

DEATH BY 1000 CUTS:

The Erosion of Oregon's Exclusive Farm Use Zone

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of Oregon

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FOREWARD

Oregon's land use planning program protects millions of acres of farmland, but this natural resource remains under constant threat. Urban expansion and rural rezoning continue to take land out of exclusive farm use (EFU) zoning. Yet, a more insidious activity also harms agricultural communities: the increasing numbers and types of nonfarm uses on farm land. This report details the roughly sixty nonfarm uses permitted on EFU land, and identifies the numerous detrimental impacts nonfarm uses have on Oregon's farmlands.

Not all nonfarm uses create negative impacts, with some uses complementing agriculture, and others being necessary for the stability of the agricultural area. However, the increase in nonfarm uses is making farming difficult because of the resulting traffic and inability to move farm equipment, the obligation of managing neighbor complaints, increased trespass, and spikes in land valuation due to speculation for nonfarm development. The interviews and data in this report demonstrate nonfarm uses in Oregon are on the rise, and those uses are contributing to the erosion of agricultural vitality throughout the state. Based on data gathered, a clear picture emerges: Oregon's EFU zone is no longer exclusive.

Some see Oregon farmland as flat land ready to be built upon, regardless of the impact to the functioning of established agricultural enterprises and how the decline in the agriculture economy would affect local rural communities. On the contrary, farmland should be used in a way that supports the state's farms, farmers, rural communities and macroeconomy. Oregon farms are a vital pillar of the state's economy, and land uses that conflict with agricultural operations should be avoided to preserve agricultural industry health and promote its economic viability.

Oregon agriculture deserves protection: it supports rural and urban communities, contributing 686,518 jobs, \$29.71 billion in wages, and \$2.85 billion in exports to Oregon's economy. EFU lands are working lands, and need to be zoned and managed to protect local agriculture and the statewide economy.

Oregon's land use program prevents much misplaced development, but there are numerous exceptions and loopholes that cumulatively harm Oregon farms. EFU zoning needs to continue to ensure spatial contiguity of farmland and well-functioning agricultural infrastructure.

The practice of continuing and strengthening EFU zoning, including limitations on conflicting uses, must remain a priority for counties, lawmakers and state agencies. As this report lays out, EFU lands are under threat from development notwithstanding their zoning of not-so-exclusive farm use.

Farmers know how to successfully work the land, but face a myriad of challenges, from shifting workforce conditions to commodity market instability. The more Oregon's land use program can ensure land use patterns that allow for agricultural production to flourish, the more resilient Oregon's economy will be. As Oregon grows, its rural communities will flourish because of — not in spite of — agricultural land protection.

Mary Kyle McCurdy
Deputy & Policy Director



EXECUTIVE SUMMARY

Oregon's land use system is intended to protect economic, environmental, and human prosperity through numerous planning goals. Goal 3 is the Agriculture goal and is foundational to exclusive use farm (EFU) zoning and stewarding Oregon's millions of acres of productive agricultural land. The importance of farmland was recognized in 1973 with the passage of Senate Bill 100, the landmark legislation that created Oregon's land use planning system.

A primary reason the Oregon Legislature created the land use planning system was to limit sprawling development onto the state's valuable natural resources, including farmland. To protect farmland, counties are required to designate EFU zones as areas preserved and maintained for farm use. Initially — in addition to farm use and farm dwellings — state statutes permitted a limited number of nonfarm uses in EFU zones: schools, churches, public and nonprofit parks, playgrounds, community centers, golf courses, and utility facilities.

As of 2020, the Oregon legislature has expanded the number of uses, so that now about 60 uses are allowed within EFU zones, many of which are not related to farming. The proliferation of nonfarm uses brings into question whether EFU zoning is adequately preserving and maintaining land for agriculture as intended by the legislature, or if strengthening reforms are needed. Nearly fifty years after its creation, just how exclusive is the EFU zone?

This report explores the overall conflicts created by nonfarm uses on farmland, details the extent and impact of specific uses allowed, and concludes with recommendations that can help ensure well-functioning and productive agricultural communities. Our priority recommendations include:

Enforce land use laws: Many conflicts exist because many nonfarm uses occur without required county permits or in violation of permit conditions. Adequate county enforcement would limit the spread of unlawful nonfarm

uses and reduce conflicts. Increased funding for planning departments would help address the lack of enforcement of land use laws. The cost of providing county enforcement services should be evaluated when the legislature or any county considers allowing or expanding a nonfarm use on farmland.

Limit nonfarm dwellings on farmland:

The cumulative effect of nonfarm dwellings threatens long-term agricultural stability. When dwellings unassociated with agriculture proliferate, and are used for purposes other than their permitted use, land speculation increases and neighboring farms are forced to manage conflicts.

When counties review applications for nonfarm dwellings on farmland, the full cost of servicing and managing conflicts due to nonfarm dwellings — including funding for ongoing compliance review — must be evaluated. In light of the numerous conflicts nonfarm dwellings create, the legislature should not allow any new nonfarm dwellings on farmland.

Clarify definitions and review criteria:

Unclear definitions for uses allowed on farmland create confusion and loopholes allowing for conflicting uses, resulting in uncertainty regarding the scope of uses allowed. The effect of this is that local governments permit uses at or outside the outer bounds of the law. By clarifying and limiting the scope of definitions and uses allowed on farmland, the original purpose of the EFU zone can be better achieved. Two of the use categories that can be revised to better achieve their original purposes are home occupations and commercial activities in conjunction with a farm use.

Adopt alternative siting analyses:

Counties should develop a process requiring identification and analysis of alternative sites for land-intensive and high-impact nonfarm uses. The analysis should require consideration of other land not zoned for farm or forestry, including urban land. Proper siting can ensure that Oregon's natural resources and tax dollars are used in the most efficient and productive manner.

Eliminate problematic non-farm uses on

farmland: Although significant hurdles exist to achieve change in the legislature, advocates should continue to consider what harmful non-farm uses should be further restricted or eliminated on farmland through statutory amendments.

ABOUT THIS REPORT

This report was created by 1000 Friends of Oregon's 2019 Paul Gerhardt Jr. Intern, Amber Shackelford. It documents the rise of nonfarm uses on farmland in Oregon, and how the uses impact farmers.

ABOUT 1000 FRIENDS OF OREGON

1000 Friends of Oregon is a statewide land use advocacy organization with offices in Eugene, Grants Pass, and Portland. Founded in 1975, our mission is to work with Oregonians to enhance quality of life by building livable urban and rural communities, protecting family farms and forests, and conserving natural areas.

ACKNOWLEDGMENTS AND CREDITS

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INTRODUCTION

The importance of agriculture to Oregon — both its character and economy — is undeniable. Far-reaching grass fields, dairy cows grazing along the highway, and barns backdropped by mountain vistas are essential features of Oregon's landscape and identity. But the extent of Oregon's agriculture goes beyond aesthetic and cultural values — it is also the second largest industry in the state.

Agriculture is a \$22 billion industry in Oregon that, along with the industries it supports, provides jobs for one in eight Oregonians. The industry brings a lot of income into the state, as 80 percent of agricultural products are exported. Further, Oregon leads domestic production in multiple crops, including blackberries, several varieties of grass seed, and hazelnuts. Given the valuable role agriculture plays in Oregon, its continued success needs to be prioritized at the state and local levels.

Oregon has taken great strides to protect and support agriculture. The emergence of EFU zoning occurred through a 1961 law that provided tax assessments to farmers based on the value of land for farm use and provided for exclusive zoning for farm use, although counties did not identify specific zones.

In 1963, the legislature revised this law to allow for the creation of zones exclusively for farm use, save for schools, churches, public or nonprofit parks, playgrounds and community centers, golf courses, and utility facilities. The law also continued farm tax assessment and provided an opportunity for that to be extended to those farming outside of farm zones. Six years later, as concerns arose that development and road construction were threatening farmland, the Oregon Legislature passed Senate Bill 10, requiring comprehensive statewide zoning by local governments to achieve seven planning goals, including the goal of conserving prime farmlands. Due to the slow pace of zoning adoption, Senate Bill 10 was not effective enough to meet this goal alone, which opened the door for Senate Bill 100 in 1973.

Senate Bill 100, strongly advocated for by then-Governor Tom McCall, is the innovative legislation that established Oregon's land use planning program. The need to protect farmland was a key driver of the bill, which required the adoption of comprehensive plans to, among other things, limit sprawl and preserve agricultural land for crop production. Preserving and maintaining agricultural lands became Goal 3 of the Statewide Planning Goals. In addition to Senate Bill 100, the legislature also passed Senate Bill 101, which enacted the state's agricultural land use policy and clarified the purpose of EFU zoning.

Over 40 years after the passage of Senate Bills 100 and 101, The annual conversion rate of range and agricultural lands has decreased from 17,000 acres per year before land use system implementation, to 7,000 acres per year after implementation. Furthermore, while Oregon lost 217,000 acres of these lands from 1984 to 2014, neighboring Washington State lost nearly the same amount in half the time.

These figures suggest many more acres of farmland would have been converted to other uses if not for the land use system. Even with the protections of the land use system valuable land continues to be lost. About 870 acres are lost annually to urban expansion, and a similar amount is lost due to the rezoning of EFU lands for other rural development, but the vast majority of land lost is due to nonfarm uses and development on land still zoned as EFU.

In contrast to the limited amount of nonfarm uses originally allowed in EFU zones, the number of nonfarm uses allowed today has expanded to around 60. The exact number is difficult to determine based on how uses are grouped, and because the legislature approves a new use nearly every legislative session. Some of these 60 uses are farm-related, such as farm stands and irrigation canals, and some are nonfarm-related, but to some degree need to be located on EFU lands because they are geographically dependent.

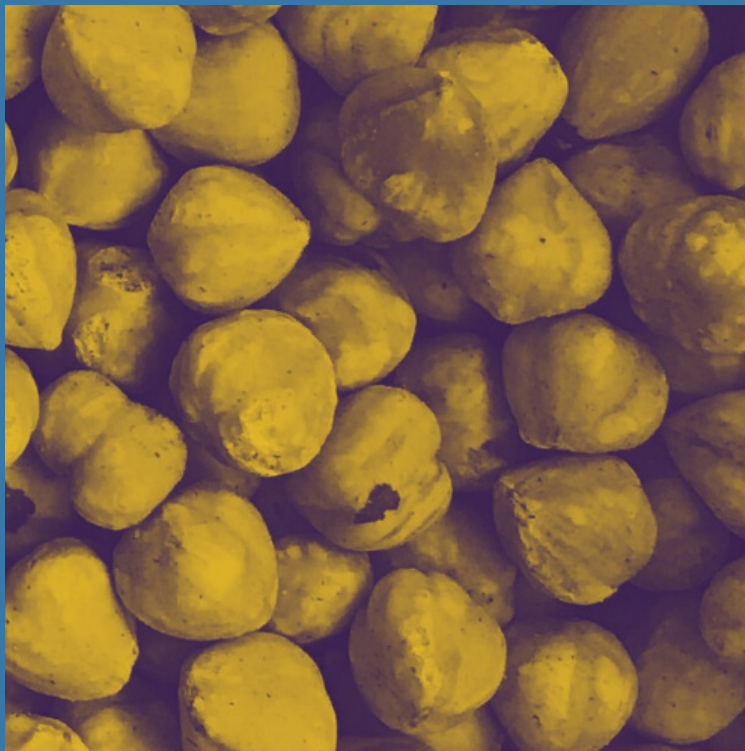
Some uses have no relation to agriculture, including nonfarm dwellings, destination resorts, and model aircraft facilities.

Other uses fall into a gray area, where they are potentially farm-related, but might interfere with agriculture depending on certain circumstances. Uses that fall into this category include agritourism, home occupations, and wineries.

Nonfarm and potentially farm-related uses in EFU zones can cause conflicts and negatively impact a farmer's ability to engage in agriculture. Direct conflicts include complaints and disputes with nonfarming neighbors, property damage, disruptions caused by nonfarm commercial activities, and lawsuits involving claims relating to nuisance, trespass, littering, and livestock predation.

Indirect impacts are equally threatening to agriculture, including the potential breakdown of critical mass, agricultural land fragmentation, and land value inflation. Direct and indirect impacts make it more difficult for farmers to stay in business, and for new farmers to enter into agriculture as they complicate and constrain the already thin-margined practice of modern agriculture.

In other words, the proliferation of nonfarm uses on farmland represents a growing threat to the viability of agriculture in Oregon, which endangers the economic and cultural values farming brings to the state. The following sections provide general background on land use law for farmland, explore conflicts due to nonfarm uses on farmland, and offer policy suggestions for reducing these threats to agriculture.



Farmland Overview

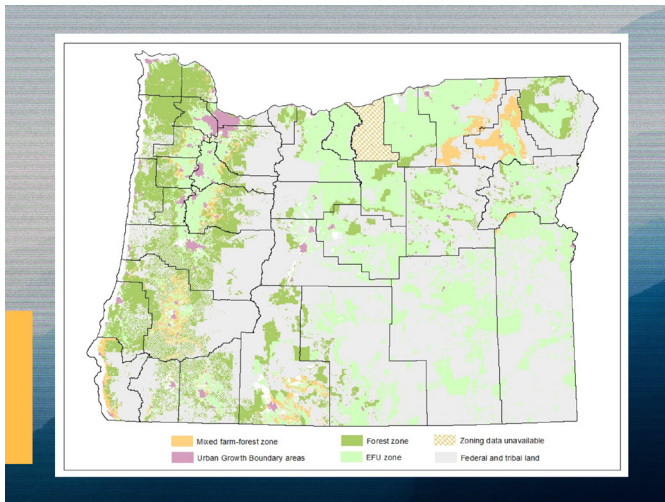


Figure 1. Exclusive Farm Use and Other Lands Zoning

Source: Stephanie Campbell, Oregon DLCD, Rural Resource Lands Research Report https://www.oregon.gov/lcd/Commission/Documents/2019-05_Item_6_Attch_A_Report.pdf

WHAT IS FARMLAND?

In Oregon, farmland is determined based on soil class and suitability for farm uses. There are a number of detailed nuances about soil type, quality, ability to grow certain crops, and regional differences that can impact how an agricultural property is regulated, which this report does not address in depth. Land use regulations also govern uses on farmland based on whether a use is located within three miles of an urban growth boundary.

Certain uses are regulated based on whether they are located on “high-value farmland.” High-value farmland comprises the most productive agricultural land. Some nonfarm uses are allowed on high-value farmland, others are allowed with review, and some are not permitted at all.

At least two definitions of high-value farmland exist, leading to confusion over what type of land is being discussed when the topic of uses on high-value farmland arises. One definition, largely used in relation to dwellings, comes from ORS 215.710.

This statute defines high-value farmland as a tract of land predominantly composed of irrigated or non-irrigated and prime-, unique-, Class I- or Class II-classified soils. Prime farmland, as defined by the United States Department of Agriculture (USDA), is “land that has the best combination of physical and

chemical characteristics for producing food, feed, forage, fiber, and oilseed crops and is available for these uses.”

Unique farmland is land “used for the production of specific high-value food and fiber crops, such as citrus, tree nuts, olives, cranberries, and other fruits and vegetables.”

Class I and Class II are additional soil classifications by the National Resources Conservation Service (NRCS). ORS 215.710 provides further specifications for defining high-value farmland for land inside or outside the Willamette Valley, and west of the Coast Range summit when used for a dairy operation.

ORS 195.300(10) expands the definition of high-value farmland provided in ORS 215.710. The statute incorporates additional subclassifications of soil; land that has a water rights certificate associated with it or is within the boundaries of an irrigation or diking district; land planted with wine grapes; and land meeting certain elevation and slope criteria in particular areas. What can further complicate the definition provided by ORS 195.300(10) is that when a use lists which definition of high-value farmland it is referring to, it might refer to all of ORS 195.300(10), or only part of it, as the statute has six subsections.

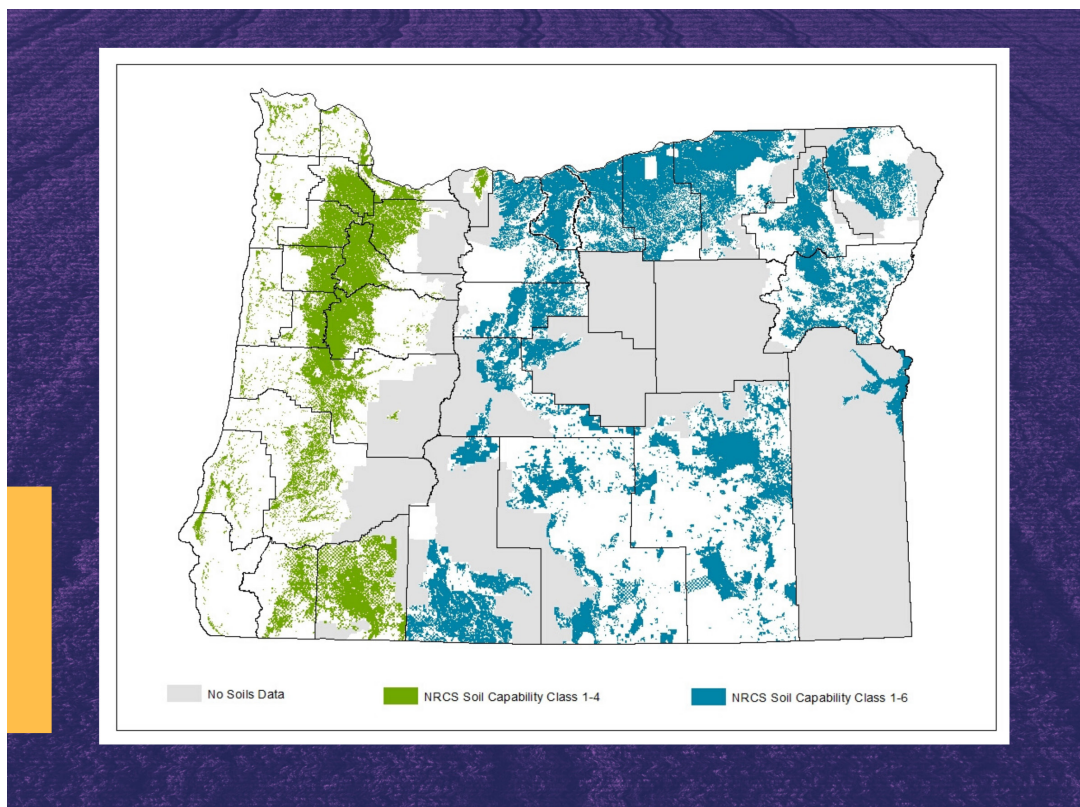


Figure 2. NRCS Soil Capability Classes on Non-Federal Lands
 Source: Stephanie Campbell, Oregon DLCD, Rural Resource Lands
 Research Report https://www.oregon.gov/lcd/Commission/Documents/2019-05_Item_6_Attch_A_Report.pdf

STATUTORY NONFARM USES

Most uses in the EFU zone are provided at ORS 215.213 and 215.283. These two statutes are similar and contain many of the same nonfarm uses, but ORS 215.213 applies to counties that adopted marginal lands provisions (Washington and Lane counties). ORS 215.283 applies to all other counties in Oregon.

ORS 215.213 was originally intended to be slightly more restrictive than ORS 215.283 as a quid pro quo for more liberal allowances of nonfarm dwellings on designated marginal lands. But over several decades, the number of additional uses passed by Oregon's legislature has made both statutes very expansive, resulting in an erosion of the exclusive nature of farmland.

Nonfarm uses on farmland are categorized as either permitted uses or uses that may be allowed conditionally. The two types are commonly referred to as sub-1 uses and sub-2 uses. Most sub-1 uses listed under subsection 1 of either ORS 215.213 or 215.283 are permitted outright, with a handful having

some statewide review criteria. These uses are subject only to state law, and a county cannot enact stricter land use requirements for such uses. Examples of sub-1 uses include farm stands, wineries, and utility facilities.

Sub-2 uses listed under subsection 2 of the aforementioned statutes are subject to conditional use review, in which the use must meet both state and any additional local requirements. Sub-2 uses are also subject to ORS 215.296, which requires —among other things— that the use will not force a significant change in or significantly increase the cost of accepted farm or forest practices on surrounding lands. Examples of sub-2 uses are parks, golf courses, and temporary hardship dwellings.

Not all allowed uses fit neatly under subsection 1 or 2. Agritourism, for example, has its own section of ORS 215.213 and 215.283 entirely, and can also be permitted under several other statutory allowances. In addition, some uses are found elsewhere in Chapter 215, such as lot-of-record dwellings and youth camps.



Overall Issues & Conflicts

This section analyzes broad conflicts and impacts to agriculture that arise from the accumulation of nonfarm uses on farmland. When evaluating impacts, there are four general categories to keep in mind: farm-related, not farm-related but locationally dependent, potentially farm-related, and not farm-related.

These categories were informed by interviews with farmers and land use practitioners from throughout Oregon. The categories should be considered on a spectrum ranging from clearly related to farm use (dwellings for the primary farm operator) to decidedly unrelated to farm use (fireworks stand).

A nonfarm use's impact on farmland depends on more than just its relation to farming. The extent and location of the use are also important. A particular use might be wholly unrelated to farming, but there could be only one application of it in the state, resulting in a minimal impact. In contrast, certain uses more related to farming might be endemic across the state, resulting in a cumulative negative impact on established agricultural practices. Therefore, the scope, location, and intensity of any use must be evaluated to better understand compatibility (or lack thereof) with farm uses. All of these considerations help inform how nonfarm uses interfere with farming.

Lack of enforcement impairs the functioning of the EFU zone.

A major issue that exacerbates conflicts for farmers is the lack of enforcement of EFU statutes and permit requirements. Counties are responsible for the enforcement of conditional use permits, as well as compliance with statutory criteria for permitted uses, but enforcement is largely complaint-driven. This means that in order for counties to verify that a nonfarm use complies with its permit, a formal complaint may need to be filed. Even if counties are aware of a compliance issue, they may not address it without a complaint.

This is the first area where enforcement breaks down, as filing a complaint often creates more animosity between community members without resolving the issue, making individuals reluctant to file complaints against

problem-causing neighbors. After a complaint is filed, there is the question of whether it will lead to enforcement. An individual who filed a complaint told an interviewee that county enforcement would not have time to look into it for at least a year. Another described a farmer who complained about noise produced by neighbors so many times that now the sheriff will not respond.

The answer to what is causing a lack of enforcement is two-fold. First, counties often do not have adequate funding or staff for enforcement. It is difficult to implement an unfunded program, which is what managing enforcement cases can feel like for rural planning offices.

Even if the office is funded for enforcement, there is no requirement for counties to take timely action in response to complaints. Local governments face tight budget constraints across numerous policy programs, which puts land use enforcement low on the priority list. The issue is complicated by the frequency of changes to land use laws and the detailed regulatory programs governing nonfarm uses. This can make the quantity and complexity of work for land use enforcement officials a significant challenge.

The second reason behind the lack of enforcement is that counties may not necessarily want to enforce land use laws. The state does not have independent authority to address individual violations, so the responsibility lies with the county. One interviewee shared his view that some county officials are hesitant to tell people what they can do with their land, while others do not "fundamentally believe in the Oregon land use system." Whether this is because their constituents do not want to feel limited in the use of their property, or those governing or personally making enforcement decisions do not support EFU restrictions, it results in a lack of action by counties to properly regulate EFU lands. By allowing nonfarm uses to operate in violation of or without a permit, counties are failing to protect farmers' abilities to effectively farm.

The need to remedy the lack of land use enforcement must be taken into account when considering statutory or local amendments to

land use laws. Because it is clear that nonfarm operators and their customers do not always abide by permit conditions, any consideration of a new or expanded nonfarm use must include equitable and timely stakeholder engagement.

Consideration and analysis of the full cost of the use, including funding for a compliance program must also be taken into account. For some uses, compliance officers are necessary to ensure that the purpose of the EFU zone continues to be achieved. Additional costs to consider include funding for a complaint hotline, and the partnership of local police to address after-hours violations and complaints.

Traffic impacts farmers' abilities to move machinery and products, stresses local services, and creates dangerous conditions.

Traffic generated by nonfarm uses is a conflict that was widely discussed by interviewees, in part because of its cumulative nature.

There are four distinct areas of traffic issues in EFU zones.

- Traffic issues generated from single events, such as weddings and outdoor mass gatherings.
- Traffic from additional permanent businesses, such as wineries, bed and breakfasts, and guest ranches.
- Traffic results from people living or working in EFU areas that are not engaged in farming or farm-related activities.
- Increased traffic from urban residents commuting or otherwise traveling through EFU zones to get to other destinations, including taking shortcuts and avoiding traffic on major highways. While this fourth traffic-inducing activity might not be a result of a nonfarm use, it still has a strong effect on farmers' abilities to farm, and adds to the cumulative impacts of increased traffic.

Traffic created by nonfarm uses can be dangerous: Oregon Department of Transportation data reports that crashes involving tractors and other farm equipment have increased from a total of 26 throughout the state in 2013 to 45 and 42 in 2016 and 2017, respectively.

One interviewee reported that there have been many fatalities and accidents on the road his farm is located on, mostly due to negligence and excessive speed. All farm operations considered, this farmer believes "the most dangerous thing we do is drive down the road." No matter the reason for increased traffic on rural roads, the hazards and the need to modify farming practices remain the same.

Increases in traffic also escalates wildfire risk. It is difficult to evacuate people in the event of a wildfire because rural transportation systems are not developed to support large amounts of traffic. Many venues where large events take place only have one way in and out, potentially on unimproved roads.

This limitation already poses challenges for emergency responders needing to get to incidents at the event itself or to neighboring farmers. The challenge of evacuating thousands of people from such a constrained area is exponentially more difficult if a fire breaks out nearby.

The presence of more cars in wildfire-prone areas raises the risk of fire. Wildfires can be started by metal parts of cars dragging on the road and creating sparks, or by heat from the exhaust igniting dry kindling.

According to Oregon Department of Forestry fire statistics, these causes accounted for only about 5% of wildfires in the state in 2018. However, cars causing catastrophic fires are not unprecedented. Sparks from a vehicle's rim scraping the road caused the deadly 2018 Carr fire, which burned 229,651 acres and killed eight people in Northern California. As the number of cars increases in rural areas vulnerable to fire, the possibility of a car sparking a fire increases as well. Which in turn puts agricultural property at a higher risk of wildfire.

Traffic also forces farmers to change their practices and can result in farmland being taken out of production. One interviewee described how she used to farm land bordering a rural highway. Unfortunately, as traffic increased over time, the risks of highway drivers crashing into farm equipment on the road and trash on the fields ruining equipment became too high, so she stopped leasing and

farming that land altogether.

If land bordering heavily trafficked highways becomes too difficult to farm, a sizable amount of land could be taken out of production.

Disruption, nuisance, and lawsuits

Nonfarm uses on farmland can cause significant disruptions to farmers and result in lost time due to managing complaints and physical impacts to farmland and equipment. They are summarized here:

- Trespassing
- Vandalism & theft
- Poaching/recreational shooting
- Roaming dogs
- Introduction of invasive species
- Noise & music
- Time & money spent dealing with and adapting to neighbor complaints of farm practices

Oregon has a right-to-farm law, which provides commercial farmers with a defense if they are sued for an alleged nuisance. But the farmer still needs to hire an attorney and manage the lawsuit. Then there is the matter of nuisances created by nonfarm neighbors, which the right-to-farm law does not address.

For example, if neighbors plant an invasive species that spreads to a farmer's property, right-to-farm does not protect them from that conflict. Farmers do have the option of filing a general nuisance lawsuit against a neighbor, but in addition to the retaliation they could face, this is not an effective means for remedying threats to farming.

Winning a nuisance lawsuit means a farmer may receive money for damages, but not necessarily injunctive relief — the cause of the nuisance will not necessarily be stopped. It is more efficient and economical to prevent conflicts and nuisances from occurring in the first place. A major reason for the existence of land use laws is to prevent such conflicts.

Right-to-farm laws do not mean farmers can avoid all the costs and lost time associated with a lawsuit. One interviewee described a lawsuit where a woman was rear-ended

after stopping on a road where a dust cloud from combining on his property had settled. A nuisance claim was brought against the farmer, and even with right-to-farm, an arbitrator still found him partially liable. The farmer had to pay a portion of the claim as well as attorney fees.

Lawsuits can represent a tremendous cost to farmers, and might cause them to make concessions and numerous changes to their farming practices in order to prevent disgruntled neighbors and visitors from filing suit.

As another farmer put it, “even if something that happens is the other person’s fault, people will sue for assets.” The end result of a lawsuit — even when the farmer prevails — could be a loss due to the amount of time they have to spend dealing with the lawsuit instead of farming.

Land fragmentation

All nonfarm uses that take farmland out of production contribute to land fragmentation, regardless of zoning. The amount of acreage necessary for successful farming varies depending on what is being farmed, which is why each county determines — within state allowances — its own minimum lot sizes for new farm parcels to best suit farming practices in the area.

These minimum lot sizes are intended to maintain sufficiently-sized tracts of farmland to ensure the continued viability of agriculture in each region. New parcels created for other nonfarm uses across the state must be no larger than the minimum size needed to accommodate the use.

In each case, the remainder of the original farm parcel must continue to meet the minimum lot size after the land division. All minimum parcel sizes must be large enough to keep commercial farms and ranches in the area successful and not contribute to their decline.

However, land fragmentation can still happen in two ways. First, even if new nonfarm uses are on small parcels, that land is still removed from farm use and fragments the farmland

around it. The more nonfarm uses concentrate in an area, the more fragmented the land becomes. This is part of the cumulative impacts nonfarm uses engender.

The second way land fragmentation occurs is through the development of existing parcels. Before SB 100 established Oregon's land use program, there were many parcels smaller than minimum lot sizes scattered throughout the state.

For numerous years, people have sought out these parcels for nonfarm dwellings in particular. For example, one interviewee shared how she is repeatedly contacted by individuals wanting to purchase a 12-acre lot that is part of her larger property. While she is not selling her property, her neighbor is looking to sell off a 5-acre lot. The practice of selling off sections of property gradually reduces the amount of farmland available, contributing to fragmentation.

The future implications of fragmentation are critical to consider, because reconsolidating a tract of land after it has been sold off to multiple buyers and potentially developed is significantly difficult to do. This has a unique and adverse effect on new farmers who do not own land, as they attempt to find enough land to purchase or lease to establish a profitable farm, while facing competition from other nonfarm-oriented buyers.

Land value inflation

In addition to fragmentation, nonfarm uses in EFU zones can also inflate land values. The 1000 Friends report "Too Many Homes on the Range" identified a study showing that even if only small amounts of land are sold at higher prices, the value of land in the area will tend to rise as owners' expectations increase.

Multiple interviewees cited nonfarm development as driving up land prices. Farmers are being outbid by other buyers looking to develop vacation homes or ranchettes, who are willing and able to pay more for the land. Even if farmers can afford the land, the price might exceed what one could earn from farming it.

One interviewee recalled a farming neighbor who put up his land for sale far above what any farmers around him would pay for it, in hopes of attracting a developer who would build a golf course on the land.

Rising land prices, like fragmentation, particularly disadvantage new farmers, with one interviewee stating it is "almost impossible for first generation farmers to acquire land." The land cost is prohibitive, especially for small-scale, organic farmers who are competing for smaller parcels.

Such impacts are important to consider within the context of the majority of agricultural lands changing hands within the next few decades as current farmers retire. Many farms do not yet have intended successors identified.

Indirect impacts: Shadow conversion and the impermanence syndrome

Land fragmentation and inflation of land costs cause direct negative impacts to farmers such as the inability to purchase land and the conflicts that occur when nonfarm uses interfere with farming practices. But, nonfarm uses can also result in more indirect impacts such as shadow conversion.

Oregon Department of Agriculture's Land Use and Water Planning Coordinator, Jim Johnson, describes shadow conversion as "not just the loss of land, but the loss of the ability of farmers to operate and the pressure to convert from farming because [they] cannot afford it anymore." Although a farmer still has their land, they might sell because they can no longer manage the problems resulting from dealing with nonfarm-use related issues. Essentially, though they have the tools and expertise to do so, farming becomes infeasible for these individuals.

Shadow conversion is an element of impermanence syndrome, which is a "self-fulfilling prophecy in which discouraged farm owners invest less resources or sell their land because they believe nearby nonfarm developments will compromise the future of their farm operation."

In this situation, farmers might halt operations while they search for a buyer or refrain from investing in their farms knowing they can generate income from selling their farm either when they find a buyer, or upon retirement.

A disturbing feedback loop is created: nonfarm uses near existing farms reduce farmer's certainty of the future and the perceived ability to farm, which causes them to sell their land or otherwise stop farming. This results in agricultural land being taken out of production and replaced by more nonfarm uses.



Figure 3. Feedback Loop Created by the Impermanence Syndrome

Threats to critical mass

The continuous growth of nonfarm uses on agricultural lands raises the concern of how they impact critical mass. Farmers and ranchers rely on various businesses, services, and suppliers to farm, maintain their land, and sell their products. These businesses, such as processors, equipment dealers, feed stores, and marketers in turn rely on farmers to support them.

Agricultural producers that utilize the services of and support of such businesses in a given area make up the critical mass. Once the critical mass slips below a certain threshold — typically when there are fewer farms — the area will no longer be profitable, so the agricultural businesses leave, reducing the number of resources available to farmers.

Farmers could then have to travel farther distances and pay higher prices for necessary products and services. This process could

create another feedback loop if costs are too great and farmers do not (or cannot, perhaps due to soil capabilities of their land) adapt, and instead sell off their land for nonfarm uses.

A threshold for critical mass has been difficult to identify in studies, in part due to lack of data, but also because whatever thresholds exist are likely highly dependent on context. Oregon has great diversity in its agriculture, from multi-thousand-acre ranches to small, organic vegetable farms. With diversity comes differences in business needs. Therefore, there are likely multiple critical mass thresholds for varying agricultural products, scales, regions, and markets.

Despite the difficulty of ascertaining parameters, there are clear signs of decline in critical mass in Oregon. One example is the closing of tractor and large equipment dealerships. Interviewees report the closing of many or all in the Hood River and Rogue Valley areas.

One interviewee notes the decline in Oregon pork production — a 52% decline in number of animals and a 20% decline in farms producing pork from 2007 to 2012 — could be related to the lack of access to rendering facilities.

Another interviewee describes an area that could be impacted in the future by a decline in critical mass. The farmer describes increasing difficulty in selling fruit products, in his case primarily pears, which require sophisticated packing houses to supply large grocery stores. In Hood River, there are 15,000 acres of land dedicated to fruit production, and there are four packing houses.

He remarks that if only two remained, there would not be enough competition between the packing houses and farmers would be in trouble. While this might not be an issue yet, Hood River faces increasing pressure from development as a tourist destination, which could impact critical mass in the future.

Breakdown of community

Another hard-to-quantify result of the proliferation of nonfarm uses is the breakdown of rural communities. One interviewee states simply, "The sense of community, of shared values and goals, is just gone." She describes damage done to the local community by absentee landlords, and an exaggerated class divide between farmers and nonfarmers who live in the area but send their children into Portland to be educated.

Another interviewee also mentions the issue of absentee ownership, noting that owners who live elsewhere are not engaged with the schools and do not utilize local professional services.

The disengaged property owners tend to view their properties as financial investments and advocate for lower tax burdens —perspectives and investment strategies which funnel money out of agricultural communities. A third interviewee laments that with so much traffic and fragmentation due to development, the quality of life is declining.

The aforementioned types of community disintegration could cause farmers to leave the fields and sell off their lands, introducing further nonfarm uses into the area.



Extent of Nonfarm Uses & Specific Conflicts

This section breaks down the extent of each nonfarm related, potentially farm-related, and directly farm-related use, followed by a discussion of each use's resulting conflicts with agricultural practices. Supporting data comes primarily from the Department of Land Conservation and Development (DLCD) Farm & Forest Reports, a biennial publication summarizing land use decisions in exclusive farm use and forest zones, reported to DLCD by counties.

However, basing the extent of these activities on permit data is a limiting factor, as permit data might be reported inconsistently across counties, and unpermitted uses occur throughout the state as well. Information regarding conflicts resulting from these uses comes from farmers and individuals involved in rural land use issues that were interviewed for this project.

When evaluating conflicts, it is important to keep in mind regional differences across the state. As can be seen with some of the information on the concentration of uses in certain counties below, not all parts of the state experience uses the same, or at all. Due to the variety of crops and livestock produced, the sizes of farms, geography, soil types, proximity to urban areas and other factors throughout the state, the challenges farmers face can vary greatly across regions and counties.

FARM-RELATED:

Relative farm help dwellings are residential dwellings built for relatives of the primary farmer or their spouse whose assistance is needed on the farm. Between 1999 and 2017, counties issued 691 permits for relative help dwellings, averaging 47 per year between 1999-2007, and 27 per year between 2008-2017, with no more than 36 dwellings permitted in a single year since 2007.

The 2008 recession is one possible explanation for the decrease in permits during this time. With 154 permits issued, Douglas County is responsible for approving 22 percent of relative farm help dwellings in the state between 1999-2017. Yamhill, the county that approved the second-most permits, makes up just eight percent.

Relative farm help dwellings, when used as intended, are great for farmers. However, the statute allowing for these dwellings leaves loopholes that can be exploited for nonfarm uses. State statutes do not require applicants to show demonstration of need to get a permit for a relative farm help dwelling, nor do they require the applicant to state how much help the new onsite occupants will provide. This loophole can result in individuals living in the dwelling that only provide minimal support or do not work on the farm at all.

For example, on a ten-acre hay farm, a farmer may not need to work full-time on the farm, let alone require year-round help of a relative to adequately run the operation — but a relative farm help dwelling could still be approved. Interviewees note that some relative help dwellings end up becoming rentals for unrelated and nonfarming tenants, including short-term lodging. The abuse of this allowance can result in more nonfarming individuals on farmland and thus more conflicts, such as farm practice complaints, roaming dogs, and vandalism.

Farm stands can support direct crop sales, bring in extra income, and help visitors gain an appreciation and understanding of farms. Farm stands are somewhat abundant, with 88 permits reported since 2000, a quarter of which are concentrated in Marion County. However, some farm stands exceed permit conditions and create problems for neighboring farmers.

Farm stands are supposed to sell products from the farm itself or those nearby, not offer promotional activities that exceed 25% of the farm stand's sales, and not include any structures for other uses. Farm stands become an issue when they start turning into grocery stores or cafés, according to multiple interviewees. This problem has gone unaddressed due to a lack of enforcement.

Such a difference from the original use purpose can create traffic and trespass issues due to people unfamiliar with farming practices traveling into actively farmed areas. One farmer reported traffic from farm stands as a particular concern.

During harvest season, farmworkers and semi-trucks hauling crops need to travel to and from his farm frequently. A farm stand is located on a road nearby, which constantly has people parked on the road — creating a traffic and safety hazard as people and dogs move in and out of cars alongside the road while trucks try to pass by. The farm stand's permit conditions do not allow on-street parking. In addition, the farmer has had people from the farm stand trespassing onto his land and picking fruit.

In counties that allow on-road parking, the conflict still exists for farmers, especially those who need to move farm equipment that takes up the entire road. Additional conflicts arise when promotional activities such as events like harvest festivals exceed 25% of a farm stand's sales and bring in substantially more visitors and traffic, as opposed to customers just coming to buy produce from a farm stand. Farm stands are certainly farm-related and allow for direct sales of crops, but they can still cause issues for neighboring farmers.

Commercial activities in conjunction with farm use can be complementary to farm use, or not at all. Since 1997, counties have issued 308 permits for commercial activities in conjunction with farm use. It is the fourth-most permitted non-dwelling use since 1997, and the second-most since 2013 (see figure 4 below). The biggest issue with this use, which multiple interviewees identified, is that it is too broadly defined.

There is no specific definition of what activities do or do not qualify, making it a catch-all for uses that do not fit into other categories. Potentially conflicting uses that might be approved under this allowance include water-intensive processing facilities, tasting rooms without wineries or vineyards, overnight accommodations, and wedding venues. Additional guidance on what “commercial activities in conjunction with farm use” means exists in case law, and incorporating these definitions into the statute could improve clarity and reduce misuse of this allowance.

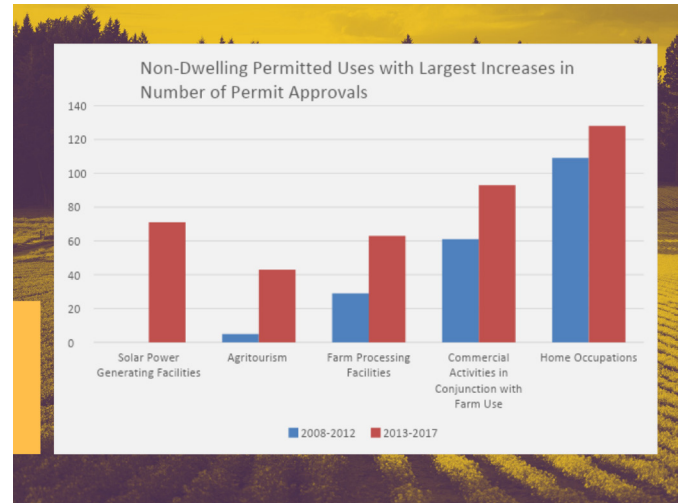


Figure 4 | Data source: Tim Murphy, Oregon DLCD

Irrigation reservoirs: Irrigation generally does not cause conflicting issues, but one interviewee identified new irrigation reservoirs as a growing problem.

There is increasing demand for irrigation reservoirs at lower elevations, and no land use permits are required for them since they are an outright allowed use. Reservoirs have the potential to flood productive farmland, taking land out of production and causing significant problems for neighboring farms.

As there are no state-required land use permits for irrigation reservoirs, there is also no data on how this use and its resulting conflicts have grown. There remains a need for this outright use to be reexamined for appropriateness and additional review criteria, particularly to safeguard high-value farmland.

NOT FARM-RELATED, LOCATIONALLY DEPENDENT:

Exploration, production and processing of geothermal resources, oil, gas, mineral aggregate. Since 1997, counties have reported eight permits for aggregate processing into asphalt/cement, two permits for mineral exploration, and 291 permits for mineral and aggregate mining. DLCD might have classified related permits under the “other” category.

Although this use is not related to farming, exploration of these resources is permitted outright on EFU lands, including high-value farmland.

Processing and production require the county to determine that the use does not force a significant change in or significantly increase the cost of accepted farming practices on surrounding lands. Aggregate mining in and adjacent to stream beds is particularly prevalent in the Willamette Valley, with one interviewee describing it as “polka dotted [with mining], especially around the best soils.”

Gravel mining is land-intensive and can take extensive areas of farmland out of production. The process interferes with hydrology and can “[ruin] the land forever,” states another interviewee.

Aggregate operations also generate truck traffic that impacts agricultural uses. This use can conflict with farming, but a strong lobbying effort has kept it as an allowable use on EFU lands. Because the use involves a finite natural resource, certain aspects of the use (like exploration) can occur only where that resource is, which is why this use is categorized as locationally dependent. Still, these resources are not located exclusively on EFU lands, so it is not unreasonable to suggest that alternative site analyses be required.

POTENTIALLY FARM-RELATED:

Replacement dwellings

For nearly every year since 1999, with a total of 4,982 permits, replacement dwellings have been the number one type of dwelling approved on EFU lands. They hit a peak of 368 approvals in 2001, then declined to a low of 188 in 2012 before another upward trend. From 2013-2017, the state has seen an average of 236 replacement dwelling permits each year.

Douglas County has issued the most replacement dwelling permits, with 883 issued between 1999 and 2017 (see figure 5 below for a map of permitted dwellings in Douglas County). Washington County issued the second-most at 430 permits, less than half that of Douglas County. Marion, Polk, Umatilla and Malheur counties are the only others with more than 300 replacement dwelling permits issued within the same time frame. These

counties combined account for more than half of all replacement dwelling permits. Such concentration of permits suggests possible misuse of the statute in some jurisdictions.

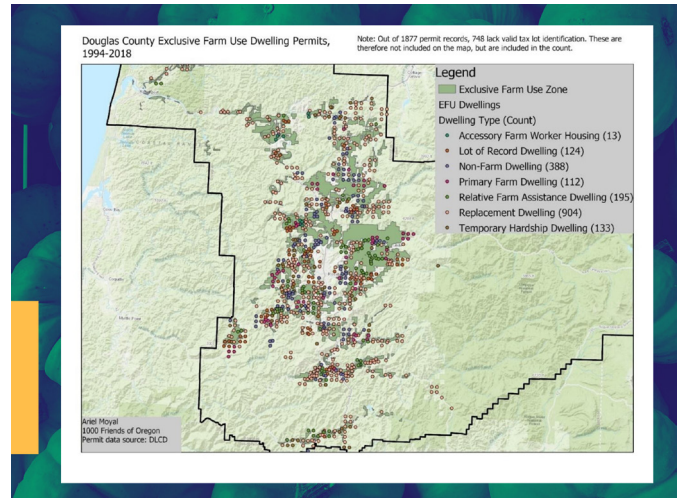


Figure 5

There are two types of replacement dwellings: one in conjunction with farm use if the existing dwelling has been listed as a historic property, and the alteration, restoration, or replacement of a lawfully established dwelling. A potential issue with replacement dwellings is that it is not clear what the dwelling is being replaced with.

As one interviewee describes, what might start out as a small farm house can be torn down and replaced with a large, expensive dwelling. The problem is not necessarily the house itself, but the fact that when the homeowner moves on, farmers interested in purchasing the property for farm use would struggle to afford the property due to the added value of the expensive house.

Furthermore, while a replacement dwelling approval requires the original dwelling structure to be removed upon completion of the new structure, this does not always happen. Depending on the condition of the dwelling being replaced, the new dwelling might be required to be built in the same place as the old dwelling, or it might be able to be sited elsewhere on the property.

Because a second dwelling can be erected without tearing down the first, it is not difficult to find properties where the original dwelling remains in use. If there is no enforcement, there is little oversight to ensure the original

structure is removed. Through this process, more nonfarm dwellings might exist on farmland than envisioned under the statute.

Temporary hardship dwellings

This use is meant to provide housing for a farmer or a farmer's relative who is suffering a health hardship, with the dwelling being removed or returned to its original use within three months of the hardship's end. Since 1999, counties permitted 1,427 temporary hardship dwellings on EFU lands, averaging 95 per year from 1999-2007 and 57 per year between 2008-2017.

After hitting a low of 31 permits in 2013, the number approved each year has steadily increased, with 57, 64, and 85 permits in 2015, 2016, and 2017 respectively, the latter being the most permitted in a single year since 2005. The average number of permits issued between 1999 and 2017 for each county was 40 permits. Linn County issued the most on average with 181 permits, followed by Marion County with 175, Yamhill with 158, and Clackamas with 138. Three counties issued no permits for this use during the 1999-2017 period, and seven others issued fewer than five. The data shows that hardship dwellings are not evenly distributed across the state, and might indicate a lack of sufficient reporting or misuse of the allowance.

Interviewees cite multiple issues and abuses with hardship dwellings. First, DLCD does not track the removal of hardship dwellings. With the absence of monitoring and enforcement, many dwellings remain after a hardship subsides.

Interviewees report that some are turned into short-term rentals. One interviewee remarked that some people pursue this allowance to gain housing for nonfarming family members to live on the farm, rather than because of a health hardship. To remedy some of the possible abuses, DLCD could require counties to perform annual reporting on occupancy and removal when the hardship ends. The major resulting conflicts for farmers are the increased traffic and conflicts with nonfarming residents and visitors.

Home occupations

Since 1997, counties have approved 464 home occupations. This use is the most permitted non-residential use since 2013, and the third-most since 1997. Between 1994 and 2017, the average number of home occupations permitted annually in Oregon was 15. Per county, Marion County issued the most during this time frame with 131 permits, which is 28 percent of all permits, followed by Jackson County with 48 permits.

No other counties issued more than 35 permits during this time. Home occupations must be located primarily in existing buildings and not "unreasonably interfere with other uses permitted in the zone" in which they are located, and not force a significant change in or significantly increase the cost of accepted farming practices.

A major problem with home occupations is that the use has no clear definition, and can include a wide range of operations. There are some businesses approved as home occupations that at the right scale pose little interference with farming, and some that even complement agricultural practices, such as bookkeeping and farm equipment repair.

Home occupations can also be incompatible with farming, such as weddings, short term rentals, and bed and breakfasts. There is no statewide requirement that a home occupation be accessory to the primary dwelling use.

Wedding event uses, which may also be permitted by counties as other uses, can create major problems for farmers — numerous interviewees discussed the issues weddings on farmland may cause. In general, weddings are not compatible with the operation of farms.

Farms produce dust, noise, and spray, none of which are conducive to the festivities of a wedding. Even when individuals with wedding permits sign a declaration stating they will not interfere with or complain about farming practices, some complain anyway.

An interviewee recalled one such individual turning off a farm's irrigation and asking farmers to accommodate weddings by moving cows away from a shared fence, and not baling hay during the event.

Another interviewee described wedding guests yelling and throwing items at a farmer for plowing his field during a wedding. Traffic is also an issue, as well as balloon releases from weddings ending up in crops and equipment. Furthermore, wedding permits are sometimes violated: more weddings are hosted than the permit allows, or the festivities continue with amplified music past approved hours.

Additionally, home occupations are supposed to be substantially conducted indoors but guests at weddings are unlikely to be restricted to staying inside. Unfortunately, due to a lack of county enforcement, it is difficult to find solutions to the problems created by event-based home occupations. The result is farmers and their operations continuing to be disturbed

Commercial lodging, such as short-term vacation rentals, is another use permitted as a home occupation. The primary issue is bringing nonfarming individuals to agricultural areas. Lodging guests are not always prepared for the agricultural practices they find themselves exposed to.

Guests (or the lodging operators) have raised complaints over common agricultural practices and trespassed onto neighboring fields. Commercial lodging on farmland creates additional traffic in rural areas. When encountering farm equipment on highways, an interviewee noted visitors often drive too fast, make unsafe maneuvers, or even cause crashes.

In addition to the conflicts the visitors cause, commercial lodging takes land out of farm production and can exacerbate housing issues. As one interviewee reported, people and property management companies seek out smaller-sized investment properties on farmland to turn them into short term rentals rather than to farm.

The aforementioned properties are in high demand for new and small-scale farmers who

do not need or cannot afford large parcels, but those not trying to make a living off of the land often outbid them. In this way, short term rentals introduce barriers to new farmers trying to get started. Additionally, short term rentals that are accessory to parcels in farm production decrease housing opportunities for farm workers.

Agritourism has been a permitted use category since 2011, and from then to 2017, counties issued 48 permits, over half of which were in Yamhill County. However, this does not reflect the total number of farms with tourism-related uses in Oregon, since other uses such as farm stands, wineries, breweries, and cideries are also allowed to host related events. The elastic parameters might help to explain a 2017 USDA Census of Agriculture statistic reporting a total of 481 farms in Oregon that derived income from agritourism sources.

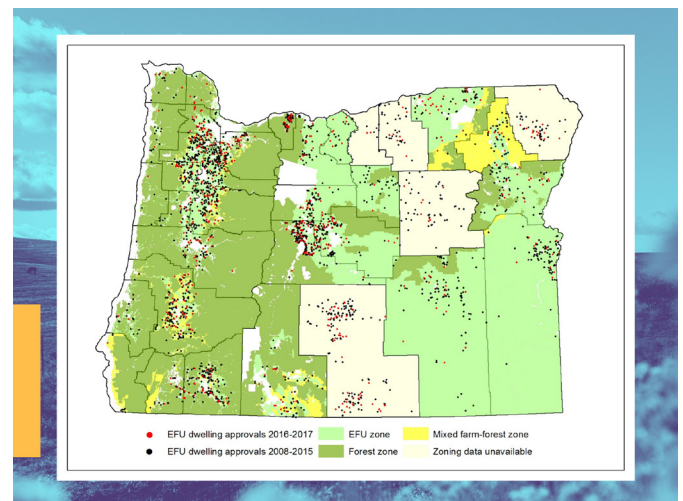


Figure 6. Agritourism, Lodging, and Recreation Use Approvals on Farmland, 2008-2017

Source: Oregon DLCD, 2016-2017 Oregon Farm and Forest Report, https://www.oregon.gov/dlcd/Publications/Farm_Forest_Re-

It is important to mention that when compatibility with agricultural practices is achieved, agritourism can be beneficial for farming. Agritourism provides an opportunity to educate people about farming, help farmers market and sell their own products, and allow farmers to diversify their income stream. However, agritourism can also cause significant problems for neighboring farmers.

One reason agritourism varies in its benefits or detriments to farming is that it is not well-defined. Multiple interviewees identified this issue, describing it as “sticky,” “a slippery

slope,” and “one of the weakest spots” in EFU legislation. No single definition of agritourism exists in statute, and there is no type of list that identifies activities that qualify as agritourism. There is a definition for “agri-tourism activity” under ORS 30.671, relating to agritourism liability, but it does not apply directly to Chapter 215. Some counties have definitions for agritourism, but there is not a shared definition at the state level. “Agri-tourism and other commercial events or activities that are related to and supportive of agriculture” is the only wording in the agritourism state statutes that provides guidance for what activities count as agritourism.

Although it is unclear what actually constitutes agritourism, state statutes place limitations on the scope of activities permitted. Activities permitted as agritourism must be incidental and subordinate to the farm use without forcing a significant change in or significantly increasing the cost of accepted farming practices on surrounding lands.

Because of the broad definition, anything from farm tours and u-pick operations on the farm-related end of the spectrum, to weddings and music events on the nonfarm-related end, have been approved by local governments.

Moreover, the incidental and subordinate requirement does not provide an exacting framework for evaluating the scope of the use, resulting in the potential for the farm use to become secondary to the agritourism operation.

Some limitations to income exist for farm stands, wineries, breweries, and cideries. In 2020, the Oregon Court of Appeals clarified that for agritourism events permitted under ORS 215.283(4), whether the events are incidental and subordinate requires an inquiry of any relevant circumstances, including the nature, intensity, and economic value of the respective uses, that bear on whether the existing commercial farm use remains the predominant use of the tract. It is not sufficient to compare the duration of an event to the duration of a farm use.

Because of the breadth and varied intensities of activities considered to be agritourism, the potential impacts to neighboring farms can also be wide-ranging. As with many other uses, traffic can be particularly problematic.

Large events can block roads, especially when a site has limited access. Examples include long lines of cars backing up onto the road to get into a popular flower festival on a farm, and similar traffic getting to and from Sauvie Island.

One interviewee recalled how visitors to a farm in Helvetia that was featured on a television show routinely impacted the neighbors who shared their driveway. Excess traffic can create dangerous road conditions and force farmers to alter their practices around the events.

Another issue farmers experience due to tourism-based uses is trespassing. As one interviewee comments, “wherever tourists are, they are leaking onto surrounding lands.” He described an incident where people from two tour vans walked around his mother’s farm fields without permission to take pictures. Besides the damages trespassers inflict upon fields, equipment, and crops, the time it takes to then deal with trespassing — talking to neighbors, law enforcement, filing complaints — is costly for farmers.

Wineries

Conflicts due to wineries are challenging to summarize as wineries vary extensively. A winery’s size, scope, and support of local vineyard operations are critical aspects as to whether an operation is compatible with farming. Since 1997, counties permitted 138 wineries, though according to DLCD data, more were permitted before and potentially since then under other categories such as “commercial activity in conjunction with farm use.”

Some farmers operate wineries that run seamlessly with surrounding farms, while others are not meaningfully connected to the agricultural community, and focus more on the tourism associated with food and beverage service than on the growing of grapes.

Wineries permitted under ORS 215.452 or 215.453 are permitted uses subject to a number of statutory requirements but granted broad leeway for associated activities. Interviewees raised issue with this, as wineries are allowed to conduct events such as weddings, operate bed & breakfasts, and at a certain scale, restaurants.

Each aforementioned use introduces conflicts discussed in other sections. Similar to commercial lodging on farmland, some wineries are “selling ambiance” despite being located in areas designated for large-scale farming, and wineries “do not want people running a combine next to their tasting room.”

Some wineries — even if they are growing the required acreage of grapes on the same tract — can take a substantial amount of land out of farming. One interviewee describes how the main goal of EFU zoning is to have land in a condition to grow something on, but winery facilities built for wine production and hosting events — with paved driveways, patios, and parking lots, and landscaping — take land out of agricultural production.

All of these additions can prevent the land from returning to farm use under a new owner since farmers would have to purchase the winery’s improvements in addition to the land.

Overall, interviewees agreed that provisions addressing food service and events at wineries are not tight enough. Better enforcement of existing provisions is also needed — interviewees mentioned some wineries illegally operating restaurants, and others that were more appropriately described as event spaces. The issue is further complicated since ORS 215.456 allows counties to permit wineries that do not qualify under ORS 215.452 or 215.453, or that want to “carry out uses or activities that are not authorized” under these two statutes.

Cideries & breweries

Since 1994, counties permitted approximately 11 cideries and 11 breweries under categories such as commercial activities in conjunction with farm use, home occupations, and farm crop processing. The legislature made cideries and breweries their own use categories in

2017 and 2019 respectively.

Though not yet as prevalent as wineries, cideries and breweries present many of the same conflicts as their grape-growing counterparts, as they allow many of the same tourism-based uses as wineries, and add to the cumulative impacts of additional tourists on farmland and acreage diverted from farm use.

Utility facilities & service lines

Since 1997, counties approved 602 utility facility permits, eight transmission towers over 200 feet tall, and three utility service lines (lines might have previously been categorized under another use in the Farm & Forest Reports). Utility facilities are the top permitted nonfarm and non-dwelling use since 1997, but they have seen some decline, with just 72 approvals between 2013 and 2017, compared to 174 between 2008 and 2012.

The siting of major transmission line corridors has been especially controversial. Counties must consider alternative sites for utility facilities and service lines, but it is not entirely comprehensive. One interviewee describes how utilities prefer to put in their own roads and utility lines through fields, because it is cheaper, but the practice interferes with farming on said fields. The same farmer had cities try to run water lines through his fields, which would cause complications due to irrigation lines and drainage systems already located underneath them. Additionally, there is no requirement for utilities or service lines that are necessary for public service in EFU zones be sited off high-value farmland.

While utility facilities may be necessary to serve the areas where they are built, that does not mean they are without conflicts or are ideally sited.

Landscape contracting businesses

Landscape businesses “in conjunction with the growing and marketing of nursery stock” have been allowed on EFU lands since 2005, with eight permitted since 2014, though earlier approvals might be categorized under “other uses.”

The statute does not provide requirements on how much nursery stock must be grown in relation to the contracting business, which might open the door for minimal nursery stock and a maximum amount of nonfarm structural development. However, given the small number of permits and lack of conflicts interviewees reported, this use does not appear to be a significant threat to agricultural production, but rather can aid the financial stability of nursery operations when engaged in at the appropriate scale.

Personal-use airports

Statutes have allowed this use since 1975, and since 1997, counties have permitted 62. The statute limits what the airstrip can be used for, which includes farm-related commercial activities. Interviewees did not bring up these airports as particularly problematic, and one mentioned that farmers use them for agricultural operations.

NOT FARM-RELATED

Nonfarm dwellings

First allowed in 1973, nonfarm dwellings have been the second-most permitted dwelling type since 1999, for a total of 3,118 permits between then and 2017. See Figure 7 below (dwellings permitted in EFU zones from 1999-2017). From 1999-2007, the number of permits per year stayed above 200, with an average of 238 per year. There was a steep decline after 2007, likely due to the Great Recession, with a low of 65 permits issued in 2014.

Since 2014, the number of permits issued each year has increased, for an average of 102 per year for 2015-2017. Deschutes County leads the way with 650 nonfarm dwelling permits issued between 1999-2017; Douglas, Lake, and Crook counties follow with 378, 344, and 337 permits, respectively. All other counties issued 220 permits or fewer from 1999-2017.

The Oregon Court of Appeals observed in 1987 that an “EFU zone is designed to preserve the limited amount of agricultural land to the maximum extent possible . . . The clear intent is that nonfarm dwellings be the exception and that approval for them be difficult to obtain.” However, given the extent of nonfarm

dwellings, the exception appears to have become the norm.

Interviewees identified traffic as a significant impact from nonfarm dwellings. Impacts resulting from traffic are discussed throughout this report, but the main takeaway is increased traffic on rural roads makes it more difficult and dangerous for farmers to move equipment between fields and for crop-hauling trucks and farmworkers to get to and from farms in a safe and timely manner.

As nonfarm dwellings increase the amount of people in an area, the traffic volume in the area will increase as well. Nonfarm residents also introduce differing kinds of traffic, such as pedestrians, joggers, and bicyclists, on roads without shoulders and not built to accommodate a diversity of transportation uses.

Complaints and retaliation from nonfarm residents against regular farming practices are commonplace. Though counties require EFU zone residents to sign a declaration stating they will not complain about farm use, it does not ensure the declaration will be followed. As one interviewee described, nonfarmers might not realize farms are a business with almost year-round, sometimes 24-hour operations.

Many nonfarming residents are unprepared for the farm practices that interfere with the bucolic life expected. Practices complained about include work done around the clock (for example, swathing for grass seed must be done at night), noise, dust, smells, and burning.

Often, residents want to work out their issues with farmers through dialogue, and farmers commonly try to accommodate the resident. But in one farmer’s words: “being a good neighbor takes up a lot of time, and damage is done.” For farmers, time is money, and time spent defending or changing their farm practices is time not spent farming. Managing neighbors’ expectations results in time lost, at a significant cost to the farmer.

While right-to-farm laws offer some protection from nuisance lawsuits, if a farmer does not

try to appease their neighbors, they might eventually face retaliation. One interviewee's livestock guard dog was shot after a dispute with a neighbor. The same farmer also had their gate opened and sheep released onto the highway, and tops of Christmas trees chopped off, presumably in retaliation. Farmers have also reported other types of vandalism and stealing crops and equipment. Such conflicts further drive up costs for farm operations, and contribute to a lost sense of community.

Numerous interviewees reported dogs as an issue. Some residents let them run around, even though dogs have bothered, attacked, and killed livestock. Additionally, livestock such as sheep will not graze near barking dogs. Children can also be an issue, running or riding dirt bikes through fields and ruining them.

Trespassing is problematic, and might cause farmers to have to invest in additional fencing. One interviewee recalled how she and her husband stopped farming on fields due to trespass, stating: "without fences, people just walk around in fields like everything is theirs. They throw litter and rocks into the fields, which messes up farm equipment."

Invasive species such as spotted knapweed — which threatens grazing lands in Eastern Oregon — are often introduced to farmlands when nonfarming individuals plant them on their property. Also, nonfarm dwellings in the wildland urban interface should be avoided as they increase the possibility of human-caused wildfires, threatening property damage and public health due to smoke hazards.

Nonfarm dwellings also take land out of production and contribute to farmland fragmentation. While an individual dwelling might not create much impact, the accumulation of nonfarm dwellings and the mounting impacts threaten the feasibility of agriculture.

Nonfarm dwelling statutes are some of the few that require a cumulative impacts analysis prior to issuing a permit, but the analysis could be more thorough. State administrative rules require the analysis to look only at how many nonfarm and lot-of-record dwellings could be approved in the study area. The analysis should consider all existing and potential

dwellings, as well as all other intensive nonfarm uses to accurately assess how nonfarm uses are impacting farmers' ability to farm in a more holistic context.

Another cumulative impact to consider is nonfarm dwelling water use. As the houses are located in areas away from municipal water lines, the owners depend on wells for their water source. One nonfarm dwelling with a well may not have an impact on nearby farms, but the proliferation of nonfarm dwellings can have a cumulative effect on water use.

If landowners of nonfarm dwellings do not have senior water rights, they might take water away from farmers who do. One interviewee notes that when farmers find themselves without enough water, they are simply told to drill their wells deeper. Additional drilling poses a large cost to farmers and is not a sustainable long-term solution. As another interviewee notes, at some point an area will reach a carrying capacity for development and water use, and the current system does not have a way of identifying the limit.

Some nonfarm dwellings are located where they should not be: on productive soils. Nonfarm dwellings are required to be located on certain types of soil and land that is generally unsuitable for farming, but some standards have been avoided through a site-specific soils analysis initiated by a landowner and performed by a consultant, for better or worse.

Under a DLCD program, landowners are allowed to challenge NRCS soil capability ratings for their properties through a site-specific soils report. The consultant's report can only be challenged on procedural grounds, as it is only reviewed for completeness by the state, and the state does not review the actual soils analysis. Third-party verification of site-specific soil capabilities would help ensure that soil reports reflect existing soil quality, and prevent the use of soils analysis as a way to circumvent the rules regulating development on productive soils.

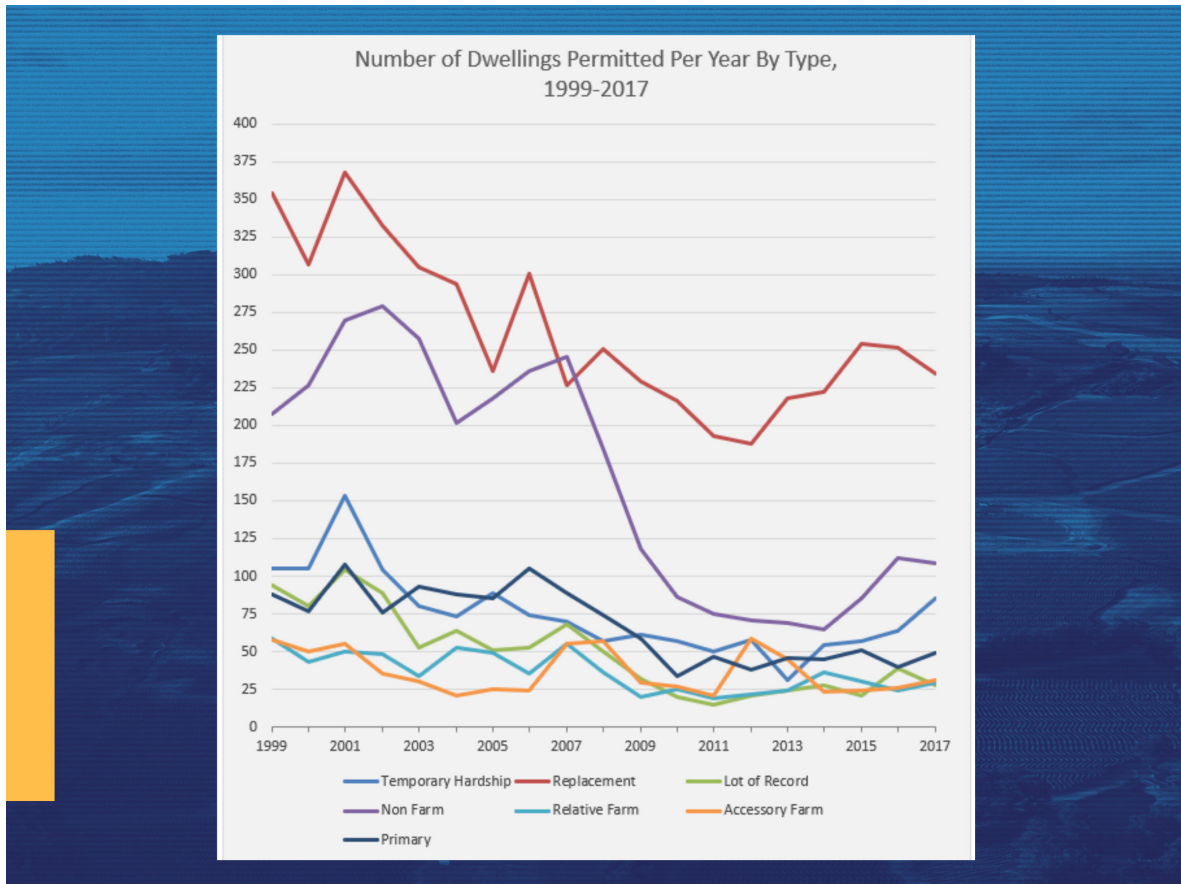


Figure 7 | Data source: DLCD Farm & Forest Reports

Lot-of-record dwellings

Since 1999, counties approved 934 lot-of-record dwellings, with an average of 73 per year between 1999-2007, and 28 per year between 2008-2017. The year 2016, at 39 approvals, is the only year since 2009 to have more than 30 permits approved in a year. Between 1999 and 2017, Jackson County issued the most permits for lot-of-record dwellings, with 128, followed by Baker County with 77.

The decline in lot-of-record permitting is likely because one of the conditions for this dwelling is that the property must have been owned — or been inherited by someone who owned — since before 1985, and have no other dwellings on the property. Therefore, only a finite number of properties qualify under this use. While nonfarming residents in lot-of-record dwellings pose the same problems to farmers as those in other nonfarm dwellings, the use itself is less worrisome due to its inherent restrictions.

Bed & breakfasts

The amount of bed & breakfasts is difficult to determine. DLCD listed 49 permitted in Farm & Forest Reports under the category “Bed & Breakfast” from 1997 to 2011. However, during the same time period and afterwards, they were also permitted under categories such as home occupations, guest ranches, accessory uses, and “other.”

Interviewees repeatedly discussed how other dwellings such as relative help and temporary hardship dwellings have been rented out for other purposes, including conversion to a commercial lodging use like bed & breakfasts. Therefore, it is hard to ascertain the full extent of bed & breakfasts on EFU lands.

The primary conflict with bed and breakfasts is that by design, they bring more nonfarming individuals out to farmland, who sometimes complain, trespass, vandalize property, and raise the risks of unintentional wildfires. The cumulative impact of dwellings built to host bed & breakfast businesses is an overall reduction of usable farmland.

Guest ranches

Since 1997, counties approved 20 permits for guest ranches. Guest ranches are a conditionally allowed use in Eastern Oregon, supposed to be “incidental and accessory” to an existing livestock operation, and not force a significant change in or significantly increase the cost of accepted farming practices.

Guest ranches — like other commercial lodging uses — generate traffic and take land for nonfarm uses and out of agricultural production. What might pose a larger problem with guest ranches is the 160-acre requirement. Successful ranching in Eastern Oregon requires thousands of acres, so if speculators go after 160-acre parcels to build guest ranches, this could fragment the land available to others.

Additionally, the guest ranch statute mentions food services for those attending special events. If the ranch hosts events such as weddings, all of the conflicts associated with them could result.

Residential treatment home

There have not been enough approvals of this use for DLCD to identify it as a standalone category in any Farm & Forest Reports. Other DLCD data shows three permitted in 2015. No new structures are permitted under this use, although potential conflicts could be traffic from staff commuting to and from the treatment home, and nuisance complaints from nonfarming persons using the treatment home. Still, no interviewees identified this use as a prominent issue.

Golf courses

Since 1997, counties issued 21 permits for golf courses, with 15 issued before 2005. The primary issue golf courses pose to the viability of farming is due to their nature, they can take a substantial amount of land out of farm production.

Golf courses create additional impacts such as traffic and increased water use, and nonfarm-related events including weddings. Golf courses are only allowed on certain kinds of high value farmland under strict circumstances, which limits their overall impacts.

One interviewee described concern about “super siting,” where a developer of a project under a specific use — that would otherwise not be allowed through permitting — bypasses the available exceptions process and lobbies legislators to allow that use to be sited by law regardless of land use regulations.

This has happened more than one once, including for a golf course resort in Eastern Oregon.

Destination resorts

Farm & Forest Reports list one permit issued for destination resorts since 2008, though other DLCD data lists additional permits approved in 2018. It also appears counties approved at least one destination resort under the “guest ranch” category.

Destination resorts cause much the same conflicts as golf courses. As noted above, they can also be the motivation behind super siting legislation. Under ORS 197.445, destination resorts may include residential units and commercial uses “necessary to meet the needs of visitors to the development.”

These allowances further introduce nonfarming individuals and the attendant conflicts to EFU lands. The statute does require that 50 percent of the site be permanent open space, potentially serving as a buffer to surrounding properties, but this alone is not enough to mitigate the conflicts resulting from resorts.

Public parks

Approximately 26 public parks have been permitted on EFU lands from 1995 to 2017. Parks can be a benefit by facilitating the understanding and education of agriculture practices. On the other hand, when people are brought out to EFU lands, potential conflicts follow, such as traffic.

One interviewee tried to prove to the county that the amount of traffic generated by a proposed park would significantly impact farm practices for his orchard, to no avail. Another interviewee mentioned — especially regarding trails — that vandalism to farmland can be an issue.

Most interviewees did not pinpoint public parks as a prevalent problem, though another interviewee noted that “public park” is not defined, which raises the question of what is being permitted under this use. Finally, while they maintain open space, parks might also take farmland out of production — leading to increased land costs and fragmentation.

Private parks

Since 1997, counties have approved 145 private parks/campgrounds. As described above, parks may be compatible with farming in some ways, but also create conflicts related to traffic, trespassing, and vandalism, as well as the broader concern of removing farmland from production.

Considering there have been more private than public park permits issued, they may be a greater contributor to such issues. Similar to public parks, one interviewee noted private parks could be more distinctly defined.

The lack of specificity in the allowance led to a 2016 court decision in *Central Oregon Landwatch v. Deschutes County*, which ruled that private parks are for outdoor recreational use, and cannot be permitted solely as outdoor venues for events such as weddings and reunions. There could be other private parks operating under similar circumstances that have not been brought to court.

Youth camps

DLCD did not report any permits for youth camps in the Farm & Forest Reports, though they may be categorized under “other uses.” One is listed as permitted in other DLCD data. The statute for youth camps and applicable administrative rules are relatively restrictive for where they can be located, to disallow them on high-value soils.

The statutes also contain many provisions for protective buffers and setbacks to minimize impacts to surrounding properties and resources. There could be conflicts relating to traffic and noise from youth camps, but this use was not noted as particularly problematic.

Churches, cemeteries, community centers, and schools

These uses all share a common purpose as community resources that serve rural communities. Since 1997, 43 churches, 35 schools, and 8 community centers have been permitted on EFU lands.

These uses have the potential to generate conflicts for farmers related to traffic (especially for large churches), restrictions on farm practices, and trespassing. While interviewees did not specifically mention these uses as problematic, they have a cumulative effect of reducing the overall amount of productive land.

The aforementioned uses, especially schools, tend to attract additional residential uses. Given the potential for conflict, it might be appropriate to require these uses to consider other locations (such as rural residential zoned land) before they are sited on EFU lands.

County fairgrounds expansion

According to a farmer interviewed for this project, county fairgrounds serve as a center for the agricultural community and contribute to its quality of life.

Fairgrounds expansion may be beneficial for farmers, but if it creates development that otherwise diminishes the ability of the agricultural community to use the fairgrounds, it could be problematic. This use has not been reported in DLCD Farm & Forest Reports.

Living history museum

Living history museums have been permitted in all counties since 1999. Since then, counties have approved four applications. The statute does stipulate that living history museums can only be in an EFU zone if other areas cannot accommodate them, or if they are

located within a quarter mile of an urban growth boundary. Living history museums could contribute to traffic issues on rural roads depending on their location, but otherwise no interviewees mentioned specific conflicts.

Equine therapy

Although this is a new independently identified use as of 2019, a local news source reports there are around 20 equine therapy centers around the state. No interviewees reported issues with this use, but this activity could have some traffic impacts. The activity is allowed to take place in new buildings that are accessory, incidental and subordinate to farm use, so there is potential for new structures to be erected. As it currently stands, equine therapy appears fairly compatible with farming practices.

Dog training, testing trials, and boarding kennels

Since 1997, Farm & Forest Reports note counties have permitted 56 boarding kennels, along with three dog training classes/testing trials since 2015. Though no interviewees singled out facilities for dogs as problem-causing, they did report dogs themselves (generally in relation to nonfarm dwellings) as issues regarding harassing livestock and damaging property, so it is possible similar conflicts could result with training, trials, or boarding. Additionally, these uses generate traffic, particularly testing trials where there may be up to 60 dogs, their owners, and their cars on the property.

Solar power generating facilities

Solar power facilities have proliferated in the past few years, making it the third-most permitted, nonfarm-related, non-dwelling use since 2013. 2014 was the first time DLCD reported permits for this use, with two that year. Between 2014 and 2017, counties have granted 71 solar power permits, with the number growing each year, up to 37 permits in 2017 alone.

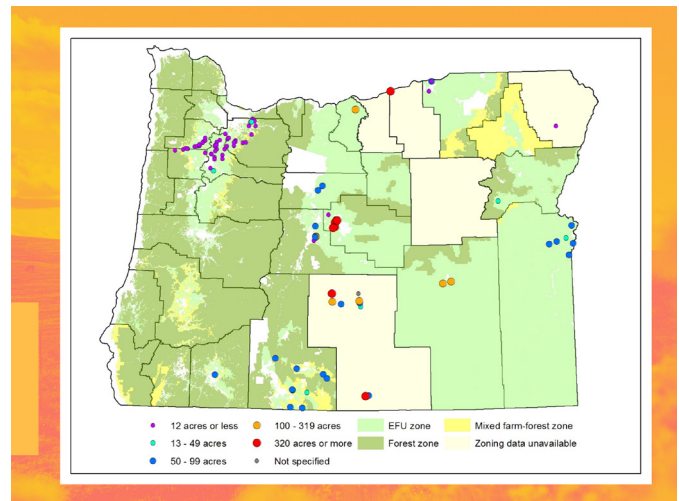


Figure 8. Solar projects approved on farm and forest lands, 2008-2017

Source: Oregon DLCD, 2016-2017 Oregon Farm and Forest Report, https://www.oregon.gov/lcd/Publications/Farm_Forest_Report_2016_2017.pdf

The primary challenge solar power generating facilities pose to farmland is land consumption. Solar panels need to cover the land, and it is not always possible to farm commercially between the panels, as can be done with wind turbines.

Additionally, flat ground is preferred for solar panel facilities, which also tends to be some of the best ground for farming. Solar power facilities can result in direct land competition to agriculture. Because of the rapid growth and potential for high value farmland to be taken out of production, DLCD adopted new rules for solar facilities, which increased restrictions for facilities on different types of high-value soils, affecting 3.6 million acres of Oregon farmland.

Outdoor mass gatherings

A 2019 law allows counties to require outdoor mass gatherings of over 3,000 people lasting more than 24 hours to acquire a land use permit. Prior to the law's passage, counties issued four similar permits between 2016-2017.

While outdoor mass gatherings must be compatible with existing land uses and not "materially alter the stability of the overall land use pattern of the area," they do not have to be related to agriculture in any way.

An interviewee described the conflicts resulting from a popular mass gathering music festival

in Jackson County: amplified music that continued after 10 pm, lots of traffic to and from the venue, and festival goers trespassing onto neighboring fields, with some vandalizing or stealing crops, and using the fields to relieve themselves. In at least one instance, a fire occurred and crossed property lines. The festival was eventually forced to move to a different location from the conflicts that arose.

Mass gatherings raise traffic safety concerns; often the venues only have one road leading in and out, and emergency vehicle access can be difficult. Another interviewee reported one venue as hosting events almost every month, obtaining permits under different names, and every year, some kind of emergency incident occurred.

County law enforcement facility, armed forces reserve center, and public training safety facility

The statute permitting county law enforcement facilities is a “one-off” allowance established in 2005 to grandfather in an existing facility in Marion County. Similarly, the public training safety facility statute is limited, allowing only Portland Community College to apply for the establishment of such a facility before 2016.

Armed forces reserve centers are not restricted by date, but are allowed only within half a mile of a community college and only in counties with marginal lands (Washington County and Lane County). There have not been enough approved in a given year to warrant a note in any of DLCD’s Farm & Forest Reports. It is unlikely agriculture will face many threats from these uses.

Water bottling operations

This use has been allowed since 1997, with approximately 13 permits issued between 1997 and 2017. Potential conflicts from this use could include increased traffic and impacts to water supplies for farming. One interviewee mentioned that while there are few water bottling facilities, the impacts on water availability to farmers could be significant, especially in the context of potential water scarcity due to climate change.

Solid waste disposal

Since 1994, counties have issued ten permits for solid waste disposal sites, with five since 2013. This use has the potential to generate significant conflicts for nearby agriculture. One example comes from the proposed expansion of the Riverbend Landfill in Yamhill County. The landfill wanted to expand its current facility by 29 acres, but neighboring farmers argued it would adversely affect them.

Already, impacts from the landfill include trash being blown onto fields, getting stuck in hay and damaging balers. The trash attracts birds, which destroyed a farmer’s u-pick cherry operation. Under ORS 215.296, allowed uses cannot force a significant change in or significantly increase the cost of accepted farming practices on surrounding lands. The Oregon Supreme Court ruled that the expansion would create significant costs, and that the proposed mitigation methods were insufficient. While landfills may not be widespread, they can still negatively impact a farmer’s ability to farm.

Log truck parking

The ability to park up to seven log trucks on EFU lands has been permitted since 1995. Between 2000 and 2016, counties permitted three of these sites. While not directly related to farm use, log truck parking could support farm-related forest product uses, and no interviewees mentioned conflicts with this use.

Aerial fireworks stand

On its face, an aerial fireworks stand does not sound as if it belongs in an EFU zone. When looking at the specifics of the statute permitting them, however, it is clear they do not pose a substantial threat to the viability of agriculture. Lawmakers adopted this statute in 2003 to grandfather in a single preexisting firework stand in Clackamas County. Therefore, it is highly unlikely this statute will result in a proliferation of interfering fireworks stands.

Filming activities

No instances of film activities have been selectively identified in Farm & Forest Reports, although given that filming for 45 days or less does not require governmental approval, the extent of this use is unknown. It is easy to imagine that filming, its associated activities, and the crew involved could generate conflicts related to traffic as well as attempts to change farm practices (such as asking a neighbor not to do any activities that kick up dust). However, no interviewees cited filming activities as a significant cause of conflicts at present.

Wetlands

Statutes have allowed the creation of wetlands on EFU lands as an outright permitted use since 1989. Counties have issued 14 permits through 2017, according to DLCD records. There are no limitations on what type of farmland wetlands may replace.

Wetlands are an important natural resource, but if they replace high-value farmland, they are taking another valuable resource out of production. Wetlands can also cause flooding issues for neighboring farms.

With the passage of Senate Bill 1517, effective in 2017, legislators authorized Tillamook County to engage in a pilot program to make wetlands creation subject to conditional use review, including a collaborative process among stakeholders in hopes of directing wetland development to areas that will minimize negative impacts to farmers. If this program is successful, it could be an ideal way to achieve wetland restoration while preserving productive agricultural land.

Model aircraft facilities

Statutes have allowed facilities for model aircraft since 1997. Counties have permitted two such facilities. Interviewees categorized this use as another “one-off” allowance, and none reported any particular issues with this use. If model aircraft clubs (of which there are several in Oregon) gather at these facilities, there could be traffic implications, but otherwise this use certainly has fewer impacts on farmers compared to others on this list.



Policy Recommendations

The following policy recommendations reflect that Oregon's farm use zone has become, in many ways, "exclusive" in name only.

The growth of nonfarm uses on farmland has caused both ongoing conflicts and accumulated adverse impacts that pose significant challenges to Oregon's number two industry — agriculture.

There is ample room to improve land use laws and local decision-making in a way that ensures economic vitality for Oregon's agricultural communities by protecting commodity production on farms while supporting town centers as economic hubs. Recommendations include proposed changes to local actions, state statutes, and agency administrative rules that seek to lessen the burdens farmers face because of nonfarm uses, and keep agricultural land in production.

IMPROVE ACCESS TO AND FUNDING FOR LOCAL LAND USE ENGAGEMENT, INCLUDING ENFORCEMENT

No matter how protective land use planning laws may be for agriculture, they are of little use if they are not meaningfully applied or enforced. Communities should be able to work with their local planning office to ensure permit applications and land use violation complaints are properly reviewed, and that the outcomes at the local level actually implement the requirements of state land use laws.

Not all property owners or counties will be open to more engagement and enforcement of land use, but better funding for planning departments would be a step in the right direction. A statewide fund could pay for a new digital platform to ensure local governments are posting proper notice and engaging equitably with all community members. Notice requirements at the state and local level should be revised to require notice not just to landowners, but also renters.

Funding for local enforcement should also be pursued, possibly through a statutory requirement for higher local fees for certain kinds of permits. Counties should consider requiring a refundable deposit for uses that may have a high impact on agricultural

operations, to support enforcement services if needed. More funding would better equip counties to fulfill their planning and enforcement responsibilities, and ensure the benefits of proper land use planning are shared equitably by all community members.

Counties should consider how they are implementing their community involvement programs, and whether permit proceedings and enforcement opportunities are readily accessible for all community members. When considering allowing new or expanded uses in any zone, planning offices must analyze and explain in staff reports what the expected impacts of a use are, how complaints will be managed, and how the local government will pay for enforcement of the conditions needed to ensure a nonfarm use is compatible with surrounding farm uses.

CLARIFY AND IMPROVE DEFINITIONS AND REVIEW CRITERIA

Poorly defined or undefined terms in EFU statutes were a large problem interviewees described. The absence of clarity has resulted in manipulation of statutes to get numerous uses approved on EFU lands, including uses most likely not contemplated by the legislature. Clarifying definitions and review criteria are critical to closing loopholes. Use categories and phrases that need definitions or revisions include:

Agritourism. As noted earlier, interviewees reported agritourism as one of the uses most in need of defining. It currently has no single definition, nor any sort of list describing what activities do or do not qualify as agritourism. Marion County Code provides a definition of agritourism that may be a good place to start:

"... 'agri-tourism' means a common, farm-dependent activity that promotes agriculture, any income from which is incidental and subordinate to the income of a working farm operation. Such activities 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 and similarly small, farm-themed parties. Regularly occurring celebratory gatherings, weddings, parties or similar uses that cause the property to act as an event center or that take place in structures specifically designed for such events are not agri-tourism.” Marion County Code 17.120.090(G).

The codification of a definition that creates a bright-line rule as to what constitutes agritourism could help limit events hosted on EFU lands that have a tenuous connection to agriculture and create significant burdens for neighboring farms, although this does not fully address the need to regulate by a uses’ intensity.

Commercial activities in conjunction with farm use. Interviewees identified this use as another allowance that is too vague. Similar to agritourism, a useful definition would describe what specific elements are required to be demonstrated in a permit application, and what types of activities are or are not allowed under this use. After she retired from DLCD, Katherine Daniels provided this potential definition in a letter:

“A commercial activity in conjunction with farm use means an activity that enhances the farming enterprises of the local agricultural community by providing products or services that are essential to the practice of agriculture.”

Daniels derived this definition from case law. This phrasing was not intended to apply to agritourism-type activities, and a definition along these lines would clarify that agritourism event uses should not be approved as commercial activities in conjunction with farm use, and event uses can be addressed in a separate category.

Any revision should address the problematic approvals that allow commercial activities to operate on farmland that are not essential to a farm use.

Incidental and subordinate. While not a use in itself, a number of uses are required to be “incidental and subordinate” to farm use. However, the meaning of this requirement is not entirely clear. Statutory or rule changes could reflect the analysis identified by the

Court of Appeals, noted above, that requires an inquiry of any relevant circumstances, including the nature, intensity, and economic value of the respective uses, that bear on whether the existing commercial farm use remains the predominant use.

High-value farmland. As mentioned at the beginning of this report, there are different kinds of farmland described in law — both at the state and federal level — such as unique, prime, and high-value. Multiple interviewees cited the need for a simpler definition of high-value farmland, potentially one that is updated to reflect current data of what types of farming can occur on various lands. Furthermore, improving consistency by using one definition of high-value farmland throughout EFU statutes would be useful, but any change must take into account the multiple uses of the term throughout land use laws.

REQUIRE ALTERNATIVE SITING ANALYSIS FOR INTENSIVE USES

Counties should be required to conduct an alternative siting analysis for nonfarm uses on farmland, especially for impact-intensive uses. Alternate siting analyses would require permit applicants to demonstrate they have considered alternative locations or other options that would minimize negative impacts of the use proposed on agricultural operations.

Counties would then have to make factual findings as to why they permitted the use on a particular site compared to other available sites. The alternatives analysis or “reasonable accommodation” standard provided in the land use planning goal exception process provides an example of an appropriate, although imperfect, framework.

A few nonfarm uses already require some type of alternative siting analysis in certain instances, including the application of biosolid facilities, transmission lines, utility facilities, wind power generation, and living history museums. This is a very limited list to which the alternative siting analysis applies, and even then, it is not always applied.

One interviewee recalls how a utility argued to be able to locate on EFU lands near a UGB because it was the only property where they could readily access a specific substation, but they did not consider other substations in the region. This example underlines the need for comprehensive guidance and requirements — from LCDC — in alternative siting analyses, which may differ from use to use.

Alternative siting analyses should be required for traffic-intensive uses such as schools, community centers, parks, solid waste disposal facilities, outdoor mass gatherings, event-based uses, tasting rooms, and aggregate industries. Required alternative siting analyses can help ensure that the underlying purpose of ORS 215.296 is achieved.

IMPROVE REPORTING CAPABILITIES AND ACCESS TO PROPERTY-SPECIFIC DATA

Some analysis in this report had to make assumptions and depend on anecdotal evidence because of the gaps in reporting on land use decision-making and enforcement data. Oregon can improve data availability by requiring local jurisdictions to report in a timely manner not just comprehensive plan amendments, but also permit applications and decisions to the state, and have that data available on a state-run website.

Such measures will help ensure that all community members can participate in the land use planning process. The state or counties should also maintain publicly-accessible and property-specific Geographic Information System (GIS) mapping that captures existing land use zoning, designations, active and expired permits, and enforcement issues.

By creating a broader and more uniform data reporting system, stakeholders and lawmakers will be able to make more informed decisions when evaluating change to the land use system, including for uses on farmland. Better spatial data will also help identify overburdened regions in the state.

REQUIRE CUMULATIVE IMPACTS ANALYSIS FOR AREAS EXPERIENCING DEVELOPMENT PRESSURE

It is not just individual misplaced uses that impact farmland, but also the accumulation of these uses. Given its importance to the state economy and rural communities' wellbeing, Oregon cannot afford to lose its agricultural lands.

A cumulative impact analysis would more fully demonstrate the extent of the existing threats agricultural lands face. The idea of requiring a cumulative impacts analysis is not new. In 2017, members of the Working Lands Collaborative — including several individuals interviewed for this paper — urged DLCD to “take a long-term planning perspective” by amending administrative rules to require counties take cumulative impacts into account in the permitting process.

However, the agency recently deferred work on any research or development of criteria that would further evaluate cumulative impacts due to nonfarm uses.

ORS 215.296 could provide an opportunity to incorporate cumulative impacts analysis into legislation. Currently, ORS 215.296 states that uses under ORS 215.213(2) or (11) and 215.283(2) or (4) cannot force a significant change in or significantly increase the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use. The statute could be revised to specify how the governing body should reach the decision that a use satisfies these conditions, including a cumulative impacts analysis.

Counties are required to conduct a limited cumulative impacts analysis for nonfarm dwellings; however, dwellings continue to proliferate. Currently, the analysis only requires other nonfarm and lot-of-record dwellings in the study area to be considered.

A comprehensive analysis should evaluate not just the dwellings noted above, but also high-impact nonfarm uses in a study area, particularly uses that are land consumptive or have demonstrated impacts to agricultural operations. Further analysis of the approach and scale for a cumulative impacts analysis is needed.

The analyses might vary depending on the use being considered. Any further pursuit of studying the application of cumulative analysis should keep in mind that an effective analysis does not merely result in disclosure, but ensures that the applicant demonstrates that the use will be able to operate within the requirements of any conditional use permit.

PLACE INCOME CONSTRAINT ON AGRITOURISM TO ENSURE THAT FARMING REMAINS THE PRIMARY USE

Currently, there is no limit on how much of a farm's income can come from activities permitted under agritourism uses, though there are limits for those activities under the farm stand, winery, and cidery provisions. Creating a limit, where income from agritourism cannot make up more than 25 percent of the farm's gross income for example, could prevent agritourism operations from turning into nonfarm event centers and ensure that the farm stays in production.

CONSIDER CLIMATE CHANGE IMPACTS AND THE USE OF WATER-CONSTRAINED AREA OVERLAYS

Many interviewees raised concerns about water resources in certain areas, particularly in the context of drought. Two suggested some type of zoning overlay, similar to what is used for wetlands. Such an overlay could identify water-constrained areas where certain water-intensive uses, such as wineries and extraction and bottling of water, would not be allowed. Before any type of water policy is introduced, a careful review of any impacts to water rights should be conducted.

The use of water availability for zoning purposes is an emerging concept nationally and will become more important as drought conditions intensify because of climate change. Governor Kate Brown recently launched the State's 100-Year Water Vision, with a goal of ensuring adequate ground and surface water to support economic vitality for all Oregonians. Land use regulations will be one tool used in achieving this goal, and need to be applied in a way that protects agricultural interests from water-intensive nonfarm uses.

SUPPORT FUNDING FOR OAHP

The Oregon Agricultural Heritage Program (OAHP) aims to protect farmlands through working lands easements. A working lands easement is a legal arrangement where in exchange for a tax break or other monetary benefit, a landowner agrees to keep their property as working agricultural land in perpetuity, including if the land is sold. Meaning the land cannot be developed for another use.

Working lands easements have benefits and drawbacks. They are most effective when used to permanently protect specific segments of land from development. Even with Oregon's land use planning program, legislation can change at any time, meaning EFU restrictions and zoning are not necessarily permanent. The context of changing legislation makes easements a great additional tool, especially for unique or high-value lands that are at an elevated risk of development, such as land near the edge of an urban growth boundary. On the other hand, easements alone are not enough to protect farmland.

They protect particular properties, whereas land use planning acts more like a regulatory web. In other words, easements are piecemeal and "are not a good way to achieve broad landscape resilience." All things considered, OAHP and easements should be supported as an important tool in the farmland protection toolkit, with Oregon's land use planning program continuing to be the primary statewide management tool.

REDIRECT FOOD AND BEVERAGE SERVICE TOWARDS TOWNS AND CITIES

Given the array of conflicts to neighboring farms that wineries, cideries, breweries, and other retail food and beverage service uses can introduce, a few interviewees suggested changing the uses from a permitted-with-standards use under ORS 215.213 and 215.283 to a conditional use, allowing counties to apply stricter regulations.

Strategies to regulate food and beverage service on farmland more effectively, coupled with advocacy for a shift to siting those uses in developed commercial areas, could result in less restaurant infrastructure being built on farmland, and more appropriate development in established areas that have sufficient infrastructure and services to accommodate community members and tourists.

Opening new businesses in town brings more people to the area and can help support other local businesses such as hotels, grocery stores, coffee shops, and other retail operations.

CONSIDER TOOLS OUTSIDE THE LAND USE SYSTEM, LIKE TAX POLICY

The Oregon land use system is and will continue to be vital for protecting farmland, but there are other tools that also have potential to address some of the issues threatening the future of agriculture. One tool to consider is tax policy.

For example, tax policy could be enacted to disincentivize nonfarm development on EFU lands by heavily taxing nonfarm structures. In this way, the cost burdens shouldered by the agriculture community resulting from nonfarm development could be recouped, and the number of developments on farmland limited.



Moving Forward

Based on the research explored in this report, four areas are identified as priorities to be addressed or further researched:

ENFORCEMENT OF LAND USE LAWS

A common theme heard from interviewees was a lack of sufficient enforcement of Oregon's land use laws. The conflicts that can arise locally over a land use action can upset the community and harm agricultural operations. Counties need to regulate and enforce laws in a way that respects primary uses in zones. Local governments should consider the cost of necessary enforcement staffing for any new use that is allowed in the EFU zone.

REVISING CRITERIA FOR HOME OCCUPATIONS

This use needs clarification and refinement to limit the scope. Especially considering its broad nature and that some of the most troublesome activities for farmers get approved under it, such as weddings and commercial lodging.

Enforcement capabilities and permit compliance for existing home occupations should be further studied, with a focus on evaluating the broad scope of uses permitted under this catchall category. Permit review should focus on the impacts related to the size, duration, and whether the use occurs substantially within allowed structures.

LIMIT NONFARM DWELLINGS

The cumulative impacts of nonfarm dwellings can have detrimental impacts to the vitality of the agricultural industry. They cause land speculation, traffic, and neighbor complaints. The sheer number of replacement dwellings and their concentration in certain counties is concerning.

More research to evaluate county decision making on nonfarm dwellings should occur, with a focus on evaluating whether applications include sufficient evidence to demonstrate compliance with land use regulations, including whether the applicant is pursuing the use as intended under the law. Also, the reasons for a lack of enforcement of conditions, and pathways for reform relating to nonfarm dwellings and enforcement, should be researched further.

UTILIZE ESTABLISHED COMMERCIAL AREAS FOR RETAIL SERVICES

Tourism, event spaces, and commercial food and beverage services can be beneficial for rural communities, but need to be sited in a way that preserves agricultural land and limits impacts to farmers. Developers need to stop taking advantage of farmland and the benefits it reserves for the agriculture industry. The legislature and state agencies should focus on economic development within Oregon's towns and cities.

More research on economic development opportunities in rural communities should be pursued to further understand what constraints businesses face when opening and operating retail businesses within cities and towns, and how land use laws can support those appropriately-sited uses.

Given the complex and cumulative nature of nonfarm uses and their resulting conflicts, quantifiable data demonstrating their magnitude compared to one another is difficult to ascertain. Regardless of which use is the most problematic, it is clear intervention is necessary to protect the cultural and economic values agriculture provides to Oregon.

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