

BEFORE THE BOARD OF COMMISSIONERS OF THE STATE OF OREGON

FOR THE COUNTY OF YAMHILL

SITTING FOR THE TRANSACTION OF COUNTY BUSINESS

In the Matter of Upholding the Planning)
Commission's Approval and Denying the Appeal)
of Docket SDR-15-18; Approval of Site Design)
for a Winery Producing Less Than 50,000 gallons) Board Order 18-468
of Wine Per Year in Conjunction with a Vineyard)
of at Least 15 Acres Located at 18010 NE Fairview)
Drive, Tax Lot 3322-900)

THE BOARD OF COMMISSIONERS OF YAMHILL COUNTY, OREGON (the Board) sat for the transaction of county business on December 20, 2018, Commissioners Mary Starrett, Richard L. "Rick" Olson, and Stan Primozych being present.

IT APPEARING TO THE BOARD as follows:

A. On October 4, 2018 the Planning Commission held a public hearing on an application by Erath Winery (owned by Ste. Michelle Wine Estates) to construct an allowed-use winery and tasting room on NE Fairview Drive, in conjunction with a 15-acre vineyard. Following the hearing, the Commission voted unanimously (6-0) to approve the application, with conditions.

B. The Planning Commission's decision was appealed to the Board, which held a public hearing regarding the application on November 29, 2018. The hearing was continued to December 6, 2018. Following the close of the hearing, the Board deliberated and voted unanimously (3-0) to uphold the Planning Commission's decision, deny the appeal, and approve the application, with conditions; NOW THEREFORE,

IT IS HEREBY ORDERED BY THE BOARD AS FOLLOWS:

Section 1. The Planning Commission's decision to approve Docket SDR-15-18 is hereby upheld, the appeal filed in this matter is denied, and the application is approved.

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Section 2. The findings and conditions attached as Exhibit A, and incorporated herein by reference, are hereby adopted in support of, and as part of, this order.

DONE this 20th day of December, 2018 at McMinnville, Oregon.

ATTEST:



YAMHILL COUNTY BOARD OF COMMISSIONERS

BRIAN VAN BERGEN
County Clerk

Chair

MARY STARRETT
MARY STARRETT

By: Carolina Rook
Deputy Carolina Rook

Commissioner

RICHARD D. "RICK" OLSON
RICHARD D. "RICK" OLSON

FORM APPROVED BY:

Timothy S. Sadlo
Timothy S. Sadlo
Senior Assistant County Counsel

Commissioner

STAN PRIMOZICH
STAN PRIMOZICH

Exhibit A

Board Order 18-468 Findings in Support of the Board's Decision Affirming the Planning Commission's Approval of Docket No. SDR-15-18 and Conditions of Approval

FINDINGS OF FACT:

A. Background Facts

1. The subject parcel (Tax Lot 3322-900) is approximately 19.725 acres located at 18010 NE Fairview Drive ("Property"). The Property is zoned Exclusive Farm Use (EF-20) and is in active farm use as a vineyard. The Property produces approximately 60 tons of grapes per year from the onsite vineyard. The grapes are currently harvested and transported offsite for processing. The Property has existing access to NE Fairview Drive. Grapes have been harvested and transported off the Property for approximately 26 years.
2. Erath Winery (owned and operated by Ste. Michelle Wine Estates) is the applicant ("Erath") proposing a winery producing less than 50,000 gallons per year under ORS 215.452 ("permitted use winery") at the Property. Erath currently operates a winery at a different facility within one mile (as the crow flies) of the Property and will be relocating its operations to the new winery in 2020 when its lease ends for its current facility.
3. Erath (one of the Dundee Hills' founding wineries) has been operating in Yamhill County for over 40 years. Ste. Michelle Wine Estates ("Ste. Michelle") has owned and operated Erath for over 12 years. Ste. Michelle acquired the Property, known as Knight's Gambit Vineyard, three years ago as a future home for Erath.
4. Erath will obtain water from an on-site groundwater well for the winery operations and will either operate under the 5,000 gallons per day groundwater exemption for commercial and industrial use under ORS 537.545, or obtain any necessary permit from Oregon Water Resources Department to use groundwater for winery operations. The Property has an existing groundwater permit from Oregon Water Resources Department to irrigate the vineyard (G-18501). The Property will also be served by an on-site septic system.
5. The surrounding parcels are all zoned for Exclusive Farm Use ("EFU"), with EF-40 land to the south and southeast, and EF-20 land to the north, northeast, and west. While some parcels to the north and west of the Property are smaller lots used for residential purposes, the underlying zoning for the area, including those parcels, is EFU. Other properties in the surrounding area are large and predominantly devoted to agriculture, especially vineyards (as evidenced by aerial photographs in the record). A bed & breakfast and winery is located on the property immediately to the southwest. There are other wineries with tasting rooms in the vicinity, with access off of Fairview Drive. The Property, and properties within the surrounding area, are within the Dundee Rural Fire Protection District.

B. Procedural Findings

1. The application for a permitted use winery was filed on March 22, 2018. The County sent an incompleteness letter on April 2, 2018. The application was deemed complete on July 26, 2018 and the County began processing the application as a Type B review under Yamhill County Zoning Ordinance (“YCZO”) 1301.
2. Staff issued the public notice of the complete application on August 3, 2018. The county received a timely request for a public hearing from Jerry Seeberger, as provided for under YCZO 1301.01.
3. The Planning Commission held a public evidentiary hearing on October 4, 2018. At the hearing, the Planning Commission received from neighbors, oral and written testimony in favor and in opposition to the proposed winery. The applicant also provided testimony and rebuttal in response to public testimony and questions from the Planning Commission. After receiving public testimony, the Planning Commission closed the record and deliberated. There was no request to leave the record open. The Planning Commission discussed the issues raised, which primarily concerned water use, transportation and safety, and compatibility/livability impacts. Following deliberations, the Planning Commission concluded that the evidence in the record supported approval of the application for a permitted use winery and unanimously approved the application subject to conditions. The Planning Commission incorporated by reference the staff report and applicant’s materials as findings to support the Planning Commission decision.
4. An appeal of the Planning Commission decision was filed on October 18, 2018 by Jerry Seeberger (“appellant”).
5. The Board of County Commissioners held a public evidentiary hearing on November 29, 2018. Once the Board opened the public hearing, county counsel and the planning director informed the Board that Public Works wished to provide supplemental comments to the Board concerning the appeal of the Planning Commission’s approval of the Erath proposal, but the Public Works director’s medical conditions prevented him from preparing written or oral comments in time for the hearing. In response to Public Work’s request, the Board established the following procedure for the November 29 hearing: (i) take the staff report; (ii) take testimony from the applicant; (iii) take testimony from appellant and the public; and (iv) continue the hearing until a date certain (December 6, 2018) to allow time for Public Works to provide additional written comments. During the public hearing, the Board received written and oral testimony, which raised similar concerns presented to the Planning Commission, focused primary on water use, transportation and safety, and compatibility/livability impacts. Before closing the November 29 hearing, the Board established the following procedure for the December 6 hearing: (i) by December 5, the Public Works would deliver any additional written comments; (ii) staff would circulate comments to the applicant, appellant, and participating parties; (iii) on December 6, the Board would open the continued hearing and receive reviewing agency reports, including Public Works; (iv) allow rebuttal by appellant and public of evidence presented during the reviewing agency reports; and (v) allow closing rebuttal from the applicant.

6. On December 5, 2018, Public Works issued additional written comments that withdrew its prior comments (stating no concerns) placed on the record during the agency review comment period (August 2018) and raised questions concerning whether the applicant's prior transportation analysis properly quantified the anticipated number of trips to adequately meet the County's site design review standards to ensure traffic safety.
7. The Board opened the continued public hearing on December 6, 2018. The Board followed the procedure for the hearing established during the November 29 hearing. Staff presented the reviewing agency reports, which included an email comment from Oregon Water Resources Department ("OWRD") noting the need to comply with OWRD regulations and the written comments from Public Works. The Public Works director was unable to attend the public hearing to discuss the comments due to his ongoing medical conditions but the County engineer was present. The Board took rebuttal testimony from appellant and neighbors on the reviewing agency reports. The Board then allowed the applicant closing rebuttal during which time the applicant presented additional evidence in response to testimony and comments received to date, including the Public Works comments regarding anticipated traffic and road safety. In response to concerns over water and traffic, the applicant proposed additional conditions for the Board's consideration. The Board closed the public hearing and deliberated, during which time the Board asked questions of the applicant and the County engineer, to inform the language of new conditions of approval.
8. Following deliberations, the Board moved to affirm the Planning Commission's decision to approve the application, subject to additional conditions of approval. The motion was unanimously approved. The Board directed staff and county counsel to prepare findings of fact and conclusions to document the decision, and on December 20, 2018, the Board adopted the presented findings of fact and conclusions of law.

C. Substantive Findings

1. The applicable approval criteria and review standards are set forth in YCZO 402.02(H) and 402.10(I) governing permitted use wineries on EFU land. These local code provisions implement state law codified at ORS 215.452 (defining the requirements for a permitted use EFU winery) and ORS 215.283(1)(n) (listing a winery meeting the requirements of ORS 215.452 as a permitted use in the EFU zone. State law prohibits the County from deviating from state rules established for this type of winery. See *Brentmar v. Jackson County*, 321 Or 481, 496 (1995) (requiring counties to apply state rules for land uses listed in 215.283(1)). The County has not updated the YCZO to incorporate the most recent version of ORS 215.452, as amended by Oregon Senate Bill 841 (2013). Therefore, ORS 215.452 applies directly to this application pursuant to ORS 197.646(3). ORS 215.452(2), (3), (4), and (9)-(12) authorize the proposed winery and provide standards for the winery operation, along with the development standards in the EF-20 zone (YCZO 402.09).
2. YCZO 402.02 Permitted Use Winery in EFU Zone

(H) Winery, as defined in Section 402.10, subject to 1101 Site Design Review

YCZO 402.02(H) lists permitted uses in the EFU districts, including a winery if the winery produces a maximum annual volume of less than 50,000 gallons and has at least 15 acres of

vineyard onsite. The record reflects that the proposed winery is designed to produce a maximum of 20,000 nine-liter equivalent cases per year, which at the conversion rate of approximately 2.378 gallons of wine per case, equates to less than 50,000 gallons per year. A supplemental site plan included in the record shows that at least 15 acres of vineyard are on the Property, even after an area has been cleared for the winery development.

3. YCZO 402.09, EFU Development Standards

(C) The minimum setback for all yards shall be 30 feet for all uses

The site plans included in the record demonstrates that all structures will satisfy the 30-foot setback yard requirement.

(F) A clear-vision area shall be maintained on the corner of any parcel at the intersection of any two of the following: county roads, public roads, private roads serving four or more parcels, and railroads. A clear-vision area shall contain no sight-obscuring structures or plantings exceeding 30 inches in height within a triangle formed by the lot corner nearest the intersection, and the two points 20 feet from this corner as measured along the parcel lines adjacent to the intersecting rights-of-way. Trees exceeding this height may be located such that their branches extend into this triangle, provided they are maintained to allow at least 12 feet of visual clearance within the triangle below the lowest hanging branches.

Two private driveways will connect the Property to NE Fairview Drive (a county road), but the private drives serving the Property do not serve four or more parcels, only two parcels that comprise the Property. See Figure SP-1. Therefore, YCZO 402.09(F) does not apply to this application. Nonetheless, both driveway entrances will be landscaped to maintain the intersections with NE Fairview Drive to meet the clear vision planting requirements.

(G)(2) The maximum building height for all other structures shall be 45 feet.

The maximum proposed building height is approximately 42 feet to the highest point above finished grade. Any potential modifications will be minor and within the code limit. Condition 1 requires that the facility be constructed consistent with the site plan (SP-1), ensuring that the facility will be constructed consistent with this standard.

(I)(2) Parking requirements for those uses which may generate traffic beyond what is normally expected in the [EFU] District shall be determined by the Director, subject to the provisions of Section 1007.

YCZO 1007.02(C) provides off-street parking space standards. YCZO 1007.02(C) treats winery tasting rooms as an “eating or drinking establishment” for purposes of establishing off-street parking requirements: one parking space per 100 square feet of floor area, plus one space per employee on a maximum work shift. Figure SP-1 in the applicant’s supplemental materials sets out the parking schedule for the proposed square footage and future build out. Condition 7 ensures that the facility will be constructed consistent with these standards.

4. YCZO 1101.02, Evaluation of Site Development Plans

YCZO 1101.02(A) provides seven factors the County considers when reviewing site development plans. Specifically, the code provides that “review of a site development plan shall be based upon consideration of the following***.” The factors outlined in YCZO 1101.02(A)(1)-(7) are considerations that County must take into account when reviewing the application against the underlying EFU development standards. The following sections document the Board’s consideration of YCZO 1101.02(A) and conclude that, subject to conditions, the proposal satisfies the County’s design review requirements.

(A)(1) Characteristics of adjoining and surrounding uses

The adjoining and surrounding parcels are all zoned EFU, with EF-40 to the south and southwest, and EF-20 land to the north, northeast, and west. Lands adjacent and surrounding the Property are used for agricultural operations, primarily vineyards like the Property, with some Christmas tree operations and pastures. There are two other wineries with tasting rooms in the vicinity and a bed and breakfast and winery is located on the property immediately to the southwest. Neighbors directly across NE Fairview Drive have residences on their properties. There was testimony before the Board that the adjoining and surrounding land are residential and should remain residential. The land is EFU, not rural residential under the YCZO. There are parcels with approved dwellings, but all adjoining and surrounding land is plan-designated for EFU use. The proposed winery takes advantage of co-locating on the vineyard site and will harvest and process the grapes onsite thus continuing the ongoing agricultural operations consistent with the intent of the EFU zone, like other operations in the surrounding area (e.g., Torii Mor and Lange).

There was testimony that the proposed winery would detract from the character of the area, would result in visual impacts to neighbors, and was an unlawful industrial use on residential land. The proposal is a use permitted in the EFU zone subject to standards contained in ORS 215.452 and allegations of unlawful use are unfounded. The Board notes that there were specific concerns raised regarding the scale of the facility, including the amount of parking and the ratio of square footage between wine production space and tasting room and retail space for the promotion and sale of wine. Figure SP-1 and Figure EX-1 in the applicant’s supplemental materials illustrate the orientation and location of the proposed development on the Property and the orientation to adjacent properties. The applicant proposes to develop 26,900 square feet, which includes 2,900 square feet for the tasting room (approximately 10 percent of the development) (“Phase 1 Build-Out”). The applicant requested approval for future build-out of 5,800 square feet, which includes an additional 2,600 square feet for the tasting room (“Phase 2 Build-Out”). In total, the maximum build-out of winery would be 32,700 square feet with 5,500 square feet dedicated for tasting room space (“Total Build-Out”). Even at Total Build-Out, the area dedicated for tasting room activities would be less than 17 percent of the total development square footage. The remainder of the space is dedicated for winery production (up to 20,000 maximum case annual production), storage, and accessory uses for the winery.

Evidence provided by the applicant demonstrates that the facility is designed to account for the topography and much of the structure will be built into the hillside; utilities and equipment will be screened; and there will be extensive landscaping proposed along NE Fairview Drive and private driveways. Throughout the surrounding area there is an existing pattern of vineyards, farm operations, residential uses, wineries (wine production and tasting rooms), and commercial

activities including commercial activities in conjunction with farm use. While some neighbors may be concerned with visual impacts from single-view points (like a driveway or while driving up Fairview Drive), the proposed winery is consistent in size and scale with other winery facilities and operations in the surrounding area and throughout the County. The applicant also addressed this concern in its closing rebuttal, providing drawings of the facility from different vantage points. This evidence showed how the facility would be constructed into the hillside and how it would appear looking up Fairview Drive from downhill, looking directly at the facility from Fairview Drive when at the same elevation, and looking down Fairview Drive.

Nothing in the YCZO or ORS 215.452 requires that the winery be a certain size or limit the area dedicated to tasting room or other commercial activities permitted without limit under ORS 215.452. The Board considered the characteristics of the adjacent and surrounding uses, and while the Board acknowledges that neighbors have expressed concern about the size and scale of the proposal, the applicant has designed the facility in a manner that addresses those concerns by addressing compatibility and visual impacts to adjacent and surrounding uses. Issues regarding compatibility and traffic are addressed under YCZO 1101.02(A)(3). The Board finds that the proposed design takes into consideration adjoining and surrounding uses and the topography of the site. Setbacks have been imposed, and screening will be planted prior to operation. Condition 6 ensures that the applicant will implement the landscape plan. The Board finds that the factor in YCZO 1101.02(A)(1) has been adequately considered for this site design review.

(A)(2) Economic factors relating to the proposed use;

The proposal allows the applicant to continue its operations in Yamhill County by relocating the existing Erath winery to the Property, a permanent home for the facility thus allowing the winery to continue employing its local employees and increase its number of employees during seasonal peaks. The winery will also contribute to the tax base and will allow the applicant to produce an estate bottled wine from the grapes grown at the on-site vineyard. While the Board acknowledges there may have been some neighbor concerns that the proposal would have negative economic impacts on neighbors, the Board finds these complaints unfounded and not supported by any evidence placed in the record. There are other similar neighboring wineries with production and tasting room activities in the surrounding area and throughout the County. This type of development has, and will continue, to increase property values in the County. Condition 16 ensures that, to the extent any road safety improvements may be required in the future, the applicant will pay its proportionate share just as any property owner along any County roadway proposed for improvements. See also discussion under YCZO 1101.02(A)(3) below.

(A)(3) Traffic safety, internal circulation, and parking

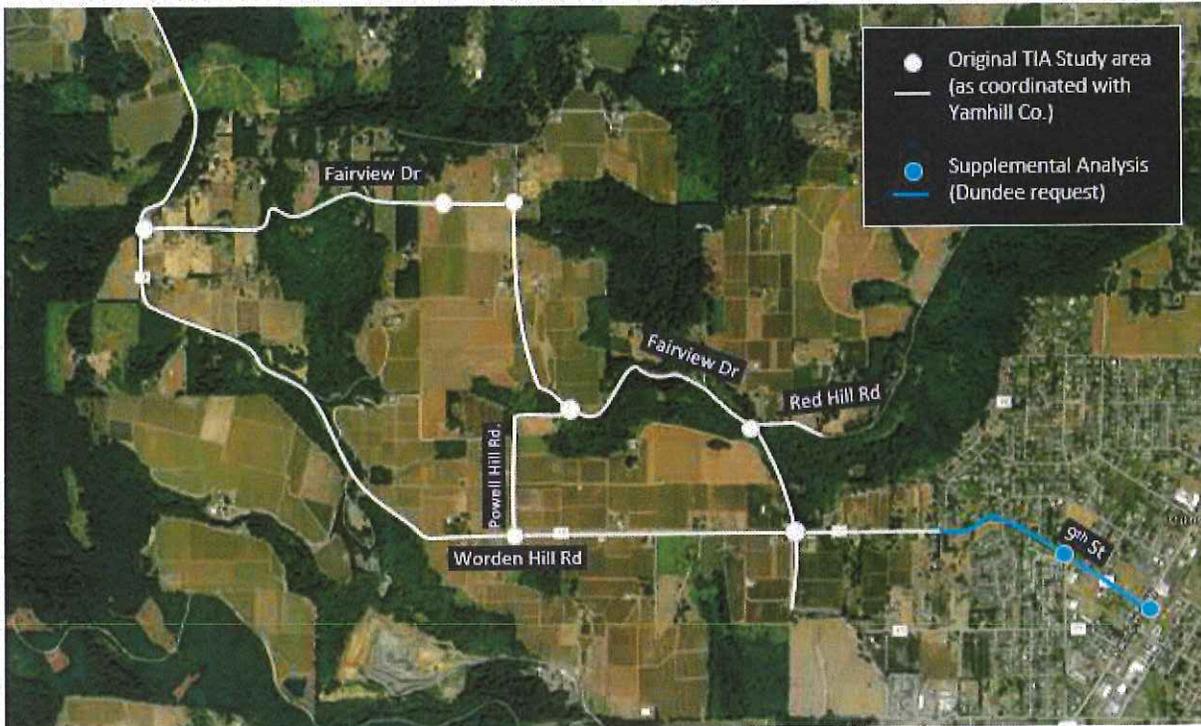
The applicant accounted for parking and internal circulation on the Property by providing a complete site plan with vehicle parking (as required by YCZO 1007, see above) and the applicant developed an internal circulation plan to manage access and circulation for trucks associated with the wine production and ongoing vineyard management in addition to the occasional bus for wine events. Access to the facility will be via two private driveways off of NE Fairview Drive, as shown on Figure SP-1 (the site plan in the record). One of the driveways will use the existing access point along NE Fairview Drive, which has been used for vineyard operations and trucking harvested grapes for many years. A new access point will support the second private driveway. Access to the production portion of the winery will be limited to use by employees and service

vehicles, and traffic will primarily enter from the east and exit to the east. The drive aisles have been designed to accommodate emergency vehicle requirements. The site layout separates the two functions both vertically and horizontally on the site with parking areas and drop off/pick up areas specific to each use and entrance. There were comments made regarding the number of parking spaces and the size of the parking area, including a concern that there was bus parking shown on the site plan. The proposal is designed to meet the County's access and parking requirements in YCZO 1007 and ORS 215.452(9) and (11). The applicant represented in its testimony that large buses are uncommon and, at the existing facility, buses were only accommodated on a reservation basis and kept to a minimum. The site plan shows that any bus may be accommodated onsite, as is required by ORS 215.452(9) requiring that all parking associated with the permitted use winery be accommodated on the same lot or tract as the winery. The applicant's proposal adequately addresses parking and internal circulation, as required by YCZO 1101.02(A)(3) and ORS 215.452(9), which is discussed further below.

The applicant provided considerable information into the record in order to address concerns about traffic safety from the appellant, neighbors, Public Works, and the City of Dundee. As a part of the application, the County required, and the applicant submitted, a detailed traffic impact analysis ("TIA") for the proposed winery and its potential impacts on the local transportation system. The conclusion of the professional engineer (David Evans and Associates, Inc.) who submitted the report concluded that, over the 20 year planning horizon, accounting for current traffic counts, expected growth, and the addition of the winery traffic, all intersections in the study area would continue to function at the highest level of service. The study also concluded that there was not a documented safety problem as the number of crashes throughout the study area is low.

In response to criticism that the applicant did not study enough intersections, the applicant provided a supplemental report from its transportation engineer documenting additional analysis of the identified intersections, including intersections of concern for the City of Dundee. The additional evidence supports the applicant's earlier conclusions that the winery will not result in traffic safety concerns at studied intersections.

Figure 1: Location of Analyzed Intersections



While the Board recognizes that there are neighbor concerns regarding intersections, the data provided by the applicant supports the above conclusions. No evidence was provided into the record that indicated otherwise; many assertions and personal observations were made but no evidence was provided. Opponents did not provide any expert testimony or a technical critique of the applicant's transportation analysis and data by a qualified transportation engineer. The City of Dundee city councilor did testify at the November 29 hearing in her capacity as city councilor and as a transportation engineer, but her testimony was limited to the City's letter and did not provide supplemental evidence or a technical review of DEA's supplemental memo provided into the record in response to the City of Dundee's comments.

The Board recognizes that there are differing views of intersection safety but concludes that the applicant has provided sufficient evidence and explanation for the Board to conclude that the proposal accounts for traffic safety at the studied intersections, the studied intersections adequately capture the potential area of impact, and even with the Total Build-Out, the capacity of the studied intersections should still perform safely under the County's Transportation System Plan ("TSP"). The Board also notes that there is evidence in the record responding to the City of Dundee's concerns and such evidence demonstrates that there is not a documented safety concern at intersections within the City of Dundee.

The TIA was based on the Institute of Transportation Engineers ("ITE") Manual. The ITE winery use category bases trip counts on California and other states' data, not Oregon. The TIA evaluated the worst-case scenario based on trip counts from the ITE, which is not reflective of actual daily trips from the proposed winery. It is evident from the comments received that many persons interpreted the TIA as actual trips, rather than understanding that the TIA estimates an ultimately worst-case scenario based on the Total Build-Out for evaluating the adequacy of the transportation system. The comments Public Works provided into the record on December 5, 2018, were based on the traffic numbers presented in the ITE and not on the anticipated average daily trips, which

is what is required by the County's road standards in the County's acknowledged and adopted TSP. In response the applicant presented testimony and additional evidence from its transportation engineer at the December 6 hearing in response to concerns that the roads, specifically Fairview Drive, could not accommodate the number of anticipated trips given the road's rating as a "Local Road" under the County's TSP.

Appendix A of the County's TSP sets out the roadway standards for new construction and reconstruction projects. NE Fairview Drive is classified as a Local Road under the TSP. Concerns, however, were addressed to whether the amount of traffic associated with the winery and tasting room at full build out would require changing the classification of the road to a "Resource" road.

NE Fairview Drive is generally known to have an upper and a lower section: the upper section travels east-west for approximately one mile between NE Worden Hill Road and NE Sylvan View Drive and is paved with asphalt ("Upper Fairview"); and the lower section is mostly north-south between NE Sylvan View Drive/Upper Fairview and NE Warren Road/NE Worden Hill Road and is graveled ("Lower Fairview"). The neighbors, under the County's Community Road Improvement Program ("CRIP"), funded the paving of Upper Fairview. Lower Fairview remains unpaved. Significant evidence and testimony was received (from neighbors and the Public Works Department) that parts of Fairview Drive (especially the unpaved portions) are not suitable for significant increases in traffic, due to inadequate width, poor site-distance, inadequate and damaged roadbed, difficult gradients and drainage problems.

As stated, currently both Upper and Lower Fairview are Local Roads. As defined in the County's TSP, a Local Road provides access to adjacent land and higher-classified roads; and accommodates travel over shorter distances compared to collectors or arterials. Such roads support existing zoning and roadways are generally designed to accommodate build-out of permitted uses in the existing zone. The applicant raised concerns during the proceeding that the burden should not be on it, as an applicant for a permitted use in the EFU zone, to ensure that the County roadway (NE Fairview Drive) is constructed to County standards. The county has responded with a condition limiting the applicant's contribution to any necessary road improvements to its proportionate share of such improvements.

Figure 2: County TSP, Appendix A

**Yamhill County Roadway Standards
For New Construction/Reconstruction Projects**

	Principal Arterials			Minor Arterials			Major Collector			Minor Collector			Resource Roads			Local Roads		
	>2,500			>2,000			1,500 to 2,000			400 to 1,500			400 to 1,500			Under 400		
Design ADT	L*	R	M	L	R	M	L	R	M	L	R	M	L	R	M	L	R	M
Terrain	L*	R	M	L	R	M	L	R	M	L	R	M	L	R	M	L	R	M
Design Speed (mph)	60	50	40	60	50	40	50	40	30	50	40	30	30	20	10	30	25	20
Maximum Grade (%)	3	4	6	3	4	6	4	6	6	4	6	6	7	10 ¹	10	7	10	10
Minimum Stopping Sight Distance (ft) ²	570			570			425			425			200			200		
Minimum Passing Sight Distance (ft) ²	2,135			2,135			1,835			1,835			1,090			1,090		
Lane Width (ft)	12	12	12	12	12	12	12	11	11	11	11	11	11	11	11	10	10	10
Shoulder Width (ft)	6	6	6	6	6	6	6	6	4	5	4	2	2	2	2	2	2	2
Surface Type ⁴	P	P	P	P	P	P	P	P	P	P	P	P	P/G	P/G	P/G	P/G	P/G	P/G
Shoulder Type ⁵	P	P	P	P	P	P	P	P	P	P	P	P	C	C	G	G	G	G
Roadway Width (ft)	36	36	36	36	36	36	36	34	30	32	30	26	26	26	26	24	24	24
Maximum Super Elevation Rate	6%	6%	6%	6%	6%	6%	6%	6%	6%	6%	6%	6%	6%	6%	6%	6%	6%	6%
Minimum Radius (ft)	1340	835	510	1340	835	510	835	510	275	835	510	275	275	125	70	275	144	125
Maximum Degree of Curvature	4°15'	6°45'	11°15'	4°15'	6°45'	11°15'	6°45'	11°15'	20°50'	6°45'	11°15'	20°50'	20°50'	45°50'	81°50'	20°50'	39°45'	45°50'
Vertical Clearance (ft)	17	17	17	17	17	17	17	17	17	17	17	17	17	17	17	16	16	16
Minimum ROW Width (ft)	60	60	60	60	60	60	60	60	60	60	60	60	50	50	50	50	50	50
Cross Slope																		
Low Type (Pavement)		2%			2%			2%			2%			2%			2%	
High Type (Treated Earth/Gravel)		N/A			N/A			N/A			N/A			3 to 4%			3 to 4%	
* L - Level, R - Rolling, M - Mountainous																		
Notes:																		
¹ Maximum sustained grade is 10%. Maximum intermittent grade is 15% for 200 feet.																		
² Minimum stopping sight distance is a function of speed and grade. The distances shown are for level terrain (less than or equal to 3% grade) and the design speeds shown above. Distances must be calculated for grades exceeding 3 percent.																		
³ Minimum passing sight distance is a function of speed and grade. The distances shown are for level terrain (less than or equal to 3% grade) and the design speeds shown above. Distances must be calculated for grades exceeding 3 percent.																		
⁴ P - Pavement, P/G - Pavement or Gravel (to be determined by County Road Engineer). Standards for lane width, shoulder width, and shoulder type do not apply to gravel surface types.																		
⁵ P - Pavement, C - Composite, G - Gravel																		

To demonstrate compliance with the adopted and acknowledged County TSP standards, the applicant estimated the anticipated number of average daily trips (“ADT”) and peak trips for the proposed facility based on 2017 visitor data from the applicant’s existing facility.

Figure 3: Current and Anticipated Average Daily Trips

Use	Area*	ADT**	Notes
Current Tasting Room	1,600 SF	37 trips	Annual visitors at 19,883 (2017), average of 1,657 visitors/month or 55 visitors/day. 3 visitors/vehicle average (3:1 ratio) x 2 = ADT.
Proposed Phase I	2,900 SF	67 trips	1.81 factor based on increased square footage and 2017 visitor counts (37 ADT x 1.81).
Proposed Phase II	2,600 SF	61 trips	1.63 factor based on increased square footage with build out and 2017 visitor counts (37 ADT x 1.63).
Proposed Total Build-Out (Phase I + Phase II)	5,500 SF	128 trips	3.44 factor based on increased square footage with total build out and 2017 visitor counts (37 ADT x 3.44).

* Area calculated based on the square footage allocated to the A2 occupancy rating of the current and the proposed facility.

** Average daily winery trips calculated based on the 2017 data from the existing Erath facility.

The applicant provided evidence showing that, on average, the proposed facility is likely to generate 67 daily trips once Phase 1 is constructed. Testimony from the County engineer during the December 6 hearing estimated that the current ADT for NE Fairview Drive (i.e., background) is likely 187 ADT based on prior counts. This evidence suggests that ADT associated with Phase 1, plus background, is under 400 ADT as required by the TSP. The applicant requested approval for the Total Build-Out even though Phase II is likely not contemplated for five or more years in order to account for total impacts associated with the proposed use. Once Phase II is constructed, the Total Build-Out is currently anticipated to generate 128 ADT. Even at Total Build-Out, based on the available evidence in the record, it is reasonable to conclude that the ADT associated with Total Build-Out, plus background, would remain under 400 ADT as required by the TSP. The trips traveling to and from the proposed winery are expected to be distributed between both Upper and Lower Fairview. The County uses the Local Road ADT to manage its roadways and ensure ongoing safety. The anticipated ADT associated with Phase 1 is significantly less than the worst-case scenario in the TIA (1,000 trips versus 67 trips), as is the Total Built-Out (1,000 trips v. 128 trips). The anticipated ADT associated with the winery do not raise safety concerns and should not overwhelm the roadway given that the ADT, plus background, remains under 400 ADT, the current TSP standard.

Figure 4: Current and Anticipated Peak Daily Trips

Existing	Peak Trips/Day	Proposed Phase 1	Proposed Phase 2	Total Build-Out
Memorial Day Weekend	97	176	160	336
July 4 Weekend	102	185	166	351
Labor Day Weekend	87	158	142	300
Club Member Pick-Up (spring, summer, fall, winter)	198	358	323	681

Figure 4 shows the applicant's anticipated peak trips for wine events, representing those times of the year when the applicant anticipates the highest number of visitors based on 2017 visitor and sales data. Peak trips were calculated using the same methodology outlined in the notes in Figure 3. The evidence demonstrates that on peak days, Phase 1, plus background, should remain under 400 trips as required by the Local Road standard, except for the four Club Member pick-up events per year. With Total-Build Out, the peak number of trips, plus background, appear to exceed the Local Road standards for NE Fairview Drive.

In addition to vehicle trips, concerns were raised about truck trips and whether the addition of truck trips would make NE Fairview unsafe. The applicant has quantified the anticipated actual truck

trips associated with the proposed operations in response to concerns. The anticipated number of trips are minimal, with most truck trips occurring seasonally during grape harvest and crush and then again during bottling. The size of trucks and number of truck trips associated with the proposed winery is customary with other winery operations in the County, as well as other farming operations (e.g., hay trucks, Christmas tree trucks, and vineyard trucks) and is not likely to result in traffic safety concerns given the infrequency of the anticipated trips.

The applicant proposes to move forward with construction of the Phase 1 Build-Out immediately. The Phase II Build-Out will not occur in the near future, if at all. For purposes of YCZO 1101.02(A)(3), the Board considers the phasing and makes findings with respect to Phase 1 Build-Out and the Total Build-Out. For Phase I, the applicant provided expert testimony and evidence to demonstrate to the Board's satisfaction that the facility, after the Phase 1 Build-Out, will operate under the Local Road standards for NE Fairview Road even when considering background, except for four times per year during Club Member pick-up days. Given the limited nature of the Club Member pick-up days, a condition is imposed to require the applicant to implement traffic management protocols on pick-up days to ensure traffic safety (Condition 14). For all other times of the year, the anticipated average and peak trips with Phase I Build-Out, even considering background, sufficiently meet County's TSP standard. For the Total Build-Out, considering background, the anticipated ADT is reasonably likely to meet the County's TSP standard, but the peak trips appear to exceed the standard. As explained above, Total Build-Out is not anticipated to proceed for five-plus years. Given the anticipated length of time until the Total Build-Out trips would come online, the Board finds that subject to conditions, the proposal, at Total Build-Out, can nonetheless comply with the County's TSP standards at the time of Phase II construction, although certain improvements may be required under Condition 16. The applicant may proceed with construction while the applicant coordinates with the Public Works Director to determine whether Ordinance 787 requires the applicant to bear its proportionate share of any required improvement to NE Fairview Drive arising from the proposed development.

The Board recognizes the appellant's, other neighbors,' and county's concerns about traffic safety within the vicinity and along NE Fairview Drive. The applicant has carried its burden to fully address the traffic safety site design factor. To ensure traffic safety associated with the proposal, the Board is adopting Conditions 15, 16, and 17. Condition 15 requires traffic management measures for Club Member pick-up events to ensure traffic safety. Condition 16 requires the applicant to coordinate with the Public Works Director in establishing whether the applicant should make an additional contribution to road improvements roughly proportionate to its use and the potential impacts of its use, considering other users, and considering that the neighbors have already made a significant contribution to the improvement of Fairview Drive by paving the segment from Worden Hill Road and extending across the frontage of the applicant's property. Condition 17 requires that the applicant coordinate with Public Works prior to construction to conduct a pre-construction road inspection to document road conditions along the construction transportation route; conduct a post-construction road inspection; and repair any damage attributable to the facility's construction. Traffic safety has been considered under YCZO 1101.02(A)(3) and conditions have been imposed to ensure ongoing traffic safety.

(A)(4) Provisions for adequate noise and/or visual buffering from noncompatible uses;

ORS 215.452 requires establishment of a setback of at least 100 feet from the property lines for wineries and public gathering areas unless a variance is granted by the local government. The

structure the applicant has proposed to construct for the wine production and tasting room is setback at least 100 feet from all property lines. The facility will have a landscaped buffer around the perimeter to screen it from the adjacent properties to the north across Fairview Drive and all lights used at the facility will be shielded to prevent shining onto adjacent properties and roads. The property to the west also has a dense stand of fir trees that should adequately buffer the residence on the property from most views or sounds of the winery (see site plan labeled EX-1). The artificial amplification of voice or sound outdoors is prohibited. The appellant raised the issue of noise and visual impacts to residential uses on property across Fairview Drive where he and his wife live, and the Board has attempted to address those concerns. No outdoor amplification will be allowed and the guests coming for tastings or the allowed events will gather in the immediate vicinity of the tasting room. (See also discussion above under (A)(1) regarding the Board's response to the appellant's and others' concerns regarding visual impacts.) Based on the site plans, it appears that the gathering areas will be primarily south and east of the winery/tasting room building. The building itself should block much of the noise and views from the surrounding properties to the north. While farming activities on-site, *i.e.* growing and harvesting of grapes, will generate noise typical of farm uses, such noise is expected in the farm zone, is seasonal, and is compatible with surrounding uses. Noise and buffering has been adequately considered, and as with YCZO 1101.02(A)(1), Condition 6 ensures that the applicant will implement the landscape plan as proposed and Condition 10 ensures that there will be no outdoor amplified music or sound. The applicant's plans provide for adequate noise and visual buffering from potentially noncompatible uses (*i.e.*, nearby residences).

(A)(5) Retention of existing natural features on site

The subject parcel is just less than 20 acres in size. The site generally slopes from west to east and also from west to the southeast. Nearly the entire parcel is currently planted as a vineyard. The wine tasting and production facility is proposed in the northwest corner of the parcel, leaving over 15 acres in vineyard. The natural slope will be maintained and the wine tasting facility and courtyard are laid out to take advantage of the scenic view to the east and south. No natural features on site will be removed, or negatively impacted by the proposal.

(A)(6) Problems that may arise due to development within potential hazard areas.

There are no known potential hazard areas on the subject Property.

(A)(7) Comments and/or recommendations of adjacent and vicinity property owners whose interests may be affected by the proposed use.

Public comments have raised transportation and traffic safety, noise, compatibility, and scale of the proposed winery. The Board has considered these comments and responded to each in the above sections. Appellant and neighbors also raised concerns about water usage and water supply. The county imposed Condition 4 to ensure that the water usage associated with the winery complies with OWRD regulations. Condition 5 was also added, requiring annual water usage be reported by the applicant to the county. These conditions are intended to respond to the appellant's and neighbors' concern, considering that it is OWRD's responsibility to issue and monitor water rights and to enforce water law.

(B) All development applications for site design review are subject to the development standards of the underlying zoning district and may be modified pursuant to satisfaction of the considerations provided in subsection 1101.02(A). The Director may waive submittal requirements consistent with the scale of the project being reviewed, upon determining that requirements requested to be waived are not necessary for an effective evaluation of the site development plan.

The applicant is not seeking any modification to a development standard in the EF-20 zone.

5. ORS 215.452, Permitted Use Winery Statute

As described above, the YCZO has not been updated to incorporate the current ORS 215.452, as amended by Oregon Senate Bill 841 (2013). Therefore, the Board makes findings directly under the statute to support approval of The applicant's site design review application for a permitted use winery.

(1) A winery may be established as a permitted use on land zoned for exclusive farm use under ORS 215.213 (Uses permitted in exclusive farm use zones in counties that adopted marginal lands system prior to 1993) (1)(p) and 215.283 (Uses permitted in exclusive farm use zones in nonmarginal lands counties) (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;

(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.

The applicant has more than 15 acres of vineyard on-site; therefore, the approval will allow an annual production of less than 50,000 gallons of wine. The applicant provided a supplemental site plan showing that the vineyard acreage still meets the 15 acre threshold notwithstanding the area where vineyard was removed to accommodate the winery building. This was a concern raised in public comments and it has been addressed. The events listed in subsections (2)(a), (b), (c) and (e) may be carried out under this site design review application, however, the agri-tourism and other commercial events as allowed by subsection (2)(d) require an additional application and approval. A public comment questioned whether a commercial kitchen is allowed. The Board notes that ORS 215.452(3) expressly allows on-site kitchen facilities.

(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.

As discussed under YCZO 1101.02(A)(3) above, all parking for the facility, including Phase I and Total Build-Out, can be accommodated on the Property. This standard is met.

(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.

Evidence of the planted acreage is in the record and the applicant must maintain the 15 acres. This standard is met.

(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.

The site plan (SP-1) shows that the 100-foot setback requirement is met and direct access and internal circulation is provided to accommodate both visitors and winery operations. See also discussion above under YCZO 1101.02(A)(3). This standard is met.

(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.

The Property is not located in an area described in (12)(a) or (c). There are no inventoried Goal 5 resources on the Property. Condition 2 ensures that the winery will have all building, plumbing, septic, and electrical permits to comply with general public health and safety regulations. This standard is met.

DECISION:

This request is for approval of site design to construction a permitted use winery under ORS 215.452. The Board finds that the applicant's proposal complies with the applicable criteria in the YCZO and ORS 215.452 and the application is approved subject to the following conditions.

CONDITIONS:

1. The development shall substantially conform to the site map submitted with this application (see enclosure labeled "SP-1").
2. Prior to development, all required building, plumbing, septic, and electrical permits and inspections shall be obtained from the Yamhill County Planning Department.
3. Prior to issuance of building permits, the water supply and access must meet the Dundee Rural Fire Protection District standards and conditions.
4. Prior to issuance of building permits, the applicant shall provide evidence of a water right, permit, or long-term service agreement to bring in water from another site, or evidence shall be provided indicating the winery and tasting room will not exceed the allowable daily usage for a permit-exempt well under ORS 537.545.
5. For the first five years of operation, on or before January 31 of each year, the applicant shall submit a report of annual water usage to the Planning Director.
6. At the time of issuance of building permits, the applicant shall submit a landscaping plan for review by the Planning Director. The landscaping plan shall be adhered to and initiated prior to operation of the facility.

7. Parking shall be established and permanently maintained as long as the tasting room is operating so that there is a minimum of one parking space per 100 square feet of tasting room space plus one parking space for each employee on maximum working shift for both the wine production facility and the tasting room pursuant to Section 1007 of the YCZO. Parking shall not be permitted on the street or public right-of-way.
8. The applicant shall obtain all permits required by the Department of Environmental Quality (DEQ), the Oregon Liquor Control Commission (OLCC), and the Oregon Department of Agriculture (ODA).
9. "Agri-tourism or other commercial events" per subsection (2)(d) of ORS 215.452 are not authorized without additional approval. "Agri-tourism or other commercial events" include 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.
10. The use of outdoor amplified music or sound is not permitted.
11. The winery may produce no more than 50,000 gallons of wine annually.
12. Any lighting for the winery and tasting room shall be shielded, deflected, or directed onto the applicant's property, so it does not shine onto the county road or adjacent lots.
13. Prior to initiation of the operation, the landowner shall sign an affidavit acknowledging the following declaratory statement and record it in the deed and mortgage records for Yamhill County:

"The subject property is located in an area designated by Yamhill County for agricultural uses. It is the county policy to protect agricultural operations from conflicting land uses in such designated areas. Accepted agricultural practices in this area may create inconveniences for the owners or occupants of this property. However, Yamhill County does not consider it the agricultural operator's responsibility to modify accepted practices to accommodate the owner or occupants of this property, with the exception of such operator's violation of state law."
14. The use may have one on-premise sign of not more than 24 square feet pursuant to Section 1006 of the YCZO, subject to approval of a sign permit.
15. During Club Member pick-up wine events, the applicant shall have flaggers at the winery's driveway and up to three other locations along NE Fairview Drive to facilitate traffic and to ensure slow speeds and continued traffic flow.
16. Prior to issuance of a certificate occupancy for Phase 1, the applicant shall coordinate with the Public Works Department to confirm road and safety improvements that are needed to ensure ongoing traffic safety based on full facility build-out. If such improvements are necessary, applicant shall contribute applicant's proportionate share to the necessary improvements according to the process set out in Ordinance 787.

17. Prior to construction, the applicant shall identify the transportation route for construction and coordinate with the Public Works Department to conduct a pre-construction road inspection along the designated route with a Yamhill County representative and an independent third party with the required expertise to inspect and evaluate graveled and paved roads to document road conditions. Following the completion of construction of Phase 1, the applicant shall conduct a post-construction road inspection along the designated route with the Public Works Department and an independent third party with the required expertise to inspect and evaluate graveled and paved roads. The applicant shall be responsible for paying for the third party contractor and for the cost to repair the road should damage occur during construction. In the event a dispute arises, the third party shall be the final arbiter.
18. This approval shall expire two years from the date of this Board Order unless the use has been initiated.
19. The construction of any additional structures or modification to the footprint of existing structures, or change in use of the current structures shall require the submission and approval of a Site Design Review application.
20. Modification of any of the above conditions requires approval under Section 1101.02 of the *Yamhill County Zoning Ordinance*. Violation of any of the above conditions may result in revocation of the site design review permit with the process detailed in Sections 1101.06 and 1101.07 of the *Yamhill County Zoning Ordinance*.