



March 25, 2026

VIA FIRST CLASS MAIL AND ELECTRONIC MAIL

Land Conservation and Development Commission

Attn: Denise Johnson

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Re: Petition for Enforcement Order to Correct Deschutes County's Pattern
and Practice of Violating Statewide Planning Goals 3 & 14 and DCCP

Dear Chair Lazo and Members of the Commission:

Pursuant to ORS 197.324(2) and OAR 660-045-0060, Central Oregon LandWatch (COLW) and 1000 Friends of Oregon (1000 Friends) submit this letter requesting the Land Conservation and Development Commission (LCDC) to adopt an enforcement order under ORS 197.319 to ORS 197.335 to correct Deschutes County (the County)'s pattern and practice of violating Statewide Planning Goals 3 and 14 in approving both rezonings of agricultural land for residential and industrial development and nonfarm dwellings on agricultural land zoned for exclusive farm use.

PART ONE: INTRODUCTION

Over the past three years, Deschutes County has approved at least 12 applications to redesignate and rezone large tracts of the County's limited supply

of agricultural lands.¹ *See* Table 1, below. Together, these 12 decisions have converted 1,606 acres of agricultural lands for sprawling residential and industrial use.² These lands include both large remote tracts in the middle of agricultural land districts, and small irrigated farms adjacent to or very near urban growth boundaries.

Introducing these islands of residential and industrial development in the middle of exclusive farm use zones breaks up cohesive economic units and undermines the central objective of Oregon’s agricultural lands preservation program: To preserve the “maximum amount of the limited supply of agricultural land . . . in large blocks” to maintain the state’s agricultural economy and to assure “adequate, healthful and nutritious food for the people of this state and nation.” ORS 215.243(2).

Authorizing this sprawling development pattern outside of the County’s urban growth boundaries also frustrates Goal 14’s primary objective to accommodate urban population growth and employment inside of the state’s approximately 215 urban growth boundaries. The hundreds of houses and acres of

¹ In the July 29, 2025 notice to Deschutes County, the Petitioners identified the nine decisions that had been made in the preceding three years. *See* Appendices, Vol. 1, Ex. A. These nine decisions are included in Appendices, Vol. 3, Exhibits CC, FF, GG, HH, II, JJ, KK, MM and NN. Since then, the County has made three additional plan amendment/zone change decisions that convert agricultural land for residential uses. *See* Appendices, Vol. 3, Exhibits OO, PP and QQ. OAR 660-045-0090(4) authorizes Petitioners to present these recent examples of noncompliant decisions as evidence of good cause to proceed. Note the Petitioners also identified these three decisions as pending review in their July 29, 2025 notice letter. *See* Ex. A, at page 12.

² Before the most recent three years that are the subject of this enforcement order, the County had approved the rezoning of an additional 1,500 acres of agricultural lands to residential and industrial zones in similar fashion.

industrial development allowed by these 12 decisions are not related to or needed for farming and forestry and could be accommodated within existing urban growth boundaries and land previously zoned for residential and industrial development. Between its existing vacant rural residential land and many destination resorts, Deschutes County has 3,658 vacant residentially-zoned lots outside of urban growth boundaries as of late 2024. Exhibit Y at page 11. Yet it continues to approve applications to rezone its resource lands to create even more sprawling development patterns.

In short, through these 12 decisions Deschutes County has engaged in a pattern and practice of unordered and inefficient transition from rural to urban use, has attracted new urban population and employment outside UGBs, and has hastened an inefficient use of land through its haphazard siting of new residential and employment uses throughout the rural County, counter to the text and policy of Goal 14 and Oregon's statewide planning program as a whole.

The County is perpetuating its pattern of ex-urban residential sprawl through the approval of individual permits for new homes as well. Between 1997 and 2023, Deschutes County approved a total of 1,463 new dwellings in its exclusive farm use zone, the second highest number of new houses approved in exclusive farm use among all Oregon counties.³ Of those 1,463 new dwellings, 949, or 64%, were approved as nonfarm dwellings under OAR 660-033-0130(4) and Deschutes County Code (DCC) 18.16.050(G), making nonfarm dwellings the most common type of newly approved dwelling in Deschutes County's EFU zone.⁴

In the Oregon Farm & Forest Land Use Report for 2022-2023, the Department of Land Conservation and Development (DLCD) found that the

³ Exhibit Z, Department of Land Conservation & Development, Oregon Farm & Forest Land Use Report 2022-2023 at p. 44 and pdf page 95.

⁴ *Ibid.*

increasing prevalence of nonfarm dwellings appears inconsistent with the legislative intent of the permitting pathway:

“Senator Hector MacPherson, the principal sponsor of 1973 SB 101, stated that the purpose of nonfarm dwellings was not ‘to open the exclusive farm use zone up to subdivisions’ but rather to provide ‘a little escape valve here whereby we can allow a small amount of single-family residential dwellings within an exclusive farm use zone.’ The Oregon Court of Appeals observed in *Cherry Lane v. Jackson County* that these types of nonfarm dwelling approvals should “be the exception and that approval for them be difficult to obtain.”⁵

In Deschutes County, this “exception” has become not only not difficult, but rather commonplace to obtain. Because of this proliferation, the nonfarm dwellings exception now threatens to swallow the rule protecting Deschutes County’s EFU zone from nonfarm residential development.

As an illustration of the widespread conversion of Deschutes County’s agricultural land base to nonfarm development, the following maps show all dwellings approved on what are now the County’s EFU zones between 1900 and 2020. The maps show that most of this dwelling development has occurred in the decades after the state codified Goals 3 and 14 in an effort to place limitations on rural subdivisions and nonfarm dwellings. These maps were created using data provided by Deschutes County on new building permits issued on agricultural land. The green areas are the County’s EFU zones on private land, and red dots are houses.

⁵ *Ibid.* at p. 40-41.

Figure 1. Houses in 1900 on Deschutes County Agricultural Lands Designated for Exclusive Farm Use During Acknowledgment

Deschutes County Parcel Growth in EFU zone (by year)

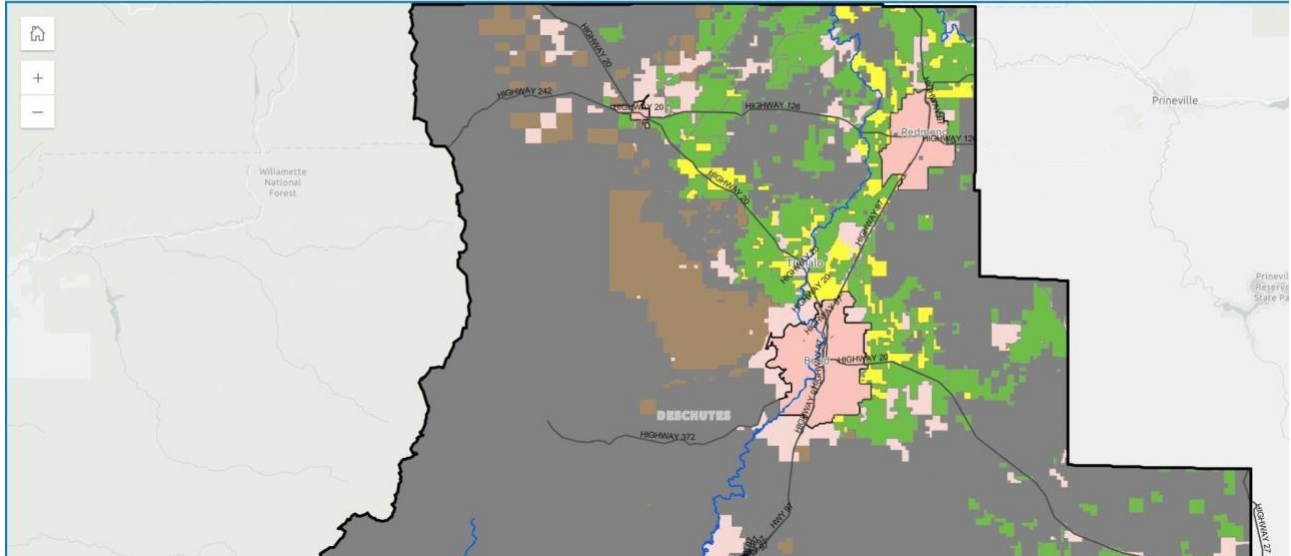


Figure 2. Houses in 1940 on Deschutes County Agricultural Lands Designated for Exclusive Farm Use During Acknowledgment.

Deschutes County Parcel Growth in EFU zone (by year)

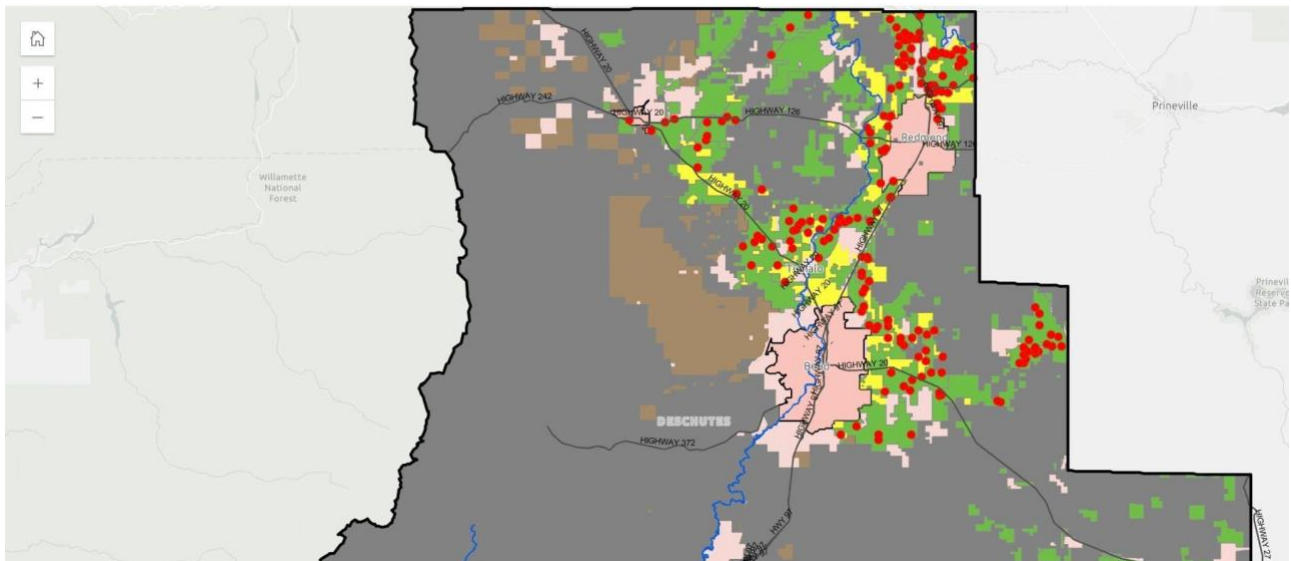


Figure 3. Houses in 1970 on Deschutes County Agricultural Lands Designated for Exclusive Farm Use During Acknowledgment

Deschutes County Parcel Growth in EFU zone (by year)

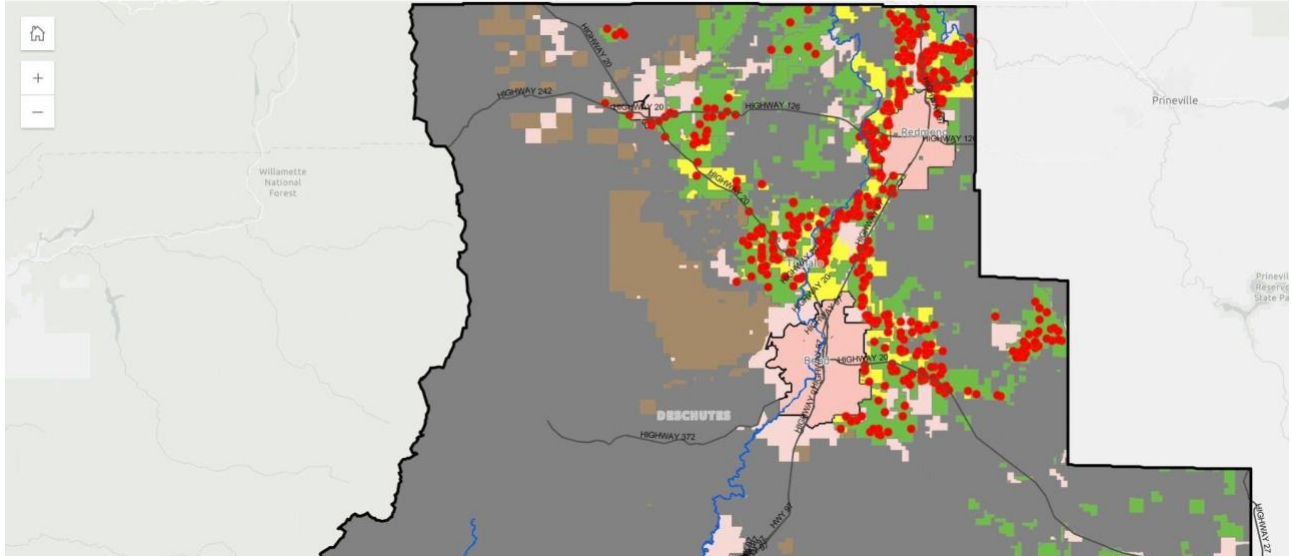


Figure 4. Houses in 1990 on Deschutes County Agricultural Lands Designated for Exclusive Farm Use During Acknowledgment

Deschutes County Parcel Growth in EFU zone (by year)

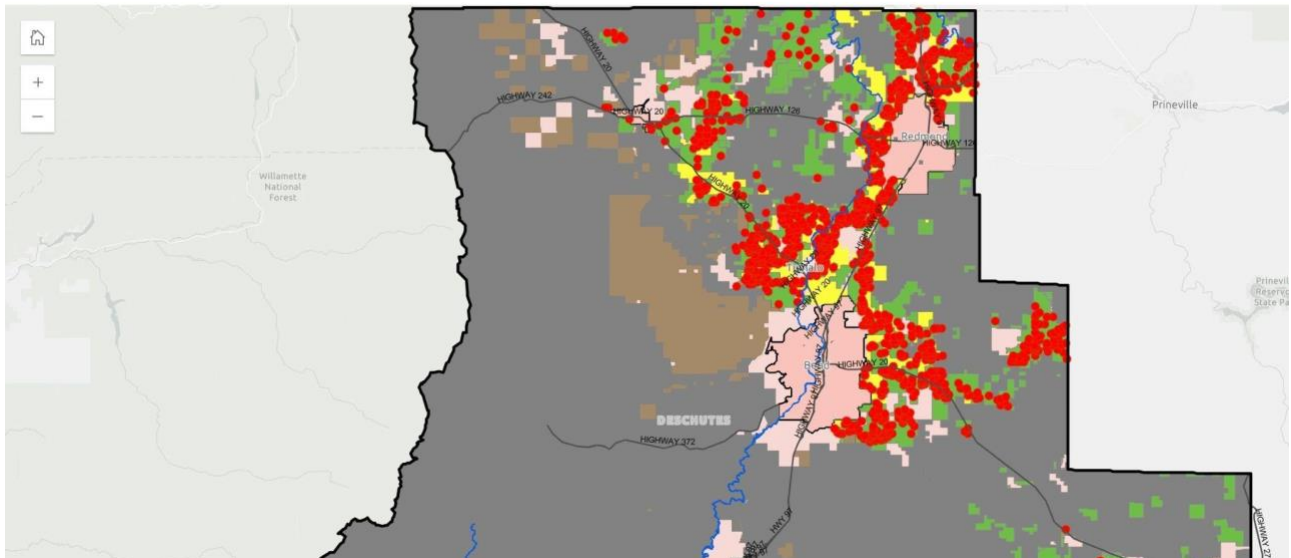
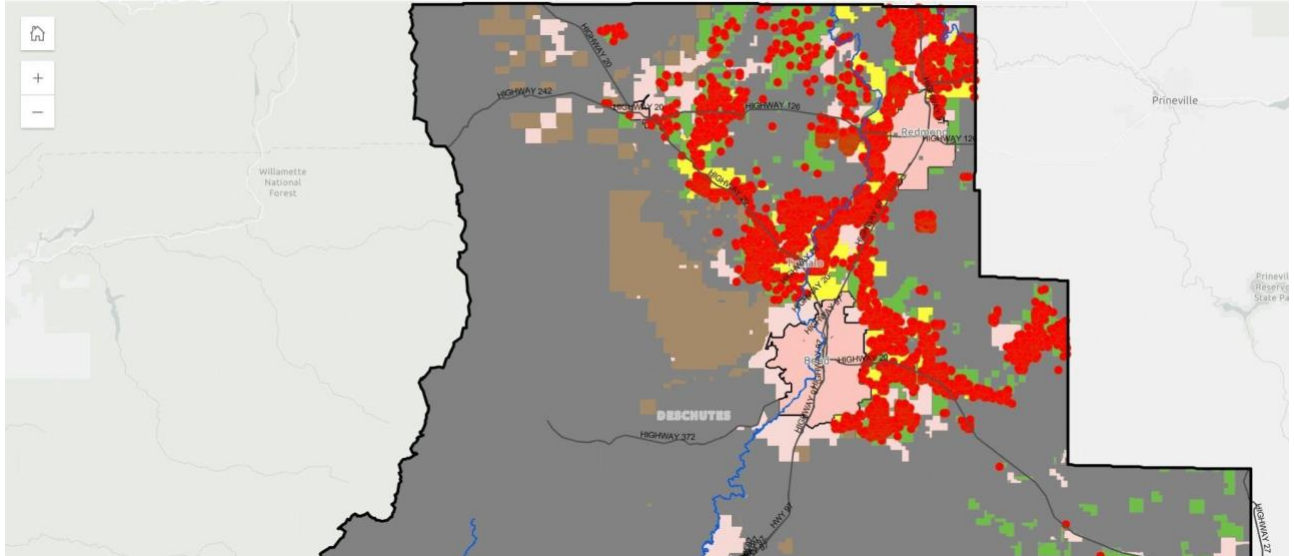


Figure 5. Houses in 2020 on Deschutes County Agricultural Lands Designated for Exclusive Farm Use During Acknowledgment

Deschutes County Parcel Growth in EFU zone (by year)



PART TWO: REQUEST FOR AN ENFORCEMENT ORDER TO ADDRESS DESCHUTES COUNTY’S PATTERNS AND PRACTICES OF VIOLATIONS

Petitioners submitted three separate requests to Deschutes County seeking corrective action to address a total of seven patterns and practices of violation. *See* Appendices Vol. 1, Exhibits A, E, and I. The petitioners identified three patterns and practices of violations related to the rezoning of agricultural land for residential and industrial use over the past three years. *See* Exhibits A and I. The petitioners identified four patterns and practices of violation related to the approval of nonfarm dwellings on agricultural land over the last three years. Exhibit E.

I. Patterns and Practices of Violations Relating to the Redesignation and Rezoning of Agricultural Land for Residential and Industrial Use

A. Introduction

The first and third patterns and practices of violations identified in this petition relate to the redesignation and rezoning of agricultural land and were described in COLW’s and 1000 Friends’ July 29, 2025 request to Deschutes County seeking corrective action. *See* Exhibit A. The second pattern and practice of violation identified in this petition also relates to the redesignation and rezoning of agricultural land and was described in 1000 Friends’ January 22, 2026 request to Deschutes County. *See* Exhibit I.

B. First Pattern And Practice of Violation: Failure To Properly Interpret And Apply Goal 3 Definition Of Agricultural Land That Includes Land “Necessary To Permit Farm Practices To Be Undertaken On Adjacent Or Nearby Lands.”

Over the past three years, Deschutes County has approved at least twelve post-acknowledgement plan amendments that redesignate and rezone agricultural land protected by statewide planning Goal 3 for residential and industrial use. In each decision, Deschutes County fails to comply with the Goal 3 definition of agricultural land, which includes “[l]and that is necessary to permit farm practices to be undertaken on adjacent or nearby agricultural lands.” *See* Appendices Vol. 2, Exhibit M, Statewide Planning Goal 3; *see also* Exhibit N, Goal 3 Rule at OAR 660-033-0020(1)(a)(C).

These decisions violate Goal 3, OAR 660-033-0020(1)(a)(C) and OAR 660-033-0030(2)-(3) by concluding that each of the twelve tracts of land is not agricultural land within the meaning of Goal 3, without a proper analysis or adequate findings on whether the lands were “necessary to permit farm practices to be undertaken on adjacent or nearby agricultural lands.” *See*. Exhibits M and N.

These decisions also violate Deschutes County Comprehensive Plan (DCCP) Section 2.2.3, which authorizes the redesignation of agricultural land to a “nonresource” designation, “as allowed by State Statute, Oregon Administrative Rules and this Comprehensive Plan.” DCCP Policy 2.2.3. *See* Exhibit O, DCCP Section 2.2. A redesignation decision that does not comply with the Goals and other administrative rules regarding the designation of agricultural land is therefore a violation of the County’s comprehensive plan.

- 1. Standard Requiring Land Which Is Necessary to Enable Farm Practices on Adjacent or Nearby Lands to be Maintained as Agricultural Land**

- a. State law*

Statewide Planning Goal 3 is “[t]o preserve and maintain agricultural lands.” Exhibit M, OAR 660-015-0000(3). Goal 3 requires that agricultural lands “shall be

preserved and maintained for farm use, consistent with existing and future needs for agricultural products, forest and open spaces and with the state’s agricultural land use policy expressed in ORS 215.243 and 215.700.” *Id.*

Oregon’s state agricultural land use policy provides:

“The preservation of a maximum amount of the limited supply of agricultural land is necessary to the conservation of the state’s economic resources and the preservation of such land in large blocks is necessary in maintaining the agricultural economy of the state and for the assurance of adequate, healthful and nutritious food for the people of this state and nation.”

ORS 215.243(2)

As explained by the Goal 3 rule at OAR 660-033-0020(1)(a):

“Agricultural Land” as defined in Goal 3 includes:

- (A) Lands classified by the U.S. Natural Resources Conservation Service (NRCS) as predominantly Class I-IV soils in Western Oregon and I-VI soils in Eastern Oregon;
- (B) Land in other soil classes that is suitable for farm use as defined in ORS 215.203(2)(a), taking into consideration soil fertility; suitability for grazing; climatic conditions; existing and future availability of water for farm irrigation purposes; existing land use patterns; technology and energy inputs required; and accepted farming practices; and
- (C) Land that is necessary to permit farm practices to be undertaken on adjacent or nearby agricultural lands.

See Goal 3 and OAR 660-033-0020(1)(a), Exhibits M and N.

This petition's first pattern and practice relates to the third prong of the Goal 3 definition of agricultural land, the "necessary" standard in OAR 660-033-0020(1)(a)(C). See Exhibit N. The "necessary" standard is typically considered after a county has found the land is not predominantly Class I-VI soils or suitable for farm use.

OAR 660-033-0030(2) explains: "Even if a lot or parcel is not predominantly Class I-VI soils or suitable for farm use, Goal 3 nonetheless defines as agricultural 'Lands in other classes which are necessary to permit farm practices to be undertaken on adjacent or nearby lands.'" OAR 660-033-0030(3) adds: "Nearby or adjacent land, regardless of ownership, shall be examined to the extent that a lot or parcel is * * * 'necessary to permit farm practices to be undertaken on adjacent or nearby lands' outside the lot or parcel.'" OAR 660-033-0030(3).

In *Central Oregon LandWatch v. Deschutes County (710 Properties)*, __ Or LUBA __ (LUBA No. 2023-006/009, July 28, 2023, *aff'd* 330 Or App 321 (2024)), the County had found that the land to be rezoned was not necessary to permit farm practices to be undertaken on adjacent and nearby agricultural lands because it was not "needed by area farms to conduct farm practices on their properties." *710 Properties, supra*, slip op at 56.

LUBA found that the County had misinterpreted the Goal 3 necessary standard, explaining:

"OAR 660-033-0020(1)(a)(C) asks not only whether the land itself is necessary to permit farm practices on adjacent or nearby lands but, also, whether the land's resource designation and zoning, and the presumed lack of impacts or conflicts with farming on adjacent or nearby lands, are necessary to permit farm practices on adjacent or nearby lands."

710 Properties, supra, slip op at 59.

The Oregon Court of Appeals affirmed LUBA's ruling, finding:

“[C]onsideration of whether ‘agricultural land’ under OAR 660-033-0020(1)(a)(C) must include consideration of whether the land’s resource designation and zoning is “necessary to permit farm practices to be undertaken on adjacent or nearby agricultural lands.”

710 Properties, 330 Or App at 333.

In other words, a property’s agricultural land designation and exclusive farm use zoning must be maintained when such designation and zoning are necessary to allow farm practices to be undertaken on adjacent or nearby agricultural lands. *Id.* at 33. The court explained that the necessary standard was intended to implement Oregon’s agricultural land preservation policy at ORS 215.243:

“OAR 660-033-0020(1)(a)(C) is part of, and was intended to implement, Oregon's statutory and regulatory scheme for statewide land use planning for Oregon's limited supply of agricultural land. * * *

As set forth above, that statutory and regulatory scheme (1) is predicated on an express policy goal of preserving the “maximum amount of the limited supply of [Oregon's] agricultural land,” and preserving such land for “farm use” and “maximum agricultural productivity,” ORS 215.243, *Stop the Dump Coalition*, 364 at 444; (2) expressly recognizes that how a parcel is used can conflict with the viability of farm uses on nearby parcels, *e.g.*, ORS 215.243; and (3) is designed with safeguards to limit use of land designated as *agricultural land* in ways that conflict with farm uses [*citations omitted*].”

710 Properties, supra, 330 Or App at 331–332 (emphases original).

The Court concluded:

“In view of that statutory and regulatory scheme, which OAR 660-033-0020(1)(a)(C) was intended to help implement, we think it likely that when LCDC adopted OAR 660-033-0020(1)(a)(C), LCDC intended that a parcel be designated as “agricultural land” if such designation and the accompanying zoning is “necessary to permit farm practices to be undertaken on adjacent or nearby agricultural lands,” OAR 660-033-0020(1)(a)(C), thereby preserving such adjacent and nearby agricultural land for “farm use” and “maximum agricultural productivity,” in accordance with this state’s policy regarding agricultural lands. That interpretation is also in keeping with Oregon’s recognition that many non-agricultural land uses—uses that would be permissible if land designated as agricultural land was redesignated as non-agricultural land—may conflict with nearby farm uses. And that interpretation makes use of the safeguards in Goal 3 (and the administrative rules implementing Goal 3) that limit use of agricultural land in ways that conflict with farm uses.”

710 Properties, supra, 330 Or App at 331–332 (emphases original).

b. Legislative history

LCDC’s creation of the “necessary” standard was an intentional effort to ensure that counties could not convert lower-quality agricultural lands because of the necessity of maintaining those lands to the success of the overall agricultural industry in Oregon. In 1974, after touring the state to gather input from the people of Oregon, LCDC drafted the Goals. The meeting materials from that process shed further light on the policy intent of Goal 3 and the “necessary” standard.

LCDC Priority: Preserve All Kinds of Agricultural Land

The need to protect lands necessary to the success of other agricultural lands is clear from LCDC's initial development of Goal 3, which began in early 1974. At its July 19, 1974, meeting, the Commission reviewed a draft of what would become its Agricultural Lands goal. Exhibit AA, pdf⁶ pages 34-36. The draft includes the following policy statements:

- “Preservation of limited supply of large tracts of land is necessary for continuance of the industry.”
- “Open land use for agricultural use is an efficient means of conserving natural resources that are an important part of Oregon.”
- “Large tracts of agricultural lands shall/should be maintained in continuous units with minimum fragmentation due to transportation and/or power transmission corridors and other linear land uses.”
- “Exclusive farm use zones shall/should be encouraged whenever large tracts of important agricultural lands are available.”
- “There are different types of agriculture in Oregon such as irrigated, dry farming, rangeland, and others. Comprehensive plans shall/should have provisions dealing directly with the type or types of agriculture in its geographic area.”
- “Livestock production is an important component of the agricultural economy of the state. Comprehensive plans shall address land use of existing rangeland.”
- “Agricultural lands presently under irrigation shall/should, to the highest degree possible, be retained in agricultural use.”

⁶ Throughout the petition document, when there might be a discrepancy between the Exhibit PDF page number and the pagination of the underlying document, the PDF page number is given and noted.

- “All types of agricultural lands shall/should be inventoried and identified in comprehensive plans, and programs for retention of such lands shall be presented.”

Exhibit AA, pdf pages 34-36. From the beginning, LCDC recognized that agricultural land comes in many forms, including rangeland and open land, and that the success of the agricultural economy in Oregon requires preservation of all of this land in large tracts with minimum fragmentation.

LCDC Priority: Protect Large Blocks of Agricultural Land

A letter in LCDC’s July 19, 1974, meeting packet from DLCD Director Arnold Cogan includes a draft of “possible goals or guidelines” for the subject “agricultural land in Oregon.” The third of the three draft goals or guidelines is to “Create buffer zones or strips of neutral land to separate ag land from adjacent or nearby [land] being used for other purposes such as residential development.” Exhibit AA, pdf page 81. A “staff worksheet for development of statewide goals and guidelines” includes as “possible goals and guidelines” to “create buffer zones,” “keep large parcels of land,” “prevent connections to services and utilities,” and “restrict building on prime agricultural land.” Exhibit AA pdf page 83.

From the beginning, LCDC recognized the importance of designating as agricultural land not just the most productive farmland in the state, but also less productive lands needed to protect nearby and adjacent agricultural lands. The idea of “buffer zones” of this less productive land apparently contributed to the adoption of the “necessary” standard in Goal 3 and at OAR 660-033-0020(1)(a)(C). Of course, all land designated as agricultural land would be placed in exclusive farm use zones that authorized limited nonfarm residential and commercial uses as well as agricultural activities appropriate for lower

productivity lands. But the more intense development allowed outside the exclusive farm use zone would not be allowed to break up the large blocks.

At its December 27, 1974, meeting, the Commission adopted its final version of Goal 3 Agricultural Lands that includes the familiar language: “Lands in other Classes which are necessary to permit farm practices to be undertaken on adjacent or nearby lands, shall be included as agricultural land in any event.” *See* Exhibit BB (December 27, 1974 packet), pdf page 49. The importance of limiting development on adjacent and nearby lands to the success of the agricultural industry of the state has been core to the land use program since the beginning.

As outlined above, in 2024, the Court of Appeals in *710 Properties*, concurred with this legislative intent, explaining that the “necessary” standard is intended to implement the statewide agricultural lands policy at ORS 215.243 to protect the maximum amount of agricultural land in large blocks and limit uses that can have adverse impacts on accepted farm and forest practices. *710 Properties*, 330 Or App at 331-332.

c. Deschutes County Comprehensive Plan (DCCP)

Goal 3, OAR 660-033-0020(1)(a)(C), and OAR 660-033-0030(2)-(3) are implemented locally via the Deschutes County Comprehensive Plan (DCCP) at Section 2.2. *See* Exhibit O. DCCP Policy 2.2.3 authorizes the redesignation of agricultural lands to “nonresource” lands “as allowed by” state statutes, administrative rules and the county comprehensive plan, thereby incorporating state standards for the redesignation of agricultural land. *See* Exhibit O.⁷

⁷ While the comprehensive plan also contains DCCP Policy 2.2.4: “Develop comprehensive policy criteria and code to provide clarity on when and how EFU parcels can be converted to other designations,” no such criteria and code have been developed or applied in the County’s many decisions to convert EFU parcels

2. Explanation of Pattern and Practice of Violation

In the 12 decisions redesignating and rezoning agricultural land for residential and industrial use reviewed in this petition, the County consistently misinterprets and misapplies the Goal 3 necessary standard for defining agricultural lands and thereby violates its own comprehensive plan at DCCP 2.2.3. Specifically, the decisions fail to consider whether the subject property's designation as agricultural land and zoning for exclusive farm use, and consequent lack of development, is necessary for farm practices to be undertaken on adjacent and nearby lands.

In the 12 decisions, the county misapplies the “necessary” standard by asking whether surrounding farm operations could utilize the subject property in their operation. As explained by LUBA and the Court of Appeals in the *Central Oregon LandWatch* case, that is an incomplete and therefore incorrect statement and application of Goal 3:

“[The necessary standard] asks not only whether the land itself is necessary to permit farm practices on adjacent or nearby lands but, also, whether the land's resource designation and zoning, and the presumed lack of impacts or conflicts with farming on adjacent or nearby lands, are necessary to permit farm practices on adjacent or nearby lands.”

710 Properties, supra, __ Or LUBA __ (slip op at 59), *aff'd* 330 Or App 321 (2024). In the 12 reviewed decisions, the County consistently fails to determine whether the EFU zoning of the subject property, and the lack of conflicts associated with EFU zoning, is necessary to permit farm practices to be undertaken

to other designations. DCCP Policy 2.2.3's incorporation of state rules and statutes therefore controls.

on adjacent or nearby agricultural lands. *710 Properties, supra*, 330 Or App at 332-333.

In addition to misinterpreting and misapplying the “necessary” legal standard, the decisions fail to correctly identify and assess the potential impacts that proposed redesignations and rezonings could have on any of the farm practices that are or could be undertaken on adjacent and nearby agricultural lands. In other words, they omit the analysis required to determine if the land is necessary.

In the necessary findings for several of the decisions, the County states that the land is not necessary for agricultural practices to be undertaken on nearby and adjacent lands because those lands have already been removed from the agricultural land base by previous rezonings. One rezoning thus justifies another, leading to the steady erosion of Deschutes County’s agricultural land base.

Pursuant to Oregon’s agricultural land use policy at ORS 215.243, Statewide Planning Goal 3, OAR 660-033-0020(1)(a)(C), OAR 660-033-0030(2)-(3), and DCCP Policies 2.2.1 and 2.2.3, the County has a legal duty to preserve agricultural lands in large blocks in order to minimize conflicts imposed on farmland by non-agricultural land uses. In these 12 decisions, the County has systematically defied this policy and violated its comprehensive plan by redesignating and rezoning individual properties without properly determining whether those lands are necessary for farm practices to be undertaken on nearby and adjacent lands.

Table 1 lists the 12 decisions constituting Deschutes County’s pattern and practice of violating the Goal 3 “necessary” standard as incorporated into its comprehensive plan policy DCCP 2.2.3, along with information about the agricultural land converted by the decision.

**Table 1: Description of County’s 12 Post-Acknowledgment Plan Amendments
Redesignating Agricultural Land for Residential and Industrial Use**

PAPA Decision	Basic Facts
Ordinance No. 2022-010; File No. 247-20-000438-PA, 439-ZC; July 29, 2022; “Aceti” Exhibit CC	<ul style="list-style-type: none"> ● 21.54 acres ● 16 acres of water rights ● history of irrigated crop production ● located along U.S. Highway 97 halfway between Bend and Redmond ● redesignated/rezoned from Agricultural/EFU to Rural Industrial/Rural Industrial
Ordinance No. 2022-013; File No. 247-21-001043-PA, 1044-ZC; December 21, 2022; “710 Properties” Exhibit FF	<ul style="list-style-type: none"> ● 710 acres ● adjacent to several commercial farms ● 4.5 miles northwest of City of Redmond UGB ● redesignated/rezoned from Agricultural/EFU to Rural Residential Exception Area/Rural Residential
Ordinance No. 2023-007; File No. 247-22-000353-PA, 354-ZC; May 23, 2023; “Marken” Exhibit GG	<ul style="list-style-type: none"> ● 59 acres ● 36 acres of water rights ● history of irrigated crop production and livestock grazing ● adjacent to City of Bend UGB ● redesignated/rezoned from Agricultural/EFU to Rural Residential Exception Area/Multiple Use Agricultural⁸
Ordinance No. 2023-010; File No. 247-22-000314-PA, 313-ZC; July 13, 2023; “Te Amo Despacio” Exhibit HH	<ul style="list-style-type: none"> ● 93 acres ● adjacent to City of Bend UGB ● redesignated/rezoned from Agricultural/EFU to Rural Residential Exception Area/Multiple Use Agricultural
Ordinance No. 2023-015; File No. 247-21-000881-PA, 882-ZC; September 19, 2023; “LBNW”	<ul style="list-style-type: none"> ● 19 acres ● 3 acres of water rights ● history of irrigated livestock and equestrian pasture use

⁸ Deschutes County’s Multiple Use Agricultural zone is a rural residential zone that, together with the County’s Rural Residential zone, implements the County’s Rural Residential Exception Area plan designation. DCCP Table 1.3.3 - Comprehensive Plan and Zoning Code Designations.

Exhibit II	<ul style="list-style-type: none"> • located along U.S. Highway 97 halfway between Bend and Redmond • redesignated/rezoned from Agricultural/EFU to Rural Industrial/Rural Industrial
Ordinance No. 2023-018; File No. 247-22-000792-PA, 793-ZC; September 12, 2023; “Griffin/Renfro” Exhibit JJ	<ul style="list-style-type: none"> • 40 acres • 5 acres of water rights • 0.75 miles east of City of Bend UGB • redesignated/rezoned from Agricultural/EFU to Rural Residential Exception Area/Multiple Use Agricultural
Ordinance No. 2024-001; File No. 247-23-000210-PA, 211-ZC; February 6, 2024; “Groves” Exhibit KK	<ul style="list-style-type: none"> • 40 acres • located 1 mile north of City of Bend UGB • redesignated/rezoned from Agricultural/EFU to Rural Residential Exception Area/Multiple Use Agricultural
Ordinance No. 2024-012; File No. 247-22-000443-PA, 436-ZC; January 8, 2025; “Destiny Court” Exhibit MM	<ul style="list-style-type: none"> • 65.1 acres • 29 acres of water rights • history of irrigated crop and livestock production • located 0.5 miles north of City of Bend UGB • redesignated/rezoned from Agricultural/EFU to Rural Residential Exception Area/Multiple Use Agricultural
Ordinance No. 2025-003; File No. 247-22-000574-PA, 573-ZC; April 8, 2025; “Last Ranch” Exhibit NN	<ul style="list-style-type: none"> • 20 acres • 14.6 acres of water rights • history of livestock production as part of a larger ranching operation • located along U.S. Highway 97 halfway between Bend and Redmond • redesignated/rezoned from Agricultural/EFU to Rural Industrial/Rural Industrial
Ordinance No. 2025-010; File No. 247-24-000404-PA, 405-PC; July 10, 2025 “BPRD” Exhibit OO	<ul style="list-style-type: none"> • 279 acres (174 acres designated/zoned Agricultural/EFU, 105 acres designated/zoned Surface Mining) • located 0.25 miles southeast of the City of Bend UGB • adjacent property under same ownership currently in irrigated crop production • redesignated/rezoned from Agricultural/EFU and Surface Mining to Rural Residential Exception Area/Rural Residential

<p>Ordinance No. 2026-004; File No. 247-24-000097-PA, 098-ZC; February 5, 2026; “BCL”</p> <p>Exhibit PP</p>	<ul style="list-style-type: none"> ● 240 acres ● located 0.25 miles east of City of Bend UGB ● 63 acres developed with photovoltaic solar energy array ● redesignated/rezoned from Agricultural/EFU to Rural Residential Exception Area/Multiple Use Agricultural
<p>Ordinance No. 2026-005; File No. 247-24-000392-PA, 393-ZC; March 18, 2026; “Cascades Academy”</p> <p>Exhibit QQ</p>	<ul style="list-style-type: none"> ● 20 acres ● 15.5 acres of water rights ● history of irrigated equestrian pasture ● located 1.5 miles northeast of City of Bend UGB ● redesignated/rezoned from Agricultural/EFU to Rural Residential Exception Area/Multiple Use Agricultural

Table 2 below sets forth each decision’s relevant findings and explains how the County fails to adequately interpret and apply the Goal 3 “necessary” standard, contributing to the County’s pattern and practice of violating that standard.⁹ The petitioners’ July 29, 2025 notice letter to Deschutes County goes into further detail about the specifics of how each of these decisions violates the Goal 3 “necessary” standard. *See Exhibit A.* Note this pattern and practice of violating the “necessary” standard is not merely a matter of inadequate findings. The County is consistently misinterpreting and misapplying the legal standard that comprises the Goal 3 definition of agricultural land.

⁹ For some of the 12 decisions, we quote the relevant findings. For others, we paraphrase or summarize. The entirety of the County’s 12 decisions are included in Appendices Vol. 3 as Exhibits CC, FF, GG, HH, II, JJ, KK, MM, NN, OO, PP and QQ.

Table 2: 12 Post-Acknowledgment Plan Amendments Violating Goal 3 “Necessary” Standard and DCCP 2.2.3

PAPA File No.	“Necessary” standard findings in decision	Does decision correctly address impact of rezoning property under Goal 3 “necessary” standard?
Ordinance No. 2022-010; File No. 247-20-000438-PA, 439-ZC; July 29, 2022; “ <i>Aceti</i> ”	<p>“The Hearings Officer finds that the subject property is not land necessary to permit farm practices to be undertaken on adjacent or nearby lands because none of the identified farm uses on those lands is dependent upon the subject property.”</p> <p>Exhibit CC (Ordinance No. 2016-029, Hearings Officer decision at page 44).</p>	No. County does not address potential impact of rezoning property for industrial development on current or future agricultural activities on nearby EFU lands and whether the land’s resource designation and zoning with presumed lack of impacts is necessary to permit farm practices to be undertaken on adjacent and nearby lands.
Ordinance No. 2022-013; File No. 247-21-001043-PA, 1044-ZC; December 21, 2022; “ <i>710 Properties</i> ”	<p>County mentions potential traffic issues, but concludes that they “are not a relevant consideration in addressing this issue because Goal 3 asks whether the ‘land’ to be rezoned, the subject property, is needed by area farms to conduct farm practices on their properties.”</p> <p>Exhibit FF (Ordinance No. 2022-013 at page 11).</p>	No. County fails to determine whether the land’s resource designation and zoning with presumed lack of impacts is necessary to permit farm practices to be undertaken on adjacent and nearby lands, leading to remand by LUBA, affirmed by the Court of Appeals. County also errs in concluding that traffic and other potential impact issues were not relevant to review under the “necessary” standard.
Ordinance No. 2023-007; File No. 247-22-000353-PA, 354-ZC; May 23, 2023; “ <i>Marken</i> ”	<p>“Staff agrees with the Applicant’s analysis and finds no feasible way that the subject property is necessary for the purposes of permitting farm practices on any nearby parcels discussed in the Findings of Fact section above, or the larger area more generally. This finding is based in part on poor quality, small size, and existing development on surrounding EFU properties.”</p>	No. County fails to determine whether the land’s resource designation and zoning, with presumed lack of impacts, is necessary to permit farm practices to be undertaken on adjacent and nearby lands. Although the applicant provides some information about nearby farm operations, that

	Exhibit GG (Ordinance No. 2023-007, Hearings Officer decision page 52).	include irrigated hay production, horse riding, pasturing livestock, hemp production, and grapevines, the County fails to analyze the potential impacts of rezoning the property on these identified farm practices or other farm practices that might be undertaken on adjacent and nearby lands.
Ordinance No. 2023-010; File No. 247-22-000314-PA, 313-ZC; July 13, 2023; “ <i>Te Amo Despacio</i> ”	County describes some nearby properties “that are agriculturally zoned and engaged in farm use” and concludes that there is “no feasible way that the Subject Properties are necessary for the purposes of permitting farm practices on any nearby parcels” and that “the Subject Properties should not be considered agricultural land under this part of the administrative rules.” Exhibit HH (Ordinance No. 2023-010 at page 14).	No. County fails to determine whether the land’s resource designation and zoning, with presumed lack of impacts, is necessary to permit farm practices to be undertaken on adjacent and nearby lands.
Ordinance No. 2023-015; File No. 247-21-000881-PA, 882-ZC; September 19, 2023; “ <i>LBNW</i> ”	County finds that “[q]uestions concerning the ‘impact on adjacent or nearby agricultural lands,’ do not answer the inquiry of whether the subject property is ‘necessary to permit farm practices to be undertaken on adjacent or nearby agricultural lands.’ OAR 660-033-0020(1)(a)(C).” County describes nearby lands with EFU zoning, OAR 660-033-0020(1)(a)(B) suitability factors, and finds that “the subject property	No. County fails to determine whether the land’s resource designation and zoning, with presumed lack of impacts, is necessary to permit farm practices to be undertaken on adjacent and nearby lands. County does not consider information about current or potential farm practices on nearby or adjacent lands. County erroneously conflates

	<p>does not constitute “Agricultural Lands” as defined in OAR 660-033-0020(1)(a)(C).”</p> <p>Exhibit II (Ordinance No. 2022-011 at page 28).</p>	<p>suitability factors with necessary standard. County includes no analysis of how rezoning the subject property, and the impacts of nonfarm industrial development, could affect the ability of nearby and adjacent lands to undertake current or future farm practices.</p>
<p>Ordinance No. 2023-018; File No. 247-22-000792-PA, 793-ZC; September 12, 2023; “Griffin/Renfro”</p>	<p>County finds that OAR 660-033-0020(1)(a)(B) suitability factors determine that “the Subject Property is not necessary to permit farm practices to be undertaken on adjacent or nearby agricultural land under this part of the administrative rules.”</p> <p>Exhibit JJ (Ordinance No. 2023-018, Hearings Officer decision at page 18).</p>	<p>No. County fails to determine whether the land’s resource designation and zoning, with presumed lack of impacts, is necessary to permit farm practices to be undertaken on adjacent and nearby lands. Application describes neighboring properties as used for crop and livestock production and a cattle feedlot. County fails to consider whether those adjacent and nearby farmlands and farm practices might be impacted by rezoning the property and the conflicts presented by residential development.</p>
<p>Ordinance No. 2024-001; File No. 247-23-000210-PA, 211-ZC; February 6, 2024; “Groves”</p>	<p>None.</p> <p>Exhibit KK (Ordinance No. 2024-001).</p>	<p>No. County fails to determine whether the land’s resource designation and zoning, with presumed lack of impacts, is necessary to permit farm practices to be undertaken on adjacent and nearby lands County does not specifically address the Goal 3 “necessary” standard, but includes combined findings under OAR 660-033-0020(1)(a)(B) “suitability”</p>

		standard, OAR 660-033-0020(1)(a)(C), and OAR 660-033-0020(1)(b) that do not discuss, provide information, or analyze the Goal 3 “necessary” standard.
Ordinance No. 2024-012; File No. 247-22-000443-PA, 436-ZC; January 8, 2025; “ <i>Destiny Court</i> ”	<p>“Based upon the record in this case the Hearings Officer finds that the Subject Property is not necessary to permit farm practices to be undertaken or maintained on adjacent or nearby agricultural lands; there simply are no adjacent farm uses or adjacent ‘agricultural lands.’ The Hearings Officer also finds that there is no evidence in the record suggesting that a nearby farm use would benefit from the ‘agricultural use’ of the Subject Property; including, but not limited to, providing additional feed resources to the Subject Property or the use of the Subject Property to locate storage or maintenance facilities for the nearby properties.”</p> <p>Exhibit MM (Ordinance No. 2024-012, Hearings Officer decision at 46-47).</p>	No. County fails to determine whether the land’s resource designation and zoning, with presumed lack of impacts, is necessary to permit farm practices to be undertaken on adjacent and nearby lands. <i>Contrary to Central Oregon LandWatch, supra,</i> findings invert “necessary” standard analysis by asking how nearby properties could use the subject property as part of a farm operation, rather than asking whether the agricultural lands designation and exclusive farm use zoning of subject property are necessary to permit farm practices to be undertaken on nearby and adjacent agricultural lands.
Ordinance No. 2025-003; File No. 247-22-000574-PA, 573-ZC; April 2, 2025; “ <i>Last Ranch</i> ”	County finds that it would be “challenging for any nearby farm to beneficially use the subject property in support of farm practices” and that “there is no evidence in the record to suggest that any nearby farm has an interest in using the subject property to	No. County fails to determine whether the land’s resource designation and zoning, with presumed lack of impacts, is necessary to permit farm practices to be undertaken on adjacent and nearby lands.

	<p>support any nearby farm practices.” County finds that “a change to [industrial] zoning would result in similar levels of development that exist in the [industrial] zoned lands to the south and southwest. The development of these lands does not appear to have impacted the ability of the few farms in the area to continue to operate.”</p> <p>Exhibit NN (Ordinance No. 2025-003, BOCC decision at pages 5-6).</p>	
<p>Ordinance No. 2025-010; File No. 247-24-000404-PA, 405-PC; July 10, 2025; “BPRD”</p>	<p>County finds that “the Subject Property is not necessary for purposes of permitting farm practices on any nearby parcels is based in part on poor soil quality and existing development on surrounding EFU properties.”</p> <p>Exhibit OO (Ordinance No. 2025-010, Hearings Officer decision page 45).</p>	<p>No. County fails to determine whether the land’s resource designation and zoning, with presumed lack of impacts, is necessary to permit farm practices to be undertaken on adjacent and nearby lands.</p> <p>Application and public comments described nearby and adjacent lands in irrigated farm use, including lands also owned by applicant, but county does not discuss the impacts that rezoning the property for residential use could have on current or future farm practices on those nearby lands.</p>
<p>Ordinance No. 2026-004; File No. 247-24-000097-PA,</p>	<p>County “does not disagree” with staff recommendation which finds “no feasible way that the subject property is necessary for the purposes of permitting farm</p>	<p>No. County fails to determine whether the land’s resource designation and zoning, with presumed lack of impacts, is necessary to</p>

<p>098-ZC; February 5, 2026; “BCL”</p>	<p>practices on any nearby parcels[...] This finding is based in part on poor quality, small size, and existing development on surrounding EFU and MUA10 properties.” County concludes, based on other findings, a private soils report, and the applicant’s argument, that “the conclusion reached that the Subject Property is not Agricultural Land is reasonable and appropriate.”</p> <p>Exhibit PP (Ordinance No. 2026-004, Hearings Officer decision at page 38).</p>	<p>permit farm practices to be undertaken on adjacent and nearby lands.</p> <p>County describes adjacent and nearby lands, but fails to analyze potential impacts that rezoning the property for residential use could have on those nearby lands. County bases this finding on existing conditions of subject property and nearby lands, not on the impacts that residential development would have on current or future farm practices on nearby agricultural lands.</p>
<p>Ordinance No. 2026-005; File No. 247-24-000392-PA, 393-ZC; “<i>Cascades Academy</i>”</p>	<p>County finds that past owners of nearby agricultural lands refute those lands’ history of farm use, justifying rezoning the property. County bases its conclusion on testimony of one past nearby land owner.</p> <p>Exhibit QQ (Ordinance 2026-010 at page 4-5).</p> <p>County finds that because no specific development is proposed as part of the rezoning application, potential conflicts with adjacent or nearby lands resulting from rezoning the property to a residential zone cannot be considered.</p> <p>Exhibit QQ (Ordinance 2026-010, Hearings Officer decision at page 15).</p>	<p>No. County fails to determine whether the land’s resource designation and zoning, with presumed lack of impacts, is necessary to permit farm practices to be undertaken on adjacent and nearby lands.</p> <p>County justifies failure to analyze impacts of rezoning property to a residential zone based on uncertainty of future development in the new residential zone.</p>

Each one of these 12 decisions fails to properly consider and apply the Goal 3 “necessary” standard, which requires consideration of the potential impacts of removing the land’s agricultural designation and EFU zoning on adjacent and nearby farm practices that could be undertaken, now and in the future. The result is a large-scale removal of the “buffer zones” or “strips of neutral land” that LCDC intends through the Goal 3 “necessary” standard to be retained as agricultural lands in order to preserve the maximum amount of the state’s limited supply of agricultural lands. ORS 215.243.

C. Second Pattern and Practice: Failure to Properly Interpret and Apply Goal 3 Definition of Agricultural Land to Lands That Are “Suitable for Farm Use.”

Over the past three years, Deschutes County has approved at least eight post-acknowledgement plan amendments that redesignate and rezone agricultural land without proper interpretation and application of the Goal 3 “suitability” standard, the second prong of the Goal 3 definition of agricultural land. This second definitional prong protects “lands which are *suitable for farm use*.” See Exs. M and N. These eight decisions are listed below in Table 3, which includes Exhibit numbers for each of the decisions.

1. Standards Governing Removal of Agricultural Lands Designation from Designated Agricultural Lands

Deschutes County Comprehensive Plan (DCCP) Policy 2.2.3 authorizes the redesignation of land designated agricultural zoned for exclusive farm use to a “nonresource” designation “as allowed by State Statute, Oregon Administrative Rules and this Comprehensive Plan,” thereby incorporating Goal 3 and its administrative rule into the County’s comprehensive plan.” See DCCP Policy 2.2.3., Exhibit O. As discussed above, Goal 3 has a three-prong definition of agricultural land. See Exhibits M and N. The second prong is:

“lands which are *suitable for farm use* taking into consideration 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, or accepted farming practices.”

Exhibit M, Goal 3, OAR 660-015-0000(3)(emphasis added). Goal 3 incorporates the definition of “farm use” as set forth in ORS 215.203. *See* Exhibit M.

ORS 215.203(2) provides:

“(a) As used in this section, "farm use" means ***the current employment of land for the primary purpose of obtaining a profit in money*** by raising, harvesting and selling crops or the feeding, breeding, management and sale of, or the produce of, livestock, poultry, fur-bearing animals or honeybees or for dairying and the sale of dairy products or any other agricultural or horticultural use or animal husbandry or any combination thereof. "Farm use" includes the preparation, storage and disposal by marketing or otherwise of the products or by-products raised on such land for human or animal use. "Farm use" also includes the current employment of land for the primary purpose of obtaining a profit in money by stabling or training equines including but not limited to providing riding lessons, training clinics and schooling shows. "Farm use" also includes the propagation, cultivation, maintenance and harvesting of aquatic, bird and animal species that are under the jurisdiction of the State Fish and Wildlife Commission, to the extent allowed by the rules adopted by the commission. "Farm use" includes the on-site construction and maintenance of equipment and facilities used for the activities described in this subsection. "Farm use" does not include the use of land subject to the provisions of ORS chapter 321, except land used exclusively for growing cultured Christmas trees or land described in ORS 321.267(3) or 321.824(3).

(b) As used in this subsection, “current employment” of land for farm use includes:

- (B) ***Land lying fallow for one year*** as a normal and regular requirement of good agricultural husbandry; * * *
- (E) ***Wasteland***, in an exclusive farm use zone, dry or covered with water, ***neither economically tillable nor grazeable***, lying in or adjacent to and in common ownership with a farm use land ***and which is not currently being used for any economic farm use***; * * *

ORS 215.203(2)(emphasis added), Exhibit P.

The Goal 3 definition of agricultural land therefore includes land that is *suitable to be employed for* the primary purpose of obtaining a profit in money. There is no requirement that the land have produced a profit in the past. There is no requirement that the land will produce a profit in the future. It need merely be suitable for someone to employ it for the primary purpose of making a profit. The consideration of profit in ORS 215.203 is therefore tied to purpose or intent—whether a farmer or rancher could employ the land with the purpose of obtaining a profit from agricultural activities.

The definition of farm use in ORS 215.203(2) specifically includes land that is not currently being used for any economic farm use, and that is neither economically tillable nor grazeable, so long as it is in common ownership with adjacent or surrounding land that is in farm use. In other words, a particular piece of land does not have to be tillable or grazeable to be agricultural land. As long the land is in common ownership with neighboring lands in farm use, it is considered to be in farm use under ORS 215.203(2) and thereby suitable for farm use under Goal 3.

2. Explanation of the Pattern and Practice of Violation

The County has engaged in a pattern and practice of finding that agricultural land is not “suitable for farm use” within the meaning of Goal 3 based on a hypothetical “reasonable farmer” test that is not contained in the rule or statute. Table 3 below lists eight decisions that indicate a pattern and practice of violating the Goal 3 “suitability” standard through use of the “reasonable farmer” test and/or speculation about the land’s profitability to find the land was unsuitable for farm use.¹⁰

In seven of the eight decisions reviewed in this petition, the county concluded that a “reasonable farmer” could not farm the land profitably, and so the land was not suitable for farm use. In the eighth decision, Exhibit KK, it is unclear whether the County relies on the reasonable farmer test or some other approach in giving decisive weight to profitability. Table 3 lists the eight decisions with exhibit

¹⁰ All eight decisions are included in the Appendices Vol. 3 as Exhibits FF, GG, II, KK, MM, OO, PP and LL. Four of the decisions, Exhibits GG (Marken), II (LBNW), KK (Groves) and MM (Destiny Court), were included as exhibits to the petitioners’ January 22, 2026 notice letter to Deschutes County. *See* Exhibit I. Two of the decisions, Exhibits FF (710 Properties) and LL (710 Properties 2024), were part of the series of appeals related to the 710 Properties case that was not fully resolved until February 12, 2026, so the decisions are now included. Two of the decisions, Exhibits OO (BPRD) and PP (BCL), were decided after the petitioners’ January 22, 2026 notice letter, and are included now pursuant to OAR 660-045-0090(4).

As discussed under the First Pattern and Practice, the County has approved at least 12 applications for the redesignation and rezoning of agricultural land over the past three years. The other four decisions, Exhibits CC, HH, JJ and NN are not included because they do not explicitly refer to the reasonable farmer test or otherwise give decisive weight to profitability in finding the land unsuitable for farm use. However, Exhibit CC has no findings regarding suitability, and the findings in HH, JJ and NN are inadequate to establish the standard is met.

numbers and indicates whether or not they relied on the “reasonable farmer” test to find the land was unsuitable for farm use.

LCDC has maintained that the “reasonable farmer” test used by Deschutes County is inconsistent with Goal 3 and the Goal 3 rule. *See* Exhibit U and V.

Under LCDC’s interpretation of Goal 3, whether land is suitable to be employed *for the primary purpose of* obtaining a profit in money is a subjective test, based on the intent of the person employing the land. Exhibit U at 12-13, 16-19. It is not an objective inquiry into whether a hypothetical “reasonable” farmer would find the use profitable. Exhibit U at 12-13, 18-20. LCDC has also maintained the reasonable farmer test is based largely on speculation about the land’s profitability, which is not supported by the language of Goal 3. Exhibit U at 21-22. That language requires that the question of land’s suitability for farm use be based on the land-based criteria set forth in Goal 3.¹¹ *Id.*

LCDC did not include profitability among the factors it adopted for determining land’s suitability for farm use under Goal 3 and OAR 660-033-0020(1)(a)(B). Exhibit U at 21-22. The Commission has explained that profitability is a relatively minor consideration—going to a farmer’s intent—and does not predominate over the land-based suitability factors set forth in Goal 3 and OAR 660-033-0020(1)(a)(B). *Id.* LCDC has maintained that the “reasonable farmer” test’s potential for giving decisive weight to profitability in determining land’s suitability for farm use is contrary to Goal 3. Exhibit U at 21, 23-25, 27.

Yet in the seven of the eight decisions listed in Table 3, the County found the land was unsuitable for farm use based on the “reasonable farmer” test and

¹¹ The Goal 3 “suitability” factors are 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, or accepted farming practices. *See* Goal 3, Exhibit M.

speculation about the land's profitability. In all eight of the decisions, the County gave decisive weight to the issue of the land's potential or hypothetical profitability in determining the land was not suitable for farm use. The County's interpretation of the Goal 3 suitability standard in all eight of these decisions is contrary to LCDC's plausible interpretation of Goal 3 and is therefore in error. *Housing Land Advocates & Dev. Comm.*, 311 Or App 326, 492 P3d 765, *rev den*, 368 Or 702 (2021) (deference owed to LCDC's interpretation of its own rules, including Goals).

Note this pattern and practice of violating the "suitability" standard is not merely a matter of inadequate findings. The County is consistently misinterpreting and misapplying the legal standard that comprises the Goal 3 definition of agricultural land.

The County's approval of the redesignation and rezoning of these agricultural lands in violation of Goal 3 constitutes a violation of the County's comprehensive plan. *See* DCCP Policy 2.2.3, Ex. O. Corrective action is needed to address the county's pattern and practice of decision-making in violation of its comprehensive plan, which incorporates Goal 3 as interpreted by its drafter, LCDC.

3. Significance of LUBA's Creation and Use of "Reasonable Farmer" Test

The Commission may ask whether it is bound by LUBA's interpretation of its rules that is contrary to its own.

Unlike the Oregon Court of Appeals and Oregon Supreme Court, LUBA does not have review authority over LCDC's decisions. ORS 197.825(2). While LUBA interpretations of LCDC's rules are persuasive and influential, they are not necessarily binding on LCDC itself. The Commission may choose to incorporate a LUBA interpretation of its Goals and rules in future rulemaking or policy decisions, but LCDC is free to adopt a different interpretation of its own Goals and rules.

Neither the Court of Appeals nor the Oregon Supreme Court has reviewed LUBA’s “reasonable farmer” test. LCDC challenged LUBA’s test in *Redside Restoration Project One, LLC v. Deschutes County*, 344 Or App 383 (2025), *rev den* ___ Or ___ (February 12, 2026), but the Court found the issue had been waived. *Redside Restoration*, 344 Or App at 416.

In that appeal, LCDC pointed out that LUBA cited only its own earlier decisions, not those of the Court of Appeals or the Supreme Court, as support for its “reasonable farmer” test. Exhibit U at 13-14, n 2.¹² LCDC observed that the only non-LUBA authority cited in support of LUBA’s “reasonable farmer” test in those earlier decisions was *Wetherell v. Douglas County*, 342 Or 666, 160 P3d 614 (2007).¹³ *Id.* But the *Wetherell* court did not create or sanction a “reasonable farmer” test for determining whether land was employed for the primary purpose of obtaining a profit in money under Goal 3 and ORS 215.203. Moreover, as LCDC explains:

¹²The decisions cited by LUBA in *Redside Restoration* in support of “reasonable farmer” test include *Central Oregon Landwatch v. Deschutes County (Marken)*, LUBA No. 2023-49 (Feb 15, 2024)(slip op at 14-15); *Landwatch Lane County v. Lane County*, 77 Or LUBA 368, 371 (2018); *Doherty v. Wheeler County*, 56 Or LUBA 465, 472 (2008). LCDC also correctly observed that none of the cited decisions interpreted the test of ORS 215.203(2), i.e., the “currently employed for the primary purpose of obtaining a profit in money” language. *Id.*

Additional cases in which LUBA has utilized the “reasonable farmer” test that similarly cite earlier LUBA cases as authority, including *Central Oregon LandWatch v. Deschutes County (710 Properties)*, ___ Or LUBA ___, ___ (LUBA Nos. 2023-006/009, July 28, 2023 (slip op at 28-30), *aff’d*, 330 Or App 321 (2024)(citing *Landwatch Lane County* and *Doherty*) and *Central Oregon LandWatch v. Deschutes County (Aceti)*, 74 Or LUBA 156 (2016).

¹³ Cited in *Landwatch Lane County*, 77 Or LUBA at 317. *See also Doherty*, 56 Or LUBA at 472, *supra*, n 11.

“[T]he court in *Wetherell* did not construe the phrase “primary purpose’ in ORS 215.203(2)(a) and instead held only that that statute’s use of the term “profit” meant that local governments could not be prohibited from considering profitability in making their determinations under OAR 666-033-0020(1)(a)(B). 342 Or at 623. The court expressly declined to decide what profitability should be given, and said nothing about how evidence should be evaluated under ORS 215.203(2)(a). *Id.*”

Exhibit U, at 13-14, n 2.

In other words, the *Wetherell* court did not consider the subjective nature of the “primary purpose” language. Nor did the court consider what type of evidence could satisfy that standard. Specifically, the court did not consider whether general opinion evidence that no reasonable person could ever farm the land with the primary purpose of obtaining a profit in money satisfied the standard. But of course how could such opinion evidence satisfy a standard that relies on someone’s subjective intent? How can a witness know the intent or profit motive of all future farmers and ranchers who may manage the land?

If LCDC issues an interpretation of Goal 3 contrary to LUBA’s, any appeal of that decision or order would be to the Oregon Court of Appeals. ORS 197.335(2). The Court of Appeals gives deference to LCDC’s plausible interpretation of its own rules, including the Goals, as long as LCDC’s interpretation is not “inconsistent with the wording of the rule, its context, or any other source of law.” *Housing Land Advocates v. Land Conservation and Dev. Comm.*, 311 Or App 326, 340, 492 P3d 765, *rev den*, 368 Or 702 (2021) (quoting *Barkers Five, LLC v. LCDC*, 261 Or App 259, 302-303, 323 P3d 368 (2014)).

a. “Primary Purpose” is a Subjective Test

As LCDC argued to the Court of Appeals in *Redside Restoration*, there is nothing in the text of ORS 215.203 as incorporated into Goal 3 that supports a so-

called “objective” test like the reasonable farmer test. *See* Exhibit U at 12. LCDC explained:

“Instead, the text and context of that statute reflect that whether a person has a “primary purpose of obtaining a profit in money” from their employment of the land is a subjective test, that can be satisfied by evidence that an actual farmer intends to currently employ the land for the primary purpose of obtaining a profit in money.”

Exhibit U at 12. The Commission explains:

“The plain meaning of the phrase “primary purpose” reflects that the focus of ORS 215.203(2)(a) is on the subjective purpose of the person currently employing the land.”

Exhibit U at 16-17.

LCDC explains that the “reasonable farmer” test is inconsistent with the context of the statute, most notably Oregon’s agricultural land use policy at ORS 215.243(2), because “it undermines the statute’s command to preserve the ‘maximum amount of the limited supply of agricultural land,’ particularly agricultural land in ‘large blocks.’” Exhibit U at 20. LCDC explains:

“LUBA’s test enables local governments to disregard, as objectively unreasonable, the expressed intent of actual farmers who propose to use the land for farm uses merely because some other party put forth evidence from which the local government could find that the proposed use would not be profitable.”

Exhibit U at 20. LCDC describes the probable on-the-ground consequences of LUBA’s test:

“Given the easily manipulable nature of economic forecasting, it is not hard to imagine how LUBA’s ‘objective test’ will play out on the ground. Local governments being asked [to] approve the redesignation of agricultural land to non-agricultural uses—thus further depleting the state’s ‘limited supply of

agricultural land’—will be faced with voluminous testimony about the “unreasonableness” of proposed farm uses, and will be empowered to give decisive weight to that evidence over the testimony of actual farmers willing to bet their own money on keeping land in agricultural production, thereby preserving that land for future generations of Oregonians.”

Exhibit U at 20-21.

b. Profitability Should Not Be Given Decisive Weight

LCDC has also maintained that the “reasonable farmer” test is inconsistent with Goal 3 and ORS 215.203 because it has the negative potential “of affording decisive weight to whether a proposed use of land will actually be profitable.” Exhibit U at 21. In LCDC’s interpretation of the Goal: “the likelihood that a proposed farm use on the land will generate a profit is a minor consideration that should not be allowed to predominate over the other factors listed in OAR 660-033-0020(1)(a)(B).” Exhibit U at 22.

LCDC explains that the Oregon Supreme Court has consistently rejected giving decisive weight to the profitability of a proposed use when determining if it qualified as a “farm use” under ORS 215.203 “because doing so would subvert ‘the goal of preserving land in productive agriculture.’” Exhibit U at 23-24 (citing *Craven v. Jackson County*, 308 Or 281, 287, 779 P2d 1011 (1989)).

LCDC points out that the Supreme Court has also rejected an interpretation of “farm use” in ORS 215.203(2)(c) that would have given substantial weight to the term profit as applied to the farm impacts test in ORS 215.296. Exhibit U at 24.¹⁴ In

¹⁴ The farm impacts test requires a consideration of whether a proposed nonfarm use will negatively impact “accepted farming practices” on surrounding agricultural lands. ORS 215.203(2)(c) defines “accepted farming practices” as “a mode of operation that is common to farms of a similar nature, necessary for the operation of such farms to *obtain a profit in money . . .*” See Exhibit P.

Stop the Dump Coalition v. Yamhill County, 364 Or 432, 455, 435 P3d 698 (2019), the court rejected the Court of Appeals’ holding that the language of ORS 215.203 supported a conclusion that “the legislature intended to focus the farm impacts test on preserving agricultural land to make a profit.” Exhibit U at 24. The Court observed: “If that were the legislature’s purpose, the text that the legislature used to convey that purpose in ORS 215.296(1) would be, at best, obscure.” *Stop the Dump*, 364 at 455.

Similarly, if LCDC’s purpose were to include in its definition of protected agricultural lands “suitable for farm use” only those lands shown to be profitable, it could have stated that intent more clearly in Goal 3. Instead, as in *Stop the Dump*, LCDC favors an interpretation of “farm use” as used in the Goal 3 suitability test that is consistent with “the legislature’s overarching concern with protecting Oregon’s limited supply of productive agricultural land, a long-term legislative policy” as set forth in ORS 215.243(2). *See* Exhibit U at 24-26.

In its *Redside Restoration amicus* brief, LCDC concludes that LUBA’s “objective” reasonable farmer test is inconsistent with ORS 215.203, Goal 3 and ORS 215.243 because “it will result in local governments affording decisive weight to the profitability of proposed uses on lands when determining whether those lands are ‘agricultural land’ under OAR 660-033-0020(1)(a)(B).” Exhibit U at 25.

That is exactly what has happened in the decisions reviewed in conjunction with this petition. The Commission should order corrective action to halt the County's pattern and practice of using the “reasonable farmer” test and giving decisive weight to profitability when determining whether land is suitable for farm use and therefore agricultural land protected by Goal 3.

Table 3: County’s Misinterpretation and Misapplication of “Suitability” Standard in Rezoning Approvals

Permit Number	Decision Final Date	“Reasonable Farmer” Test?	Exhibit Pages
Ordinance No. 2022-013 247-21-001043-PA 710 Properties Exh. FF	12/21/2022	Yes	Exh. FF Pdf pages 24, 25, 26, 28, 77, 79, and 80
Ordinance No. 2023-007 247-22-000353-PA Marken Exh. GG	05/23/2023	Yes	Exh. GG Pdf pages 22, 24 and 25
Ordinance 2023- 015 247-21-000881-PA LBNW Exh. II	09/19/2023	Yes	Exh. II Pdf pages 90, 92, 93 and 94
Ordinance No. 2024-001 247-23-000210-PA Groves Exh. KK	02/06/2024	No. But gives decisive weight to profitability in finding land not suitable for grazing.	Exh. KK Pdf page 48

Ordinance No. 2024-012 247-22-000443-PA Destiny Court Exh. MM	01/08/2025	Yes	Exh. MM Pdf pages 52, 81, and 82
Ordinance No. 2025-010 247-24-000404-PA BPRD Exh. OO	07/10/2025	Yes	Exh. OO Pdf pages 50 and 61
Ordinance No. 2026-004 247-24-000097-PA BCL Exh. PP	02/05/2026	Yes	Exh. PP Pdf pages 32, 64, and 65-66
247-24-000395-A 710 Properties 2024 Exh. LL	10/22/2024	Yes	Exh. LL Pdf pages 25, 26, 32, 34, 35, 150, 151, 152, 154, 203, and 206

D. Third Pattern And Practice: Failure To Properly Interpret And Apply Goal 14.

1. Standards Requiring Local Governments to Contain Population and Employment Growth Inside Urban Growth Boundaries

a. State law

The Oregon Supreme Court has held that “the policy of Goal 14 is to contain urbanization within acknowledged UGBs.” *1000 Friends of Oregon v. LCDC (Curry County)*, 301 Or 447, 474, 724 P2d 268, 287 (1986). Goal 14 “generally prohibits urbanization of ‘rural land’” and prohibits development that “will undermine the effectiveness of an established UGB.” *Id.* at 474-75.

Whether a use of land outside of an urban growth boundary (UGB) maintains land as rural land or urbanizes rural land in violation of Goal 14 requires an individualized, site-specific inquiry. *Curry County*, 301 Or at 504 n33; *Doob v. Josephine County*, 32 Or LUBA 376, 381 (1997). The fact that a comprehensive plan has been acknowledged in the past does not mean that amendments to the plan will also comply with the goals. *Ludwick v. Yamhill County*, 72 Or App 224, 696 P2d 536, rev den, 299 Or 443 (1985).

LUBA has consistently held that Goal 14 requires a case-by-case analysis and, consistent with *Curry County* and *Ludwick*, past acknowledgement of any other zone or property for Goal 14 compliance does not control whether a new PAPA complies with Goal 14:

In *DLCD v. Klamath County*, 19 Or LUBA 459, 465 (1990), LUBA held:

“The determination of whether a particular proposal to rezone land [] will result in urban level uses requires a case-by-case analysis.”

In *Kaye v. Marion County*, 23 Or LUBA 452, slip op at 9 (1992), LUBA held:

"The analysis of whether a particular proposed use will allow an urban or a rural use within the meaning of Goal 14 requires a case-by-case analysis. *1000 Friends of Oregon v. LCDC (Curry County)*, *supra*, 301 Or at 521."

In *DLCD v. Klamath County*, 40 Or LUBA 221, 227, LUBA (2001) held:

"[A]cknowledgment does not have the legal effect of establishing that all future applications of the [] zone to particular properties, no matter what the circumstances, will also necessarily comply with Goal 14."

In *Friends of Yamhill County*, 41 Or LUBA 247, 256-257 (2002), LUBA held:

"By definition, land that (1) is located outside an acknowledged UGB and (2) is not the subject of an exception to Goal 14 is rural land.

"Although rezoning the subject property or other [] zoned properties to [] may not result in urban development that would violate Goal 14, the county may not assume that such rezoning will not do so. *DLCD v. Klamath County*, 40 Or LUBA 221, 227 (2001); *DLCD v. Klamath County*, 19 Or LUBA 459, 465 (1990)."

In *Oregon LandWatch v. Deschutes County (Destiny Court)*, __ Or LUBA __, slip op at 13, 15 (LUBA No. 2025-015, June 26, 2025), LUBA clarified that all comprehensive plan amendments must comply with the 19 Goals, irrespective of the acknowledged status of a local government's comprehensive plan:

“We agree with petitioner that all comprehensive plan amendments are potentially subject to review for compliance with applicable statewide planning goals, even if the amendment only applies an acknowledged plan designation and zoning district to a specific property.”

“Some site-specific analysis as indicated in *Curry County* and *Shaffer* is still necessary.”

For proposals to site new industrial uses outside of UGBs, in *Shaffer v. Jackson County*, 17 Or LUBA 922, 928 (1989), LUBA declared several other factors that must be considered when determining whether a particular land use offends Goal 14:

“(1) relevant characteristics of the proposed use (such as number of employees, noise, odor, dust and other pollutants emitted, associated traffic); (2) the ultimate use of the products of the proposed use (e.g., whether for urban or rural uses, and in what proportions); (3) the characteristics of urban development in nearby UGBs; (4) where other similar uses in the county are located; and (5) whether there is a practical necessity to locate the proposed use in the rural area, close to a site specific resource.”

Shaffer, 17 Or LUBA at 928.

b. Deschutes County Comprehensive Plan (DCCP) and Deschutes County Code (DCC)

At Section 4.2, the DCCP includes urbanization policies to implement Goal 14. Section 4.2 Goal 1 is to “Coordinate with cities, special districts and stakeholders to support urban growth boundaries and urban reserve areas that provide an orderly and efficient transition between urban and rural lands.” Policy 4.2.2 is to “Promote and coordinate the use of urban reserve areas.”

2. Explanation of The Pattern and Practice of Violation

The County's 12 decisions to convert agricultural land for sprawling nonfarm development have been made without proper application of Goal 14, which, as interpreted by LUBA and Oregon courts, requires site-specific analysis of whether the conversion would undermine Goal 14's objectives.

As detailed in Table 4 below, six of the 12 decisions offer a discussion of the *Curry County* factors. The other six find that Goal 14 does not apply and that no site-specific Goal 14 analysis is required. All 12 of the decisions find that Goal 14 is satisfied. The net effect of these 12 conversions is the accommodation of significant new population and employment growth outside of the County's four urban growth boundaries, undermining the effectiveness of those UGBs. *Curry County*, 301 Or at 474-475. Although five decisions do offer a discussion of the *Curry County* factors, even those decisions ultimately violate Goal 14 by accommodating significant new population and employment growth outside UGBs through improper interpretation and application of the *Curry County* factors.

The DCCP provides two zones to implement its Rural Residential Exception Area plan designation: the Multiple Use Agricultural (MUA) and Rural Residential (RR) zones. DCCP Table 1.3.3 - Comprehensive Plan and Zoning Code Designations. The MUA zone has a minimum lot size of 10 acres, except that the DCC allows a "five-acre minimum lot size or equivalent density" in the MUA zone when a property is within one mile of a UGB. DCC 18.116.400(A)(3). The RR zone also has a minimum lot size of 10 acres, and the DCC also allows a "five-acre minimum lot size or equivalent density" when a property is within one mile of a UGB. DCC 18.116.400(A)(4).

The nine decisions that redesignate agricultural land to the County's Rural Residential Exception Area plan designation apply either the MUA or RR zone, significantly increasing new population growth on these former agricultural lands. In

sum, these nine decisions authorize 261 new dwellings outside of the County's four UGBs, just within the past three years. These dwellings would not support rural farming or forestry operations, but would be inhabited by new population growth largely reliant on urban services and infrastructure.

Three of the decisions rezone agricultural land to the County's Rural Industrial plan designation and Rural Industrial zone. The RI zone uses include pulp and paper manufacturing, plastic factories, fiber factories, petroleum storage, and concrete plants. DCC 18.100.020. In the three decisions converting agricultural lands to the RI zone, the County does not consider whether these uses would frustrate Goal 14's directive to contain employment growth inside UGBs.

The 12 decisions are also inconsistent with DCCP Goal 4.2 and Policy 4.2.2. Rather than coordinate further urban growth planning with cities, special districts, and stakeholders, including through the use of urban reserves, the County has enabled significant new growth often very near UGBs. The result is not an orderly and efficient transition between urban and rural lands, but a haphazard land use pattern of upzoning near UGBs that frustrates the purpose of those UGBs and violates Goal 14.

In Table 4, we describe each decision and explain how it fails to adequately interpret and apply Goal 14, contributing to the County's pattern and practice of violating that standard. We further refer the Commission to our July 29, 2025 notice letter to Deschutes County, which goes into further detail about each of these decisions' violation of Goal 14. See Exhibit A, pages 13-31.

Table 4: County Post-Acknowledgment Plan Amendments Constituting Goal 14 Pattern and Practice Violation

PAPA Decision	Goal 14 findings in decision	Goal 14 analysis ?	Does decision correctly address whether rezoning property violates Goal 14?
Ordinance No. 2022-010; File No. 247-20-000438-PA, 439-ZC; July 29, 2022; “ <i>Aceti</i> ”	None. Exhibit CC.	No	No. County fails to provide site-specific Goal 14 findings. Siting of new industrial uses outside UGBs undermines the effectiveness of UGBs to contain urban employment inside UGBs.
Ordinance No. 2022-013; File No. 247-21-001043-PA, 1044-ZC; December 21, 2022; “ <i>710 Properties</i> ”	County finds that it need not apply Goal 14, based on the acknowledged status of the County’s comprehensive plan and zoning code. County alternatively provides a basic analysis of the <i>Curry County</i> factors, concluding that that “none of the above-factors indicates that the Applicant’s rezone request implicates Goal 14.” Exhibit FF, Ordinance No. 2022-013, page 15-17.	Yes	No. County allows 71 new 10-acre residential lots, or 95 dwellings in a cluster or planned development, on the 710-acre property in a rural agricultural area, over four miles from a UGB. County allows up to 95 new residential lots without any minimum lot size requirement for “planned developments” which are allowed in the County’s rural residential zones. This new residential growth undermines the effectiveness of UGBs.

<p>Ordinance No. 2023-007; File No. 247-22-000353-PA, 354-ZC; May 23, 2023; “<i>Marken</i>”</p>	<p>County first finds “that Goal 14 does not apply in this case.” Ordinance No. 2023-007, page 64. County finds, in the alternative, that the applicant-provided analysis of the <i>Curry County</i> factors satisfies Goal 14. Ordinance No. 2023-007, page 64-65.</p>	<p>Yes</p>	<p>No. New residential zoning applied to the 60-acre property allows density of 1 dwelling per 5 acres, allowing a new 12-dwelling neighborhood adjacent to a UGB. This new residential growth frustrates the purpose of UGBs.</p>
<p>Ordinance No. 2023-010; File No. 247-22-000314-PA, 313-ZC; July 13, 2023; “<i>Te Amo Despacio</i>”</p>	<p>County concludes:, “This goal is not applicable because the Applicants' proposal does not involve property within an urban growth boundary and does not involve the urbanization of rural land. The MUA-10 zone is an acknowledged rural residential zoning district that limits the intensity and density of developments to rural levels. The compliance of this zone with Goal 14 was recently acknowledged when the County amended its Comprehensive Plan. The Comprehensive Plan recognizes the fact that the MUA-10 and RR zones are the zones that will be applied to lands designated Rural Residential Exception Areas.”</p> <p>Exhibit HH, Ordinance No. 2023-010, page 20.</p>	<p>No</p>	<p>No. County fails to provide site-specific Goal 14 inquiry. New residential zoning applied to the 93-acre property allows density of 1 dwelling per 5 acres, allowing a new 19-dwelling neighborhood adjacent to a UGB. This new residential growth frustrates the purpose of UGBs.</p>

<p>Ordinance No. 2023-015; File No. 247-21-000881-PA, 882-ZC; September 19, 2023; “<i>LBNW</i>”</p>	<p>None. Exhibit II, Ordinance No. 2022-011.</p>	<p>No</p>	<p>No. County’s decision violates Goal 14 per <i>Curry County</i> and <i>Shaffer</i>, which held that a site-specific analysis is always required when a conversion of resource land for industrial use is proposed. Siting of new industrial uses outside UGBs undermines the effectiveness of UGBs to contain urban employment inside UGBs.</p>
<p>Ordinance No. 2023-018; File No. 247-22-000792-PA, 793-ZC; September 12, 2023; “<i>Griffin/Renfro</i>”</p>	<p>County concludes: “Staff found that this goal is not applicable because the Applicants’ proposal does not involve property within an urban growth boundary and does not involve the urbanization of rural land. The MUA-10 zone is an acknowledged rural residential zoning district that limits the intensity and density of developments to rural levels. The compliance of this zone with Goal 14 was recently acknowledged when the County amended its Comprehensive Plan. The Comprehensive Plan recognizes the fact that the MUA-10 and RR zones are the zones that will be applied to lands designated Rural Residential Exception Areas.”</p>	<p>No</p>	<p>No. County fails to provide site-specific inquiry concerning whether Goal 14 is violated. New residential zoning applied to the 40-acre property allows density of 1 dwelling per 5 acres, allowing a new 8-dwelling neighborhood 0.75 miles from a UGB. This new residential growth frustrates the purpose of UGBs.</p>

	<p>“[...] I find that this Goal is not applicable for the reasons above.”</p> <p>Exhibit JJ, Ordinance No. 2023-018, Hearings Officer decision at page 24-25.</p>		
<p>Ordinance No. 2024-001; File No. 247-23-000210-PA, 211-ZC; February 6, 2024; “<i>Groves</i>”</p>	<p>None. County quotes with approval applicant-provided response to Goal 14: “The proposal is consistent with Goal 14 for the following reasons: 1. The proposal supports a likely, though not certain, eventual transition from rural to urban land use that responds to identified needed lands as the Bend UGB expands north 7600 feet; 2. The proposal represents an orderly growth pattern that eventually will efficiently utilize public facilities and services, including the 2023 improvements to Hunnell Road; 3. The proposal will ultimately result in the maximum efficiency of land uses on the fringe of the existing urban area; 4. The Subject Property has been found to be not predominantly agricultural land as defined in OAR 660-033-0020; and 5. The proposal will promote compatibility with surrounding rural</p>	<p>No</p>	<p>No. County fails to provide site-specific inquiry concerning whether Goal 14 is violated. New residential zoning applied to the 40-acre property allows density of 1 dwelling per 5 acres, allowing a new 8-dwelling neighborhood 1 mile from a UGB. Applicant’s Goal 14 response contemplates “likely” urbanization of subject property. This new residential growth frustrates the purpose of UGBs.</p>

	residential uses and will not adversely impact any nearby commercial agricultural uses because there are none.” Exhibit KK, Ordinance No. 2024-001, Hearings Officer decision at page 35.		
Ordinance No. 2024-012; File No. 247-22-000443-PA, 436-ZC; January 8, 2025; “ <i>Destiny Court</i> ”	County adopts applicant-provided findings and finds that “Goal 14 has been satisfactorily addressed by Applicant and that the Applicant’s proposal is consistent with Goal 14 and no exception is required/necessary.” Exhibit MM, Ordinance No. 2024-012, Hearings Officer decision at 12-15, 51-52.	Yes	No. New residential zoning applied to the 65-acre property allows density of 1 dwelling per 5 acres, allowing a new 13-dwelling neighborhood less than 0.5 miles from a UGB. Applicant’s Goal 14 response contemplates “a more dense housing pattern in the future” on the subject property. This new residential growth frustrates the purpose of UGBs.
Ordinance No. 2025-003; File No. 247-22-000574-PA, 573-ZC; April 2, 2025; “ <i>Last Ranch</i> ”	None. Exhibit NN, Ordinance No. 2025-003.	No	No. Failure to provide site-specific Goal 14 findings violates <i>Curry County, Doob, and Shaffer</i> . Siting of new industrial uses outside UGBs undermines the effectiveness of UGBs to contain urban employment inside UGBs.
Ordinance No. 2025-010; File No. 247-24-000404-PA, 405-PC; July 10, 2025; “ <i>BPRD</i> ”	County finds applicant-provided “discussion and analysis” regarding Goal 14 “to be persuasive” and “finds no Goal 14 exception is required in this case.”	Yes	No. New residential zoning applied to the 280-acre property allows density of 1 dwelling per 5 acres, allowing a new 56-dwelling neighborhood 0.25 miles from a UGB. This

	Exhibit OO, Ordinance No. 2025-010, Hearings Officer decision at page 60.		new residential growth frustrates the purpose of UGBs.
Ordinance No. 2026-004; File No. 247-24-000097-PA, 098-ZC; February 5, 2026; “BCL”	<p>“The Board finds that its acknowledged Comprehensive Plan, amended in 2016 to create the RREA designation and its MUA-10 and RR-10 zones, confirms that uses allowed within those zones are all rural uses and not urban uses.”</p> <p>“The Board also considered and evaluated the factors presented by the applicant referred to often as the Curry County factors to assess whether rezoning the property MUA-10 will result in urban uses on rural land.”</p> <p>Exhibit PP, Ordinance No. 2026-004, BOCC decision at pages 7-9.</p>	Yes	No. New residential zoning applied to the 240-acre property allows a density of 1 dwelling per five acres because property is within one mile of a UGB. This allows a new 48-dwelling neighborhood, frustrating the purpose of UGBs by accommodating significant new residential growth just outside of a UGB.
Ordinance No. 2026-005; File No. 247-24-000392-PA, 393-ZC; “Cascades Academy”	County finds that “the substantial evidence in the record demonstrates the proposal is rural in nature and does not require an exception to Goal 14.”	Yes	No. New residential zoning applied to the 20-acre subject property allows two new dwellings, located 1.5 miles from a UGB. This frustrates the purpose of UGBs.

	<p>Exhibit QQ, Ordinance No. 2026-050, Board of County Commissioners decision at page 5.</p> <p>Hearings Officer decision finds that “it is not necessary to apply the <i>Curry</i> factors as urged by COLW, and that the change in zone to MUA-10 does not result in urbanization of the Subject Property.”</p> <p>Exhibit QQ, Ordinance No. 2026-050, Hearings Officer decision at 18.</p>		
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II. PATTERNS AND PRACTICES OF VIOLATIONS RELATING TO APPROVALS OF NONFARM DWELLINGS ON AGRICULTURAL LAND ZONED FOR EXCLUSIVE FARM USE

A. Introduction

The fourth, fifth, sixth and seventh patterns and practices of violations identified in this petition relate to the approval of nonfarm dwellings on agricultural land that Deschutes County has zoned for exclusive farm use. These patterns and practices were described in COLWs and 1000 Friends' November 13, 2025 request to Deschutes County seeking corrective action. That request was based on a total of sixteen decisions approving nonfarm dwellings in the three-year period preceding the request, i.e., November 15, 2022 through November 13, 2025. The sixteen decisions are included in Volume 4 of the Appendices, Exhibits RR-GGG.¹⁵

B. Fourth Pattern And Practice: Improper Reliance On Private Soils Assessment To Determine Whether Land Is Generally Unsuitable For The Production Of Farm Crops And Livestock

1. Standards Governing Soils Assessments in Land Use Decisions

OAR 660–033-0130(4)(c)(B)(i) as implemented by DCC 18.16.050 authorizes a nonfarm dwelling only on land that is “generally unsuitable for the production of farm crops and livestock or merchantable tree species.” *See* Exh. S, OAR 660-03-0130(4) and Exh. T, DCC 18.16.050.

OAR 660-033-0130(4)(c)(B)(ii) and DCC 18.16.050 (G)(1)(a)(3) provide:

¹⁵ Five post-notice decisions are also included in Volume 4 as Exhibits HHH-LLL and are addressed separately below.

“A lot or parcel or portion of a lot or parcel is presumed to be suitable if . . . in Eastern Oregon it is composed predominantly of Class I-VI soils.”

Exhs. S and T. The referenced soils rating is from the USDA Natural Resources Conservation Service (NRCS) Land Capability Classification System, which groups all soils into eight classes designated by Roman numerals I-VIII. *See* Exhs. MMM and NNN. The soils are rated based on their capacity to support various land uses, most importantly agriculture. *Ibid.*

LCDC also uses the NRCS soils classification system as one basis for defining “agricultural land” that must be inventoried and preserved for agricultural use under Goal 3. Land with predominantly Class I-IV soils in western Oregon, and predominantly Class I-VI soils in eastern Oregon, as identified by the NRCS, are included in Goal 3’s definition of agricultural land. *See* Exh. M.

Adopted in 2010, ORS 215.211 authorizes the use of a private soils assessment to “assist a county to make a better determination of whether land qualifies as agricultural land.” ORS 215.211(1). It sets up a system where DLCD is to arrange for the soils assessment and directs DLCD to review all soils assessments to be utilized by the county under ORS 215.211.

The statute does not, however, authorize the use of private soil assessments to assist counties in determining whether a lot or parcel, or a portion thereof, “is composed predominantly of Class I-VI soils,” and thereby presumed suitable for agricultural use in eastern Oregon. *See* Exhs. S and T; *Inglis v. Harney County*, LUBA No. 2025-017 (Jun. 20, 2025) (slip op at 16). The statute also does not authorize counties to rely exclusively on a developer’s private soil assessment to conclude that land is unsuitable for the production of farm crops and livestock and thereby eligible for a nonfarm dwelling.

ORS 215.211 is the only Oregon statute that authorizes a person to obtain additional information to challenge USDA NRCS soils ratings in a land use proceeding. It requires that DLCD arrange for the independent soils assessment

and to review the assessment if it is to be used by the applicant. ORS 215.211 only applies to determinations of whether land qualifies as agricultural land, not whether land is generally unsuitable for the production of farm crops and livestock or merchantable tree species. *Inglis, supra*, slip op at 16. There is no statutory authorization that allows the County to consider a private soils professional report in approving or denying a nonfarm dwelling application.

2. Explanation of the Pattern and Practice of Violation

The County is systematically violating OAR 660-033-0130(4)(c)(B)(i) and DCC 18.16.050(G)(1)(a)(3) by approving nonfarm dwellings based on private soils assessments. The violation has two prongs. First, the County is relying on the soils assessment, rather than the NRCS soils survey, to determine the soils ratings for the subject property. Second, the County is relying exclusively on the applicant's private soils assessment to conclude that the land is unsuitable for the production of farm crops and livestock. Evidence of the property's history of crop production is not considered, nor is the question of whether other land with similar soil characteristics is used for the production of farm crops or livestock in the County.

a. Redesignating Soils

In 12 of the 13 nonfarm dwelling approvals listed in Table 5 below, the County improperly relies on a private soils assessment to determine the land's agricultural capability, independent of the NRCS soils capability classification.¹⁶ There is no indication that these soils assessments are arranged or reviewed by DLCD. *See Inglis, supra*, slip op at 16. In several of the applications, the NRCS soils report showed the property contained predominantly Class I through VI soils, but the private soils analysis reclassified those soils to predominantly Classes VII

¹⁶ In Decision 247-23-000154-CU (Exh. XX), both the NRCS studies and the private soils assessment classify the soils in the proposed building envelope as Class VII.

through VIII. As a result, land that was presumed suitable for the production of farm crops and livestock lost that presumption.

There is no statutory or rule authorization allowing the County to rely on a developer's private soil reports to second-guess NRCS soils classifications for the purpose of nonfarm dwelling applications. ORS 215.211 only applies to determinations of whether land qualifies as agricultural land, not whether land is generally unsuitable for the production of farm crops and livestock or merchantable tree species. Allowing a developer's private soils analysis to reclassify the land's soils is therefore a violation of OAR 660-033-0130(4)(c)(B)(i) and DCC 18.16.050(G)(1)(a)(3).

The second prong of the violation is that in all 13 decisions outlined below, the County's analysis of the land's suitability for farm crop and livestock production ends with a "general unsuitability" finding that is based only on a review of the soil types described in the building envelope. While Class VII soils are not *presumed* suitable for the production of farm crops and livestock, they may in fact be suitable. *See* Exhibits MMM and NNN. Evidence of the property's history of crop and livestock production must also be considered in determining whether the land is unsuitable for the production of farm crops and livestock. *See Peterson v. Crook County*, 49 Or LUBA 223 (2005) (slip op at 5).

In addition, a proper analysis of land's suitability for the production of farm crops includes the practical consideration of whether and how other land with similar soil characteristics is used for crop and livestock production. For example, the records for the nonfarm dwelling approvals show that Class VII soils are used throughout Deschutes County for both livestock pasture and for growing hay. If land with similar characteristics is used elsewhere for the production of farm crops, that is an obstacle to finding that the land is generally unsuitable. As such, the County's singular reliance on a private soil report, without additional analysis of past uses or other uses of similar soils in the nearby area, misapplies and

misconstrues OAR 660-033-0130(4)(c)(B)(i) and DCC 18.16.050(G)(1)(a)(3), and constitutes a practice of violations of state and local land use regulations.

In 12 of these 13 decisions, the County relies exclusively on the developer’s private soil assessment to conclude that the land is unsuitable for the production of farm crops. Even if the soils are not presumed suitable for the production of farm crops or livestock, failure to ask whether the soils might be nonetheless suitable is error. The County’s failure to consider evidence other than the private soils assessment in determining suitability represents a pattern of violating OAR 660-033-0130(4)(c)(B)(i) and DCC 18.16.050(G)(1)(a)(3) by misapplying the law.

Table 5: 12 of 13 Nonfarm Dwelling Approvals Improperly Relying on Private Soils Assessments

Permit Number	Decision Final Date	Reclassify NRCS Soils Ratings in Building Envelope?	Suitability Based Entirely on Soils Assessment?
247-22-000373-CU Exh. RR	7/27/2024	Yes. NRCS: Predominantly Class I-VI. Soils assessment: Predominantly Class VII-VIII. Exh. RR, pg. 40, 42.	Yes. Exh. RR, pg. 42

<p>247-22-000409-CU</p> <p>Exh. SS</p>	<p>12/5/2022</p>	<p>Yes.</p> <p>NRCS: 138B (Class VI); 81F (Class VII and VIII)</p> <p>Soils assessment:</p> <p>81C, 81D, 81F, and 141C (Class VIII)</p> <p>Exh. SS, pgs. 16-17.</p>	<p>Yes.</p> <p>Exh. SS, pg. 17</p>
<p>247-22-000421-CU</p> <p>Exh. TT</p>	<p>11/15/2022</p>	<p>Yes.</p> <p>NRCS: Predominantly Class I-VI.</p> <p>Soils assessment:</p> <p>Predominantly Class VII-VIII.</p> <p>Exh. TT, pg. 3, 25.</p>	<p>Yes.</p> <p>Exh. TT, pg. 28.</p>
<p>247-22-000556-CU</p> <p>Exh. UU</p>	<p>3/29/2023</p>	<p>Yes.</p> <p>NRCS: Predominantly Class VI.</p> <p>Soils Assessment:</p> <p>Predominantly Class VII-VII.</p>	<p>Yes.</p> <p>Exh. UU, pg. 17.</p>

		Exh. UU pgs. 3-4.	
247-23-000077-CU Exh. WW	7/5/2023	Yes. NRCS: 31A (Class VI/III), 34C (Class VI/III and VI/IV) and 141C (Class VI and VIII) Soils Assessment: 31A (Class VI/III), 31C (Class VI), 138A (Class VII), and 138C (Class VIII) soils. Exh. WW, pgs. 17-18.	Yes. Exh. WW, pg. 17.
247-23-000154-CU Exh. XX	7/25/2023	No. NRCS: 101E (Class VII) Soils Assessment: 101E (Class VII), 101D (Class VII) Exh. XX, pg. 15	Yes. “Generally unsuitable” finding is based on “consideration of the soil study maps and ratings.” Exh. XX, pg. 15

<p>247-23-000293-CU</p> <p>Exh. YY</p>	<p>4/3/2024</p>	<p>Yes.</p> <p>NRCS: 106D (Class VI/VII), 71A (Class VI/III), 100C (Class VI/VII).</p> <p>Soils Assessment: 36B (Class VI), 36C (Class VI), 81D (Class VII), 81E (Class VII), 109 (Class VIII)</p> <p>Exh. YY, pgs. 3-5, 33-36</p>	<p>Yes.</p> <p>Exh. YY, pg. 41</p>
<p>247-23-000428-CU</p> <p>Exh. ZZ</p>	<p>10/9/2023</p>	<p>Yes.</p> <p>NRCS: 26A (Class VI/IV), 81F (Class VII), 128C (Class VI)</p> <p>Soils Assessment: 57% Class VII and VIII.</p> <p>Exh. ZZ, pgs. 3-4,</p>	<p>Yes.</p> <p>Exh. ZZ, pg. 17</p>

<p>247-23-000443-CU</p> <p>Exh. AAA</p>	<p>8/30/2023</p>	<p>Yes.</p> <p>NRCS: 34C (VI/III and VI/IV), 141 C (VI and VIII)</p> <p>Soils assessment: All Class VII and VIII.</p> <p>Exh. AAA, pgs. 3-4, 19.</p>	<p>Yes.</p> <p>Exh. AAA, pg. 20</p>
<p>247-23-000533-CU</p> <p>Exh. CCC</p>	<p>10/1/2023</p>	<p>Yes.</p> <p>NRCS: 38B, (Class III/VI and VII), 58C (IV/VI and VII)</p> <p>Soils assessment: All Class VII and VI.II</p> <p>Exh. CCC, pgs. 2-3, 16.</p>	<p>Yes.</p> <p>Exh. CCC, pgs. 16-17</p>
<p>247-23-000556-CU</p> <p>Exh. DDD</p>	<p>1/30/2024</p>	<p>Yes.</p> <p>NRCS: Predominantly Class VI/III</p> <p>Soil assessment: All Class VII and VIII.</p> <p>Exh. DDD, pgs. 3-4, 23</p>	<p>Yes.</p> <p>Exh. DDD, pg. 24.</p>

<p>247-23-000830-CU</p> <p>Exh. FFF</p>	<p>6/12/2024</p>	<p>Yes.</p> <p>NRCS: 38B (Class III/VI and VII), 34C (Class III/VI and IV/VI)</p> <p>Soil assessment: All Class VII and VIII.</p> <p>Exh. FFF, pgs. 3, 20</p>	<p>Yes.</p> <p>Exh. FFF, pg. 22.</p>
<p>247-24-000754-CU</p> <p>Exh. GGG</p>	<p>2/4/2025</p>	<p>Yes.</p> <p>NRCS: Predominantly Class I-VI.</p> <p>Soil assessment: Predominantly Class VII and VIII.</p> <p>Exh. GGG, pgs. 3-4</p>	<p>Yes.</p> <p>Exh. GGG, pg. 19.</p>

C. Fifth Pattern and Practice: Failure to Properly Apply the Cumulative Impacts Analysis to Protect Stability of the Agricultural Land Use Pattern

1. Standards Governing Cumulative Impact Analysis for Nonfarm Dwellings

Under both state and county law, a nonfarm dwelling cannot be approved if the cumulative impact of the proposed dwelling and other potential nonfarm dwellings will materially alter the stability of the overall land use pattern of the

area. OAR 660-033-0130(4)(c)(C); DCC 18.16.050(G)(1)(a)(2). OAR 660-033-0130(4)(a)(D) describes the process for conducting the cumulative impact analysis, as applied to Deschutes County by OAR 660-033-0130(4)(c)(C) and DCC 18.16.040(G)(1)(a)(2).

This process requires the County to:

- 1) Define a study area adequate to determine the cumulative impact of nonfarm dwellings on the affected agricultural area;
- 2) Identify the pattern of farm and nonfarm uses occurring in the study area;
- 3) Document the dwelling development trends in the impacted area; and then,
- 4) Determine whether the cumulative effect of existing and potential nonfarm dwellings will make it more difficult for the existing types of farms in the area to continue operation due to diminished opportunities to expand, purchase, or lease farmland, acquire water rights, or diminish the number of tracts or acreage in farm use in a manner that will destabilize the overall character of the study area.

Appendices, Vol. 4, Exhibit S, OAR 660-033-0130(4)(a)(D)(incorporating OAR 660-033-0130(4)(a)(D) process); Exhibit T, DCC 18.16.040(G)(1)(a)(2).

2. Explanation of the Pattern and Practice of Violation

In the 11 decisions listed in Table 6 below, the County fails to comply with the requirements of the cumulative impact analysis in OAR 660-033-0130(4)(c)(C) and DCC 18.16.050(G)(1)(a)(2) and employs an alternative analysis that undermines the exact purpose of the code sections. Whereas OAR 660-033-0130(4)(c)(C) is intended to ensure that the cumulative impact of nonfarm dwelling

development does not lead to the conversion of agricultural areas designated and protected under Goal 3 for agricultural use, the County's noncompliant cumulative impacts analysis short-circuits this protection. It assumes that in areas with any amount of existing nonfarm development, any new nonfarm will only continue a trend, as opposed to destabilizing the agricultural land use pattern.

In determining whether this criterion is satisfied, the County first fails to properly identify the agricultural area impacted by the progressive approval of nonfarm dwellings. *See* Table 6, below, third column. Contrary to regulatory requirements, the County simply chooses a 2,000-acre area for analysis, without justifying the scope and contours of the area, *DLCD v. Crook County*, 34 Or LUBA 243, 251 (1998); *Bruck v. Clackamas County*, 15 Or LUBA 540, 543 (1987), or explaining why the study area is sufficient for the cumulative impacts analysis. *Dowrie v. Benton County*, 38 Or LUBA 93 (2000); *DLCD v. Crook County*, 34 Or LUBA at 251.

Second, the County fails to properly identify the farm and nonfarm uses in the area, instead making conclusory, non-specific findings about the nature of area agriculture and listing houses that have been approved since 1993, without describing their current use or impact. For example, the County groups "replacement dwellings" with nonfarm dwellings, without stating whether the dwelling replaced a farm or nonfarm dwelling and how the property is used at the time of review.¹⁷ The analysis of farm uses in this step is similarly cursory and conclusory, making it impossible to determine the balance of farm and nonfarm uses in the area. The fourth column of Table 6 below indicates whether the County conducts the proper analysis under the second step of the stability analysis in OAR

¹⁷ *See* Figure 3, in Exhibit E, page 13, listing the nonfarm, replacement and M 37/49 dwellings identified by the County without clarifying whether the M 37/49 and replacement dwellings were in conjunction with farm use or not.

660-033-0130(4)(c)(C), OAR 660-033-0130(4)(a)(D)(ii) and DCC 18.16.040(G)(1)(a)(2), in each of the 11 decisions.

In the third step regarding trends, the County typically finds that a significant number of replacement and nonfarm dwellings have been approved in the area studied since 1993, and concludes that the development trend is the building of nonfarm and replacement dwellings.

In the fourth and final step of the analysis, rather than determine whether the cumulative effect of existing and potential nonfarm dwellings will make it more difficult for area farms to continue to operate, or destabilize the overall character of the area, in each decision, the County concludes that approving the new proposed nonfarm dwelling will not alter the current trend in the area because a significant number of nonfarm dwellings are already being developed.¹⁸

In this final step in the 11 decisions in Table 6, the County seems to abandon the cumulative impact altogether, concluding with the boilerplate:

“It is unlikely that adding this dwelling would tip the balance from resource to non-resource use;” and

“[A]pproval of the proposed nonfarm dwelling will not destabilize the mixture of agricultural and residential character of the surrounding area.”¹⁹

¹⁸ See Trend Analysis, Exh. GGG, pdf pages 20-21; Exh. DDD, pages 20-21; Exh. FFF, page 17; Exh. CCC, page 13; Exh. BBB, page 14; Exh. AAA, page 16; Exh. XX, pages 12-13; Exh. VV, page 14; Exh. UU, page 13-14; Exh. TT, page 22; and Exh. RR, page 38.

¹⁹ See Exh. GGG, pdf page 22; Exh. DDD, pages 21-22; Exh. FFF, page 18; Exh. CCC, page 14; Exh. BBB, page 15; Exh. AAA, page 17; Exh. XX, pages 13-14; Exh. VV, page 15; Exh. UU, page 14-15; Exh. TT, page 23; and Exh. RR, page 39.

The County thereby asks only whether the one new dwelling would tip the balance of uses or destabilize the current land use pattern, rather than analyzing the cumulative impact of existing and potential dwellings as required by 660-033-0130(4)(c)(C), 660-033-0130(4)(a)(D)(iii) and DCC 18.16.040(G)(1)(a)(2). The fifth column of Table 6 below indicates whether the County conducts the proper analysis under the final step of the stability analysis in OAR 660-033-0130(4)(c)(C), 660-033-0130(4)(a)(D)(iii) and DCC 18.16.040(G)(1)(a)(2), in each of the 11 decisions.

As Table 6 indicates, in each of the 11 decisions, the County's analysis fails to comply with each step of the analysis required by OAR 660-033-0130(4)(c)(C) and DCC 18.16.050(G)(1)(a)(2). The County's analysis needs to identify, distinguish, and consider all of the farm and nonfarm uses in the area, assess the effect that approving nonfarm dwellings has had on farm practices and agricultural land prices in the area, and conduct a thorough examination of the impacts the cumulative development of these dwellings has had and could have on farmers and ranchers working the land in the EFU zones. Simply finding that another nonfarm dwelling is consistent with the trend of expanding residential development in areas specifically set apart from residential sprawl is insufficient to address the destabilizing cumulative impact of nonfarm dwelling approvals and constitutes a pattern of violating OAR 660-033-0130(4)(c)(C), 660-033-0130(4)(a)(D) and DCC 18.16.050(G)(1)(a)(2).

The County's failure to properly analyze the cumulative impact of nonfarm dwelling approvals on the overall stability of the land use land use pattern in the affected agricultural areas results in a pattern of ongoing noncompliance with OAR 660-033-0130(4)(c)(C), DCC 18.16.050(G)(1)(a)(2), and ORS 215.284(2)(d). Corrective action is needed to address the resulting conversion of the County's agricultural land areas with a patchwork of residential sprawl, destabilizing the agricultural land base, and negating the exact protection that OAR 660-033-0130(4)(c)(C) and DCC 18.16.050(G)(1)(a)(2) seek to provide.

Table 6: County Nonfarm Dwelling Approvals Failing to Properly Apply Cumulative Impacts Analysis

Permit Number	Decision Final Date	Proper Ag Area ID?	Properly Identify Farm & Nonfarm Uses, Existing/Potential?	Proper Analysis of Cumulative Impact?
247-24-000754-CU Exh. GGG	2/4/2025	No. Exh. GGG, pdf Page 17	Partially.* Exh. GGG, pdf Pages 17-20	No. Exh. GGG, pdf Pages 20-22
247-23-000830-CU Exh. FFF	6/12/2024	No. Exh. FFF, Page 13	Partially.* Exh. FFF, Pages 14-17	No. Exh. FFF, Pages 17-18
247-23-000556-CU Exh. DDD	1/30/2024	No. Exh. DDD pdf Pages 16-17	Partially* Exh. DDD, Pages 18-20	No. Exh. DDD, Pages 20-22
247-23-000533-CU Exh. CCC	10/1/2023	No. Exh. CCC, Page 9	Partially* Exh. CCC, Pages 12-13	No. Exh. CCC, Pages 13-14
247-23-000478-CU Exh. BBB	9/13/2023	No. Exh. BBB, Page 10	Partially* Exh. BBB, Pages 11-14	No. Exh. BBB, Pages 14-15
247-23-000443-CU	8/30/2023	No.	Partially*	No.

Exh. AAA		Exh. AAA, Pages 11-12	Exh. AAA, Pages 12-16	Exh. AAA, Pages 16-17
247-23- 000154-CU Exh. XX	7/25/2023	No. Exh. XX, Page 9	Partially* Exh. XX, Pages 9-12	No. Exh. XX, Pages 13-14
247-23- 000060-CU Exh. VV	4/9/2023	No. Exh. VV, Pages 9-10	Partially* Exh. VV, Pages 10-14	No. Ex. VV, Pages 14-15
247-22- 000556-CU Exh. UU	3/29/2023	No. Exh. UU, Pages 9-10	Partially* Exh. UU, Pages 10-13	No. Exh. UU, Pages 13-15
247-22- 000421-CU Exh. TT	11/15/2022	No. Exh. TT, Page 18	Partially* Exh. TT, Pages 18-22	No. Exh. TT, Pages 22-23
247-22- 000373-CU Exh. RR	7/27/2024	No. Exh. RR, Page 34	Partially* Exh. RR, Pages 34-38	No. Exh. RR, Pages 38-39

*Partially means the County identified nonfarm dwellings, but did not clarify whether the identified replacement dwellings and M37/49 dwellings were in conjunction with farm use or not in conjunction with farm use. The County also gave some information about agricultural use in the area, but the information was cursory and conclusory, making it impossible to determine the balance of farm and nonfarm uses in the area.

D. Sixth Pattern and Practice of Violation: Failure to Determine Whether Land Can Reasonably Be Put to Farm or Forest Use In Conjunction With Other Land

1. Standards Governing “Generally Unsuitable” Criterion for Nonfarm Dwellings: Use in Conjunction with Other Land

Deschutes County Code (DCC) 18.16.050(G) implements the Goal 3 standards at OAR 660-033-0130(4) for dwellings “not in conjunction with farm use” on agricultural land zoned for exclusive farm use.²⁰ DCC

18.16.050(G)(1)(a)(3) requires that, prior to approval, a County must find that the proposed nonfarm dwelling “is situated on an existing lot or parcel, or a portion of a lot or parcel that is generally unsuitable for the production of farm crops and livestock or merchantable tree species, considering the terrain, adverse soil or land conditions, drainage and flooding, vegetation, location, and size of the tract.”

DCC 18.16.050(G)(1)(a)(3) implements OAR 660-033-0130(4)(c)(B)(i) and ORS 215.284(2)(b), which authorize counties to examine only a portion of a lot or parcel when considering a nonfarm dwelling application. But this allowance is accompanied by a significant caveat: DCC 18.16.050(G)(2)(a) and OAR 660-033-0130(4)(c)(B)(i) require that “[a] lot or parcel or a portion of a lot or parcel shall not be considered unsuitable solely because of size or location if it can reasonably be put to farm or forest use in conjunction with other land.”

This provision means that while a county can consider the production suitability of only a portion of a lot or parcel, often described as the “building envelope,” the county is prohibited from finding that the building envelope is not suitable for the production of farm crops or livestock simply because of the size of the portion considered. In the event a county’s suitability finding for the production of farm crops or livestock is based on either the building envelope’s

²⁰ ORS 215.284(4) is the parallel statutory provision.

size or its location, the county is required to “consider whether the property reasonably could be used in conjunction with other land before finding it unsuitable.” *Central Oregon LandWatch v. Crook County*, 294 Or App 762, 768 (2018); *Peterson v. Crook County*, 49 Or LUBA 223 (2005), *aff’d* 200 Or App 414 (2005), slip op at 12.

2. Explanation of the Pattern and Practice of Violation

The County is systematically violating OAR 660-033-0130(4)(c)(B)(i) and DCC 18.16.050(G)(2)(a) in the consideration of nonfarm dwelling applications. As demonstrated in each of the 11 decisions listed in Table 7 below, the County followed the same noncompliant practice in determining whether a property or a portion of a property was unsuitable for the production of farm crops or livestock before approving a nonfarm dwelling.

In each of these 11 decisions, the County analyzed the size of the “proposed building envelope” to determine whether the envelope was suitable for dryland grazing. *See* third column in Table 7 below. While this focus on the building envelope is permissible under state law, the building envelope cannot be deemed unsuitable for agricultural use based solely on the size of the envelope without an analysis of whether the envelope could be used for agriculture in conjunction with other land. OAR 660-033-0130(4)(c)(B)(i).

The County’s analysis of the building envelope’s suitability for dryland grazing is based on the building envelope’s size. Specifically, each approval of a nonfarm dwelling includes a section in which the County calculates the envelope’s “Livestock Production” capability. *See, e.g.*, Exh. TT at pages 28-29; Exh. GGG at pdf pages 24-25. In that calculation, the County analyzes each building envelope’s suitability for livestock production based on a formula for the per acre production

capability.²¹ The formula converts the building envelope soil types and size into a calculation of a purported rate of production for beef per acre in the building envelope, or what the County calls the “total gross beef production potential.” The County’s equation is:

$$(\text{Beef per acre}) \times (\text{Size of building envelope}) \times (\text{AUM per acre}) \times (\text{Market Beef Price})$$

Under this analysis, the smaller the proposed building envelope, the lower its livestock production capability. By using the small size of the building envelope, the County consistently concludes that the proposed area is generally unsuitable for the production of livestock because a smaller size area leads to a lower total yield which leads to a low dollar return. This practice is captured in the third column of Table 7 below.

In reaching the conclusion that the building envelope’s small size is incapable of supporting livestock production, the County consistently omits the required next step of the analysis. When the envelope’s unsuitability is based on its size, OAR 660-033-0130(4)(c)(B)(i) and DCC 18.16.050(G)(2)(a) require that the

²¹ The County’s “Livestock Production” capability analysis is based on the following assumptions, purportedly derived through consultation with the OSU Extension Service:

- One Animal Unit Month (AUM) is the equivalent to the forage required for a 1000 lb. cow and calf to graze for 30 days (900 pounds of forage).
- On good quality forage, an animal unit will gain 2 pounds per day.
- Two animal units will eat as much in one month as one animal unit will eat in two months.
- Forage production on dry land is not continuous: Once the forage is eaten, it generally will not grow back until the following spring.
- An average market price for beef is \$1.15 per pound.

County determine whether the envelope “can reasonably be put to farm or forest use in conjunction with other land.” The County fails to conduct this part of the analysis in all of the 11 nonfarm dwelling approvals as set forth in the fourth column of Table 7 below.

LCDC’s rules require this second step of the analysis to avoid just the pattern of decision-making occurring here. Using the small acreage size of the proposed building envelope, the County consistently calculates a low dollar livestock production capability, usually less than \$1,000 per building envelope, and thereby concludes the envelope is generally unsuitable for the production of livestock. Because the County is only calculating the beef production potential for a small fraction of a subject property, usually less than 5 acres, its livestock production capability calculation will always return a small dollar figure.

In every approval, the County makes the somewhat obvious finding that a small area cannot support forage for very many cows.²² Therefore, the County is finding that the building envelope is unsuitable solely because of the size of the building envelope. The County makes no finding that the examined building envelope could not be reasonably used for livestock production in conjunction with other land, such as the rest of the subject parcel, or neighboring parcels.

Dryland cattle grazing is one of Deschutes County’s most profitable agricultural activities, with promising prospects. According to the American Farm Bureau, "For the first time in a long time, cattle ranchers, backgrounders, stockers and cow-calf producers are experiencing dependable economic returns, allowing them to rebuild working capital and consider restocking America’s beef herd." Brett Nelson, Economics of U.S. Beef and Cattle Market, Oct. 29, 2025, <https://www.fb.org/market-intel/economics-of-u-s-beef-and-cattle-market>

²² This observation is made in conjunction with building envelope analysis cited for each decision in the third column of Table 7 below.

But grazing livestock can take significant acreage of forage ground to allow for sustainable production operations. Here, the County completely nullifies a potentially productive and traditional use of agricultural land, based on the small size of the analyzed section of the subject parcels. That practice directly conflicts with OAR 660-033-1030(4)(c)(B)(i) and DCC 18.16.050(G)(2)(a), which require the County to consider the ability of all building envelopes to be managed in conjunction with other land as part of a combined livestock grazing operation.

The failure to analyze whether a portion of a lot or parcel could be used in conjunction with other lands as described above occurs in each of the 11 nonfarm dwelling decisions listed in the table below. These decisions demonstrate the County's pattern of analyzing small portions of a subject property in order to artificially arrive at a small number for total gross beef production potential. In each of the 11 approvals, the County failed to consider the potential for the analyzed small area to be put to farm use in conjunction with other land. These approvals demonstrate a pattern of violating OAR 660-033-0130(4)(c)(B)(i) and DCC 18.16.050(G)(2)(a) and require corrective action.

Table 7: 11 County Nonfarm Dwelling Approvals Based on Improper Interpretation and Application of “Generally Unsuitable” Standard | Use in Conjunction with Other Land | Profitability

Permit Number	Decision Final Date	Small Size of Building Envelope/ GBPP ²³	County asked if could be used in conjunction w/other land?	County inserts profitability requirement?
247-24-000754-CU Ex. GGG	2/4/2025	3.27 acres/ \$225.63 Exh. GGG, pdf pgs. 24-25	No. Ex. GGG, pdf pgs. 27-28	Yes. Ex. GGG, pdf pg. 25
247-23-000830-CU Ex. FFF	6/12/2024	2.90 acres/ \$156.00-\$200.00 Exh. FFF, pgs. 22-23	No. Ex. FFF, pgs. 26-27.	Yes. Ex. FFF, pg. 24
247-23-000556-CU	1/30/2024	12.3 acres/ \$848.70	No.	Yes. Ex. DDD, pg. 26

²³ “GBPP” is purported “Total Gross Beef Production” Potential per County formula.

Ex. DDD		Exh. DDD, pgs. 25-26	Ex. DDD, pgs. 28-29	
247-23- 000533-CU Ex. CCC	10/1/2023	4.92 acres/* \$339.48 Exh. CCC, pgs. 18-19.	No. Ex. CCC, pgs. 20-21	Yes. Ex. CCC, pgs. 18-19.
247-23- 000478-CU Ex. BBB	9/13/2023	4.51 acres/ \$242.73 Exh. BBB, pgs. 17-18.	No. Ex. BBB, pgs. 19-20	Yes. Ex. BBB, pgs. 17-18
247-23- 000443-CU Ex. AAA	8/30/2023	7 acres/ \$483.00 Exh. AAA, pgs. 20-21.	No. Ex. AAA, pgs. 23-24	Yes. Ex. AAA, pg. 21
247-23- 000154-CU Ex. XX	7/25/2023	3.10 acres/ \$166.84 Exh. XX, pgs. 16-17.	No. Ex. XX, pg. 19	Yes. Ex. XX, pg. 17

247-23-000060-CU Ex. VV	4/9/2023	1.3 acres \$109.43 Exh. VV, pgs. 18-19.	No. Ex. VV, at pg. 22	Yes. Ex. VV, pg. 19
247-22-000556-CU Ex. UU	3/29/2023	3.0 acres \$207.00 Exh. UU, pg. 18.	No. Ex. UU, pg. 21	Yes. Ex. UU, pg. 18
247-22-000421-CU Ex. TT	11/15/2022	0.90 acres \$75.76 Exh. TT, pgs. 28-29.	No. Ex. TT, pg. 32	Yes. Ex. TT, pg. 29
247-22-000373-CU Ex. RR	7/27/2024	4.2 acres \$289.80 Exh. RR, pgs. 42-43	No. Ex. RR, pgs. 45- 46	Yes. Ex. RR, pg. 43

*Entire property analyzed

E. Seventh Pattern and Practice: Improper Use of Profitability Analysis in Determining Whether a Lot or Parcel is Generally Unsuitable for the Production of Farm Crops and Livestock

1. Standards Governing “Generally Unsuitable” Standard for Nonfarm Dwellings

As discussed above, DCC 18.16.050(G)(1)(a)(3) implements OAR 660-033-0130(4)(c)(B)(i), which authorizes nonfarm dwellings on agricultural land only if the dwelling will be:

“situated on an existing lot or parcel, or a portion of a lot or parcel that is *generally unsuitable for the production of farm crops and livestock* or merchantable tree species, considering the terrain, adverse soil or land conditions, drainage and flooding, vegetation, location, and size of the tract.”

Exhibits S and T (emphasis added). *See also* ORS 215.284(2)(b).

2. Explanation of the Pattern and Practice of Violation

The County’s analysis of the nonfarm dwelling “generally unsuitable” standard in each of the 11 decisions outlined above in Table 7 violates DCC 18.16.050(G)(1)(a)(3) and OAR 660-033-1030(4)(c)(B)(i) by inserting a profitability analysis that is not contained in state and local nonfarm dwelling criteria. *See* Table 7, fifth column. Under DCC 18.16.050(G)(1)(a)(3), OAR 660-0331030(4)(c)(B)(i) and ORS 215.284(2), the County must find that the proposed nonfarm dwelling will be sited on land that is “generally unsuitable *for the production of farm crops and livestock* or merchantable tree species.” (Emphasis added). There is no requirement that the crop or livestock production be for profit. *See* Exhibits S and T.

The Oregon Supreme Court has found profitability to be a factor in determining whether land is suitable for “farm use” and thereby agricultural land under Goal 3, because Goal 3 incorporates the statutory definition of farm use in ORS 215.203(2), which includes a profitability consideration.²⁴ *Wetherell v. Douglas County*, 342 Or 666 (2007).

The criteria for nonfarm dwellings do not, however, incorporate the statutory definition of “farm use” in ORS 215.203. *Griffin v. Jackson County*, 48 Or LUBA 1 (2004) (slip op at 7). OAR 660-033-0130(4)(c)(B)(i) asks whether the land is generally unsuitable *for the production of crops, livestock and merchantable tree species*. There is no reference to “farm use” or ORS 215.203. *Wetherell*’s interpretation of the profitability standard in ORS 215.203 therefore does not apply, and profitability is irrelevant. *Id.*

The County’s practice of inserting a profitability consideration into its “Livestock Production” capability analysis, and other aspects of determining whether the land is generally unsuitable for the production of farm crops and livestock, does not comply with the requirements of DCC 18.16.050(G)(1)(a)(3) and OAR 660-0331030(4)(c)(B)(i).

In each of the 11 nonfarm dwelling approvals identified in Table 7 above, the County inserted a profitability analysis into the determination of whether the building envelope or entire property was generally unsuitable for the production of crops, livestock or merchantable tree species. *See* Table 7, fifth column. This was error and constitutes a pattern and practice of violating state and county regulations governing the approval of nonfarm dwellings.

²⁴ “Farm use” means the current employment of land for the primary purpose of obtaining a profit in money. ORS 215.203(2).

F. Recent Examples of Noncompliant Decisions Supporting Finding of Good Cause to Proceed to a Contested Case Hearing | Fourth through Seventh Patterns and Practices

OAR 660-045-0090(4) provides:

“A requester who alleges a pattern or practice of noncompliant decision making may present as evidence of good cause to proceed recent examples of noncompliant decisions made after the requester notified the affected local government or district of the requester’s intent to petition for enforcement.”

OAR 660-045-0090(4).

Since 1000 Friends and COLW notified the county of their intent to petition the Commission for an enforcement order on November 13, 2025, the county has approved five more nonfarm dwellings on agricultural land zoned for exclusive farm use, which the Commission may consider as evidence of good cause to proceed. These five decisions are attached as Exhibits HHH, III, JJJ, KKK and LLL.

Tables 5R through 7R below group the five new nonfarm dwelling approvals in tables indicating their continuation of the fourth, fifth, sixth and seventh patterns and practices of violation identified above.

Table 5R: Recent Examples of Noncompliant Decisions Continuing Fourth Pattern and Practices of Violation | Improper Reliance on Private Soils Assessments

Permit Number	Decision Final Date	Reclassify NRCS Soils Ratings in Building Envelope?	Suitability Based Entirely on Soils Assessment?
247-25-000038-CU Exh. HHH	5/16/2025	Yes. NRCS: 61C (Class IV/VI and Class VII), 157C (Class IV/VI and Class VIII), 36A (Class III/VI) Soils assessment: 61C (Class IV/VI and Class VII), 157C (Class IV/VI and Class VIII). Exh. HHH, at pdf pgs. 8-9, 25.	Yes. Exh. HHH, at pdf pg. 25
247-25-000198-CU Exh. III	7/8/2025	Yes. NRCS: 38B (Class III/IV and Class VI/VII), 58C (Class VI and Class VIII) Soils assessment: Class VII and VIII. Exh. III at pdf pgs. 9, 26-27	Yes. Exh. III, at pdf pg. 27
247-25-000510-CU	9/26/2025	Yes. NRCS: 152A (Class III/VI), 34C (Class III/VI	Yes. Exh. JJJ, at pdf pg. 26.

Exh. JJJ		and Class IV/VI), 141C (Class VI and Class VIII) Soils assessment: 138C (Class VII), 152C (Class VI) Exh. JJJ, at pdf pgs. 8, 25	
247-25-000541-CU Exh. KKK	10/15/2025	Yes. NRCS: 142B (Class VI) Soils assessment: 32A, 32C, 190, 139A, 139C, P (Class VII and VIII) Exh. KKK, at pdf pgs. 7, 26	Yes. Exh. KKK, at pdf pgs. 26-27
247-25-000659-CU Exh. LLL	1/23/2023	Yes. NRCS: 36A (Class III/VI), 38B (Class III/VI and Class VII), 65A (Class III/VI) Soils assessment: Class VII and VIII Exh. LLL, at pdf pgs. 8-9, 29-30	Yes. Exh. LLL, at pdf pgs. 29-30.

Table 6R: Recent Examples of Noncompliant Decisions Continuing Fifth Pattern and Practice of Violation | Failure to Conduct Proper Cumulative Impacts Analysis

Permit Number	Decision Final Date	Proper Ag Area ID?	Properly Identify Farm & Nonfarm Uses, Existing/Potential?	Proper Analysis of Cumulative Impact?
247-25-000038-CU Exh. HHH	5/16/2025	No. Exh. HHH, pdf page 17	Partially* Exh. HHH, pdf page 17-21	No. Exh. HHH, pdf pages 21-23
247-25-000198-CU Exh. III	7/8/2025	No. Exh. III, pdf page 18	Partially* Exh. III, pdf pages 19-22	No. Exh. III, pdf pages 22-24
247-25-000510-CU Exh. JJJ	9/26/2025	No. Exh. JJJ, pdf page 17	Partially* Exh. JJJ, pdf pages 17-22	No. Exh. JJJ, pdf pages 22-24
247-25-000541-CU Exh. KKK	10/15/2025	No. Exh. KKK, pdf page 19	Partially* Exh. KKK, pdf page 19-22	No. Exh. KKK, pages 22-24
247-25-000659-CU Exh. LLL	1/23/2023	No. Exh. LLL, pdf page 21	Partially* Exh. LLL, pdf pages 21-26	No. Exh. LLL, pdf pages 26-27

*See Table 6, *supra*, for the meaning of “partially.”

Table 7R: Recent Examples of Noncompliant Decisions Continuing Sixth and Seventh Pattern and Practice of Violation | Failure to Determine Whether Land Can Reasonably Be Put to Farm or Forest Use In Conjunction With Other Land | Improper Use of Profitability

Permit Number	Final Decision Date	Small Size of Building Envelope/ GBPP	County asked if could be used in conjunction w/other land?	County insert profitability requirement?
247-25-000038-CU Exh. HHH	5/16/2025	1.61 acres/ \$111.16 Exh. HHH, at pdf pgs. 25-26	No. Ex. HHH, at pdf pgs. 28-29	Yes. Ex. HHH, at pdf pg. 26
247-25-000198-CU Exh. III	7/8/2025	5.24 acres/ \$362.00 Exh. III, at pdf pgs. 25-26.	No. Ex. III, at pdf pgs. 29-30	Yes. Ex. III, at pdf pg. 26
247-25-000510-CU Exh JJJ	9/26/2025	2.08 acres/ \$143.52 Exh. JJJ, at pdf pgs. 25-28	No. Ex. JJJ, at pdf pgs. 25-34	Yes. Ex. JJJ, at pdf pgs. 25-28
247-25-000541-CU	10/15/2025	13.05 acres*/ \$801.40	No.	Yes.

Exh. KKK		Exh. KKK, at pdf pgs. 27-28.	Ex. KKK, at pdf pages 30-31	Ex. KKK, at pdf page 28
247-25-000659-CU Exh. LLL	1/23/2026	1.02 acres/ \$23.23 Exh. LLL, at pdf pgs. 30-31	No. Ex. LLL, at pdf pages 33-35	Yes. Ex. LLL at pdf pages 30-31

Unlike the other four decisions included in Table 7R, which completely fail to consider whether the land can be managed in conjunction with other land, Exh. III, Decision 247-25-000198-CU, finds that “the portion of the subject property within the proposed building envelope, is generally unsuitable for the production of farm crops or livestock,” and then adds “by itself and in conjunction with adjacent parcels.” But the decision does not include any analysis to support its conclusion that the building envelope could not be used in conjunction with adjacent parcels. As with the other decisions, the county’s focus is only on the level of income attainable by dryland grazing on the building envelope, which is constrained by the size of the envelope.

IV. CORRECTIVE ACTIONS SOUGHT BY THE PETITIONERS

ORS 197.320 authorizes the Commission to order corrective actions to remedy a pattern and practice of noncompliance. ORS 197.320. These corrective actions include revisions to the local government’s comprehensive plan, land use regulations and decision-making process that are the basis for the enforcement order. ORS 197.320; ORS 197.319(1)(b)(A).

A. Corrective Actions for Pattern and Practice of Violations Related to the Redesignation and Rezoning of Agricultural Land for Residential and Industrial Use

To address the county's identified pattern and practice of rezoning agricultural lands for residential and industrial use without properly interpreting and applying Goals 3 and 14, the petitioners seek the following corrective actions:

- 1) Deschutes County's immediate initiation of a legislative comprehensive plan amendment that prohibits the continuing redesignation and rezoning of agricultural lands on a case-by-case basis under ORS 197.610-197.625;²⁵
- 2) Deschutes County's immediate initiation of a legislative comprehensive plan amendment that requires taking a goal exception to Goal 14 under ORS 197.732 for any decision that redesignates and rezones land to accommodate new residential or employment growth outside of an urban growth boundary;
- 3) Deschutes County's immediate suspension in the processing of any pending post-acknowledgment plan amendment applications that would redesignate and rezone agricultural lands in Deschutes County;
- 4) Pending completion of corrective actions (1) and (2), any new or pending applications for the redesignation and rezoning of agricultural lands, including any applications that are suspended pending resolution of this enforcement process, must be reviewed by a state-appointed hearings officer or the Department. *See* OAR 660-045-0020(6).

²⁵ This would not affect landowners' or the County's ability to seek a change in designation and zoning under the provisions of ORS 215.788 or ORS 197.732.

B. Corrective Actions for Pattern and Practice of Violations Relating to the Approval of Nonfarm Dwellings on Agricultural Land Zoned for Exclusive Farm Use

To address the county’s identified pattern and practice of approving applications to permit nonfarm dwellings on agricultural land zoned for exclusive farm use in violation of state and local land use laws, the petitioners seek the following corrective actions:

- 1) Deschutes County’s immediate suspension in the processing of any pending applications for nonfarm dwellings under OAR 660-033-0130(4) and DCC 18.16.050(G);
- 2) Deschutes County’s immediate initiation of a legislative comprehensive plan amendment that prohibits the approval of additional nonfarm dwellings under OAR 660-033-0130(4) and DCC 18.16.050(G) on agricultural land zoned for exclusive farm use;²⁶
- 3) Pending completion of corrective action (2), any new or pending applications for nonfarm dwellings, including any applications that are suspended pending resolution of this enforcement process, must be reviewed by a state-appointed hearings officer or the Department. See OAR 660-045-0020(6)

V. WHY DESCHUTES COUNTY’S RESPONSES TO PETITIONERS’ REQUESTS FOR CORRECTIVE ARE NOT ADEQUATE

OAR 660-045-0060(1)(b) requires: “[a]n explanation of why the affected local government or district’s response to the request is not adequate.”

²⁶ Counties are not required to allow nonfarm dwellings authorized under OAR 660-033-0130(4).

A. Deschutes County’s Response to Petitioners’ July 29, 2025 Request for Corrective Action re: Redesignation and Rezoning of Agricultural Land

Deschutes County’s September 26, 2025 response to the petitioners’ July 29, 2025 request for corrective action is inadequate because it refuses to take any corrective action to cease or limit the County’s pattern and practice of violating the Goal 3 “necessary” standard and Goal 14. *See* Appendices Vol. 1, Exhibit D. In addition, the County’s arguments for why the Commission should not issue an order requiring corrective action are unfounded.

1. LUBA Appeal is Not Prerequisite to Enforcement Order

The County argues that the petitioners should have appealed the decisions to LUBA if they wanted corrective action, but a LUBA appeal is not a prerequisite to parties seeking corrective action at LCDC. *Schoonover v. LCDC*, 104 Or App 155, 158-159, 799 P2d 679 (1990) (the fact that DLCD has the power to appeal individual land use decisions does not require that this tool be used, rather than the enforcement order). *See* Exhibit D.

ORS 197.320 gives the Commission power to order compliance with goals, acknowledged comprehensive plans and land use regulations “when there is a generalized failure by a planning jurisdiction to comply with various requirements of the land use laws, over and above any errors in a particular land use decision.” *Schoonover v. LCDC*, 104 Or App at 158-159. LUBA may only remand or reverse individual land use decisions. That is not the corrective action the petitioners seek here.

2. Goal 3 Requirements

The remainder of the County's September 26 response reflects the County's general misunderstanding of state and local laws protecting agricultural lands that are manifest in its pattern and practice of noncompliant decision-making. For example, the County argues that Goal 3 does not apply to post-acknowledgement plan amendments to redesignate land that was inventoried as agricultural land by the County pursuant to Goal 3 requirements. Similarly, the County conflates the Goal 3 "necessary" standard for defining agricultural land with the "suitability" standard—a different criterion for identifying agricultural land. *See* Exhibit D, page 4-5, 15-16; Exhibit M, Goal 3. The County's misstatement and misapplication of the "necessary" prong in the 12 decisions, and again in its Response to Petitioners' request, is part of the County's pattern and practice of violating the "necessary" standard.

3. "Big Look" Process

At the conclusion of its Response, the County states that "Oregon law specifically recognizes that not all land originally designated as 'agriculture,'" should continue to be protected for farm use by Goal 3. Exhibit D at 19-20.

Because the County raises the issue again in its March 20, 2026 response to the petitioners' January 22, 2026 request for corrective action, *see* Exhibit L, pages 10 and 17, the petitioners assume the County is referencing the "Big Look" process authorized by ORS 215.788-795. That process allows counties to undertake a legislative reacknowledgement process "[f]or the purposes of correcting mapping errors made in the acknowledgment process and updating the designation of farmlands and forestlands for land use planning." ORS 215.788(1).

The 2009 legislature adopted the ORS 215.788-794 "Big Look" process to give Oregon counties a way to consider whether some of their agricultural and

forest lands are incorrectly designated. The Big Look process requires a comprehensive look at a county's entire resource land base including consideration of significant adverse effects of potentially rezoning resource lands on a wide range of natural and other resources, including water, energy, transportation, wildlife habitat, and wildfire risk, as well as orderly and compact development, what DLCD refers to as the "co-benefits" of exclusive farm use zoning.²⁷ ORS 215.791.

Rather than pursue this legislatively-sanctioned course of action, Deschutes County has chosen to systematically violate Goal 3 and Goal 14 by converting thousands of acres of its limited supply of agricultural lands to residential and industrial sprawl. And it refuses to acknowledge the need for corrective action.

B. Deschutes County's Response to Petitioners' November 13, 2025 Request for Corrective Action re: Nonfarm Dwellings

Deschutes County's January 8, 2026 response to 1000 Friends and COLW's November 13, 2025 request for corrective action regarding the approval of nonfarm dwellings in the County's EFU-zone is inadequate because it refuses to take any corrective action to cease or limit the County's pattern and practice of noncompliant decision-making. *See* Appendices Vol. 1, Exhibit H. In addition, the County's arguments for why the Commission should not issue an order requiring corrective action are unpersuasive.

First, the County asserts that the legislature intended for the policy stated in *Cherry Lane v. Jackson County* that nonfarm dwelling approvals should "be the exception and that approval for them be difficult to obtain"²⁸ only to apply in the Willamette Valley. Exhibit H, page 5. Of course, Jackson County is not in the

²⁷ Exhibit Z, DLCD Oregon Farm & Forest Land Use Report, 2022-2023, pages 20-26.

²⁸ *Ibid.* at p. 40-41.

Willamette Valley and is subject to the same criteria for nonfarm dwellings as Deschutes County. Moreover, 1000 Friends and COLW did not rely on the nonfarm dwelling standards outlined in state law for the Willamette Valley. This petition is based on a pattern and practice of noncompliance with Deschutes County's own code, and the state law and regulations applicable to nonfarm dwellings in Deschutes County.

Second, the County claims that the corrective actions requested in this Petition would violate Goal 1 because landowners who might want to apply for a nonfarm dwelling would be excluded. This response is not adequate for at least two reasons. One, any contested hearing would provide an opportunity for public participation. Any persons interested in the enforcement proceeding may request status as a party or limited party, OAR 660-045-0120, and DLCD or the hearings officer will provide notice of any hearing to anyone who requests notice.

In addition, the County is free to provide notice about this enforcement petition to its citizens, satisfying Goal 1's requirements. Goal 1 notes that state agencies must coordinate their planning efforts with the affected governing bodies and make use of existing local citizen involvement programs established by counties and cities. If the Commission finds good cause to proceed, 1000 Friends and COLW encourage the Commission and the County to coordinate to make use of local citizen involvement programs in Deschutes County and ensure that the County's citizens are aware of the County's practices when it comes to permitting dwellings in areas specifically set aside for farming, ranching, and timberland management.

As in its September 26, 2025 response, the County claims that this Petition is an "end run" around LUBA's exclusive jurisdiction over land use appeals. As explained above, this argument is without merit. LUBA appeals are not a prerequisite to an enforcement order and serve a different purpose. *Schoonover*, *supra*, 104 Or App at 158-159.

1. Private Soil Reports

The County argues that soil reports from privately-hired soils surveyors is the best evidence of “adverse” soil conditions. This suggests that the NRCS soils information may show more positive soil conditions and may not support the siting of a nonfarm dwelling. But, as 1000 Friends and COLW explained in their Notice and earlier in this petition, and as LUBA has found, ORS 215.211, OAR 660-033-0030(5)(b), and OAR 660-033-0045 do not apply to applications for nonfarm dwellings. *Inglis*, slip op at 16. There is no statutory basis that allows the county to consider a soil report for a nonfarm dwelling application.

2. Cumulative Impact Analysis

Finally, the County’s response fails to address the overarching faulty premise at the heart of each of these decisions. The County finds that development of nonfarm dwellings is the predominant trend in the study area, so adding another nonfarm dwelling will not upset that trend. But the trend itself is the problem that the cumulative impacts analysis required by the OAR and the DCC are intended to prevent. If the County can find that adding more and more nonfarm dwellings will just continue a pre-existing trend, residential sprawl will continue until there are no farmers left willing to try to work the small remaining lots between the luxury homes.

3. Building Envelope Analysis

The County argues that it was not required to analyze whether the building envelope identified for each nonfarm dwelling could reasonably be put to farm or forest use in conjunction with other land because size or location were not the sole reason for finding the building envelope generally unsuitable. The county claims it also relied on adverse soils and land conditions. But that argument is belied by the county’s own findings in each decision. In each of the 16 decisions listed above in

Tables 7 and 7R, *the county finds that lands similar to the building envelopes are usable for dryland grazing*. See, e.g. Exh. BBB, at pdf pg. 17 (“The 157C soil has a forage capability of 700 lbs. per acre. for a ‘normal’ year.”)

In other words, the County does not find that adverse soils and land conditions make the portion of the property identified unsuitable for farm crops and livestock. In each of the 16 decisions listed in Tables 7 and 7R above, the County always finds that some cattle grazing could occur in the building envelope and that there is some level of potential beef output in terms of dollars. See dollar amounts listed in third columns in Tables 7 and 7R.

The County always finds that the building envelope can return a relatively small (positive) dollar amount, ranging from \$75.76 to \$848.70 in the 16 decisions identified by 1000 Friends and COLW. See Tables 7 and 7R, third column. Only after doing this calculation does the County determine that the building envelope is unsuitable for dryland grazing. Not because of adverse soils and land conditions, but *because it is too small to produce a large dollar amount*.

The County’s claims that some other factors (soil and land condition) led to its conclusion are not supported by the decisions themselves. Other factors may have ruled out other uses of the building envelope like growing crops or merchantable trees, *but the analysis the county uses to rule out dryland grazing is always a function of the size of the envelope*. As such, the County is required to analyze whether the building envelope could be suitable for dryland grazing in conjunction with other properties. The county acknowledges they did not do that analysis for any of the decisions identified by 1000 Friends and COLW.

4. Profitability Analysis

In responding to 1000 Friends and COLW’s description of the County’s pattern and practice of unlawfully inserting a profitability analysis into nonfarm

dwelling analysis, the County’s response underscores its misunderstanding of the law. The County claims that profitability is a proper consideration, citing case law relating to a determination of whether land is agricultural land for purposes of Goal 3. But that is not the determination the County must make in analyzing a nonfarm dwelling application. A nonfarm dwelling application does not ask whether the building envelope is agricultural land under Goal 3. Instead, the lot or parcel must be found to be generally unsuitable for the production of crops, livestock and merchantable tree species. That requirement does not say anything about “farm use” or “gross income.”

LUBA has specifically found that these two inquiries are different. “In an application for a nonfarm dwelling on EFU-zoned property, the county is not required to make a determination that the subject property does not meet the definition of agricultural land.” *Inglis v. Harney County*, LUBA No. 2025-017 (Jun. 20, 2025) (slip op at 16). As such, the profitability considerations that have been inserted into the agricultural land definition by the Supreme Court do not apply to the county’s decision in a nonfarm dwelling case. The county complains that this is a broad-brushed argument that is really a substantial evidence challenge. But in reality, 1000 Friends and COLW have identified a repeated misconstruction of the law and have requested that the county take corrective action to address this pattern and practice. The county has refused.

C. Deschutes County’s Response to Petitioners’ January 22, 2026 Request for Corrective Action re: Rezonings

Deschutes County’s March 20, 2026 response to the petitioners’ January 22, 2026 request for corrective action is inadequate because it refuses to take any corrective action to cease or limit the County’s pattern and practice of violating the Goal 3 “suitability” standard. *See* Appendices Vol. 1, Ex. L.

1. Goal 3 Definition of “Farm Use” in ORS 215.203

The County says that the petitioners misrepresent the definition of farm use in ORS 215.203(2). *See* Exhibit L, page 9. The disputed language can be seen in Exhibit P, which contains the full text of ORS 215.203. ORS 215.213(2)(b) provides:

(b) As used in this subsection, “current employment” of land for farm use includes:

(B) *Land lying fallow for one year* as a normal and regular requirement of good agricultural husbandry;

* * *

(E) *Wasteland*, in an exclusive farm use zone, dry or covered with water, *neither economically tillable nor grazeable*, lying in or adjacent to and in common ownership with a farm use land *and which is not currently being used for any economic farm use*; *

* *”

ORS 215.203(2) (emphasis added), Exhibit P.

Under this definition, wasteland that is neither economically tillable nor grazeable, and which is not currently being used for any economic farm use, is considered currently employed for farm use, *i.e.*, currently employed for the primary purpose of obtaining a profit in money, if it is lying in or adjacent to and in common ownership with “a farm use land.” *See* Exhibit P, ORS 215.203(2)(b)(E).

Goal 3’s definition of farm use includes the entirety of ORS 215.203, including subsection (b), which clarifies occasions where land that is not being actively used for an economic farm use is nonetheless considered to be currently employed for the primary purpose of obtaining a profit in money.

In creating the “reasonable farmer” test, LUBA has focused entirely on ORS 215.203(a) and elevated profitability to be the decisive factor in determining if land is suitable for farm use. This is contrary to LCDC’s interpretation of Goal 3 and to the language of the Goal itself.

2. Purpose of an Enforcement Order

The County characterizes the corrective actions sought in this petition as punishment, an end-run around LUBA, and inappropriate forum shopping. *See* Exhibit L. The corrective actions sought here, authorized by the enforcement order statute, are not punitive. They are also not within LUBA’s and the appellate courts’ authority to order. Rather, they are a specific means the legislature created for LCDC to order revisions to a local comprehensive plan, land use regulations and decision-making, in order to bring them into compliance with the goals, acknowledged comprehensive plan provisions and land use regulations. ORS 197.320. The decisions submitted in support of the petition are provided as evidence of a noncompliant pattern and practice. Unlike a LUBA reversal or remand, neither the decisions, nor the land uses they permitted, would be affected by an enforcement order.

The objective of an enforcement order is better decision making in the future to better protect Deschutes County’s limited agricultural land base.

VI. CONSEQUENCES LIKELY TO RESULT FROM DESCHUTES COUNTY’S REFUSAL TO TAKE CORRECTIVE ACTION

OAR 660-045-0060 requires a petition for enforcement order to include a statement of consequences likely to result from the affected local government’s refusal to take adequate corrective action.

Deschutes County has thousands of acres of privately-owned farm and range land designated as agricultural land under Goal 3 and zoned in large blocks for exclusive farm use. DCCP Section 2.2, page 7. Under the County's interpretation and application of Goal 3 and Goal 14, all of that land is subject to case-by-case rezoning and nonfarm residential development.

Since the petitioners notified the County of their intent to seek corrective action on July 29, 2025, the County has not changed its decision-making process for the redesignation of agricultural land. The County has approved three more applications to redesignate agricultural land for residential development without proper interpretation and application of Goal 3 and Goal 14. See Exhibits OO, PP and QQ. Together, these three decisions convert an additional 537 acres of agricultural land for residential development.

All three decisions perpetuate the county's improper interpretation and application of the necessary standard in violation of the *710 Properties* case, as identified in the First Pattern and Practice. See Table 2, Exhibits OO, PP and QQ. Two of the decisions rely on speculations about profitability per the "reasonable farmer" test to conclude that the land at issue is not suitable for farm use, per the Second Pattern and Practice. See Table 3, Exhibits OO and PP. And all three decisions fail to properly address the Goal 14 prohibition against urbanizing lands outside the state's urban growth boundaries, as set forth in the *Curry County* decision and its progeny, per the Third Pattern and Practice. See Table 4, Exhibits OO, PP and QQ.

In addition, there are at least three pending applications before the Deschutes County Hearings Officer to redesignate agricultural land for residential development, totaling 91.79 acres.²⁹ In at least two of them, the applicant argues the "reasonable farmer" test. See n 22.

²⁹ 247-25-000537-PA, Willitts LLC (20 acres EFU-TRB to RREA; applicant argues reasonable farmer test);

Since the petitioners notified the County of their intent to seek corrective action on November 13, 2025, the county has approved 5 more applications for nonfarm dwellings without the proper interpretation and application of the Goal 3 criteria as set forth above.³⁰ Together these 5 applications would convert a total of 25 acres of additional agricultural land for nonfarm residential development.

If the Commission fails to order corrective action to address the County's pattern and practice of noncompliance, the immediate likely consequence is the County's approval of these pending and future applications to rezone and develop the County's agricultural land base. The long-term consequence of the County's continued conversion of its agricultural lands is miles of unfettered sprawl with increased risk of wildfire, increased vehicle miles traveled, and increased cost of services, while threatening the opportunity for a vibrant agricultural economy and assurance of adequate, healthful and nutritious food for the people of this state and nation. *See* ORS 215.243.

VII. GOOD CAUSE TO PROCEED

ORS 197.324(2)(b) provides that after a petitioner files a petition for enforcement with the department:

“The commission shall determine if there is good cause to proceed on the

247-26-0000099-PA, Gales (7.79 acres EFU-TRB to RREA); and
247-26-000120-PA, R Derek Jaros LLC (64 acres AG/EFU-SC to RREA;
applicant argues reasonable farmer test).

See <https://www.deschutes.org/cd/page/hearings-officer-hearings>

³⁰ *See* Exhibits HHH, III, JJJ, KKK and LLL.

petition.”

ORS 197.324(2)(b). If the commission determines that there is good cause to proceed, the commission shall hold a hearing or appoint a hearings officer to consider the petition. ORS 197.324(2)(d); ORS 197.328(1).

The “good cause” determination is a gatekeeping standard. It operates as a screening step for the Commission to determine whether to hold a hearing on the merits of the petition for enforcement. *See* ORS 197.324(2)(d) and 197.328. The good cause finding is not itself a determination on the merits of the petition, so the Commission does not need to determine at this stage whether the alleged pattern and practice is actually occurring. Rather, the Commission must evaluate whether the petitioners have made a *prima facie* showing of noncompliance that justifies moving to the next stage of the proceedings, which is a hearing on the merits of the petition.

DLCD has found that the “good cause to believe” standard is a “relatively low threshold.” *See* April 24, 1992 DLCD Staff Report to Commission re: Petition for Jackson County Enforcement Order, Agenda Item 1.0, May 7, 1992 LCDC Meeting, Exhibit X at 3. The Department has explained:

“Petitioner must establish some factual basis from which the Commission may reasonably conclude that violations of the County's comprehensive plan or land use regulations *may* have occurred. Petitioner need not prove that a pattern and practice of violations actually exists at this stage of the proceeding.”

1992 DLCD Staff Report, Exhibit X at 3 (emphasis added).

In this case, the petitioners have set forth a *prima facie* showing of the evidentiary and legal basis on which the commission may reasonably conclude that

the County might have engaged in a pattern and practice of unlawful decision-making. The petition therefore meets the low threshold established by the “good cause to proceed” standard in ORS 197.324(2)(b) and (d), and should be scheduled for a contested case hearing, either by the Commission or a Commission-appointed hearings officer.

Sincerely,



Rory Isbell
Counsel for Petitioner
Central Oregon LandWatch



F. Blair Batson
John D. Butterfield
Counsel for Petitioner
1000 Friends of Oregon

Cc: David Doyle, Deschutes County Counsel (via USPS certified mail and email)
Kirstin Greene, DLCDC Deputy Director (via email)
Alexis Hammer, DLCDC Legislative and Policy Manager (via email)
Alyssa Bonini, DLCDC Legislative and Policy Coordinator (via email)
Adam Marl, DLCDC Legislative and Policy Coordinator (via email)
Casaria Taylor, DLCDC Rules, Records, and Policy Coordinator (via email)

Enclosures:

APPENDICES (included on USB thumb drive)

Volume 1 Exhibits

A. Central Oregon LandWatch and 1000 Friends of Oregon Letter to Deschutes County Stating Notice of Intent to Petition the Land

- Conservation and Development Commission for an Enforcement Order to Correct Identified Patterns and Practices of Violations and to Seek Requested Corrective Actions, Dated July 29, 2025.
- B. Mailing receipt for July 29, 2025 Notice.
 - C. Email of July 29, 2025 Notice
 - D. Deschutes County September 26, 2025 Response to the July 29, 2025 Letter.
 - E. Central Oregon LandWatch and 1000 Friends of Oregon Letter to Deschutes County Stating Notice of Intent to Petition the Land Conservation and Development Commission for an Enforcement Order to Correct Identified Patterns and Practices of Violations and to Seek Requested Corrective Actions, Dated November 13, 2025.
 - F. Mailing receipt for November 13, 2025 Notice.
 - G. Email of November 13, 2025 Notice.
 - H. Deschutes County January 8, 2026 Response to November 13, 2025 Letter, including four exhibits marked by Deschutes County as Exhibits A, B, C, and D.
 - I. 1000 Friends of Oregon Letter to Deschutes County Stating Notice of Intent to Petition the Land Conservation and Development Commission for an Enforcement Order to Correct Identified Patterns and Practices of Violations and to Seek Requested Corrective Actions, Dated January 22, 2026.
 - J. Mailing receipt for January 22, 2026 Notice.
 - K. Email of January 22, 2026 Notice.
 - L. Deschutes County March 20, 2026 Response to the January 22, 2026 Letter.

Volume 2 Exhibits

- M. Statewide Planning Goal 3, OAR 660-015-0000(3).
- N. Goal 3 rule, OAR 660-033-0020.

- O. Deschutes County Goal 3 policies, DCCP Section 2.2
- P. ORS 215.203
- Q. Statewide Planning Goal 14, OAR 660-015-0000(14)
- R. Deschutes County Goal 14 policies, DCCP Section 4.2
- S. Nonfarm dwelling rule, OAR 660-033-0130(4)
- T. Deschutes County implementation of nonfarm dwelling rule, DCC 18.16.050.
- U. Amended Brief of Amicus Curiae Land Conservation and Development Commission, *Redside Restoration v. Deschutes County*, 344 Or App 383 (2025).
- V. LCDC Petition for Review, *Central Oregon LandWatch v. Deschutes County (710 Properties)*, __ Or LUBA__ (LUBA No. 2023-006/009, July 28, 2023, *aff'd* 330 Or App 321 (2024).
- W. LCDC Opening Brief, *Central Oregon LandWatch v. Deschutes County (710 Properties)*, 330 Or App 321 (2024).
- X. April 24, 1992 DLCD Staff Report to Commission re: Petition for Jackson County Enforcement Order, Agenda Item 1.0, May 7, 1992 LCDC Meeting
- Y. Deschutes County 2024 Rural Housing Profile
- Z. DLCD Oregon Farm & Forest Land Use Report, 2022-2023
- AA. LCDC July 17, 1974 Meeting Notebook
- BB. LCDC December 27, 1974 Meeting Notebook
- MMM. USDA NRCS Web Soil Survey, National Cooperative Soil Survey
- NNN. USDA SCS Land Capability Classification Handbook

Volume 3 Exhibits

- CC. Deschutes County Ordinance No. 2022-010 “Aceti”
- DD. Deschutes County Ordinance No. 2021-002 “Aceti 2021”
- EE. Deschutes County Hearings Officer Decision, File Numbers 247-14-000456-ZC, 247-14-000457- PA “Aceti 2015 Hearings Officer Decision”
- FF. Deschutes County Ordinance No. 2022-013 “710 Properties”

- GG. Deschutes County Ordinance No. 2023-007 “Marken”
- HH. Deschutes County Ordinance No. 2023-010 “Te Amo Despacio”
- II. Deschutes County Ordinance No. 2023-015 “LBNW”
- JJ. Deschutes County Ordinance No. 2023-018 “Griffin/Renfro”
- KK. Deschutes County Ordinance No. 2024-001 “Groves”
- LL. Deschutes County Ordinance No. 2024-010 “710 Properties 2024”
- MM. Deschutes County Ordinance No. 2024-012 “Destiny Court”
- NN. Deschutes County Ordinance No. 2025-003 “Last Ranch”
- OO. Deschutes County Ordinance No. 2025-010 “BPRD”
- PP. Deschutes County Ordinance No. 2026-004 “BCL”
- QQ. Deschutes County Ordinance No. 2026-005 “Cascades Academy”

Volume 4 Exhibits

- RR. Deschutes County Decision File No. 247-22-000373-CU
- SS. Deschutes County Decision File No. 247-22-000409-CU
- TT. Deschutes County Decision File No. 247-22-000421-CU
- UU. Deschutes County Decision File No. 247-22-000556-CU
- VV. Deschutes County Decision File No. 247-23-000060-CU
- WW. Deschutes County Decision File No. 247-23-000077-CU
- XX. Deschutes County Decision File No. 247-23-000154-CU
- YY. Deschutes County Decision File No. 247-23-000293-CU
- ZZ. Deschutes County Decision File No. 247-23-000428-CU
- AAA. Deschutes County Decision File No. 247-23-000443-CU
- BBB. Deschutes County Decision File No. 247-23-000478-CU
- CCC. Deschutes County Decision File No. 247-23-000533-CU
- DDD. Deschutes County Decision File No. 247-23-000556-CU
- EEE. Deschutes County Decision File No. 247-23-000625-CU
- FFF. Deschutes County Decision File No. 247-23-000830-CU
- GGG. Deschutes County Decision File No. 247-24-000754-CU
- HHH. Deschutes County Decision File No. 247-25-000038-CU
- III. Deschutes County Decision File No. 247-25-000198-CU

- JJJ. Deschutes County Decision File No. 247-25-000510-CU
- KKK. Deschutes County Decision File No. 247-25-000541-CU
- LLL. Deschutes County Decision File No. 247-25-000659-CU