

**TESTIMONY
Oregon Farm Bureau**

HB 2666

House Committee on Rural Communities, Land Use and Water

April 16, 2015

Chair Clem and Members of the Committee:

Oregon Farm Bureau urges you to oppose HB 2666. HB 2666 would severely limit the ability of farmers located next to proposed aggregate projects to raise concerns about the impacts of those projects on their existing farming operations, and would make it easier to site aggregate projects that have negative effects on Oregon's farming and ranching practices.

By way of background, Oregon Farm Bureau is a voluntary, grassroots, nonprofit agricultural organization representing Oregon's farmers and ranchers in the public and policymaking arenas. As Oregon's largest general farm organization, its primary goal is to promote educational improvement, economic opportunity, and social advancement for its members and the farming, ranching, and natural resources industry as a whole. Today, Oregon Farm Bureau represents over 7,000 member families professionally engaged in the industry and has a total membership of over 60,000 families.

The existing process is functioning as it should, and does not need to be modified.

HB 2666 is a solution in search of a problem. Recent data obtained from the Oregon Department of Land Conservation and Development (DLCD) demonstrates that since 1994, only 11 projects out of the 358 tracked by DLCD have been denied the right to mine for aggregate resources within lands zoned for exclusive farm use. **This is a 97% success rate for aggregate projects within farm use zones.** Despite these statistics, the aggregate companies seek to make it even easier to mine for aggregate resources within farmland by limiting neighboring farmers' ability to raise concerns about the impacts of these operations on their businesses.

Oregon Farm Bureau opposes any efforts to lower the protection granted to farmland when siting aggregate projects. For more than three decades, Oregon has maintained a strong policy to protect farmland. The policy calls for the "preservation of a maximum amount of the limited supply of agricultural land" (ORS 213.245).

Agriculture is one of Oregon's largest industries. In 2012, the Oregon agricultural sector produced a farm gate value of \$5.4 billion, equal to roughly 15% of the state's economy. Oregon is one of the most agriculturally diverse states in the nation, boasting the production of more than 220 different types of crops and livestock, and leading in the production of 13 crops and livestock. More than 98% of the state's farms are owned by a family or individual.

In discussing the issues associated with conversion of farmland to non-farm use, DLCD has noted that:

The great majority of rural land conversion occurs through the approval of various non-farm and non-forest uses. Conversion occurs both through the physical loss of agricultural and forest land via development and what is called the "shadow effect" of development on nearby resource land. The "shadow effect" refers to the adverse impacts or conflicts that some non-farm and non-forest uses can have on farm and forest operations. These conflicts can interfere with accepted farm and forest practices, raise land costs, lead to the loss of farm and forest infrastructure, and promote the eventual conversion of resource lands to other uses.

Non-farm and non-forest uses with the potential for conflict include: (1) large-scale, land-intensive uses (*e.g.*, aggregate operations, golf courses, wetland creation), (2) cumulative incremental development (*e.g.*, dwellings, home occupations) and (3) activities and events (*e.g.*, outdoor mass gatherings, concert or wedding venues). While any of these individual uses may not pose problems, the approval of large numbers of such uses over time in a region can tip the balance of an area from commercial agriculture and forestry to hobby farm and forest landscapes.¹

HB 2666 would make it easier to convert farmland to aggregate mining by limiting the ability of neighboring farmers to raise issues regarding the impacts of the aggregate operation on their property. Given the already high success rate of these projects on farmland, Oregon Farm Bureau opposes altering the process to limit the ability of farmers to participate effectively in the conditional use process.

HB 2666 would effect a significant change in existing law.

HB 2666 seeks to drastically alter the finding that the local governing body is required to make before approving an aggregate project in a farm zone. Under ORS 215.296, a local governing body must find that the proposed aggregate operation will not force a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest use, or significantly increase the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use. This "compatibility analysis" is designed to provide neighboring farmers with an opportunity to raise concerns about impacts to their operations, and requires counties to ensure that approving a conditional non-farm use in a farm zone will not impact the agricultural integrity of the area.

Under the Goal 5 process, DLCD has adopted rules which govern the initial siting process for aggregate projects. However, for an individual project, the county must always undertake the compatibility analysis provided for by ORS 215.296. In the context of the Goal 5 analysis, LUBA has determined that the statutory standard creates a stricter standard than the rules, and that meeting applicable standards

¹ 2012-13 Oregon Farm and Forest Report, pg. 31.

under the rules does not as a matter of law minimize conflicts with agricultural practices. *See Eugene Sand & Gravel*, LUBA No. 2002-068, 12 (2003).

HB 2666 seeks to scale back the ORS 215.296 compatibility analysis, and supplant many of the standards from the rules for the 215.296 analysis. As originally proposed, HB 2666 created a significantly more narrow definition the county would be required to use in determining whether a proposed aggregate project would force a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest use or significantly increase the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use. This standard essentially places the burden on the farmer to show that his land would not be economically viable to farm in light of the proposed aggregate operation. This regulatory scheme drastically alters the balance struck by the current land use planning system, and essentially prioritizes aggregate operations over farming within a farm zone. This result is not acceptable.

Both the original bill and -1 amendments also create a heightened evidentiary standard farmers would have to meet to demonstrate an impact, and shifts the burden to the farmers to prove that an impact exists. This is not consistent with the language or intent behind the ORS 215.296 analysis or the farm use zoning scheme, and again prioritizes aggregate operations over existing farming operations. Many farmers are not in a financial position to hire an attorney or an expert to help them develop and frame their concerns regarding impacts to their operations, and they should not have to engage such experts to ensure that the evidence they submitted will meet a heightened legal standard.

Both versions of the bill also substitute the state permitting processes for the compatibility analysis undertaken by 215.296, creating a presumption of a "safe harbor" if the operation is mining within the scope of its permits. The state permitting processes cannot be used as a substitute for meaningful analysis of impacts to farmers. The state permitting processes looks at impacts to public resources, and ensures that the aggregate operations will not exceed certain threshold levels of impacts to these resources. This is a very different analysis than that undertaken by ORS 215.296, which requires a review of impacts to neighboring farming practices.

Both the bill and the amendments also limit the area of impact that the county can consider in deciding whether there are impacts on farming operations. The amendments require that the county set a zone of impact, excluding farmers outside that zone from raising concerns. Impacts from aggregate operations can vary depending on the location in the state, the type of farming in the area, the individual practices the farmers engage in, and the type of aggregate operation proposed. ORS 215.296 is designed such that any farmer who believes that the aggregate operation will force a significant change in accepted farm practices or significantly increase the cost of accepted farm practices has the opportunity to raise those concerns with the county. The county can then determine whether those impacts are supported by evidence and are likely to occur. Excluding a farmer from presenting information on potential impacts simply because he is located an arbitrary distance from the project is contrary to the purpose of the compatibility analysis, and fails to recognize the diversity of agricultural operations (and diversity of potential impacts to those operations from aggregate mining).

Both versions of the bill also eliminate the ability to consider conflicts from transporting mining materials on public roads. In agricultural areas, public roads are often old farm roads, which are narrow, not frequently maintained, and which farmers are required to traverse frequently as they farm various fields. When an aggregate operation goes into the area, and proposes to significantly increase the amount of traffic on the road, it can have real impacts on the farming operations in the area, limiting the

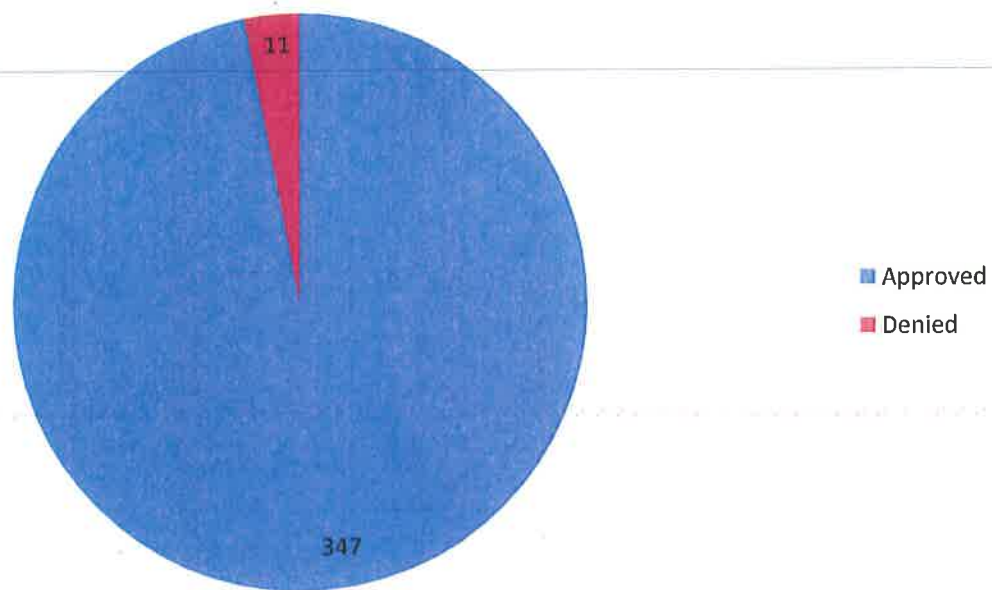
farmers' ability to access their fields, creating maintenance issues on the road, and creating safety concerns for the farmer and his employees that have to traverse the road. Because of the integral nature of these transportation uses to farming operations, the county should be able to consider whether that increased traffic will interfere with accepted farming practices.

Finally, both version of the bill only allow consideration of impacts to farming that is currently occurring on the property. Agricultural operations in the state are diverse. Many farmers within the Willamette Valley grow different crops year to year, and most have altered crops over the last several years. By freezing the date on which impacts to crops are considered, HB 2666 stymies the ability of farmers to raise impacts to future agricultural practices. The types of crops grown on local farms vary due to public demand, market prices, cost of inputs, and many other factors outside the farmers' control. Limiting the ability of the farmer to address potential impacts to future uses limits the farmers' ability to grow and be responsive to changing market pressures.

In short, HB 2666 creates an unfair standard and process for the farmers whose land is impacted by aggregate operations. The current balance struck for aggregate operations on farm zones is effective and functioning as it should. Stifling the farmers' ability to effectively participate in the process prioritizes aggregate operations over farming operations on some of our state's most productive farmland. We urge the committee to oppose HB 2666.

Please contact Mary Anne Nash with the Oregon Farm Bureau with any questions.

Land Use Decisions - Aggregate Operations in Farm Zones, 1994-2013



*Based on Decisions Reported to DLCDC

