

1 BEFORE THE LAND USE BOARD OF APPEALS
2 OF THE STATE OF OREGON

3
4 FRIENDS OF YAMHILL COUNTY,
5 *Petitioner,*

6
7 vs.

8
9 YAMHILL COUNTY,
10 *Respondent,*

11
12 and

13
14 GRANGE HILL, LLC,
15 *Intervenor-Respondent.*

16
17 LUBA No. 2026-016

18
19 FINAL OPINION
20 AND ORDER

21
22 Appeal from Yamhill County.

23
24 Ricky Armendariz filed the petition for review and reply brief and argued
25 on behalf of petitioner.

26
27 Jodi M. Gollehon filed a joint respondent's brief on behalf of respondent.
28 Also on the brief was Kaleb C. Raevers, Kevin H. Kono, Elaine Albrich, Caroline
29 Cilek, and Davis Wright Tremaine LLP.

30
31 Kevin H. Kono filed a joint respondent's brief and argued on behalf of
32 intervenor-respondent. Also on the brief was Jodi M. Gallehon, Kaleb C. Raevers,
33 Elaine Albrich, Caroline Cilek, and Davis Wright Tremaine LLP.

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35 BASSHAM, Board Member; ZAMUDIO, Board Chair; WILSON, Board
36 Member, participated in the decision.

37
38 ZAMUDIO, Board Chair, concurring.

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REMANDED

8/13/2026

You are entitled to judicial review of this Order. Judicial review is governed by the provisions of ORS 197.850.

NATURE OF THE DECISION

Petitioner appeals a county decision, on remand, re-approving a conditional use permit (CUP) to operate a bed and breakfast facility as a home occupation in a farm dwelling, on land zoned exclusive farm use (EFU).

MOTION TO INTERVENE

Grange Hill, LLC (intervenor), the applicant below, moves to intervene on the side of the county in this appeal. The motion is unopposed and is allowed.

MOTION TO TAKE OFFICIAL NOTICE

Petitioner moves to take official notice, pursuant to OAR 661-010-0046¹ and ORS 40.090,² of a document published by the Oregon Department of Land Conservation and Development (DLCD), entitled “Using Income Criteria to Protect Commercial Farmland in the State of Oregon.” Petitioner argues that the

¹ OAR 661-010-0046(1) provides that LUBA may take official notice of relevant judicial law as defined in ORS 40.090. OAR 661-010-0046(2)(a) further provides, in part, that:

“A motion to take official notice shall contain a statement explaining with particularity what the material sought to be noticed is intended to establish, how it is relevant to an issue on appeal, and the authority for notice under ORS 40.090.”

² As relevant here, ORS 40.090(2) defines “law judicially noticed” to include:

“Public and private official acts of the legislative, executive and judicial departments of this state, the United States, any federally recognized American Indian tribal government and any other state, territory or other jurisdiction of the United States.”

1 DLCD document is a public official act of an executive department of this state,
2 and therefore subject to judicial notice. According to petitioner, the DLCD
3 document discusses the legislative history of the farm income test at ORS
4 215.279 and OAR 660-033-0135(4)(a) and “is relevant to understanding the
5 legislature’s concerns regarding the proliferation of farm dwellings with no
6 agricultural use[]” and “how th[o]se concerns extend to home occupations that
7 are operated substantially within farm dwellings.” Motion to Take Official Notice
8 1-2.

9 The county and intervenor (together, respondents) oppose the motion,
10 arguing first that petitioner has not established that the proffered document is
11 authentic. Respondents note that the document is not found on DLCD’s website,
12 and the uniform resource locator (URL) petitioner provided as the source for the
13 document links to the website of a private institution, not an Oregon government
14 website. Petitioner replies that the document is available on the Oregon State
15 Library’s website, in its Government Information and Library Services
16 collection, and provides a URL for that source. We have verified that source, and
17 agree with petitioner that, as far as can be demonstrated, the document is an
18 authentic DLCD publication.

19 Respondents next argue that the DLCD document is not relevant to any
20 issue on appeal, because it does not qualify as “legislative history” as petitioner
21 claims. Respondents argue that there is no evidence that the document, which is
22 undated, was presented to the legislature in adopting statutes related to farm

1 dwellings, or before the Land Conservation and Development Commission
2 (LCDC) in promulgating rules related to farm dwellings. Further, respondents
3 note that the document does not address home occupations at all, much less home
4 occupations in farm dwellings.

5 Petitioner replies that, while the document does not itself constitute
6 legislative history of the statutes and rules governing farm dwellings and the farm
7 income test, it is an official agency publication that summarizes the history and
8 purpose of that legislation, which petitioner argues reflects a general legislative
9 concern regarding the proliferation of “farm dwellings” that have no connection
10 to agricultural use of the property. We understand petitioner to argue that that
11 summary is relevant to the third assignment of error, which challenges the
12 county’s conclusions regarding whether the farm dwelling at issue in this appeal
13 will be occupied by the “farm operator.”

14 As discussed below, the third assignment of error turns on whether the
15 applicant has established that the farm dwelling will be occupied by the “farm
16 operator,” which under the governing case law is a requirement for obtaining a
17 conditional use permit for a home occupation in a farm dwelling. The DLCD
18 publication does not concern home occupations, but it does summarize the
19 legislative tests that govern farm dwellings, and describes the policy basis for
20 those tests. As discussed further below, the farm dwelling tests include a
21 minimum farm income, earned by the “farm operator,” and certain restrictions on
22 occupancy of the farm dwelling. In our view, those tests have some relevance to

1 the question presented in the third assignment of error. Accordingly, we shall
2 consider petitioner’s legal arguments based on the DLCD publication, to the
3 extent that publication is relevant to the issues raised under the third assignment
4 of error.³ The motion to take official notice is granted.

5 **BACKGROUND**

6 This is the county’s second attempt to approve a CUP for a home
7 occupation within a farm dwelling, to allow a nine-bedroom bed and breakfast
8 operation. We summarize below the relevant facts and appellate history.

9 In 2020, the county approved an application by a prior owner of the
10 property for a dwelling in conjunction with farm use on the subject property (farm
11 dwelling), based on the pre-existing vineyard use of the 18.89-acre subject
12 property. The subject property includes high-value soils, so the application for a
13 farm dwelling was subject to standards at OAR 660-033-0135(4).⁴ The prior

³ Respondents note, correctly, that LUBA may not consider any “adjudicative facts” contained within a document subject to official notice under ORS 40.090(2). Joint Response to Motion to Take Official Notice 3 (quoting *Schaff v. City of Medford*, 79 Or LUBA 317, 320 (2019)). However, petitioner does not cite to, and we do not consider, any “adjudicative facts” in the DLCD publication.

⁴ OAR 660-033-0135(4) provides, in relevant part:

“On land identified as high-value farmland, a dwelling may be considered customarily provided in conjunction with farm use if:

“(a) The subject tract is currently employed for the farm use, as defined in ORS 215.203, on which the farm operator earned at least \$80,000 in gross annual income from the sale of farm

1 owner also applied and received approval for a CUP to operate a bed and
2 breakfast in the approved dwelling, under the standards at ORS 215.448 and local
3 implementing ordinances.⁵

products in each of the last two years or three of the last five years, or in an average of three of the last five years; and

“(b) * * * there is no other dwelling on lands designated for exclusive farm use pursuant to ORS chapter 215 or for mixed farm/forest use pursuant to OAR 660-006-0057 owned by the farm or ranch operator or on the farm or ranch operation; and

“(c) The dwelling will be occupied by a person or persons who produced the commodities that grossed the income in subsection (a) of this section;

“(d) In determining the gross income required by subsection (a) of this section;

“(A) The cost of purchased livestock shall be deducted from the total gross income attributed to the farm or ranch operation;

“(B) Only gross income from land owned, not leased or rented, shall be counted; and

“(C) Gross farm income earned from a lot or parcel that has been used previously to qualify another lot or parcel for the construction or siting of a primary farm dwelling may not be used.”

⁵ ORS 215.448 provides, in relevant part:

“(1) The governing body of a county or its designate may allow, subject to the approval of the governing body or its designate, the establishment of a home occupation and the parking of vehicles in any zone. However, in an exclusive farm use zone, forest zone or a

1 Intervenor subsequently acquired the property, and along with it the 2020
2 farm dwelling approval. However, the 2020 CUP for a home occupation was
3 personal to the prior owner, and did not transfer to intervenor. Accordingly, in
4 2022 intervenor filed the present CUP application for a home occupation bed and
5 breakfast, to be operated within the approved but yet-to-be-constructed

mixed farm and forest zone that allows residential uses, the following standards apply to the home occupation:

- “(a) It shall be operated by a resident or employee of a resident of the property on which the business is located;
- “(b) It shall employ on the site no more than five full-time or part-time persons;
- “(c) It shall be operated substantially in:
 - “(A) The dwelling; or
 - “(B) Other buildings normally associated with uses permitted in the zone in which the property is located; and
- “(d) It shall not unreasonably interfere with other uses permitted in the zone in which the property is located.
- “(2) The governing body of the county or its designate may establish additional reasonable conditions of approval for the establishment of a home occupation under subsection (1) of this section.
- “(3) Nothing in this section authorizes the governing body or its designate to permit construction of any structure that would not otherwise be allowed in the zone in which the home occupation is to be established.”

1 dwelling.⁶ The proposed dwelling would include nine guest rooms, each with en
2 suite bathrooms, and an innkeeper's suite, to be occupied by the manager of the
3 bed and breakfast operation. The county approved the CUP.

4 On appeal, LUBA affirmed the county's decision. *Friends of Yamhill*
5 *County v. Yamhill County*, LUBA No 2022-081 (Dec 27, 2022) (*Grange Hill I*).
6 Petitioner appealed our decision to the Court of Appeals. On appeal, the Court of
7 Appeals reversed, concluding that, based on its design, the proposed structure
8 was not a "dwelling" at all, but rather a type of motel or similar transient lodging.
9 *Friends of Yamhill County v. Yamhill County*, 325 Or App 282, 529 P3d 1007
10 (2023) (*Grange Hill II*). The Supreme Court granted review of the Court of
11 Appeals' decision, and affirmed the court's decision in part, and reversed in part.
12 *Friends of Yamhill County v. Yamhill County*, 373 Or 790, 572 P3d 278 (2025)
13 (*Grange Hill III*).

14 The Supreme Court disagreed with the Court of Appeals that the presence
15 of certain design characteristics and building and specialty codes rendered, as a

⁶ At the time of the first round of appeals, the structure had not yet been constructed, and the parties and appellate bodies had before them only design drawings. Sometime during the trip up and down the appellate ladder, intervenor received building permits and the dwelling was constructed. As built, the structure differs in some ways from the design drawings considered in the first round of appeal. However, as far as the parties advise, the design differences between the initially proposed plans and the as-constructed version are not significant. The record on remand includes photographs of the constructed dwelling's exterior and interior. Record 401.55 to 401.78.

1 matter of law, the proposed structure a facility for transient lodging similar to a
2 hotel or motel. The Supreme Court held that design characteristics and
3 classifications based on building specialty codes are relevant considerations in
4 determining whether a proposed structure qualifies as a “dwelling” for purposes
5 of ORS 215.448(1) and (3), but is not dispositive. In addition, the court held that:

6 “[T]he legislature intended the ‘dwelling’ requirement for a home
7 occupation under ORS 215.448 to mean a structure that satisfies the
8 requirements for a particular category of ‘dwelling’ that the land use
9 laws normally allow on property in the zone. When, as here, the
10 purported category of dwelling is a ‘primary dwelling’ on EFU land,
11 those requirements include that the structure will be the home for a
12 farm operator. * * * LUBA erroneously dismissed that requirement
13 as irrelevant to whether the proposed structure satisfies the
14 ‘dwelling’ requirement in ORS 215.448[.]” *Grange Hill III*, 373 Or
15 at 793.

16 The Supreme Court remanded our decision for us to consider petitioner’s
17 challenges to the CUP “under the standards articulated in this opinion.” *Id.* at
18 814.

19 On remand, we reconsidered petitioner’s challenges to the CUP in light of
20 the Supreme Court’s decision and those portions of the Court of Appeals’
21 decision that the Supreme Court affirmed or agreed with. *Friends of Yamhill*
22 *County v. Yamhill County*, LUBA No 2022-081 (Sept 19, 2025) (*Grange Hill*
23 *IV*). We sustained the first and second sub-assignments to the first assignment of
24 error, and a portion of the second assignment of error, and denied the remaining
25 arguments. We then remanded “for further proceedings consistent with the

1 Supreme Court’s decision and this opinion.” *Id.* at (slip op at 16). Specifically,
2 we remanded to the county to address three distinct issues in the first instance:

3 (1) Whether the dwelling proposed for the home occupation is
4 the home of the “farm operator” for the farm use that qualifies
5 the subject property for the primary dwelling;

6 (2) Whether the “design characteristics” of the structure
7 disqualify it as a “dwelling” for purposes of ORS 215.448(1);
8 and

9 (3) Whether the proposed dwelling qualifies as a “dwelling” as
10 defined under relevant local code provisions.

11 On remand from *Grange Hill IV*, the board of commissioners conducted
12 an evidentiary hearing on January 8, 2026. To demonstrate that the dwelling
13 would be occupied by the farm operator, as required by the Supreme Court’s
14 decision, intervenor did not identify the farm operator who would reside in the
15 dwelling, but instead offered a “job description” for the bed and breakfast
16 operator, which assigned to that unknown individual a role in managing the
17 vineyard operations on the property.

18 On January 15, 2026, the board of commissioners deliberated and voted to
19 re-approve the CUP, based on additional findings addressing the three remand
20 issues. The commissioners again concluded that the structure constitutes a
21 “dwelling” based on design characteristics and local code definitions. Based on
22 the “job description,” the commissioners imposed a condition of approval that
23 requires intervenor to provide the planning department with evidence that “a

1 Grange Hill farm operator is occupying the dwelling.” Record 34.⁷ The board of
2 commissioners’ final decision was adopted February 12, 2026. This appeal
3 followed.

4 **FIRST ASSIGNMENT OF ERROR**

5 As noted, ORS 215.448(1)(c) authorizes counties to approve as a
6 conditional use in the EFU zone home occupations that are substantially
7 conducted in the “dwelling” or other buildings normally associated with uses
8 permitted in the EFU zone. ORS 215.448(3) provides that nothing in the statute
9 authorizes “construction of any structure that would not otherwise be allowed in
10 the zone in which the home occupation is to be established.” From the beginning
11 of this appeal, the parties have disagreed about whether the disputed structure
12 qualifies as a “dwelling” for purposes of ORS 215.448(1)(c), or whether instead
13 it is a structure designed for transient lodging, such as a motel or hotel, that is not
14 allowed in the EFU zone.

15 That disagreement has focused on the design characteristics and building
16 code categories that apply to the structure. Judicial interpretations of what
17 constitutes a “dwelling” for purposes of ORS 215.448 have swung dramatically
18 over the course of this appeal, from LUBA’s initial view that because it is not

⁷ LUBA received the record in this appeal on April 3, 2026. On April 22, 2026, LUBA received an amended record and on April 30, 2026, LUBA received the second amended record. All citations to the record are to the second amended record.

1 impossible for someone to reside in the structure, the structure qualifies as a
2 dwelling, to the Court of Appeals' opposite view that because the structure is
3 designed and regulated for transient lodging, it cannot constitute a dwelling.
4 *Grange Hill I*, LUBA No 2022-081 (slip op at 16); *Grange Hill II*, 325 Or App
5 at 288-89. The Supreme Court rejected both those extremes. As we understand
6 the Supreme Court's view, in "hybrid" situations where a structure is proposed
7 as the site for a home occupation and it shares design and other characteristics of
8 both a dwelling and a building type that is not allowed in the applicable zone, the
9 county must determine whether the structure qualifies as a "dwelling" for
10 purposes of ORS 215.448, based on all relevant considerations. *Grange Hill IV*,
11 LUBA No 2022-081 (slip op at 10).

12 The "relevant considerations" discussed in the courts' *Grange Hill*
13 decisions include the design of the structure, as well as the building code and
14 specialty codes that apply to the proposed transient lodging home occupation use.
15 We address below additional considerations that petitioner argues should also be
16 evaluated.

17 **A. Design Characteristics**

18 On remand, the county first addressed the structure's design, and
19 concluded, on balance, that the structure has the design characteristics of a
20 dwelling.⁸ The county rejected arguments that size, the number of bedrooms, the

⁸ The county's findings state:

1 shape or other features of the structure rendered it something other than a
2 dwelling, noting that dwellings in the EFU zone come in all shapes and sizes,
3 with sometimes unusual or unique features.⁹

“The as-built plans and photographs of the structure show that Grange Estate has the design characteristics of a single-family dwelling. The living space is all within a single common structure, with access to the living areas, kitchen, bedrooms, bathrooms, utility, and accessory spaces all from within the structure after entering the front or one of the side doors. Most bedrooms are on the second floor, a common design for a single-family residence. Each bedroom is accessed from a hallway shared with other bedrooms, except for one bedroom off the kitchen, which has access via the back door and mud room. There are common areas and living space on both floors, with a sitting room in each shared wing of the upstairs and shared dining, living, sitting, and study areas in the downstairs area, all sharing common atmosphere. Like with the upstairs bedrooms, the downstairs bedrooms connect to a shared hallway, which leads to the shared common areas. These features show that the bedrooms share a common atmosphere with the rest of the structure. The structure also has kitchen space and full bathrooms. *See also* the [b]oard[of commissioners’] findings above relating to the YCZO 202 definitions, which are incorporated here by reference. All of these features are consistent with the design features of single-family dwelling.” Record 27-28 (emphasis in original).

⁹ The findings continue:

“We agree with Grange Hill that dwellings in the County, including dwellings on EFU land, come in all shapes and sizes. This is consistent with the Oregon Supreme Court’s guidance in the Supreme Court Decision, which recognized that there ‘will be structures that seemingly straddle the design standards for two categories of building—whether it is a structure that meets the

1 On appeal, petitioner argues that the county misconstrued the “design
2 characteristics” test and adopted inadequate findings regarding that test.
3 Petitioner argues that, while neither the Supreme Court nor LUBA articulated
4 exactly how the county is to apply the test, it is clear from the Supreme Court’s
5 opinion that in “hybrid” situations where a structure that is purportedly a type of
6 dwelling that is allowed in the EFU zone, but the structure is designed in a way
7 that it can be characterized as a type of structure not allowed in the EFU zone,
8 consistency with ORS 215.448(3) requires the county to evaluate *all* of the
9 relevant design characteristics of the structure to determine whether, on balance,
10 it is properly categorized as a dwelling, or, instead, as a type of structure not
11 allowed in the EFU zone.

design standards of a single-family residence but also has nine bedrooms with en suite bathrooms or a structure that meets the design standards of a single-family residence but includes an enormous “home theater” space.’ [*Grange Hill III*], 373 Or at 807. Having some characteristics consistent with one type of structure is not dispositive. *Id.* The [b]oard must take a holistic view and make a reasoned determination based on its overall assessment of the structure’s design characteristics. This is how the [b]oard has consistently applied the YCZO; Grange Hill’s evidence demonstrates dwellings in the County have unique size and features and nonetheless are considered permissible single-family dwellings. The fact that these dwellings may have a basketball court, gazebo, ballroom, or commercial kitchen does not make the dwellings something other than a permissible dwelling on rural land.” Record 28 (internal record citation omitted).

1 In the present case, petitioner argues that the county's analysis is flawed
2 because the county evaluated only design elements that, under the county's
3 expansive understanding of what could constitute a "dwelling," the county
4 concluded are design elements that are consistent with that of a dwelling. But
5 petitioner argues that "[e]vidence demonstrating that a hotel-like structure could
6 be considered a dwelling is not the same as evidence proving that this particular
7 structure is in fact a dwelling." Petition for Review 19. We understand petitioner
8 to argue that the county must also evaluate design elements that are inconsistent
9 with, or less consistent with, the characterization of the structure as a dwelling.
10 A full evaluation of all design characteristics, petitioner argues, is necessary for
11 the county to conclude that, on balance, the structure is properly characterized as
12 a dwelling, and not a different type of structure that is not allowed in the EFU
13 zone.

14 Relatedly, under the second subassignment of error, petitioner argues that
15 the county's findings are inadequate because the county failed to address design
16 elements that petitioner argued below are more characteristic of a commercial
17 transient lodging facility, such as a hotel or motel, rather than those of a dwelling.
18 Petition for Review 22 (citing Record 409 (listing design elements such as en
19 suite bathroom facilities and lack of bathroom facilities attached to common
20 areas, the absence of a dining room or living room, the presence of a fitness
21 center, a dedicated mechanical room, a large parking lot for guests, etc.)).

1 We agree with petitioner that, to give effect to ORS 215.448(3) with
2 respect to structures with hybrid design elements, the county must do more than
3 evaluate the design elements that it believes are consistent with characterization
4 of the structure as a dwelling. As we understand the Supreme Court's ruling on
5 this issue, the county must evaluate all the relevant design elements or
6 characteristics, and determine whether, on balance, the structure is predominantly
7 or primarily characterized as a dwelling or other structure allowed in the EFU
8 zone, instead of a type of structure that is not allowed in the EFU zone. The
9 county failed to conduct the required evaluation of all design elements, and failed
10 to conduct the balancing or weighing required to reach a sustainable conclusion
11 one way or another.

12 Generally, a local government is not obligated to identify or discuss the
13 evidence it does *not* rely upon to conclude that a criterion is met. *Evans v. City of*
14 *Bandon*, 74 Or LUBA 418, 425 (2016); *Melton v. City of Cottage Grove*, 28 Or
15 LUBA 1, 20, *aff'd*, 131 Or App 626, 887 P2d 359 (1994); *Angel v. City of*
16 *Portland*, 22 Or LUBA 649,656-57, *aff'd*, 113 Or App 169, 831 P2d 77 (1992).
17 However, the balancing test required in this circumstance is not a simple matter
18 of identifying the evidence that supports the ultimate finding of compliance with
19 an approval criterion. In our view, an evaluation under that test requires
20 consideration of all relevant design elements, and an ultimate conclusion,
21 informed by that evaluation, whether the structure proposed for the home

1 occupation is properly characterized as a dwelling or a type of structure not
2 allowed in the zone.

3 The county concluded that dwellings in EFU zones come in all shapes and
4 sizes, and sometimes have unusual features for the use of their residents such as
5 a basketball court, gazebo, ballroom or commercial kitchen. Based on that
6 conclusion, the county adopted an expansive or “holistic” view of “dwelling” as
7 a structural category. However, the county conversely seemed to adopt a narrow
8 categorical view of transient lodging facilities, such as hotels and motels. For
9 example, the findings emphasize that the structure features bedroom suites and
10 rooms that are open to a “common atmosphere,” hallways and common areas, in
11 apparent contradistinction to hotels and motels, thus treating a “common
12 atmosphere” as a design element that is exclusive to dwellings. Record 27-28.
13 However, the county cites no evidence that lack of a common atmosphere is an
14 essential or even typical element of a hotel or motel. If the county adopts an
15 expansive view of dwellings as a structural category based on unusual features
16 sometimes seen in dwellings, we see no basis under ORS 215.448(3) or in the
17 record to adopt a conversely narrow view of transient lodging facilities as a
18 structural category. That unbalanced framework renders the outcome of the
19 balancing test a foregone conclusion. Accordingly, we agree with petitioner that
20 remand is necessary for the county to adopt findings addressing all of the relevant
21 design elements and characteristics, and informed by that full evaluation, adopt
22 a new conclusion regarding whether, on balance, the structure should be

1 predominantly or primarily categorized as a dwelling or a transient lodging
2 facility not allowed in the EFU zone.

3 **B. Building and Specialty Codes**

4 An additional consideration on remand for purposes of ORS 215.448(3) is
5 the extent to which construction of the structure to fire and safety codes that
6 govern transient lodging facilities, rather than the different standards that govern
7 a single-family dwelling, weighs on the conclusion of whether a hybrid structure
8 is properly characterized as a dwelling or transient lodging facility. The Supreme
9 Court rejected the Court of Appeals' conclusion that that factor was
10 independently dispositive, but agreed that the factor is a relevant consideration
11 for purposes of ORS 215.448(3).

12 The county adopted extensive findings addressing the fact that the
13 structure is required, under the applicable building and specialty codes, to be
14 constructed according to the more rigorous "R-1" and "occupancy class A"
15 standards that apply to transient lodging facilities. Record 28-30. The findings
16 are too lengthy to quote in full, but in summary the findings take the position that
17 building to the more rigorous standard applicable to transient lodging facilities
18 does not "change" the nature of the structure as a dwelling.¹⁰ However, that

¹⁰ The findings state, in relevant part:

"Grange Hill built to R-1 standards because it seeks to operate a bed and breakfast home occupation in its dwelling. A bed and breakfast home occupation contemplates 'transient' occupancy in the sense of

1 conclusion presupposes that the structure is a “dwelling” and asks only whether
2 building to standards required for transient lodging facilities “changes” the nature
3 of the structure. That is not responsive to the inquiry required by the Supreme
4 Court’s decision and our remand, which is for the county to determine, based on
5 all relevant considerations, whether the structure is properly categorized as a
6 dwelling or a type of structure not allowed in the EFU zone. The county cannot
7 answer that question by presupposing the structure is a dwelling, and evaluating
8 the considerations only to the extent some consideration “changes” the dwelling
9 into something else.

10 In the findings, the county also argues that, apparently as a policy matter,
11 it should not have to evaluate whether building to R-1 standards “changes” the

providing overnight lodging for compensation. As such, building to R-1 standards makes sense. But as discussed above, providing lodging to guests for compensation as part of a bed and breakfast does not change the fact that the structure is a dwelling (in fact, it compels it, because a bed and breakfast can only occur in a single-family dwelling). Likewise, complying with R-1 building code standards to account for bed and breakfast guest occupancy within the single-family dwelling does not change the dwelling into something else. Finally, the fact that some common spaces have occupancy class A also does not change the nature of the structure. That just reflects, e.g., that bed and breakfast guests may assemble for breakfast in such a common area or access a room dedicated to fitness equipment. Indeed, even the Oregon Supreme Court recognized that a single-family residence that ‘includes an enormous “home theater”’ could still be a dwelling, even though the enormous home theater would likely be built under [R]-1 standards. *Friends of Yamhill County*, 373 Or at 807.” Record 29.

1 dwelling into a transient lodging facility because doing so would “punish those
2 who choose enhanced safety features and create a perverse incentive to build *less*
3 *safe* dwellings.”¹¹ Record 30 (emphasis in original). However, as we understand
4 the relevant building and specialty codes, the application of the R-1 standards in
5 the present case does not reflect intervenor’s voluntary choice to apply more
6 rigorous standards in order to build a safer structure. Instead, because the
7 proposed use and design of the structure is for a nine-unit bed and breakfast the
8 building and specialty codes require that the structure be built to R-1 standards
9 applicable to transient lodging facilities. Similarly, the proposed use and design
10 of the structure’s common areas means that the building and specialty codes
11 require that those assembly spaces be built to occupancy class A standards.

12 It is possible, as petitioner argues, that intervenor could have chosen a
13 different design for a dwelling with a smaller bed and breakfast operation that
14 would, for purposes of the building and specialty codes, be classified as a

¹¹ The findings state on this point:

“The fact that a structure may be built to higher OSSC [Oregon Structural Specialty Code] safety standards than required for a dwelling does not mean it is not a dwelling under ORS chapter 215 or the YCZO. * * * Holding otherwise would punish those who choose enhanced safety features and create a perverse incentive to build *less safe* dwellings. Grange Hill’s structure has the design characteristics of a dwelling, and the building code specifications to which it is built do not change the nature of the structure.” Record 30 (emphasis in original, internal record citation omitted).

1 residential use subject to less stringent R-3 standards.¹² But recognizing that an
2 applicant's choice to build a larger facility that the building and specialty codes
3 classify as a transient lodging facility, and taking that classification into account
4 in evaluating whether the structure is a "dwelling" for purposes of ORS
5 215.448(1)(c)(A) and not a structure prohibited under ORS 215.448(3), does not,
6 as the findings suggest, create a "perverse incentive to build less safe dwellings,"
7 or otherwise provide a basis to ignore weighing the application of the building
8 and specialty codes in the balancing required by the Supreme Court's decision.

9 In our view, consideration of how the applicable building and specialty
10 codes classify the structure must be weighed with and against other relevant
11 considerations to determine whether the structure is, on balance, properly
12 categorized as a dwelling allowed in the EFU zone or a type of structure not
13 allowed in the EFU zone. The county's findings addressed this consideration in
14 isolation from other considerations, rather than together as part of an overall
15 weighing or balancing of potentially competing considerations. And, again, the
16 county asked and answered the wrong question. The county asked whether
17 consideration of the building and specialty codes "changed" the dwelling into
18 something other than a dwelling, rather than how, on balance, the structure must
19 be categorized given its design characteristics and building code classifications.

¹² Petitioner argues that the OSSC classifies as a residential use a "lodging house" with up to five guest rooms. Petition for Review 17-18.

1 We agree with petitioner that remand is required for the county to conduct
2 the appropriate inquiry under ORS 215.448(1)(c)(A) and ORS 215.448(3), and
3 adopt adequate findings explaining the ultimate conclusion of whether the
4 structure, as designed, is primarily or predominately categorized for purposes of
5 those statutes as a dwelling allowed in the EFU zone, or as a structure for transient
6 lodging not allowed in the EFU zone.

7 **C. Other Considerations**

8 Petitioner's first and second subassignments of error include several
9 arguments involving considerations that, respondents argue, have no relationship
10 to the design or appropriate categorization of the structure, for purposes of ORS
11 215.448(1)(c)(A) and ORS 215.448(3).

12 The first of those considerations is the appearance of the disputed building,
13 which petitioner contends looks like a hotel or motel rather than a dwelling. We
14 agree with respondents that appearance is a subjective consideration that plays
15 no role in the present inquiry. A dwelling may be constructed to appear as
16 something other than a dwelling, but still constitute a dwelling by its predominant
17 design and function. Conversely, a building may look like a dwelling from the
18 exterior, but by its design and function constitute something other than a
19 dwelling.

20 The second putative consideration is the common ownership of the
21 building with similar transient lodging or hospitality operations that intervenor
22 or associated corporate entities conduct on the adjacent property and elsewhere.

1 Petitioner argues that intervenor’s corporate parent owns and operates a similar
2 nine-unit lodging facility on the adjacent parcel, the Black Walnut Inn, along with
3 a winery, which are all clustered close to the structure at issue in this appeal,
4 forming what petitioner characterizes as a common “resort” atmosphere. Petition
5 for Review 2, 18-19. We agree with respondents, however, that other facilities
6 owned by intervenor or associated corporate entities play no role in determining
7 whether the disputed structure is a dwelling or something other than a dwelling,
8 for purposes of ORS 215.448(1)(c)(A) and ORS 215.448(3).

9 Third, petitioner argues that the general history of the law regarding home
10 occupations under ORS 215.448 is a “consideration” that must be taken into
11 account. Petitioner argues that, as the Supreme Court noted, home occupations
12 were originally intended by the legislature as a vehicle for small cottage
13 industries to be started up in rural residences, before eventually moving out of
14 the dwelling into an appropriate commercial or industrial zone. Petition for
15 Review 13 (citing *Grange Hill III*, 373 Or at 808). Petitioner argues that that
16 understanding of the original limited legislative intent should inform the present
17 inquiry, which involves a new permanent structure specifically designed to
18 support a transient lodging operation that is unlikely ever to be moved into a
19 commercial zone appropriate for a transient lodging facility. Respondents argue,
20 however, that while the Supreme Court noted the history of the home occupation
21 statute, the court never endorsed the notion that home occupations are limited to
22 starter businesses that eventually move into a zone that allows that business.

1 Respondents argue, and we agree, that the Supreme Court acknowledged that a
2 bed and breakfast is an appropriate home occupation in a dwelling; indeed, it
3 categorically *must* be located in a dwelling, which are typically found in zones
4 that allow dwellings. We agree with respondents that the general legislative
5 history of the home occupation statute is not a relevant “consideration” for
6 purposes of the present inquiry.

7 Finally, petitioner cites to evidence that in various media reports the
8 structure is purportedly described as a “hotel.”¹³ Petition for Review 19.
9 Petitioner argues that intervenor has not corrected these reports, or otherwise
10 issued any countervailing media that describe the structure as a dwelling and the
11 proposed lodging facility as a home occupation. However, we agree with
12 respondents that how the proposed bed and breakfast operation is marketed or
13 described in the media is not relevant to answering the question posed by the
14 Supreme Court and our remand.

15 The first and second subassignments of error are sustained, in part.

16 The first assignment of error is sustained, in part.

¹³ Respondents dispute that the media reports describe the structure as a “hotel.” Joint Respondent’s Brief 22 n 6. According to respondents, the reports use the term “hotels” to describe other facilities, but refer to the structure at issue in this appeal as an “inn.” *Id.* We need not resolve the parties’ factual dispute on this point.

1 **SECOND ASSIGNMENT OF ERROR**

2 In *Grange Hill IV*, we remanded the decision for the county to address
3 whether the structure qualifies as a “dwelling” under YCZO 1004.01(C), and
4 related code definitions.¹⁴ We noted that because a home occupation is a
5 conditional use in the EFU zone under ORS 215.283(2)(i), the county is entitled
6 to regulate such uses more restrictively, if it chooses, than the use is regulated
7 under ORS 215.448. *Grange Hill IV*, LUBA No 2022-081 (citing *Brentmar v.*
8 *Jackson County*, 321 Or 481, 496, 900 P2d 1030 (1995)) (slip op at 13). Because
9 the county’s initial decision did not include a reviewable interpretation of YCZO
10 1004.01(C) and related code definitions, we remanded the decision to allow the
11 county to interpret those code provisions in the first instance. On remand, the
12 county adopted five pages of findings interpreting YCZO 1004.01(C) and related
13 code definitions, and concluded that the relevant YCZO provisions do not
14 regulate home occupations more restrictively than the ORS 215.448. Record 23-
15 27.

16 On appeal, petitioner argues that the county misconstrued the applicable
17 code provisions and adopted inadequate findings by failing to address two of the
18 critical code definitions. In its findings, the county addressed several YCZO 202

¹⁴ YCZO 1004.01(C) implements ORS 215.448(1)(c) and requires that a “home occupation will be operated substantially in the dwelling or in other buildings normally associated with uses permitted in the zone in which the property is located.”

1 definitions, particularly for the terms “dwelling,” “dwelling unit,” and “bed and
2 breakfast inn.”¹⁵ The lengthy findings are difficult to summarize, but in essence
3 the county noted the tension between the definition of “dwelling,” a dwelling unit
4 designed for and occupied by one family only, and specifically excluding all
5 accommodations “used for transient occupancy,” with definitions and code
6 language that expressly allow a bed and breakfast inn as a home occupation in a

¹⁵ YCZO 202 defines “dwelling” as:

“A building containing one (1) *dwelling unit* designed for and occupied by one (1) *family* only. The term dwelling includes a manufactured dwelling but does not include a hotel, *motel*, travel trailer, boarding, lodging or rooming house, private hospital, rest home or nursing home or other accommodations used for transient occupancy.” (Emphasis added to identify other defined terms.)

The definition of “dwelling” references the term “dwelling unit,” which YCZO 202 defines as:

“One (1) room or rooms connected together, constituting an independent housekeeping establishment designed and used for occupancy by one (1) family, including dependent relatives and caretakers, and includes permanent provisions for living, sleeping, cooking (limited to one kitchen only) and sanitation (full bathroom).”

YCZO 202 defines “bed and breakfast inn” as follows:

“A single-family dwelling where lodging is offered for compensation, having no more than nine (9) sleeping rooms for this purpose. A bed and breakfast inn may offer a morning meal for overnight guests only. A bed and breakfast inn is conducted within the residence of the operator.”

1 “single-family dwelling,” with up to nine sleeping rooms. In its findings, the
2 county resolves that tension by choosing to give effect to the more “specific”
3 language of code provisions allowing a bed and breakfast in a dwelling, and less
4 effect to the more “general” language in the definition of “dwelling.” The county
5 reasoned:

6 “[T]he [b]oard [of commissioners] notes that the ‘dwelling’
7 definition excludes hotels, motels, and ‘other accommodations used
8 for transient occupancy’ and finds that this language does not
9 undermine the fact that the Grange Estate structure amounts to a
10 ‘dwelling’ under the YCZO. The [b]oard reconciles the YCZO
11 language by applying the YCZO rules of construction. As particular
12 provisions control over general provisions, the YCZO’s specific
13 provisions governing home occupations show that having guests
14 stay in one’s residence does not turn a dwelling into a motel, hotel,
15 or anything other than a dwelling.

16 “* * * * *

17 “To the extent that providing lodging [for] paying bed and breakfast
18 guests constitutes ‘transient occupancy’ the YCZO’s more
19 particular provisions governing home occupations and bed and
20 breakfast operations control over the YCZO’s general provision
21 defining ‘dwelling.’ Reading the YCZO as a whole and in light of
22 the more particular provisions governing bed and breakfasts, the
23 reference to ‘transient occupancy’ in the definition of ‘dwelling’
24 must exclude ‘transient occupancy’ by guests of a bed and breakfast
25 when a resident of the property lives in the dwelling. Any other
26 reading renders meaningless the multitude of provisions (in both the
27 YCZO and ORS) specifically contemplating bed and breakfasts as
28 home occupations.” Record 25-26.

1 Petitioner argues, however, that the findings fail to address the YCZO 202
2 definitions of the terms “family” and “motel,” both of which are terms referenced
3 in the code definition of “dwelling.” YCZO 202 defines “family” as:

4 “One or more person related by blood, marriage, legal adoption or
5 legal guardianship plus not more than five (5) additional persons,
6 including foster and shelter care persons or, up to five (5) unrelated
7 persons, all living together as a single housekeeping unit.”

8 YCZO 202 defines “motel” as:

9 “One (1) or more attached or detached buildings containing
10 housekeeping or sleeping units designed and used for the temporary
11 accommodation of tourists or transients with off-street parking
12 space for each such unit.”

13 Under the first subassignment of error petitioner argues that the most
14 plausible way to reconcile all of the relevant code provisions, including that of
15 the key term “family,” is to interpret the definition of “dwelling” to exclude
16 structures designed to offer transient lodging to more than five unrelated persons.
17 Under that interpretation, petitioner argues, the structure is not a “dwelling”
18 because it offers nine “sleeping units designed and used for the temporary
19 accommodation of tourists or transients,” and because it provides off-street
20 parking for each unit. As such, petitioner argues, the structure falls squarely
21 within the code definition of “motel.” According to petitioner, the county’s
22 contrary conclusion that the structure is a “dwelling” as defined at YCZO 202 is
23 inconsistent with the express language of the applicable definitions, and hence
24 cannot be affirmed under the standard of review applicable to a governing body’s

1 interpretation of its code provisions. ORS 197.829(1).¹⁶ Under that statute and
2 associated case law, LUBA must affirm a governing body's interpretation of its
3 local land use legislation unless that interpretation is inconsistent with the express
4 language, purpose or policy underlying the interpreted provision. Stated
5 differently, LUBA must defer to a governing body's code interpretation as long
6 as that interpretation is "plausible." *Siporen v. City of Medford*, 349 Or 247, 259,
7 243 P3d 776 (2010). We understand petitioner to argue that the county's
8 interpretation of the relevant code definitions is implausible, in part because the
9 county failed to address and give effect to the code definitions of "family" and
10 "motel." Petitioner argues that, at a minimum, remand is required for the county
11 to adopt findings addressing those definitions.

12 Respondents note that the county's decision quotes the YCZO 202
13 definition of "family" in a footnote, and that the findings address, to at least some

¹⁶ ORS 197.829(1) provides, in relevant part:

"[LUBA] shall affirm a local government's interpretation of its comprehensive plan and land use regulations, unless the [B]oard determines that the local government's interpretation:

"(a) Is inconsistent with the express language of the comprehensive plan or land use regulation;

"(b) Is inconsistent with the purpose for the comprehensive plan or land use regulation; [or]

"(c) Is inconsistent with the underlying policy that provides the basis for the comprehensive plan or land use regulation[.]"

1 extent, both that definition and the definition of “motel,” in reaching the
2 conclusion that the structure is a “dwelling.” Joint Respondent’s Brief 30 (citing
3 Record 31-33, 25 n 4). We agree with respondents that the findings adequately
4 address the definitions of “family” and “motel.” The findings quote the definition
5 of “family” in footnote four on Record page 25, and discuss that definition at
6 several points, as well as the code definition of “motel,” even though the latter
7 definition is not separately quoted.¹⁷ The county was clearly aware of those code
8 definitions, and considered them in context with other relevant definitions.

9 It is true that the findings do not expressly address petitioner’s argument,
10 based on the code definition of “family,” that a structure designed to offer
11 transient lodging for more than five unrelated persons is not a “dwelling.” The
12 county apparently understood petitioner to argue that providing any transient

¹⁷ For example, the findings state:

“By contrast, construing the Grange Estate structure as a motel because it offers overnight lodging for pay would require ignoring the YCZO’s definitions described above and the interplay among them. The fact that Grange Estate will offer lodging for compensation as a bed and breakfast does not make it a motel. A motel does not have a ‘family’ living in it or have permanent provisions for living, sleeping, cooking, or sanitation. If providing lodging to paying overnight guests in a structure where a farm operator lives constituted ‘transient occupancy,’ removing the structure from the definition of ‘dwelling,’ no one could ever operate a bed and breakfast, even though the YCZO and the ORS both expressly contemplate bed and breakfasts as home occupations on EFU land.” Record 26 (emphasis omitted).

1 lodging at all, even one sleeping unit, would disqualify a structure as a dwelling,
2 and rejected that argument because it would effectively prohibit any bed and
3 breakfast operations as a home occupation in any dwelling. On appeal at least,
4 petitioner offers a more nuanced interpretation that would allow within a
5 dwelling a home occupation bed and breakfast that offers lodging for no more
6 than five unrelated persons, while similar operations that offer lodging for more
7 than five unrelated persons would be classified as a hotel or motel.¹⁸

8 However, we agree with respondents that petitioner has not demonstrated
9 that the county's interpretation is inconsistent with the express language, purpose
10 or policy underlying the applicable code definitions. After quoting the YCZO
11 202 definition of "family," the county observed that "[a] single person occupying
12 the structure meets the definition of 'family.'" Record 25 n 4. In related findings,
13 the county states that "having guests stay in one's residence does not turn a
14 dwelling into a motel, hotel or anything other than a dwelling." Record 25. We
15 understand respondents to argue that the county impliedly concluded that guests
16 staying in a home occupation bed and breakfast are not part of the "family" for
17 purposes of the relevant code definitions, that the scope of "family" is limited to
18 the person or persons who live in the dwelling as a "single housekeeping unit."
19 Respondents contend that that implicit interpretation is consistent with the

¹⁸ As respondents note, petitioner's interpretation would conflict with YCZO 1012 provisions authorizing within a dwelling a bed and breakfast operation with up to nine sleeping rooms.

1 express language of the relevant code definitions, including the definition of
2 “family,” and must be affirmed under ORS 197.829(1)(a) through (c) and
3 *Siporen*. See *Green v. Douglas County*, 245 Or App 430, 439, 263 P3d 355 (2011)
4 (LUBA must defer to a governing body’s implicit code interpretation, where the
5 practical effect of the findings is to give definition to the interpreted term and the
6 governing body’s understanding of the term is inherent in the way it applied the
7 term).

8 In the reply brief, petitioner argues that the interpretation set out in the joint
9 respondent’s brief is not found in the county’s findings and therefore LUBA
10 should not consider it. Reply Brief 3. However, we agree with respondents that
11 in its findings the county plainly, if implicitly, rejected the notion that guests
12 staying in a bed and breakfast operation must be treated as part of the “family”
13 living there, for purposes of the relevant code definitions, including the code
14 definition of “family.” That implied understanding of the relevant code
15 provisions is adequate for our review. We agree with respondents that that
16 interpretation is consistent with the text of all relevant code definitions. The code
17 definition of “family” is plausibly read to concern persons living together within
18 a single housekeeping unit, and therefore does not concern temporary guests,
19 paying or otherwise, who do not live together in a single housekeeping unit.
20 Accordingly, we affirm that interpretation. ORS 197.829(1)(a).

21 The first and second subassignments of error are denied.

22 The second assignment of error is denied.

1 **THIRD ASSIGNMENT OF ERROR**

2 In five sub-assignments of error, petitioner challenges the county's
3 findings regarding whether the dwelling would be occupied by the "farm
4 operator." Petitioner argues that the county misconstrued the applicable law
5 regarding the farm operator test, deferred a discretionary determination, failed to
6 adopt adequate findings, and made findings not supported by substantial
7 evidence. Because the fourth and fifth subassignments of error most clearly
8 present the dispositive issues of misconstruction of state law, we begin there.

9 **A. Farm Operator**

10 As noted, on remand, intervenor did not identify the farm operator who
11 would reside in the dwelling, thus qualifying that dwelling as the site for a home
12 occupation, under the Supreme Court's ruling. Instead, intervenor offered a "job
13 description" for a farm operator. The county accepted that job description as a
14 sufficient basis to identify the farm operator in a future proceeding, and imposed
15 a condition of approval requiring that, prior to starting the home occupation,
16 intervenor present county staff with evidence that "a Grange Hill farm operator
17 is occupying the dwelling." Record 34. The county's findings on this point state:

18 "For purposes of an allowed dwelling for a relative of the farm
19 operator, that rule defines a 'farm operator' as the 'person who
20 operates a farm, doing the work and making the day-to-day
21 decisions about such things as planting, harvesting, feeding and
22 marketing.' OAR 660-033-0130(9). In that same context, all that is
23 required for 'farm operator' status is that the person have some
24 significant involvement in the farm operations. Where there is some
25 division of duty among more than one person, a person who has a

1 predominant role in the management and farm use of the farm
2 qualifies as the ‘farm operator.’

3 “Considering the statutory and regulatory scheme, the intent behind
4 the requirement, the Supreme Court Decision’s guidance, and other
5 relevant authority, and the practical realities of farm management,
6 the [b]oard [of commissioners] defines ‘farm operator’ as follows:

7 *“A ‘farm operator’ is the person primarily engaged in providing on-*
8 *site management and oversight of farm operations, including*
9 *advising about, and participating in, day-to-day decisions about*
10 *such things as planting, harvesting, maintenance, and third-party*
11 *contracting.”* Record 31 (emphasis in original).

12 In *Grange Hill III*, the Supreme Court observed that there is no controlling
13 definition of “farm operator” as used in ORS 215.283, the statute that authorizes
14 farm dwellings in EFU zones, but noted that LUBA has, in the context of
15 allowing a relative farm help dwelling for a relative of the farm operator, cited
16 the definition found in OAR 660-033-0130(9).¹⁹ 373 Or at 811 n 7 (citing
17 *Richards v. Jefferson County*, 79 Or LUBA 171, 180 (2019)). No party has cited

¹⁹ OAR 660-033-0130(9)(a) provides:

“To qualify for a relative farm help dwelling, a dwelling shall be occupied by relatives whose assistance in the management and farm use of the existing commercial farming operation is required by the farm operator. However, farming of a marijuana crop may not be used to demonstrate compliance with the approval criteria for a relative farm help dwelling. The farm operator shall continue to play the predominant role in the management and farm use of the farm. A farm operator is a person who operates a farm, doing the work and making the day-to-day decisions about such things as planting, harvesting, feeding and marketing.”

1 any case to us in which we or the courts have relied on the definition in OAR
2 660-033-0130(9) to determine whether a person qualifies as a “farm operator”
3 for purposes other than qualifying for a relative farm help dwelling. However,
4 we understand petitioner to argue that the Supreme Court’s footnote citing to
5 OAR 660-033-00130(9) and *Richards* suggests that the court understands that
6 definition to inform the present circumstances, which involve the question of who
7 qualifies as a “farm operator” in relation to a primary “dwelling” in conjunction
8 with farm use. Respondents also invoke OAR 660-033-0130(9), but argue that
9 the county relied upon the rule definition to craft its own, differently worded,
10 definition that, in respondents’ view, is better suited for evaluating who is
11 qualified to occupy a farm dwelling for present purposes.

12 Petitioner challenges the county’s definition, arguing that under that
13 definition a person may constitute a “farm operator” as long as that person is
14 “primarily engaged in providing on-site management and oversight of farm
15 operations,” which is a significantly weaker formulation than set out in OAR 660-
16 033-0130(9). Record 31. Petitioner argues that under the county’s definition the
17 person need not have the “predominant role in the management and farm use of
18 the farm[,]” but can qualify as farm operator as long as they are “primarily
19 engaged” in farm management and oversight, as compared to some other non-
20 farm activity (such as managing a bed and breakfast). OAR 660-033-0130(9)(a).
21 Petitioner also notes that the person’s role could be limited to simply “*advising*
22 about, and *participating* in, day-to-day decisions about such things as planting,

1 harvesting, maintenance, and third-party contracting.” Record 31 (emphasis
2 added). Petitioner argues that a person who merely *advises* or *participates* in day-
3 to-day decision-making, but is not in fact the ultimate decision maker, cannot
4 constitute the “farm operator” for purposes of qualifying the person who resides
5 in a farm dwelling.

6 Petitioner is correct that the county’s definition is a broader or weaker
7 formulation of the definition at OAR 660-033-0130(9). While the definition at
8 OAR 660-033-0130(9) is not controlling in the present context, we agree with
9 petitioner that if the county is going to rely on OAR 660-033-0130(9) the county
10 has not established any basis to apply a broader or weaker reformulation of the
11 rule definition in order to determine who qualifies as the “farm operator” for
12 present purposes. The definition at OAR 660-033-0130(9) serves a specific
13 purpose, to ensure a relative farm help dwelling is allowed only if there is a
14 qualifying “farm operator” who remains the predominant actor and decision
15 maker on the farm, compared to the limited role played by the relative or farm
16 assistant. *See Richards*, 79 Or LUBA at 180 (discussing the predominant and
17 subordinate roles of the farm operator and relative or farm assistant). The
18 county’s much looser definition requires no such comparison of roles to
19 determine who is the predominant actor and would instead qualify a person as
20 the “farm operator” even if they play a subordinate or relatively minor role in the
21 farm operation. To the extent the definition at OAR 660-033-030(9) informs the

1 present inquiry, the county’s definition significantly broadens or weakens the rule
2 definition, and thus misconstrues the applicable law.

3 Under the Supreme Court’s ruling in *Grange Hill III*, the question before
4 the county is whether the person that intervenor proposes to reside in the farm
5 dwelling that is the site of the proposed home occupation qualifies as the “farm
6 operator,” and hence whether the farm dwelling qualifies as a “dwelling,” for
7 purposes of ORS 215.448. In our view, that inquiry is informed directly by the
8 standards that apply to qualify the “farm operator” when obtaining approval of a
9 farm dwelling, under ORS 215.279 and its implementing rules, at OAR 660-033-
10 0135(4), rather than the definition that governs relative farm help dwellings. *See*
11 *Friends of Yamhill County v. Yamhill County*, LUBA No 2022-090 (Dec 17,
12 2025) (home occupation in the EFU zone must demonstrate that the dwelling
13 proposed for the home occupation continues to qualify under all the criteria for
14 that type of dwelling) (slip op at 9-10).

15 As noted above, OAR 660-033-0135(4) imposes two relevant
16 qualifications regarding the farm operator and the resident of a farm dwelling.
17 First, under OAR 660-033-0135(4)(a), a qualifying farm operator must earn “at
18 least \$80,000 in gross annual income from the sale of farm products in each of
19 the last two years or three of the last five years, or in an average of three of the
20 last five years[.]” Second, the applicant for a farm dwelling must show that the
21 dwelling “will be occupied by a person or persons who produced the commodities
22 that grossed the income in [OAR 660-033-0135(4)(a)].” OAR 660-033-

1 0135(4)(c). Petitioner argues, and we agree, that the most straightforward and
2 legally sufficient means to determine whether the proposed resident of a home
3 occupation in a farm dwelling is the “farm operator” for that farm operation is to
4 determine whether that person would qualify under OAR 660-033-0135(4)(a) or
5 (c).

6 Respondents argue that the county was not required to apply the farm
7 income test at OAR 660-033-0135(4)(a) because that issue was not within
8 LUBA’s limited scope of remand. While the county did, in an abundance of
9 caution, address evidence submitted by intervenor to show that the vineyard
10 operation on the subject property generated the requisite income within the last
11 two years, respondents argue that LUBA’s remand did not require the county to
12 conduct that evaluation.

13 We disagree with respondents that our scope of remand was so narrowly
14 drawn that it excluded consideration of the criteria at OAR 660-033-0135(4)(a)
15 and (c) as a basis to determine whether the dwelling would be occupied by the farm
16 operator, which is the determination that is required by the Supreme Court and
17 our remand.²⁰ Because the issue is largely one of first impression, our remand

²⁰ Our opinion on this point concluded, after discussing the Supreme Court’s reasoning:

“As a consequence, in the present case intervenor must demonstrate, and the county must find, among other things, that the dwelling proposed for the home occupation is the home of the ‘farm operator’

1 was necessarily broad, and did not specify any particular limits to the inquiry.
2 That breadth is suggested by our statement that “the county must find, *among*
3 *other things*, that the dwelling proposed for the home occupation is the home of
4 the ‘farm operator’ for the farm use that qualifies the subject property for the
5 primary dwelling.” *Grange Hill IV*, LUBA No 2022-081 (emphasis added) (slip
6 op at 7). The parties were free on remand to advocate for or against different
7 approaches to determining who qualifies as the farm operator, and the county was
8 obligated to make responsive findings to issues fairly raised on that point.

9 With respect to OAR 660-033-0135(4)(a) and (c), respondents argue that
10 determining whether a person is the “farm operator” or “resident” under those
11 criteria is a more flexible inquiry than petitioner argues. Respondents note that
12 OAR 660-033-0135(4)(a) and (c) use different language (“farm operator” versus
13 “person or persons”) and it is evident that the farm operator under subsection (a)

for the farm use that qualifies the subject property for the primary dwelling.

“Intervenor proposed that the dwelling would be occupied by a ‘resident’ who would occupy the innkeeper’s suite, but did not propose, and the county did not find, that any resident of the dwelling would be the ‘farm operator’ who farms the vineyard that qualifies the property for the dwelling. Accordingly, the present record and findings do not provide a basis for the county to conclude that the dwelling proposed for the home occupation qualifies as a ‘dwelling’ for purposes of ORS 215.448(1)(c)(A), under the Supreme Court’s interpretation of that statute. We therefore sustain this portion of the second subassignment of error.” *Grange Hill IV*, LUBA No 2022-081 (slip op at 7).

1 need not be a natural person, but instead could be, as in the present case, a limited
2 liability corporation or similar entity that, for tax purposes, “earned” the requisite
3 income. Presumably because the resident of the farm dwelling must be a natural
4 person, respondents argue that OAR 660-033-0135(4)(c) therefore refers to
5 “person or persons,” indicating, among other things, that more than one person
6 can produce the commodities that grossed the income referred to in OAR 660-
7 033-0135(4)(a). Based on these textual distinctions, respondents argue that it is
8 clear that the “farm operator” referenced in OAR 660-033-0135(4)(a) need not
9 be the same “person or persons who produced the commodities” for purposes of
10 OAR 660-033-0135(4)(c), and that the farm operator for purposes of subsection
11 (a) may in fact have no physical role in producing the commodities that earn the
12 requisite income.

13 Respondents are probably correct that the wording differences between
14 OAR 660-033-0135(4)(a) and (c) reflect the reality that the person who “earns”
15 the requisite income may, for tax and other purposes, be a corporate entity not
16 capable of residing in a dwelling. Such corporate entities are often personal, with
17 one or more principals who are natural persons who do the work as the actual
18 farm operator, and who eventually receive the earned income as pass-through
19 income. Such principals presumably would qualify as both the “farm operator”
20 for purposes of subsection (a), as well as the resident for purposes of subsection
21 (c), that is, the person or persons who produced the commodities that grossed the
22 income referenced in subsection (a).

1 Respondents are probably also correct that it is possible, in at least some
2 circumstances, for the “farm operator,” who for tax or accounting purposes
3 “earned” the requisite income for purposes of subsection (a), to rely on other
4 “person or persons [to produce] the commodities that grossed the income in
5 subsection (a)[,]” as required by subsection (c). A conceivable example is an
6 absentee or hands-off owner of a farm business who hires a professional farm
7 manager to produce the commodities that generate the requisite income for the
8 farm operation during the relevant period. In such circumstances, the farm
9 manager would, presumably, be qualified to occupy the farm dwelling pursuant
10 to subsection (c).

11 We understand respondents to posit that there may be circumstances where
12 multiple persons combine their efforts to produce the commodities that generate
13 the requisite income during the relevant time periods, and the question arises who
14 among those persons is qualified to reside in the farm dwelling under OAR 660-
15 033-0135(4)(c). We understand respondents to argue based on intervenor’s “job
16 description” that any person who has participated or who will in the future
17 participate in producing the commodities qualifies under subsection (c). We
18 disagree with that broad proposition, for two reasons.

19 First, we note that the key terms in OAR 660-033-0135(4)(a) and (c) are
20 expressly retrospective. Under subsection (a) the requisite income must be
21 “earned” within certain periods of time in the recent past. Under subsection (c),
22 the farm dwelling can only be occupied by a person or persons who “produced”

1 the commodities that grossed the revenue referenced in subsection (a). Both
2 “earned” and “produced” are in the past tense. Nothing in the text or context of
3 OAR 660-033-0135(4) suggests a farm dwelling can be authorized based on
4 future projected earnings or occupied by persons who are only anticipated to
5 produce commodities in the future. Accordingly, if OAR 660-033-0135(4)(a) and
6 (c) are invoked as the basis to determine who qualifies as the “farm operator” for
7 purposes of satisfying the Supreme Court’s remand on this issue, then those
8 determinations must be based on past earnings and past production of
9 commodities, not future projected earnings or future projected production.
10 Relying upon an unidentified person who, in the future, will participate in
11 producing the requisite commodities, as the county does here, would not be
12 consistent with any approach to determining who qualifies as the “farm operator”
13 based on OAR 660-033-0135(4)(a) and (c).

14 Second, any approach to qualifying the farm operator based on OAR 660-
15 033-0135(4)(c) must adequately reflect the requirement that the occupants of the
16 farm dwelling “produced” the requisite commodities. Under the county’s broad
17 definition, a person who played only a minor or tangential role in actually
18 producing the requisite farm commodities could potentially qualify as the farm
19 operator. As explained above, for purposes of OAR 660-033-0130(9), the farm
20 operator is the person who plays the predominant and decisive part in the farm
21 operation, and that category would not include a subordinate whose role may be
22 relatively minor. While OAR 660-033-0135(4)(c) does not expressly limit

1 occupancy to the person who is the predominant and decisive producer of
2 commodities, if the county relies on OAR 660-033-0135(4)(c) to identify the
3 farm dwelling occupant, then it must adopt through conditions meaningful limits
4 on occupancy that are consistent with OAR 660-033-0135(4)(c).

5 In the present case, the county's findings address the farm income criterion
6 at YCZO 402.03(A), which implements OAR 660-033-0135(4)(a), to the extent
7 necessary to address the farm operator issue.²¹ Intervenor submitted evidence in
8 the form of a letter and a spreadsheet, indicating that intervenor grossed over
9 \$80,000 per year from grape sales from 2022 to 2025. Record 374.1-374.3.
10 Petitioner argues, and we agree, that the evidence provided does not identify the
11 person or persons who actually produced the commodities that generated that
12 income, and thus sheds no light on the issue of who is qualified to occupy the
13 farm dwelling for purposes of resolving the issue on remand.

14 Respondents argue that the letter and spreadsheet plainly identify Grange
15 Hill, LLC as the owner of the property on which the income was generated. While

²¹ The county's findings state, in relevant part:

“Grange Hill provided evidence into the record demonstrating that the vineyard produced over \$80,000 from grape sales in 2022, 2023, and 2024. For these reasons, to the extent required, the [b]oard [of commissioners] finds that that the record contains substantial evidence to demonstrate that Grange Hill still meets the principal dwelling approval criteria in YCZO 402.03(A) and may operate the bed and breakfast in the Grange Estate dwelling.” Record 33.

1 that is accurate, and may well suffice to satisfy OAR 660-033-0130(4)(a), it does
2 not answer the question posed by the Supreme Court and our remand. The farm
3 dwelling criterion that would most directly answer that question in the present
4 case is OAR 660-033-0130(4)(c), but the county did not address that criterion.
5 We agree with petitioner that the county's findings addressing the farm dwelling
6 criteria at OAR 660-033-0130(4) that are relevant to the question of who qualifies
7 to occupy the farm dwelling are inadequate and not supported by substantial
8 evidence.

9 In sum, the county's reformulation of the definition of "farm operator" at
10 OAR 660-033-0130(9) is inconsistent with that definition. To the extent the
11 county relies on OAR 660-033-0130(9) to answer the question posed by the
12 Supreme Court and our remand, it must do so in a manner consistent with that
13 rule, which assigns the role of "farm operator" to the predominant and decisive
14 actor in the farm operation. However, as explained, because the pertinent
15 question on remand is whether the home occupation will be located within a
16 dwelling allowed in the EFU zone, the applicant must demonstrate that the home
17 occupation will be located in, as relevant here, a "farm dwelling," which means
18 demonstrating that the dwelling still qualifies as a farm dwelling under the criteria
19 in OAR 660-033-0135(4). To answer that question, the county must identify both
20 the farm operator who "earned" the requisite income for purposes of OAR 660-
21 033-0130(4)(a) and the "person or persons who produced the commodities that
22 grossed the" same income, for purposes of OAR 660-033-0130(4)(c). Only then

1 will the county be in a position to craft conditions of approval to ensure that the
2 dwelling continues to qualify as a farm dwelling, *i.e.*, is occupied by the farm
3 operator or commodity producer, and thus ensure compliance with ORS
4 215.448(1)(a) and (c).

5 The fourth and fifth subassignments of error are sustained.

6 **B. Identifying the Farm Operator; Deferred Determination**

7 Under the first subassignment of error, petitioner argues that the county
8 erred in failing to identify in its decision the farm operator who, under the
9 Supreme Court's ruling, must reside in the dwelling to qualify the dwelling as
10 the site of a home occupation. Instead, petitioner argues under the second
11 subassignment of error, the county deferred the task of identifying the farm
12 operator to a subsequent determination by county staff that provides no notice or
13 opportunity for public participation. That deferral, petitioner argues, is
14 inconsistent with the county's obligation to make all determinations regarding
15 compliance with approval standards under a process where statutory notice and
16 public hearing requirements are observed. *Rhyne v. Multnomah County*, 23 Or
17 LUBA 442, 447 (1992).

18 Initially, respondents argue that the issue of improper deferral under *Rhyne*
19 is waived because it was not sufficiently raised during the proceedings below.
20 Petitioner argued that simply imposing a condition of approval that the home
21 occupation be conducted by the farm operator would be an impermissible
22 deferral. Record 407. However, respondents argue that the second subassignment

1 of error raises a different issue, whether a condition of approval requiring that the
2 farm operator be identified in a subsequent staff proceeding is an impermissible
3 deferral. Petitioner replies that it raised precisely that issue in oral testimony to
4 the county. Reply Brief 3-4 (citing Record 407; Joint Respondent's Brief App, at
5 42). We agree with petitioner that the issue raised in the second subassignment
6 of error was preserved.

7 For the reasons set out in our discussion of the fourth and fifth
8 subassignments of error, we generally agree with petitioner that answering the
9 question posed by the Supreme Court and our remand requires, as a practical
10 matter, that the county identify the person or persons who produced the
11 commodities, in the present appeal, the grapes sold on the subject property,
12 within the relevant time period. The county's attempt to identify the farm
13 operator in a later staff process is flawed, if for no other reason than it relies upon
14 the county's erroneous definition of "farm operator." But even if that later staff
15 process were based on a correct application of the law, we agree with petitioner
16 that the relevant law described above requires the exercise of a significant degree
17 of discretion that cannot be deferred to a staff process that does not provide notice
18 and opportunity for public participation.

19 The first and second subassignments of error are sustained.

1 **C. Adequacy of Findings Addressing the County Definition of**
2 **Farm Operator**

3 The third subassignment of error is styled as an alternative to the first and
4 second subassignments and assumes that the county is not required to identify the
5 farm operator in a public hearing, but instead may permissibly defer that
6 determination to a staff process. Even if so, petitioner challenges the adequacy of
7 the county’s findings and explanations adopting intervenor’s “job description” as
8 the basis to ensure that the farm dwelling will be occupied by the farm operator.

9 We need not resolve this subassignment of error, which is styled in the
10 alternative to the first and second subassignments. Because we sustained
11 petitioner’s primary arguments under the first and second subassignments, no
12 purpose would be served by addressing the alternative arguments. In addition,
13 remand under the first, second, fourth, and fifth subassignments will require
14 adoption of new findings and consideration of new evidence regarding the farm
15 operator that are not based on the “job description.” Thus, the arguments under
16 this third subassignment of error are, at best, moot.

17 We do not reach the third subassignment of error.

18 The third assignment of error is sustained, in part.

19 The county’s decision is remanded.

20 ZAMUDIO, Board Chair, concurring.

21 I agree with the majority that, if the county relies on OAR 660-033-0135(4)
22 to determine who may occupy the farm dwelling for purposes of satisfying the
23 test set out by the Supreme Court in *Grange Hill III*, then the farm income test

1 and the production of agricultural commodities must be based on retrospective
2 evidence. I write separately to observe an issue that the majority decision does
3 not address. The rule interpretation in this decision raises what I view as a
4 significant lag-time restriction on farm employment and transfer of commercial
5 farming enterprises. It seems to me that the majority's interpretation of OAR 660-
6 033-0135(4) implies that the person or persons who would qualify to occupy the
7 farm dwelling would be required to produce farm commodities and significant
8 income from the sale of farm products for at least two years prior to occupying
9 the farm dwelling. If the farm dwelling is transferred to a new farm operator, then
10 that new farm operator must produce farm income for at least two years before
11 they could obtain a conditional use permit to operate a home occupation in the
12 farm dwelling. I do not believe that is what the legislature contemplated or
13 intended in adopting ORS 215.283 and ORS 215.448. I also do not believe that
14 LCDC contemplated OAR 660-033-0135 as imposing such restrictions. That
15 type of timing restriction seems inconsistent with the policy of keeping farmland
16 in farm use by allowing farm operators to undertake limited nonfarm commercial
17 operations to supplement farm income. Nevertheless, I agree that the use of the
18 past tense in OAR 660-033-0135(4)(a) and (c) compels a retrospective analysis.
19 Before the Supreme Court issued *Grange Hill III*, I do not think that the
20 legislature or LCDC contemplated that farm dwelling criteria would be applied
21 to home occupation applications. However, the policy solution to avoiding
22 limitations on farm dwelling residential occupation and potential transfer of a

1 farm-dwelling-based home occupation is properly accomplished in a statutory or
2 rule amendment, and not a LUBA interpretation of OAR 660-033-0135.

3 I respectfully concur in the decision.

Certificate of Mailing

I hereby certify that I served the foregoing Final Opinion and Order for LUBA No. 2026-016 on August 13, 2026, by mailing to said parties or their attorney a true copy thereof contained in a sealed envelope with postage prepaid addressed to said parties or their attorney as follows:

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Dated this 13th day of August, 2026.



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