

## LAW OFFICE OF BILL KLOOS PC

OREGON LAND USE LAW  
375 W. 4<sup>TH</sup> AVENUE, SUITE 204  
EUGENE, OR 97401  
TEL: 541.343.8596  
WEB: WWW.LANDUSEOREGON.COM

Nick Klingensmith  
nklingensmith@landuseoregon.com

April 17, 2017

House Committee on Agriculture and Natural Resources  
State Capitol  
900 Court Street NE  
Salem, OR 97301

RE: Testimony on HB 2730 (-1)

Chair Clem and members of the Committee:

I write on behalf of Elk River Property Development, LLC, in support of HB 2730(-1). Thank you for considering this testimony. My client is developing a golf course in Curry County, and my client would benefit from the much-needed clarifications contained in this bill. It addresses the unintended consequences of a 2009 amendment to ORS 215.283(2), which regulates the uses allowed in exclusive farm use zones. The 2009 amendment provided that golf courses could be developed in EFU zones, but not in areas that are “high value farmland.” The definition of “high value farmland” comes from ORS 195.300(10), which was originally enacted as part of the implementing legislation for Measure 49.

The definition of “high value farmland” in ORS 195.300 includes lands that possess certain soil types. Although soil type is the most common indicator of “high value farmland,” the statutory definition also includes other lands, including those that, on June 28, 2007, were “within the place of use for a permit, certificate or decree for the use of water for irrigation issued by the Water Resources Department.” In other words, any land that was authorized to be irrigated on June 28, 2007 is “high value farmland,” regardless of soil type.

A portion of the site where my client’s golf course has been approved falls into this category, in that it does not have high value soil characteristics, but it is considered “high value farmland” because it has an irrigation permit that was issued prior to June 28, 2007. In my client’s case, the part of the irrigation permit that applied inside of the golf course lapsed because the water use was never developed by the permit holder. This undeveloped portion of the irrigation permit is essentially a “zombie” permit, as it does not qualify for a time extension.<sup>1</sup> This leads to a situation where land has been included in the definition of “high value farmland,” despite the fact that it does not possess high value soil characteristics, and it also does not have a valid water right that could be used to irrigate it. HB 2730(-1) would allow my client to include this area in the golf course, essentially closing the “donut hole” that the 27-acre area with the old, unused, lapsed irrigation permit creates on the site.

---

<sup>1</sup> The standards at ORS 537.230(1), OAR 690-315-0040(1)(b) and OAR 690-315-0040(5) do not allow for extensions of permits (or for portions of those permits) if actual construction of the authorized irrigation didn’t begin within the time period set by the permit.

Despite the fact that HB 2730 (-1) would benefit my client, any suggestion that it amounts to “super siting” my client’s golf course, or that it would have far-reaching impacts on farming practices in the state, misses the larger point that this bill resolves the unintended consequences of the 2009 amendments to ORS 215.283(2)(v).

By prohibiting golf courses on lands that possess high value soil characteristics, it appears the legislature intended to protect those soils for farming. HB 2730(-1) would leave that legislative priority intact. However, there is no credible reason to believe the legislature intended to prohibit golf courses on poor soils that fall into the definition of “high value farmland” only because they have an expired irrigation permit.

The original intent behind the 2009 amendments to ORS 215.283(v) appears to allow golf courses in EFU zones, while protecting high value soils for farming. As drafted, HB 2730(-1) would keep the prohibition against siting golf courses on lands with high value soil characteristics. The bill is narrowly-crafted to allow golf courses west of Hwy 101 to include areas that don’t have high value soil types, but that do have an irrigation permit, and that are surrounded entirely by a golf course. This isn’t super-siting – it’s legislative housekeeping.

Respectfully submitted,

*Nick Klingensmith*  
Nick Klingensmith