



Co-Chair Ken Helm

Co-Chair Mark Owens

Vice Chair Sarah Finger McDonald

Members of the House Agriculture, Land Use, Natural Resources, and Water Committee

Re: House Bill 4153 -2 – Farm Store Permits

Co-Chairs Helm and Owens, Vice Chair Finger McDonald, thank you for the opportunity to provide written comment in addition to the testimony provided to the committee on February 4.

The Association of Oregon Counties takes great pride in being the local government responsible for farmland and the regulations on land zoned for agricultural purposes. Because of this, it was important to the counties to ensure during the development of this bill to place guardrails or sideboards to ensure farming and agricultural production stayed at the forefront of the new “Farm Store” permit. Please find below some context regarding the sideboards put in place for this bill as you consider moving forward with House Bill 4153-2.

Existing Farm Stand Operations:

First and foremost, it needs to be on record that any farm with an existing farm stand permit will not lose that permit with the passage of HB 4153. There is not an ability for the county to revoke a farmstand permit. The farmstand will only need to be compliant with the new provisions of HB 4153 if the farm operation wishes to expand their farm store operation or alter their existing permit.

Second, it needs to be stated at the beginning that a farm operation that desires to sell their own products does not need a farm stand / farm store permit. The sale of a farm operations farm crops is a permissible use in the farm zone, and this permit would not be needed (ORS 215.203). If the farm operation has a desire to allow the public into a structure, it does need to meet all building code requirements, however a farm stand / farm store permit is not necessary.

Activities that are allowed: Section 2 (1)(a)

Under a Farm Store Permit, in addition to the selling of goods and crops (discussed further below), only specific types of activities are allowed to occur. First and the most important, the activity must be conducted by farm operation. Once that operation can attest they are going to run the activity, the activity must promote the farm, it must promote visitors of the public to the farm store and the sale of the store’s products to the public, and finally for the purpose to generate commercial, entertainment, or educational value. If the activity is not conducted by the farm where the activity is occurring or violates those specific provisions, the farm store permit is not a valid route, and the farmer will need to explore other pathways.

The bill is very clear that lodging is not permissible through a Farm Store Permit. A farm operation cannot use a farm store permit to allow a hotel or overnight dwellings to occur. If a hotel or dwelling is located on farmland that is outside permissible activities listed by the legislature in ORS 215.213 or 215.283, the farm is in violation.

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Eating and Food Service at the Farm Store: Section 2 (1)(b) and Section 2 (2)(5) and (6)

Under the Farm Store Permit, a farmer through this permit can offer Farm to Table Meals. It would be a permissible use of the permit, however the farmer must offer it as a fee-based dining experience, the food must be grown by the farm or by farmers in the local agricultural area, and it must be prepared and served to educate the public on the production of the food.

Under this permit, a farm cannot have a structure designed for drive-through dining. However, we do know that the farm stores will want to sell processed farm products, as such this permit will allow the farm operation to have a kitchen facility, but it cannot use the facility to function as a café. The language in Section (2) (2)(6) was mirrored after the existing winery statutes and provisions. The food that can be provided at a farm store using this permit is intended for the “grab and go” style (apple cider donuts for example), it is for individuals that make purchases at a counter. A farm store permit cannot be used to justify a restaurant / café on the premises. This means it will not be provided to a farm wishing to have wait staff or a host/hostess, nor can it be used as justification to take reservations for sit down service.

Finally, regarding the sale of food products for consumption at the farm operation, the bill does state in Section 2(6) a farm store with an on-site kitchen facility must be licensed by the Oregon Health Authority.

Keep working farmland working:

The current farm stand rules only have a 75/25 income threshold that must be met, there is not a requirement that any of the farmland be in working agricultural production. Counties understand the concern of farmers and the agricultural community that this bill has the potential of taking farmland out of the working land designation. The bill states a series of acreage requirements that need to be in “active farm use” to qualify for a new Farm Store permit.

“Active Farm use” is defined in ORS 215.203(2)(a), and lists what farming practices qualify. Some of these include ‘raising, harvest, and selling crops; producing livestock and poultry; and the sale of dairy products;’ however the important piece in ORS 215.203(2)(a) is that farm use means the “current employment of land for the primary purpose of obtaining a profit in money.”

Knowing farming operations cannot have the entire parcel or lot in active farm use due to other factors (roads, structures, wetlands, habitat, etc), House Bill 4153-2 states in Section 2 (2)(c) the minimum acreage limits that must be met based on the size of the farming operation. If the farming operation has at least 80 acres, a minimum amount in active farm use is 45 acres, a 20-acre parcel needs at least 10. However, there is a second track for farming operations with less than 20 acres – the farm store must show they have earned at least \$10,000 in gross farm income cumulatively over the preceding two years.

Jurisdictions have already established to issue a temporary use permit for activities that do not exceed, typically, 3 days. This permitting process is utilized for a wide variety of temporary uses in any zoning district. This permitting process remains an option for activities, and it should be remembered that the sale of farm products on a farm is already allowed as outright use. Counties should work with their legal counsel on determining what appropriate documentation and information could be provided to

demonstrate the \$10,000 income threshold is met. Working with legal counsel to review the evidence provided to demonstrate compliance of the various land use and zoning requires in a common practice at the local level and county planning departments rely on this legal expertise to help make determinations on whether applicants have adequately demonstrated compliance. If the evidence results in a discretionary determination, avenues to address the discretion include bringing the evidence before a hearings officer or planning commission at a public hearing. What is the most important aspect of this \$10,000 process in determining compliance is giving the local jurisdiction the ability to work with the local farmers and farming operations.

Size and restrictions on the Farm Store building:

Counties believe consistency in the code is necessary for clear and objective criteria in the land use statutes. As such, statute allows other permissible farm structures under a Type 1 review to be no more than 10,000 square feet (HB 4153-2 Section 2 (2)(b)). The legislature has previously established the size limit of Type 1 structures in the farm zone; ORS 215.255 allows small-scale processing facilities with siting standards up to 10,000 square feet.

House Bill 4153 removes the 75/25 income test on farm stands for new permits and replaces it with a square footage limitation inside the structure. County planning departments are very experienced in looking at site plans and the conduction of site visits to verify compliance. This bill limits the retail section of a farm store to be 25% of the floor space (Section 2 (3)(b)). Today, there is not a limit on what can be sold in a farm store under the 25% income restriction, just that it meets the 25% income restriction. To keep agriculture and farm use the primary purpose of the farm store, limiting retail items to 25% allows the remaining 75% to be for the farm operation's crops and other crops grown in the 'local agricultural area. The bill further places the limitation in Section 2 (4) the sale of retail items must take place within the permanent enclosed structure. As stated at the beginning of this letter, if the farm operation only wants to sell their own operations crops, a farm store permit is not required. Again, this is due to the selling of farm products being included in the definition of "farm use" (ORS 215.203) and a land use permit is not necessary.

Alcohol Products at Farm Stores: A farm stand today, with a lawfully issued OLCC license, is allowed to serve alcohol products on their premises. This does not change under HB 4153-2. While not the primary point of sale and product, the sale of alcoholic products are often in conjunction with the sale of farm products and farm-related activities that occur on site. Wineries, cideries, breweries, and distilleries also serve alcoholic beverages, and this is their primary farm product. Regardless of the use of the property – farm store, winery, or other uses in other zoning districts that include the sale or consumption of alcoholic products, counties participate in the OLCC process for any new OLCC licensing requests, renewals or requests to modify existing OLCC licenses. County review includes review and input from the sheriff's office, local health department, and from the local planning office for new license applications or applications to modify and existing OLCC license. If alcohol is being served or sold at the farm store under this bill, counties will continue to participate in the licensing process as required through the states OLCC requirements.

Third Party Hosting: There is a limitation placed on the farm store permits on who is allowed to conduct the activities. Specific types of Agri-Tourism activities are allowed, Section 2 (1)(a)(A). That provision states “the activity is conducted by a farm operation to promote the farm operation, visitors to a farm store and the sale of farm store products to the public and that may also generate commercial, entertainment or educational value.” Counties do not believe that allowing a third party to host the agri-tourism event is in the spirit of the farm store provisions and would be regulated to ensure the activities conducted under said permit are by the farm operation itself.

Siting Standards: House Bill 4153-2 (Section 2 (7)(a)) allows a local government with land use jurisdiction of the farm operation to adopt siting standards that are related to access, egress, parking, traffic management, noise management, hours of event operation and sanitation and solid waste requirements. Counties also retain the ability to regulate issues around public health, public safety and the general welfare of the community through ORS 215.253(2). Counties have been regulating siting standards since Oregon’s Land Use system was put in place and the provisions of what is allowed in the farm zone were created by the Legislature. Some examples of siting standards on existing farm stands include: *All building, plumbing and mechanical permits required by the county for conversion of a portion of an existing structure must be obtained. The farm stand may not be used for the sale, or to promote the sale of marijuana products or extracts per OAR 660-033-0130. Any permits required by ODA, OHA, and other state agencies must be obtained. The applicant shall maintain a parking area of one car per 300 square feet floor area of the farm stand. Prior to operation of the farm stand the parking area shall be established. No on street parking is allowed.*

Another county has siting standards that require: *all required parking spaces must be at least 9'x18' in size and at least one space per 200 square feet of floor area dedicated to the farm stand must be provided. Approval from the county public works department regarding adequate egress and access and they must be clearly marked.*

Each county can set the siting standards to be specific to the issues experienced in their county, however the ability to regulate and keep the community safe, farmers farming, and environmental protections around sanitation are a must for counties and the county planning departments when issuing the permit.

Other Permits: A county will require all other necessary permits to be obtained. A farm store permit does not provide a single permit for operation. If the farm operation has a permanent structure they intend to use, it must meet building code requirements. If an existing agricultural structure is going to be converted, ORS 455.315 no longer grants the building code exception since it will now be open to the public. ORS 455.315 states a structure used by the public will be regulated by the state Fire Marshal.

CODE COMPLIANCE:

Finally, like the current practice, a permit will be issued, and the farm operation will be required to follow all siting standards and requirements of the law. If the farm operation is not in compliance, county code enforcement will be present and issue the necessary warnings, citations, or shutdowns. The provisions of House Bill 4153 -2 do not change the counties’ responsibility in keeping the public safe nor change the complaint driven process counties operate today with farm stand permits.

In Closing:

Counties took a great deal of time to ensure adequate guardrails were put in place on House Bill 4153 and the -2 amendments. If the legislature believes House Bill 4153 warrants enactment into law, counties will continue to ensure the agricultural lands are protected for unnecessary development through the issuance of farm store permits. Existing farm stand permit holders will not see their permit revoked and they will be allowed to continue to sell their crops and promote their farming operations.

Thank you for your consideration of House Bill 4153 and the sideboards / guard rails the counties worked to ensure were put in place.

Branden Pursinger
Legislative Affairs Manager – Natural Resources and Land Use
Association of Oregon Counties