

Clackamas County Zoning Districts, Farm Uses and Land Use Review Procedures

August 19, 2015

A. Zoning Districts

Unincorporated Clackamas County land is regulated in 51 zoning districts. For the purposes of the discussion of marijuana-related land uses, these districts can be sorted into the following nine categories.

1. **Natural Resource Zoning Districts, including Exclusive Farm Use (EFU), Ag/Forest (AG/F) and Timber (TBR):** Primarily to be preserved and maintained for farm and forest uses. To a large degree, allowed uses are regulated by the state. Dwellings are not allowed outright, although many lots in these zones have dwellings on them, either due to nonconforming use status or compliance with the criteria for establishment of a dwelling. The minimum lot size is 80 acres for the creation of a new lot, with very limited exceptions, though many lots are smaller because the 80-acre standard was not enacted until 1993.
2. **Rural Residential Districts, including Recreational Residential (RR), Rural Area Residential 1-Acre (RA-1), Rural Area Residential 2-Acre (RA-2), Rural Residential Farm Forest 5-Acre (RRFF-5), Farm Forest 10-Acre (FF-10), and Future Urban 10-Acre (FU-10):** Primarily intended for single-family dwellings and small farms and forests. Minimum lot sizes range from one to 10 acres. The FU-10 district includes lands within the Portland Metropolitan Urban Growth Boundary (UGB) and reserved for future urban use. However, the allowed uses in this district are very similar to the rural residential districts.
3. **Rural Commercial and Rural Tourist Commercial Districts:** Located in rural areas of the county to provide for retail, service and office uses that serve, and are on a scale commensurate with, rural development. Except where concentrated in unincorporated communities (e.g., Boring, Beavercreek, Government Camp), these zones are scattered throughout the county on relatively small lots that have a historic commitment to commercial use.
4. **Rural Industrial Districts:** Located in rural areas of the county to provide for industrial uses that are not labor-intensive and are consistent with rural character, rural development, and rural facilities and services. This zone is concentrated in unincorporated communities or applied to sites with a historic commitment to industrial use.
5. **Urban and Mt. Hood Low-Density Residential Districts:** These 12 low-density residential zones primarily allow single-family dwellings on lots ranging from 2,000 to 30,000 square feet. These zones are located within the Portland Metropolitan UGB except for the Mt. Hood low-density residential district, which is along the Highway 26 corridor in several unincorporated communities.

6. **Urban and Mt. Hood Multi-family Residential Districts:** These eight multi-family residential zones primarily allow two-family, three-family and multi-family dwellings at densities of 12 units an acre and above. These zones are located within the Portland Metropolitan UGB, except for the Mt. Hood multi-family residential district, which is along the Highway 26 corridor in Wemme/Welches and Government Camp.
7. **Urban Industrial Districts, including Campus Industrial (CI), Business Park (BP), Light Industrial (LI) and General Industrial (GI):** These four zones, located in the Portland Metropolitan UGB, accommodate a variety of industrial and office uses, with development standards that vary across zones. For example, primary uses in the BP zone may not include outdoor processing, storage or display. In the LI zone, minimal outdoor storage is allowed and outdoor processing is prohibited as part of a primary use. In the GI zone, outdoor storage, display and processing are allowed as part of a primary use.
8. **Urban Commercial Districts:** These 13 urban commercial districts that provide for a broad range of retail, service and office uses are located within the Portland Metropolitan UGB. In some cases, manufacturing is permitted as long as it does not include primary processing of raw materials. Residential uses are also permitted in many commercial districts.
9. **Open Space Districts, including Open Space Management (OSM) and Government Camp Open Space Management (GCOSM):** Primarily intended to provide for natural areas, parks and recreational uses.

B. Regulation of Farm Uses

The authority to regulate the type and nature of farm uses in the rural area of the county varies depending on the zoning district. In the EFU district, the county is required to permit farm uses as defined in ORS 215.203. House Bill 3400 specifically identifies marijuana as a crop for purposes of this definition. ORS 215.203 specifically provides:

(2)(a) As used in this section, “farm use” means the current employment of land for the primary purpose of obtaining a profit in money by raising, harvesting and selling crops or the feeding, breeding, management and sale of, or the produce of, livestock, poultry, fur-bearing animals or honeybees or for dairying and the sale of dairy products or any other agricultural or horticultural use or animal husbandry or any combination thereof.

- *“Farm use” includes the preparation, storage and disposal by marketing or otherwise of the products or by-products raised on such land for human or animal use.*
- *“Farm use” also includes the current employment of land for the primary purpose of obtaining a profit in money by stabling or training equines including but not limited to providing riding lessons, training clinics and schooling shows.*
- *“Farm use” also includes the propagation, cultivation, maintenance and harvesting of aquatic, bird and animal species that are under the jurisdiction of*

the State Fish and Wildlife Commission, to the extent allowed by the rules adopted by the commission.

- *“Farm use” includes the on-site construction and maintenance of equipment and facilities used for the activities described in this subsection.*
- *“Farm use” does not include the use of land subject to the provisions of ORS chapter 321, except land used exclusively for growing cultured Christmas trees as defined in subsection (3) of this section or land described in ORS 321.267 (3) or 321.824 (3).*

Furthermore, ORS 215.253 limits the county’s authority to restrict or regulate farming practices in the EFU District.

215.253 Restrictive local ordinances affecting farm use zones prohibited; exception.

(1) No state agency, city, county or political subdivision of this state may exercise any of its powers to enact local laws or ordinances or impose restrictions or regulations affecting any farm use land situated within an exclusive farm use zone established under ORS 215.203 or within an area designated as marginal land under ORS 197.247 (1991 Edition) in a manner that would restrict or regulate farm structures or that would restrict or regulate farming practices if conditions from such practices do not extend into an adopted urban growth boundary in such manner as to interfere with the lands within the urban growth boundary. “Farming practice” as used in this subsection shall have the meaning set out in ORS 30.930.

(2) Nothing in this section is intended to limit or restrict the lawful exercise by any state agency, city, county or political subdivision of its power to protect the health, safety and welfare of the citizens of this state.

- The county permits farm use in the AG/F and TBR districts in the same manner as permitted in the EFU District.
- In the county’s rural residential districts, the county’s Zoning and Development Ordinance (ZDO) (rather than Oregon Revised Statutes [ORS]) establishes the uses, farm-related or otherwise, that are permitted, and those uses vary between the different rural residential districts (see Farm Uses in Table 316-1 from the ZDO, below).
- Currently the allowed farm uses in the RA-2, RRFF-5, FF-10 and FU-10 zones align closely with those in ORS 215.203 and implemented in our EFU district, but are not identical.
- Farm uses allowed in the RA-1 and RR districts are more limited but include raising, harvesting and selling crops.
- Except as may be allowed through a home occupation permit, processing of farm products currently is a conditional use in the RRFF-5 and FF-10 districts and is prohibited in other rural residential districts.

Finally, the County is prohibited from regulating farming practices as a nuisance or trespass *“on lands zoned for farm or forest use.”* (See ORS 30.930 through 30.960, below.) Of particular note is the definition of “nuisance” or “trespass” in ORS 30.932.

As used in ORS 30.930 to 30.947, “nuisance” or “trespass” includes but is not limited to actions or claims based on noise, vibration, odors, smoke, dust, mist from irrigation, use of pesticides and use of crop production substances.

C. Land Use Review Procedures

There are three types of procedures used for reviewing land use applications, as described in the county’s ZDO.

1. **Type I Permits:** Land use actions governed by *non-discretionary standards and clear and objective approval criteria.*

General: Approval of a Type I permit may require imposition of conditions of approval to ensure compliance with the ZDO.

Decision Process: The Planning Director (or staff designee) reviews the application for conformance with the applicable criteria and issues a decision. The Planning Director’s decision is the final decision of the county.

Notice: No notice to adjacent property owners.

Examples: simple property line adjustments, signs and mobile vending units.

2. **Type II Permits:** Land use actions governed by *standards and approval criteria that generally require the exercise of limited discretion.*

General: Impacts associated with the land use action may require imposition of conditions of approval to minimize those impacts and ensure compliance with the ZDO.

Decision Process: The Planning Director (or staff designee) reviews the application for conformance with the applicable criteria and issues a decision. Any interested party may appeal the decision. The Planning Director’s decision is final unless appealed to the land use hearings officer, in which case the application is considered at a public hearing. The hearings officer’s decision is the final decision of the County in all but applications for interpretations of text of the ZDO or Comprehensive Plan.

Notice: Notice of the application is provided to the applicant, nearby property owners and the applicable Community Planning Organization (CPO), Hamlet or Village.

Examples: partitions, small subdivisions, home occupation permits, variances and design review.

3. **Type III Permits:** Land use actions governed by *standards and approval criteria that require the use of discretion and judgment.*

General: The issues associated with the land use action may be complex and the impacts significant, and conditions of approval may be imposed to mitigate the impacts and ensure compliance with the ZDO and the Comprehensive Plan.

Decision Process: The Type III procedure is a quasi-judicial review process where the land use hearings officer conducts a public hearing, receives testimony, reviews the application for conformance with the applicable criteria and issues a decision. The hearings officer’s decision is the final decision of the county.

Notice: Notice of the application and public hearing is provided to the applicant, nearby property owners and the applicable CPO, Hamlet or Village.

Examples: large subdivisions, conditional use permits and zone changes

D. Options for Allowing Marijuana Production and Processing in Rural Residential Districts

Under the provisions of HB 3400, the County *may* allow the production (i.e., growing) and processing of marijuana in rural residential zoning districts. Staff believes there are several options to consider:

1. *Prohibit production and processing of marijuana.*
2. *Require submittal and approval of a conditional use permit.*
Conditional use permits are subject to Type III land use review. The conditional use permit provides an opportunity to consider and evaluate the specific nature and characteristics of each proposal through the public hearing process. The conditional use permit criteria include broad discretion to consider certain impacts from a proposed use, compatibility of the use with adjacent and nearby properties, safety of the transportation system and suitability of the property to accommodate the use. (See Section 1203 of the ZDO, attached.)
3. *Require submittal and approval of a home occupation permit.*
This could include limiting growing and processing operations to Level III home occupations (a property where at least 50% of abutting properties are greater than two acres). Home occupations are subject to Type II land use review. (See Section 822 of the ZDO, attached.)
4. *Allow growing as an outright permitted use but adopt objective development standards,* such as limiting the use to indoor operations or requiring a minimum lot size or minimum setback from lot lines. These standards could be applied during review of a building permit or through a Type I land use review.
5. *Allow growing of marijuana as an outright permitted use* with no land use review and no special development standards.

**Table 316-1: Permitted Uses in Rural Residential and
Future Urban Residential Zoning Districts
(from Clackamas County ZDO)**

Use	RA-1	RA-2	RR	RRFF-5	FF-10	FU-10
Accessory Buildings and Uses Customarily Permitted , such as amateur (Ham) radio antennas and towers, arbors, bicycle racks, carports, citizen band transmitters and antennas, cogeneration facilities, courtyards, decks, decorative ponds, driveways, electric vehicle charging stations, family daycare providers, fountains, garages, garden sheds, gazebos, greenhouses, HVAC units, meeting facilities, outdoor kitchens, parking areas, patios, pergolas, pet enclosures, plazas, property management and maintenance offices, recreational facilities (such as bicycle trails, children’s play structures, dance studios, exercise studios, playgrounds, putting greens, recreation and activity rooms, saunas, spas, sport courts, swimming pools, and walking trails), rainwater collection systems, satellite dishes, self-service laundry facilities, shops, solar energy systems, storage buildings/rooms, television antennas and receivers, transit amenities, trellises, and utility service equipment	A	A	A	A	A	A
Accessory Kitchens	A ¹					
Aircraft Land Uses	X	X	X	C	C	C
Aircraft Landing Areas	X	C	C ²	X	X	X
Bed and Breakfast Inns , subject to Section 832	C	C	C	C	C	X
Bed and Breakfast Residences , subject to Section 832	C	C	C	C	C	C
Bus Shelters , subject to Section 823	P	P	P	P	P	P
Campgrounds	C	C	C	C	C	C
Cemeteries , subject to Section 808	C	C	X	C	C	C
Churches , subject to Section 804	C	C	C	C	C	C ³
Commercial or Processing Activities in Conjunction with Farm or Forest Uses	X	X	X	C	C	X
Composting Facilities , subject to Section 834	X	X	X	C	C	X
Conservation Areas or Structures for the Conservation of Water, Soil, Forest, or Wildlife Habitat Resources	P	P	P	P	P	P
Crematories , subject to Section 808	C	C	X	X	X	X
Daycare Facilities , subject to Section 807	C	C	C	C	C	C ⁴
Daycare Services, Adult	C	C	C	C	C	C ⁵
Dwellings, Detached Single-Family	P ⁶					
Dwellings, Two-Family , subject to Section 802	C ⁶	X	X	X	X	X
Energy Source Development	X	X	C	X	X	X
Farmers’ Markets , subject to Section 840	A	A	A	A	A	A

Use	RA-1	RA-2	RR	RRFF-5	FF-10	FU-10
Farm Uses, including:						
Raising, harvesting, and selling crops	P	P	P ⁷	P	P	P
Feeding, breeding, management and sale of, or the produce of, livestock, poultry, fur-bearing animals, or honeybees	X ⁸	P	X ⁸	P	P	P
Dairying and the sale of dairy products	X ⁸	P	X ⁸	P	P	P
Any other agricultural or horticultural use or animal husbandry or any combination thereof	X ⁸	P	X ⁸	P	P	P
Preparation, storage, and disposal by marketing or otherwise of the products or by-products raised on such land for human or animal use	P	P	P ⁷	P	P	P
Propagation, cultivation, maintenance, and harvesting of aquatic, bird, and animal species that are under the jurisdiction of the Oregon Fish and Wildlife Commission, to the extent allowed by the rules adopted by the commission	X ⁸	P	X ⁸	P	P	P
Growing cultured Christmas trees	P	P	P ⁷	P	P	P
Fish or Wildlife Management Programs	X	X	X	P	P	P
Forest Practices , including the following operations conducted on or pertaining to forestland: reforestation of forestland, road construction and maintenance, harvesting of forest tree species, application of chemicals, disposal of slash, and removal of woody biomass	P ⁹	P ⁹	P	P ⁹	P ⁹	P ⁹
Fraternal Organization Lodges	C ¹⁰					
Government Uses , unless such a use is specifically listed as a primary, accessory, conditional, or prohibited use in the applicable zoning district	C ¹⁰					
Guest Houses and Studios , subject to Section 833	A	A	A	A	A	A
Guest Ranches and Lodges	X	X	C	X	X	X
Home Occupations , including bed and breakfast homestays, subject to Section 822 ¹¹	A	A	A	A	A	A
Home Occupations to Host Events , subject to Section 806	C	C	C	C	C	C
Hydroelectric Facilities , subject to Section 829	C	C	C	C	C	C
Kennels	C ¹²	C ¹²	X	C ¹²	C ¹²	X
Livestock , subject to Section 821	P	X ⁸	A	X ⁸	X ⁸	X ⁸
Manufactured Dwellings , subject to Section 824	P ⁶					
Operations Conducted for the Exploration, Mining, or Processing of Geothermal Resources or Other Subsurface Resources	X	X	X	C	C	X
Produce Stands	A ¹³	A ^{13,14}				
Public Utility Facilities	C ^{10,15}					
Radio and Television Transmission and Receiving Towers and Earth Stations	C ^{10,16}					
Recreational Uses , including boat moorages, community gardens, country clubs, equine facilities, gymnastics facilities, golf courses, horse trails, pack stations, parks, playgrounds, sports courts, swimming pools, ski areas, and walking trails ¹⁷	C ¹⁰	C ^{10,18}	C ¹⁰	C ^{10,18}	C ^{10,18}	C ^{10,18}

Use	RA-1	RA-2	RR	RRFF-5	FF-10	FU-10
Recreational Uses, Government-Owned , including amphitheaters; arboreta; arbors, decorative ponds, fountains, gazebos, pergolas, and trellises; ball fields; bicycle and walking trails; bicycle parks and skate parks; equine facilities; boat moorages and ramps; community buildings and grounds; community and ornamental gardens; courtyards and plazas; fitness and recreational facilities, such as exercise equipment, gymnasiums, and swimming pools; horse trails; miniature golf, putting greens, and sports courts; pack stations; parks; picnic areas and structures; play equipment and playgrounds; nature preserves and wildlife sanctuaries; ski areas; tables and seating; and similar recreational uses ¹⁷	P ¹⁹	P ¹⁹	P ¹⁹	P	P	P
Recreational Uses, Government-Owned Golf Courses ¹⁷	P ¹⁹	P ¹⁹	P ¹⁹	P	P	P
Recreational Vehicle Camping Facilities , subject to Section 813	C ¹⁰	X				
Sanitary Landfills and Debris Fills , subject to Section 819	X	X	X	C	C	X
Schools , subject to Section 805	C ²⁰	C ²⁰	C	C ²⁰	C ²⁰	C ²¹
Signs , subject to Section 1010	A ²²					
Surface Mining , subject to Section 818	X	X	X	C	C	X
Telephone Exchanges	C ¹⁰					
Temporary Buildings for Uses Incidental to Construction Work. Such buildings shall be removed upon completion or abandonment of the construction work.	A	A	A	A	A	A
Temporary Storage within an Enclosed Structure of Source-Separated Recyclable/Reusable Materials Generated and/or Used On-site Prior to On-site Reuse or Removal by the Generator or Licensed or Franchised Collector to a User or Broker	A	A	A	A	A	A
Transfer Stations , subject to Section 819	X	X	C	X	X	C
Utility Carrier Cabinets , subject to Section 830	P	P	P	P	P	P
Wireless Telecommunication Facilities listed in Subsections 835.04 and 835.05(A)(2) and (3), subject to Section 835	P	P	P	P	P	P
Wireless Telecommunication Facilities listed in Subsection 835.06(A), subject to Section 835	C	C	C	C	C	C

- ¹ An accessory kitchen is permitted only in a detached single-family dwelling or a manufactured dwelling. Only one accessory kitchen is permitted in each single-family dwelling or manufactured dwelling.
- ² Aircraft landing areas are permitted for use by emergency aircraft (fire, rescue, etc.) only.
- ³ This use is limited to alteration or expansion of a lawfully established church.
- ⁴ This use is limited to alteration or expansion of a lawfully established daycare facility.
- ⁵ This use is limited to alteration or expansion of a lawfully established adult daycare service.

- ⁶ Except as limited by Subsection 902.02, each lot of record may be developed with only one of the following: detached single-family dwelling, two-family dwelling (only if approved as a conditional use in the RA-1 District pursuant to Section 802), or manufactured dwelling.
- ⁷ This use is permitted only on lots larger than five acres.
- ⁸ Depending on the specific zoning district, livestock is either permitted as described under the use category of “farm uses” or is permitted as described under the use category of “livestock.”
- ⁹ For land inside the Portland Metropolitan Urban Growth Boundary, refer to Subsection 1002.03 regarding a development restriction that may apply if excessive tree removal occurs.
- ¹⁰ Uses similar to this may be authorized pursuant to Section 106, *Authorization of Similar Uses*.
- ¹¹ A use may be permitted as a home occupation, subject to Section 822, even if such use is also identified in another use listing in Table 316-1.
- ¹² The portion of the premises used shall be located a minimum of 200 feet from all property lines.
- ¹³ A produce stand shall be subject to the parking requirements of Section 1015, *Parking and Loading*.
- ¹⁴ In addition to selling produce grown on-site, a produce stand may sell agricultural products that are produced in the surrounding community in which the stand is located.
- ¹⁵ Public utility facilities shall not include shops, garages, or general administrative offices.
- ¹⁶ The base of such towers shall not be closer to the property line than a distance equal to the height of the tower.
- ¹⁷ This use may include concessions, restrooms, maintenance facilities, and similar support uses.
- ¹⁸ Equine facilities are a primary use, subject to the following standards and criteria:
- a. The number of horses shall be limited to no more than one horse per acre or five horses in total, whichever is less. Horses owned by the operator of the equine facility, or owned by a 501(c)(3) organization and being temporarily fostered by the operator of the equine facility, do not count toward the maximum number of horses. The one-horse-per-acre standard shall be calculated based on the area of the lot of record or tract on which the equine facility is located.
 - b. Services offered at the equine facility, such as riding lessons, training clinics, and schooling shows, shall be provided only to the family members and nonpaying guests of the operator of the equine facility, the owners of boarded horses, or the family members and nonpaying guests of the owners of boarded horses.
- ¹⁹ Any principal building or swimming pool shall be located a minimum of 45 feet from any other lot in a residential zoning district.
- ²⁰ Schools are prohibited within the areas identified as Employment, Industrial, and Regionally Significant Industrial on the Metro Region 2040 Growth Concept Map.
- ²¹ This use is limited to alteration or expansion of a lawfully established school.
- ²² Temporary signs regulated under Subsection 1010.13(A) are a primary use.

Excerpted from Oregon Revised Statutes

FARMING AND FOREST PRACTICES

30.930 Definitions for ORS 30.930 to 30.947. As used in ORS 30.930 to 30.947:

(1) “Farm” means any facility, including the land, buildings, watercourses and appurtenances thereto, used in the commercial production of crops, nursery stock, livestock, poultry, livestock products, poultry products, vermiculture products or the propagation and raising of nursery stock.

(2) “Farming practice” means a mode of operation on a farm that:

(a) Is or may be used on a farm of a similar nature;

(b) Is a generally accepted, reasonable and prudent method for the operation of the farm to obtain a profit in money;

(c) Is or may become a generally accepted, reasonable and prudent method in conjunction with farm use;

(d) Complies with applicable laws; and

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

(3) “Forestland” means land that is used for the growing and harvesting of forest tree species.

(4) “Forest practice” means a mode of operation on forestland that:

(a) Is or may be used on forestland of similar nature;

(b) Is a generally accepted, reasonable and prudent method of complying with ORS 527.610 to 527.770 and the rules adopted pursuant thereto;

(c) Is or may become a generally accepted, reasonable and prudent method in conjunction with forestland;

(d) Complies with applicable laws;

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

(f) May include, but is not limited to, site preparation, timber harvest, slash disposal, road construction and maintenance, tree planting, precommercial thinning, release, fertilization, animal damage control and insect and disease control.

(5) “Pesticide” has the meaning given that term in ORS 634.006. [1981 c.716 §1; 1983 c.730 §1; 1993 c.792 §32; 1995 c.703 §1; 2005 c.657 §2]

30.931 Transport or movement of equipment, device, vehicle or livestock as farming or forest practice. Notwithstanding ORS 30.930, if the activities are conducted in a reasonable and prudent manner, the transport or movement of any equipment, device or vehicle used in conjunction with a farming practice or a forest practice on a public road or movement of livestock on a public road is a farming or forest practice under ORS 30.930 to 30.947. [1995 c.703 §9]

30.932 Definition of “nuisance” or “trespass.” As used in ORS 30.930 to 30.947, “nuisance” or “trespass” includes but is not limited to actions or claims based on noise, vibration, odors, smoke, dust, mist from irrigation, use of pesticides and use of crop production substances. [1993 c.792 §33; 1995 c.703 §2]

30.933 Legislative findings; policy.

(1) *The Legislative Assembly finds that:*

- (a) *Farming and forest practices are critical to the economic welfare of this state.*
- (b) *The expansion of residential and urban uses on and near lands zoned or used for agriculture or production of forest products may give rise to conflicts between resource and nonresource activities.*
- (c) *In the interest of the continued welfare of the state, farming and forest practices must be protected from legal actions that may be intended to limit, or have the effect of limiting, farming and forest practices.*

(2) *The Legislative Assembly declares that it is the policy of this state that:*

- (a) *Farming practices on lands zoned for farm use must be protected.*
- (b) *Forest practices on lands zoned for the production of forest products must be protected.*
- (c) *Persons who locate on or near an area zoned for farm or forest use must accept the conditions commonly associated with living in that particular setting.*
- (d) *Certain private rights of action and the authority of local governments and special districts to declare farming and forest practices to be nuisances or trespass must be limited because such claims for relief and local government ordinances are inconsistent with land use policies, including policies set forth in ORS 215.243, and have adverse effects on the continuation of farming and forest practices and the full use of the resource base of this state. [1993 c.792 §31]*

30.934 Prohibition on local laws that make forest practice a nuisance or trespass; exceptions.

(1) *Any local government or special district ordinance or regulation now in effect or subsequently adopted that makes a forest practice a nuisance or trespass or provides for its abatement as a nuisance or trespass is invalid with respect to forest practices for which no claim or action is allowed under ORS 30.936 or 30.937.*

(2) *Subsection (1) of this section does not apply to:*

- (a) *City rules, regulations or ordinances adopted in accordance with ORS 527.722; or*
- (b) *Any forest practice conducted in violation of a solar energy easement that complies with ORS 105.880 to 105.890. [1993 c.792 §38]*

30.935 Prohibition on local laws that make farm practice a nuisance or trespass. *Any local government or special district ordinance or regulation now in effect or subsequently adopted that makes a farm practice a nuisance or trespass or provides for its abatement as a nuisance or trespass is invalid with respect to that farm practice for which no action or claim is allowed under ORS 30.936 or 30.937. [1981 c.716 §2; 1985 c.565 §4; 1993 c.792 §37]*

30.936 Immunity from private action based on farming or forest practice on certain lands; exceptions.

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

(2) *Subsection (1) of this section shall not apply to a right of action or claim for relief for:*

- (a) *Damage to commercial agricultural products; or*
- (b) *Death or serious physical injury as defined in ORS 161.015.*

(3) Subsection (1) of this section applies regardless of whether the farming or forest practice has undergone any change or interruption. [1993 c.792 §34; 1995 c.547 §8; 1995 c.703 §3; 2001 c.401 §1]

30.937 Immunity from private action based on farming or forest practice allowed as preexisting nonconforming use; exceptions.

(1) No farming or forest practice allowed as a preexisting nonconforming use shall give rise to any private right of action or claim for relief based on nuisance or trespass.

(2) Subsection (1) of this section shall not apply to a right of action or claim for relief for:

(a) Damage to commercial agricultural products; or

(b) Death or serious physical injury as defined in ORS 161.015.

(3) Subsection (1) of this section applies only where a farming or forest practice existed before the conflicting nonfarm or nonforest use of real property that gave rise to the right of action or claim for relief.

(4) Subsection (1) of this section applies only where a farming or forest practice has not significantly increased in size or intensity from November 4, 1993, or the date on which the applicable urban growth boundary is changed to include the subject farming or forest practice within its limits, whichever is later. [1993 c.792 §35; 1995 c.703 §4]

30.938 Attorney fees and costs. *In any action or claim for relief alleging nuisance or trespass and arising from a practice that is alleged by either party to be a farming or forest practice, the prevailing party shall be entitled to judgment for reasonable attorney fees and costs incurred at trial and on appeal. [1993 c.792 §36]*

30.939 When use of pesticide considered farming or forest practice.

(1) Notwithstanding ORS 30.930 (2), the use of a pesticide shall be considered to be a farming practice for purposes of ORS 30.930 to 30.947, if the use of the pesticide:

(a) Is or may be used on a farm of a similar nature;

(b) Is a reasonable and prudent method for the operation of the farm to obtain a profit in money;

(c) Is or may become customarily utilized in conjunction with farm use;

(d) Complies with applicable laws; and

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

(2) Notwithstanding ORS 30.930 (4), the use of a pesticide shall be considered to be a forest practice for purposes of ORS 30.930 to 30.947, if the use of the pesticide:

(a) Is or may be used on forestland of a similar nature;

(b) Is a reasonable and prudent method of complying with ORS 527.610 to 527.770;

(c) Is or may become customarily utilized in conjunction with forestland;

(d) Complies with applicable laws;

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

(f) Includes, but is not limited to, site preparation, timber harvest, slash disposal, road construction and maintenance, tree planting, precommercial thinning, release, fertilization, animal damage control and insect and disease control. [1993 c.792 §32a; 1995 c.703 §5]

30.940 Effect on other remedies. *The provisions of ORS 30.930 to 30.947 shall not impair the right of any person or governmental body to pursue any remedy authorized by law that concerns matters other than a nuisance or trespass. [1981 c.716 §3; 1985 c.565 §5; 1993 c.792 §39]*

30.942 Rules.

(1) *The State Department of Agriculture may adopt rules to implement the provisions of ORS 30.930 to 30.947.*

(2) *The State Forestry Department may adopt rules to implement the provisions of ORS 30.930 to 30.947. [1993 c.792 §41]*

30.943 Certain agencies not required to investigate complaints based on farming or forest practice. *The Department of Environmental Quality, Department of State Lands, State Department of Agriculture or State Forestry Department is not required to investigate complaints if the agency has reason to believe that the complaint is based on practices protected by ORS 30.930 or 30.947. [1995 c.703 §8]*

30.947 Effect of siting of destination resorts or other nonfarm or nonforest uses. *The fact that a comprehensive plan and implementing ordinances allow the siting of destination resorts or other nonfarm or nonforest uses as provided in ORS 30.947, 197.435 to 197.467, 215.213, 215.283 and 215.284, does not in any way affect the provisions of ORS 30.930 to 30.947. [1987 c.886 §13; 1995 c.703 §6]*

30.949 Action for hindering, impairment or obstruction of forest practice on state forestland.

(1) *As used in this section:*

(a) *“Access road” means a road owned or maintained by the State Forestry Department.*

(b) *“Forest practice” has the meaning given that term in ORS 527.620.*

(c) *“State forestland” means:*

(A) *Forestland acquired under ORS 530.010 to 530.040; and*

(B) *Common School Forest Lands and Elliott State Forest Lands managed under ORS 530.490.*

(2) *A private entity that contracts with the State Forestry Department to perform a forest practice has a right of action for the amount of actual damages against any person that, while on state forestland or an access road on state forestland, intentionally commits an act that hinders, impairs or obstructs or is an attempt to hinder, impair or obstruct, the performance of the forest practice by the private entity. A court shall award a plaintiff prevailing under this section reasonable attorney fees and costs.*

(3) *If the contract between the private entity and the department provides for the private entity to perform forest practices in a defined area of state forestland that lies in more than one county, venue for a cause of action under this section is proper in any county containing part of the area of state forestland defined by the contract terms in effect on the date the cause of action arose.*

(4) *An action under this section must be commenced within two years after the date of the act giving rise to the cause of action. [2013 c.461 §1]*