



## MEMORANDUM

**TO:** Columbia River Gorge Commission

**FROM:** Joanna Kaiserman, Land Use Planner

**DATE:** March 10, 2020

**SUBJECT:** **Work Session\*:** Gorge 2020 – Land Uses and Development Reviews Discussion of Key Issues

---

### Summary

The purpose of this memo and presentation is to follow up on the Gorge Commission's response to the staff's compiled inventory of issues for Gorge2020 topics (the "rainbow checklist"). This memo provides the Gorge Commission with more information on particular issues in the Land Uses and Development Reviews Focus Topic, and requests that Commission discuss these issues in preparation for providing policy guidance at the April 2020 Commission meeting.

Commissioners last heard a presentation on the Land Uses and Development Reviews Focus Topic at the November 12, 2019 Commission meeting, which provided the Gorge Commission an update on progress made for the Land Uses and Development Reviews Focus Topic and to request Commission discussion and guidance related to key issues of this Focus Topic that emerged from staff's engagement with county planners and the public. At the January 21, 2020 Commission meeting, Commissioners reviewed the inventory of issues for the Land Uses and Development Reviews Focus Topic, and informed staff of which topics the Commission requires more discussion about before providing staff with policy guidance.

This memo is a response to the request for additional information and Commission discussion about these issues. Staff incorporated Commission feedback from the November 2019 and January 2020 Commission meetings into further discussions on these topics with county planners. Using the Commission's input and feedback from county planners, staff is developing proposed revisions to the Management Plan. This memo is intended to provide the Commission with more information about these topics and why staff is proposing draft revisions, and to request the Commission's guidance for draft policy changes for these various topics.

## **Background**

At the November 12, 2019 Commission Meeting, staff requested the Commission's perspectives on key issues of the Land Uses and Development Reviews Focus Topic. The Commission started the policy conversation by discussing several foundational questions about the issues identified by county planners and the public. Based on the discussion from that meeting, staff understands that the Commission wants to know more about what the Management Plan currently says about those issues and further explanation about why these issues need to be clarified in the Plan.

At the January 21, 2020 Commission meeting, staff presented a checklist of all remaining issues and tasks for each of the Focus Topics and Technical Reviews for completing the Gorge2020 Management Plan review and revision process. The Commission reviewed the inventory of issues for the Land Uses and Development Reviews Focus Topic and identified the issues that: 1) have been adequately addressed and the Commission does not require additional discussion before providing policy guidance; 2) issues that Commissioners believe require more discussion before the Commission can provide policy direction; and 3) issues that will be deferred for action after and outside of the Gorge2020 Management Plan update.

### Topics the Commission wants to have more discussion about before providing policy direction:

- Short-term rental (STR) regulation
- Commercial facilities, events, and uses regulations
- Renewable energy
- Mining regulations
- Cluster developments
- Land use designation policies for public lands

### Topics the Commission directed staff to pursue outside of Gorge2020:

- Fossil fuel train regulation
- Buildable lands inventory and assessment

For each of the topics listed above that the Commission requested more discussion about, staff has summarized the following: what the Management Plan says now about the issue; why staff is proposing draft revisions; and what decision staff is requesting from the Commission in order to draft language to be presented to the Commission at the April 2020 Commission meeting. These summaries are included below for the Commission to consider for discussion at the March 10, 2020 Commission meeting.

## **Topics for discussion**

### Short-term rental (STR) regulation

- What the Management Plan currently allows:
  - p. II-5-4: Bed and Breakfast Inns in the Rural Center, Commercial, and 5-acre and 10-acre Residential designations, and in historic dwellings in other designations.

Glossary-3: Bed and Breakfast Inns are defined as “An establishment located in a structure designed as a single-family dwelling where more than two rooms but fewer than six rooms are rented on a daily basis. Bed and breakfast inns are clearly incidental to the use of a structure as a single-family dwelling and are owner occupied and operated. Bed and breakfast inns operate as transient accommodations, not as rooming or boarding houses.”

p. II-5-4: Travelers accommodations in Rural Centers and Commercial designations.

Glossary-3: Travelers accommodations are defined as “Any establishment having rooms rented or kept for rent on a daily or weekly basis to travelers or transients for a charge or fee paid or to be paid for rental use or use of facilities.”

- Why staff is proposing revisions:

Residents are interested in renting out rooms in existing residences or accessory buildings as short-term or vacation rentals as a means of supplementing their income. Short-term rentals are not currently allowed in the National Scenic Area. The standards for Bed and Breakfast Inns in the Management Plan can be restrictive to landowners who wish to rent rooms in their residence on a daily or weekly basis. Many residents in the National Scenic Area are already operating short-term rentals, unpermitted. Clear language in the Management Plan expressly allowing or prohibiting the use of short-term rentals will clarify regulations for residents and planners alike. Please see the document “Bed and Breakfast Inns v. Short-term Rentals in NSA” to see a comparison of the differences between Bed and Breakfasts and short-term rentals attached to this memo.

**What the Commission needs to decide for staff to draft revised language:**

- Should staff add language to the Management Plan to clarify policy regarding short-term rentals?
- Would allowing short-term rentals support the second purpose of the Act of allowing economic development in a way that is consistent with resource protections?

Commercial facilities, events, and uses regulations

- What the Management Plan currently allows:

II-7-54: Commercial events, including weddings, receptions, parties and other small-scale gatherings that are incidental and subordinate to the primary use on a parcel may be allowed in the GMA except on lands designated Open Space, Commercial Forest, or Agriculture-Special, subject to resource protection guidelines and the following conditions:

- The use must be in conjunction with a lawful winery, wine sales/tasting room, bed and breakfast inn, or commercial use.
- The owner must live on the subject parcel and operate and manage the use.
- A single event is limited to 100 guests.
- Must follow parking requirements, including allowing no more than 50 vehicles per single event and all parking areas shall be fully screened from key viewing areas.
- The owner may hold 18 individual one-day events per year.

- The owner shall notify the reviewing agency and neighboring landowners in advance of each event.
- Temporary structures for events are allowed to be up no more than two days before and two days after the event, or for up to 90 days if the structures are fully screened from key viewing areas.
- It must be demonstrated that the use will not affect any nearby agricultural or forest operations.
- Must comply with any additional requirements imposed by the counties.
- Approvals for commercial events are valid up to two years. After the approval expires, landowners must reapply for the use.

- Why staff is proposing revisions:

Many landowners in agricultural land use designations wish to expand the allowed review uses on agricultural land to include a wider variety of commercial facilities (such as cideries) and events (such as farm-to-table dinners). Others are concerned that commercial uses on agricultural land is changing the character of agricultural lands in the National Scenic Area. County planners are generally in favor of allowing commercial events and uses at venues other than wineries and adding provisions for agritourism activities on agricultural land. Planners have requested clarification of the standards and definitions for commercial events and uses in the Management Plan, which lead to challenges in implementation at the permitting level. By naming specific uses (such as wineries) in the Plan and not allowing uses that are not mentioned (such as cideries) but that are similar uses, prevents the Plan from being a living document that adapts with changing times. Monitoring and compliance of commercial events is also challenging because it is difficult to enforce existing limits on attendees and parking. Planners agreed that the Management Plan needs to be clearer about when a temporary use represents a commercial event, and to provide various guidelines and review processes depending on the size and number of events being held. For comparison, staff has attached Oregon laws relating to commercial events at farm stands, and at breweries, cideries, and wineries.

**What the Commission needs to decide for staff to draft revised language:**

- Should the language in the Management Plan be changed to more generally describe a type of use rather than to name specific use to allow for similar types of uses?
- What goals are the Management Plan achieving by allowing commercial uses and events on lands not designated Commercial or Rural Center?

Renewable energy

- What the Management Plan currently allows:

Although not mentioned in the Management Plan, solar panels are currently allowed for residential use as an addition if attached to a structure and as an accessory structure if detached. Solar panels under a certain size may be allowed as an expedited review use. Wind energy production is also not addressed in the Management Plan. However, wind turbines that are accessory to a primary residential or agricultural use – and do not produce energy in excess of what is used on the subject property – may be allowed.

- Why staff is proposing revisions:

Renewable energy production, incidental and secondary to the primary use of a property, is already permitted in the National Scenic Area, yet is not mentioned in the Management Plan. For clarity to residents and planners, staff recommends adding language to allow solar and wind power generation as accessory to residential or agricultural use, making clear that power generation for commercial use is prohibited.

#### **What the Commission needs to decide for staff to draft revised language:**

- Is there a need for the Management Plan to include language explicitly allow solar and wind energy generation for non-commercial use?

#### Mining regulations

- What the Management Plan currently allows:

Section 6(d) in National Scenic Area Act says the Commission cannot prohibit mining in the National Scenic Area as long as it is compliant with scenic, natural, cultural, and recreation resource protections. The Management Plan allows for the exploration, development, and production of mineral and geothermal resources, subject to the guidelines in Part I, Chapter 1: Scenic Resources.

Glossary-8: Exploration, development (extraction and excavation), and production of mineral resources are defined as “all or any part of the process of surface, underground, or submerged mining of mineral resources. Minerals include soil, coal, clay, stone, sand, gravel, metallic ore, oil and gases and any other material or substance excavated for commercial, industrial or construction use. For the Management Plan, this definition includes all exploration and mining, regardless of area disturbed or volume mined. Production of mineral resources means the use of portable crushing, onsite stockpiling, washing, milling, screening, or sorting equipment or other similar methods of initial treatment of a mineral resource to transport to another site for use or further processing. Secondary processing such as concrete or asphalt batch plants are considered industrial uses.”

II-7-8: In the GMA, existing development or production of mineral resources “may continue unless the Gorge Commission determines that the uses adversely affect the scenic, cultural, natural, or recreation resources of the Scenic Area. These uses will be considered discontinued and subject to land use ordinances under the Management Plan if any of the following conditions exist: (1) The mined land has been reclaimed naturally or artificially to a point where it is revegetated to 50 percent of its original cover (considering both basal and canopy) or has reverted to another beneficial use, such as grazing. Mined land shall not include terrain that was merely leveled or cleared of vegetation. (2) The site has not maintained a required state permit. (3) The site has not operated legally within 5 years before the date of adoption of the Management Plan.”

II-7-8: In the SMA, “Uses involving the exploration, development, or production of sand, gravel, or crushed rock in the SMA may continue if both of the following conditions exist: (1) The sand, gravel, or crushed rock is used for construction or maintenance of roads used to manage or

harvest forest products in the SMA. (2) A determination by the Forest Service finds that the use does not adversely affect the scenic, cultural, natural, or recreation resources.”

**What the Commission needs to decide for staff to draft revised language:**

- Do we need to clarify the definition of what constitutes and does not constitute “active” mining?

Cluster developments

- What the Management Plan currently allows:

II-7-41: Land divisions smaller than the minimum parcel size in some land use designations, allowing for higher development density, upon a showing that the new developments will be clustered together leaving at least 75% of the land undeveloped.

- Why staff is proposing revisions:

Cluster developments are rarely proposed, and opportunities for these kinds of land divisions are limited. The purpose of cluster development is to limit impacts to protected resources, but it is unclear that this goal is being met. Public comment received on this topic suggested defining the term “cluster” and prohibiting cluster developments on lands designated for agriculture and forest uses. There has been a total of 7 applications for cluster developments since the National Scenic Area was established. Of those 7 applications, only 2 applications were approved and developed. The last application for a cluster development was made in 2008. Staff does not see the benefit to resources of allowing cluster developments and suggests removing this provision from the Management Plan.

**What the Commission needs to decide for staff to draft revised language:**

- What is the benefit to resources to continue to allowing cluster developments?
- Should the provision for cluster developments be removed from the Plan?

Land use designation policies for public lands

- What the Management Plan says:

p. 9: Land Use Designations in the National Scenic Area were developed based on resource inventories. These inventories are a compilation of information about existing resources in the National Scenic Area and form the informational foundation for the Management Plan. The National Scenic Area Act directed the Gorge Commission and Forest Service to use the information from the resource inventories to develop land use designations that would be used to map out areas suitable for certain types of development and resource use. The determination of the Land Use Designations did not consider ownership.

- What is proposed for revision?

A public commenter requests that the Commission consider requiring future land acquisitions by public entities to be re-designated as Open Space or Recreation to reflect the change in use.

Staff consulted with the Forest Service and other public land management agencies including OR State Parks and WA State Parks and all these agencies do not see the value in requiring this, since the resource protections do not change based on ownership. If this suggested change to the Management Plan were to be adopted by the Commission, the Forest Service has stated that it would not include it in the Plan's SMA guidelines.

**What the Commission needs to decide for staff to draft revised language:**

- How would requiring this change in land use designation protect resources more than the current guidelines do?

**Next Steps**

Commissioners requested more discussion on these topics before the draft revisions are presented to the Commission in April 2020. Staff requests that the Commission discuss each of these topics at the March 10, 2020 Commission meeting and respond to the questions posed by staff. The answers to these questions will guide staff in developing appropriate draft revisions to policies in the Management Plan related to these topics.

**Attachments**

Bed and Breakfast Inns v. Short-term Rentals in NSA  
Oregon laws relating to commercial events at farm stands and at breweries, cideries, and wineries

## Bed and Breakfast Inns v. Short-term Rentals in NSA

	Bed and Breakfast Inns	Short-term Rentals
Management Plan Definition	An establishment located in a structure designed as a single-family dwelling where more than two rooms but fewer than six rooms are rented on a daily basis. Bed and breakfast inns are clearly incidental to the use of a structure as a single-family dwelling and are owner occupied and operated. Bed and breakfast inns operate as transient accommodations, not as rooming or boarding houses.	None.
Length of Guest Stay	Up to 14 consecutive days	Up to 30 days
Number of Rooms Rented	3 to 5	One or more, entire house/property, or detached building on property
Accommodations	Rooms within a single-family dwelling	Rooms within a single-family dwelling, or entire dwelling, accessory dwelling or structure.
Owner occupation	Required	Not required
Where allowed in NSA	In GMA in Rural Center, Commercial, 5-acre Residential, and 10-acre Residential Land Use Designations.  In SMA, only in structures that are included in, or eligible for inclusion in, the National Register of Historic Places historic dwellings.	Not allowed

Source of information about Short-Term Rentals:

Munster, Jared. *Short-Term Rentals: Regulation and Enforcement Strategies PAS Memo*. American Planning Association. January 2019. <https://www.planning.org/publications/document/9164214/#.XlgAJARfOAw>

**215.283 Uses permitted in exclusive farm use zones in nonmarginal lands counties; rules. (1) The following uses may be established in any area zoned for exclusive farm use:**

- (a) Churches and cemeteries in conjunction with churches.
- (b) The propagation or harvesting of a forest product.
- (c) Utility facilities necessary for public service, including wetland waste treatment systems but not including commercial facilities for the purpose of generating electrical power for public use by sale or transmission towers over 200 feet in height. A utility facility necessary for public service may be established as provided in:
  - (A) ORS 215.275; or
  - (B) If the utility facility is an associated transmission line, as defined in ORS 215.274 and 469.300.
- (d) A dwelling on real property used for farm use if the dwelling is occupied by a relative of the farm operator or the farm operator's spouse, which means a child, parent, stepparent, grandchild, grandparent, stepgrandparent, sibling, stepsibling, niece, nephew or first cousin of either, if the farm operator does or will require the assistance of the relative in the management of the farm use and the dwelling is located on the same lot or parcel as the dwelling of the farm operator. Notwithstanding ORS 92.010 to 92.192 or the minimum lot or parcel size requirements under ORS 215.780, if the owner of a dwelling described in this paragraph obtains construction financing or other financing secured by the dwelling and the secured party forecloses on the dwelling, the secured party may also foreclose on the homesite, as defined in ORS 308A.250, and the foreclosure shall operate as a partition of the homesite to create a new parcel.
- (e) Subject to ORS 215.279, primary or accessory dwellings and other buildings customarily provided in conjunction with farm use.
- (f) Operations for the exploration for and production of geothermal resources as defined by ORS 522.005 and oil and gas as defined by ORS 520.005, including the placement and operation of compressors, separators and other customary production equipment for an individual well adjacent to the wellhead. Any activities or construction relating to such operations shall not be a basis for an exception under ORS 197.732 (2)(a) or (b).
- (g) Operations for the exploration for minerals as defined by ORS 517.750. Any activities or construction relating to such operations shall not be a basis for an exception under ORS 197.732 (2)(a) or (b).
- (h) Climbing and passing lanes within the right of way existing as of July 1, 1987.
- (i) Reconstruction or modification of public roads and highways, including the placement of utility facilities overhead and in the subsurface of public roads and highways along the public right of way, but not including the addition of travel lanes, where no removal or displacement of buildings would occur, or no new land parcels result.
- (j) Temporary public road and highway detours that will be abandoned and restored to original condition or use at such time as no longer needed.
- (k) Minor betterment of existing public road and highway related facilities such as maintenance yards, weigh stations and rest areas, within right of way existing as of July 1, 1987, and contiguous public-owned property utilized to support the operation and maintenance of public roads and highways.
- (L) A replacement dwelling to be used in conjunction with farm use if the existing dwelling has been listed in a county inventory as historic property as defined in ORS 358.480.
- (m) Creation, restoration or enhancement of wetlands.
- (n) A winery, as described in ORS 215.452 or 215.453.
- (o) Farm stands if:
  - (A) The structures are designed and used for the sale of farm crops or livestock grown on the farm operation, or grown on the farm operation and other farm operations in the local agricultural area, including the sale of retail incidental items and fee-based activity to promote the sale of farm crops or livestock sold at the farm stand if the annual sale of incidental items and fees from promotional activity do not make up more than 25 percent of the total annual sales of the farm stand; and
  - (B) The farm stand does not include structures designed for occupancy as a residence or for activity other than the sale of farm crops or livestock and does not include structures for banquets, public gatherings or public entertainment.
- (p) Alteration, restoration or replacement of a lawfully established dwelling, as described in ORS 215.291.
- (q) A site for the takeoff and landing of model aircraft, including such buildings or facilities as may reasonably be necessary. Buildings or facilities shall not be more than 500 square feet in floor area or placed on a permanent foundation unless the building or facility preexisted the use approved under this paragraph. The site

shall not include an aggregate surface or hard surface area unless the surface preexisted the use approved under this paragraph. An owner of property used for the purpose authorized in this paragraph may charge a person operating the use on the property rent for the property. An operator may charge users of the property a fee that does not exceed the operator's cost to maintain the property, buildings and facilities. As used in this paragraph, "model aircraft" means a small-scale version of an airplane, glider, helicopter, dirigible or balloon that is used or intended to be used for flight and is controlled by radio, lines or design by a person on the ground.

(r) A facility for the processing of farm products as described in ORS 215.255.

(s) Fire service facilities providing rural fire protection services.

(t) Irrigation reservoirs, canals, delivery lines and those structures and accessory operational facilities, not including parks or other recreational structures and facilities, associated with a district as defined in ORS 540.505.

(u) Utility facility service lines. Utility facility service lines are utility lines and accessory facilities or structures that end at the point where the utility service is received by the customer and that are located on one or more of the following:

(A) A public right of way;

(B) Land immediately adjacent to a public right of way, provided the written consent of all adjacent property owners has been obtained; or

(C) The property to be served by the utility.

(v) Subject to the issuance of a license, permit or other approval by the Department of Environmental Quality under ORS 454.695, 459.205, 468B.050, 468B.053 or 468B.055, or in compliance with rules adopted under ORS 468B.095, and as provided in ORS 215.246 to 215.251, the land application of reclaimed water, agricultural or industrial process water or biosolids, or the onsite treatment of septage prior to the land application of biosolids, for agricultural, horticultural or silvicultural production, or for irrigation in connection with a use allowed in an exclusive farm use zone under this chapter. For the purposes of this paragraph, onsite treatment of septage prior to the land application of biosolids is limited to treatment using treatment facilities that are portable, temporary and transportable by truck trailer, as defined in ORS 801.580, during a period of time within which land application of biosolids is authorized under the license, permit or other approval.

(w) A county law enforcement facility that lawfully existed on August 20, 2002, and is used to provide rural law enforcement services primarily in rural areas, including parole and post-prison supervision, but not including a correctional facility as defined under ORS 162.135.

(x) Dog training classes or testing trials, which may be conducted outdoors or in preexisting farm buildings, when:

(A) The number of dogs participating in training does not exceed 10 dogs per training class and the number of training classes to be held on-site does not exceed six per day; and

(B) The number of dogs participating in a testing trial does not exceed 60 and the number of testing trials to be conducted on-site is limited to four or fewer trials per calendar year.

(y) A cider business, as described in ORS 215.451.

(z) A farm brewery, as described in ORS 215.449.

(2) 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:

(a) Commercial activities that are in conjunction with farm use, including the processing of farm crops into biofuel not permitted under ORS 215.203 (2)(b)(K) or 215.255.

(b) Operations conducted for:

(A) Mining and processing of geothermal resources as defined by ORS 522.005 and oil and gas as defined by ORS 520.005 not otherwise permitted under subsection (1)(f) of this section;

(B) Mining, crushing or stockpiling of aggregate and other mineral and other subsurface resources subject to ORS 215.298;

(C) Processing, as defined by ORS 517.750, of aggregate into asphalt or portland cement; and

(D) Processing of other mineral resources and other subsurface resources.

(c) Private parks, playgrounds, hunting and fishing preserves and campgrounds. Subject to the approval of the county governing body or its designee, a private campground may provide yurts for overnight camping. No more than one-third or a maximum of 10 campsites, whichever is smaller, may include a yurt. The yurt shall be located on the ground or on a wood floor with no permanent foundation. Upon request of a county governing body, the Land Conservation and Development Commission may provide by rule for an increase in the number

of yurts allowed on all or a portion of the campgrounds in a county if the commission determines that the increase will comply with the standards described in ORS 215.296 (1). As used in this paragraph, “yurt” means a round, domed shelter of cloth or canvas on a collapsible frame with no plumbing, sewage disposal hookup or internal cooking appliance.

(d) Parks and playgrounds. A public park may be established consistent with the provisions of ORS 195.120.

(e) Community centers owned by a governmental agency or a nonprofit community organization and operated primarily by and for residents of the local rural community. A community center authorized under this paragraph may provide services to veterans, including but not limited to emergency and transitional shelter, preparation and service of meals, vocational and educational counseling and referral to local, state or federal agencies providing medical, mental health, disability income replacement and substance abuse services, only in a facility that is in existence on January 1, 2006. The services may not include direct delivery of medical, mental health, disability income replacement or substance abuse services.

(f) Golf courses on land:

(A) Determined not to be high-value farmland, as defined in ORS 195.300 (10); or

(B) Determined to be high-value farmland described in ORS 195.300 (10)(c) if the land:

(i) Is not otherwise described in ORS 195.300 (10);

(ii) Is surrounded on all sides by an approved golf course; and

(iii) Is west of U.S. Highway 101.

(g) Commercial utility facilities for the purpose of generating power for public use by sale. If the area zoned for exclusive farm use is high-value farmland, a photovoltaic solar power generation facility may be established as a commercial utility facility as provided in ORS 215.447. A renewable energy facility as defined in ORS 215.446 may be established as a commercial utility facility.

(h) Personal-use airports for airplanes and helicopter pads, including associated hangar, maintenance and service facilities. A personal-use airport, as used in this section, means an airstrip restricted, except for aircraft emergencies, to use by the owner, and, on an infrequent and occasional basis, by invited guests, and by commercial aviation activities in connection with agricultural operations. No aircraft may be based on a personal-use airport other than those owned or controlled by the owner of the airstrip. Exceptions to the activities permitted under this definition may be granted through waiver action by the Oregon Department of Aviation in specific instances. A personal-use airport lawfully existing as of September 13, 1975, shall continue to be permitted subject to any applicable rules of the Oregon Department of Aviation.

(i) Home occupations as provided in ORS 215.448.

(j) A facility for the primary processing of forest products, provided that such facility is found to not seriously interfere with accepted farming practices and is compatible with farm uses described in ORS 215.203 (2). Such a facility may be approved for a one-year period which is renewable. These facilities are intended to be only portable or temporary in nature. The primary processing of a forest product, as used in this section, means the use of a portable chipper or stud mill or other similar methods of initial treatment of a forest product in order to enable its shipment to market. Forest products, as used in this section, means timber grown upon a parcel of land or contiguous land where the primary processing facility is located.

(k) A site for the disposal of solid waste approved by the governing body of a city or county or both and for which a permit has been granted under ORS 459.245 by the Department of Environmental Quality together with equipment, facilities or buildings necessary for its operation.

(L) One manufactured dwelling or recreational vehicle, or the temporary residential use of an existing building, in conjunction with an existing dwelling as a temporary use for the term of a hardship suffered by the existing resident or a relative of the resident. Within three months of the end of the hardship, the manufactured dwelling or recreational vehicle shall be removed or demolished or, in the case of an existing building, the building shall be removed, demolished or returned to an allowed nonresidential use. The governing body or its designee shall provide for periodic review of the hardship claimed under this paragraph. A temporary residence approved under this paragraph is not eligible for replacement under subsection (1)(p) of this section.

(m) Transmission towers over 200 feet in height.

(n)(A) Commercial dog boarding kennels; or

(B) Dog training classes or testing trials that cannot be established under subsection (1)(x) of this section.

(o) Residential homes as defined in ORS 197.660, in existing dwellings.

(p) The propagation, cultivation, maintenance and harvesting of aquatic species that are not under the jurisdiction of the State Fish and Wildlife Commission or insect species. Insect species shall not include any

species under quarantine by the State Department of Agriculture or the United States Department of Agriculture. The county shall provide notice of all applications under this paragraph to the State Department of Agriculture. Notice shall be provided in accordance with the county's land use regulations but shall be mailed at least 20 calendar days prior to any administrative decision or initial public hearing on the application.

(q) Construction of additional passing and travel lanes requiring the acquisition of right of way but not resulting in the creation of new land parcels.

(r) Reconstruction or modification of public roads and highways involving the removal or displacement of buildings but not resulting in the creation of new land parcels.

(s) Improvement of public road and highway related facilities, such as maintenance yards, weigh stations and rest areas, where additional property or right of way is required but not resulting in the creation of new land parcels.

(t) A destination resort that is approved consistent with the requirements of any statewide planning goal relating to the siting of a destination resort.

(u) Room and board arrangements for a maximum of five unrelated persons in existing residences.

(v) Operations for the extraction and bottling of water.

(w) Expansion of existing county fairgrounds and activities directly relating to county fairgrounds governed by county fair boards established pursuant to ORS 565.210.

(x) A living history museum related to resource based activities owned and operated by a governmental agency or a local historical society, together with limited commercial activities and facilities that are directly related to the use and enjoyment of the museum and located within authentic buildings of the depicted historic period or the museum administration building, if areas other than an exclusive farm use zone cannot accommodate the museum and related activities or if the museum administration buildings and parking lot are located within one quarter mile of an urban growth boundary. As used in this paragraph:

(A) "Living history museum" means a facility designed to depict and interpret everyday life and culture of some specific historic period using authentic buildings, tools, equipment and people to simulate past activities and events; and

(B) "Local historical society" means the local historical society recognized by the county governing body and organized under ORS chapter 65.

(y) An aerial fireworks display business that has been in continuous operation at its current location within an exclusive farm use zone since December 31, 1986, and possesses a wholesaler's permit to sell or provide fireworks.

(z) A landscape contracting business, as defined in ORS 671.520, or a business providing landscape architecture services, as described in ORS 671.318, if the business is pursued in conjunction with the growing and marketing of nursery stock on the land that constitutes farm use.

(aa) Public or private schools for kindergarten through grade 12, including all buildings essential to the operation of a school, primarily for residents of the rural area in which the school is located.

(bb) Equine and equine-affiliated therapeutic and counseling activities, provided:

(A) The activities are conducted in existing buildings that were lawfully constructed on the property before January 1, 2019, or in new buildings that are accessory, incidental and subordinate to the farm use on the tract; and

(B) All individuals conducting therapeutic or counseling activities are acting within the proper scope of any licenses required by the state.

(cc) Guest ranches in eastern Oregon, as described in ORS 215.461.

(3) Roads, highways and other transportation facilities and improvements not allowed under subsections (1) and (2) of this section may be established, subject to the approval of the governing body or its designee, in areas zoned for exclusive farm use subject to:

(a) Adoption of an exception to the goal related to agricultural lands and to any other applicable goal with which the facility or improvement does not comply; or

(b) ORS 215.296 for those uses identified by rule of the Land Conservation and Development Commission as provided in section 3, chapter 529, Oregon Laws 1993.

(4) The following agri-tourism and other commercial events or activities that are related to and supportive of agriculture may be established in any area zoned for exclusive farm use:

(a) A county may authorize a single agri-tourism or other commercial event or activity on a tract in a calendar year by an authorization that is personal to the applicant and is not transferred by, or transferable with, a

conveyance of the tract, if the agri-tourism or other commercial event or activity meets any local standards that apply and:

(A) The agri-tourism or other commercial event or activity is incidental and subordinate to existing farm use on the tract;

(B) The duration of the agri-tourism or other commercial event or activity does not exceed 72 consecutive hours;

(C) The maximum attendance at the agri-tourism or other commercial event or activity does not exceed 500 people;

(D) The maximum number of motor vehicles parked at the site of the agri-tourism or other commercial event or activity does not exceed 250 vehicles;

(E) The agri-tourism or other commercial event or activity complies with ORS 215.296;

(F) The agri-tourism or other commercial event or activity occurs outdoors, in temporary structures, or in existing permitted structures, subject to health and fire and life safety requirements; and

(G) The agri-tourism or other commercial event or activity complies with conditions established for:

(i) Planned hours of operation;

(ii) Access, egress and parking;

(iii) A traffic management plan that identifies the projected number of vehicles and any anticipated use of public roads; and

(iv) Sanitation and solid waste.

(b) In the alternative to paragraphs (a) and (c) of this subsection, a county may authorize, through an expedited, single-event license, a single agri-tourism or other commercial event or activity on a tract in a calendar year by an expedited, single-event license that is personal to the applicant and is not transferred by, or transferable with, a conveyance of the tract. A decision concerning an expedited, single-event license is not a land use decision, as defined in ORS 197.015. To approve an expedited, single-event license, the governing body of a county or its designee must determine that the proposed agri-tourism or other commercial event or activity meets any local standards that apply, and the agri-tourism or other commercial event or activity:

(A) Must be incidental and subordinate to existing farm use on the tract;

(B) May not begin before 6 a.m. or end after 10 p.m.;

(C) May not involve more than 100 attendees or 50 vehicles;

(D) May not include the artificial amplification of music or voices before 8 a.m. or after 8 p.m.;

(E) May not require or involve the construction or use of a new permanent structure in connection with the agri-tourism or other commercial event or activity;

(F) Must be located on a tract of at least 10 acres unless the owners or residents of adjoining properties consent, in writing, to the location; and

(G) Must comply with applicable health and fire and life safety requirements.

(c) In the alternative to paragraphs (a) and (b) of this subsection, a county may authorize up to six agri-tourism or other commercial events or activities on a tract in a calendar year by a limited use permit that is personal to the applicant and is not transferred by, or transferable with, a conveyance of the tract. The agri-tourism or other commercial events or activities must meet any local standards that apply, and the agri-tourism or other commercial events or activities:

(A) Must be incidental and subordinate to existing farm use on the tract;

(B) May not, individually, exceed a duration of 72 consecutive hours;

(C) May not require that a new permanent structure be built, used or occupied in connection with the agri-tourism or other commercial events or activities;

(D) Must comply with ORS 215.296;

(E) May not, in combination with other agri-tourism or other commercial events or activities authorized in the area, materially alter the stability of the land use pattern in the area; and

(F) Must comply with conditions established for:

(i) The types of agri-tourism or other commercial events or activities that are authorized during each calendar year, including the number and duration of the agri-tourism or other commercial events and activities, the anticipated daily attendance and the hours of operation;

(ii) The location of existing structures and the location of proposed temporary structures to be used in connection with the agri-tourism or other commercial events or activities;

(iii) The location of access and egress and parking facilities to be used in connection with the agri-tourism or other commercial events or activities;

(iv) Traffic management, including the projected number of vehicles and any anticipated use of public roads; and

(v) Sanitation and solid waste.

(d) In addition to paragraphs (a) to (c) of this subsection, a county may authorize agri-tourism or other commercial events or activities that occur more frequently or for a longer period or that do not otherwise comply with paragraphs (a) to (c) of this subsection if the agri-tourism or other commercial events or activities comply with any local standards that apply and the agri-tourism or other commercial events or activities:

(A) Are incidental and subordinate to existing commercial farm use of the tract and are necessary to support the commercial farm uses or the commercial agricultural enterprises in the area;

(B) Comply with the requirements of paragraph (c)(C), (D), (E) and (F) of this subsection;

(C) Occur on a lot or parcel that complies with the acknowledged minimum lot or parcel size; and

(D) Do not exceed 18 events or activities in a calendar year.

(5) A holder of a permit authorized by a county under subsection (4)(d) of this section must request review of the permit at four-year intervals. Upon receipt of a request for review, the county shall:

(a) Provide public notice and an opportunity for public comment as part of the review process; and

(b) Limit its review to events and activities authorized by the permit, conformance with conditions of approval required by the permit and the standards established by subsection (4)(d) of this section.

(6) For the purposes of subsection (4) of this section:

(a) A county may authorize the use of temporary structures established in connection with the agri-tourism or other commercial events or activities authorized under subsection (4) of this section. However, the temporary structures must be removed at the end of the agri-tourism or other event or activity. The county may not approve an alteration to the land in connection with an agri-tourism or other commercial event or activity authorized under subsection (4) of this section, including, but not limited to, grading, filling or paving.

(b) The county may issue the limited use permits authorized by subsection (4)(c) of this section for two calendar years. When considering an application for renewal, the county shall ensure compliance with the provisions of subsection (4)(c) of this section, any local standards that apply and conditions that apply to the permit or to the agri-tourism or other commercial events or activities authorized by the permit.

(c) The authorizations provided by subsection (4) of this section are in addition to other authorizations that may be provided by law, except that “outdoor mass gathering” and “other gathering,” as those terms are used in ORS 197.015 (10)(d), do not include agri-tourism or other commercial events and activities. [1983 c.826 §17; 1985 c.544 §3; 1985 c.583 §2; 1985 c.604 §4; 1985 c.717 §7; 1985 c.811 §7; 1987 c.227 §2; 1987 c.729 §5a; 1987 c.886 §10; 1989 c.224 §27; 1989 c.525 §2; 1989 c.564 §9; 1989 c.648 §61; 1989 c.739 §2; 1989 c.837 §27; 1989 c.861 §2; 1989 c.964 §11; 1991 c.459 §348; 1991 c.950 §1; 1993 c.466 §2; 1993 c.704 §3; 1993 c.792 §14; subsections (3) to (8) renumbered 215.284 in 1993; 1995 c.528 §2; 1997 c.250 §2; 1997 c.276 §2; 1997 c.312 §2; 1997 c.318 §3; 1997 c.363 §2; 1997 c.862 §3; 1999 c.320 §1; 1999 c.608 §2; 1999 c.640 §2; 1999 c.756 §§14a,14b; 1999 c.758 §2; 1999 c.816 §2; 1999 c.935 §22; 2001 c.149 §§2,3; 2001 c.488 §§2,3; 2001 c.544 §§1,2; 2001 c.613 §§8,9; 2001 c.676 §§2,3; 2001 c.757 §§2,3; 2001 c.941 §§2,3; 2003 c.247 §3; 2005 c.22 §163; 2005 c.354 §4; 2005 c.609 §26; 2005 c.625 §76; 2005 c.693 §3; 2005 c.737 §1; 2007 c.71 §72; 2007 c.541 §2; 2007 c.739 §36; 2009 c.850 §2; 2011 c.459 §3; 2011 c.462 §2; 2011 c.567 §2; 2011 c.679 §8; 2012 c.74 §3; 2013 c.197 §2; 2013 c.242 §4; 2013 c.462 §§5,8; 2017 c.148 §§3,4; 2017 c.253 §§5,6; 2017 c.393 §§1,2; 2017 c.504 §§5,6; 2018 c.119 §§3,4; 2019 c.244 §§5,6; 2019 c.270 §§3,4; 2019 c.410 §§8,9; 2019 c.440 §7; 2019 c.650 §§7,8]

**215.449 Farm brewery; conditions; permissible uses; reporting.** (1) As used in this section:

(a) “Agri-tourism or other commercial events” includes outdoor concerts for which admission is charged, educational, cultural, health or lifestyle events, facility rentals, celebratory gatherings and other events at which the promotion of malt beverages produced in conjunction with the farm brewery is a secondary purpose of the event.

(b) “Brewer” means a person who makes malt beverages.

(c) “Farm brewery” means a facility, located on or contiguous to a hop farm, used primarily for the commercial production, shipping and distribution, wholesale or retail sales, or tasting of malt beverages made with ingredients grown on the hop farm.

(d) “Hop farm” means a tract of land planted with hops.

(e) “Malt beverage” has the meaning given that term in ORS 471.001.

(f) “On-site retail sale” includes the retail sale of malt beverages in person at the farm brewery site, through a club or over the Internet or telephone.

(2)(a) A farm brewery may be established as a permitted use on land zoned for exclusive farm use under ORS 215.213 (1)(bb) and 215.283 (1)(z) or on land zoned for mixed farm and forest use if the farm brewery:

(A) Produces less than 150,000 barrels of malt beverages annually, inclusive of malt beverages produced by the farm brewery’s owners or operators at the farm brewery or elsewhere, through any entity owned or affiliated with the farm brewery;

(B) Produces less than 15,000 barrels of malt beverages annually on the farm brewery site; and

(C)(i) Owns an on-site hop farm of at least 15 acres;

(ii) Owns a contiguous hop farm of at least 15 acres;

(iii) Has a long-term contract for the purchase of all of the hops from at least 15 acres of a hop farm contiguous to the farm brewery; or

(iv) Obtains hops from a total of 15 acres from any combination of sources described in sub-subparagraph (i), (ii) or (iii) of this subparagraph.

(b) For purposes of this subsection, land planted with other ingredients used in malt beverages produced by the farm brewery counts towards the acreage minimums.

(3) In addition to any other activities authorized for a farm brewery, a farm brewery established under this section may:

(a) Market malt beverages produced in conjunction with the farm brewery.

(b) Conduct operations that are directly related to the sale or marketing of malt beverages produced in conjunction with the farm brewery, including:

(A) Malt beverage tastings in a tasting room or other location on the premises occupied by the farm brewery;

(B) Malt beverage club activities;

(C) Brewer luncheons and dinners;

(D) Farm brewery and hop farm tours;

(E) Meetings or business activities with farm brewery suppliers, distributors, wholesale customers and malt beverage industry members;

(F) Farm brewery staff activities;

(G) Open house promotions of malt beverages produced in conjunction with the farm brewery; and

(H) Similar activities conducted for the primary purpose of promoting malt beverages produced in conjunction with the farm brewery.

(c) Market and sell items directly related to the sale or promotion of malt beverages produced in conjunction with the farm brewery, the marketing and sale of which is incidental to on-site retail sale of malt beverages, including food and beverages:

(A) Required to be made available in conjunction with the consumption of malt beverages on the premises by the Liquor Control Act or rules adopted under the Liquor Control Act; or

(B) Served in conjunction with an activity authorized by paragraph (b), (d) or (e) of this subsection.

(d) Subject to subsections (6) to (9) of this section, carry out agri-tourism or other commercial events on the tract occupied by the farm brewery.

(e) Host charitable activities for which the farm brewery does not charge a facility rental fee.

(f) Site a bed and breakfast as a home occupation on the same tract as, and in association with, the farm brewery.

(4) A farm brewery may include on-site kitchen facilities licensed by the Oregon Health Authority under ORS 624.010 to 624.121 for the preparation of food and beverages described in subsection (3)(c) of this section. Food and beverage services authorized under subsection (3)(c) of this section may not utilize menu options or meal services that cause the kitchen facilities to function as a cafe or other dining establishment open to the public.

(5)(a) The gross income of the farm brewery from the sale of incidental items or services provided pursuant to subsection (3)(c) to (e) of this section may not exceed 25 percent of the gross income from the on-site retail sale of malt beverages produced in conjunction with the farm brewery. The gross income of a farm brewery does not include income received by third parties unaffiliated with the farm brewery.

(b) At the request of a local government with land use jurisdiction over the site of a farm brewery, the farm brewery shall submit to the local government a written statement prepared by a certified public accountant that certifies the compliance of the farm brewery with this subsection for the previous tax year.

(6) Except as provided by subsections (7) and (8) of this section, a farm brewery may carry out agri-tourism or other commercial events described in subsection (3)(d) of this section for up to 18 days per calendar year.

(7) A farm brewery in the Willamette Valley may carry out agri-tourism or other commercial events as provided in subsection (6) of this section, provided:

(a) Events on the first six days of the 18-day limit per calendar year are authorized by the local government through the issuance of a renewable multiyear license that:

(A) Has a term of five years; and

(B) Is subject to an administrative review to determine necessary conditions pursuant to subsection (8) of this section.

(b) The local government's decision on a license under paragraph (a) of this subsection is not:

(A) A land use decision, as defined in ORS 197.015, and is not subject to review by the Land Use Board of Appeals.

(B) A permit, as defined in ORS 215.402 or 227.160.

(c) Events on days seven through 18 of the 18-day limit per calendar year are authorized by the local government through the issuance of a renewable multiyear permit that:

(A) Has a term of five years;

(B) Is subject to an administrative review to determine necessary conditions pursuant to subsection (8) of this section; and

(C) Is subject to notice as specified in ORS 215.416 (11) or 227.175 (10).

(d) The local government's decision on a permit under paragraph (c) of this subsection is:

(A) A land use decision, as defined in ORS 197.015, and is subject to review by the Land Use Board of Appeals.

(B) A permit, as defined in ORS 215.402 or 227.160.

(8)(a) A local government with land use jurisdiction over the site of a farm brewery shall ensure that agri-tourism or other commercial events occurring as described in subsection (3)(d) of this section are subordinate to the production and sale of malt beverages and do not create significant adverse impacts to uses on surrounding land.

(b) A local government may impose conditions on a license or permit issued pursuant to subsection (7) of this section as necessary to meet the requirements of paragraph (a) of this subsection. The conditions must be 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.

(9) A local government may charge a fee for processing a license or permit under subsections (6) and (7) of this section. The fee may not exceed the actual or average cost of providing the applicable licensing or permitting service.

(10) When a bed and breakfast facility is sited as a home occupation on the same tract as a farm brewery as described in subsection (3)(f) of this section:

(a) The bed and breakfast facility may prepare and serve two meals per day to the registered guests of the bed and breakfast facility; and

(b) The meals may be served at the bed and breakfast facility or at the farm brewery.

(11) A farm brewery operating under this section shall provide parking for all activities or uses of the tract on which the farm brewery is situated.

(12) A local government with land use jurisdiction over the site of a farm brewery shall ensure that the farm brewery complies with:

(a) Local criteria regarding floodplains, geologic hazards, the Willamette River Greenway, solar access and airport safety;

(b) Regulations of general applicability for the public health and safety; and

(c) Regulations for resource protection acknowledged to comply with any statewide goal relating to open spaces, scenic and historic areas and natural resources.

(13)(a) For the purpose of limiting demonstrated conflicts with accepted farm and forest practices on adjacent lands, a local government with land use jurisdiction over the site of a farm brewery shall:

(A) Except as provided in paragraph (b) of this subsection, establish a setback of at least 100 feet from all property lines for the farm brewery and all public gathering places; and

(B) Require farm breweries to provide direct road access and internal circulation for the farm brewery and all public gathering places.

(b) A local government may allow a setback of less than 100 feet by granting a farm brewery an adjustment or variance to the requirement described in paragraph (a)(A) of this subsection. [2019 c.244 §2]

**215.450** [1955 c.682 §4; repealed by 1971 c.13 §1]

**215.451 Cider business; conditions; permissible uses; reporting.** (1) As used in this section:

(a) “Agri-tourism or other commercial events” includes outdoor concerts for which admission is charged, educational, cultural, health or lifestyle events, facility rentals, celebratory gatherings and other events at which the promotion of cider produced in conjunction with the cider business is a secondary purpose of the event.

(b)(A) “Cider” means an alcoholic beverage made from the fermentation of the juice of apples or pears.

(B) “Cider” includes but is not limited to flavored cider, sparkling cider and carbonated cider.

(c) “Cider business” means a facility used primarily for the commercial production, shipping and distribution, wholesale or retail sales, tasting, crushing, making, blending, storage, bottling, administrative functions or warehousing of cider.

(d) “Cidermaker” means a person who makes cider.

(e) “On-site retail sale” includes the retail sale of cider in person at the cider business site, through a cider club or over the Internet or telephone.

(f) “Orchard” means a piece of land planted with apple or pear trees.

(2) A cider business may be established as a permitted use on land zoned for exclusive farm use under ORS 215.213 (1)(aa) and 215.283 (1)(y) or on land zoned for mixed farm and forest use if the cider business produces:

(a) Less than 100,000 gallons of cider annually and the cider business:

(A) Owns an on-site orchard of at least 15 acres;

(B) Owns a contiguous orchard of at least 15 acres;

(C) Has a long-term contract for the purchase of all of the apples or pears from at least 15 acres of an orchard contiguous to the cider business; or

(D) Obtains apples or pears from any combination of subparagraph (A), (B) or (C) of this paragraph; or

(b) At least 100,000 gallons of cider annually and the cider business:

(A) Owns an on-site orchard of at least 40 acres;

(B) Owns a contiguous orchard of at least 40 acres;

(C) Has a long-term contract for the purchase of all of the apples or pears from at least 40 acres of an orchard contiguous to the cider business;

(D) Owns an on-site orchard of at least 15 acres on a tract of at least 40 acres and owns at least 40 additional acres of orchards in Oregon that are located within 15 miles of the cider business site; or

(E) Obtains apples or pears from any combination of subparagraph (A), (B), (C) or (D) of this paragraph.

(3) In addition to any other activities authorized for a cider business, a cider business established under this section may:

(a) Market cider produced in conjunction with the cider business.

(b) Conduct operations that are directly related to the sale or marketing of cider produced in conjunction with the cider business, including:

(A) Cider tastings in a tasting room or other location on the premises occupied by the cider business;

(B) Cider club activities;

(C) Cidermaker luncheons and dinners;

(D) Cider business and orchard tours;

(E) Meetings or business activities with cider business suppliers, distributors, wholesale customers and cider industry members;

(F) Cider business staff activities;

(G) Open house promotions of cider produced in conjunction with the cider business; and

(H) Similar activities conducted for the primary purpose of promoting cider produced in conjunction with the cider business.

(c) Market and sell items directly related to the sale or promotion of cider produced in conjunction with the cider business, the marketing and sale of which is incidental to on-site retail sale of cider, including food and beverages:

(A) Required to be made available in conjunction with the consumption of cider on the premises by the Liquor Control Act or rules adopted under the Liquor Control Act; or

(B) Served in conjunction with an activity authorized by paragraph (b), (d) or (e) of this subsection.

(d) Subject to subsections (6) to (9) of this section, carry out agri-tourism or other commercial events on the tract occupied by the cider business.

(e) Host charitable activities for which the cider business does not charge a facility rental fee.

(f) Site a bed and breakfast as a home occupation on the same tract, and in association with, the cider business.

(4) A cider business may include on-site kitchen facilities licensed by the Oregon Health Authority under ORS 624.010 to 624.121 for the preparation of food and beverages described in subsection (3)(c) of this section. Food and beverage services authorized under subsection (3)(c) of this section may not utilize menu options or meal services that cause the kitchen facilities to function as a cafe or other dining establishment open to the public.

(5)(a) The gross income of the cider business from the sale of incidental items or services provided pursuant to subsection (3)(c) to (e) of this section may not exceed 25 percent of the gross income from the on-site retail sale of cider produced in conjunction with the cider business. The gross income of a cider business does not include income received by third parties unaffiliated with the cider business.

(b) At the request of a local government with land use jurisdiction over the site of a cider business, the cider business shall submit to the local government a written statement prepared by a certified public accountant that certifies the compliance of the cider business with this subsection for the previous tax year.

(6) Except as provided by subsections (7) and (8) of this section, a cider business may carry out agri-tourism or other commercial events described in subsection (3)(d) of this section for up to 18 days per calendar year.

(7) A cider business in the Willamette Valley may carry out agri-tourism or other commercial events as provided in subsection (6) of this section, provided:

(a) Events on the first six days of the 18-day limit per calendar year are authorized by the local government through the issuance of a renewable multi-year license that:

(A) Has a term of five years; and

(B) Is subject to an administrative review to determine necessary conditions pursuant to subsection (8) of this section.

(b) The local government's decision on a license under paragraph (a) of this subsection is not:

(A) A land use decision, as defined in ORS 197.015, and is not subject to review by the Land Use Board of Appeals.

(B) A permit, as defined in ORS 215.402 or 227.160.

(c) Events on days seven through 18 of the 18-day limit per calendar year are authorized by the local government through the issuance of a renewable multi-year permit that:

(A) Has a term of five years;

(B) Is subject to an administrative review to determine necessary conditions pursuant to subsection (8) of this section; and

(C) Is subject to notice as specified in ORS 215.416 (11) or 227.175 (10).

(d) The local government's decision on a permit under paragraph (c) of this subsection is:

(A) A land use decision, as defined in ORS 197.015, and is subject to review by the Land Use Board of Appeals.

(B) A permit, as defined in ORS 215.402 or 227.160.

(8)(a) A local government with land use jurisdiction over the site of a cider business shall ensure that agri-tourism or other commercial events occurring as described in subsection (3)(d) of this section are subordinate to the production and sale of cider and do not create significant adverse impacts to uses on surrounding land.

(b) A local government may impose conditions on a license or permit issued pursuant to subsection (7) of this section as necessary to meet the requirements of paragraph (a) of this subsection. The conditions must be 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.

(9) A local government may charge a fee for processing a license or permit under subsections (6) and (7) of this section. The fee may not exceed the actual or average cost of providing the applicable licensing or permitting service.

(10) When a bed and breakfast facility is sited as a home occupation on the same tract as a cider business as described in subsection (3)(f) of this section:

(a) The bed and breakfast facility may prepare and serve two meals per day to the registered guests of the bed and breakfast facility; and

(b) The meals may be served at the bed and breakfast facility or at the cider business.

(11) A cider business operating under this section shall provide parking for all activities or uses of the lot, parcel or tract on which the cider business is situated.

(12) A local government with land use jurisdiction over the site of a cider business shall ensure that the cider business complies with:

(a) Local criteria regarding floodplains, geologic hazards, the Willamette River Greenway, solar access and airport safety;

(b) Regulations of general applicability for the public health and safety; and

(c) Regulations for resource protection acknowledged to comply with any statewide goal respecting open spaces, scenic and historic areas and natural resources.

(13)(a) For the purpose of limiting demonstrated conflicts with accepted farm and forest practices on adjacent lands, a local government with land use jurisdiction over the site of a cider business shall:

(A) Except as provided in paragraph (b) of this subsection, establish a setback of at least 100 feet from all property lines for the cider business and all public gathering places; and

(B) Require cider businesses to provide direct road access and internal circulation for the cider business and all public gathering places.

(b) A local government may allow a setback of less than 100 feet by granting a cider business an adjustment or variance to the requirement described in paragraph (a)(A) of this subsection. [2017 c.253 §2]

**215.452 Winery; conditions; permissible uses.** (1) 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:

(a) Less than 50,000 gallons and:

(A) Owns an on-site vineyard of at least 15 acres;

(B) Owns a contiguous vineyard of at least 15 acres;

(C) Has a long-term contract for the purchase of all of the grapes from at least 15 acres of a vineyard contiguous to the winery; or

(D) Obtains grapes from any combination of subparagraph (A), (B) or (C) of this paragraph; or

(b) At least 50,000 gallons and the winery:

(A) Owns an on-site vineyard of at least 40 acres;

(B) Owns a contiguous vineyard of at least 40 acres;

(C) Has a long-term contract for the purchase of all of the grapes from at least 40 acres of a vineyard contiguous to the winery;

(D) Owns an on-site vineyard of at least 15 acres on a tract of at least 40 acres and owns at least 40 additional acres of vineyards in Oregon that are located within 15 miles of the winery site; or

(E) Obtains grapes from any combination of subparagraph (A), (B), (C) or (D) of this paragraph.

(2) In addition to producing and distributing wine, a winery established under this section may:

(a) Market and sell wine produced in conjunction with the winery.

(b) Conduct operations that are directly related to the sale or marketing of wine produced in conjunction with the winery, including:

(A) Wine tastings in a tasting room or other location on the premises occupied by the winery;

(B) Wine club activities;

(C) Winemaker luncheons and dinners;

(D) Winery and vineyard tours;

(E) Meetings or business activities with winery suppliers, distributors, wholesale customers and wine-industry members;

(F) Winery staff activities;

(G) Open house promotions of wine produced in conjunction with the winery; and

(H) Similar activities conducted for the primary purpose of promoting wine produced in conjunction with the winery.

(c) Market and sell items directly related to the sale or promotion of wine produced in conjunction with the winery, the marketing and sale of which is incidental to on-site retail sale of wine, including food and beverages:

(A) Required to be made available in conjunction with the consumption of wine on the premises by the Liquor Control Act or rules adopted under the Liquor Control Act; or

(B) Served in conjunction with an activity authorized by paragraph (b), (d) or (e) of this subsection.

(d) Carry out agri-tourism or other commercial events on the tract occupied by the winery subject to subsections (5), (6), (7) and (8) of this section.

(e) Host charitable activities for which the winery does not charge a facility rental fee.

(3) A winery may include on-site kitchen facilities licensed by the Oregon Health Authority under ORS 624.010 to 624.121 for the preparation of food and beverages described in subsection (2)(c) of this section. Food and beverage services authorized under subsection (2)(c) of this section may not utilize menu options or meal services that cause the kitchen facilities to function as a cafe or other dining establishment open to the public.

(4) The gross income of the winery from the sale of incidental items or services provided pursuant to subsection (2)(c) to (e) of this section may not exceed 25 percent of the gross income from the on-site retail sale of wine produced in conjunction with the winery. The gross income of a winery does not include income received by third parties unaffiliated with the winery. At the request of a local government with land use jurisdiction over the site of a winery, the winery shall submit to the local government a written statement that is prepared by a certified public accountant and certifies the compliance of the winery with this subsection for the previous tax year.

(5) A winery may carry out up to 18 days of agri-tourism or other commercial events annually on the tract occupied by the winery.

(6) For events described in subsection (5) of this section for a winery in the Willamette Valley:

(a) Events on the first six days of the 18-day limit per calendar year must be authorized by the local government through the issuance of a renewable multi-year license that:

(A) Has a term of five years; and

(B) Is subject to an administrative review to determine necessary conditions pursuant to subsection (7) of this section.

(b) The local government's decision on a license under paragraph (a) of this subsection is not:

(A) A land use decision, as defined in ORS 197.015, and is not subject to review by the Land Use Board of Appeals.

(B) A permit, as defined in ORS 215.402 or 227.160.

(c) Events on days seven through 18 of the 18-day limit per calendar year must be authorized by the local government through the issuance of a renewable multi-year permit that:

(A) Has a term of five years;

(B) Is subject to an administrative review to determine necessary conditions pursuant to subsection (7) of this section; and

(C) Is subject to notice as specified in ORS 215.416 (11) or 227.175 (10).

(d) The local government's decision on a permit under paragraph (c) of this subsection is:

(A) A land use decision, as defined in ORS 197.015, and is subject to review by the Land Use Board of Appeals.

(B) A permit, as defined in ORS 215.402 or 227.160.

(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.

(8) A local government may charge a fee for processing a license or permit under subsections (6) and (7) of this section. A fee may not exceed the actual or average cost of providing the applicable licensing or permitting service.

(9) A winery operating under this section shall provide parking for all activities or uses of the lot, parcel or tract on which the winery is established.

(10) Prior to the issuance of a permit to establish a winery under this section, the applicant shall show that vineyards described in subsection (1) of this section have been planted or that the contract has been executed, as applicable.

(11) 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:

(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; and

(b) Provision of direct road access and internal circulation.

(12) A local government shall apply:

(a) Local criteria regarding floodplains, geologic hazards, the Willamette River Greenway, solar access and airport safety;

(b) Regulations of general applicability for the public health and safety; and

(c) Regulations for resource protection acknowledged to comply with any statewide goal respecting open spaces, scenic and historic areas and natural resources.

(13) When a bed and breakfast facility is sited as a home occupation on the same tract as a winery established under this section and in association with the winery:

(a) The bed and breakfast facility may prepare and serve two meals per day to the registered guests of the bed and breakfast facility; and

(b) The meals may be served at the bed and breakfast facility or at the winery.

(14) As used in this section:

(a) "Agri-tourism or other commercial events" includes outdoor concerts for which admission is charged, educational, cultural, health or lifestyle events, facility rentals, celebratory gatherings and other events at which the promotion of wine produced in conjunction with the winery is a secondary purpose of the event.

(b) "On-site retail sale" includes the retail sale of wine in person at the winery site, through a wine club or over the Internet or telephone. [1989 c.525 §4; 1993 c.704 §6; 1997 c.249 §61; 2001 c.613 §20; 2009 c.850 §11; 2010 c.97 §§1,2; 2011 c.679 §§2,3,3a; 2013 c.554 §2]

**215.453 Large winery; conditions; permissible uses.** (1) A winery may be established as a permitted use on land zoned for exclusive farm use under ORS 215.213 (1)(p) or 215.283 (1)(n) or on land zoned for mixed farm and forest use if:

- (a) The winery owns and is sited on a tract of 80 acres or more, at least 50 acres of which is a vineyard;
  - (b) The winery owns at least 80 additional acres of planted vineyards in Oregon that need not be contiguous to the acreage described in paragraph (a) of this subsection; and
  - (c) The winery has produced annually, at the same or a different location, at least 150,000 gallons of wine in at least three of the five calendar years before the winery is established under this section.
- (2) In addition to producing and distributing wine, a winery described in subsection (1) of this section may:
- (a) Market and sell wine produced in conjunction with the winery;
  - (b) Conduct operations that are directly related to the sale or marketing of wine produced in conjunction with the winery, including:
    - (A) Wine tastings in a tasting room or other location on the premises occupied by the winery;
    - (B) Wine club activities;
    - (C) Winemaker luncheons and dinners;
    - (D) Winery and vineyard tours;
    - (E) Meetings or business activities with winery suppliers, distributors, wholesale customers and wine-industry members;
    - (F) Winery staff activities;
    - (G) Open house promotions of wine produced in conjunction with the winery; and
    - (H) Similar activities conducted for the primary purpose of promoting wine produced in conjunction with the winery;
  - (c) Market and sell items directly related to the sale or promotion of wine produced in conjunction with the winery, the marketing and sale of which is incidental to retail sale of wine on-site, including food and beverages:
    - (A) Required to be made available in conjunction with the consumption of wine on the premises by the Liquor Control Act or rules adopted under the Liquor Control Act; or
    - (B) Served in conjunction with an activity authorized by paragraph (b), (d) or (e) of this subsection;
    - (d) Provide services, including agri-tourism or other commercial events, hosted by the winery or patrons of the winery, at which wine produced in conjunction with the winery is featured, that:
      - (A) Are directly related to the sale or promotion of wine produced in conjunction with the winery;
      - (B) Are incidental to the retail sale of wine on-site; and
      - (C) Are limited to 25 days or fewer in a calendar year; and
    - (e) Host charitable activities for which the winery does not charge a facility rental fee.
- (3)(a) The gross income of the winery from the sale of incidental items pursuant to subsection (2)(c) of this section and services provided pursuant to subsection (2)(d) of this section may not exceed 25 percent of the gross income from the on-site retail sale of wine produced in conjunction with the winery.
- (b) At the request of a local government with land use jurisdiction over the site of a winery, the winery shall submit to the local government a written statement, prepared by a certified public accountant, that certifies compliance with paragraph (a) of this subsection for the previous tax year.
- (4) A winery operating under this section:
- (a) Shall provide parking for all activities or uses of the lot, parcel or tract on which the winery is established.
  - (b) May operate a restaurant, as defined in ORS 624.010, in which food is prepared for consumption on the premises of the winery.
- (5)(a) A winery shall obtain a permit from the local government if the winery operates a restaurant that is open to the public for more than 25 days in a calendar year or provides for agri-tourism or other commercial events authorized under subsection (2)(d) of this section occurring on more than 25 days in a calendar year.
- (b) In addition to any other requirements, a local government may approve a permit application under this subsection if the local government finds that the authorized activity:
- (A) Complies with the standards described in ORS 215.296;
  - (B) Is incidental and subordinate to the retail sale of wine produced in conjunction with the winery; and
  - (C) Does not materially alter the stability of the land use pattern in the area.
- (c) If the local government issues a permit under this subsection for agri-tourism or other commercial events, the local government shall review the permit at least once every five years and, if appropriate, may renew the

permit.

(6) A person may not have a substantial ownership interest in more than one winery operating a restaurant under this section.

(7) Prior to the issuance of a permit to establish a winery under this section, the applicant shall show that vineyards described in subsection (1) of this section have been planted.

(8) A local government shall require a winery operating under this section to provide for:

(a) Establishment of a setback of at least 100 feet from all property lines for the winery and all public gathering places; and

(b) Direct road access and internal circulation.

(9) A local government shall apply:

(a) Local criteria regarding floodplains, geologic hazards, the Willamette River Greenway, solar access and airport safety;

(b) Regulations for the public health and safety; and

(c) Regulations for resource protection acknowledged to comply with any statewide goal respecting open spaces, scenic and historic areas and natural resources.

(10) The local government may authorize a winery described in subsection (1) of this section to sell or deliver items or provide services not described in subsection (2)(c) or (d) or (3) of this section under the criteria for a commercial activity in conjunction with farm use under ORS 215.213 (2)(c) or 215.283 (2)(a) or under other provisions of law.

(11)(a) A local government may issue a permit for a winery operating under this section to host outdoor concerts for which admission is charged, facility rentals or celebratory events if the local government issued permits to wineries operating under this section in similar circumstances before August 2, 2011.

(b) A local government may not issue a permit for a winery operating under this section to host outdoor concerts for which admission is charged, facility rentals or celebratory events if the local government did not issue permits to wineries operating under this section in similar circumstances before August 2, 2011.

(12) When a bed and breakfast facility is sited as a home occupation on the same tract as a winery established under this section and in association with the winery:

(a) The bed and breakfast facility may prepare and serve two meals per day to the registered guests of the bed and breakfast facility; and

(b) The meals may be served at the bed and breakfast facility or at the winery.

(13) As used in this section:

(a) "Agri-tourism or other commercial events" includes outdoor concerts for which admission is charged, educational, cultural, health or lifestyle events, facility rentals, celebratory gatherings and other events at which the promotion of wine produced in conjunction with the winery is a secondary purpose of the event.

(b) "On-site retail sale" includes the retail sale of wine in person at the winery site, through a wine club or over the Internet or telephone. [2011 c.679 §5; 2011 c.679 §5a; 2013 c.554 §6]

**215.454 Lawful continuation of certain winery-related uses or structures.** (1)(a) A use or structure in an area zoned for exclusive farm use that exists on June 28, 2011, may be lawfully continued, altered, restored or replaced pursuant to ORS 215.130 if the use or structure is located on the same tract, as defined in ORS 215.010, as a winery established under ORS 215.213 (1)(p) or 215.283 (1)(n) that produced more than 250,000 gallons of wine in calendar year 2010.

(b) This subsection does not affect the lawful continuation, alteration, restoration or expansion of the winery sited on the same tract.

(2) A winery established under ORS 215.213 (1)(p) or 215.283 (1)(n) that produced more than 150,000 gallons and not more than 250,000 gallons of wine in calendar year 2010 does not require a permit under ORS 215.213 (2)(c) or 215.283 (2)(a). However, the winery must comply with all provisions of ORS 215.452 except the annual production requirements.

(3) A use or structure that is lawfully established at a winery located in an exclusive farm use zone and that exists on August 2, 2011, including events and activities that exceed the income limit imposed by ORS 215.452, may be continued, altered, restored or replaced pursuant to ORS 215.130.

(4) Subsection (3) of this section does not affect the lawful continuation, alteration, restoration or replacement of the winery sited on the same tract.

(5) A use or structure that is lawfully established at a winery located in an exclusive farm use zone and that exists on June 28, 2013, including events and activities that exceed the income limit imposed by ORS 215.452, may be continued, altered, restored or replaced pursuant to ORS 215.130.

(6) Subsection (5) of this section does not affect the lawful continuation, alteration, restoration or replacement of the winery sited on the same tract. [2011 c.567 §6; subsections (3) and (4) of 2013 Edition enacted as 2011 c.679 §6; subsections (5) and (6) of 2013 Edition enacted as 2013 c.554 §5]

**Note:** 215.454 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 215 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

**215.455 Effect of approval of winery on land use laws.** Any winery approved under ORS 215.213, 215.283, 215.284, 215.452 and 215.453 is not a basis for an exception under ORS 197.732 (2)(a) or (b). [1989 c.525 §5; 2007 c.71 §73; 2011 c.679 §9]

**215.456 Siting winery as commercial activity in exclusive farm use zone.** (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:

(a) Does not qualify for siting under ORS 215.452 or 215.453; or

(b) Seeks to carry out uses or activities that are not authorized by ORS 215.452 or 215.453.

(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 winery. The gross income of a winery does not include income received by third parties unaffiliated with the winery. [2013 c.554 §3]