

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 a Comprehensive Plan Amendment and Zoning)
Boundary Adjustment including Site Design Review for a Winery)
Located at 30835 Highway 99W, Newberg, Applicant William) Ordinance 876
Hatcher representing A to Z Wineworks, PAZ-01-12/SDR-01-12,)
and Declaring an Emergency.)

THE BOARD OF COMMISSIONERS OF YAMHILL COUNTY, OREGON ("the Board") sat for the transaction of County business on October 25, 2012, Commissioners Leslie Lewis, Kathy George, and Mary P. Stern being present.

IT APPEARING TO THE BOARD that William Hatcher representing A to Z Wineworks applied for a Comprehensive Plan amendment and zoning boundary adjustment as well as a site design review to expand the winery; and

IT FURTHER APPEARING TO THE BOARD that the Planning Commission heard this matter at a duly noticed public hearing on September 6, 2012, and voted unanimously to recommend approval; and that the Board subsequently convened a duly noticed public hearing on October 11, 2012, and following the hearing then voted 2-0 to approve the application, Commissioner Stern being excused; NOW, THEREFORE,

IT IS HEREBY ORDAINED BY THE BOARD that the application is approved as detailed in the Findings for Approval, Exhibit "A", incorporated into this Ordinance by this reference. This ordinance, being necessary for the health, safety, and welfare of the citizens of Yamhill County, and an emergency having been declared to exist, is effective immediately.

DONE this 25th day of October, 2012, at McMinnville, Oregon.

ATTEST

YAMHILL COUNTY BOARD OF COMMISSIONERS

REBEKAH STERN DO
Yamhill County Clerk



Leslie A. Lewis
LESLIE LEWIS

By: *Anne Britton*
Deputy ANNE BRITTON

Kathy George
Commissioner KATHY GEORGE

APPROVED AS TO FORM BY
Rick Sanai

Mary P. Stern
Commissioner MARY P. STERN

RICK SANAI
Yamhill County Counsel

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Exhibit "A"
FINDINGS FOR APPROVAL

DOCKET NO.: PAZ-01-12/SDR-01-12

REQUEST: For approval of a Comprehensive Plan amendment and zoning boundary adjustment. The applicant is proposing to move the boundary of the existing RI, Resource Industrial zone south to encompass the existing winery and exclude the planted vineyard. The current RI, Resource Industrial boundary is 2.5 acres and the adjusted area will remain 2.5 acres. The vineyard to the north would become EF-20, Exclusive Farm Use. The request includes a site design review to expand the winery, construct a tasting room and remove a previously imposed limit on the wine production.

APPLICANT: William Hatcher representing A to Z Wineworks.

ZONING: The existing zoning is a mixture of RI Resource Industrial, EF-20 Exclusive Farm and a small portion is zoned VLDR-2.5 Very Low Density Residential.

TAX LOTS: 3215-301, 302, 305 and 502.

LOCATION: Rex Hill Winery, 30835 Highway 99W, Newberg.

CRITERIA: Sections 402, 701, 1101.02 and 1208.02 of the Yamhill County Zoning Ordinance. Section 904, Limited Use Overlay may also be applied. Comprehensive Plan policies may be applicable. ORS 215.452, as amended by 2011 House Bill 3280 applies in the EF-20 zone.

A. Background Facts:

1. *Property size:* The tract is made up of four tax lots which total 84.23 acres.
2. *Access:* The main access to the existing Rex Hill/A to Z winery is Highway 99W, Newberg. Tax Lot 3215-502 also abuts and has access onto Benjamin Road.
3. *On-site Land Use:* Page 1 of the application lists the "Scope of Existing Development" on the property. The use includes an existing vineyard, residence, barns and sheds, and a winery and tasting room. The application indicates 25 acres of planted vineyard on-site and 16.4 on an adjacent site under long-term lease. The winery, tasting room and kitchen amount to 32,500 square feet of development. The tract also contains the newly acquired 38 acres of filbert orchard.
4. *Surrounding Zoning and Land Uses:* Page 4 of the application contains a description of the characteristics of adjoining and surrounding land uses and that is incorporated here by reference. Property to the south, across the State Highway contains both AF-10, Agriculture/Forestry Small Holding and RI Resource Industrial zoning. Property to the north and east is zoned RI, Resource

Industrial and EF-20, Exclusive Farm use. Property to the west is zoned EF-20, Exclusive Farm use and VLDR-2.5, Very Low Density Residential which is smaller lots with residences on them. This rural residential zone is in neither the Urban Growth Boundary (UGB) or the Urban Reserve Area (URA) for the City of Newberg.

5. *Water:* As explained on page 4 of the application, the parcel has been supplied by city water since at least 1935. Statewide Planning Goal 11 therefore does not apply to this water supply.

6. *Sewage Disposal:* There is an on-site septic system.

7. *Fire Protection:* Newberg Rural Fire District

8. *Soils:* The Yamhill County Soil Survey shows that the property is predominantly composed of high-value farmland which consists of Agricultural Class II (Am and WuB) and III (LuC, LuD and YhD) soil. The property also has a swath of Class VI - Terrace Escarpments. It should be noted that the existing RI, Resource Industrial zone is on Class III high-value soils. If this zone is allowed to move it would be partly on one of the areas identified as Class VI, nonhigh-value soils.

9. *Taxes:* All but about 3.5 acres is receiving farm deferral.

10. *Previous Actions:* Since adjusting the zoning boundary focuses on Tax Lots 301 and 302, the previous actions also focus on these two lots. Tax Lots 3215-301 and 302 were created by a partition in 1976 (Docket # P-584-76) and on March 2, 1989 Lot 302 was approved for a non-farm dwelling (Docket # C-03-98). In 1982, on Tax Lot 3215-301, the property went through a plan amendment and zone change (Docket PA-113-82/Z-221-82) from AF-20, Agriculture/Forestry to RI, Resource Industrial on approximately 2.5 acres. Additionally, in May of 1995, an addition to the winery was approved through Site Design Review (Docket # SDR-02-95). In 2007 a Site Design Review approved wine production with a limit of 163,000 cases as well as expansion of the winery.

11. *Description of Proposal:* The applicant requests approval to move the location of the 2.5 acre RI zone to one that will encompass the existing development as well as provide for additional area for development. The alternative is to build in the designated RI, Resource Industrial zone resulting in an increased development footprint and resulting in the destruction of planted vineyard. In addition to moving the existing zone, the request includes expanding the winery, constructing a new tasting room and removing the limit on wine production.

It should be noted that if the existing zone is moved, then the land left behind would be zoned EF-20 Exclusive Farm Use with a Comprehensive Plan Amendment from I Industrial to AFLH Agriculture/Forestry Large Holding.

B. Zone Change and Plan Amendment Provisions and Analysis

1. The Plan Amendment portion of the request is not subject to local review criteria, but is subject to ORS and OAR criteria.

2. The zone change portion of the request must comply with the standards and criteria in YCZO Section 1208.02. These provisions are:

(A) *The proposed change is consistent with the goals, policies, and any other applicable provisions of the Comprehensive Plan.*

(B) *There is an existing demonstrable need for the particular uses allowed by the requested zone, considering the importance of such uses to the citizenry or the economy of the area, the existing market demand which such uses will satisfy, and the availability and location of other lands so zoned and their suitability for the uses allowed by the zone.*

(C) *The proposed change is appropriate considering the surrounding land uses, the density and pattern of development in the area, any changes which may have occurred in the vicinity to support the proposed amendment and the availability of utilities and services likely to be needed by the anticipated uses in the proposed district.*

(D) *Other lands in the county already designated for the proposed uses are either unavailable or not as well-suited for the anticipated uses due to location, size, or other factors.*

(E) *The amendment is consistent with the current Oregon Administrative Rules for exceptions, if applicable.*

3. Regarding criterion (A) above, goals and policies which may be pertinent are:

Oregon Statewide Planning Goals and Guideline - Goal 9 - Economics, which states "To provide adequate opportunities throughout the State for a variety of economic activities vital to the health, welfare, and prosperity of Oregon's citizens . . . Comprehensive plans and policies will contribute to a stable and healthy economy in all regions of the State."

This approval will allow for an expanded economic activity associated with the production and sale of wine into the market. Additionally, the establishment of an improved winery and tasting room will enhance the economic base of the community. The County originally approved the RI zone on the property in 1982 in order to provide the landowner with "the ability to operate a winery on-site while having the flexibility to process grapes grown off-site." The County concluded that the "proposed winery would facilitate further agricultural production in the County and would enhance the reputation of an increasingly popular and economically viable Yamhill County Industry." This

new zoning adjustment therefore furthers the County's longstanding goals for the property.

Yamhill County Revised Goals and Policies - Goal I.B.1. To provide an adequate amount of land, development areas and sites to accommodate those uses which are customarily found in rural areas or require or are better suited to rural locations, without compromising the basic goal relating to urban containment and orderly urban development.

Wineries with associated vineyards are customarily found in rural agricultural areas. Although some wineries and wine tasting rooms are located in urban centers, with grapes transported to the winery from vineyards outside the urban area, they are not specifically an urban use and do not compromise the goal of urban containment.

Yamhill County Revised Goals and Policies - Policy I.H.1.g. Agricultural, forestry and mineral resource-oriented industry will be accommodated in areas close to the resources utilized, provided that such industrial uses are compatible with any nearby urban development, city water supply and sewerage are not required, and waste discharges constitute no threat to the environment.

Even though the winery is in close proximity to the City of Newberg (within ½ mile), there is no urban scale of development in the immediate vicinity of the subject parcel at this time, and while city water is available, it was not required for this development. DEQ handles permits for waste water discharges from wineries to assure that the development will not cause a threat to the environment.

Yamhill County Revised Goals and Policies - Policy I.H.1.m. The county will encourage industrial development which bases its products on renewable and indigenous raw materials.

Grapes are a renewable raw material.

4. Regarding the need for the proposed use under criterion (B), and the availability of other lands RI, Resource Industrial zoned lands in the county, criterion (B) and (D), this application is different from most requests in that the zone is already there. It is just that the zone was located in an area where the development was planned, but did not take place. The details of this development are noted under "Zoning History" on pages 2 and 3 of the application. The most relevant is towards the bottom of page 2 where it notes in 1983 (right after the rezoning):

Ultimately, the vision of digging caves under the vineyard in the northern portion of the RI zone did not materialize, instead the winery grew east, west and south; in every direction but north and into the RI zone. The home, garage and agricultural buildings to the south, were incorporated into the winery operation, and a work yard was constructed between those buildings and the winery.

The statute changed in 1989 to allow wineries in the farm zone, subject to certain planting requirement. It appears that by the time the zoning boundary was compared to the air photo (likely in the 1990's), the property was already developed and the statute had already changed to allow

certain winery sizes in the farm zone. The previous approval limits the winery production to 163,000 cases per year. The application indicates that the production has been around 150,000 cases per year but that number is expected to increase. Moving the RI, Resource Industrial zone would lift the production limitation placed by the previous site design review.¹ In addition it would “clean up the map” and locate the zone in the area of the actual development.

The applicant’s responses are on pages 8 and 9 of the application and are incorporated here by reference.

5. Regarding criterion (C), the surrounding land uses are a combination of farm uses and rural residences. The subject parcel is in an area with other vineyards and wine production facilities. With regard to utility needs, the existing winery and tasting room has existing utilities. The expansion of the winery and tasting room will not result in utility use beyond what is available in the area. The production aspect of the winery is compatible with and similar to other farm uses in the vicinity. Since most of the impacts are already established, expansion of the use does not appear to be out of character with what has previously occurred in the area.

The winery, as proposed, would not require any additional utilities and services than already exist in the area or that could be provided by a private well and septic system.

6. The applicant’s response to criterion (E) is on page 11 of the application and is incorporated here by reference.

C. Resource Industrial (RI) Zone Use Criteria

1. Pursuant to YCZO 701.02B, a winery is a permitted use in the RI zone, including the wholesale and retail sale of wine. Applicant’s winery produces wine and sells wine at wholesale and retail. Applicant therefore meets the criteria for a permitted use winery in the RI zone

D. Exclusive Farm Use (EFU) Zone Use Criteria

1. Under ORS 215.452, as amended by 2011 House Bill 3280, wineries meeting certain characteristics are permitted uses in the EFU zone. A winery with at least 40 acres of on-site or contiguous vineyards may produce an unlimited quantity of wine. As described above, applicant controls over 40 total acres of vineyards on the property and adjacent parcels. To extent that applicant’s wine production activities will take place in the EF-20 zone in addition to the RI zone, therefore, these activities are permitted under state law.

2. House Bill 3280 also allows permitted use EFU wineries to conduct wine marketing activities and up to 25 days annually of other events in a tasting room or other portions of the

¹Recently, the owner acquired an adjacent property and now has over 40-acres of vineyard under cultivation. With the passage of HB 3280 the wine production limits for wineries with 40-acre vineyards has been lifted.

property. Applicant has stated that applicant's visitor activities are below the levels that are allowed by House Bill 3280 and that applicant will abide by the limits in state law in the future. Applicant's proposed tasting room is therefore permitted under state law.

E. Site Design Review Criteria and Analysis

1. Site design review is required for any development in an RI district. Section 1102.02 of the YCZO governs site design review. Review of a site development plan shall be based upon consideration of the following:

- (1) *Characteristics of adjoining and surrounding uses;*
- (2) *Economic factors relating to the proposed use;*
- (3) *Traffic safety, internal circulation and parking;*
- (4) *Provisions for adequate noise and/or visual buffering from noncompatible uses;*
- (5) *Retention of existing natural features on site;*
- (6) *Problems that may arise due to development within potential hazard areas.*
- (7) *Comments and/or recommendations of adjacent and vicinity property owners whose interests may be affected by the proposed use.*

2. Regarding the criterion (1) and (2) above, the applicant's responses are on page 4 and 5 of the application and are incorporated here by reference. The proposed development is in character with the uses in the surrounding area.

3. Regarding criterion (3), the Oregon Department of Transportation (ODOT) responded to the referral in a letter dated August 29, 2012. In the letter it states in part:

“The property currently takes access to OR 99W. All State Highway access is subject to review and compliance with criteria identified in OAR 734 Division 51. For that reason, ODOT will need to evaluate the permitted connection to the highway under OAR 734-51-3020 Change of Use (COU) of a Private Connection. The applicant has provided ODOT with additional information but the department is unable to complete the COU analysis prior to the comment deadline. ODOT requests, therefore, that the following condition of approval: Applicant shall provide the county with evidence of compliance with ODOT's access requirements for the new proposed use of the OR 99W approach.”

As noted on page 5 of the application, Rex Hill/A to Z has a direct, well-developed access onto State Highway 99W. The application notes recent improvements to that access. At the October 11, 2012 Board of Commissioners hearing, applicant presented a written copy of ODOT's approval of applicant's access. Applicant therefore has satisfied the ODOT's above-recommended condition.

As for the parking requirements, the applicant's findings are found on page 5 of the application and are incorporated here by reference. The applicant has proposed 98 parking spaces which appear to be adequate to satisfy the use.

4. Regarding criterion (4), there are no non-compatible adjacent uses which require noise or visual buffering.

5. Regarding considerations (5) and (6), there are no significant natural features on the site, and there are no known hazards. Neither the existing or proposed buildings are located in an identified hazard area such as the airport overlay zone or flood hazard overlay zone. It should be noted that the reason for the application is to allow the development to occur in an area that has already been committed to the processing of farm crops, rather than on land that has already been planted to vineyard.

6. Cheryl Cappelli testified before the Board of Commissioners as to her general concern regarding unlimited wine production and potential noise from winery events. Ms. Cappelli explained that she lives approximately 1/2 mile from the winery and approximately 1/5 mile from the applicant's property boundary.

Applicant responded that increases in wine production do not cause increases in noise at a winery and that to the extent that wine production activities could have nuisance-related effects, these activities are protected by Oregon's Right to Farm statutes.

With regard to events, applicant explained that HB 3280 allows the County to apply its general noise ordinance to visitor activities at wineries, and therefore applicant will be subject to the same noise standards as other activities occurring in the County.

Based on Ms. Cappelli's geographic relationship to the winery and applicant's comments, the Board concludes that the county's noise ordinance will adequately prevent impacts to Ms. Cappelli's property from applicant's visitor activities. Ms. Cappelli did not identify a specific concern regarding applicant's wine production, but the Board notes that the state Right to Farm law does apply to applicant's viticultural and wine production activities.

CONCLUSION:

1. The request is for a Comprehensive Plan amendment and zoning boundary adjustment. The applicant proposes to move the boundary of the existing RI, Resource

Industrial zone south to encompass the existing winery and exclude the planted vineyard. The current RI, Resource Industrial, boundary is 2.5 acres and the adjusted area will remain 2.5 acres. The vineyard to the north would become EF-20, Exclusive Farm Use. The request includes a site design review to expand the winery, construct a tasting room and remove a previously imposed limit on the wine production.

2. The proposed zone change is consistent with Comprehensive Plan goals and policies. There is already a winery and tasting room on the property that were previously approved by the County. With conditions, the winery expansion would be compatible with surrounding agricultural and residential uses.

3. The subject property is zoned RI, Resource Industrial, and EF-20, Exclusive Farm Use. Both of these zones allow applicant's winery and associated activities as a permitted use. Applicant has demonstrated that it meets the definitions of a permitted use winery in both Section 701.02 for the RI zone and ORS 215.452 for the EF-20 zone.

4. With conditions, the request is consistent with the standards of Section 701.02 and site design standards of Section 1101.

DECISION:

Based on the above findings, analysis and conclusions, the request by Ernest Munch representing William Hatcher of Rex Hill Winery/A to Z Wineworks for a plan amendment, zone change and site design review to move the 2.5 acre RI Resource Industrial zone on the property and to allow a winery and tasting room expansion on the tract made up of Tax Lots 3215-301, 302, 305 and 502, is hereby APPROVED, subject to the following conditions:

1. The development shall substantially conform to the site map submitted with this application (see Winery Master Plan and Site Master Plan).

2. All permits required by Yamhill County for building construction, septic, and electrical installation shall be obtained for construction of the expansion.

3. On-site parking will be provided at the rate of one space per employee on a maximum work shift and one space per 100 square feet of public tasting space.

4. Prior to issuance of permits, the water supply and access will be required to meet the Newberg Fire Marshal's standards.

5. Prior to issuance of building permits for the expanded winery and tasting room, the applicant shall provide a statement from the Public Works Director, or his representative, that the proposed development complies with Ordinance 787.

6. The winery operation shall conform to the applicable standards of Section 701.02(B) of the *Yamhill County Zoning Ordinance*.

7. All necessary permits shall be obtained from Oregon Water Resources Department, Oregon Department of Environmental Quality (DEQ) and Oregon Liquor License Commission (OLCC).

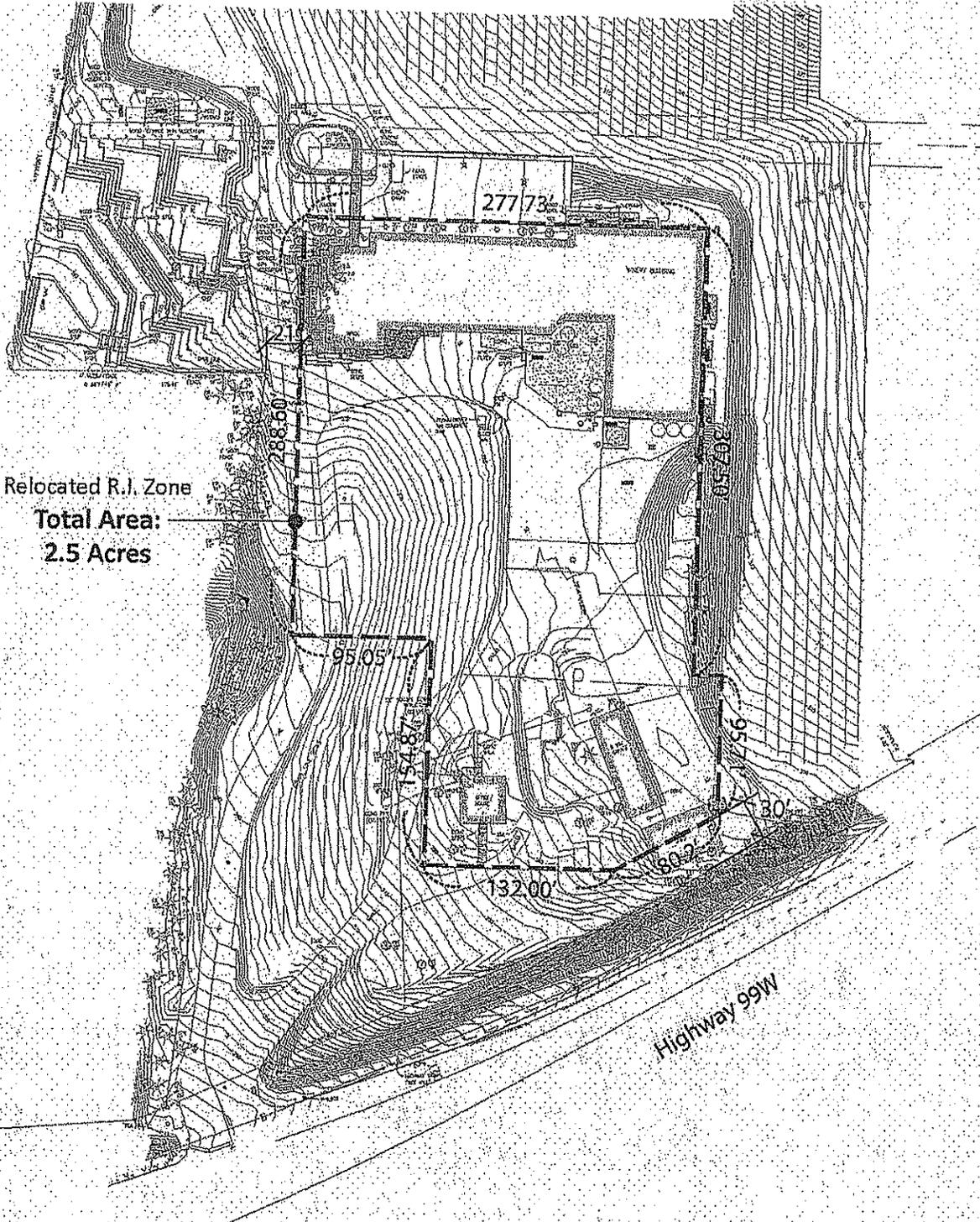
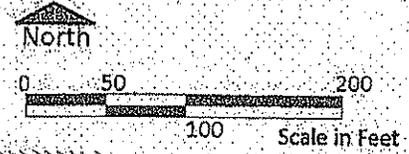
8. Modification of any of the above conditions requires approval under Section 1101.02 of the *Yamhill County Zoning Ordinance*. Violation of any of the above conditions may result in revocation of the site design review permit with the process detailed in Sections 1101.06 and 1101.07 of the *Yamhill County Zoning Ordinance*.

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EXHIBIT MAP FOR ORDINANCE NO. 876
ADOPTED BY THE
YAMHILL COUNTY BOARD OF COMMISSIONERS
OCTOBER 25, 2012, DOCKET PAZ-01-12/SDR-01-12
Tax Lot 3215-301

Approval of a Comprehensive Plan Amendment to move the Plan Designation and RI Resource Industrial zone from the location identified in PA-113-82/Z-211-82 to the location identified below. The previous RI Resource Industrial zone identified in PA-113-82/Z-211-82 will be plan Designed AFLH and zoned EF-40 Exclusive Farm Use

Rex Hill
A to Z Wine Works, LLC
Winery Survey & R.I. Zone
September 7, 2012



Relocated R.I. Zone
Total Area:
2.5 Acres