



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 October 24, 2016

DATE: October 17, 2016

FROM: Matthew Martin CDD (541) 330-4620

TITLE OF AGENDA ITEM:

A public hearing on amendments to the Deschutes County Code that modify: 1.) The Comprehensive Plan recognizing non-resource lands process allowed under State law to change EFU zoning; 2.) Title 18, County Zoning, providing a definition of agricultural and equine exempt buildings; and 3.) Title 18 reducing setbacks in Forest Use (F-2) zone for Haner Park Subdivision and an adjoining three acre tax lot. (County File Nos. 247-16-000402-PA/247-16-000403-TA)

PUBLIC HEARING ON THIS DATE? Yes.

BACKGROUND AND POLICY IMPLICATIONS:

In 2014, the Board directed the Community Development Department (CDD) to conduct a public outreach campaign to understand community, stakeholder, and landowner opinions about Deschutes County farm designations and land uses. Following these discussions, the Planning Commission and the Board supported initiating the proposed amendments outlined above as part of the Planning Division's FY 2015-2016 work program.

On March 10, 2016, the Planning Commission conducted a public hearing on the proposed amendments. The recommendations of the Planning Commission are included in the staff report.

FISCAL IMPLICATIONS:

None.

RECOMMENDATION & ACTION REQUESTED:

Hold the public hearing and provide direction to staff regarding a continuance, conducting deliberation or consideration of first reading of Ordinance Nos. 2016-005 and 2016-006.

ATTENDANCE: Matthew Martin, Associate Planner

DISTRIBUTION OF DOCUMENTS:

CDD, Legal



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PUBLIC HEARING ON THIS DATE? Yes.

BACKGROUND AND POLICY IMPLICATIONS:

In 2014, the Board directed the Community Development Department (CDD) to conduct a public outreach campaign to understand community, stakeholder, and landowner opinions about Deschutes County farm designations and land uses. In May 2014, the Planning Division conducted community conversations in throughout the county in Alfalfa, Bend, Brothers, La Pine, Sisters, and Terrebonne.

The Board held two joint work sessions with the Planning Commission on June 26, 2014 and September 25 respectively, to discuss the results of the agricultural lands program public outreach campaign. Following these discussions and consideration of policy options, the Planning Commission and the Board supported initiating the proposed amendments as part of the Planning Division's FY 2016-2017 work program.

FISCAL IMPLICATIONS:

None.

RECOMMENDATION & ACTION REQUESTED:

Hold the public hearing. At the conclusion of oral testimony consider:

1. Continuing the public hearing to a date certain;
2. Close the public hearing and leave to written record open to a date certain; or
3. Close the public hearing and written record and deliberate.

ATTENDANCE: Matthew Martin, Associate Planner

DISTRIBUTION OF DOCUMENTS:

CDD, Legal



Community Development Department

Planning, Building Safety, Environmental Soils, Code Enforcement
PO Box 6005, Bend, Oregon 97708-6005
117 NW Lafayette Avenue
www.deschutes.org/cd

Staff Report

FILE NUMBERS: 247-16-000021-TA and 247-16-000022-PA

APPLICANT: Deschutes County Community Development
117 NW Lafayette Avenue
Bend, Oregon 97701

PROPERTY OWNER: N/A

REQUEST: 1) Text amendment to Comprehensive Plan, Chapter 2, Section 2.2 and Chapter 3, Section 3.3, recognizing non-resource lands process allowed under State law to change Exclusive Farm Use zoning; 2) Text amendment to zoning code providing a definition of agricultural-exempt and equine buildings; and, 3) Reducing setbacks in Forest Use (F-2 zone), for Haner Park Subdivision and an adjoining three acre tax lot.

STAFF CONTACT: Matthew Martin, AICP, Associate Planner

I. APPLICABLE CRITERIA:

Title 22, Deschutes County Development Procedures Ordinance

II. BASIC FINDINGS:

A. PROPOSAL: 1) Text amendment to Comprehensive Plan, Chapter 2, Section 2.2 and Chapter 3, Section 3.3, recognizing non-resource lands process allowed under State law to change Exclusive Farm Use zoning; 2) Text amendment to zoning code providing a definition of agricultural-exempt and equine buildings; and, 3) Reducing setbacks in Forest Use (F-2 zone), for Haner Park Subdivision and an adjoining three acre tax lot.

III. CONCLUSIONARY FINDINGS:

A. CHAPTER 22.12, LEGISLATIVE PROCEDURES

1. Section 22.12.010.

Hearing Required

FINDING: The applicant meets this criterion because a public hearing will be held before the Deschutes County Board of County Commissioners (Board) on October 24, 2016.

2. Section 22.12.020, Notice

Notice

A. Published Notice

- 1. Notice of a legislative change shall be published in a newspaper of general circulation in the county at least 10 days prior to each public hearing.**
- 2. The notice shall state the time and place of the hearing and contain a statement describing the general subject matter of the ordinance under consideration.**

FINDING: Notice is published in the Bend Bulletin newspaper on October 14, 2016 and contained the information described in DCC 22.12.020(A)(2).

B. Posted Notice. Notice shall be posted at the discretion of the Planning Director and where necessary to comply with ORS 203.045.

FINDING: This criterion will be met with notice posted in the bulletin board in the lobby of the Deschutes County Community Development Department, 117 NW Lafayette, Bend.

C. Individual notice. Individual notice to property owners, as defined in DCC 22.08.010(A), shall be provided at the discretion of the Planning Director, except as required by ORS 215.503.

FINDING: Given the proposed amendments in question do not apply to any specific property, no individual notices were sent or required.

D. Media notice. Copies of the notice of hearing shall be transmitted to other newspapers published in Deschutes County.

FINDING: Notice will be provided to the County public information official for wider media distribution. This criterion has been met.

3. Section 22.12.030 Initiation of Legislative Changes.

A legislative change may be initiated by application of individuals upon payment of required fees as well as by the Board of County Commissioners.

FINDING: The application was initiated by the Deschutes County Planning Division, which received a fee waiver. This criterion has been met.

4. Section 22.12.040. Hearings Body

- A. The following shall serve as hearings or review body for legislative changes in this order:**
- 1. The Planning Commission.**
 - 2. The Board of County Commissioners.**

FINDING: This criterion will be met.

B. Any legislative change initiated by the Board of County Commissioners shall be reviewed by the Planning Commission prior to action being taken by the Board of Commissioners.

FINDING: The Planning Commission held a public hearing on March 10, 2016, and reviewed the proposed changes. That same day, the Planning Commission voted in support of the proposed definitions of agricultural/equine exempt buildings and setback standard for Haner Park. Deliberations were continued to March 24 and the Planning Commission voted to not support the proposed comprehensive plan amendments relating to the non-resource lands process allowed under State law to change EFU zoning.

5. Section 22.12.050 Final Decision

All legislative changes shall be adopted by ordinance

FINDING: If approved, the proposed legislative changes included in file nos. 247-16-000021-TA/247-16-000022-PA will be implemented by ordinances upon approval and adoption by the Board; this criterion will be met.

IV. PROPOSED TEXT AMENDMENTS:

The proposed text amendments are detailed in the Exhibits A-D attached hereto with additional text identified by underline and deleted text by ~~strike through~~. Below are explanations of the proposed changes.

A. Text Amendment To Comprehensive Plan, Chapter 2, Section 2.2 And Chapter 3, Section 3.3, Recognizing Non-Resource Lands Process Allowed Under State Law To Change Exclusive Farm Use Zoning.

In designating farm lands in the late 1970s, the County was hampered by the limited availability of soil maps. Where soil maps from the NRCS existed those were consulted, but the County also included irrigated lands and lands receiving farm deferrals for the previous five years and site visits. In general, non-urban, non-forest, undeveloped and uncommitted lands were determined to be farm lands. This designation by default resulted in some areas being designation agricultural based on best available information.

In previous decisions on proposed plan amendments, county hearings officers and the Board have determined that land use planning, implemented through Deschutes County Comprehensive Plan policies and zoning, enables rural property owners with EFU zoning to demonstrate in a quasi-judicial process, with evidence supporting findings that a subject property does not constitute “agricultural lands” as defined in Goal 3 and Oregon Administrative Rule (OAR) 660-033-0020(1). Further, if the property does not meet the definition of agricultural lands then an exception to Goal 3 is not required which is the typical path for redesignation. The Land Use Board of Appeals affirmed this approach in *Wetherell v. Douglas County*, __Or LUBA__, (LUBA No. 2006-122, October 9, 2006).

Oregon Administrative Rules (OAR) Division 4 interprets the requirements of Goal 2 (Land Use Planning) and ORS 197.732 regarding exceptions. The definition for nonresource lands is described in OAR 660-004-0005(3):

- “Land not subject to any of the statewide goals listed in OAR 660-004-0010(1)(a) through (g) except subsections (c) and (d). Nothing in these definitions is meant to imply that other goals, particularly Goal 5, do not apply to nonresource land.”¹

Policy 2.2.3 directs Deschutes County to:

Allow comprehensive plan and zoning map amendment for individual EFU parcels as allowed by State Statute, Oregon Administrative Rules and this Comprehensive plan.

A Hearings Officer in a decision in NNP (PA-13-1, ZC-13-1) held any failure on the county's part to adopt comprehensive plan policies and code provisions describing the circumstances under which EFU-zone land may be converted to a non-resource designation and zoning codes does not preclude the county from considering quasi-judicial plan amendment and zone change applications to remove EFU zoning. This plan amendment further clarifies that the County intends to allow the non-resource lands process allowed under State law to change EFU zoning.

The proposed amendment acknowledges this existing path to change land currently designated resource to a non-resource designation as allowed by state law.

On March 24, the Planning Commission voted to not recommend approval the proposed amendments.

B. Text Amendment To Zoning Code Providing A Definition Of Agricultural-Exempt and Equine Buildings.

State law (ORS 455.315)² allows exemption from the requirement for a building permit and inspections under Oregon State Structural Specialty Code (electrical, plumbing, and mechanical permits are always required). Since 2001, the authority to approve an agricultural exempt building resides with the Building Official. A formal application requires the County Planning Division to provide input on whether the property is a farm. Deschutes County's zoning ordinances do not define “farm” or provide a basis for making a determination on whether a property constitutes a farm.

Until the late 1990s, the Oregon Uniform Building Code (UBC) defined farm as “farm use” – the same as in ORS 215.203 (the EFU Zone). However, when the state changed to the

¹ OAR 660-004-0010:

(1) The exceptions process is not applicable to Statewide Goal 1 "Citizen Involvement" and Goal 2 "Land Use Planning." The exceptions process is generally applicable to all or part of those statewide goals that prescribe or restrict certain uses of resource land, restrict urban uses on rural land, or limit the provision of certain public facilities and services. These statewide goals include but are not limited to:

(a) Goal 3 "Agricultural Lands"; however, an exception to Goal 3 "Agricultural Lands" is not required for any of the farm or nonfarm uses allowed in an exclusive farm use (EFU) zone under ORS chapter 215 and OAR chapter 660, division 33, "Agricultural Lands", except as provided under OAR 660-004-0022 regarding a use authorized by a statewide planning goal that cannot comply with the approval standards for that type of use;

...

http://arcweb.sos.state.or.us/pages/rules/oars_600/oar_660/660_004.html

² ORS 455: https://www.oregonlegislature.gov/bills_laws/ors/ors455.html

International Building Code (IBC), “farm” was not defined. “Farm use” is defined in Deschutes County Code and ORS 215.203 as:

“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 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. “Farm use” includes the preparation, storage and disposal by marketing or otherwise of the products or by-products raised on such land for human or animal use. “Farm Use” also includes the current employment of the land for the primary purpose of obtaining a profit in money by stabling or training equines, including but not limited to, providing riding lessons, training clinics and schooling shows. “Farm use” also includes the propagation, cultivation, maintenance and harvesting of aquatic species and bird and animal species to the extent allowed by the rules adopted by the State Fish and Wildlife Commission. “Farm use” includes the on-site construction and maintenance of equipment and facilities used for the activities described above. “Farm 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 as defined in ORS 215.203(3). Current employment of the land for farm use also includes those uses listed under ORS 215.203(2)(b).

CDD’s internal policy is a property must be receiving farm deferral and zoned EFU to qualify. Below are approaches used by other central, eastern and western Oregon counties. Most provide clear and objective standards to determine what constitutes a farm for the purposes of making decisions on agricultural exempt buildings.

- Crook County

Agricultural Exempt Building: Property must qualify for “farm use” (land must be currently employed for the primary purpose of obtaining profit in money). The property must also either be at least 80 acres in size or currently employed in a farm use and that such use has produced at least \$40,000 in gross annual income in at least 2 of the previous 5 years.

Equine Exempt Building: Same as above but the structure must only be used for stabling or training equines including but not limited to providing riding lessons, training clinics and schooling shows; storage of hay; and property owners must own at least one equine or have the applicable land use approval for an equine facility (such as riding lessons, training, schooling, boarding) in the zone.

- Jackson County

Agricultural Exempt Building: Property must be receiving farm deferral.

Equine Exempt Building: Same as above and it must be located on a farm. Structure must only be used for stabling or training equines including but not limited to providing riding lessons, training clinics.

- Jefferson County

Agricultural Exempt and Equine Building: Property automatically qualifies if it is located in the EFU zone and in farm deferral.

- Klamath County

Agricultural and Equine Exempt Building: Property automatically qualifies if it is either located in the EFU zone or if not, in farm deferral.

- Lake County

Agricultural Exempt Building: Property must qualify for “farm use” (land must be currently employed for the primary purpose of obtaining profit in money).

Equine Exempt Building: Same as above and it must be located on a farm. Structure must only be used for stabling or training equines including but not limited to providing riding lessons, training clinics.

Staff is proposing a definition for agricultural and equine exempt building that applies to property receiving farm deferral, regardless of the underlying zone. According to the Oregon Department of Revenue, if land is in an EFU zone and is used primarily to make a profit by farming, it qualifies for special farm-use assessment. If land is not in an EFU zone but is used as farmland, it may receive the same assessment given to all qualifying EFU farmland.

This text amendment is consistent with Agricultural Lands, Policy 2.28, which states:

Support a variety of methods to preserve agricultural lands, such as:

- a. Support the use of grant funds and other resources to assist local farmers;*
- b. Work cooperatively with irrigation districts, public agencies and representatives and land owners;*
- c. Encourage conservation easements, or purchase or transfer of development rights programs;*
- d. Control noxious weeds;*
- e. Encourage a food council or ‘buy local’ program.*

Allowing property owners with farm deferral status to receive agricultural exempt buildings helps preserve agricultural lands and promote farm uses by preserving time and expense that would otherwise go towards obtaining a building permit.

On March 10th the Planning Commission voted to recommend approval of the proposed amendment with the staff recommended additional text that specifies the agricultural building or equine facility is located on the property (lot or parcel) receiving special assessment for farm use as implemented by the County Assessor’s Office.

In addition, internal discussions between Planning and Building Division since the Planning Commission deliberations have resulted in a recommendation to add a citation of the applicable state statute (ORS 455.315) to the proposed definition. This provides clarity through reference to the applicable statewide standards for agricultural buildings and equine facilities but does not change the substance of the definition.

With both the recommendations of the Planning Commission and the additional reference offered by staff, the proposed definition for consideration reads:

"Agricultural building or equine facility" means buildings and structures that are exempt from the State of Oregon Structural Specialty Code as agricultural buildings and equine facilities as described in ORS 455.315. A structural building permit is not required for agricultural buildings or equine facilities located on the same lot or parcel receiving special assessment for farm use."

C. Reducing Setbacks In Forest Use (F-2 Zone), For Haner Park Subdivision And An Adjoining Three Acre Tax Lot.

Haner park subdivision and the remnant parcel are located in the southwestern portion of Deschutes County. These properties were platted prior to State enabling land use legislation. This island of F-2 zoned property is surrounded by land zoned Forest Use (F-1) and owned by the federal government as part of the Deschutes National Forest. Deschutes County is proposing text amendments reducing the setbacks in Haner Park subdivision and an adjoining three-acre tax lot to the standard 25 feet setback instead of the currently required 100 foot setback. The lot sizes in the Haner Park are of a relative small size requiring a variance to the 100 foot setback to develop any structures on the vast majority lots. No other changes to the F-2 zone are proposed.

This text amendment is consistent with Forest Lands, Section 2.3 and its goals and policies. The emphasis of this section is on forest management and conservation. Policy 2.3.5 is the only policy remotely related to the text amendment:

Uses allowed in Forest zones shall comply with State Statute and Oregon Administrative Rule.

Any proposed use must still comply with the F-2 zone development standards, which are consistent with State Statute and administrative rules.

On March 10th, the Planning Commission voted to recommend approval of the proposed amendment.

ATTACHMENTS: Draft Ordinance 2016-005
 Draft Ordinance 2016-006
 Meeting Minutes - Planning Commission 3/10/16
 Meeting Minutes - Planning Commission 3/24/16

REVIEWED

LEGAL COUNSEL

For Recording Stamp Only

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON

An Ordinance Amending Deschutes County Code *
Title 23 and the Deschutes County Comprehensive *
Plan to Recognize Non-resource Lands Process *
Allowed under State law to change Exclusive Farm *
Use zoning. *

ORDINANCE NO. 2016-005

WHEREAS, the Deschutes County Community Development Department (CDD) initiated amendments (Planning Division File No. TA-16-000022-PA) to the Deschutes County Comprehensive Plan, Chapter 2, Resource Management, and Chapter 3, Rural Growth Management to recognize non-resource lands process allowed under State law to change Exclusive Farm Use zoning; and

WHEREAS, the Deschutes County Planning Commission reviewed the proposed changes on March 10, 2016 and forwarded to the Deschutes County Board of County Commissioners ("Board"), a recommendation of denial; and

WHEREAS, the Board considered this matter after a duly noticed public hearing on October 24, 2016, and concluded that the public will benefit from the proposed changes to the Deschutes County Comprehensive Plan Chapters 3 and 4 and Deschutes County Code ("DCC") Title 23; now, therefore,

THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON, ORDAINS as follows:

Section 1. AMENDMENT. DCC 23.01.010, Introduction, is amended to read as described in Exhibit "A," attached hereto and by this reference incorporated herein, with new language underlined and language to be deleted in ~~striketrough~~.

Section 2. AMENDMENT. Deschutes County Comprehensive Plan Chapter 2, Resource Management, is amended to read as described in Exhibit "B," attached hereto and by this reference incorporated herein, with new language underlined and language to be deleted in ~~striketrough~~.

Section 3. AMENDMENT. Deschutes County Comprehensive Plan Chapter 3, Rural Growth Management, is amended to read as described in Exhibit "C," attached hereto and by this reference incorporated herein, with new language underlined and language to be deleted in ~~striketrough~~.

Section 4. AMENDMENT. Deschutes County Comprehensive Plan Chapter 5, Supplementary Sections, is amended to read as described in Exhibit "D," attached hereto and by this reference incorporated herein, with new language underlined and language to be deleted in ~~striketrough~~.

///

Section 5. FINDINGS. The Board adopts as its findings Exhibit “E”, attached and incorporated by reference herein.

Dated this _____ of _____, 2016

BOARD OF COUNTY COMMISSIONERS
OF DESCHUTES COUNTY, OREGON

ALAN UNGER, Chair

TAMMY BANEY, Vice Chair

ATTEST:

Recording Secretary

ANTHONY DEBONE, Commissioner

Date of 1st Reading: _____ day of _____, 2016.

Date of 2nd Reading: _____ day of _____, 2016.

	Record of Adoption Vote:			
Commissioner	Yes	No	Abstained	Excused
Anthony DeBone	_____	_____	_____	_____
Alan Unger	_____	_____	_____	_____
Tammy Baney	_____	_____	_____	_____

Effective date: _____ day of _____, 2016.

Chapter 23.01 COMPREHENSIVE PLAN

23.01.010. Introduction.

- A. The Deschutes County Comprehensive Plan, adopted by the Board in Ordinance 2011-003 and found on the Deschutes County Community Development Department website, is incorporated by reference herein.
- B. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2011-027, are incorporated by reference herein.
- C. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2012-005, are incorporated by reference herein.
- D. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2012-012, are incorporated by reference herein.
- E. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2012-016, are incorporated by reference herein.
- F. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2013-002, are incorporated by reference herein.
- G. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2013-009, are incorporated by reference herein.
- H. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2013-012, are incorporated by reference herein.
- I. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2013-007, are incorporated by reference herein.
- J. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2014-005, are incorporated by reference herein.
- K. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2014-006, are incorporated by reference herein.
- L. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2014-012, are incorporated by reference herein.
- M. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2014-021, are incorporated by reference herein.
- N. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2014-027, are incorporated by reference herein.
- O. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2016-005, are incorporated by reference herein.

(Ord. 2016-005 § 1, 2016; Ord. 2014-027 § 1, 2014; Ord. 2014-021 §1, 2014; Ord. 2014-012 §1, 2014; Ord. 2014-006 §2, 2013; Ord. 2014-005 §2; Ord. 2013-012 §2, 2013; Ord. 2013-009 §2, 2013; Ord. 2013-007 §1, 2013; Ord. 2013-002 §1, 2013; Ord. 2013-001 §1, 2013; Ord. 2012-016 §1, 2012; Ord. 2012-013 §1, 2012; Ord. 2012-005 §1, 2012; Ord. 2011-027 §1 through 12, 2011; Ord. 2011-017 repealed; Ord.2011-003 §3, 2011)

To view the Comprehensive Plan, type <http://www.deschutes.org/complan> into your web browser.
[Laserfiche can't do links.]

Section 2.2 Agricultural Lands

Background

Protecting farm lands and the economic benefits of agriculture is one of the primary goals of the Oregon land use system. Statewide Planning Goal 3 establishes farmland identification and protection standards which must be met by local governments. The Goal requires farm lands to be preserved for farm uses, consistent with existing and future needs for agricultural products, forest and open space. Additional criteria for Goal 3 can be found in Oregon Revised Statute (ORS) 215 and in Oregon Administrative Rule (OAR) 660-33. These criteria spell out in considerable detail which lands shall be designated as farm lands and what uses are permissible.

The main concept is that local governments must inventory and protect farm lands through the use of Exclusive Farm Use (EFU) zones that provide primarily for the continuation of commercial-scale agriculture, including farm operations, marketing outlets and the agricultural support system. To provide a science based method of identifying farm lands, Statewide Goal 3 defines agricultural lands primarily through soil classifications. However, other lands can, and often must, be classified for farming based on the criterion 'suitable for farm use' or being near agricultural lands.

Excerpt from Statewide Planning Goal 3

"Agricultural Land ... in eastern Oregon is land of predominantly Class I, II, III, IV, V and VI soils as identified in the Soil Capability Classification System of the United States Soil Conservation Service, and other lands which are suitable for farm use 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, or 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 land in any event.

More detailed soil data to define agricultural land may be used by local governments if such data permits achievement of this goal.

Agricultural land does not include land within acknowledged urban growth boundaries or land within acknowledged exceptions to Goals 3 or 4."

Besides Statewide Goal 3, farming is protected in Oregon by "right-to-farm" law (ORS 30.930-047). This law protects commercial farms from nuisance suits brought about by generally accepted farming practices, such as noise, dust or odors.

County Agricultural Designations

Farm land designations in Deschutes County have been and continue to be highly controversial. In designating farm lands in the late 1970s, the County was hampered by the limited availability of soil maps. Where soil maps existed those were consulted, but the County also included irrigated lands and lands receiving farm deferrals for the previous five years. Ultimately, seven separate agricultural areas were identified, each specifying minimum lot sizes. In general, non-urban, non-forest, undeveloped and uncommitted lands were determined to be farm lands.

Despite designating many agricultural areas by default, the 1979 Resource Element noted that based on agricultural determinants of soils, water, climate and economics, profitable farming in the County remained difficult. The findings for protecting non-profitable agricultural land noted the aesthetic value of farm land, the costs and hazards of allowing local development and the economic importance of rural open space.

In 1992 a commercial farm study was completed as part of the State required periodic review process. The study concluded that irrigation is the controlling variable for defining farm lands in Deschutes County. Soil classifications improve when water is available. Seven new agricultural subzones were identified based on the factual data provided in the 1992 study and minimum acreages were defined based on the typical number of irrigated acres used by commercial farms in that particular subzone (with the exception of the Horse Ridge subzone).

Like the 1979 Resource Element, the 1992 farm study noted the challenges of local commercial farming. The high elevation (2700-3500 feet), short growing season (88-100 days), low rainfall and distance to major markets hamper profitability. The 1992 study resulted in minimum lot sizes that are smaller than the State requirement of 80 acres for farm land and 160 acres for range land. These minimum lot sizes are unique in Oregon and were acknowledged as in compliance with Goal 3 by the Oregon Land Conservation and Development Commission. In general, County farm designations are effectively protecting farm lands while allowing limited land divisions.

Deschutes County Agricultural Sub-Zones

As noted above, the County maintains a unique set of farm sub-zones based on the average number of irrigated acres for each type of farm land as determined in the 1992 farm study. Irrigated land divisions in each sub-zone must result in parcels that retain the acreages shown in Table 2.2.1.

Table 2.2.1 - Exclusive Farm Use Subzones

<i>Subzone Name</i>	<i>Minimum Acres</i>	<i>Profile</i>
Lower Bridge	130	Irrigated field crops, hay and pasture
Sisters/Cloverdale	63	Irrigated alfalfa, hay and pasture, wooded grazing and some field crops
Terrebonne	35	Irrigated hay and pasture
Tumalo/Redmond/Bend	23	Irrigated pasture and some hay
Alfalfa	36	Irrigated hay and pasture
La Pine	37	Riparian meadows, grazing and meadow hay
Horse Ridge East	320	Rangeland grazing

Source: Deschutes County 1992 Farm Study

Irrigation Districts

As shown in the 1992 farm study, irrigation and irrigation districts are instrumental factors for Deschutes County agriculture. Irrigation districts in Oregon are organized as Special Districts under ORS Chapter 545. The districts are created for the purpose of delivering water to their patrons. As such they are effectively non-profit water user associations. In addition to irrigation, these districts also supply a number of other uses, including municipal, industrial, and

pond maintenance. However, by and large the districts exist for the purposes of delivering irrigation.

Seven districts, which withdraw their water supply from the Deschutes River Basin, have formed an intergovernmental unit called a "board of control" under ORS 190.125. This organizational structure allows the districts to work together as a unit in implementing water conservation projects, providing educational resources, utilizing equipment and for other joint purposes. A key goal for the Deschutes Basin Board of Control is to preserve agricultural uses in those areas where irrigation improves soils to class VI or better.



The six irrigation districts listed below serve residents or have facilities within Deschutes County and are members of the Deschutes Basin Board of Control.

Arnold Irrigation District

The present Arnold Irrigation District was first organized as the Arnold Irrigation Company on December 27, 1904 and became official on January 9, 1905. As of 2010 the district manages approximately 65 miles of canals, ditches and pipes in an area of approximately 18,560 acres.

Central Oregon Irrigation District

The Central Oregon Irrigation District (COID) was established in 1918. The District provides water for approximately 45,000 acres within an 180,000 acre area in Central Oregon. More than 700 miles of canals provide agricultural and industrial water to irrigate Terrebonne, Redmond, Bend, Alfalfa and Powell Butte areas. In addition, COID provides water to the City of Redmond and numerous subdivisions. In Bend, many parks and schools receive water through the COID system. COID is also the managing partner in the operation of the 55,000 acre foot Crane Prairie Reservoir, located on the east side of the Central Cascades.

North Unit Irrigation District

The North Unit Irrigation District (NUID) was organized in 1916. As part of the Reclamation Act of 1902, Congress approved the Deschutes Project and in 1927 began construction of the project under the direction of the U.S. Bureau of Reclamation. The project was completed in 1949 allowing NUID to serve nearly 50,000 acres. Today NUID is the second largest irrigation district in Oregon, serving approximately 59,000 acres in Jefferson County. NUID maintains facilities in Deschutes County, including Wickiup Dam, Bend Headworks and the North Unit Irrigation Canal. NUID has a long-standing relationship with the U.S. Bureau of Reclamation as a result of the Deschutes Project.

Swalley Irrigation District

The Swalley Irrigation District was organized as the Deschutes Reclamation and Irrigation Company (DRIC) in 1899. In 1994 the shareholders of the DRIC voted to incorporate as an irrigation district and took the name of Swalley Irrigation District. The District has 28 miles of canals and laterals providing water to 667 customers.

Three Sisters Irrigation District

The Three Sisters Irrigation District (formerly Squaw Creek Irrigation District) was founded in 1917 from the Squaw Creek Irrigation Company and the Cloverdale Irrigation Company. They were founded in 1891 and 1903 respectively, making Three Sisters Irrigation District one of the oldest such districts in Oregon. The District serves approximately 175 water users over approximately 7,568 acres.

Tumalo Irrigation District

Originally known as the Tumalo Project, Tumalo Irrigation District started in 1904. In 1922 the Project reorganized as an irrigation district under Oregon state laws. The District serves approximately 60 square miles, irrigating approximately 8,093 acres, and has over 80 miles of canals, laterals and ditches serving 635 landowners.

Deschutes County Agriculture 2007 - 2009

The following statistics provide a snapshot of farming in Deschutes County.

Source: County GIS data

- Approximately 36% of the County or more than 700,000 acres are designated as Agriculture on the Comprehensive Plan map. Of that acreage, 69% is public, primarily Federal ownership leaving approximately 224,000 acres privately held.
- 160,078 acres of privately owned farm lands in the County receive special tax assessment for farm use.
- Of the acres receiving farm tax assessments, 44,221 are irrigated.
- In 2008 there were 3,725 agricultural parcels less than five acres.

Source: Oregon State University Extension Oregon Agricultural Information Network, Deschutes County Agricultural Commodity Sales for 2009 (preliminary estimate)

- \$19,792,000 in agricultural sales, a drop from the 2008 preliminary estimate of \$25,991,000. This follows slight upturns in sales between 2006-2008.
- 62% of agriculture sales are in crops and 38% in livestock. The primary crops are hay and alfalfa hay while the primary livestock is cattle. The biggest downturns for 2009 are non-alfalfa hay and cattle.

Source: United States Department of Agriculture, National Agricultural Statistics Service 2007 Census of Agriculture

- There are 1,405 farms in Deschutes County residing on 129,369 acres
- Average farm size 92 acres
- Approximately 24% of farms are under 10 acres and 78% are under 50 acres
- Total net cash farm income is negative
- 59% of farmers list their primary occupation as 'Other' rather than farming

The above data highlights the fact that farming in Deschutes County is generally not commercially profitable. For a majority of farmers, farming is not a sustaining economic activity, but rather a lifestyle choice. Living on a farm and farming as a secondary economic activity acknowledge a shift from commercial farming towards the benefits of a rural lifestyle.



Farm Trends 2010

Whatever the challenges, agriculture is part of Deschutes County's culture and rural lifestyle. During the public input process, various ideas were discussed on how to preserve agricultural lands, open spaces and rural character of the County, while enabling landowners to make a living. The following ideas identify current trends that could be promoted by the County in conjunction with the local extension service and other agencies and organizations. It is important to emphasize that new uses must conform to State regulations.

Alternative energy: Development of small alternative energy projects would promote local energy self-sufficiency, using Central Oregon's sun, wind, thermal, hydropower and biomass resources. Larger agricultural parcels could be used as commercial wind or solar farms to provide renewable energy as well as income to landowners.

Alternative uses: There is interest in allowing non-farm uses on farm lands to take advantage of agrarian lifestyles and Central Oregon's setting. Ideas being discussed include agri-tourism or hosting weddings. Nonetheless, new non-farm uses must be evaluated to ensure they are compatible with ORS and OARs as well as existing land uses and zoning.

Local markets: Products from small farms are often sold to local markets. Additionally local consumption saves on transportation and energy, allowing better tracking of food sources thereby increasing food safety and improving freshness and quality. Buying local is a current trend that could benefit the County's many small farmers. Community Supported Agriculture is one popular method, where farmers obtain paid subscriptions from customers, who then receive fresh produce every week for the season. Farmers markets and farm stands are another aspect of the local food movement.

Conservation easements: Many states are using programs to put permanent conservation easements on farm lands. As an example of a program that is not yet available in Oregon is the Purchase of Agricultural Conservation Easements (PACE). Funded by the federal government and a combination of other sources, PACE purchases development rights from farmers.

Niche markets: Small quantities or specialized products can be raised to meet particular markets, like organic products or peppermint oil.

Value-added products: Processing crops can increase profitability. An example would be making jam or jelly out of locally grown berries.

Farm Councils: Farm councils are being initiated around the country to promote local sustainable food. The Central Oregon Food Policy Council (COFPC) formed in 2010 to lead the effort to a sustainable and just food system. The COFPC is made up of 12-15 volunteers including representatives from agricultural production, public health, government and others interested in the local food system. Identified strategies include supporting access to local healthy food, advocating for public policies that increase sustainable food production and connecting stakeholders in the food systems field.

Big Look

In 2005 a task force was appointed by the Oregon Governor, Speaker of the House and Senate President to review the current land use system. The Oregon Task Force on Land Use Planning was a 10-member group representing various perspectives, charged with conducting a comprehensive review of the Oregon Statewide Planning Program. Called the Big Look Task

Force, this group was asked to make recommendations for any needed changes to land-use policy to the 2009 Legislature.

After three years of extensive input from experts and citizens throughout the State, the task force developed its findings and recommendations. One of the primary conclusions reached was that Oregon needs a more flexible land use system that responds to regional variations.

Two of the primary recommendations from the Task Force addressed agricultural and forest lands, recommending:

- Counties be allowed to develop regional criteria for designating farm and forest lands, if they also protect important natural areas and assure that development is sustainable.
- Counties be allowed to propose specialized rules to decide what lands are designated as farm or forest land.

2009 Legislature / House Bill 2229

House Bill (HB) 2229 began as the vehicle for legislative recommendations for the Big Look Task Force. However, by the time the Legislature adjourned, very little of the Task Force's recommendations remained. HB 2229 does authorize counties to reevaluate resource lands and amend their comprehensive plan designations for such lands consistent with definitions of "agricultural land" and "forest land." For example, the County could add irrigated lands to the regional definition of farm lands to acknowledge the results of the 1992 farm study. Anything that does not qualify as farmland or forestland may be rezoned for non-resource use, subject to conditions that development in the non-resource zones be rural in character, not significantly conflict with surrounding farm and forest practices, and not have adverse effects on such things as water quality, wildlife habitat, and fire safety. County rezoning activities must be pursuant to a work plan approved by the Oregon Department of Land Conservation and Development. This effectively means the work will be done similar to periodic review with the Land Conservation and Development Commission expressly given exclusive jurisdiction to review a county decision.

Future of Deschutes County Farm Designations and Uses

Statewide Planning Goal 3 requires counties to preserve and maintain agricultural lands. However, in discussions on the future of agriculture in Deschutes County, there are still differences of opinion over which lands should be designated farm lands and what uses should be allowed. Farm lands contribute to the County in a number of ways. Agriculture is part of the ongoing local economy. Wide-open farm lands offer a secondary benefit by providing scenic open spaces that help attract tourist dollars. Farm lands also contribute to the rural character that is often mentioned as important to residents. Finally, it should be noted that agricultural lands are preserved through State policy and land use law because it is difficult to predict what agricultural opportunities might arise, and once fragmented the opportunity to farm may be lost.

On the other hand, there seems to be widespread agreement that much of the local farm land is marginal, particularly without irrigation. The climate, especially the short growing season, makes commercial farming challenging. Statewide Planning Goal 3 does not really account for the conditions in Deschutes County, resulting in agricultural zoning being applied to land with no history of farming and limited potential for profitable farming. The small size of agricultural parcels adds to the challenges. It has been argued that preserving farm lands benefits the wider

public at the expense of agricultural landowners. There is considerable pressure to convert agricultural land to residential or other uses.

The debate is complicated because there are impacts to the farming community from converting agricultural lands to other uses. It can be challenging for a farmer who has residential neighbors because farming activities can have noise, odor or dust impacts. The right-to-farm law discussed earlier offers some protection to farmers, but as residential uses grow there is pressure to convert, leading to a greater loss of agricultural lands.

The goals and policies in this Section are intended to provide the basis for evaluating the future of agriculture in the County over the next twenty years. They are intended to provide, within State guidelines, flexibility to the farming community. County farm lands will be preserved by ensuring a variety of alternative paths to profitability.

Section 2.2 Agricultural Lands Policies

Goals and Policies

Goal I Preserve and maintain agricultural lands and the agricultural industry.

Policy 2.2.1 Retain agricultural lands through Exclusive Farm Use zoning.

Policy 2.2.2 Exclusive Farm Use sub-zones shall remain as described in the 1992 Farm Study and shown in the table below, unless adequate legal findings for amending the sub-zones are adopted or an individual parcel is rezoned as allowed by Policy 2.2.3.

Exclusive Farm Use Subzones

Subzone Name	Minimum Acres	Profile
Lower Bridge	130	Irrigated field crops, hay and pasture
Sisters/Cloverdale	63	Irrigated alfalfa, hay and pasture, wooded grazing and some field crops
Terrebonne	35	Irrigated hay and pasture
Tumalo/Redmond/Bend	23	Irrigated pasture and some hay
Alfalfa	36	Irrigated hay and pasture
La Pine	37	Riparian meadows, grazing and meadow hay
Horse Ridge East	320	Rangeland grazing

Policy 2.2.3 Allow comprehensive plan and zoning map amendments, [including for those that qualify as non-resource land](#), for individual EFU parcels as allowed by State Statute, Oregon Administrative Rules and this Comprehensive Plan.

Policy 2.2.4 Develop comprehensive policy criteria and code to provide clarity on when and how EFU parcels can be converted to other designations.

Policy 2.2.5 Uses allowed in Exclusive Farm Use zones shall comply with State Statute and Oregon Administrative Rule.

Policy 2.2.6 Regularly review farm regulations to ensure compliance with changes to State Statute, Oregon Administrative Rules and case law.

Policy 2.2.7 Encourage water projects that benefit agriculture.

Policy 2.2.8 Support a variety of methods to preserve agricultural lands, such as:

- Support the use of grant funds and other resources to assist local farmers;
- Work cooperatively with irrigation districts, public agencies and representatives and land owners;
- Encourage conservation easements, or purchase or transfer of development rights programs;
- Control noxious weeds;
- Encourage a food council or 'buy local' program.

Goal 2 Promote a diverse, sustainable, revenue-generating agricultural sector.

- Policy 2.2.9 Encourage farming by promoting the raising and selling of crops, livestock and/or poultry.
- Policy 2.2.10 Support stakeholders in studying and promoting economically viable agricultural opportunities and practices.
- Policy 2.2.11 Encourage small farming enterprises, including, but not limited to, niche markets, organic farming, farm stands or value added products.
- Policy 2.2.12 Review County Code and revise as needed to permit alternative and supplemental farm activities that are compatible with farming, such as agri-tourism or commercial renewable energy projects. When a preferred alternative or supplemental use identified through a public process is not permitted by State regulations work with the State to review and revise their regulations.

Goal 3 Ensure Exclusive Farm Use policies, classifications and codes are consistent with local and emerging agricultural conditions and markets.

- Policy 2.2.13 Identify and retain accurately designated agricultural lands.
- Policy 2.2.14 Explore new methods of identifying and classifying agricultural lands.
a. Apply for grants to review and, if needed, update farmland designations.
b. Study County agricultural designations considering elements such as water availability, farm viability and economics, climatic conditions, land use patterns, accepted farm practices, and impacts on public services.
c. Lobby for changes to State Statute regarding agricultural definitions specific to Deschutes County that would allow some reclassification of agricultural lands.
- Policy 2.2.15 Address land use challenges in the Horse Ridge subzone, specifically:
a. The large number of platted lots not meeting the minimum acreage;
b. The need for non-farm dwellings and location requirements for farm dwellings;
c. Concerns over the impact on private property from off-road vehicles, facilities, and trails located on adjacent public lands.
- Policy 2.2.16 Work with the State to review and revise accessory farm dwelling requirements to address the needs of local farmers.
- Policy 2.2.17 Encourage coordination between fish/wildlife management organizations and agricultural interests.

Section 3.3 Rural Housing

Background

Housing is a basic need that provides not just shelter, but connection to a wider community. A variety of housing types and price points ensures options for people at different life stages and needs. Oregon's statewide planning program directs cities to retain an adequate amount of land to accommodate residential growth. Generally counties are directed to protect farms, forests and other rural resources like wildlife while limiting new rural development. This section of the Plan looks specifically at housing on existing and potential new parcels and how the County can support a diverse and affordable housing supply.

Housing inside urban growth boundaries is addressed in Statewide Planning Goal 10, Housing and OAR 660-008. Statewide Goal 2, Land Use and Goal 14, Urbanization both have sections that address rural housing, supplemented by OAR 660-004 and 660-014. These rules refine how new rural residential lots can be created. The Deschutes County housing policies provide the framework for residential development. The policies further delineate the role of the County in facilitating the availability of an affordable and quality housing stock within both urban and rural communities.

Rural Residential Exception Areas

In Deschutes County most rural lands are designated for farms, forests or other resources and protected as described in the Resource Management chapter of this Plan. The majority of the land not recognized as resource lands or Unincorporated Community is designated Rural Residential Exception Area. The County had to follow a process under Statewide Goal 2 to explain why these lands did not warrant farm or forest zoning. The major determinant was that many of these lands were platted for residential use before Statewide Planning was adopted.

In 1979 the County assessed that there were over 17,000 undeveloped Rural Residential Exception Area parcels, enough to meet anticipated demand for new rural housing. As of 2010 any new Rural Residential Exception Areas need to be justified through initiating a non-resource plan amendment and zone change by demonstrating the property does not meet the definition of agricultural or forest land, or taking exceptions to farm, forest, public facilities and services and urbanization regulations, and follow guidelines set out in the OAR.

Rural Residential Exception Areas 2009

Source: County GIS data

- 71,000 acres of Rural Residential Exception Area (including right-of-way)
- 64,000 acres of Rural Residential Exception Area (excluding right-of-way)
- 24,750 Rural Residential Exception Area lots
- 18,100 Rural Residential Exception Area lots that are developed

Future of Rural Housing in Deschutes County

In looking at rural housing growth, it is important to find the balance between protecting rural values and protecting property rights. In community meetings some people expressed concern over the level of new development that has been allowed while others highlighted the

restrictions on their property that do not permit it. Too much development can lead to the destruction of the qualities that bring people to Deschutes County, while too many restrictions keep out people who would choose a rural lifestyle.

Housing Legality, Public Health and Safety

One issue meriting attention is the need to be sure housing is legally developed. A house built without proper land use permits may not meet required setbacks or other regulations, causing legal disputes between neighbors. A house built without proper building permits could be constructed shoddily, causing safety issues. Land use and building permit requirements therefore are intended to safeguard the rights of property owners and neighbors. Historically, there have been problems in the County with substandard housing. Over the years substandard housing has become less of an issue. However, there are still areas where development has occurred without land use or building permits, leading to numerous code complaints. An area of south County, known as Section 36, has been identified as one place that the County could work closely with local residents to address health and safety issues. Another health and safety issue that came up in public meetings is the need to regulate large animals on residential lots. The idea is to control odors and flies that can accumulate and impact neighbors. Research on how large animals are regulated in other counties would provide some direction on this issue.

Housing Diversity

A challenge for the County given rural housing restrictions is how to support a diversity of housing to meet the needs of the community, while retaining the rural character important to residents. Deschutes County requires a 10 acre minimum lot size for new rural residential lots in order to protect the rural quality of life and its resources. Yet, the 10 acre minimum raises the cost of rural housing and may limit the rural lifestyle to households at the upper end of the income spectrum. Additionally much of the new rural housing being built is located in high-end destination resorts. This slant towards high priced rural housing is mitigated somewhat by the thousands of small lots that were platted before land use laws were enacted. These smaller lots provide an opportunity for less expensive housing.

One way the County can address the need for housing options is to promote the idea of housing alternatives such as co-housing or accessory dwelling units. Currently these alternatives are not permitted by State regulations that protect rural lands. Co-housing involves creating a community through clustered housing. Accessory dwelling units, sometimes known as granny flats, are small units accessory to the main housing. Regulated correctly, housing alternatives could provide flexibility in rural housing. The first step in permitting housing variety is to initiate a discussion with the State on how and where these types of housing would be appropriate.

Another way to support a diversity of housing is to work closely with agencies and jurisdictions that promote it. The public corporation responsible for promoting affordable housing initiatives in Deschutes, Jefferson and Crook Counties is the Central Oregon Regional Housing Authority, also known as Housing Works. Organized under the Oregon Housing Authority Law (ORS 456), this agency provides affordable housing services to low income households. They also engage in public/private partnerships to provide and manage affordable housing. Cities are also involved in providing a diversity of housing. Promoting a variety of housing choices and mix of price points can be achieved through cooperating with Housing Works and local cities, the donation of County property, or other means.

Section 3.3 Rural Housing Policies

Goals and Policies

Goal 1 Maintain the rural character and safety of housing in unincorporated Deschutes County.

- Policy 3.3.1 The minimum parcel size for new rural residential parcels shall be 10 acres.
- Policy 3.3.2 Incorporate annual farm and forest housing reports into a wider system for tracking the cumulative impacts of rural housing development.
- Policy 3.3.3 Address housing health and safety issues raised by the public, such as:
- a. The number of large animals that should be permitted on rural residential parcels; or
 - b. The properties south of La Pine, in Township 22S, Range 10E, Section 36, many of which are not in compliance with planning and building codes.
- Policy 3.3.4 Encourage new subdivisions to incorporate alternative development patterns, such as cluster development, that mitigate community and environmental impacts.
- Policy 3.3.5 Maintain the rural character of the County while ensuring a diversity of housing opportunities, including initiating discussions to amend State Statute and/or Oregon Administrative Rules to permit accessory dwelling units in Exclusive Farm Use, Forest and Rural Residential zones.

Goal 2 Support agencies and non-profits that provide affordable housing.

- Policy 3.3.6 Support Central Oregon Regional Housing Authority and other stakeholders to meet the housing needs of all Deschutes County residents.
- a. Assist as needed in coordinating and implementing housing assistance programs.
 - b. Support efforts to provide affordable and workforce housing in urban growth boundaries and unincorporated communities.
- Policy 3.3.7 Utilize block grants and other funding to assist in providing and maintaining low and moderate income housing.

Section 5.12 Legislative History

Background

This section contains the legislative history of this Comprehensive Plan.

Table 5.11.1 Comprehensive Plan Ordinance History

Ordinance	Date Adopted/ Effective	Chapter/Section	Amendment
2011-003	8-10-11/11-9-11	All, except Transportation, Tumalo and Terrebonne Community Plans, Deschutes Junction, Destination Resorts and ordinances adopted in 2011	Comprehensive Plan update
2011-027	10-31-11/11-9-11	2.5, 2.6, 3.4, 3.10, 3.5, 4.6, 5.3, 5.8, 5.11, 23.40A, 23.40B, 23.40.065, 23.01.010	Housekeeping amendments to ensure a smooth transition to the updated Plan
2012-005	8-20-12/11-19-12	23.60, 23.64 (repealed), 3.7 (revised), Appendix C (added)	Updated Transportation System Plan
2012-012	8-20-12/8-20-12	4.1, 4.2	La Pine Urban Growth Boundary
2012-016	12-3-12/3-4-13	3.9	Housekeeping amendments to Destination Resort Chapter
2013-002	1-7-13/1-7-13	4.2	Central Oregon Regional Large-lot Employment Land Need Analysis
2013-009	2-6-13/5-8-13	1.3	Comprehensive Plan Map Amendment, changing designation of certain property from Agriculture to Rural Residential Exception Area
2013-012	5-8-13/8-6-13	23.01.010	Comprehensive Plan Map Amendment, including certain property within City of Bend Urban Growth Boundary
2013-007	5-29-13/8-27-13	3.10, 3.11	Newberry Country: A Plan for Southern Deschutes County

2013-016	10-21-13/10-21-13	23.01.010	Comprehensive Plan Map Amendment, including certain property within City of Sisters Urban Growth Boundary
2014-005	2-26-14/2-26-14	23.01.010	Comprehensive Plan Map Amendment, including certain property within City of Bend Urban Growth Boundary
2014-012	4-2-14/7-1-14	3.10, 3.11	Housekeeping amendments to Title 23.
2014-021	8-27-14/11-25-14	23.01.010, 5.10	Comprehensive Plan Map Amendment, changing designation of certain property from Sunriver Urban Unincorporated Community Forest to Sunriver Urban Unincorporated Community Utility
<u>2016-005</u>	<u>TBD</u>	<u>23.01.010, 2.2, 3.3</u>	<u>Comprehensive Plan Amendment recognizing non-resource lands process allowed under State law to change EFU zoning</u>

I. APPLICABLE CRITERIA:

Title 22, Deschutes County Development Procedures Ordinance

II. BASIC FINDINGS:

- A. PROPOSAL:** 1) Text amendment to Comprehensive Plan, Chapter 2, Section 2.2 and Chapter 3, Section 3.3, recognizing non-resource lands process allowed under State law to change Exclusive Farm Use zoning; 2) Text amendment to zoning code providing a definition of agricultural-exempt and equine buildings; and, 3) Reducing setbacks in Forest Use (F-2 zone), for Haner Park Subdivision and an adjoining three acre tax lot.

III. CONCLUSIONARY FINDINGS:

A. CHAPTER 22.12, LEGISLATIVE PROCEDURES

1. Section 22.12.010.

Hearing Required

FINDING: The applicant meets this criterion because a public hearing will be held before the Deschutes County Board of County Commissioners (Board) on October 24, 2016.

2. Section 22.12.020, Notice

Notice

A. Published Notice

- 1. Notice of a legislative change shall be published in a newspaper of general circulation in the county at least 10 days prior to each public hearing.***
- 2. The notice shall state the time and place of the hearing and contain a statement describing the general subject matter of the ordinance under consideration.***

FINDING: Notice is published in the Bend Bulletin newspaper on October 14, 2016 and contained the information described in DCC 22.12.020(A)(2).

B. Posted Notice. Notice shall be posted at the discretion of the Planning Director and where necessary to comply with ORS 203.045.

FINDING: This criterion will be met with notice posted in the bulletin board in the lobby of the Deschutes County Community Development Department, 117 NW Lafayette, Bend.

C. Individual notice. Individual notice to property owners, as defined in DCC 22.08.010(A), shall be provided at the discretion of the Planning Director, except as required by ORS 215.503.

FINDING: Given the proposed amendments in question do not apply to any specific property, no individual notices were sent or required.

D. Media notice. Copies of the notice of hearing shall be transmitted to other newspapers published in Deschutes County.

FINDING: Notice will be provided to the County public information official for wider media distribution. This criterion has been met.

3. Section 22.12.030 Initiation of Legislative Changes.

A legislative change may be initiated by application of individuals upon payment of required fees as well as by the Board of County Commissioners.

FINDING: The application was initiated by the Deschutes County Planning Division, which received a fee waiver. This criterion has been met.

4. Section 22.12.040. Hearings Body

A. The following shall serve as hearings or review body for legislative changes in this order:

- 1. The Planning Commission.***
- 2. The Board of County Commissioners.***

FINDING: This criterion will be met.

B. Any legislative change initiated by the Board of County Commissioners shall be reviewed by the Planning Commission prior to action being taken by the Board of Commissioners.

FINDING: The Planning Commission held a public hearing on March 10, 2016, and reviewed the proposed changes. That same day, the Planning Commission voted in support of the proposed definitions of agricultural/equine exempt buildings and setback standard for Haner Park. Deliberations were continued to March 24 and the Planning Commission voted to not support the proposed comprehensive plan amendments relating to the non-resource lands process allowed under State law to change EFU zoning.

5. Section 22.12.050 Final Decision

All legislative changes shall be adopted by ordinance

FINDING: If approved, the proposed legislative changes included in file nos. 247-16-000021-TA/247-16-000022-PA will be implemented by ordinances upon approval and adoption by the Board; this criterion will be met.

IV. PROPOSED TEXT AMENDMENTS:

The proposed text amendments are detailed in the Exhibits A-D attached hereto with additional text identified by underline and deleted text by ~~strikethrough~~. Below are explanations of the proposed changes.

A. Text Amendment To Comprehensive Plan, Chapter 2, Section 2.2 And Chapter 3, Section 3.3, Recognizing Non-Resource Lands Process Allowed Under State Law To Change Exclusive Farm Use Zoning.

In designating farm lands in the late 1970s, the County was hampered by the limited availability of soil maps. Where soil maps from the NRCS existed those were consulted, but the County also included irrigated lands and lands receiving farm deferrals for the previous five years and site visits. In general, non-urban, non-forest, undeveloped and uncommitted lands were determined to be farm lands. This designation by default resulted in some areas being designation agricultural based on best available information.

In previous decisions on proposed plan amendments, county hearings officers and the Board have determined that land use planning, implemented through Deschutes County Comprehensive Plan policies and zoning, enables rural property owners with EFU zoning to demonstrate in a quasi-judicial process, with evidence supporting findings that a subject property does not constitute "agricultural lands" as defined in Goal 3 and Oregon Administrative Rule (OAR) 660-033-0020(1). Further, if the property does not meet the definition of agricultural lands then an exception to Goal 3 is not required which is the typical path for redesignation. The Land Use Board of Appeals affirmed this approach in *Wetherell v. Douglas County*, __Or LUBA__, (LUBA No. 2006-122, October 9, 2006).

Oregon Administrative Rules (OAR) Division 4 interprets the requirements of Goal 2 (Land Use Planning) and ORS 197.732 regarding exceptions. The definition for nonresource lands is described in OAR 660-004-0005(3):

- "Land not subject to any of the statewide goals listed in OAR 660-004-0010(1)(a) through (g) except subsections (c) and (d). Nothing in these definitions is meant to imply that other goals, particularly Goal 5, do not apply to nonresource land." ¹

Policy 2.2.3 directs Deschutes County to:

Allow comprehensive plan and zoning map amendment for individual EFU parcels as allowed by State Statute, Oregon Administrative Rules and this Comprehensive plan.

¹ OAR 660-004-0010:

(1) The exceptions process is not applicable to Statewide Goal 1 "Citizen Involvement" and Goal 2 "Land Use Planning." The exceptions process is generally applicable to all or part of those statewide goals that prescribe or restrict certain uses of resource land, restrict urban uses on rural land, or limit the provision of certain public facilities and services. These statewide goals include but are not limited to:

(a) Goal 3 "Agricultural Lands"; however, an exception to Goal 3 "Agricultural Lands" is not required for any of the farm or nonfarm uses allowed in an exclusive farm use (EFU) zone under ORS chapter 215 and OAR chapter 660, division 33, "Agricultural Lands", except as provided under OAR 660-004-0022 regarding a use authorized by a statewide planning goal that cannot comply with the approval standards for that type of use;

...

http://arcweb.sos.state.or.us/pages/rules/oars_600/oar_660/660_004.html

A Hearings Officer in a decision in NNP (PA-13-1, ZC-13-1) held any failure on the county's part to adopt comprehensive plan policies and code provisions describing the circumstances under which EFU-zone land may be converted to a non-resource designation and zoning codes does not preclude the county from considering quasi-judicial plan amendment and zone change applications to remove EFU zoning. This plan amendment further clarifies that the County intends to allow the non-resource lands process allowed under State law to change EFU zoning.

The proposed amendment acknowledges this existing path to change land currently designated resource to a non-resource designation as allowed by state law.

On March 24, the Planning Commission voted to not recommend approval the proposed amendments.

B. Text Amendment To Zoning Code Providing A Definition Of Agricultural-Exempt and Equine Buildings.

State law (ORS 455.315)² allows exemption from the requirement for a building permit and inspections under Oregon State Structural Specialty Code (electrical, plumbing, and mechanical permits are always required). Since 2001, the authority to approve an agricultural exempt building resides with the Building Official. A formal application requires the County Planning Division to provide input on whether the property is a farm. Deschutes County's zoning ordinances do not define "farm" or provide a basis for making a determination on whether a property constitutes a farm.

Until the late 1990s, the Oregon Uniform Building Code (UBC) defined farm as "farm use" – the same as in ORS 215.203 (the EFU Zone). However, when the state changed to the International Building Code (IBC), "farm" was not defined. "Farm use" is defined in Deschutes County Code and ORS 215.203 as:

"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 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. "Farm use" includes the preparation, storage and disposal by marketing or otherwise of the products or by-products raised on such land for human or animal use. "Farm Use" also includes the current employment of the land for the primary purpose of obtaining a profit in money by stabling or training equines, including but not limited to, providing riding lessons, training clinics and schooling shows. "Farm use" also includes the propagation, cultivation, maintenance and harvesting of aquatic species and bird and animal species to the extent allowed by the rules adopted by the State Fish and Wildlife Commission. "Farm use" includes the on-site construction and maintenance of equipment and facilities used for the activities described above. "Farm 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 as defined in ORS 215.203(3). Current

² ORS 455: https://www.oregonlegislature.gov/bills_laws/ors/ors455.html

employment of the land for farm use also includes those uses listed under ORS 215.203(2)(b).

CDD's internal policy is a property must be receiving farm deferral and zoned EFU to qualify. Below are approaches used by other central, eastern and western Oregon counties. Most provide clear and objective standards to determine what constitutes a farm for the purposes of making decisions on agricultural exempt buildings.

- Crook County

Agricultural Exempt Building: Property must qualify for "farm use" (land must be currently employed for the primary purpose of obtaining profit in money). The property must also either be at least 80 acres in size or currently employed in a farm use and that such use has produced at least \$40,000 in gross annual income in at least 2 of the previous 5 years.

Equine Exempt Building: Same as above but the structure must only be used for stabling or training equines including but not limited to providing riding lessons, training clinics and schooling shows; storage of hay; and property owners must own at least one equine or have the applicable land use approval for an equine facility (such as riding lessons, training, schooling, boarding) in the zone.

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Staff is proposing a definition for agricultural and equine exempt building that applies to property receiving farm deferral, regardless of the underlying zone. According to the Oregon Department of Revenue, if land is in an EFU zone and is used primarily to make a profit by farming, it qualifies for special farm-use assessment. If land is not in an EFU zone but is used as farmland, it may receive the same assessment given to all qualifying EFU farmland.

This text amendment is consistent with Agricultural Lands, Policy 2.28, which states:

Support a variety of methods to preserve agricultural lands, such as:

- a. Support the use of grant funds and other resources to assist local farmers;*
- b. Work cooperatively with irrigation districts, public agencies and representatives and land owners;*
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- e. Encourage a food council or 'buy local' program.*

Allowing property owners with farm deferral status to receive agricultural exempt buildings helps preserve agricultural lands and promote farm uses by preserving time and expense that would otherwise go towards obtaining a building permit.

On March 10 the Planning Commission voted to recommend approval of the proposed amendment with the staff recommended additional text that specifies the agricultural building or equine facility is located on the property (lot or parcel) receiving special assessment for farm use as implemented by the County Assessor's Office.

In addition, internal discussions between Planning and Building Division since the Planning Commission deliberations have resulted in a recommendation to add a citation of the applicable state statute (ORS 455.315) to the proposed definition. This provides clarity through reference to the applicable statewide standards for agricultural buildings and equine facilities but does not change the substance of the definition.

With both the recommendations of the Planning Commission and the additional reference offered by staff, the proposed definition for consideration reads:

"Agricultural building or equine facility" means buildings and structures that are exempt from the State of Oregon Structural Specialty Code as agricultural buildings and equine facilities as described in ORS 455.315. A structural building permit is not required for agricultural buildings or equine facilities located on the same lot or parcel receiving special assessment for farm use."

C. Reducing Setbacks In Forest Use (F-2 Zone), For Haner Park Subdivision And An Adjoining Three Acre Tax Lot.

Haner park subdivision and the remnant parcel are located in the southwestern portion of Deschutes County. These properties were platted prior to State enabling land use legislation. This island of F-2 zoned property is surrounded by land zoned Forest Use (F-1) and owned by the federal government as part of the Deschutes

National Forest. Deschutes County is proposing text amendments reducing the setbacks in Haner Park subdivision and an adjoining three-acre tax lot to the standard 25 feet setback instead of the currently required 100 foot setback. The lot sizes in the Haner Park are of a relative small size requiring a variance to the 100 foot setback to develop any structures on the vast majority lots. No other changes to the F-2 zone are proposed.

This text amendment is consistent with Forest Lands, Section 2.3 and its goals and policies. The emphasis of this section is on forest management and conservation. Policy 2.3.5 is the only policy remotely related to the text amendment:

Uses allowed in Forest zones shall comply with State Statute and Oregon Administrative Rule.

Any proposed use must still comply with the F-2 zone development standards, which are consistent with State Statute and administrative rules.

On March 10th, the Planning Commission voted to recommend approval of the proposed amendment.

REVIEWED

LEGAL COUNSEL

For Recording Stamp Only

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON

An Ordinance Amending Deschutes County Code
Title 18 to Provide a Definition of Agricultural
Exempt Buildings and Reducing Setbacks in the
Forest Use 2 ("F2") Zone for the Haner Park
Subdivision.

*
*
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*

ORDINANCE NO. 2016-006

WHEREAS, the Deschutes County Community Development Department (CDD) initiated amendments (Planning Division File No. 247-16-000021-TA) to the Deschutes County Code (DCC) Title 18, Chapter 18.04, Definitions; and Chapter 18.40, Forest Use Zone (F-2) to provide a definition of agricultural exempt buildings and reduce setbacks in the F-2 Zone for Haner Park Subdivision; and

WHEREAS, the Deschutes County Planning Commission reviewed the proposed changes on March 10, 2016 and forwarded to the Deschutes County Board of County Commissioners ("Board"), a recommendation of approval; and

WHEREAS, the Board considered this matter after a duly noticed public hearing on October 24, 2016, and concluded that the public will benefit from the proposed changes to Deschutes County Code ("DCC") Title 18; now, therefore,

THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON, ORDAINS
as follows:

Section 1. AMENDMENT. DCC 18.04.030, Definitions, is amended to read as described in Exhibit "A," attached hereto and by this reference incorporated herein, with new language underlined and language to be deleted in ~~striketrough~~.

Section 2. AMENDMENT. DCC 18.40.100, Yards and Setbacks, is amended to read as described in Exhibit "B," attached hereto and by this referenced incorporated herein, with new language underlined and language to be deleted in ~~striketrough~~.

///

Section 3. FINDINGS. The Board adopts as its findings Exhibit "C", attached and incorporated by reference herein.

Dated this _____ of _____, 2016

BOARD OF COUNTY COMMISSIONERS
OF DESCHUTES COUNTY, OREGON

ALAN UNGER, Chair

TAMMY BANEY, Vice Chair

ATTEST:

Recording Secretary

ANTHONY DEBONE, Commissioner

Date of 1st Reading: _____ day of _____, 2016.

Date of 2nd Reading: _____ day of _____, 2016.

Commissioner	Record of Adoption Vote:			
	Yes	No	Abstained	Excused
Anthony DeBone	___	___	___	___
Alan Unger	___	___	___	___
Tammy Baney	___	___	___	___

Effective date: _____ day of _____, 2016.

18.40.100. Yards and Setbacks.

- A. The front yard setback shall be 40 feet from a property line fronting on a local street, 60 feet from a property line fronting on a collector and 100 feet from a property line fronting on an arterial.
- B. Each side yard setback shall be a minimum of 25 feet except:
 - 1. All parcels or lots with a side yard adjacent to zoned forest land shall have a minimum side yard of 100 feet; and
 - 2. Tracts 1-58 -located in Haner Park, located in Township 22, Range 09, Section 09BB and Section 04CC, and Tax Lot 2209000000600 shall have a minimum side yard of 25 feet as long as the side yard abuts the Forest Use 2 zone.
- C. Rear yards shall be a minimum of 25 feet except:
 - 1. All parcels or lots with rear yards adjacent to zoned forest land shall have a minimum rear yard of 100 feet; and
 - 2. Tracts 1-58 located in Haner Park, located in Township 22, Range 09, Section 09BB and Section 04CC, and Tax Lot 2209000000600 shall have a minimum rear yard of 25 feet as long as the rear yard abuts the Forest Use 2 zone.
- D. The setback from the north lot line shall meet the solar setback requirements in DCC 18.116.180.
- E. In addition to the setbacks set forth herein, any greater setbacks required by applicable building or structural codes adopted by the State of Oregon and/or the County under DCC 15.04 shall be met.
(Ord. 2016-006 §2, 2016; Ord. 95-075 §1, 1995; Ord. 94-008 §19, 1994; Ord. 92-025 §3, 1992; Ord. 91-020 §1, 1991; Ord. 83-037 §11, 1983)

“****” Denotes portions of this Section not amended by Ordinance 2016-006.

Section 18.04.030. Definitions.

"Agricultural building or equine facility" means buildings and structures that are exempt from the State of Oregon Structural Specialty Code as agricultural buildings and equine facilities. A structural building permit is not required for agricultural buildings or equine facilities receiving special assessment for farm use.

(Ord. 2016-006 §1, 2016; Ord. 2015-004 §1, 2015; Ord. 2014-009 §1, 2014; Ord. 2013-008 §1, 2013; Ord. 2012-007 §1, 2012; Ord. 2012-004 §1, 2012; Ord. 2011-009 §1, 2011; Ord. 2010-022 §1, 2010; Ord. 2010-018 §3, 2010; Ord. 2008-007 §1, 2008; Ord. 2008-015 §1, 2008; Ord. 2007-005 §1, 2007; Ord. 2007-020 §1, 2007; Ord. 2007-019 §1, 2007; Ord. 2006-008 §1, 2006; Ord. 2005-041 §1, 2005; Ord. 2004-024 §1, 2004; Ord. 2004-001 §1, 2004; Ord. 2003-028 §1, 2003; Ord. 2001-048 §1, 2001; Ord. 2001-044 §2, 2001; Ord. 2001-037 §1, 2001; Ord. 2001-033 §2, 2001; Ord. 97-078 §5, 1997; Ord. 97-017 §1, 1997; Ord. 97-003 §1, 1997; Ord. 96-082 §1, 1996; Ord. 96-003 §2, 1996; Ord. 95-077 §2, 1995; Ord. 95-075 §1, 1975; Ord. 95-007 §1, 1995; Ord. 95-001 §1, 1995; Ord. 94-053 §1, 1994; Ord. 94-041 §§2 and 3, 1994; Ord. 94-038 §3, 1994; Ord. 94-008 §§1, 2, 3, 4, 5, 6, 7 and 8, 1994; Ord. 94-001 §§1, 2, and 3, 1994; Ord. 93-043 §§1, 1A and 1B, 1993; Ord. 93-038 §1, 1993; Ord. 93-005 §§1 and 2, 1993; Ord. 93-002 §§1, 2 and 3, 1993; Ord. 92-066 §1, 1992; Ord. 92-065 §§1 and 2, 1992; Ord. 92-034 §1, 1992; Ord. 92-025 §1, 1992; Ord. 92-004 §§1 and 2, 1992; Ord. 91-038 §§3 and 4, 1991; Ord. 91-020 §1, 1991; Ord. 91-005 §1, 1991; Ord. 91-002 §11, 1991; Ord. 90-014 §2, 1990; Ord. 89-009 §2, 1989; Ord. 89-004 §1, 1989; Ord. 88-050 §3, 1988; Ord. 88-030 §3, 1988; Ord. 88-009 §1, 1988; Ord. 87-015 §1, 1987; Ord. 86-056 §2, 1986; Ord. 86-054 §1, 1986; Ord. 86-032 §1, 1986; Ord. 86-018 §1, 1986; Ord. 85-002 §2, 1985; Ord. 84-023 §1, 1984; Ord. 83-037 §2, 1983; Ord. 83-033 §1, 1983; Ord. 82-013 §1, 1982)

FINDINGS

I. **APPLICABLE CRITERIA:**

Title 22, Deschutes County Development Procedures Ordinance

II. **BASIC FINDINGS:**

- A. **PROPOSAL:** 1) Text amendment to Comprehensive Plan, Chapter 2, Section 2.2 and Chapter 3, Section 3.3, recognizing non-resource lands process allowed under State law to change Exclusive Farm Use zoning; 2) Text amendment to zoning code providing a definition of agricultural-exempt and equine buildings; and, 3) Reducing setbacks in Forest Use (F-2 zone), for Haner Park Subdivision and an adjoining three acre tax lot.

III. **CONCLUSIONARY FINDINGS:**

A. **CHAPTER 22.12, LEGISLATIVE PROCEDURES**

1. Section 22.12.010.

Hearing Required

FINDING: The applicant meets this criterion because a public hearing will be held before the Deschutes County Board of County Commissioners (Board) on October 24, 2016.

2. Section 22.12.020, Notice

Notice

A. Published Notice

1. Notice of a legislative change shall be published in a newspaper of general circulation in the county at least 10 days prior to each public hearing.

2. The notice shall state the time and place of the hearing and contain a statement describing the general subject matter of the ordinance under consideration.

FINDING: Notice is published in the Bend Bulletin newspaper on October 14, 2016 and contained the information described in DCC 22.12.020(A)(2).

B. Posted Notice. Notice shall be posted at the discretion of the Planning Director and where necessary to comply with ORS 203.045.

FINDING: This criterion will be met with notice posted in the bulletin board in the lobby of the Deschutes County Community Development Department, 117 NW Lafayette, Bend.

C. Individual notice. Individual notice to property owners, as defined in DCC 22.08.010(A), shall be provided at the discretion of the Planning Director, except as required by ORS 215.503.

FINDING: Given the proposed amendments in question do not apply to any specific property, no individual notices were sent or required.

D. Media notice. Copies of the notice of hearing shall be transmitted to other newspapers published in Deschutes County.

FINDING: Notice will be provided to the County public information official for wider media distribution. This criterion has been met.

3. Section 22.12.030 Initiation of Legislative Changes.

A legislative change may be initiated by application of individuals upon payment of required fees as well as by the Board of County Commissioners.

FINDING: The application was initiated by the Deschutes County Planning Division, which received a fee waiver. This criterion has been met.

4. Section 22.12.040. Hearings Body

A. The following shall serve as hearings or review body for legislative changes in this order:

- 1. The Planning Commission.**
- 2. The Board of County Commissioners.**

FINDING: This criterion will be met.

B. Any legislative change initiated by the Board of County Commissioners shall be reviewed by the Planning Commission prior to action being taken by the Board of Commissioners.

FINDING: The Planning Commission held a public hearing on March 10, 2016, and reviewed the proposed changes. That same day, the Planning Commission voted in support of the proposed definitions of agricultural/equine exempt buildings and setback standard for Haner Park. Deliberations were continued to March 24 and the Planning Commission voted to not support the proposed comprehensive plan amendments relating to the non-resource lands process allowed under State law to change EFU zoning.

5. Section 22.12.050 Final Decision

All legislative changes shall be adopted by ordinance

FINDING: If approved, the proposed legislative changes included in file nos. 247-16-000021-TA/247-16-000022-PA will be implemented by ordinances upon approval and adoption by the Board; this criterion will be met.

IV. PROPOSED TEXT AMENDMENTS:

The proposed text amendments are detailed in the Exhibits A-D attached hereto with additional text identified by underline and deleted text by ~~strikethrough~~. Below are explanations of the proposed changes.

A. Text Amendment To Comprehensive Plan, Chapter 2, Section 2.2 And Chapter 3, Section 3.3, Recognizing Non-Resource Lands Process Allowed Under State Law To Change Exclusive Farm Use Zoning.

In designating farm lands in the late 1970s, the County was hampered by the limited availability of soil maps. Where soil maps from the NRCS existed those were consulted, but the County also included irrigated lands and lands receiving farm deferrals for the previous five years and site visits. In general, non-urban, non-forest, undeveloped and uncommitted lands were determined to be farm lands. This designation by default resulted in some areas being designation agricultural based on best available information.

In previous decisions on proposed plan amendments, county hearings officers and the Board have determined that land use planning, implemented through Deschutes County Comprehensive Plan policies and zoning, enables rural property owners with EFU zoning to demonstrate in a quasi-judicial process, with evidence supporting findings that a subject property does not constitute "agricultural lands" as defined in Goal 3 and Oregon Administrative Rule (OAR) 660-033-0020(1). Further, if the property does not meet the definition of agricultural lands then an exception to Goal 3 is not required which is the typical path for redesignation. The Land Use Board of Appeals affirmed this approach in *Wetherell v. Douglas County*, ___Or LUBA___, (LUBA No. 2006-122, October 9, 2006).

Oregon Administrative Rules (OAR) Division 4 interprets the requirements of Goal 2 (Land Use Planning) and ORS 197.732 regarding exceptions. The definition for nonresource lands is described in OAR 660-004-0005(3):

- "Land not subject to any of the statewide goals listed in OAR 660-004-0010(1)(a) through (g) except subsections (c) and (d). Nothing in these definitions is meant to imply that other goals, particularly Goal 5, do not apply to nonresource land." ¹

Policy 2.2.3 directs Deschutes County to:

¹ OAR 660-004-0010:

(1) The exceptions process is not applicable to Statewide Goal 1 "Citizen Involvement" and Goal 2 "Land Use Planning." The exceptions process is generally applicable to all or part of those statewide goals that prescribe or restrict certain uses of resource land, restrict urban uses on rural land, or limit the provision of certain public facilities and services. These statewide goals include but are not limited to:

(a) Goal 3 "Agricultural Lands"; however, an exception to Goal 3 "Agricultural Lands" is not required for any of the farm or nonfarm uses allowed in an exclusive farm use (EFU) zone under ORS chapter 215 and OAR chapter 660, division 33, "Agricultural Lands", except as provided under OAR 660-004-0022 regarding a use authorized by a statewide planning goal that cannot comply with the approval standards for that type of use;

...

http://arcweb.sos.state.or.us/pages/rules/oars_600/oar_660/660_004.html

Allow comprehensive plan and zoning map amendment for individual EFU parcels as allowed by State Statute, Oregon Administrative Rules and this Comprehensive plan.

A Hearings Officer in a decision in NNP (PA-13-1, ZC-13-1) held any failure on the county's part to adopt comprehensive plan policies and code provisions describing the circumstances under which EFU-zone land may be converted to a non-resource designation and zoning codes does not preclude the county from considering quasi-judicial plan amendment and zone change applications to remove EFU zoning. This plan amendment further clarifies that the County intends to allow the non-resource lands process allowed under State law to change EFU zoning.

The proposed amendment acknowledges this existing path to change land currently designated resource to a non-resource designation as allowed by state law.

On March 24, the Planning Commission voted to not recommend approval the proposed amendments.

B. Text Amendment To Zoning Code Providing A Definition Of Agricultural-Exempt and Equine Buildings.

State law (ORS 455.315)² allows exemption from the requirement for a building permit and inspections under Oregon State Structural Specialty Code (electrical, plumbing, and mechanical permits are always required). Since 2001, the authority to approve an agricultural exempt building resides with the Building Official. A formal application requires the County Planning Division to provide input on whether the property is a farm. Deschutes County's zoning ordinances do not define "farm" or provide a basis for making a determination on whether a property constitutes a farm.

Until the late 1990s, the Oregon Uniform Building Code (UBC) defined farm as "farm use" – the same as in ORS 215.203 (the EFU Zone). However, when the state changed to the International Building Code (IBC), "farm" was not defined. "Farm use" is defined in Deschutes County Code and ORS 215.203 as:

"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 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. "Farm use" includes the preparation, storage and disposal by marketing or otherwise of the products or by-products raised on such land for human or animal use. "Farm Use" also includes the current employment of the land for the primary purpose of obtaining a profit in money by stabling or training equines, including but not limited to, providing riding lessons, training clinics and schooling shows. "Farm use" also includes the propagation, cultivation, maintenance and harvesting of aquatic species and bird and animal species to the extent allowed by the rules adopted by the State Fish and Wildlife Commission. "Farm use" includes the on-site construction and maintenance of equipment and facilities

² ORS 455: https://www.oregonlegislature.gov/bills_laws/ors/ors455.html

used for the activities described above. "Farm 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 as defined in ORS 215.203(3). Current employment of the land for farm use also includes those uses listed under ORS 215.203(2)(b).

CDD's internal policy is a property must be receiving farm deferral and zoned EFU to qualify. Below are approaches used by other central, eastern and western Oregon counties. Most provide clear and objective standards to determine what constitutes a farm for the purposes of making decisions on agricultural exempt buildings.

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