of-record rules set forth in OAR 660-06-005(4) regarding the parcels' date of creation do not apply to forest template dwellings. *Parsons v. Clackamas County*, 32 Or LUBA 147 (1996).

8.8 Goal 4 – Forest Lands/ Goal 4 Rule – Forest 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).

8.8 Goal 4 – Forest Lands/ Goal 4 Rule – Forest 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).

8.8 Goal 4 – Forest Lands/ Goal 4 Rule – Forest Dwellings. Where an applicable comprehensive plan policy requires that residential uses adjacent to forestlands have adequate setbacks and fire prevention measures, a local government decision approving a forest dwelling must be supported by findings establishing what setbacks and fire prevention measures are required and why they are adequate. *Furler v. Curry County*, 27 Or LUBA 546 (1994).

8.8 Goal 4 – Forest Lands/ Goal 4 Rule – Forest Dwellings. A reasonable person could not conclude that a proposed forest dwelling satisfies a "necessary for forest use" standard because the subject property is "quite remote," where the evidence in the record shows only that the subject property is five miles from an urban growth boundary and a 35 minute drive from a city. *Furler v. Curry County*, 27 Or LUBA 546 (1994).

8.8 Goal 4 – Forest Lands/ Goal 4 Rule – Forest Dwellings. A finding that a proposed forest dwelling will occupy only a small portion of the subject property is relevant to a determination of compliance with an "accessory to forest use" standard, but is not sufficient, in itself, to support a determination of compliance with the standard. *Furler v. Curry County*, 27 Or LUBA 546 (1994).