

# Guidance on Specific State Land-Use Regulations Affecting Agritourism

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Chances are you've had success in life and business by adopting the motto "better to ask for forgiveness than beg for permission" – after all, it's a hallmark of creative thinkers, pioneers and business innovators. Unfortunately, when it comes to navigating the policies and regulations regarding agriculture, failing to ask for and obtain permission can put you and your customers in jeopardy.

## BACKGROUND ON OREGON LAND-USE LAW

In response to competing interests and a desire to strengthen the state's economy while simultaneously conserving farmland and natural resources, the Legislative Assembly passed the original Oregon Land Use Act in 1973. This act required all cities and counties to adopt comprehensive plans that met mandatory standards set by the state. These programs, and the semi-independent roles of the state and local jurisdictions, set the foundation for the land-use policies we encounter today.

For instance, even though the state legislature adopted Senate Bill (SB) 960 in 2011, which created a process and structure for agritourism events, each of Oregon's 36 counties has the option to respond by implementing those parameters as they are written in statute, to implement a lesser version, or to implement nothing. It's important to keep this in mind as you continue reading this section: Just because there's a policy in place at the state level doesn't mean it will directly translate to your location.

## FIRST STEPS: PREPARING FOR PERMITS

As you embark on this venture, it's important to remember that you're doing something new, and the very thought of agritourism can cause quite the kerfuffle. Your neighbors may associate tourists with increased traffic and noise rather than with spending that bolsters the local economy. Planners and inspectors find themselves in the challenging position of meeting your needs and those of your neighbors, while ensuring the safety of the public. As you proceed through the permitting process, patience and frequent communication will work to your benefit as you gain allies rather than make enemies.

Give yourself plenty of time to deal with the agencies regulating the industry. Agencies are often understaffed and can seem slow to process applications. Your business idea may be brilliant, but it may take time to build the regulator's understanding of your proposed operation and goals. Sometimes rules and regulations can themselves be confusing: Keep in mind that regulations were written by lawyers, and it might take both you and the agency representative time to figure out what tools at their disposal can yield you the proper permits. You may need to appear before a board or committee whose agendas require a 30-day advance public notice. Given all these factors, arriving at your regulator's or inspector's office with only a few days to act tends to cause unnecessary conflicts and stress. Don't be afraid to ask questions, but remember to be patient and courteous.

Finally, don't be discouraged if your county hasn't adopted a policy that you feel you need to operate your business. Oftentimes, a lack of resources or a lack of demand is the only reason a policy hasn't been changed. You can work with your planners and regulators to make some improvements.



## COMMON REGULATIONS THAT IMPACT AGRITOURISM ACTIVITIES

Below you will find information about the most common regulations that impact agritourism in Exclusive Farm Use zones.

### A. FARM USE

Farm use is regulated by ORS 215.203. This statute allows direct sales and marketing of farm crops.

#### Types of Allowable Uses

Uses may be subject to county review, and include:

- Direct sales and marketing
- U-Pick
- U-Cut
- Christmas tree sales
- Community-Supported Agriculture (CSAs), limited to crops grown/harvested on-site

#### Limitations and Requirements

- Sales are limited to crops grown and harvested on-site.

### B. MASS GATHERINGS

Mass gatherings are defined and regulated by ORS 433.735(1), ORS 433.750, ORS 433.755 and ORS 433.763(1). These statutes define “outdoor mass gatherings” to mean an anticipated assembly of more than 3,000 persons that continues, or can reasonably be expected to continue, for more than 24 consecutive hours but less than 120 total hours within any three-month period.

Other gatherings are defined as an assembly of 3,000 or fewer persons not anticipated to continue for more than 120 hours in any three-month period. Counties are allowed to make modifications to this definition (e.g., “large gatherings” in Marion County).

#### Types of Allowable Uses

- Concerts
- Festivals
- Fairs
- Carnivals

#### Limitations and Requirements

##### *Mass gatherings:*

- Subject to review by the planning commission.
- Demonstrate compatibility with existing land uses.
- Not materially alter stability of land-use pattern of the area.
- No permanent structures are allowed.
- Have very detailed requirements for sanitary services, parking, medical services on-site, sewage, trash and food service.

##### *Small or “other” gatherings:*

- Not subject to review (e.g., not a “land-use decision”).

*Note: If you have an agritourism permit, you may not also apply for a mass gathering permit. If your county has adopted an agritourism policy based on SB960, you may not use “mass gathering” permits in lieu of an agritourism permit.*



## C. FARM STANDS

Farm stands are defined by ORS 215.283 (1)(o), which defines farm stands as structures “designed and used for the sale of farm crops or livestock grown on the farm operation, or grown on the farm operation and other farm operations in the local agricultural area, including the sale of retail incidental items and fee-based activity to promote the sale of farm crops or livestock sold at the farm stand.”

### Types of Allowable Uses

- Direct sales of farm crops and livestock produced on the farm or other farms in Oregon, and retail incidental items.
- Fee-based activity to promote the sale of crops could potentially include a variety of uses, but it’s worthy to note that these uses are based on a Court of Appeals case:
  - Small-scale gatherings such as a birthday or picnic
  - Corn mazes
  - School tours
  - Pumpkin patch events
  - Hay rides
  - Farm animal exhibits
  - Farm product food contests
  - Food preparation demonstrations
  - Outdoor farm-to-table dinners

### Limitations and Requirements

- This statute does not include temporary or permanent structures designed for occupancy as a residence, or for activity other than the sale of farm crops or livestock.
- Nor does this statute provide for temporary or permanent structures designed for banquets, public gatherings and/or public entertainment.
- Annual sales of incidental items and fees from promotional activities are limited to 25% of total annual farm-stand retail sales.

## D. AGRITOURISM/COMMERCIAL EVENTS OR ACTIVITIES

This is the core of SB 960, approved by the Oregon Legislature in 2011 and referenced earlier in this chapter. While agritourism events are defined by ORS 215.283(4), the statute doesn’t specifically define the term “agritourism.” The customary definition is any commercial enterprise at a working farm or ranch conducted for the enjoyment of visitors that generates supplemental income for the owner. To date, your county may have chosen to adopt these regulations in whole, in part or not at all.

What is consistent no matter where you are is that agritourism and other commercial events must be related to and supportive of agriculture. All the activities approved by these provisions must be “incidental and subordinate to existing farm use.” To define that phrase a little further, think of it this way: Is this event secondary to your on-site farming in terms of income generated, area occupied and off-site impacts? Does this event generate supplemental income that will support your farming efforts?

### Types of Allowable Uses

The statute is not clear about the types of events and activities that might be allowed, so counties may interpret these uses differently. In general this permit could include activities related to:

- Education
- Hospitality
- Entertainment
- Outdoor recreation

### ***More specifically, we see agritourism permits issued for:***

- Cooking classes using farm products
- School tours (which could also be conducted with a farm stand permit)
- Farm/garden/nursery tours and stays
- Festivals and “Harvest Days”
- Pony rides, petting zoos, corn mazes
- Farm-to-table events





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## Limitations and Requirements

State law requires that the activities and events must be related to and supportive of agriculture, and be incidental and subordinate to existing farm use.

State law provides for a variety of permits; they increase in cost and intensity as the events do.

They are:

- One expedited event permit.
- One-event permit with a conditional land-use permit.
- Up to six events with a conditional land-use permit.
- Up to 18 events with a conditional land-use permit.

Conditions associated with these permits are set by the local jurisdiction, but are likely to include:

- Parking
- Noise
- Sanitation
- Signage
- Food service

Although there is no specified limitation on annual agritourism event revenue in relation to overall farm income, these events are intended to be subordinate to existing use.

## E. WINERY, CIDERY AND BREWERY BUSINESSES

Wineries, as related to land use and events, are regulated by ORS 215.452 and ORS 215.453. A small winery is defined by statute as less than 50,000 gallons on at least 15 acres, or more than 50,000 gallons on at least 40 acres. A large winery is defined as at least 150,000 gallons on 80 acres or more. A cider business, as related to land use and events, is regulated by ORS 215.451 and may be established on land zoned for EFU if the cider business produces less than 100,000 gallons of cider annually and owns an on-site or contiguous orchard of at least 15 acres; or produces at least 100,000 gallons of cider annually and owns an on-site or contiguous orchard of at least 40 acres. It's worthy to note that statute defines cider as a product made of apple or pears. In general, wineries and cideries have a wider array of allowable activities. Certain activities are more restricted for wineries than for farms with permitted farm stands. However, there are also activities that are only permitted on EFU land occupied by wineries.

In 2019 SB 287 passed the Oregon Legislature and affords breweries the same opportunities based upon their size and crops. Specifically, a farm brewery may be established in an EFU zone if it produces less than 150,000 barrels of malt beverages annually, a portion of the production may be produced offsite. Additionally, if the farm brewery produces less than 15,000 barrels of malt beverages annually on site; owns an on-site or contiguous hop farm of at least 15 acres; has a long-term contract for the purchase of all of the hops from at least 15 acres of a hop farm contiguous to the farm brewery; or obtains hops from a total of 15 acres from any combination of sources described in the statute.

## Types of Allowable Uses

Operations that are directly related to the sale or marketing of wine, cider or malt beverages produced in conjunction with the business may be allowed.

This includes limited service restaurants and the sale of incidental items directly related to on-site sales, including:

- Tours and tastings
- Buying club meetings
- Winemaker/cidermaker/brewer luncheons and dinners
- Business activities for wine/cider/brewing industry professionals
- Open houses to promote wine, cider or beer
- Bed-and-breakfast and room-and-board facilities

Agritourism or other commercial events in conjunction with these facilities are also allowed.

The promotion of wine, cider or beer produced in conjunction with the business is a secondary purpose of the event. Such events include:

- Outdoor concerts for which admission is charged
- Educational, cultural, health or lifestyle events
- Facility rentals
- Celebratory gatherings
- Charitable activities for which the winery does not charge a facility rental fee
- Other events

## Limitations and Requirements

- Income from limited-service restaurants and sales of incidental items must not exceed 25% of income from wine/cider/beer sales.
- The size of the business and frequency of events determines what permits are required. For small operations that host events more than six days per year, and large operations that host events more than 24 days per year, land-use permits are required.
- Both 7-18 and over 25-day applications must address potential impacts and must be subordinate to the production and sales of wine/cider/beer and may not create adverse impacts to uses on surrounding land.
- Small wineries/cideries/breweries are allowed a maximum of 18 days per year for events.
- 1-6 days is not a land-use decision.
- 7-18 days requires a land-use decision.
- Large wineries/cideries/breweries are allowed a maximum of 25 days per year for events.
- A land-use permit is required.
- Restaurants, where permitted, may operate 25+ days.

## F. GUEST RANCHES

Guest ranches as related to agritourism and events are regulated by ORS 215.296 (1)(2) and ORS 321.805. The guest ranch must be located on a lawfully established unit of land that is at least 160 acres, contains the dwelling of the individual conducting the livestock operation and is not on high-value farmland.

### Types of Allowable Uses

- Lodging
- Hunting
- Fishing
- Hiking
- Biking
- Horseback riding
- Swimming

- Food service (only for guests of the guest ranch, individuals accompanying the guests and individuals attending a special event at the guest ranch)

## Limitations and Requirements

You may not establish a guest ranch if the proposed site of the guest ranch is within the boundaries of or surrounded by:

- A federally designated wilderness area or a wilderness study area.
- A federally designated wildlife refuge.
- A federally designated area of critical environmental concern.
- An area established by an Act of Congress for the protection of scenic or ecological resources.

Additionally:

- A guest lodge must include no fewer than four and no more than 10 overnight guest lodging units.
- It may not exceed a total of 12,000 square feet in floor area, not counting the floor area of a lodge, that is dedicated to kitchen area, rest rooms, storage or other shared or common indoor space.
- For every increment of 160 acres that the lawfully established unit of land on which the guest ranch is located exceeds the minimum 160-acre requirement, up to five additional overnight guest lodging units not exceeding a total of 6,000 square feet of floor area may be included in the guest ranch, for a total of not more than 25 guest lodging units and 30,000 square feet of floor area.
- Recreation may not include the development of golf courses.
- The cost of meals, if any, may be included in the fee to visit or stay at the guest ranch; a guest ranch may not sell individual meals to an individual who is not a guest of the guest ranch, an individual accompanying a guest or an individual attending a special event at the guest ranch.

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