



**MEMORANDUM**

**DATE:** October 21, 2021

**TO:** Deschutes County Planning Commission

**FROM:** Peter Russell, Senior Transportation Planner

**RE:** Rural Economic Development Opportunities / Panel Discussion / Recap

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The Planning Commission (PC) on October 14, 2021, hosted a panel discussion on Rural Economic Development Opportunities with representatives from state agencies, Oregon Farm Bureau, High Desert Food and Farm Alliance, and County staff.<sup>1</sup> The conversation centered on real and perceived barriers for small-scale farmers and ranchers to undertake agri-tourism and/or commercial activities in conjunction with farm use. The discussion lasted approximately 2.5 hours.

On October 28 the Planning Commission will revisit the issues and themes identified by the panel, share observations, and consider other possible remedies to forward to the Board of County Commissioners (Board) for their consideration. Staff will then meet with the Board to summarize the topics and seek further direction.

**I. BACKGROUND**

Staff prepared a June 28, 2021, white paper on Rural Economic Development Opportunities in Deschutes County. Staff presented it to the Board on June 28, 2021 and to the Planning Commission on July 8. Besides citing Oregon Revised Statutes (ORS), Oregon Administrative Rules (OAR), and zoning, the white paper identified other contributing factors such as septic issues, building codes, and rural demographics. Staff shared the white paper with the panelists two weeks before the October 14 PC meeting. The panel discussed the challenges facing small operators and their entry into commercial activities in terms of fees, regulations, and the time land use review took. The panelists were:

- Jim Johnson, Oregon Department of Agriculture
- Jon Harrang, Oregon Department of Agriculture
- Matt Cyrus, Oregon Farm Bureau
- Carol McBeth, Central Oregon LandWatch
- Katrina Van Dis, High Desert Food and Farm Alliance
- Todd Cleveland, Deschutes County Environmental Soils Division

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<sup>1</sup> <https://www.deschutes.org/bc-pc/page/planning-commission-4>

- Randy Schied, Deschutes County Building Safety Division

## II. PANEL DISCUSSION MAIN THEMES

Panelists possess a wide range of experience, both from a regulatory aspect, daily practitioner, and as a land use applicant. During the wide-ranging and open discussion, as well as in the question and answer period, the following major topics or themes emerged. These are not presented in any order of priority:

### A. Explore changes in state law to house on-farm laborers

Ranches and farms typically exist far from urban centers. Agricultural workers can experience long commutes. State law imposes an acreage, median acreage/gross sales test or gross annual income test (\$40,000 to \$80,000) for farm-related and accessory dwellings. For small farms, these requirements are difficult to meet.

Lowering these requirements for small farmers requires a change to state law.<sup>2</sup>

### B. Lower land use fees

The Community Development Department (CDD) is a fee-supported enterprise. The fee structure relates to the complexity of the land use application, such as outright permitted use compared to a conditional use permit and whether similar applications were approved administratively or appealed to a hearings officer or the Board. The Board sets the permit fees charged by CDD and would have to approve any changes.

Lowering fees would require Board action and a subsidy from the general fund.

### C. Change state law to lower the income thresholds for agri-tourism and commercial activities in conjunction with farm use to recognize the income challenges facing small farmers

Farm use as defined by state law, means the current employment of the land for the primary purpose of obtaining a profit in money. State law requires agri-tourism and commercial activities in conjunction with a farm use to be incidental and subordinate to the primary farm use. In Deschutes County, the Board through a series of land use decisions defines incidental and subordinate income level at 40% to the primary farm use. In other words, a farm with an income of \$100,000 could only generate an additional \$40,000 on the incidental use. The agricultural use must also have a connection to agri-tourism and/or commercial activity (ex. growing flowers and incorporating them in wedding settings and making them available for sale). The area devoted to agri-tourism and/or the commercial activity must also constitute a small area of the overall farm. Lastly, the events themselves must also be incidental and occur infrequently.

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<sup>2</sup> Oregon Revised Statute 215.277 sets the farmworker housing policies on agriculture land.

Lowering the incidental and subordinate requirements for small farmers requires a change to state law.

**D. Remove commercial activities in conjunction with farm use as a conditional use and process as an administrative determination**

Commercial activities in conjunction with farm use have been controversial in Deschutes County due to compatibility concerns (traffic, noise, disruptions to neighboring farms, etc.).

Amending County code and reclassifying it as an administrative determination would require Board direction.<sup>3</sup>

**E. Prioritize agriculturally related land use applications (processing, agri-tourism, commercial activities in conjunction with farm use) ahead of other land use applications.**

Under state law, counties have 30 days to deem a quasi-judicial land use application complete and then 150 days to reach a decision at the local level, up to and including the Board.<sup>4</sup> Typically, the County processes land use applications in the order received. Deschutes County receives approximately 800 to 1,000 applications a year.

As might be expected, each applicant expects a timely decision. The time to process an application depends on the complexity of the land use, whether it is a matter of first impression or is a more routine application, whether site plan review is involved, if the use is permitted outright or conditionally, and/or whether there is any opposition.

Prioritizing one application type over another is extremely awkward and would set a problematic precedent. Staff is not aware of another Oregon county that favors one application type over another.

**F. Verify why Crook and Jefferson counties have differing approaches to farm uses and lower land use fees**

A few panelists noted it appeared Crook and Jefferson counties were more pro-agriculture, had lower fees, and processed land use applications faster than Deschutes County. Staff contacted the Planning Directors at Crook and Jefferson counties as well as the Central Oregon representative for the Department of Land Conservation and Development (DLCD).

All three counties must follow the same state laws and regulations. The three differ markedly in geographic size, number of parcels and average size, soils, and land prices. The proximity to Bend affects land prices as locations near the largest city east of the Cascades are highly sought.

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<sup>3</sup> DCC Chapter 18.124 Site Plan Review, is still required.

<sup>4</sup> The 150-day clock does not apply to plan amendments and zone changes.

The desirability of proximity to Bend can be seen in the 2015-2019 median home price in 2019 dollars:

- Deschutes County \$364,600
- Crook County \$246,100
- Jefferson County \$224,600

A similar pattern appears for median household income 2015-2019 in 2019 dollars.<sup>5</sup>

- Deschutes County \$67,043
- Jefferson County \$53,277
- Crook County \$49,006

Essentially, those drawn to the Bend area and its amenities have significantly higher income and can bid up the price of land zoned Exclusive Farm Use (EFU), Multiple Use Agriculture (MUA-10), and Rural Residential (RR-10). For EFU lands, which tend to be larger parcels than MUA-10 and RR-10, the property owner has the option of applying for a non-farm dwelling (NFD). The NFD, however, must be situated on the lands least suitable for farming (Class 7 or 8 soils); a NFD does not necessarily preclude farming the remaining property. Oregon law requires that any property receiving special farm tax assessment be disqualified from such tax status upon receipt of preliminary approval for a nonfarm dwelling. In addition, the law requires that certain taxes associated with disqualification be paid before the nonfarm dwelling can be built. NFDs are discussed in more detail below.

Staff talked with Will Van Vactor, Crook County Community Development Department Director, about the differences between Crook and Deschutes counties. Mr. Van Vactor pointed out that Crook County has much lower permit volumes than Deschutes County. Crook County does not send out preliminary notices of land uses that are agriculture in nature or related to agriculture, which saves 21 days in the process; Crook County does send out notice of decision. Crook County does review that the proposed use is incidental and subordinate to the primary agricultural use, but does not have an income test. Deschutes County, through Hearings Officers and Board decisions, has set a financial ceiling for the commercial use for the farm's total income. The commercial use can be at most 40 percent of the farm's income.

Staff also reached out to Jefferson County, but did not receive a timely response.

Finally, staff talked with Jon Jinings, Central Oregon Community Service Specialist for the Department of Land Conservation and Development (DLCD). He reiterated that the same state rules and regulations apply to Crook, Jefferson, and Deschutes counties. From a State standpoint, one or two counties cannot be more pro-agriculture than another as the State's land use system does not make such distinctions. Please attached letter from DLCD.

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<sup>5</sup> Data taken from Oregon Blue Book, 2021-22, Housing Table for Crook, Deschutes, and Jefferson counties

**G. Conduct outreach to realtors about what living on agricultural land can mean to those not accustomed to living near working farms and ranches**

The Deschutes County Soil and Water Conservation District produced a Rural Living Handbook in 2010 describing what to expect when living in the rural countryside.<sup>6</sup> The panel suggested more outreach to area realtors about farming and ranching and what that can mean to those living near a working farm or ranch. Staff regularly meets with Central Oregon Association of Realtors (COAR) and does outreach on land use topics. Staff can certainly include discussion points on living next to a working ranch and/or farm in terms of noise, odor, nocturnal activities, etc.

**H. Reassess the number of non-farm dwellings approved by Deschutes County**

In EFU zoning, dwellings can either be a primary dwelling, a NFD, or a replacement dwelling. ORS 215.243 sets the resource land dwelling policy. The dwelling types fall into two broad categories – 1) dwellings for farm owners; relatives helping in farming; and farm workers, including relatives assisting in farm operations and 2) dwellings not associated with an active farm use on the property.<sup>7</sup> State law allows nonfarm dwellings on EFU lands for areas deemed unsuitable for farm use. Typical factors include rocky terrain, poor soils, or lack of water rights. Nonfarm dwellings go through a rigorous review.

Review of NFDs in Deschutes County include notice of application and potentially public hearings. Deschutes County has more smaller EFU zoned parcels than Crook and Jefferson counties and Deschutes County is geographically larger than both of them. Deschutes County has poorer soils and a shorter growing season. The combination of these factors means there are more potential locations for NFDs. Additionally, as shown above, there is a demand for homes on rural property near Bend. State statute details the legal process for applicants to apply and local governments to review and approve or deny a NFD. The following two tables compare the three counties approvals of NFDs.

**Table 1, Nonfarm Dwellings Approved 2018-2019<sup>8</sup>**

<b>County</b>	<b>2018</b>	<b>2019</b>	<b>TOTAL</b>
Deschutes	23	21	44
Crook	9	1	10
Jefferson	0	2	2

<sup>6</sup> [https://issuu.com/desertvalleygroup/docs/deschutes\\_rlh\\_2010](https://issuu.com/desertvalleygroup/docs/deschutes_rlh_2010)

<sup>7</sup> DLCD, "Oregon Farm and Forest Land Use Report, 2018-2019" page 12

<sup>8</sup> Ibid, Table 4, Nonfarm dwelling approvals on Farmland, parcel size, and county, 2018-2019

**Table 2, Nonfarm Dwellings Approved by Parcel Size, 2018-2019<sup>9</sup>**

<b>County</b>	<b>0-5 Acres</b>	<b>6-10 Acres</b>	<b>11-20 Acres</b>	<b>21 to 40 Acres</b>	<b>41 to 80 Acres</b>	<b>80+ Acres</b>
Deschutes	17	4	15	5	2	3
Crook	0	2	2	2	4	0
Jefferson	0	0	0	1	0	1

**III. NEXT STEPS**

Staff will provide a summary to the Board of the Planning Commission’s October 14 panel discussion and October 28 observations and recommendations. The Board meeting will likely occur in November.

*Attachment: Letter from Jon Jinings, DLCD, dated October 20, 2021*

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<sup>9</sup> Ibid