

BOCC DECISION MATRIX

MARKEN PLAN AMENDMENT / ZONE CHANGE Land Use File Nos. 247-22-000353-PA, 354-ZC					
	Issue Area	Applicable Approval Criteria	Applicant and Oppositional Responses	Hearings Officer and Staff	Board Decisions
1	<p><u>Goal 3: Part 1</u></p> <p>Does the subject property constitute agricultural land, as defined by OAR 660-033-0020(1)(a)?</p>	<p>Deschutes County Comprehensive Plan Policy 2.2.3, and Statewide Planning Goal 3.</p>	<p>The Applicant asserts the property owners unsuccessfully attempted to obtain a profit through farming the property, even with the use of irrigation and fertilizer. The applicant asserts it is not feasible to obtain a profit in money due to the poor soil capability and high cost of required inputs.</p> <p><u>Oppositional comments</u> assert the subject property is predominantly Class I-VI soils according to the NCRS, has a long history of farm use, and contains a water impoundment for farm use. The property owners voluntarily relinquished the majority of their water rights, and oppositional comments assert this should not be used as justification that the property is unsuitable for farming.</p> <p>Oppositional comments assert the property has been in farm use for over 30 years, with the intent to obtain a profit. Questions were raised about the methods that were attempted to farm the property for profit, and whether it could have been possible to successfully obtain a profit. Additionally, the definition of 'agricultural use' from DCC 18.04.030 specifically excludes the requirement to obtain a profit.</p>	<p>The Hearings Officer (HOff) found the subject property is not Goal 3 agricultural land (HOff Decision p. 57).</p> <p>The Hearings Officer found that the definition of farm use in ORS 215.203(2)(a) refers only to the current employment of land. The current employment of the property is not for the primary purpose of growing or harvesting crops, or other farm activities described in ORS 215.203(2)(a).</p> <p>The Hearings Officer also found that the pond on the subject property does not constitute a water impoundment for farm use, per ORS 215.203(2)(b)(G). (HO Decision p. 28-30).</p> <p>Staff agrees with the Hearings Officer's findings.</p>	<p>Does the subject property constitute agricultural land under OAR 660-033-0020(1)(a)?</p> <ol style="list-style-type: none"> 1. If no, the Board can continue reviewing the applications, and move to approve the Plan Amendment and Zone Change (PA/ZC). 2. If yes, the Board must deny the PA/ZC.

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2	<p><u>Goal 3: Part 2</u></p> <p>Whether the soil study provided by the applicant is sufficient to demonstrate the subject property consists of predominantly unproductive soils, or Class VII-VII.</p>	<p>OAR 660-033-0020(1)(a) and Statewide Planning Goal 3.</p>	<p><u>The Applicant</u> asserts the site-specific soil study was prepared by a certified soil classifier and reviewed by DLCD. The site-specific soil study was conducted according to the Soil Survey Manual, appropriately delineated different soil classifications, and correctly categorized developed land and water bodies.</p> <p><u>Oppositional comments</u> assert that the NCRS mapping must be considered, and that the site-specific soil study is deficient because the summary of observation points does not support the conclusion that the property is predominantly Class VII-VIII soils.</p>	<p>The Hearings Officer found that Statewide Planning Goal 3 and OAR 660-033-0030(5) allow the County to use a more detailed soil study than the NCRS (Hoff Decision p. 27).</p> <p>The Hearings Officer found the key issue was whether the NCRS soil mapping constitutes the only authoritative source for land use planning. The Hearings Officer concurred with the Applicant’s legal analysis showing that site-specific soil studies may be used to determine whether a property is agricultural land.</p> <p>Staff agrees with the Applicant and Hearings Officer on this issue area. The Board has previously approved Plan Amendment and Zone Change applications that relied on property-specific soil studies.</p>	<p>Does the site-specific soil study show the property is predominantly Class VII-VIII soils?</p> <ol style="list-style-type: none"> 1. If yes, the Board can continue reviewing the applications, and move to approve the PA/ZC. 2. If no, the Board may deny the application because the property meets the definition of Goal 3 ‘agricultural land.’

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3	<p><u>Goal 3: Part 3</u></p> <p>A previous land use application (PA-13-1, ZC-13-1) denied a request for a Plan Amendment and Zone Change for a different property, despite finding the property was predominantly Class VII soil.</p>	<p>OAR 660-033-0020(1)(a) and Statewide Planning Goal 3.</p>	<p><u>Applicant comments</u> assert there is nothing in the record to support the notion the subject property is capable of generating even a small profit from farming, even with available irrigation. The Newland case is not applicable because the application was for an aggregated group of farm parcels, and there was no record of income lost through attempting to farm those properties, as there is with the subject property.</p> <p><u>Oppositional comments</u> assert that in the Newland case (PA-13-1, ZC-13-1), the Board denied a PA/ZC application even though a soil study indicated the property was predominantly Class VII soils. Oppositional comments assert the Board found the Newland property could generate a profit through farming, even if that profit was very small. In particular, available irrigation was cited as a key reason the application was denied on the basis the property may be suitable for some type of farm use.</p> <p>Oppositional comments also cite a finding made in file PA-13-1, ZC-13-1, which states profitability is not the only or most important factor to consider when determining whether a property constitutes agricultural land.</p>	<p>The oppositional comments citing Deschutes County file PA-13-1, ZC-13-1 were submitted in the open record period following the Board hearing. The Hearings Officer recommendation had already been issued at this time, so the Hearings Officer did not address it in their analysis.</p> <p>However, staff notes the Hearings Officer findings regarding the definition of Goal 3 agricultural land are applicable to many of the points raised in the oppositional comments. Specifically, the Hearings Officer found the subject property is not engaged in farm use for the primary purpose of obtaining a profit.</p>	<p>Does the subject property constitute agricultural land under OAR 660-033-0020(1)(a)?</p> <ol style="list-style-type: none"> 1. If no, the Board can continue reviewing the applications, and move to approve the Plan Amendment and Zone Change (PA/ZC). 2. If yes, the Board must deny the PA/ZC.

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4	<p>A previous land use application (CU-80-42, TP-596) was denied on the subject property, on the basis that the property is suitable for farming.</p>	<p>Oppositional comments did not cite relevant approval criteria. However, staff notes this topic may be relevant to Comprehensive Plan Policy 2.2.3 and Statewide Planning Goal 3, because it may relate to whether the property meets the definition of agricultural land.</p>	<p><u>Applicant comments</u> assert the land use application cited by the opposition was a request for a residential subdivision, under the former EFU-20 zoning designation. The information provided on the property's soils was not prepared by a certified soils scientist. The Applicant concurs that staff made findings regarding agriculture on the subject property, but these findings did not address the definition of 'farm use,' or otherwise show the property met the definition of agricultural land, per Goal 3.</p> <p><u>Oppositional comments</u> assert a previous application on the subject property, Deschutes County file TP-596, was denied. These comments assert the record for this prior application include a soil study showing the property is predominantly Class I-Vi soils, and that the County found the property was suitable for farming and grazing. Oppositional comments assert this previous application was denied because there was potential for farm use on the subject property, and these findings should inform the current Zone Change and Plan Amendment request.</p>	<p>The Hearings Officer notes the cited land use application was for a Variance, not a Plan Amendment or Zone Change. The Hearings Officer finds this previous County decision did not explicitly address whether the property qualified as agricultural land, as defined by Goal 3.</p> <p>Staff agrees with the Hearings Officer's finding that the cited land use application does not address the applicable approval criteria for the subject Plan Amendment and Zone Change, and therefore is not applicable.</p>	<p>Are the findings regarding suitability for farm use in the Hearings Officer decision for file CU-80-42, TP-596 relevant to this application?</p> <ol style="list-style-type: none"> 1. If no, the Board can continue reviewing the applications, and move to approve the PA/ZC. 2. If yes, are the findings in the cited decision are sufficient to demonstrate the property is agricultural land, as defined by OAR 660-033-0020(1)(a)? <ol style="list-style-type: none"> A. If yes, the Board may deny the PA/ZC. B. If no, the Board can continue reviewing the applications, and move to approve the PA/ZC.

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5	Proximity to Bend Urban Growth Boundary (UGB), and the impact of the subject Plan Amendment/Zone Change on future UGB expansions.	Statewide Planning Goal 14. Staff notes the criteria of DCC 18.136.020(C)(1) may relate to this specific topic.	<p>The <u>Applicant</u> asserts this area is a top candidate for future expansion of the Bend UGB, and would allow for an orderly extension of urban services and compact urban development. The applicant cites previous expansions of the Bend UGB in the general surrounding area, and asserts the proposed Plan Amendment will increase the likelihood of the subject property being included in future expansions.</p> <p>The applicant asserts Goal 14 is not a relevant approval criteria. The MUA-10 zoning district is consistent with the adopted Comprehensive Plan and does not constitute urban development.</p> <p><u>Oppositional comments</u> assert that adding density in this area is costly and inefficient. Comments raised concerns about land speculation inflating the price of agricultural land, and raised questions about the type and intensity of development that will occur on the subject property.</p>	<p>The Hearings Officer found Goal 14 does not apply to the subject application.</p> <p>Because future expansion of the Bend UGB was not tied to an applicable approval criteria, the Hearings Officer did not make any substantive findings regarding this topic.</p> <p>Staff agrees with the Hearings Officer and notes the subject Plan Amendment and Zone Change does not approve any new development on the subject property. Future uses may require a separate land use review, and will require the developer to obtain all required permits.</p>	<p>Is there an approval criterion which requires the Board to analyze the proximity of the proposed PA/ZC with respect to the UGB and future UGB expansions?</p> <ol style="list-style-type: none"> 1. If no, the Board can continue reviewing the applications, and move to approve the PA/ZC. 2. If yes, the Board may identify relevant criteria and make additional findings under those criteria.

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6	Does the application require an exception to Statewide Planning Goal 14: Urbanization?	OAR 660-015-0000(14)	<p><u>Applicant comments</u> assert compliance with Goal 14 was reviewed when the County adopted its Comprehensive Plan and the MUA-10 zoning district. Therefore, any allowed uses within the MUA-10 Zone are consistent with Goal 14, and a Plan Amendment and Zone Change application is not the appropriate forum to revisit whether the County’s MUA-10 Zone is consistent with Statewide Planning Goal 14.</p> <p>The Applicant cites <i>1000 Friends of Oregon v. LCDC (Curry County)</i>, 310 Or 447, 498-511, 724 P2d 268 (1986) and Deschutes County Comprehensive Plan Policy 2.2.3, to assert the Rural Residential Exception Area designation has already been determined to be consistent with Goal 14.</p> <p><u>Oppositional comments</u> assert an exception to Goal 14 is required because the Zone Change would allow denser, urban levels of development, and would essentially allow rural lands to urbanize. The subject property currently contains two dwellings, and the Zone Change would allow for a significant increase in density and the possibility of cluster development. This increase in allowed housing density is significant enough to require an exception to Goal 14.</p>	<p>The Hearings Officer found Goal 14 does not apply. However, the Hearings Officer also adopted alternate findings in case it was later determined that Goal 14 does apply. These alternate findings demonstrate that Goal 14 is satisfied, if it does apply.</p>	<p>Does Goal 14: Urbanization apply to the subject application?</p> <ol style="list-style-type: none"> 1. If yes, the Board will need to determine whether Goal 14 has been satisfied. <ol style="list-style-type: none"> A. If Goal 14 applies, and the Board finds it has been satisfied by the Applicant, they may adopt the alternate findings and approve the application. B. If Goal 14 applies, and the Board finds it has not been satisfied, the Board may deny the application because a goal exception is required. 2. If no, the Board can continue reviewing the applications, and move to approve the PA/ZC.

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7	Has there been a change in circumstances since the property was originally zoned?	DCC 18.136.020 Rezoning Standards D. That there has been a change in circumstances since the property was last zoned, or a mistake was made in the zoning of the property in question.	<p><u>Applicant comments</u> assert there has been a change in circumstances, since the soil of the land was found to be less suitable for farming than originally anticipated. Other changes in circumstance that were cited include development and annexation of properties in the surrounding vicinity. The applicant also cited other similar Plan Amendment and Zone Change requests that have been approved, and were therefore found to satisfy this criterion.</p> <p><u>Oppositional comments</u> assert the soils and agricultural productivity of the property have not changed since it was last zoned. Oppositional comments also assert the County has previously determined that there were not mapping errors in the EFU zoning designation.</p>	The Hearings Officer adopts the Applicant’s findings, and agrees the County has not determined that no mapping errors exist (HOff Decision p. 17). The Hearings Officer finds the NCRS soil mapping was imprecise and the site-specific soil study is therefore new information.	Has there been a change in circumstances since the property was zoned? 1. If yes, the Board can continue reviewing the applications, and move to approve the PA/ZC. 2. If no, the Board may deny the application for failure to comply with DCC 18.136.020(D).