

# Guide to Wineries and Events in EFU Zones

DLCD – Updated August 17, 2012

This Guide is intended to summarize recent legislation in House Bill 3280 and Senate Bill 960 (2011), to clarify key provisions of the bills and to answer common questions from the perspective of the agency, which has oversight over the implementation of the bills. The Guide is not intended to provide legal advice or to be a substitute for rulemaking.

There are several potential options for approving agri-tourism and other commercial events and activities in EFU zones, including two specific options, as follows:

## 1. Agri-tourism and Other Commercial Events and Activities

**SB 960** (2011) effective June 28, 2011, codified at ORS 215.213(4) and 215.283(11))

- These provisions allow agri-tourism and other commercial events and activities.
- These provisions are optional for counties, which may choose to adopt them or not. A county must amend its code to include these uses in order to permit them.
- All events and activities must be 1) “related to and supportive of agriculture” and 2) “incidental and subordinate to existing farm use on the tract.”
- Four types of events and activities are allowed, each with its own set of limitations and approval criteria: 1) single events, 2) expedited single events, 3) up to six three-day events, and 4) up to 18 additional events if on a parcel meeting the minimum parcel size.
- Other authorizations for events and activities are allowed, except that: 1) mass or other outdoor gatherings may not include agri-tourism events or activities and 2) wineries may not be approved for conditional use events under both SB 960 and HB 3280.

### Q & A

***Q: What does “related to” and “supportive of” agriculture mean in SB 960? What about “incidental and subordinate?”***

***A: We interpret “related to” and “supportive of” to mean that the proposed agri-tourism or other commercial event or activity is physically and/or economically logically connected to, and supports, an existing on-site farm operation. For example, “related to” could mean that the proposed event involves a product that is produced on site that has a meaningful and significant relationship to the proposed event. “Supportive of” could involve the generation of supplemental income to help support a farm. “Incidental and subordinate” means that the event or activity is strictly secondary and ancillary to on-site farming in terms of income generated, area occupied, and off-site impacts. It is the responsibility of the county to make findings showing consistency of proposed events with these terms.***

***Q: Can SB 960 be used together with other authorizations to allow a greater number of agri-tourism or commercial events or activities at a single site?***

*A: For the most part, yes. However, events allowed under SB 960 may not, in combination with other permitted agri-tourism or commercial events or activities, materially alter the stability of the land use pattern in the area. In addition, wineries may not conduct conditionally-permitted events under both HB 3280 and SB 960. Finally, the allowance of “other authorizations” means statutory or rule authorizations; local code authorizations must be compliant with statute and rule.*

***Q: Does the provision for up to 18 events or activities in a calendar year limit the number of days on which these events or activities can take place?***

*A: No, though it might be advisable for counties to limit the length of these events and activities.*

***Q: What does it mean that mass and other outdoor gatherings “do not include agri-tourism or other commercial events and activities”?***

*A: We interpret this to mean that counties may not approve both agri-tourism and other commercial events and activities as well as mass and other outdoor gatherings for the same purposes in EFU zones. However, counties that do not use SB 960 may approve mass and other outdoor gatherings for agri-tourism purposes in EFU zones, and all counties may continue to approve mass and other outdoor gatherings in non-EFU zones.*

***Q: Can counties adopt only part of SB 960?***

*A: Yes, so long as the bill’s limitations on other authorizations are observed.*

## **2. Wineries and Associated Events**

**(HB 3280)** (2011) effective August 2, 2011, codified at ORS 215.452 and 215.243)

- These provisions are mandatory and must be adopted or directly applied in their entirety.
- All wineries with at least 15 acres of planted vineyards are allowed to have marketing activities, including: 1) tasting rooms, 2) wine tours, 3) wine clubs and 4) similar activities.
- All wineries with at least 15 acres of planted vineyards are allowed up to 25 days of private events directly related to the sale or promotion of wine. The income from these events together with other “incidental” goods and services provided is limited to 25% of gross income from the on-site retail sale of wine (*note: the allowance for services, including events, sunsets for small wineries on January 1, 2014*).
- Large wineries are allowed to have a restaurant that is open fewer than 25 days annually.

- Large wineries may have: 1) a restaurant that is open more than 25 days annually and 2) more than 25 days of events annually, as conditional uses subject to ORS 215.296 and “incidental and subordinate” and “materially alter” review criteria.
- Events at wineries may include public outdoor concerts, facility rentals or celebratory events if the county issued permits to wineries in the past in similar circumstances.
- Lawfully permitted events existing on August 2, 2011, including those exceeding the 25% income cap, are grandfathered under ORS 215.130.

## **Q & A**

***Q: What incidental items and services must be included in the gross income limit of 25%?***

*A: All incidental items and services, including up to 25 event days annually, must be included in the gross income limit. Whether these items and services must include only those provided directly by the winery or also those provided by a third party, such as a caterer, is currently unclear in law and needs to be clarified. Goods and services that are not currently subject to the 25% income limit include:*

1. *Wine marketing activities;*
2. *Outdoor concerts, facility rentals or celebratory events, if permissible;*
3. *Grandfathered events and activities, as permitted;*
4. *Restaurants under ORS 215.243; and*
5. *More than 25 event days under ORS 215.243*

***Q: Where a winery does not qualify to have a restaurant, can food be catered?***

*A: ORS 215.452 permits wineries to provide pre-packaged food and beverages served by a limited service restaurant as defined in ORS 624.010. Whether the allowance for marketing and other events allows the provision of other food, such as catered meals, or allows a commercial kitchen, is unclear in law and needs to be clarified.*

***Q: Can public as well as private events be permitted?***

*A: Wine marketing events under ORS 215.452(2)(a) and 215.453(2)(a) may be public or private. However, only private events may be permitted as part of the 25 allowed days of events annually. Public events, such as outdoor concerts, facility rentals or celebratory events may be permitted only if the local government issued permits to wineries in similar circumstances before August 2, 2011. Public events are not permitted under this bill if such events took place without local government permits.*

***Q: Can the provision for commercial activities in conjunction with farm use in the bill be used to allow additional events at large wineries?***

*A: ORS 215.453(10) authorizes counties to allow wineries “to sell or deliver items or provide services” not described in the bill under the criteria for commercial activity in conjunction with farm use in statute. This inclusion merely acknowledges an existing allowance and is not intended to expand the scope of this use. Any events allowed under this authority must be in conjunction with farm (not winery) use, be either exclusively or primarily a customer or supplier of farm uses, and be essential to the practice of agriculture.*

***Q: Can new wineries and tasting rooms be permitted as commercial activities in conjunction with farm use?***

*A: New wineries with vineyards of at least 15 acres and accompanying tasting rooms should not be reviewed and permitted as commercial activities in conjunction with farm use, but rather as wineries under ORS 215.452 or 215.243. Wineries that are approved as commercial activities in conjunction with farm use carry with them no implicit allowance for events. Any events at these facilities must be approved under specific statutory authorizations that allow events. Tasting rooms may not be permitted without wineries.*

### **3. Other Options**

Other specific authorizations for approving agri-tourism events and activities in EFU zones, subject to appropriate review criteria, include the following:

- *Farm use*: u-picks, community supported agriculture
- *Farm stands*: fee-based activities
- *Mass and other outdoor gatherings*: once each three months if SB 960 not used

In addition, a couple of other broad authorizations exist that could potentially be used to allow agri-tourism events and activities in EFU zones, including:

- *Home occupations*: if substantially in the dwelling or other buildings permitted in the zone
- *Public parks*: if compliant with OAR 660-034-0040
- *Private parks*: if for recreational purposes
- *Commercial activities in conjunction with farm use*: if essential to the practice of agriculture and either exclusively or primarily a customer or supplier of farm uses

If any of these other options are used to in addition to those in SB 960 and HB 3280 to allow events, we recommend that counties: 1) limit the total combined number of events at a site to the maximum allowed for a single avenue of approval and 2) require that approved events do not, in combination with agri-tourism or other commercial events or activities authorized in the area, materially alter the stability of the land use pattern in the area.

## Uses Permitted in EFU Zones under 2011 Legislation

This matrix provides an at-a-glance overview of the allowed uses under SB 960 and HB 3280 and the relationship between the two bills. The review criteria in the two bills are not included and the material presented below is in shortened format and does not include detail in the bills.

Use	Farms (non-winery uses)	Winery w/ 15+ acres vineyards	Winery producing 150K+ gallons
Single or expedited single event	P/A (no permanent structure allowed)	P/C	
Up to six 72-hour events	R/A (no permanent structure allowed)	R/C	
Up to 18 additional events on parcel meeting minimum lot size			
Outdoor gatherings (as defined in SB 960)	N	NA	
Market & sell wine	NA, but farm stands allow	P	
Market & sell wines not produced in conjunction with the winery	NA, but farm stands allow	N	P
Wine tours, wine clubs & “similar activities”	NA	P	
Wine tasting in tasting rooms or other location	NA	P	
Market & sell incidental items, including pre-packaged foods	NA, but farm stands may sell incidental items & promotional activities up to 25% of sales	P – Income from items & services limited to 25% of income from retail wine sold on site	
Provide services, including private events, up to 25 days (sunsets 1-1-14 along with 25% limitation)			
More than 25 days of private events	NA	N	R/CC
Outdoor concerts, facility rentals, celebratory events	NA	R if county permitted in similar circumstances prior to 8-2-11, but R/CC if as a CUP	
Restaurant	NA	N	P R if open more than 25 days annually
Sell items or provide services as a commercial activity in conjunction with farm use	NA (see guide)	R/CC (see guide)	
Grandfathers uses, structures & activities in existence on 8-2-11, even if over 25% limitation	NA	P	

P = Permitted

R = Permitted subject to review and application of criteria

N = Not permitted

NA = Not applicable

A = County must amend its EFU zone to add the use for it to be allowed

C = Not in combination with HB 3280 CUP events

CC = Not in combination with SB 960 events

Events permitted by SB 960 are shaded yellow

Events permitted by HB 3280 are shaded purple