

Memorandum

Comprehensive Plan Update

Date: March 25, 2015
To: Community Advisory Committee
From: Rich Faith, Senior Land Use Planner
Re: Impacts of Farming and Forest Operations

At the February 25th CAC meeting, staff presented a background report on policy issues related to farm, forest, rural economy and land use. These issues will be among those the CAC will be discussing in guiding policy language for the comprehensive plan. CAC members were asked to identify other issues not on the list that should be added.

One topic that was mentioned as a possible policy issue for discussion was the negative impacts of farming and forestry operations can have on nearby residential uses. Since the exclusive farm use and commercial forest use zones allow some residences that are not necessarily associated with farming or timber production, there can be inherent conflicts between these uses. Specific examples of conflicts that were given are odors when manure is spread over farmland, ongoing noise when loud blasts are used to control birds in berry fields, and timber clear cuts that encroach on residential areas.

Although this topic was placed on the policy issue list for further discussion, there was also acknowledgement that it may be a larger statewide issue that is beyond our control. Timber management and harvesting, for example, are regulated under the State Forest Practices Act.

Because this topic received a notable number of votes from CAC members as an important issue, I've researched it and have the following information.

Impacts of Farming Operations

In accordance with Oregon's land use planning program's priority on protecting agricultural lands, the EFU zone is intended to preserve and maintain agricultural lands for farm use. Other uses allowed in the EFU zone have secondary importance to farming. To the extent that limited numbers of residences are allowed under very restrictive conditions, state laws governing uses in the EFU zone are designed to protect farming rather than non-farming uses that are allowed incidentally.

One of the principal means that state law relies upon for protection of farming activities in the EFU zone is through "right to farm" legislation. Right to farm laws typically require the landowner of any new dwelling to record a document prohibiting them or their successors from filing a claim for injury from farming or forest practices for which no action or claim is allowed by statute. This requirement is embodied in all of the county's EFU zones with the following language:

As a condition of approval of a single family dwelling, the landowner for the dwelling shall sign and record in the deed records for the county a document binding the landowner, and the landowner's successors in interest, prohibiting them from pursuing a claim for relief or cause of action alleging injury from farming or forest practices for which no action or claim is allowed under ORS 30.936 or 30.937.

30.936 Immunity from private action based on farming or forest practice on certain lands; exceptions. (1) No farming or forest practice on lands zoned for farm or forest use shall give rise to any private right of action or claim for relief based on nuisance or trespass.

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30.937 Immunity from private action based on farming or forest practice allowed as preexisting nonconforming use; exceptions. (1) No farming or forest practice allowed as a preexisting nonconforming use shall give rise to any private right of action or claim for relief based on nuisance or trespass.

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Therefore, with respect to conflicts between farming operations and those residing in the EFU zone, state right to farm legislation recognizes that conflicts are inherent with normal and customary farming practices but the legislations purposely protects the farm operation from nuisance and trespass claims.

The West of Sandy River planning area takes the right to farm protection beyond just the EFU zone and applies it to all zoning districts. The West of Sandy code requires a covenant to be recorded whenever a new, replacement or expanded dwelling is approved. The specific requirement is as follows:

(H) New, replacement, or expansion of existing dwellings shall minimize impacts to existing farm uses on adjacent land (contiguous or across the street) by:

(1) Recording a covenant that implements the provisions of the Oregon Right to Farm Law in ORS 30.936 where the farm use is on land in the EFU zone; or

(2) Where the farm use does not occur on land in the EFU zone, the owner shall record a covenant that states he recognizes and accepts that farm activities including tilling, spraying, harvesting, and farm management activities during irregular times, occur on adjacent property and in the general area.

Impacts of Forest Operations

Similar to agricultural land protection, the Oregon land use planning program gives priority to protection of forest lands for commercial forest production and harvesting over other permitted uses. This is reflected in the state law which grants CFU zoned properties immunity from private action based on normal and customary forest practices. In the same manner as its EFU zones, all of the County's CFU zones require the landowner of any new dwelling to record a

document prohibiting them or their successors from filing a claim for injury from farming or forest practices for which no action or claim is allowed by statute.

In addition, for CFU zones the code seeks to minimize conflicts between forest management activities and residences by requiring dwellings to meet forest practices setback standards from adjacent forest lands and by requiring dwellings to be sited where they have the least impact on nearby or adjoining forest lands.

Finally, the State Forest Practices Act establishes rules and standards for timber management and harvesting. According to the Oregon Department of Forestry, counties cannot impose zoning restrictions that conflict with these forest practice rules unless the county adopts its own comprehensive forest practices ordinance in place of the State's. Multnomah County does not have its own forest practices ordinance.

Conclusion

For farm and forest lands, state law recognizes that conflicts between farm and forest practices and nearby residential uses are likely to occur, but it specifically protects farmers and foresters against nuisance and trespass complaints by granting immunity from legal actions.