

Oregon Court of Appeals restricts short-term rentals of farm dwellings

By MATEUSZ PERKOWSKI
Capital Press

Houses in Oregon farm and forest zones can't be used for short-term rentals without an analysis of potential agricultural impacts, according to the state's Court of Appeals.

The appellate court has rejected rules enacted by Clackamas County, which allowed farm and forest dwellings to be used for Airbnb and similar short-term rental services.

Short-term rentals have come under fire for potentially interfering with agricultural activities and inflating the price of rural properties, but they've also allowed many farmers to diversify their incomes.

"We are sharing our property with strangers. That's not always comfortable, but that's how we can fix our tractors," said Scottie Jones, an Oregon sheep farmer and founder of the U.S. Farm Stay Association.

In 2020, Clackamas County updated its zoning regulations to require registration and other parameters for short-term rentals, but otherwise allowed temporary lodging in dwellings in farm and forest "resource" zones.

The county reasoned that dwellings remain dwellings whether they're occupied on a long- or short-term basis, so rentals don't change a residential house's fundamental nature.

The Court of Appeals has disagreed with the county's "contention that short-term rental is indistinguishable from the ordinary residential use of a dwelling," upholding a decision by the state's Land Use Board of Appeals.

Houses that are used by "groups of strangers who occupy a building in a transitory way" exceed the ordinary use of a dwelling, and thus cannot be allowed outright in farm and forest zones, the appellate court said.

"We are not persuaded by the county's contention that the nature of the use of a dwelling remains as a residential one, and as originally approved or established in the resource zone, when it is used as a short-term rental," the ruling said.



Mateusz Perkowski/Capital Press

Scottie Jones, an Oregon sheep farmer, founded the U.S. Farm Stay Association. Jones said she doesn't disagree with an Oregon Court of Appeals ruling that restricts short-term rentals of farm dwellings, but wishes land use criteria were more consistent.

Properties in "resource" zones are intended for farm and forest uses. Exceptions have to meet the "farm impacts test" and obtain conditional use permits, the ruling said. Under this test, non-farm uses cannot force significant changes to agricultural practices or significantly increase their cost.

These land use rules undermine the county's argument that short-term rentals of dwellings aren't subject to conditional use requirements, the ruling said.

It's likely that farm and forest dwellings can still be used for short-term rentals as long as they're permitted as home occupations, said Mary Kyle McCurdy, deputy director of 1,000 Friends of Oregon, a farmland preservation group that opposed the county's regulations.

"That is still a potential opening," she said, though the Court of Appeals did not expressly reach that conclusion.

Though 1,000 Friends of Oregon doesn't agree with all the activities permitted as "home occupations," the organization hasn't objected to temporary lodging being permitted this way if it's

not detrimental to agriculture, McCurdy said.

Home occupation permits are already used by farmers to provide lodging, but the land use rules aren't consistent across the state, said Jones, founder of the U.S. Farm Stay Association.

"The counties really do treat this differently," she said.

Jones said she has no problem with "farm stays" being required to meet the farm impacts test, to have the farmer live on-site or even to provide an educational component.

Such rules can assure farm stays remain authentic and aren't exploited by "investors coming in with frat parties," she said.

Short-term rentals have proven controversial when absentee landowners rent out properties for gatherings and events that neighbors find disruptive.

While concerns have been raised about "hotels" on farmland, it should be recognized that farm stays help agricultural operations become more financially resilient, Jones said.

Biden administration supports rejection of Proposition 12

By CAROL RYAN DUMAS
Capital Press

The Biden administration has filed an amicus brief in the U.S. Supreme Court in support of an appeal by National Pork Producers Council and American Farm Bureau Federation ahead of the court's review of California's Proposition 12.

Prop 12 seeks to ban the sale of uncooked pork from pigs that do not meet what the petitioners call the state's arbitrary production standards. That ban includes pork from pigs raised on farms outside of California.

The administration's brief calls for the reversal of the 9th U.S. Circuit Court of Appeals ruling in July 2021 upholding a lower court's ruling against the groups' challenge to the measure.

Approved by California voters in 2018, Prop 12 establishes minimum space requirements for breeding pigs, calves raised for veal and egg-laying hens within the state. It also bans the sale of pork, veal and eggs from animals raised elsewhere if their living conditions don't meet California's standards.

National Pork and Farm Bureau sued the California Department of Food and Agriculture on the grounds that Prop 12 violates the U.S. Constitution's Commerce Clause in banning the sale of out-of-state pork from animals con-

fined in a manner inconsistent with California standards.

In the 9th Circuit Court of Appeals, they argued the measure compels out-of-state producers to change their operations to meet California's standards, impermissibly regulating extraterritorial conduct outside California's borders.

The court disagreed, saying Prop 12 does not dictate the price of product and does not tie the price of in-state products to out-of-state prices and does not violate the underlying principles of the Commerce Clause.

The court recognized the measure could have an indirect effect on how pork is produced and sold outside California but held such upstream effects don't violate the Commerce Clause.

In its brief, the Biden administration argued the Commerce Clause prohibits state laws that unduly restrict interstate commerce. The brief states petitioners plausibly allege Prop 12 unduly restricts and substantially burdens interstate commerce.

Further, it states Prop 12 does not advance a legitimate local interest as California has no legitimate interest in the housing conditions of out-of-state animals and Prop 12 has no human health or safety benefits.

The Supreme Court is scheduled to hear arguments Oct. 11.

Oregon predator trap check regulation worries livestock industry

By MATEUSZ PERKOWSKI
Capital Press

Traps for predators must be checked more frequently under new Oregon wildlife regulations that the farm industry fears will undermine protections for livestock.

Significantly for cattle and sheep producers, restraining traps must be checked more than twice as often if they're meant to stop predators from damaging livestock operations.

Due to the long distances between many traps, agriculture groups worry the revised rules will hinder efforts to control coyotes and other predators.

"We have a multitude of predatory animals and their populations are growing," said Todd Nash, president of the Oregon Cattlemen's Asso-

ciation. "The thing that seems to reduce over time is the number of capable trappers. They're spread so thin to begin with that they're covering huge swaths of land."

For traps that kill predators, the state's Fish and Wildlife Commission has reduced the time between trap checks from 30 days to 14 days, which the OCA did not oppose.

However, traps and snares that restrain livestock-damaging predators must now be checked every two days under the new regulations, compared to every seven days previously.

With the limited number of available trappers, the rule change effectively reduces the amount of work they'll be able to perform — especially when fuel prices are so high, critics say.

"That's a game changer.

You change the way you operate," Nash said.

If they're not intended to prevent livestock damage, restraining traps for predators must now also be checked every two days, down from three days previously.

Traps intended to curb livestock damage are meant to catch specific predators, they were previously given more time to work than those not aimed at particular individuals.

By "bending to urban pressure" and reducing trap check intervals, the commission has shown it's "out of touch with rural communities and land managers," said Lauren Smith, the Oregon Farm Bureau's government and national affairs director.

"Across Oregon's vast landscape, there are terrain and weather issues,



USDA

A coyote attacks a lamb. Traps intended to stop predators from harming livestock must be checked more frequently under new Oregon regulations that worry livestock producers.

lack of road access, trap efficiency and many other issues that come into play when making such a significant reduction in a trap check time intervals," Smith said in an email.

The rule change fails to account for these practical challenges or the livestock losses and

other costs that predators impose on rural landowners, she said.

Complying with the new rules will cause expenses to "skyrocket" for the USDA's Wildlife Services division, whose agents are often hired to trap predators, said Jim Soares, vice president

of the Oregon Trappers Association.

The agency would need to spend substantially more money just to perform the same amount of work, but it's unclear where the additional funding would come from, Soares said.

"This is going to be devastating for the livestock industry," he said.

Environmental advocates, on the other hand, cheered the revised trap check requirements because shorter intervals will decrease the amount of time that animals suffer.

More frequent checks will also help prevent the unintended deaths of non-target threatened and endangered species caught in restraining traps, according to the Center for Biological Diversity nonprofit.

The regulatory decision is a "step in the right direction" and better represents "Oregon's values," but it still falls short of the 24-hour trap check intervals recommended by wildlife experts, the group said. "This change makes trapping less inhumane, but Oregon still has a long way to go."



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