



Farm and Forest Conservation Program Improvement Plan Rulemaking Advisory Committee Meeting #3

May 22nd, 2024, 9:00am – Noon

A request for an interpreter for the hearing impaired or for other accommodations for persons with disabilities should be made at least 48 hours before the meeting to Casaria Taylor at 971-600-7699, casaria.taylor@dlcd.oregon.gov or by TTY: Oregon Relay Services (800) 735-2900

This meeting will be available for viewing at: <https://youtube.com/@OregonDLCD>

Agenda

15 min	Introductions
60 min	Discussion on ‘preparation’ and ‘processing’. Materials: proposed rule revision, relevant statute and rule, 1996 Report to the Governor from the Agricultural Processing Working Group
5 min	Stretch Break
45 min	Discussion on the evidentiary standard for the verification of income
45 min	Discussion on ‘recreational’ uses in private parks. Materials: <i>Central Oregon Landwatch v. Deschutes County, 72 Or LUBA 61 (2015)</i>
10 min	Next Steps
<p>Action items (to be undertaken between meetings):</p> <ul style="list-style-type: none"> - Review and comment on meeting notes and any rule language revisions. - Email any additional thoughts or comments on these topics to Hilary.Foote@DLCD.Oregon.gov within the week. Please indicate if your comments are for Staff’s consideration or if you wish them to be included in the next published meeting packet. 	
Upcoming Meetings	
June 11, 2024	RAC Meeting #4
July 12, 2024	RAC Meeting #5
September 26-27, 2024	Land Conservation and Development Commission Rulemaking Hearing

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Farm and Forest Improvements Project 2024 Rulemaking Advisory Committee (RAC) Meeting Summary

April 22, 2024, RAC Meeting #2

Location: The meeting was conducted virtually over Zoom Webinar.

RAC Member Attendees:

Alyssa Boles	Linn County
Amber Bell	Lane County
Austin Barnes	Marion County
Blair Batson	1,000 Friends of Oregon
Charles Bennett	Jackson County
Elaine Albrich	Oregon Wine Growers Association
J. Kenneth Katzaroff	Schwabe Williamson & Wyatt
James Johnson	Oregon Department of Agriculture
Jan Lee	Clackamas Soil & Water Conservation District board/ Oregon Association of Conservation Districts
Jeffrey L. Kleinman	Attorney
Joy Lovett	Oregon Department of Fish and Wildlife
Justin Green	Justin B. Green Consulting
Katherine H Daniels	Agricultural Land Use Scholar
Lauren Poor	Oregon Farm Bureau
Maitreyee Sinha	Washington County
Megan Davchevski	Umatilla County
Michael S. McCarthy	McCarthy Family Farm
Mickey Killingsworth	M.D. Acres
Nellie McAdams	Oregon Agricultural Trust
Rob Hallyburton	Friends of Yamhill County
Rory Isbell	Central Oregon LandWatch
Samantha Bayer	Oregon Property Owners Association



Tyler Ernst	Oregon Forest Industries Council
Barbara Boyer	Land Conservation and Development Commission (LCDC) Liaison

Department of Land Conservation and Development (DLCD) Staff Attendees:

- Hilary Foote, Farm and Forest Land Use Specialist
- Gordon Howard, Community Services Division Manager
- Casaria Taylor, Rules, Records, and Policy Coordinator

Welcome Opening Remarks, Agenda Review and Introductions

Hilary Foote, DLCD, reviewed the meeting agenda and objectives and the timeline and expectations for the rulemaking process going forward. Staff clarified that issues or suggestions exceeding the scope of the charge would be noted and considered for potential inclusion in future work. Staff also clarified that should there be alternative perspectives on proposed rule language, those would be noted in the Staff Report to LCDC for the September rulemaking hearing.

Discussion: Incidental and Subordinate and Necessary to Support Standards

Hilary Foote, DLCD, reviewed the existing statutory opportunities for agri-tourism and other commercial events at ORS 215.283(4)/215.213(11).

Clarifying the 'Incidental and Subordinate' standard:

Proposed Language: OAR 660-033-0130(43)(a) As used in ORS 215.213(11) or 215.283(4) a determination that the event or other activity is 'incidental and subordinate' requires an inquiry into the relationship between the predominant farm use on the tract and the subordinate events use, including factors such as the nature, intensity, and economic value of the respective uses.

- It is common that multiple farm uses may occur on a farm. Charles Bennet raised the question, should the proposal be required to demonstrate it is subordinate to the predominant farm use on the tract, to the collective farm uses occurring on the tract, or to each farm use on the tract? The proposed language only indicates a review of the proposal against the predominant farm use on the tract in addressing the incidental and subordinate standard.
- Charles Bennet suggested the language be modified to require a demonstration that the events are incidental and subordinate to all of the farm uses collectively. He read the language from the court case and pointed out that the courts required the predominant use of the tract remain farm use.



- Austin Barnes shared he felt demonstrating subordination to the predominant farm use should be sufficient.
- Jeff Kleinman also suggested the language be revised to change ‘predominant farm use’ to ‘existing farm use’. This proposed language was shared on screen:
OAR 660-033-0130(43): (a) As used in ORS 215.213(11) or 215.283(4) a determination that the event or other activity is ‘incidental and subordinate’ requires an inquiry into the relationship between the **predominant existing** farm use **on-the-tract, which must be and remain the predominant use**, and the subordinate events use, including factors such as the nature, intensity, and economic value of the respective uses.
- Jeff Kleinman observed that moving the word ‘predominant’ should address several of the concerns raised by requiring an analysis against farm uses globally.
- Jim Johnson shared that the definition of farm use is quite broad and can vary over the course of the year. Jim expressed support for Jeff Kleinman’s comments.
- Mike McCarthy shared that he engages in multiple farm uses as part of his farm operation. Mike opined that it would be simple to characterize all of the farm operations occurring on his property and identify the total income from all of the operations.
- Rob Hallyburton agreed with Jeff’s proposed language and added that the phrase in the original draft ‘and the subordinate event use’ prematurely presupposes that the events have been determined to be subordinate given that the subordination of the events will have not yet been determined, so it should state “and the proposed event use”.
- Megan Davchevski shared that Umatilla does not process many event permits they get more inquiries for unrelated event venues and would support the language proposed by Jeff Kleinman.
- Blair Batson noted that the intent behind the incidental and subordinate requirement is to ensure that the events do not become the proverbial (event) tail wagging the (farm use) dog and expressed support for the language revision proposed by Jeff Kleinman.
- Rob Hallyburton suggested it is important to look at the whole farm operation and not crop-by-crop.
- Rory Isbell noted that the term ‘farm use’ used here is defined at ORS 215.203 and includes multiple farm uses. Rory expressed support for Jeff Kleinman’s proposed language.
- Ken Katzaroff noted that ‘existing’ potentially limits farm use to what is happening at the moment of permitting and doesn’t account for the fact that farm use may change over time.
- Jeff Kleinman noted that Ken’s concern is legitimate, and we should look at.
- Austin Barnes noted that from a county perspective, if an applicant pivots into a very different farm use, say you had a flower festival events permit and discontinued commercial flower farming, would a county have an enforcement issue? This hasn’t come up as an enforcement issue yet. The more common enforcement issue is when an event exceeds what was described in the permitting process.
- Rory Isbell highlighted that the authorization in statute has renewal provisions and given the timeframes involved should a potential change of farm use really be a concern?



- Blair Batson noted that the statutory provisions at ORS 215.283(4)/215.213(11) refer to ‘existing farm use’ on the tract.
- Rob Hallyburton shared details of a different court case where the events proposed were related to a minor farm use occurring on the farm tract rather than the predominant farm use or farm uses collectively occurring on the tract.
- Mickey Killingsworth suggested that events should be related to the primary farm use of the property and not minor farm uses occurring on the property such as authorizing an egg-hunt event at an operation where egg production is a minor farm use. Mickey also highlight the difference between commercial farm use and practices related to a farm use.
- Lauren Poor brought up corn mazes as an example of a common event that may not be directly related to a primary farm use and expressed concern that language not be overly restrictive to preclude.
- Mike McCarthy suggested that if clarifying the rule standard for ORS 215.283(4)/215.213(11) the clarification should also be applied to the similar language in the winery statutes. Rory Isbell also noted that guest ranches contain a similar standard. Hilary Foote clarified that the current charge for the rulemaking is specific to ORS 215.283(4)/215.213(11).

Adding further clarification:

- Katherine Daniels observed that the ‘incidental and subordinate’ standard and the ‘necessary to support’ standards represent contrasting standards in that the first calls for the event use to be minor compared to the event use and the second calls for the events to be relatively important to the farm operation and that difference poses a conundrum to county planners and requires quite a bit of discretion. While the court’s guidance on factors to be considered is useful, being specific about what each factor entails will be more helpful to county planners. Eg - define ‘intensity’ such as directing a county to look at acreage, frequency, number of cars, etc or to look at the economic value of the respective uses. Katherine clarified that she is proposing adding specific categories for a county to consider rather than adding specific limits.
- Mike McCarthy added that considering number of employees and payroll may be topics that would be indicative of economic value and intensity.
- Hilary Foote asked planners for thoughts on that tension. Austin replied that the burden of proof is on the applicant and if they can demonstrate that the events are necessary. He shared that they don’t get many applications for 18 events.
- Austin Barnes noted that when looking at secondary farm dwellings there is no limit to the number which can be applied for, it is up to you to demonstrate the need for that. The same is applicable to requests for 18-events permits.
- Jeff Kleinman reminded that the 18-events of up to 72 hours option is one out of four options and noted that it isn’t supposed to be easy to obtain.



- Jim Johnson shared that he participated in the original agri-tourism task force to the legislature. He shared that when they discussed this topic, the larger number of events were intended to be more difficult to satisfy because of the frequency and potential to impact the surrounding area.
- Justin Green expressed support for Katherine's recommendation to further clarify the factors.
- Mike McCarthy suggested that there is a small range of what may be appropriate.
- Maitreyee Sinha shared that clear and objective guidance or a rubric would be very helpful.

Clarifying the 'Necessary to Support' standard:

Proposed Language: (b) As used in ORS 215.213(11)(d)(A) or ORS 215.283(4)(d)(A), a determination that an event or activity is 'necessary to support' either the commercial farm uses on the farm or commercial agricultural enterprises in the area if the events are essential in order to maintain the existence of either the commercial farm or the commercial agricultural enterprises in the area.

- Charles Bennet expressed concern that the 'or to maintain commercial agricultural enterprises in the area' to the necessary to support standard is overly broad and may authorize an event supportive of a farm use occurring elsewhere in the area and not on the subject parcel.
- Charles Bennet and Austin Barnes also expressed concern that the reference to 'other commercial agricultural enterprises in the area' may introduce confusion as to where the events may be taking place.
- Elaine Albrich expressed concern that it would be burdensome for an applicant to demonstrate that the events are necessary to support *all* of the farm uses occurring on the property rather than the predominant farm use. The initially proposed language would limit review to the predominant farm use of the farm tract.
- Elaine Albrich also expressed concern that a requirement to demonstrate the events are *essential* in order to be found to be 'necessary' is an overly burdensome standard to meet.
- Hilary Foote read the following quote from the case, "Accordingly, we construe the statute to require that in order to establish that proposed events are "necessary to support" either the commercial farm uses on the farm or commercial agricultural enterprises in the area within the meaning of the statute, the county must find that the events are essential in order to maintain the existence of either the commercial farm or the commercial agricultural enterprises in the area."
- Samantha Bayer expressed concern that adopting the caselaw verbatim has policy implications and is concerned that the court's interpretation that a requirement to demonstrate the events are essential in order to be considered 'necessary' is an impossible standard to meet.

General comments:

- Lauren Poor expressed a desire to have a broader policy conversation Oregon policy on what we want to see for agriculture and how we want to sustain our agriculture.
- Gordon Howard clarified that while we have some flexibility to clarify statute in rule, and we are collecting feedback on how that might be accomplished, we cannot change the existing statutory provisions.



- Ken Katzaroff suggested that a broader policy discussion may be appropriate, that LCDC may want to carry a LC to the legislature.

Discussion: Rural Transportation Uses on Resource Land

Proposed Language: OAR 660-012-0065 (5) (a) For transportation uses or improvements listed in subsection (3) of this rule within an exclusive farm use (EFU) or forest zone, except for transportation uses or improvements permitted under ORS 215.213(1), 215.283(1) or OAR 660-006-0025(1)-(3), a jurisdiction shall find that the proposal will comply with the standards described in ORS 215.296. In addition, for such transportation uses or improvements in a forest zone, except for transportation uses or improvements permitted under OAR 660-006-0025(1)-(3), must also comply with the standards described in OAR 660-006-0025(5).

Hilary Foote, DLCD provide an orientation to the topic including an overview of the existing statutory provisions and rule clarifications and the rulemaking history behind OAR 660-012-0065(3)-(5).

Jim Johnson shared that he was working at DLCD during the 1994-1995 rulemaking and that the summary shared aligned with his recollection of the rulemaking which was that certain transportation uses should be allowable in resource zones subject to some type of review standard rather than going through an exceptions process. Jim highlighted that the farm impacts test at ORS 215.296 allows for mitigation of potential impacts.

Katherine Daniels shared that when she was staff at DLCD, that the agency had interpreted that the uses listed in OAR 660-012-0065(3) were subject to the impacts test and supports putting that interpretation into rule.

Jim Johnson noted that this question came up in a Benton County trail review process which resulted in moving the proposal to an alternative location.

Mickey Killingsworth shared her experience siting on a county-wide trail review process which resulted in moving the proposal to an alternative location.

Jim Johnson observed that linear facilities on farmland tend to engender a lot of discussion as they have the potential to enable public access into areas zoned for industrial farm or forest use – working landscapes which aren’t always conducive to recreational use.

Amber Bell shared that most of the uses in OAR 660-012-0065(3) are listed as conditional uses in their code.

Charles Bennet opined that the recommended changes make sense.

Jim Johnson noted that the question of how to apply the rural transportation provisions in forest zones does come up and merits clarification.



Closing and Next Steps

Hilary Foote, DLCD, shared that the upcoming LCDC meeting includes an item to consider additions to the rulemaking charge for this RAC. Hilary reviewed the items proposed for addition to the RAC charge and suggested RAC members may want to review the staff report for LCDC agenda item 7.

Hilary Foote, DLCD, adjourned the meeting and noted the next steps.

The next steps are:

- RAC members were encouraged to email their suggested edits to proposed rule language to Hilary Foote.
- DLCD will circulate Draft Meeting Notes, Public Comments and RAC Member Comments for review and feedback.
- Written feedback from RAC members is requested by May 10th, 2024. Written feedback should be directed to Hilary Foote at Hilary.Foote@DLCD.Oregon.gov
- A Doodle Poll will be circulated on Friday April 26th if LCDC decides to add to the charge for the Farm and Forest Improvements Project rulemaking.



May 10, 2024

To: Hillary Foote, Farm/Forest Specialist, DLCD
From: Jan Lee, President, Oregon Association of Conservation Districts

In response to our last RAC meeting and subsequent recommendations for change, I share support for the following recommendations:

1) Clarifying the 'Incidental and Subordinate' standard:

I support the language revision proposed by RAC member Klein which encompasses both "existing use" in this section and the acknowledgment that the use "must remain the predominant use" in section OAR 660-033-0130(43) as used in ORS 215.213(11) or 215.283(4). Farm use could be interpreted pretty broadly so this wording provides a mechanism to allow that flexibility while still protecting the predominant use. Maintaining the incidental and subordinate requirements ensure that it is the farm use and not the secondary events that are predominant.

The language submitted by RAC member Bennett further clarifies by considering relevant circumstances (nature, intensity and economic value of uses) and that language will help counties address the factors, from my view. Permits for larger numbers of events were always meant to be more onerous and should be reflected as such in the rules. The statute requires that the county must find that these events are essential to maintain the existence of either the commercial farm or the commercial agricultural enterprises in the area and that must be appropriately reflected in the rules.

2) Rural Transportation Uses on Resource Land

The language proposed for OAR 660-012-0065 by staff regarding transportation uses seems comprehensive enough to cover requirements, especially in review of existing statutes and rulemaking history. The farm impacts test allows for mitigation when necessary. I like RAC member Daniels suggestion to add the interpretation of the subject impacts test into the rule. Experience has shown that recreational uses, when reviewed in several county processes, have ultimately been moved to other locations as evidenced by RAC member comments.

Farm and Forest Conservation Program Improvements Project

Proposed Rule Revisions for discussion at RAC Meeting #3

1. *Repair the circular definition in OAR 660-033-0020(7)(b). Add a definition for 'processing' to OAR 660-033-0020 with the intent of clarifying what is appropriately considered a preparation farm use and what is processing.*

Statement of Need: It can be difficult to ascertain when a proposed activity is appropriately considered 'preparation' which is considered 'farm use' under ORS 215.203, when it becomes 'processing' which is a sub-1 use subject to standards (ORS 215.255), and when an activity, in essence, may exceed what is permissible as 'processing' and become 'manufacturing' which may be permissible as a commercial activity in conjunction with farm use.

ORS 215.203 clarifies that 'farm use' includes the preparation of products or by-products raised on land employed for farm use. OAR 660-033-0020(7) defines 'Products or by-products raised on such land' as "those products or by-products 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" and defines 'preparation of products or by-products' as including ""but not limited to the cleaning, treatment, sorting, or packaging of the products or by-products". This set of definitions contains a circular reference that essentially says farm use includes preparation provided preparation is occurring on land employed for farm use.

'Processing' is not defined in statute or rule implementing Goal 3.

The technical working group recommended that it would be helpful for the state to repair this circular definition and define 'processing'. If the RAC does not reach a consensus on the topic, diverging opinions will be noted.

Attached are copies of relevant statute and rule language and a copy of the 1996 Report to the Governor from the Agricultural Processing Working Group which contains relevant history related to these definitions. The RAC will be asked to evaluate these materials and recommend language defining these terms.

Proposed rule revision to consider for 'preparation':

OAR 660-033-0020(7)(a) "Farm Use" as that term is used in ORS chapter 215 and this division means "farm use" as defined in ORS 215.203.

(b) As used in the definition of "farm use" in ORS 215.203 and in this division:

(A) "Preparation" of products or by-products includes but is not limited to the cleaning, treatment, sorting, or packaging of the products or by-products; and

(B) "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.~~

Or

(A) "Preparation" of products or by-products includes but is not limited to the cleaning, treatment, sorting, or packaging of the products or by-products **outdoors or in a building with a floor area devoted to preparation not to exceed X square feet.**

(B) "Products or by-products raised on such land" means that **at least one-quarter of** those products or by-products **prepared at the facility** 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 arm use of the land.~~

[The second option draws on statutory language for processing facilities at ORS 215.255]

Proposed new rule language to consider for 'processing':

OAR 660-033-0020(x) [would require re-numbering of this section of rule which is organized alphabetically].

Potential definition language to consider:

"Processing" means the cooking, baking, heating, drying, mixing, grinding, churning, separating, extracting, cutting, freezing or otherwise manufacturing farm crops or changing the physical characteristics of a farm crop, and the packaging, canning or otherwise enclosing of such farm crops in a container, but does not mean the storage, sorting, cleaning or water-rinsing of a farm crop.

[This is based on the language in ODA's rules for food establishments and retail food service activities at OAR 603-025-0010(11) and ORS 215.255]

"Processing" also means the preparation or slaughter of poultry products, rabbits or rabbit products.

[This is based on the definition of "processing" from ODA's rules for meat processing infrastructure at OAR 603-008-0000(6) and ORS 215.255]

2. *Establish an evidentiary standard for verification of income to demonstrate compliance with the standards for farm stands, agri-tourism events and primary farm dwellings.*

Statement of Need: Several Counties have communicated that it is difficult to verify income in a reliable manner. The concerns expressed include that Schedule F tax documents are not specific enough to be definitive, particularly about where the products were produced, and it is difficult to verify if such documents have been filed. Counties take a variety of approaches to verification of qualifying income for primary and accessory farm dwellings as well as income thresholds for farm stands and other types of activities which are intended to be subordinate to farm use. The technical working group has recommended that it would be helpful for the state to clarify an appropriate evidentiary standard for verification of income.

Examples of approaches taken by counties include various combinations of the following:

- IRS Schedule F. This is the form used to report farm income and expenses to the IRS.
- Applicant-provided accounting records.
- Affidavit of income from the applicant.
- Affidavit of income from certified accountant.
- Individual purchase and sale receipts.
- Applicant-provided narrative descriptions of farm practices and income.

Examples from other uses allowed in farm zones: Wineries, cideries and breweries must provide a written statement prepared by a certified public accountant verifying components of gross income for the previous tax year. The proposed language is based on that statutory language and language in ORS 215.461(8).

Language to consider and discuss:

OAR 660-033-0130(23)(f) *The farm stand operator shall annually submit to the local government a written statement prepared by a certified public accountant that certifies compliance with the annual sales requirement of subsection (a) above and any other information the county may require to ensure ongoing compliance with this section, or any condition of approval required by the county.*

OAR 660-033-0130(24)(h) *The applicant shall submit to the local government a written statement prepared by a certified public accountant that certifies compliance with the gross farm income requirements in subsection (A) or (B) above, whichever is applicable.*

OAR 660-033-0135(3)(d) In determining the gross income required by subsection (a) of this section:

(A) The cost of purchased livestock shall be deducted from the total gross income attributed to the farm or ranch operation;

(B) Only gross income **earned** from land owned, not leased or rented, shall be counted; and

(C) Gross farm income earned from a lot or parcel that has been used previously to qualify another lot or parcel for the construction or siting of a primary farm dwelling may not be used.

(D) The applicant shall submit to the local government a written statement prepared by a certified public accountant that certifies compliance with the gross farm income requirement

OAR 660-033-0135(4)(d) In determining the gross income required by subsection (a) of this section:

(A) The cost of purchased livestock shall be deducted from the total gross income attributed to the farm or ranch operation;

(B) Only gross income **earned** from land owned, not leased or rented, shall be counted; and

(C) Gross farm income earned from a lot or parcel that has been used previously to qualify another lot or parcel for the construction or siting of a primary farm dwelling may not be used.

(D) The applicant shall annually submit to the local government a written statement prepared by a certified public accountant that certifies compliance with the gross farm income requirement

3. Consider clarifying that focal events in private parks are not “recreational uses”. This is proposed as a codification of the opinion in [*Central Oregon Landwatch v. Deschutes County, 72 Or LUBA 61 \(2015\)*](#) as [*affirmed by the Court of Appeals*](#).

A wide variety and intensity of activities are proposed as ‘private parks’ in resource zones. Specific approved private park uses reported to DLCD include: airsoft courses, frisbee golf, shooting ranges, paintball parks, demonstration gardens, events venues and motocross tracks. The Technical Working Group convened in 2023 expressed concern that it may be unclear when proposals for private parks become inappropriate for a rural environment or what is appropriately considered a ‘park’ and suggested the department consider rulemaking to define uses allowable as ‘private parks’ including scale and intensity. Caselaw exists addressing these questions and clarifying that venues for focal events are not ‘private parks’.

Proposal for consideration and discussion:

Update the Use table at OAR 660-033-0120 to reference a new section in OAR 660-033-010.

Add at new section to OAR 660-033-0130 as follows:

() A private park is an area devoted to low-intensity, outdoor, recreational uses for which enjoyment of the outdoors in an open space, or on land in its natural state, is a necessary component and the primary focus.

REPORT TO THE GOVERNOR from the AGRICULTURAL PROCESSING WORKING GROUP

Background

At the request of the Governor, the Department of Land Conservation and Development (DLCD) convened a representative group to review whether the provisions of the exclusive farm use statute (ORS Chapter 215) dealing with the processing of agricultural products should be revised. The Agricultural Processing Working Group was to consider whether changes were needed and, if so, to develop language to revise the statute for introduction in the 1997 Legislature. The Agricultural Processing Working Group met on July 2, 1996 to consider these issues.

Agricultural Processing Working Group

The group was comprised of the following persons: Ronald Eber, Agricultural Lands Specialist for DLCD; Senator Bob Kintigh; Lorna Youngs, Assistant Director for the Oregon Department of Agriculture; Lynn Beaton, Oregon Economic Development Department; Don Schellenberg, Oregon Farm Bureau; Art Schlack, Association of Oregon Counties, and Blair Batson, 1000 Friends of Oregon.

Results of Review

At its meeting, the group reviewed and discussed the applicable statutory provisions, an analysis of the current case law on the matter (enclosed), past legislative proposals including SB 946 (1995) and their experience(s) with the application of these provisions to specific land use proposals at the local level. No one was aware of any specific problem(s) with the existing provisions or the need for any new legislation at this time. However, the group agreed to continue to monitor the situation and if any problems should develop, refer them to the Governor's Food Processing Council for review.

Finally, the group's discussion of SB 946 did uncover an issue that deserves further comment. SB 946 proposed a description of the term "preparation" included in the definition of "farm use" in ORS 215.203. "Preparation" of a farm product is allowed as a farm use and such activities receive special farm use assessment. "Processing" activities are not a farm use and do not receive special assessment. The bill was proposed because a local assessor disqualified an activity he believed was "processing" and not the "preparation" of a farm product. The proposed language was intended to resolve a tax issue by providing special farm use assessment to the land under an owner's preparatory activities but not authorize a new nonfarm activity in a farm use zone. Unfortunately, the

bill as drafted, appeared to allow some new processing activities as outright farm uses rather than just resolve the tax issue.

In light of this, the group agreed that caution is needed when proposing amendments to the definition of "farm use" because it both defines the allowed farm uses in a farm zone and the land eligible for special farm use assessment. Had the proposed amendment been to the subdefinition of "current employment" it would not have affected the allowed farm uses and provided the intended tax benefit.

The Farm Bureau expressed interest in legislation that would extend the provision of special assessment to not only the defined "farm uses" including preparatory activities but also to those nonfarm processing activities now allowed as "commercial activities that are in conjunction with farm use" by ORS 215.283(2)(a). **The group did not take on a position on this issue.**

Recommendation

The group does not recommend any legislation at this time. Based on the group's review of the situation, there is not a problem with the provisions allowing for the processing of agricultural products in an exclusive farm use zone.

If you have any questions, please call Ronald Eber at 373-0090.

Farm Zone Provisions Related to Processing Agricultural Products

ORS 215.203: Definition of Farm Use

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:

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 and storage of the products raised on such land for human use and animal use and disposal by marketing or otherwise.** "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 species. It 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

The highlighted (**bold**) part of the definition is the language 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. As a general rule, the preparation, storage or sale of a farm product is considered an allowed farm use when a majority of the farm products come from the subject farm. Additional farm products can also be prepared, stored or sold from other farms in the area. However, when a majority of the farm products come from neighboring farms in the area, not the subject farm, preparation and storage are treated as "commercial activities in conjunction with farm use" and "sales" are treated under the "farm stand" provisions. "Preparation" has been interpreted to include cleaning, sorting, packaging and other preparatory activities for 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). Making a new or different product from the naturally grown farm product is "processing" not "preparation" and treated as a "commercial" activity in conjunction with farm use.

ORS 215.283(1)(s): Farm Stands If:

(A) The structures are designed and used for the sale of farm crops and livestock grown on farms in the local agricultural area, including the sale of retail incidental items, if the sales of the incidental items make up no more than 25 percent of the total sales of the farm stand; and

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

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

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. Copies of the different versions of this use considered by the Legislature in 1973 are enclosed.

The Court cases that have established these guidelines are Craven v. Jackson County, 308 Or 281 (1989), City of Sandy v. Clackamas County, LUBA No. 94-104, November 1994 and Earle v. McCarthy, 28 Or App 539, (1977).

Senate Bill 101
1973 Oregon Laws Chapter 503 Sec. 4
Original Bill (reprinted excerpts)

215.213 The following nonfarm uses may be established in any area zoned under ORS 215.010 to 215.190 for farm use:

(3) Commercial activities on the same land as and clearly incidental and secondary to farm use.

Re-engrossed bill, including amendments by Senate
February 2 and May 18, 1973

215.213 (2) The following nonfarm uses may be established in any area zoned under ORS 215.00 to 215.190 for farm use subject to the approval of the governing body of the court . . .

(a) Commercial activities that are in conjunction with farm use.

Fluhm-Pattie suggestions:

(3) Commercial activities which are clearly incidental and secondary to farm use and which are customarily located in close proximity to farm operations.

Or

"Commercial activities which are directly related to the farming operation.

Proposed (9) Private shops located on farm use land that provide services ~~related to~~ directly related to farm operations of other lands within the farm use zone.

"(3) Subject to the approval of the governing body of the county, commercial activities that are in conjunction with farm use and not operated as a separate business or enterprise. "

"(3) The following commercial activities operated in conjunction with farm use and not as a separate business or enterprise:

- (a) Hop, nut and fruit driers.
- (b) Feed mixing and storage facilities.
- (c) Mint distilleries.
- (d) Rendering plants.
- (e) Seed processing, packing, shipping and storage facilities.
- (f) Slaughter houses.
- (g) Agricultural produce storage facilities.
- (h) Feed lots.
- (i) Hullers.
- (j) Any other similar processing and allied farm commercial activities.