

## **Senate Committee on Natural Resources**

Public Hearing, February 8, 2023

Testimony in support of Senate Bill 70

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### **Background:**

The Oregon legislature recognized the unique situation of the communities situated on the state's far eastern border in unanimously passing HB 2012 in the 2017 Regular Session. That legislation created and funded a mechanism for identifying barriers and creating opportunities for our small slice of Oregon to more effectively compete with neighboring Idaho, respectively the Border Board and the Border Fund. The 2021 legislature passed SB 16, as advocated for by the Border Board, to allow rezoning of limited, nonviable land within the Eastern Oregon Border Economic Development Region from exclusive farm use to rural residential use. Following its passage, as the county planning department worked to implement the legislation, it was discovered that the incorporated definition of "high-value farmland" in SB 16 had the unintended effect of precluding implementation. SB 70 is a technical fix necessary to move forward with the implementation of SB 16.

### **Executive Summary:**

SB 16 from 2021 incorporated the definition of "high-value farmland" contained in ORS 195.300. Notably, that definition is contained within the statutes dealing with just compensation for land use regulation. SB 70 would appropriately change the definition of "high-value farmland" to that contained within the planning and zoning statutes for counties, located at ORS 215.710.

The definition in the original legislation tying to ORS 195.300 proved irreconcilable in that it includes in its definition of high-value farmland any land that was in the boundaries of an irrigation district in mid-2007. As it turns out, most of the EFU land in the Border Region is within irrigation districts, presumably was within the district as of that arbitrary date, and is therefore precluded from qualifying for rezone under SB16 regardless of whether it has water rights, is irrigated or irrigable, its soil classification, is farmable, or any of the other carefully drafted constraints of the land use regulations. At the time SB16 was drafted and later passed, no one realized the boundaries of the local irrigation districts were so broad or that maps of the districts are so elusive. As it turns out, they are both sweeping and elusive. The proposed new definition in ORS 215.710 of high-value farmland is a much better fit, is contained within the same Oregon Revised Statute chapter as the codification of SB 16, and affords all the protections of intended in SB 16.

### **Senate Bill 70 As Introduced:**

Allows for the implementation of 2021 SB 16 as intended, by changing the incorporated definition of high-value farmland from that in ORS 195.300(10)(c)(B), as follows (in pertinent part):

*"land that is in an exclusive farm use zone...and that on June 28, 2007, is ... within the boundaries of a district, as defined in ORS 540.505."*

to the definition in ORS 215.710, as follows (in pertinent part):

*"(1) For purposes of ORS 215.705, high-value farmland is land in a tract composed predominantly of soils that, at the time the siting of a dwelling is approved for the tract, are:*

- (a) Irrigated and classified prime, unique, Class I or Class II; or*
- (b) Not irrigated and classified prime, unique, Class I or Class II.*

*(2) In addition to that land described in subsection (1) of this section, for purposes of ORS 215.705, high-value farmland, if outside the Willamette Valley, includes tracts growing specified perennials as demonstrated by the most recent aerial photography of the Agricultural Stabilization and Conservation Service of the United States Department of Agriculture taken prior to November 4, 1993. For purposes of this subsection, "specified perennials" means perennials grown for market or research purposes including, but not limited to, nursery stock, berries, fruits, nuts, Christmas trees or vineyards but not including seed crops, hay, pasture or alfalfa....*

*(5) For purposes of approving a land use application under ORS 215.705, the soil class, soil rating or other soil designation of a specific lot or parcel may be changed if the property owner:*

*(a) Submits a statement of agreement from the Natural Resources Conservation Service of the United States Department of Agriculture that the soil class, soil rating or other soil designation should be adjusted based on new information; or*

*(b)(A) Submits a report from a soils scientist whose credentials are acceptable to the State Department of Agriculture that the soil class, soil rating or other soil designation should be changed; and*

*(B) Submits a statement from the State Department of Agriculture that the Director of Agriculture or the director's designee has reviewed the report described in subparagraph (A) of this paragraph and finds the analysis in the report to be soundly and scientifically based.*

*(6) Soil classes, soil ratings or other soil designations used in or made pursuant to this section are those of the Soil Conservation Service in its most recent publication for that class, rating or designation before November 4, 1993."*

As is clear, the replacement definition of high-value farmland in SB 70 is robust and fitting and preserves exactly what SB 16 was intended to protect: high-value farmland. This is simply a technical fix to a problematic and dated definition.

**Highlights of SB 16 that are UNAFFECTED by SB 70:**

- Subject to a county review board process, EFU land in the Border Region may be rezoned to rural residential, allowing the development of one residential unit per parcel, provided that:
  - The land has not been farmed in the prior three years;
  - The land is not predominately composed of Class I, II or III soils, or viable for reasonably obtaining a profit through farm use;
  - Rezoning will not force a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest use;
  - If the water source is a well, the lands are not within a critical ground water area or within any area in which ground water withdrawals have been restricted by the Water Resources Commission;
  - The property owner agrees, as a condition of approval of rezoning to sign and record an irrevocable deed restriction acknowledging the protected rights of farm and rangeland practices in the area;
  - The rezoning complies with any other criteria adopted by the county;
  - Minimum lot size of 2 acres and no more than 200 acres total could be rezoned by the county under this Bill;
  - The rezoning has received a public hearing and a written opinion from a review board;

- In the preceding 10 years, the lands have not been assessed for property tax purposes as: open space use, riparian habitat, wildlife habitat, or a conservation easement.
- Review board - 4 members appointed by the county:
  - One member who represents the interests of the farming community;
  - One member who represents the Eastern Oregon Border Economic Development Board;
  - One member who is a member of the planning body of the County;
  - One member who is a member of the governing body of the County.
- Continues any applicable farm use tax deferral and valuation on properties in region until redeveloped for sale or five years after rezoning.

**Stakeholders:**

SB 16 had and continues to enjoy strong support within the Border Region from agriculturists, property owners, residents, prospective residents, business owners, and local governments. That is an important distinction to remember as you hear from outside groups and distant landowners who are concerned in general about protecting Oregon lands. It is clear in the submitted testimony of those opposed to SB 70 that they have little understanding of either SB 16 or SB 70. Those local to the Border Region, including those serving on the Eastern Oregon Border Economic Development Board, are acutely aware of the vital role of agriculture in our region. SB 16 originally, and SB 70's technical fix, continue the critical protection of viable farm ground and farming practices.

**Call to Action:**

On behalf of the Eastern Oregon Border Economic Development Board, I invite you to get to know our small part of Oregon. This legislature acknowledged the uniqueness of the Border Region and charged our group with creating opportunity in the face of challenge. SB 16 was a critical part of the board's work toward that end and, I believe, a shining example of a good bill getting passed on its merits. I now ask that you pass SB 70 to fix a technical error in the original legislation that is impeding its implementation as intended.