



MEMORANDUM

DATE: December 13, 2021

TO: Board of County Commissioners

FROM: Peter Russell, Senior Transportation Planner
Will Groves, Planning Manager

RE: Rural Economic Development Opportunities Panel Discussions / Recommendations

I. BACKGROUND

The Board of County Commissioners (Board) asked staff to prepare a white paper on rural economic development opportunities in Deschutes County. Staff presented the white paper to the Board at its June 28, 2021 meeting.¹ Besides Oregon Revised Statutes (ORS), Oregon Administrative Rules (OAR), and zoning, the white paper also cited other factors influencing rural economic development opportunities such as septic issues, building codes, and rural demographics. During the presentation, the Board requested staff convene a panel discussion with the Planning Commission (PC) that would occur after the agricultural season. The panel would discuss the challenges facing small operators and their entry into new activities in terms of fees, transportation system development charges, and regulations.

II. PANEL DISCUSSIONS

The PC held an October 14 panel discussion on Rural Economic Development Opportunities with representatives from state agencies, Oregon Farm Bureau, High Desert Food and Farm Alliance (HDFFA), and County staff.² Commissioners reviewed a matrix prepared by staff on October 28 that identified issues and possible remedies, based on the panel discussion (Attachment).³ Afterwards, they requested an additional panel discussion exclusively with the High Desert Food and Farm Alliance (HDFFA) on December 9.⁴ In addition to Katrina Van Dis, Executive Director, HDFFA, three farmers participated in the panel: Linda and Jeff Anspach with D&D Ranch, and John Herman with Lazy Z Ranch.

¹ <http://deschutescountyor.igq2.com/Citizens/FileOpen.aspx?Type=1&ID=2471&Inline=True>

² <https://www.deschutes.org/bc-pc/page/planning-commission-4>

³ <https://www.deschutes.org/bc-pc/page/planning-commission-5>

⁴ <https://www.deschutes.org/bc-pc/page/planning-commission-11>

III. PLANNING COMMISSION RECOMMENDATIONS

At the conclusion of the December 9 panel, the Planning Commission recommended the Board consider:

1. Removing financial and technical roadblocks to obtaining guest ranch, agri-tourism, and commercial activities in conjunction with farm use (CA/FU) permits.
2. Changing these permits from a use subject to standards and conditional use permits, respectively, to outright permits.
3. Lowering or subsidizing the application fees.
4. Prioritizing these applications by:
 - i. Reviewing these applications ahead of other planning applications; and
 - ii. Providing dedicated staff resources and support for these applications.
5. Removing or subsidizing Hearings Officer fees for review of these applications.
6. Revisiting a prior Board decision limiting non-farm revenues to 40% of farm revenues.
7. Lobbying at the state level to relax “incidental and subordinate” requirements to make it economically favorable to support the small farmer.

IV. ANALYSIS

Staff offers the following discussion and analysis for each of these options.

1) Remove financial and technical roadblocks to obtaining agri-tourism and commercial activities in conjunction with farm use permits.

Panelists identified a number of difficulties farming in Central Oregon, including the high costs of irrigation, labor, and real estate. Drought and water availability exacerbate these difficulties. Small farmers turn to guest ranches, agri-tourism, and CA/FU to support the viability of primary farming. However, the panelists found that regulations, fees, and processing times make it difficult and risky to pursue these permits.

2) Changing these permits from a use subject to standards and conditional use permits, respectively, to outright permits

The technical difficulty of complying with applicable regulations was identified as an obstacle to getting these permits. Agri-tourism permits are regulated under ORS 215.283(4) and any changes to these regulations would require changes at the state level. CA/FU permits and guest ranches currently require conditional use permits. Changing these reviews to “subject to standards” permits would reduce the cost of these permits and potentially exempt them from neighborhood compatibility standards. Staff notes that evolving case law associated with these uses may complicate writing non-discretionary standards.

3) Lowering or subsidizing the application fees

As a fee supported department, any reduction of fees would likely require increasing other fees or general fund support. Fees for the applications are currently as follows: Guest Ranch (\$7,017), Agri-Tourism (\$547 to \$1,071), CA/FU (\$7,017).

4) Prioritizing these applications by:

- i. Reviewing these applications ahead of other planning applications; and**
- ii. Providing dedicated staff resources and support for these applications**

Prioritizing applications would likely increase processing times for other application types, unless additional staffing resources were allocated.

5) Removing or subsidizing Hearings Officer fees for review of these applications

As a fee supported department, any reduction of fees would likely require increasing other fees or general fund support. Fees for the Hearings Officer Deposit is currently Actual Cost of Services (\$5,500 deposit).

6) Revisiting a prior Board decision limiting non-farm revenues to 40% of farm revenues

The Board previously determined in a 2012 land use decision that a commercial income as high as 40 percent of farm income could qualify as "incidental and subordinate".⁵ Based on this decision, staff has used 40 percent as an income cap for CA/FU. However in *Friends of Yamhill County* (LUBA 2018-144 *Friends of Yamhill County et al v. Yamhill County*), LUBA concluded:

*"...the legislature did not intend to place income or revenue sideboards on 'incidental and subordinate in ORS 215.283(4)."*⁶

*Whether a proposed commercial event is "incidental and subordinate" to an existing commercial farm use will depend largely on the circumstances presented by each application, depending on the existing farm use and the number and intensity of events proposed. We conclude that the legislature intended the counties to exercise some discretion in allowing and limiting the types of commercial activities that can be permitted on farmlands and determining whether such activities are "incidental and subordinate" within the quantified statutory limits on frequency and intensity of such events, and any other limits imposed by the county."*⁷

In light of *Friends of Yamhill County*, the Board could revisit the decision in *Downs*, but this would require an applicant-initiated proposal to come before the Board.

⁵ In *Downs* (LUP-12-2), the Board called up for review an administrative decision concerning an application for a limited use permit to conduct weddings on a 39.83 -acre EFU- zoned parcel engaged in farm use consisting of hay production and sales. Based on Board's decision in *Downs*, Hearings Officers have found that the Board has set the numeric limit for the commercial income percentage for "incidental and subordinate" as high as 40 percent.

⁶ <https://www.oregon.gov/luba/Docs/Opinions/2019/08-19/18144.pdf>. Page 21

⁷ *Ibid.* Page 22.

7) *Lobbying at the state level to relax “incidental and subordinate” requirements to make it economically favorable to support the small farmer*

The panel and PC recommended the Board undertake lobbying at the state level for rule changes relaxing “incidental and subordinate” for commercial income on farms.

V. NEXT STEPS

At the conclusion of today’s discussion, staff seeks direction from the Board.

Attachment:

October 28, 2021- Matrix

Attachment – October 28, 2021 Matrix

At the October 28, 2021 Planning Commission meeting, staff presented a matrix on possible actions and briefly recapped the June 28, 2021, white paper on Rural Economic Development Opportunities in Deschutes County.

II. MATRIX THEMES

Staff organized the matrix by three themes: changes the Planning Division can do without outside approval; changes that would require Board approval; and changes that would require changes to state law or administrative rule. The options are presented in Table 1 below. These all relate to land use; other factors include: septic requirements, state building code, commercial kitchens, traffic, demographics, and potential transportation system development charges (SDCs).

Table 1 – Potential Options and Authority

Option	Planning Division	Board of County Commissioners	State
Prioritize agriculture or agricultural-related land use applications	Internal decision, but would check with Board beforehand	Provide input to Planning Division	No formal role
Outreach to Realtors to educate about living near a working farm or ranch	Internal decision	No formal role	No formal role
Accept private party text amendment to change commercial activities in conjunction with farm use from conditional to outright permitted use	Process text amendment, but recommendation to Board would come from Hearings Officer	Approve text amendment changing commercial activity in conjunction with a farm use from a conditional use to an outright permitted use	Department of Land Conservation and Development (DLCD) can participate in hearing process; Land Use Board of Appeals (LUBA) hears any appeal of Board decision
Accept private party text amendment to prohibit nonfarm dwellings	Process text amendment, but recommendation to Board would come from Hearings Officer	Approve text amendment prohibiting nonfarm dwellings	DLCD can participate in hearing process; LUBA hears any appeal of Board decision
Lower land use fees or subsidize selected agriculture or agricultural-related land use applications	CDD Director and/or Planning Manager could comment on +/- of proposal	Board has authority to set fees, but requires public hearing; Board can also choose to subsidize	No formal role

Option	Planning Division	Board of County Commissioners	State
Re-examine “incidental and subordinate” income test, currently set at 40% for agri-tourism and commercial activity. Other aspects are frequency, duration, intensity, spatial area, etc. of the use	Requires a land use application in which the “incidental and subordinate income” issue is a key aspect. Other factors are nature, intensity, and value of the proposed use. Needs Hearings Officer recommendation.	Board reviews the HO’s recommendation on the land use application and, if approved, can make findings regarding the income test for agri-tourism and commercial activity in conjunction with a farm use.	DLCD can participate in hearing process; LUBA hears any appeal of Board decision
Change administrative rules for activities allowed on EFU-zoned lands	No formal role	Can provide comment to DLCD	Revise OAR Chapter 660 Division 033
Change state law for farm labor housing allowed on EFU lands	No formal role	Can provide comment on proposed bill(s)	Revise ORS 215.213 and/or 215.283
Change 25% cap on income from sales on incidental items and promotional events for farm stands and wineries	No formal role	Can provide comment on proposed bill(s)	Revise OR 215.283(1)(o)(A)
Change state law to add meaderies to allowed uses	No formal role	Can provide comment on proposed bill(s)	Revise ORS 215.283