CENTRAL OREGON LANDWATCH

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August 17, 2022

Deschutes County Board of Commissioners
1300 NW Wall Street
Bend, OR 97703

Delivered by hand

re: **File No:** ***247-21-001043-PA, 247-21-001044-ZC***
Plan amendment to change land designation from Agriculture to Rural Residential Exception Area, corresponding zone change to rezone from EFU to Rural Residential

Dear Commissioners,

On behalf of Central Oregon LandWatch, thank you for the opportunity to comment on the above-referenced proposals. We respectfully urge the Commissioners to deny the proposals for the reasons outlined below.

General Comments

Deschutes County is in the midst of a severe drought. Given the County's rapidly declining groundwater levels, it is inadvisable to drill 71 exempt wells on this rural land. Sixty Deschutes County residents had to deepen their wells last year. Groundwater pumping in this region leads to an eventual reduction in surface water and an increase in surface water temperature. The Oregon Department of Fish and Wildlife (ODFW) commented to the Hearings Officer that the seeps and springs that could be damaged by the addition of 71 wells are unique habitat for a variety of plant and animal species. Moreover, ODFW data show the 710-acre property is essential mule deer and elk habitat. The Bend Bulletin reported yesterday that mule deer populations in Deschutes County are plummeting, and are now only half what they were 20 years ago, due in large part to development. The County should protect essential mule deer and elk habitat by maintaining the property's classification as agricultural land zoned for exclusive farm use.

The property is predominantly land capability Class VI as determined by the U.S. Natural Resources Conservation Service (NRCS), and is thus agricultural land as a matter of law. The property qualifies as agricultural land under the plain text of DCC 18.04.030:

> "Agricultural Land" means lands classified by the U.S. Natural Resources Conservation Service (NRCS) as predominantly Class I-VI soils, and other lands in different soil classes which are suitable for farm use, taking into consideration soil fertility, suitability for grazing and cropping, 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. Lands in other classes which are necessary to permit farm practices to be undertaken on adjacent or nearby lands shall be included as agricultural lands in any event.

Statewide Planning Goal 3 requires the County to preserve agricultural lands for farm use. Statewide Planning Goal 14 requires urban growth boundaries to separate urban and urbanizable land from rural land. These proposals cannot be approved without exceptions to Goals 3 and 14, but no exception to Goals 3 or 14 have been sought, and if such exceptions were sought the subject property would not qualify. Because the applicable law forbids the proposed changes the application must be denied.

Our specific comments are below.

1. *DCC 18.136.020: developer has not shown the public interest is served by developer's proposal; approval of 71 exempt wells in a drought-stricken county is bad public policy; mule deer are threatened by the proposed destruction of their habitat*

Eden Central has failed to establish that its request to pave over 710 acres of agricultural land to erect 71 houses with 71 exempt wells is in the public interest. DCC 18.136.020.

A recent article from Oregon Public Broadcasting describes alarming drops in groundwater level in Deschutes County. Att. 1., *Race to the Bottom: How Central Oregon Groundwater Sells to the Highest Bidders*.

Deschutes County is in severe drought. In 2021, 60 Deschutes County residents had to deepen their wells:

> "Oregonians [are] paying the price of declining groundwater in the state's fastest-growing region. Over the past 10 years, Deschutes County residents have deepened an average of 29 wells per year. Last year, that shot up to 60, and so far this year the problem is worse. Meanwhile, development is booming, with more than 1,100 new wells drilled since 2020 alone." *Id*.

State data show Deschutes County groundwater levels in different areas have dropped more than a foot per year for decades. *Id*. Oregon Water Resources Department Deputy Director Doug Woodcock is quoted as saying: "The declines are starting to become significant; and it's not going away."

According to the three-agency letter in the record from ODA, ODFW, and DLCD, developer's proposed water use risks severe detriment to fish and wildlife habitat by reducing surface flows necessary for fish and wildlife through groundwater pumping from 71 additional wells. ODFW further commented that the property is essential habitat for mule deer and elk that should be protected from development. The Board of Commissioners should base its decision on the best scientific data available from ODFW, and not hide behind technicalities about what is or is not a listed Goal 5 resource.

The Bend Bulletin reported August 16, 2022, that mule deer levels in Deschutes County continue to plummet.[1] How much decimation of the County's wildlife must there be before the Board of Commissioners finally takes action and votes to protect fish and wildlife species and their habitats?

Fish and wildlife are important contributors to the quality of life in Deschutes County. The last thing Deschutes County residents need is 71 houses on agricultural land that provides vital wildlife habitat, or 71 more straws in a fast-declining aquifer. The Board of Commissioners should deny this proposal as contrary to the public interest. DCC 18.136.020.

2. *DCC 18.04.030; OAR 660-033-0020(1)(a); OAR 660-015-0000(3); Goal 3; State rule does not provide an opportunity to designate lands as nonresource if the land meets the agricultural capability class thresholds in the state's agricultural lands definition*

On May 15, 2019, DLCD wrote to Deschutes County explaining that state rule does not provide an opportunity to designate land as nonresource if the land meets the agricultural capability class threshold in the state's agricultural lands definition. Att. 2. Rather, a Goal 3 exception is required before lands that meet the agricultural capability class threshold can be designated for low intensity rural development.

[1] Mule deer numbers continue downward trend in Central Oregon, Bend Bulletin, August 16, 2022.

DLCD wrote May 15, 2019:

> "State rule does not provide an opportunity to designate lands as nonresource if the land meets the agricultural capability class or forest productivity thresholds in the state's 'agricultural lands' and 'forest lands' definitions. A Goal 3 or 4 exception, rather than nonprime resource land designation, appears to be required to designate these lands for low intensity rural development. Dwelling opportunities allowed under current zoning (e.g. nonfarm dwellings, template dwellings) may also be an option."

Land in Eastern Oregon that is predominantly Class I-VI as classified by the NRCS is agricultural land *per se*.

> OAR 660-033-0020
> (1)(a) "Agricultural Land" as defined in Goal 3 includes:
> (A) Lands classified by the U.S. Natural Resources Conservation Service (NRCS) as predominantly Class I-IV soils in Western Oregon and I-VI soils in Eastern Oregon;
> (B) Land in other soil classes that is suitable for farm use as defined in ORS 215.203(2)(a), taking into consideration 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; and
> (C) Land that is necessary to permit farm practices to be undertaken on adjacent or nearby agricultural lands.
> (b) Land in capability classes other than I-IV/I-VI that is adjacent to or intermingled with lands in capability classes I-IV/IVI within a farm unit, shall be inventoried as agricultural lands even though this land may not be cropped or grazed.

As shown on the County's own GIS map and in the developer's application, the 710 acres are classified by the NRCS as predominantly 63C, which is predominantly land capability Class VI. Att. 3-5. The land is agricultural land as a matter of law pursuant to Statewide Planning Goal 3, OAR 660-015-0000(3); OAR 660-033-0020(1)(a); DCC 18.04.030. An exception to Goal 3 is required.

3. *OAR 660-033-0020(1)(a)(B): land in other soil classes that is suitable for farm use as defined in ORS 215.203(2)(a) is also agricultural land.*

Pursuant to OAR 660-033-0020(1)(a)(B), *supra*, agricultural land includes:

> Land in other soil classes that is suitable for farm use as defined in ORS 215.203(2)(a), taking into consideration 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."

Goal 3, Oregon Administrative Rule, and the County code broadly define agricultural lands to include "lands in different soil classes," "lands in other soil classes," or "other lands," to distinguish them from "lands classified by the U.S. Natural Resources Conservation Service (NRCS) as predominantly Class I-VI soils," which are agricultural land as a matter of law.

If the property were not agricultural land as a matter of law pursuant to Goal 3, OAR 660-015-0000(3), OAR 660-033-0020(1)(a), and DCC 18.04.030, the subject property would still meet the definition of agricultural land because the land is suitable for farm use under the expansive definition of "farm use" in ORS 215.203(2)(a):

> "As used in this section, "farm use" means the current employment of land for the primary purpose of obtaining a profit in money by raising, harvesting and selling crops or the feeding, breeding, management and sale of, or the produce of, livestock, poultry, fur-bearing animals or honeybees or for dairying and the sale of dairy products or any other agricultural or horticultural use or animal husbandry or any combination thereof."

The developer claims that multiple farm uses, from breeding livestock to lavender to plant production in greenhouses, cannot be pursued because water is not available. This is directly contradicted by the developer's own evidence in the form of a letter from Central Oregon water broker John Short stating that water rights are available in the Lower Bridge area. Att. 6. John Short's Water Rights Services, LLC helps secure and manage water rights. Att. 7. The company's website provides "If you need to buy or sell water rights, Water Right Services, LLC can either act as a water right broker or buy/sell the water rights or mitigation directly."[2]

The developer incorrectly concluded that the cost of water rights affects farming profits or losses. Land and water rights are not part of calculations of profit and loss but are capital assets.

The Hearings Officer significantly misinterpreted the phrase "primary purpose of obtaining a profit in money" in ORS 215.203(2). This phrase was interpreted in *Everhart v. Dept. of Rev.*, 15 Or Tax 76, 79 (1999) to refer to the intent of the landowner or tenant. A primary purpose of obtaining a profit in money must be induced from objective observable conduct. *Id.*:

> "The second element of the definition indicates that the use of the land must be "for the primary purpose of obtaining a profit in money." This phrase looks to the intent of the user of the land. Inasmuch as intent is a subjective state of mind, it must be induced from objective observable conduct."

[2] https://oregonwater.us/faq/, last accessed August 16, 2022.

The court determined that farm use is not required by ORS 215.203(2) to actually result in a money profit. This is a crucial point given that a recent USDA study shows that over half of U.S. farms report losses each year. Att. 8. Of roughly 2 million U.S. farm households, slightly more than half report negative income from their farming operations each year, though many earn positive farm income in certain years. *Id*.

The court in *Everhart* observed that for a use to qualify as a farm use in ORS 215.203(2) a land user need not make a profit but must "engage in farm activities with the primary purpose of obtaining a profit." *Id*.:

> "Third, the definition defines or describes the type of activities that qualify as 'farming.' Farm use is not required to actually result in a money profit. Undoubtedly, the legislature recognized the risks of farming. It has not imposed any specific income requirements for land in an EFU zone. It merely requires that the person engage in farm activities with the primary purpose of obtaining a profit. It is also clear that the legislature viewed *bona fide* farms as those farms that produced products or crops sold in the open market. Small operations such as raising chickens for family use or a few pigs to trade with a neighbor for some other product or service do not qualify. The legislature's intent is to grant the special assessment to farmers who exchange their crops for money."

The *Everhart* opinion is from the tax court and is not binding on Deschutes County, but provides a useful interpretation of the applicable statutory phrase "primary purpose of obtaining a profit in money."

The Deschutes County definition of agricultural use is unrelated to profit. DCC 18.04.030:

> "Agricultural use" means any use of land, whether for profit or not, related to raising, harvesting and selling crops or by the feeding, breeding, management and sale of, or the produce of, livestock, poultry, fur-bearing animals or honeybees or for dairying and the sale of dairy products or any other agricultural or horticultural use or animal husbandry or any combination thereof not specifically covered elsewhere in the applicable zone. Agricultural use includes the preparation and storage of the products raised on such land for human and animal use and disposal by marketing or otherwise. Agricultural use also includes the propagation, cultivation, maintenance and harvesting of aquatic species. Agricultural use does not include the use of land subject to the provisions of ORS chapter 321, except land used exclusively for growing cultured Christmas trees."

The developer's major argument is inapplicable in Deschutes County, because whether or not a landowner or tenant can make a profit from the above activities, land that can be used for those activities is correctly designated as agricultural land in Deschutes County.

Multiple uses, for example poultry or fur-bearing animal production, do not require any particular type of soil yet are specifically mentioned as examples of farm use under ORS 215.203(2)(a) and of agricultural use under DCC 18.04.030. The evidence in the record does not support a conclusion that the 710 acres *cannot* be used for "the feeding, breeding, management and sale of, or the produce of" poultry or fur-bearing animals, or for the production of game birds, or for the production of plants in greenhouses. These are farm uses and accepted farming practices under the definition of "farm use" in ORS 215.203(2)(a).

The evidence in the record regarding dozens of farm uses is based on an erroneous interpretation of the phrase "primary purpose of obtaining a profit in money." The developer submitted evidence that water is available to the subject property. The 710 acres could produce dozens of agricultural products including the raising, harvesting, selling, feeding, breeding, management, or sale of, or the produce of, cattle, calves, layers, horses, ponies, goats, sheep, lambs, forage-land used for all hay, forage-land used for all haylage, grass silage, greenchop, wheat for grain, winter wheat for grain, austrian winter peas, dry edible beans, grains, oilseeds, dry beans, dry peas, tobacco, cotton, cottonseed, vegetables, melons, potatoes, sweet potatoes, fruits, apples, pears, plums, tree nuts, berries, marionberries, blackberries, raspberries, nursery, greenhouse, floriculture, sod, short rotation woody crops, other crops and hay, poultry, eggs, hogs, pigs, wool, mohair, goat milk, mules, burros, donkeys, livestock, poultry, fur-bearing animals or honeybees or for dairying and the sale of dairy products or any other agricultural or horticultural use, or animal husbandry, or any combination thereof. All that is required is that the land can be put to these uses, and that in undertaking these activity the farmer have the primary object of obtaining money in exchange for farm products, and not have a primary object of producing agricultural goods for some other reason, like to give as gifts. The subject property qualifies as agricultural land and an exception to Goal 3 is required.

4. *ORS 215.211 does not affect the process by which a county determines whether land qualifies as agricultural land through application of OAR 660-015-0000(3); OAR 660-033-0020(1)(a); and DCC 18.04.030.*

The Hearings Officer's decision interprets ORS 215.211 to affect the process of determining whether land qualifies as agricultural land. This interpretation is directly contradicted by the text of ORS 215.211(5), which provides:

> "This section authorizes *a person* to obtain additional information for use in the determination of whether land qualifies as agricultural land, but this section does not otherwise affect the process by which *a county* determines whether land qualifies as agricultural land." Att. 9. Emphasis added.

The statute governs a *person* who concludes more detailed soils information would assist a county in determining whether land meets the definition of agricultural land. It imposes an obligation on such persons to request that the Department of Land Conservation and Development (DLCD) to arrange for an assessment of the capability of the land by a professional soil classifier.

The Hearings Officer misconstrued the statute by finding that the statute affects the definition of agricultural land in OAR 660-015-0000(3), OAR 660-033-0020(1)(a), or DCC 18.04.030. The statute itself explicitly states that the statute does not affect the process by which a county determines whether land qualifies as agricultural land.

The subject property is agricultural land *per se* because it is classified by the NRCS as predominantly Class I-VI. All parties agree the NRCS classifies the land as predominantly Class VI. No further information is needed to identify the land as agricultural land. Pursuant to OAR 660-033-0030(1), "All land defined as 'agricultural land' in OAR 660-033-0020(1) shall be inventoried as agricultural land."

The developer conflates two separate inquiries. The developer's submission of a report expressing the opinion that the soil is not suited for agriculture does not mean the USDA NRCS Upper Deschutes River Area Soil Survey is incorrect. There is no evidence of any kind that the USDA NRCS Upper Deschutes River Area Soil Survey is incorrect. The developer conducted an Order 1 Survey. The terms "land capability class" and "Order 1" survey are terms of art from the NRCS, which invented both terms. According to the NRCS Technical Soil Services Handbook 629, an "Order 1" survey does not replace or change the results of the official soil survey:

> "Order 1 soil surveys and site-specific data collected are supplements to the official soil survey, but they do not replace or change the official soil survey." Att. 10

The developer's Order 1 survey does not replace or change the official soil survey. The NRCS handbook further states that more detailed soil maps for more intensive investigations are likewise "not considered changes to the Official Soil Survey Information." *Id*.

The Upper Deschutes River Area Soil Survey, which is part of the record for this proceeding, was mapped at two levels of intensity. The Eden Central property was mapped by the NRCS at the detailed level, as shown in Attachments 5 and 11. According to Eden Central's application the following soils were identified by the NRCS on the subject property: Holmzie Searles complex; LaFollete sandy loam; Redcliff-Lickskillet rock outcrop complex; and Redslide-Lickskillet complex 5-30 and 30-50% slopes. Att. 5. These are detailed soil map units in the NRCS Upper Deschutes River Area Soil Survey. Att. 11. The average size of delineations for purposes of management at this level is 40 acres, and the minimum size is 5 acres. *Id*. The Eden Central property is 710 acres. It is legally irrelevant and factually false to assert the NRCS soil survey was not conducted at a sufficient level of detail to classify the agricultural land capability of the 710-acre property. As the NRCS explains in the survey, Att. 11:

> "The survey area was mapped at two levels of intensity. At the less detailed level, map units are mainly associations and complexes. The average size of the delineations for most management purposes was 160 acres. Most of the land mapped at this level is used as woodland and rangeland. At the more detailed level, map units are mainly consociations and complexes. The average size of the delineations for purposes of management was 40 acres, and the minimum size was 5 acres. Most of the land mapped at the more detailed level is used as irrigated and nonirrigated cropland. Spot symbols were used for contrasting soil types and miscellaneous areas that are too small to be mapped at the same intensity as the surrounding land. Inclusions of contrasting soils or miscellaneous areas are described in the map unit if they are a significant component of the unit."

Where NRCS land capability classifications are available they determine whether land meets the definition of agricultural land. The Hearings Officer's decision misconstrues ORS 215.211, which explicitly does not "affect the process by which a county determines whether land qualifies as agricultural land." Att. 9. The Eden Central property is agricultural land. An exception to Goal 3 is required.

5. *ORS 197.835(6); Goal 14, OAR 660-015-0000(14): exception to Goal 14 is required*.

The evidence in the record is insufficient to support a finding that the proposal does not violate Goal 14. Goal 14 establishes urban growth boundaries "to provide land for urban development needs and to identify and separate urban and urbanizable land from rural land." OAR 660-015-0000(14).

LUBA has explained that a Goal 14 exception may be required to designate rural land for residential use depending on the factors discussed in *1000 Friends of Oregon v. LCDC,* 301 Or 447, 498-511, 724 P2d 268 (1986) that may make such an exception necessary. *1000 Friends of Oregon v. Josephine County*, ___ Or LUBA ___, LUBA No. 2021-116 (2022); *Columbia Riverkeeper v. Clatsop County*, 61 Or LUBA 240, 244 (2010).

Currently the subject property is unirrigated rural land with a minimum lot size of 80 acres. DCC 18.16.050(C)(1) ("Nonirrigated land division: The minimum lot or parcel size for a nonirrigated land division is 80 acres.") One dwelling per 80 acres is a rural density for the subject property.

Out of the 710 acres on the subject property a density of one dwelling per 80 acres would permit 8 houses. The proposed 71 houses and 10-acre lot size is not a rural density.

There are only three categories of land in Oregon land use law: urban, urbanizable, and rural. OAR 660-015-0000(14). Goal 14 states that urban growth boundaries separate the three categories of land: rural, urbanizable and urban. Given there are no other land categories and land in this area is currently rural with a minimum lot size of 80 unirrigated acres fixed by law, lowering the minimum lot size from this rural level must mean the land has been determined to be "urbanizable," that is, currently rural but authorized for more intensive development. Before approving conversion of this EFU property to a lower minimum lot size and thus declaring the property urbanizable, the County would have to bring the property inside an urban growth boundary or take an exception to Goal 14.

The Hearings Officer's decision misplaces its reliance on prior acknowledgement of the County's RR-10 Zone to mean the current application is in compliance with Goal 14. Every plan amendment is required to comply with the applicable statewide planning goals at the time of its adoption. ORS 197.835(6) (explaining LUBA "shall reverse or remand an amendment to a comprehensive plan if the amendment is not in compliance with the goals.") There is no evidence in the record to support a finding that a 10-acre lot size is rural and not urban. Note DCCP 3.3.1 imposes a minimum lot size of 10 acres on rural residential development. DCCP 3.3.1 does not allow for clustering, and the minimum lot size cannot be reduced.

6. *DCC 18.136.020(D): no change in circumstances since the property was last zoned; no mistake was made in zoning*

The subject property does not qualify for an amendment because there is no evidence the subject property was mischaracterized by Deschutes County as agricultural land reserved for exclusive farm use at the time of acknowledgement. In 2014-2015 Deschutes County considered the County's agricultural land designations, preparing the Agricultural Lands Program Community Involvement Report, June 18, 2014. Deschutes County found no errors in its designation of EFU or forest lands.

In 2015, in a response to the County's proposal to rezone EFU lands to MUA-10, DLCD wrote to the County that there is no evidence that either the County's EFU lands or forest lands were incorrectly zoned at acknowledgement. Att. 12:

> "[The] department has been unable to determine the nature and scope of the mapping error the county intends to address. It is not apparent why the areas the county has shared with the department were incorrectly zoned at acknowledgment."

The property was rural land surrounded by farmland when zoned for exclusive farm use and remains rural land surrounded by farmland today. There is no evidence to support a finding that there has been any change in circumstances since the property was last zoned. Therefore the application must be denied. DCC 18.136.020(D).

Thank you for your attention to these views.

Best regards,

Carol Macbeth
Staff Attorney
Central Oregon LandWatch

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He questioned the logistics of the offer and the motive.

"I think [Thornburgh] is probably using North Unit as a pawn in the process," Britton told OPB several weeks after the proposal surfaced.

"Somebody figured out that North Unit is in a dire situation, and people are grabbing at everything they can to save their livelihoods and be able to farm," he said.

A wheel line irrigation system crosses a field in Jefferson County, near Madras, Ore., in May 2022. Years of water shortages have challenged farmers in the North Unit Irrigation District.
Emily Cureton Cook / OPB

DeLashmutt denied any attempt at a quid pro quo with state officials.

"I suppose you could try to turn me into a bad guy, but given the facts, I've got water, it's worth a lot of money and I'm willing to let people that really need it, use it," he said.

On June 27, more than a month after lawmakers became involved, Thornburgh lobbyist Dallum assured Britton in an email that the resort "is not seeking compensation, consideration or any position on the development."

At this point, the irrigation district signaled it would accept a one-time water donation, with some caveats.

"We've made it clear we want no association with Thornburgh," Britton said in an email.

He was also doubtful the state's administrative process would move fast enough to see any additional water this summer, which marks a third consecutive year of severe drought.

Old laws

North Unit Farmer Cate Havstad-Casad sees Thornburgh as emblematic of deeper injustices embedded in state water law, and the regulations enforcing it.

Her family grows organic crops and raises animals near Madras. This season they're expecting a 75% reduction in the amount of water their properties are entitled to on paper.

"We sincerely hope that there is some common sense that is going to look at the inequitable distribution of water, and work to redistribute it," Havstad-Casad said.

She testified before lawmakers last year, pleading for reforms.

Cate Havstad-Casad holds frozen meat produced by her family farm in Jefferson County. After years of specializing in organic vegetables, water shortages are driving Havstad-Casad and her husband to make a costly shift to grazing and meat production, she said. May 11, 2022.
Emily Cureton Cook / OPB

Like Oregon, many Western states use a system for dividing up water called prior appropriation. People who control the oldest water rights get their share first when supplies are scarce. It doesn't matter if someone is using the water to grow food, maintain a private water ski lake, or build a golf course resort.

"The message that it sends is it doesn't matter if farmers disappear," Havstad-Casad said.

Even illicit cannabis grows are considered a "beneficial use" by Oregon water regulators, so long as the property they're on has a valid water right for irrigation. To irrigate, state officials said, means simply to apply water to promote growth.

Oregon's top water managers have frequently blamed outdated laws for the consequences of mismanagement.

But some legal experts argue state regulators have more power than they're willing to use.

University of Oregon law professor Adell Amos formerly served as a federal land and water resources attorney for the U.S. Department of the Interior. She said current state laws leave a lot of discretion with the state agency.

"It's not that the law is perfect," she said. "But there is a lot of unexercised authority there to address these issues in the face of climate change."

For instance, regulators do have to consider public benefits when they look at applications to move or change surface water rights. But when developers want to move a groundwater right, like what Thornburgh and the water ski lake owners are doing, it doesn't trigger the same type of review.

Career water managers in Oregon have the power to bring groundwater right moves more inline with how the state treats surface water, according to Amos.

"The road is really wide," she said. "You have to politically choose where you want to be on that road."

Two turkeys follow North Unit Irrigation District farmer Cate Havstad-Casad around at her family's farm near Madras on May 11, 2022.
Emily Cureton Cook / OPB

Overall, she said, there's unresolved tension in how Oregon officials interpret the law to balance a public water supply against private property rights.

"It makes us an easy target," she said. "If you're a powerful interest that wants to privatize water and pump groundwater, why wouldn't you pick a state where this is all muddled?"

Growing demand

When it comes to ensuring rural residents have access to groundwater for their homes, the burden is increasingly falling to taxpayers.

This summer, the state began funneling more than $5.5 million to certain homeowners with failing wells.

"We get multiple calls a day about dry wells," said John Cox, the lending director at the Central Oregon community aid organization NeighborImpact. "It's just unprecedented."

Last year, Cox said the nonprofit serving three counties made loans to replace 18 wells for low-income households, at a total cost of more than $400,000.

Aiken Well Drilling's Neil Fagen is splattered with wet sand as he works to build a domestic well east of Bend, Ore., July 5, 2022.
Emily Cureton Cook / OPB

This year, an infusion of state grants are expected to go further, but with each well project averaging a cost of $23,000, Cox predicted the money "will be gone in no time." And there's no certainty the Legislature will reauthorize the funding in 2023.

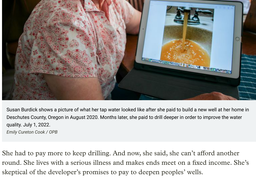
In July, water regulators shot down another one of Thornburgh's requests for wells.

DeLashmutt has said he's confident that he'll be able to get the water he wants.

And the resort is poised to grow. DeLashmutt is in the process of trying to buy 400 acres of state property inside the resort's existing footprint, with the Oregon State Land Board expected to take up the issue again in August.

Burdick, the homeowner whose well went dry about a mile away, is worried.

The first time she paid to drill deeper, the water that came back up wasn't the same quality as before. It flowed dark yellow from the tap, she said.



Susan Burdick shows a picture of what her tap water looked like after she paid to build a new well at her home in Deschutes County, Oregon in August 2020. Months later, she paid to drill deeper in order to improve the water quality. July 1, 2022.
Emily Cureton Cook / OPB

She had to pay more to keep drilling. And now, she said, she can't afford another round. She lives with a serious illness and makes ends meet on a fixed income. She's skeptical of the developer's promises to pay to deepen peoples' wells.

"I just don't know how long it's gonna take for my straw to not be long enough," she said. "Thornburgh has the money to run the longest straw of any of us."

She described herself as a conservative, someone who usually votes for Republicans and who strongly supports private property rights.

But, she said, there should be limits: "You can't just keep sucking water out of the ground and let everybody else lose."

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May 15, 2019

Peter Gutowsky, AICP, Planning Manager
Deschutes County Community Development
117 NW Lafayette Avenue
Bend, OR 97703

RE: **Comprehensive plan amendments for nonprime resource lands**
County # 247-19-000265-PA, DLCD # 003-19

Dear Peter:

Thank you for the opportunity to review the proposed amendments to the Deschutes County Comprehensive Plan. The proposal would allow for lands currently designated as agricultural or forest lands to be redesignated as nonprime resource lands, provided they do not meet the definitions of "agricultural lands" or "forest lands" in the Statewide Planning Goals and Oregon Administrative Rules (OAR). We understand this proposal will be followed by future amendments to the county's zoning code.

The Department of Land Conservation and Development (DLCD or the department) recognizes the thoughtful approach the county took when developing these amendments and the county's efforts to promote public participation. The majority of the amendments appear to be consistent with the requirements in state rules. However, there are a few issues of concern to the department, as follows:

1. **Policy 3.11.3**.

   Agricultural lands
   The "agricultural lands" definition in OAR 660-033-0020(1) provides additional suitability considerations (e.g. climactic conditions, technological and energy inputs required, accepted farming practices) that are not addressed in the proposed amendments. Also for consistency with state rule, Policy 3.11.3.a.ii.4. should address land that is adjacent to or intermingled with Class I-VI soils within a farm unit.

   Forest lands
   The proposed amendments do not address how forest productivity should be evaluated. We assume this will be addressed in future amendments. OAR 660-006-0010 provides a methodology for evaluating forest productivity and nonprime resource designations should be evaluated in accordance with that rule. DLCD has data available that may be helpful.

   The "forest lands" definition in OAR 660-006-0005(7) includes lands that are suitable for commercial forest uses, including adjacent or nearby lands which are necessary to permit forest operations or practices. Whether or not land is necessary for conducting forest operations or practices should be considered before it is designated nonprime resource.

OAR 660-006-0005(7) also includes "*Other forested lands that maintain soil, air, water and fish and wildlife resources.*" It appears the county has opted to address this portion of the definition by requiring that land is only eligible for nonprime resource designation if it does not contain Goal 5 resources. The county may want to consider additional data sources (e.g. ODFW data) where Goal 5 inventories have not been recently updated. DLCD is more than willing to facilitate the acquisition of data from state agencies upon request.

2. **Policies 3.11.13 and 14**. State rule does not provide an opportunity to designate lands as nonresource if the land meets the agricultural capability class or forest productivity thresholds in the state's "agricultural lands" and "forest lands" definitions. A Goal 3 or 4 exception, rather than nonprime resource land designation, appears to be required to designate these lands for low intensity rural development. Dwelling opportunities allowed under current zoning (e.g. nonfarm dwellings, template dwellings) may also be an option. DLCD is available to assist the county in exploring options.

Conclusion

We request that the county consider the comments above and amend the proposal accordingly for consistency with the Statewide Planning Goals and rules. Please enter this letter into the record of these proceedings and provide DLCD with a copy of any further amendments and the decision.

Thank you again for the opportunity to comment. We do apologize for not providing these comments sooner. Please let us know if you have any questions.

Respectfully,

Tim Murphy, Farm and Forest Lands Specialist
503-934-0048 / timothy.murphy@state.or.us

Cc: Zechariah Heck, Associate Planner
Scott Edelman
Jon Jinings

EXHIBIT 2
710 acres are predominantly 63C
Deschutes County GIS
. https://dial.deschutes.org/Real/InteractiveMap/124845

Upper Deschutes River Area, Oregon, Parts of Deschutes, Jefferson, and Klamath Counties

63C—Holmzie-Searles complex, 0 to 15 percent slopes

Map Unit Setting

National map unit symbol: 24f7
Elevation: 2,500 to 3,500 feet
Mean annual precipitation: 9 to 11 inches
Mean annual air temperature: 47 to 52 degrees F
Frost-free period: 70 to 90 days
Farmland classification: Farmland of statewide importance

Map Unit Composition

Holmzie and similar soils: 50 percent
Searles and similar soils: 35 percent
Estimates are based on observations, descriptions, and transects of the mapunit.

Description of Holmzie

Setting

Landform: Hillslopes
Landform position (two-dimensional): Shoulder, summit
Landform position (three-dimensional): Crest, interfluve, nose slope
Down-slope shape: Linear
Across-slope shape: Linear
Parent material: Volcanic ash over residuum weathered from tuff

Typical profile

H1 - 0 to 7 inches: loam
H2 - 7 to 19 inches: clay loam
H3 - 19 to 29 inches: gravelly clay
H4 - 29 to 39 inches: weathered bedrock

Properties and qualities

Slope: 0 to 15 percent
Depth to restrictive feature: 20 to 40 inches to paralithic bedrock
Drainage class: Well drained
Capacity of the most limiting layer to transmit water (Ksat): Moderately low to moderately high (0.06 to 0.20 in/hr)
Depth to water table: More than 80 inches
Frequency of flooding: None
Frequency of ponding: None
Available water supply, 0 to 60 inches: Low (about 4.4 inches)

Interpretive groups

Land capability classification (irrigated): None specified
Land capability classification (nonirrigated): 6e
Hydrologic Soil Group: D
Ecological site: R010XA009OR - JUNIPER SHRUBBY PUMICE FLAT 10-12 PZ

Hydric soil rating: No

Description of Searles

Setting

Landform: Hillslopes
Landform position (two-dimensional): Shoulder, summit
Landform position (three-dimensional): Crest, interfluve, nose slope
Down-slope shape: Linear
Across-slope shape: Linear
Parent material: Volcanic ash over residuum weathered from basalt

Typical profile

H1 - 0 to 7 inches: sandy loam
H2 - 7 to 13 inches: loam
H3 - 13 to 15 inches: very gravelly loam
H4 - 15 to 24 inches: very gravelly clay loam
H5 - 24 to 34 inches: unweathered bedrock

Properties and qualities

Slope: 0 to 15 percent
Depth to restrictive feature: 20 to 40 inches to lithic bedrock
Drainage class: Well drained
Capacity of the most limiting layer to transmit water (Ksat): Moderately high (0.20 to 0.57 in/hr)
Depth to water table: More than 80 inches
Frequency of flooding: None
Frequency of ponding: None
Available water supply, 0 to 60 inches: Very low (about 2.7 inches)

Interpretive groups

Land capability classification (irrigated): None specified
Land capability classification (nonirrigated): 6e
Hydrologic Soil Group: C
Ecological site: R010XA019OR - SHRUBBY LOAM 8-12 PZ
Hydric soil rating: No

Data Source Information

Soil Survey Area: Upper Deschutes River Area, Oregon, Parts of Deschutes, Jefferson, and Klamath Counties
Survey Area Data: Version 17, Sep 14, 2020

EXHIBIT F

How Soil Surveys Are Made

Soil surveys are made to provide information about the soils and miscellaneous areas in a specific area. They include a description of the soils and miscellaneous areas and their location on the landscape and tables that show soil properties and limitations affecting various uses. Soil scientists observed the steepness, length, and shape of the slopes; the general pattern of drainage; the kinds of crops and native plants; and the kinds of bedrock. They observed and described many soil profiles. A soil profile is the sequence of natural layers, or horizons, in a soil. The profile extends from the surface down into the unconsolidated material in which the soil formed or from the surface down to bedrock. The unconsolidated material is devoid of roots and other living organisms and has not been changed by other biological activity.

Currently, soils are mapped according to the boundaries of major land resource areas (MLRAs). MLRAs are geographically associated land resource units that share common characteristics related to physiography, geology, climate, water resources, soils, biological resources, and land uses (USDA, 2006). Soil survey areas typically consist of parts of one or more MLRA.

The soils and miscellaneous areas in a survey area occur in an orderly pattern that is related to the geology, landforms, relief, climate, and natural vegetation of the area. Each kind of soil and miscellaneous area is associated with a particular kind of landform or with a segment of the landform. By observing the soils and miscellaneous areas in the survey area and relating their position to specific segments of the landform, a soil scientist develops a concept, or model, of how they were formed. Thus, during mapping, this model enables the soil scientist to predict with a considerable degree of accuracy the kind of soil or miscellaneous area at a specific location on the landscape.

Commonly, individual soils on the landscape merge into one another as their characteristics gradually change. To construct an accurate soil map, however, soil scientists must determine the boundaries between the soils. They can observe only a limited number of soil profiles. Nevertheless, these observations, supplemented by an understanding of the soil-vegetation-landscape relationship, are sufficient to verify predictions of the kinds of soil in an area and to determine the boundaries.

Soil scientists recorded the characteristics of the soil profiles that they studied. They noted soil color, texture, size and shape of soil aggregates, kind and amount of rock fragments, distribution of plant roots, reaction, and other features that enable them to identify soils. After describing the soils in the survey area and determining their properties, the soil scientists assigned the soils to taxonomic classes (units). Taxonomic classes are concepts. Each taxonomic class has a set of soil characteristics with precisely defined limits. The classes are used as a basis for comparison to classify soils systematically. Soil taxonomy, the system of taxonomic classification used in the United States, is based mainly on the kind and character of soil properties and the arrangement of horizons within the profile. After the soil

scientists classified and named the soils in the survey area, they compared the individual soils with similar soils in the same taxonomic class in other areas so that they could confirm data and assemble additional data based on experience and research.

The objective of soil mapping is not to delineate pure map unit components; the objective is to separate the landscape into landforms or landform segments that have similar use and management requirements. Each map unit is defined by a unique combination of soil components and/or miscellaneous areas in predictable proportions. Some components may be highly contrasting to the other components of the map unit. The presence of minor components in a map unit in no way diminishes the usefulness or accuracy of the data. The delineation of such landforms and landform segments on the map provides sufficient information for the development of resource plans. If intensive use of small areas is planned, onsite investigation is needed to define and locate the soils and miscellaneous areas.

Soil scientists make many field observations in the process of producing a soil map. The frequency of observation is dependent upon several factors, including scale of mapping, intensity of mapping, design of map units, complexity of the landscape, and experience of the soil scientist. Observations are made to test and refine the soil-landscape model and predictions and to verify the classification of the soils at specific locations. Once the soil-landscape model is refined, a significantly smaller number of measurements of individual soil properties are made and recorded. These measurements may include field measurements, such as those for color, depth to bedrock, and texture, and laboratory measurements, such as those for content of sand, silt, clay, salt, and other components. Properties of each soil typically vary from one point to another across the landscape.

Observations for map unit components are aggregated to develop ranges of characteristics for the components. The aggregated values are presented. Direct measurements do not exist for every property presented for every map unit component. Values for some properties are estimated from combinations of other properties.

While a soil survey is in progress, samples of some of the soils in the area generally are collected for laboratory analyses and for engineering tests. Soil scientists interpret the data from these analyses and tests as well as the field-observed characteristics and the soil properties to determine the expected behavior of the soils under different uses. Interpretations for all of the soils are field tested through observation of the soils in different uses and under different levels of management. Some interpretations are modified to fit local conditions, and some new interpretations are developed to meet local needs. Data are assembled from other sources, such as research information, production records, and field experience of specialists. For example, data on crop yields under defined levels of management are assembled from farm records and from field or plot experiments on the same kinds of soil.

Predictions about soil behavior are based not only on soil properties but also on such variables as climate and biological activity. Soil conditions are predictable over long periods of time, but they are not predictable from year to year. For example, soil scientists can predict with a fairly high degree of accuracy that a given soil will have a high water table within certain depths in most years, but they cannot predict that a high water table will always be at a specific level in the soil on a specific date.

After soil scientists located and identified the significant natural bodies of soil in the survey area, they drew the boundaries of these bodies on aerial photographs and

identified each as a specific map unit. Aerial photographs show trees, buildings, fields, roads, and rivers, all of which help in locating boundaries accurately.

EXHIBIT F

Soil Map

The soil map section includes the soil map for the defined area of interest, a list of soil map units on the map and extent of each map unit, and cartographic symbols displayed on the map. Also presented are various metadata about data used to produce the map, and a description of each soil map unit.

EXHIBIT F

Custom Soil Resource Report

Soil Map (Eden Enterprises LLC - NW Coyner Avenue)

Map Scale: 1:14,500 if printed on A portrait (8.5" x 11") sheet.

Meters: 0 200 400 800 1200

Feet: 0 500 1000 2000 3000

N

Map projection: Web Mercator Corner coordinates: WGS84 Edge tics: UTM Zone 10N WGS84

EXHIBIT F

MAP LEGEND

Area of Interest (AOI)

Area of Interest (AOI)

Soils

Soil Map Unit Polygons

Soil Map Unit Lines

Soil Map Unit Points

Special Point Features

Blowout

Borrow Pit

Clay Spot

Closed Depression

Gravel Pit

Gravelly Spot

Landfill

Lava Flow

Marsh or swamp

Mine or Quarry

Miscellaneous Water

Perennial Water

Rock Outcrop

Saline Spot

Sandy Spot

Severely Eroded Spot

Sinkhole

Slide or Slip

Sodic Spot

Spoil Area

Stony Spot

Very Stony Spot

Wet Spot

Other

Special Line Features

Water Features

Streams and Canals

Transportation

Rails

Interstate Highways

US Routes

Major Roads

Local Roads

Background

Aerial Photography

MAP INFORMATION

The soil surveys that comprise your AOI were mapped at 1:24,000.

Please rely on the bar scale on each map sheet for map measurements.

Source of Map: Natural Resources Conservation Service
Web Soil Survey URL:
Coordinate System: Web Mercator (EPSG:3857)

Maps from the Web Soil Survey are based on the Web Mercator projection, which preserves direction and shape but distorts distance and area. A projection that preserves area, such as the Albers equal-area conic projection, should be used if more accurate calculations of distance or area are required.

This product is generated from the USDA-NRCS certified data as of the version date(s) listed below.

Soil Survey Area: Upper Deschutes River Area, Oregon, Parts of Deschutes, Jefferson, and Klamath Counties
Survey Area Data: Version 16, Jun 11, 2020

Soil map units are labeled (as space allows) for map scales 1:50,000 or larger.

Date(s) aerial images were photographed: Jun 21, 2013—Sep 7, 2016

The orthophoto or other base map on which the soil lines were compiled and digitized probably differs from the background imagery displayed on these maps. As a result, some minor shifting of map unit boundaries may be evident.

Map Unit Legend (Eden Enterprises LLC - NW Coyner Avenue)

Map Unit Symbol	Map Unit Name	Acres in AOI	Percent of AOI
63C	Holmzie-Searles complex, 0 to 15 percent slopes	534.6	76.0%
71A	LaFollette sandy loam, 0 to 3 percent slopes	8.9	1.3%
101D	Redcliff-Lickskillet-Rock outcrop complex, 15 to 30 percent south slopes	24.3	3.5%
106D	Redslide-Lickskillet complex, 15 to 30 percent north slopes	17.1	2.4%
106E	Redslide-Lickskillet complex, 30 to 50 percent north slopes	118.4	16.8%
Totals for Area of Interest		**703.3**	**100.0%**

Map Unit Descriptions (Eden Enterprises LLC - NW Coyner Avenue)

The map units delineated on the detailed soil maps in a soil survey represent the soils or miscellaneous areas in the survey area. The map unit descriptions, along with the maps, can be used to determine the composition and properties of a unit.

A map unit delineation on a soil map represents an area dominated by one or more major kinds of soil or miscellaneous areas. A map unit is identified and named according to the taxonomic classification of the dominant soils. Within a taxonomic class there are precisely defined limits for the properties of the soils. On the landscape, however, the soils are natural phenomena, and they have the characteristic variability of all natural phenomena. Thus, the range of some observed properties may extend beyond the limits defined for a taxonomic class. Areas of soils of a single taxonomic class rarely, if ever, can be mapped without including areas of other taxonomic classes. Consequently, every map unit is made up of the soils or miscellaneous areas for which it is named and some minor components that belong to taxonomic classes other than those of the major soils.

Most minor soils have properties similar to those of the dominant soil or soils in the map unit, and thus they do not affect use and management. These are called noncontrasting, or similar, components. They may or may not be mentioned in a particular map unit description. Other minor components, however, have properties and behavioral characteristics divergent enough to affect use or to require different management. These are called contrasting, or dissimilar, components. They generally are in small areas and could not be mapped separately because of the scale used. Some small areas of strongly contrasting soils or miscellaneous areas are identified by a special symbol on the maps. If included in the database for a given area, the contrasting minor components are identified in the map unit

Attachment 6

From: John Short <johnshort@usa.com>
Sent: Friday, April 22, 2022 10:05 AM
To: Mark Stockamp <mark.stockamp@710.properties>
Subject: Re: 710 Properties - Water Rights Questions

Hello Mark,

Water rights (or mitigation credits) for irrigation in the Lower Bridge area currently sell for $21,000 per acre. A buyer today competes with several destination resorts and deep pocket hobby farmers. Purchasing water rights (or mitigation credits) typically doesn't pencil for true agriculture like cattle grazing or hay farming. For clarity, someone wishing to irrigate an acre of land can either purchase a one acre water right from nearby or purchase mitigation credits for the same price. Mitigation credits currently sell for $11,667 each with an acre of irrigation requiring 1.8 credits, hence $21,000 per acre. You can go either way. A 125 acre pivot requires over $2.6 million in water rights.

Hope this helps.

Sincerely,
John

John A. Short CCB# 197121

Attachment 7

Water Right Services, LLC

OREGON WATER RIGHTS | ABOUT US | SERVICES | FAQ | CONTACT US

About Water Right Services, LLC

Most people don't think much about water. Oh, sure, you know if your area is in drought. You know whether or not you can water your lawn (and when). You know how high your bill is and when it's due.

John Short knows water.

Water Right Services, LLC, under John Short's direction, has over 15 years experience in water rights management. They've worked with Oregon water rights and the Deschutes Basin's Groundwater Mitigation Program
since 2003. Water Right Services, LLC helps secure and manage water rights for properties with simple uses like small pastures or ponds up through 100,000+ acre ranches and communities with overlapping, multi-use water rights.

Whether you want to change the irrigation system on your farm, start a fish hatchery, buy land and plant a crop, graze cattle, open a plant nursery, or engage in some other endeavor involving water — Water Right Services, LLC handles your water issues knowledgeably and effectively.

AGAMERICA
TIMES ARE UNCERTAIN
LOCK IN YOUR RATE NOW.
FLEXIBLE AG FINANCING
Interest-only loans
Short-term options
Fast approval
APPLY NOW

Attachment 8

TALK IN MARKETING

AcreTrader

A company called AcreTrader is advertising on the Bill O`Reily commentary. I looked them up and here`s what I found. ...[More]

Author: BA Deere Posted: 08-13-2022

David Kruse "Don`t sell new crop!"

Futures doesn`t reflect the basis, futures haven`t been working. https://www.buzzsprout.com/889474/11116173-08-10-22-stop-selling-new-crop-corn-soybean

Author: BA Deere Posted: 08-10-2022

All Talk

OVER HALF OF U.S. FARMS LOSE MONEY, USDA STUDY SHOWS

SMALLER FARMS DOMINATE THE PROFIT-LOSS PICTURE.

By Mike McGinnis
8/1/2018

Listen to article 5 minutes

U.S. farmers who are losing money are not alone, according to data collected by the USDA released Wednesday.

The study analyzed data from 2015. Over half of U.S. farm households report losses from their farm businesses each year, the USDA's Economic Research Service reported in a press release.

There is a caveat. Because net farm income isn't the total contributor to the financial well-being of farm families, tax-loss benefits and asset appreciation push the share of households with positive annual farm returns rises from 43% to 70%, according to the release.

"Of the roughly 2 million U.S. farm households, slightly more than half report negative income from their farming operations each year. The proportion incurring farm losses is higher for households operating smaller farms, where most or all of their income is typically derived from off-farm activities," the ERS release stated. "However, many of these farm households do earn positive farm income in certain years; also, measures of farm income alone may understate the full economic value of owning the farm," ERS release stated.

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ERS stated that 'this report includes the returns that farmers – as small business owners and landholders – receive from tax law and land ownership.'

Here is what the ERS study discovered:

- In 2015, the year analyzed in this study, farm households earned an average of $119,880. Average income for households operating residence farms (farms with less than $350,000 in gross cash farm income and where the principal operator has a nonfarm primary occupation) was $114,703. The average income for households operating intermediate farms (less than $350,000 in gross cash farm income and where the principal operator's primary occupation is farming) was $70,338. And the average income for households with commercial farms ($350,000 or more gross cash farm income, regardless of the principal operator's occupation) was $332,731.
- While 82% of households operating commercial farms had positive income from their farming business, only one third of residence farm households and slightly less than half of intermediate farm households earned money from their farming operation in 2015.
- While the composition of farm household income varies by the size and type of farm, on average, farm households earned between $64,120 (intermediate farm households) and $115,337 (residential farm households) from off-farm sources in 2015.
- Between 2003 and 2015, the value of total farm and nonfarm assets held by farm households increased by 40% to 57%. In 2015, the average farm household owned approximately $1 million in farm assets in addition to nearly $600,000 in nonfarm assets.
- Many farms are labor-intensive, with considerable unpaid household labor put toward the farm operation. "Operator labor and management income," or OLMI, is an alternative net income measure that accounts for the "opportunity costs" of unpaid labor and capital spent in farming, rather than in other pursuits. Once net farm income is adjusted for opportunity costs, it falls by an average of 52% across all family farms. Commercial farms had the highest average OLMI, while intermediate and residence farms had negative average OLMI. Returns were higher for experienced operators (more than 10 years of experience) than for beginning operators (10 or fewer years), even after controlling for assets.
- Between 1990 and 2015, average farm real estate values increased every year except one at an average nominal rate of approximately 6%. Households owning commercial farms experienced average asset appreciation of an estimated $74,406 in 2015.
- Farm households are able to offset their off-farm income with farm losses, thus reducing their taxable income. When tax-loss benefits and appreciation in farm real estate values are considered, average annual farm economic returns increased from an estimated $232,780 to $308,084 for commercial farm households in 2015, largely driven by asset appreciation. In addition, the share of farm households with positive returns from their farm operation increased from 43% to about 70% of all farms.

The ERS release stated that this study is based primarily on data from the 2015 Agricultural Resource Management Survey (ARMS), a cross-sectional sample of U.S. farm operations.

"Conducted annually by USDA's National Agricultural Statistics Service (NASS) and Economic Research Service (ERS), the survey is representative of the 2 million farms and farm households in the 48 contiguous states. The tax analysis comes from a model developed by ERS that uses applicable 2015 federal tax provisions and 2015 ARMS data to estimate federal income, Social Security, and self-employment taxes," the ERS stated.

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Evening Edition | Friday, August 12, 2022
Article

A soybean field.
USDA projects higher soybean yield, lower demand
Article

california_drought
In Newsom's long-term water strategy, ag makes a fleeting appearance
Article

As farmland values soar, so do fears of a price bubble
Article

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Attachment 9

West's Oregon Revised Statutes Annotated
Title 20. Counties and County Officers
Chapter 215. County Planning; Zoning; Housing Codes (Refs & Annos)
Agricultural Land Use (Refs & Annos)
(Exclusive Farm Use Zones) (Refs & Annos)

O.R.S. § 215.211

215.211. Soils assessments

Currentness

(1) If a person concludes that more detailed soils information than that contained in the Web Soil Survey operated by the United States Natural Resources Conservation Service would assist a county to make a better determination of whether land qualifies as agricultural land, the person must request that the Department of Land Conservation and Development arrange for an assessment of the capability of the land by a professional soil classifier who is:

(a) Certified by and in good standing with the Soil Science Society of America; and

(b) Chosen by the person.

(2) A soils assessment produced under this section is not a public record, as defined in ORS 192.311, unless the person requesting the assessment utilizes the assessment in a land use proceeding. If the person decides to utilize a soils assessment produced under this section in a land use proceeding, the person shall inform the Department of Land Conservation and Development and consent to the release by the department of certified copies of all assessments produced under this section regarding the land to the local government conducting the land use proceeding. The department:

(a) Shall review soils assessments prepared under this section.

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(b) May not disclose a soils assessment prior to its utilization in a land use proceeding as described in this subsection without written consent of the person paying the fee for the assessment.

(c) Shall release to the local government conducting a land use proceeding all soils assessments produced under this section regarding land to which the land use proceeding applies.

(3) Before arranging for a soils assessment under this section, the department shall charge and collect from the person requesting the assessment a fee in an amount intended to meet the costs of the department to assess the soils and administer this section.

(4) The department shall deposit fees collected under this section in the Soils Assessment Fund established under ORS 215.212.

(5) This section authorizes a person to obtain additional information for use in the determination of whether land qualifies as agricultural land, but this section does not otherwise affect the process by which a county determines whether land qualifies as agricultural land.

Credits

Added by Laws 2010, c. 44 (1st Sp. Sess.), § 1, eff. March 10, 2010, operative Oct. 1, 2011. Amended by Laws 2013, c. 1, § 22, eff. Jan. 1, 2014.

O. R. S. § 215.211, OR ST § 215.211

Current through laws enacted in the 2022 Regular Session of the 81st Legislative Assembly, which convened February 1, 2022 and adjourned sine die March 4, 2022, in effect through June 2, 2022, pending classification of undesignated material and text revision by the Oregon Reviser. See ORS 173.160. Some statute sections may be more current, see credits for details.

End of Document

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TSSH Part 629

Attachment 10

Onsite Soil Investigations

Background (629.00)

The National Soil Survey Handbook, Part 655.01(c), provides the following description:

> Site-specific soil investigations, testing, interpretation, and evaluations are services that support the design and installation of works and structures or the implementation of agricultural practices, or that test and evaluate research predictions. These technical soil services are part of NRCS technical assistance to individual cooperators or units of government that have signed agreements specifying the services. The intention of services to individual cooperators is usually to help apply a conservation plan. These are described in general terms in district agreements with NRCS. These services are very site specific and often result in design and practice specifications.

Onsite investigations are not intended to provide information for program eligibility (see site-specific evaluation, NFSAM 512.03).

When site-specific investigations are appropriate (629.01)

NRCS technical soil services for site-specific investigations are done:

- on agricultural lands for USDA program purposes when requested by USDA program participants; or
- through Federal, State, or local forms of government where there is a memorandum of understanding or a cooperative agreement that lists the services to be provided. For more information, see the National Soil Survey Handbook, Part 655.

GM_430 - Title 430 - Soil Survey
402.6 Limitations on Use and Distribution of Soil Survey Information
A. Soil surveys seldom contain detailed site-specific information and are not designed for use as primary regulatory tools in site-specific permitting decisions, but are useful for broad regulatory planning and application. Official Soil Survey Information is public information and may be interpreted by organizations, agencies, units of government, or others based on their own needs; however, users are responsible for the appropriate application of soil survey information. *NRCS will not accept reassignment of authority for decisions made by other Federal, State, or local regulatory bodies. NRCS will not make changes to Official Soil Survey Information, or of any supplemental soil mapping, for purposes related solely to State or local regulatory programs.*

The General Manual, Title 430, Section 402.5F states

> Supplemental mapping provides more detailed soil maps and information for areas of limited extent as a result of more intensive onsite investigations. It is considered a separate soil map developed for specific needs and is maintained for improved documentation of the reliability of the delineations and attribute data of the Official Soil Survey Information. More detailed supplemental soil maps are not considered changes to the Official Soil Survey Information.

Supplemental mapping should only be done to support official NRCS activities, including the implementation of Farm Bill programs and/or Conservation Technical Assistance. It should not be done simply because a cooperator (who has a conservation plan) has a personal need, such as hoping for a better soil potential rating for purposes of selling property.

How site-specific investigations are done (629.02)

Generally, soil survey information is not adequate for site-specific investigations, and point sampling must be done to collect data for a specific use at a specific location. For example, for a manure storage facility, information on depth to the water table and restrictive layers is very important at the location of the proposed facility. Therefore, soil descriptions and interpretations are needed only at the location of the proposed facility.

Exhibit D

It is important to understand what data are needed to make the appropriate interpretations for the proposed use before conducting site-specific investigations. This knowledge can facilitate sampling design and ensure that the appropriate data are collected. For information on the characteristics that are important for a conservation practice, refer to the conservation practice standards in the Field Office Technical Guide.

When assisting other units of government with site-specific soils information, consult with the agency to see whether guidelines and criteria are in place. Make any recommendations regarding the soil characteristics that may be important for interpretation for the proposed use if there are no guidelines or criteria or if they are incomplete.

Order 1 soil surveys and site-specific data collected are supplements to the official soil survey, but they do not replace or change the "official" soil survey. In many cases, mapping at an order 1 level or collecting point data may reveal inclusions within map units of soils that were not named in the official soil survey as well as use-dependent soil properties that are different from the typical soil properties listed for map units in the "official" soil survey.

Any change to the official and published soil survey can be made only when the survey area is designated as being an MLRA soil survey update (NSSH Part 610). The resource soil scientist provides documented evidence of the soil characteristics, including pedon descriptions and any transect notes (geospatially located), to the MLRA Project Office Leader. If the onsite investigation is conducted in a non-MLRA project area (e.g., for conservation planning), the findings are also provided to the State Soil Scientist and can then be used to document the need for a future soil survey update. The field determination of HEL orNHEL is provided to the DC and SC.

It is important that any data collected during site-specific investigations be properly captured for multiple and future uses through Pedon PC and uploaded into NASIS where appropriate. Copies of reports should go to the State Soil Scientist.

Attachment 11

United States Department of Agriculture

Natural Resources Conservation Service

In cooperation with United States Department of Agriculture, Forest Service; United States Department of the Interior, Bureau of Land Management; and Oregon Agricultural Experiment Station

Soil Survey of Upper Deschutes River Area, Oregon, including parts of Deschutes, Jefferson, and Klamath Counties

How to Use This Soil Survey

General Soil Map

The general soil map, which is a color map, shows the survey area divided into groups of associated soils called general soil map units. This map is useful in planning the use and management of large areas.

To find information about your area of interest, locate that area on the map, identify the name of the map unit in the area on the color-coded map legend, then refer to the section **General Soil Map Units** for a general description of the soils in your area.

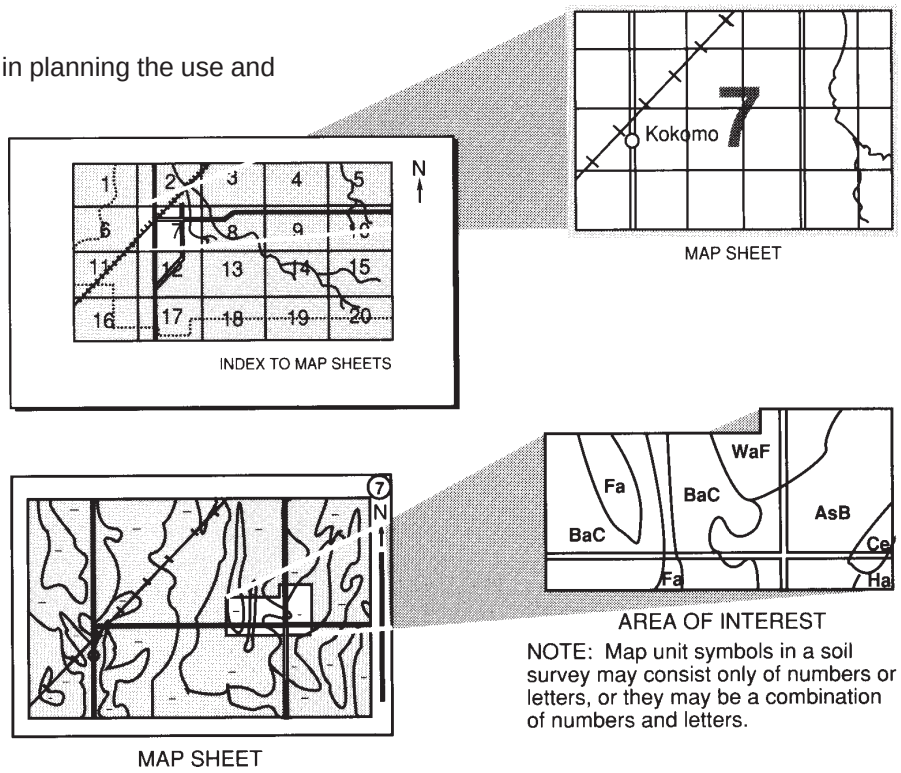
Detailed Soil Maps

The detailed soil maps can be useful in planning the use and management of small areas.

To find information about your area of interest, locate that area on the **Index to Map Sheets**. Note the number of the map sheet and turn to that sheet.

Locate your area of interest on the map sheet. Note the map unit symbols that are in that area. Turn to the **Contents**, which lists the map units by symbol and name and shows the page where each map unit is described.

The **Contents** shows which table has data on a specific land use for each detailed soil map unit. Also see the **Contents** for sections of this publication that may address your specific needs.



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Issued 1999

Foreword

This soil survey contains information that affects land use planning in this survey area. It contains predictions of soil behavior for selected land uses. The survey also highlights soil limitations, improvements needed to overcome the limitations, and the impact of selected land uses on the environment.

This soil survey is designed for many different users. Farmers, ranchers, foresters, and agronomists can use it to evaluate the potential of the soil and the management needed for maximum food and fiber production. Planners, community officials, engineers, developers, builders, and home buyers can use the survey to plan land use, select sites for construction, and identify special practices needed to ensure proper performance. Conservationists, teachers, students, and specialists in recreation, wildlife management, waste disposal, and pollution control can use the survey to help them understand, protect, and enhance the environment.

Various land use regulations of Federal, State, and local governments may impose special restrictions on land use or land treatment. The information in this report is intended to identify soil properties that are used in making various land use or land treatment decisions. Statements made in this report are intended to help the land users identify and reduce the effects of soil limitations that affect various land uses. The landowner or user is responsible for identifying and complying with existing laws and regulations.

Great differences in soil properties can occur within short distances. Some soils are seasonally wet or subject to flooding. Some are shallow to bedrock. Some are too unstable to be used as a foundation for buildings or roads. Clayey or wet soils are poorly suited to use as septic tank absorption fields. A high water table makes a soil poorly suited to basements or underground installations.

These and many other soil properties that affect land use are described in this soil survey. Broad areas of soils are shown on the general soil map. The location of each soil is shown on the detailed soil maps. Each soil in the survey area is described. Information on specific uses is given for each soil. Help in using this publication and additional information are available at the local office of the Natural Resources Conservation Service or the Cooperative Extension Service.

Bob Graham
State Conservationist
Natural Resources Conservation Service

segments of the landform, a soil scientist develops a concept or model of how they were formed. Thus, during mapping, this model enables the soil scientist to predict with a considerable degree of accuracy the kind of soil or miscellaneous area at a specific location on the landscape.

Commonly, individual soils on the landscape merge into one another as their characteristics gradually change. To construct an accurate soil map, however, soil scientists must determine the boundaries between the soils. They can observe only a limited number of soil profiles. Nevertheless, these observations, supplemented by an understanding of the soil-vegetation-landscape relationship, are sufficient to verify predictions of the kinds of soil in an area and to determine the boundaries.

Soil scientists recorded the characteristics of the soil profiles that they studied. They noted color, texture, size and shape of soil aggregates, kind and amount of rock fragments, distribution of plant roots, reaction, and other features that enable them to identify soils. After describing the soils in the survey area and determining their properties, the soil scientists assigned the soils to taxonomic classes (units). Taxonomic classes are concepts. Each taxonomic class has a set of soil characteristics with precisely defined limits. The classes are used as a basis for comparison to classify soils systematically. Soil taxonomy, the system of taxonomic classification used in the United States, is based mainly on the kind and character of soil properties and the arrangement of horizons within the profile. After the soil scientists classified and named the soils in the survey area, they compared the individual soils with similar soils in the same taxonomic class in other areas so that they could confirm data and assemble additional data based on experience and research.

While a soil survey is in progress, samples of some of the soils in the area generally are collected for laboratory analyses. Soil scientists interpret the data from these analyses and tests as well as the field-observed characteristics and the soil properties to determine the expected behavior of the soils under different uses. Interpretations for all of the soils are field tested through observation of the soils in different uses and under different levels of management. Data are assembled from other sources, such as research information, production records, and field experience of specialists.

Predictions about soil behavior are based not only on soil properties but also on such variables as climate and biological activity. Soil conditions are predictable over long periods of time, but they are not predictable from year to year. For example, soil scientists can predict with a fairly high degree of accuracy that a given soil will have a high water table within certain depths in most years, but they cannot predict that a high water table will always be at a specific level in the soil on a specific date.

After soil scientists located and identified the significant natural bodies of soil in the survey area, they drew the boundaries of these bodies on aerial photographs and identified each as a specific map unit. Aerial photographs show trees, buildings, fields, roads, and rivers, all of which help in locating boundaries accurately.

Survey Procedures

The general procedures followed in making this survey are described in the National Soil Survey Handbook of the Natural Resources Conservation Service. Source material used in the development of the survey includes the soil survey of the Deschutes Area, Oregon, published in 1958 *(23)*; the interim soil survey of the Brothers Area published in 1983 *(28)*; U.S. Geological Survey geologic maps; and the National Cooperative Soil Survey memorandum of understanding between the Natural Resources Conservation Service, the Forest Service, the Bureau of Land Management, and the Oregon Agricultural Experiment Station.

By separating the landscapes into discrete landforms and identifying the dominant soil-forming properties on each landform, predictable soil-landform models became apparent and were the basis for the soil maps and the development of the soil series and map unit descriptions. The soil-landform relationships for this survey area are discussed under the heading “Formation of the Soils.”

The survey area was mapped at two levels of intensity. At the less detailed level, map units are mainly associations and complexes. The average size of the delineations for most management purposes was 160 acres. Most of the land mapped at this level is used as woodland and rangeland. At the more detailed level, map units are mainly consociations and complexes. The average size of the delineations for purposes of management was 40 acres, and the minimum size was 5 acres. Most of the land mapped at the more detailed level is used as irrigated and nonirrigated cropland. Spot symbols were used for contrasting soil types and miscellaneous areas that are too small to be mapped at the same intensity as the surrounding land. Inclusions of contrasting soils or miscellaneous areas are described in the map unit if they are a significant component of the unit.

Soil mapping in the high desert of eastern

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January 8, 2015

Deschutes County Planning Commission
c/o Nick Lelack, Community Development Director
117 NW Lafayette Avenue
Bend, Oregon 97701

SENT VIA E-MAIL

RE: HB 2229 question regarding scope of review

Deschutes County planning staff has requested the opinion of the Department of Land Conservation and Development (the department) on whether HB 2229 requires all, or most, farm- or forest-zoned lands in a county to be considered in a "reacknowledgment" process, or whether smaller, non-contiguous tracts could be considered as the first phase of a multi-phase reacknowledgment process.

County staff described several non-contiguous problem areas. The county stated that its goal was "for partially platted subdivisions zoned for EFU or Forest to be legislatively rezoned to MUA-10." Department staff consulted with county staff on these areas, and studied maps of five of the areas and past county attempts to find solutions. The total acreage of these areas equals about 840 acres.

Analysis

HB 2229 is memorialized at Chapter 873 Oregon Laws 2009. The relating clause "Relating to recommendations of the Oregon Task Force on Land Use Planning…" gives an indication that certain themes in the bill originated with "The Big Look." A theme that wound through the Big Look was that land use laws should treat different regions of the state fairly, recognizing the geographical, ecological and cultural aspects of each region. Section 2(B) of HB 2229, for example, directs that the Land Conservation and Development Commission to "consider the variation in conditions and needs in different regions of the state and encourage regional approaches to resolve land use problems."

For this discussion, section 5 of HB 2229 is applicable. A portion of section 5 is provided below.

> SECTION 5. (1) For the purposes of correcting mapping errors made in the acknowledgment process and updating the designation of farmlands and forestlands for land use planning, a county may conduct a legislative review of lands in the county to determine whether the lands planned and zoned for farm use, forest use or mixed farm and forest use are consistent with the definitions of "agricultural lands" or "forest lands" in goals relating to agricultural lands or forestlands.

> (2) A county may undertake the reacknowledgment process authorized by this section only if the Department of Land Conservation and Development approves a work plan, from the county, describing the expected scope of reacknowledgment. The department may condition approval of a work plan for reacknowledgment under this section to reflect the resources needed to complete the review required by sections 7 and 13 of this 2009 Act. The work plan of the county and the approval of the department are not final orders for purposes of review.
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> (3) A county that undertakes the reacknowledgment process authorized by this section shall provide an opportunity for all lands planned for farm use, forest use or mixed farm and forest use and all lands subject to an exception under ORS 197.732 to a goal relating to agricultural lands or forestlands to be included in the review.

This states that the county may undertake a "reacknowledgement" process by conducting a legislative review for the purpose of correcting mapping errors made during its original acknowledgment. Determining whether a proposal is a "legislative review" requires consideration of three questions:

1. Is the process bound to result in a decision?
2. Is the decision bound to apply preexisting criteria to concrete facts?
3. Is the action directed at a closely circumscribed factual situation or a relatively small number of persons?

This is not a "bright line" test. The more definitively these questions are answered in the negative, the more likely the process is legislative. In this case, the answer to question 1 is clearly no. Regarding question 2, the project would be subject to existing criteria in (at least) Goals 3 and 4 and HB 2229; it is typical for goals and statutes to apply to local legislative decisions, however, so this is not determinative but it does lend additional weight to question 3. Regarding question 3, the department is uncomfortable determining that the county is proposing a legislative review when it includes only 840 acres in five areas. We don't know the number of "persons" it would be directed at, but the number can't be very large.

Section 5 states the review is of "lands in the county" and that the county must provide an opportunity for all lands in a resource zone to be provided an opportunity for consideration. While the phrase "lands in the county" is not entirely clear, the department's understanding of the legislative intent is that the reference to "lands in the county," when combined with the "legislative review" language, is that counties are not authorized to (1) set up a framework in the comprehensive plan and then require individual applications for re-designation of land or (2) pick and choose small areas to review. While we do not find that the county must review *all* land in the county, we would be most inclined to approve a work program that includes some major region defined by geographic characteristics rather than by property or subdivision boundaries.

Additionally, the county may not pre-determine specific areas for review, as subsection 5(3) requires the county to provide an opportunity for all farm and forest land to be considered. If the

county receives a request to review an area that is not included in the original proposal, the county must review it. As explained above, we believe that this area must be a geographic area of the county and not individual properties or subdivisions.

Regarding phasing of review, the department would entertain a work program that lays out the project in pieces, but those pieces should each address a substantial part of the county and address all the other requirements of HB 2229.

Additional Consideration

Considering other aspects of HB 2229 not related to your question, the department has been unable to determine the nature and scope of the mapping error the county intends to address. It is not apparent why the areas the county has shared with the department were incorrectly zoned at acknowledgment, and this is a fundamental aspect of the bill. If the county chooses to move forward with a work program, the county will need to demonstrate that the HB 2229 process is an appropriate vehicle for addressing the county's needs.

Summary

The department does not read HB 2229 to require the county review all farm and forest lands in the county under the provisions of section 5 of the law. On the other hand, we do not find that it permits the county to look only at small areas defined by existing subdivisions, but instead requires a review of a substantial part of the county.

We look forward to working with Deschutes County as it considers whether to submit a work program for a project to correct mapping errors in its rural zones under HB 2229. We hope this adequately answers your question, but we are available for further consultation if it does not.

Sincerely,

Rob Hallyburton
Community Services Division Manager

cc: Scott Edelman, Regional Representative
Jon Jinings, Community Services Specialist
Michael Morrissey, Rural Policy Analyst