

BOCC Decision Matrix – Remand of Eden Properties Plan Amendment/Zone Change

Land Use File No. 247-24-000395-A (247-21-001043-PA, 1044-ZC)

No.	Issue Area/Approval Criterion	LUBA Final Order and Opinion	Applicant Response	Opponent Testimony	Board Decision Points
1	<p><u>Definition of Agricultural Land and Farm Use pursuant to ORS 215.203 and OAR 660-033-0030</u></p> <p>OAR 660-033-0030(3) requires that “nearby or adjacent land, regardless of ownership, shall be examined to the extent that a lot or parcel is either ‘suitable for farm use’ or ‘necessary to permit farm practices to be undertaken on adjacent or nearby lands’ outside the lot or parcel.”</p> <p>Is the subject property suitable for farm use <u>in conjunction with other property?</u></p>	<p>(pg. 37) “Relating the profitability of farm related activity solely to the activity on the subject property places undue weight on profitability. The board of commissioners improperly weighed the consideration of profitability of the subject property operating independently.”</p> <p>The Board decision fails to consider the ability to use the subject property with a primary purpose of obtaining a profit in money <i>in conjunction with other property.</i></p>	<p>The Board’s 2022 decision identifies nearby or adjacent lands and the farm uses occurring there on at Rec-97-100. The former Volwood Farms, Nicol Valley Farms, Stabb and Buchanan properties are the only nearby or adjacent lands engaged in farm use.</p> <p>The Buchanan property was the only property identified as keeping livestock.</p> <p>The applicant asserts the subject property is not suitable for irrigated agriculture due to the prohibitive cost of financing the acquisition of water rights and the development and operation of wells, pumps, and irrigation pivots.</p> <p>Applicant’s Open Record Exhibits 73 and 111 include testimony from rancher Rand Campbell finding combined operations with the Buchanans would not be profitable and would not be undertaken by reasonable farmer with intention to make a profit in money – relied on accepted farm practice of raising, selling cattle at auction to estimate cattle revenue.</p> <p>Applicant Open Record Exhibit 107 – Declaration of Robert Turner who spoke with former Volwood Farms owners who stated they would not consider combining operations with the Eden Property due to lack of irrigation, improvement costs due to fencing, inadequate forage, difficult seeding process due to lack of water and arid climate for successful germination.</p> <p>Central Oregon ranch owner/operator Russ Mattis submitted comment (July 23, 2024) stating they would not consider grazing the subject property alone or in conjunction with his ranch properties due to setup costs for fencing, rock removal, establishing water rights.</p>	<p>B. and E. Buchanan, adjacent owners and operators of Keystone Natural Beef, state they would use the property to expand their cattle ranching operation and they assert the subject property is suitable for seasonal grazing for the following reasons (2024-07-24 Public Comment):</p> <ul style="list-style-type: none"> • No need for irrigation, winter moisture is sufficient for seasonal grazing • Turnout period for grazing cows on site would start in April/May and continue to early August • Introduce drought tolerant grasses • Grazing land with characteristics of the Eden property is a well-accepted farming practice in Central Oregon • Utilize property as a breeding development center for their registered cattle. • Terrain is conducive for a feedlot-type setting due to rocky hillsides and uneven terrain providing muscular training and maintaining hoof health • Submitted business plan, dated July 24, 2024. <p>DLCD (2024-08-07 Comment):</p> <ul style="list-style-type: none"> • Record provided by applicant does not fully explore Buchanan opportunity as it relates to the possible farm uses. • “Accepted farming practices of the greater Central Oregon region include seasonal rotation of livestock over multiple properties and large areas, many of which do not contain irrigation rights.” 	<p>Based on the evidence in the record, is the subject property suitable for farm use <u>in conjunction with other property?</u></p> <ol style="list-style-type: none"> 1. If no, then the Board can continue reviewing the applications and move onto the other issue areas. 2. If yes, then the Board must deny the application.

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2	<p><u>Definition of Agricultural Land and Imported Feed</u></p> <p>OAR 660-033-0020(1)(a)(B) defines agricultural land as "Land in other soil classes that is <u>suitable for farm use</u> as defined in ORS 215.203(2)(a), taking into consideration:</p> <ul style="list-style-type: none"> • 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, and • accepted farming practices <p>Based on the above factors, is the subject property suitable for the feeding, breeding, management, and sale of livestock and poultry or the stabling or training of equines for the primary purpose of obtaining a profit in money <i>if feed is imported from off-site?</i></p>	<p>(pg. 41) ...the board of commissioners' interpretation is not supported by the text of OAR 660-033-0020(1)(a)(B) or ORS 215.203(2)(a), both of which are silent as to the source of the feed that is necessary to sustain animals involved in farm uses. ***</p> <p>Whether livestock, poultry, and equines are sustained with forage grown on-site or feed imported from off-site, their feeding, breeding, management, sale, stabling, and training potentially qualify as farm uses. The board of commissioners misconstrued OAR 660-033-0020(1)(a)(B) or ORS 215.203(2)(a) in concluding that land is suitable for farm uses involving animals only if sufficient feed can be grown on-site. ***</p> <p>(pg. 42) It may be that, even if feed is imported from off-site, the subject property is not suitable for the feeding, breeding, management, and sale of livestock and poultry or the stabling or training of equines for the primary purpose of obtaining a profit in money, given the factors listed in OAR 660-033-0020(1)(a)(B). However, the board of commissioners did not reach that conclusion. On remand, the county will have an opportunity to evaluate the testimony that 710 properties cites through the proper lens and reach its own conclusion.</p>	<p>Applicant's Final Legal Argument relies on evidence submitted to the record from rancher Rand Campbell who analyzes the economic viability of livestock, poultry, and stabling and training of equine operations – see Applicant's Exhibits 43 (cattle, goats), 47 (goats, sheep suitability factors), 50 (suitability for chickens), 108 (horse operations), 111 (cattle operations with the Buchanan Coyner Road property).</p> <p>Mr. Campbell's analysis of the imported feed and suitability issue is also supported by exhibits filed by the applicant, regarding livestock, poultry and equine uses. See, Exhibits 2-6, 12, 14 (significant financial losses for Lower Bridge alpaca operation), 20-24, 26-29, 32, 37, 64, 77.</p> <p>Mr. Campbell's analysis of combined operations concludes that importing feed is a money-losing proposition. He found that "the more hay a rancher needs to purchase and feed their cattle, the less profitable they will be" and "[i]ncreasing the number of cow-calf pairs would also lead to further losses due to reliance on expensive outside hay."</p>	<p>Central Oregon LandWatch (2024-07-24) asserts:</p> <ul style="list-style-type: none"> • Nearby feed stores in Redmond area can deliver feed directly to area farms and ranches for variety of livestock, equine, poultry uses. • Common practice to supply or supplement feed from feed stores. • No specific economic analysis included. <p>K. Nonella, Equine Nutritionist (2024-07-30) asserts that the subject property is well-suited for the stabling, training, and boarding of equines as horses need dry land acreage as well as goats due to adaptation to arid climates and browsing habits.</p>	<p>Based on the evidence in the record, is the subject property suitable for the feeding, breeding, management, and sale of livestock and poultry or the stabling or training of equines for the primary purpose of obtaining a profit in money <u>if feed is imported from off-site?</u></p> <ol style="list-style-type: none"> 1. If no, then the Board can continue reviewing the applications and move onto the other issue areas. 2. If yes, then the Board must deny the application.

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3	<p><u>Definition of Agricultural Land and Equipment and Facilities to support Farm Activities</u></p> <p>OAR 660-033-0020(1)(a)(B) defines agricultural land as "Land in other soil classes that is <u>suitable for farm use</u> as defined in ORS 215.203(2)(a), taking into consideration:</p> <ul style="list-style-type: none"> • 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, and • accepted farming practices" <p>ORS 215.203(2)(a) defines <u>farm use</u> in part as, "Farm use also includes the on-site construction and maintenance of equipment and facilities used for the activities described in this subsection."</p> <p><u>Given the factors in OAR 660-033-0020(1)(a)(B), is the property suitable for the construction or maintenance of equipment and facilities used for farm activities even where those farm activities occur on other lands?</u></p>	<p>(pg. 44) "Under ORS 215.203(2)(a), "farm use" includes the [on-site] construction and maintenance of equipment and facilities used for farm activities" whether they occur on the subject property or elsewhere.</p> <p>(pg. 45) "The board of commissioners misconstrued OAR 660-033-0020(1)(a)(B) and ORS 215.203(2)(a) in concluding that land is suitable for that farm use only if the farm activities occur on the same land."</p>	<p>This use is limited, by its express terms, to the on-site <i>construction</i> and <i>maintenance</i> of equipment and facilities used for farm uses. Construction is the act of building something, typically a large structure, and maintenance is keeping the structure in good repair once it is built. These acts, and these acts alone, are allowed by this part of the definition of "farm use." The use does not include the uses that occur within the structure or with the equipment once constructed or maintained. The storage of farm equipment and/or farm products is only a farm use if it meets other parts of the definition of "farm use." ORS 215.203(2)(b).</p> <p>The preparation and storage of farm products and by-products is defined separately and earlier in ORS 215.203(2)(b) as a "farm use." That use is limited to the preparation and storage of products and by-products "<i>raised on such land.</i>" Farm equipment storage is allowed if it is a part of the current employment of the land for farm activities conducted with the primary purpose of obtaining a profit in money. The subject property is not suitable for conducting a "farm use" with that intention.</p> <p>The remaining issue is whether the subject property is a suitable place to construct or maintain a farm structure or farm equipment on the subject property for a farm use occurring on another property if the property is suitable for farm use. As a result, the applicant assessed whether the property is suitable for farm equipment repair facilities that serve "farm uses" only and the construction of farm equipment or structures on site for use elsewhere. A review of the seven suitability factors shows that the property is not suitable for these uses and other similar uses based on three or more of the seven suitability factors, as detailed in the Applicant's Final Legal Argument.</p>	<p>The Johnsons and others assert that the subject property is suitable for the construction of new homes so is appropriate for the construction of any type of farm structure.</p> <p>The Buchanans say they would like to store farm equipment on the property.</p> <p>DLCD asserts that the use allowed is "the construction and maintenance of equipment and facilities used to support farm practices including barns, agricultural storage sheds and other preparation facilities, processing facilities allowed by ORS 215.255, hay covers, cattle lanes, driveways, holding pens, and similar improvements and structures included in the definition of farm use..."</p> <p>Farm and ranch stores without a primary farm use on the subject parcel is a commercial activity in conjunction with farm use so the applicant's evidence is irrelevant. DLCD acknowledges that the property lacks 'urban services' and 'adequate transportation' to support a more intense use of the subject property but says that residential development would exceed the traffic generated by a single farm equipment business.</p>	<p>Similar to what DLCD noted in their comment, Staff understands that stand alone commercial farm and ranch stores are not permitted in the EFU Zone without a primary farm use on the subject property or otherwise "in conjunction with farm use."</p> <p>Staff understands the remanded issue requires additional evidence and conclusions regarding the suitability of the property for on-site construction and maintenance of equipment and facilities used for farm activities, even if those activities occur on other lands.</p>	<p>Given the factors in OAR 660-033-0020(1)(a)(B), is the property suitable for the construction or maintenance of equipment and facilities used for farm activities even where those farm activities occur on other lands?</p> <ol style="list-style-type: none"> 1. If no, then the Board can continue reviewing the applications and move on to other issue areas. 2. If yes, then the Board must deny the PA/ZC.

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4	<p><u>Definition of Agricultural Land – Part 2 – Legal Test</u></p> <p><u>Is retention of the property's agricultural designation necessary to permit farm practices on adjacent or nearby lands?</u></p> <p>OAR 660-033-0020(1)(a)(C) defines "agricultural land" as "Land that is necessary to permit farm practices to be undertaken on adjacent or nearby agricultural lands."</p>	<p>The County's findings identify the surrounding farm practices on tables that are a part of its decision (Rec-98-100). The findings, however, do not establish compliance with OAR 660-033-0020(1)(a)(C). This OAR "requires an evaluation of the impacts that redesignating and rezoning land from agricultural to non-resource will have on adjacent or nearby lands and a determination of whether those impacts will prevent farm practices on those lands" making it necessary to retain EFU zoning.</p> <p>The County's findings on remand must evaluate the impacts of water, traffic, nuisance and trespass and determine whether any of those impacts will prevent farm practices from continuing on adjacent or nearby lands.</p> <p>The Court of Appeals agreed with LUBA that the retention of EFU must meet the "high standard" that it is truly "necessary to permit farm practices on adjacent or nearby agricultural lands." The Court found that "necessary" means "whatever is essential for some purpose" and "things that must be had."</p>	<p>The tables in the decision identify adjacent and nearby lands and the farm practices occurring on those lands. The impacts test must be applied to those lands and those farm practices. The only likely exception is the Buchanan's use of their property for wintering cattle owned by Keystone Natural Beef which was not identified by the tables but was treated as an area farm use by LUBA for the combined operations test.</p> <p>Opponents did not address the relevance of LUBA's finding that the County had identified farm practices and adjacent and nearby lands and did not confine their evidence to lands and farm practices identified by the tables.</p> <p>Opponent Redside applies elements of the "significant impacts" test of <i>Stop the Dump</i> and ORS 215.296(1); not the more stringent "prevent farm practices" test established by LUBA and the Court of Appeals.</p>	<p>Redside argues that holdings of the <i>Stop the Dump</i> case apply even though the case addresses the "no significant impacts" test; a test more stringent than the "necessary to permit farm practices" test. (2024-08-14 J. Howsley)</p> <p>DLCD agrees that the "necessary to permit farm practices" test applies and claims that evidence has been provided that residential use may have "significant impacts related to traffic and new water demands" and that the applicant had not, as of August 7, 2024 provided substantial evidence that retaining EFU zoning is not necessary to permit farm practice on adjacent or nearby lands.</p>	<p>Staff recommends that the Board follow the test as set out by LUBA and the Oregon Court of Appeals.</p> <p>Staff recommends that the Board apply to "necessary to permit farm practices" test to the properties identified as adjacent and nearby properties in its prior decision.</p> <p>Staff recommends that the Board review the farm practices identified in its prior decision and determine whether the "necessary" test is met. Staff also recommends that, in an excess of caution, that the Board also address farm practices related to the Buchanan and Two Canyons LLC cattle operations in its decision.</p>	<p>Is retention of the property's agricultural designation necessary to permit farm practices on adjacent or nearby lands?</p> <ol style="list-style-type: none"> 1. If no, then the Board can continue reviewing the applications and move on to other issue areas. 2. If yes, then the Board must deny the PA/ZC.

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5	<p><u>Definition of Agricultural Land – Part 2A, Traffic</u></p> <p>OAR 660-033-0020(1)(a)(C) defines "agricultural land" as "Land that is necessary to permit farm practices to be undertaken on adjacent or nearby agricultural lands."</p>	<p>While the Board concluded that traffic impacts would not prevent farm practices on adjacent and nearby lands, the findings do not set out the facts which the Board believed and relied upon and did not explain how those facts led to this conclusion.</p>	<p>The subject property does not adjoin and lacks access to Lower Bridge Way and Buckhorn Road, rural collector streets designed to carry a significant amount of vehicle traffic. Any access that might be obtained across public lands will be limited to utility and emergency access only. Eden Central traffic will use Coyner Avenue for access and, therefore, will not interfere with Two Canyons, LLC's cattle driving operation (about 50 head of cattle).</p> <p>Joe Bessman, P.E (Applicant's Exhibit 49) has filed photos and detailed information re farm vehicles to support his opinion that Coyner Avenue and its shoulders are wide enough to allow the Buchanan haying and farm equipment and Eden Central traffic to pass while traveling down this road.</p> <p>Mr. Buchanan does not claim that other potential conflicts will prevent him from continuing accepted farm practices on his property. Open range law requires drivers to compensate Mr. Buchanan for harm to calves. Improved, relatively inexpensive fencing would cure the existing calf escape problem.</p> <p>Other opponents claim traffic will interfere with farm use but not that traffic impacts will prevent farm practices. Opponent Lori Johnson states, in her July 16, 2024 letter that EFU zoning "is not necessary to permit farming practice in the area" and Kelsey Nonella agrees.</p> <p>There are no livestock crossings along the route of travel to Hwy 126 from the Eden Central property.</p> <p>The Applicant includes a Condition of Approval limiting residential development to a maximum of 71 dwellings.</p>	<p>Redside claims Two Canyons, LLC moves cattle between two farm properties owned by Two Canyons, LLC along Lower Bridge Way and a short distance on Buckhorn Road.</p> <p>Mr. Buchanan says that Eden Central traffic will conflict with slow-moving vehicles. He says he would have no way of continuing our operation "if" he cannot get haying equipment down Coyner Avenue and onto his ranch.</p> <p>Mr. Buchanan says that the EFU zone should be preserved to prevent conflicts with farm equipment and cattle trucks that use Coyner Avenue and the not infrequent escape of small calves onto the road.</p> <p>Other opponents say that slow-moving farm vehicles use Coyner Avenue and other roads that pass properties that are not adjacent or nearby lands.</p> <p>Redside claims there is undisputed testimony of livestock crossings in the record citing a statement that the "farming community" has livestock crossing (singular).</p>	<p>Given the applicant's proposed condition of approval agreement, is it <i>necessary</i> for the Agricultural Land/EFU designation of the Eden Central property to be retained to permit farm practices to occur on adjoining or nearby agricultural lands due to traffic impacts?</p> <ol style="list-style-type: none"> 1. If no, then the Board can continue reviewing the applications and move onto the other issues areas. 2. If yes, then the Board must deny the PA/ZC.

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6	<p><u>Definition of Agricultural Land - Part 2B, Water</u></p> <p>OAR 660-033-0020(1)(a)(C) defines "agricultural land" as "Land that is necessary to permit farm practices to be undertaken on adjacent or nearby agricultural lands."</p>	<p>Findings in the Board's decision must address water impacts and determine whether retaining the existing zoning and plan designation (Agriculture/EFU) is necessary to permit farm practices on adjacent or nearby agricultural lands.</p>	<p>As determined by the Board in 2022, "[a] professional water study conducted by GSI Water Solutions, Inc. found that the use of exempt wells to meet the water needs of new residents would be unlikely to have a measurable interference on agricultural wells and domestic wells in the area around the subject property."</p> <p>OWRD's Regional Manager Kyle Gorman testified in initial application proceedings that groundwater is available, that the aquifer is "robust" and that the aquifer in the area potentially influenced by pumping (Lower Bridge) is declining slowly over time due primarily to drought.</p> <p>The fact that the level of groundwater is dropping gradually is not evidence that water use by 71 homes will result in a discontinuation of irrigated farming on any adjacent or nearby farm property.</p> <p>Bob Long of CwM-H2O (2024-08-07 J. Howsley New Evidence) poses and answers questions not asked by LUBA other than to state that any exempt water use, no matter how small, will increase the rate of decline of groundwater. He offers no evidence that shows that the conclusions of the GSI Water Solutions water analysis are incorrect. He fails to quantify the impacts of water use by Eden Central wells or to establish that the Eden Central use, alone, will impose any additional costs to pump groundwater or to challenge GSI's finding that interfere with agricultural wells is unlikely water use by Eden Central will interfere with the Volwood well closest to the Eden Central.</p> <p>The Applicant proposes to include a Condition of Approval (Pg. 27 of Final Legal Argument and Exhibit 114) to voluntarily reduce the amount of water that could be used from exempt wells for irrigation from the permitted ½ acre of irrigation to ¼ acre. The Applicant proposes this to be memorialized in a Restrictive Covenant recorded to the property's title.</p> <p>The Applicant also includes a Condition of Approval limiting residential development to a maximum of 71 dwellings.</p>	<p>Opponents argue that the groundwater is dropping and, therefore, no new homes should be allowed to be built on the Eden Central property. Opponents assert that a rural development of this size would lower the groundwater and require area wells to be redrilled. Many commenters pointed to a variety of data regarding groundwater levels in the region and well log records that show that some area wells have be redrilled due to dropping groundwater levels.</p> <p>Redside introduced a letter written by Bob Long, RG, LHG, CWRE (2024-08-07 J. Howsley New Evidence) that crafts and answers questions other than those posed by LUBA in its decision. B. Long concludes that because exempt water users are not required by law to provide mitigation, any exempt use no matter how small will cause some decline in groundwater. He asserts that any slight decline will adversely affect agricultural water use and operations by increasing the cost of pumping well water and potentially requiring new wells to be drilled as water levels decline.</p>	<p>Given the applicant's proposed condition of approval agreement, is it necessary to retain EFU zoning to permit farm practices to be undertaken on adjacent and nearby agricultural lands due to water impacts related to the use of exempt groundwater wells by future owners of lots on the Eden Central property?</p> <ol style="list-style-type: none"> 1. If no, then the Board can continue reviewing the applications and move onto the other issues areas. 2. If yes, then the Board must deny the PA/ZC.

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7	<p>OAR 660-033-0020(1)(a)(C) <u>Definition of Agricultural Land – Part 2C, Nuisance and Trespass</u></p> <p>OAR 660-033-0020(1)(a)(C) defines "agricultural land" as "Land that is necessary to permit farm practices to be undertaken on adjacent or nearby agricultural lands."</p>	<p>Findings in the Board's decision must determine whether potential nuisance and trespass impacts will occur as a result of uses allowed by the RR10 zone and, if so, whether retaining the existing zoning and plan designation (Agriculture/EFU) is necessary to permit farm practices on adjacent or nearby agricultural lands.</p>	<p>No party asserts on remand that nuisance and trespass impacts will prevent farm practices from being undertaken on adjacent or nearby lands or present any testimony or evidence that these potential impacts will do so.</p> <p>The existing EFU zoning on the subject property could allow up to 24 non-farm dwellings and while the RR10 zoning would allow more dwellings, the impacts imposed will be the same as the minimal impacts imposed by a nonfarm dwelling.</p> <p>ORS 30.930-.947, the "Right to Farm" law limits nuisance and trespass lawsuits against farm operators.</p> <p>The applicant asks the County to impose a condition of approval agreement (Applicant's Exhibit 114), enforceable by a recorded restrictive covenant, that requires: (a) those who build new homes to sign the County's EFU waiver of remonstrance agreement that protects accepted farm practices; and (b) that requires new homes to meet a special 100' setback from properties engaged in farm use; and (c) to construct and fence on or near the common boundary (where missing) and post and maintain no trespassing signs along or close to the boundary with the former Volwood Farms property at intervals of 250' – the only farm property that adjoins the subject property at more than one point and that is not separated from it by a road. These measures will significantly minimize potential nuisance and trespass conflicts between farm and nonfarm uses.</p> <p>The Applicant includes a Condition of Approval limiting residential development to a maximum of 71 dwellings.</p>	<p>DLCD argued in 2022 that it was not clear how water, traffic, nuisance and trespass impacts under the new RR-10 zoning would impact area farm operations.</p> <p>In 2024, DLCD argues that testimony indicates that RR10 uses "may have significant impacts related to new residential traffic and new water demands" but does not claim that testimony indicates that nuisance and trespass impacts will be significant or will prevent farm practices from being undertaken on adjacent or nearby lands. This reflects the fact that evidence and arguments on remand about impacts has not included concerns about trespass or nuisance.</p>	<p>Considering the proposed conditions of approval agreement (Applicant's Exhibit 114), will potential nuisance and trespass impacts associated with the application request prevent the continuation of farm practices on nearby or adjacent lands?</p> <ol style="list-style-type: none"> 1. If no, then the Board can continue reviewing the applications and move onto the other issues areas. 2. If yes, then the Board must deny the PA/ZC.

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8a	<p><u>DCC 18.136.020(C)(2) and DCCP Agricultural Lands Goal 1 – Impacts on Surrounding Land Use, Board Interpretation of the Code and Goal</u></p> <p>DCC 18.136.020(C)(2) requires that <i>“impacts on surrounding land use will be consistent with the specific goal and policies contained within the Comprehensive Plan.”</i></p> <p>DCCP Agricultural Lands Goal 1 is to <i>“[p]reserve and maintain agricultural lands and the agricultural industry.”</i></p>	<p>(Pg 73-74) The County’s findings are <i>not</i> inadequate for failing to address surrounding non-resource lands.</p> <p>However, findings that an increase from 24 to 71 dwellings will have no greater water, wastewater or traffic impacts on surrounding agricultural lands and the agricultural industry, and findings relying on the distance of the property and surrounding agricultural lands to address these impacts are inadequate because it is unclear how this fact will mitigate water, wastewater or traffic impacts and achieve compliance with DCC 18.136.020(C)(2) and DCCP Agricultural Lands Goal 1. The County must consider evidence of impacts on surrounding agricultural lands vis-a-vis water, wastewater, and traffic.</p>	<p>The County is due deference in interpreting provisions of its code and comprehensive plan that are not mandated by State law. In this case, neither the code nor the plan text is mandated by state law. The applicant asks that the County interpret the Goal 1 and the impacts test of DCC 18.136.020(C)(2), as they relate to impacts of the proposed PA/ZC, as requiring compliance with the impact test formulated by LUBA based on the provisions of OAR 660-033-0020(1)(a)(C). That test will preserve and maintain agricultural lands and the agricultural industry by protecting surrounding agricultural lands. That test includes both adjoining and nearby lands that surround the property and the County has already properly identified those lands. Ensuring that farm practices on those lands will be able to continue assures that those lands and the industry will be preserved.</p> <p>The proposed interpretation of DCCP Agricultural Lands Policy Goal 1 is reasonable because Goal 1 is implemented by DCCP Policies 2.2.1 – 2.28. Policy 2.2.3 allows plan and zone map amendments for non-resource land “as allowed by State Statute, <i>Oregon Administrative Rules</i> and this Comprehensive Plan” – rules that include OAR 660-033-0020(1)(a)(C) that addresses impacts to adjoining and nearby lands.</p>	<p>Opponents did not, on remand, weigh in on the issue of the proper interpretation of DCC 18.136.020(C)(2) and DCCP Agricultural Lands Goal 1. They did claim that water, wastewater and traffic impacts would occur and that the application, therefore, should be denied. The traffic and water impacts have been addressed by this matrix under the analysis of OAR 660-033-0020(1)(a)(C). Issues related to wastewater impacts are addressed below.</p>	<p>Does the Board concur with the Applicant’s approach to analyze compliance with DCCP Agricultural Lands Goal 1 as it relates to DCC 18.36.020?</p> <ol style="list-style-type: none"> 1. If yes, the Board can continue reviewing the application materials and move onto the next issue area. 2. If no, how does the Board wish to interpret compliance with the above stated provisions and the impacts test?

No.	Issue Area/Approval Criterion	LUBA Final Order and Opinion	Applicant Response	Opponent Testimony	Board Decision Points
8b	<p><u>DCC 18.136.020(C)(2) and DCCP Agricultural Lands Goal 1 – Impacts on Surrounding Land Use – Analysis of Impacts</u></p> <p>DCC 18.136.020(C)(2) requires that <i>“impacts on surrounding land use will be consistent with the specific goal and policies contained within the Comprehensive Plan.”</i></p> <p>DCCP Agricultural Lands Goal 1 is to <i>“[p]reserve and maintain agricultural lands and the agricultural industry.”</i></p>	<p>The County must consider evidence of impacts on surrounding agricultural lands vis-a-vis water, wastewater, and traffic and determine whether they are consistent with DCCP Agricultural Lands Goal 1.</p>	<p>The applicant addressed water and traffic issues in its response to the requirements of OAR 660-033-0020(1)(a)(C). That response also establishes that the impacts on surrounding lands will be consistent with DCCP Agricultural Lands Goal 1.</p> <p>Certified Professional Soil Scientist and Registered Wastewater Specialist Brian Rabe, CPSS, WWS, based on his expertise and experience in addressing septic system and soils issues and his site-specific soil survey of the Eden Central property, advised “given the location of the property and the size of potential residential lots, it is my professional opinion that there will be no wastewater impacts on nearby or surrounding agricultural lands or the farm uses or farm practices on such lands.” Applicant Exhibit 36. Mr. Rabe specifically rejected claims made by Redside’s attorney, that nitrate testing of agricultural wells was necessary and provided evidence that nitrates are beneficially used in agriculture (Applicant Exhibit 48). He also rebutted Mr. Buchanan’s claim that “the drainage of sewage from 71 homes would result in significant negative changes in our farm practices” stating that no evidence support the claim (Applicant Exhibit 76).</p> <p>The Applicant proposes to include a Condition of Approval (Pg. 27 of Final Legal Argument and Exhibit 114) to voluntarily reduce the amount of water that could be used from exempt wells for irrigation from the permitted ½ acre of irrigation to ¼ acre. The Applicant proposes this to be memorialized in a Restrictive Covenant recorded to the property’s title.</p> <p>The Applicant includes a Condition of Approval limiting residential development to a maximum of 71 dwellings.</p> <p>Other conditions the Applicant proposes include:</p> <ul style="list-style-type: none"> • 100-foot setbacks from lands engaged in farm use and receiving farm tax deferral • Residential access only from NW Coyner Avenue. Other access points are emergency only. • No destination resort may be established on the property. • Waiver of Remonstrance precluding complaints against nearby farm practices. 	<p>Redside attorney James Howsley offered his opinion that the permeability of subsoils “means that wastewater from septic drain fields will flow down to the groundwater at a relatively high rate” and that there is no evidence of current or potential nitrate levels in nearby wells and that testing wells for nitrates is required to find that septic systems will not impact groundwater quality.</p> <p>Mr. Buchanan claims that “the drainage of sewage from 71 homes would result in significant negative changes in our farm practices” but did not identify any farm practices that would be impacted or offer scientific proof of this assertion. See, Billy Buchanan letter of 2024-08-07 and testimony at July 24, 2024 hearing.</p>	<p>Considering the proposed conditions of approval agreement (Applicant’s Exhibit 114), will the impacts of the zone change on surrounding land use be consistent with DCCP Agricultural Lands Goal 1, considering water, wastewater, and traffic impacts?</p> <ol style="list-style-type: none"> 1. If yes, then the Board can continue reviewing the applications and move to approve the application. 2. If no, the Board must deny the application.