Public Comment received for the 2025 Farm Stands Rulemaking May 24, 2025 through June 11, 2025

All public comment received for this rulemaking may be viewed at: https://www.oregon.gov/lcd/lar/pages/rulemaking.aspx

Friends of French Prairie is an Oregon non-profit corporation

PO Box 403 | Donald, Oregon 97020 | www.friendsoffrenchprairie.org

June 2, 2025

To:

Re: FOFP COMMENTS ON OAR 660-033-0120 REGARDING FARM STANDS IN ELCLUSIVE FARM USE ZONES AND AGRI-TOURISM

The intent of the 1993 farm stand legislation was the ability of farmers to sell their neighbors' products in addition to products grown on their farm without having to qualify as a commercial activity in conjunction with farm use. It should be noted that what the Legislature was also trying to avoid was enabling some farm stands to essentially become specialty grocery stores that would compete with existing grocery stores in town. Farm stands were to be direct marketing efforts to support small farms by enabling an on-site retail revenue stream with minimal overhead.

The intent was also to promote local farming through the sale of products grown on the farm or grown in the immediate area. The legislature did not want farm stands to sell products that were not from the local agricultural area. Local zoning comes into play because they may or may not allow sale of specialty items related to the farm or farm stand, or allow fee-based activities to promote the farm as well as farm promotion activities such as farm-table-dinners, etc. Of note is that the income from these retail activities cannot make up more than 25% of the farm stand's annual sales.

While this legislation and the accompanying county zoning and farm stand rules have benefited many farmers, there has unfortunately been a significant lack of oversight and enforcement. Farm stands that are selling artichokes, pineapples, mangoes, Italian pasta, pottery, etc. are clearly not sourcing those items from the farm, from neighboring farms, or the nearby region. Further, many have evolved essentially into mini-theme parks or restaurants. Though most farm stands are on small farms, many large farm stands are clearly operating beyond the scope of that legislation and this reality must be seriously assessed before any consideration of expanding the farm stand rules.

Friends of French Prairie encourages the RAC to both address the need for enforcement as well as language that clarifies what items can and cannot be sold to promote local farm crops and the geographic range from which they can be sourced. We further support the five topics addressed by 1000 Friends of Oregon in their submitted comments, and specifically changes to LCDC's table of uses (A23) at OAR 660-033-0120:

1. Primary Use Test

The proposed amendment to OAR 660-033-0130(23)(c) would clarify that a predominance of the farm crops and livestock sold at a farm stand must be grown on the farm operation where the farm stand is located. The proposed amendment to OAR 660-033-0130(23)(f) clarifies that "incidental items" are farm-product themed merchandise designed specifically to promote local agricultural products that are sold at the farm stand.

2. Promotional Activities Outside and Inside Farm Stand Structures

The proposed amendment to OAR 660-033-0130(23)(e) would clarify that fee-based promotional activities at farm stands do not include activities or events that are already authorized under other provisions of the Goal 3 rule, such as agritourism and other commercial events and activities authorized under OAR 660-033-0120, OAR 660-033-0130(5) and ORS 215.283(4).

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

The proposed amendment to OAR 660-033-0130(23)(d) would clarify that "local agricultural area" includes agricultural operations within a 50-mile radius of the farm stand and not statewide, consistent with the legislative history of ORS 215.283(1)(d). The proposed amendment to OAR 660-033-0130(23)(e) would clarify that fee-based promotional activities at farm stands do not include activities or events that are already authorized under other provisions of the Goal 3 rule, such as agritourism and other commercial events and activities authorized under OAR 660-033-0120, OAR 660-033-0130(5) and ORS 215.283(4).

4. Prepared Foods with a Direct Tie to the Farm Operation or the Local Agricultural Area

The proposed amendment to OAR 660-033-0130(23)(c) provides a definition of "prepared food items," which the statute does not allow to be sold a farm stand. Specifically, "prepared food items" are defined as foods prepared on-site for immediate consumption by cooking, chopping, slicing, mixing, squeezing, or other preparation. Prepared food items include such items as hotdogs, hamburgers, sandwiches, charcuterie boards, hot soup, salads, coffee and hot chocolate. Prepared food items do not include fresh produce provided for consumption without preparation or packaging.

5. Impacts on Neighboring Farms

The proposed amendment to OAR 660-033-0130(23)(e) would clarify that fee-based promotional activities at farm stands do not include activities or events that are already authorized under other provisions of the Goal 3 rule, such as agritourism and other commercial events and activities authorized under OAR 660-033-0120, OAR 660-033-0130(5) and ORS 215.283(4). These activities and events are subject to rule and statutory criteria requiring the consideration of impacts on neighboring farms. The proposed amendment to OAR 660-033-0130(23)(i) would require the biennial review of farm stand permits to ensure the continuing compliance with the requirements of OAR 660-033-0130(23).

Again, we encourage a serious assessment of enforcement of the current rules that were aimed to financially assist small farms and to promote local farming.

Sincerely

Ben Williams, President

Benjamin D Williams

DLCD RAC Farm Market

What is Agritourism?

By Claire Zielinski

In this brief article I will reflect on the potential definition of agritourism, and how it affects farmers lives and income. I will also analyze how other countries define and structure agritourism and the positives and negatives they have seen. Lastly, the profound impact it has on bringing future generations back to the farm and keeping them interested in agriculture and living in rural areas.

Agritourism is selling or offering a commodity, service, or experience direct to the consumer. Agritourism is often performed but not limited to: permanent brick and mortar stores like farm markets, online retail, appointment only, tours and educational experiences, u-pick, or experienced during events/festivals. The products sold varies from the raw commodity, the processed commodity, affiliated commodities, and other businesses goods. These products are normally centralized around the commodity that is grown, agriculture in general, or around farmers and farm communities. Agritourism grows and changes with the market and trends of consumers and is likely to continue to grow and change; but is focused around selling and educating consumers on food, fiber, energy, and agriculture itself.

Agritourism is difficult to define as like all other forms of agriculture it is constantly changing. It can change based on trends, the environment, profit, the market, and other factors. Agritourism is impacted in these changes just as much as any other form of agriculture, but often times the correlation for change is more direct reflecting in people. Salem used to be the Cherry capitol of the United States holding a cherry festival each year. However, cherries became less popular. Farmers started tearing out their orchards and 1912 was the last official cherry festival for the city of Salem. Now, there are very few cherry farmers left in Salem.

While these trends from the public greatly impact agritourism because they are selling directly to the consumer. We cannot assume these trends do not also affect other types of farms. Many farmers who sell their products on the open market can be heavily affected by the prices of a commodity. "Multiple studies show that farmer suicide rates are 2-5x higher than the national average. Experiences such as natural disasters, extreme weather events, financial uncertainty, fluctuating markets, labor shortages, trade disruptions and other factors all contribute to extreme

stress for farmers and ranchers who often live in a very isolated setting." *American Farm Bureau*. Sadly each year many farmers mental health is affected due to their crops; often times because of poor prices and financial ruin. A few years ago there was a gold rush on Hemp, that many farmers in the Willamette Valley tried to get a part of to make it rich. Sadly, the market was over supplied and prices crashed, and some farmers took their lives over it.

Financial uncertainty is one of the main reasons farmers turn away from selling on the open wholesale market, and switch to selling direct to the consumer. It gives them the power to set their price and gives them control over their livelihoods. Removing a huge source of stress and mental taxation. Through my involvement in the farming community I have met many farmers who when asked about their story of why they switched to selling direct to consumer. Answered that it was because of financial reasons, and that agritourism gave them the opportunity to continue to do what they love and continue it forward to future generations.

While some people switch to agritourism because of the financial security and benefits it gives them. Many young farmers are incorporating some form of agritourism into their farm operations. Young farmers find the draw of agritourism for many reasons including financial benefits, capability of operating, and creating their own space. According to the Oregon Farm Bureau "96.7%" of farms in Oregon are family owned and operated. Many of these family farms have multiple generations working on the farm and find it financially difficult to support the next generation as well.

Introducing agritourism to their farm can give them the funds to offer that young generation a full-time livable wage so they can quit their "city jobs." Other young farmers feel the need to take on agritourism because they feel the capability to do so. "Generation Facebook (Generation F) is a demographic group that has grown up using social media as their primary networking tool." *Tech Target*. Being the Facebook Generation, many young farmers feel knowledgeable and capable of starting online sales and setting up direct to consumer sales quickly and easily. One of the reasons I love to see people bring agritourism into their farm operation is because the next generation has an interest in it. Just as family farms can be strapped to provide enough income for the next generation, they can also be at a loss for work with multiple generations on the same farm. Being open to a new business venture like agritourism give that new generation a space to carve out for themselves. Making them want to return to the family farm and continue it on for another generation.

One of the reasons I believe it is so important to entice young farmers back to the family farm is because of the example we are seeing in other countries around the world. Italy and Japan are having record breaking low numbers in their countryside. To the point that entire rural villages are left abandoned because all the young people are moving to the city. Seeing the previous generation working so hard with little financial return; many young people are leaving their family farms across the globe for a different lifestyle. Both Italy and Japan have come up with a wide variety of incentive programs to encourage people to move back to the country and pick up farming, and both have programs which promote agritourism.

The Rural Revitalization Law (地域活性化法, Chiiki Kasseika Hō) from Japan is designed to promote regional revitalization across Japan, focusing on rural areas. It provides legal frameworks for the development of local industries, tourism, and agriculture. Under the Chiiki Kasseika Ho, is the Act on Promotion of Rural and Agricultural Tourism (農業観光振興法, Nōgyō Kankō Shinkō Hō). This law was passed in 2016 to explicitly promote agriculture-based tourism, including agritourism. It aims to integrate agriculture with tourism, highlighting the importance of preserving farming traditions and providing both domestic and international tourists with authentic agricultural experiences. The law outlines the roles of local governments in promoting agritourism, encouraging them to collaborate with farmers and rural communities. It also establishes frameworks for certification of agritourism experiences, ensuring quality standards for activities such as farm stays, workshops, and guided tours.

In Italy, agr-tourism (known as agriturismo in Italian). Italian Law No. 730 of 1985 – "Norms on Agritourism." The law laid the foundation for the development of agritourism by defining the term "agriturismo" and establishing the rules for farm stays, meals, and activities that involve tourism on agricultural lands. After this law more were introduced to further define agritourismo's ensuring that they support agricultural production while also promoting sustainable tourism. Local regions like Tuscany, Lazio, and Emilia-Romagna have additional regulations that tailor agritourism to local agricultural products and traditions. For example in Tuscany they have additional laws with language to give structure to wineries and olive oil mills for tastings and tours, as those are some of their largest agricultural products in the region.

Both Japan and Italy focus their agritourism around hospitality with overnight farm stay experiences, or educational tours/demonstrations of traditional agricultural practices. There are also many agricultural experiences focused on food. Offering cooking classes, or a home cooked dinner that they can reserve. To experience, taste, and learn about regional traditional cuisine. This farm stay agritourism model has worked well for inviting foreign guests to the countryside in regions where they might not have otherwise been able to find accommodations. By having

farm stay experiences they then can explore these remote and not regularly visited areas to increase tourism and awareness. Italy has had greater success overall than Japan in using their programs to bring young people back to farming, and more tourists to the countryside. Between 2000 and 2020, the number of agritourism operations nearly doubled, driven by both local and international demand. According to ISTAT (Italian statistics agency), around 55% of agritourism operators are also engaged in diversified income activities like education, wellness, or artisan products.

While Oregon and the United States have not seen the amount of people leaving the countryside like Italy and Japan. I believe they are good precautionary tales of what could happen in the next twenty years. Proactive measures to encourage young people to remain in the countryside and continue their family farms will help prevent a loss of population numbers of rural communities. Agritourism should be one of the tools in the conversation to keep people involved in farming; and should be kept in mind when defining what agritourism is and what it has the capability of doing.

While the RAC is focused on farmstands. When considering the overall definition of agritourism I hope that the RAC keeps farm stays, wineries & other alcohol, events, festivals, weddings, tours, u-pick operations, and all other forms of agritourism in mind. I believe that agritourism touches on all these things, and while each have their own level or standards/regulations. If the definition of agritourism is changed through this RAC, it could affect other aspects of agritourism.

For weddings, I know I have heard frustration from many farmers about how in Oregon farmers have difficulty with how varied regulations on weddings are from county to county. I know a farmer who was personally frustrated that in his county he would only be able to host weddings if he was a vineyard or another type of alcohol producing business. However, he had lost his daughter to a drunk driving accident, and wants his farm to be dry in honor of her. He wanted to host weddings because he wanted to offer that experience to others as he could not have it with his daughter. The current regulations leave people who remain abstinent of alcohol for religious or other reasons from hosting weddings.

In comparing Oregon, the standards of hosting events, specifically weddings, on a global scale. In England and in Italy the major regulation stopping farms from hosting weddings is the requirement to be legally licensed as a place for weddings to be performed, which farms can attain. A business or wedding venue in the United State and the State of Oregon in not required

to have a license to be a legal space to perform a wedding. Below is a table with the differences between requirements for weddings in

Oregon, Italy, and England.

Comparison Summary Table of Weddings being Allowed on Farms Globally

Feature	Italy	England	Oregon (USA)
Legal Wedding Allowed?	Only in licensed venues	Only in licensed venues	Yes, with proper land- use permits
Symbolic Ceremonies OK?	Yes	Yes	Yes
Alcohol/Entertainment	Requires permits	TEN or Premises License needed	OLCC licensing required
Major Obstacles	Bureaucracy, noise rules	Neighbor opposition	Zoning, land-use limitations

Educating the public is a huge part of agritourism. Most of the public is multiple generations removed from a rural or agricultural lifestyle. "As a consequence, the ability of consumers to personally visit a farm has transformed into a special experience akin to tourism." *An Initial Economic Impact Estimate of Agritourism in Oregon's Willamette Valley.* While often people come to learn about the commodity the farmer grows through a tour. Sometimes the learning experience is visiting the farm itself and being exposed to different noises, animals, and plants. Animal experiences such as petting zoos are extremely popular especially among young developing children. However, adults often learn just as much as the kids do.

While the public may not be purchasing anything that the farm produces by visiting the farm, they are instead purchasing an overall experience. School tours are of course a great way to educate a large amount of people, but some children that are special needs do not do well around crowds or loud sounds. However, they benefit greatly from a quiet farm experience. There is a need for both hands on educational tours, but also quiet farm visits. To prepare ones farm for the public can be a great expense, so if a farmer charge for these experiences to cover those costs,

and their liability insurance. I believe it still qualifies as agritourism and a kind of agritourism that appeals and is needed by a certain crowd.

Again, agritourism is a large term that is hard to fully encompass as it is constantly changing. I would hope that the RAC leaves room for growth with their definition as change in the future is inevitable. I believe the trends in agritourism are focusing on food in the future. Based on research on other countries, agritourism has been a way to get people to move back to the depleting countryside. Agritourism is an extremely important tool for farmers that should be monitored but not stifled. For agritourism gives farmers economic diversity, a chance for younger generations to return to the farm, help keep rural communities populated and visited by tourists and educate the public about agriculture. I do acknowledge that there is a fine line between too little and too much regulation on agritourism. If agritourism is over regulated though, it stops agritourism from becoming a utilized tool.

From: Austin Barnes
To: FOOTE Hilary * DLCD

Subject: RE: Follow up for the 2025 Farm Stands RAC Meeting #2

Date: Wednesday, June 4, 2025 3:07:47 PM

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Hilary,

Here are some thoughts on those questions – I am working on some language that I will send along later as well.

1. What does the promotion of farm products involve? What sorts of activities are not promotional for the purpose of the farm stand rule?

I think it is harder to say what **can** fall into the promotional aspect as that is ever changing and evolving, so I will focus on what **is not**. It is not things that do not involve the farm product and do not have a direct connection to the farm or its operation. A farm tour certainly is promotion as is selling hay and offering hayrides. But allowing the public to simply picnic on top of hay, is not a promotional activity, hay is traditionally not used to sit on and this does not draw a tangible connection to the farm. This example said another way is: a tour of a strawberry farm that sells strawberries and strawberry muffins and milkshakes is all activity that can take place under a farmstand permit and is promotional. But charging people to have a picnic of their own food in a strawberry field would not be promotional, as there is no direct connection between the person and the strawberry, other than ambience. It is just a nice place to picnic. The promotional activity should give the person new knowledge about the farm or product and only be able to exist if the farm is operating. This is to say, that a picnic can happen anywhere, but a tour of a strawberry farm and their cleaning/sorting equipment, can only happen on a strawberry farm.

I use this a lot when explaining agri-tourism. If the agri-tourism can happen without the farm use on the parcel, then it cannot be agri-tourism. Agri-tourism is something that can only happen due to the exiting and continued farm use. I would say the same for a farm stand's promotional activity.

2. Would putting some parameters on scope and scale of allowable events be helpful or detrimental? What would that look like?

I am torn on this. On one side it would provide clear guidance, but on the other, it would kick a lot of people into getting secondary agri-tourism or mass gathering permits and cause a lot of confusion and re-permitting.

3. How direct should the relationship between the event and products being sold at the farm

stand be?

Extremely direct. The event should be directed related and derived from the products being sold/grown on the farm. The event should be based on what the farm stand sells. If I have a farmstand that sells apples and fruit, then I want to do a haunted house and food carts in the fall, that does not work. But if I do apple bobbing, pumpkin patch, apple throwing contest, apple baking contest, then that would work in my interpretation.

4. At what point is an application for an agri-tourism permit required rather than or in addition to a farm stand permit?

This should kick in when they are not selling product grown on the farm or utilizing the farm stand as the focal point of the event. In my example above, you have an apple farm doing an apple festival of sorts. This is accessory to the farm stand and further promotes it and apples. If you had an apple farm and farmstand but wanted to do barrel racing and a rodeo as a promotional activity, then that is when an agri-tourism permit would be needed. A rodeo does not promote apples.

5. Should there be graduated standards based on the intensity of the farm stand operation?

Potentially, I think this would be good to be tied to the occupancy rating of the building or capacity of the farm stand. If you have less than 30 parking spaces or expected customers, then it can be lesser. Maybe 31-70 is another level, and above 70 spaces is a third, higher level of review with more standards. I also think this could be a bad idea as farmstands change and grow over time and it is hard to know exactly how many people will show up on any given day. What if your farm stand blows up one summer on tik tok and now you have 200 cars a day, we might create regulatory nightmares doing this. I believe the best policy does not have graduated steps and instead controls itself the size of farmstands to keep them compatible for the area.

6. Should there be graduated standards based on the scale of promotional events?

Same as above. I think if you are needed graduated standards for events, you should just get kicked into an agri-tourism permit.

7. We have heard the need for clarifying that distinction between farm use marketing and farm stand marketing. Particularly on the topic of educational activities. Written comments on that would be helpful.

Giving farm tours with no farm stand = farm use. Same as U-Pick, farm use. Giving farm tours with a farm stand to promote what you sell = farm stand marketing. However, I am not sure this needs to be addressed as a part of this. I have not seen any issues raised regarding this or a LUBA case regarding this. please correct me if I am wrong. This seems to be a small difference but not sure it matters here. Farm use marketing does not require a permit, so I

don't see how this becomes an issue.

8. Should there be rule language clarifying different standards for temporary structures like tents and canopies? Should there be a time limitation or other standard to support a determination that the structure is temporary?

Yes – the structure could be up for one growing season, or yearly season (spring/summer/fall/winter). Or not more than 180 days, which is under ½ a year.

Thank you for your consideration and let me know if you have any questions!



Austin Barnes | Principal Planner

Marion County Public Works

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ON 5155 Silverton Rd NE, Salem, OR 97305

From: FOOTE Hilary * DLCD <Hilary.FOOTE@dlcd.oregon.gov>

Sent: Tuesday, June 3, 2025 1:00 PM

To: TAYLOR Casaria * DLCD <Casaria.TAYLOR@dlcd.oregon.gov>; LOBNIBE Silas * DLCD <silas.lobnibe@dlcd.oregon.gov>; HOWARD Gordon * DLCD <Gordon.HOWARD@dlcd.oregon.gov>; BOYER Barbara * DLCD <Barbara.Boyer@dlcd.oregon.gov>

Cc: GREENE Kirstin * DLCD <Kirstin.GREENE@dlcd.oregon.gov>; BONINI Alyssa * DLCD <alyssa.bonini@dlcd.oregon.gov>; HAMMER Alexis * DLCD <alexis.hammer@dlcd.oregon.gov>; donna@dsconsult.co

Subject: Follow up for the 2025 Farm Stands RAC Meeting #2

WARNING: This email originated outside of Marion County.

DO NOT CLICK links or attachments unless you trust the sender and know the content is safe.

Good afternoon RAC members,

Thank you for sharing your thoughts on promotional events at farm stands this morning. We found the discussion to be very helpful. Below are some of the questions we noted as emerging themes at the end of our meeting. There was a lot of material to digest today, so if you have additional thoughts on these questions or proposals related to these questions, it would be useful to staff to have those submitted as written comments.

- 1. What does the promotion of farm products involve? What sorts of activities are not promotional for the purpose of the farm stand rule?
- 2. Would putting some parameters on scope and scale of allowable events be helpful

- or detrimental? What would that look like?
- 3. How direct should the relationship between the event and products being sold at the farm stand be?
- 4. At what point is an application for an agri-tourism permit required rather than or in addition to a farm stand permit?
- 5. Should there be graduated standards based on the intensity of the farm stand operation?
- 6. Should there be graduated standards based on the scale of promotional events?
- 7. We have heard the need for clarifying that distinction between farm use marketing and farm stand marketing. Particularly on the topic of educational activities. Written comments on that would be helpful.
- 8. Should there be rule language clarifying different standards for temporary structures like tents and canopies? Should there be a time limitation or other standard to support a determination that the structure is temporary?

Please provide your written comments to us by the end of the day on Wednesday, June 11th. Written comments received before June 11th will be included in the packet for the June 24th meeting.

Within the next few days, we will be sending out the meeting summary for today's meeting for your review and will ask for any corrections to the summary by the end of the day June 11th.

Thank you for supporting this effort! We appreciate the time you are volunteering on this rulemaking.

Hilary Foote

Farm Forest Specialist | Community Services Division

Pronouns: She/Her

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For administrative support please contact:

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To provide comments to the Land Conservation and Development Commission please contact:

Casaria Taylor

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June 7, 2025

Via email

Department of Land Conservation and Development farmforest.comment@dlcd.oregon.gov

Dear DLCD,

Thank you for the opportunity to provide public comments throughout the farm stand rule making process. Here are our suggestions on selected questions which were enumerated at the end of the June 3 RAC meeting, These comments are being offered for both DLCD staff for the RAC, and for the LCDC.

- 1. What does the promotion of farm products involve?
- 2. What sort of activities are not promotional?
- 4. What does the relationship between the event and the products being sold need to be like?

The existing OAR 660-033-0130(23) stipulates that farm stands may be approved if:

(a) The structures are designed and used for the 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 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 or livestock and does not include structures for banquets, public gatherings or public entertainment.

The statutory wording is clear: any fee-based activity must *promote the sale of farm crops or livestock sold at the farm stand.* Activities to promote a) farming in general, b) sales of items that are not crops or livestock, or c) crops or livestock not sold at the farmstand, are not legitimate uses of farm stand structures. The OAR amendment (e) proposed by 1000 Friends of Oregon in their May 19, 2025 letter would appropriately limit activities at farm stands by excluding those authorized elsewhere under OAR 660-033-0120, OAR 660-033-0130(5) and ORS 215.283(4). To further specify what *is* allowed, we propose adding the following:

"Promote" means that the unambiguous focus of the fee-based activity is to sell specific crops and livestock which are grown on the farm operation for the primary purpose of obtaining a profit in money as defined in ORS 215.203(2)(a), and are sold at the farm stand.

This definition is designed to ensure that the activity occurs on the site where the farm stand is located and that crops and livestock raised for profit on the farm operation are an integral part of the activity. Sampling crops grown on site is an example of an appropriate event suggested by one of the RAC members.

Inserting the farm use criteria helps to define allowable educational events. For example, one RAC member described animal displays at a farm stand which does not sell livestock or livestock products. Such displays do not promote the sale of farm crops or livestock sold at the farm stand. Instead, they are petting zoos for the entertainment of children. They often display pets, borrowed or purchased animals, or animals which are given away at the end of the event. In contrast, using livestock raised for profit on site to demonstrate the reality of rearing, milking, shearing or processing, with the related livestock products being sold at the farm stand, is a farm use and promotes the sale of those farm products.

3. Would putting parameters on the scope and scale of events be helpful or detrimental? If it would be helpful, what would that look like?

1000 Friends of Oregon's proposed amendment requiring that agri-tourism, commercial events, and other activities described elsewhere in statute and rule be governed as such, and not as farm stands, would ensure that counties and county planning directors have the ability to limit those events appropriately.

As for activities that promote farm stand sales of crops and livestock, the legislature intended to limit those using the requirement that farm stands may include "the sale of retail incidental items and feebased activity to promote the sale of farm crops or livestock sold at the farm stand if the annual sales 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". We propose adding this clarification to OAR 660-033-0130(23)(a).

As used in this section, "fees from promotional activity" include admissions fees and any and all other amounts required in order to access the activity.

Currently, the 25% limit is rendered meaningless by bundling items otherwise categorized as crops or livestock with the event admission fee, then attributing most or all of the fee to those items. For example, with the purchase of a \$30 event admission ticket, the customer is given a gift certificate, a bakery item, and a jar of pickles. Each of the items could be purchased individually, apart from the event, if the customer wanted them. The total sales price of the bundled items is counted as sales of crops and livestock, with a tiny remainder of the \$30, if any, counted as the fee from the promotional activity subject to the 25% limit. The sole reason a person would pay an admission fee and thereby be required to "purchase" all of the bundled items is if there are activities or amenities accessible only by paying the admissions fee. Any required fee, then, is a fee for and from a promotional activity, and should be included in the 25% limit at the full amount the customer is required to pay.

9. Should there be clarification on standards for temporary structures; how do you allow people coming to events to be sheltered given the statutory constriction?

The farm stand statute and *Greenfield* case law are clear that all farm stand structures must be *designed* and used for the sale of farm crops or livestock; certain structures so designed and used may optionally be used for the sale of retail incidental items or fee-based promotional activity. A slide displayed during the June 3 meeting asked: "should temporary structures be treated differently than permanent structures?" and "should 'accessory' structures be treated differently?" Two RAC members explained that the current limitation is on the *design and use* of the structures, not their *type*.

Thrive opposes the exemption of temporary or accessory structures from the current requirements. The legislature did not make an exception for temporary or accessory structures. Any structure approved as part of a farm stand business must be designed and used for the sale of crops and livestock sold at the farm stand, and not for temporary or permanent lodging, restaurants, public entertainment, or other purposes. Exempting temporary or accessory structures from the statutory design and use limitation would give carte blanche for all-out entertainment venues, cafes, restaurants, stadiums, and mini country fairs in and around temporary and accessory structures on EFU land.

Obviating the design and use restriction would enable and encourage bypassing the farm stand altogether. Picture a farm stand event site with a ticket kiosk for entry and exit, buildings cooking fair food like corn dogs, tents for people to sit and eat prepared food, stadium seating for concerts, and vendor booths selling everything from jewelry to vacation rentals; all temporary, under non-enclosed structures, or in accessory buildings. There would be no need or incentive for people to even enter the farm stand; it becomes, as one RAC member described, secondary to the public dining and entertainment uses.

Activities that legitimately promote sales of farm crops and livestock generally have people moving around the farm property. Shaded, passive seating is typically associated with consumption of prepared food items or public entertainment. Those are not the purpose of farm stands. Temporary relief from summer sun should be sought in the farm stand structure, where people may actually purchase farm crops and livestock products.

Respectfully,

Chris Robuck, Co-President

Mary Blanch

Thrive Hood River

To: DLCD

Re: Farmstand RAC Comments on the June 3 meeting.

Date: June 10. 2025

From: Mike McCarthy, Ag for Oregon

Introduction:

As I talk to commercial farmers from around the state on the issue of farm stands, I have repeatedly heard "they need guardrails." Almost none are opposed to farm stands, but their stated vision is of a small shed full of produce all grown on that farm. Otherwise, they state, "why have it on the farm?" Some of the legislative history describes the intent of farm stands is to sell principally crops grow on the farm where the stand is located.

In practice, many farm stands now sell very little from the farm where the "stand" is located. Many are now simply delis, boutique grocery stores and tasting rooms. The receipts from produce sold at the farm stand and "incidental items" or "fee based promotional activities" are very much blurred so no analysis can reasonably be conducted to determine if the 25% requirement is being met. Why does this really matter?

Anti-competitive for true farm stands

As we shift the idea of farm stands to recreational venues, as is happening in some of Oregon's most productive agricultural areas, the sales focus shifts from farm products from the farm to other retail items and events. The customer demand in the area moves away from on-farm produce sales to tourism events, making it harder for true produce farms to be successful. It also means that farms lose interest in producing the very wide range of fruit and vegetable products it takes to be profitable. Farms move to easier, more lucrative sales of products purchased off farm, such as imported food products, home goods, and prepared food items, defeating the true purpose of farm stands, which is to provide a seasonal market for a farm operator's farm products.

In addition, creating commercial venues under the guise of farm stands with promotional events and prepared food items (even if in the 25% category) results in unfair and inequitable competition with businesses in surrounding towns and rural communities. Many of these rural towns are struggling economically to keep their buildings full. Many have empty storefronts that are no longer providing taxes or employment for the community. They can't compete with farmland owners whose land is relatively cheap and taxed at a much lower rate than commercial land inside towns. Farmland owners also often use ag buildings that don't have commercial valuation to contribute to the local tax base. Town businesses have complained about this issue, but are relatively quiet about it as they are concerned about offending potential customers. The loss of business in our rural communities is an important public policy issue that needs to be addressed by policymakers, without requiring town-based businesses to complain. The unfairness of farmland owners being able to operate commercial businesses only tangentially related to agriculture also brings scrutiny to the farm tax deferral system and could be its undoing.

Farmers' markets should be encouraged by state tax credits or grants to locate in our cities, towns and rural communities. Located appropriately, these businesses can expand and diversify as they wish. These existing communities are where the customers are. They are where there are streets, parking and services. In-town farmers' markets do not interfere with farming activities on EFU.

A change in expectations

A surprising sociological transformation is occurring relative to farming in Oregon. New farmers and some long- standing farms are developing expectations that farms, particularly small and medium-sized farms, can provide the sole living for a family or multiple families. This is contrary to the economic realities of Oregon agriculture. Off-farm income is often an important part of a successful operation. Ryan Krabill of OFB recently stated that 70% of farms have off-farm jobs and income. When starting my small farm, I worked 17 years for a packinghouse managing their orchards. Most farms in my highly successful fruit-growing area have been supported by off-farm income.

Farms cannot guarantee profitability. If greater economic security is needed, it is customary to supplement farm income with off-farm work. But in an attempt to bring farmers greater economic security, we cannot destroy the farm zone on which our agricultural industry depends by converting it to a commercial zone, with all of the parking lots, roadways, sewer systems, public buildings and storage buildings that are needed to support retail operations and the tourist trade.

Accelerating Farmland cost

As we essentially up-zone EFU lands to include a new variety of uses, each new use increases the cost of farm properties to future buyers. Allowing commercial uses such as stealth restaurants, along with long lists of recreational and residential uses, on our limited supply of agricultural land makes it harder for farmers to purchase this now more expensive land. It becomes less feasible to just farm and grow food. We are creating high-priced land to be only a recreational zone with mansions for the super wealthy. This is changing the whole price structure of farmland in Oregon, for the worse.

PROPOSAL:

In the early 1990s, Oregon realized that valuable agricultural land was being lost to the development of urban golf courses, schools and churches. LCDC responded by prohibiting these uses on high-value farmland that were otherwise allowed in the exclusive farm use zone. Because of the expanding development of commercial and recreational events on Oregon's limited supply of its most valuable farmland, LCDC should similarly limit fee-based promotional events and retail activities on high-value farmland. The agency could adopt an outright prohibition on certain types of events and retail activities, or limit these uses by scale, duration, and purpose.

Hilary's questions from June 3:

Responses:

1. What does the promotion of farm products involve? What sorts of activities are not promotional for the purpose of the farm stand rule?

Promotion of farm products should be those promotions that (1) include sampling only of products grown on the farm that the farm stand is on, (2) observing the crops in the field that customers are interested in buying and (3) u-picking. Activities that promote farming in general, sales of items not grown on the farm and items that are not crops or livestock are not legitimate uses of farm stands.

- 2. Would putting some parameters on scope and scale of allowable events be helpful or detrimental?
- 3. What would that look like? How direct should the relationship between the event and products being sold at the farm stand be?

4.At what point is an application for an agri-tourism permit required rather than or in addition to a farm stand permit?

We support what has been suggested by several groups, that activities at farms stands exclude uses authorized elsewhere under OAR 660-033-0120, OAR 660-033-0130(5) and ORS 215.283(4). Creating vaguely understood promotional events through farm stand permits is a challenge for applicants, county planners, neighboring citizens and non profits that care about compliance. This type of multiple path permitting is an unnecessary recipe for confusion and unneeded complexity. Agritourism permits state clearly the type, number, timing and conditions of events. These activities in the EFU zone are then specified and clear to all in the community that is affected by these activities and should only be allowed by this route.

5. Should there be graduated standards based on the intensity of the farm stand operation? 6. Should there be graduated standards based on the scale of promotional events?

Farm stands that expect to see more than 25 cars per day or when in use have more than 25 cars per day should be required to obtain an appropriate Agritourism permit if their activities go beyond the sale of local farm products. This application process would analyze traffic, infrastructure and effects on neighboring farms (ORS 215.296).

7. We have heard the need for clarifying that distinction between farm use marketing and farm stand marketing. Particularly on the topic of educational activities. Written comments on that would be helpful.

Any use that exceeds the sales of products produced on the farm where the farm stand is located should be permitted under Agritourism standards.

8. Should there be rule language clarifying different standards for temporary structures like tents and canopies? Should there be a time limitation or other standard to support a determination that the structure is temporary?

Any structures on the farm, whether permanent of temporary that support farm sales or fee based promotions impact the surrounding neighbors and farms. There is no difference to impacts. And often "temporary" structures rapidly become permanent.

Should Laws and Rules be Flexible?

On EFU to protect the land, the system provides that only uses called out in law, rule or ordinance are allowed. Flexibility already exists in law and rule by the number of uses that are now allowed on EFU, with more uses allowed on lands the legislature has declared as less productive. LCDC rules provide greater protection for high-value farmland by limiting a number of nonfarm uses that proved threatening to the integrity of the zone. Farmstands should be similarly regulated by limiting certain promotional events and sales on high-value farmland.

Vague rules create a huge burden on planners and cause confusion for applicants. Time spent by planners, applicants and citizens concerned about compliance is wasted when trying to determine allowed uses when there is a lack of clarity. In many cases this lack of rule clarity (i.e. flexibility) causes lengthy discussions between planners and applicants about allowed uses, then applications being withdrawn, then additional discussions, involvement of attorneys, resubmittals, appeals and legal challenges. This is a frustrating and costly process for all involved.

The goal of legal writing should be clarity. In Clear Legal Rules by Garner and Kimble they state: "1. Be Clear. Clarity should always be a drafter's paramount concern-creating text that conveys an unambiguous meaning". They further state, "It is essential then to identify instances of vagueness and ambiguity and to sharpen the wording".

Immense flexibility already exists due to the many uses allowed on EFU. We do not need any more flexibility.

Summary

Farm stands selling produce grown on the farm should be allowed in EFU zones, subject to strict, clear and objective siting requirements to ensure they are directed to sales of local farm products. Many farm stands are now operating out of compliance with even the existing vague standards. We need clear rules and regulations that can be enforced. We need vigorous enforcement by DLCD and LCDC to prevent the unfairness that occurs from noncompliance.

When we discuss concerns about the profitability of Oregon farms, we need to focus on the width and breadth of the problem. Focusing on farm stand sales as a solution to farm profitability misses most of commercial agriculture in Oregon and only helps a very select few while negatively impacting many farms. The focus on farm stands and other agritourism activities obscures the real problems we need the legislature and Oregonians to understand.

The touted educational value of farm stands is overstated and disingenuous. What are we teaching? That you can buy cute tableware from Europe or Mexico in the middle of an Oregon agricultural zone? That farms and farm stands are great venues for recreation, tourism and alcohol tasting by urbanites?

We are not teaching the reality of agriculture, which depends at the most fundamental level on the availability of large blocks of productive land in which to operate.

TO: Hilary Foote and Farm Stand RAC

FROM: Sid Friedman, Friends of Yamhill County

DATE: June 10, 2025

RE: Next Steps and Questions from June 3 meeting summary

During the legislative work group chaired by Senator Helm a need was consistently expressed to clarify grey areas with clear and objective standards that are easy to interpret and apply. That need was again expressed at the initial meeting of this advisory group.

At the June 3 meeting, some members expressed a desire for squishier standards to provide "flexibility." We continue to be believe that to the greatest extent possible, standards should be clear and objective and easy to apply. Rules that are muddy and grey invite uneven application and abuse. What is allowable should not be not dependent on which side of a county line a farm stand may be located.

The summary of the June 3 Farm Stand RAC meeting included several "Next Steps and Questions" (p. 6-7). This memo addresses some of those questions:

- 1. What does the promotion of farm products involve?
 - What sorts of activities are not promotional for the purpose of the farm stand rule?
- 3. How direct should the relationship between the event and products being sold at the farm stand be?

By law, fee-based activities at farm stands are only allowed if those activities promote farm crops or livestock sold at the farm stand. Therefore, there needs to be a clearly identifiable nexus between the promotional event and the farm crop sold at the farm stand. Examples could include a flower arranging class at a farm stand that sells cut flowers, a cooking class that primarily uses produce or livestock sold at the farm stand, or a festival featuring strawberry shortcake at a berry stand.

Other fee-based agri-tourism activities which may promote agriculture generally or in some cases merely bring people out into the countryside are allowed under the several other statutory provisions in the tables appended to the meeting summary. These include commercial activities in conjunction with farm use, the agri-tourism statue, and home occupations. These other fee-based activities are not promotional for the purposes of the farm stand statue and they therefore cannot be permitted by the farm stand rule.

These other avenues in statue appropriately allow a county to consider impacts to neighboring farm operations, whether or not the commercial activities, in combination with other agri-tourism or other area commercial events or activities could materially alter the stability of the land use pattern in the area. They also allow a county to consider the adequacy of basic infrastructure, such as a narrow gravel road, a limited groundwater area, or fire danger.

Regular daily menu meal service, paint ball shooting galleries, bridal showers, corporate retreats, yoga classes, live music with an admission fee, etc. are not promotional for the purposes of the farm stand statute. These uses are occurring at some farm stands but they go way beyond the scope of what the farm stand statute allows.

By definition promotional activities at farm stands should be lower-impact than those allowed by these other statutory provisions, which allow the consideration of greater impacts. The proposed definition in the memorandum from 1000 Friends of Oregon, dated May 15, does that:

(e) As used in this section, a "fee-based activity to promote the sale of farm crops or livestock" does not include any activity or event authorized under OAR 660-033-0120, such as playgrounds and campgrounds, and agritourism and other commercial events and activities allowed under OAR 660-033-0120, OAR 660-033-0130(5) and ORS 215.283(4).

This definition also clarifies which statutory provision an applicant should use to gain approval. In addition, we propose appending the following to the definition proposed by 1000 Friends:

- (i)A clearly identifiable nexus must exist between the promotional activity and the farm crops or livestock sold at the farm stand; and
- (ii) the promotional activities must be incidental to the sale of farm crops or livestock sold at the farm stand
- 2. Would putting some parameters on scope and scale of allowable events be helpful or detrimental? What would that look like?
- 4. At what point is an application for an agri-tourism permit required rather than (or in addition to) a farm stand permit

Yes, the farm stand rule should put parameters on the scope and scale of allowable events. As Jim Johnson noted at the June 3 committee meeting, there is an ocean of difference between an occasional farm to fork dinner or annual harvest festival featuring local crops or livestock grown on the farm operation, and frequent on-going meal service.

When the legislature adopted the agri-tourism statue, they recognized that the events it authorizes can have significant impacts in other farm operations and/or materially alter the stability of the surrounding land use pattern, either by themselves or in combination with other commercial uses authorized in the area. Those potential negative consequences do not disappear simply because an event is held at an approved farm stand. The same is true for uses authorized as commercial activities in conjunction with farm use (CACFU).

Events authorized under the agri-tourism permit or as CACFUs should require an agri-tourism permit or CACFU permit. Other events should have limits on their frequency and size. The agri-tourism statute includes stricter criteria for farms that host more than 6 events a year. We propose that a farm stand be limited to no more than 6 events per year and be subject to the same limitations on duration, as well as whatever other limits on daily attendance, hours of operation, etc. that a county may find to be warranted.

- 5. Should there be graduated standards based on the intensity of the farm stand operation?
- 6. Should there be graduated standards based on the scale of promotional events?

No, there should not be graduated standards. Graduated standards will be confusing and nearly impossible to enforce.

The intensity of a farm operation and the intensity of a farm stand operation vary season to season and year to year.

The scope and scale of promotional events should be limited by the parameters set forth above.

7. DLCD has heard the need for clarifying the distinction between farm use marketing and farm stand marketing, particularly on the topic of educational activities. RAC's written comments on this topic would be helpful.

Under ORS 215.203, farm use marketing encompasses crops and livestock produced on the subject farm operation.

Under 215.283, farm stand marketing can also encompass crops and livestock produced on other farm operations in the local area.

8. Should there be rule language clarifying different standards for temporary structures like tents and canopies? Should there be a time limitation or other standard to support a determination that the structure is temporary?

No, there should not be different standards for permanent structures and temporary structures. What matters is a structure's use and design. A use is either permitted within a farm stand structure or it is not. That does not and should not change based on whether a structure is permanent or temporary.

DLCD RAC Farm Market

Where is Local?

By Claire Zielinski

My name is Claire Zielinski; I am writing a brief memo to the DLCD RAC on Farm Markets about the current and future definition of local for Farm Market. I am a fifth-generation farmer, and I work full-time at my family's Farm Market in Salem, E.Z. Orchards.

One of the topics discussed in the first meeting that I wanted to give comment on is the definition of local. Currently the definition is the entire State of Oregon plus bordering counties of neighboring states. I urge this RAC and the DLCD to keep this definition.

While the definition of local goods can become a philosophical debate over how far people feel local is. Some might consider local to be a bubble radius around where they live from 5 miles, 60 miles, or even 200 miles. For others local is defined by the closest place they can get the product they are looking for. In Oregon we grow over 220+ agricultural commodities, most of which are grown in the Willamette Valley. For someone from Malheur county, there might not be any orchards with fresh cherries in their county. However, they might be able to get cherries from Hood River, for some local is defined by the closest place the consumer can get what they are looking for.

One item that I never heard mentioned during the first meeting was the impact of changing the definition of local might have on other State programs. For example, here at E.Z. Orchards Farm Market we accept the Farm Direct Dollars. The Farm Direct Dollars is a food initiative program that gives eligible seniors, and low income families farm dollars that they can only use on local produce (fruits and vegetables only). This program gives people who might not regularly be able to afford, or go out of their way for local produce, a reason to buy local. While I am still communicating with the Oregon Health Authority on if a change to the definition of local for farm markets would affect their program. It would certainly confuse both farmers and customers utilizing this food program.

If a customer walked into our Farm Market and wanted to use the Farm Direct Dollars on local produce, and the definition of local was different for local from DLCD and OHA were different. It would create confusion for Farm Market owners about how to advertise for customers who are trying to use this program while also staying compliant with DLCD. We may post a sign for customers that explains why not everything eligible for the Farm Direct Dollars is not marked as local, but they will still be confused. An unfortunate result might be people choosing not to use the Farm Direct Dollars at all due to the inconvenience.

I urge the DLCD and the RAC to keep the definition of local as it currently stands for the sake of those who live in remote areas and because of the impact of changing the definition might have on other programs.

From: <u>EICHNER Lindsey A</u>

To: <u>FOOTE Hilary * DLCD</u>; <u>COMMENT Farmforest * DLCD</u>

Cc: BELL Amber R

Subject: RE: 2025 Farm Stand RAC Meeting #2 Summary for review

Date: Wednesday, June 11, 2025 5:14:39 PM

The meeting summary draft looks good to me. Below are my comments in red to the follow-up questions from Hilary:

- 1. What does the promotion of farm products involve? What sorts of activities are not promotional for the purpose of the farm stand rule?
- 2. Would putting some parameters on scope and scale of allowable events be helpful or detrimental? What would that look like?

For Planners, it would be helpful to have some guidance on this. Wineries/Cider businesses/breweries (winery) have specific activities listed to what is allowed in conjunction with those businesses. The big difference between a farm stand and a winery is that there are standards that define the farm operation in the winery provisions (certain amount of acres in a specific crop, setbacks, etc).

3. How direct should the relationship between the event and products being sold at the farm stand be?

It is our understand that if the events aren't related to the products sold at the farm stand, it requires an agri-tourism permit or possibly an outdoor gathering review (Fewer than 3,000 people, less than 120 hours in any three-month period).

4. At what point is an application for an agri-tourism permit required rather than or in addition to a farm stand permit?

The DLCD EFU model code includes a definition for Agri-tourism that is very specific. Lane County has included most of this definition within our EFU zone definitions section. That said, we removed the very last sentence that the model code suggests (optional, not in state law or rule). It would have been different the definition for agri-tourism within the Winery (et al) section (ORS 215.452(14)(a)).

In Lane County, we have said if the farm crop (aka wine) is not the main focus or reason for the event, then it requires an agri-tourism event license or CUP (depending on # of days in accordance with state law). It seems harder to determine at a farm stand if the farm crops/products are the main focus. Hay rides take customers out to fields to pick up the farm crop, seems directly related. Do corn mazes promote the sale of corn? Possibly, but it also utilizes the farm crop itself as entertainment. A birthday party where you rent an area with a play structure, feed goats (not for sale), and buy ice cream (not made from the farm stand's crops) does not seem like it's directly related to or promoting the farm use for farm products.

LC 16.212(2)(a) Agri-tourism. "Agri-tourism" means a common, farm-dependent activity that promotes agriculture, any income from which is incidental and

subordinate to a working farm. Such uses may include hay rides, corn mazes and other similar uses that are directly related to on-site agriculture. Any assembly of persons shall be for the purpose of taking part in agriculturally-based activities such as animal or crop care, tasting farm products or learning about farm or ranch operations. Agri-tourism may include farm-to-plate meals. Excluded: Except for small, farm-themed parties, regularly occurring celebratory gatherings, weddings, parties or similar uses are not Agri-tourism.

LC 16.212(11)(c)(i) "Agri-tourism or other commercial events" includes outdoor concerts for which admission is charged, educational, cultural, health or lifestyle events, facility rentals, celebratory gatherings and other events at which the promotion of wine produced in conjunction with the winery is a secondary purpose of the event. (ORS 215.452(14)(a))

- 5. Should there be graduated standards based on the intensity of the farm stand operation?
- 6. Should there be graduated standards based on the scale of promotional events?
- 7. We have heard the need for clarifying that distinction between farm use marketing and farm stand marketing. Particularly on the topic of educational activities. Written comments on that would be helpful.
- 8. Should there be rule language clarifying different standards for temporary structures like tents and canopies? Should there be a time limitation or other standard to support a determination that the structure is temporary?

I would suggest looking at building code as well, but it seems reasonable to have time and size limitations IF the structure is proposed as temporary to provide weather shelter for customers and is not the main structure for the farm stand (where farm crops/products are sold).

Thank you,

Lindsey Eichner

Assistant Planning Director Lane County Land Management 3050 N. Delta Hwy Eugene, Oregon 97408 (541)682-3998

From: FOOTE Hilary * DLCD

Sent: Friday, June 6, 2025 11:38 AM

To: TAYLOR Casaria * DLCD <Casaria.TAYLOR@dlcd.oregon.gov>; LOBNIBE Silas * DLCD <silas.lobnibe@dlcd.oregon.gov>; HOWARD Gordon * DLCD <Gordon.HOWARD@dlcd.oregon.gov>; BOYER Barbara * DLCD <Barbara.Boyer@dlcd.oregon.gov>

Cc: GREENE Kirstin * DLCD <Kirstin.GREENE@dlcd.oregon.gov>; BONINI Alyssa * DLCD <alyssa.bonini@dlcd.oregon.gov>; HAMMER Alexis * DLCD <alexis.hammer@dlcd.oregon.gov>; donna@dsconsult.co

Subject: 2025 Farm Stand RAC Meeting #2 Summary for review

[EXTERNAL <u>∧</u>]

Good afternoon RAC Members,

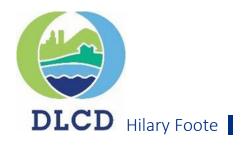
Attached is a Draft Meeting Summary for 2025 Farm Stand RAC Meeting #2. Please review the meeting summary and forward any edits or clarifications to me by the end of the day Wednesday, June 11, 2025. If you feel that you need additional time to review the meeting summary, please email me directly. It is important to us that we accurately capture your thoughts and feedback on this topic.

As a reminder, our next meeting will be held over zoom on June 24th, 1:00 – 4:00. If you have comments for the RAC that you would like included in the packet for our next meeting, please forward those comments to us by the end of the day Wednesday, June 11, 2025. The agenda and materials packet for that meeting will be posted to the rulemaking webpage the week before the next RAC meeting and we will also email you links to those materials when they are posted.

You should all have received calendar invitations for the next three meetings including zoom links. The zoom link for each meeting can also be found at the top of the agenda for that meeting. Please contact me if you are having any issues with the calendar invitations or the meeting links.

If you have any other questions or concerns that come up during this process, please don't hesitate to contact me.

Thank you for volunteering your time to support this effort!



Farm Forest Specialist | Community Services Division

Pronouns: She/Her

Oregon Department of Land Conservation and Development

635 Capitol Street NE, Suite 150 | Salem, OR 97301-2540

Cell: 503-881-9249 | Main: 503-373-0050

hilary.foote@dlcd.oregon.gov | www.oregon.gov/LCD



Hilary Foote Farm Forest Specialist Oregon Department of Land Conservation and Development 635 Capitol Street NE, Suite 150 Salem, OR 97301-2540

Via email: farmforest.comment@dlcd.oregon.gov; Hilary.FOOTE@dlcd.oregon.gov

Re: Comments in Response to RAC #2 Questions

On behalf of the Oregon Property Owners Association, thank you for the opportunity to provide comments in response to the following questions that were posed at the end of the RAC's second meeting.

1. What does the promotion of farm products involve? What sorts of activities are not promotional for the purpose of the farm stand rule?

Oregon law allows farmers to conduct "fee-based activity to promote the sale of farm crops or livestock sold at the farm stand" if the fees from those activities do not exceed 25% of the annual sales of the farm stand. As discussed in *Greenfield*, the purpose of this language was to allow farmers the opportunity to host entertaining and exciting events to encourage foot traffic to the farmstand in order to encourage the public to buy products directly from the farmstand.

At the highest level, the activities should be those reasonably viewed as related to farming or farm product production that could reasonably be expected to promote the sale of farm crops or livestock. For example, these allowed events include farm-to-table dinners, harvest festivals with live music, pumpkin patches with cow trains and kids activities, plant or animal exhibits, private educational events that teach kids and adults about farming, classes on pickling, making of cider or jam or other ways to preserve farm products. Each of these events are all related to farming, celebrate Oregon agriculture, and are reasonably expected to encourage visitors to buy farm products at the farmstand and support local farm families.

2. Would putting some parameters on scope and scale of allowable events be helpful or detrimental? What would that look like?

Putting additional parameters on events would be detrimental. As discussed in *Greenfield*, the types of activities that are allowed through the promotions clause are varied and diverse. The Legislature did not impose significant restrictions on the types of events allowed, and when passing

the bill, the legislative history shows that the Legislature intended for farmers to be able to do a wide range of entertaining and educational activities to promote their farm and agriculture.

Putting greater parameters on the scope and scale of the allowable events would potentially be harmful, arbitrary, and counter to legislative intent. First, the income-restriction already serves as a backstop to making sure that farming remains the primary use of the property. While OPOA believes that this test should be changed legislatively to a different type of primary-use test (there are issues with implementation and unintended consequences for farmers), it nonetheless was what the Legislature adopted to limit the scope and scale of the promotions clause. Adding additional limitations would be arbitrary.

Second, individual farmers are the best judge of what they need to do to produce, harvest, market, and sell their commodities. They need freedom and flexibility to market their commodities in the manner most advantageous to their particular operation and that resonates with their customer base. This means that they need the freedom to experiment and choose which types of events yield the best results.

As discussed in the last RAC meeting, agritourism activities and promotional activities allow farmers the chance to form connections and relationships with their customer base. Building consumer trust is essential to a successful agricultural operation. The state should not adopt rules that are prescriptive or interfere with how farmers engage, market, and sell their products to the public on their properties. DLCD should allow farmers to be creative, innovative, and adapt to market conditions and consumer preferences in order to support strong agricultural enterprise.

3. How direct should the relationship between the event and products being sold at the farm stand be?

There should not have to be a direct relationship between the event taking place and the products being sold at the farm stand because doing so would be unnecessarily restrictive, stifle the success of our farmers, have negative consequences for education, and difficult to enforce.

Example: Farmer wants to sell tickets to an educational class for children where they learned about raising livestock and how dairy operations work. Would the county need to require Farmer to submit a script highlighting where the farmer mentions the specific cheese sold in the farmstand that day? Would there be a requirement that the farmer have to tell the children they needed to buy their cheese? If Farmer just educated the children about agriculture and didn't encourage them to use their lunch money to buy product in the farmstand, could someone file a complaint against them? Isn't it enough that the entire class is focused on educating the next generation of consumers about food production and encouraging the public to love and respect farming?

4. At what point is an application for an agri-tourism permit required rather than or in addition to a farm stand permit?

A farmstand is a use allowed as of right and allowed at any farm on EFU zoned land. See ORS 215.213(1)(r) and ORS 215.283(1)(o). Farmers are allowed to host any agritourism event through their farmstand permit so long as they meet the income limitation and are not hosting any of the prohibited events outlined in the statute inside the farmstand.

In addition to hosting promotional events through a farmstand permit, a farmer may also apply for an "agritourism event permit" if their county allows "agritourism events" or "commercial events" under ORS 215.213(11) or ORS 215.283(4). However, not all counties allow these types of events and there are considerable barriers to obtaining them. There are also significant limitations on the size of the event, number events allowed, etc., which has made the agritourism event permit less than desirable for many farmers. Regardless, the Legislature made clear that the agritourism events authorized under this section "are in addition to other authorizations that may be provided by law[.]" See ORS 215.283(6)(c).

So, in the context of hosting events, there really isn't a situation where an agritourism event permit can be required "rather than" a farmstand permit, but there are likely many circumstances where an agritourism event permit is required in addition to a farmstand permit, but that depends on whether the county allows that opportunity.

5. Should there be graduated standards based on the intensity of the farm stand operation? Should there be graduated standards based on the scale of promotional events?

Unclear what this means and need additional information/clarification. See the answers to previous comments.

6. We have heard the need for clarifying that distinction between farm use marketing and farm stand marketing. Particularly on the topic of educational activities. Written comments on that would be helpful.

This is a complicated question that needs more discussion and potentially legislative fixes to bring the law up to date with the economic realities of farming today. With that said, Under ORS 215.203, "farm use" means:

[T]he 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 or animal use.

"Farm use" under Oregon law is broadly defined to include any and all activities encompassing the growing, marketing, sale and distribution of farm products. The purpose of the statute is to encourage and protect all activities necessary for commercial agricultural operations. Accordingly, when a farmer is using their EFU property to prepare, market, and sell their farm products for a commercial purpose, those activities are protected "farm uses" and should not require a "farmstand permit" from the planning department. Generally, landowners obtain farm stand permits so that they can sell other farmer's products and retail items that are not farm products. However, this is likely not necessary if a property owner is marketing and only selling products grown exclusively by their farm unit.

7. Should there be rule language clarifying different standards for temporary structures like tents and canopies? Should there be a time limitation or other standard to support a determination that the structure is temporary?

If a farmer requires a farmstand permit, there should be greater flexibility and allowances for activities to take please in temporary structures, especially those required for the health and safety of customers and employees. As an example, limitations on the "farmstand structures" should not include temporary structures like tents needed to provide shade or rain cover for farm employees and customers during promotional events.

In building codes, a "temporary" structure is typically defined as any building or structure erected for a limited period, usually 180 days or less, to support temporary events or uses. These structures may include tents, umbrellas, membrane structures, relocatable buildings, or other structures used for storage, equipment protection, dining, workspace, or assembly.

Thank you for the opportunity to submit these comments. Please do not hesitate to reach out with any questions or concerns.

Sincerely,

Samantha Bayer General Counsel Oregon Property Owners Association sbayer@oregonpropertyowners.org Thank you for the follow up questions. I think it will be a beneficial way for all members to communicate their thoughts and to develop a positive framework.

My thoughts are based around the flexibility for farmers in promoting farm products through a farm stand permit but also emphasizes a framework and guardrails for safety, land use, and community impact that will support county planners in the process. Our farm's success relies on our ability to promote what we grow with events like the tulip festival.

I would also like to make a note about our first meeting and the topics of primary use and local. As a family farm that operates year-round, there is no question that our primary use is agriculture. Our land is actively farmed 12 months out of the year, and our events and activities are directly tied to our on-farm production.

When it comes to evaluating **primary use**, we believe a simple and effective approach would be to require justification of what crops are actually being grown on the farm. A question like, "What products are produced on-site versus sourced off-site?" would help counties clearly determine whether the farm stand is rooted in real agricultural production.

On the topic of "local", we believe redefining the term away from what is already established in other statutes or state definitions could be confusing and counterproductive. For us, local is less about strict mileage limits and more about relationship.and.transparency. Buying directly from another small farmer — rather than through a distributor or middleman — is what truly supports the agricultural community.

- 1. What does the promotion of farm products involve? What sorts of activities are not promotional for the purpose of the farm stand rule?
 - a. Promotion should include any activity that draws attention to, celebrates, or facilitates the sale of crops grown on-site. Examples should include flower festivals, harvest celebrations, wine/cider tastings, and on-farm educational events. Educational offerings that inform the public about farming or processing around agriculture are what farmers want and should offer and be allowed to offer. Sales of farm-grown products, including seasonal openings or online pickups, are valid. I do want to allow flexibility within the events, celebrations, or festivals to allow some room for not directly tied to agriculture activities. For example, pumpkin patches offering kids activities are the norm and the public would not want to change the ability to experience these activities.
- 2. Would putting some parameters on scope and scale of allowable events be helpful or detrimental? What would that look like?

- a. Rigid limits based on attendance could be detrimental, especially for large farms with capacity and safety protocols. Event feasibility should be based on a farm's capacity to handle visitors safely. Not creating boxes that have crowd limits. Our farm has over 200 acres of space and we are able to safely accommodate up to 8,000 people per day. If we were on 20 acres, that number would have to significantly drop. I am happy to share our policies and procedures for our event, as we are one of the largest farm stands and seasonal festivals in the state of Oregon.
- 3. How direct should the relationship between the event and products being sold at the farm stand be?
 - a. The relationship between the event and the products sold at the farm stand should be clear and meaningful, but not so narrow that it prevents effective promotion. Events should directly promote or celebrate the products or crops grown and sold on the farm. Our tulip festival showcases the 40 acres of tulips we grow and results in direct on-site sales of cut flowers, potted bulbs, and value-added items. Similarly, wine tastings held at the farm promote the grapes grown on-site and lead to direct sales. Educational workshops, u-pick activities, or harvest events are other examples of events that support product promotion. These events should be allowed to be feebased. In a day of social media and people looking for the perfect picture, we are experiencing a lot of people who will spend nothing and use everything. A fee puts value on the operation and business and allows the business to cover costs associated with the business. Overhead expenses, insurance, and even labor are covered with the use of a fee to visitors.
- 4. At what point is an application for an agri-tourism permit required rather than or in addition to a farm stand permit?
 - a. Some counties do not offer agritourism permits, and the concept is sometimes overlapped. I think that when a shift occurs from product promotion to general recreation, that is when an agritourism permit should be applied for. The time limit associated with agritourism permits are a struggle for pumpkin patches and our festival. We are having a 37–45-day tulip festival depending on the season.
- 5. Should there be graduated standards based on the intensity of the farm stand operation?
 - a. Yes. Farms vary in size and activities offered. A tiered approach would assist farmers without limiting future growth. Our farm was once a small operation with only a few hundred visitors each year. We have scaled our operation responsibly and with a positive economic impact. Limiting based on current size would discourage farmers from growth and diversification.
- 6. Should there be graduated standards based on the scale of promotional events?

- a. Yes, and this can mirror the intensity scale. However, flexibility is key. I have seen many small events/activities that have been managed poorly and that have had major impacts to the people and land. On the other hand, there are farm stands able to accommodate large amounts of people with positive impacts. The focus should be on management capacity, safety, and land conservation, not a cap on attendance.
- 7. We have heard the need for clarifying that distinction between farm use marketing and farm stand marketing. Particularly on the topic of educational activities. Written comments on that would be helpful.
 - a. I thought this fell under paid versus unpaid. If an educational activity is free and focused on public service (like a school tour), it falls under farm use. If the farmer charges a fee or includes product promotion, it should fall under farm stand marketing. That is what makes the most sense to me.
- 8. Should there be rule language clarifying different standards for temporary structures like tents and canopies? Should there be a time limitation or other standard to support a determination that the structure is temporary?
 - a. Yes. Open-air tents or canopies should be considered **temporary** and **not require permits** if they meet safety standards and are removed after events. Some guidance should be in place for how long these can remain and under what use.