

31.3.18 Permits – Particular Uses – Wineries. Under 2010 legislation, wineries authorized by ORS 215.283(1)(n) and 215.452 may offer “[s]ervices directly related to the sale and promotion of wine,” and host “private events.” ORS 215.452 limits “gross income from the sale of incidental items and services” to “25 percent of the gross income from the retail sale on-site of wine produced in conjunction with the winery.” *Friends of Yamhill County v. Yamhill County*, 66 Or LUBA 212 (2012).

31.3.18 Permits – Particular Uses – Wineries. The legislature in 2010 enacted amendments to ORS 215.452, which governs wineries that are a permitted use under ORS 215.283(1)(n), and those amendments failed to adopt a proposal to expressly preserve statutory authority to approve wineries under ORS 215.283(2)(a) as “commercial activities that are in conjunction with farm use.” However, LUBA will not infer from that failure a legislative intent to eliminate ORS 215.283(2)(a) as basis for winery approval on EFU-zoned land, where it was common practice before 2010 to approve wineries under ORS 215.283(2)(a) as “commercial activities that are in conjunction with farm use” and the 2010 legislative history suggests that the legislature did not intend to eliminate that common practice. *Friends of Yamhill County v. Yamhill County*, 66 Or LUBA 212 (2012).

31.3.18 Permits – Particular Uses – Wineries. Approval of wineries under ORS 215.283(2)(a) as “commercial activities that are in conjunction with farm use” and approval of wineries under ORS 215.283(1)(n) and 215.452, which specifically authorize “wineries” on EFU-zoned land, are *alternative* ways to seek approval for a winery. Approval under ORS 215.283(2)(a) for expansions to an existing winery that was originally approved under ORS 215.283(1)(n) and 215.452 that are not permitted under ORS 215.452, has the legal effect of converting ORS 215.283(1)(n) and 215.452 winery into an ORS 215.283(2)(a) winery. Therefore the expanded winery as a whole must comply with the limits imposed on ORS 215.283(2)(a) wineries. *Friends of Yamhill County v. Yamhill County*, 66 Or LUBA 212 (2012).

31.3.18 Permits – Particular Uses – Wineries. ORS 215.283(1)(r) authorizes “processing of farm crops” as a permitted use in EFU zones. While a winery that only produces wine from wine grapes might qualify for approval under ORS 215.283(1)(r), a winery that includes a tasting room and hosts numerous events at the winery to promote sale of wine is more than “processing of farm crops” and must be approved under ORS 215.283(1)(n), which authorizes wineries that are limited in accordance with ORS 215.452 and 215.453 or under ORS 215.283(2)(a), which authorizes “commercial activities that are in conjunction with farm use.” *Friends of Yamhill County v. Yamhill County*, 66 Or LUBA 212 (2012).

31.3.18 Permits – Particular Uses – Wineries. A winery that is authorized to hold up to 44 public or private events annually to promote and sell wine produced at the winery and to prepare and serve meals at those events, but must limit sale of incidental items and services at the events and winery to no more than “25 percent of the gross income from the on-site sale of wine produced in conjunction with the winery,” is permissible under the Supreme Court’s and Court of Appeals’ decisions in *Craven v. Jackson County*, because the events, food service and sale of incidental items and services are properly viewed as “incidental” and “secondary” to the winery. However, such a winery is approaching the point where the events, food service and sale of incidental items

and services can no longer be said to be “incidental” and “secondary” to the winery. *Friends of Yamhill County v. Yamhill County*, 66 Or LUBA 212 (2012).

31.3.18 Permits – Particular Uses – Wineries. A winery that was initially approved as a permitted use under ORS 215.283(1)(n) and 215.452 was not required to consider its impact on farm and forest practices on nearby lands because ORS 215.296(1)(a) and (b) do not apply to such permitted use wineries. However, if that winery is to be expanded later in ways that are not allowed under ORS 215.452, as a “commercial activit[y] that [is] in conjunction with farm use” under ORS 215.283(2)(a), the expanded winery must comply with ORS 215.296(1)(a) and (b), which apply to “commercial activities that are in conjunction with farm use.” In that circumstance ORS 215.296(1)(a) and (b) apply to the entire winery as expanded, not just the later approved expansion. *Friends of Yamhill County v. Yamhill County*, 66 Or LUBA 212 (2012).

31.3.18 Permits – Particular Uses – Wineries. Petitioners’ challenge to a winery expansion presents no basis for remand under the ORS 215.296(1)(a) and (b) significant change/increase standard, where the county’s findings can be read to identify “spraying pesticides, burning fence lines and plowing fields” as accepted farming practices that might be impacted by an expanded winery operation, the county imposes a 200-foot buffer setback requirement on the winery and requires a recorded acknowledgement by the winery owner that nearby farms have a right to continue their accepted farming practices even if they impact the winery, and petitioners offer no direct challenge to the adequacy of those measure to avoid significant changes in or increases in the cost of accepted farming practices. *Friends of Yamhill County v. Yamhill County*, 66 Or LUBA 212 (2012).