



Lisa Estrin <lisa.m.estrin@multco.us>

comment on T2-2021-14981

1 message

Carol Chesarek <chesarek4nature@earthlink.net>
To: Lisa Estrin <lisa.m.estrin@multco.us>

Thu, Apr 21, 2022 at 3:54 PM



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Hi Lisa,

Here are my comments. Thank you for answering my questions and providing the additional files.

Carol



CLC Letter to Mult Co re 12424 NW Springville dwelling permit application 042122.docx
2264K

Carol Chesarek
13300 NW Germantown Road
Portland, OR 97231

April 21, 2022
Ms. Lisa Estrin, Senior Planner
Multnomah County Land Use Planning
1600 SE 190th Avenue
Portland, OR. 97231

Submitted by e-mail:
lisa.m.estrin@multco.us

Re: Case File T2-2021-14981
12424 NW Springville Road

Dear Ms. Estrin:

Multnomah County Code requirements...

Multnomah County Code 39.4265 (B) (3) (f), (g)

- (B) Customary Farm Dwelling.** A dwelling is not allowed unless (on)
- (3) Not high-value farmland soils, capable of producing the median level of annual gross sales. On land not identified as high-value farmland a dwelling may be considered customarily provided in conjunction with farm use if:
 - (f) The dwelling will be occupied by a person or persons who will be principally engaged in the farm use of the land, such as planting, harvesting, marketing or caring for livestock, at a commercial scale; and
 - (g) If no farm use has been established at the time of application, land use approval shall be subject to a condition that no building permit may be issued prior to the establishment of the farm use required by subsection (c) of this section.
- (Subsection (c) requires annual gross sales as defined by subsection (a) and (b), that the subject tract is as large as farm tracts within one mile that are capable of producing \$10,000 in annual gross sales.)

Earlier this year, the county Board of Commissioners voted to remove this specific Customary Farm Dwelling provision from our code. In the staff report to the county Planning Commission regarding the proposed change (STAFF REPORT FOR THE PLANNING COMMISSION HEARING JUNE 7, 2021, pages 6 and 7) staff described the county's inability to provide current (and therefore accurate) data for determining annual gross sales of indicator crops specific to Multnomah County:

County provision MCC 39.4225(C) / MCC 39.4265(B)(3) –“Option 3” – underlined above implements OAR 660-033-0135(2) addressing a scenario where a farm tract is not primarily composed of high value farmland soils and is not actively being farmed, but is proven capable of producing at least the median level of annual gross sales of indicator crops specific to Multnomah County.

To make that provision available for use by applicants, a county must conduct a study to determine the estimated potential gross sales per acre for properties within one mile of the subject property. The table produced as a result of that study must be approved by the Department of Land Conservation and Development and is valid for a period of four years. Likely because of the resource burden placed on counties to conduct the required gross sales study, Oregon counties are not required to provide for this specific farm dwelling use and staff understand that few Oregon counties have adopted these optional provisions.

For those counties that have adopted this optional provision, the OARs prescribe a specific process for conducting the necessary study, which begins with a county identifying three “indicator crop types * * * using the most recent OSU Extension Service Commodity Data Sheets, Report No. 790, ‘Oregon County and State Agricultural Estimates,’ or other USDA/Extension Service documentation.” OAR 660-033-0135(2)(c)(A). However, Oregon State University no longer produces the cited agricultural indicator crop reports. While the OARs reference data from other USDA/Extension Service documentation as an acceptable alternative, the USDA statistician for this area recently communicated to county staff that federal budget reductions have resulted in data collection for certain crops being eliminated, and reporting intervals reduced from once a year to once every five years. Therefore, the information 7 required for counties to implement this provision effectively is no longer available, making it difficult for staff to provide guidance to applicants or otherwise implement this provision.

Earlier today, I received the information that the county compiled for this applicant (Gross Sales Multnomah County Ag Land 01-13-2014.xlsx) in 2014. The crop data used is from 2008 through 2012, so some of the data is 14 years old now and certainly out of date. Today new high value crops are being grown, such as marijuana, that weren’t legal in 2012. Crop values have gone up and down, varying significantly since 2008.

There is national data available for some local crops, which shows the high variability of wheat and hay/alfalfa prices. Some of this information is included in an endnote¹. This data shows that even a rolling 5-year average for crop value will vary greatly depending on the particular 5 years used. To achieve an accurate crop valuation, recent data is essential, but current data is no longer available for indicator crops in Multnomah County. The most recent data appears to be from 2012, and calculations use data back through 2008. The county should not permit new farm dwellings based on data that is 15 years old.

When the county adopted this code provision, they left themselves discretion about whether to allow dwellings using this median value of annual gross sales by keeping the word “may”:

Multnomah County Code 39.4265

(B) **Customary Farm Dwelling:** A dwelling is not allowed unless (on)

(3) Not high-value farmland soils, capable of producing the median level of annual gross sales. On land not identified as high-value farmland a dwelling **may** be considered customarily provided in conjunction with farm use

This allows the county the flexibility to decide that it would be inappropriate to grant a dwelling permit based on crop sales data that is extremely out of date.

In the state land use scheme, legislators can require that certain uses must be allowed if certain rules are met. In this case they use "shall," meaning shall be allowed as written in the ORS or OAR. Counties must comply to allow these uses.

In other cases, legislators use the word "may" meaning that the counties have the option of adopting or declining to allow the use in their local code. Such is the case here. Multnomah County (one of just a few counties across the state) chose to include this farm dwelling option, though they were not required to do so.

Now the interesting part: When a county chooses to take the option, they typically change the language to “shall” in their local code, meaning that in this county the use must be allowed if it meets the standards. However, Multnomah County chose not to change the wording, so it has the effect of making it optional for the county to approve an application, for example because there is no current data to use in making an accurate determination of whether the application complies with the intent of the provision.

I can't find any explanation of what data was used in the applicant's annual gross sales calculations shown in Table 2 Potential Earning Capacity for Each Tract in their Narrative (Exhibit A.x – Narrative with Applicable Code Sections, page 11), what indicator crops were included in that valuation, or how the calculations were done. The values shown for Gross Sales Per Acre by Tract (Class 2=484.11, Class 3 = 397.66, Class 4 = 203.89, Class 6 = 103.74) don't appear to match the values in the County's spreadsheet based on crop data from 2008-2012, or in the February 2014 consultant report included in the application materials (Exhibit A.x – February 2014 Farm Income Study, Table 3 on pages 8 and 9). The February 2014 consultant's report uses only 3 indicator crops (it does not use Small Fruits and Berries) and shows values of Class 2 = 807.56, Class 3 = 663.36, Class 4 = 288.42, and Class 6 = 173.05, also based on crop data from 2008 – 2012.

It also isn't clear if the proper procedure for calculating the annual gross sales of the indicator crops was done properly. OAR 660-033-0135² calls for using 3 dry indicator crops and 3 irrigated indicator crops. Only three indicator crops were included in the February 2014 Consultant's report, though. The county calculations appear to include 3 irrigated and 1 dry

indicator crops. There is no explanation of why 6 indicator crops were not used (3 dry and 3 irrigated), or why small fruits & berries, or greenhouse and nursery crops were not used as indicator crops.

A March 3, 2015 Memorandum from CSA Planning, Ltd. to Lindsey Nesbitt, Multnomah County Senior Planner, on the subject of Farm Capability Numbers recommends using Small Fruit and Berry as an indicator crop:

Three crop types are recommended as indicators for the irrigated crop category. The three crop types are Grains, Grass and Legume Seed, and Small Fruit and Berry. These are the three with the highest reported acreage.

The applicant, Scott Reed, also doesn't appear to be currently "principally engaged in the farm use of the land". Scott Reed's has a company, Reed Development Partners <https://reedcommunity.com/> which is engaged in development projects all over the United States. This language doesn't allow for someone to start principally farming the land in the future, it requires current principal engagement in the farm use of the land.

The Narrative provided by the applicant (Exhibit A.x – Narrative with Applicable Code Sections, page 12) describes the sale of eggs as the principal current farm activity (there is no value put on the sale of any goats mentioned). It says that their hens produce 40,000 eggs per year which are collected, cleaned, inspected, packaged, refrigerated, and delivered each week to residential and commercial customers.

Oregon requires egg handling licenses for commercial egg sales. I searched for egg handling licenses for the Reed property on April 20, 2022. No Oregon Department of Agriculture egg handling license shows up under Springville Road or Springwood Acres, or under the name of Reed (screenshots are attached in an endnote³. I am confused about how the Reeds can be legally selling their eggs to commercial buyers without this license.

I also couldn't find any information advertising the Reed's residential sales on Next Door, Facebook, Craig's List, the TriCountyFarms or Local Harvest sites for finding fresh eggs/produce, or the Multnomah County Farm Bureau map of farm sales. There are no signs up on the periphery of the property advertising eggs for sale.

For a large scale egg operation, this appears odd and seems to undermine the argument that Scott Reed is "principally engaged in the farm use of the land" – if he was, we suspect that there would be an egg handler's license associated with him or with his farm, and that I could figure out how to purchase some of those pasture raised eggs.

The Reeds have owned this property since 2014. If they were serious about farming, they could have established livestock and crops by now. They could have a mature orchard. The lot the home is planned for is zoned EFU. Given the size of the property, they could easily be earning

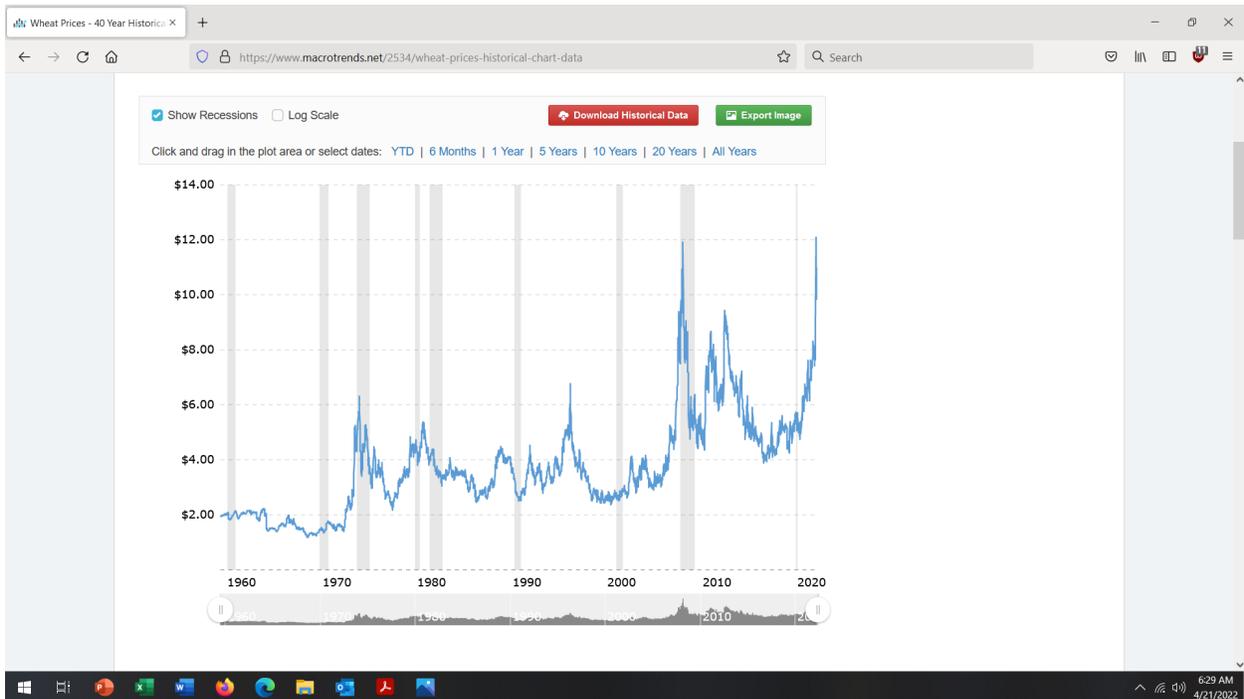
enough farm income to qualify for a farm dwelling under other code sections today. Instead, they have brought in thousands of truckloads of fill (much of which was poor quality) over many years, built roads for the fill trucks, but only recently started actual farming on the property. It looks very much as if the relatively recent farming activity is simply being used to justify building an extremely large house with a view on valuable farmland, and I am concerned about whether any farming will continue after a dwelling permit has been granted by the county.

I hope the county will take a close look at this application, particularly in the areas noted.

Thank you.

Carol Chesarek

¹ Prices for crops such as wheat and hay are notoriously volatile, as can be seen on these charts of Historical Annual prices for wheat in US dollars per bushel from MacroTrends.net (captured 4/20/22 and 4/21/22):



Wheat Prices - 40 Year Historical

https://www.macrotrends.net/2534/wheat-prices-historical-chart-data

Wheat Prices - Historical Annual Data

Year	Average Closing Price	Year Open	Year High	Year Low	Year Close	Annual % Change
2022	\$9.3308	\$7.5800	\$12.9400	\$7.4150	\$10.9900	42.59%
2021	\$7.0402	\$6.4200	\$8.5600	\$6.0175	\$7.7075	20.34%
2020	\$5.4980	\$5.6025	\$6.4075	\$4.7470	\$6.4050	14.63%
2019	\$4.9414	\$5.0675	\$5.5875	\$4.2475	\$5.5875	11.03%
2018	\$4.9757	\$4.3350	\$5.7450	\$4.1650	\$5.0325	17.86%
2017	\$4.4014	\$4.0650	\$5.6000	\$4.0225	\$4.2700	4.66%
2016	\$4.3945	\$4.5825	\$5.1950	\$3.8065	\$4.0800	-13.19%
2015	\$5.0836	\$5.8150	\$6.1555	\$4.6525	\$4.7000	-20.27%
2014	\$5.8908	\$5.9700	\$7.3900	\$4.7400	\$5.8950	-2.60%
2013	\$6.8608	\$7.5525	\$7.9125	\$6.0050	\$6.0525	-22.20%

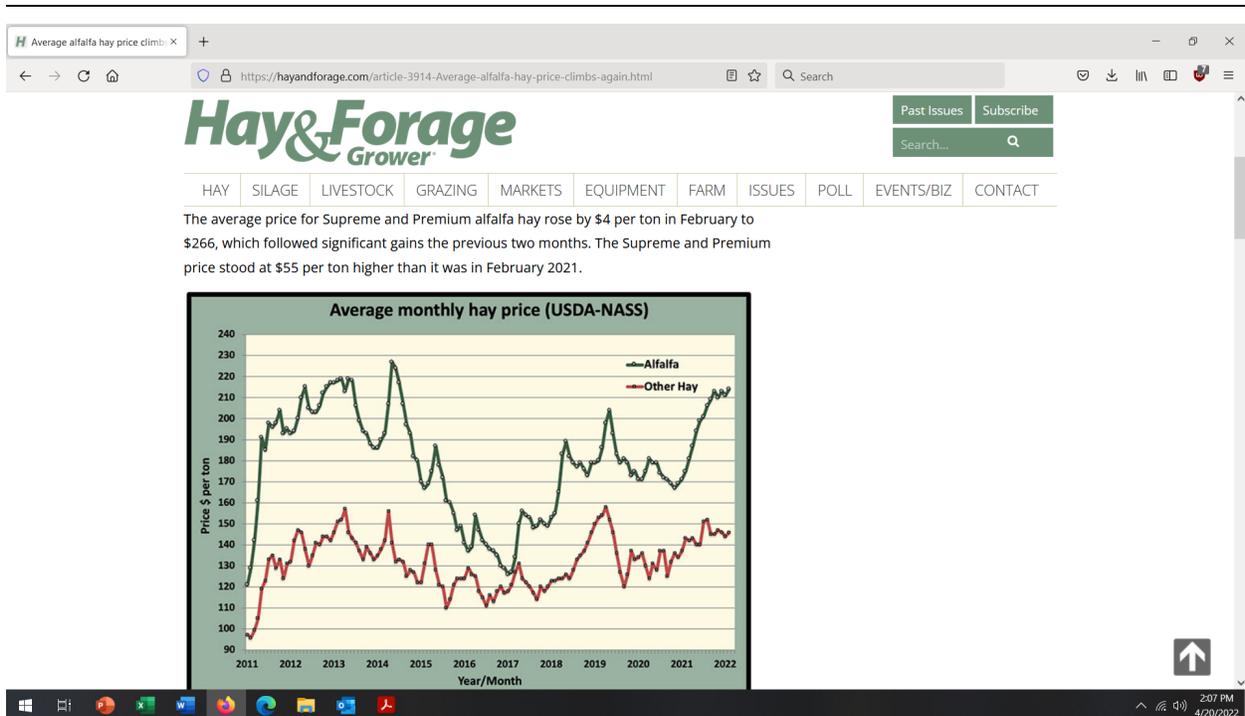
Related Charts

Wheat Prices - 40 Year Historical

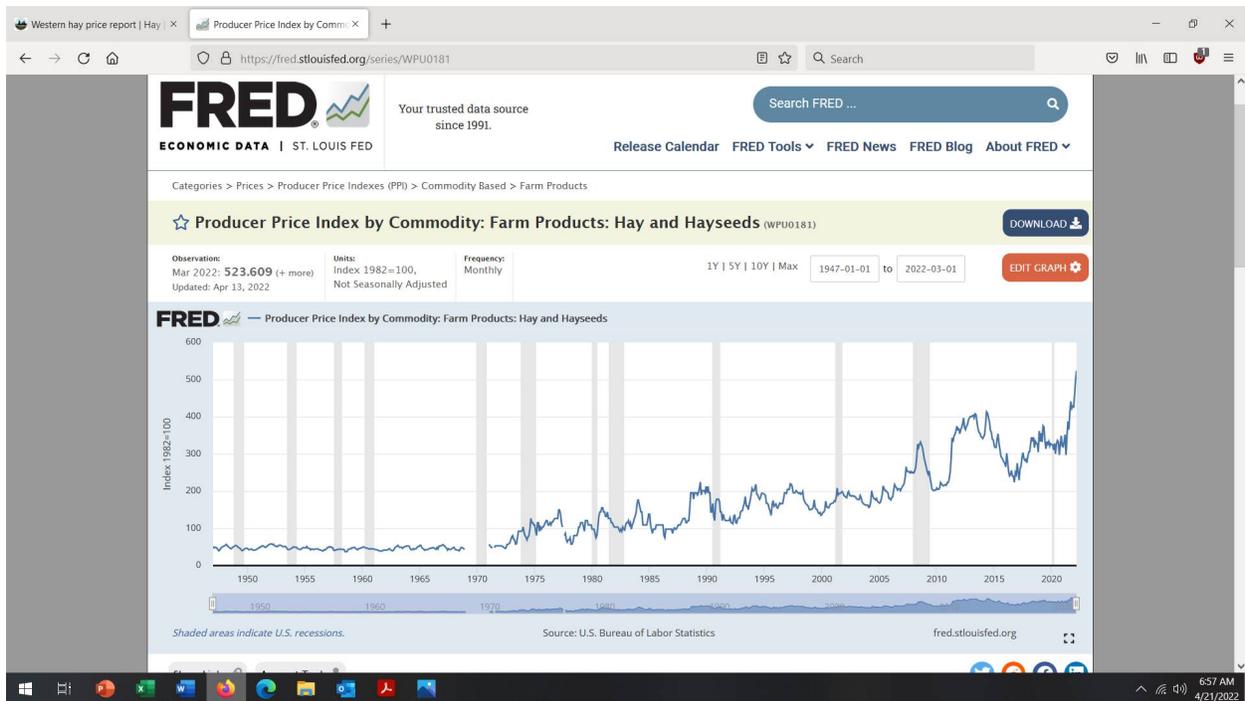
https://www.macrotrends.net/2534/wheat-prices-historical-chart-data

2013	\$6.8608	\$7.5525	\$7.9125	\$6.0050	\$6.0525	-22.20%
2012	\$7.5412	\$6.5700	\$9.4325	\$5.9225	\$7.7800	19.19%
2011	\$7.1443	\$8.0550	\$8.8600	\$5.7740	\$6.5275	-17.82%
2010	\$5.8712	\$5.5775	\$7.9925	\$4.2800	\$7.9425	46.68%
2009	\$5.3381	\$6.1100	\$6.7450	\$4.4125	\$5.4150	-11.34%
2008	\$7.9908	\$9.1500	\$12.8250	\$4.7550	\$6.1075	-30.99%
2007	\$6.4086	\$5.0100	\$9.7950	\$4.1900	\$8.8500	76.65%
2006	\$4.0607	\$3.4600	\$5.4250	\$3.2250	\$5.0100	47.68%
2005	\$3.2152	\$3.0225	\$3.6800	\$2.8775	\$3.3925	10.33%
2004	\$3.4785	\$4.0575	\$4.2275	\$2.9510	\$3.0750	-18.44%
2003	\$3.3615	\$3.2875	\$4.1475	\$2.7925	\$3.7700	16.00%
2002	\$3.2541	\$2.9200	\$4.2200	\$2.6125	\$3.2500	12.46%
2001	\$2.7417	\$2.7625	\$2.9550	\$2.4575	\$2.8900	3.40%

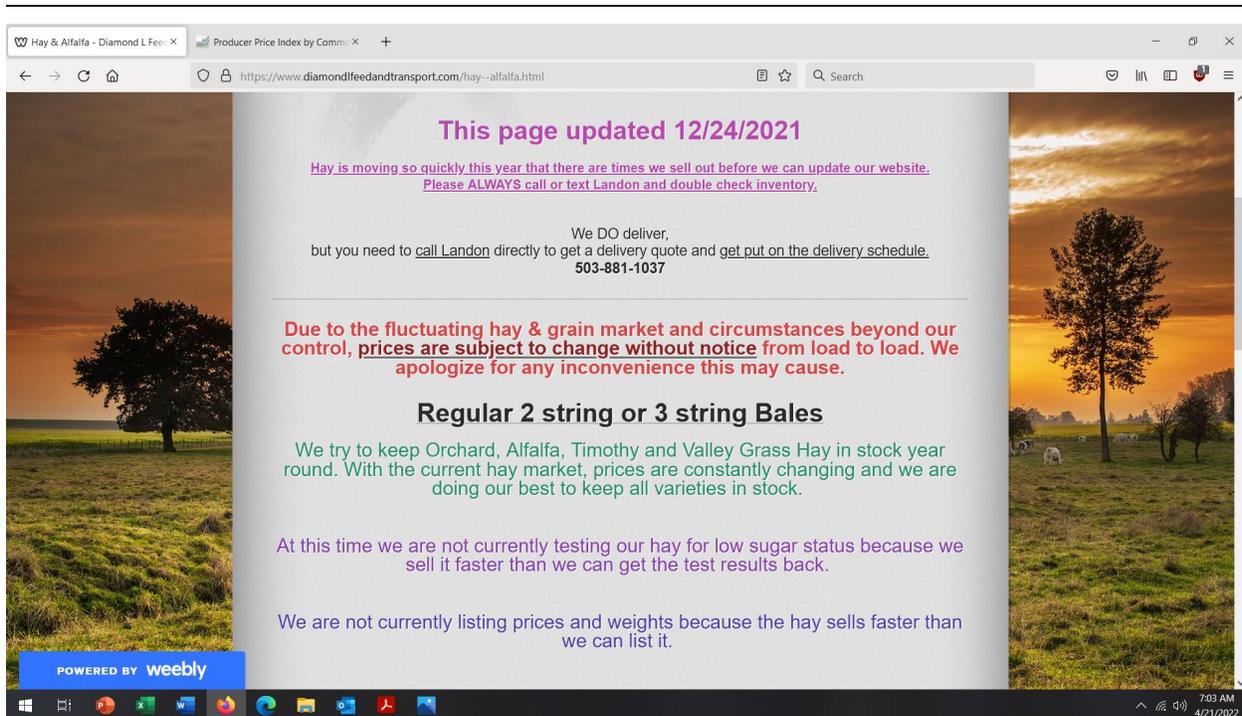
You can also see the high variability of alfalfa hay prices in this graph from Hay & Forage Grower <https://hayandforage.com/article-3914-Average-alfalfa-hay-price-climbs-again.html> captured 4/20/22:



Here is more data for hay and hayseeds from <https://fred.stlouisfed.org/series/WPU0181>



And we can see from the web page of Diamond Feed and Transport in Scio that hay prices are currently very high and volatile due to limited supply:



This data shows that even a rolling 5-year average for crop value will vary greatly depending on the particular 5 years used. For an accurate calculation, recent data is essential, but current data is no longer available for indicator crops in Multnomah County.

² OAR 660-033-0135

Rule 660-033-0135 Dwellings in Conjunction with Farm Use

(2)(c)

In order to review a farm dwelling pursuant to subsection (2)(a) of this section, a county may prepare, subject to review by the director of the Department of Land Conservation and Development, a table of the estimated potential gross sales per acre for each assessor land class (irrigated and nonirrigated) required in subsection (2)(b) of this section. The director shall provide assistance and guidance to a county in the preparation of this table. The table shall be prepared as follows:

(A)

Determine up to three indicator crop types with the highest harvested acreage **for irrigated and for nonirrigated lands** in the county using the most recent OSU Extension Service Commodity Data Sheets, Report No. 790, "Oregon County and State Agricultural Estimates," or other USDA/Extension Service documentation;

(B)

Determine the combined weighted average of the gross sales per acre for the three indicator crop types for irrigated and for nonirrigated lands, as follows:

(i)

Determine the gross sales per acre for each indicator crop type for the previous five years (i.e., divide each crop type's gross annual sales by the harvested acres for each crop type);

(ii)

Determine the average gross sales per acre for each crop type for three years, discarding the highest and lowest sales per acre amounts during the five-year period;

(iii)

Determine the percentage each indicator crop's harvested acreage is of the total combined harvested acres for the three indicator crop types for the five year period;

(iv)

Multiply the combined sales per acre for each crop type identified under subparagraph (ii) of this paragraph by its percentage of harvested acres to determine a weighted sales per acre amount for each indicator crop; and

(v)

Add the weighted sales per acre amounts for each indicator crop type identified in subparagraph (iv) of this paragraph. The result provides the combined weighted gross sales per acre.

(C)

Determine the average land rent value for irrigated and nonirrigated land classes in the county's exclusive farm use zones according to the annual "income approach" report prepared by the county assessor pursuant to [ORS 308A.092 \(Determining value for farm use\)](#); and

(D)

Determine the percentage of the average land rent value for each specific land rent for each land classification determined in paragraph (C) of this subsection. Adjust the combined weighted sales per acre amount identified in subparagraph (B)(v) of this subsection using the percentage of

average land rent (i.e., multiply the weighted average determined in subparagraph (B)(v) of this subsection by the percent of average land rent value from paragraph (C) of this subsection). The result provides the estimated potential gross sales per acre for each assessor land class that will be provided to each county to be used as explained under paragraph (2)(b)(C) of this section.

3

The screenshot shows a web browser window displaying the Oregon Department of Agriculture's search results page. The page title is "Search Food Safety Licenses". The search criteria are: Address: SPRINGVILLE ROAD, City: PORTLAND, County: MULTNOMAH, License Type: ALL FSD LICENSES. The results section states "There are no records that match your search query." The footer includes the Oregon Department of Agriculture contact information: 635 Capitol ST NE Salem OR 97301, Email: info@oda.state.or.us, and Phone: (503) 986-4550.

The screenshot shows a web browser window displaying the Oregon Department of Agriculture's search results page. The page title is "Search Food Safety Licenses". The search criteria are: Name: SPRINGWOOD ACRES, City: PORTLAND, County: MULTNOMAH, License Type: ALL FSD LICENSES. The results section states "There are no records that match your search query." The footer includes the Oregon Department of Agriculture contact information: 635 Capitol ST NE Salem OR 97301, Email: info@oda.state.or.us, and Phone: (503) 986-4550.

Search Food Safety Licenses

Searched For:
Name: REED
County: MULTNOMAH
License Type: ALL FSD LICENSES

Results 1 - 3 of 3

Name Mailing City Mailing County or Country	Doing Business As Location City Location County	License Description Status/Expiration
BTE REED LLC LAKEWOOD CO 80226 Jefferson	FLOYDS FINE CANNABIS REED PORTLAND OR 97202 Multnomah	Cannabis Retail Food Establishment Active 06/30/2022
ROBERT RUSSELL REED PORTLAND OR 97221 Multnomah	ROBERT RUSSELL REED PORTLAND OR 97221 Multnomah	HTST Pasteurizer Operator Active 06/30/2023
REEDER BEACH RESORT STORE PORTLAND OR 97231 Multnomah	REEDER BEACH RESORT STORE PORTLAND OR 97231 Multnomah	Retail Food Establishment Active 06/30/2022