

Section II:

Legal Considerations, Licenses, Permits & Regulations

Agri-Tourism Workbook

Section II

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SECTION II

LEGAL CONSIDERATIONS LICENSES, PERMITS, AND REGULATIONS

ZONING — WHAT IS AND IS NOT ALLOWED

This information is provided by the Department of Land Conservation and Development

The people of Oregon have developed laws to ensure that agricultural lands will remain in farm use. However, there are some nonfarm activities besides farm use that may be allowed in farm zones. The state land use laws provide the parameters for farm land with each county given the authority to more fully define and clarify ag lands and their use at the local level, consistent with state law.

Agricultural lands shall be preserved and maintained for farm use, consistent with existing and future needs for agricultural products, forest and open space and with the state’s agricultural land use policy expressed in ORS 215.243 and 215.700.

State law provides for the preservation and maintained use of farm land in Oregon. Statewide Planning Goal 3, “Agricultural Lands,” requires all agricultural lands to be inventoried and preserved by adopting exclusive farm use zones consistent with ORS Chapter 215. Additional limitations are applied to high-value farmlands.

Over the years a number of “non-farm” uses have been listed in the law and rules implementing Goal 3. Every application for a non-farm use will be decided on a case-by-case basis by the county, based on the facts presented to it, keeping in mind that the overriding and primary purpose of Exclusive Farm Use zones is to promote and sustain commercial farming.

PERMITTED NON-FARM USES ON EFU LAND — Contact your county planning department prior to siting or building any structure or starting any non-farm use activity. Non-farm uses require prior approval by the respective county. Certain non-farm uses are allowed, and their approval standards are incorporated into local zoning regulations; additional approval standards may apply to “high value farmland.” Technical variations exist between counties; so contact your county planning department or DLCDC (373-0050) for details. The following types of uses are generally allowed in exclusive farm use zones:

- Public or private schools
- Forest product propagation & harvesting
- Dwelling for farm use
- Farm buildings and Farm Stands
- Mineral exploration & mining
- Farm-worker housing
- Churches and Cemeteries
- Public Utility Service
- Geothermal exploration/production
- Community Centers
- Land based application of reclaimed water for farm use
- Siting for solid waste disposal
- Creation/restoration of wetlands
- Hunting & fishing preserves
- Golf courses
- Winery
- Playgrounds or campgrounds
- Boarding, breeding & training of greyhounds
- Dog kennels
- Bed & Breakfast (5 guest limit) in existing residences
- Commercial activities in conjunction with farm use
- Small Scale crop processing facility

Guest Ranches

Senate Bill 928
Ordered by the Senate April 12
Including Senate Amendments dated April 12

Sponsored by Senator FERRIOLI (at the request of Oregon
Association of Convention and Visitors Bureaus)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure.

Extends sunset for provision that allows establishment of guest ranch in exclusive farm use zone in eastern Oregon and requires guest ranch to use accepted livestock practices. Clarifies required distance between ranch and urban growth boundary. Takes effect December 31, 2001.

A BILL FOR AN ACT

Relating to guest ranches; creating new provisions; amending sections 1 and 5, chapter 728, Oregon Laws 1997; repealing section 3, chapter 728, Oregon Laws 1997; and prescribing an effective date. Be It Enacted by the People of the State of Oregon:

SECTION 1. Section 3, chapter 728, Oregon Laws 1997, is repealed.

SECTION 2. Section 1, chapter 728, Oregon Laws 1997, as amended by section 1, chapter 216, Oregon Laws 1999, is amended to read: Sec. 1.

Notwithstanding ORS 215.283, a guest ranch may be established in conjunction with an existing and continuing livestock operation, using accepted livestock practices, that qualifies as a farm use under ORS 215.203 in any area zoned for exclusive farm use in eastern Oregon.

(2) A guest ranch established under this section shall meet the following conditions:

(a) Except as provided in paragraph (d) of this subsection, the lodge, bunkhouses or cottages cumulatively shall:

(A) Include not less than four nor more than 10 overnight guest rooms exclusive of kitchen areas, rest rooms, storage and other shared indoor facilities; and

(B) Not exceed a total of 12,000 square feet in floor area.

(b) The guest ranch shall be located on a lawfully created parcel

(A) That is at least 160 acres;

(B) That is the parcel containing the dwelling of the person conducting the livestock operation; and

(C) That is not classified as high-value farmland as defined in ORS 215.710.

(c) The guest ranch may be sited on any portion of a lot or parcel if the majority of the lot or parcel is more than 10 air miles from an urban growth boundary containing a population greater than 5,000, regardless of whether any other portion of the lot or parcel is within 10 miles of the urban growth boundary. The guest ranch shall be deemed to comply with this paragraph if it is located within the range set by the standard margin of error on the county's map used to determine the distance from an urban growth boundary.

(d) For each doubling of the initial 160 acres required under paragraph (b) of this subsection, up to five additional overnight guest rooms and 3,000 square feet of floor area may be added to the guest ranch for a total of not more than 25 guest rooms and 21,000 square feet of floor area.

(3) A guest ranch may provide recreational activities that can be provided in conjunction with the livestock operation's natural setting, including but not limited to hunting, fishing, hiking, biking, horseback riding, camping or swimming. Intensively

developed recreational facilities, such as golf courses as identified in ORS 215.283, shall not be allowed. A campground as described in ORS 215.283 (2)(c) shall not be allowed in conjunction with a guest ranch, and a guest ranch shall not be allowed in conjunction with an existing golf course under ORS 215.283 (2)(e) or with an existing

campground under ORS 215.283 (2)(c).

(4) Food services shall be incidental to the operation of the guest ranch and shall be provided only for the guests of the guest ranch. The cost of meals provided to the guests shall be included as part of the fee to visit or stay at the guest ranch. The sale of individual meals to persons who are not guests of the guest ranch shall not be allowed.

(5) Approval of a guest ranch shall be subject to the provisions of ORS 215.296 (1) and (2) and other approval or siting standards of the county.

(6) As used in this section:

(a) 'Eastern Oregon' shall have the meaning provided in ORS 321.405.

(b) 'Guest ranch' means a facility for overnight lodging incidental and accessory to an existing livestock operation that qualifies as a farm use under ORS 215.203. Guest ranch facilities may include a lodge, bunkhouse or cottage accommodations as well as passive recreational activities and food services as set forth in subsections (2) to (4) of this section.

(c) 'Livestock' means cattle, sheep, horses and bison.

SECTION 3. Section 5, chapter 728, Oregon Laws 1997, is amended to read:

Sec. 5. Chapter 728, Oregon Laws 1997, is repealed December 31, 2005.

SECTION 4. The Department of Land Conservation and Development, the State Department of Agriculture and the Economic and Community Development Department shall jointly submit a written report to the Seventy-third Legislative Assembly by January 1, 2005.

SECTION 5. This 2001 Act takes effect on December 31, 2001.

Specifics on Zoning for Certain Recreational Uses

Farm/Game and Exotic Animal Ranches:

Farm use, in part, includes the current employment of land for the “primary purpose of obtaining a profit in money. . . by feeding, breeding, management and sale of, or the production of, livestock...or animal husbandry or any combination thereof.” (ORS 2 15.203) Thus, the raising of any kind of animal not otherwise prohibited by state or federal law is a farm use under Oregon law and allowed in farm and forest zones. Some counties apply additional conditions to “feedlots” and the Oregon Department of Agriculture may require a Confined Animal Feeding Permit in certain types of operations.

Produce Stands as amended by 2001 Legislature:

Farm stands may be approved in a farm zone if:

(a) The structures are designed and used for sale of farm crops and livestock grown on the farm[s] 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, if the annual sales of the incidental items and fees from promotional activity do not make up ~~no~~ more than 25% of the total annual sales of the farm stand; and,

(b) The farm stand does not include structures designed for occupancy as a residence or for activities other than the sale of farm crops and livestock, and does not include structures for banquets, public gatherings or public entertainment. [See ORS 215.283(1)(r) and ORS 660-33-130(23)].

Hunting and Fishing Preserves:

Private parks, playgrounds, hunting and fishing preserves, and campgrounds are uses subject to local review in farm and forest zones. They are not allowed on high value farmland in EFU zones. However, this restriction does not prohibit or limit a farm/ranch owner from inviting people onto their land and charging a fee to hunt or fish.

In farm zones, the limitation on hunting and fishing preserves on high value farmland, or the need to get approval for such preserves on non-high value lands, only applies to those activities that are clearly separate businesses or clubs established to allow hunting or fishing for a fee that is not incidental to the primary farm use of the land (see OAR 660-33-120). In forest zones, private hunting and fishing operations “without lodging accommodations” are allowed outright (see OAR 660-06-025(3)(f)). Private seasonal accommodations for fishing and fee hunting are also allowed subject to certain conditions (see OAR 660-06-025(4)(p) and (4)(w)).

Campgrounds:

In both farm and forest zones, “campgrounds” are defined as “an area devoted to overnight temporary use for vacation, recreational, or emergency purposes, but not for residential purposes. A camping site may be occupied by a tent, travel trailer, recreational vehicle or a limited number of yurts. Campgrounds authorized by this rule shall not include intensively developed recreational uses such as swimming pools, tennis courts, retail stores or gas stations.” Separate sewer, water or electric service hook-ups shall not be provided to individual campsites except that electrical service may be provided to yurts [See OAR 660-06-025(4)(e) and 660-33-130(19); also see OAR Division 333-31-0000 to determine the need to register with the Health Division and county requirements.]

Bed & Breakfast Establishments:

B&B establishments are not specifically listed as an allowed use; however, two other uses are allowed which can authorize this type of use within existing dwellings. These provisions provide the most flexibility to farm/ranch owners to allow small-scale accommodations, especially related to hunting and fishing in EFU zones. Room and board arrangements for a maximum of five unrelated persons in existing residents [ORS 215.283(2)(u)] and home occupations may be authorized in an existing dwelling, employing only residents of the home [OAR 660-33-120, 660-33-130 and 660-06-025]. For Oregon Health Division requirements on Bed & Breakfast food service rules see ORS 324 and OAR 333-17-000, and ORS 446.330 and OAR 333-29-0000 for lodging requirements.

Visiting the County Planning Department

- First, ask for the zoning map and establish exactly what zones cover your property, including any overlay zones such as for airports, wetlands, floodplains, recreation, etc.
- If you have a need for resource inventory maps that can help identify specific features on your property that may affect your plans, the county can usually direct you to these. All counties have National Wetlands Inventory maps and Soil Information Maps provided by the Natural Resource Conservation Services, U.S. Department of Agriculture. Another source of maps is the Nature of the Northwest Information Center, which carries USGS maps, publications and maps from the OR Dept. of Geology and Mineral Industries, state and national forest maps, etc. The center is located in the State Office Building near the Lloyd Center in Portland. Hours are 10am to 5pm M-F, 800 NE Oregon St., #5, Suite 177, Portland OR 97232, 503-731-4444.
- Ask for the text listing all uses allowed in your zone and all conditions applicable to those uses. Watch for references to other codes or sections and obtain copies of those as well.
- After careful reading, ask for explanations of any uses or conditions you don't understand.
- Ask for an application form for your proposed use and any fee schedule.
- Ask what documentation has to be filed with the application (maps, sketches, letters from fire district, water district, etc.)
- Ask about deadlines for filing and procedures for application approval.
- Ask whether anyone else in the county is doing the same thing and when and how he or she received permission.
- Ask who makes the decision. Each county is different, so be sure you know. Ask whether any decisions are made "over the counter" and if any hearings are needed. Who holds the hearings and who gets notices of the hearings and the application?
- Ask what local, state and federal government guidelines specific to your activity must be met — who else needs to write a letter of support or sign off on your project? (For septic approval it's usually the county or DEQ; sometimes the fire district needs to review proposed building layout, vegetation setbacks, water storage ponds, road access, etc.; building inspector may need to review your plans for code compliance, safety, electric; local health department or Oregon Health Division rules may apply.)
- Ask if there are other design reviews, sign codes, parking and road access codes, access for disabled provisions, or other requirements.
- Before you submit your application, scout the territory— build trust with neighbors, know who might be affected and get their cooperation, and ensure compliance with all coding.
- Have pre-application meetings with the county staff. Make sure you and the county have the same understanding about codes and requirements. If there are meetings or hearings, listen carefully to any objections or concerns and answer them upfront, eliminate the problem if you can or make adjustments if possible.

It's cheaper and easier to change your plan at the beginning than fight through appeals and deal with lawsuits after you've spent money and time on a recreation enterprise.

If the use you propose is in the Exclusive Farm Use statute but not in the county comprehensive plan, you can apply to have the plan changed and the use added or applied directly under ORS 197.646. Incidental, infrequent events like school tours, fund raisers, infrequent festivals are usually not regulated, but check first. These activities are not prominent uses which require zoning approval or changes in most instances.

The Department of Land Conservation and Development and the Land Conservation and Development Commission does not approve local decisions.

TECHNICAL ASSISTANCE — Contact the local DLCD field representative or Jon Jinings or Ronald Eber at DLCD/Salem (373-0050) for information about state law, Goal 3, and the Land Conservation & Development Commission. Information on local procedures and standards is available from each local county planning department.

DLCD Field Representatives by Region

<u>Region</u>	<u>Field Representative</u>	<u>Phone</u>
Willamette Valley, Hood River Columbia Counties	Rob Hallyburton	(503) 373-0050 x 239
Central and Eastern Oregon	Jon Jinings	(541) 388-6424
South Coast	David Perry	(541) 563-2056
North Coast	Dale Jordan	(503) 373-0050 x 262
Southern Oregon	John Renz	(541) 858-3189
Farm & Forest Lands Specialist	Ronald Eber	(503) 373-0050 x 247

Business Registration and Licensing

It takes time to jump through all the hoops, but better to do it up front and discover any problems, than wait until you've invested lots of time and money.

As you evaluate your recreation enterprise proposal, you may want to consider changing the status of your business entity from a sole proprietorship to a limited partnership or corporation to address liability/insurance issues. (see section on liability and insurance). When forming these legal entities, you will need to correspond with the office of the Secretary of State, Corporation Division and register your operation as the appropriate entity.

CONTACT: Business Information Center
Corporation Division
255 Capitol Street, NE
Salem, OR 97310
(503) 986-2200
www.filinginoregon.com

EMPLOYER'S IDENTIFICATION NUMBER

If you do not already have an employer's ID number, and you will be hiring employees specifically for the recreational enterprise, you should obtain a federal identification number. When you return Form SS-4 to the IRS, they will send you a federal tax identification number, and your business will be registered with the IRS, the Social Security Administration and the Department of Labor.

CONTACT: Internal Revenue Service
(800) 829-1040

OTHER PERMITS AND LICENSING

Certain activities require special licenses or permits. Oregon's Business Information Center may be able to help identify, what licenses, certificates, or permits you will need for your recreational enterprise.

CONTACT: Business Information Center
Corporation Division
255 Capitol Street, NE
Salem, OR 97310
(503) 986-2200
www.filinginoregon.com

Employing Other People

Labor law can be one of the most difficult areas of compliance...make sure you go over any questions with a qualified consultant or legal counsel.

If you have employees, the Bureau of Labor and Industries can provide information on minimum wage rates, apprenticeship and training programs, and other laws affecting the hiring of employees. The following departments may be contacted for further information.

General Information	Bureau of Labor and Industries 800 NE Oregon Street, #32 Portland, OR 97232 (503) 731-4200 www.boli.state.or.us
Civil Rights	(503) 731-4200 ext 1
Wage & Hour	(503) 731-4200 ext 2
Apprenticeships	(503) 731-4200 ext 3
Technical Assistance	(503) 731-4200 ext 4
Withholding Taxes	Oregon Department of Revenue 955 Center Street, NE Salem, OR 97310 (503) 945-8091 www.dor.state.or.us/withhold/withhold.html
Unemployment Taxes	Unemployment Insurance Tax Section Oregon Employment Department 875 Union Street, NE Salem, OR 97311 (503) 947-1696 www.emp.state.or.us
Workers' Compensation Insurance	Oregon Workers' Compensation Division 350 Winter Street NE, Room 27 Salem, OR 97310 (503) 947-7810 www.cbs.state.or.us/external/wcd

Other resources: *The Oregon Farmers Handbook*, available for \$5.00 from the OR Department of Agriculture, summarizes information from various agencies about state and federal employment laws. It also includes information on many other topics, including tax issues, water and land use, hazardous materials and pesticides, etc. To order, send check or money order for \$5.00 to ODA, 635 Capitol St. NE, Salem OR 973 10-0110 or visit www.oda.state.or.us/information/fh/index.html to request an order form.

Oregon Workers' Compensation

Although you may already be familiar with workers' compensation laws related to agriculture, your new enterprise may involve different activities with different workers' compensation rates and risks. The Department of Consumer & Business Services (DCBS) offers the following information to explain the workers' compensation system and rate making.

Under Oregon law, each employer provides workers' compensation coverage by qualifying:

(a) as a carrier-insured employer, or (b) as a self-insured employer (posts surety deposit with DCBS director). Commonly, agricultural employers comply with the law by becoming a carrier-insured employer. Employers may elect to offer private health and/or dental plans for their employees, however private health insurance does not replace the obligation to carry workers' compensation insurance. For a list of insurers contact the Small Business Ombudsman for Workers' Compensation at (503) 378-4209.

Workers' compensation coverage provides all medical expenses as well as disability and vocational benefits to workers who become occupationally injured or diseased with temporary or permanent disability. Payments are made to dependents if the worker dies as a result of occupational injury or disease. Workers' compensation insurance is designed to compensate workers injured on the job, at the same time protecting the employer from other liabilities. In most cases, when an employer has workers' compensation insurance, an injured worker must look for indemnification from the insurer solely. The worker has no right to proceed against the employer unless the injury was caused by a deliberate act of the employer to inflict damage to the worker.

Premium Rates - Workers' compensation premium rates may vary by insurer. All rates however are applied to incremental amounts of \$100 of annual payroll. The following four factors influence the premium rate for each employer:

- 1) **Type of operation:** Farm operations (dairy, orchard, ranch/cattle, etc.) are categorized into National Council on Compensation Insurance (NCCI) Classification codes based on the major activities of the employees and type of production. In turn, the statewide risk (accidents) associated with each NCCI class code determines the base rate, i.e. the higher the accident(s) costs in each class code, the higher the premium rate. The 2003 base rate for some farm operations follow: dairy operation - \$4.65 per \$100 of annual payroll; cattle operation/ranch - \$12.61; nursery operations - \$2.09; and berry picking by hand - \$0.57. You should check with your insurer for rates applicable to recreational enterprises operated on your farm.
- 2) **Experience Modification Factor (EMF):** The EMF reflects the accident rate of the individual farm operation. EMF is determined by the frequency and severity of accidents at the individual farm, averaged over a moving three-year period. In other words, once an accident occurs it remains a factor in determining the farm's premium rates for three years. Farm operators can significantly reduce premiums over time by implementing a wellmanaged worker safety program, thereby reducing the number of on-the-job accidents.
- 3) **Expense Loading Factor (ELF):** Each insurance carrier determines its individual costs of operational expenses; taxes and losses; and adds a percentage rate to the base rate to reflect these costs. Expense loading factors range from 0.960 to 1.580. Farm operators may compare ELF rate for various carriers to determine which is the most competitive.
- 4) **Premium Assessment:** DCBS assesses the same flat rate to all insurance carriers, which is reflected in the premiums of employers. The premium assessment rate for 2003 is 8.0%, which adds 8.0% to the total premium cost.

Oregon Insurance Plan - If you can't find an insurer willing to write your policy, you can obtain insurance through the Oregon Insurance Plan. The National Council on Compensation Insurance (NCCI) administers the insurance plan. NCCI requires a special application and a deposit prior to processing. Upon NCCI approval of your application, it assigns you to one of several insurance companies. For further information contact NCCI at (800) 622-4123 and ask for Oregon coverage.

Payroll Exemptions — Payroll not subject to workers' compensation premium includes vacation pay, bonuses the employee is unaware of in advance of payment, tips and gratuities, overtime in excess of straight time hourly rate, profit sharing pay when the payment is made under a written agreement, the value of special rewards for invention or discovery, group health plan contributions, and bonus payments which are part of a written plan to reward workers for safe working practices. Holiday pay, sick pay and bonuses, which are anticipated by the employee, and those, unrelated to safety bonuses, should be identified on payroll reports, but are not subject to premium. For more information contact your insurer.

Permits/Licenses — The Workers' Compensation Division will issue a Notice of Compliance upon receipt of a "Guaranty Contract" by an insurer. This notice must be posted in an accessible location. A new notice is required should the carrier change.

Reporting Injuries — Injuries should be reported using *Worker's and Employer's Report of Occupational Injury or Disease* (Form 801), which is available from the insurer. To assure prompt and accurate filing of reports, instruct employees to report all accidents immediately. Verify all facts concerning an accident before completing the form. The Form 801 must be filed with your insurer within 5 days after knowledge of an injury. If an injured worker required only first aid and did not lose time from work, a report is not filed.

Record Keeping — A record of the date, nature, and treatment of every injury, including minor ones requiring only first aid, should be kept. These records may be useful in case the worker later seeks medical treatment. Form 801 must be completed for all cases involving time loss from work or treatment by a physician.

Compensable Injury — A compensable injury is an accidental injury or disease occurring in the course of employment that requires medical services or results in disability or death. The following points are particularly important for all employers:

- Your insurer determines compensability.
- A previous injury or physical condition, if aggravated by current employment, could result in a compensable claim.
- The absence of witnesses does not prevent an injury from being compensable.
- If a worker does not follow company rules, the claim could still be compensable.

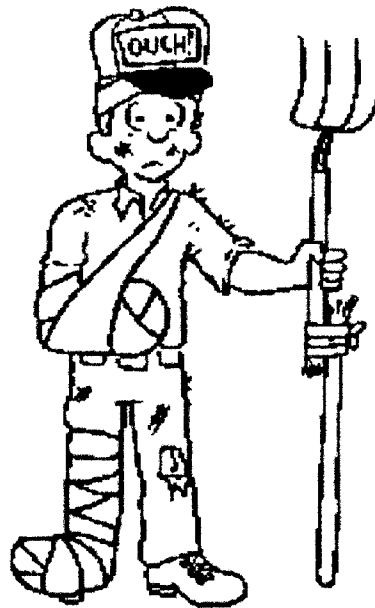
As employer, you are considered to have knowledge of an accident when any one of the following occurs:

1. You or your authorized representative, such as a farm manager or supervisor, sees an accident and knows that a worker was injured as a result of that accident.
2. The worker or someone on the worker's behalf advises you or your representative, orally or in writing, that an on-the-job injury has occurred.
3. The worker notifies you that he or she intends to file a claim for a condition previously not considered work-related.
4. Your insurer receives a *Worker's and Physician's Report for Workers' Compensation Claims* (Form 827) completed by the doctor and signed by the worker.
5. The worker or their representative tells your insurer, orally or in writing, that an on-the-job injury has occurred.

Additional Information — For more information about workers' compensation insurance coverage contact:

Department of Consumer & Business Services
Workers' Compensation Division
350 Winter St. NE Room 27
Salem OR 97301-3 879
(503) 947-7815
TTY: (503) 947-7993
E-mail: WCD.employer.info@state.or.us
Web site: www.oregonwcd.com

Small Business Ombudsman for Workers' Compensation
350 Winter St. NE Room 250
Salem OR 9730 1-3878
(503) 378-4209
TTY: (503) 378-4100





Weights and Measures

Scales used in the buying and selling of commodities or services by weight must be legal for trade, have an active National Type Evaluation Program (NTEP) Certificate of Conformance (CC) unless otherwise exempted, licensed annually with the Oregon Department of Agriculture, and certified by the Measurement Standards Division. This includes, but is not limited to, the following types of weighing equipment:

- a. Produce scales (hanging or countertop),
- b. Price-computing scales,
- c. Portable platform scales (for weighing sacks, baskets, bins, etc.),
- d. Built-in, floor, or “dormant” scales (for weighing pallet loads, tote boxes, etc.),
- e. Single animal scales (for weighing one head of livestock at a time),
- f. Livestock scales (for weighing multiple head of livestock),
- g. Motor vehicle scales,
- h. Hopper scales (for loose bulk commodities, grains, seeds, nuts, etc.), and
- i. Belt-conveyor scale systems (for weighing large quantities of bulk commodities on a continuous basis).

Packaged products must bear a declaration of the product contained, the responsible party’s address, and the net contents in terms of weight or other measure as provided for in the department’s Weights and Measures Packaging and Labeling Regulations (OAR Ch. 603-027-0105 through 603-027-0220).

Products sold in bulk form (e.g. firewood, bark mulch, etc.) but not weighed or measured utilizing a licensed and certified weighing or measuring device, must still be accurately represented as to the quantity delivered. This requires that an appropriate unit of measure be applied.

Generally, Oregon regulations require that commodities in liquid form shall be sold only by liquid measure or net weight. Except as otherwise expressly provided, commodities not in liquid form shall be sold only by weight, measure of length or area, or count. However, liquid commodities may be sold by weight, and commodities not in liquid form may be sold by count only if such methods give accurate information as to the quantity of the commodity sold. These provisions do not apply to:

- Commodities sold for immediate consumption on the premises where sold;
- Vegetables sold by the head or bunch;
- Commodities in containers standardized by the laws of Oregon or the United States;
- Commodities in packaged form when there exists a general consumer usage to express the quantity in some other manner;
- Concrete aggregates, concrete mixtures, and loose solid materials such as earth, soil, gravel, crushed stone, and like substances sold by cubic measure; or
- Unprocessed vegetable and animal fertilizer sold by the cubic measure.

The Measurement Standards Division of the Oregon Department of Agriculture may inspect and test weighing and measuring devices to ascertain their correctness. The division may do this as often as it considers necessary and will test these devices at the request of the owner. An approval seal signifying the division’s approval must be attached to all commercially used weighing and measuring devices unless specifically exempted by law.

Please remember, all commercially used weighing and measuring devices in Oregon must be legal for trade, have an active National Type Evaluation Program (NTEP) Certificate of Conformance (CC) unless otherwise exempted, currently licensed with the department, and certified by the Measurement Standards Division.

For license applications and certification examinations for scales in Oregon,

CONTACT: Oregon Department of Agriculture
Measurement Standards Division
635 Capitol Street NE
Salem, OR 97301-2532
Telephone: (503) 986-4670
Fax: (503) 986-4784
Hearing Impaired: (503) 986-4762
www.oda.state.or.us/msd

Building Code

Any change in farm use for recreational purposes involving farm structures, or construction of additional structures to benefit recreational guests, would likely involve building code compliance issues. New construction on farm use is quite restricted and you will need to carefully examine the issues of any proposed new facilities. Contact your county building codes office for any of the following.

1. A change in the use of an existing farm building requires the building to conform to the use or occupancy according to the State Building Code. Houses changed from single family dwelling to multifamily lodging or Bed & Breakfast must be brought to the code standards for the new use. The same would apply to existing farm buildings that may have been constructed as exempt farm structures. If used for public occupancy, the building would have to conform to the code standards for its new use. Construction or alteration would require a building permit from your county building codes office.
2. Structures that are for public use may have to comply with the accessibility standards for the Americans with Disabilities Act and possibly with the Fair Housing Act and Oregon laws. ORS 447.220 states that:
It is the purpose of (state law) to make affected buildings, including but not limited to, commercial facilities, public accommodations, private entities, private membership clubs and churches in the state accessible to and usable by persons with disabilities, as provided in the Americans with Disabilities Act, and to make covered multifamily dwellings in the state accessible to and usable by all persons with disabilities, as provided in the Fair Housing Act.
3. Modification of the electrical system in any structure that would be subject to rental to the public, or could be classified as a commercial structure, would have to be wired by a licensed electrician.
4. Recreational parks are regulated by the Health Division and the Building Codes Division. These requirements (ORS 446.310 to 446.350). Such facilities include day-use picnic areas as well as sites for camping use (OAR 333-31-0000). A license to operate is required from the Oregon Health Division or local county health department (see page 32).
5. Activities under the category of an amusement ride would have to be operated under a valid amusement ride operation permit. This would include rides on or within a flow perimeter or structure, along cables, rails or ground. It would not include hayrides, sleigh rides, etc.
6. Pressure vessels, such as antique steam farm equipment, small steam operated trains, or air compressor tanks that are not used solely for agricultural purposes, exceeding five cubic feet in volume and 150 pounds pressure, are required to have a valid inspection and permit.
7. State law (ORS 479.255(1)) requires that an approved and properly functioning smoke detector be installed in every hotel guest room.

CONTACT: Oregon Department of Consumer and Business Services
Building Codes Division
1535 Edgewater Street NW
PO Box 14470
Salem, OR 97309
(503) 378-2306
www.oregonbcd.org





Liquor Licenses

Bed and Breakfast businesses that sell or serve beer, wine and cider only to registered overnight guests, and have six or fewer guest units, do not need a liquor license in Oregon. If the Bed and Breakfast has more than six guest units or serve alcohol for events such as receptions, they must secure a Limited On-Premise Sales license.

An Off-Premise Sales license allows package sales of beer, wine and cider, a privilege that could be useful for a permanent produce stand or gift shop. The license includes a sample tasting privilege so customers may sample the product if you wish to offer sample tasting of beer, wine or cider.

For picnics, fairs, community events, concerts and festivals that do not emphasize alcohol consumption, a Temporary Sales license is required which allows sales of beer, wine and cider for on and off-Premise consumption and distilled spirits for on-premise consumption only. The license requires that food service be available and depending on the size of the event, liquor liability may be required.

Applicants for the Limited On-Premise Sales license can expect a about six to eight weeks from the day they submit a complete application to the date a license is issued, assuming there is no underlying basis to refuse the license. Applicants for the Off-Premise license may be issued a temporary license that is effective as soon as a complete application packet and license fee is submitted. A Temporary Sales license application must be submitted at least 10 days prior to the event.

A Winery license allows sales of beer, wine and cider for consumption on the licensed premises, as well as package sales of wine and cider. The Winery license is flexible enough to allow operation of a hospitality business, such as a Bed and Breakfast, at the winery.

A Growers Sales Privilege license allows the licensee to sell wine or cider made only from the licensee's fruit for on and off-premise consumption. This license also allows operation of a hospitality business at the licensed premises.

Individuals who serve or sell alcohol by the drink must have a Service Permit. The permit costs \$23 and is valid for 5 years. Applications for Service Permits must complete an approved Alcohol Server Education Program course (approximately \$25 fee for a six-hour course, given throughout Oregon).

Liquor laws are complex, but the basics apply to all liquor licenses:

- No sale to alcohol to minors under 21 years of age
- No sale of alcohol to a visibly intoxicated person
- Alcohol sales are restricted to the time between 7:00 am and 2:30 am



The licensee is responsible for compliance with the laws on the premises and all areas within control of the licensee. Business must be conducted in the manner that does not negatively impact neighbors. Please talk to your insurance agent if you intend to serve or sell alcohol as it may bring additional liability issues.

For more information on liquor laws, licenses and permits, contact the Oregon Liquor Control Commission at (800) 452-6522 or visit www.olcc.state.or.us



Food Preparation and Dining

The local county health departments and the Oregon Department of Human Services (DHS) administer ORS 624, which governs preparation and service of food to the public. If you intend to prepare and sell food to the public, you most likely will be required to have a food service license.

If you are planning, or thinking about, serving meals to the public first call the health department in the county in which you intend to operate (see list below) or call the DHS Food Consultation Unit. Find out what is required before proceeding with your plans.

BILL EMMINGER

bill.emminger@co.benton.or.us

BENTON COUNTY HLTH DPT
PO Box 579 - 530 NW 27TH ST
CORVALLIS, OR 97339-0579
(541) 766-6841
(541) 766-6248 fax

JOHN MASON, RS

johnm@co.deschutes.or.us

DESCHUTES COUNTY HLTH
117 NW LAFAYETTE AVE
BEND, OR 97701
(541) 388-6575
(541) 385-1764 fax

DELBERT, BELL, RS

dbell@co.klamath.or.us

KLAMATH COUNTY GOV CTR
305 MAIN ST, STE 130
KLAMATH FALLS, OR 97601
(541) 883-1122 ext 3050
(541) 885-3643 fax

STEVE DAHL, RS (503) 655-8386

steved@co.clackamas.or.us

CLACKAMAS COUNTY HLTH
710 CENTER ST
OREGON CITY, OR 97045
(503) 655-8386
(503) 655-8350 fax

DAVE BUSSEN, RS

dhbussen@co.douglas.or.us

DOUGLAS COUNTY HLTH
621 W MADRONE
ROSEBURG, OR 97470
(541) 440-3571
(541) 957-3704 fax

HARRY YOUNGQUIST RS

harry.youngquist@co.lane.or.us

LANE COUNTY HLTH SERV
125 E 8TH AVE
EUGENE, OR 97401
(541) 682-4480
(541) 682-7459 fax

MARK EDINGTON, RS

mark_edington@hotmail.com

COLUMBIA CO PUB HLTH AUTH
PO BOX 995
ST. HELENS, OR 97051
(503) 366-3828
(503) 397-1424 fax

MIKE CHRISTMAN, RS

miked.christman@class.oregonvos.net

HOOD RIVER COUNTY HLTH
1109 JUNE ST
HOOD RIVER, OR 97031
(541) 386-1115
(541) 386-9181 fax

GAIL STATER, RS

gstater@co.lincoln.or.us

LINCOLN COUNTY HLTH
36 SW NYE STREET
NEWPORT, OR 97365
(541) 265-4179
(541) 574-6252 fax

RICK HALLMARK

rhallmark@co.coos.or.us

COOS COUNTY HLTH DEPT
1975 MCPHERSON
NORTH BEND, OR 97459
(541)756-2020 ext 643
(541) 756-5466 fax

GARY STEVENS, RS

stevengk@jacksoncounty.org

JACKSON COUNTY HLTH
1005 E MAIN ST
MEDFORD, OR 97504-7459
(541) 774-8206
(541) 774-8177 fax

RICK PARTIPILO, RS

rpartipilo@co.Linn.or.us

LINN COUNTY HLTH DEPT
Box 100, 300 SW 4th Av Rm 115
ALBANY, OR 97321
(541) 967-3821
(541) 926-2060 fax

RUSSELL HANSON, RS
hanson_russ@hotmail.com
CROOK COUNTY ENV HLTH
300 E THIRD ST
PRINEVILLE, OR 97754
(541) 447-8155
(541) 416-2139 fax

SUSAN FULLER, RS
susan.fuller@co.jefferson.or.us
JEFFERSON COUNTY ENV
715 SW 4TH ST, STE C
MADRAS, OR 97741
(541) 475-4456 x4226
(541)475-0132 fax

RAY HUFF, RS
rhuff@malheurco.org
MALHEUR COUNTY ENV
251 'B' STREET W BOX 9
VALE, OR 97918
(541) 473-5185
(541) 473-5168 fax

MIKE MESZAROS, RS
meszarosm@co.curry.or.us
CURRY COUNTY HLTH DEPT
PO BOX 746
GOLD BEACH, OR 97444
(541) 247-3254
(541) 247-5601 fax

SYLVIA MIRELES, RS
smireles@co.josephine.or.us
JOSEPHINE COUNTY ENV
714 NW 'A' STREET
GRANTS PASS, OR 97526
(541) 474-5325 ext 2201
(541) 474-5353 fax

JOE FOWLER, RS
jfowler@mail.open.org
MARION COUNTY HLTH
2111 FRONT ST NW, #3-109
SALEM, OR 97301
(503) 588-5346
(503) 566-2986 fax

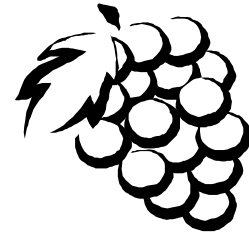
For any county not listed here or for the most current information please contact:

Department of Human Services
Environmental Services and Consultation
800 NE Oregon Street
Portland, OR 97232
(503) 731-4012
www.ohd.hr.state.or.us/esc

Direct Marketing of Produce or Processed Foods

The Oregon Department of Agriculture (ODA) licenses and inspects establishments that process and package food. Any pre-packaged item offered for sale must be labeled with the following information:

- Common or usual name of the food
- Quantity of contents (net weight or volume)
- Name and address of the manufacturer, packer or distributor
- List of ingredients (in descending order or predominance)



The only exception is a package packed in the presence of the consumer.

CONTACT: Oregon Department of Agriculture
Food Safety Division
635 Capitol Street NE
Salem, OR 97301
(503) 986-4720
www.oda.state.or.us/fsd

At this time there is no requirement for an additional license if you are selling at a Farmers/Saturday Market. If you are selling your own fruit and/or produce from a roadside stand on your own property, you are not required to be licensed. If you are not selling on your own property, a retail license is required. If you are selling produce that you do not raise or processed foods from a stand on your property, you are required to be licensed. You do not need a license for a food establishment where the principle activity is the receiving, storing, sorting, cleaning and packing of fresh fruits and vegetables (ORS 616.706). However, inspection of certain commodities for quality and grade may be required by the Oregon Department of Agriculture, Commodity Inspection Division (503-986-4720).

Methods of Packaging and Labeling of Fresh Produce

The Oregon Dept of Agriculture licenses persons for purchasing and reselling fresh fruits and vegetables. The program allows the department to make contacts in cases of a food borne illness and requires a bond when purchasing the produce by means other than cash.

Used Containers: It is unlawful to sell or offer for sale horticultural products in used packages or containers unless they are first cleaned of all foreign matter and substances and are in all respects sanitary. Previous markings, brands, grade markings, labels, trademarks, names, and addresses must be entirely removed or defaced to destroy their legibility or made illegible by turning the container or package inside out. New label information, as noted above, must be added to used containers. Specific references are contained in:

- (a) Oregon Revised Statutes Chapters 585.010 to 585.990 and 632.900 to 632.995.
- (b) Oregon Administrative Rules 603-051.
- (c) <http://www.oregon.gov/prod/index.cfm?CurrPID=843>



CONTACT: Oregon Department of Agriculture
Commodity Inspection Division
635 Capitol Street, NE
Salem, OR 97310
(503) 986-4620
www.oda.state.or.us/cid

Well Water

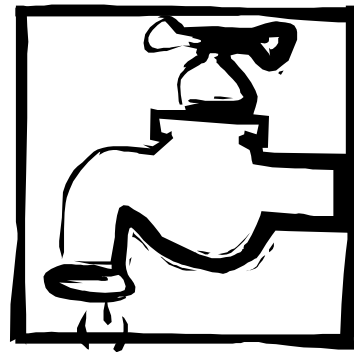
If you need additional water for your enterprise, the following applies to well construction.

To secure a ground water supply, you will need to estimate your water needs, locate a ground water source, obtain a water right (in some cases), select and contract with a well constructor or get the needed Oregon Water Resources Department (OWRD) authorization to drill the well yourself and properly maintain the well.

The OWRD recommends against drilling your own well. Standards on well depth, casing, sealing, development and yield testing, and developing a well log require specialized knowledge and equipment. Names of local well constructors are available from the OWRD, including local watermasters, and the Oregon Ground Water Association. If you decide to drill a well yourself on your own property, you must: 1) Obtain a landowner's well construction permit and file a \$2,000 bond with the OWRD per well; 2) Construct the well in accordance with state law, general standards and regulations; 3) Before beginning work, submit a well construction "start card" to the OWRD region office and complete a written water well report within 30 days of completing the well.

Estimating Water Needs: If you intend to add activities that involve livestock or other water needs, use the following to estimate peak daily water demand: add the appropriate quantities of water for all uses which would likely occur on the day of the year in which water needs would be highest.

<u>Type of Use</u>	<u>Gallons Per Day</u>
Family & Guest use (per person)	50 - 75
Lawn & Garden	50 - 1,000
Livestock -Cattle/steer (per head)	12
Dairy (plus maintenance per head)	35
Goat/Sheep (per head)	2
Hog (per head)	4
Horse/Mule (per head)	12
Poultry-Chickens (per 100)	5-10
Turkeys (per 100)	10-18

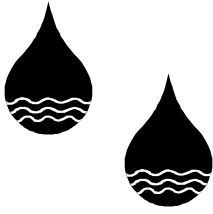


Finding Ground Water: You can learn about the quantity and quality of ground water in your area from local water well constructors and neighbors. Water Well Reports are required by Oregon water law and are a basic tool used in checking for ground water availability. You may examine water well reports at www.wrd.state.or.us, your local watermaster's office or at the Water Resources Department's central office at 158 12th Street NE, Salem. The U.S. Geological Survey and National Water Well Association advise against employing a waterwitch to search for ground water.

Water Rights related to Ground Water - With some exceptions, a water right is needed for use of ground water. The following uses of ground water do NOT require the user to obtain a water right: stock watering; watering a maximum of 1/2 acre of lawn or domestic garden; watering up to 10 acres of lawn, grounds and fields of schools within a critical groundwater area; up to 15,000 gallons per day for single or group domestic use; up to 5,000 gallons per day for any single industrial or commercial use; and down-hole heat exchange.

CONTACT: Water Resources Department
158 12th Street NE,
Salem OR 97310
(503) 378-8455.

For well water testing, contact the Health Division, Drinking Water Section at 503-731-4010.
For drainage/sewer construction, contact your local county planning department or DEQ.



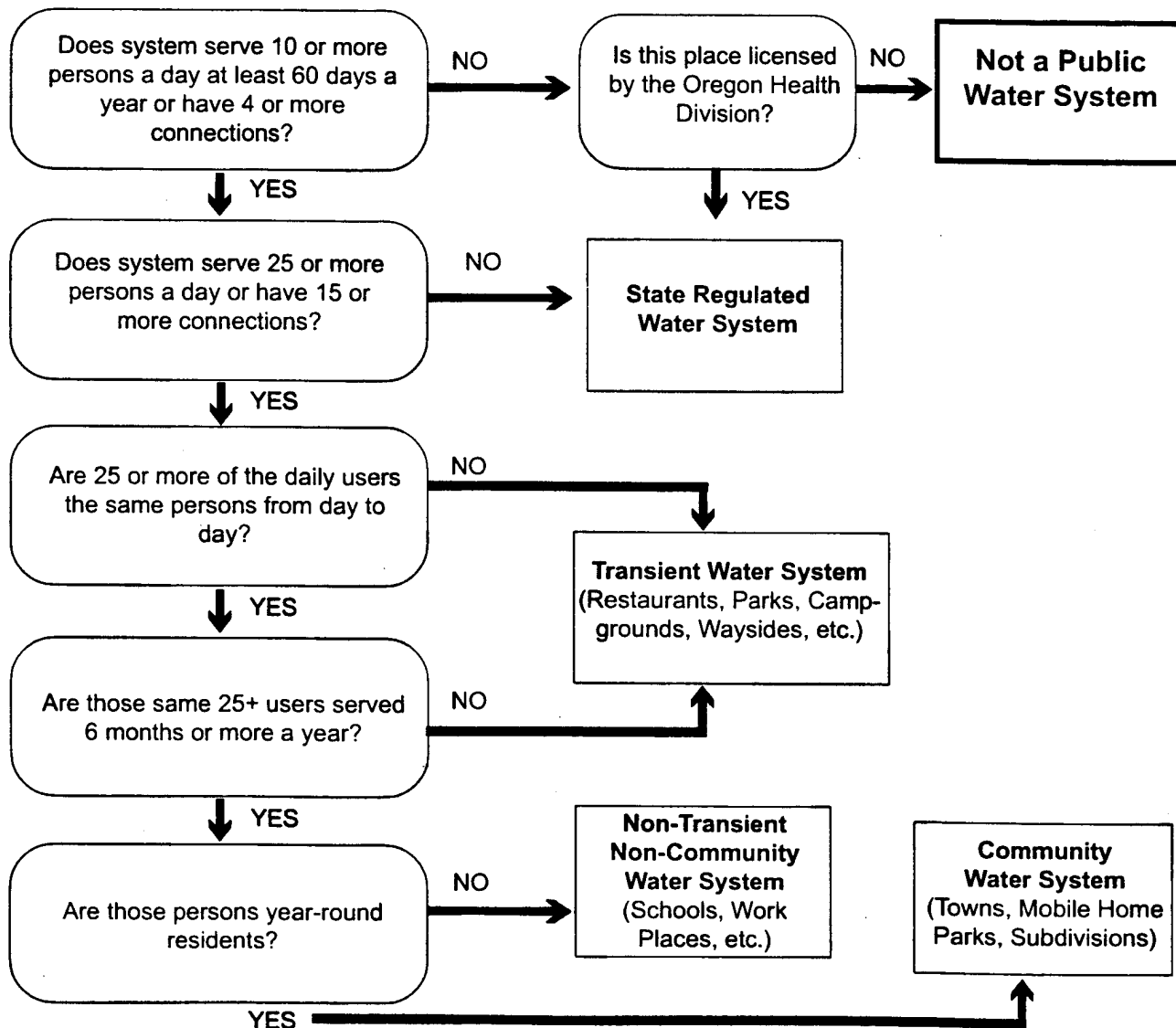
Drinking Water

If your farm or ranch has its own private water source (well, spring, stream, lake, etc.) and is a public or commercial establishment, it may be a “public water system.” A public water system is defined as:

...a system for the provision to the public of piped water for human consumption, if such system has more than three service connections or supplies water to a public or commercial establishment which operates a total of at least 60 days per year, and which is used by 10 or more individuals per day or is a facility licensed by the Health Division...

If your establishment meets the definition of a public water system the Health Division’s rules governing public water systems would apply to you. These rules cover such things as plan review, monitoring (using various laboratory tests) the quality of the water source, reporting test results to the Health Division, operator certification, etc.

The flow-chart will help you classify your establishment if you are still unsure if it is a public water system.



Special Permits for Activities on Public Lands



Who Needs a Permit?

Any individual or group conducting commercial activities and business on federally or state managed lands must obtain a special use permit from the land management agency on which the business is being proposed. Anyone charging a fee to lead, guide or assist an outdoor recreational activity on public lands must also be registered with the Marine Board (503-378-8587, 435 Commercial Street, Salem OR 97310) as an outfitter/guide. Both the BLM and Forest Service require a proof of a guide registration before issuing a permit.

Permits are needed for farm and ranch recreational activities on public lands for hosting or charging fees for skiing, hiking, horseback riding or guiding, or horse trail construction; conducting fishing or hunting outfitter guide activities; leading interpretive tours; and hosting special events such as wagon rides, black powder shoots, dog sled races, and chuckwagon dinners.

Why is a Permit Needed?

The permit process is intended to identify any potential land use or resource conflicts that may arise; identify applicable procedures, permits, and special conditions needed to protect resources and public uses; achieve common understanding between the agency and the applicant about the objectives of the activities; and identify time frames, limitations, and responsibilities. In addition, fees generated by the commercial use of lands managed by the federal government are returned to the treasury as revenues.

STEPS IN THE PROCESS FOR U.S. FOREST SERVICE SPECIAL USE PERMITS

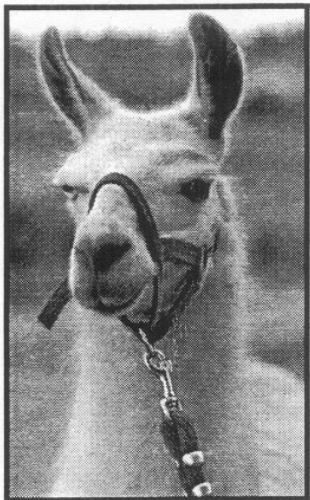
1. Make early contact with the local Forest Service Ranger in the appropriate District Office to discuss your proposal. Ask for a permit application and clarification on the permit processing for the type of activity you propose.
2. File an application for a Special Use Permit and provide a written description to identify all detailed and specific information concerning your proposal. Make sure you have addressed all licenses, bonds, and insurance needs for your proposed activity. Fees charged for the permit will vary by activity and level of use.
3. The District Ranger makes an environmental analysis based on your permit application and project description. The analysis will determine the effects of your project on soil, vegetation, wildlife, and public use of the National Forest. If the effects are significant, additional analysis may be needed. When the required analysis is complete and the proposal acceptable, a decision to issue the special use permit can be made. Capacity for the proposed activity and interest from additional applicants may cause a competitive process to be used for issuing permits. In some cases, no additional capacity exists for issuing new permits.

STEPS IN THE PROCESS FOR BUREAU OF LAND MANAGEMENT PERMITS

The process is the same as with the U.S. Forest Service, however for an outfitter guide permit, a non-refundable minimum fee is due with each approved application.



CONTACT: Oregon Division of State Lands
775 Summer Street NE, Suite 100
Salem, OR 97301
(503) 378-3805
www.oregonstatelands.us



Non-Traditional Livestock And Exotic Animals

Some view the rearing of “non-traditional or alternative” livestock and exotics as a business venture that is ripe for Oregon — an alternative source of farm income, a benefit to the state’s economy, and a better use of natural resources.

But like any other business operation, there are specific requirements to be followed and responsibilities to public health and safety with some of these animals.

The Oregon Department of Agriculture has regulatory oversight in some areas of non-traditional livestock and some exotic animals. Anyone getting into this business needs to understand the associated animal health and public safety concerns.

Non-traditional animals (birds, reptiles, etc.), may be divided into two groups:

- 1) Those raised and/or propagated as “livestock” for the use of the animals as food and fiber, or work animals (such as llamas), and
- 2) Those animals raised and/or propagated as pets.

Officials at the Department of Agriculture believe the first grouping includes many current and future operations that can be viably conducted in a beneficial manner if properly regulated. However, the department discourages ownership of some exotic animals as pets.

One type of animal that has become very popular in recent years includes the llamas and alpacas. While they don’t require a special license to raise, these animals — like cattle and other livestock — require a Certificate of Veterinary Inspection and Oregon Import Permit before being brought into the state.

Other species, such as ostrich and other ratites, buffalo, yaks, zebra, antelope, and water buffalo are also increasing in popularity among livestock owners and breeders. These animals present unique markets — some for meat, some for other by-products such as feathers, eggs, hair or similar items. It’s another way farmers and ranchers can diversify their income base. These exotic animals can also be incorporated into a farm or ranch recreation enterprise for viewing or petting of small animals. However, before bringing any of these animals into the State, contact the Animal Health and Identification Division of the Oregon Department of Agriculture for importation requirements at (503) 986-4680.

Elk, deer, and other cervid species are the most regulated animals in the exotic category. Interested parties should check with the Oregon Department of Fish and Wildlife before getting involved with cervids. Rules adopted by the Oregon Department of Agriculture stipulate that elk captive and most other types of deer can be sold in Oregon as meat. Only certain individuals that were raising specific cervid species prior to January 20, 1993 can continue to buy or sell the deer. Fallow deer and reindeer are legal to raise and sell as meat, although the market for reindeer is not as well developed as that for fallow deer.

All types of cervid farming or ranching in Oregon must be approved and licensed by the Oregon Department of Fish and Wildlife (503-872-5260). Fallow deer and reindeer require a Cervid Propagation License from the ODFW; all other species require a holding permit. Requirements for marking the deer, keeping records, fencing, transactions, and transfer of ownership are very detailed. Specific information can be obtained from the ODFW.

The Department of Agriculture wants to ensure that anyone thinking about beginning or expanding an exotic animal operation has the animals properly checked for disease and vaccinated if necessary. Containment facilities are equally important for certain species.

Owners of certain exotic animals must meet proper health and safety requirements for the animals. That includes having the veterinarian in the state of origin call the Oregon Department of Agriculture to obtain an import permit for any shipment of animals coming in. ODA can then determine necessary testing of the animals. Animals imported from other countries must meet U.S. Department of Agriculture requirements as well as Oregon's requirements.

If you are considering exotic animals as part of a recreational enterprise, but also for additional income from meat or other animal by-products, do some homework to be sure there is a market for the product. Some of these animals reach thousands of dollars in value when initial interest is peaked, then without a real market for the product, the value drops drastically. Like any other type of agricultural operation, there must be a place to sell the product before you put too much into producing it.

For more information regarding the keeping of non-traditional livestock, contact the department's Animal Health & Identification Division at (503) 986-4680.

Some exotic animals, while fascinating to observe, pose real risks as pets. Animals such as lions, tigers, cheetahs and other large cats, bears and wolves are wild animals. They do not have the genetic background and history of domestication for predictable behavior around humans.

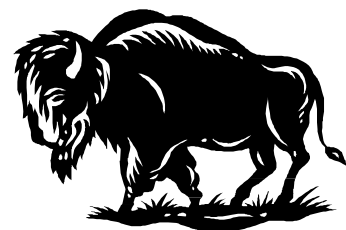
The law that authorizes the keeping of exotic animals in Oregon states:

It is the policy of this state that the keeping of exotic animals be regulated so as to assure the health, welfare and safety of such animals, and to assure the security of facilities in which they are kept, so as to avoid undue risk to the public (ORS 609.309).

The two major points of the law are the *welfare of the animals* and the *safety of the public*. Any person who keeps certain exotic animals is required to house the animals in confined conditions to avoid risk to the public as a result of escape. Any costs or damages incurred as a result of such an escape become the liability of the owner of the animal. Obviously, this type of animal captivity could affect your insurance costs for liability coverage.

The Oregon Department of Agriculture has specific authority to oversee the licensing and containment of non-human primates (monkeys, apes, etc.), exotic cats (lions, tigers, leopards, etc.), bears (other than black bears), wolves, and other exotic canines.

Obtaining and keeping an exotic animal requires a permit from ODA, a four-step process. First, before obtaining an exotic animal, the owner must apply for and receive an Oregon Exotic Animal permit, which involves considerations of location relative to population and livestock, dangers in the event of escape, and other issues. As part of the application process for the permit, an Area Animal Health Veterinarian will make an appointment to inspect the facility that will hold the animal. Specific caging rules are outlined in department administrative rules. Third, upon approval of the facility by the veterinarian, a permit is issued. Once the permit is obtained and the facility is approved, THEN the animal may be housed in the location. The permit is renewable at two-year intervals.



Liability and Insurance Considerations

Liability should be one of your major considerations when you enter into a fee-recreation enterprise. In general, if you decide to impose a fee for any recreational activity conducted on your land or land you are in possession and control of (rent or lease), you are exposed to greater liabilities for any injury of visitors that may occur. Meet with your attorney and insurance agent to determine the extent of liability and insurance needed and to develop a risk management plan.

The landowner or user in possession and control of the land is obligated to make reasonable use of the property, which causes no unreasonable harm to others in the vicinity. Liability equally applies on land you may be renting or leasing — ownership is not the key factor.

The extent of your liability toward a person who enters the property and who has potential of being hurt depends on the

There are a number of ways to reduce liability exposure, such as:

1. Knowing the statutes and regulations that apply to fee recreation land use
2. Having a formal fee-recreation property use agreement with clientele
3. Having adequate liability insurance that covers all fee-recreation activities
4. Incorporating the business
5. Selecting the clients that use your property; and,
6. Providing a tour of the property to all clients and explaining any known potential hazards.

status of the visitor. Oregon law defines a visitor as trespasser, licensee, or an invitee.

TRESPASSER: Someone who enters the property of another without consent of the owner. Possessor of the land (expressed or implied). Consent is simply the owner/possessor's willingness to let the other person enter or remain on the land. Someone you ask to leave, but who stays, becomes a trespasser. Someone who walks past a "No Trespassing" sign is generally a trespasser.

Trespassers enter the property for their own purposes and not for the performance of any obligation to the landowner. In Oregon law, trespass may be classed as intentional, reckless, negligent, or without fault. Since the trespasser has no authority to enter the property, the landowner has no duty to warn about dangerous conditions or activities on the property. Exceptions are where significant numbers of trespassers are known to frequent the area or where young children are involved.

In general, the landowner is not liable for injuries to trespassers caused by a landowner's failure to exercise reasonable care to put the land in safe condition for them, except if there is willful, wanton, or reckless action on the part of the landowner (actions by the landowner intended to cause injury or reckless disregard or indifference to human safety).

LICENSEES: A licensee is someone who comes onto your land with consent. The licensee generally is on your premises without business or commercial reason. Social guests fall in the category of licensee. A public officer who enters a premise in the line of duty is a licensee.

The duty owed to licensees depends on whether the injury is caused by a condition of the land or activities on the land. As a condition of the land, a possessor/owner is liable for willful or wanton acts or gross negligence. As to activities on the land, the possessor/owner has the duty to exercise reasonable care for the protection of the licensee. You are not required to put the land (natural conditions) in safe condition for licensees, but must warn licensees of dangerous conditions and activities.

The licensee classification is especially important with respect to the use of land for recreational purposes. Recreationists using the land with permission, but without a fee imposed, would likely be considered licensees in Oregon.

Oregon law provides considerable protection to landowners against injury liability to licensees if the disclosure requirements are met.

INVITEES: Someone who enters or remains on the property at the expressed or implied invitation of the owner/possessor for the benefit of the inviter, or the mutual benefit of the owner/inviter and the invitee.

Invitees come in two forms: public or business.

A public invitee is a person who is invited to enter or remain on the land as a member of the public for the purpose to which the land is held open to the public. A business invitee is a person who is invited to enter or remain on the land for a purpose directly or indirectly connected with business dealings.

In general, the landowner's liability obligations are the highest under an invitee situation, less with a licensee, and even less with the trespasser.

In the case of the invitee, the owner/possessor's obligations may include inspecting the property, warning of dangers, removing dangerous conditions, curtailing dangerous activities, etc. The owner must exercise reasonable care to make the premises reasonably safe. Merely posting warning signs is not enough.

Law Changes:

The 1995 Oregon Legislature enacted House Bill 2296 to grant immunity to landowners who directly or indirectly permit persons to use their land for recreational uses, woodcutting, or the harvest of special forest products without charge. (Landowners may charge up to \$20 per cord for permission to use the land for woodcutting and still maintain the immunity protection).

Under the statute, the landowner/possessor is not liable in contract or tort for any personal injury, death, or property damage that arises out of use of the land as long as there are no fees paid (with the exception noted above).

Equine activity:

The 1995 Oregon Legislature also adopted ORS 30.687-30.697 to limit liability for damages to persons harmed in the course of equine activities. The law provides that, with some exceptions, an equine activity sponsor or professional is not liable for injury or death arising out of riding, training, driving, grooming, or riding as a passenger on a horse. The limitation does not apply to a situation involving a race, or to situations of willful or wanton disregard for safety or intentional actions.

Other Forms of Liability:

Alcoholic beverages: Other activities associated with a fee-recreation event or activity may result in additional types of liability. For example, if intoxicating beverages are served at a cost, the owner/operator is required to carry liquor legal liability insurance (see additional information on liquor licensing)

Transportation: If transportation is provided (carrying paying guests around in a personal automobile), a commercial auto policy is needed. Your regular auto coverage will not cover commercial use of the vehicle.

Vicarious liability: Additionally, the possessor of land is not only responsible for his/her own actions, but also for the acts of persons acting on their behalf. This may include an employee or even an independent contractor (pack guides, boatmen, for example).

Off-farm liability: If an activity sponsored on the farm causes harm, hazard, or injury to people outside the farm, other forms of liability are involved. These are the customary issues of trespass, chemical drift, spread of fire from one party's property to another, seepage of water onto adjacent lands, mining onto another's property, projecting a foundation across a boundary line, etc. Some activities may also cause nuisance to an off-farm party that causes liability. The risks identified may seem onerous and discouraging, but there are insurance companies willing to work with you to protect your interests through policy coverage.

Nuisance and Right to Farm:

The 1993 Legislature adopted a "Right to Farm" law (ORS 30.930) that set limits on liability for many farm and forest practices. Whether the law will be of assistance in a claim created by a recreational use on farm land will depend on whether the circumstances fall within the guidelines set forth in the statute. The activity must meet the criteria of a "farming practice" to receive the immunity protection.

Fanning practices is defined as an activity that is or may be used on a farm of a similar nature; generally accepted, reasonable and prudent as a method for operation on a farm that is in business for profit; compatible with applicable laws; and is done in a reasonable and prudent manner.

Solve Problems Early:

Without getting into the details of the law, an important point here is that a successful recreation activity, done in conjunction with on-going farming activities, should have the support and understanding of neighbors, local officials, and other affected parties. If there are issues that create concern or disagreement, you should address these with the respective parties as soon as possible. One method for doing this is through mediation — the use of an impartial third party neutral mediator who assists the interested parties to find a common resolution to the problem. The Oregon Department of Agriculture offers mediation services through its Farm Mediation Program. For information, contact the program coordinator at (503) 986-4558 or (800) 347-7028.



BUSINESS STRUCTURE

Incorporating a recreational business may be one way to ease the burden of liability. In theory, an individual is not liable for any assets other than those he or she has invested in the corporation. Other types of organizations with some potential for limiting liabilities of their owners are limited partnerships and limited liability companies.

LIABILITY INSURANCE

Adequate liability insurance is imperative. Most policies that cover general farm and ranch activities do not cover recreational activities on the land. You will either need to add a rider to your existing policy or get a new policy with one of the companies that provide insurance for your particular activity.

Liability insurance coverage for a fee recreation activity is generally written in \$100,000, \$300,000, \$500,000 and \$1,000,000 packages. As a rule, you should maintain enough liability insurance coverage to protect personal assets as much as economically possible. Additionally, if you plan to hire a hunting, fishing, or packing guide for your operation, Oregon statutes require the guide to have minimum liability coverage of \$300,000.

Premium rates vary among insurance companies, based on the exposure of risk for a particular fee-recreation activity. The rates are affected by the portion of the enterprise devoted to recreation and type of activities. Additionally, your managerial capability as an operator appears to be significant in determining premiums.

Some questions for consideration regarding insurance for your enterprise are:

1. Is the difference between the premium for the insurance and the income gained enough to offset each other and still allow a sufficient financial gain to make the venture worthwhile?
2. Can you realistically pass the costs of insurance on to the customer, or will the cost decrease the customer demand for the activity?

The following activities will be reviewed very closely by an insurance company and will involve special coverage if available:

- Hunting
- Fishing
- Lodging
- Food Services
- Alcohol
- Animals, especially horses
- Landing strips on the property



Keep in mind that employees who change job functions because of the new activity may be placed in different work classifications resulting in changes in workers compensation premium costs as well.

Selecting Insurance Based on Your Recreational Activities

Generally, the following activities will be viewed as Commercial Insurance subject to a separate policy from the general farm or ranch policy coverage:

- Boating, Canoeing, Rafting
- Clay Bird Shooting or other Shooting Events
- Elder Hostel Programs
- Exotic Animal Farms
- Fee Hunting and Fishing
- Festivals, Concerts, and Special Events
- Guest or Dude Ranches
- Horseback Riding; Horse, Mule, and Llama Pack Teams
- Hunting Dog Trials and Training
- Hunting Preserves
- Moto-Cross, ATV, Snowmobile, and Mountain Bike Riding
- Seasonal Festivals and Celebrations
- Wineries and Breweries

In general, the following activities can be made part of a farm or ranch insurance policy by endorsements. Each activity is always viewed on its own merit:

- Bed and Breakfast
- Farmers Markets
- Roadside Markets
- School Youth Tours
- Technical Tours
- Working Farm (viewing and limited participation)

Questions to ask in comparing insurance coverage:

1. Is there a deductible?
2. Does the insurance apply to:
 - Your premises and operations liability?
 - Your products and operations liability?
 - Your contractual liability to others?
 - Your personal injury liability to others (libel, slander, invasion of privacy)?
 - Your advertising injury to others?
 - Your property liability damage to others?
 - Incidental medical malpractice liability resulting from aiding an injured person?
 - Non-owned watercraft liability?
 - Host liquor liability?
 - Court costs for defense (above limit or included in liability policy limit)?
3. Are employees added as additional insureds?
4. Are there additional charges for adding public land management agencies, such as the U.S. Forest Service, BLM, or Oregon Marine Board as additional insured?
5. Is the premium a set fee, based on a percentage of gross sales, or client days?
6. Do you have to join an association to get insurance?
7. Are there representations in the policy that the guests or operators must adhere to for a claim to be honored?
8. Does the insurance agent understand your proposed fee-recreation business?

- Waiver of liability: as an additional protection you may want to incorporate principles of firearms safety, require successful completion of hunter safety or horse riding basics, prohibit use of alcohol with certain activities, etc.
- Acknowledgment and assumption of risk: describe the nature of the property (i.e., wild land with barbed-wire fences, logs, poison ivy, wild animals, uneven terrain, etc.) and the activities (horse riding, fishing, etc.), and then have the lessee/guest accept the risks such activities can have.
- Insurance: with this provision, you may want to have the user agree to carry liability insurance and to name you in the policy as an insured.
- Conditions of cancellation, renegotiation, or renewal: a list of conditions necessary in the case either party wishes to terminate, renegotiate or renew an agreement for various reasons.
- Mediating differences: This arrangement may reduce the probability of disagreements resulting in litigation. Specify that any problems arising from the agreement or the use of the property, including injury, will first be addressed in mediation before either party resorts to legal action.
- Payment specify the rate to be paid, how payment is to be made—where, when, etc., and the provisions for failure to pay.
- Damage deposit: this provision would cover damages the lessee does to the property that are not repaired by the lessee. The deposit would be returned to the lessee if damages do not occur.
- Miscellaneous: other sections or provisions may include gates and fences, trespass enforcement, in-kind services provided by the user (fence construction, wildlife crop planting, etc.), limitations of the number of campers or overnight recreational vehicles in certain areas, use of campfires or cooking fires, garbage, sanitation, other guest policies, etc.
- Signatures: finally, complete the agreement with the printed name and address of each member of the recreation group, followed by their signatures and the date of each person's signing.



SAMPLE AGREEMENT

**PERMISSION TO ENTER AND USE
PROPERTY FOR RECREATION PURPOSES**

_____ (Guest) is hereby given permission to enter property known as: _____

for the following purposes: _____

on the following dates: _____

This permission is strictly limited to the above description and is subject to strict compliance with the rules and regulations copied and attached, and other limitations or restrictions which from time to time may be given either orally or in writing.

RELEASE, WAIVER, AND INDEMNITY

I have read the above permission and the accompanying rules and warnings, and I understand that participating in _____ (name of activity) results in certain risks, regardless of all feasible safety measures, which can be taken. I am aware of the nature of the risks involved. I will follow any and all rules presented to me. I will conduct myself as a prudent person with regard for the safety of others, and myself and for the property of others.

To the extent proposed activities involve equine activity as that term is defined in state law, I hereby waive the right to bring an action against the equine professional or equine activity sponsor for any injury or death arising out of riding, training, driving, grooming, or as a passenger upon the equine.

I assume the risk of any responsibility of injury, loss, or damage to person or property resulting from my participation in activities on the premises. I will not hold the landowners, possessors, or occupiers liable.

I agree to indemnify and hold the landowners, possessors, or occupiers harmless from any claims or damages resulting from my actions, which may affect the person or property of the landowners, possessors, or occupiers of the premises or any other person.

Signed _____

Date _____

Potential Sources of Liability Insurance for Fee-Recreation Enterprises

Gillingham & Associates, Inc.

Westminster, CO
Phone: (303) 428-5400
Fax: (303) 428-5900

www.outdoorinsurance.com

Coverage includes outfitters and guides, horses and related activities, guest ranches, fishing, hunting preserves, shooting clubs, trap and skeet shooting, field dog training, snowmobile tours and related activities.

Gray's Insurance

Colorado Springs, CO
Phone: (719) 444-8940 or (800) 747-4679

Special programs in equine coverage include: dude and guest ranches, guides and outfitters, stables, and trail rides, boarding and training, riding academies, tack, show animals and clubs, medical, farm and ranch packages. Outdoor recreational coverage includes white water rafting, cross-country skiing, snowmobiling, camps, golf courses, skeet and trap shooting, fishing ponds, and hunting preserves.

Hart Insurance

Grants Pass, OR
Phone: (541) 479-5521
Fax: (541) 474-1890

www.hartinsurance.com

Coverage programs include fishing, hunting, whitewater rafting, pack animals, watercraft, outfitters, guest ranches, resorts, lodging and other outdoor insurance.

K&K Insurance

Fort Wayne, IN
Phone: (800) 637-4757
Fax: (260) 459-5866

www.kandkinsurance.com

Commercial equine liability coverage, pack teams, riding lessons, trail rides, wagons, buggies, hunting, fishing, pony rides and boarding. Provides coverage for guides and outfitters and guest ranches. ATV, snowmobiles, and bicycle rental, rock/ice climbing, rafting, canoes/kayaks, fishing ponds and streams, boating, campsites and lodges are eligible. Package policies.

Kohout Insurance

Seattle, WA
Phone: (206) 364-2866 or (800) 800-4413
Fax: (206) 417-5966

www.guideinsurance.com

Independent insurance agent who covers guided hunting and fishing, wagon and sleigh rides, trail rides, mountaineering, sled dog tours, winter sports, whitewater rafting, swimming facilities, guest ranches, food services, pony rides, mountain biking and related activities.

The Insurance Mart

Madras, OR
Phone: (800) 742-0794

www.the-insurance-mart.com

Independent agency that provides liability coverage for equine businesses, professional guides and packers, horse-guided hunting operations, BLM and Forest Service insurance certificates, dog sled tours, whitewater rafting, drift and jet boats, rafts, kayaks, guest ranches, field dog trails, horses, llamas, hunting preserves, resorts and lodges.

Worldwide Outfitter and Guides Association, Inc.

Salt Lake, UT
Phone: (800) 321-1493

www.smallcompanyinsurance.com

Association that provides liability insurance to its members as participants in a group master policy. Coverage for outfitter and guide services and some closely related activities.



Barriers and Access Considerations

Depending on the nature of your enterprise and the customers you desire to attract, you should give consideration to accessibility by certain groups. For example, if your activities lend themselves to observation, viewing, touching, and similar experiences that might attract elderly citizens, children, or people with disabilities, you will want to review this checklist for barriers that might inhibit their access to events or activities, and may be required for compliance with federal laws.

BUILDING ACCESS:

1. Do you have parking spaces clearly marked for disabled people? Do the spaces comply with Oregon law and with the Americans with Disabilities Act under federal law (ADA)?
2. Are the parking spaces near the main building entrance?
3. Are the door entrances greater than 32 inches?
4. Do door hardware require grasping, twisting or gripping that may be prohibitive for elderly, children, or disabled individuals?
5. Doors should have less than 8.5 pounds of pull for the audiences discussed here.
6. Do not use revolving doors unless other accessible doors are provided.

BUILDING CORRIDORS:

1. Are the hallways free of obstruction and at least 36 inches wide?
2. Is the floor surface hard, level, and not slippery?
3. Do obstacles (phones, fountains, etc.) protrude into the hall corridors and inhibit passing?
4. Are elevators provided for access to multilevel structures for disabled, elderly, etc.?
5. Interior doors should have 5 pounds or less of pull.

RESTROOMS:

1. Are restrooms in accessible locations?
2. Again, door hardware should not inhibit entrance. Handles that require twisting, grasping, gripping or pinching present difficulties.
3. Are the restrooms large enough for wheelchair turnaround (60" minimum)?
4. Are stall doors at least 32" clear?

OUTDOOR PATHS AND ACTIVITIES:

If you are trying to attract a general public audience with equal access to all people, your outdoor facilities should promote recognition of access needs.

1. Are pathways paved or constructed to provide a hard surface, level or gently sloped, and not slippery?
2. Are railings provided in necessary locations?
3. Are viewpoints designed to allow viewing from a seated or low position without presenting other dangers?

For detailed review standards, contact the Architectural and Transportation Barriers Compliance Board at 1-800-872-2253, and/or obtain a copy of the ADA Accessibility Guidelines (ADAAG) for current specifications.

Conservation Reserve Program Usage



The Conservation Reserve Program (CRP) was established by the U.S. Department of Agriculture to enter long-term contracts with producers to provide permanent vegetative cover on cropland that is highly erodible or contributing to serious water quality problems.

Producers with land enrolled in the CRP program have a conservation plan developed in cooperation with the local conservation district staff, including the Natural Resource Conservation Service (NRCS) U.S. Department of Agriculture, the Extension Service, and the Oregon Department of Forestry, along with the local Soil & Water Conservation District.

Some recreation related uses may be authorized on acreage managed under CRP. Hunting and fishing activities, including fee hunting and fishing of free roaming populations, can be authorized uses of designated CRP acreage. Development of these recreation attractions would be at the land owner s expense.

Use restrictions are placed on activities that could impact water quality by destroying permanent vegetation cover. Designated CRP acreage may not be used for recreation facilities such as airplane runways, fairgrounds, parking areas, camping areas, or wildlife containment areas.

Should you have questions about a specific use of CRP land in conjunction with a proposed recreation activity, contact your local NRCS office.

