



ex. **Oregon**

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Date: May 27, 2015
TO: Committee Implementing Measure 91
FROM: Michael Morrissey, Rural Policy Analyst
Katherine Daniels, Farm and Forest Lands Specialist
RE: Testimony on House Bill 3400-1 amendments

Thank you for this opportunity to provide testimony on the House Bill 3400-1 amendments. Currently, DLCDC administers ORS chapter 215 and OAR 660 division 33 that govern land use approvals in exclusive farm use (EFU) and mixed farm-forest zones in conjunction with the production, processing and sale of farm products.

Issues: HB 3400-1 raises several land use issues of concern, including dwellings in conjunction with farm use, processing facilities and two venues for farm product sales.

1. *Dwellings in conjunction with farm use:* Section 35(2) prohibits primary dwellings in conjunction with a marijuana crop in EFU zones. Assuming that this is meant to prohibit primary *farm* dwellings, the amendment should specify this. DLCDC assumes that the intent is to prevent the proliferation of such dwellings on small parcels on the basis of the income tests in rule, which would be easy for a high-value crop like marijuana to meet. However, there is another pathway in rule for the approval of primary farm dwellings in EFU and mixed farm-forest zones that requires a minimum parcel size of 160 acres of farmland or 320 acres of rangeland. This pathway would be foreclosed by the current proposed legislation.

Section 35 does not address accessory farm dwellings, which, like many primary farm dwellings, are approved subject to minimum income tests. Accessory farm dwellings are intended for farm worker housing and may only be approved where there is already a primary farm dwelling. Accessory farm dwellings should be treated in the same manner as primary farm dwellings to prevent their proliferation on small parcels where there is already a primary farm dwelling.

2. *Processing facilities:* There are currently three potential paths for the approval of farm processing facilities in EFU and mixed farm-forest zones that represent different scales of processing activity, and that can be referred to as large-scale (commercial activities in conjunction with farm use), mid-scale (facility for the processing of farm crops) and

home-based (home occupation). Large-scale and home-based processing are subject to conditional use review, while mid-scale processing is a permitted use. Counties may impose local review criteria for conditional uses, but not for permitted uses. Section 35(3) and (4) allow the processing of marijuana as a large-scale or home-based facility, but not as a mid-scale facility. If the intent of omitting the mid-scale processing option for marijuana facilities is to ensure that counties can use local review criteria, then this choice makes sense. Otherwise, it appears that the legislation inadvertently omits reference to one of the existing paths for approval of a farm processing facility.

Section 35(4) does not state whether an OLCC license is required for marijuana processing as a home occupation.

3. *Ensuring licensing only with approved land use determinations:* Section 35(5) requires a land use compatibility statement (LUCS) from a local government that demonstrates only that a requested license is for a land use that is allowable as a permitted or conditional use in local code. Unless OLCC also asks whether the local government has actually approved the specific use, it is possible that OLCC would be in the position of issuing a license to an applicant who has not obtained the necessary land use approvals. Counties have expressed a strong concern that applicants, having paid substantial license fees, would then face denial by local permitting authorities. For these reasons, OLCC should be directed to require a LUCS that demonstrates that proposed land uses have actually received local land use approvals.
4. *Potential on-farm marijuana sales.* Absent rulemaking to the contrary by DLCD, which has authority to issue land use rules, marijuana sales would likely be allowable at farm stands and at commercial activities in conjunction with farm use in EFU and mixed farm-forest zones. If the legislature wishes to prohibit or restrict such sales, DLCD, using its existing authorities and programs, would require two years to complete the rulemaking process. Farm stands currently may sell raw and processed farm products from both the on-site farm and other farms in Oregon and adjacent counties, without limit. The legalization of recreational marijuana opens the possibility of a proliferation of farm stands that sell largely or only marijuana. Farm stands are additionally allowed to generate incidental non-farm sales and promotional activities that make up to 25% of gross farm stand sales. Given the high value of marijuana compared to other farm crops, this could generate a very high level of sales of non-farm products in farm zones, as well as a high level of promotional activities that are currently undefined in statute or rule. Similar concerns arise regarding commercial activities, in that the use is undefined in statute and rule and is often interpreted broadly by counties. This use could involve marijuana sales, incidental non-farm sales, promotional activities and tastings.

5. *Potential to trigger Measure 49 and Measure 56 requirements.* Measure 49 prohibits new regulations that limit residential uses of property in resource zones without compensation by local governments or the state. Measure 56 prohibits new limits on previously-allowed uses in a given zone without notice to all landowners in that zone. Absent notwithstanding language in legislation, the state or local governments could be held liable for claims of new restrictions on dwellings or other allowed uses in resource zones.

Recommendations: DLCDC's recommendations and proposed revisions to HB 3400 are that:

1. Any reference to primary dwellings be amended to be for primary *farm* dwellings.
2. Accessory farm dwellings be treated in the same manner as primary farm dwellings.
3. If the legislature wishes to restrict or prohibit marijuana sales and associated incidental sales and promotional activities at farm stands and commercial activities in conjunction with farm use, that DLCDC be directed to develop rules for that purpose.
4. If the legislature wants to avoid a situation in which the OLCC issues a license to an applicant who has not obtained land use approvals, include statutory language directing OLCC in its rulemaking to require that a LUCS demonstrate local government approval of the specific land use.
5. All land use-related legislation includes language "notwithstanding Measures 49 and 56."

Proposed revisions to statute: The legislature should make the following statutory changes to Section 59, chapter 1, Oregon Laws 2015 to address the issues identified above (amendments to 1 amendments in bold):

1. Section 35(2) **Notwithstanding Measure 49 and Measure 56**, a primary farm dwelling **or an accessory farm dwelling** in conjunction with a marijuana crop **that is subject to an income test and** located on land in an exclusive farm use **or mixed farm-forest zone** is not a permitted use under ORS 215.213 or 215.283.
2. Section 35(5) Prior to the issuance of any license under section 19, 20, 21 or 22, chapter 1, Oregon Laws 2015, the Oregon Liquor Control Commission shall request a land use compatibility statement from the city or county that authorizes the land use. The land use compatibility statement must demonstrate that the requested license is for a land use that **has been approved** within the given zoning designation where the land is located. The commission may not issue a license if the land use compatibility statement shows that the proposed land use **has not been approved** in the applicable zone.

- 3. Section 35(6) Notwithstanding Measure 56, the Department of Land Conservation and Development is directed to develop administrative rules to limit marijuana sales and associated uses at farm stands and at commercial activities in conjunction with farm use in exclusive farm use and mixed farm-forest zones. The department shall have two years to complete such rulemaking, during which time the OLCC shall issue no licenses to farm stands or commercial activities in conjunction with farm use.**