



Deschutes County Board of Commissioners
1300 NW Wall St., Suite 200, Bend, OR 97701-1960
(541) 388-6570 - Fax (541) 385-3202 - www.deschutes.org

AGENDA REQUEST & STAFF REPORT

For Board Business Meeting of November 23, 2015

DATE: November 9, 2015

FROM: Peter Gutowsky. Department CDD Phone # ext. 1709

TITLE OF AGENDA ITEM:

Board deliberation of File No. 247-15-000035-CU; 247-15-000403-A.

PUBLIC HEARING ON THIS DATE? No.

BACKGROUND AND POLICY IMPLICATIONS:

The Board conducted a limited de novo public hearing on October 7, 2015, focusing on the issue of whether the “least suitable” standard for conditional uses should be considered to have been met if the “general unsuitable” standard is met for non-farm dwellings. The written record was left open until October 14, with final arguments afforded to the applicant for a period of one week to October 21..

FISCAL IMPLICATIONS:

None.

RECOMMENDATION & ACTION REQUESTED:

Deliberate, and provide direction to staff.

ATTENDANCE: Peter Gutowsky, Planning Manager; Paul Blikstad, Senior Planner.

DISTRIBUTION OF DOCUMENTS:

Paul Blikstad.

INSTRUCTIONS FOR COMPLETING THE AGENDA REQUEST FORM

Use “tab” to move between fields. You can use as much space as necessary within each field. You may want to save this document to your computer and set it up with your department’s specific information for use the next time. You can remove the editing restrictions by going to review/restrict editing (stop protection), after you have saved it to your computer.

Do not leave any fields incomplete. Don’t forget the “preferred meeting date” section. Incomplete documents will be returned to the Department Director. This could cause your agenda item to miss the deadline for submission.

The Board conducts business meetings on Mondays and Wednesdays beginning at 10 a.m. Please note, if there are not enough agenda items to justify holding two meetings in one week, items may be combined and addressed at either the Monday or Wednesday meeting. There are weeks that the Board does not meet at all; much depends on the Commissioners’ schedules and availability. If your item is time-sensitive or you need to notice a specific date for a hearing or decision, please contact the Board’s Secretary.

The agenda request and backup documents should be submitted to the Board’s secretary no later than Wednesday afternoon prior to the following week’s meetings. It can be submitted as far in advance as you want.

If you are submitting a contract or other document where more than one original is needed (for instance, one original for the County and one for the contractor), please submit the correct number of original documents.

Unless your agenda item is an Order, Ordinance, Resolution or letter, a document summary form is required as well.

Please also e-mail the agenda request form and the document summary form to the Board Secretary so that minor changes can be made if needed.



Community Development Department

Planning Division Building Safety Division Environmental Soils Division

P.O. Box 6005 117 NW Lafayette Avenue Bend, Oregon 97708-6005
(541)388-6575 FAX (541)385-1764
<http://www.co.deschutes.or.us/cdd/>

MEMORANDUM

DATE: November 9, 2015

TO: Deschutes County Board of Commissioners

FROM: Peter Gutowsky, Planning Manager
Paul Blikstad, Senior Planner

RE: Deliberation: Non-Farm Dwelling (File No. 247-15-000035-CU; 247-15-000403-A)

The Board of County Commissioners (Board) is deliberating on November 23 regarding File No. 247-15-000035-CU; 247-15-000403-A.

I. Background

The applicants submitted a Conditional Use Permit for a nonfarm dwelling on an approximately 20-acre parcel in the Exclusive Farm USE (EFU-TRB) Zone, identified on County Assessor's Map 17-13-30, as tax lot 200. The physical address is 22075 Erickson Road.

Hearings Officer Stephanie Hicks on July 20, 2015 denied the application for a non-farm dwelling in the EFU zone because:

- While the proposed home site area met the generally unsuitable standard of Deschutes County Code (DCC) 18.16.050(G)(1)(a)(iii), the applicant did not address in greater detail why the southeast corner of the subject property was not the "least suitable site for farm use (DCC 18.16.040(A)).¹

II. Public Hearing

The Board conducted a limited de novo public hearing on October 7, 2015, focusing on the issue of whether the "least suitable" standard for conditional uses should be considered to have been met if the "general unsuitable" standard is met for a non-farm dwelling. The written record was left open until October 14, with final arguments afforded to the applicant for a period of one week to October 21.

III. Additional Written Testimony and Final Argument

October 14 – Additional Written Testimony

¹ Chapter 18.16. Exclusive Farm Use Zones. <http://weblink.deschutes.org/public/0/doc/78730/Page1.aspx>

The following materials, enclosed with this memorandum, were submitted into the record by October 14:

- Staff memorandum by Paul Blikstad, dated October 14, which included its own set of attachments (Attachment A)
 - A-1 - Additional soils information from the Web Soil Survey by Liz Fancher
 - A-2 - Dana and Karen Clough rebuttal
 - A-3 - Applicant's response to Mr. Bomke by Liz Fancher
- Central Oregon Landwatch's transmittal (Attachment B)
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October 21 – Final Argument

Liz Fancher, the applicant's attorney submitted final arguments on October 21 (Attachment D).

IV. Analysis

Applicant initiated this appeal "in order to resolve a conflict between the way its professional planning staff and a new land use hearings officer interpret the 'least suitable' requirement." Applicant requested that "the Board hear this appeal de novo on the issues set forth in this notice of appeal only." The notice stated,

The appeal is limited to the issue of whether the "least suitable" standard for conditional uses should be considered to have been met if the "general unsuitable standard is met.

Specifically, "the applicant asks that the issues be limited to a review of the hearings officer's new interpretation of the 'least suitable' requirement." The applicant further limited the scope of review by stating that: "none of the other issues raised in this case are new and none present questions of law that should be resolved by the Board."

Regarding non-farm dwellings, a question for the Board is how (if at all) does the "least suitable" criteria contained in DCC 18.16.040(A), Limitations on Conditional Uses, operate in context with the "generally unsuitable" criteria contained in DCC 18.16.050(G), Standards for Dwellings in EFU Zones?

The general unsuitable standard requires the County to find that a proposed nonfarm dwelling home site on an EFU parcel is on soils that are of poor quality, and are not suitable for farm use. The least suitable standard has not been clearly defined, but staff has found in prior conditional use permit decisions, that these two criteria are essentially the same.

In coordination with County legal counsel, staff found the following:

1. As a matter of basic semantics, "least suitable" assumes some level of suitability for farming and also some level of unsuitability for farming whereas "generally unsuitable" assumes some level of unsuitability for farming and also some level of suitability for farming. In operation these two standards are indistinguishable.
2. As a matter of basic code interpretation, whenever there is a conflict or inconsistency, the specific controls over the general. In this instance the "least suitable" criteria is associated with general limitations on conditional uses whereas the "generally

unsuitable” criteria is associated with specific standards for dwellings in EFU zones. Accordingly, the “generally unsuitable” criteria controls.

V. Board Options

Staff provided a matrix for the Board to assist them in evaluating the Limited Use Permit burden of proof and formulating a decision.

Attachments:

- A. October 14 Staff memorandum (includes its own attachments A1 to A3)
- B. Central Oregon Landwatch submittal
- C. Mr. Bomke submittal
- D. Applicant’s final arguments

Non-farm Dwelling / Options

Issue	Board Options
<p style="text-align: center;">Option 1 - Approval</p> <p>General Unsuitability Criteria Controls</p>	<p>Based upon a preponderance of evidence in the record, the Board makes the following interpretations in the context of non-farm dwellings in EFU zones:</p> <ul style="list-style-type: none"> • Compliance with the “least suitable” criteria in DCC 18.16.040(A) is established, as a matter of law, upon a finding of “generally unsuitable” in DCC 18.16.050(G); • To the extent that there is a conflict or inconsistency between the “least suitable” criteria in DCC 18.16.040(A) and the “generally unsuitable” criteria in DCC 18.16.050(G), the “generally unsuitable” criteria controls; <p>Regarding File No. 247-15-000035-CU, the Board affirms and adopts the Hearings Officer’s findings that the applicant’s identified location for the non-farm dwelling is “generally unsuitable” for farming.</p>
<p style="text-align: center;">Option 2A – Approval</p> <p>Least Unsuitable Criteria Separate from General Unsuitability Criteria</p>	<p>Based upon a preponderance of evidence in the record, the Board makes the following interpretation in the context of non-farm dwellings in EFU zones:</p> <ul style="list-style-type: none"> • Compliance with the “least suitable” criteria in DCC 18.16.040(A) is separate and distinct from the “generally unsuitable” criteria in DCC 18.16.050(G); <p>Regarding File No. 247-15-000035-CU, the Board:</p> <ol style="list-style-type: none"> 1. Affirms and adopts the Hearings Officer’s findings that the applicant’s identified location for the non-farm dwelling is “generally unsuitable” for farming; and, 2. Finds, based on the soils information, that the northeast and southeast parts of the applicant’s property are properly classified as containing class VII soils whether or not the property is irrigated. Therefore both are “least suitable” as it pertains to DCC 18.16.040.
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RECEIVED

BY: _____

LIZ FANCHER, ATTORNEY

OCT 21 2015

Liz Fancher
Sue Stinson, Paralegal

DELIVERED BY: _____

October 21, 2015

HAND DELIVERED

DESCHUTES COUNTY BOARD
OF COMMISSIONERS
c/o PAUL BLIKSTAD, SENIOR PLANNER
117 NW LAFAYETTE AVENUE
BEND, OR 97703

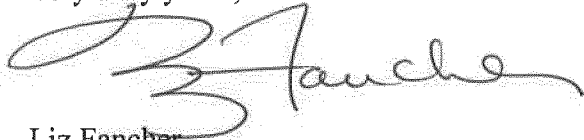
Re: 247-15-000035-CU/247-15-000403-A – Clough

Dear Paul:

Attached are copies of the following documents which are being submitted on behalf of the Cloughs' as their final argument in the above-referenced appeal:

1. Final Argument Submitted by Liz Fancher
2. October 20, 2015 letter from Roger Borine responding to Bomke's submittal
3. October 20, 2015 letter from Roger Borine responding to Ms. Macbeth's submittal on behalf of Central Oregon Land Watch

Very truly yours,



Liz Fancher
Attorney at Law

LF/ss
Encls.

BEFORE THE BOARD OF COMMISSIONERS OF DESCHUTES COUNTY

Applicants: Dana and Karen Clough

Submitted by: Liz Fancher
644 NW Broadway Street
Bend, OR 97701
541-385-3067 (telephone)
liz@lizfancher.com

Case File No.: 247-15-000035-CU/247-15-000403-A

Matter: Nonfarm Dwelling in EFU-TRB Subzone

FINAL ARGUMENT

Summary

The evidence in the record, including a professional soils analysis by a highly qualified and experienced soil scientist, shows that all land in the east part of the Clough property is the least suitable for the production of farm crops and livestock. The primary soil in this area is Gosney soil, as determined by digging test pits on the property. Gosney soil is rated Class VII by the NRCS. The Gosney soil on the Cloughs' property was also rated Class VII. That rating applies to the soil whether or not it is irrigated. With or without irrigation, the soil is not generally suitable for the production of crops or livestock. The approval of the nonfarm dwelling in the location proposed by the Cloughs will cluster the home in a corner of the property that adjoins MUA-10 exceptions area residential properties to the north and east where it will have the lowest possible impact on EFU-zoned properties. It will allow the good soils to the west of the home to remain in farm use and be cared for by the resident of the nonfarm dwelling.

The hearings officer correctly determined that the home site in the NE area identified by Mr. Borine by soils testing is generally unsuitable for the production of farm crops and livestock. As a result, the Cloughs' application should be approved by the Board.

Sole Reason for Denial (Least Suitable) Resolved by Soils Analysis

The Cloughs' nonfarm dwelling application was denied by the County's hearings officer for the sole reason that the Cloughs failed to provide detailed soils evidence regarding the suitability of soils in the SE part of the Cloughs' property – most of which is located within County setback areas or within a gas pipeline easement. The hearings officer felt this information was needed to find that the area selected for the home was the least suitable for the production of farm crops and livestock. This was a departure from the County's established interpretation of the "least suitable." Prior to the Clough decision, the staff's interpretation of the least suitable test was that it was met if a nonfarm dwelling was located on generally unsuitable soil rather than on suitable soil found on the same property. In this interpretation, the "least suitable" criterion prevents the development of suitable farm land and allows homes to be

built only on parts of farm properties that contain poor soils. This result is consistent with and allowed by State law. As this is true, we ask that you continue to apply the “least suitable” law to the Cloughs as it has been applied to others.

Despite the fact that the hearings officer’s decision was a departure from the County’s established interpretation of what is the “least suitable,” the Cloughs provided the detailed soils information the hearings officer felt was missing. The soils information confirms Mr. Borine’s hearings testimony that the northeast and southeast parts of the Cloughs’ property are properly classified as containing Class VII soils whether or not the property is irrigated. Both are the “least suitable.” There is no significant difference in the soils found in the eastern part of the property. They are all the “least suitable.”¹

Class VII soils are not agricultural soils. They do not produce a commercial hay crop and did not produce such a crop in the NE part of the Clough property. The soils are so shallow and porous that crops will not see a marked improvement due to soils enhancement, irrigation or fertilization. The Cloughs lost significant sums of money growing short, low-quality hay on the Class VII soils found on their property. They fertilized and irrigated the NE corner. They abated weeds. All of these efforts failed to produce a marketable crop. The poor quality and low height of this hay, when ready for harvest, is shown in photographs contained in the 2014 Borine soils report. The yield and quality of the hay in the NE part of the Clough property was so low that contract farmer Don Barbin told the Cloughs to discontinue harvesting the area (prior to 2015). The fact that this hay is not a viable farm crop is confirmed by the fact that Mr. Barbin, in 2015, left hay harvested from the NE corner on the property even though he had obtained it from the Cloughs at no cost. Surely, if this hay harvested in the NE corner were marketable hay, Mr. Barbin would not have left it in the field.

Scope of Review

The opponents have attempted to prejudice the Board against the Cloughs by attacking them, their lawyer and their highly regarded soil scientist and by providing the Board with arguments and evidence outside the scope of this appeal. This places the applicants at a disadvantage. The applicants have not been free to defend themselves on the “generally unsuitable” for the production of farm crops and livestock issue without violating the Board’s order on the scope of review. All they can say is that they disagree and that the hearings officer disagreed and ask the Board to specifically find that the evidence filed on appeal may not and will not be considered for purposes of determining compliance with the “generally unsuitable” criterion – which is consistent with the County’s land use procedures ordinance on this point.² The hearings officer heard almost all of the same evidence from the neighbors and found in favor of the Cloughs based on science and the fact that the undisputed evidence in the record before her was that it is not possible to make a profit growing hay on the Class VII soils found in the NE corner of the property.

¹ The fact that a small part of the SE area is not irrigated is irrelevant because the soil is the same and has the same capability rating whether irrigated or not. Furthermore, the home site area of the NE corner of the property also lacks irrigation water rights.

² We are not asking the Board to change the scope of the appeal; rather we are asking that it enforce compliance with its order, resolve the “least suitable” issue only and reject evidence that contradicts the finding that the home site location proposed is “generally unsuitable” for the production of farm crops and livestock.

Least Suitable Issue Not Basis for Denial

Finally, the “least suitable” issue is not a basis for denial of this application unless the Board finds that soils in setback and easement areas are the “least suitable.” Otherwise, the application should be approved in any areas the Board finds are the “least suitable.” The applicant has provided the Board with the necessary soils information that shows that the entire eastern part of the subject property is properly classified Class VII. The only issue is whether the Cloughs are limited to building a very odd-shaped, small home in a very small, triangular part of their property or whether they will be allowed to build a home on equally poor soils that grow very short hay that is not saleable.

Arguments by Carol Macbeth for Central Oregon Landwatch (COLW)

Ms. Macbeth filed comments for Central Oregon Landwatch on the final day of the post-hearing comment period. Ms. Macbeth did not participate in the case prior to that point in time and, apparently, did not read the entire record. Her comments are riddled with significant and numerous factual errors that make the entire letter an unreliable source of evidence for the Board. These errors are explained below. Ms. Macbeth’s primary argument is based on Mr. Borine’s classification of Gosney soils as LCC 7 and is based entirely on OAR 660-033-0030(5)(a). That law does not, however, apply to the review of a nonfarm dwelling or to Mr. Borine’s soils report and should be rejected out of hand. Finally, Ms. Macbeth argues that the entire property is suitable for farm an argument that is outside the permissible scope review in this appeal.

Macbeth Evidence Related to Settled Issue of Generally Unsuitability of NE Area of Property (throughout letter)

Most of the rest of Ms. Macbeth’s argument is an argument that no part of the subject property is generally unsuitable for the production of farm crops and livestock – in a few places thinly veiled as a claim that the NE corner of the property is not the least suitable because COLW claims that no part of the property is generally unsuitable for farm use. As the Board specifically limited the scope of the issue on appeal and the issues on which de novo evidence can be considered, Ms. Macbeth’s arguments and evidence on this topic may not be accepted as a part of the record. If any part of the argument is allowed, it should be admitted for the limited purpose of determining compliance with the “least suitable” criterion and not be used to revisit the Hearings Officer’s decision that the NE part of the Clough’s property is generally unsuitable for the production of farm crops and livestock. Furthermore, Ms. Macbeth’s use of the generally unsuitable for farm use test is not correct. The test is whether the property is “generally unsuitable for the production of farm crops and livestock or merchantable tree species.” DCC 18.16.050(G)(1)(a)(iii).

To reduce the length of this document we have prepared a chart, **Exhibit A**, to many of the COLW/Macbeth arguments that are not outside the scope of the appeal and that should not be accepted on that issue. DCC 22.32.027(B)(1)(review shall be on the record except as allowed by the Board).

Arguments re Least Suitable Land

The following is a response to arguments that might be found to have some bearing on the “least suitable for the production of farm crops and livestock issue:

The “Least Suitable” is not “the Most Unsuitable” Site (page 1)

On page 1 paragraph 2 of her letter, Ms. Macbeth attempts to change the County code requirement of “least suitable” to “most unsuitable.” The terms are not one and the same. The “least suitable land” is suitable land that is less suitable than other suitable land. The “most unsuitable” land is the most unsuitable land of land that is unsuitable. In this case, because the Hearings Officer has found that the proposed home site is generally unsuitable for the production of farm crops and livestock, the area is not suitable for that use and it meets or exceeds the requirement that it be the “least suitable.” This interpretation of the term “least suitable” is consistent with the County’s well-settled interpretation of the term in nonfarm dwelling cases. The County should not make new law in this case by affirming the Hearings Officer’s approach to the issue.

Macbeth’s Claim that Gosney Soils Should Not be Classified LCC 7 (starting on page 4)

Ms. Macbeth does not take issue with the fact that Gosney soil is found throughout the eastern part of the Clough property. She does, however, challenge his classification of the Gosney soil as Land Capability Class VII (LCC 7) soil arguing that it is inconsistent with selected provisions of an NRCS publication and the fact that grass grows on the LCC 7 soils.

Ms. Macbeth must not have read Mr. Borine’s October 17, 2014 soils report as it contains a chart that correctly reports that the Gosney soil in the 58C mapping unit that applies to the Cloughs’ property is rated LCC 7 by the NRCS. Thus, Mr. Borine and the NRCS both rate the Gosney soil found in this area LCC 7.

Ms. Macbeth lacks any known qualifications in the field of soils science and in classifying soils and, therefore, is not qualified to challenge the LCC 7 rating applied to Gosney soils by the NRCS and Mr. Borine. Ms. Macbeth’s lack of competency in classifying soils is also shown by the fact that she fails to use the correct reference document – the *Guide for Placing Soils in Capability Classes in Oregon*; SCS, Portland, OR revised June 1977 that is referenced on pages 4 and 8 of Mr. Borine’s October 17, 2014 soils report.

Mr. Borine, is a highly regarded soil scientist who has extensive training, accreditations and experience in mapping and classifying soils, as well as experience as a Central Oregon hay farmer. Mr. Borine’s impressive and extensive credentials are described on page 2 of the Applicant’s Response to County Staff Report document that is a part of the record. None of Ms. Macbeth’s attempts to discredit his soils classification of Gosney soil as Class VII has any merit.

Claim that Soils Reports Violate OAR 660-033-0030(5)(a)(page 1, pp. 4-9)

Ms. Macbeth crafts a legal argument based on OAR 660-033-0030(5)(a), a rule that does not apply to this application and asks the Board to adopt an incorrect interpretation of the rule. Ms. Macbeth

expounds on her legally unsupportable argument in two places; on page 1 and in Item 1 under Specific Comments.

OAR 660-033-0030(5)(a) does not apply to soils reports prepared for use in the review of a nonfarm dwelling application. Instead, it applies to soils reports used to support a change in the designation of land from agricultural to nonagricultural land. A copy of a legal opinion on this topic that was provided to Katherine Daniels of the Department of Land Conservation and Development by Assistant Attorney General Diane Lloyd is attached as **Exhibit B** of this final argument. The applicants adopt Ms. Lloyd's analysis as their final legal argument on the issue – they agree with the Attorney General's Office. Because the Cloughs are not asking the County to change the classification of their property from "Agriculture" to "Nonagricultural," OAR 660-033-0030(5)(a) does not apply.

Furthermore, Ms. Macbeth's claim that Mr. Borine's reports do not relate to the NRCS land capability classification system is wrong and reveals her lack of understanding of soils science and classification systems. The Borine soils report dated October 17, 2014 so states: "This more detailed soils data is directly related to the NRCS Land Capability Classification system (LCC) designation." See, page 2, **Exhibit C** of application (the soils report). The report provides LCC information from the NRCS and classifies the soils using the LCC classification system. An LCC 7 classification was found to be the correct LCC for lands on the east side of the Cloughs' property. Furthermore, Mr. Borine's report was reviewed by the Department of Land Conservation and Development and found to be consistent with the reporting requirements for completeness which include the requirement that the soils report relate its findings to the NRCS land capability classification system, OAR 660-033-0030(5)(a). See, **Exhibit D** of application. The September 10, 2015 letter is an addendum to the original report and it uses the NRCS LCC throughout.

Claim that Soils in NE Quadrant are Class III Soils (pp. 2-3, 5, 7, 9-13)

Mr. Borine's detailed soils analysis shows that the area of Class 36A Deskamp soils on the Cloughs' property is smaller than mapped by NRCS and that the Gosney soils are more extensive than assumed by the NRCS. Mr. Borine's test pits revealed that the soils in the NE part of the Cloughs' property are predominantly Gosney soils – not Deskamp soils – and that the proper rating of the area, as a whole, is Class VII. Mr. Borine determined this fact by digging sixty test pits on the subject property focused on the home site area and the SE part of the property. The soils mapping completed by NRCS was not nearly as detailed as Mr. Borine's work.

What was learned from Mr. Borine's work was that the blister ridge that exists north and south of the proposed home site extends underground across the home site area. The blister ridge area was altered by the construction of an underground natural gas pipe in the NE part of the Cloughs' property. This created a level area of poor soils that dry out quickly due to their shallow depth and the heat generated by the natural gas pipeline. As the pipeline was built deeper than bedrock in the NE part of the Clough's property and then filled, a small number of test pits near the pipeline are deeper than those found elsewhere in the eastern part of the property.

Smith v. Clackamas County Case Holding Was Modified by the Oregon Legislature in 1993 (page 2)

The holding of the 1992 *Smith v. Clackamas County* case cited by Ms. Macbeth was modified by the Oregon Legislature in 1993. The intent of the Legislature was to allow nonfarm dwellings to be sited on nonproductive areas of otherwise productive farm properties in Eastern Oregon, including Deschutes County. *Dorvinen v. Crook County*, 33 Or LUBA 711 (1997)(discussing legislative history of 1993 law). The comments from that case Ms. Macbeth quotes do not reflect the law that currently applies to Central Oregon EFU properties. Ms. Macbeth also fails to relate this case to the issue of the “least suitable” land and it, therefore, should not be considered.

Photographs Figures 1 and 2 (page 3)

The Figure 1 and 2 photographs do not provide sufficient detail or meaningful information about the ability of the LCC 7 soils to produce a commercial hay crop because they are taken from a distant vantage point. This is evident from a review of the maps and other photographs in the record. The soils report, **Exhibit C** of the application, contains ground level photographs that show the LCC 7 soils in the foreground. The photographs show that the grass hay, dry and ready for harvest (if harvested) is extremely short and sparse. A great deal of bare dirt is visible in the photographs. These facts are consistent with the applicant’s evidence that this part of the property, like the SE corner of the property, is not suitable for the production of farm crops or livestock without incurring significant financial losses. The vast majority of the Figure 1 photograph depicts the Cloughs’ pond and the LCC 3 soils (when irrigated) that are found in the west part of the Cloughs’ property. The proposed building envelope is so distant as to render the photograph meaningless. Furthermore, the evidence in the record is that the NE area grows short, noncommercial hay. Nothing in this photograph contradicts that evidence as it shows very short grass.

It is also evident that the land in the foreground of Figure 2 contains LCC 3 soils and the LCC 7 soils are in the background. Again, the evidence in the record is that the NE area grows short, noncommercial hay. Nothing in this photograph contradicts that evidence as it shows short grass; not tall grass hay.

Error by Ms. Macbeth in Describing Property and Unfounded Claim re Findings re Lava Rock Ledge (bottom page 3)

Ms. Macbeth misstates the hearings officer’s finding regarding the lava rock ledge. This is one of many instances in which this type of error is made in the Macbeth/COLW letter. Ms. Macbeth added the word “visible” in front of the words “lava rock ledge.” The hearings officer’s finding and the evidence, however, is that the lava rock ledge is below ground. The hearings officer specifically describes the area as having “shallow soils” which are above the lava rock ledge. The hearings officer clearly understood this fact as she quotes Mr. Borine’s opinion that gas pipeline construction eliminated the visible connection of the blister ridge in the home site area between two 58C NRCS mapping units north and south of the home site.

Unreliable Assumptions about Figure 3 (page 3-4)

Aerial photographs are not a highly reliable indicator of whether land is the least suitable for the production of farm crops or livestock use or whether the gas pipeline accelerates drying of the soils in the NE part of the subject property. The Figure 3 photograph is not dated but appears to be taken early in the year at a time when water is abundant and not yet a limiting factor in crop growth – when heat might aid crop growth. Over the life of the hay crop, however, heat will accelerate the evaporation of

water that needs to be retained in the soil to allow the hay to grow to a commercial height – rather than the low height shown in the soils report photographs. Furthermore, Figure 3 shows that the west part of the subject property is lush and a deep green and the east field is more sparse and light green – consistent with the applicants’ description of the differences between the east and west fields. The photograph also shows nice green growth in the nonirrigated SE part of the property where the Bomkes’ claim the land is the least suitable. This area looks, from the photo, to be superior to the area proposed for the home in the NE corner just west of the pipeline easement. If the aerial photograph is found to be a true indicator of suitability, it is clear that the NE corner outside the easement is the least suitable for the production of farm crops and livestock.

Figure 4 (page 4)

Figure 4 shows, again, that the least green part of the subject property includes the NE corner of the subject property and that the southeast part of the property is greener. Again, the west field – the field that grows a good hay crop – is a noticeably deeper green. Based on the opponents’ approach to aerial photographs, the area proposed for a home is the least suitable.

Ms. Macbeth, again, mischaracterizes the evidence and arguments. This time she claims that the applicants argued that the soils within the boundaries of their property, alone, are not Class III soils. The applicants made no such argument. They do not know whether the lava blister ridge that runs under the NE part of their property runs under the Bomkes’ MUA-10-zoned property as well. Soils on the Bomkes’ property were not tested and such testing is not necessary as Gosney soils that are rated LCC 7 by the NRCS and Mr. Borine were found in test pits in the NE area. Furthermore, Ms. Macbeth’s claim that “visually there is no difference between Class III soils on the applicants’ property (presumably in the NE area) and on surrounding lands” is not borne out by Figure 4 as it relates to the Bomkes’ property to the east. The north part of the Bomkes’ MUA-10-zoned residential property is free of vegetation and may well also contain poor soils despite being mapped LCC 3 by the NRCS maps, if irrigated.

Figure 6 – Attack on Testimony of Roger Borine re Accuracy of NRCS Mapping (page 4)

Ms. Macbeth, yet again, misrepresents the applicants’ evidence and makes statements about the soils map that are far beyond her lay understanding of soils mapping and soils. Mr. Borine did not claim that the NRCS maps are inaccurate. Instead, Mr. Borine testified:

“[T]he NRCS soil mapping was correct for the purpose it was designed, and the detail that it was mapped at. Having done many of those surveys and published soils surveys myself for NRCS, I’m well aware of what it takes to map soils at the level the mapper is asked to do in this type of country and landscape, 300 to 1,500 acres a day. That’s a big difference than 19 acres that I could spend two days on or more. So – so to say that the survey is wrong, it is right, and I support that. It’s just that – the NRCS recognizes this in its – this attachment that’s in here that it should not be used for regulatory purposes, that it should be at a more detailed level to map the soils at an order one, which this [the Borine soils report] is, to be used for regulatory purposes ...” pp. 28-29, Transcript.

No Competent Evidence that Soils Classification Would be Altered by Irrigation or Fertilizer (page 4 and 6)

Ms. Macbeth implies that the soils classification on the Clough's property was altered by an alleged lack of irrigation or fertilizer. There is no competent evidence in the record that supports this claim. Furthermore, the soils evidence provided explains that the soil here does not have an adequate capacity to hold water and nutrients. This poor soil will not flourish with farm crops when these inputs are supplied.

Ms. Macbeth (footnote 5) makes the untrue claim that "uncontroverted testimony" is that the eastern portion of the subject property has been "unwatered and unfertilized" for several years. The applicants have presented testimony to the contrary. The opponents have presented conflicting evidence on the issue of irrigation. The Bomkes, in fact, submitted a photograph they say shows that the home site area was irrigated in 2015. Ms. Macbeth is wrong.

Claim that Soils Analysis Not Conducted In Accordance with NRCS Classification System (page 7)

Ms. Macbeth claims, on page 7, that the Borine soils report does not follow two of fourteen assumptions about soils classifications in an NRCS publication. Ms. Macbeth, however, is not qualified to make these claims and she fails to reference the correct source for soils ratings - *Guide for Placing Soils in Capability Classes in Oregon*; SCS, Portland, OR revised June 1977 that is referenced on pages 4 and 8 of Mr. Borine's October 17, 2014 soils report.

Ms. Macbeth has no basis to assume that Mr. Borine did not consider these NRCS principles or that his work is inconsistent with either cited assumption. Mr. Borine's report essentially found that the Gosney soils associated with the 58C Gosney/ Deskamp/Rock Outcrop complex mapping unit found in the southeast part of the property extends across the lot toward an area of similar soils found on the property to the north. The NRCS classified the Gosney soils found in Mapping Unit 58C LCC 7. Mr. Borine applied the same soils classification to the Gosney soils. There is no reasonable basis to attack Mr. Borine's action as it is consistent with the NRCS soils classification.

Claim of Successful Farming (page 8)

Ms. Macbeth refers to Mr. Barbin as "one farmer who successfully farmed the subject property in the past." Mr. Barbin harvested the hay grown by the Cloughs and did so, this year, in return for their entire hay crop on the entire property. The farmers of this property, the Cloughs, did not "succeed." Despite what Ms. Macbeth claims, the language she quotes from Mr. Barbin does not say that the Class VII soils "respond to farm management as thought [sic] they are of greater capability." Page 8, Macbeth Letter. No such claim was made. The only specific claim from Mr. Barbin about the yield of hay in the NE area – not for the entire property – is that the yield is approximately ½ ton per acre. The Cloughs' have submitted evidence from Judd Weirbach, a professional custom farmer, that explains that a farmer will lose significant sums of money raising a crop that has such a poor yield.

Claim that Gosney Soils Found in East Part of Property Should Not be Rated LCC 7 based on Ms. Macbeth's Lay Interpretation of on NRCS Handbook Statement (page 8)

Ms. Macbeth's argument that the Gosney soils on the east part of the Cloughs' property should not be rated Class 7 is inconsistent with the Class 7 rating applied to Gosney soils by the NRCS. The County

should not accept Ms. Macbeth's lay interpretation of general guidelines in the NRCS Handbook over the actual rating applied to the soil by NRCS. Furthermore, the *Guide for Placing Soils in Capability Classes in Oregon*; SCS, Portland, OR revised June 1977 is the correct reference for soils classification work and implements Handbook policies in Oregon. Mr. Borine used that publication to guide his soils classification work.

Furthermore, Ms. Macbeth has inaccurately described the text she quotes from page 12 of the NRCS Handbook. She claims it explains the definition of Class 7 soils. In fact, the explanation of what soils are capability Class 7 soils is provided on page 10, not page 12. The description of the soil class on page 10 is consistent with the conditions of the soils in the NE corner of the Cloughs' property. According to the Handbook:

*"Physical conditions of soils in class VII are such that it is impractical to apply such pasture or range improvements as seeding, liming, fertilizing, and water control with contour furrow, ditches or diversions, or water spreaders. Soil restrictions are more severe than those in class VI because of one or more continuing limitations that cannot be corrected, such as *** (3) shallow soil, (4) stones, *** (7) unfavorable climate, or (8) other limitations that make them unsuited to common cultivated crops."*

The text quoted by Ms. Macbeth is in a section of the Handbook that labeled "Other Kinds of Soil Groupings" that "are necessary to meet specific needs" such as "range use, woodland use, special crops and engineering interpretation." This text does not apply to the Cloughs' property.

Additional Claims that are Untrue (bottom page 8)

Ms. Macbeth's claim that there is no evidence in the record that the soils in the NE quadrant do not return inputs under property management is untrue. The applicants submitted evidence to that effect and their evidence is supported by the results of professional soils testing. The soil testing explains why "proper management" will not yield favorable results.

Ms. Macbeth claims that Mr. Borine did not consider "what the tested soils capability would be under proper management" because the report "characterized the tested soils as all Class VII, as though their current or inherent capability in their unwatered and unfertilized state was immutable even under good farm management." Mr. Borine's report plainly states that the property is irrigated. Mr. Borine has also explained that fertilizer will quickly move through the shallow Gosney soils to groundwater where it will be of no benefit to crops.

Distribution of 58C and 36A Soils (page 9-10)

Ms. Macbeth makes arguments that aerial photographs show the boundaries between 58C and 36A soil mapping units. This is generally true but it proves nothing. Mr. Borine explained that a gas pipeline was constructed through the NE part of the Cloughs' property obliterating the visual references used by NRCS to map the boundary between 58C and 36A soils. Detailed soils testing found Gosney soil – a Class VII soil found in the 58C mapping unit – to be the predominant soil in the northeast and southeast parts of the Cloughs' property.

Ploeg v. Tillamook County Case (page 12)

The Cloughs applied appropriate agricultural management to the NE part of their property in the past and their testimony and evidence bears that out. With such efforts, the Cloughs lost a significant sum of money and produced hay that was not marketable – a goat farmer would not feed the hay grown in the NE part of the property to his goats. This is a predictable outcome given the very poor and shallow Class VII Gosney soils found there.

Quotation of Carol Davis Letter of September 18, 2015 and Argument re Use for Horses (pp. 11-12)

The issue of whether the use of the NE part of the property for horses made it generally unsuitable for the production of farm crops and livestock was considered and decided by the Hearings Officer against Ms. Davis' position. Off-leash dogs chased horses pastured in this field (outside of the corrals that are located in the SE part of the property). The production of livestock standard looks to the amount of forage produced on the land to feed animals, including horses. The evidence in the record is that it was less expensive for the Cloughs to buy hay than it was to raise hay on the poor soils found in the NE corner of their property to feed to their horses. Also, the low quality of hay grown in the NE corner (so poor that goats won't eat it) makes it generally unsuitable as feed for horses.

Argument re Least Suitable vs. Generally Unsuitable (pp. 13-17)

The code requires that the home site location be generally unsuitable and the least suitable. Both requirements apply. The "least suitable" requirement, however, is a County requirement that is not imposed by State law. It was written to apply to conditional uses in the EFU zoning district that can be sited on land that is suitable for the production of farm crops and livestock. It was mistakenly applied to nonfarm dwelling applications during a code update in 2009.

Since 2009, the "least suitable" requirement has been applied by the County in nonfarm dwelling application to prohibit the development of a nonfarm dwelling on any part of a property that is suitable for continued farm use and to require it to occur where the land is generally unsuitable for the production of farm crops and livestock. This is also a reasonable interpretation when applied to other nonfarm uses allowed by the EFU zone (uses permitted as conditional uses) that are not limited to occur on lands that are generally unsuitable for the production of farm crops and livestock. This is not an academic issue. The County code allows properties that are, as a whole, generally unsuitable for the production of farm crops and livestock to receive nonfarm dwelling approvals. The "least suitable" rule prevents the property owner from building in any part of that property that is suitable for the production of farm crops and livestock.

The County's established interpretation of the term "least suitable" does not conflict with Goal 3 because it does not allow uses or home sites that are prohibited by Goal 3, state statutes or administrative rules that implement Goal 3. The Clough's proposed home site fully complies with all State-mandated requirements for a nonfarm dwelling and the interpretation of the County's code to allow a nonfarm dwelling on lands where it is allowed by State law, lands generally unsuitable for the production of farm crops and livestock, does not violate Goal 3.

COLW's Reliance on Recent Comments from Don Barbin (pp. 8, 16-17)

Mr. Barbin recently changed his testimony about the Clough's property after being hired by an opponent and neighbor to contract farm their property. Barbin's new testimony is completely at odds with his prior testimony and the scientific evidence regarding the capability of the soil in the NE corner of the Cloughs' property. It is contradicted by the evidence provided by the Cloughs.

Mr. Barbin is a contract farmer who has harvested the Cloughs' hay crop and who has no involvement in fertilizing or irrigating the property. The record shows that Mr. Barbin advised the Cloughs to discontinue harvesting the hay in the northeast corner of their property due to its low yield and poor quality. Mr. Barbin has not challenged this fact and it is consistent with the fact that this part of the property contains Class VII soils that the NRCS says do not support a commercial hay crop.

Mr. Barbin was only willing to clear hay from the east part of the property in 2015 if he was allowed to keep the entire hay crop from the Clough's property – including all the good hay grown on the 36A soils. Furthermore, Mr. Barbin left hay harvested from the NE part of the property in the field rather than remove it for sale. This casts doubts on the verity of his new claims.

Mr. Barbin, also, engaged in an *ex parte* contact with the Hearings Officer then lied about it to the Cloughs, continually changing his story every time the Cloughs spoke to him about the matter. He also claimed that County planner Paul Blikstad contacted him asking for information about the property. Mr. Blikstad advised the Cloughs' attorney that Mr. Barbin had called him. Given this track record, Mr. Barbin's new claims are not credible and should not be relied on by the Board.

Claim of Change in Policy re Least Suitable (page 16)

Ms. Macbeth's claim that the applicant is asking to change its policy regarding the least suitable lands is false. The applicant is asking the County to continue to apply the "least suitable" requirement as it has in prior County decisions and not to adopt the new approach taken by the Hearings Officer.

Claim re "No Evidence" re Low Yield of Hay (page 17)

There is, contrary to Ms. Macbeth's claim, evidence in the record that shows that the applicants obtained a low yield of hay from the eastern part of the property when it was properly managed and farmed by the Cloughs. Those efforts failed and Mr. Barbin told them to stop trying. The Cloughs fertilized, irrigated, abated weeds and burned their fields. These good management practices resulted in a yield of just one-half a ton per acre of grass hay.

The evidence from Mrs. Bomke about Mr. Robinson's yield of alfalfa (150 to 200 tons per year) and Mr. Robinson's letter are of questionable value. The evidence applies to two pieces of property rather than to just the subject property. The letter offers no evidence that any alfalfa was grown on the NE part of the property or, if it was, the yield achieved there.

Mr. Robinson was not actively involved in farming the property and almost a decade has passed since Mr. Robinson owned the property. The property was farmed by Richard Wyman and he was in the best position to know the yield of the crops he harvested from the property. Mr. Wyman testified:

*"I did custom haying back in the 80s and 90s and I did that property [Robinson's properties]. *** We planted alfalfa***. Then I continued to cut hay off that property, I was getting 60, 70 tons a year off the 40 acres." Page 55, Transcript.*

This yield of 60 to 70 tons per acre is consistent with the Cloughs' evidence that the west part of the property produces a good hay crop and that the east part does not. If Mr. Barbin's claim that a yield of 4 to 5 tons per acre can be achieved off the field when managed as managed by "past farmers [Robinson]," a yield of 60 or 70 tons on the entire 40-acre property (1.5 to 1.75 tons per acres) is a strong indication that the poor soil areas of the property were either not in production or were not contributing much to the yield achieved from the crop.

Evidence About Alfalfa Hay (pp. 17-18)

The Cloughs do not grow alfalfa hay on their property. They grow grass hay.

The evidence Ms. Macbeth submitted regarding alfalfa supports the Cloughs' case. It states that "alfalfa varieties with high yielding capacities reach their full potential only when growing on fertile soils." P. 18, COLW letter. Class 7 soils are not fertile soils. These very poor soils cannot be made fertile by adding fertilizer to them as it rapidly drains through the shallow soils into the groundwater. While it is true that Central Oregon soils generally are shallow and have low water-holding capacities, the Class 7 soils on the Cloughs' property are so shallow that they are rated LCC 7 – soils that the NRCS considers to be unsuitable for the cultivation of crops. The Class 7 designation applies to these soils whether or not they are irrigated. This means that their suitability for the production of crops does not improve when irrigated.

Self-Created Hardship/Plantain (page 19)

The evidence in the record is that plantain is a problem for other farms in the area, it is not a problem confined to the Cloughs' property. The Cloughs participated in a government funded program for two years in an effort to abate the plantain without success.

The Cloughs provided evidence from Utah State University about buckhorn plantain, the type of plantain found in the NE part of their property. It is unknown whether the information provided by Ms. Macbeth relates to this type of plantain but the USU information shows that it is very difficult to control buckhorn plantain. It says that primary tillage implements are effective but that secondary tillage is not. This is due to the "dense crown and strong taproot which is too strong to be pulled out of the ground by secondary tillage methods." **Exhibit J, Applicant's Response to Staff Report**. The cost of this type of weed control would only increase the losses incurred by the Cloughs by continued efforts to grow a crop on Class 7 soils the NRCS says are not suitable for growing crops. It is reasonable for the Cloughs to act in accordance with the NRCS's judgment on this issue and to decline to lose more money by paying for the primary tillage work that might control the weed until weed seed blows in from neighboring properties the following year.

The Cloughs have not created conditions that support the growth of plantain. Prior to 2015, they irrigated all parts of their property and did not create a weed problem by failing to water the property.

Unsigned Documents Submitted by Mrs. Bomke

The Bomkes filed a document that is nearly identical to the document they filed at the land use hearing before the Board. We responded to that document in post-hearing comments. We strongly disagree with the Bomkes' claims about the NE part of the Cloughs' property and their claim that the Cloughs have made the property appear like it is not farmable when it actually is. The soils testing that was conducted on the property shows otherwise – that the poor Class VII Gosney soils – not the Cloughs – made it infeasible for the Cloughs to grow a saleable crop in the NE part of their property.

The Bomkes own a small property with a residence on two lots zoned MUA-10. One of their lots is occupied by their home. They have the right to build a second home on the second lot. While it is understandable that the Bomkes do not want new neighbors to locate their home close to their home, this does not mean that Class VII soils should not be used to build a home that can be occupied by a farmer who will continue farm uses on the remainder of the Cloughs' property. The location chosen is the best location – in close proximity to the MUA-10 exceptions area (primarily residential) rather than in close proximity to EFU-zoned properties.

The claim that a home placed in the NE corner of the property will dramatically alter existing farming is illogical. The soils that will come out of production are not Class III soils; they are Class VII Gosney soils. This fact was determined by digging holes in the ground and sampling the soil. As we have explained before, as a legal matter, horse boarding and training is not the production of farm crops and livestock and income from that activity is not relevant in deciding whether land is the least suitable (or generally unsuitable).

The highest yield claimed for the northeast corner by an opponent is that it grows 1 ton of hay per acre. That figure is overstated by 100% -- the actual yield is one-half ton per acre. Even if true, however, a yield of only 1 ton per acres is not adequate to allow a farmer to expect to earn a profit from raising hay in the NE corner of the property.³ The cost information provided by the Cloughs confirms this fact. This is further proof that the Class VII soils found in the NE corner are not generally suitable for the production of farm crops and livestock. Furthermore, even if one ton of hay were able to be grown in the NE area and it were profitable to do so, the hay produced would still have the quality issue that makes the hay unattractive to buyers and goats – and to Mr. Barbin who would not take it from the property after he harvested it when it would have cost him nothing to do so.

Soils Information

³ As stated by Mr. Barbin and Ms. MacBeth, yields of 4 to 5 tons are typically expected on good farm land and it is this level of production that is commercial farm use that can be profitable. One ton per acre is simply too low to be profitable.

The Bomkes attempt to discredit Mr. Borine’s professional opinion regarding soils by submitting a page they say comes from the Capability Classification Handbook 210. The Bomkes read the text as saying that soil that is 10 to 20 inches deep is Class III. What the Bomkes fail to realize is that the Handbook says that where other unfavorable factors occur in combination with depth (e.g. those present in Central Oregon), the capability decreases. The Handbook notes that “[i]n arid and semiarid areas, irrigated soils in Class I are more than 60 inches in depth” as opposed to 36 inches. This does not contradict Mr. Borine’s professional evidence about soils depth and water holding capacity of Class VII soils in Central Oregon. If the Bomkes were trained in soils science, they would have known that the *Guide for Placing Soils in Capability Classes in Oregon*; SCS, Portland, OR revised June 1977 that is referenced on pages 4 and 8 of Mr. Borine’s October 17, 2014 soils report provides more detailed information that supports Mr. Borine’s LCC 7 soils classification. Furthermore, the NRCS agrees with Mr. Borine that Gosney soil in mapping unit 58C is properly classified LCC 7.

The Cloughs applied appropriate agricultural management to the NE part of their property in the past and their testimony and evidence bears that out. With such efforts, the Cloughs lost a significant sum of money and produced hay that was not marketable – a goat farmer would not feed the hay grown in the NE part of the property to his goats. This is a predictable outcome given the very poor and shallow LCC 7 Gosney soils found there.

The Bomkes’ claims that Gosney soil that the NRCS rates as Class 7 is a good agricultural soil that could be made productive by the Cloughs are clearly wrong. The NRCS says that such soils are not suitable for the production of crops. Mr. Borine agrees with that assessment and soils classification. The Cloughs’ experience is consistent with the scientific evidence.

The Bomkes argue that Mr. Borine should have elevated the soils capability classification of the Cloughs’ property because crops have been grown there. The Gosney soil found on the property, however, is classified by the NRCS as a Class VII soil. The fact that someone attempted and failed to grow a saleable hay crop on such poor soils does not mean that the NRCS and Mr. Borine are wrong.

Southeast Part of the Property Not Less Suitable than Northeast Part

The southeast part of the property and the northeast part of the property are comprised of the same soils and have the same capacity to support the production of farm crops and livestock. Irrigation water from the NE area can be moved to the small part of the SE area that lacks water rights so the irrigation water rights status of the area is not determinative of their relative suitability. The following is a comparison of the areas:

Southeast

Class 7 soils
Gosney soils
Located 100’ from EFU property

Northeast

Class 7 soils
Gosney soils
Located near MUA property; away from EFU properties

Irrigated and not irrigated	Irrigated and not irrigated (water rights removed) but irrigation does not improve productivity
Green in most aerial photos	Green in most aerial photos; sparse growth compared to other areas of property
No farm (only) income or expenses	Significant farm losses due to unsaleable/low quality short hay grown
Setbacks make it virtually impossible to build a nonfarm dwelling here	Area is large enough for a nonfarm dwelling and related improvements

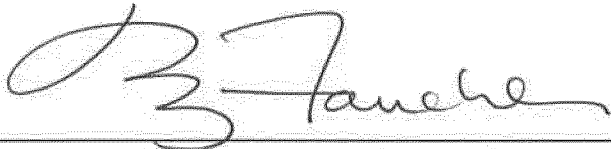
Measurements of the Small Buildable Area in the Southeast Part of the Property

The Cloughs measured the small triangular area in the SE part of their property – the area not burdened by easement or setbacks. They measured the area after the east boundary line of the easement was located by the natural gas company. They used the property corners set by their surveyor to locate the east and south property lines. Their results show a much smaller, triangular buildable area (2300 square feet) than claimed by the Bomkes. The Google Earth photographs submitted with post-hearing comments show how small this area is when compared to the area occupied by the Bomke and Carroll homes.

Evidence from Others

I have attached a chart that lists and responds to arguments from others and to exhibits filed by the Bomkes at the Board hearing as **Exhibit C** of this document.

Respectfully submitted this 21st day of October, 2015.

A handwritten signature in black ink, appearing to read "Liz Fancher", written over a horizontal line.

Liz Fancher, OSB 812202

Attorney for Dana and Karen Clough

EXHIBIT A

	RESPONSE TO LETTER FROM CAROL MACBETH FOR COLW
Location of Evidence	Applicants' Response
2 nd paragraph, page 1	<p>This is an argument that the NE part of the property is suitable for <u>farm use</u>. This is not an issue as the area has been determined to be generally unsuitable for farm use by the hearings officer and that determination is binding.</p> <p>Furthermore, Ms. Macbeth uses the wrong legal standard ("farm use"). The correct legal standard is whether the site is the least suitable "for the production of farm crops and livestock." <i>See, Williams v. Jackson County</i>, 55 Or LUBA 223 (2007)(interpreting similar language in the generally unsuitable requirement of State law; <i>Griffin v. Jackson County</i>, 48 Or LUBA 1 (2004)(stabling and training of equines is not production of farm crops and livestock and not basis for denial of a nonfarm dwelling).</p>
4 th paragraph, page 1	Ms. Macbeth's argument that soils in the NE area are Class III is inconsistent with the finding of the hearings officer that the soils are generally unsuitable, a finding based in part on Mr. Borine's soils analysis that shows that the soils are Class VII nonagricultural soils.
1 st partial paragraph, page 2	Ms. Macbeth again argues that no land on the subject property is unsuitable for agriculture. This argument is inconsistent with the hearings officer's determination that the NE part of the property is generally unsuitable for the production of farm crops and livestock.
1 st full paragraph, page 2 under "General Comments"	This is a claim that the entire property is not unsuitable for farm use. The only issue on appeal is whether the property is the least suitable for the production of farm crops and livestock.
2 nd full paragraph, page 2 under "General Comments"	The argument that surrounding lands are [hobby] farms is an argument that has no connection to the "least suitable" criterion.
3 rd full paragraph, page 2 under "General Comments"	This is a claim that the entire property is suitable for farm use that has no bearing on the least suitable approval criterion.
Final paragraph on page 2 (continues to page 3)	This case relates to the generally unsuitable for the production of farm crops and livestock test; not to the "least suitable" requirement.
First three full paragraphs page 3	This is an argument about the generally unsuitable test; not the least suitable criterion. An argument that a site is not the least suitable because it is not unsuitable conflicts with the hearings officer's determination that the NE part of the property is generally unsuitable for the production of farm crops and livestock.
End of page 3 to page 4 before "Specific Comments"	The evidence and arguments provided on this page are admissible only for use in determining compliance with the "least suitable" approval criterion.
Specific Comment 1, beginning on bottom of page 4	The arguments and evidence provided in this comment are admissible only for use in determining compliance with the "least suitable"

	approval criterion. The argument that soils are Class III is an argument that the home site is not “generally unsuitable” for farm use; not an argument that is not the least suitable of lands that are generally unsuitable for the production of farm crops and livestock. The argument, therefore, is not admissible.
Specific Comment 1, bottom of page 7	The claim that the site has “been successfully used” means that it is not Class VII soil should not be accepted for the purpose of determining whether the property is generally unsuitable for farm use as the Board did not permit de novo evidence on that issue.
Last full paragraph page 10 and last partial paragraph on page 10 continuing to page 11.	This is an argument that the property is suitable for farm use; it is related to the “general unsuitability” standard and not the least suitable standard.

EXHIBIT B

Liz Fancher

From: Nick Lelack <Nick.Lelack@deschutes.org>
Sent: Tuesday, March 24, 2015 9:43 AM
To: Laurie Craghead; Liz Fancher; Sharon Smith
Cc: _CDD Planning Division; David Doyle
Subject: Soils Assessment Process Interpretation from DOJ

Please see below.

Nick Lelack, AICP, Director
Deschutes County Community Development Department
PO Box 6005
117 NW Lafayette
Bend, OR 97708-6005
Office: 541.385.1708 / Cell: 541.639.5585 / Fax: 541.385.1764
www.deschutes.org/cdd

From: Daniels, Katherine [mailto:katherine.daniels@state.or.us]
Sent: Tuesday, March 24, 2015 9:41 AM
To: Nick Lelack
Subject: FW: legal guidance requested

Hi Nick,

Below is the response from our legal counsel at DOJ on her interpretation of the applicability of the soils assessment process to nonfarm dwellings and land divisions under statute and rule. Her conclusion is in line with that of your legal counsel and Liz Fancher. Would you forward this interpretation to them? Thank you.

Katherine

Katherine Daniels, AICP | Farm and Forest Lands Specialist
Community Services Division
Oregon Dept. of Land Conservation and Development
635 Capitol Street NE, Suite 150 | Salem, OR 97301-2540
Direct: (503) 934-0069 | Main: (503) 373-0050 | Fax: (503) 378-5518
katherine.daniels@state.or.us | www.oregon.gov/LCD

From: LLOYD Diane
Sent: Friday, March 13, 2015 4:00 PM
To: Daniels, Katherine
Subject: RE: legal guidance requested

Katherine,

Your second question was whether the soil assessment process and department review required under OAR 660-033-0130(5) and OAR 660-033-0045 apply to nonfarm dwellings or to partitions for nonfarm dwellings. My analysis, as discussed by phone on Wednesday, is as follows:

HB 3647 (2010), codified at ORS 215.211, describes the soil assessment process for a "determination of whether land qualifies as agricultural land," and does not refer to soils assessments for other purposes. OAR 660-033-0030, "Identifying Agricultural Land," interprets ORS 215.211 and in section (5)(a) states that if data

EXHIBIT C

RESPONSE TO DOCUMENTS PREPARED BY OPPONENTS FILED AT HEARING

Opponent Document/Issue	Response
October 4, 2015 letter from Robinson	Not relevant to issue of least suitable; provides no evidence about any particular area of the property. Not inconsistent with hearings officer's finding that a small part of the property is generally unsuitable.
October 1, 2015 note from Bradbury (three copies filed)	No evidence related to least suitable standard.
August 19, 2015 letter signed by Barbin	No evidence related to least suitable standard. Evidence provided is related to the east v. west part of the property. No information is provided re north v. south part of the east side of property that is comprised of Class VII nonagricultural soils. Information provided is incorrect.
July 10, 2015 letter from Barbin with attachments	Not relevant. Issues settled by decision of hearings officer. Information related to generally unsuitable issue that is not before the Board for review.
November 26, 2014 e-mail from K. Daniels (two copies filed)	Information not relevant to least suitable test; relates to generally unsuitable test and is evidence already considered by the hearings officer.
Marked up copy of Soils Test Pit Map claiming SE corner of property is large enough for a building envelope	The estimates of the size of the areas shown on the soils map are wrong. This was addressed in the post-hearing materials filed by the applicants. Map claims a "building envelope" area where setbacks prevent construction of a nonfarm dwelling and associated buildings. The narrow triangular shape of the area does not match a home shape and is too small for a typical house and garage (due to the narrow width in the north part of the triangle that makes that area unusable for a home).
Page from Supplemental Application – 6 tons of hay	This relates to the generally unsuitable standard and is not relevant to the least suitable issue. This is, however, a mistake. This information was not relied on by the hearings officer. A yield of ½ ton per acre for the Class VII soils is accurate and a higher yield is achieved on the Class III soils.
Release Agreement for riding lessons/income from riding lessons	This information is not relevant. Both the "least suitable" and "generally unsuitable" tests apply

	<p><u>only</u> to the production of farm crops and livestock; not to the broader class of activities that are considered “farm use.”</p> <p>The fact that land can and has been used for farm buildings and for the stabling or training of equines does not make it suitable for the production of farm crops or livestock. <i>Williams v. Jackson County</i>, 55 Or LUBA 223 (2007); <i>Griffin v. Jackson County</i>, 48 Or LUBA 1 (2004)(stabling and training of equines not production of farm crops and livestock).</p>
Receipt for boarding and lessons (some submitted twice)	This is irrelevant because it does not address the issue of whether the land is the “least suitable.” Also, this activity is not the production of farm crops or livestock and is not considered when applying the “least suitable” or “generally unsuitable” tests.
2015 Pivot Photo “irrigating homesite”	With water rights the soils in the home site area are Class VII soils that produce just ½ ton per acre of hay when irrigated. The quality of the hay is so poor that Mr. Barbin harvested it and left some in the field even though he was given the hay at no cost other than his cost to harvest it.
Davis letter of February 6, 2015 (two copies)	Not relevant; no bearing of question of “least suitable”; in record considered by hearings officer.
Worlein letter filed February 19, 2015 (two copies filed)	Not relevant; relates to generally unsuitable only; considered by hearings officer.
SS anonymous e-mail to P. Blikstad dated February 16, 2015 (two copies filed)	Not relevant; already in the record considered by the hearings officer.
Trachsel e-mail of February 19, 2015 (two copies filed)	Not relevant; already in record considered by hearings officer.
E-mail from Danny Sheridan dated February 19, 2015 (two copies filed)	Not relevant; already in record considered by hearings officer.
Letter from Danny Sheridan filed February 20, 2015 (two copies filed)	Not relevant; already in record considered by hearings officer.
Letter from Carol Davis dated September 18, 2015 re listing price from 2007-2009 (two copies)	Not relevant to least suitable issue.
Letter from McHone dated February 12, 2015 opposing division of property	Not relevant to least suitable issue. In record considered by hearings officer.
Exhibit AA, letter signed by Don Barbin filed August 19, 2015 filed by Bomke	Response provided above.
Exhibit A2, letter from McHone dated February 12, 2015 filed by Bomke	Response provided above.
Exhibit A, Deschutes County Farmland Advisory Committee Meeting May 28, 1992 that shows farming in Central Oregon is not profitable for	Not relevant to least suitable issue.

most farmers and that soils are poor filed by Bomke	
Exhibit B, Agricultural Profile that describes Redmond/Tumalo/Bend Subzone area as containing "irrigated pasture and some hay" and states that it is "small scale, part-time, subsidized non-commercial agriculture" filed by Bomke.	Not relevant to least suitable issue.
Exhibit C, Interpreting Soil Change and Soil Function filed by Bomke.	Not relevant to least suitable issue.
Exhibit D, Work to Lower Ash Content in Forage filed by Bomke.	Not relevant to least suitable issue.
Exhibit DD, Release Agreement for riding horses filed by Bomke.	Not relevant to least suitable issue; riding lessons are not "the production of farm crops and livestock" which are the <u>only</u> farm uses considered in nonfarm dwelling applications.
Exhibit E (Exhibit TT also on page) filed by Bomke. Top of page contains comments that are perhaps related to generally unsuited for production of farm crops and livestock issue and soils testing. Rest of page and following pages are information regarding the NRCS soil classifications	Comments not developed to point where shown to be relevant to least suitable issue. Class III soils have "severe limitations that reduce the choice of plants or require special conservation practices or both." Class VII soils have "very severe limitations that make them unsuited to cultivation and that restrict their use mainly to grazing, forestland, or wildlife."
Neighbor Property – 2 photos from Bomke	Not relevant to whether area of house is least suitable.
Exhibit F – USDA NRCS publication re organic material in soil from Bomke	Not relevant to least suitable issue; land already determined to be generally unsuitable.
Exhibit G – USDA NRCS publication re soil health management from Bomke	Not relevant to least suitable issue.
Exhibit G5 – Summary of 11 Years of Farming Parcel 200 from Bomke	Shows that Class VII soils area proposed for nonfarm home yielded ½ ton of hay when actively managed (fertilized, burned, weed abated) as a farm field and that these activities result in significant financial losses. Explains that area is not suited for unsupervised use by livestock due to loose dogs that chase livestock.
Exhibit GG – Letter from Don Barbin dated July 10, 2015 and attachments from Bomke	Response provided above; not relevant.
Exhibit HH – E-Mail chain beginning with e-mail from William Groves to K. Daniels regarding generally unsuitable requirement as it relates to a different property from Bomke	Not relevant; not related to least suitable for production of farm crops and livestock issue.

Exhibits I, J, K, L – Aerial photos from Google Earth for 2012, 2011, 2006, 2005 from Bomke	All photos other than the 2012 photo show that the area the Bomkes claim is the least suitable is green and similar to other parts of the property.
Map of pipeline location from Bomke	Map shows that pipeline is, in fact, in close proximity to the Cloughs' proposed home site. The heat from the pipeline speeds the loss of irrigation water from the Class VII soils due to evaporation. This same limitation applies to the SE part of the property. The areas are similar and both are the least suitable.
Exhibit MM – Area of Water Rights Transfer & Removed Water from Bomke	The water rights were removed from a part of the NE area as this is a typical requirement of nonfarm dwelling application approvals on low-quality irrigated land.
Exhibit NN – Supplemental Application from Bomke	Not relevant to least suitable issue; response provided above.
Exhibit O – E-Mail from William Groves to Anthony Raguine dated December 1, 2014 re commercial scale farm use definition that is not used in the County's review of nonfarm dwelling applications from Bomke.	Not relevant to least suitable issue.
Exhibit S – Part of information provided by DLCD website re soils studies from Bomke.	Not shown to be relevant to issue of least suitable. The hearings officer properly relied on soils analysis to resolve conflicting evidence regarding the low productivity of the Cloughs' property. Document shows that Roger Borine is one of four soils professionals in the State of Oregon who is properly qualified to conduct soils studies in the State of Oregon that challenge agricultural land capability. It states, "[t]hese individuals have the necessary education and experience to provide detailed soils data to determine whether soils are agricultural." DLCD note that the listing is not an endorsement.
Exhibit T – NRCS Soils Information from Bomke	This document explains that all of the Class VII soils identified by Roger Borine on the Cloughs' property "have very severe limitations that make them unsuited to cultivation and that restrict their use mainly to grazing, forestland, or wildlife." Opponents highlighted text that says that prime farmlands have an adequate supply of water from precipitation or irrigation. This does not mean that Class VII irrigated land is prime farmland.
Exhibit T4 – Using Heat Units to Schedule Vegetable Plantings from Bomke	This exhibit is not relevant to the issue of whether land is the least suitable.
Exhibit TT – Cal Recycle from Bomke	This exhibit relates to composting and is not relevant to the issue of whether land is the least

	suitable.
Exhibit UU – About Biomass from Bomke	Not relevant to the issue of least suitable.
Exhibit X – DCC 18.16.010 from Bomke	<p>Not clear how this is relevant to the issue of the least suitable criterion.</p> <p>The purpose of maintaining agricultural lands and to serve as a sanctuary for farm uses underlined by opponents will be met by allowing the owner to live on the property and farm the hay field to the west of the home site or to conduct other agricultural uses. It is not possible to obtain a farm dwelling for this property in any other way.</p> <p>The Cloughs plan to retire from farming. They plan to place their irrigation water instream if they cannot sell the property so they no longer have the burden of farming the property from a remote location.</p>
Exhibit X (2 nd Exhibit X) – DLCD Farmland Protection Program – highlighted goal of preserving farm land and comments that program keeps land from being divided to a size that is too small for commercial agriculture from Bomke.	<p>Not clear how this is relevant to least suitable criterion.</p> <p>The Cloughs' farm use is not "commercial agriculture."</p>
Exhibit Y – Pilot Program Executive Order No. 12-07 for a grant program in Jackson, Josephine and Douglas counties from Bomke.	This is not relevant to the least suitable issue and has no specific relationship to the Cloughs' property.
Exhibit YY – photo of farm field from Bomke.	Not clear that these photos include the proposed homesite and it is clear that some do not. The photo is consistent with Cloughs' evidence that nonfarm area grows short grass but it is not saleable (some hay given to Barbin left on property; hay rejected as low-cost/free feed by owner of goats).
Exhibit Z – Supplemental Application Instructions (blank) from Bomke	Not relevant to least suitable for the production of farm crops and livestock issue.
Exhibit ZZ – Water Rights Maps showing part of SE area lacks water rights and that part of NE area lacks water rights (due to transfer) from Bomke	<p>There is a small non-irrigated area in the SE part of the property. The vast majority of this area is not eligible for nonfarm development because it is within required 100' setback areas.</p> <p>All of the soil in the east part of the property is Class VII nonagricultural soil whether or not it is irrigated.</p>

October 20, 2015

Deschutes County Commissioners
117 NW Lafayette Avenue
Bend, OR 97703

Re: File No 247-15-000035-CU, Clough Nonfarm Dwelling Application

I received and have read the testimony provided by Bomke's (File #247-15-000035-CU) regarding the issue of least suitable land on the Clough Property.

After a lengthy review, I decided a point by point rebuttal of issues was neither possible nor desirable as the format, data and discussion is very disjointed making it very difficult to follow and interpret. Perhaps that was the intent. With that said, I will respond to several apparent and glaring errors and inconsistencies regarding the issue of soils.

1- Mr. Bomke takes issue with the soils report as being inaccurate and completed with intent to mislead. I take issue with these statements.

As part of the record I have provided evidence of my qualifications for education, experience, professional certifications, and ethics. Mr. Bomke's statements are clear in his testimony; they are his opinion, although inaccurate, and made with the intent to discredit the soils data.

2- There are many technical soil issues that Mr. Bomke has stated and referenced that merit comment:

- a. Page 3, D: Prime Farm Lands. Intent or reasoning for referencing Prime farmlands is unclear. Exhibit T's website is not related to Prime farmlands.
- b. Page 4, F: This quote is not true and I believe if Mylen Bohle was to evaluate how his statement has been interpreted for this land use decision there would be several qualifiers.
- c. Page 5, H: Governor's EO 12-7 "Central Oregon's irrigated lands are high value crop lands." High-value farmland is defined in ORS 215.705 and states in part (a) *irrigated and classified as prime, unique, Class I or Class II; or (b) Not irrigated and classified as prime, unique, Class I or Class II.* The proposed building site is not high-value farmland.
- d. Page 8, D: "All class 7 soils have a depth of less than 10 inches. This brings into question the actual classification of the soils... etc." Mr. Bomke is in error, the proper reference is the *Guide for Placing Soils in Capability Classes in Oregon*; SCS; Portland, OR, revised June 1977 and is a supplement with more detailed criteria localized to Oregon. This guide is referenced in the Clough's soil report on pages 4 and 8 dated October 17, 2014. Soil classifications in this report are correct and consistent with NRCS policy.
- e. Page 9, F: Mr. Borine speaks specifically etc. and Mr. Borine claimsetc. Mr. Bomke is misquoting. I did not make the statements or claims.
- f. Page 15, 12: The pipe that dries out the soil: "Growing Degree Days" or "Heat Units" are a function of climate, not soils. It is indicative whether the growing season has enough days that are conducive to produce a crop. Very speculative for Mr. Bomke to suggest the pipeline stimulates soil health and productivity.
- g. Page 17, 14 A: Prime Farm lands: Do not see the connection between prime farmlands and management issues?

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- h. Page 18, H: "He makes several claims outside his realm of a soil expert. How to farm hay being of them." Disagree. As stated and previously included in the record (*File No. 247-15-000035-CU, Clough Nonfarm Dwelling Application, 7/8/2015*) to the Hearing Officer "I also own a small farm in Central Oregon and use it to raise grass hay. From the point of view of a farmer who hopes to make a profit from farming,....". Further, was a Certified Master Planner with USDA-NRCS for natural resource conservation in Oregon on crop, range and forest lands.
- i. Page 20 Exhibit C: Interpreting soil change and soil function: "An additional loss of grass and increase in shrubs, which causes the feedback loop to continue". I am at a loss to know the intent of this statement.
- j. Page 23, 21-22: Discussion on Organic Material: Soil tests of central Oregon soils show typically that organic matter is 0-1% in the surface 4 inches and 0% in the subsoil of soils similar to this site. This is very low and provides a very limited reservoir for holding and supplying nutrients and moisture to the plant. Mr. Bomke's reference and exhibit UU is a commercial site for product sales.
- k. Page 27, 32: "Current class 3 soils are infested with Plantain." Unless Mr. Bomke received permission to trespass and do a plant survey on the Clough property he has no knowledge of the plant composition.
- l. Page 27, 33: "Roger Borine has a biased approach as he is looking to load his pipeline for future income." Mr. Bomke is way over the top with this statement and creates credibility concerns to his entire testimony and motives.
- m. Exhibit L: LCC Comments: the proper reference is the *Guide for Placing Soils in Capability Classes in Oregon*; SCS; Portland, OR, rev 6/77 and is a supplement with more detailed criteria localized to Oregon. This guide is referenced in the Clough's soil report on pages 4 and 8 dated October 17, 2014. Soil classifications in this report are correct and consistent with NRCS policy.
- n. Exhibit L: Chapter 5-Soil Improvement on Pasture Lands: Not to be confused with *USDA Land Capability Classification Handbook 210* also listed in this Exhibit L. Mr. Bomke's Chapter 5 is from *Soil Health Library*. His reference states "This website provides free downloadable e-books about radical agriculture, natural hygiene/nature cure and self-sufficient homestead living. There are secondary collections involving social criticism and transformational psychology."
- o. Exhibit N: Principles of Alfalfa Production in Central Oregon: Mr. Bomke provided a reference *Principles of Alfalfa Production in Central Oregon*, Agricultural Experiment Station, OSU, Corvallis, Special Report 483, April 1977, that documents the reasoning for placing shallow and very shallow soils with low available water capacities in LCC 7 whether irrigated or nonirrigated. In the reports pages 9-12 and titled Irrigation the reasoning is discussed. It is not a coincidence that this document was published April 1977 and the *Guide for Placing Soils in Capability Classes in Oregon*; SCS; Portland, OR, was revised June 1977 using this critical research.

Regards,



Roger Borine, CPSC, CPSS, PWS

October 20, 2015

Deschutes County Commissioners
117 NW Lafayette Avenue
Bend, OR 97703

Re: File No 247-15-000035-CU, Clough Nonfarm Dwelling Application

I received and have read the testimony provided by Ms. Macbeth of Central Oregon Land Watch regarding the issue of least suitable land issue on the Clough Property.

After a lengthy nineteen page review there are two issues continually stressed in the testimony and they were the soils reports do not follow the protocol of the NRCS land capability classification system, and NRCS soils report is accurate and the clients report should not be considered.

My response is a summary that addresses these two themes recurring throughout Ms. Macbeth's testimony.

1. COLW states – "The applicants' October 17, 2014 and September 10, 2015 soils reports do not follow the protocol of the NRCS land capability classification system but ignore fundamental assumptions underlying accurate soil capability classifications. The reports violate OAR 660-033-0030(5)(a), which requires the applicants' soils reports to relate to the NRCS land capability classification system. Therefore we urge the Board to ignore both of the applicants' soils reports."

It is clear that Ms. Macbeth has not read or considered neither the Clough's soil report nor the record. My letter in the record to the HO dated May 16, 2015 clearly states:

"My professional opinion that the site is generally unsuitable for the production of crops and livestock or for growing of merchantable tree species is based on factors addressed in the NRCS Land Capability Classification system (LCC). This information is derived from Agriculture Handbook No. 210, Land-Capability Classification, SCS, 1961. This is the reference document that provides detailed information for the LCC system. LCC is specifically referenced in Goal 3, Agricultural Lands for statewide planning. A "Guide for Placing Soils in Capability Classes in Oregon" dated June 1977 was developed and adopted by USDA-Soil Conservation Service and approved nationally was used for placing soils in a LCC. The following statements from Ag Handbook 210 explain how the LCC system relates to the suitability of land to produce crops and livestock: ..."

2. COLW states – "The applicants' soils reports have been reviewed for completeness according to OAR 660-033-0030, -0045, however the state of Oregon has made no determination as to the accuracy of the soils assessment. In fact, the state of Oregon reviewer noted "the web soil survey shows the tested area to be irrigated and cropped, an indication of its suitability for farm use."

Again, it is clear that Ms. Macbeth has not read the record. My letter in the record to HO dated May 16, 2015 clearly states:

"This statement is not entirely an accurate statement. In OAR 660-033-0030(9)(f) it states "the department shall review the soils assessment by: (A) performing completeness checks for consistency with reporting requirements for all submitted soils assessments; and (B)(i) "the department shall arrange for a person who meets the qualification of "professional soil classifier" to conduct systematic sample reviews and field checks of soils assessments and make recommendation to the department as to whether they are soundly and scientifically based. (B)(ii) Within 30 days of the receipt of a soils assessment subject to review under this paragraph, the department shall determine whether the soils assessment is soundly and scientifically based. Note: This OAR is DLCD's provision to ensure accuracy. The department chose not to challenge the accuracy of this report within the 30 day provision."

3. COLW states – "The reports violate OAR 660-033-0030(5)(a), which requires the applicants' soils reports to relate to the NRCS land capability classification system. The applicants' reports are not comparable to the NRCS determinations that the soils are Class III, therefore we urge the Board to ignore the applicants' soils reports."

NRCS policy regarding using soils for regulatory purposes:

NRCS General Manual Part 402.6-Limitations on the Use of Soil Survey Information: *"Soil Surveys seldom contain detailed site specific information and are not designed to be used as primary regulatory tools in permitting or citing decisions, but may be used as reference sources."*

NRCS maps soils at the landscape level. Land use issues in Oregon are addressed by tax lots. Consequently, NRCS soil maps may be perfectly correct at the landscape level while a tax lot may be in part or entirely a contrasting inclusion. An Order 1 soil survey is prudent to accurately define soils, mapping units, and miscellaneous areas and to accurately locate their boundaries. It provides more detailed information about the soils within the large mapping units used in the NRCS Soil Survey of the Upper Deschutes River Area.

Clough's Soil Report - 10/17/2014, Page 4:

"The two NRCS soil mapping units occurring in this study area were reviewed at the landscape level throughout their extent. All have contrasting inclusions listed in their map unit descriptions. The initial on-site inventory determined that shallow and very shallow soils occur in the 36A–*Deskamp loamy sand, 0-3% slopes* map unit.

As defined by OAR 660-033-0020(1)(a)(A) Agricultural Land is land classified by the USDA Natural Resources Conservation Service (NRCS) as predominantly Land Capability Classification (LCC) 1-6. The LCC includes criteria for soil depth, surface texture, permeability, slope, available water capacity, drainage class, flooding/ponding, alkali/salinity, frost-free days, and evapotranspiration (irrigated and non-irrigated)."

Letter to HO dated May 16, 2015:

"It is my opinion, based on test results and Web Soil Survey mapping, that the area identified as LCC 7 on page 5 of my assessment contains Class 58C Gosney-Rock Outcrop-Deskamp soil like the areas found north and south of it. The location of this soil unit (Class 58C) is shown on page 13 of my assessment. The area of LCC soils is located on a blister ridge that connects the two areas mapped 58C by NRCS and was, most likely, not evident to the NRCS soil mappers at the scale of mapping, when they mapped the area due to roads and gas pipeline construction work that altered the appearance of this area."

My regards,



Roger Borine, CPSC, CPSS, PWS