

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-15-23, a Conditional
Use Permit for Tax Lot No. R3523 02400;
Applicant: Ground 152, LLC

Board Order 25-333

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, Ground 152, 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, cider, and other malt beverages at the existing approved onsite farmstand; and

B. WHEREAS, The Board originally approved Planning Docket No. C-15-23 on February 8, 2025, via Board Order 24-26; 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-15-23 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-15-23 is approved, subject to the following conditions. All approval conditions provided under Board Order 24-26 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 3523-02400.
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 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 NW Red Shot Lane, NW Panther Creek Road, or NW Meadow Lake Road. 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 and other malt beverages, and locally produced cider, 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 will be required to meet the Carlton Fire Department standards.
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 approval unless the use has been initiated.
14. This approval shall be deemed personal to the Applicant (Ground 152, LLC), Frank Foti, and the current property owner (15660 Ground, 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

Chair

KIT JOHNSTON

By: Carolina Rook
Deputy Carolina Rook

Commissioner

MARY STARRETT

FORM APPROVED BY:

Alt Bond
Yamhill County Counsel

Commissioner

DAVID "BUBBA" KING

Approved by the Yamhill County Board of
Commissioners on 10/16/2025
via Board Order 25-333

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

3
4 FRIENDS OF YAMHILL COUNTY,
5 *Petitioner,*

6
7 vs.

8
9 YAMHILL COUNTY,
10 *Respondent,*

11
12 and

13
14 GROUND 152, LLC,
15 *Intervenor-Respondent.*

16
17 LUBA No. 2024-008

18
19 FINAL OPINION
20 AND ORDER

21
22 Appeal from Yamhill County.

23
24 Sean T. Malone filed the petition for review and reply brief and argued on
25 behalf of petitioner.

26
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.

34
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 (CUP) 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 (EFU).

BACKGROUND¹

The subject parcel is approximately 81.5 acres that is split-zoned with most of the parcel located in the EF-80, Exclusive Farm Use zone and a small portion within the AF-20, Agriculture/Forestry Large Holding zone. Ground 152, LLC (intervenor) is part of a collection of farm entities with a collective operation that spans 440 acres and raises cows, pigs, chickens, ducks, turkeys, vegetables, and edible flowers. Intervenor raises cows, pigs, and chickens on the subject property, which is developed with a single-family dwelling, residential accessory structures, and agricultural structures.² Land use in the surrounding area includes residential, agricultural, and forest uses.

¹ In a separate decision issued this same date we remand a separate county decision based on the reasoning set out in this decision. *Friends of Yamhill County v. Yamhill County*, ___ Or LUBA ___ (LUBA No 2024-009, June 25, 2024).

² In 2021, the county approved a replacement dwelling and a conditional use permit for a bed and breakfast on the subject property. We affirmed that approval, the Court of Appeals reversed, and the Supreme Court allowed review. *Friends of Yamhill County v. Yamhill County* ___ Or LUBA ___ (LUBA No 2022-081,

1 The county previously approved a farm stand on the EF-80-zoned area of
2 the subject property. The farm stand sells meat and produce. Intervenor applied
3 to the county for a CUP to sell wine, beer, cider, and other malt beverages
4 (fermented beverages) primarily produced in Oregon and provide wine-tasting
5 services at the farm stand, while continuing to sell meat and produce. The
6 additional sale of fermented beverages would involve improvements to the
7 interior of the farm stand. Intervenor does not produce fermented beverages.
8 Intervenor does not produce or process crops used to produce fermented
9 beverages such as grapes, grain, or hops. The county planning director approved
10 the CUP. Petitioner appealed the director’s decision to the board of
11 commissioners, which, after a public hearing, also approved the CUP. This
12 appeal followed.

13 **FIRST ASSIGNMENT OF ERROR**

14 We begin by summarizing the pertinent law. Statewide Planning Goal 3
15 (Agricultural Lands) is “[t]o preserve and maintain agricultural lands.” State law
16 restricts the uses that are allowed on agricultural land to farm uses and specified
17 nonfarm uses. *See* ORS 215.203(1) (generally requiring that land within EFU
18 zones be used exclusively for “farm use”); ORS 215.283 (identifying permitted
19 uses on EFU land).

20 “‘[F]arm use’ means the current employment of land for the primary

Dec 27, 2022), *rev’d*, 325 Or App 282, 529 P3d 1007, *rev allowed*, 371 Or 333 (2023).

1 purpose of obtaining a profit in money by raising, harvesting and
2 selling crops or the feeding, breeding, management and sale of, or
3 the produce of, livestock, poultry, fur-bearing animals or honeybees
4 or for dairying and the sale of dairy products or any other
5 agricultural or horticultural use or animal husbandry or any
6 combination thereof. 'Farm use' includes the preparation, storage
7 and disposal by marketing or otherwise of the products or by-
8 products raised on such land for human or animal use." ORS
9 215.203(2)(a).

10 ORS 215.283(1) lists 26 nonfarm uses that counties must allow on EFU
11 land, subject to standards adopted by the Land Conservation and Development
12 Commission (LCDC). *See* OAR 660-033-0130 (setting out standards applicable
13 to permitted and conditional uses on agricultural land). Uses authorized in ORS
14 215.283(1) are allowed "as of right" and are not subject to additional local
15 criteria. *Brentmar v. Jackson County*, 321 Or 481, 496, 900 P2d 1030 (1995).
16 ORS 215.283(2) contains a list of nonfarm uses that a county may allow as
17 conditional uses in an EFU zone, if the county concludes that the use will not
18 significantly affect surrounding lands devoted to farm use under ORS 215.296,
19 the "farm impacts test."³ The county may adopt additional local criteria for uses
20 listed in ORS 215.283(2). ORS 215.296(10); *Brentmar*, 321 Or at 488.

21 The county approved the CUP under Yamhill County Zoning Ordinance
22 (YCZO) 402.04(G), which allows, as a conditional use, "[c]ommercial activities
23 that are in conjunction with farm use as defined in Section 402.10(B), but not

³ Petitioner does not challenge the county's determination that the approval satisfies ORS 215.296(1).

1 including the processing of farm crops which are a permitted use as described in
2 subsection 402.02(E), subject to Section 1101, Site Design Review.” YCZO
3 402.04(G) implements ORS 215.283(2)(a), which provides:

4 “The following nonfarm uses may be established, subject to the
5 approval of the governing body or its designee in any area zoned
6 [EFU] subject to ORS 215.296:

7 “(a) *Commercial activities that are in conjunction with farm use,*
8 *including the processing of farm crops into biofuel not*
9 *permitted under ORS 215.203(2)(b)(K) or 215.255.”*
10 *(Emphasis added.)*

11 YCZO 402.10(B) provides:

12 “B. Commercial Activities in Conjunction with Farm Use - As
13 authorized under subsection 402.04, *a commercial activity in*
14 *conjunction with farm use is:*

15 “1. The processing, packaging, and wholesale distribution and
16 storage of a product not derived primarily from farm activities
17 on the premises;

18 “2. *Retail sales and promotion of agricultural products, supplies*
19 *and services directly related to the production, harvesting,*
20 *and processing of agricultural products.* Such uses include,
21 but are not limited to, the following:

22 “• Storage, distribution and sale of feed, fertilizer, seed,
23 chemicals, and other products used for commercial
24 agriculture

25 “• Livestock auction or sales yards

26 “• Farm equipment storage and repair facilities

1 Petitioner argues that the sale of the fermented beverages is not
2 “commercial activity in conjunction with farm use” because intervenor does not
3 produce, harvest, or process the crops used to produce the fermented beverages
4 nor process or produce the beverages themselves. Essentially, petitioner argues
5 that to be “in conjunction with farm use,” there must be a nexus between the
6 farming activity on the subject property and the commercial use.

7 As we understand the arguments, petitioner does not argue that the YCZO
8 402.10(B) terms “agricultural product” and “directly related” impose additional
9 local restraints on a commercial use that those allowed under ORS 215.283(2)(a).
10 Instead, petitioner argues that those terms support petitioner’s nexus argument—
11 which is that because none of the “agricultural products” that intervenor produces
12 are used in the production of the fermented beverages, the sale and serving of
13 fermented beverages is not “directly related to the production, harvesting, and
14 processing of agricultural products.” YCZO 402.10(B). Petitioner argues that the
15 county’s findings and interpretation of “directly related” are inconsistent with
16 state law and are inadequate because the findings fail to apply tests from case law
17 construing ORS 215.283(2)(a) to determine whether the commercial activity will
18 be exclusively or primarily used by farm uses and essential to farm practices.
19 Petition for Review 2.

20 The county found:

21 “[Intervenor’s] proposed use is for the retail sales and promotion of
22 processed agricultural products, in the form of alcohol and wine
23 produced by farmers in the local area. State law defines the local

1 area as the State of Oregon. If approved, the farmstand will be
2 limited to wine tasting and the sale of alcohol that has been produced
3 in Oregon. Because the Applicant has only explicitly defined these
4 beverages to include wine, cider, beer and other malt beverages, that
5 is what was evaluated and considered for approval. Wines, ciders,
6 beer or other malt beverages sold at the farmstand that are from
7 outside the local area would be considered incidental items, and the
8 sale of any incidental items at the farmstand shall not account for
9 more than 25 [percent] of the total sales at the farmstand.” Record
10 28.⁴

11 The county concluded that commercial activity in conjunction with farm
12 use is not limited “to only commercially market products derived from onsite
13 farm uses.” Record 28. Instead, the county concluded that the proposed
14 commercial activity is “in conjunction with farm use” because intervenor’s
15 proposed commercial activity provides “an additional local market outlet for both
16 (1) direct sale of alcohol products from local wineries and farm breweries[,] and
17 (2) indirect sale of locally grown hops, grapes, and other fruits that are processed
18 into those alcohol products.” Record 29.

⁴ All record citations in this decision are to the amended record. While the challenged decision does not cite it, we assume that the county reference to “state law” refers to the LCDC farm stand rule, which we set out fully below under the second assignment of error, and which provides that a farm stand may sell “farm crops and livestock grown on the farm operation, or grown on the farm operation and other farm operations in the local agricultural area[.]” OAR 660-033-0130(23)(a). For purposes of that rule, “‘local agricultural area’ includes Oregon or an adjacent county in Washington, Idaho, Nevada or California that borders the Oregon county in which the farm stand is located.” OAR 660-033-0130(23)(d). Petitioner does not challenge the county’s determination that the local agricultural area includes the entire state.

1 The county also found that “[n]othing in YCZO 402.10(B)(2) limits farm
2 sales only to what is produced by the operator’s farm.” Record 29 (underscoring
3 in original). The county reasoned that the inclusive list of commercial activities
4 in YCZO 402.10(B) “are deliberately not intended to serve only the onsite farm
5 activities but to collectively serve the local farming community.” Record 30. The
6 county noted that two of the items on the YCZO 402.10(B)(2) list—facility
7 rentals and promotional events—require the commercial activity to be directly
8 related to promotion of products harvested or processed on site, but that limitation
9 does not apply to retail sales of agricultural products. Record 29.

10 The parties dispute the applicable standard of review. Petitioner argues that
11 this appeal concerns the interpretation of state law that we review for legal error
12 with no deference to the county local governing body’s interpretation.
13 Differently, intervenor argues that we review the county’s interpretation of the
14 local code terms “agricultural product” and “directly related” with deference to
15 the county’s decision under ORS 197.829(1)(d).

16 ORS 197.829(1)(d) provides that we “shall affirm a local government’s
17 interpretation of its comprehensive plan and land use regulations, unless [we
18 determine] that the local government’s interpretation * * * is contrary to a state
19 statute, land use goal or rule that the comprehensive plan provision or land use
20 regulation implements.” We must defer to a local governing body’s interpretation
21 of its own regulation if that interpretation is not “inconsistent with the express
22 language of the comprehensive plan or land use regulation” or inconsistent with

1 the underlying purposes and policies of the plan or regulation. ORS 197.829(1);
2 *Siporen v. City of Medford*, 349 Or 247, 258-59, 243 P3d 776 (2010) (applying
3 ORS 197.829(1)). We do not, however, defer to the governing body’s
4 interpretation of a local provision that implements and adopts statutory language.
5 *Kenagy v. Benton County*, 115 Or App 131, 134-36, 838 P2d 1076, *rev den*, 315
6 Or 271 (1992).

7 We review the county’s interpretation of the language from ORS
8 215.283(2)(a) “commercial activity in conjunction with farm use” for legal error
9 with no deference. ORS 215.283(2)(a) does not contain the terms “agricultural
10 product” and “directly related.” We explained above that the county may impose
11 additional local criteria on uses authorized under ORS 215.283(2) and restrict
12 those uses more severely than provided by state law; however, petitioner does
13 not argue that the county has done so. Because the only issue before us is whether
14 the county’s interpretation of the YCZO phrases “agricultural product” and
15 “directly related” exceed the scope of commercial activities authorized by ORS
16 215.283(2)(a), we do not afford any deference to the county’s interpretation.

17 In reviewing the county’s interpretation of ORS 215.283(2)(a), we
18 examine the statutory text, context, and legislative history with the goal of
19 discerning the enacting legislature’s intent. *State v. Gaines*, 346 Or 160, 171-72,
20 206 P3d 1042 (2009); *PGE v. Bureau of Labor and Industries*, 317 Or 606, 610-
21 12, 859 P2d 1143 (1993). We are independently responsible for correctly
22 construing statutes. *See* ORS 197.805 (providing the legislative directive that

1 LUBA “decisions be made consistently with sound principles governing judicial
2 review.”); *Gunderson, LLC v. City of Portland*, 352 Or 648, 662, 290 P3d 803
3 (2012) (“In construing statutes and administrative rules, we are obliged to
4 determine the correct interpretation, regardless of the nature of the parties’
5 arguments or the quality of the information that they supply to the court.” (Citing
6 *Dept. of Human Services v. J. R. F.*, 351 Or 570, 579, 273 P3d 87 (2012); *Stull v.*
7 *Hoke*, 326 Or 72, 77, 948 P2d 722 (1997.)). For the reasons explained below,
8 we conclude that the county did not misconstrue the applicable law and that it
9 made adequate findings.

10 In 1973, the legislature created a list of nonfarm conditional uses allowed
11 in EFU zones in an amendment to ORS 215.213, including “commercial
12 activities that are in conjunction with farm use.” Or Laws 1973, chap 503, § 4;
13 see *Central Oregon Landwatch v. Deschutes County*, 276 Or App 282, 291-93,
14 367 P3d 560 (2016) (examining the legislative history of ORS 215.213 and ORS
15 215.283); *Brentmar*, 321 Or at 490-91 (same). The same phrase, without
16 modification, was carried over from ORS 215.213(2)(a) into ORS 215.283(2)(a)
17 in 1983, when ORS 215.283 was enacted. Or Laws 1983, chap 826, § 17.

18 The phrase “commercial activities that are in conjunction with farm use”
19 is not defined by statute or LCDC rule. “Conjunction” is not defined by statute
20 for purposes of ORS 215.283(2)(a). The plain meaning of the term “conjunction”
21 is “occurrence together[,] concurrence esp[ecially] of events * * *.” *Webster’s*
22 *Third New Int’l Dictionary* 480 (unabridged ed 2002). Thus, ORS 215.283(2)(a)

1 requires that the commercial activities occur at the same point in time or space
2 with a farm use. In this case, the subject property is in active farm use, raising
3 animals and growing produce. In addition, as the county concluded, the proposed
4 commercial activity is “in conjunction with” the farm uses of production and
5 processing of crops used in making fermented beverages, such as grape producers
6 in the county.⁵

7 Nothing in ORS 215.283(2)(a) requires that the subject property be in farm
8 use or that the commercial activity be directly related to a farm use occurring on
9 the subject property or the immediate vicinity. In construing ORS 215.283(2)(a)
10 the Court of Appeals has rejected a “petitioner’s contentions that the use is not
11 connected with farming because no independent grape growing activities are now
12 being conducted on the parcel and because the winery may serve grape farming
13 operations which are not located in the immediate vicinity.” *Craven v. Jackson*
14 *County*, 94 Or App 49, 53, 764 P2d 931 (1988) (*Craven I*), *aff’d*, 308 Or 281,
15 779 P2d 1011 (1989) (*Craven II*) (footnote omitted). The court explained that it
16 had previously construed a county ordinance “which was materially identical to
17 ORS 215.283(2)(a)” in *Earle v. McCarthy*, 28 Or App 539, 560 P2d 665 (1977),
18 and had therein upheld a CUP for a warehouse for the storage of hop crops and
19 the storage and sale of string and burlap for hop production on an EFU parcel on

⁵ Intervenor asserts that the farm stand is also a farm use. Joint Respondent’s Brief 7, 12. A farm stand is a nonfarm use that is authorized under ORS 215.283(1)(o).

1 which no independent farming activities were conducted. *Craven I*, 94 Or App at
2 52-53 (citing *Earle*, 28 Or App at 539-42; *Balin v. Klamath County*, 3 LCDC 8,
3 19 (1979) (concluding that a farm and irrigation equipment dealership and
4 demonstration area qualify as commercial activity in conjunction with farm use)).

5 While the *Earle* and *Balin* decisions predated the enactment of ORS
6 215.283(2)(a), those cases provide context for construing ORS 215.283(2)(a).
7 Decisional law that predates the enactment of a statute provides context for
8 construing a statute because we presume that the enacting legislature is aware of
9 decisional law on the same subject matter. *See Blachana, LLC v. Bureau of Labor*
10 *and Industries*, 354 Or 676, 691, 318 P3d 735 (2014) (“We presume that the
11 legislature was aware of existing law[.]”); *Lindell v. Kalugin*, 353 Or 338, 349,
12 297 P3d 1266 (2013) (“Case law existing at the time of the adoption” of the rule
13 or statute “forms a part of the context.”); *Mastriano v. Board of Parole*, 342 Or
14 684, 693, 159 P3d 1151 (2007) (“[W]e generally presume that the legislature
15 enacts statutes in light of existing judicial decisions that have a bearing on those
16 statutes.”); *see also J & D Fertilizers, Ltd. v. Clackamas County*, 105 Or App 11,
17 14, 803 P2d 280 (1990), *rev den*, 311 Or 261 (1991) (stating, in dicta, that the
18 storage of agricultural products on land other than the site of their production can
19 be allowed as a conditional use on agricultural land).

20 The legislative history of which we are aware demonstrates that the
21 legislature considered and rejected language that would limit commercial
22 activities on farm land by requiring that they relate to farming activities occurring

1 on the subject property. Instead, the legislature intentionally adopted broader
2 language. Tape Recording, Subcommittee to Senate Committee on Revenue, SB
3 101, May 11, 1973, Tape 37, Side 2 (discussion between Mr. Sullivan, Sens
4 Macpherson, Hoyt, and Atiyeh). ORS 215.283(2)(a) does not require a nexus
5 between the products of farm use *on the subject property* and the proposed
6 commercial activity. Accordingly, the county did not misconstrue the statute by
7 not requiring intervenor to demonstrate such a nexus.

8 Petitioner argues that the county misconstrued the phrases “agricultural
9 products” and “directly related” in YCZO 402.10(B)(2). Again, YCZO
10 402.10(B)(2) permits, as a conditional use, “[r]etail sales and promotion of
11 agricultural products, supplies and services directly related to the production,
12 harvesting, and processing of agricultural products.”

13 Petitioner argues that the county improperly construed the phrase
14 “agricultural products” in concluding that fermented beverages are “agricultural
15 products.” According to petitioner, “agricultural products” includes only “a raw
16 product from the farm (*i.e.*, a farm crop)” such as grapes, hops, and apples, and
17 does not include processed products such as wine, beer, and cider. Petition for
18 Review 21-22. Intervenor responds, and we agree, that the phrase “agricultural
19 products” does not specify “raw” or “unprocessed” and can be read to include
20 processed products such as wine, cider, and beer.

21 Petitioner argues that a broad interpretation of “agricultural products” is
22 contrary to the statewide policy of preserving agricultural land for agricultural

1 use and would allow stand-alone liquor stores and wine tasting rooms on
2 agricultural land. That fact pattern is not presented in this case. The commercial
3 use at issue here will operate within a farm stand structure that is separately
4 allowed on agricultural land. The approval contains a condition of approval
5 requiring the commercial use to “occur within the existing farm stand building.”
6 Record 19. The challenged decision does not allow the expansion of the farm
7 stand footprint or the construction of any new structures with a resulting loss of
8 farmland. The language of ORS 215.283(2)(a) authorizing commercial activity
9 in conjunction with farm use is broad and petitioner has not provided any
10 legislative history demonstrating that the legislature intended a narrower range
11 of discretion than the county exercised in this appeal.

12 Petitioner argues that the county adopted inadequate findings explaining
13 whether and why fermented beverages are “agricultural products.” Findings must
14 (1) address the applicable standards, (2) set out the facts relied upon, and (3)
15 explain how those facts lead to the conclusion that the standards are met. *Heiller*
16 *v. Josephine County*, 23 Or LUBA 551, 556 (1992). “[T]o be sufficient for
17 review, findings need only ‘establish the factual and legal basis for the particular
18 conclusions drawn in a challenged decision.’” *Niederer v. City of Albany*, 79 Or
19 LUBA 305, 314 (2019) (quoting *Thormahlen v. City of Ashland*, 20 Or LUBA
20 218, 229-30 (1990)). The above-quoted findings establish that the county found
21 and approved the sale of fermented beverages as “processed agricultural
22 products” and explained that the sale of fermented beverages both benefits

1 intervenor's farm operation and enhances the market for farmers that grow the
2 crops that are processed into the fermented beverages. Record 29-30. Those
3 findings are adequate to support the county's decision.

4 Petitioner argues that, even if the fermented beverages are agricultural
5 products, the decision fails to demonstrate that those products are "directly
6 related to the production, harvesting and processing of agricultural products."
7 YCZO 402.10(B)(2). Again, we do not understand petitioner to argue that the
8 phrase "directly related" imposes any additional requirement that is more
9 stringent than state law. Instead, petitioner argues that the county's interpretation
10 of "directly related" is inconsistent with case law. We proceed to examine that
11 case law and conclude that the county's interpretation is not inconsistent with it.
12 *See State v. Cloutier*, 351 Or 68, 100-101, 261 P3d 1234 (2011) (explaining that
13 precedential prior appellate construction of statutory language is an important
14 consideration in construing a statute).

15 Whether a commercial activity is authorized by ORS 215.283(2)(a) is
16 determined on a case-by-case, fact-specific basis. Thus, generally, no case will
17 provide an apt matrix for determining whether a different use under a different
18 fact pattern is authorized by ORS 215.283(2)(a). "Agricultural practices are
19 diverse, and the types of commercial activities that are in conjunction with farm
20 uses may be equally diverse. Whether the commercial activities are in
21 conjunction with farm use depends on the relationship between the commercial

1 activities and farm uses.” *Friends of Marion County v. Marion County*, ___ Or
2 LUBA ___, ___ (LUBA Nos 2021-088/089, Apr 21, 2022) (slip op at 22).

3 In *Craven II*, after ORS 215.283(2)(a) was enacted, Jackson County
4 approved a CUP for a winery and retail sale of wine and other products produced
5 or bottled on the premises and incidental sales of “cork screws, posters of the
6 winery, wine books, postcards of the winery, glasses, and T-shirts bearing the
7 winery name and logo.” 308 Or at 284. At the time of the CUP approval, the
8 subject property had been planted in vineyards with vines that were not yet
9 producing grapes for winemaking. The petitioner objected to the winery, tasting
10 room, and other retail activity, arguing that those activities were not “in
11 conjunction with farm use.”

12 The applicant argued that their requested uses were “farm uses” because
13 they were the “employment of land for the primary purpose of obtaining a profit
14 in money * * * by marketing or otherwise of the products or by-products raised
15 on such land for human or animal use.” ORS 215.203(2)(a). The court agreed
16 that farming is a commercial enterprise and yet declined to construe ORS
17 215.203(2)(a) so broadly as to allow, as a farm use, *any* commercial activity that
18 sells or markets farm products.

19 “Such an interpretation could permit a shopping mall or supermarket
20 as a farm use so long as the wares sold are mostly the products of a
21 farm someplace. Marketing of farm products could be established
22 by a gift shop selling candles of tallow and beeswax, a clothing store
23 that sells wools, cottons, and silks from worms nourished on
24 cultivated mulberry leaves, perhaps even a furrier who specializes

1 in ranch mink coats, a bakery, a coffeehouse, a butcher shop, and a
2 pharmacy with a section featuring natural remedies from foxglove,
3 flea bane, and Saint-John's-wort. The goal of preserving land in
4 productive agriculture would be subverted." *Craven II*, 308 Or at
5 288.

6 The court reasoned that the applicant's winery and incidental retail sales
7 are allowed as "commercial activities that are in conjunction with farm use." ORS
8 215.283(2)(a). The court explained:

9 "We believe that, to be 'in conjunction with farm use,' the
10 commercial activity must enhance the farming enterprises of the
11 local agricultural community to which the EFU land hosting that
12 commercial activity relates. The agricultural and commercial
13 activities must occur together in the local community to satisfy the
14 statute. Wine production will provide a local market outlet for
15 grapes of other growers in the area, assisting their agricultural
16 efforts. Hopefully, it will also make [the applicant's] efforts to
17 transform a hayfield into a vineyard successful, thereby increasing
18 both the intensity and value of agricultural products coming from
19 the same acres. Both results fit into the policy of preserving farm
20 land for farm use.

21 "Sales of souvenirs which advertise the winery may cause others to
22 come to the area and buy the produce of the vineyards and farms
23 roundabout. Such sales may reinforce the profitability of operations
24 and the likelihood that agricultural use of the land will continue. At
25 least LUBA could reasonably so find, as it did, and interpret the
26 incidental sales of souvenirs with logos as being 'in conjunction
27 with farm use.'" *Craven II*, 308 Or at 289.

28 While *Craven II* was pending in the Supreme Court, the legislature
29 authorized wineries as permitted uses on EFU-zoned land. Or Laws 1989, ch 525,
30 § 2. In 2011, the legislature added a new category for large wineries. Or Laws
31 2011, ch 679, § 8 (*see* ORS 215.283(1)(n) (allowing "[a] winery, as described in

1 ORS 215.452 or 215.453”). ORS 215.452 and 215.453 impose acreage
2 requirements, wine production, and marketing limitations for wineries. In
3 authorizing wineries as permitted uses under ORS 215.283(1)(n), the legislature
4 did not repeal or amend the ORS 215.283(2)(a) authorization for commercial
5 activities as conditional uses on EFU-zoned land.

6 After those statutory changes, Yamhill County approved a CUP under the
7 county’s implementation of ORS 215.283(2)(a) for the Stoller Vineyards
8 property approving the following commercial uses: “a new building—including
9 a tasting room, commercial kitchen, storage, and staff offices—and to host up to
10 44 events (with meal service) each year[.]” *Friends of Yamhill County v. Yamhill*
11 *County*, 255 Or App 636, 638, 298 P3d 586 (2013) (*Stoller*). Stoller had obtained
12 a prior approval for a winery and tasting room on the subject property under ORS
13 215.283(1)(n) and ORS 215.452, which allowed the sale of wine and incidental
14 items, a limited-service restaurant, and three events per calendar year. The
15 petitioner challenged the county’s approval, arguing that the county erred in
16 approving the CUP because the approved commercial uses exceeded the
17 limitations on wineries under ORS 215.283(1)(n) and ORS 215.452. The Court
18 of Appeals rejected that argument, reasoning that the legislature adopted ORS
19 215.283(1)(n) to authorize wineries as a limited permitted use with a process
20 “that is quicker and simpler than the conditional-use process that is available
21 under ORS 215.283(2)(a).” *Stoller*, 255 Or App at 645. The court also rejected
22 the petitioner’s argument that the limitations for permitted-use wineries applied

1 to conditional use commercial activities. In other words, the limitations in ORS
2 215.452 and 215.453 do not apply to conditional uses authorized under ORS
3 215.283(2)(a). The court concluded that the county’s “approval of Stoller’s CUP
4 application converted its winery and tasting room operations from a permitted-
5 use winery under ORS 215.283(1)(n) and ORS 215.452 to a conditional-use
6 winery under ORS 215.283(2)(a).” *Stoller*, 255 Or App at 647-49 (footnote
7 omitted).

8 The court concluded that the scope of Stoller’s commercial activity is
9 authorized under ORS 215.283(2)(a), as construed in the *Craven I* and *Craven II*.
10 The court explained that whether a commercial activity is authorized by ORS
11 215.283(2)(a) is determined on a case-by-case, fact-specific basis.

12 “[T]he type of activity proposed is not necessarily the determining
13 factor; rather, as the Supreme Court explained in *Craven II*, ‘to be
14 “in conjunction with farm use,” the commercial activity must
15 enhance the farming enterprises of the local agricultural community
16 to which the EFU land hosting that commercial activity relates.’ 308
17 Or at 289. As we put it in *Craven I*,

18 “[a] commercial use which assists farmers in processing and
19 marketing crops can be as supportive of agricultural
20 operations as one which aids them in producing crops. The
21 fact that the marketing technique may prove to be effective
22 enough to attract travelers hardly means that the farmers
23 whose processed produce the travelers purchase are not
24 benefited. 94 Or App at 54.” *Stoller*, 255 Or App at 650.

1 The court rejected the petitioner’s contention that Stoller’s commercial
2 activities (events and food service) would overtake the primary activities of
3 producing grapes and processing and selling wine. The court explained that

4 “it is patent from the *Craven* decisions that any commercial activity
5 beyond the direct processing and selling of wine must, to be
6 approved as a commercial activity in conjunction with the farm use
7 of viticulture, be both ‘incidental’ and subordinate to the processing
8 and selling activities of the winery. *Craven II*, 308 Or at 289; *Craven*
9 *I*, 94 Or App at 54. As we warned in *Craven I*, the incidental and
10 secondary winery activities cannot become ‘the tail [that] wag[s] the
11 dog.’ [*Id.*] As always, farm-use-related commercial activity must
12 promote ‘the policy of preserving farm land for farm use.’” *Craven*
13 *II*, 308 Or at 289.” *Stoller*, 255 Or App at 650–51 (first and second
14 brackets in original, third brackets added).

15 The court reasoned that the county’s conditions—including that the events be
16 “directly related” to the sale and promotion of wine produced at the winery—
17 were designed to ensure that the event and food service activities will remain
18 incidental and secondary to the processing and sale of wine. Moreover, the court
19 found that the approved commercial activities would enhance the marketing of
20 Stoller wine and would “reinforce the profitability of operations and the
21 likelihood that agricultural use of the land will continue,’ thus promoting the goal
22 of preserving farm land.” *Stoller*, 255 Or App at 652 (quoting *Craven II*, 308 Or
23 at 289 (footnote omitted)).

24 Similarly, here, the county found that the commercial sale of fermented
25 beverages will reinforce the profitability of intervenor’s farm use and enhance
26 the farming enterprises of the local agricultural community. The county found:

1 “Robust farmstands are symbiotic with the agriculture surrounding
2 them. Selling alcohol produced by nearby vineyards and farm
3 breweries will not make [intervenor] any less a farm. Instead, the
4 entire county’s farming is furthered. [Intervenor] will also have an
5 additional profit source to benefit overall farming operations and
6 draw in customers for the veggies and meats that [intervenor]
7 produces and which serve as the core of farmstand sales.

8 “Due to inflation, international trade pressure, taxes, red tape, and
9 other factors, it is increasingly difficult for farmers to make a profit.
10 [Petitioner’s] arguments would make it harder for farmers to earn a
11 living from farming; all farms and farmstands would be harmed.

12 “[Petitioner] appears to contend that allowing a small amount of
13 alcohol sales and tasting at an existing farmstand to complement the
14 core meat and veggie sales will somehow adversely alter the
15 character of the area. Such concerns are simply unfounded. A low-
16 volume use that is similar to many surrounding uses does not
17 adversely impact the surrounding area. Rather, these applications
18 further the local economic synergy of the wine industry. For
19 decades, expanding wine-related agriculture has been a goal of
20 Yamhill County.” Record 30.

21 The county’s interpretation of “commercial activities in conjunction with
22 farm use” and “directly related” are consistent with the court’s construction in
23 *Craven I*, *Craven II*, and *Stoller*. We address below petitioner’s contention that
24 the decision impermissibly allows sales of fermented beverages to overtake the
25 farm use.

26 Petitioner relies on and extensively cites *City of Sandy v. Clackamas*
27 *County*, 28 Or LUBA 316 (1994) for the proposition that commercial activity in
28 conjunction with farm use may only be permitted when the nonfarm commercial
29 products or services are “essential to the practice of agriculture” and where the

1 commercial operator is “exclusively or primarily a customer or supplier of farm
2 uses.” *Id.* at 321-22. In *City of Sandy*, the county approved a CUP for the sale and
3 rental of large trucks and trailers, sale of portable storage buildings, operation of
4 a mailbox and shipping facility, and construction of a 4,800-square-foot building
5 to house the operation. We concluded that the disputed uses were not commercial
6 activities in conjunction with farm use. We explained that

7 “even if a commercial activity primarily sells to farm uses, that may
8 not be sufficient to allow the commercial activity to qualify as a
9 commercial activity in conjunction with farm use. There is a second
10 inquiry that must be satisfied. The products and services provided
11 must be ‘essential to the practice of agriculture.’ While farmers must
12 eat and farm equipment frequently operates on gasoline, that is not
13 sufficient to make grocery stores or gas stations commercial
14 activities in conjunction with farm use. The connection must be
15 closer to the ‘essential practice of agriculture.’ [*Balin*, 3 LCDC at
16 19.] * * *

17 “* * * * *

18 “[T]here is no reason to believe the trucks, trailers, and equipment
19 intervenor is authorized to sell and rent under the [CUP], will be
20 purchased or rented exclusively or primarily by farms or farmers in
21 the area. The same holds true for the mailbox, UPS and fax services.
22 There is evidence that *some* of intervenor’s expected sales and
23 rentals will be to farm uses, but it is equally clear from the record
24 that there is a potentially large number of customers for the items
25 and services intervenor will offer that are *not* farm uses. The record
26 in this case is inadequate to demonstrate sales and rentals will be
27 primarily to farm uses in the area and, for that reason, is inadequate
28 to demonstrate that the authorized use is a ‘commercial activity in
29 conjunction with farm use.’” *Id.* at 322 (citing *Chauncey v.*
30 *Multnomah County*, 23 Or LUBA 599, 606-007 (1992) (emphases
31 in original; footnote omitted)).

1 *City of Sandy* stands for the proposition that products and services which
2 could be used for farm uses and by farm workers, but are also used by a variety
3 of other nonfarm uses and users, lack a sufficient connection to farm use to be
4 considered “commercial activities in conjunction with farm use.” “[I]n
5 conjunction with farm use” requires a customer/seller or seller/customer
6 relationship between the proposed commercial use and farm uses in the
7 community. *See Earle*, 28 Or App at 539 (upholding CUP for warehouse storage
8 of hop crops and the storage and sale of string and burlap for hop production on
9 an EFU parcel on which no independent farming activities were conducted);
10 *Balin*, 3 LCDC at 19 (concluding that a farm and irrigation equipment dealership
11 and demonstration area qualify as commercial activity in conjunction with farm
12 use).

13 Intervenor argues, and we agree, that *City of Sandy* is distinguishable from
14 the facts of this case and not instructive to the fact-specific inquiry under ORS
15 215.283(2)(a). In *City of Sandy*, there was no primary farm use of the subject
16 property and a tenuous connection to farm uses in the area. Here, the proposed
17 commercial use is not a stand-alone commercial sale of fermented beverages on
18 EFU-zoned land. Intervenor operates a farm and farm stand and the commercial
19 use will occur “in conjunction with” those uses. The commercial activity will also
20 relate to and enhance farming activity in the local agricultural area. Unlike the
21 commercial use at issue in *City of Sandy*, intervenor in this case is both a customer
22 and a seller of processed farm products. *City of Sandy* is not analogous, let alone

1 dispositive, and the county did not err in failing to make specific findings
2 responding to petitioner’s arguments relying on that case.

3 Petitioner argues that “the commercial activity is not secondary or
4 incidental to the farm use, which will result in the ‘tail wagging the dog[,]’” and
5 that “the farm use could very well be eclipsed by the sales of alcohol, leading to
6 what is essentially a soft-liquor store on EFU land.” Petition for Review 32-33,
7 31 (footnote omitted); *see Craven I*, 94 Or App at 54 (“There is, of course, a risk
8 of the tail wagging the dog in many situations where secondary activities are
9 permitted because they serve primary ones[.]”). Intervenor responds that because
10 the commercial activity will operate within the existing farm stand, “and the rule
11 that the [commercial activity] is, by definition, secondary to the underlying farm
12 use, appropriately limits the scope of the [commercial activity] such that the
13 [commercial activity] will remain supportive of the farm use of the subject parcel
14 and the surrounding area.” Joint Respondent’s Brief 42.⁶

15 The parties agree that a commercial activity under ORS 215.283(2)(a)
16 must be “subordinate” and “secondary” to the primary farm and farm stand uses.
17 Joint Respondent’s Brief 41-42. Those limitations are not express in ORS
18 215.283(2)(a). We understand the parties to agree that those requirements are

⁶ Intervenor provides not citation to any “rule.” We assume that the “rule”
intervenor refers to is the limitation in the courts’ construction in *Stoller* and
Craven that a commercial use approved under ORS 215.283(2)(a) may not
become “the tail that wags the dog.” *Stoller*, 255 Or App at 651 (citing *Craven*
II, 308 Or at 289; *Craven I*, 94 Or App at 54).

1 derived from case law construing ORS 215.283(2)(a), namely, *Craven I*, *Craven*
2 *II*, and *Stoller*, summarized above. Because the parties agree that those limitations
3 apply to the proposed use, we accept them as applicable for purposes of this
4 decision. From that premise, we agree with petitioner.

5 The county concluded that it was “allowing *a small amount* of alcohol
6 sales and tasting at an existing farmstand *to complement* the core meat and veggie
7 sales” as “[a] *low-volume* use.” Record 30 (emphases added). The challenged
8 decision does not include any conditions limiting the sales of fermented
9 beverages or any findings explaining the county’s conclusion that the conditional
10 commercial activity “will be a secondary use that is in conjunction with the
11 primary use on the property.” Record 31. Intervenor does not point to anything
12 in the application or the decision that imposes any limit on the sale and service
13 of fermented beverages that ensures that those commercial activities remain
14 “subordinate” or “secondary” to the preexisting farm use and the farm stand use.
15 On remand, the county must adopt findings explaining that conclusion.

16 The first assignment of error is sustained, in part.

17 **SECOND ASSIGNMENT OF ERROR**

18 Petitioner argues that the county’s decision is inconsistent with the farm
19 stand statute, which allows the sale of farm crops or livestock and limits the sale
20 of “incidental items” to no more than “25 percent of the total annual sales of the
21 farm stand[.]” ORS 215.283(1)(o)(A). Intervenor responds, and we agree, for

1 reasons explained below, that the farm stand limitation does not apply to the
2 approved conditional commercial use.

3 In 1993, four years after the Supreme Court’s decision in *Craven II*, the
4 legislature specifically authorized farm stands as a permitted use in on
5 agricultural land. Or Laws 1993, ch 466, § 2. Farm stands may be established on
6 EFU zoned land under ORS 215.283(1)(o), which provides:

7 “(1) The following uses may be established in any area zoned for
8 exclusive farm use:

9 “* * * * *

10 “(o) Farm stands if:

11 “(A) The structures are designed and used for the sale of
12 farm crops or livestock grown on the farm operation,
13 or grown on the farm operation and other farm
14 operations in the local agricultural area, including the
15 sale of retail incidental items and fee-based activity to
16 promote the sale of farm crops or livestock sold at the
17 farm stand if the annual sale of incidental items and
18 fees from promotional activity do not make up more
19 than 25 percent of the total annual sales of the farm
20 stand; and

21 “(B) The farm stand does not include structures designed for
22 occupancy as a residence or for activity other than the
23 sale of farm crops or livestock and does not include
24 structures for banquets, public gatherings or public
25 entertainment.”

26 LCDC promulgated the farm stand rule, OAR 660-033-0130(23), which
27 provides:

28 “A farm stand may be approved if:

1 “(a) The structures are designed and used for sale of farm crops
2 and livestock grown on the farm operation, or grown on the
3 farm operation and other farm operations in the local
4 agricultural area, including the sale of retail incidental items
5 and fee-based activity to promote the sale of farm crops or
6 livestock sold at the farm stand if the annual sales of the
7 incidental items and fees from promotional activity do not
8 make up more than 25 percent of the total annual sales of the
9 farm stand; and

10 “(b) The farm stand does not include structures designed for
11 occupancy as a residence or for activities other than the sale
12 of farm crops and livestock and does not include structures
13 for banquets, public gatherings or public entertainment.

14 “(c) As used in this section, ‘farm crops or livestock’ includes both
15 fresh and processed farm crops and livestock grown on the
16 farm operation, or grown on the farm operation and other
17 farm operations in the local agricultural area. As used in this
18 subsection, ‘processed crops and livestock’ includes jams,
19 syrops, apple cider, animal products and other similar farm
20 crops and livestock that have been processed and converted
21 into another product but not prepared food items.

22 “(d) As used in this section, ‘local agricultural area’ includes
23 Oregon or an adjacent county in Washington, Idaho, Nevada
24 or California that borders the Oregon county in which the
25 farm stand is located.

26 “(e) A farm stand may not be used for the sale, or to promote the
27 sale, of marijuana products or extracts.”

28 *See Greenfield v. Multnomah County*, 259 Or App 687, 317 P3d 274 (2013)
29 (examining limits of the farm stand permitted use).

30 Petitioner argues that the CUP improperly allows the sale of fermented
31 beverages that may surpass the sale of meat and produce. Petitioner argues that

1 the county may not allow a commercial activity in conjunction with farm use that
2 would exceed the limitations in the farm stand statute.

3 Petitioner's argument is analogous to the petitioner's argument in *Stoller*,
4 that the county was prohibited from allowing a conditional commercial use under
5 ORS 215.283(2)(a) that exceeds the limited permitted winery use under ORS
6 215.283(1)(n). The court rejected that argument, reasoning that the permitted use
7 winery limitations do not apply to the conditional commercial use. *Stoller*, 255
8 Or App at 647-49 (footnote omitted). Similarly, here, intervenor did not seek an
9 amended or additional farm stand approval and, instead, sought separate
10 conditional commercial use approval. To be sure, the commercial use will operate
11 within the farm stand. However, the CUP approval is distinct and the farm stand
12 limitations are inapplicable. Accordingly, the county did not misconstrue the
13 applicable law.

14 The second assignment of error is denied.

15 The county's decision is remanded.

EXHIBIT B
SUPPLEMENTAL FINDINGS IN SUPPORT OF APPROVAL ON REMAND
(Board Order 25-333)

HEARING DATE: August 21, 2025

DOCKET NO.: C-15-23

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, cider, and other malt beverages at the existing approved onsite farmstand (Docket SDR-12-23).

APPLICANT: Ground 152, LLC

OWNER: 15660 Ground, LLC

TAX LOT: R3523 02400

LOCATION: 15250 NW Panther Creek Road, Carlton

ZONE: The subject parcel is split-zoned, with the majority of the parcel located in the EF-80, Exclusive Farm Use zone and a small portion within the AF-20, Agriculture/Forestry Large Holding zone. The farmstand is located within the EF-80 zoned area of the subject lot.

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 24-26 are incorporated here by reference.
2. *Appellate History.* Board Order 24-26 was remanded by the Land Use Board of Appeals (LUBA) on June 25, 2024, under LUBA 2024-008. 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 24-26 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 is also 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 the existing 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 to sell 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.

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).

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% “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 definitively secondary and subordinate to the approved 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 24-26). 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.

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- 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.

5. *Farmstand Approval Expiration*. FYC contends that, because the farmstand permit approved under Docket SDR-12-23 is arguably expired, a conditional use permit cannot be issued allowing for its use to sell locally produced wine, beer, cider, and other malt beverages. The County rejects this argument because the approved farmstand permit is separate and distinct from the approval of the conditional use permit contemplated herein, and an analysis into whether or not a previously approved farmstand permit has expired would be an unnecessary undertaking for the Board to take when considering a conditional use application. More specifically, the County's objective here is to determine whether or not the submitted application satisfies the conditional use requirements for state and local law, not to engage in code enforcement activities for an existing farmstand permit. Determining whether or not a permitted use has expired requires certain and specific legal procedures to be followed, including, generally speaking, a warning, followed by issuance of a uniform citation if no corrective action is taken, and ultimately a circuit court hearing for a legal ruling on the issue, as further described in the County's "Code Enforcement Code." To circumvent the County's enforcement procedures laid out in its code would be both unnecessary and (more significantly) a likely infringement of due process.

Further, the Applicant contends, and the County agrees, that Board Order 00-514 may have applicability to the permit issued under Docket SDR-12-23 because it provides a basis for determining whether or not "substantial construction" of the farmstand has occurred, thus allowing for its continued operation. Board Order 00-514 provides a non-exhaustive list of criteria for the County to examine when making such a determination, including construction and non-construction activities, such as consulting architectural, building, and/or engineering professionals, septic tank plans or installation, and "any other substantial effort or investment that indicates intent to develop the site." (see Board Order 00-514(1)(i)). The Applicant provided testimony in the remand hearing that cabinets have been removed, painting has been done, building professionals have been consulted, sanitarian conferrals have occurred regarding the septic system, and retail consultants have been consulted to design the farmstand layout. Specifically, the Applicant testified that the expenses incurred in these efforts are greater than \$10,000. Given that, additional consideration is required. The Board cannot circumvent the processes and procedures laid out in Board Order 00-514 and issue a deficient determination under this CUP approval regarding "substantial construction" of an entirely separate, albeit related, farmstand permit. The requisite analysis for making such a determination is simply outside the scope of this remand proceeding.

Lastly, it is worth noting, without adopting any conclusions thereof, that the reason that the Applicant was unable to initiate the approved farmstand use was largely because of the opponent's ongoing appeal of this conditional use permit, including appealing to the Supreme Court an "Affirmed Without Opinion" decision from the Court of Appeals. To deny a conditional use application on remand based solely on the fact that one of the originally imposed conditions may have (arguably) expired whilst the opponents were contesting the approval on appeal is both unfair to the Applicant and otherwise encourages frivolous appeals by opponents in order to "run out the clock" on a permit-holder's ability to initiate an approved use. Lastly, even if it is determined that the farmstand permit did, in fact, expire in 2024, the Applicant may always choose to reapply, and Condition 2 will thereafter be satisfied, making the entire argument moot.

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 sale of locally produced alcohol including wine, beer, cider, and other malt beverages from the existing 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 1202.02, 402.04(G), and 402.07(A) of the *Yamhill County Zoning Ordinance*.
3. With conditions, the request can conform with the site design review standards listed in Section 1101.02 of the *Yamhill County Zoning Ordinance*.
4. 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 Ground 152, LLC for a conditional use permit 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 has been approved, subject to the following conditions. All approval conditions provided under Board Order 24-26 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 3523-02400.
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 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 NW Red Shot Lane, NW Panther Creek Road, or NW Meadow Lake Road. 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 and other malt beverages, and locally produced cider, 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 will be required to meet the Carlton Fire Department standards.
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 approval unless the use has been initiated.
14. This approval shall be deemed personal to the Applicant (Ground 152, LLC), Frank Foti, and the current property owner (15660 Ground, 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*.