

February 23, 2006

TO: County Planning Directors and Interested Persons

FROM: Ronald Eber, Farm and Forest Lands Specialist

SUBJECT: **Adopted Amendments to Administrative Rules Regarding Farm and Forest Land (OAR Chapter 660, Divisions 006 and 033) in Response to 2005 Legislation and Affecting Farm Stands**

Enclosed are the amendments to the Goal 3 and 4 administrative rules (OAR 660 divisions 006 and 033) adopted by the Land Conservation and Development Commission at its February meeting. **The amended rules were filed with the Oregon Secretary of State and became effective on February 15, 2006.**

PUBLIC NOTICE AND OUTREACH

In accordance with the Oregon Administrative Procedures Act (APA) and the Commission's rule (OAR 660 Division 001), the department published notice in the Secretary of State's Rules Bulletin on January 2, 2006. Notice of the proposed rules was provided to the members of the Legislature specified under ORS 183.335(15) and sent to a number of the department's administrative rule notice lists. These include the "all rules," Goal 3 & 4 lists, state agency contacts, city and county planning directors and other interest groups. All comments including emails were submitted to the Commission.

BACKGROUND

The proposed rule amendments incorporate the 2005 legislative amendments to ORS Chapters 197 and 215 into the Commission's Goal 3 and 4 rules regarding Agricultural and Forest Lands (OAR 660, Divisions 6 and 33). The commission also adopted amendments to increase the ability of farm stands to sell Oregon farm products in exclusive farm use zones.

FORMAT

Deleted text is ~~[bracketed]~~: new text is **bold and underlined.**

SUMMARY OF AMENDMENTS TO GOAL 3 RULE

1. **OAR 660-33-120 - Table 1** (attached in front of division 033): Adds or amends approval standards for certain non farm uses allowed in farm use zones. **HB 2069** provides for landscaping businesses in conjunction with a farm; **HB 3117** provides for the continuation of an existing county law enforcement facility in Marion County; **SB 346** clarifies which type of aquaculture operations qualify as an outright farm as opposed to a conditional non farm use.
2. **OAR 660-033-0130(8) (SB 863)** –Adds the new statutory provision allowing someone to defer actually replacing an exiting dwelling after its demolition to sometime in the future. [p.14, line 17 and lines 32-42]
3. **OAR 660-033-0130(23) – Farm Stands:** These amendments were not required by any legislation, but prior to the session various farm interests discussed the need for either statutory or rule amendments to address the operation of farm stands. The amendments do two things: (1) clarify 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) clarify that farm products from throughout Oregon may be sold. Adoption of these proposed amendments by the commission may avoid the need for legislation on this subject in the next session.

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. As used here, “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 proposed amendments to subsection (c) of this rule 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 amendments 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. [p. 19, lines 1-10]

4. **OAR 660-033-0130(36) (HB 2932)** – Authorizes all counties except Lane and Washington (marginal land counties) to provide for services to veterans in rural community centers in existence on January 1, 2006 [p. 22, lines 13-20]

SUMMARY OF AMENDMENTS TO GOAL 4 RULE

1. **OAR 660-006-0027(7) (HB 3313)** – Declares that where an existing dwelling is required to be in the 160-acre template for a dwelling under ORS 215.750 and OAR 660-006-0027(1)(f) & (g), the dwelling will be considered ‘in’ the template “if any part of the dwelling is in the 160-acre square or rectangle” [p. 13, lines 9-13]
2. **OAR 660-006-0031(10) (HB 3313)** – Corrects reference to ORS 215.428(3) to cite 215.427(3) because of 1999 legislative change [p. 17, line 27]

If you have any questions, please contact Ronald Eber, Farm & Forest Lands Specialist at 373-0050, ext. 247 or at Ron.Eber@state.or.us.

Attachments

1. Division 033 – Agricultural Lands (green)
2. Table 1 – OAR 660-033-0120 – (salmon)
3. Goal 3 Exhibit ‘A’ (white)
4. Division 006 – Forest Lands (blue)
5. Goal 4 Exhibit ‘A’ (white)

Department of Land Conservation and Development

Farm Stands Backgrounder

Updated May 5, 2025

Farm Stands

Introduction:

Land in exclusive farm use zones is mainly for farming, with only certain other uses allowed by law. One permitted use is a farm stand that sells locally grown crops or livestock. The farm stand can also sell some related retail items and host events to promote its products. However, income from events and retail sales cannot exceed 25% of the farm stand's total earnings.

The existing statutes for farm stands are ORS 215.213(1)(r)/215.283(1)(o):

“...the following uses may be established in any area zoned for exclusive farm use: ...Farm stands if:

“(A) 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 activity 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”

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

Land protected under exclusive farm use zoning is meant to be reserved for farm operations. In addition to farming, other non-farm uses that are listed by the legislature may also be allowable. That list of uses is divided into two categories that planners refer to as “sub-1 uses,” those listed in ORS 215.283(1) and ORS 215.213(1) or “sub-2” uses, those listed in ORS 215.283(2) or ORS 215.213(2).¹ The first category, sub-1 uses, are uses that the legislature generally finds to be compatible with an agricultural environment and neighboring farm operations so long as the standards established in statute are applied.

¹ ORS 215.213 applies to Washington and Lane Counties. ORS 215.283 applies to all other counties in Oregon. The reasons for this differentiation are irrelevant to this discussion.

The second category, sub-2 uses, are uses that the legislature has found may or may not be compatible with an agricultural environment depending on the circumstances of the specific proposal. Sub-2 uses must be found to be compatible with surrounding farm and forest uses through a public review process.

Farm stands are what is what planners call a “sub-1” use – that is a use listed in ORS 215.213(1) or ORS 215.283(1). Because it is a sub-1 use, every county in Oregon must allow farm stands in their ordinance and they must apply only the standards in statute. A county may not apply additional criteria to farm stands. Because it is a sub-1 use, a county does not consider as part of its review process whether or not a farm stand may have impact on the surrounding agricultural area.

While the Land Conservation and Development Commission (LCDC) has the authority to interpret and clarify the statutory provisions copied above, it cannot revise the standards established by the legislature or contradict them.

Brief History:

- Prior to 1993, DLCD had interpreted farm stands that were simply selling farm products produced on the underlying farm to be considered a part of ‘farm use’ for which no land use permit was required, while farm stands where the majority of the products came from other farms were required to be permitted as commercial activities in conjunction with farm use subject to county review.
- Farm stands were added to the list of uses allowable in exclusive farm zones in 1993. The gross income limitation for sales of incidental and retail items at farm stands, and the limitation on structures were in the original statutory language.
- The allowance for promotional activities to be conducted at farm stands for a fee was added in 2001 (2001 HB 3924). The legislative history indicates that the addition was intended to be a minor modification to that allow fee-based activities while avoiding an unintended consequence of some other large scale commercial activity or restaurant going into a farm zone as a sub-1 use.
- In 2006 LCDC added language to administrative rules adopted by the Commission to implement Oregon’s agricultural statutes to clarify that Oregon farm products that are processed could be sold as though they were ‘farm crops’ rather than ‘incidental retail items’. LCDC clarified that processed farm products, like ciders, jellies and jams, were not subject to the 25% gross income limitation for “incidental items and fees from promotional activity.” The rulemaking record clarifies that 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.

- In 2024 LCDC added language to the same administrative rules to clarify that, at a minimum, counties should use an IRS tax return transcript when verifying whether a farm stand complies with the 25% income threshold. The rule language recognizes that counties will likely require additional information when verifying compliance with the statutory provision.

Interpretations:

The Court of Appeals interpreted the farm stand regulations in the Greenfield/Bella Organics case in 2013. The decisions contain more detail on the legislative history for ORS 215.213(1)(r)/215.283(1)(o) and discussions relevant to topics the RAC will be considering. Both the LUBA and the Court of Appeals decisions can be found here: https://cdnsm5-hosted.civiclive.com/UserFiles/Servers/Server_3585797/File/Government/County%20Departments/Public%20Works/Land%20Management%20Division/Land%20Use%20Planning%20Zoning/Lane%20Code%20Legislative/509-PA14-05054%20LCPC%20Attachment%204.pdf

2025 Farm Stand Rulemaking:

The Phase 1 Farm Stand Rulemaking will explore five topics identified by the 2025 legislative agri-tourism work group:

- **Primary Use Test:** Is farming required to be the primary activity on the property hosting a farm stand? If so, how do counties ensure that farming rather than sales and events remains the primary activity on the property?
- **Activities that Promote Sale of Farm Products, the Farm Operation Itself, or Agriculture:** What types of promotional events and activities may be authorized in conjunction with a farm stand instead of being authorized through an agritourism events permit or other process? Note that agri-tourism events not in association with a farm stand may be, and often are, permitted under the standards for ‘agri-tourism and other commercial events’ (ORS 215.213(11)/215.283(4)). This is a different use that the Legislature added to the exclusive farm use zone statutes in 2011.
- **Promotional Activities Outside and Inside Farm Stand Structures:** A farmstand may not include structures for banquets, public gatherings or public entertainment. Where on the property may promotional events occur?

- Prepared Foods with a Direct Tie to the Farm Operation or the Local Agricultural Area: To what extent may prepared foods and beverages be offered at a farm stand?
- Impacts on Neighboring Farms: Should counties consider impacts to neighboring farms or forest operations from a farm stand operation as part of the permitting review process?

Original 1993 version of the farm stand statute:

“...the following uses may be established in any area zoned for exclusive farm use: ...Farm stands if:

“(A) The structures are designed and used for the sale of farm crops or 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 or livestock and does not include structures for banquets, public gatherings or public entertainment.”

Current version of the farm stand statute:

“...the following uses may be established in any area zoned for exclusive farm use: ...Farm stands if:

“(A) 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 activity 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”

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

Current version of the farm stand rule:

OAR 660-033-0130(23) A farm stand may be approved if:

(a) The structures are designed and used for sale of farm crops and 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 activity to promote the sale of farm crops or livestock sold at the farm stand if the annual sales of the 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

(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.

(c) 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 farm 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.

(d) 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.

(e) A farm stand may not be used for the sale, or to promote the sale, of marijuana products or extracts.

(f) At the request of a local government with land use jurisdiction over the farm stand, the farm stand operator of a farm stand approved under this section shall submit to the local government evidence of compliance with the annual sales requirement of subsection

(a). Such evidence shall consist of an IRS tax return transcript and any other information the local jurisdiction may require to document ongoing compliance with this section or any other condition of approval required by the county.

Agency Thoughts on Rulemaking for Issues Addressed at RAC Meetings 1 and 2

Below are initial thoughts from agency staff on language to address some of the issues raised at the first two RAC meetings. Additional issues discussed at the third RAC meeting will be considered and staff will provide their thoughts on those issues and other comments received prior to the July RAC meeting. The July RAC meeting will be devoted to a discussion of these initial thoughts on rule language.

There will not be agenda time at the June 24th meeting for discussion of the below. The agency is providing our initial thoughts at this time in order to allow RAC members to consider the below and provide additional written feedback to staff before the packet for the July meeting is finalized.

Rule Language to clarify when a farm stand is a “farm use” and when it requires a farm stand permit.

There seemed to be broad support among RAC members for clarifying when certain activities are a ‘farm use’ and when they require a farm stand permit. We heard a desire on the part of RAC members to clarify when educational activities and tours are permissible as a farm use.

Several proposals were received from the public which were very. There seems to be general agreement that educational activities for which no fee is charged may be permitted as a farm use.

Suggestion:

Possible rule language:

“A temporary structure designed and used only for the sale of farm crops and livestock grown on the farm operation is not a farm stand. Low-intensity promotional activities, such as farm tours, for which no fee is charged or collected do not require a farm stand approval.”

“For purposes of this section “temporary structure” includes structures such as tents, canopies, chairs, benches and tables that are sited on the property for no more than 90 days in a calendar year. “Temporary structure” does not include food trucks.”

Provide an agency guidance document or memo post rule-adoption with examples such as the following:

- Approve as a “farm use” proposals that do not involve selling processed foods, retail items, produce from other farms or developing structures.
- A temporary structure such as a roadside table and tent canopy selling farm crops and livestock produced on the hosting farm is a “farm use”.
- A u-pick operation supported by a table and temporary tent canopy for weighing produce and collecting money is a “farm use”.

Local Agricultural Area

“Local Agricultural Area” is defined in rule (OAR 660-033-0130(23)(d)):

(d) 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.

This section was added to rule in 2006. A number of RAC members expressed verbal and written support for the current version of the rule and like the flexibility to be able to offer a wider range of products, particularly in the off-season. Members shared that the diversity allows them to keep employees during the off-season.

Other members expressed a belief that the legislative intent was for products being sold at farm stands to be sourced from a more localized area. These members are advocating for adoption of a narrower definition. Several proposals were received for language that would narrow the definition of “local agricultural area”.

Suggestion:

If no change to this section of rule is included in the Notice of Proposed Rulemaking, LCDC would be precluded from making any changes to this section of rule during the hearings process.

Possible rule language:

“Local Agricultural Area” is defined in rule (OAR 660-033-0130(23)(d)):

(d) As used in this section, "local agricultural area" includes Oregon. or an area in Washington, Idaho, Nevada or California that borders the Oregon county in which the farm stand is located and is within 50 miles of the Oregon state boundary.

Retail Item Limitations

Some RAC members proposed clarifying the relationship between incidental retail items sold at a farm stand and farm crops and livestock sold at the farm stand. The concept was brought up during the first RAC meeting and did not engender much discussion.

Suggestion:

“For purposes of this section “retail incidental items” are items with a direct relationship to the farm crops or livestock sold at the farm stand and which are intended to promote the sale of farm crops or livestock sold at the farm stand. Such retail incidental items may include, but are not limited to, vases for flowers grown on the site, carving kits for pumpkins grown on site, t-shirts advertising the farm itself.”

Activities that Promote Sale of Farm Products, the Farm Operation Itself, or Agriculture

The agency posed a number of questions to RAC participants around clarifications on events that are allowable at farm stands as opposed to events which require other permits. There is a variety of opinion on this topic with some members advocating for more restrictions and others advocating for more flexibility.

The relationship between promotional activities and farm stand products

Statute allows “fee-based activity to promote the sale of farm crops or livestock sold at the farm stand”. There are a variety of opinions on how direct the relationship between the activities and the farm stand products should be. The agency received several proposals for language that would clarify the necessary relationship between the activities and farm crops and livestock sold at the farm stand. The agency has also heard that there is a need to clarify how fee-based educational activities may be permitted and that examples of allowable activities would be useful.

Suggestion:

“For purposes of this section “promotional activity” involves activities related to the farm crops or livestock sold at the farm stand and which are intended to encourage the sale of farm crops or livestock sold at the farm stand or educate visitors on the agricultural practices being conducted on the farm. Such activities may include, but are not limited to, flower arranging classes at a farm stand that sells cut flowers, fee-based tours, cooking demonstrations using farm products sold at the farm stand, product sampling or tasting,

rides to or through crop fields, farm-to-table dinners predominantly featuring farm crops and livestock sold at the farm stand. Promotional activities authorized by this section are incidental and subordinate to the sale of farm crops or livestock at the farm stand.”

Parameters on scope and scale of allowable activities

There was some discussion at the RAC of standards which would limit the scope, scale or intensity of promotional events at farm stands. Several comments submitted indicated that these types of standards, if adopted should focus on capacity issues such as parking spaces, sanitation, etc. Some comments received indicated that such standards may not be able to apply to a variety of proposals (ie there is no one-size- fits-all solution) and may be burdensome. Other comments included proposals for specific limitations such as days of events and number of cars.

Suggestion:

At this time the agency is not proposing any standards addressing scope or scale of allowable activities.

Farm Stand Events vs Other Permitting Pathways

Several proposals were received that would prohibit promotional activities at farm stands that could be permitted under another use category. Not all counties offer these alternative pathways.

Suggestion:

At this time the agency is not proposing a rule amendment that would prohibit promotional activities.

Temporary Structures

Statute prohibits the use of farm stand structures for banquets, public gatherings or public entertainment. The holdings in the Greenfield case include that temporary structures are subject to this limitation. This interpretation means that no farm stand structures, including temporary tents and canopies, may be used for banquets, public gatherings or entertainment. This means that promotional events only occur out-of-doors, or that they occur in a structure only if the promotional events do not involve banquets, public gatherings or entertainment. Several RAC members cited this as a health and safety issue.

There was a variety of opinion on this topic, however, with some RAC members expressing concern that these structures become permanent in practice and allow a larger scale of activity than permitted by statute.

Suggestion:

“Temporary structures may be used to shelter visitors participating in promotional events authorized by this section.”

“For purposes of this section “temporary structure” includes structures such as tents, canopies, chairs, benches and tables that are sited on the property for no more than 90 days in a calendar year. “Temporary structure” does not include food trucks.”