

PRESERVE FARMLAND THROUGH PROSPERITY:

Reform Oregon's Land Use Laws

by Ann Brentmar

EXECUTIVE SUMMARY

This proposal advocates revising the statutes regulating wineries to cover on-site processing of other farm products. Wineries are permitted on land zoned for exclusive farm use in all Oregon counties. Processing of any other agricultural commodity requires a conditional use permit in most counties. Wineries have a legislative niche that allows them to combine agriculture, value-added processing and tourism into successful businesses. This niche should be enlarged to all farmers who wish to process their crops on their property. If it is legal to process grapes into wine, it should be just as legal to process grapes into grape juice, jelly or jam.

The benefits to be realized are manifold. Farmers can expect their incomes to increase through value-added processing of farm products. More income will allow more land to remain as farmland; pressure to sell land for development will be high as long as profits from farming are marginal. Further, allowing the processing of food on farmland will add a crucial component to the Agro-Tourism project being developed by various state agencies, including the Oregon Department of Agriculture. Furthermore, this proposal would help that Department reach its benchmark goal of doubling the value-added portion of Oregon's agricultural products by 2010, which would strengthen both state and local economies.

ABOUT THE AUTHOR

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I. INTRODUCTION

Oregon's population is expected to increase by upward of 1 million people in the next twenty years. Agriculture, one of Oregon's leading industries, will feel the effects of this growth, losing prime farmland as urban communities expand onto the fertile valley floors. Since 1973, Oregon's land use laws have protected farmland from non-agricultural development. As evidenced by the growing number of recent approvals for non-farm dwellings on farmland, these laws are weakened wherever pressure from growth inflates farmland property values to far exceed the profit obtained from agriculture. One way to aid in preserving Oregon's farmland is promotion of value-added processing of agricultural crops. Under current Oregon law, only dairy farmers and winery owners are permitted to construct processing facilities to produce finished, marketable products. This proposal seeks to examine the concepts embodied in the regulations permitting processing for wineries and dairies and to identify pathways to extend the same advantages to all farmers.

Value-added processing of all types of raw commodities forms an important component in the development of sustainable revitalization and diversification of rural economies. Exporting finished products rather than raw commodities creates local jobs and brings higher profits to the primary producers of the raw materials. As every potato farmer knows, potatoes are cheap while potato chips are expensive by comparison.

In Oregon, only 20% of all agricultural products are consumed by Oregonians.¹ Most of this surplus food leaves the state unprocessed; often it is processed in other states, such as California.² The Oregon Department of Agriculture has recognized the importance of value-added food processing in stating: "All in all, the future of Oregon agriculture rests not only with the producers of food products, but also with those who do something with the product after it is harvested."³

The State of Oregon is not alone in recognizing the importance of value-added processing. Prince Charles, the Prince of Wales, an organic farming advocate, produces cookies made from oats and wheat grown on his home farm in the Duchy of Cornwall. With "Duchy Originals", he says, he is trying to demonstrate the opportunities for farmers to add value to their raw materials by developing and marketing finished products themselves.⁴

Oregon farmland is protected from development by stringent land use laws. In exchange for special farm tax assessment, the owners of land in farm use are prohibited from any non-farm construction or business activity.⁵ Processing facilities, large or small, have been interpreted as a non-farm commercial activity and permitted only as a conditional use, subject to approval from the local government. This has prevented the loss of good farmland to large industrial

operations. The standards for approval apply equally to large and small farms. Most counties do not distinguish among the origins of the finished products' contents. Thus a family farm making jam from their own berries is subject to the same regulations as a large chicken-parts packaging company who obtain the chickens exclusively from other farms.

Two exceptions to the processing facilities regulation are dairy farms and wineries. Dairy farms traditionally include milk bottling and processing of dairy products such as cheese, butter and ice cream. These are recognized as an integral part of the farm's operation. Constructing facilities for processing dairy products is permitted as a part of accepted farm use.⁶

Wineries have had a different route to being classified as a permitted use. Legislation enacted in 1989 defined a winery operation of a specific capacity as a permitted farm use, while larger wineries of a more commercial nature still require a conditional use permit as a commercial activity in conjunction with farm use.

Wineries are a permitted use on land zoned for exclusive farm use in all Oregon counties.⁷ The statutes define the acreage, bottling capacity and inventory for a winery to operate as a permitted use. In creating these statutes, the Legislature choose to recognize wine as different than other agricultural products, allowing vineyard owners to combine agriculture, value-added processing and tourism into successful businesses. The same recognition should be extended to all farmers who may wish to process their crops without the added expense of doing it off the farm. If it is legal to process grapes into wine, it should be legal to process grapes into grape juice, jelly or jam.

II. CURRENT POLICIES

A. Statutory Language

Neither the Oregon Revised Statutes nor the Oregon Administrative Rules directly address the siting of processing facilities on land zoned for exclusive farm use. Each county must interpret the state's exclusive farm use zone statutes when drafting and administering their farmland ordinances. While some county's have interpreted these statutes to permit processing, most have interpreted processing to be a "commercial activity in conjunction with farm use", which may be administered through a conditional use permit. Other counties reflect both the lack of legal language directed at processing and the fact that accepted farm practice often includes processing in some form, and permit processing limited to items produced directly on the farm. Table 1 is an accounting of the 36 Oregon counties' ordinances regarding processing on lands zoned for exclusive farm use.⁸

Current County Interpretations

Table 1.

Conditional Use Permit Required

Home occupation: Lincoln, Umatilla

Commercial use:

Baker, Clackamas, Clatsop, Coos, Crook, Curry, Deschutes, Gilliam, Grant, Harney, Jefferson, Josephine, Klamath, Lake, Lane, Malheur, Multnomah, Polk, Sherman, Tillamook, Wallowa, Wasco

Permitted Use

If processing solely raw materials produced on the same farm, otherwise, a conditional use as a commercial activity in conjunction with farm use:

Columbia, Douglas, Linn, Marion, Union, Benton, Hood River
Under Administrative/Design Review:
Washington, Yamhill, Jackson, Morrow

The variation in counties' interpretation reflects the lack of language specifically addressing processing. These differences in interpretation also reflect individual county's approaches to regulation and their differing regional farm practices. The disparate range from outright permitted to conditionally permitted uses is tempered by those counties who recognize the right to process on the farm what is grown on the farm.

A farmer consulting the Oregon Administrative Rules on licensed food processing facilities finds no mention of building permits for a structure, much less a zoning clearance permits from a local government⁹ Thus, many farmers, believing that they are exercising a farm use, build processing facilities as part of agricultural buildings or place them in already existing buildings, have them licensed, and begin processing. Often, not until much later, do they realize the county may consider the farm's processing facilities to be in violation of county code.

"What is clear is that the law is not," writes Ron Eber, an agricultural lands specialist with the Department of Land Conservation and Development, in response to questions on the counties' varied approach to regulating processing on farmland.¹⁰

B. Governor's Council on Food Processing

The Governor's Council on Food Processing, headed by Bruce Andrews, Director of the Oregon Department of Agriculture, considers all food value-added processing on farm land to be a permitted farm use as a part of accepted farming practice.¹¹ Processing facilities are traditionally located in close proximity to farmland, thereby ensuring freshness in processed foods. Many of Oregon's older processing facilities located on farmland, such as mint oil distilleries and berry canneries, were built prior to the enactment of the current land use laws.

C. Court Interpretations

The Oregon courts have not interpreted processing, in general, to be an integral part of farm practice. However, the

same courts have ruled to give special exceptions to processing facilities for wineries:

In short, the Oregon Supreme Court found that a winery for a vineyard is no different than a barn for an alfalfa grower or a storage shed for an onion farmer.¹²

Oregon courts have held that the farmer making grapes into wine is engaged in a permitted farm use and that the farmer processing grapes into grape juice is engaged in a non-farm activity. The winery is entitled to special farm tax assessment as a farm use, while the grape juice processing facility is taxed as a commercial activity.

III. BENEFITS OF VALUE-ADDED PROCESSING

A. Rising Sun Farms

Rising Sun Farm, located in Talent, OR, is an example of a success story in on-site value-added processing. In 1985, the Fujas family began farming herbs in the remote Colestein Valley near Mt. Ashland. Elizabeth and her husband Richard quickly realized the key to farming profitably on their marginal mountain soils lay in making salad dressings and herb pasta sauces from their herbs. Having read only the state statutes and believing their plans fit within the definition of accepted farm practice, the Fujas' remodeled an existing building on a small budget, had it inspected and licensed by the local Agriculture Department representative, and began processing. Their gourmet dressings and sauces were successful, and they converted more of their marginal pasture land to high-value herb production.

In 1989, Rising Sun Farm was named "The Most Progressive Farm in Oregon" by the Oregon Department of Agriculture. Recognition and a rapidly growing business made it necessary to purchase additional farm land closer to town, within an irrigation district. When they planned to move their processing kitchen to the new farm, they learned that the county considered their kitchen a commercial activity in conjunction with farm use and required a conditional use permit. Consequently, they chose a farm along a major highway with adequate existing structures to process and store their farm products, which minimized some of the issues involved. The county's conditional use permit process required the Fujas' to show that their processing operation had some feature which necessitated its location on the farm. Basil, a major ingredient in their products, contains volatile aromatic oils which keep their flavor best when processed immediately, so the county requirements could be met.

"It was puzzling to us that anyone could consider our processing kitchen not to be a part of our farm practices" says Elizabeth, "The landuse laws for farmland seem to try to scratch the dirt off the farmer so that they can get at the developer underneath."

Today Rising Sun Farm has diversified the types of foods it produces, processes not only herbs from the Fujas farms but also from other local farms, but they had not had to build more facilities. Rising Sun Farm dressings, pesto, and tortes are shipped to specialty stores in the USA, Europe and Japan. Its processing facilities are small relative to the 11-acre parcel: two remodeled 20' x 40' Quonset huts. The Department of Environmental Quality approved a waste water system which allows the dirty water from rinsed vegetables to be reused as irrigation water.

B. Benefits to Farmers

As Rising Sun Farm's success demonstrates, processing can provide the additional income necessary to make small and medium sized farms profitable. Allowing farmers to be processors will place farming profits more directly back into their hands. As the primary producers of a commodity, farmers invest the most labor, carry the most risk, and get the least financial return for their efforts. Processing can triple a crop's value, and farmers who can process their crops into a product are less vulnerable to the market fluctuations associated with pricing structures on raw commodities. Farmers are left with the option of tilling crops back into the soil when the costs of harvesting and getting to market exceed the market value of the crop. Having products to take to market rather than raw produce provides a year-round income and a much greater chance for self-reliance.

The 1995 Federal Farm Bill removed traditional subsidies and price supports for many farmers. The American Farmland Trust, in a report entitled "Toward a More Strategic Approach to Farmland Protection", noted the growing importance of preserving prime farmland as national policies shift added market risks to producers.¹³ To balance the burden of those risks, farmers must have the right to bypass the middleman, and have control over the processing and marketing of their crops.

IV. STATE AGRICULTURAL ECONOMY AND SUSTAINABLE LOCAL ECONOMIES

Allowing farmers to have their own processing facilities will have an enormous impact on the state's agricultural economy. The Oregon Department of Agriculture has recognized value-added processing as having the greatest potential for growth and expansion of the agricultural economy. The Oregon Progress Board set a benchmark of doubling the value-added portion of Oregon's agricultural products by the year 2010 and directed state funds towards that goal. Fulfilling this goal will add an estimated 21,000 jobs and \$3 billion dollars to Oregon's economy.¹⁴

Benefits will also be felt in local, rural economies. Allowing processing on farmland will strengthen rural economies throughout the state through diversification of its leading

industry's resource base. A strong rural agriculture based economy can aid in replacing the revenue lost in the decline of the timber industry, allowing communities to develop a sustainable future.

Small and medium-sized farms, less than 180 acres in size, comprise 75% of Oregon's working farms. Most of them are at best marginal in terms of profitability, with one-third of all Oregon farms' yearly sales being less than \$2,500.00. The 'farmer' commutes to a job elsewhere. Among Oregon's farm operators, 53% earn more than half their income off the farm.¹⁵ Many farmers in this category would more actively farm their land if they could make a reasonable profit.

Providing an adequate, healthful and nutritious food source for the state is a part of Oregon's planning goal for farmland. Farm practices which produce processed foods for local consumption promote this goal. Processing and marketing locally keeps the farm profits within the local communities. Farmer and writer Wendell Berry remarked on the benefits of this agro-economic model:

*The local consumer population in towns and cities should subsist, so far as possible, from the produce of the locality or region. The primary reason for this, in the region as on the farm, is that it is safe, but there are other reasons also. It would diversify local farming. It would support the local farm economy. It would greatly reduce transportation and other costs. It would put fresher food on the table. It would increase local employment. And what would be exported from the region would, again, be regarded as surplus.*¹⁶

V. PRESERVING FARMLAND

Processing as a permitted use on farmland will help to preserve farmland. Demands from the state's increasing human population and environmental concerns, such as water use and wetland preservation, will remove more farmland from the resource base. Oregon's land use laws protect land zoned for exclusive farm use from subdivision, but pressure to rezone these lands for residential use will always exist when the profits from farming are marginal. This is especially true for farms which are close to growing urban areas where prices for irrigated farmland can range upward of \$6000.00 per acre. Farmers who can do their own processing will reap more profit from their crops. They enhance the value of their land as productive farmland and enable it withstand pressures from development.

Education is needed for those organizations opposed to any relaxation of land use laws to understand that preservation of agricultural land rests largely on preservation of agriculture. Although the statewide agricultural lands planning goal includes conservation of economic resources, also included is conservation of the open space, natural beauty and aesthetic assets associated with farms. These scenic considerations should

be secondary to the economic forces at play in conserving our resource lands. Land which has been zoned for exclusive farm use should be used to create the largest possible income from agriculture and agriculturally related activities. Processing facilities in farm zones may remove some small amount of land from agricultural production but the benefits to the individual farmer and to the stability of the agricultural land use pattern in the area should outweigh aesthetic concerns.

A. Agro-Tourism

Licensed food processing kitchens on farm land will add a crucial component to the Agro-Tourism project being developed by the Oregon Department of Agriculture and other state agencies.¹⁷ This program is designed to augment farm and ranch income with appropriate recreational enterprises.

Oregon land use planning hinges on successfully convincing the majority of the state's population that they are better off living in higher densities inside urban growth boundaries and leaving rural and forest lands as undeveloped resource lands. But people in cities need access to these resource lands, to understand the issues involved in preserving them and to share their natural beauties. Educational and recreational opportunities abound on forest land, but, with the noted exception of wineries, farmland has not traditionally been accessible to the non-farm public. Imagine being able to go to a local strawberry U-pick, and coming home with strawberry jam, that you've prepared just as you like it. The U-pick operators have made money on the berries, canning supplies and fees for kitchen use and expert advice, and you have had an enjoyable and educational experience.

B. Living on the Farm

In order to build a farmhouse on land zoned for exclusive farm use, a farmer must show acceptable amounts of gross receipts from farming for three years.¹⁸ The intent of this regulation is to ensure that homes built on farm land are being built by landowners who are keeping the land in agricultural production. The income requirements are relatively high and make no distinction between the relative values of the 230 different agricultural commodities produced in Oregon or the size of the farm. For those farmers with medium and small-size farm parcels, value-added processing can provide the extra farm income to meet the requirements for building a farmhouse.

VI. CONDITIONAL USE PERMIT VS. PERMITTED USE

A. The conditional use permit

The majority of Oregon's counties regulate processing through the conditional use permit. Conditional use permits allow an activity to only occur within whatever conditions the county imposes. The standard of review for the conditional use permit varies from county to county. The range is from those minimally required by statute¹⁹ to a blanket set of rules

which apply the same standard to a farm-related processing kitchen as to a park, community center, or golf course. Most importantly, a conditional use permit may be denied, regardless how integral processing is to a farm's management plan.

Conditional use permit decisions are quasi-judicial decisions, that is, the neighboring property owners are notified, have the opportunity to comment and the right to appeal the decision before the Land Use Board of Appeals. Thus, a farmer who has already poor personal relationship with a neighbor may be discouraged from even applying for a conditional use permit. In addition to the application fees, which in some counties are linked to the actual amount of time necessary to process the application, the CUP process places the burden of legal proof on the farmer. A farmer may find it necessary to hire land use consultants and expert witnesses to carry this burden of proof. And after the money has been spent, the application may still be denied. Or worse yet - an application may be approved by a local government and then appealed by an unhappy neighbor. Then the farmer may need legal advice and cannot begin processing until the legal issues are resolved. For example, Jackson County approved a winery on farmland over the objections of a neighbor. The neighbor appealed the decision all the way to the Oregon Supreme Court, who ruled in favor of the farmer. However, due to the drain of the legal expenses and time involved, the farmer never built his winery. The same year that this case was decided by the Supreme Court, the current winery legislation was enacted, so that other farmers would not face similar lawsuits.²⁰

An application may be approved with conditions which are excessively restrictive. There is nothing to limit conditions the county may require - not only size, but location of facilities, hours of operations, amount of ingredients obtained from other farms, use of the facility by other farmers, etc. The open-ended hand the county has in the conditional use process deters some farmers from applying for permits. In Southern Oregon, the majority of value-added processing on farmland takes place in small, discreet, licensed facilities, which have not obtained conditional use permits. In short, it is difficult to get people to apply for a permit which comes with unknown costs and unknown ramifications.

B. Processing as a Home Occupation or Commercial Activity

The counties which regulate processing as a conditional use do so by considering processing as a commercial activity in conjunction with a farm use or as a home occupation, both listed under the non-farm permitted uses section. Neither is an appropriate classification.

To describe processing on EFU land as a home occupation seems contrary to the language regulating home occupations. Home occupations on farm land require a processing kitchen to be located in an existing building and limit the number of

employees to five, which does not serve the seasonal nature of agricultural processing.²¹

The category of uses which includes “commercial activities in conjunction with farm use” has a distinctly non-farm flavor. To interpret on-site processing of agricultural products as belonging in this category places it alongside such uses as the mining and processing of geothermal, aggregate and other mineral resources, the production of asphalt and cement, community centers and parks, golf courses, dog kennels, commercial energy generating facilities, personal-use airports and helicopter pads, sawmills, solid waste disposal sites, hunting and fishing reserves, living history museums, transmission towers over 200 feet high and destination resorts.

Court decisions in agricultural land use cases have further defined “commercial activities in conjunction with farm use” to be those commercial activities which are either exclusively or primarily a customer or supplier of farm uses. Such activities must either enhance the farming enterprises in the local agricultural community or occur together with agricultural activities in the local community. Suppliers are limited to those providing products and services essential to the practice of agriculture.²² This definition more closely describes seed, fertilizer and irrigation equipment sales, farm machine repair services or processing of raw materials obtained primarily from other farms.²³

Considering on-site agricultural processing as a commercial activity in conjunction with farm use rather than as a farm use itself becomes unfair in light of the permitted farm use of processing grapes into wine. The winery statutes were written specifically to provide wineries with their own section of law so that they would not be considered as a commercial activity. The statutes limit the number of gallons produced annually, so that only very large operations are excluded and need to be considered under the category of commercial activity. Winery statutes allow for processing of some grapes from other vineyards and allow for retail sales of non-agricultural items to be up to 25% of total sales.²⁴ The statutes rely on the common sense of vintners not to build facilities which are larger than needed to process, rather than attempting to regulate by square foot.

C. Effects on Farmland and Farmers

Changing the regulations to switch a use from a conditionally permitted use to a permitted use of permitting uses versus conditionally permitted use, can have a liberating effect. In 1995 the state legislature amended the definition of farm use to include “stabling or training of equines including but not limited to providing riding lessons, training clinics and schooling shows”. These were formerly categorized as conditionally permitted uses. Redefined as a farm use, riding arenas and stables became permitted uses. Six months after the change there were four new riding arenas on farmland within ten miles of the authors’ farm.²⁵

Placing processing in the category of conditional use rather than permitted use handicaps farmers from even thinking creatively about the best possible farm management plan.

Mary and Vince Allonis of Whistling Duck Farm in Trail, OR have gone to great lengths to avoid their farm practices from being considered legally as “processing” and requiring a conditional use permit. The Allonis’ grow organic salad greens which they sell primarily in the form of one pound bags of washed mixed greens. They sell to local stores and at growers’ markets and make a good profit. To avoid entering into the category of processed foods, which includes cutting already harvested vegetables, they harvest each lettuce with several cuts. The cut leaves can then be legally washed, packaged and stored on their farm. These constraints limit the Allonis’ ability to diversify their farm operations.

D. Unincorporated Communities Rule

In 1994 by the Department of Land Conservation and Development adopted new regulations to set a statewide policy for the planning and zoning of unincorporated rural communities. to be implemented by 1997. The rules require each county to designate boundaries around rural settlements. Counties have the option of permitting certain types and of commercial and industrial development of a limited size within the boundary. The net effect of the new designations will be to make development outside the boundaries more difficult. For farmers outside the boundary, conditional use permits for processing may become nearly impossible to obtain.

VII. EXTENDING THE WINERY REGULATIONS

Some difficulty exists in attempting to apply the approach in the winery statutes to other agricultural products. The variety of agricultural commodities (food, fodder, fiber, medicine, and non-food) produced in Oregon defies classification by measure. Likewise the countless possibilities for potential value-added agricultural products makes regulation by measure of their contents impractical.

Statewide interpretation of “accepted farm practices”²⁶ should be widened to include on-site processing of items from the farm which produces them. Then the blueberry farmer who wishes to sell jam rather than fresh berries has the same rights as the dairy farmer or grape grower.

This approach gives farmers the flexibility they need to operate processing kitchens on their farms, while at the same time gives counties the flexibility to impose conditional use permit standards if necessary. If a processing facility is planned which is of a size to process more than the farm parcel can produce, then a local government could make a case that the processing facility is not within the definition of accepted farm practice and require a conditional use permit, rather than issuing a building permit. The local government would carry

the burden of proving that the process was more commercial in nature than is appropriate to an accepted farm practice. The current conditional use process places all the burdens of proof on the farmer to show that her processing will not be excessive; this alternative interpretation reverses that and requires the county to show that a farmer's proposed processing is excessive.

The major objection to processing facilities on farmland is they remove valuable agricultural land from production and, as such, should only be permitted if they are proportional to the amount of agriculture being done. The conditional use process prevents a farmer from covering her farm with processing facilities and engaging only in processing. Likewise, processing interpreted as an accepted farming practice would protect from similar abuses, since the processing can only exist as a part of farm practice.

Some counties require a conditional use permit only if the processing introduces materials from off the farm property. This is an artificial constraint aimed at controlling the activity of processing, not necessarily the size of the processing facility. Regulating the contents of processed foods will not serve the goal of increasing value-added processing. Restricting farmers to the use of their processing facilities solely for their own produce prevents them from sharing their processing facilities with neighboring farmers. Requiring that every farmer has to construct his/her own kitchen if they want to process will not help to preserve farmland.

For example, a farm in our bioregion could reasonably produce almost all the ingredients necessary for a tomato sauce or salsa. Other products may require other ingredients, but not require any additional processing space. Corine Davis, of Foothills Gardens in Gold Hill, OR, produces oil-free herb salad dressings and gourmet and medicinal mushroom products. She uses intensive organic farming methods. By volume, many of her products are primarily vinegar, which she produces from her orchards. All of the herbs she uses in processing come from her own acres, as do some of the mushrooms. Other mushrooms and the more exotic spices and ingredients are imported from other sources. Jackson County permits Corine's processing kitchen as a farm use which is part of an accepted farming practice. If Jackson County were to have considered her kitchen to be a commercial activity, a strict application of existing case law would have not allowed her to process these products at all - as Corine's products do not enhance local farming enterprises nor occur together with local agricultural activities. Corine's accepted farming practice does, however, support her family from her farm operations while maintaining her farmland in an ecologically sustainable fashion.

If processing becomes a uniformly permitted farm use, most farms will not build huge facilities. The availability of water for processing will limit construction of facilities on farmland where water is needed for irrigation. Large processing

companies are more likely to be interested in siting their facilities in centrally located industrial or commercial zones where the infrastructure for transportation, water use and waste disposal are readily available.

As Elizabeth Fugas' business at Rising Sun Farm expands, she is not looking to build more facilities on her farm, but to move portions of her processing and storage to commercial space in nearby Medford, where there is a glut of empty large facilities due to the declines in the pear industry.

VIII. IMPLEMENTATION

Counties already have the authority to interpret their own ordinances to include processing as an accepted farm practice. Four counties have already adopted this interpretation. Ten counties currently allow processing as an accepted farm practice if no items from off the farm are being processed. All counties should adopt this interpretation. Within that framework, farmers should be permitted to process items from other sources or allow other farmers to use their facilities, as long as this can be accommodated in the existing facilities.

Alternately, implementing this proposal on a statewide basis will require legislative action. The definition of farm use in ORS 215.203(2)(a) should be amended to include processing or a separate amendment should be made to ORS 215 to permit processing of agricultural crops on land zoned for exclusive farm use.

IX. THE FARM TAX ASSESSMENT

The section of state law which lists all of the permitted "farm uses" in the exclusive farm use zone serves two purposes; it is used by: ²⁷ 1. County and LCDC for zoning and planning purposes 2. Oregon Department of Revenue to determine which aspects of farm operation deserve the special tax assessment.

With respect to processing on farmland, this dual purpose has resulted in conflicting and unequal results. Although land use concerns have not asked any court to interpret the law to include processing as a permitted farm use, the question has come before the Oregon Tax Court.²⁸ They ruled that processing is not a part of a farm use and accordingly, the chicken processing equipment in question was taxable, regardless of where the processing took place. However the same court found that a winery is a part of an accepted farm practice.²⁹

Allowing processing as an accepted farm practice will even the playing field on the special farm tax assessment. Processing facilities which are supporting the farm parcel's production

are a part of accepted farm practice and will be taxed as a winery or dairy is.

X. CONCLUSION

If farm owners cannot realize a good profit from farming, they will have no incentive to farm their lands. There will always be pressure to develop farmland if farming is not as profitable as real estate. Allowing farmers to add value to their crops through on site processing will bring a higher income to the farmer and thereby increase the land's value as farmland.

As permitted uses, a farmer may process milk into dairy products and grapes into wine. Current law needs to equally respect the diversity and creativity of farmers, not create special categories for some products while excluding others. Processing as a permitted, accepted farm practice will extend the benefits of value-added processing to all farmers.

As Oregon's population grows, its rural lands face pressure from development. The laws which currently protect farmland may change. If farmers can reap the maximum value from their crops, even if it means taking some land out of production to build processing facilities, then the incentive to farm will be constant no matter which way the legislative winds blow.

Endnotes

1. *Agriculture: Oregon's Leading Industry - A Closer Look At - Production, Processing, Technology, Trade, Employment, Environment* published by Oregon Department of Agriculture, 1995, p. 12.

2. As reported to author in a telephone conversation in July 1996 with Gary Nelson, Agricultural Statistics, California Department of Food and Agriculture. Exact statistics are not kept.

3. ODA, op. Cit., p.13

4. "Duchy Originals To Be Sold in the US?", *Medford Mail Tribune*, July 26, 1994

5. Permitted farm uses are defined in ORS 215.203(b) ORS 215.203 (b) includes in the definition of farm use "dairying and the sale of dairy products"

6. ORS 215.213(1) was interpreted recently in *Brentmar v. Jackson Co.*, 321Or 481 P.2d (1995). The author's husband, Olafur Brentmar, was plaintiff in a 1993 appeal of a conditional use permit. Jackson County denied an application from Peace Garden Institute (PGI) for an organic horticulture school with related processing facilities. The Oregon Supreme Court ruled in PGI's favor in August 1995, declaring schools to be a permitted use on land zoned for exclusive farm use. Wineries were included

in the same subsection of law as schools; thus wineries also became a permitted use on farmland.

During research for the appeal, the author became aware of the many conflicting legal interpretations regarding the right to process on farmland. Field research in southern Oregon led to the realization that almost all of the processing kitchens on or near farmland were built without consulting county regulations.

PGI was incorporated in 1982 on the principle that diversified agricultural and forest land management, integrated with small-scale cottage industries, will create and sustain a viable economy while engaging in constructive ecological solutions. Seeing the effects of the decline of the timber industry in our rural community, we sought for a new model of rural economic development. We became convinced that agriculture, supported by value-added processing of farm and secondary forest products, would create a stronger and more sustainable rural economy.

PGI sought to establish an educational center on an 156 acre farm in the Applegate Valley near Medford, OR. The proposed school and related facilities would have added a 1/4 acre of new construction to the farm. The remaining farmland was to have been placed in a community land trust under an agricultural conservation easement. In denying the application, Jackson County conceded that although the proposed uses would create a ten-fold increase in the per-acre value from the current farm practices, the removal of valuable farmland from production could not be justified.

As of October 1996, PGI is still in litigation with Jackson County over the issuance of a building permit for the school. The author's proposal here would have no effect on that litigation as Jackson County recently adopted the interpretation that processing on farmland is a part of an accepted farm practice.

7. Ibid.

8. The author obtained this information by telephone survey of county planning departments in June and July of 1996.

9. Inspectors licensing food processing facilities are required by OAR 603-25-020 (1) and (7)-(9) to find that Oregon State fire, plumbing, and water quality and waste disposal codes are met and that "structures shall be suitable in size, construction, and design to facilitate maintenance and sanitary operations for food preparation or distribution purposes." Before constructing or remodeling a processing facility, OAR 603-25-030(a) and (b) require applicants to submit construction plans only "for review and comment as to sanitation and food maintenance."

10. e-mail to author....
11. Letter to author, June 9, 1996, from Bruce Andrews, director of the Oregon Department of Agriculture and representative of the Governor's Food Processing Council.
12. *Giradet v. Department of Revenue* 13 OTR 44 (1994)
13. *A Strategic Approach to Farmland Protection*, Michael Maynard, American Farmland, Spring 1996, p. 14.
14. ODA. Op. Cit., p.12
15. Ibid, p.7
16. *Home Economics*, Wendall Berry, Whole Earth Review, Summer 1986. pp.52-53.
17. *Farm and Ranch Recreation Workbook*, published by Oregon Department of Agriculture, 1996.
18. OAR 660 -33-130(24) (b). On high-value farmland, a farmer must show annual gross income of \$80,000 for the last two years or three out of the last five years. The figure for non high-value farmland is \$40,000.
19. ORS 215.296 (1) (a) and (b): The use will not force a significant change nor will not increase the cost of accepted farm practice on surrounding lands devoted to farm use.
20. *Craven vs. Jackson County* 308 ORS 281 (1989).
21. ORS 215.448(1)(b). Subsection (1)(c) limits home occupations to already existing buildings. Subsection (3) of the same would expressly prohibit farmers from constructing a new facilities for processing, even if it were determined that the existing structures could not be remodeled to licensing standards.
22. *Craven vs. Jackson Co.*, op. Cit.
23. To comfortably fit on-site processing under the heading of commercial activity in conjunction with farm use requires some further stretching. To regulate the activity of processing, rather than restricting the structures which house the processing facilities is counter-productive to sound agricultural practices. This interpretation would require a farmer to apply for a conditional use permit even if he/she did not wish to construct their own processing facilities, but merely use the services of a mobile processing kitchen.
24. ORS 215.452 limits wineries to an annual production of less than 100,00 gallons.
25. The same legislature added to the list of permitted farm uses: the parking of up to seven log trucks and the filming of movies for up to 45 days. If log truck owners and movie makers are operating businesses on farmland as permitted farm uses, why is a farmer making a finished product from agricultural crops not within accepted farm practice?
26. *Accepted farming practice* is defined in ORS 215.203(c) to be "a mode of operation that is common to farms of a similar nature, necessary for the operation of such farms to obtain a profit in money, and customarily utilized in conjunction with farm use." All land under buildings supporting accepted farming practices is considered to be land in farm use according to ORS 215.203 (2) (b) (F). Construction of buildings to house accepted farm practices are permitted outright on farmland.
27. ORS 215.203
28. *Belozer Farms vs. Dept. of Revenue.*
29. *Giradet vs. Department of Revenue*, op. Cit.