

# Agri-tourism and Winery Event Law in Oregon

By: Andrew Sprauer  
(presented September 2013)

# Overview

---

1. What is Agri-tourism?
2. Agri-tourism in Oregon- Wineries v. Other Farming Enterprises
3. Agri-tourism- Senate Bill 960 (2011)
4. Wineries- House Bill 3280 (2011)

# What is Agri-tourism?

- Basic Definition:
  - “The practice of touring agricultural areas to see farms and often to participate in farm activities” (Meriam-Webster Online)

# What is Agri-tourism?

- Origin of Agri-tourism:
  - Began in Italy (“agriturismo”) as early as 1965
  - The first official Italian Farmhouse participating in agri-tourism was founded in 1973.

# What is Agri-tourism?

- Origin of Agri-tourism (continued):
  - Continuing agri-tourism:
    - A relatively small amount of arable land, high population density, and high land and labor costs in several EU countries has made it difficult for many families to stay on farmland that has been handed down for generations.
    - As part of the policy package developed to address these issues, the European Union has created incentives for producers to add value to agricultural production by participating in agritourismo. (“agri-tourism”)

# What is Agri-tourism

- Origin of Agri-tourism in Oregon
  - In 2011, the Oregon Legislature approved Senate Bill 960 (SB960) allowing counties to establish agri-tourism and other commercial events and activities that are related to and supportive of agriculture.
  - Specifically authorized new commercial events related to active farming operations in Exclusive Farm Use, Special Agricultural, and Farm/Timber zones.

# Agri-tourism in Oregon

## *Wineries vs. Other Farming Enterprises*

- Authorization of commercial events  
“related to and supportive of agriculture”.
  - As outlined in SB 960

# Agri-tourism in Oregon

## *Wineries vs. Other Farming Enterprises*

- Are winery events included and authorized under events for agri-tourism?
  - NO
  - Wineries- House Bill 3280

# Agri-tourism in Oregon

*SB 960 and HB 3280*

- Important Characteristics of SB 960
  - Codified at ORS 215.213(4) and 215.283(11).
  - SB 960 was OPTIONAL for counties
    - Result- Although most counties I have reviewed have seemingly followed the language of SB 960 in codifying it in their local ordinances and zoning code, counties were given full discretion in how much or how little to include.
      - Must look at the specific local ordinances/zoning codes to determine what commercial events or activities are allowed.

# Agri-tourism in Oregon

*SB 960 and HB 3280*

- All activities must be:
  - Related to and supportive of agriculture
  - Incidental and subordinate to existing farm use on the tract.

# Agri-tourism in Oregon

*SB 960 and HB 3280*

- What does this mean?
  - Interpretation from DLCD is that commercial activities are “physically and or economically logically connect to, and supports, an existing on-site farm operation.”

# Agri-tourism in Oregon

*SB 960 and HB 3280*

- Example: “related to”
  - Proposed event involves a product that is produced on site and has a meaningful and significant relationship to the proposed event.
- Example: “supportive of”
  - Could involve the generation of supplemental income to help support a farm.
- Example: “Incidental and subordinate”
  - The event or activity is strictly secondary and ancillary to on site farming in terms of income generated, area occupied, and offsite impacts.

# Agri-tourism in Oregon

*SB 960 and HB 3280*

- Four types of events and activities are allowed:
  - Single events
  - Expedited single events
  - Up to six three-day events
  - Up to 18 additional events if on a parcel meeting the minimum parcel size.
    - All above uses are permitted under SB 960, but county must have amended its code to allow events consistent with language SB 960
    - No construction of permanent structures in support of event is allowed.
      - Application for Marion County Agri-tourism Event Form

# Agri-tourism in Oregon

## *Wineries vs. Other Farming Enterprises*

- History of events at vineyards and wineries are covered separately under zoning law and HB 3280 (also passed in 2011)
  - Wineries are not considered to be agricultural operations, but originated as conditional uses allowed on EFU and other farm zoned lands.
  - Wineries then became a permissive use of agricultural lands under Oregon law in 1989.
  - No other significant changes to winery law until 2011(HB3280).

# Agri-tourism in Oregon

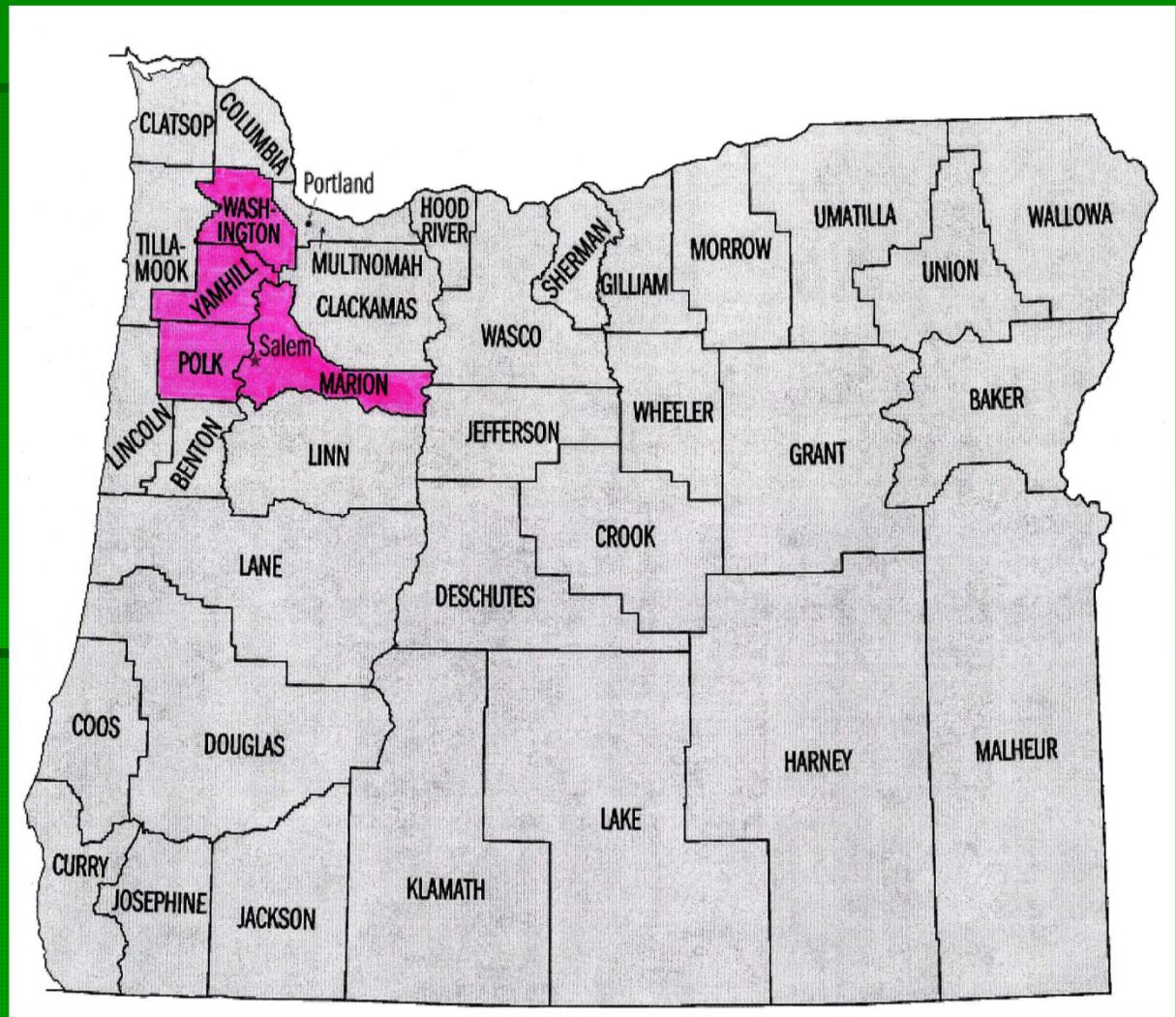
## *Wineries vs. Other Farming Enterprises*

- Why is it important to review winery law and rights?

# Agri-tourism in Oregon

## *Wineries vs. Other Farming Enterprises*

How many vineyards in these four counties?



# Agri-tourism in Oregon

## *Wineries vs. Other Farming Enterprises*

- Now 165 vineyards in the North Willamette Valley!
  - Agri-tourism is very prevalent in Oregon and the Willamette Valley.

# Agri-tourism in Oregon

*SB 960 and HB 3280*

- Important Characteristics of HB 3280-Wineries
  - Codified at ORS 215.542 and 215.452
  - The provisions of HB 3280 were MANDATORY and had to be adopted and directly applied in their entirety by counties.
  - HB 3280 created specific distinctions between “Small wineries” and “Large wineries”.

# Agri-tourism in Oregon

*SB 960 and HB 3280*

- 1. Small Wineries (ORS 215.452)
  - Established as a permitted use for wineries with maximum annual production of “less than 50,000 gallons”.
    - Owns an on-site vineyard of at least 15 acres;
    - Owns a contiguous vineyard of at least 15 acres;
    - Has a long-term contract for the purchase of all grapes from at least 15 acres of a vineyard contiguous with the winery; or
    - Obtains grapes from any combination above.

# Agri-tourism in Oregon

*SB 960 and HB 3280*

- 1. Small Wineries (ORS 215.452)
  - Established as a permitted use for wineries with maximum annual production of “at least 50,000 gallons”.
    - Owns an on-site vineyard of at least 40 acres;
    - Owns a contiguous vineyard of at least 40 acres;
    - Has a long-term contract for the purchase of all grapes from at least 40 acres of a vineyard contiguous with the winery; or
    - Obtains grapes from any combination above.

# Agri-tourism in Oregon

*SB 960 and HB 3280*

- 1. Small Wineries (ORS 215.452)
  - Allowed commercial activities:
    - Tasting rooms
    - Wine tours
    - Wine clubs
    - Similar wine related activities
  - 25 days of private events directly related to the sale or promotion of wine
    - Income from these events must be limited to 25% of gross income from the on-site retail sale of wine.

# Agri-tourism in Oregon

*SB 960 and HB 3280*

- 1. Large Wineries (ORS 215.453)
  - Established as a permitted use:
    - Winery owns and is sited on a tract of 80 acres or more, at least 50 acres of which is vineyard;
      - 80 acres is default minimum parcel size for EFU and other zoned agricultural property
    - Winery owns at least 80 additional acres of planted vineyard in Oregon; and
      - Additional acreage does not need to be contiguous to the on-site acreage described above.
    - Winery has produced annually, at the same or a different location, at least 150,000 gallons of wine in at least 3 to 5 calendar years before the winery is established under ORS 215.453

# Agri-tourism in Oregon

*SB 960 and HB 3280*

- 1. Large Wineries (ORS 215.453)
  - Allowed commercial activities:
    - Allows for same basic wine related activities as granted to small wineries;
    - Limited service restaurant incidental to the retail sales of wine on-site;
    - Providing commercial services, including private events, hosted by the winery or patrons of the winery; at which wine produced in conjunction with the winery is featured;
      - Must be directly related to the sale or promotion of wine produced in conjunction with the winery;
      - Events must be incidental to the retail sale of wine on-site; and
      - Must be limited to 25 days or fewer in the calendar year.
    - Gross income from events and sales of above incidental items may not exceed 25% of the gross income from the on-site retail sale of wine produced in conjunction with the winery.

# Agri-tourism in Oregon

*SB 960 and HB 3280*

- 1. Large Wineries (ORS 215.453)
  - Allowed commercial activities (Continued):
    - Limited allowance for full service restaurant
      - 25 days per year; or
      - Full time with County Permit
      - Depending on source
        - 4-10 wineries in state qualify for full service restaurant.
    - Currently only King Estate is operating a year round full service restaurant under this provision.

# Agri-tourism in Oregon

*SB 960 and HB 3280*

- Continuing Issues

- Growth of wine industry and opposing interests means laws are continually changing.
- HB3280 passed in 2011
- January 1, 2013
  - County right to demand CPA letter of compliance with 25% income rule for previous tax year.
- January 1, 2014
  - Deleted provisions for 25 days of private events (related to limited restaurant service); and
  - Deleted 25% income limitation and requirement for CPA certification letter on demand from county.

# Senate Bill 841

- Facing “sun-setting” on a number of the provisions of HB 3280.
- Drastic, seemingly, final changes (currently) to commercial events at wineries on ag land.
- Major changes include:
  - Wineries can now engage in activities directly related to the sale and marketing of wine without local review.
    - Also did away with the 25% income restriction.

# Senate Bill 841

- Major changes include (continued):
  - Wineries may now hold other commercial events for 18 days per year with marketing and sale of wine being a “secondary purpose of the event”.
    - Wineries in the Willamette Valley must go through new administrative review processes with the counties before hosting these types of events.
    - Counties will issue multi-year licenses for such events and review that activities are “subordinate to the production and sale of wine and do not create an adverse impact to uses in surrounding lands”.
    - In anticipation of challenges, licenses for 6 events or less are exempt from LUBA review, but licenses authorizing 7-18 events are considered land use decisions.

# Senate Bill 841

- Major changes include (continued):
  - Less of an impact on Large Wineries
    - Does not materially alter rules or requirements for operation of full service restaurant.
    - Maintains review provisions for large wineries for up to 35 commercial events per year.

# Agri-tourism Issues Going Forward

- Ever changing laws still in the early stages
  - Important portions of SB 960 and HB 3280 were scheduled to sunset January 1, 2014
    - We have already seen two revisions to ORS 215.452 and ORS 215.453
- Unexplored liability issues / legal questions
  - Recreational Use Liability Issues
    - Sallee v. Stewart – Iowa Supreme Court Case (2013)
  - Farm Operations v. Tourism
- Oregon Farm Income is less than other states
- Balancing economic growth with Oregon's extreme land use protections
  - Current laws threaten against violations v. supporting positive growth