



## Community Development Department

Planning Division Building Safety Division Environmental Soils Division

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**DATE:** January 2, 2014  
**TO:** Deschutes County Planning Commission  
**FROM:** Peter Gutowsky, Principal Planner  
Matthew Martin, Associate Planner  
**MTG:** January 9, 2013  
**RE:** Non-Resource Lands Program / Public Engagement / Draft Concept

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### I. Background

The County is undertaking a long-term project exploring the creation of a Non-Resource comprehensive plan designation and zone. "Non-Resource Lands" do not meet the definition of agricultural lands found in Statewide Planning Goal 3 and accompanying administrative rules (OAR) due to the presence of poor soil conditions, lack of irrigation, climate conditions, and other relevant factors, including but not limited to past use.<sup>1</sup> They differ from Rural Residential Exception Areas and other rural areas not planned and zoned for farming activities. Instead, they are characterized by large tracts without an existing settlement pattern and supporting residential infrastructure.

Because Non-Resource Lands are not physically developed or irrevocably committed to other uses, they do not qualify for an exception pursuant to OAR 660, Division 4. It is recognized that there are properties in the county that are currently zoned Exclusive Farm Use (EFU) but do not meet the state's definition for agricultural lands or farm suitability. As summarized in this memorandum, individual property owners are pursuing on a case-by-case basis, Comprehensive Plan and Zone Change amendments demonstrating that their EFU property does not meet the state's definitions of agricultural lands, thereby warranting rezoning to Multiple-Use Agricultural-10 (10 acre minimums).

As summarized below, the Planning Commission's first two meetings on this topic were organized to gain a better understanding of EFU zoning in Deschutes County.

*November 14, 2013*

The Non-Resource Land Program kicked-off at the November 14, 2013 Planning Commission meeting with introductory presentations from the Department of Land Conservation and Development (DLCD), Oregon Department of Agriculture, and Deschutes County. The purpose

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<sup>1</sup> OAR 660-004-005(3). [http://arcweb.sos.state.or.us/pages/rules/oars\\_600/oar\\_660/660\\_004.html](http://arcweb.sos.state.or.us/pages/rules/oars_600/oar_660/660_004.html)

was to discuss the history of agricultural land use regulation in Oregon and Deschutes County. Given the panel's expertise and subject matter, the meeting was also recorded by video.

*December 12, 2013*

The December 12 meeting provided a continuation of the discussion but from a local agricultural industry perspective. A panel consisting of regional agricultural experts was convened with representatives from Central Oregon Irrigation District, Deschutes Soil and Water Conservation District, DLCD, Deschutes County Farm Bureau and an agricultural producer. The purpose was to identify characteristics that support or present barriers to productive agriculture operations in Deschutes County. In addition, the panel discussed the potential pros and cons of establishing a non-resource lands designation and zone. All of the materials from these two meetings, including panel PowerPoint presentations are posted on the County's website.<sup>2</sup>

## **II. Additional Resources**

Non-Resource Lands have been a prominent issue for years throughout Oregon. The following attachment summarizes recent hearing officer decisions, other county non-resource land approaches, the Big Look, House Bill (HB) 2229 and the Southern Oregon Pilot Project.

## **III. Public Engagement / Draft Concept for Consideration**

To gauge public and stakeholder sentiment on the Non-Resource Lands Program, staff drafted a concept for the Planning Commission's consideration. It will be discussed on January 9, with the expectation that the Planning Commission will refine and ultimately recommend a preferred approach at their meeting on January 23 or February 13. The preferred approach will then be shared with the Board of County Commissioners (BOCC) at a work session later in February. Upon receiving BOCC support, staff will initiate community conversations for 2-3 months throughout the region, holding listening sessions in Alfalfa, Bend, Brothers, La Pine, Redmond, Sisters, Terrebonne, and Tumalo. Results will then be shared with the Planning Commission and BOCC to determine whether there is support for developing criteria and procedures that can allow individual property owners to reclassify areas with exceedingly low capacity for agricultural activities to a Non-Resource designation, and if so, the parameters.

### *Threshold Question*

Recognizing that there are lands zoned EFU in Deschutes County that do not meet the state's definition of agricultural lands or farm suitability, should the County develop criteria and standards that enable eligible property owners to formally re-designate to a newly created "Non-Resource" zone that allow rural land uses and development not presently allowed?

### *EFU Assessment / Suitability Discussions*

EFU lands are multi-faceted. Many are characterized by irrigation, wildlife combining zones, and rural fire protection districts. Ownership patterns also matter; certain EFU lands also adjoin Urban Growth Boundaries (UGBs), exception lands, and destination resorts. Prior to exploring eligibility criteria, procedures and development standards for a new Non-Resource Lands zone, it is imperative for Deschutes County to first understand public opinion. This approach starts from the principle that the public and interested stakeholders deserve to discuss and assess

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<sup>2</sup> <http://www.deschutes.org/Community-Development/Regional-Projects-and-Resources/Non-Resource-Lands.aspx>

whether EFU lands, with all their variations, are even suitable for accommodating non-agricultural land uses that would theoretically be allowed under Non-Resource zoning.

Table 1 illustrates how staff could begin gathering community input. As envisioned, one station would allow participants to identify which, if any, EFU lands warrant exploring Non-Resource Land opportunities. A second station, depicted in Table 2 would enable participants to describe their Non-Resource Land use preferences. Public outreach strategies at each community meeting would also include:

- Background material;
- GIS maps showing:
  - EFU zoning
  - Wildlife combining zones
  - Destination resorts
  - Irrigation district boundaries
  - Fire protection districts
  - Municipalities and UGBs
  - State and county road systems
- Interactive exercises, allowing participants to identify EFU priorities in relationship to Non Resource land use preferences;
- Written materials, enabling participants to describe their opinions in greater detail;
- Opportunities for participants to share their perspectives verbally and staff to record them; and,
- Next steps

Attachment:

Overview of Hearings Officer Decisions, Other County Non-Resource Programs, Big Look, HB 2229, and Southern Oregon Pilot Project

Table 1 – EFU Lands Assessment / Suitability Exercise #1

Suitability Exercise	Existing EFU Zoned Lands									
	Irrigation		Wildlife	Adjoining Ownership Patterns				Carrying Capacity		
	Irrigated	Non-Irrigated	Combining Zones	Irrigated EFU	Dry EFU	Exception Land	UGBs	Within a Rural Fire Protection District	County roads have sufficient capacity	Septic and domestic well availability
Are Non-Resource Land Use opportunities suitable in these locations? (Select Yes, No, or Undetermined)										

Table 2 – Non-Resource Land Use Preferences / Suitability Exercise #2

Land Use Exercise	Non-Resource Land Opportunities									
	Land Uses			Minimum Parcel Size				Buffers	Easements	
	Low Density Rural Residential when suitability characteristics are met <sup>3</sup>	Value Added Businesses using agricultural resources	Other	0-10 acres	10-20 acres	20-30 acres	30-acres and larger	Should buffers be applied?	Should conservation easements be utilized?	
What types of Non-Resource Land Uses are suitable in the rural county? (Select Yes, No, or Undetermined)										

<sup>3</sup> Suitability characteristics need to be defined. One example for determining land use suitability could be adjoining zoning.

## ATTACHMENT

### Non-Resource Lands Background References

#### **I. Local Hearings Officer Decisions**

##### **PA13-1/ZC-13-1 (NNP IV-NCR, LLC)**

**Key Issues:** Soils Analysis/Suitability for Farm Use

The Hearings Officer denied the request because the applicant failed to demonstrate the subject property is not “agricultural land” as defined in statute and administrative rule. Specifically, it was found that under the unique circumstances of this case, where the subject property is a tract with multiple parcels, the applicant must demonstrate each parcel consists of predominantly Class VII and VIII soils rather than simply analyzing the tract as a whole. The applicant did not provide sufficient evidence from which the predominant soils analysis could be conducted as to each parcel. In addition, the Hearings Officer found the applicant failed to demonstrate the entire subject property is unsuitable for farm use considering profitability and other factors set forth in the administrative rule. That is because the applicant’s agricultural economic analysis, on which it relies heavily, is based on questionable assumptions.

##### **PA-10-5/ZC-10-3 (Rose)**

**Key Issues:** Predominantly Agricultural Land/Suitability for Farm Use

This request included a zone change from both SM and EFU to MUA-10. The Hearings Officer denied the SM zone change because the applicant did not prove the reclamation requirements for the surface mine had been met. The Hearings Officer also denied the amendment and zone change involving the EFU zone properties stating the former surface mine cannot be counted in the ratio of agricultural land to nonagricultural land to determine predominance and without the former surface mine area, the ratio falls to less than 50% nonagricultural land for the full parcel. In addition, the Hearings Officer concluded that applicant’s argument is insufficient to demonstrate that the subject property is not suitable for farm use because there are high value soils present, existing agricultural use on the property, and nearby agricultural use to which the property could combine.

##### **PA-11-4/ZC-11-1 (Benesh)**

**Key Issues:** Change of Circumstance/Irrevocably Committed

The Hearings Officer denied this request because the applicant did not demonstrate there has been a change in circumstances sufficient to justify the proposed re-designation and rezoning, and has not demonstrated the subject property is irrevocably committed to non-resource uses. The applicant argued the changes of circumstance were rezoning of some surrounding land from EFU to MUA-10 and partitioning of the subject property. No conflicts of uses were found and no compelling argument that nearby residential uses or proximity of Eagle Crest irrevocably committed to non-resource uses. Furthermore, the applicant did not show the property could not be combined with other farm use.

## **PA-11-7/ZC-11-2 (Oregon Department of State Lands)**

### **Key Issues:** Non-Agricultural Land/Change of Circumstance/Suitability for Farm Use

The Hearings Officer approved this request finding the subject property is not predominantly comprised of high value soils as defined and therefore does not meet the definition of agricultural land. In addition, the Hearings Officer found the close proximity of the City of Bend UGB to be a change in circumstance from the time the property was originally zoned EFU. Finally, the Hearings Officer also found the property to not be suitable for farm use because there are no adjacent farm uses or lands in class I-VI soils for the property to be added to farm operations.

## **II. Similar Programs from Around the State**

### **Crook County**

In 2011, the Crook County Court adopted an ordinance amending the Comprehensive Plan with respect to adding descriptions and policies for non-resource lands. No new zone was established. Rather, if a plan amendment is proposed and approved to re-designate land to “non-resource,” then an existing zoning district is chosen depending on existing or intended use and compliance with all applicable state and local provisions. In addition, carrying capacity of services and compatibility with nearby uses shall be considered.

### **Klamath County**

Klamath County has established a Non-Resource (NR) plan designation and zone for lands that are not agricultural or forest lands as defined by the State. The corresponding zone further requires that the lands are not identified as wildlife habitat, are not necessary for watershed protection or recreational use, and not irrigated or irrigable. The minimum parcel size is 20 acres. Outright permitted uses include single-family residential and farm uses. Conditionally permitted uses include kennels, cemeteries, and those permitted in the EFU zone. It is noteworthy that the NR zone permits an additional dwelling (2 dwellings total) for family members if parcel is 20 acres or larger.

### **Lane County**

The Lane County Rural Comprehensive Plan provides an opportunity for lands that are not farm and forest lands by definition to be designated on the plan diagram as rural residential or as park and recreation. It emphasizes such a plan designation must comply with applicable State standards and the importance of compatibility with surrounding farm and forest lands. If designated, the rural residential zones available are those with a minimum residential density of 1 unit per 5 or 10 acres based on carrying capacity of the surrounding land use pattern and services.

### **III. Special Statewide and Regional Projects**

#### **The Big Look**

In 2005, the Oregon Legislature established the Big Look Task Force to carry out a comprehensive review of Oregon's statewide land use planning system and to make recommendations. Specific to resources lands, the group found there is wide support for continued preservation of farms and forests and significant interest in developing new programs to designate and conserve natural areas and resources. However, a number of issues with the current system were raised that have more to do with fine-tuning the system than with a substantial re-orientation of how rural lands are managed. Nevertheless, the issues summarized below continue to be the source of friction and the task force recommended they be addressed in order to avoid future instability:

- Some farm and forest lands are either non-productive or cannot otherwise reasonably be defined as farm and forest.
- If lands are re-designated for other rural uses, current limits on development are inadequate to assure that the types and intensities of uses are consistent with the carrying capacity of the land and other resource constraints.

The task force made several recommendations for farm, forest, and natural areas that provide a framework for counties to reevaluate their current farm and forest land designations by developing region-specific criteria for what lands should continue to be classified in this manner.

#### **House Bill 2229**

In 2009, the Oregon Legislature approved legislation that implemented the recommendations of the Big Look Task Force. The legislation allows a county to conduct legislative review of county lands to determine whether lands planned and zoned are consistent with definitions of "agricultural lands" or "forest lands" for purposes of correcting mapping errors and updating designations of farmlands and forestlands. It further provides that a county, if in conjunction with at least one other local government, may enter into collaborative regional problem-solving process with certain public bodies. The legislation also expands the authority for regional land use planning and outlines procedural review processes.

#### **Southern Oregon Regional Pilot Program**

In May of 2012, Governor Kitzhaber signed an Executive Order that established a "Pilot Program for Regional Farm and Forest Land Conservation." The pilot program involves three counties—Douglas, Jackson, and Josephine—and authorizes them to enter into a regional process to enable these counties to develop a plan to allow "...appropriate additional regional variation in what lands must be planned and managed as farm and forest lands." Guidelines were established for process and outcomes of the project. One of these guidelines states that any resource lands rezoned to non-resource lands are planned and zoned for types of uses and at levels that:

- Will not significantly interfere with nearby farm or forest uses.

- Will not significantly interfere with the future urbanization of nearby cities.
- Are sustainable in terms of fiscal impacts to local and state government.
- Are sustainable in terms of their effects on water supplies, transportation, water quality, fire protection, wildlife, and fish and wildlife habitat.

In addition, the Executive Order mandates that any "...newly allowed uses do not exceed the carrying capacity of the lands". A status report from DLCD to the Governor and appropriate committees of the Oregon House of Representatives and Oregon Senate is expected on or before January 1, 2014.