



## Community Development Department

Planning Division Building Safety Division Environmental Soils Division

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

### Memorandum

**DATE:** March 17, 2015  
**TO:** Deschutes County Board of Commissioners  
**FROM:** Nick Lelack, Director  
Peter Gutowsky, Planning Manager  
**RE:** HB 2229 / Agricultural Lands / Planning Commission Direction

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### BACKGROUND

Staff received direction from the Board of County Commissioners (BOCC) on November 24, 2014 to explore HB 2229, also known as the Big Look Bill, as it relates to correcting mapping errors of farm and forestlands.<sup>1</sup> Two major developments have occurred over the past two months that complicate implementing HB 2229: a Department of Land Conservation and Development (DLCD) letter and a conversation with former Community Development Director John Anderson (1978-85). Given these circumstances, the Planning Commission on February 26 and March 12 respectively, directed staff to:

- Draft a letter to Jim Rue, DLCD Director to initiate rulemaking (Attachment 1); and,
- Prioritize as a work program item for FY 2015/2016, a text amendment that reduces setbacks in forestland related specifically to Haner Park and Section 36.

Unrelated to HB 2229, two items discussed by the Planning Commission last fall included:

- Allowing temporary medical hardship dwellings in the Conventional House Combining Zone; and,
- Comprehensive Plan amendments to clarify that resource land, EFU and Forest Use parcels, can be re-designated and rezoned to non-resource lands through a quasi-judicial application process, without taking an exception to Goal 3 or Goal 4.

### DIRECTION

Staff seeks direction from the BOCC on how to proceed with the agricultural lands program. A matrix of options relating to HB 2229 is provided as Attachment 2. One option for the BOCC's consideration is after discussing the utility of a rulemaking letter to Director Rue, placing the items summarized above on the Community Development Department's draft FY 2015-2016 work plan. Later this spring, those items can be evaluated by the public, Planning Commission and ultimately the BOCC, in relationship to other work tasks.

### Attachments:

1. Draft LCDC Rulemaking Letter
2. Matrix of Options

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<sup>1</sup> ORS 215.788(1) [https://www.oregonlegislature.gov/bills\\_laws/lawsstatutes/2013ors215.html](https://www.oregonlegislature.gov/bills_laws/lawsstatutes/2013ors215.html)

**Matrix of Options for HB 2229**

Options	Summary	Timeline
<i>Request Land Conservation and Development Commission (LCDC) initiate rule making</i>	DLCD envisioned rule making for HB 2229. <sup>2</sup> Currently no formal statewide rules or other standards exist to guide local governments in planning and zoning “non-resource land.”	To be determined. If rule making occurred, staff would be able to evaluate its applicability to Deschutes County and the resources and timeline required for implementation.
<i>Await results of the Southern Oregon Pilot Project</i>	<p>On May 10, 2012, Governor Kitzhaber signed Executive Order (EO) 12-07, which establishes a "Pilot Program for Regional Farm and Forest Land Conservation."<sup>3</sup> 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.</p> <p>According to a DLCD status update, only Jackson County will be pursuing the assessment of possible mapping errors. A new scope emphasizes the regional nature of this project including the identification of regional criteria or methods to establish alternative forest land designations or alternative farm parcel size opportunities and regional criteria or factors for determining which lands should not be designated under Goals 3 or 4. Furthermore, the contract provides additional flexibility to the counties by allowing a county to proceed with an approach that may not be regional in nature if it elects to stay within the parameters of current state law.<sup>4</sup></p> <p>Douglas County has proposed a process to identify lands eligible for non-resource designation. Appropriate rural and open space uses would be authorized in new land use designations with lot sizes between 10 and 40 acres.<sup>5</sup></p>	To be determined. If the results of the Pilot Project are successful, staff would be able to evaluate its applicability to Deschutes County and the resources and timeline required for implementation.

<sup>2</sup> [http://www.oregon.gov/LCD/docs/rulemaking/072909/item8\\_policy\\_agenda\\_report.pdf](http://www.oregon.gov/LCD/docs/rulemaking/072909/item8_policy_agenda_report.pdf). Page 10.

<sup>3</sup> <http://www.soregionalpilot.org/>

<sup>4</sup> [http://www.oregon.gov/LCD/docs/meetings/lcdc/052214/02Item\\_3\\_SORPP.pdf](http://www.oregon.gov/LCD/docs/meetings/lcdc/052214/02Item_3_SORPP.pdf)

<sup>5</sup> [http://www.co.douglas.or.us/planning/Plan\\_docs/ff/PilotProgramUpdate14.pdf](http://www.co.douglas.or.us/planning/Plan_docs/ff/PilotProgramUpdate14.pdf)

Options	Summary	Timeline
<p><i>Property Owners initiate Goal 3 or Goal 4 Exception</i></p>	<p>The following five rural subdivisions are currently zoned Exclusive Farm Use (EFU) or Forest Use (F2):</p> <ul style="list-style-type: none"> <li>• Haner Park (F2)</li> <li>• Meadow Crest Acres (EFU)</li> <li>• Section 36 (F2)</li> <li>• Skyline Subdivision (F2)</li> <li>• Squaw Creek Canyon Recreation Estates 1<sup>st</sup> Addition (EFU and F2)</li> </ul> <p>A Goal 3 or 4 committed exception could be explored to demonstrate that the respective properties are no longer capable of being used for agricultural or forest uses due to housing, roads, infrastructure and other improvements.</p>	<p>To be determined. Property owners could band together and initiate a Goal 3 or 4 exception to re-designate and rezone their properties to rural residential</p>
<p><i>Initiate Non-Resource Lands Program</i></p>	<p>A non-resource lands program would enable property owners, on a case-by-case basis, to initiate a Comprehensive Plan amendment and zone change to re-designate their EFU property to a “Non-Resource” zone.</p> <p>Engage the community to draft eligibility criteria and non-resource zoning. Amend County comprehensive plan and zoning ordinance incorporating policies and standards for now plan designation and zone.</p> <p>Upon adoption, property owners on a case-by case basis would be able to initiate Comprehensive Plan and zone change amendment.</p>	<p>12-18 months.</p>
<p><i>Initiate HB 2229, taking a sub-regional or county-wide approach</i></p>	<p>Develop a work plan in coordination with the Planning Commission, BOCC, and DLCD. State law requires LCDC to approve the work plan. If the work plan is approved, the County must provide an opportunity for all farm and forest land to be considered in any regional or county-wide approach.</p>	<p>24 to 48 months. Requires significant resources to substantiate agricultural and forest designations, transportation and wildlife impacts, among others.</p>
<p><i>Initiate a text amendment that reduces setbacks in forestland related specifically to Haner Park and Section 36</i></p>	<p>Develop a text amendment that reduces setbacks in Haner Park and Section 36.</p>	<p>3-6 months</p>



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Date

Mr. Jim Rue, Director  
Oregon Department of Land Conservation and Development  
635 Capitol St. NE, Suite 150  
Salem, OR 97301

### Re: HB 2229 / LCDC Rulemaking

Dear Mr. Rue:

House Bill 2229, Section 2(b)(B) directs the Land Conservation and Development Commission (LCDC) to adopt rules that,

*Consider the variation in conditions and needs in different regions of the state and encourage regional approaches to resolving land use problems.*

The Deschutes County Planning Commission [add BOCC if they concur] respectfully requests LCDC initiate rulemaking to implement the legislation and clarify processes for:

1. Updating farmlands and forestlands for land use planning;
2. Phasing;
3. Regional approaches to resolving land use problems;
4. Non-resource lands containing ecologically significant natural areas or resources;
5. Carrying capacity of the lands; and,
6. Significantly adverse effects.

Since the law took effect, Deschutes County has continually expressed interest in implementing HB 2229, also known as the "Big Look Bill," as evidenced by its participation in a 2010 Association of Counties panel discussion with state agency officials and subsequent conversations with the Department of Land Conservation and Development (DLCD). Most recently, Deschutes County requested input on a phased approach and clarification of key issues relating to five pre-platted subdivisions with farm and forestland designations. Rob Hallyburton, DLCD Community Services Division Manager wrote in a letter on January 8, 2015,

*While we do not find that the county must review all land in the county, we would be most inclined to approve a work program that includes some major region defined by geographic characteristics rather than by property or subdivision boundaries. Additionally, the county may not pre-determine specific areas for review, as subsection 5(3) requires the county to provide an opportunity for all farm and forest land to be considered. If the county receives a request to review an area that is not included in the original proposal, the county must review it. As explained above, we believe that this*

*area must be a geographic area of the county and not individual properties or subdivisions.*

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

Based on Mr. Hallyburton's letter, there remain differences of opinion whether HB 2229 is targeted exclusively to properties with mapping errors or if it also applies to updating farm and forestlands designations based on changed circumstances. Without administrative rules, undertaking a work plan is fraught with legal uncertainty. It is also extremely difficult to gauge staffing resources and timelines.

Thank you for considering this request.

Sincerely,

TBD