

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 Approving on Remand
Planning Docket No. C-14-23, a Conditional
Use Permit for Tax Lot No. R3409 00101;
Applicant: Carlton Hub, LLC

Board Order 25-332

THE BOARD OF COMMISSIONERS OF YAMHILL COUNTY, OREGON (the Board) sat for the transaction of county business on October 16, 2025, Commissioners Kit Johnston, Mary Starrett, and David “Bubba” King being present.

IT APPEARING TO THE BOARD as follows:

A. WHEREAS, The Applicant, Carlton Hub, LLC, submitted a conditional use request for the operation of a commercial activity in conjunction with farm use to allow the tasting of locally produced wine and the sale of locally produced wine, beer, and other malt beverages, and cider at the existing approved onsite farmstand; and

B. WHEREAS, The Board originally approved Planning Docket No. C-14-23 on February 8, 2025, via Board Order 24-27; and

C. WHEREAS, The Board’s decision was thereafter appealed to LUBA, where it was remanded back to the County for those reasons set forth in Exhibit A, attached hereto and incorporated herein; and

D. WHEREAS, On August 21, 2025, the Board held a remand hearing wherein testimony and evidence was provided confirming that the sales of fermented beverages under the conditional use permit will be limited to a secondary use done in conjunction with the primary use on the property; and

E. WHEREAS, Following deliberation, the Board voted unanimously to re-approve Planning Docket No. C-14-23 with an additional condition limiting the sales of fermented beverages in accordance with the LUBA remand order; and now, therefore,

IT IS HEREBY ORDERED BY THE BOARD AS FOLLOWS:

Section 1. Planning Docket C-14-23 is approved, subject to the following conditions. All approval conditions provided under Board Order 24-27 are hereby annulled and replaced with the following conditions:

1. The development shall substantially conform to the site maps submitted with the original application.
2. The wine tasting service and alcohol sales shall occur within the existing farmstand building located on Tax Lot 3409-00101.
3. Alcohol sales at the farmstand shall be limited to locally produced wine, locally produced beer, locally produced cider, and locally produced malt beverages. For the purposes of this Condition 3, the local area is defined as all counties in Oregon.
4. The farmstand shall only sell farm crops and livestock grown on either the Applicant's farm operation or other farm operations in the local agricultural area, including the retail sale of incidental items and fee-based activities done in the promotion of farm crops or livestock sold at the farmstand. The annual sale of incidental items and fees from promotional activities shall not make up more than one-quarter (25%) of the total annual sales of the farmstand. For the purposes of this Condition 4, the "local agricultural area" is defined as all counties in Oregon.
5. The local alcohol sales at the farmstand allowed under Condition 3, which are separate and distinct from the farmstand's sale of incidental items and fees from promotional activities, shall be limited to no more than one-quarter (25%) of the total annual sales of the farmstand.
6. Prior to issuance of building permits, the Applicant shall obtain authorization from the County Sanitarian for the farmstand to use the existing septic system or shall otherwise receive approval for a new septic system to serve the farmstand.
7. Parking shall be established and permanently maintained for as long as the farmstand is operating so that there is a minimum of one parking space for each employee on maximum working shift, and one (1) parking space per 100 square feet of wine tasting area, and one (1) parking space per 300 square feet of farmstand area pursuant to Section 1007 of the Yamhill County Zoning Ordinance. Parking shall not be permitted along the Highway 47 right-of-way. Parking shall not be permitted on any surrounding property not under the ownership of the Applicant.
8. The use of outdoor amplified music or sound shall not be permitted.
9. Prior to the provision of wine tasting service or sale of locally produced wine, locally produced beer, locally produced cider, and locally produced malt beverages, the Applicant shall obtain all permits required by the Oregon Liquor Control Commission (OLCC).

10. Prior to issuance of building permits, the water supply and access driveway shall meet the standards and regulations set forth by the Yamhill Fire Department.
11. Any lighting for the farmstand shall be shielded, deflected, or directed onto the Applicant's property, so it does not shine onto the county road or adjacent lots.
12. "Agri-tourism or other commercial events" shall not occur on the subject parcel without additional land use approval. "Agri-tourism or other commercial events" include outdoor concerts for which admission is charged, educational, cultural, health or lifestyle events, facility rentals, and celebratory gatherings.
13. This approval shall expire two years from the date of this letter unless the use has been initiated.
14. This approval shall be deemed personal to the Applicant (Carlton Hub, LLC), Frank Foti, and the current property owner (Carlton Hub, LLC) and shall not run with the land.
15. The construction of any additional structures or modification to the footprint of existing structure(s) used in conjunction with the farmstand shall require the submission and approval of a Site Design Review application.
16. Modification of any of the above conditions requires approval under Section 1202.05 of the Yamhill County Zoning Ordinance. Violation of any of the above conditions may result in revocation of the conditional use permit with the process detailed in Section 1202.07 and 1202.08 of the Yamhill County Zoning Ordinance.

Section 2. In support of this Order, the Board adopts the findings set forth in Exhibit B, attached hereto and incorporated herein, which identifies the applicable approval criteria and explains how each respective criteria has been met.

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DONE this 16 day of October, 2025, at McMinnville, Oregon.

ATTEST:



YAMHILL COUNTY BOARD OF COMMISSIONERS

KERI HINTON

County Clerk

By: Carolina Rook
Deputy Carolina Rook

Chair

KIT JOHNSTON

Commissioner

MARY STARRETT

Commissioner

DAVID "BUBBA" KING

FORM APPROVED BY:

Chris Bond
Yamhill County Counsel

Approved by the Yamhill County Board of
Commissioners on 10/16/2025
via Board Order 25-332

1 BEFORE THE LAND USE BOARD OF APPEALS
2 OF THE STATE OF OREGON

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4 FRIENDS OF YAMHILL COUNTY,
5 *Petitioner,*

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7 vs.

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9 YAMHILL COUNTY,
10 *Respondent,*

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12 and

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14 CARLTON HUB, LLC,
15 *Intervenor-Respondent.*

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17 LUBA No. 2024-009

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19 FINAL OPINION
20 AND ORDER

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22 Appeal from Yamhill County.

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24 Sean T. Malone filed the petition for review and reply brief and argued on
25 behalf of petitioner.

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27 Jodi M. Gollehon filed a joint response brief on behalf of respondent. Also
28 on the brief was Steve Elzinga, Anderson Beals, and Sherman, Sherman, Johnnie
29 & Hoyt, LLP.

30
31 Steve Elzinga filed a joint response brief and argued on behalf of
32 intervenor-respondent. Also on the brief was Jodi M. Gollehon, Anderson Beals,
33 and Sherman, Sherman, Johnnie & Hoyt, LLP.

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35 ZAMUDIO, Board Member; RYAN, Board Chair; RUDD, Board
36 Member, participated in the decision.

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REMANDED

06/25/2024

You are entitled to judicial review of this Order. Judicial review is governed by the provisions of ORS 197.850.

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NATURE OF THE DECISION

Petitioner appeals a board of commissioners’ decision approving a conditional use permit for the operation of a commercial activity in conjunction with farm use to allow the sale of wine, beer, other malt beverages, and cider at an existing farm stand on land zoned for exclusive farm use.

ASSIGNMENTS OF ERROR

This appeal concerns substantially similar facts, decision, and legal issues as those in *Friends of Yamhill County v. Yamhill County*, ___ Or LUBA ___ (LUBA No 2024-008, June 25, 2024), in which we issue a final opinion and order on this same date remanding the county’s decision. We remand the county’s decision in this appeal for the same reasons expressed in *Friends of Yamhill County v. Yamhill County*, ___ Or LUBA ___ (LUBA No 2024-008, June 25, 2024).

The county’s decision is remanded.

EXHIBIT B
SUPPLEMENTAL FINDINGS IN SUPPORT OF APPROVAL ON REMAND
(Board Order 25-332)

HEARING DATE: August 21, 2025

DOCKET NO.: C-14-23

REQUEST: A conditional use request for the operation of a commercial activity in conjunction with farm use to allow the tasting of locally produced wine and the sale of locally produced wine, beer, and other malt beverages, and cider at the existing approved onsite farmstand (Docket C-20-20/SDR-24-20).

APPLICANT: Carlton Hub, LLC

OWNER: Carlton Hub, LLC

TAX LOT: R3409 00101

LOCATION: 15713 Highway 47, Yamhill

ZONE: Exclusive Farm Use (EF-80) zone.

CRITERIA: Sections 402.02(B), 402.04(G), 402.07(A), 1101, and 1202.02 of the *Yamhill County Zoning Ordinance (YCZO)*. Comprehensive Plan policies may also be applicable.

SUPPLEMENTAL FINDINGS OF FACT:

A. Background Facts

1. *Incorporation of Previous Background Facts.* The original background facts as stated in Yamhill County Board Order 24-27 are incorporated here by reference.
2. *Appellate History.* Board Order 24-27 was remanded by the Land Use Board of Appeals (LUBA) on June 25, 2024, under LUBA 2024-009. LUBA ordered a remand to the County on the basis that the decision did not include any conditions limiting the sales of fermented beverages or any findings explaining the County’s conclusion that the conditional commercial activity will be a secondary use that is in conjunction with the primary use on the property. On October 24, 2024, the Court of Appeals “Affirmed Without Opinion” the LUBA decision under Docket No. A184847. The Court of Appeals’ affirmation was then appealed to the Oregon Supreme Court, who declined to review it. The Applicant thereafter submitted a remand hearing request to the County to address the remaining issues under the LUBA decision.

B. Findings Following Remand

1. *Previous Findings Incorporated:* The previous findings adopted under Board Order 24-27 are hereby incorporated by reference as if set forth fully herein.
2. *Secondary Use:* As explained under LUBA 2024-009, the proposed alcohol sales must be secondary and subordinate to the preexisting farmstand and farm uses on the subject property. By definition, a primary use must be more than 50% and a secondary use must be less than 50%. Current farm use on the subject property includes more than just the sale of farm products at the farmstands. For example, the Applicant indicates that livestock and poultry are both farmed on the property. Additionally, the Applicant’s farm operation spans 440 acres in the local agriculture community and is home to over 80 cattle, 75 pigs, 1,000 chickens, 500 ducks, 200 turkeys, and 150 species of veggies and edible flowers, and includes permitted farmstands to sell those farm products. Farm activity in the local agricultural community is even broader, and consists of nut orchards, grass seed and alfalfa hay cultivation, and livestock pasturage. Limiting local alcohol sales under this conditional use permit to less than 25% of the total farmstand sales will ensure that, even when both local alcohol sales and incidental sales are combined, over 50% of the farmstand sales will be from the sale of farm products grown either on the subject property or in the local agriculture area. Incorporation of this condition will ensure that alcohol sales approved as a commercial activity in conjunction with farm use remain relatively small in proportion and definitively secondary and subordinate to the permitted farmstand and farm uses.

Friends of Yamhill County (FYC) argues that the proposed commercial activities “cannot be made secondary and subordinate to the very limited farm use on the property.” (FYC Written Testimony, p.3.) The County disagrees with this assertion based on the following:

- a. *Outside the scope of the remand.* FYC’s argument that the commercial activities proposed need to be directly related to the specific farm uses occurring on the subject property is simply outside the scope of the remand. FYC appears to be attempting to merge their “directly related” argument with the secondary and subordinate question being addressed on remand. However, the two issues are separate and distinct. While LUBA directed the County to ensure that the proposed activities remain secondary and subordinate to the farm uses those activities support, LUBA specifically considered and rejected FYC’s argument, and they are thus barred from relitigating it.
- b. *Commercial-Use-In-Conjunction-with-Farm-Use need not be tied to, or measured against, the farm use on the property where the farmstand is located.* Second, and in the alternative, to the extent FYC’s argument is found to be relevant, the County disagrees with FYC on the merits of their argument. Commercial activities in conjunction with farm use are specifically authorized in areas zoned for exclusive farm use by ORS 215.283(2)(a). As LUBA concluded in its previous decision in this matter:

“Nothing in ORS 215.283(2)(a) requires that the subject property be in farm use or that the commercial activity be directly related to a farm use occurring on the subject property or the immediate vicinity. In construing ORS 215.283(2)(a) the Court of Appeals has rejected a ‘petitioner’s contentions that the use is not connected with farming because no independent grape growing activities are now being conducted on the parcel and because the winery may serve grape farming operations which are not located in the immediate vicinity.’ *Craven v. Jackson County*, 94 Or App 49, 53, 764 P2d 93 I (1988) (*Craven I*), *aff’d*, 308 Or 28 1, 779 P2d 1011 (1989) (*Craven II*) (footnote omitted). The court explained that it had previously construed a county ordinance ‘which was materially identical to ORS 215.283(2)(a)’ in *Earle v. McCarthy*, 28 Or App 539, 560 P2d 665 (1977), and had therein upheld a CUP for a warehouse for the storage of hop crops and the storage and sale of string and burlap for hop production on an EFU parcel on which no independent farming activities were conducted. *Craven I*, 94 Or App at 52-53 (citing *Earle*, 28 Or App at 539-42; *Bahn v. Klamath County*, 3 LCDC 8, 19 (1979) (concluding that a farm and irrigation equipment dealership and demonstration area qualify as commercial activity in conjunction with farm use)).”

Friends of Yamhill County v. Yamhill County, ___ Or LUBA ___, ___ (LUBA No 2024-008, June 25, 2024) (opinion at 13-14).

After noting that existing caselaw informs the Court’s analysis of legislative intent, LUBA went on to conclude:

“The legislative history of which we are aware demonstrates that the legislature considered and rejected language that would limit commercial activities on farm land by requiring that they relate to farming activities occurring on the subject property. Instead, the legislature intentionally adopted broader language. . . . [Citations omitted] . . . ORS 215.283(2)(a) does not require a nexus between the products of farm use *on the subject property* and the proposed commercial activity. Accordingly, the county did not misconstrue the statute by not requiring intervenor to demonstrate such a nexus.”

Id. (opinion at 14-15).

LUBA’s decision was affirmed by the Court of Appeals, and the Supreme Court denied Friends of Yamhill County’s (FYC) petition for review. Thus, the County has clear guidance that the evaluation of the proposed Commercial Use In Conjunction with Farm Use need not be tied to, or measured against, the farm use on the property where the farmstand is located. The farm use to which the sales

must be tied are farming and sale of raw or processed farm products from within the State of Oregon.¹

Despite the clear guidance, FYC appears to be renewing their argument in their contention that, “Even very modest alcohol sales would not be secondary and subordinate to the farm use on the subject tract.” (FYC Written Testimony, p.2.) However, the gross sale of grapes on the subject property is not a measurement for determining subordinate use. As noted above, the farm use to be considered is the farm uses in the local agricultural community, not the subject property itself.

FYC’s attempted reliance on sales data from the NACS is rejected for two reasons. First, data from the NACS (National Association of Convenience Stores), is inapplicable to the proposed use. The Applicant is not proposing a convenience store, and the location of the farm store, along with the products offered, do not qualify the farm store as an operation similar in any way to a convenience store. Second, FYC’s argument seeks to apply the inappropriate comparison of sales volumes of convenience stores to the revenue that could be generated from the sale of the grapes grown on the property where the farmstand is located. As explained above, the revenue from the farming operation on the property where the farmstand is located is not the appropriate measure. The appropriate measure is the amount of sales of locally produced wine, beer, cider, and other malt beverages related to total sales generated by the farmstand on the subject property.

Lastly, even if the subject property is considered, farm use on the subject property includes more than just the sale of farm products at the farmstands. As previously stated, the Applicant’s farm operation spans 440 acres in the local agriculture community and is home to over 80 cattle, 75 pigs, 1,000 chickens, 500 ducks, 200 turkeys, and 150 species of veggies and edible flowers, as well as permitted farmstands selling those farm products. Farm activity in the local agricultural community is even broader. The tasting of locally produced wine and the sale of locally produced wine, beer, cider, and other malt beverages is tied to, and subordinate to farm uses in Oregon and also to the farm uses on the Applicant’s own farm.

Ensuring that a use is secondary and subordinate requires placement of a limitation on the uses’ overall sales of the farmstand. Specifically, the revenue gained from the tasting of locally produced wine and the sale of locally produced wine, beer, cider, and other malt beverages must be secondary to, or less than 50% of, the total revenue produced by sales at the farmstand.

The Applicant has proposed a limit of revenue from the tasting of locally produced wine and the sale of locally produced wine, beer, and other malt beverages, and cider at less than 25% of all sales from the farmstand, far less than the 50%

¹ LUBA noted in its decision that “[FYC] does not challenge the county’s determination that the local agricultural area includes the entire state.” *Id.* (opinion at 9, fn 4).

“subordinate and secondary use” threshold. Once again, incorporation of this condition will ensure that alcohol sales approved as a commercial activity in conjunction with farm use remain relatively small in proportion and definitely secondary and subordinate to the preexisting farmstand and farm uses.

3. *Traffic:* Pam Kindel submitted a comment raising concerns that the proposed use would increase traffic on Meadow Lake and Panther Creek Roads. Traffic concerns are outside of the scope of this remand. Furthermore, traffic concerns were raised and addressed in the proceedings below (see section B(5) of the original findings adopted under Board Order 24-27). Lastly, this concern appears to be applicable only to the farmstand located on Tax Lot R3523 02400, which is currently under consideration under Docket C-15-23. Accordingly, the County will not reconsider traffic issues on remand, and additional findings regarding traffic are not required.
4. *Hours of Operation:* Both FYC and Pam Kindel have requested a limitation on the hours of operation for the sale and tasting of Oregon wine, beer, and cider under this conditional use permit. The County will not incorporate findings or a condition limiting the hours of operation for the following reasons:
 - a. Outside the scope of the remand. Hours of operation are beyond the scope of this remand and could have been raised in prior proceedings.
 - b. Hours of operation are not congruous to determining whether or not a proposed commercial activity is secondary and subordinate to a farm use. Any activity on the subject property, whether it is a farming or non-farming activity, can be determined to be primary or secondary, regardless of what time that activity occurs. To analogize, a county fairground may hold a fair only once a year for several weeks. For the rest of the year, the fairgrounds may be let-out to various organizations for events. Yet the proceeds from the sale of fair tickets can still dwarf the proceeds from other activities. Although the fairground only operated a fair for a small portion of the year, the fair may still be considered its primary purpose, and the activities that occur the rest of the year may still be considered secondary.

Additionally, both FYC and Ms. Kindel fail to connect how limiting the hours of operation will ensure the use remains subordinate. If the tasting of locally produced wine and the sale of locally produced wine, beer, cider, and other malt beverages, were limited to one hour, but the sales during that hour represented 80% of the revenue of the farm stand, the use would therefore not be subordinate. Accordingly, a limitation on hours of sale has no connection to whether the use remains a subordinate use. By limiting revenue from the tasting of locally produced wine and the sale of locally produced wine, beer, cider, and other malt beverages to less than 25% of the farm stands total revenue, the use is restricted in such a way that it will remain subordinate to the farmstand’s overall sales.

- c. It is unnecessary to impose limitations on the hours of operation beyond those imposed by the OLCC. Condition 5 of this approval limits the sales and tasting of

Oregon wine, beer, and cider to less than 25% of sales at the preexisting farmstand. Consequently, even when the sales allowed hereunder are combined with the 25% of sales allowed for retail incidental items under the original farmstand permit, revenue from sales of alcohol and tasting will, therefore, always be less than 50% of the total farmstand sales. As conditioned, this approval will not allow the Applicant to make alcohol sales or tasting the primary use of the subject property, regardless of the operating hours for those sales and/or tastings.

CONCLUSIONS FOR APPROVAL:

1. The request is for a conditional use and site design review for a commercial activity in conjunction with farm use for the provision of wine tasting service and the sale of locally produced alcohol, including wine, beer, cider, and other malt beverages from the preexisting farmstand. This request does not include the production of any onsite wine, beer, cider, or other malt beverages.
2. With conditions, the request can be made compatible with the applicable conditional use review criteria listed in Sections 402.02(B), 402.04(G), 402.07(A), 1101, and 1202.02 of the *Yamhill County Zoning Ordinance*.
3. The request complies with the goals and policies of the *Yamhill County Comprehensive Plan*.

DECISION:

Based upon the above findings and conclusions, the request by Carlton Hub, LLC for a conditional use permit and site design review approval for the provision of wine tasting service and the sale of wine, beer, cider, and other malt beverages from the existing, approved onsite farmstand as a commercial activity in conjunction with farm use, on Exclusive Farm use zoned property, shall be approved, subject to the following conditions. All approval conditions provided under Board Order 24-27 shall be annulled and replaced with the following conditions:

1. The development shall substantially conform to the site maps submitted with the original application.
2. The wine tasting service and alcohol sales shall occur within the existing farmstand building located on Tax Lot 3409-00101.
3. Alcohol sales at the farmstand shall be limited to locally produced wine, locally produced beer, locally produced cider, and locally produced malt beverages. For the purposes of this Condition 3, the local area is defined as all counties in Oregon.

4. The farmstand shall only sell farm crops and livestock grown on either the Applicant's farm operation or other farm operations in the local agricultural area, including the retail sale of incidental items and fee-based activities done in the promotion of farm crops or livestock sold at the farmstand. The annual sale of incidental items and fees from promotional activities shall not make up more than one-quarter (25%) of the total annual sales of the farmstand. For the purposes of this Condition 4, the "local agricultural area" is defined as all counties in Oregon.
5. The local alcohol sales at the farmstand allowed under Condition 3, which are separate and distinct from the farmstand's sale of incidental items and fees from promotional activities, shall be limited to no more than one-quarter (25%) of the total annual sales of the farmstand.
6. Prior to issuance of building permits, the Applicant shall obtain authorization from the County Sanitarian for the farmstand to use the existing septic system or shall otherwise receive approval for a new septic system to serve the farmstand.
7. Parking shall be established and permanently maintained for as long as the farmstand is operating so that there is a minimum of one parking space for each employee on maximum working shift, and one (1) parking space per 100 square feet of wine tasting area, and one (1) parking space per 300 square feet of farmstand area pursuant to Section 1007 of the Yamhill County Zoning Ordinance. Parking shall not be permitted along the Highway 47 right-of-way. Parking shall not be permitted on any surrounding property not under the ownership of the Applicant.
8. The use of outdoor amplified music or sound shall not be permitted.
9. Prior to the provision of wine tasting service or sale of locally produced wine, locally produced beer, locally produced cider, and locally produced malt beverages, the Applicant shall obtain all permits required by the Oregon Liquor Control Commission (OLCC).
10. Prior to issuance of building permits, the water supply and access driveway shall meet the standards and regulations set forth by the Yamhill Fire Department.
11. Any lighting for the farmstand shall be shielded, deflected, or directed onto the Applicant's property, so it does not shine onto the county road or adjacent lots.
12. "Agri-tourism or other commercial events" shall not occur on the subject parcel without additional land use approval. "Agri-tourism or other commercial events" include outdoor concerts for which admission is charged, educational, cultural, health or lifestyle events, facility rentals, and celebratory gatherings.
13. This approval shall expire two years from the date of this letter unless the use has been initiated.

14. This approval shall be deemed personal to the Applicant (Carlton Hub, LLC), Frank Foti, and the current property owner (Carlton Hub, LLC) and shall not run with the land.
15. The construction of any additional structures or modification to the footprint of existing structure(s) used in conjunction with the farmstand shall require the submission and approval of a Site Design Review application.
16. Modification of any of the above conditions requires approval under Section 1202.05 of the *Yamhill County Zoning Ordinance*. Violation of any of the above conditions may result in revocation of the conditional use permit with the process detailed in Section 1202.07 and 1202.08 of the *Yamhill County Zoning Ordinance*.