

# Memo

## Comprehensive Plan Update

June 11, 2015

**To:** Farm, Forest and Rural Economy Subcommittee  
**From:** Kevin Cook, Multnomah County Planner  
**Re:** Can wineries be subject to additional standards similar to those in SIMC/RAP Policy 1.3

### OVERVIEW

Policy 1.3 of the draft SIMC/RAP contains a number of prescriptive elements that are intended to balance the underlying purpose of EFU land (to preserve and maintain agricultural lands for farm use... - MCC 34.2600) with the provisions for farm stands (an allowed, non-farm use in EFU zones).

This memo addresses the question, “Is it possible to apply additional standards to wineries similar to those found in Policy 1.3?”<sup>1</sup> Table 1 provides an analysis in pursuit of the question and Table 2 provides a more focused distillation providing the likely answers based on the analysis.

***“Policy 1.3 – Develop and adopt a tiered review process for farm stand operations on EFU land distinguishing between operations that include promotional activities and those that do not. Farm stands that occupy one acre or less (including parking) and do not include promotional activities or events shall be reviewed through the County’s Type I process, based on objective standards. Farm stands that occupy more than one acre or include promotional events or activities shall be reviewed under the County’s Type II application process.***

*Until implementing code is adopted, the following shall apply:*

*(a) Proposed farm stands that would occupy more than one acre or include promotional events or activities shall be sited in order to limit the overall amount of acreage proposed for the farm stand structures and events consistent with the following standards:*

*(1) The amount of land identified for the farm stand structures and associated permanent parking shall not exceed two acres.*

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<sup>1</sup> A related question was raised by the Community Advisory Committee: “Since counties have the option to adopt a more limited version of (or even none of) the agri-tourism provisions of ORS 215.283(4) is the same true for the state provisions for wineries? – Can counties opt out of allowing wineries?” The answer is no, because counties must list wineries as an allowed non-farm use subject to the standards and definitions in statute. In contrast, the agri-tourism provisions are optional for counties (“counties may adopt”) and as such, the jurisdiction can decide whether to adopt said provisions and to what extent.

*(2) The amount of land identified for farm stand promotional activities shall be the minimum necessary to accomplish the objective of supporting farming operations on the property. Absent compelling need for additional area, the area identified for promotional events, including corn mazes and event parking, shall not exceed five percent or five acres of the property on which the farm stand is located, whichever is less.*

*(3) An applicant may seek approval to accommodate temporary parking on additional acreage during September and October of a calendar year on areas that have already been harvested or used for pasture during the current growing season. The temporary parking area shall not be graveled or otherwise rendered less productive for agricultural use in the following year.*

*(4) An applicant owning or leasing multiple properties in farm use on Sauvie Island shall be limited to only one Type II farm stand.*

*(5) Multnomah County may require consideration of alternative site plans that use less agricultural land or interfere less with agricultural operations on adjacent lands.*

*(6) Farm stand signage shall comply with county sign ordinance standards to maintain and complement the rural character of the island.”*

SIMC/RAP Policy 1.8 has some similarity to Policy 1.3.

***“Policy 1.8 – Fee-based promotional activities at farm stands shall be limited to those that promote the contemporaneous sale of farm crops or livestock at the farm stand and whose primary purpose is significantly and directly related to the farming operation.***

*(a) Permitted farm stand promotional activities include harvest festivals, farm-to-plate dinners, corn mazes, hayrides, farm animal exhibits, cow trains, small farm-themed gatherings such as birthday parties and picnics, school tours, musical acts, farm product food contests and food preparation demonstrations, and similar activities consistent with this policy.*

*(b) Unless authorized at farm stands by statute, administrative rule or an appellate land use decision, fee based weddings, corporate retreats, family reunions, anniversary gatherings, concerts, and amusement park rides, and other activities for which the primary focus is on the underlying cause for the gathering or activity rather than the farm operation, are prohibited.”*

Wording similar to the first and third paragraphs of the policy could be applied across the board to wineries, whereas the second paragraph is tailored to farm stands based on current case law.

#### ABBREVIATIONS USED IN THIS MEMO

SIMC/RAP: Sauvie Island and Multnomah Channel Rural Area Plan

EFU: Exclusive Farm Use (zone)

ORS: Oregon Revised Statutes

MCC: Multnomah County Code

CU: Conditional Use

## QUALIFYING STATUTES

There are four ways under ORS 215 to qualify an EFU zoned parcel for a winery. Applicants may choose to apply under any of the qualifying statutes subject to meeting the approval criteria:

- **ORS 215.452 – Wineries with at least 15 acres of vineyard** – allows for tasting rooms, winemaker luncheons and dinners, winery tours and open houses, and up to 18 days of agri-tourism or other commercial events annually subject to the 25% limitation on the sale of incidental items and services. Events are subject to a 5 year – renewable permit.
- **ORS 215.453 – Large Winery** – Is sited on at least an 80 acre EFU tract, of which at least 50 acres is vineyard. Must own at least 80 additional acres of planted vineyards in Oregon. Must be producing at least 150,000 gallons of wine in at least three of the five calendar years before the winery is established under this section. Allows for tasting rooms, winemaker luncheons and dinners, winery tours and open houses **and restaurants** (restaurant open more than 25 days/year is subject to additional county Conditional Use permit).

Also allows for agri-tourism and events subject to the 25% limitation on the sale of incidental items and services. Events are subject to a 5 year – renewable permit. **State law does not limit the number of agri-tourism related events** for a large winery but the events must be incidental and subordinate to the retail sale of wine produced in conjunction with the winery.

- **ORS 215.283(1)(r) – Winery as a processing facility only** – The facility must be located on a farm operation that provides at least one-quarter of the farm crops processed at the facility. Floor area used for processing is limited to 10,000 square feet. Strictly for processing and **does not allow for tasting rooms, commercial events and activities, or agri-tourism**. Once established, this type of winery can be converted to a winery allowed under ORS 215.452 or 215.453 subject to County approval.
- **ORS 215.283(2)(a) – Winery as a commercial activity in conjunction with farm use** – Allowed if the proposed winery does not qualify for siting under ORS 215.452 or 215.453 or seeks to carry out uses or activities that are not authorized by ORS 215.452 or 215.453.

Approval is subject to a finding that the facility will not force a significant change in, and/or increase the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use. The local jurisdiction can impose siting standards and approval conditions. Non-wine sales and activities are subject to the 25% income limitation.

TABLE 1

Subject	SIMC/RAP Policy 1.3	Wineries – ORS 215	Notes
<b>Tiered review process</b>	Develop and adopt a tiered review process for farm stand operations on EFU land distinguishing between operations that include promotional activities and those that do not	<p><b>215.452 Winery; conditions; permissible products and services; local government findings and criteria; fees. (1)</b> A winery may be established as a permitted use on land zoned for exclusive farm use under ORS 215.213 (1)(p) and 215.283 (1)(n) or on land zoned for mixed farm and forest use if the winery produces wine with a maximum annual production of:...</p> <p><b>215.453 Large winery; conditions; products and services; local government findings and criteria. (1)</b> A winery may be established as a permitted use...</p>	<p><b>1:</b> Differing standards for approving a wineries in the ORS essentially creates a tiered review process.</p> <p><b>2:</b> Multnomah County Code lists a winery as a Review Use [MCC 34.2625(H)], however the MCC needs to be updated to include large wineries as a review use.</p> <p><b>3:</b> Wineries and large wineries meeting the approval criteria in statute must be allowed by counties and therefore the most stringent review type the County can apply is the Review Use – However, a restaurant (that would be open more than 25 days per year) approved as part of a large winery is subject to a conditional use permit. – The MCC needs to be updated to list a restaurant associated with a large winery as a CU.</p>

		<p><b>215.283(1)(r)</b> A facility for the processing of farm crops...</p> <p>...If a building is established or used for the processing facility or establishment, the farm operator may not devote more than 10,000 square feet of floor area to the processing facility or establishment, exclusive of the floor area designated for preparation, storage or other farm use. A processing facility or establishment must comply with all applicable siting standards but the standards may not be applied in a manner that prohibits the siting of the processing facility or establishment</p>	<p><b>4:</b> A winery approved under this provision would be strictly for processing grapes into wine and would not be allowed to have promotional activities and on site retail sales unless the property also has approval for a farm stand in which case wine sales and promotional activities would be subject to the 25% rule pursuant to 215.456.</p> <p><b>5:</b> A winery approved under this provision is allowed only if the winery could not qualify under (or seeks activities not authorized by) 215.452 or 215.453 pursuant to 215.456(1).</p> <p><b>6:</b> A winery approved under this provision is limited to 10,000 sq. ft. for processing. Other siting standards may also be applied to wineries approved under the processing facility standards.</p>
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		<p><b>215.456 Siting winery as commercial activity in exclusive farm use zone.</b> (1) A local government may authorize the siting of a winery, on land zoned for exclusive farm use, pursuant to the standards that apply to a commercial activity in conjunction with farm use under ORS 215.213 (2)(c) or 215.283 (2)(a) or other law if the winery:</p> <p>(a) Does not qualify for siting under ORS 215.452 or 215.453; or</p> <p>(b) Seeks to carry out uses or activities that are not authorized by ORS 215.452 or 215.453.</p> <p>(2) If a county authorizes the establishment of a winery on land zoned for exclusive farm use or mixed farm and forest use under provisions of law other than ORS 215.452 or 215.453 after June 28, 2013, the gross income of the winery from any activity other than the production or sale of wine may not exceed 25 percent of the gross income from the on-site retail sale of wine produced in conjunction with the</p>	<p><b>7:</b> A winery approved under provisions for commercial activities in conjunctions with farm use are subject to the 25% rule and must demonstrate that the use will not force a significant change to nearby farm and forest practices/costs.</p>
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		<p>winery. The gross income of a winery does not include income received by third parties unaffiliated with the winery.</p> <p><b>215.283(2)</b> 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 (Standards for approval of certain uses in exclusive farm use zones):  (a) Commercial activities that are in conjunction with farm use...</p> <p><b>215.296</b>  <b>Standards for approval of certain uses in exclusive farm use zones</b>  (1) A use allowed under ORS...  ...215.283 (Uses permitted in exclusive farm use zones in nonmarginal lands counties) (2) or (4) may be approved only where the local governing body or its designee finds that the use will not:  (a) Force a significant change in accepted farm or forest practices on</p>	<p><b>8:</b> 215.296(10) explicitly allows counties to establish additional standards for wineries approved under the commercial activity provisions set forth in statute and may impose approval conditions to ensure conformance with the additional standards.</p>
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		<p>surrounding lands devoted to farm or forest use; or</p> <p>(b) Significantly increase the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use.</p> <p>(2) An applicant for a use allowed under ORS... ...215.283 (Uses permitted in exclusive farm use zones in nonmarginal lands counties) (2) or (4) may demonstrate that the standards for approval set forth in subsection (1) of this section will be satisfied through the imposition of conditions. Any conditions so imposed shall be clear and objective...</p> <p>...(10) This section does not prevent a local governing body approving a use allowed under ORS... ...215.283 (Uses permitted in exclusive farm use zones in nonmarginal lands counties) (2) or (4) from establishing standards in addition to those set forth in subsection (1) of this section or from imposing conditions to ensure conformance with the additional standards.</p>	
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<p><b>Standards centered on the amount of land devoted to the nonfarm uses and/or associated promotional activities.</b></p>	<p>Farm stands that occupy one acre or less (including parking) and do not include promotional activities or events shall be reviewed through the County's Type I process, based on objective standards. Farm stands that occupy more than one acre or include promotional events or activities shall be reviewed under the County's Type II application process.</p> <p>(a) Proposed farm stands that would occupy more than one acre or include promotional events or activities shall be sited in order to limit the overall amount of acreage proposed for the farm stand structures and events consistent with the following standards:</p> <p>(1) The amount of land identified for the farm stand structures and associated permanent parking shall not exceed two acres.</p> <p>(2) The amount of land identified for farm stand promotional activities shall be the minimum necessary to accomplish the objective of supporting farming operations on the</p>	<p><b>215.452 (11)</b> A local government shall apply the standards described in this subsection. Standards imposed on the siting of a winery shall be limited solely to each of the following for the sole purpose of limiting demonstrated conflicts with accepted farming or forest practices on adjacent lands:</p> <p>(a) Establishment of a setback of at least 100 feet from all property lines for the winery and all public gathering places unless the local government grants an adjustment or variance allowing a setback of less than 100 feet...</p>	<p><b>9:</b> The highlighted text suggests that counties cannot apply additional siting standards to wineries approved under 215.452.</p> <p><b>10:</b> There are no standards other than 100 foot setbacks from property lines that limit the land area used by the winery.</p>
		<p><b>215.453 (8)</b> A local government shall require a winery operating under this section to provide for:</p> <p>(a) Establishment of a setback of at least 100 feet from all property lines for the winery and all public gathering places...</p>	<p><b>11:</b> There are no standards other than 100 foot setbacks from property lines that limit the land area used by the winery.</p> <p><b>12:</b> Restaurants approved under these provisions are subject to ORS 215.296(10), which explicitly allows counties to establish additional standards for wineries approved under the commercial activity provisions set forth in statute and may impose approval</p>

	property. Absent compelling need for additional area, the area identified for promotional events, including corn mazes and event parking, shall not exceed five percent or five acres of the property on which the farm stand is located, whichever is less.		conditions to ensure conformance with the additional standards.  <b>13:</b> The statute is silent regarding whether additional local standards can be adopted for large wineries.
<b>Temporary/seasonal use of fields for parking.</b>	(3) An applicant may seek approval to accommodate temporary parking on additional acreage during September and October of a calendar year on areas that have already been harvested or used for pasture during the current growing season. The temporary parking area shall not be graveled or otherwise rendered less productive for agricultural use in the following year.	<b>215.452...</b> (7) As necessary to ensure that agri-tourism or other commercial events on a tract occupied by a winery are subordinate to the production and sale of wine and do not create significant adverse impacts to uses on surrounding land, the local government may impose conditions on a license or permit issued pursuant to subsection (6) of this section related to: (a) The number of event attendees; (b) The hours of event operation; (c) Access and parking; (d) Traffic management; (e) Noise management; and (f) Sanitation and solid waste....  ... (11) A local government shall	<b>14:</b> It appears that the County may apply local parking standards to wineries approved under all four statutes for wineries.  <b>15:</b> Counties may impose conditions on wineries allowed under 215.452 related to number of event attendees, hours of operation, traffic and noise management, sanitation and solid waste.

		<p>apply the standards described in this subsection. Standards imposed on the siting of a winery shall be limited solely to each of the following for the sole purpose of limiting demonstrated conflicts with accepted farming or forest practices on adjacent lands:...</p> <p>...(b) Provision of direct road access and internal circulation.</p>	
<p><b>Limitation on the number of facilities allowed per applicant.</b></p>	<p>(4) An applicant owning or leasing multiple properties in farm use on Sauvie Island shall be limited to only one Type II farm stand.</p>		<p><b>16:</b> This provision seeks to limit the number of farm stands operated by a farm operator on Sauvie Island. Arguably, multiple properties on Sauvie Island operated by a single owner are part of one farm operation. A similar provision could be applied countywide to wineries.</p>
<p><b>County may require alternate site plans.</b></p>	<p>(5) Multnomah County may require consideration of alternative site plans that use less agricultural land or interfere less with agricultural operations on adjacent lands.</p>		<p><b>17:</b> County staff oftentimes asks applicants to submit new site plans and/or additional materials if it is not clear that the applicant has carried the burden of proof that a standard can be met. Applicants must prove that the winery will not force a significant change in nearby farming operations and/or costs – in the case of</p>

			wineries approved under 215.452, this concept is limited to demonstrating that the criteria in the statute, such as the 100 foot setback, can be met.
<b>Signs</b>	(6) Farm stand signage shall comply with county sign ordinance standards to maintain and complement the rural character of the island.		<b>18:</b> None of the four statutes allowing wineries addresses signage. However, signs are regulated independently of wineries in the MCC. The sign ordinance regulates size and design of signs and not the content of signs – in other words all properties can have signs as long as the signs meet the requirements regardless of whether the signs advertise a winery or express something else. Signs advertising unapproved uses on a property are potentially prohibited however.

## CONCLUSION

Table 2 provides staff's analysis regarding the potential for additional standards that could be applied to wineries. The subcommittee can choose to recommend a policy that would require additional standards/restrictions on wineries where possible or can choose to be no more restrictive than state law. Staff has provided an example policy that would direct the County to develop additional standards for wineries. If the subcommittee and/or CAC chooses to recommend a policy that the county be more restrictive than state statutes with respect to wineries and related activities, staff would bring back a simple policy reflecting that policy choice.

TABLE 2

	Type of winery approval	Wineries	Large wineries	Winery as a processing facility only.	Winery as a commercial activity in conjunction with farm use.
	ORS	215.452	215.453	215.283(1)(r)	215.283(2)(a)
Type of Standard	Area Limitations / Standards	<b>No</b> except that 100 foot setback applies.	<b>Potentially.</b> Statute is silent on the issue.  Additional standards can be adopted for restaurants open more than 25 days/year.	<b>Potentially.</b> Statute indicates facility must comply with all applicable siting standards.  The standards should be tied to balancing need to preserve ag land and limits should be proportional to the size of the farm operation.  Processing facility floor area limited to 10,000 sq. ft.	<b>Yes.</b> Statute explicitly allows additional local standards.
Type of Standard	Parking Standards	<b>Likely Yes.</b> Conditions regarding parking are allowed and standards regarding internal circulation are allowed in so far as the standard addresses demonstrated conflicts with accepted farming or forest practices on	<b>Likely Yes.</b> Requires onsite parking and allows standards for access and internal circulation.	<b>Likely Yes.</b> Statute indicates facility must comply with all applicable siting standards.	<b>Yes.</b> Statute explicitly allows additional local standards.

		adjacent lands.			
<b>Type of Standard</b>	An applicant owning or leasing multiple properties in farm use in Multnomah County or Plan Area limited to only one winery in Multnomah County or one per plan area.	<b>Potentially.</b> Untested.	<b>Potentially.</b> Untested.	<b>Potentially.</b> Untested.	<b>Potentially.</b> Untested.
<b>Type of Standard</b>	Multnomah County may require consideration of alternative site plans that use less agricultural land or interfere less with agricultural operations on adjacent lands.	<b>Yes.</b> Limited to demonstrating that the criteria in statute are met.	<b>Likely Yes.</b>	<b>Likely Yes.</b> Tied to requirement that applicant demonstrate compliance with all applicable siting standards.	<b>Yes.</b>

<b>Type of Standard</b>	Signage shall comply with county sign ordinance standards to maintain and complement the rural character of the island.	<b>Yes.</b> Sign standards regulate size, placement, and design rather than content. Sign regs are independent of winery approval standards.	<b>Yes.</b>	<b>Yes.</b>	<b>Yes.</b>
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## PROPOSED POLICY

Staff has drafted a policy below that would direct the County to develop additional limits and standards for wineries:

### Proposed Policy

Fee-based promotional activities at wineries shall be limited to those that promote the contemporaneous sale of wine at the winery and whose primary purpose is significantly and directly related to the winery operation.

(a) Unless authorized at wineries by statute, administrative rule or an appellate land use decision, fee based activities, such as weddings, corporate retreats, family reunions, anniversary gatherings, concerts, amusement park rides, and other activities for which the primary focus is on the underlying cause for the gathering or activity rather than the farm operation, are prohibited.

(b) Create standards that limit the area and extent of wineries and associated agri-tourism activities to the extent allowed by law in order to retain a maximum supply of land in production for farm crops or livestock, to ensure public health and safety, to minimize impacts on nearby farming operations, residents, roads, traffic circulation, wildlife and other natural resources and to maintain the rural character of Multnomah County's agricultural areas.

(c) To the extent allowed by law, develop additional standards for wineries that address potential offsite impacts such as hours of operation, the number and duration of events, noise, lighting, signs, parking and circulation, and the size, design and placement of structures associated with the winery.

(d) Until implementing code is adopted, the following shall apply:

- (1) Proposed wineries that would occupy more than one acre or include agri-tourism events or activities shall be sited in order to limit the overall amount of acreage proposed for the winery structures and events.
- (2) The amount of land identified for agri-tourism activities at wineries shall be the minimum necessary to retain productive farm land on the property.
- (3) An applicant may seek approval to accommodate temporary parking on additional acreage during September and October of a calendar year on areas that have already been harvested or used for pasture during the current growing season. The temporary parking area shall not be graveled or otherwise rendered less productive for agricultural use in the following year.
- (4) An applicant owning or leasing multiple properties in farm use in Multnomah County shall be limited to only one winery in Multnomah County.
- (5) Multnomah County may require consideration of alternative site plans that use less agricultural land or interfere less with agricultural operations on adjacent lands.
- (6) Signage shall comply with county sign ordinance standards to maintain and complement the rural character of Multnomah County's agricultural areas.