

DRAFT

Uses Allowed in Farm Zones Supportive of the Agricultural Industry

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Farm Use - ORS 215.203/308A.056:

The definition of farm use serves a dual purpose. It identifies both the uses allowed in a farm zone and the uses which receive special farm use property tax assessment. The definition is now found in ORS Chapters 308A and ORS 215: For land use purposes in Chapter 215, it reads:

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 use 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 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 as defined in subsection (3) of this section or land described in ORS 321.267(3) or 321.824(3).

The highlighted (**bold**) part of the definition is the language that historically is used to allow some value added and marketing activities in farm zones as a "farm use." This provision allows initial preparation for sale, storage and the sale (wholesale or retail) of the farm products raised on a farm. It was intended to allow those preparatory activities prior to the storage or sale of farm products grown on the subject farm, Reter v. Oregon Tax Commission, 3 OTR 477 (1969), aff'd, 256 Or 294 (1970).

Because the distinction between “preparation” and “processing” is not always easy to determine, LCDC adopted a rule (OAR 660-033-0020(7(b))) to further define the term “preparation” as it is used in the definition of “farm use.” It reads:

“Preparation of products or by-products includes but is not limited to the cleaning, treatment, sorting, composting or packaging of the products or by-products.”

“Preparation” of a farm product is something less than “processing.” Making a new or different product from the naturally grown farm product is "processing" not "preparation" and treated as either a “processing facility” of “farm crops” in a building less than 10,000 sq. feet or a "commercial" activity in conjunction with farm use. All “processing” facilities, regardless of size, where more than 75% of the product comes from other farms, are treated as “commercial” activities in conjunction with farm use (See the description for these processing uses in this Memo).

(OAR 660-033-0020(7(b))) also includes language to clarify the area from where the farm products may come that are to be prepared. The rule reads:

“‘Products or by-products raised on such land’ means that those products or by-products are raised on the farm operation where the preparation occurs or on other farm land provided the preparation is occurring only on land being used for the primary purpose of obtaining a profit in money from the farm use of the land.”

This makes clear that a farm operation may prepare products from the subject farm or from other farm operations as long as the preparation takes place on a qualified farm operation. Further, the proposed rule does limit the source of the farm products to only those from the local agricultural area. Thus a farm may prepare its own farm products or those from other farms. A stand alone preparation plant would not be allowed by this rule but rather would need to be treated as a “commercial activity in conjunction with farm use.”

A winery - ORS 215.283(1)(q)/215.452:

Wineries were specifically authorized in 1989 in order to clarify that they were allowed as a non farm use in an EFU zone and were not a “farm use” under ORS 215.203. Prior to this time they were approved as “commercial activities” in conjunction with farm use [see Craven v. Jackson County, 308 Or 281 (1989)]. Counties have limited discretion on the approval standards or conditions applied to proposed wineries meeting the specific provisions of ORS 215.452 [ORS 215.452(4)]. Wineries not meeting the specific statutory provisions can also be reviewed as “processing facilities” or “commercial activities.”

Farm Stands - ORS 215.283(1)(r):

Farm stands were added to the EFU zone in 1993 with additions to allow some limited promotional activities in 2001. Prior to 1993, farm stands were considered an outright permitted “farm use” but with the scale and scope of some stands getting larger, the use was specifically listed in order in order to allow to counties to review these operations, assure appropriate access, and to limit the sale of items incidental to the sale of farm products and other unrelated activities. A farm stand may be approved if:

“The structures are designed and used for the sale of farm crops or livestock grown on the farm operation, or grown on the farm operation and other farm operations in the local agricultural area, including the sale of retail incidental items and fee based activities to promote the sale of farm crops or livestock sold at the farm stand if the annual sale of incidental items and fees from promotional activity do not make up more than 25 percent of the total annual sales of the farm stand; and”

“The farm stand does not include structures designed for occupancy as a residence or for activity other than the sale of farm crops and livestock and does not include structures for banquets, public gatherings or public entertainment.”

LCDC amended in farm zone rules was amended in 2004 in order to clarify two things: (1) that processed crops and livestock grown on the farm operation or from other farm operations in the local agricultural area may be sold at farm stands along with fresh crops and livestock and are not a more limited “retail incidental item,” and (2) that farm products from throughout Oregon may be sold. In addition to the statutory language quoted, OAR 660-033-0130(23) now states:

“As used in this section, ‘farm crops or livestock’ includes both fresh and processed farm crops and livestock grown on the farm operation, or grown on the farm operation and other farm operations in the local agricultural area. As used in this subsection, “processed crops and livestock” includes jams, syrups, apple cider, animal products and other similar farm crops and livestock that have been processed and converted into another product but not prepared food items.”

“As used in this section, ‘local agricultural area’ includes Oregon or an adjacent county in Washington, Idaho, Nevada or California that borders the Oregon county in which the farm stand is located.”

For processed farm products, the intent is to clearly not include processed farm crops and livestock within the 25% limitation applied to “retail incidental items” which can also be sold at farm stands. This allows the farm operator to sell a wider range of farm products and lessen the enforcement burden on counties. “Processed crops and livestock” is intended to include jams, syrups, apple cider, animal products and other similar farm crops and livestock that have been processed and converted into another product and is not intended to include prepared food items.

Further, the amendments are intended to make clear that only Oregon food crops and livestock

grown in Oregon can be sold at farm stands as a processed item. It was not the intent of the proposed amendment to allow out-of-state crops and livestock processed in Oregon to be sold at farm stands outside the 25% limitation.

As to the area from which farm products can come, farm stands are intended to facilitate and encourage the sale of Oregon farm products. Farm products are now part of a global market and people today view Oregon products as being “local.” Farm crops and livestock are marketed throughout Oregon with Westside farm stands regularly selling Hermiston Melons and Walla Walla Onions from eastern Oregon and visa versa. Limiting farm stand sales to only crops and livestock from the immediate vicinity of the farm stand is contrary to the intent of the farm use provisions in ORS Chapter 215.

The new rules ensure that only farm crops and livestock from counties bordering Oregon and immediately adjacent to the Oregon county where the farm stand is located can be sold as a farm product and not as a “retail incidental item” subject to the 25% limitation. The intent is to allow for the sale of farm crops and livestock not subject to the 25% limitation at farm stands from only those counties adjacent to Oregon in Washington, Idaho, Nevada and California. Farm crops and livestock from Southern California, i.e. avocados from San Diego County or other non adjacent counties can still be sold but only as “retail incidental items” subject to the 25% limitation of gross annual sales.

Processing Facility for Farm Crops <10,000 square feet – ORS 215.283(1)(u):

Processing facilities for farm crops were allowed in 1997 in order to encourage small scale facilities on the farm. The incentive for these facilities was an exemption from the farm compatibility standards in ORS 215.296 and farm assessment for the land under these facilities [ORS 215.203(2)(b)(F)]. These facilities can accommodate small wineries and bio-fuel production. Such facilities are subject to three limitations: (1) they can only process farm crops (plants not livestock/animals or other); (2) at least one-quarter of farm crops processed must come from the farm operation on which the facility is located; and (3) the building for the processing facility cannot exceed 10,000 square feet of floor area exclusive of the floor area designated for preparation, storage or other farm use or devote more than 10,000 square feet to the processing activities within another building supporting farm uses.

Commercial Activities In Conjunction With Farm Use - ORS 215.283(2)(a):

A commercial activity in conjunction with farm use must be either exclusively or primarily a customer or supplier of farm uses. Such activities must either:

- (1) Enhance the farming enterprises in the local agricultural community; or
- (2) Occur together with agricultural activities in the local community.

Suppliers are limited to those providing products and services essential to the practice of agriculture.

This use was added to the EFU zone by SB 101 in 1973. The legislative intent was to let local government decide specifically what these uses may be. Uses discussed as falling within this category included hop, nut and fruit driers; feed mixing and storage facilities; mint distilleries; rendering plants; seed processing, packing, shipping and storage facilities; slaughter houses; agricultural produce storage facilities; feed lots; hullers; and any other similar processing and allied farm commercial activities. Wineries not meeting the standards in ORS 215.283(1)(q) or other new bio-fuel plants can be approved using these standards. The Court cases that have established these guidelines are Craven v. Jackson County, 308 Or 281 (1989), City of Sandy v. Clackamas County, 28 Or LUBA 316 (1994) and Earle v. McCarthy, 28 Or App 539, (1977).

Home Occupations – ORS 215.283(2)(i)/215.448

Home occupations is a catch-all use that can accommodate all kinds of small businesses and activities in a farm zone. This use has been used to allow farm machinery repairs, bed and breakfast accommodations, small gatherings for weddings and family events as well as many other types of small local businesses. To be approved, the business must (1) be operated by a resident or employee of a resident of the property where the business is located, (2) employ no more than five full or part-time employees on site, (3) be operated substantially in a dwelling or other building normally associated with uses permitted in the farm zone, and (4) not unreasonably interfere with other uses permitted in the farm zone. Home occupations cannot construct any structure that would not otherwise be allowed in a farm zone.

Landscaping Business – ORS 215.283(2)(z)

A landscaping business or one providing landscape architecture services is allowed if done in conjunction with the growing of nursery stock on land in farm use.

Other Supportive Uses to Rural Area – ORS 215.283

There are some additional uses permitted in farm zones that are supportive of farm and rural areas of Oregon. Some of these include propagation or harvesting of forest products, primary and accessory dwellings for farmers, their families and seasonal and year round farm workers, rural fire protection services, irrigation canals and support facilities, rural community centers, aquaculture activities, water extraction and bottling plants, and expansion of existing county fairgrounds.