

7.2.3 Goal 3 – Agricultural Lands/ Goal 3 Rule – Agricultural Land Definition – Other Suitable Land. A finding that an 8.5-acre parcel with Class VI agricultural soils is not “suitable for grazing,” and not “other lands” suitable for farm use, and hence not “agricultural land” as defined in OAR 660-033-0020, is supported by substantial evidence, where the undisputed evidence is that the parcel can accommodate only two animal units per month, equivalent to a lease value of \$30 per month, yielding less revenue than the annual property taxes. *O’Brien v. Lincoln County*, 65 Or LUBA 286 (2012).

7.2.3 Goal 3 – Agricultural Lands/ Goal 3 Rule – Agricultural Land Definition – Other Suitable Land. Where the record indicates that seasonal rather than year-round cattle grazing is a common pattern in an area, and the subject property is currently or was recently leased for seasonal grazing, evidence sufficient to establish that the property is not “suitable for grazing” and thus not agricultural land under OAR 660-033-0020(1)(a)(B) must include an evaluation of whether the property is suitable for seasonal grazing. *Wetherell v. Douglas County*, 62 Or LUBA 80 (2010).

7.2.3 Goal 3 – Agricultural Lands/ Goal 3 Rule – Agricultural Land Definition – Other Suitable Land. OAR 660-033-0030(2) and (3) require consideration of adjoining and nearby lands, in determining whether property is suitable for grazing and hence qualifies as agricultural land OAR 660-033-0020(1)(a)(B). Remand is necessary, where the record indicates that adjoining properties support seasonal grazing operations and have similar soils and conditions to the subject property, but the county does not adopt findings considering those adjoining properties or explain why the subject property cannot reasonably be used for seasonal grazing. *Wetherell v. Douglas County*, 62 Or LUBA 80 (2010).

7.2.3 Goal 3 – Agricultural Lands/ Goal 3 Rule – Agricultural Land Definition – Other Suitable Land. Where an issue arises whether a petitioner waived his right to raise an issue at LUBA regarding whether a county erroneously found that land is not “other lands” that are suitable for farm use considering the factors set out at OAR 660-033-0020(1)(a)(B), a petitioner may not respond that the applicant raised that issue by addressing those factors below. The only issue raised by the applicant was whether the land *does not qualify* as such lands; the applicant did not raise the issue of whether the land *does qualify* as such other land. *Just v. Linn County*, 60 Or LUBA 74 (2009).

7.2.3 Goal 3 – Agricultural Lands/ Goal 3 Rule – Agricultural Land Definition – Other Suitable Land. Where a local government’s findings rely heavily on particular factors set out in OAR 660-033-0020(1)(a)(B) to conclude that land does not qualify as “other lands” that are suitable for farm use under OAR 660-033-0020(1)(a)(B), and petitioner waived his right to challenge the findings concerning those particular factors because petitioner raised no issue below concerning those particular factors, LUBA will deny an assignment of error that challenges the adequacy of the county’s OAR 660-033-0020(1)(a)(B) findings. *Just v. Linn County*, 60 Or LUBA 74 (2009).

7.2.3 Goal 3 – Agricultural Lands/ Goal 3 Rule – Agricultural Land Definition – Other Suitable Land. When considering the profitability of land for farm use, the fair market value of property zoned for agricultural use incorporates a host of nonfarm economic values in addition to the value of the property attributable to its suitability for farm use. Property owned in fee simple grants the owner a bundle of rights and investment potentials, only some of which are related to the economic use of the land in general, or for farm use in particular. The fair market value of any EFU-zoned parcel presumably reflects its potential for nonfarm uses as well. *Wetherell v. Douglas County*, 60 Or LUBA 131 (2009).

7.2.3 Goal 3 – Agricultural Lands/ Goal 3 Rule – Agricultural Land Definition – Other Suitable Land. Even though a common practice of ranching may involve trucking cattle from one grazing area to another, the focus of OAR 660-033-0030(3) is on conjoined use of farmland with “nearby or adjacent” properties. In this context, “nearby” means property within a relatively short geographic distance, and property that is almost or nearly adjacent. The county is not required to consider conjoined use with a property that is miles away from the subject property, or separated by a significant number of other parcels. *Wetherell v. Douglas County*, 60 Or LUBA 131 (2009).

7.2.3 Goal 3 – Agricultural Lands/ Goal 3 Rule – Agricultural Land Definition – Other Suitable Land. In determining whether land is “other suitable land” under the Goal 3 definition of agricultural land and considering whether the land can be farmed with the primary purpose of obtaining a profit in money, the county errs in considering the applicant’s annual debt-service payments on the \$3,000,000 acquisition price that reflects the speculative value of the land for rural residential use rather than its actual value as farm land. *Wetherell v. Douglas County*, 58 Or LUBA 101 (2008).

7.2.3 Goal 3 – Agricultural Lands/ Goal 3 Rule – Agricultural Land Definition – Other Suitable Land. Determining whether land is agricultural land under OAR 660-033-0020(1)(a)(B) is based on the objective considerations set out in the rule. The particular motivations or financial circumstances of the landowner/applicant are irrelevant. *Wetherell v. Douglas County*, 58 Or LUBA 101 (2008).

7.2.3 Goal 3 – Agricultural Lands/ Goal 3 Rule – Agricultural Land Definition – Other Suitable Land. Testimony that the applicant has not shown why a parcel formerly part of a larger ranch cannot be used in conjunction with adjacent and nearby farm properties is sufficient to raise the issue of compliance with OAR 660-033-0030(3), notwithstanding that the petitioner failed to cite the rule. *Wetherell v. Douglas County*, 58 Or LUBA 101 (2008).

7.2.3 Goal 3 – Agricultural Lands/ Goal 3 Rule – Agricultural Land Definition – Other Suitable Land. LUBA will remand a decision determining that a parcel is not Goal 3 agricultural land for findings under OAR 660-033-0030(3), which requires that the county examine nearby or adjacent land, regardless of ownership, in determining whether a parcel is agricultural land, where the county adopted no findings addressing the rule, and there is evidence in the record that the subject property was formerly used in

conjunction with adjacent farm lands and can be so used again. *Wetherell v. Douglas County*, 58 Or LUBA 101 (2008).

7.2.3 Goal 3 – Agricultural Lands/ Goal 3 Rule – Agricultural Land Definition – Other Suitable Land. In determining that the land is not “other suitable land” under OAR 660-033-0020(1)(a)(B), a county does not err in relying on uncertainty over whether irrigation necessary to establish a new vineyard is available, combined with high cost of establishing a new commercial vineyard and the higher risks of dry-land viniculture, to conclude that land is not suitable for growing wine grapes. *Wetherell v. Douglas County*, 58 Or LUBA 101 (2008).

7.2.3 Goal 3 – Agricultural Lands/ Goal 3 Rule – Agricultural Land Definition – Other Suitable Land. In determining whether a parcel remains “adjacent to or intermingled with” agricultural land within a “farm unit” under OAR 660-033-0020(1)(b) notwithstanding that the parcel was recently partitioned from a larger farm parcel and is no longer in common use, the most important consideration is whether there is some significant obstacle to resumed joint operation. Where a 260-acre parcel was recently divided from a 590-acre ranch and was long used in conjunction with other lands within the farm unit, and there appears no reason why the parcel cannot continue to be used in conjunction with the other parcels within the former farm unit, a county has not established that the parcel is not agricultural land under OAR 660-033-0020(1)(b). *Wetherell v. Douglas County*, 58 Or LUBA 101 (2008).

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

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

7.2.3 Goal 3 – Agricultural Lands/ Goal 3 Rule – Agricultural Land Definition – Other Suitable Land. Substantial evidence supports a county’s finding that a 160-acre parcel is not suitable for an independent grazing operation, where the property has never supported an independent grazing operation, and an agricultural consultant’s study details significant capital inputs needed to establish a new, independent grazing operation that

could not be recovered from income reasonably expected from such a grazing operation. *Wetherell v. Douglas County*, 58 Or LUBA 638 (2009).

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

7.2.3 Goal 3 – Agricultural Lands/ Goal 3 Rule – Agricultural Land Definition – Other Suitable Land. Where no issue was raised during the initial proceedings or initial appeal to LUBA regarding whether a property could be used as a “woodlot” and thus be put to “farm use” for purposes of ORS 215.203(2), that issue cannot be raised for the first time on appeal of the decision on remand, pursuant to *Beck v. City of Tillamook*, 313 Or 148, 153, 831 P2d 678 (1992). *Wetherell v. Douglas County*, 58 Or LUBA 638 (2009).

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

7.2.3 Goal 3 – Agricultural Lands/ Goal 3 Rule – Agricultural Land Definition – Other Suitable Land. That land might qualify as “wasteland” for purposes of the ORS 215.203(2)(b)(E) definition of “current employment of land for farm use” does not mean that the land is therefore “suitable for farm use as defined by ORS 215.203(2)(a),” for purposes of determining whether the property is agricultural land subject to Goal 3. The ORS 215.203(2)(b)(E) definition of current employment of land for farm use serves different purposes than the definition of farm use at ORS 215.203(2)(a). *Doherty v. Wheeler County*, 56 Or LUBA 465 (2008).

7.2.3 Goal 3 – Agricultural Lands/ Goal 3 Rule – Agricultural Land Definition – Other Suitable Land. OAR 660-033-0020(1) comprehensively addresses the circumstances under which land qualifies as agricultural land subject to Goal 3. The fact that land might qualify as “wasteland” for purposes of the ORS 215.203(2)(b) definition

of “current employment of land for farm use” does not establish as a matter of law that the land qualifies as “agricultural land” under OAR 660-033-0020(1). *Doherty v. Wheeler County*, 56 Or LUBA 465 (2008).

7.2.3 Goal 3 – Agricultural Lands/ Goal 3 Rule – Agricultural Land Definition – Other Suitable Land. Undisputed evidence that (1) 41 percent of a property is inaccessible to livestock, (2) the portion that is accessible was severely overgrazed and has lost much of its topsoil, (3) the property can support only six cow-calf pairs for a three month grazing season, and (4) fencing the property for grazing would cost \$5,000 but yield at most \$400 per year in rent is substantial evidence that the property is not suitable for grazing, for purposes of OAR 660-033-0020(1)(a). *Doherty v. Wheeler County*, 56 Or LUBA 465 (2008).

7.2.3 Goal 3 – Agricultural Lands/ Goal 3 Rule – Agricultural Land Definition – Other Suitable Land. In determining whether land must be considered agricultural land under Goal 3 (Agricultural Lands) because the land is suitable for farm use, even though the land is not predominantly NRCS Class I-IV soils, where there is conflicting believable evidence regarding whether the property can be profitably farmed, LUBA will defer to the county’s finding that the property is not suitable for farm use. *Wetherell v. Douglas County*, 54 Or LUBA 604 (2007).

7.2.3 Goal 3 – Agricultural Lands/ Goal 3 Rule – Agricultural Land Definition – Other Suitable Land. Goal 3’s protection is not limited to property that is suitable for large, highly profitable, “commercial” farms that would be sufficiently profitable to provide the sole or primary source of income for a property owner. Land that is suitable for noncommercial but profitable farm use must be protected under Goal 3. *Wetherell v. Douglas County*, 54 Or LUBA 604 (2007).

7.2.3 Goal 3 – Agricultural Lands/ Goal 3 Rule – Agricultural Land Definition – Other Suitable Land. LUBA will not assume a county applied an improper “commercial” agricultural standard in determining that property need not be protected under Goal 3 for farm use, where it is reasonably clear the county used the term “commercial” to distinguish land that is suitable for a profitable vineyard from land that is not suitable for a profitable vineyard, in the sense that a vineyard on the property would not produce grapes of a quality and quantity that could be sold for a price that would exceed the cost of production. Such a distinction is permissible under *Wetherell v. Douglas County*, 342 Or 666, 160 P3d 614 (2007). *Wetherell v. Douglas County*, 54 Or LUBA 604 (2007).

7.2.3 Goal 3 – Agricultural Lands/ Goal 3 Rule – Agricultural Land Definition – Other Suitable Land. Pursuant to *Wetherell v. Douglas County*, 342 Or 666, 160 P3d 614 (2007), a local government may consider “profitability” in determining whether land is “suitable for farm use” under OAR 660-033-0020(1)(a)(B). *Wetherell v. Douglas County*, 54 Or LUBA 646 (2007).

7.2.3 Goal 3 – Agricultural Lands/ Goal 3 Rule – Agricultural Land Definition – Other Suitable Land. That a farm use is not commercial-scale in size, intensity or profitability is not a sufficient basis to conclude that land is not suitable for farm use under OAR 660-033-0020(1)(a)(B). *Wetherell v. Douglas County*, 54 Or LUBA 646 (2007).

7.2.3 Goal 3 – Agricultural Lands/ Goal 3 Rule – Agricultural Land Definition – Other Suitable Land. Under OAR 660-033-0030(3), a local government must consider whether land may be used in conjunction with nearby or adjacent farm lands. *Wetherell v. Douglas County*, 54 Or LUBA 646 (2007).

7.2.3 Goal 3 – Agricultural Lands/ Goal 3 Rule – Agricultural Land Definition – Other Suitable Land. A county’s finding that land is not suitable for grazing is not supported by substantial evidence, where the land has a history of grazing, and is bordered by similarly sized parcels currently used for grazing that have the same soils and conditions. *Wetherell v. Douglas County*, 54 Or LUBA 678 (2007).

7.2.3 Goal 3 – Agricultural Lands/ Goal 3 Rule – Agricultural Land Definition – Other Suitable Land. That land is suitable only for seasonal grazing as opposed to year-round grazing does not mean that the land is not “suitable for grazing” as that term is used in the OAR 660-033-0020(1)(a)(B) definition of agricultural land. *Wetherell v. Douglas County*, 54 Or LUBA 678 (2007).

7.2.3 Goal 3 – Agricultural Lands/ Goal 3 Rule – Agricultural Land Definition – Other Suitable Land. Findings that do not address a petitioner’s argument that property can be used for grazing like surrounding properties fail to demonstrate that the property is not suitable lands for farm use. *Wetherell v. Douglas County*, 52 Or LUBA 677 (2006).

7.2.3 Goal 3 – Agricultural Lands/ Goal 3 Rule – Agricultural Land Definition – Other Suitable Land. OAR 660-033-0030(5) prohibits consideration of “profitability or gross farm income” in determining whether land is agricultural land. That prohibition de-emphasizes if not eliminates the role that the “primary purpose of obtaining a profit in money” language in ORS 215.203(2)(a) definition of farm use might otherwise play in determining whether land is agricultural land. *Wetherell v. Douglas County*, 50 Or LUBA 167 (2005).

7.2.3 Goal 3 – Agricultural Lands/ Goal 3 Rule – Agricultural Land Definition – Other Suitable Land. While counties have some latitude to define a threshold of profitability in determining whether land is subject to a committed exception to Goal 3, counties have no such latitude in determining whether land is agricultural land under OAR 660-033-0030(5), which prohibits counties from considering “profitability or gross farm income” in determining whether land is agricultural land. *Wetherell v. Douglas County*, 50 Or LUBA 167 (2005).

7.2.3 Goal 3 – Agricultural Lands/ Goal 3 Rule – Agricultural Land Definition – Other Suitable Land. Goal 3 protects small-scale agricultural uses as well as large-scale

uses. While land capable of grazing only a few animals might not constitute land “suitable for grazing” under OAR 660-033-0020(1)(a)(B), the fact that a 160-acre parcel can provide forage to support only 211 animal unit months on a seasonal basis, consistent with its historic use and other grazing operations in the area, is not a sufficient basis to conclude that the parcel is not “agricultural land” under the Goal 3 definition. *Wetherell v. Douglas County*, 50 Or LUBA 167 (2005).

7.2.3 Goal 3 – Agricultural Lands/ Goal 3 Rule – Agricultural Land Definition – Other Suitable Land. Where land was once maintained at a level of forage productivity that has suffered in recent years due to neglect, it is inappropriate to take such neglect into account in determining whether the land is “agricultural land” under OAR 660-033-0020(1)(a)(B). Instead, the county must examine the parcel’s capability for grazing assuming appropriate management measures, such as maintaining fences and controlling brush and weeds. *Wetherell v. Douglas County*, 50 Or LUBA 167 (2005).

7.2.3 Goal 3 – Agricultural Lands/ Goal 3 Rule – Agricultural Land Definition – Other Suitable Land. OAR 660-033-0030(3) requires counties to consider whether the subject parcel can be used in conjunction with nearby or adjacent land in other ownerships in determining whether the parcel is “suitable for farm use” under OAR 660-033-0020(1)(a)(B). Where the subject property has a 70-year history of conjoined use with an adjacent parcel, the fact that the owner of the other parcel is not currently interested in conjoined use is not a sufficient basis to conclude that the subject property is not suitable for farm use. *Wetherell v. Douglas County*, 50 Or LUBA 167 (2005).

7.2.3 Goal 3 – Agricultural Lands/ Goal 3 Rule – Agricultural Land Definition – Other Suitable Land. Where a parcel has soils, aspect and other features suitable for a commercial vineyard, the county must consider whether the parcel can support such a vineyard. The fact that any vineyard the property could support would be relatively small in scale and that the soils on the predominant portion of the parcel cannot support a commercial vineyard is not dispositive. *Wetherell v. Douglas County*, 50 Or LUBA 167 (2005).

7.2.3 Goal 3 - Agricultural Lands/ Goal 3 Rule - Agricultural Land Definition - Other Suitable Land. When determining whether land qualifies as agricultural land that must be protected under Goal 3, profitability and gross farm income are not to be considered in applying the considerations specified in OAR 660-033-0020(1)(a). *Wetherell v. Douglas County*, 50 Or LUBA 275 (2005).

7.2.3 Goal 3 - Agricultural Lands/ Goal 3 Rule - Agricultural Land Definition - Other Suitable Land. The structure of OAR 660-033-0020(1), which first applies an objective soil classification threshold to define agricultural land and then applies several other standards to require that land with poorer classification soils nevertheless be inventoried as agricultural land, demonstrates an intent to cast a relatively large net when inventorying agricultural land. At least some properties with soils that are not well suited for farm use are nevertheless to be inventoried as agricultural land. *Wetherell v. Douglas County*, 50 Or LUBA 275 (2005).

7.2.3 Goal 3 - Agricultural Lands/ Goal 3 Rule - Agricultural Land Definition - Other Suitable Land. If new farm uses are beginning to make use of poorer quality lands that historically were not put to farm use in a county, such poorer quality lands may now qualify as agricultural land under OAR 660-033-0020(1)(a)(B), despite their soil classifications. *Wetherell v. Douglas County*, 50 Or LUBA 275 (2005).

7.2.3 Goal 3 – Agricultural Lands/ Goal 3 Rule – Agricultural Land Definition – Other Suitable Land. That cattle grazing occurs at some level on large tracts of BLM land with the same Class VII soils and vegetative characteristics as the subject property is some evidence that the much smaller subject property could also support some level of grazing. However, that indirect evidence does not compel a conclusion that the property is suitable for grazing, given countervailing evidence that the property is not suitable for farm use under the factors considered in OAR 660-033-0020(1)(a)(B). *Wood v. Crook County*, 49 Or LUBA 682 (2005).

7.2.3 Goal 3 - Agricultural Lands/ Goal 3 Rule - Agricultural Land Definition - Other Suitable Land. Whether property with predominantly nonfarm soils should nevertheless be viewed as “other lands suitable for farm use” under a county code standard that replicates the Goal 3 definition of agricultural land, is governed by specific considerations. That a property may have been briefly used as an elk and deer holding facility is not one of the specified considerations. *Rutigliano v. Jackson County*, 47 Or LUBA 470 (2004).

7.2.3 Goal 3 – Agricultural Lands/ Goal 3 Rule – Agricultural Land Definition – Other Suitable Land. The suitability standard requires that the local government consider whether the subject parcel or a portion thereof can reasonably be put to farm use in conjunction with adjacent or nearby lands. The county must not only consider the property’s suitability for producing crops but also its suitability for producing livestock, in conjunction with adjoining and nearby properties. *Riggs v. Douglas County*, 37 Or LUBA 432 (1999).

7.2.3 Goal 3 – Agricultural Lands/ Goal 3 Rule – Agricultural Land Definition – Other Suitable Land. County findings which conclude that the subject parcel is not suitable for farming, but do not evaluate each of the factors identified in the applicable comprehensive plan policy implementing Goal 3, are inadequate to establish compliance with the plan. *Doob v. Josephine County*, 31 Or LUBA 275 (1996).

7.2.3 Goal 3 – Agricultural Lands/ Goal 3 Rule – Agricultural Land Definition – Other Suitable Land. Where the subject parcel contains soils which are rated Class III when irrigated, the county must consider in its soil evaluation the feasibility of providing irrigation to the parcel. Without such an evaluation, the findings are inadequate to reach a conclusion regarding the suitability of the soil for farm use under the county’s comprehensive plan. *Doob v. Josephine County*, 31 Or LUBA 275 (1996).

7.2.3 Goal 3 – Agricultural Lands/ Goal 3 Rule – Agricultural Land Definition – Other Suitable Land. Given the express language in Goal 3 that future availability of water for irrigation must be considered in evaluating suitability of soils for agricultural uses, the county's interpretation that it need not consider potential availability of irrigation in determining soil suitability is incorrect, and LUBA will not defer to that interpretation. *Doob v. Josephine County*, 31 Or LUBA 275 (1996).

7.2.3 Goal 3 – Agricultural Lands/ Goal 3 Rule – Agricultural Land Definition – Other Suitable Land. In determining whether land subject to a proposed comprehensive plan and zone map change is (1) suitable for farm use, (2) necessary to permit farm use on other agricultural land, or (3) intermingled with lands of Class I-IV soils; as required by OAR 660-33-020(1)(a)(B)-(C) and (b); a local government's analysis must include all property in common ownership with the subject land. *DLCD v. Curry County*, 28 Or LUBA 205 (1994).