August 28, 2017

To: Washington County Board of Commissioners

From: Andy Back, Manager
        Planning and Development Services

Subject: B-ENGROSSED LAND USE ORDINANCE NO. 815 –
An Ordinance Amending the Community Development Code Relating to
Wineries Legislation

STAFF REPORT

For the September 5, 2017 Board of Commissioners Hearing
(The public hearing will begin no sooner than 10:00 am)

I. STAFF RECOMMENDATION

Conduct the first public hearing for B-Engrossed Ordinance No. 815. At the conclusion of the
hearing, continue the hearing to September 26, 2017.

II. BACKGROUND

At its March 7, 2017 hearing, the Board decided not to advance a proposed B-engrossment and
instead adopted A-Engrossed Ord. No. 815. That decision was appealed to the Land Use Board
of Appeals (LUBA) by the Oregon Winegrowers Association (OWA) based on concerns with
one of the standards included in the adopted ordinance. The County has filed a motion with
LUBA for a voluntary remand stating that the Board will revisit the ordinance.

At its August 15, 2017 hearing, the Board directed additional engrossment of the ordinance to
reflect the changes described in this staff report and shown in Attachment A, and continued the
hearing to September 5 and 26, 2017. The Board further directed staff to provide notice of the
ordinance changes and the schedule for engrossment hearings as required by Chapter X of the
County Charter.

III. ANALYSIS

Senate Bill (SB) 841, adopted into Oregon Revised Statute (ORS) 215, pertains to activities at
wineries on exclusive farm use lands (EFU/AF-20). The bill specifically allows application of
conditions related to number of event attendees, hours of event operation, access and parking,
traffic management, sanitation and solid waste for agritourism and other commercial uses at
Standard Wineries – activities that require a license or permit separate from the winery permit,
The bill does not clearly address whether those conditions could/should also apply to wine-related activities that are allowed “outright” through the winery permit itself (no separate license/permit required), such as tasting room activities and winemaker dinners. OWA objected to a standard within the A-engrossed ordinance that would apply these requirements to activities allowed outright with the winery permit.

As directed by the Board, staff has filed a B-engrossed Ordinance No. 815 that deletes Section 430-145.4 B as requested by OWA (and renumbers other proposed standards accordingly).

IV. SUMMARY OF RECOMMENDED B-ENGROSSMENT

- Remove draft CDC Section 430-145.4 B.
- Revise numbering as shown elsewhere in the exhibit, made necessary by the deletion
- Make additional minor formatting changes
Individual Notice No. 2017-12

At your request, Long Range Planning is providing you with Individual Notice No. 2017-12, which describes changes that were made to proposed A-Engrossed Land Use Ordinance No. 815. These changes have been incorporated into proposed B-Engrossed Ordinance No. 815.

Initial Notice

July 22, 2016 persons on the General Notification List were mailed a notice from Washington County Long Range Planning regarding initial public hearings before the Planning Commission and the Board of Commissioners (Board) for proposed Land Use Ordinance No. 815.

After public hearings for Ordinance No. 815, the Board ordered amendments to the ordinance. The amendments were incorporated into A-Engrossed Ordinance No. 815.

At the March 7, 2017 hearing, the Board decided not to advance a proposed B-engrossment and instead adopted the A-engrossed ordinance. Adoption of A-Engrossed Ord. No. 815 was appealed to the Land Use Board of Appeals (LUBA) April 10, 2017. The County has filed a motion with LUBA to extend the time to file the record for the appeal, to allow time to reconsider the ordinance.

At the August 15, 2017 hearing, the Board directed changes that are incorporated into B-Engrossed Ordinance No. 815 and summarized below. As required by Chapter X of the County Charter, the Board has directed staff to prepare and provide you with notice of these amendments. This notice, which describes the changes to proposed A-Engrossed Ordinance No. 815, is the third Individual Notice you have received in this ordinance this year.

Purpose and Description of Proposed Ordinance

As originally filed and engrossed, Ordinance No. 815 proposes to amend the Community Development Code (CDC) to include standards that the County must implement for wineries in Exclusive Farm Use Districts (EFU and AF-20) pursuant to state legislation. The Ordinance also proposes minor amendments to improve formatting within winery standards for other rural land use districts.

Proposed B-Engrossed Ordinance No. 815 incorporates all amendments proposed in the A-Engrossed version, with the following changes:

- Delete the proposed standards shown as CDC Section 430-145.4 B. in the A-Engrossed ordinance
- Revise numbering of other proposed CDC Sections as made necessary by the deletion
- Make minor formatting improvements
Background
Proposed A-Engrossed Ordinance No. 815 incorporated all of the amendments within the original ordinance, with minor corrections to:
- Consistently reflect the proper review type for certain activities at Large Wineries
- Replace a reference to Small Winery with Standard Winery for consistency

Purpose and Description of Proposed Ordinance, Cont’d.
As originally filed, Ordinance No. 815 proposed the following amendments to the CDC:
- Incorporate “agritourism” standards that apply specifically to winery tracts pursuant to Senate Bill 841 (different than “agritourism” provisions of Senate Bill 960 for non-winery farmlands, which counties are not required to implement)
- Clarify other wine-related events and activities that can be conducted on winery tracts
- Incorporate qualifying criteria and standards for operation of restaurants on winery tracts
- Allow establishment of a bed and breakfast facility as a home occupation on a winery tract (as an alternative to existing CDC standards that call for review as room and board arrangements)
- Allow qualification of certain wineries under a new category, “Large Winery,” with broader allowances for events/activities than permitted at standard wineries (subject to evidence that qualifications have been met for at least three (3) years prior)
- Clarify when wineries/winery activities may be reviewed as commercial activities in conjunction with farm use
- Incorporate provisions for continuation of nonconforming winery-related structures, uses, activities, and events predating state enactment of above noted standards

Who is Affected
Residents and property owners within rural Washington County

What Land is Affected
Rural lands in Washington County

Public Hearings
Board of Commissioners
September 5, 2017
10:00 a.m.
Board of Commissioners
September 26, 2017
6:30 p.m.
Hearings will be held in the Hillsboro Civic Center Shirley Huffman Auditorium, 150 E. Main St., Hillsboro, Oregon.

August 26, 2017 the Board may choose to adopt the ordinance, make changes to it, continue the hearing to a future date, or reject the ordinance. If adopted August 26, the ordinance would become effective November 24, 2017.

Community Development Code Standards Amended
- Section 340 - Exclusive Farm Use District (EFU)
- Section 344 - Agriculture and Forest District (AF-20)
- Section 346 - Agriculture and Forest District (AF-10)
- Section 348 - Agriculture and Forest District (AF-5)
- Section 350 - Rural Residential Five Acre Minimum District (RR-5)
How to Submit Comments

- Submit oral or written testimony to the Board at one of the public hearings.
- Written testimony, including email, may be sent to the Board in advance of the public hearings in care of Long Range Planning.
- Include the author's name and address with any public testimony.

Washington County, Department of Land Use & Transportation Planning and Development Services, Long Range Planning
155 N. First Ave., Suite 350, MS14, Hillsboro, OR 97124-3072
Telephone: 503-846-3519    Fax: 503-846-4412
Email: lutplan@co.washington.or.us

Staff Contact

Anne Kelly, Senior Planner
Telephone: 503-846-3583
Email: anne_kelly@co.washington.or.us

Proposed ordinance is available at the following locations:

- Department of Land Use & Transportation at the address listed above
- [www.co.washington.or.us/landuseordinances](http://www.co.washington.or.us/landuseordinances)
- Cedar Mill Community Library and Tigard Public Library
- Community Participation Organizations (CPOs); Call 503-846-6288 for a directory of CPOs.
August 23, 2017

To: Community Participation Organizations, Cities, Service Districts, Interested Parties

From: Andy Back, Manager
Planning and Development Services

Subject: PROPOSED B-ENGROSSED LAND USE ORDINANCE NO. 815

July 22, 2016 you were notified about initial public hearings for proposed Ordinance No. 815. After initial public hearings for Ordinance No. 815, the Washington County Board of Commissioners (Board) ordered amendments to this ordinance. The amendments were incorporated into A-Engrossed Ordinance No. 815. You were notified of the A-Engrossed ordinance and associated hearings October 4, 2016. At its October 25, 2016 hearing, the Board continued the ordinance to March 7, 2017.

At the March 7, 2017 hearing, the Board decided not to advance a proposed B-engrossment and instead adopted the A-engrossed ordinance. Adoption of A-Engrossed Ord. No. 815 was appealed to the Land Use Board of Appeals (LUBA) on April 10, 2017. The County has filed a motion with LUBA to extend the time to file the record for the appeal, to allow time to reconsider the ordinance.

At its August 15, 2017 hearing, the Board directed changes that are incorporated into B-Engrossed Ordinance No. 815 and summarized below. If you have any questions about the ordinance, or if you would like additional information, please contact Long Range Planning at 503-846-3519. This ordinance is available on the Washington County website at:

www.co.washington.or.us/landuseordinances

Ordinance Purpose and Summary
Ordinance No. 815 and its engrossments propose to amend the Community Development Code (CDC) to include standards that the County must implement for wineries in Exclusive Farm Use Districts (EFU and AF-20) pursuant to state legislation. The ordinance also proposes minor amendments to improve formatting within winery standards for other rural land use districts.

Who is Affected
Residents and property owners within rural Washington County

What Land is Affected
Rural lands in Washington County

Proposed B-Engrossed Ordinance No. 815 Provisions
Proposed B-Engrossed Ordinance No. 815 incorporates all amendments proposed in the A-Engrossed version, with the following changes:

- Delete the proposed standards shown as CDC Section 430-145.4 B. in the A-Engrossed ordinance
- Revise numbering of other proposed CDC sections as made necessary by the deletion
- Make minor formatting improvements

Department of Land Use & Transportation
Planning and Development Services • Long Range Planning
155 N. First Ave., Suite 350, MS14, Hillsboro, OR 97124-3072
phone: 503-846-3519 • fax: 503-846-4412
www.co.washington.or.us/lut • lutplan@co.washington.or.us
Background

Proposed A-Engrossed Ordinance No. 815 incorporated all of the amendments within the original ordinance, with minor corrections to:

- Consistently reflect the proper review type for certain activities at “Large Wineries”
- Replace a reference to “Small Winery” with “Standard Winery” for consistency

As originally filed, Ordinance No. 815 proposed the following amendments to the CDC:

- Incorporate “agritourism” standards that apply specifically to winery tracts pursuant to Senate Bill 841 (different than “agritourism” provisions of Senate Bill 960 for non-winery farmlands, which counties are not required to implement)
- Clarify other wine-related events and activities that can be conducted on winery tracts
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- Allow establishment of a bed and breakfast facility as a home occupation on a winery tract (as an alternative to existing CDC standards that call for review as room and board arrangements)
- Allow qualification of certain wineries under a new category, “Large Winery,” with broader allowances for events/activities than permitted at Standard Wineries (subject to evidence that qualifications have been met for at least three (3) years prior)
- Clarify when wineries/winery activities may be reviewed as commercial activities in conjunction with farm use
- Incorporate provisions for continuation of nonconforming winery-related structures, uses, activities, and events predating state enactment of above noted standards

Public Hearings - Time and Place

Board of Commissioners

September 5, 2017
10:00 a.m.

September 26, 2017
6:30 p.m.

Hearings will be held in the Civic Center Shirley Huffman Auditorium, 150 E. Main St., Hillsboro, Oregon.

August 26, 2017 the Board may choose to adopt the ordinance, make changes to it, continue the hearing to a future date, or reject the ordinance. If it is adopted August 26, the ordinance would become effective November 24, 2017.

Community Development Code Standards Amended

- Section 340 - Exclusive Farm Use District (EFU)
- Section 344 - Agriculture and Forest District (AF-20)
- Section 346 - Agriculture and Forest District (AF-10)
- Section 348 - Agriculture and Forest District (AF-5)
- Section 350 - Rural Residential Five Acre Minimum District (RR-5)
- Section 352 - Rural Commercial District (RCOM)
- Section 354 - Rural Industrial District (R-IND)
- Section 356 - Land Extensive Industrial District (MAE)
- Section 430 - Special Use Standards
- Section 440 - Nonconforming Uses and Structures
How to Submit Comments

- Submit oral or written testimony to the Board at one of the public hearings.
- Written testimony, including email, may be sent to the Board in advance of the public hearings in care of Long Range Planning.
- Include the author's name and address with any public testimony.

Washington County, Department of Land Use & Transportation Planning and Development Services, Long Range Planning
155 N. First Ave., Suite 350, MS14, Hillsboro, OR 97124-3072
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Email: lutplan@co.washington.or.us

Staff Contact

Anne Kelly, Senior Planner
Telephone: 503-846-3583
Email: anne_kelly@co.washington.or.us

Proposed B-Engrossed Ordinance No. 815 is available at the following locations:

- Department of Land Use & Transportation, at the address listed above
- www.co.washington.or.us/landuseordinances
- Cedar Mill Community Library and Tigard Public Library
- Community Participation Organizations (CPOs); call 503-846-6288 for a directory of CPOs
BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR WASHINGTON COUNTY, OREGON

B-ENGROSSED ORDINANCE 815

An Ordinance Amending the
Community Development Code
Relating to Wineries Legislation

The Board of County Commissioners of Washington County, Oregon ("Board") ordains as
follows:

SECTION 1

A. The Board recognizes that the Community Development Code Element of the
Comprehensive Plan (Volume IV) was readopted with amendments on September 9, 1986, by way
of Ordinance No. 308, and subsequently amended by Ordinance Nos. 321, 326, 336-341, 356-363,
372-378, 380, 381, 384-386, 392, 393, 397, 399-403, 407, 412, 413, 415, 417, 421-423, 428-434,
506-512, 517-523, 525, 526, 528, 529, 538, 540, 545, 551-555, 558-561, 573, 575-577, 581, 583,
588, 589, 591-595, 603-605, 607-610, 612, 615, 617, 618, 623, 624, 628, 631, 634, 635, 638, 642,
644, 645, 648, 649, 654, 659-662, 667, 669, 670, 674, 676, 677, 682-686, 692, 694-698, 703, 704,
708, 709, 711, 712, 718-720, 722, 725, 730, 732, 735, 739, 742-745, 754-758, 760, 762, 763, 765,
766, 769-776, 782-788, 791, 792, 797-802, 804, 809-811, and 813-815.

B. As part of its ongoing planning efforts, Washington County staff has identified
necessary amendments to the Community Development Code to integrate current state law relating
to wineries. The Board recognizes that such changes are necessary from time to time for the
benefit and welfare of the residents of Washington County, Oregon.
C. Under the provisions of Washington County Charter Chapter X, the Department of
Land Use and Transportation has carried out its responsibilities, including preparation of notices,
and the County Planning Commission has conducted one or more public hearings on the proposed
amendments and has submitted its recommendations to the Board. The Board finds that this
Ordinance is based on those recommendations and any modifications made by the Board are a
result of the public hearings process.

D. The Board finds and takes public notice that it is in receipt of all matters and
information necessary to consider this Ordinance in an adequate manner, and finds that this
Ordinance complies with the Statewide Planning Goals, the standards for legislative plan adoption
as set forth in Chapters 197 and 215 of the Oregon Revised Statutes, the Washington County
Charter, the Washington County Community Development Code, and the Washington County
Comprehensive Plan.

SECTION 2

The following Exhibit, attached and incorporated herein by reference, is hereby adopted as
an amendment to the Community Development Code as follows:

A. Exhibit 1 (17 pages) – Amends the following sections:

1. Section 340 – Exclusive Farm Use District (EFU);
2. Section 344 – Agriculture and Forest District (AF-20);
3. Section 346 – Agriculture and Forest District (AF-10);
4. Section 348 – Agriculture and Forest District (AF-5);
5. Section 350 – Rural Residential Five Acre Minimum District (RR-5);
6. Section 352 – Rural Commercial District (R-COM);
7. Section 354 – Rural Industrial District (R-IND);

8. Section 356 – Land Extensive Industrial District (MAE);

9. Section 430 – Special Use Standards; and

10. Section 440 – Nonconforming Uses and Structures.

SECTION 3

All other Comprehensive Plan provisions that have been adopted by prior ordinance, which
are not expressly amended or repealed herein, shall remain in full force and effect.

SECTION 4

All applications received prior to the effective date shall be processed in accordance with
ORS 215.427.

SECTION 5

If any portion of this Ordinance, including the exhibits, shall for any reason be held invalid or
unconstitutional by a body of competent jurisdiction, the remainder shall not be affected thereby and
shall remain in full force and effect.

SECTION 6

The Office of County Counsel and Department of Land Use and Transportation are
authorized to prepare planning documents to reflect the changes adopted under Section 2 of this
Ordinance, including deleting and adding textual material and maps, renumbering pages or sections,
and making any technical changes not affecting the substance of these amendments as necessary to
conform to the Washington County Comprehensive Plan format.

///

///
SECTION 7

This Ordinance shall take effect November 24, 2017.

ENACTED this ____ day of ____________, 2017, being the ________ reading and
______ public hearing before the Board of County Commissioners of Washington County, Oregon.

BOARD OF COUNTY COMMISSIONERS
FOR WASHINGTON COUNTY, OREGON

______________________________
CHAIRMAN

______________________________
RECORDING SECRETARY

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VOTE: Aye: ______________________

Nay: ______________________

Recording Secretary: ________________

Date: ______________________
Section 430-145 (Wineries) and related sections of the COMMUNITY DEVELOPMENT CODE relating to wineries, are amended to reflect the following:

1. SECTION 340 – EXCLUSIVE FARM USE DISTRICT (EFU)

340-4 Uses Permitted Through a Type II Procedure

***

340-4.1 Permitted Uses which are exempt from Section 340-4.3:

***

T. Winery - Section 430-145.4;

***

Y. Agritourism events on seven (7) to eighteen (18) days per calendar year at a standard winery described under 430-145.1 (Section 430-145.5 C).

340-4.2 Permitted Uses which are subject to Section 340-4.3:

A. Commercial Activities in Conjunction with Farm Use, including the processing of farm crops into biofuel not permitted under ORS 215.203(2)(b)(L) or as described in Section 340-4.1 D. - Section 430-33. Commercial activities in conjunction with farm use are not allowed in conjunction with a marijuana crop. See Section 430-145.9 regarding wineries that are processed under Section 430-33 as commercial activities in conjunction with farm use.

***

F. Home Occupation - Section 430-63. Applications to renew a home occupation do not have to address Section 340-4.3 if that section was addressed in a prior application. A home occupation on high-value farmland shall be operated in the dwelling or other buildings normally associated with uses permitted in the district. A home occupation shall not unreasonably interfere with other uses permitted on surrounding land in the EFU, EFC and AF-20 Districts. A bed and breakfast facility at a winery described under 430-145.1 or 430-145.2 may be processed as a home occupation subject to Section 430-63 (Section 430-145.4 C).

***

340-4.3 Required Findings:

The proposed use will not:

A. Force a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest use; nor

B. Significantly increase the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use. An applicant may demonstrate that these standards for approval will be satisfied through the imposition of conditions. Any conditions so imposed shall be clear and objective.
340-5  Uses Which May be Permitted Through a Type III Procedure

***

340-5.2  Uses which may be allowed subject to Section 340-5.3:

***

N. Agritourism events on more than twenty-five (25) days per calendar year at a large winery described under 430-145.2 (Section 430-145.6 B).

O. Restaurant open to the public for more than twenty-five (25) days per calendar year at a large winery described under 430-145.2 (Section 430-145.7 B).

340-5.3  Required Findings:

A. The proposed use is compatible with farm uses described in Oregon Revised Statutes, Chapter 215;

B. The proposed use does not interfere seriously with "accepted farming practices" as defined in ORS 215.203(2)(c) on adjacent lands devoted to farm use;

C. The proposed use does not materially alter the stability of the overall land use pattern of the area; and

D. The proposed use will not:

(1) Force a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest use; or

(2) Significantly increase the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use.

An applicant may demonstrate that these standards for approval will be satisfied through the imposition of conditions. Any conditions so imposed shall be clear and objective.

2. SECTION 344 – AGRICULTURE AND FOREST DISTRICT (AF-20)

344-4  Uses Permitted Through a Type II Procedure

***

344-4.1  Permitted Uses which are exempt from Section 344-4.3:

***

T. Winery - Section 430-145.4.

***

Y. Agritourism events on seven (7) to eighteen (18) days per calendar year at a standard winery described under 430-145.1 (Section 430-145.5 C).

344-4.2  Permitted Uses which are subject to Section 344-4.3:

abcdef Proposed additions
abcdef Proposed deletions
A. Commercial Activities in Conjunction with Farm Use, including the processing of farm crops into biofuel not permitted under ORS 215.203 (2)(b)(L) or as described in Section 344-4.1 D. - Section 430-33. Commercial activities in conjunction with farm use are not allowed in conjunction with a marijuana crop. See Section 430-145.9 regarding wineries that are processed under Section 430-33 as commercial activities in conjunction with farm use.

F. Home Occupation - Section 430-63. Applications to renew a home occupation do not have to address Section 344-4.3 if that section was addressed in a prior application. A home occupation on high-value farmland shall be operated in the dwelling or other buildings normally associated with uses permitted in the district. A home occupation shall not unreasonably interfere with other uses permitted on surrounding land in the EFU, EFC and AF-20 Districts. A bed and breakfast facility at a winery described under 430-145.1 or 430-145.2 may be processed as a home occupation subject to Section 430-63 (Section 430-145.4 C).

344-5 Uses Which May Be Permitted Through a Type III Procedure

344-5.2 Uses which may be allowed subject to Section 344-5.3:

N. Agritourism events on more than twenty-five (25) days per calendar year at a large winery described under 430-145.2 (Section 430-145.6 B).

O. Restaurant open to the public for more than twenty-five (25) days per calendar year at a large winery described under 430-145.2 (Section 430-145.7 B).

344-5.3 Required findings:

A. The proposed use is compatible with farm uses described in Oregon Revised Statutes, Chapter 215;

B. The proposed use does not interfere seriously with “accepted farming practices” as defined in ORS 215.203(2)(c) on adjacent lands devoted to farm use;

C. The proposed use does not materially alter the stability of the overall land use pattern of the area; and

D. The proposed use will not:
   (1) Force a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest use; or
   (2) Significantly increase the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use.

abcdef Proposed additions
abcdef Proposed deletions
An applicant may demonstrate that these standards for approval will be satisfied through the imposition of conditions. Any conditions so imposed shall be clear and objective.

3. **SECTION 346 – AGRICULTURE AND FOREST DISTRICT (AF-10)**

346-4 Uses Which May be Permitted Through a Type III Procedure

346-4.1 Uses which may be allowed:

S. Winery - May include accessory tasting room and incidental sales - Section 430-145.82.

4. **SECTION 348 – AGRICULTURE AND FOREST DISTRICT (AF-5)**

348-4 Uses Which May be Permitted Through a Type III Procedure

348-4.1 Uses which may be allowed:

R. Winery - May include accessory tasting room and incidental sales - Section 430-145.82.

5. **SECTION 350 – RURAL RESIDENTIAL FIVE ACRE MINIMUM DISTRICT (RR-5)**

350-4 Uses Which May be Permitted Through a Type III Procedure

350-4.1 Uses which may be allowed:

O. Winery - May include accessory tasting room and incidental sales – Section 430-145.82.

6. **SECTION 352 – RURAL COMMERCIAL DISTRICT (R-COM)**

352-3 Uses Which May Be Permitted Through a Type II Procedure

352-3.1 Permitted Uses:

Y. Winery, including a tasting room and sales - Section 430-145.82.

abcdef Proposed additions
abcdef Proposed deletions
7. SECTION 354 – RURAL INDUSTRIAL DISTRICT (R-IND)

354-3 Uses Permitted Through a Type II Procedure

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354-3.1 Permitted Uses:

***

Q. Winery, including an accessory tasting room and incidental sales - Section 430-145.82.

***

8. SECTION 356 – LAND EXTENSIVE INDUSTRIAL DISTRICT (MAE)

356-3 Uses Permitted Through a Type II Procedure

356-3.1 The following uses are permitted subject to the specific standards for the use set forth below and in applicable Special Use Sections of Section 430, as well as the intent and purpose and the general standards for the District, the Development Standards of Article IV and all other applicable standards of the Code. Approval may be further conditioned by the Review Authority pursuant to Section 207-5. A waiver of the right to remonstrate against commonly accepted farm or forest practices shall be recorded for each permitted use.

***

R. Winery - May include accessory tasting room and incidental sales - Section 430-145.82.

***

9. SECTION 430 – SPECIAL USE STANDARDS

In addition to the requirements of Sections 400 through 425, the following special use standards are provided for specific uses. Additional or amended special use standards that are applicable in the North Bethany Subarea of the Bethany Community Plan are located in Section 390, North Bethany Subarea Overlay District.

***

430-33 Commercial Activities in Conjunction with Farm Use

Commercial activities are limited to providing products and services essential to the practice of commercial agriculture. For wineries that are reviewed under Section 430-33 as commercial activities in conjunction with farm use, see also Section 430-145.9.

A commercial activity in conjunction with farm use includes, but is not limited to, processing facilities which convert harvested agricultural crops from their natural state into new products, i.e., drying, freezing, canning, etc. In addition, the preparation and storage of a product which includes significant amounts of agricultural crops not raised by the operator of the storage facility shall also be considered a commercial activity...
430-63 Home Occupation

A home occupation is a lawful activity carried on within a dwelling by a member or members of the family who occupy the dwelling, where the occupation is secondary to the use of the dwelling for living purposes and the residential character of the dwelling is maintained. Bed and breakfast facilities serving five (5) or fewer persons are permitted as a Type I Home Occupation in all districts except the Institutional, EFU, EFC and AF-20 Districts (Section 430-63.1 C does not apply to bed and breakfast facilities). Pursuant to Section 430-145.4 C, a bed and breakfast facility serving five (5) or fewer persons, in association with and on the same tract as a winery described under 430-145.1 or 430-145.2, is permitted as a Type II Home Occupation in the EFU and AF-20 Districts (Section 430-63.2 D(2) does not apply). Bed and breakfast facilities serving more than five (5) persons are subject to the standards of Section 430-19 - Boarding House (including Bed and Breakfast facilities for more than five (5) persons). A home occupation shall not be conducted on a site that includes an accessory dwelling unit, from either the primary dwelling unit or the accessory dwelling unit, except as allowed under Section 201-2.18 (CDC Section 430-117.1 J);

***

430-63.2 Home Occupation - Type II

A Type II Home Occupation shall:

***

D. Including storage of materials and products, occupy:

***

(2) Outside the UGB

(a) Not more than one thousand (1000) square feet or twenty-five (25) percent of a dwelling or lawful accessory structure, whichever is greater; or

(b) An area exceeding the above maximums by up to ten (10) percent, when requested by an applicant with a disability.

For purposes of Section 430-63.2 D(2), a "dwelling" includes the basement and attached garage. Areas used only for storage of farm equipment or farm vehicles are not considered as part of the maximum allowed home occupation space.

***

430-145 Winery

Wineries are structures where the grapes or other fruits or produce of the applicant or others may be processed and converted to wine, bottled, blended, stored, sold at wholesale or directly to a consumer for consumption off or on the premises. Vineyards are fields where grapes are grown.
Winerys that may be established under 430-145.8 in rural districts other than EFU or AF-20 are as described above, except that qualification as a winery may be based on processing and above noted activities using fruits or produce other than grapes.

As used in Section 430-145:

**Agritourism 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. Agritourism and other commercial events allowed at EFU/AF-20 wineries by ORS 215 differ from provisions that the state allows counties to adopt for agritourism and other commercial events in connection with other farm uses.

**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.

430-145.1 In the EFU and AF-20 Districts, a winery, as described by ORS 215.452 (considered for the purposes of this Code as a "standard winery") may be established as a permitted use in the EFU and AF-20 Districts subject to findings and evidence establishing compliance with the following standards A or B, below, and the standards of Section 430-145.3:

A. The winery produces a maximum annual production of less than fifty thousand (50,000) gallons of wine annually and that:

1. Owns an on-site planted vineyard of at least fifteen (15) acres;
2. Owns a contiguous planted vineyard of at least fifteen (15) acres;
3. Has and provides proof of an executed a long-term contract for the purchase of all of the grapes from at least fifteen (15) acres of a planted vineyard contiguous to the winery; or
4. Obtains grapes from any combination of (1), (2), or (3) of this subsection.

B. The winery produces a maximum annual production of at least fifty thousand (50,000) gallons and no more than one hundred thousand (100,000) gallons and that of wine annually and:

1. Owns an on-site planted vineyard of at least forty (40) acres;
2. Owns a contiguous planted vineyard of at least forty (40) acres;
3. Has and provides proof of an executed a long-term contract for the purchase of all the grapes from at least forty (40) acres of a planted vineyard contiguous to the winery;
4. Owns an on-site planted vineyard of at least fifteen (15) acres on a tract of at least forty (40) acres and owns at least forty (40) additional acres of vineyards in Oregon that are located within fifteen (15) miles of the winery site; or

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(54) Obtains grapes from any combination of (1), (2), or (3), or (4) of this subsection.

C. A winery described in Section 430-145.1 A. or B. shall allow only the sale of:

(1) Wines produced in conjunction with the winery, and

(2) Items directly related to wine, the sales of which are incidental to retail-sale of wine on-site. Such items include those served by a limited-service restaurant, as defined in ORS 624.010.

D. Prior to the issuance of a permit to establish a winery under Section 430-145.1, the applicant shall show that the vineyards, described in Section 430-145.1 A. and B., have been planted or that the contract has been executed as applicable.

E. Standards imposed upon a winery shall be limited solely to each of the following for the sole purpose of limiting demonstrated conflicts with farming or forest practices on adjacent lands:

(1) Establishment of a setback of at least one hundred (100) feet from all property lines for the winery and all public gathering places, except as allowed through CDC Section 435 (Variances and Hardship Relief); and

(2) Provision of direct road access, including safety and operational considerations and the standards of Section 501-9.3, internal circulation and parking.

(a) Internal access shall be based upon the maximum number of people at the tasting room or restaurant, including times of special events. Access shall be approved by the appropriate fire marshal.

(b) On-site parking requirements shall be based upon the maximum number of employees at the winery, the size of the tasting room and/or restaurant, and the expected number of visitors.

(c) On premise temporary parking shall be available for special winery events.

(d) A festival permit (Section 430-135.1 E.) shall be required for special events in excess of one (1) day.

(3) The review authority shall also apply, when applicable, the standards of Sections 421 (Flood Plain and Drainage Hazard Area Development), Section 422 (Significant Natural Resources), and other standards regarding geologic hazards, airport safety, and other regulations for resource protection—acknowledged to comply with any statewide planning goal respecting open spaces, scenic and historic areas, and natural resources.

F. Findings shall be made to demonstrate compliance with the standards of Section 430-145.1.

G. A winery, which does not comply with the standards of Section 430-145 A. or Section 430-145 B., may be approved as a Commercial Activity in conjunction with Farm Use (Section 430-33) upon demonstration of compliance with the applicable review criteria.
430-145.2 In the EFU and AF-20 Districts, a winery as described by ORS 215.453 (considered for the purposes of this Code as a "large winery") may be established as a permitted use subject to findings and evidence establishing compliance with the following standards and those indicated under 430-145.3:

The winery has produced annually, at the same or a different location, at least one hundred and fifty thousand (150,000) gallons of wine in at least three (3) of the five (5) calendar years before the winery is established under CDC Section 430-145.2; and

(1) Owns and is sited on a tract of eighty (80) acres or more, at least fifty (50) acres of which is a planted vineyard; and

(2) Owns at least eighty (80) additional acres of planted vineyards in Oregon that need not be contiguous to the acreage described under Section 430-145.2.A(1), above.

430-145.3 In the EFU and AF-20 Districts, to limit demonstrated conflicts with accepted farming or forest practices on adjacent lands, approval to establish a winery as described under either Section 430-145.1 (standard winery) or 430-145.2 (large winery) as a permitted use, is subject to findings and evidence demonstrating:

A. Establishment of a setback of at least one hundred (100) feet from all property lines for the winery and all public gathering places, except as allowed through CDC Section 435 (Variances and Hardship Relief);

B. Provision of parking for all activities or uses of the lot, parcel, or tract on which the winery is established. Winery parking requirements shall be based on the maximum number of employees at the winery, the size of the winery and associated facilities, and the expected number of visitors;

C. Provision of direct road access, including safety and operational considerations and the standards of Section 501-9.3;

D. Provision of internal circulation, based upon the maximum number of people at the winery and associated facilities, including times of special events. Access shall be approved by the appropriate fire marshal;

E. Compliance with standards of Section 421 (Flood Plain and Drainage Hazard Area Development) and other standards regarding geologic hazards, solar access, and airport safety, when applicable;

F. Compliance with standards of Section 422 (Significant Natural Resources) and other regulations for resource protections acknowledged to comply with any statewide goal respecting open spaces, scenic and historic areas and natural resources, when applicable; and

G. Compliance with regulations of general applicability for the public health and safety, including Environmental Health (Health and Human Services)
requirements and applicable requirements of Section 501-9 (Limited Application of the Public Facility and Service Standards Outside the UGB).

430-145.4 In addition to producing and distributing wine, wineries may conduct activities consistent with 430-145.4 A through E, below, as applicable.

A. The gross income of the winery from the sale of incidental items or services provided pursuant to Sections 430-145.4 B(3) and (4), D(1), and E(1) and (2), below, may not exceed twenty-five (25) percent of the gross income from the on-site retail sale of wine produced in conjunction with the winery.

The County may require a written statement, prepared by a certified public accountant, that certifies compliance with this requirement for the previous tax year, with application submittal and/or for periodic submittal as a condition of approval.

B. Through winery establishment under either Section 430-145.1 (standard winery) or 430-145.2 (large winery), a winery may:

(1) Market and sell wine produced in conjunction with the winery;

(2) 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.

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

(4) 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 that are:
(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 Section 430-145.4 B(2) or (3).

C. Subject to submittal and approval of an application for a Type II home occupation permit via CDC Section 430-63, wineries established under 430-145.1 (standard winery) or 430-145.2 (large winery) may operate a bed and breakfast facility in association with the winery and on the same tract as the winery, and may:

1. Prepare two (2) meals per day to the registered guests of the bed and breakfast facility; and

2. Serve the meals at the bed and breakfast facility or at the winery.

As an alternative to the above, the applicant may request bed and breakfast approval through Type II Room and Board provisions of Section 340-4.2 N or 344-4.2 N.

D. In addition to activities allowed under 430-145.4 B and C, above, a winery established under Section 430-145.1 (standard winery) may:

1. Carry out agritourism or other commercial events on the tract occupied by the winery subject to Section 430-145.5, below;

2. 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 Section 430-145.4 B(4) or D(1). Food and beverage services authorized under this subsection may not utilize menu options or meal services that cause the kitchen facilities to function as a café or other dining establishment open to the public.

E. In addition to activities allowed under 430-145.4 B and C, a winery established under Section 430-145.2 (large winery) may:

1. Provide services, including agritourism or other commercial events, hosted by the winery or patrons of the winery, at which wine produced in conjunction with the winery is featured, subject to CDC 430-145.6, below;

2. 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 served in conjunction with an activity authorized by Section 430-145.4 E (1), above;

3. Operate a restaurant, as defined in ORS 624.010, in which food is prepared for consumption on the premises of the winery, subject to requirements of Section 430-145.7, below.
430-145.5 Standards for agritourism or other commercial events on a tract occupied by a winery described under 430-145.1 (standard winery):

A. The winery may carry out up to eighteen (18) days of agritourism or other commercial events annually on the tract occupied by the winery, subject to the following:

(1) If the winery conducts agritourism or other commercial events authorized under CDC Section 430-145.5 A (pursuant to ORS 215.452), the winery may also conduct agritourism or other commercial events addressed under ORS 215.213 (11);

(2) Agritourism or other commercial events and services, including marketing and sale of food, beverages, and incidental items in conjunction with these, must be:
   (a) Directly related to the sale or promotion of wine produced in conjunction with the winery;
   (b) Incidental to the retail sale of wine on-site.

(3) Income cap requirements described under Section 430-145.4 A apply, including certification of compliance from a certified public accountant;

(4) Conditions related to number of event attendees, hours of event operation, access and parking, traffic management, sanitation and solid waste may be applied;

(5) A license pursuant to 430-145.5 B and/or a permit pursuant to 430-145.5 C is required, whichever is applicable.

B. Events on the first six (6) days of the eighteen (18) day limit per calendar year must be authorized by the County through a renewable license that has a term of five (5) years. The County's decision on a license under Subsection 430-145.5 B is not a land use decision as defined in ORS 197.015.

C. Events on days seven (7) through the maximum of eighteen (18) per calendar year must be authorized by the Current Planning Section, via approval of an application for a renewable multi-year permit that has a term of five (5) years, subject to:

(1) Type II land use review to determine conditions necessary to ensure compliance with 430-145.5 C(3), below;

(2) Evidence that a license, as required under 430-145.5 B, was obtained for events on the first six (6) days of the eighteen (18) day limit;

(3) As necessary to ensure that agritourism 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 County may impose conditions on the license 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.

430-145.6 Standards for agritourism or other commercial events on a tract occupied by a winery described under 430-145.2 (large winery):

A. Through winery establishment under 430-145.2 (large winery), a winery may:

(1) On twenty-five (25) days or fewer per calendar year, provide services including agritourism or other commercial events hosted by the winery or patrons of the winery, subject to the following:

(a) Wine produced in conjunction with the winery is featured;

(b) Agritourism or other commercial events and services, including marketing and sale of food, beverages, and incidental items in conjunction with these, must be:

   (i) Directly related to the sale or promotion of wine produced in conjunction with the winery;

   (ii) Incidental to the retail sale of wine on-site;

(c) Income cap requirements described under Section 430-145.4 A apply, including certification of compliance from a certified public accountant;

(d) Conditions related to number of event attendees, hours of event operation, access and parking, traffic management, sanitation and solid waste may be applied.

B. If a winery established under 430-145.2 (large winery) provides for agritourism or other commercial events on more than twenty-five (25) days in a calendar year, the winery shall obtain approval from the Current Planning Section via application for a permit subject to the following:

(1) Type III land use review;

(2) In addition to any other requirements, the County may approve a permit application if the County finds that the authorized activity:

   (a) Is incidental and subordinate to the retail sale of wine produced in conjunction with the winery;

   (b) Does not materially alter the stability of the land use pattern in the area; and
(c) Complies with all provisions of ORS 215.296, including but not limited to requirements that the proposed use will not force a significant change in or significantly increase the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use. An applicant’s findings may demonstrate that these standards will be satisfied through the imposition of conditions. Any conditions so imposed shall be clear and objective.

(3) Conditions related to number of event attendees, hours of event operation, access and parking, traffic management, sanitation and solid waste may be applied;

(4) If the County issues a permit under 430-145.6 B, for operation of agritourism or other commercial events on more than twenty-five (25) days per calendar year, the County shall review the permit at least once every five (5) years and, if appropriate, may renew the permit.

430-145.7 Standards for a restaurant on a tract occupied by a winery established under 430-145.2 (large winery):

A. A winery, through establishment under 430-145.2 (large winery), may:

(1) On twenty-five (25) days or fewer per calendar year, operate a restaurant as defined in ORS 624.010, in which food is prepared for consumption on the premises of the winery, subject to the following:

   (a) Wine produced in conjunction with the winery is featured;

   (b) Marketing and sale of food and beverages in conjunction with the restaurant is:

      (i) Directly related to the sale or promotion of wine produced in conjunction with the winery;

      (ii) Incidental to the retail sale of wine on-site;

   (c) Conditions related to number of event attendees, hours of event operation, access and parking, traffic management, sanitation and solid waste may be applied.

B. If a winery established under 430-145.2 (large winery) operates a restaurant that is open to the public for more than twenty-five (25) days in a calendar year, the winery shall obtain a permit from the Current Planning Section subject to the following:

   (1) Type III land use review;

   (2) In addition to any other requirements, the County may approve a permit application if the County finds that the authorized activity:
(a) Is incidental and subordinate to the retail sale of wine produced in conjunction with the winery;
(b) Does not materially alter the stability of the land use pattern in the area; and
(c) Complies with all provisions of ORS 215.296, including but not limited to requirements that the proposed use will not force a significant change in or significantly increase the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use. An applicant’s findings may demonstrate that these standards will be satisfied through the imposition of conditions. Any conditions so imposed shall be clear and objective.

(3) A person may not have a substantial ownership interest in more than one (1) winery operating a restaurant under ORS 215.453.

(4) Conditions related to number of event attendees, hours of event operation, access and parking, traffic management, sanitation and solid waste may be applied;

(5) If the County issues a permit under 430-145.7 B, for operation of a restaurant on more than twenty-five (25) days per calendar year, the County shall review the permit at least once every five (5) years and, if appropriate, may renew the permit.

430-145.82 A winery in the AF-10, AF-5, RR-5, Rural Commercial, Rural Industrial and MAE Districts may be established as a permitted use via Current Planning approval of an application subject to the following standards:

A. Comply with all state and federal requirements;
B. Have an access based upon the maximum number of people expected at the tasting room, including times of special events. Access shall be approved by the appropriate fire marshal;
C. Parking requirements shall be based on:
   (1) Be based upon the maximum number of employees at the winery; and
   (2) The size of the tasting room and expected visitors;
D. On-premise temporary parking shall be available for special winery events; and
E. A festival permit (Section 430-135.1 E.) shall be required for special events in excess of one (1) day.

430-145.9 Wineries and/or activities at wineries as Commercial Activities in Conjunction with Farm Use (Section 430-33)

A. The County may authorize the siting of a winery in the EFU or AF-20 District pursuant to the standards that apply to a Commercial Activity in Conjunction
with Farm Use (CDC Section 430-33) or other law, via Current Planning approval of a permit application subject to the following:

(1) The winery:
   (a) Does not qualify for siting under CDC Section 430-145.1 (standard winery) or 430-145.2 (large winery) (ORS 215.452 or 215.453); or
   (b) Seeks to carry out uses or activities that are not authorized by CDC Section 430-145.4 through 7 (or are not otherwise authorized by ORS 215.452 or 215.453).

(2) The gross income of the winery from any activity other than the production or sale of wine shall not exceed twenty-five (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.

(3) Conditions related to number of event attendees, hours of event operation, access and parking, traffic management, sanitation and solid waste may be applied.

B. The County may authorize a winery described in Subsection 430-145.2 (large winery) to sell or deliver items or provide services not described within 430-145.4 A, 430-145.4 B(4), or 430-145.6 A under the criteria for Commercial Activities in Conjunction with Farm Use (CDC Section 430-33) or other provisions of law, subject to Current Planning approval of a permit application. Conditions related to number of event attendees, hours of event operation, access and parking, traffic management, sanitation and solid waste may be applied.

430-145.10 Lawful continuation of certain winery-related uses or structures in the EFU or AF-20 district

A. A use or structure that exists on June 28, 2011 may be lawfully continued, altered, restored or replaced pursuant to CDC Section 440 (or as otherwise allowed by ORS 215.130) if the use or structure is located on the same tract as a winery described in ORS 215.213 (1)(p) (a winery described in ORS 215.452 or 453/CDC Section 430-145.1 or 2) that produced more than two hundred fifty thousand (250,000) gallons of wine in calendar year 2010.

B. A winery established under ORS 215.213 (1)(p) (a winery described in ORS 215.452 or 453/CDC Section 430-145.1 or 2) that produced more than one hundred fifty thousand (150,000) gallons and not more than two hundred fifty thousand (250,000) gallons of wine in calendar year 2010 does not require a permit under CDC Section 430-145.9 A (ORS 215.213 (2)(c)), but must comply with all provisions of CDC Section 430-145 that apply to wineries described under 430-145.1 (standard winery) (ORS 215.452) except the annual production requirements.
C. A use or structure that is lawfully established at a winery that exists on June 28, 2013, including events and activities that exceed the income limit imposed by CDC Section 430-145.4 A (ORS 215.452), may be continued, altered, restored or replaced pursuant to CDC Section 440 (or as otherwise allowed by ORS 215.130).

D. Subsections 430-145.10 A and C do not affect the lawful continuation, alteration, restoration or expansion of the winery sited on the same tract.

10. **SECTION 440 NONCONFORMING USES AND STRUCTURES**

A nonconforming use is a structure or use of land which does not conform to the provisions of this Code or Comprehensive Plan lawfully in existence on the effective date of enactment or amendment of this Code or Comprehensive Plan. It is the intent of this Section to allow and regulate existing uses and structures that were lawfully established and are not now in conformance with the applicable regulations of this Code.

The purpose of this Section is to generally encourage the discontinuance of nonconforming uses and structures or changing of nonconforming uses and structures to conforming or more conforming uses or structures. However, it is not the purpose of this Section to force all nonconforming uses or structures to be eliminated or brought into conformance with existing standards, or to discourage the continued nonconforming use of land for single family dwellings. Except in industrial, institutional, and commercial districts other than Neighborhood Commercial (NC), it is the intent of this Section to allow the owner of a structure used as a single family dwelling to alter or replace the structure consistent with state law, LCDC administrative rules and the applicable provisions of this Code.

Nonconforming uses that have a lesser impact on the immediate area have fewer restrictions than nonconforming uses with greater impacts. Nonconforming commercial and industrial uses in residential and farm or forest districts have more rigorous review criteria than these uses have in commercial and industrial districts in order to protect the livability and character of residential and farm or forest districts. In contrast, nonconforming single dwelling units in residential and farm or forest districts have fewer review standards because residential uses are permitted in these districts and these uses do not represent a major disruption to the immediate area. The intent of this Section in reviewing alterations to nonconforming single dwelling units in the EFU, EFC and AF-20 Districts is to review only those things that adversely affect resource based activities which are the basis for the use restrictions in these districts. See Section 430-145.9 for additional information on wineries and associated activities at wineries that may be nonconforming.

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