



Oregon

John A. Kitzhaber, M.D., Governor

Department of Land Conservation and Development

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May 9, 2013

TO: Land Conservation and Development Commission

FROM: Jim Rue, Director
Katherine Daniels, Farm and Forest Lands Specialist

SUBJECT: **Agenda Item 3 – Request to Appeal, May 23, 2013 LCDC Meeting**

**REVIEW OF A DIRECTOR'S DECISION TO PARTICIPATE IN
A CASE BEFORE THE LAND USE BOARD OF APPEALS**

POLK COUNTY

I. RECOMMENDATION

The director recommends that the commission authorize the department to proceed with an appeal of a Polk County decision to the Land Use Board of Appeals (LUBA). The department is required to file a notice of intent to appeal with LUBA by May 17, 2013, prior to the date of the commission hearing on the matter. The department recommends the appeal in order to object to the county's decision.

II. CASE SUMMARY

On April 10, 2013, the Polk County Board of Commissioners adopted an ordinance approving an expanded definition of "commercial activity in conjunction with farm use" to include a "Food Service Safe Harbor" as a conditional use in the county's exclusive farm use (EFU) and Farm/Forest (F/F) zones (Attachment A). A "commercial activity in conjunction with farm use" is an authorized use under ORS 215.283(2). Neither the statute nor the administrative rule on EFU zoning (OAR chapter 660, division 33) define this use, but opinions from LUBA through the Oregon Supreme Court establish some guidance regarding what a county may approve under this authorization.

The county views its food service authorization as an agricultural marketing mechanism for farm products grown on site, similar to tasting rooms at wineries. Under the ordinance, at least 25 percent of the food input value of menu items must be attributed to the value of farm products produced by the farm operation,¹ each menu item must feature a farm product produced by the farm operation and featured farm products must be offered for retail sale on-site. In addition, the

¹ The term "farm operation" is not defined in the Polk County ordinance or state law. The attached Polk County findings describe that the intent is to tie the food services to the farm operation, while also providing the ability for partnerships (such as a vineyard operator entering into a partnership with a farmer who raises cattle).

size of the public seating area is limited to 500 square feet and the food service operation must be on the subject farm operation.

While the county has made a conscientious attempt to link proposed food service to agriculture in a meaningful way, the department does not believe that the provision of sit-down food service, even narrowly defined, provides a product or service essential to the practice of agriculture (*City of Sandy vs. Clackamas County* 28 Or LUBA 316 (1994)). Rather, the retail sale of prepared food items is several steps removed from the traditional marketing or processing of agricultural products commonly understood to be “commercial activities in conjunction with farm use.” The department is concerned with the potential for the proliferation of many such operations, including new buildings, on virtually any size parcel in the EFU and F/F zones, and the likelihood of cumulative adverse impacts on nearby farming operations.

The department submitted a letter to Polk County on October 8, 2012, objecting to the county’s proposed authorization for food service in EFU zones, viewing the county’s action as outside appropriate use of the “commercial activity” authorization. The department also provided an earlier e-mail to the county on May 7, 2012 in response to the county’s request for informal review of the developing proposal; these comments reflected similar concerns and suggested other options the county could consider.

III. APPEAL FACTORS

To proceed with an appeal, the commission must base its decision on one or more of the following factors from OAR 660-001-023(3):

- (a) Whether the case will require interpretation of a statewide planning statute, goal or rule;
- (b) Whether a ruling in the case will serve to clarify state planning law;
- (c) Whether the case has important enforcement value;
- (d) Whether the case concerns a significant natural, cultural or economic resource;
- (e) Whether the case advances the objective of the agency’s Strategic Plan;
- (f) Whether there is a better way to accomplish the objective of the appeal, such as dispute resolution, enforcement proceedings or technical assistance.

IV. ANALYSIS

- (a) Whether the case will require interpretation of a statewide planning statute, goal or rule**

The case involves the interpretation of ORS 215.283(2)(a) regarding “commercial activities in conjunction with farm use.” There are no administrative rules that further define this use. Courts have interpreted this use fairly narrowly, while Polk and some other counties interpret it relatively broadly.

(b) Whether a ruling in the case will serve to clarify state planning law

Polk County findings state that, even before the adopted Food Service Safe Harbor was adopted, the county already regarded food service to be an authorized conditional use in the EFU and F/F zones as a commercial activity in conjunction with farm use. With that view, the Food Service Safe Harbor is intended to provide a streamlined approach to the approval of food service in these zones. A ruling in this case would provide clarity on both approaches to food service. In addition, Polk and other counties are increasingly interpreting “commercial activities” broadly with respect to other uses that the department does not consider to have been intended to be authorized by statute. The interpretation of “commercial activities” is increasingly becoming a contentious and unclear area of law with respect to authorized uses in EFU zones. The department believes that this case will provide a valuable and much-needed ruling for counties and will have significant precedential value. However, even with a ruling on this issue, the commission may wish to follow with rulemaking clarifying the scope and types of allowed commercial activities in conjunction with farm use..

(c) Whether the case has important enforcement value

The department finds that this criterion does not apply.

(d) Whether the case concerns a significant natural, cultural or economic resource

The case concerns the potential for cumulative adverse impacts on agricultural land.

(e) Whether the case advances the objective of the agency’s Strategic Plan

One of the department’s Strategic Goals is to conserve coastal, farm, forest, riparian and other resource lands. The department is concerned that a proliferation of non-farm uses in EFU zones is contrary to conservation of farmland.

(f) Whether there is a better way to accomplish the objective of the appeal, such as dispute resolution, enforcement proceedings or technical assistance

The department has suggested that the county use existing, currently authorized provisions for farm stands and agri-tourism to allow for the sale of prepared foods and farm-to-fork dinners that stop short of permanent sit-down food venues, rather than proceeding with the Food Service Safe Harbor. Beyond this, dispute resolution, enforcement proceedings or technical assistance would not provide the interpretation of statute and clarity that a court ruling would. Rulemaking could accomplish the objectives of this appeal. However, a LUBA determination in this case would be more timely and of broad value to counties generally.

V. DEPARTMENT RECOMMENDATION AND DRAFT MOTION

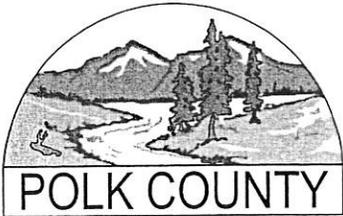
The department recommends that the commission support the director’s decision to appeal the Polk County decision

Proposed Motion: I move that the commission authorize the department to appeal the subject Polk County decision to the Land Use Board of Appeals based on the information included in this report and its demonstration that OAR 660-001-023(3)(a), (b), (d) and (e) apply.

Alternative Motion: I move that the commission not authorize the department to appeal the subject Polk County decision to the Land Use Board of Appeals.

ATTACHMENT

- A. Polk County decision and findings of fact



POLK COUNTY

COMMUNITY DEVELOPMENT

POLK COUNTY COURTHOUSE ★ DALLAS, OREGON 97338
503-623-9237 ★ FAX 503-623-6009AUSTIN M^CGUIGAN
Director

NOTICE OF BOARD OF COMMISSIONERS DECISIONS

The Board of Commissioners adopted Ordinance Numbers 13-04 and 13-05.

Ordinance No. 13-04 amends Polk County Zoning Ordinance (PCZO) Chapter 136, the Exclusive Farm Use (EFU) Zoning District, and Chapter 138, the Farm/Forest (F/F) and Farm Forest Overlay (FFO) Zoning Districts to add "Food Service Safe Harbor" standards. The Food Service Safe Harbor standards create a process to allow limited food service on farm operations as a marketing tool for the farm.

Ordinance No. 13-05 adopted amendments to the regulations for farm stands, home occupations, commercial activities in conjunction with farm use, and single agri-tourism events into the EFU, F/F, and FFO Zoning Districts. Ordinance No. 13-05 also amends the home occupation standards listed in PCZO Chapter 177, the Timber Conservation (TC) Zoning District.

FILE NUMBER: Legislative Amendment LA 12-01

REVIEW AND

DECISION CRITERIA: Polk County Zoning Ordinance 115.060

STAFF CONTACT: Jerry Sorte, Phone: (503) 623-9237, Email: sorte.jerry@co.polk.or.us

Ordinance Numbers 13-04 and 13-05 and all documents submitted regarding this legislative amendment are included in the file at the Community Development Department, Polk County Courthouse, 850 Main Street, Dallas. This file is available for review during regular business hours, and copies may be purchased for cost at the Community Development Department.

Objectors may appeal these decisions to the Land Use Board of Appeals as provided by ORS 197.825 through 197.830. A decision may be appealed to the Land Use Board of Appeals (LUBA) within 21 days after the mailing of the decision. These decisions were mailed April 26, 2013. Contact LUBA (550 Capitol Street NE, Suite 235, Salem, Oregon 97301, 503-373-1265) for appeal procedures.

Ordinance Numbers 13-04 and 13-05 become effective April 24, 2013, the date the ordinances were signed, unless the decision(s) is(are) appealed as allowed by law.

Austin M^CGuigan, Planning Director

4/26/13

Date

A copy of the file, all documents and evidence, and the applicable criteria are available for inspection at no cost and will be provided at the Community Development Department (Polk County Courthouse, 850 Main Street, Dallas, Oregon 97338 (503-623-9237) for the cost of copying. Failure of an issue to be raised in person or by letter, or failure to provide sufficient specificity to afford the decision maker an opportunity to respond to the issue, precludes an appeal to the Land Use Board of Appeals (LUBA) based on that issue.

NOTICE TO MORTGAGEE, LIENHOLDER, VENDOR OR SELLER: ORS Chapter 215 requires that if you receive this Notice of Decision(s), it must promptly be forwarded to the purchaser.

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2
3 **BEFORE THE BOARD OF COMMISSIONERS FOR**
4 **POLK COUNTY, OREGON**
5

6 In the matter of Legislative)
7 Amendment LA 12-01 to amend Polk)
8 County Zoning Ordinance Chapters)
9 136 and 138)
10

11 **ORDINANCE NO. 13-04**
12

13 **WHEREAS**, Polk County identified amendments to the Exclusive Farm Use, Farm/
14 Forest, and Farm/Forest Overlay Zoning Districts that would create a "safe harbor" to allow
15 limited food service to be permitted on farm operations as commercial activities in conjunction
16 with farm use. The "safe harbor" standards were developed to allow for greater economic
17 opportunities within those zones while maintaining strong protections for resource land and
18 neighboring farm and forest operations; and
19

20 **WHEREAS**, on October 26, 2011, the Board of Commissioners adopted Resolution 11-
21 18 which included initiating the legislative amendment process to develop "safe harbor"
22 standards that would amend Polk County Zoning Ordinance Chapters 136, the Exclusive Farm
23 Use Zoning District and Chapter 138, the Farm/Forest and Farm/Forest Overlay Zoning
24 Districts. The proposed "safe harbor" amendments were considered along with other
25 amendments to the Polk County Zoning Ordinance in Polk County Legislative Amendment LA
26 12-01; and

27 **WHEREAS**, the Planning Commission conducted a duly noticed public hearing on
28 October 23, 2012 to receive comments and testimony. The Planning Commission deliberated at
29 the October 23, 2012 meeting and recommended that the Board of Commissioners approve the
30 proposed "safe harbor" amendments to Polk County Zoning Ordinance Chapters 136 and 138;
31 and
32

33 **WHEREAS**, the Board of Commissioners conducted a duly noticed public hearing on
34 January 9, 2013, and provided an opportunity for the submission of testimony and evidence.
35 That hearing was continued until April 10, 2013. The Board of Commissioners deliberated at
36 the April 10, 2013 meeting, and passed a motion to approve Legislative Amendment 12-01 as
37 recommended by the Planning Commission and Planning staff; now therefore
38

39 **THE POLK COUNTY BOARD OF COMMISSIONERS ORDAINS AS FOLLOWS:**
40

41 Sec. 1. That Polk County adopts the findings in favor of the amendments to the Polk
42 County Zoning Ordinance as shown on Exhibit A.
43

44 Sec. 2. That Polk County amends Polk County Zoning Ordinance Chapter 136 as shown on
45 Exhibit B.
46

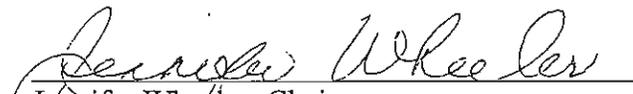
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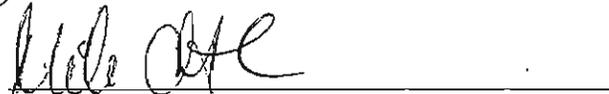
Sec. 3. That Polk County amends Polk County Zoning Ordinance Chapter 138 as shown on Exhibit C.

Sec. 4. That Polk County determines that an emergency related to the economic welfare of the citizens of Polk County is declared and this ordinance is effective immediately upon passage.

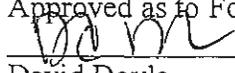
Dated this 24th day of April 2013, at Dallas, Oregon.

POLK COUNTY BOARD OF COMMISSIONERS


Jennifer Wheeler, Chair


Mike Ainsworth, Commissioner

unavailable for signature
Craig Pope, Commissioner

Approved as to Form

David Doyle
County Counsel

First Reading: April 24, 2013
Second Reading: N/A
Recording Secretary: Cheryl

Exhibit A to Ordinance No. 13-04
Findings in Support of Legislative Amendment 12-01

The attachments referenced in this exhibit refer to those attachments provided by the Planning Division with the memorandum to the Board of Commissioners for Legislative Amendment 12-01 dated January 2, 2013.

I. CRITERIA FOR LEGISLATIVE AMENDMENTS

A legislative amendment to the text of the Polk County Zoning Ordinance (PCZO) may be approved provided that the request is based on substantive information that supports the change. The criteria applicable to amending the PCZO are listed in PCZO 115.060. The applicable review and decision criteria are listed in bold followed by Staff's analysis and findings.

- (A) Compliance with Oregon Revised Statutes, and the statewide planning goals and related administrative rules. If an exception to one or more of the goals is necessary, Polk County shall adopt findings which address the exception criteria in Oregon Administrative Rules, Chapter 660, Division 4; [PCZO 115.060(A)]**
1. **Uses Authorized on Agricultural Lands. Included as Attachment B. [OAR 660-033-0120, Table 1]**
 2. **Farm stands [may be established in any area zoned for exclusive farm use] if:**
 - a. **The structures are designed and used for the sale of farm crops or livestock grown on the farm operation, or grown on the farm operation and other farm operations in the local agricultural area, including the sale of retail incidental items and fee-based activity to promote the sale of farm crops or livestock sold at the farm stand if the annual sale of incidental items and fees from promotional activity do not make up more than 25 percent 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 activity other than the sale of farm crops or livestock and does not include structures for banquets, public gatherings or public entertainment. [ORS 215.283(1)(o)]**
 3. **A farm stand may be approved if:**
 - a. **The structures are designed and used for sale of farm crops and livestock grown on the farm operation, or grown on the farm operation and other farm operations in the local agricultural area, including the sale of retail incidental items and fee-based activity to promote the sale of farm crops or livestock sold at the farm stand if the annual sales of the incidental items and fees from promotional activity do not make up more than 25 percent 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.**
 - c. **As used in this section, "farm crops or livestock" includes both fresh and processed farm crops and livestock grown on the farm operation, or grown on the farm operation and other farm operations in the local agricultural area. As used in this subsection, "processed crops and livestock" includes jams, syrups, apple cider, animal products and other similar farm crops**

- and livestock that have been processed and converted into another product but not prepared food items.
- d. As used in this section, "local agricultural area" includes Oregon or an adjacent county in Washington, Idaho, Nevada or California that borders the Oregon county in which the farm stand is located. [OAR 660-033-0130(23)]
4. Home occupations; parking; where allowed; conditions. [ORS 215.448]
- a. The governing body of a county or its designate may allow, subject to the approval of the governing body or its designate, the establishment of a home occupation and the parking of vehicles in any zone. However, in an exclusive farm use zone, forest zone or a mixed farm and forest zone that allows residential uses, the following standards apply to the home occupation: [ORS 215.448(1)]
- i. It shall be operated by a resident or employee of a resident of the property on which the business is located;
- ii. It shall employ on the site no more than five full-time or part-time persons;
- iii. It shall be operated substantially in:
1. The dwelling; or
 2. Other buildings normally associated with uses permitted in the zone in which the property is located; and
- iv. It shall not unreasonably interfere with other uses permitted in the zone in which the property is located.
- b. The governing body of the county or its designate may establish additional reasonable conditions of approval for the establishment of a home occupation under subsection (1) of this section. [ORS 215.448(2)]
- c. Nothing in this section authorizes the governing body or its designate to permit construction of any structure that would not otherwise be allowed in the zone in which the home occupation is to be established. [ORS 215.448(3)]
- d. The existence of home occupations shall not be used as justification for a zone change. [ORS 215.448(4)]
5. Home occupations and the parking of vehicles may be authorized. Home occupations shall be operated substantially in the dwelling or other buildings normally associated with uses permitted in the zone in which the property is located. A home occupation shall be operated by a resident or employee of a resident of the property on which the business is located, and shall employ on the site no more than five full-time or part-time persons. [OAR 660-033-0130(14)]
6. The following nonfarm uses may be established, subject to the approval of the governing body or its designee in any area zoned for exclusive farm use subject to ORS 215.296:
- a. Commercial activities that are in conjunction with farm use, including the processing of farm crops into biofuel not permitted under ORS 215.203 (2)(b)(L) or subsection (1)(r) of this section. [ORS 215.283(2)(a)]
7. In the alternative to paragraphs (a) and (c) of this subsection, a county may authorize, through an expedited, single-event license, a single agri-tourism or

other commercial event or activity on a tract in a calendar year by an expedited, single-event license that is personal to the applicant and is not transferred by, or transferable with, a conveyance of the tract. A decision concerning an expedited, single-event license is not a land use decision, as defined in ORS 197.015. To approve an expedited, single-event license, the governing body of a county or its designee must determine that the proposed agri-tourism or other commercial event or activity meets any local standards that apply, and the agri-tourism or other commercial event or activity:

- a. Must be incidental and subordinate to existing farm use on the tract;**
- b. May not begin before 6 a.m. or end after 10 p.m.;**
- c. May not involve more than 100 attendees or 50 vehicles;**
- d. May not include the artificial amplification of music or voices before 8 a.m. or after 8 p.m.;**
- e. May not require or involve the construction or use of a new permanent structure in connection with the agri-tourism or other commercial event or activity;**
- f. Must be located on a tract of at least 10 acres unless the owners or residents of adjoining properties consent, in writing, to the location; and**
- g. Must comply with applicable health and fire and life safety requirements. [ORS 215.283(4)(b)]**

(Staff Findings)

Farm Stands

Farm stands are listed as an allowed use on agricultural lands (EFU and F/F zone) under OAR 660-033-0120, Table 1. See Attachment B. Farm stands may require review if they are a land use decision; however, administrative review is not explicitly required by the OAR. Farm stands are also subject to the standards listed in OAR 660-033-0130(23).

The Planning Commission has recommended creating a type of farm stand that would be outright permitted. As proposed, farm stands that would be established in temporary structures and that would *not* offer fee-based activities would not require a land use permit in the EFU and F/F zones. In order for this type of farm stand to be an outright permitted use, and not require review and approval by the Planning Division, the standards for the farm stand must be clear and objective. The standards must not constitute a “land use decision,” as that term is defined in ORS 197.015(10). Specifically, the standards for the outright permitted farm stand may not require “interpretation or the exercise of policy or legal judgment” [ORS 197.015(10)(b)(C)]. A land use decision requires an application, and the purpose of this amendment is to create a type of farm stand that is allowed without the need to go through a land use application process.

In a recent Land Use Board of Appeals (LUBA) opinion, *Keith v. Washington County*, LUBA No. 2011-10 (August 8, 2012), LUBA found that the review of the farm stand standards listed in OAR 660-033-0130(23) requires the exercise of discretion. LUBA found:

More importantly, the statutory-based criteria governing farm standards require the exercise of discretion. Determining whether a proposed use is a “farm stand,” *i.e.* a structure designed and used for the sale of agricultural products grown on the farm operation, including the sale of retail incidental items and “fee-based activities” to promote the sale of agricultural products sold at the stand, necessarily requires the exercise of discretion. CDC 201.2-20(A) and ORS 215.213(1)(r)(A). Further, determining whether the proposed use does not include structures designed for activity other than the sale of agricultural products almost certainly will require discretion. CDC 201.2-20(B) and ORS 215.213(1)(r)(B). [p. 12, lines 4 through 11]

LUBA found that an analysis to confirm that a farm stand structure “does not include structures designed for activity other than the sale of agricultural products” is discretionary. The proposed standards included in Attachment A would place structural limitations on the permitted use farm stand that remove the discretionary components of ORS 215.283(1)(o) and OAR 660-033-0130(23). The outright permitted farm stand proposed in Attachment A would limit the structures used by the farm stand to temporary structures that do not require building permits under the Oregon Structural Specialty Code. Included within the allowed structures would be such temporary structures as a canopies or folding tables. A farm stand under this section may resemble a booth commonly seen at a farmer’s market. Those temporary structures are not “designed for occupancy as a residence or for activities other than the sale of farm crops and livestock and [do] not include structures for banquets, public gatherings or public entertainment.” Applicants would still be able to apply for farm stands under the current standards through the administrative review process.

The proposed outright permitted farm stand would also not permit fee-based *activities* to promote the sale of agricultural products. Staff believes that determining what fee-based activities “promote the sale of farm crops or livestock sold at the farm stand” is discretionary. With continually high demand to conduct non-agriculturally related events in the EFU and F/F zone, staff thinks it would be advisable to retain the current administrative review process to ensure that fee-based activities would promote the sale of farm crops and livestock on a case by case basis. An alternative would be for the County to create “safe harbor” events that are clearly designed to promote the sales of agricultural products; and thereby would not require discretionary review. Staff is not; however, proposing such a safe harbor as a part of this project.

The remaining component of the farm stand rules that could theoretically require a discretionary review concerns the sale of incidental items. The OAR allows the sale of incidental items that “promote the sale of farm crops or livestock sold at the farm stand” if such sales do not exceed 25% of the total annual sales of the farm stand. The OAR requires that the incidental items “promote sales,” but does not require that the incidental item be inherently agricultural in nature. Attracting customers to a farm stand with a non-agricultural trinket would undoubtedly promote the sales of the farm products. Customers investigating a trinket would be likely to peruse the farm products on the other side of the table. If the sales of incidental items are capped at 25% of the total annual sales of the farm stand, then the incidental items would clearly be subordinate to the sales of farm products, and by being sold in conjunction with the farm stand, the incidental items would promote the sales of farm products. To further ensure that the proposed outright permitted farm stand provision is not abused to allow a business to primarily focus on the sales of incidental items, staff has added a provision that states “[i]f retail incidental items are offered for sale, they shall be offered for sale at the same time and location as the farm crops and livestock sold by the farm stand.” This provision is intended to prevent a farm stand from dividing itself into two operations that one day may sell farm crops and livestock and on other day sell only “incidental items.” For these reasons, staff finds that allowing the sales of incidental items at an outright permitted farm stand, with the above mentioned restrictions, create standards that are objective to implement and do not require “interpretation or the exercise of policy or legal judgment.”

Based on the above analysis, staff finds that the proposed language to add a provision for an outright permitted farm stand in the EFU and F/F zone would comply with the requirements for a farm stand listed in ORS and OAR and would not constitute a land use decision as defined in ORS 197.015(10).

Home Occupations

The proposed amendment to the standards for home occupations in the EFU, F/F, and TC zones, would add the word “substantially” to the requirement speaking to where the business would be located. The proposed language would state “[t]he business is conducted *substantially* within the dwelling or other building(s) normally associated with uses permitted within this zone” [Emphasis added]. This language would directly reflect OAR 660-033-0130(14).

Home occupations are allowed under ORS 215.283(2)(i) and ORS 215.448. The proposed addition of the word “substantially” would directly reflect the language in ORS 215.448(1)(c). The PCZO is currently more restrictive than state law in that a home occupation must be operated entirely with the dwelling or other building(s) normally associated with uses permitted within the zone. As articulated by the Oregon Supreme Court in *Brentmar v. Jackson County*, 321 Or 481, 496, 900 P2d 1030 (1995), the County may be more restrictive than state law for a use permitted under ORS 215.283(2), such as a home occupation. This amendment would directly reflect the ORS and therefore complies with this criterion.

Commercial Activities in Conjunction with Farm Use

“Commercial activities that are in conjunction with farm use” (CA/FUs) are uses that may be established in the EFU and F/F zones pursuant to ORS 215.283(2)(a). As interpreted by the Oregon Supreme Court in *Brentmar*, counties have the ability to be more restrictive than state law when regulating the uses described under ORS 215.283(2), including CA/FUs. The current provisions for CA/FUs in the EFU and F/F zones are more restrictive than state law. They are more restrictive because the criteria include the emphasized language below:

Commercial Activity In Conjunction with Farm Use [ORS 215.283(2)(a)], including the processing of farm crops into biofuel not permitted under the definition of “farm use” in ORS 215.203(2)(b)(L) or Section 136.040(Q) and activities related to the processing, distribution and marketing of farm products, a portion of which are produced by the subject farming operation, but not including the processing of farm crops as described in Section 136.040(Q), subject to compliance with Section 136.060.

The “portion of which” language requires that the property where the CA/FU is located would need to be part of a farm operation that contributes farm products to the CA/FU. The “portion of which” standard is vague, and leaves open for interpretation how much farm product a farm operation must contribute to the CA/FU. This analysis and ambiguity is not required by state law. Staff, therefore, recommends that the CA/FU standards be amended to directly reflect the wording in state law. An applicant would still be required to show that their proposal would be a CA/FU as that term has been interpreted by the courts. The Oregon Supreme Court found in *Craven*:

We believe that, to be “in conjunction with farm use,” the commercial activity must enhance the farming enterprises of the local agricultural community to which the EFU land hosting that commercial activity relates. The agricultural and commercial activities must occur together in the local community to satisfy the statute.

Removing the ambiguous “portion of which” language from the CA/FU requirements may allow for the establishment of a greater array of CA/FUs. This proposal would comply with the statewide planning goals, ORS, and OAR, because the proposed language would be the same as ORS 215.283(2)(a).

Single Agri-Tourism Events

The proposed amendments would add a provision for property owners in the EFU and F/F zones to hold a single, one-day agri-tourism event on their property during the course of a calendar year as an outright permitted use. The Planning Commission added the clarification in the proposed language that the single event is permitted to occur during one day. This provision would comply with the statewide planning goals, ORS, and OAR, because it would directly apply ORS 215.283(4)(b). The provisions of ORS 215.283(4) are optional provisions that counties may adopt to regulate agri-tourism events. The introductory paragraph of the proposed standards adds language that clarifies the process for obtaining the ministerial permit (“single-event license”) required under the ORS from the Planning Division. The listed standards for the event are exactly the same as the language in state law. As a result, the proposed standards for a single agri-tourism event would comply with this criterion.

Food Service “Safe Harbor”

The Planning Commission recommended adoption of a “safe harbor” consisting of a set of standards to allow limited food service on farm operations in the EFU and F/F zones. The safe harbor would be a path of least resistance for property owners seeking to establish a food service operation as a commercial activity in conjunction with farm use (CA/FU). A farm operation could apply for a food service operation as a CA/FU under the current rules in effect in the EFU and F/F zones; however, an applicant must provide substantial evidence to address the discretionary criteria listed in state law. Over the years, that discretionary criteria has been adjudicated and the courts have interpreted what it means to be a CA/FU. Those interpretations create a parallel set of standards that apply to establishing a CA/FU. The resulting climate makes it likely that certain activities that would promote farm use, and comply with all legal requirements, are not pursued as a result of complex land use planning rules. A safe harbor would create standards that are more clear and objective than the requirements for a CA/FU and provide a path of least resistance that promotes economic development while minimizing potential off-site impacts.

In order to create the food service safe harbor, the County must show that a business that complies with the proposed standards would be a CA/FU. The proposed safe harbor language is included in Attachment A. In order to be a CA/FU, the safe harbor must create businesses that would comply with Polk County’s definition of a CA/FU listed in PCZO 136.050(I) and 138.060(H), the state definition of a CA/FU listed in ORS 215.283(1)(a) and the applicable provisions of case law. As discussed in this subsection above, the County’s definition of a CA/FU is currently more restrictive than state law. The standards for a CA/FU in the EFU zone, PCZO 136.050(I), are the same as the standards in the F/F zone; PCZO 138.060(H). They read as follows:

Commercial Activity In Conjunction with Farm Use [ORS 215.283(2)(a)], including the processing of farm crops into biofuel not permitted under the definition of “farm use” in ORS 215.203(2)(b)(L) or Section 136.040(Q) and activities related to the processing, distribution and marketing of farm products, a portion of which are produced by the subject farming operation, but not including the processing of farm crops as described in Section 136.040(Q), subject to compliance with Section 136.060.

In addition to state law and County ordinance, the safe harbor must be consistent with the interpretations of state law provided in case law. The landmark case interpreting the appropriate application of a CA/FU was provided by the Oregon Supreme Court in *Craven vs. Jackson County*, 308 Or 281, 779 P2d 1011 (1989). The Oregon Supreme Court evaluated what constituted a commercial activity in conjunction with farm use and stated:

We believe that, to be “in conjunction with farm use,” the commercial activity must enhance the farming enterprises of the local agricultural community to which the EFU land hosting that commercial activity relates. The agricultural and commercial activities must occur together in the local community to satisfy the statute.

LUBA also considered the question of what constitutes a CA/FU in *City of Sandy v. Clackamas County*, 28 Or LUBA 316 (1994). The operative language of *Sandy* was summarized by LUBA in *Friends of Yamhill County vs. Yamhill County*, LUBA No. 2012-005:

[In *Sandy*] “LUBA was required to apply the principle articulated in *Craven* to a proposal to expand an existing business in an EFU zone to allow sale and rental of trucks, trailers and other equipment, sale of portable storage buildings, and to provide mail box, UPS and fax services. 28 Or LUBA at 318. In concluding that the proposal exceeded the scope of what is permissible under *Craven*, LUBA explained:”

“Where a commercial use exclusively or primarily purchases agricultural products directly from agricultural uses, the connection between the commercial use and agricultural uses is relatively easy to demonstrate. For example, in *Craven*, the Oregon Supreme Court concluded a winery qualified as a ‘commercial activity in conjunction with farm use’[.]”

“* * * * *”

“Similarly, the Oregon Court of Appeals had little difficulty concluding a hop warehouse that would store hops grown by many hops growers, and sell string and burlap used in hop production, qualified as a commercial activity in conjunction with farm use. *Earle v. McCarthy*, 28 Or App 541, 560 P2d 665 (1977). In *Earle*, it appears all of the warehouse’s purchases and sales were to commercial hops growers.

“*Craven* and *Earle* stand for the relatively straightforward proposition that a commercial activity in conjunction with farm use must be either exclusively or primarily a customer or supplier of farm uses. That proposition also was the basis for the Land Conservation and Development Commission’s decision in *Balin v. Klamath County*, 3 LCDC 8, 19 (1979), where LCDC concluded a farm implement and irrigation equipment dealership qualified as a commercial activity in conjunction with farm use. However, in reaching that conclusion, LCDC identified another consideration:

“Clearly the statute is not intended to allow the establishment of grocery stores and gas stations on agricultural lands solely because they are situated in a primarily agricultural area and serve primarily agricultural needs. However, it can and should be read to express a legislative judgment that commercial activities limited to *providing products and services essential to the practice of agriculture* directly to the surrounding agricultural businesses are sufficiently important to justify the resulting loss of agricultural land. The record shows that such an enterprise is proposed and is needed. (Emphasis added.) *Id.*”

“The above quoted language makes the point that even if a commercial activity primarily sells to farm uses, that may not be sufficient to allow the commercial activity to qualify as a commercial activity in conjunction with farm use. There is a second inquiry that must be satisfied. The products and services provided must be ‘essential to the practice of agriculture.’ While farmers must eat and farm equipment frequently operates on gasoline, that is not sufficient to make grocery stores or gas stations commercial activities in conjunction with farm use. The connection must be closer to the ‘essential practice of agriculture.’ In the cases cited above, that connection was found to be satisfied by a winery, a hops warehouse, and a farm implement and equipment business.” 28 Or LUBA 320-22.

In *Sandy*, LUBA found that the sales and rental of trucks, trailers, and equipment, and offering mail box, UPS, and fax service was not a CA/FU because that activity would largely serve non-farm users. LUBA found that the proposed business would not “assure a commercial activity that is sufficiently related to the ‘essential practice of agriculture.’”

The food service safe harbor language recommended by the Planning Commission is presented and discussed below. Following that section is an expanded discussion about how the various sections would work to ensure that the safe harbor standards would authorize businesses as CA/FUs.

- ***Commercial Activity in Conjunction with Farm Use – Food Service Safe Harbor. [ORS 215.283(2)(a)]. Food service shall be considered a commercial activity in conjunction with farm use where the food service operation complies with the general review standards under Section 136.060 [ORS 215.296] and the following standards and conditions:***

This introductory paragraph clarifies that the application is subject to ORS 215.296, the same as any other application for a CA/FU. ORS 215.296 is implemented in the EFU zone by PCZO 136.060 and in the F/F zone by PCZO 138.100(A). Those sections require a demonstration by an applicant, on a case by case basis, that the proposed food service operation would not “force a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest use” or “significantly increase the cost of accepted farm or forest practices on lands devoted to farm or forest use.”

- (1) ***Each menu item shall incorporate and feature an unprocessed or processed farm product(s) produced by the subject farming operation.***

- (a) *For the purposes of this section, a farm product is “featured” in a menu item if the menu item places an emphasis on the flavors of the farm product.*
- (b) *For the purposes of this section, “processed farm product(s)” includes jams, syrups, apple cider, wine, animal products and other similar farm crops and livestock that have been processed from farm products grown on the subject farm operation and converted into another product either by the subject farming operation or by an off-site processing facility.*

Subsection (1) requires all menu items to “incorporate and feature” an unprocessed or processed farm product that is produced by the subject farming operation. The term “incorporate” was included to mean that the menu item must actually include a farm product grown by the subject farming operation. The term “feature” is intended to mean that a menu item must place an emphasis on the flavors of the farm product in how the menu item is prepared. This term is intended to exclude those menu items that include an insignificant amount of farm products grown on the subject farming operation; such as a dash of oregano. During the application process, an applicant would detail a sample menu item and describe how menu items would comply with these standards. By incorporating and featuring farm products in the food that is served, the food service would clearly be “in conjunction with farm use.” The food service would market a farm product that is produced by the subject farming operation. LUBA found in *Friends of Yamhill County vs. Yamhill County*, LUBA No. 2012-005, that wineries authorized under ORS 215.452 are CA/FUs. ORS 215.452 permits wineries to operate tasting rooms. Just as a tasting room markets wine produced at a winery, which thereby generates demand within the market for wine grapes, the limited food service would offer tasting of freshly prepared farm products and enhance the market for that farm product.

A processed farm product is a farm product that has been converted into another product either by the subject farming operation or by an off-site processing facility. A processed farm product is created outside of the scope of the limited food service operation. So, a salsa that uses tomatoes grown by the subject farm operation that is prepared and packaged at a food processing facility in Salem is a processed farm product that could be served under the proposed safe harbor. A salsa that is prepared from tomatoes grown by the subject farming operation on-site, and served fresh to the public would also comply with these standards.

- (2) *The featured unprocessed or processed farm product(s) described in subsection (1) shall be offered for retail sale where the food service is offered.*

Subsection (2) is intended to ensure a direct link between the food service operation as a marketing tool and the farm product that would be marketed. Again, similar to a wine tasting room which offers tasting and the sales of bottled wine, the limited food service operation would allow tasting of a freshly prepared farm product and the opportunity to purchase that farm product.

- (3) *At least 25% of food input value, or 50% by weight of raw ingredients, of menu items offered by the food service operation shall be attributed to the farm products (prior to processing) produced by the subject farming operation.*

Subsection (3) provides an additional method to ensure that the food service would market the farm product. The requirement that 25% of the food input value, or 50% by weight of raw ingredients of a menu item, be attributed to a farm product produced by the farm operation would ensure that the farm products constitute a significant portion of the prepared menu item. Under the first option, an operator would need to keep track of their food input costs to make certain that their farm products account for at least 25% of all food costs. The food input value of a farm product grown on-site would be a reasonable retail market value for the farm product. Under the second option, an operator would need to keep track of the weight of the ingredients going into each menu item. The 50% by weight option was added by the Planning Commission in order to allow operators who grow crops with relatively lower retail values, such as fruits or vegetables, to have a reasonable opportunity to qualify under the safe harbor. In both cases, the total ingredient value or weight

would be that of the menu items prior to processing, if a processed farm product is incorporated or featured, and prior to preparation and cooking.

The 25% or 50% standard would provide a key differentiation between an operation permitted under the food service safe harbor and what is typically considered a restaurant. A restaurant has the flexibility to change their menu without limitation. A business authorized under the food service safe harbor would craft every menu item so that it would meet this standard and thereby act as a marketing tool for the farm.

(4) *The size of the public seating area shall not exceed 500 square feet. The food service operation shall be operated substantially within a building.*

The seating area limitation described in Subsection (4) requires a business that is permitted under the food service safe harbor to maintain a small footprint. This standard helps to ensure that the food service operation would be ancillary to the farm operation and remain a marketing tool, rather than the primary function of the farm operation. A seating area limitation would also act to minimize potential traffic and related off-site impacts of the food service operation, and would ensure that a minimal amount of land is used for the approved non-farm use.

The original safe harbor proposal that was presented to the public at the April 17, 2012 Open House included a maximum seating area of 1000 square feet. After the open house, the Polk County Farm Bureau provided comments recommending a 500 square foot maximum. Also, the Department of Land Conservation and Development provided concern that businesses authorized under the safe harbor could remove a significant amount of land from agricultural production and have adverse impacts on nearby farm operations. Staff thought that one way to address those concerns would be to decrease the maximum public seating area from 1000 to 500 square feet, as recommended by the Farm Bureau. Fire code requires that at least 15 square feet be allocated for each person. So, a 500 square foot seating area would permit a maximum of 33 patrons. This may equate to eight or nine tables. As a matter of perspective, there is no size limitation on tasting rooms at wineries or on farm stands. A 500 square foot seating area limitation would significantly restrain the potential impacts that the food service safe harbor business would have on the neighborhood. A business limited to 500 square feet of seating area would likely have impacts similar to a farm stand or tasting room of a similar size.

(5) *The food service operation shall be located on the subject farming operation and operated by the owner(s) or employee(s) of the subject farm operation.*

Subsection (5) is intended to further tie the food service operation to the farming operation. It is intended to prevent a farmer from contracting out with a restaurant operator whose objective is to create a restaurant rather than a marketing tool for the farm. This language has been worded; however, to theoretically allow for partnerships. For example, a vineyard operator could enter into a partnership with a farmer that raises cattle. As long as the partnership consolidated the businesses into a single "farming operation," the vineyard operator could apply to offer limited food service to sell menu items featuring the farm's beef under the standards listed above.

The safe harbor described above would create operations that are CA/FUs. First, the proposal would comply with the PCZO/ORS definition of a CA/FU. A business authorized under the safe harbor would be commercial in nature and constitute an activity that would market a farm operation. As discussed above each menu item would need to feature and incorporate a farm product(s) (processed or unprocessed) produced by the subject farming operation, and at least 25% of the input value, or 50% by weight of raw ingredients, in each menu item would need to be attributed to the farm's product(s). To further solidify the role of the food service operation as a marketing tool, the farm product(s) that is featured would need to be offered for retail sale where the food service is provided.

With respect to *Craven*, a business authorized under the food service safe harbor would enhance the farming enterprises of the local agricultural community by providing a marketing tool for an applicant's farm operation. A farm that can offer such limited food service would attract members

of the public to their farm to sample and purchase their farm products. The limited food service would allow the farm operator to showcase how the farm product could be prepared by someone at home. This interaction would act as a farm marketing tool for the farm and strengthen the ties between the local community and the agricultural producers in the area. Under the food service safe harbor requirements, the commercial activity – the food service – and the agricultural activity – the cultivation of a farm product – would both occur in the local community. Section 4 requires that the food service operation be located on the subject farming operation. So while the tomatoes may have been raised “out back,” on the same property as the food service operation, and the beef may have been raised on another parcel that is part of the farm operation, Section 4 would ensure physical proximity between the commercial activity of the food service and the location where the farm products were raised.

Applying *Sandy*, staff also finds that a business authorized under the proposed food service safe harbor would be a CA/FU. A food service operation authorized under the above standards would be a part of a vertically integrated business where the farmer both produces the farm product, prepares the farm product for sale as a prepared food item, and sells the product directly to the customer. In this case the food service operation is primarily a “customer” of the farm products because it “purchases” farm products from itself to prepare and serve to the public. The food service operation is a supplier of farm uses because the featured farm products are offered for retail sale at the location of the food service operation.

In *Sandy*, LUBA found that grocery stores or gas stations are not CA/FUs merely because a farmer may frequent a grocery store or purchase fuel at the gas station; the connection must be closer to the “essential practice of agriculture.” In that discussion, LUBA found that a winery (which included a tasting room), a hops warehouse, and a farm implement and equipment business made that connection. A business operating under the food service safe harbor is nearly equivalent to a tasting room at a winery. A tasting room provides an opportunity for a winemaker to serve and market a processed farm product, which thereby bolsters demand within the market for wine grapes. The food service safe harbor would allow the beef producer, or vegetable producer, to prepare and serve their farm products directly to the public in order to bolster the market for their respective agricultural product. Marketing is an “essential practice of agriculture.”

The proposed food service safe harbor would permit businesses to feature processed farm products in addition to unprocessed farm products. This would comply with the legal requirements for CA/FUs. A business that serves salsa that is packaged in Salem (a processed farm product), would still need to ensure that 25% of the food input value, or 50% by weight of raw ingredients, of that salsa can be attributed to farm products grown by the subject farming operation. Offering the sale of and serving processed farm products would enhance the farming enterprises of the local agricultural community by marketing their farm products. The food service operation would act as a customer and supplier of farm products produced by the farm operation.

Concern was raised during this process that businesses authorized under the food service safe harbor would simply be restaurants out in farm land. As a matter of perspective, House Bill 3280 (2011), codified as ORS 215.452 permits restaurants to be established through a conditional use permitting process in conjunction with large wineries. So, we know that restaurants in some fashion are consistent with Statewide Planning Goal 3. As described above; however, a business authorized under the food service safe harbor would be a CA/FU, not a restaurant. The key difference is that a CA/FU has to be “in conjunction with farm use,” as that term has been defined in *Craven* and *Sandy*, where a restaurant simply sells prepared food items without the need for such connection.

For the reasons discussed above, staff finds that the proposed food service safe harbor would comply with the applicable provisions of state law and the relevant case law applicable to commercial activities in conjunction with farm use.

(B) Conformance with the Comprehensive Plan (PCCP) goals, policies and intent, and any plan map amendment criteria in the plan; [PCZO 115.060(B)]

1. Polk County will permit those farm and nonfarm uses in agricultural areas

authorized by Oregon Revised Statutes Chapter 215 and Oregon Administrative Rules Chapter 660, Division 33. [PCCP Section 2, Element B, Policy 1.4]

2. Polk County shall zone forest lands for uses allowed pursuant to Oregon Administrative Rules Chapter 660, Division 6. In addition to forest practices and operations and uses auxiliary to forest practices, as set forth in Oregon Revised Statute 527.722, Polk County shall allow in the forest environment the following general types of uses:
 - a. Uses related to, and in support of, forest operations;
 - b. Uses to conserve soil, water and air quality and to provide for fish and wildlife resources, agriculture and recreational opportunities appropriate for the forest lands;
 - c. Locally dependent uses such as communication towers, mineral and aggregate resources use, etc.;
 - d. Forest management dwellings as provided for in Oregon Administrative Rule 660-06-027; and
 - e. Other dwellings under prescribed conditions. [PCCP Section 2, Element C, Policy 1.4]

(Staff Findings)

The Polk County Comprehensive Plan contains policies to allow those uses permitted under ORS Chapter 215, OAR 660-033, and OAR 660-006. As discussed in the subsection above, the proposed amendments to PCZO Chapter 136, 138, and 177 would be consistent with ORS, OAR, and the applicable case law. The standards for home occupations and CA/FUs are currently more restrictive than state law. The amendments proposed in Attachment A are intended to remove those aspects that are more restrictive than state law and reflect the wording in state law as closely as possible. The provisions for permitted use farm stands and the food service safe harbor are an effort to permit uses allowed under ORS 215 and OAR 660-033 through a more streamlined authorization process. The addition of single agri-tourism events would also directly authorize a use permitted under ORS 215.

The proposed amendments to the PCZO would be consistent with the PCCP policies to permit those uses allowed in ORS 215, OAR 660-033, and OAR 660-006. The application complies with this criterion.

(C) That the proposed change is in the public interest and will be of general public benefit; and [PCZO 115.060(C)]

(Staff Findings)

Farm Stands

The proposed amendments would allow farm stands that only use temporary structures, and that do not offer fee based activities, as outright permitted uses. This would be in the public interest and of general public benefit because it would allow farm operators to sell unprocessed or processed farm products and livestock, and limited incidental items, without the expense and delay of a land use permit. These farm stands would provide additional retail outlets for unprocessed and processed farm products.

If an applicant was to apply today for a farm stand that would comply with the proposed standards, an applicant would need to pay \$235, wait approximately 45 days for the application to be reviewed, noticed, and open for review during a 12 day appeal period. Further, the application would not contain any discretionary components, so staff would simply move the application through the process and include the farm stand standards as conditions of approval. The proposed outright permitted farm stand would avoid this cost and time delay and allow farm operators greater

flexibility to market their farm products and other unprocessed and processed farm products produced in Oregon. For these reasons, staff finds that the proposed farm stand amendments would be in the public interest and of general public benefit.

Home Occupations

The proposed amendment to the home occupation standards in the EFU, F/F, and TC zones would allow home occupations to be operated “substantially” within the dwelling on the property or other buildings normally associated with the zone. All of the remaining home occupation standards would remain unchanged. This proposal would allow for a limited amount of activity to occur outdoors, and would potentially allow for a greater variety of businesses to be established as home occupations. A home occupation would still require a conditional use permit, which offers neighboring property owners the opportunity to provide comments before the County makes a decision. Home occupations would remain limited to no more than five employees, and an applicant would need to demonstrate on a case by case basis how the proposal would “not force a significant change in, or significantly increase the cost of, accepted farming or forest practices on agriculture or forest lands.” Staff finds that the proposed amendments would allow for increased opportunity for property owners to operate home businesses while continuing to ensure protection for surrounding farm and forestry operations. The proposed amendments would; therefore, be in the public interest and of general public benefit.

Commercial Activities in Conjunction with Farm Use

The proposed amendments to the standards for CA/FUs would apply to the EFU and F/F zones. The proposed amendments would remove language from the PCZO that is currently more restrictive than state law. The amendments would remove the requirement that the subject farming operation supply a “portion” of the farm product. This would be in the public interest and of general public benefit because it would allow for increased business opportunities for property owners seeking to provide an agriculturally related service, such as a farm product processing facility, but who are not looking to actually raise a farm product. The proposed amendment would directly reflect ORS. An applicant would still need to address ORS 215.296, which protects surrounding farm and forestry operations. As discussed throughout the report, a CA/FU would also need to be consistent with *Craven* and any other applicable case law.

Single Agri-Tourism Events

This proposal would allow for single agri-tourism events to be permitted through a ministerial review process. This would be in the public interest and of general public benefit because it would allow property owners the flexibility to hold one agri-tourism event per year, while ensuring that the event would have a minimal impact on surrounding farm and forest operations. The event would have the limitations described in ORS 215.283(4)(b), which include restrictions on hours of operation and the number of permissible attendees.

Food Service “Safe Harbor”

The food service safe harbor would be in the public interest and of general public benefit because it would provide a streamlined application processes for those farm operations seeking to offer limited food service directly to the public. During this legislative process, the County will demonstrate how the safe harbor provisions would ensure that the authorized businesses would be CA/FUs. The public benefits from this process by gaining clearer and more objective standards for offering prepared food to the public. As a result, property owners would likely have less need to hire a land use attorney to file their application.

Based on the above findings, Staff concludes that the proposed changes to the PCZO are in the public interest and of general public benefit.

(D) Compliance with the provisions of any applicable intergovernmental agreement pertaining to urban growth boundaries and urbanizable land. [PCZO 115.060(D)]

(Staff Findings)

Polk County has adopted intergovernmental agreements (IGAs) with each of the cities that have urban growth boundaries (UGB) that extend outside of city limits and into Polk County's planning jurisdiction. These cities are Salem, Dallas, Monmouth, Independence, and Willamina. The Falls City UGB is entirely located within city limits; therefore, Polk County does not have an IGA regarding UGB land use management with Falls City. Those cities were notified of the Planning Commission and Board of Commissioner's public hearings on October 1, 2012. Staff has not received any comments from the cities as of the writing of this staff report.

The proposed amendments would apply to the EFU, F/F, and TC zones. Land within the UGBs is predominantly zoned Suburban Residential (SR). Only the City of Independence contains land that is zoned EFU in its UGB, and only the City of Dallas contains land that is zoned F/F in its UGB. There is no land zoned TC within a UGB in Polk County.

Section (12)(a) of the IGA between the City of Independence and Polk County stipulates that the County will provide the City an opportunity to comment on conditional use permit applications in the UGB. The uses that require conditional use approval subject to the proposed amendments, CA/FUs and home occupations, would still require land use review and the City of Independence would continue to be provided an opportunity to comment on those applications. The City would have the opportunity to comment on any applications within the UGB under the food service safe harbor. The uses modified through this legislative amendment process would be subject to all other applicable provisions of the IGA.

Article V, Section (1)(a) of the IGA between the City of Dallas and Polk County regarding management of the UGB stipulates that the City will provide the County recommendations on all land use applications. This would include home occupations, CA/FUs, and applications under the food service safe harbor. Uses established under the proposed single agri-tourism event or the outright permitted farm stand would not require a land use permit and would therefore not be reviewed by the City. A single agri-tourism event or farm stand that would be outright permitted would be limited to using temporary buildings or structures, such as a card tables or portable canopies. Temporary structures are not regulated under the City of Dallas – Polk County IGA.

Staff has not received any comments from the cities as of the writing of this staff report. Based on the findings discussed above, the proposed amendments to the PCZO would comply with all applicable IGAs.

IV. CONCLUSION

Based on the findings above, Staff concludes that the proposed amendments to the Polk County Zoning Ordinance would comply with all of the applicable review and decision criteria for a legislative amendment.

Exhibit B to Ordinance No. 13-04
Amendments to Polk County Zoning Ordinance Chapter 136;
Exclusive Farm Use (EFU) Zoning District

Polk County Zoning Ordinance Chapter 136; Exclusive Farm Use Zone, shall be amended as follows. Additions to text are double underlined and deletions are depicted in ~~strike through~~. All headings and sub-heading numbers or letters and internal section references shall be amended as necessary to reflect the amendments provided below.

The table provided under PCZO 136.020 shall be amended to add references to the following commercial use. The table shall also be amended as appropriate to reflect the other text changes that would result from passage of this ordinance.

COMMERCIAL	HV	OTHER	PCZO
Food Service Safe Harbor	<u>CUP</u>	<u>CUP</u>	<u>050(J)</u>

The following amendments shall be made to PCZO Section 136.050; Conditional Uses:

- (J) Commercial Activity in Conjunction with Farm Use – Food Service Safe Harbor [ORS 215.283(2)(a)]. Food service shall be considered a commercial activity in conjunction with farm use where the food service operation complies with the general review standards under Section 136.060 and the following standards and conditions:
- (1) Each menu item shall incorporate and feature an unprocessed or processed farm product(s) produced by the subject farming operation.
 - (a) For the purposes of this section, a farm product is “featured” in a menu item if the menu item places an emphasis on the flavors of the farm product.
 - (b) For the purposes of this section, “processed farm product(s)” includes jams, syrups, apple cider, wine, animal products and other similar farm crops and livestock that have been processed from farm products grown on the subject farm operation and converted into another product either by the subject farming operation or by an off-site processing facility.
 - (2) The featured unprocessed or processed farm product(s) described in subsection (1) shall be offered for retail sale where the food service is offered.
 - (3) At least 25% of food input value, or 50% by weight of raw ingredients, of menu items offered by the food service operation shall be attributed to the farm products (prior to processing) produced by the subject farming operation.
 - (4) The size of the public seating area shall not exceed 500 square feet. The food service operation shall be operated substantially within a building.
 - (5) The food service operation shall be located on the subject farming operation and operated by the owner(s) or employee(s) of the subject farm operation.
- [Amended by Ordinance 13-04]

Exhibit C to Ordinance No. 13-04
Amendments to Polk County Zoning Ordinance Chapter 138;
Farm/Forest (FF) Zoning District

Polk County Zoning Ordinance Chapter 138; Farm/Forest (FF) Zoning District shall be amended as follows. Additions to text are double underlined and deletions are depicted in ~~strikethrough~~. All headings and sub-heading numbers or letters and internal section references shall be amended as necessary to reflect the amendments provided below.

The table provided under PCZO 138.030 shall be amended to add references to the following commercial use. The table shall also be amended as appropriate to reflect the other text changes that would result from passage of this ordinance.

COMMERCIAL	AUTHORIZATION	PCZO
<u>Food Service Safe Harbor</u>	<u>CUP</u>	<u>060(I)</u>

The following amendments shall be made to PCZO Section 138.060; Conditional Uses:

- (I) Commercial Activity in Conjunction with Farm Use – Food Service Safe Harbor. [ORS 215.283(2)(a)]. Food service shall be considered a commercial activity in conjunction with farm use where the food service operation complies with the general review standards under Section 138.100(A) and the following standards and conditions:
- (1) Each menu item shall incorporate and feature an unprocessed or processed farm product(s) produced by the subject farming operation.
 - (a) For the purposes of this section, a farm product is “featured” in a menu item if the menu item places an emphasis on the flavors of the farm product.
 - (b) For the purposes of this section, “processed farm product(s)” includes jams, syrups, apple cider, wine, animal products and other similar farm crops and livestock that have been processed from farm products grown on the subject farm operation and converted into another product either by the subject farming operation or by an off-site processing facility.
 - (2) The featured unprocessed or processed farm product(s) described in subsection (1) shall be offered for retail sale where the food service is offered.
 - (3) At least 25% of food input value, or 50% by weight of raw ingredients, of menu items offered by the food service operation shall be attributed to the farm products (prior to processing) produced by the subject farming operation.
 - (4) The size of the public seating area shall not exceed 500 square feet. The food service operation shall be operated substantially within a building.
 - (5) The food service operation shall be located on the subject farming operation and operated by the owner(s) or employee(s) of the subject farm operation.
- [Amended by Ordinance 13-04]