

Emerging Issues Under Oregon Right to Farm Law

Mary Anne Cooper
Vice President of Public Policy
Oregon Farm Bureau Federation

January

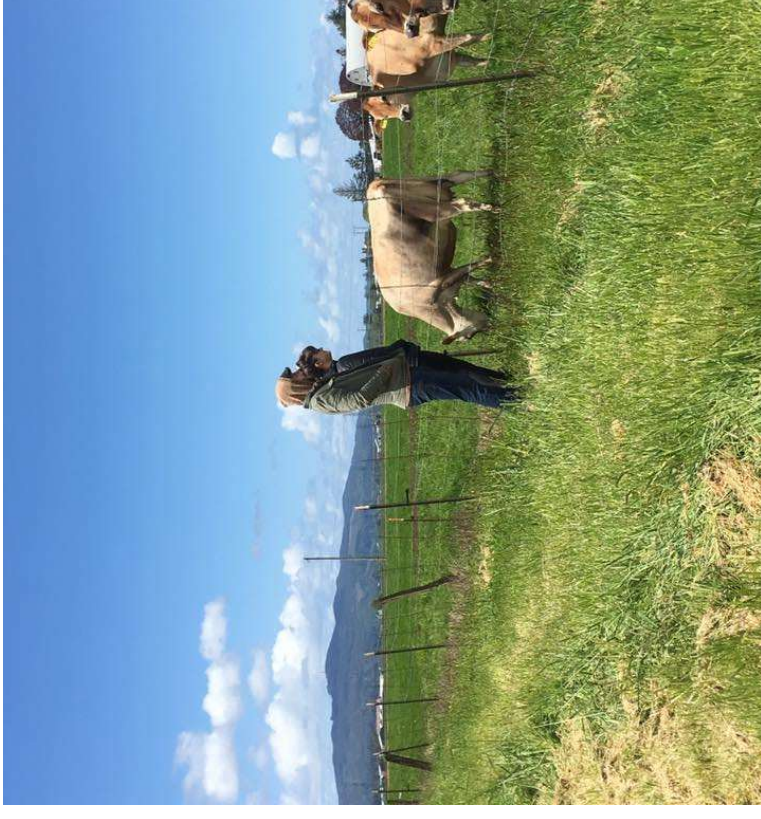


What is Right to Farm and Forest

- Oregon's right to farm laws exist to protect farming practices from nuisance/trespass complaints or local government regulation/nuisance/trespass.
- It has limited application and only protects practices in certain circumstances.
- It is closely tied to land use and zoning.
- It is usually not the only law in play in a situation (i.e. zoning, preemptive, etc)
- It also does not allow farmers to cause damage to each other's operations.

Oregon Right to Farm

- Oregon Right to Farm Consists of two elements:
 - Prohibition on local law that makes farming practice a nuisance or trespass
 - Immunity from trespass and nuisance lawsuits

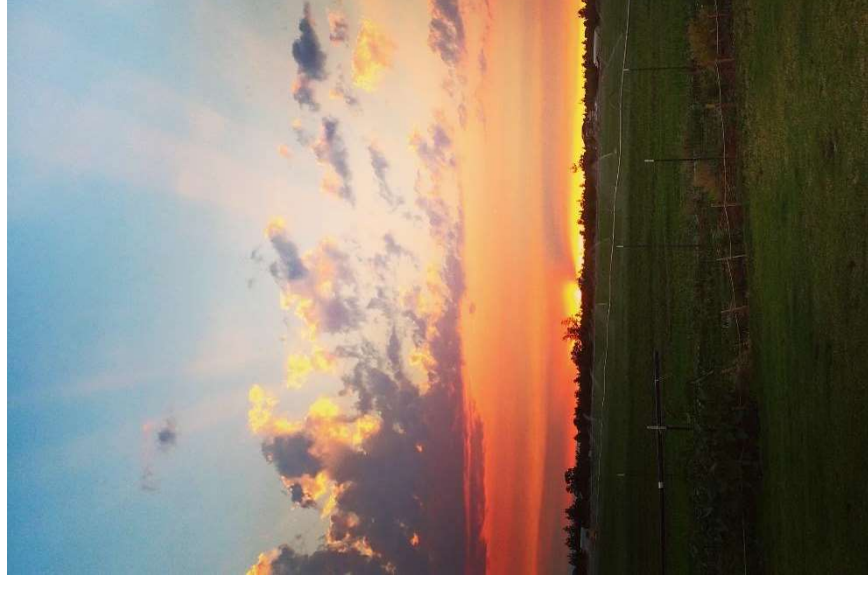


Right to Farm: Definition of Farming Practice

- Farming Practice is defined as:
 - A mode of operation on a farm that:
 - Is or may be used on a farm of a similar nature;
 - Is a generally accepted, reasonable, and prudent method for the operation of the farm to obtain a profit in money (or may become generally accepted);
 - Complies with applicable laws; and
 - Is done in a reasonable or prudent manner.
- ORS 30.930

Right to Farm: Local Laws

- Right to farm prohibits local governments and special districts from adopting regulations or ordinances that make farm practices a nuisance or trespass (ORS 30.935)
- Applies on lands zoned for farm use.
- Practical Examples:
 - Noise or odor ordinances
 - Light (cannabis)
 - Genetically engineered crops (Jackson Co. Case)



Right to Farm: Immunity from S

- No farm practice on lands zoned for farm use shall give rise to a private right of action or claim for relief based on nuisance or trespass (ORS 30.936)
- Definition of farming practice key
 - Practice must be reasonable (goose cannon example)
 - Practice must comply with applicable laws (drift example/cannon question)
- Exception for damage to commercial agricultural product and serious injury
- Prevailing party fees (ORS 30.938)

Land Use Basics

- Oregon's land use laws allow "farm uses" outright in farm zones, meaning that no land use approval is required to engage in them on farmland.
 - "Farm use" means the current employment of land for the primary purpose of obtaining a profit in money by raising, harvesting and selling crops
 - "Farm use" includes the preparation, storage and disposal by a person of products or by-products raised on such land for human or animal use
 - Processing crops usually requires local land use approval, except for processing operations.
- There have been recent issues around whether a farm is "for profit" (a hobby farm) and whether a use is preparation or processing (hay production).

Land Use Basics

- Zoning is critical for a number of laws:
 - Tax status (farm use assessment)
 - Fill and removal exemptions
 - Water quality
 - Right to farm
- Under land use law, ORS 215.253 prevents state agencies and governments from imposing restrictions or regulations on uses located on lands zoned for exclusive farm use, *with a and safety exception.*

What Happens Outside the Farm Z

- Right to farm protects farming practices allowed as “a preexisting nonconforming use” from nuisance and trespass lawsuits.
- **Only where the farm practice existed before the conflicting nonconforming use and**
- **Only where the practices has not increased in size or intensity since either 1993 or the date the property was brought into the UGB, whichever is later.**
- Still has an exemption for damage to commercial ag production.
- Preemption may still prohibit the regulation.

What is not protected?

- Only applies to nuisance and trespass lawsuits and local government regulation of nuisance and trespass
- Cannot cause damage to your neighbor's ag products
- Definition of farming practice key
 - Practice must be reasonable
 - For example, firing a goose cannon every 5 minutes may not be reasonable
 - Practice must comply with applicable laws
 - Off-site drift is not legal
 - Question has arisen about cannabis – does applicable laws include federal
 - Watch for required permits – for example, irrigation requires a water right

Recent Right to Farm/Forest Co

- Genetically Engineered Crops (Local Ordinance)
- Pesticides (Private Lawsuit/Local Ordinance)
- Cannabis and Wine (Private Lawsuit)
- Cannabis (Local Ordinance)

Other Laws that Interact with R

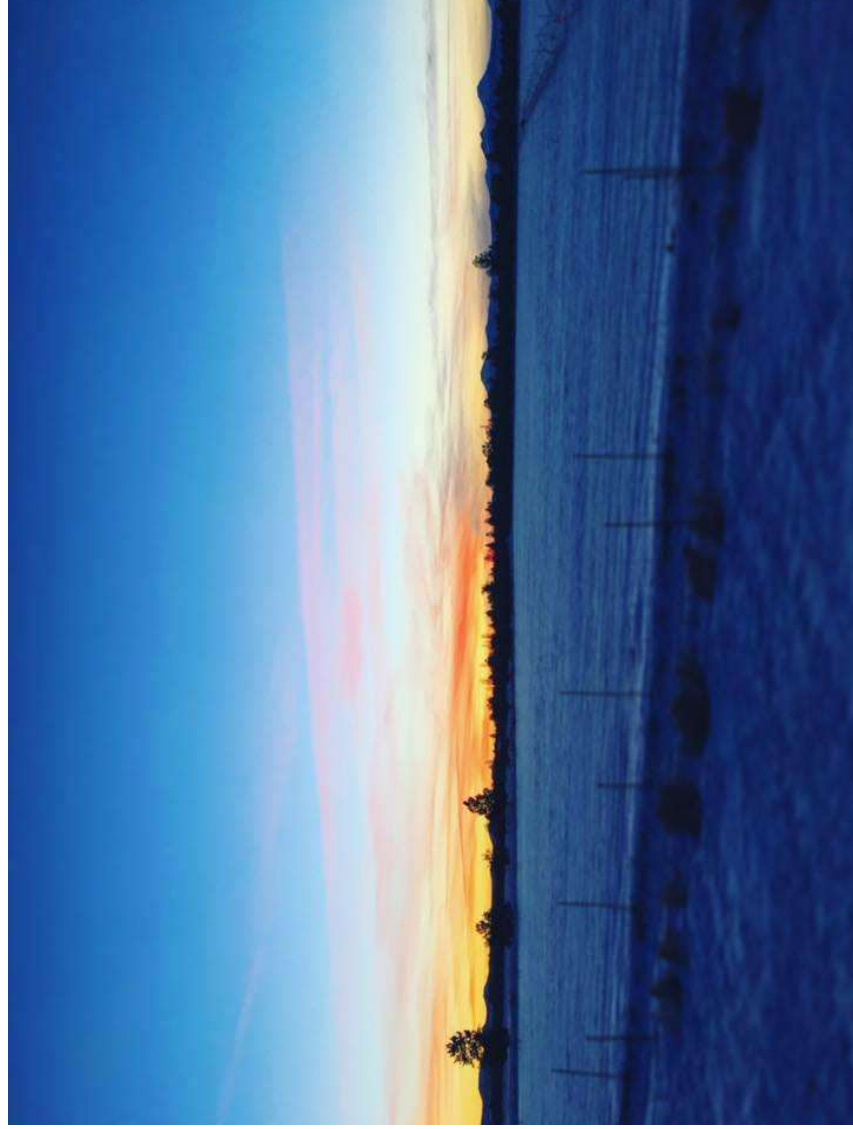
- Pesticide Preemption
- Seed Preemption
- Other State or Federal Laws
- Zoning Regulations

Right to Farm in the Legislature

- 2015 Legislative Session
 - Cannabis designated a crop, largely for purposes of right to farm
- 2017 Legislative Session
 - Efforts to change right to farm to alter how pesticide claims are viewed
- Future Sessions?



Questions?



Mary Anne Cooper
Oregon Farm Bureau
(541) 740-4062
maryanne@oregonfb.org