



Protecting the Ability to Farm

Right to Farm and Land Use in Oregon

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Conflicts with Farm Use “Nuisances”

- Odors
- Noise
- Dust
- Chemical Use
- Smoke
- Bees
- Irrigation mist



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Conflicts with Farm Use Compatibility

- Animal Control**
- Refuse and Litter**
- Alteration of Practices**
- Trespass**
- Theft and vandalism**
- Traffic**
- Competition for resources**
- Nonfarm chemical use**
- Hosts for pests**
- Air drainage and flow**



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Oregon's Right to Farm Law

ORS 30.933

Two major protection components:

- **Immunity from private action**
- **Prohibition against regulation by local governments**



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Not a Blank Check



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Oregon's Right to Farm Law Qualifying Components

**No farming or forest practice
on lands zoned for farm or
forest use shall give rise to
any private right of action or
claim for relief based on
nuisance or trespass.**

ORS 30.936(1)



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Immunity: Qualification

“Definition of Farming Practice”

A mode of operation on a farm

Definition of *farm*:

Any facility, including the land, buildings, watercourses and appurtenances thereto, used in commercial production of crops, nursery stock, livestock, poultry products or the propagation and raising of nursery stock.



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Immunity: Qualification “Definition of Farming Practice”

A mode of operation on a farm that:

- (a) Is or may be used on a farm of similar nature;
- (b) Is a generally accepted, reasonable and prudent method for the operation of the farm to obtain a profit in money;
- (c) Is or may become a generally accepted, reasonable and prudent method in conjunction with farm use;



Immunity: Qualification

“Definition of Farming Practice” (continued)

A mode of operation on a farm that:

(d) Complies with applicable laws;
and

(e) Is done in a reasonable and
prudent manner.

ORS 30.930(2)



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Immunity: Key Elements

“Definition of Farming Practice”

Includes the transport or movement of equipment, device, vehicle or livestock on a public road if the activities are conducted in a reasonable and prudent manner.

ORS 30.931



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Immunity Components: Definition of “Nuisance or Trespass”

Includes but is not limited to, actions or claims based on noise, vibration, odors, smoke, dust, mist from irrigation, use of pesticides and use of crop production substances.

ORS 30.932



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Immunity: Components

Location/Zoning

No farming or forest practice on lands zoned for farm or forest use shall give rise to any private right of action or claim for relief based on nuisance or trespass.



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Immunity: Components Location/Zoning

No farming or forest practice on lands zoned for farm or forest use ~~occurring outside an urban growth boundary~~ shall give rise to any private right of action or claim for relief based on nuisance or trespass.



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Immunity: Components Application

Immunity provided if:

- (a) Consistent with definitions (*farm use, farm, etc.*);**
- (b) Lands are zoned for farm or forest use;**
- (c) Complies with applicable laws**
- (c) Regardless of change or interruption of use.**

Except....



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Immunity: Key Elements Application

**Immunity (even if consistent w/
criteria) not provided if an action or
claim for relief involves:**

- (a) Damage to commercial
agricultural products; or**
- (b) Death or serious injury.**



Local Ordinances

Any local government or special district ordinance or regulation now in effect or subsequently adopted that makes a farm practice a nuisance or trespass or provides for its abatement as a nuisance or trespass is invalid.

Applies to farm practices that would qualify for immunity under the law.



Right to Farm: Issues

- Does not prevent a suit from being filed.
- Farmer/rancher must defend = cost
- Legal costs: prevailing party shall be entitled to judgment for reasonable attorney fees and costs (ORS 30.938)



Right to Farm: Issues

- **Involves interpretation**
- **By a Circuit Court**
- **Legality**
- **Good Neighbor or legislature!**



RTF Does not...

- **Protect from off-site conflicts.**
- **Preclude a jurisdiction from regulating farm use from land use perspective.**
- **Recognize competing “primary” land uses in transitional/edge areas.**

These are land use issues.



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Marijuana v. Hemp: Key Points

- State statute specifically states that medical cannabinoid products do not include “industrial hemp, as defined in ORS 571.300. See ORS 475B.410 (15)(b)(D).
- State statute is silent on the regulation of industrial hemp. Yet the legislature specifically addressed (allows for) the regulation of both medical and recreational cannabis.
- The legislature did provide for local government to opt out of “allowing for” any land use related to recreational cannabis and for the siting of medical cannabis dispensaries. The statute is silent related to hemp.



Marijuana v. Hemp: Key Points

- The legislature did authorize the production and possession of industrial hemp and commerce in industrial hemp products. See ORS 571.305(1). No other outside jurisdiction is offered in state statute.
- The legislature declared that “industrial hemp is an **agricultural** product that is subject to regulation by the State Department of Agriculture.”



Marijuana v. Hemp - Conclusions

- Because hemp and hemp seed production involve the “raising, harvesting and selling of crops,” it is a farm use as defined in ORS 215.203. And because there is no authorization to regulate this farm use by state law, it appears that the regulation by a local jurisdiction would violate Oregon “Right to Farm” statutes that preclude local regulation of a farming practice.
- Processing is not a farm use and can be regulated by local government





QUESTIONS?

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