

1 BEFORE THE LAND USE BOARD OF APPEALS  
2 OF THE STATE OF OREGON  
3

4 FRIENDS OF YAMHILL COUNTY,  
5 JAMES KRUEZBENDER, THOMAS ABREGO,  
6 and ELLEN ABREGO,  
7 *Petitioners,*  
8

9 and

10 OREGON DEPARTMENT OF AGRICULTURE,  
11 *Intervenor-Petitioner,*  
12

13 vs.  
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15 YAMHILL COUNTY,  
16 *Respondent,*  
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18 and  
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20 BILL STOLLER, STOLLER VINEYARDS, INC.,  
21 and RED HILLS FARM, LLC,  
22 *Intervenors-Respondents.*  
23

24 LUBA No. 2012-005  
25

26 FINAL OPINION  
27 AND ORDER  
28

29  
30 Appeal from Yamhill County.  
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32 Jennifer M. Bragar, Portland, filed the petition for review and argued on behalf of  
33 petitioners. With her on the brief were William K. Kabeiseman and Garvey Schubert Barer.  
34

35 Jas. Jeffrey Adams, Attorney-in-Charge, Salem, filed a petition for review and argued  
36 on behalf of intervenor-petitioner. With him on the brief were Ellen F. Rosenblum, Attorney  
37 General, Steven E. Shipsey and Erin L. Donald, Assistant Attorneys General.  
38

39 Rick Sanai, Yamhill County Counsel, McMinnville, filed a joint response brief and  
40 argued on behalf of respondent.  
41

42 Michael J. Gelardi, Portland, filed a joint response brief and argued on behalf of  
43 intervenors-respondents. With him on the brief was Davis Wright Tremaine, LLP.  
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HOLSTUN, Board Member; BASSHAM, Board Chair; RYAN, Board Member,  
participated in the decision.

AFFIRMED

09/18/2012

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**

Petitioners appeal a county decision that grants conditional use and site design approval for (1) additions to the Stoller Vineyard and Winery and (2) an expansion of the number and types of events that may occur at the Stoller Vineyard and Winery, which is located on land zoned for exclusive farm use (EFU). The decisions grant approval for a new wine “tasting room, a commercial kitchen, storage and staff offices.” In addition, the decisions authorize up to 44 events per year.<sup>1</sup>

**MOTION TO TAKE OFFICIAL NOTICE**

Respondent and intervenors-respondents file a motion asking that LUBA take official notice of a number of documents. The motion is granted.

**FACTS**

**A. The Existing Winery**

In 2003 the county approved Stoller’s site design review application for a winery, pursuant to ORS 215.283(1) and ORS 215.452, which authorize counties to approve wineries in EFU zones. *See* n 8. The existing winery includes a tasting room. Record 558; Oversized Exhibit XXV(d) (Drawing P1.3). Stoller Vineyard and Winery occupies the site of a former turkey farm and includes approximately 373 acres. Over 180 acres are currently planted in vineyards and Stoller plans to plant 30 to 40 more acres of vineyard. According to the record, Stoller produces “10,000 to 12,000 cases of premium wine plus 330 tons of premium fruit” annually. Record 102.<sup>2</sup>

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<sup>1</sup> We describe the different types of authorized events in more detail later in this opinion.

<sup>2</sup> As we explain later in this opinion, the EFU zone currently regulates wineries differently depending on how many gallons of wine the winery produces per year. 10,000 to 12,000 cases would equal approximately 24,000 to 29,000 gallons of wine per year, making it a small winery under existing EFU zoning regulations.

1           The county’s 2003 decision imposed a number of limitations on the approved winery.  
2           The winery was limited to “three events of one to three days in duration during a calendar  
3           year intended to draw customers to the site for the tasting and purchasing of wine.” Record  
4           3.<sup>3</sup> The winery was authorized to sell “[i]tems directly related to wine, the sales of which are  
5           incidental to the retail sale of wine on-site and do not exceed 25 percent of the total gross  
6           receipts of the retail facility.” *Id.* The 2003 decision also authorized a limited service  
7           restaurant at the winery, “as defined in ORS 624.010.” *Id.* See n 13.

8           **B.       The Approved Winery Expansion**

9           The decision that is before us in this appeal approves an expansion of the existing  
10          winery.<sup>4</sup> The decision authorizes construction of a new building located near the existing  
11          winery that will include a tasting room, commercial kitchen, offices and storage. As  
12          conditioned, the decision approves up to 44 events at the winery each year. Those authorized  
13          events are further described as follows:

- 14                   • “[N]ine single day events where attendance is not to exceed 400  
15                   patrons[.]”
- 16                   • “[T]hree three-day events w[h]ere attendance is not to exceed 400  
17                   patrons per day[.]”
- 18                   • “[O]ne three-day event w[h]ere attendance will not to exceed 300  
19                   patrons per day[.]”
- 20                   • “21 by invitation-only, single-day events w[h]ere the attendance will  
21                   not exceed 200 patrons[.]”

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<sup>3</sup> According to the record, Stoller Winery “currently hosts approximately 37 on-site visitor activities and events, attracting 25-400 attendees.” Record 103. Unless there is a difference between “activities” and “events,” the “37 on-site visitor activities and events” would appear to exceed the “three event” limitation, but no party argues this apparent discrepancy is significant.

<sup>4</sup> As we explain later in this opinion, the parties dispute whether the approval represents an expansion of the existing winery or is a new commercial activity that will be in conjunction with the existing winery, rather than in conjunction with the vineyard.

- 1           • “[T]en, by invitation-only single-day events where the expected  
2           attendance will not exceed 100 patrons.” Record 24.<sup>5</sup>

3     The appealed decision authorizes the new on-site commercial kitchen to serve up to 72 guests  
4     at any of the above-described events.<sup>6</sup> The decision also authorizes catered meals, “prepared  
5     by a commercial caterer.” Record 25. Finally, the decision includes a condition of approval  
6     that requires the following:

- 7           “15. An annual report on the facility to show that it meets the conditions  
8           related to the events shall be filed with the Planning Director. A fee  
9           for such review may be imposed. The gross income from the non wine  
10          related activity may not exceed 25 percent of the gross income from  
11          the retail sale on-site of wine produced in conjunction with the  
12          winery.” *Id.*

### 13     **INTRODUCTION**

14           A 1988 land use dispute regarding a different winery on EFU-zoned land in Jackson  
15     County, which led to a number of appeals and action by the Oregon Legislature, plays a key  
16     role in our resolution of this appeal. At the time that 1988 dispute arose, the EFU zone did  
17     not authorize wineries, as such. However, at that time the EFU zone authorized  
18     “[c]ommercial activities that are in conjunction with farm use,” under subsection (2) of ORS  
19     215.283 (hereafter CA/FU). ORS 215.283(2)(c) (1987). Jackson County approved the

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<sup>5</sup> The decision further limits the authorized events as follows:

- “3. The events, whether public or private, are allowed only if those events are: 1) directly related to the sale and promotion of wine produced in conjunction with the winery; 2) incidental and subordinate to the retail sale of wine on-site; 3) hosted by the winery or by patrons of the winery; and 4) feature wine produced in conjunction with the winery. The events shall be held between the hours of 8:00 AM and 11:00 PM. The total number of persons permitted on the subject property at any one time, excluding staff, for any one event shall not exceed four hundred (400) persons.” Record 24.

<sup>6</sup> When the expansion was first approved by the planning director, questions arose regarding whether the approved on-site commercial kitchen was limited to preparing meals for patrons at the authorized 44 annual events or whether the kitchen might be allowed to offer daily meal service for up to 72 guests throughout the year. The county sent the applicant a letter to clarify that the approved on-site commercial kitchen is limited to preparing meals at the authorized 44 annual events. Record 520.

1 proposed winery as a CA/FU.<sup>7</sup> The county’s decision was appealed and that appeal led to a  
2 July 18, 1988 LUBA decision, a November 23, 1988 Court of Appeals decision and an  
3 August 29, 1989 Oregon Supreme Court decision. LUBA affirmed the county’s decision.  
4 *Craven v. Jackson County*, 16 Or LUBA 808 (1988). The Court of Appeals affirmed  
5 LUBA’s decision. *Craven v. Jackson County*, 94 Or App 49, 764 P2d 931 (1988). And the  
6 Supreme Court affirmed the Court of Appeals’ and LUBA’s decisions. *Craven v. Jackson*  
7 *County*, 308 Or 281, 779 P2d 1011 (1989).

8 While those appeals were underway, the 1989 legislature, which was aware of the  
9 *Craven* appeals, adopted amendments to the EFU zone to amend subsection (1) of ORS  
10 215.283 to expressly authorize wineries. ORS 215.283(1)(n).<sup>8</sup> That 1989 legislation also  
11 adopted what is now codified with subsequent amendments at ORS 215.452, to define and  
12 limit the wineries that are eligible for approval as a permitted non-farm use under ORS  
13 215.283(1)(n). The 1989 legislation took effect on June 29, 1989, after LUBA’s and the  
14 Court of Appeals’ *Craven* decisions and two months before the Supreme Court’s decision in  
15 *Craven*.

16 As previously noted, Stoller Winery was originally approved in 2003. That approval  
17 was based on ORS 215.283(1)(n) and ORS 215.452. Seven years later, the expanded  
18 operation that Stoller Winery proposed in 2011 could not be approved under ORS

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<sup>7</sup> ORS 215.283(2) (1987) provided in relevant part:

“(2) The following uses may be established in any area zoned for exclusive farm use if the use meets reasonable standards adopted by the governing body:”

“\* \* \* \* \*

“(c) Commercial activities that are in conjunction with farm use.”

Identical language now appears at ORS 215.283(2)(a).

<sup>8</sup> ORS 215.283(1)(n) authorizes counties to approve in EFU zones “[a] winery, as described in ORS 215.452 \* \* \*.”

1 215.283(1)(n) and ORS 215.452, because the proposed expansion would exceed some of the  
2 limits placed on wineries by ORS 215.452. Therefore, Stoller proposed and the county  
3 approved the expanded operation under ORS 215.283(2)(a), under which the county may  
4 approve CA/FUs. *See* n 7. In other words, to approve winery activities that could not be  
5 approved under ORS 215.283(1)(n) and ORS 215.452, the county relied on the same legal  
6 theory under which the county’s decision approving a winery was affirmed in the *Craven*  
7 decisions. The central issue in this appeal is whether the expanded winery that Stoller  
8 proposed and the county approved exceeds the scope of what is permissible under ORS  
9 215.283(2)(a) as a CA/FU.

10 In order to understand the issues that are presented in this appeal, an understanding of  
11 the issues that were presented and resolved in the *Craven* decisions and the legislative intent  
12 in adopting the 1989 legislation and subsequent legislation is useful. We therefore turn first  
13 to those decisions and legislation.

14 **A. LUBA’s Decision in Craven**

15 The winery and vineyard in *Craven* were to be developed on a 23-acre EFU-zoned  
16 property. The winery was to be constructed first; the vineyard would be planted later and  
17 replace an existing hay field. The winery would ultimately produce 20,000 gallons of wine  
18 annually, and would purchase grapes from other vineyards initially but would also use grapes  
19 grown onsite as the vineyard was planted and matured. A condition of county approval  
20 required the applicant to plant at least 12 acres of grapes in the first five years. In addition to  
21 producing wine, the proposed winery was to include a tasting room where wine could be  
22 consumed and purchased. The winery would also sell “cork screws, posters of the winery,  
23 wine books, postcards of the winery, glasses and T-shirts bearing the winery name and logo.”  
24 16 Or LUBA at 809.

25 The only issue that LUBA decided in its decision was whether the county erred by  
26 approving a winery *before* the vineyard was established on the property. LUBA concluded

1 that the onsite vineyard need not be established before the winery could be approved as a  
2 CA/FU. In reaching that conclusion LUBA relied on *Earle v. McCarthy*, 28 Or App 539,  
3 560 P2d 665 (1977), in which the Court of Appeals held that a hop storage warehouse that  
4 would store hops grown off-site could be approved as a commercial activity in conjunction  
5 with farm use on EFU-zoned land, even though the site of the warehouse itself would  
6 produce no hops. LUBA also relied on *Balin v. Klamath County*, 3 LCDC 8 (1979), in which  
7 the Land Conservation and Development Commission concluded a farm implement  
8 dealership could qualify as a commercial activity in conjunction with farm use because it  
9 provided “products and services essential to the practice of agriculture directly to the  
10 surrounding agricultural businesses [that] are sufficiently important to justify the resulting  
11 loss of agricultural land.” *Craven*, 18 Or LUBA at 812, *Balin*, 3 LCDC at 19. LUBA noted  
12 that the applicant in *Craven* argued that the winery should be viewed as a “farm use” but  
13 declined to address that issue, because the county did not approve the winery as a “farm use.”  
14 16 Or LUBA at 816 n 5.<sup>9</sup>

15 **B. The Court of Appeals’ Decision in *Craven***

16 In the appeal of LUBA’s *Craven* decision to the Court of Appeals, the issues on  
17 appeal were framed more broadly:

18 “Petitioner’s specific bases for contending that the use is not one that is in  
19 conjunction with farm use are that the winery is a separate enterprise which is  
20 not connected with ‘any existing farm operation on [respondent’s] land or on  
21 neighboring lands’; that it will procure some of the grapes it processes from  
22 growers within the county but outside the immediate vicinity; that the tasting  
23 rooms and sale items have no relationship to farm operations; that the winery  
24 will provide products and services to the public and to tourists rather than  
25 benefit surrounding agricultural operations; and that permitting the winery in  
26 the EFU zone will create a ‘substantial danger of erosion of the legislative

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<sup>9</sup> LUBA noted that while the statutory definition of “farm use” includes “preparation and storage of the products raised on such land for human use and animal use and disposal by marketing or otherwise,” the proposed winery would also sell “wine related paraphernalia.” LUBA questioned whether that aspect of the winery “could be considered part of disposal of the eventual grape product.”

1 policy whereby agricultural lands should be preserved and maintained for  
2 agricultural uses.’” 94 Or App at 52.

3 We set out the Court of Appeals’ resolution of each of those issues below.

4 **1. The Winery May Precede the Onsite Vineyard and may Purchase**  
5 **Grapes From Outside the Immediate Vicinity**

6 First, the Court of Appeals agreed with the Department of Land Conservation and  
7 Development (DLCD), an intervenor in that appeal, that the winery could purchase grapes  
8 from farming operations located outside the immediate vicinity of winery and be approved  
9 and go into business before a vineyard was established onsite. As had LUBA, the Court of  
10 Appeals relied on *Earle v. McCarthy* and *Balin* in rejecting petitioner’s contention that the  
11 vineyard must be established *first* and that the winery could only serve immediately  
12 adjoining vineyards. The Court of Appeals declined to discuss petitioner’s arguments  
13 concerning *Balin*, but suggested that under different facts the connection between a proposed  
14 commercial use and the farm uses it would be “in conjunction with” might be more tenuous  
15 and lead to a different result. 94 Or App at 53 n 2.

16 **2. A Winery Serves Both the Public and Farm Uses and is not**  
17 **Inconsistent with the Legislative Policy Favoring Preservation of**  
18 **Farm Land for Farm Use.**

19 Second, the Court of Appeals next disposed of the petitioner’s arguments that the  
20 winery served the public and tourists rather than farm uses and that allowing a winery on  
21 EFU-zoned land will erode the legislative policy favoring preservation and maintenance of  
22 agricultural land for agricultural purposes. With regard to the first argument the court  
23 concluded the winery “serves both” vineyards and the tourists. With regard to the second  
24 argument, the court concluded:

25 “Petitioner’s final point is that the winery will divert agricultural land to  
26 nonfarm use. The primary purpose of ORS 215.213 and ORS 215.283 is to  
27 authorize and to define the circumstances when *nonfarm* uses may be allowed  
28 in EFU zones. Although the statutes are not designed to promote the  
29 diversion of farm land from farm use, they very clearly contemplate that  
30 certain non-agricultural uses are permissible in agricultural zones, because

1 they support farm operations or are deemed allowable for other reasons which  
2 have impressed the legislature. *See, e.g., Newcomer v. Clackamas County*, 92  
3 Or App 174, 758 P2d 369, *modified* 94 Or App 33, 764 P2d 927 (1988);  
4 *Hopper v. Clackamas County*, 87 Or App 167, 741 P2d 921 (1987), *rev den*  
5 304 Or 680 (1988). As we indicated in *Newcomer*, ORS 215.283 and ORS  
6 215.213 contain many internal standards to limit the nonfarm uses they  
7 authorize and, thereby, to promote the objective of preserving farm land for  
8 farm use. However, it is a *non sequitur* to argue, as petitioner essentially  
9 does, that the nonfarm commercial uses, which ORS 215.283(2)(a) expressly  
10 allows to be conducted *in conjunction with* farm use, should not be permitted  
11 because they are not farm uses. None of petitioner’s arguments persuades us  
12 that the winery is not a commercial use of the kind ORS 215.283(2)(a) and its  
13 county analogs authorize or that those provisions were misapplied by the  
14 county in allowing the permit.” 94 Or App at 54-55 (emphases in original).

15 **3. Incidental, Secondary Activities at a Winery that Support Wine**  
16 **Processing and Selling are Permissible**

17 Finally, the court acknowledged that the tasting room and sale of wine-related  
18 paraphernalia are permissible at a winery that is approved as a CA/FU, although that aspect  
19 of the winery presents a “closer question:”

20 “A closer question is presented by petitioner’s argument that the tasting rooms  
21 and sale items, such as glasses and T-shirts, are not connected with farm use,  
22 whether or not the winery operation itself is. We conclude that it is consistent  
23 with the statute for the county to determine that *incidental activities* of those  
24 kinds can be permitted, to the extent that they are *secondary to and support*  
25 *the wine processing and selling activities of the winery*. *See Cook v. Yamhill*  
26 *County*, 13 Or LUBA 137 (1985). There is, of course, a risk of the tail  
27 wagging the dog in many situations where secondary activities are permitted  
28 because they serve primary ones, but petitioner offers no reason for  
29 concluding that that risk is present here.” 94 Or App at 54 (emphases and  
30 underscoring added).

31 The final point made by the Court of Appeals is potentially important in this appeal  
32 and worth emphasizing. The Court of Appeals characterized the tasting room and sale of  
33 wine related paraphernalia as “incidental activities” that are permissible at a winery that is  
34 approved as a commercial activity that is in conjunction with farm use, so long as those  
35 incidental activities are “secondary to and support the wine processing and selling activities  
36 of the winery.” In *Cook v. Yamhill County*, LUBA concluded that the record in that appeal

1 was adequate to demonstrate that onsite tasting rooms and retail sale of wine is common at  
2 wineries in the United States. The court explicitly recognized that incidental and secondary  
3 winery activities, which are supportive of the winery’s wine production and sales, could  
4 become so significant that they could be characterized as a “tail wagging the dog.”  
5 Presumably if the incidental and secondary activities at a winery become so significant that  
6 they overshadow the winery’s wine making and sales activities, they would be *inappropriate*  
7 activities at a winery that is approved as a CA/FU. But the Court of Appeals presumably  
8 concluded that the activities proposed for the winery in *Craven* did not constitute such an  
9 improper dog-wagging tail.

10 **C. The Supreme Court’s Decision in Craven**

11 The Supreme Court’s decision in *Craven* begins by discussing the issue that LUBA  
12 declined to address—whether a winery might qualify as a farm use or fall within the ORS  
13 215.213(1)(f) authorization for “[n]onresidential buildings customarily provided in  
14 conjunction with farm use.” The Supreme Court suggests that the individual components of  
15 the vineyard and winery proposed in *Craven* might be viewed as either a “farm use,” as  
16 defined by ORS 215.203(2)(a),<sup>10</sup> the “current employment” of land for farm use, as provided  
17 by ORS 215.203(2)(b), an “accepted farming practice” as defined by ORS 215.203(2)(c), or  
18 within the scope of “[n]onresidential buildings customarily provided in conjunction with  
19 farm use,” as set out in ORS 215.213(1)(f). 308 Or at 285-86. But the Supreme Court then  
20 rejects the applicant’s argument that the winery in *Craven* should be viewed as a farm use:

21 “Giving decisive weight to the idea of commercial enterprise and the statutory  
22 language ‘for the primary purpose of obtaining a profit in money’ through the  
23 marketing products of the land under ORS 215.203(2)(a) could justify  
24 countless uses of agricultural land by leading land use decision makers down

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<sup>10</sup> The ORS 215.203(2)(a) definition of farm use is lengthy and includes the following; “[T]he current employment of land *for the primary purpose of obtaining a profit in money* by raising, harvesting and selling crops[.]” (Emphasis added.)

1 the road of profit-making from the sale of agricultural products. Such an  
2 interpretation could permit a shopping mall or supermarket as a farm use so  
3 long as the wares sold are mostly the products of a farm someplace.  
4 Marketing of farm products could be established by a gift shop selling candles  
5 of tallow and beeswax, a clothing store that sells wools, cottons, and silks  
6 from worms nourished on cultivated mulberry leaves, perhaps even a furrier  
7 who specializes in ranch mink coats, a bakery, a coffeehouse, a butcher shop,  
8 and a pharmacy with a section featuring natural remedies from foxglove, flea  
9 bane, and Saint–John’s–wort. The goal of preserving land in productive  
10 agriculture would be subverted. There would be no need for ORS 215.213 or  
11 215.283, or for the cross reference to them in the second sentence of ORS  
12 215.203(1), if that were a proper interpretation of the statute. It is not.” 308  
13 Or at 287-88.

14 In flatly rejecting the applicant’s very broad reading of the definition of farm use, the  
15 court in effect recognized that while even shopping malls and supermarkets might be brought  
16 within an expansive reading of the statutory definition of “farm use,” the context provided by  
17 the larger structure of the EFU zone does not permit such a broad reading of the ORS  
18 215.203(2)(a) “farm use” definition. The court’s observation on this point offers no  
19 particular guidance in how to go about determining when a claimed farm use’s connection  
20 with crops grown on farm land becomes too distant and tenuous, and in that sense is similar  
21 to the Court of Appeals “tail wagging the dog” limitation on the secondary and incidental  
22 activities that may be included in a CA/FU.

23 The Supreme Court then turned to the central question and seemed to have little  
24 difficulty in concluding that the proposed winery in *Craven* qualified as a CA/FU:

25 “The phrase upon which the validity of the CUP turns is ‘in conjunction with  
26 farm use,’ which is not statutorily defined. We believe that, to be ‘in  
27 conjunction with farm use,’ the commercial activity must *enhance the farming*  
28 *enterprises of the local agricultural community to which the EFU land hosting*  
29 *that commercial activity relates.* The agricultural and commercial activities  
30 must occur together in the local community to satisfy the statute. Wine  
31 production will provide a local market outlet for grapes of other growers in  
32 the area, assisting their agricultural efforts. Hopefully, it will also make  
33 Samad’s efforts to transform a hayfield into a vineyard successful, thereby  
34 increasing both the intensity and value of agricultural products coming from  
35 the same acres. Both results fit into the policy of preserving farm land for  
36 farm use.

1           “Sales of souvenirs which advertise the winery may cause others to come to  
2           the area and buy the produce of the vineyards and farms roundabout. Such  
3           sales may *reinforce the profitability of operations and the likelihood that*  
4           *agricultural use of the land will continue.* At least LUBA could reasonably so  
5           find, as it did, and interpret the *incidental* sales of souvenirs with logos as  
6           being ‘in conjunction with farm use.’” 308 Or at 289 (emphases added).

7           The Supreme Court’s formulation of the permissible scope of a CA/FU winery is similar to  
8           the Court of Appeals’ formulation. In addition to producing wine, a CA/FU winery may  
9           include tasting rooms, onsite sale of wine and possibly other incidental retail activities that  
10          enhance and reinforce the profitability of the winery’s onsite or off-site vineyards.

11           **D.       The 1989 Legislation**

12          As we have already noted, Oregon Laws 1989, chapter 525 was adopted and took  
13          effect after the Court of Appeals rendered its decision in *Craven* and before the Supreme  
14          Court rendered its decision in *Craven*. The participants in that legislative process included  
15          representatives of the Oregon Winegrowers Association, the Oregon Farm Bureau, individual  
16          farmers (both vineyard owners and other types of farmers), DLCDC, 1000 Friends of Oregon,  
17          and the applicant and petitioner in *Craven*. As relevant here, Oregon Laws 1989, chapter 525  
18          did two things. First, it amended ORS 215.283(1) to make “[a] winery, as described in ORS  
19          215.452,” a permitted nonfarm use in the EFU zone. ORS 215.283(1)(s).<sup>11</sup> Second, it  
20          adopted ORS 215.452 to limit the wineries, which could be approved under ORS  
21          215.283(1)(s) (1989). The key features of ORS 215.452 as originally enacted are set out  
22          below:

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<sup>11</sup> The ORS 215.283(1)(s) (1989) authorization for wineries has been renumbered several times as the statute has been amended and now appears at ORS 215.283(1)(n). The wording of ORS 215.283(1)(n) authorization for wineries has remained the same since it was first adopted in 1989, except that the legislature added a second category of winery that is codified at ORS 215.453, and the current language of ORS 215.283(1)(n), which began as ORS 215.283(1)(s) in 1989, now includes a reference to both ORS 215.452 and 215.453:

“(n)       A winery, as described in ORS 215.452 or 215.453.”

- 1           • A winery that would produce less than 50,000 gallons of wine  
2           annually must own an onsite vineyard of at least 15 acres, own an  
3           adjacent vineyard of at least 15 acres or have a contract to purchase  
4           grapes from an adjacent vineyard of at least 15 acres that is not owned  
5           by the winery. ORS 215.452(1)(a).
  
- 6           • A winery that would produce at least 50,000 gallons of wine annually,  
7           but less than 100,000 gallons, must own an onsite vineyard of 40  
8           acres, own an adjacent vineyard of at least 40 acres or have a contract  
9           to purchase grapes from an adjacent vineyard of at least 40 acres that  
10          is not owned by the winery. ORS 215.452(1)(b).
  
- 11          • The wineries described above could sell:
  - 12           ○ “Wines produced in conjunction with the winery; and
  - 13           ○ “Items directly related to wine, the sales of which are  
14           *incidental* to retail sale of wine onsite. Such items include  
15           those served by a limited service restaurant as defined in ORS  
16           624.010.” ORS 215.452(2) (emphasis added).
  
- 17          • County authority to impose additional limitations on the wineries  
18          authorized by Oregon Laws 1989, chapter 525 was generally limited to  
19          imposing a setback from property lines “not to exceed 100 feet,” and  
20          requiring “direct road access, internal circulation, and parking.”<sup>12</sup>  
21          ORS 215.452(4).

22           The legislative history for Oregon Laws 1989, chapter 525 confirms that the statutory  
23          amendment was adopted in large part as a response to concerns that approval of wineries in  
24          EFU zones was too time consuming, expensive and uncertain under the then existing ORS  
25          215.283(2)(c) authority for CA/FUs. Counties are permitted to subject the nonfarm uses  
26          authorized by subsection (2) of ORS 215.283 to additional local approval standards, and all  
27          such nonfarm uses are subject to the statutory standards set out in ORS 215.296, which  
28          require that a county find that the proposed ORS 215.283(2) nonfarm uses will not “[f]orce a  
29          significant change in accepted farm \* \* \* practices on surrounding lands devoted to farm or

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<sup>12</sup> Oregon Laws 1989, chapter 525, section 4(5) also authorized counties to impose the following, if applicable: “criteria regarding flood plains, geologic hazards, the Willamette Greenway, solar access, airport safety or other regulations for resource protection acknowledged to comply with any state-wide goal respecting open spaces, scenic and historic areas and natural resources.” ORS 215.452(5).

1 forest use; or \* \* \* [s]ignificantly increase the cost of accepted farm or forest practices on  
2 surrounding lands devoted to farm or forest use.” ORS 215.296(1). By contrast, the uses  
3 permitted under subsection (1) of ORS 215.283 are not subject to ORS 215.296 and may not  
4 be subject to additional county approval criteria. *Brentmar v. Jackson County*, 321 Or 481,  
5 496, 900 P2d 1030 (1995). The wineries authorized by Oregon Laws 1989, chapter 525  
6 presumably would have an easier time securing any needed county approvals and would not  
7 be subject any additional county regulations, beyond those authorized by Oregon Laws 1989,  
8 chapter 525 itself. The case that appears to have been most directly responsible for Oregon  
9 Laws 1989, chapter 525 was *Craven*. It is therefore somewhat ironic that the winery in  
10 *Craven* likely would not have qualified for approval as a permitted use winery under ORS  
11 215.283(1)(s) (1989), because the winery did not own an onsite 15 acre vineyard, own an  
12 adjacent 15 acre vineyard or contract with an adjacent 15 acre vineyard owned by others.

13 Another irony is that one of the frequently expressed concerns about the *Craven*  
14 decisions is a lack of certainty about what could be permitted at a winery as incidental to the  
15 primary purposes of producing grapes and making wine from those grapes. Oregon Laws  
16 1989, chapter 525 effectively adopts the same requirement that the Court of Appeals  
17 imposed—that such activities be “incidental” to grape and wine production. The House  
18 Committee on Energy and Environment explicitly recognized that the use of the term  
19 “incidental” introduced an ambiguity regarding the incidental activities that might be  
20 permissible at a winery authorized by HB 2903. One member of the committee remarked  
21 “[a]s a practical matter, it is impossible to list all the items that could be ‘incidental’ to wine  
22 sales.” Minutes, House Committee on Energy and Environment, HB 2903, April 10, 1989,  
23 (Rep Cease).

24 A number of farmers and 1000 Friends of Oregon expressed concerns during the  
25 legislative proceedings that led to Oregon Laws 1989, chapter 525 that some larger wineries  
26 that engage in activities that can generate significant traffic should not be allowed to take

1 advantage of Oregon Laws 1989, chapter 525 and avoid county conditional use review under  
2 ORS 215.283(2)(c) and ORS 215.296. An additional concern was that the wineries  
3 authorized by Oregon Laws 1989, chapter 525 should not be allowed to include restaurants.<sup>13</sup>  
4 It is quite clear that the legislature understood that the legislation was creating an easier path  
5 to approval for a limited category of winery only. That category of winery was so narrow,  
6 that one of the original supporters of the legislation wound up voting against the legislation.  
7 Minutes, Senate Committee on Agricultural & Natural Resources HB 2903, May 15, 1989,  
8 Page 13 (statement of Mark Overback, Legislative Assistant to Rep. Nancy Peterson). But it  
9 was equally clear during the legislative proceedings that proposed wineries that would not  
10 operate within the limits imposed by Oregon Laws 1989, chapter 525, would be able to  
11 continue to seek approval as CA/FUs, under ORS 215.283(2)(c). That point was made a  
12 number of times during the legislative proceedings. The Executive Director of the Oregon  
13 Winegrowers' Association explained the continued availability of ORS 215.283(2)(c)  
14 "commercial activities that are in conjunction with farm use" for approval of such wineries as  
15 follows:

16 "HB 2903-A is compromise legislation negotiated by the Oregon  
17 Winegrowers' Association, the Department of Land Conservation and  
18 Development and by the 1,000 Friends of Oregon in order to provide a  
19 simpler means for certain types of wineries to gain land use approvals in  
20 Exclusive Farm Use zones. *Wineries which do not qualify under the fairly*  
21 *restrictive language of this measure can still utilize existing county*  
22 *conditional use permit mechanisms to gain approval for a location in EFU*  
23 *zones.*

24 "The need for the legislation arises out of a hodgepodge of different county  
25 approaches to the siting of wineries \* \* \*. In order to simplify county  
26 practices and to prevent the imposition of unreasonable and unnecessary

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<sup>13</sup> The concern about restaurants apparently was resolved initially by limiting the wineries authorized by Oregon Laws 1989, chapter 525 to "a limited service restaurant, as defined in ORS 624.010." Such limited service restaurants may only serve "individually portioned prepackaged foods prepared from an approved source by a commercial process and nonperishable beverages."

1 conditions on wineries seeking building permits, HB 2903-A makes wineries  
2 a permitted use in farm zones if those wineries meet certain statutory  
3 definitions. Those definitions were the subject of extensive negotiations in the  
4 House. While the definition of a winery in Section 4 of the amended bill  
5 might be considered a little too restrictive, it is a workable approach which is  
6 supported by the three parties above.

7 “\* \* \* \* \*” Testimony, Senate Committee on Agricultural & Natural  
8 Resources, HB 2903-A, May 15, 1989, Ex F (Statement of Bill Nelson)  
9 (emphasis added) (included in respondent’s and intervenors-respondents’  
10 motion to take official notice).

11 Immediately after the above-quoted statements, Mr. Nelson quoted the following  
12 statements by Representative Cease, who chaired the House Environment and Energy  
13 Committee, during the House Floor Debate on HB 2903:

14 “Mr. Speaker. I think one thing needs to be clear on this bill. \* \* \*. The  
15 point to be made is that current arrangements for siting wineries through  
16 conditional uses by counties – as you look at the wineries out there, that’s  
17 been the way they have been sited – does not change. We are not deleting  
18 from that process whatsoever. What the difference is here is we have added  
19 now, in effect, an additional process which permits some wineries that meet  
20 these conditions to be sited in this additional way. Now as indicated, one of  
21 the real issues was what is meant by incidental uses – that if you are going to  
22 permit a winery to be created on an EFU zone through this process, what are  
23 those additional uses and we spent quite a bit of time talking about that. But I  
24 think the point you should understand is this simply adds to the process  
25 another way of doing it for certain types of wineries. It does not take away  
26 from the existing system whatsoever. If this bill did not pass, the existing  
27 system would remain intact, but the other way of doing some other things  
28 would be lost and we looked at this at the request of the winegrowers and  
29 others and I think came up with a good compromise. But the point is this does  
30 not do any damage whatsoever to existing systems.” Transcript, House-Floor  
31 Debate, HB 2903, April 20, 1989 (statement of Rep Cease).

32 From the above legislative history, which is entirely consistent with the text of the  
33 1989 legislation, it is clear that the legislature intended to create a limited safe harbor for  
34 certain wineries, as defined in the legislation. Pursuant to that safe harbor, counties would be  
35 permitted to approve a defined category of wineries as an ORS 215.283 subsection (1)  
36 permitted use, subject only to the limitations set out in the statute. Other wineries, which did  
37 not qualify for the safe harbor, would be free to continue to seek approval as “commercial

1 activities in conjunction with farm use,” under the limitations articulated by the Court of  
2 Appeals and Supreme Court in *Craven*.

3 **E. Subsequent Legislation**

4 **1. 2010 Legislation**

5 The statutory authorization for wineries, now codified at ORS 215.283(1)(n) and  
6 215.452, has been amended in nonsubstantive ways several times. The first substantive  
7 amendments were adopted during a special legislative session in 2010. Oregon Laws 2010,  
8 chapter 97. The substantive amendments were to ORS 215.452(2). Those amendments  
9 specifically allow ORS 215.452 wineries to sell wine produced at other wineries, “[s]ervices  
10 directly related to the sale and promotion of wine,” and “private events.” The 2010  
11 legislation also imposed a limit on the “gross income from the sale of incidental items and  
12 services.<sup>14</sup>

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<sup>14</sup> The Oregon Laws 2010, chapter 97 changes to ORS 215.452(2), with deletions shown in bracketed italics and additions in bold type, are set out below:

“(2) [The] **A** winery described in subsection (1)[(a) or (b)] of this section [shall allow only the sale of] **may sell only:**

“[(a) *Wines produced in conjunction with the winery; and]*

“[(b) *Items directly related to wine, the sales of which are incidental to retail sale of wine on-site. Such items include those served by a limited service restaurant, as defined in ORS 624.010.]*

“(a) **Wines produced in conjunction with the winery;**

“(b) **Items directly related to the sale and promotion of wine produced in conjunction with the winery, the sale of which is incidental to retail sale of wine on-site, including food and beverages served by a limited service restaurant, as defined in ORS 624.010, wine not produced in conjunction with the winery and gifts; and**

“(c) **Services directly related to the sale and promotion of wine produced in conjunction with the winery, the sale and delivery of which are incidental to retail sale of wine on-site, including private events hosted by the winery or by patrons of the winery, at which wine produced in conjunction with the winery is featured.**

1           The 2010 version of ORS 215.452 was in effect when Stoller applied for county  
2 approval for the additional winery activities in 2011. Stoller’s proposal went beyond what  
3 would be permissible under ORS 215.452 at that time in at least two respects. The proposed  
4 on-site commercial kitchen exceeded what was permissible as a limited service restaurant, as  
5 defined in ORS 624.010, and Stoller proposed both public and private events. As previously  
6 noted, Stoller therefore sought the county’s conditional use approval for those activities as a  
7 CA/FU.

8                           **2.       2011 Legislation**

9           In 2011, the legislature significantly enlarged the safe harbor for wineries that could  
10 be approved as a permitted use under ORS 215.283(1)(n) and ORS 215.452. Oregon Laws  
11 2011, chapter 679.<sup>15</sup> Because those statutory changes post-date the application in this matter,  
12 they do not apply directly to Stoller’s application. ORS 215.427(3)(a).<sup>16</sup> And because those  
13 statutory changes post-date the legislature’s authorization of CA/FU and do not alter the  
14 statutory authority for CA/FUs, those changes are not part of the context of the statutory term  
15 “commercial activities that are in conjunction with farm use.” *Stull v. Hoke*, 326 Or 72, 79–  
16 80, 948 P2d 722 (1997). However, we are ultimately required in this appeal to determine  
17 whether a winery such as the one approved by the county in this case falls within the general

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“(3)   **The gross income from the sale of incidental items and services under subsection (2)(b) and (c) of this section may not exceed 25 percent of the gross income from the retail sale on-site of wine produced in conjunction with the winery.”**

<sup>15</sup> Oregon Laws 2011, chapter 679 adopted some amendments that are now in effect and adopted other amendments that will not take effect until January 1, 2013 or January 1, 2014. Oregon Laws 2011, chapter 679, section 11. We limit our discussion here to the amendments that are now in effect.

<sup>16</sup> As relevant, ORS 215.427(3)(a) provides:

“If the application [for permit approval] was complete when first submitted \* \* \* and the county has a comprehensive plan and land use regulations acknowledged under ORS 197.251, approval or denial of the application shall be based upon the standards and criteria that were applicable at the time the application was first submitted.”

1 category of “commercial activities that are in conjunction with farm use,” or goes too far and  
2 becomes more than the incidental and secondary activities that are supportive of vineyards  
3 that are permissible for CA/FU wineries on EFU-zoned land. In making that determination,  
4 we believe the legislature’s express treatment of wineries under subsection (1) of ORS  
5 215.283 is at least relevant. *State v. Stamper*, 197 Or App 413, 425, 106 P3d 172 (2005).

6 Oregon Laws 2011, chapter 679 did not amend ORS 215.452 in particularly  
7 significant ways, but did impose a limit of 25 private events per year whereas under the 2010  
8 amendments “private events” were authorized without a stated annual limit on the number of  
9 private events. *See* n 14; ORS 215.452(2)(c). That suggests a concern on the legislature’s  
10 part that ORS 215.452 wineries should not be allowed to hold an unlimited number of private  
11 events. But the more significant change contained in the 2011 legislation is the introduction  
12 of a new classification of winery. The larger wineries authorized by ORS 215.453 must  
13 produce at least 150,000 gallons of wine annually, and be located on a site of at least 80  
14 acres, of which 50 acres must be a vineyard. In addition, the winery must own an additional  
15 80 acres of vineyard that need not be contiguous with the winery property. Under ORS  
16 215.453(4) and (5), ORS 215.453 large wineries are authorized to operate restaurants that are  
17 open to the public for as many as 25 days a year, in addition to limited service restaurants. In  
18 addition, a large winery full service restaurant can be open to the public for more than 25  
19 days a year with county approval. In granting such approvals, the legislation requires  
20 counties to find that the proposal (1) complies with ORS 215.296, (2) is incidental and  
21 subordinate to retail sale of wine, and (3) will not materially alter the stability of the land use  
22 pattern in the area.<sup>17</sup>

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<sup>17</sup> The text of ORS 215.453(4) and (5) is set out below:

“(4) A winery operating under this section:

1           With these 2011 changes, the legislature has determined that large wineries with  
2 restaurants to serve their visitors are permissible under subsection 1 of ORS 215.283 if they  
3 are operated not more than 25 days each year or receive county approval to operate more  
4 than 25 days. To receive such county approval, the ORS 215.296 statutory standards that  
5 apply to CA/FU wineries must be applied. Similarly, wineries with such expanded restaurant  
6 operations must be found to be “incidental and subordinate to the retail sale of wine produced  
7 in conjunction with the winery,” which is quite similar to the test that was applied by the  
8 Court of Appeals and Supreme Court in *Craven* to determine whether the winery tasting  
9 room and sale of retail items is permissible at a CA/FU winery.<sup>18</sup>

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“(a) Shall provide parking for all activities or uses of the lot, parcel or tract on which the winery is established.

“(b) May operate a restaurant, as defined in ORS 624.010, in which food is prepared for consumption on the premises of the winery.

“(5)(a) A winery shall obtain a permit from the local government if the winery operates a restaurant that is open to the public for more than 25 days in a calendar year or provides for private events occurring on more than 25 days in a calendar year.

“(b) In addition to any other requirements, a local government may approve a permit application under this subsection if the local government finds that the authorized activity:

“(A) Complies with the standards described in ORS 215.296;

“(B) Is incidental and subordinate to the retail sale of wine produced in conjunction with the winery; and

“(C) Does not materially alter the stability of the land use pattern in the area.

“(c) If the local government issues a permit under this subsection for private events, the local government shall review the permit at least once every five years and, if appropriate, may renew the permit.”

<sup>18</sup> We also note that as was the case with the 1989 legislation, the 2011 legislation explicitly requires that the events authorized at the small and large wineries authorized by the 2011 legislation must be “directly related to the sale or promotion of wine produced at on-site,” and carried forward the 2010 limitation on gross income from sale of incidental items and services to 25 percent of gross income from retail sale onsite of wine produced in conjunction with the winery. Oregon Laws 2011, chapter 679, sections 2 and 5.

1 With the preceding lengthy introduction to the history and current state of regulation  
2 of wineries in EFU zones, we turn to petitioners' and intervenor-petitioners' assignments of  
3 error.

4 **PETITIONERS' SECOND ASSIGNMENT OF ERROR**

5 Petitioners argue that the safe harbor that was originally enacted by the legislature in  
6 1989 was changed by Oregon Laws 2010, chapter 97 (SB 1055), which we discussed briefly  
7 earlier in this opinion. Petitioners contend the ORS 215.283(1)(n) and 215.452 safe harbor  
8 was converted by Oregon Laws 2010, chapter 97 into the only possible basis for approval of  
9 a winery on EFU-zoned land, eliminating the CA/FU winery option under ORS  
10 215.283(2)(a). Petitioners support this argument by pointing out that SB 1055 as originally  
11 proposed included a Section 8, which specifically provided that a winery that did not qualify  
12 for approval under ORS 215.283(1)(n) and 215.452 could seek approval as a CA/FU winery  
13 under ORS 215.283(2)(a). Petition for Review Exhibit B, page 2. Section 8 was eliminated  
14 in one of the amendments to SB 1055, and the enrolled legislation that appears at Oregon  
15 Laws 2010, chapter 97 does not include Section 8. Petition for Review Exhibit B, pages 3-5.

16 Given the clear legislative intent to preserve the CA/FU winery option in the 1989  
17 legislation and the common use of that option in the years that led up to the adoption of  
18 Oregon Laws 2010, chapter 97 in 2010, we agree with respondents that petitioners assign too  
19 much significance to the amendment to SB 1055 to delete Section 8. The parties have  
20 offered no legislative history that explains the reason for deleting Section 8 and the adopted  
21 version of SB 1055 simply amends ORS 215.452 and makes no reference to ORS  
22 215.283(2)(a). Respondents cite to testimony to the Senate Environmental and Natural  
23 Resources Committee at the meeting at which that amendment was adopted, in which the  
24 committee was told the CA/FU conditional use option for approval of wineries was  
25 unaffected by SB 1055. Motion to Take Official Notice Appendix B, pages 7-11. That  
26 testimony is somewhat confusing because some of that testimony concerns wineries that

1 might have permit applications pending at the time the 2010 legislation takes effect, which  
2 would be exempt from the SB 1055 amendments under the ORS 215.427(3) goal post rule  
3 without regard to the scope of SB 1055. *See* n 16. But included in that testimony is also  
4 testimony that the CA/FU winery option under ORS 215.283(2)(a) was simply beyond the  
5 scope of SB 1055:

6 “Senator Prozanski [01:07:20]: Alright, so, if you have a winery that’s above  
7 and beyond 100,000 gallons, they are not considered a permitted use winery,  
8 correct?”

9 “Gary Conkling [01:07:31]: Madam Chair, Senator Prozanski, that’s correct.

10 “Senator Prozanski [01:07:33]: And they would not be impacted by the  
11 passage of 10 . . . Senate Bill 1055 with the dash ones?”

12 “Gary Conkling [01:07:40]: Madam Chair, Senator Prozanski, I believe that’s  
13 true.

14 “\* \* \* \* \*

15 “Gary Conkling [01:08:35]: Madam Chair, Senator Prozanski. Again, these  
16 provisions only relate to wineries that qualify for permitted use, um permitted  
17 use wineries. And there may be wineries seeking, currently, applications for  
18 permitted use winery permits from their respective counties, and counties may  
19 use the clarifications that are provided in the dash one in evaluating those  
20 applications. But, if someone is not a permitted use winery, I don’t think  
21 these provisions have any application.” Motion to Take Official Notice,  
22 Appendix B, pages 8-9

23 If the legislative intent in SB 1055 was to eliminate the CA/FU winery option, we believe  
24 there would be at least some expression of legislative intent to show such intent; as far as we  
25 can tell there is none. We also believe there would be at least some express reference in the  
26 text of SB 1055 to ORS 215.283(2)(a), if the legislature intended to close the CA/FU winery  
27 option. As we have already explained, there is none. We do not think the inference  
28 petitioners draw from the elimination of Section 8 is warranted, given the lack of any textual  
29 or other expression of legislative intent to support that inference.

1           Petitioners’ second assignment of error is denied.<sup>19</sup>

2   **PETITIONER’S AND INTERVENOR-PETITIONER’S FIRST ASSIGNMENT OF**  
3   **ERROR**

4           Under their first assignments of error, petitioners and intervenor-petitioner Oregon  
5 Department of Agriculture (ODA) (collectively petitioners) both contend that, even assuming  
6 the ORS 215.283(2)(a) CA/FU winery option remains a viable option for approval of  
7 wineries on EFU-zoned land, the applicable standard for approval of such wineries is set out  
8 in the *Craven* decisions, and subsequent LUBA decisions that have applied *Craven*.  
9 Petitioners contend the winery approved by the county in this case is inconsistent with  
10 *Craven* and subsequent decisions by LUBA and the county erred in concluding otherwise.  
11 Petitioners present a number of loosely related arguments under their first assignments of  
12 error. We address those arguments separately below.

13           **A.     The County’s Decision Authorizes a New Building, Not a Conversion of**  
14           **an Existing Permitted Use Winery to a CA/FU winery.**

15           In its decision, the county explained its view of the legal effect of its decision in this  
16 matter:

17           “Stoller has applied for approval of its proposed tasting room and associated  
18 visitor activities as a conditional use commercial activity in conjunction with  
19 farm use, not as a permitted use winery. This land use approval converts the  
20 existing permitted use winery into a conditional use winery. \* \* \*” Record 6.

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<sup>19</sup> Petitioners fault the county for citing legislative history from the 2011 amendments to ORS 215.452 to support its position that the CA/FU option remained viable under the changes enacted by Oregon Laws 2011, chapter 679. We agree that 2011 legislative history has no bearing on the meaning of ORS 215.452 as it existed under the changes enacted by Oregon Laws 2010, chapter 97 (SB 1055). But we agree with respondents that the county’s discussion of the legislative history of the 2011 legislation appears to have been in response to petitioners’ contentions that the 2011 legislation itself foreclosed the CA/FU winery option. The county’s discussion of the 2011 legislation does not affect our resolution of the second assignment of error, because neither the text nor the legislative history of the 2010 legislation supports petitioners’ contention that Oregon Laws 2010, chapter 97 (SB 1055) eliminated the CA/FU winery option.

1 ODA challenges this finding as inconsistent with the application and inconsistent with the  
2 statutory EFU zone and the county's EFU zone.

3 Although it is not entirely clear, the applicant at one time proposed to expand the  
4 existing wine making operation, but later decided not to. Whatever the source of confusion,  
5 the proposed new building, which will house a tasting room, kitchen and other winery related  
6 space, is accurately characterized as an expansion of the winery in ways that are not  
7 permissible at a winery that is authorized under ORS 215.283(1)(n), which must comply with  
8 ORS 215.452. The county's characterization of its decision to approve the requested changes  
9 as "converting" the existing permitted use winery into a CA/FU winery is accurate and  
10 legally correct. The ORS 215.283(2)(a) authorization for CA/FU wineries and the ORS  
11 215.283(1)(n) and 215.452 authorization for wineries are *alternative* ways to seek approval  
12 for a winery. In seeking approval under ORS 215.283(2)(a) for expansions to its existing  
13 ORS 215.283(1)(n) and 215.452 winery that are not permitted under ORS 215.452, the  
14 applicant was seeking and the county approved conversion of the ORS 215.283(1)(n) and  
15 215.452 winery into a CA/FU winery under ORS 215.283(2)(a).

16 ODA's related argument that the winery cannot be a commercial activity that is in  
17 conjunction with farm use relies in large part on the complexity that has resulted from the  
18 many amendments to the EFU zone over the years. As we have already explained,  
19 "wineries" are permitted as a subsection (1) use under ORS 215.283. ORS 215.283(1)(n).  
20 The county's EFU zone also provides that "wineries" are a permitted use. Yamhill County  
21 Zoning Ordinance (YCZO) 402.02(H).

22 Another subsection (1) permitted use under ORS 215.283 is "processing of farm  
23 crops." ORS 215.283(1)(r). The county's EFU zone also authorizes "processing of farm  
24 crops." YCZO 402.02(E).

25 Yamhill County's authority for commercial activities that are in conjunction with  
26 farm use is worded a bit differently from the statute it implements and provides as follows:

1           “Commercial activities that are in conjunction with farm use as defined in  
2           Section 402.10(B), *but not including the processing of farm crops which are a*  
3           *permitted use as described in subsection 402.02(E) \* \* \*.*” YCZO  
4           402.04(G).

5           ODA argues the above-italicized language in YCZO 402.04(G) precludes approval of  
6           a winery as a commercial activity that is in conjunction with farm use, because a winery  
7           processes grapes. ODA contends the exclusive authority for county approval of a winery in  
8           Yamhill County is at ORS 215.283(1)(r) and YCZO 402.02(H) as a winery or as “processing  
9           of farm crops” under ORS 215.283(1)(r) and YCZO 402.02(E).

10           ODA’s argument is inconsistent with the legislative history of the winery  
11           amendments to the statutory EFU zone. The only new wrinkle presented here is the  
12           possibility that processing grapes into wine might also qualify as “processing of farm crops.”  
13           YCZO 402.04(G) does not prevent Yamhill County from approving a winery as a CA/FU  
14           winery. It might be that a different, more limited winery that did nothing but process grapes  
15           into wine could qualify as a permitted use under ORS 215.283(1)(r) and YCZO 402.02(H)  
16           authority for “processing of farm crops.” YCZO 402.04(G) simply recognizes that  
17           possibility. But as has been clear from the beginning in this matter, the Stoller Winery is not  
18           limited to processing of farm crops. It is those additional activities at Stoller Winery that led  
19           Stoller to seek initial approval for the winery under ORS 215.283(1)(n), ORS 215.452 and  
20           YCZO 402.02(H), and then led it to seek approval to convert the winery to a CA/FU winery  
21           under ORS 215.283(2)(a) and YCZO 402.04(G) to allow additional events and an expanded  
22           kitchen. The county’s decision is not inconsistent with the statutes or YCZO 402.04(G).

23           **B.     The Tasting Room, Kitchen and Events are in Conjunction with the**  
24           **Existing Winery, not the Stoller Vineyard.**

25           Petitioners also present a largely semantic argument. They contend that because the  
26           Stoller Winery already exists and the proposed expanded uses will be located in a building  
27           that is next to but physically separate from the existing winery, the proposed on-site kitchen  
28           and additional events are a commercial activity in conjunction with the winery (a nonfarm

1 use) rather than a commercial activity in conjunction with the vineyard (a farm use).  
2 Because the statute only authorizes commercial activities that are in conjunction with *farm*  
3 *use*, and does not authorize commercial activities that are in conjunction with *nonfarm uses*,  
4 petitioners argue the challenged decision misconstrues the statutes and county laws that  
5 mimic the statutes.

6 We do not believe petitioners' attempt to artificially segment the Stoller Winery is  
7 consistent with the Court of Appeals and Supreme Court's decisions in *Craven*. There is no  
8 dispute that under the *Craven* decisions a winery may qualify as a CA/FU winery under the  
9 statutory authority for "[c]ommercial activities that are in conjunction with farm use" now  
10 codified at ORS 215.283(2)(a). While it might be possible to analyze the kitchen and  
11 additional events as commercial activities that are in conjunction with the existing Stoller  
12 Winery, it is also possible to analyze the kitchen and additional events as additions that are to  
13 become part of the existing Stoller Winery, so long as they are accurately viewed as  
14 incidental and secondary to the processing of grapes into wine for sale. That is how the  
15 Court of Appeals and Supreme Court analyzed the issue in *Craven*, and that is how we  
16 analyze the issue in this appeal. We reject petitioners' and ODA's contention that the  
17 proposal here must be analyzed as a commercial activity that is in conjunction with a  
18 *nonfarm* use winery.

19 **C. The County's Decision Misconstrues *Craven* Because the Stoller Winery**  
20 **only Supports the Stoller Vineyard, not Other Wineries in the Area, and**  
21 **Will Not Result in Additional Vineyards on the Subject Property**

22 ODA next argues that the county's decision misconstrues the Supreme Court's  
23 decision in *Craven* because the Stoller Winery will only process grapes grown at the Stoller  
24 Vineyard and the proposal will not result in the conversion of farm land into additional

1 vineyards, as was the case in *Craven*.<sup>20</sup> As we have already explained, in *Craven* the  
2 proposed winery would not use grapes grown onsite, but rather would initially purchase  
3 grapes from other vineyards in the area. As previously noted, in rejecting the petitioner’s  
4 argument that the winery in *Craven* therefore could not qualify as a CA/FU winery, simply  
5 because there was no onsite vineyard initially, the Supreme Court explained:

6 “The phrase upon which the validity of the CUP turns is ‘in conjunction with  
7 farm use,’ which is not statutorily defined. We believe that, to be ‘in  
8 conjunction with farm use,’ the commercial activity must enhance the farming  
9 enterprises of the local agricultural community to which the EFU land hosting  
10 that commercial activity relates. The agricultural and commercial activities  
11 must occur together in the local community to satisfy the statute. *Wine*  
12 *production will provide a local market outlet for grapes of other growers in*  
13 *the area, assisting their agricultural efforts. Hopefully, it will also make*  
14 *Samad’s efforts to transform a hayfield into a vineyard successful, thereby*  
15 *increasing both the intensity and value of agricultural products coming from*  
16 *the same acres. Both results fit into the policy of preserving farm land for*  
17 *farm use.” 308 Or at 289 (emphasis added).*

18 The Supreme Court was simply pointing out that it did not matter that the proposed winery in  
19 *Craven* would not be a commercial activity in conjunction with an *onsite vineyard*, because it  
20 would purchase grapes from *nearby vineyards* (and thus would be in conjunction with those  
21 nearby vineyards) and would also assist the applicant in converting the onsite hay field into a  
22 vineyard. *Craven* does not *require* that a proposed vineyard that will purchase grapes from  
23 an onsite vineyard, and thus contribute to that onsite vineyard’s success, must also purchase  
24 grapes from other vineyards in the area and be directly responsible for the planting of  
25 additional vineyards onsite. Those aspects of the Supreme Court’s *Craven* decision were  
26 simply addressing the particular facts in *Craven*.

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<sup>20</sup> Stoller argues the winery expansion will allow it to plant 30 to 40 more acres in vineyards and that wines other than those produced at the winery will be sold at the winery. We need not resolve that factual dispute.

1           **D.     The Approved Winery Expansion is not “Essential to the Practice of**  
2           **Agriculture”**

3           Petitioners’ and ODA’s next argument is based in large part on LUBA’s decision in  
4           *City of Sandy v. Clackamas County*, 28 Or LUBA 316 (1994), where LUBA was required to  
5           apply the principle articulated in *Craven* to a proposal to expand an existing business in an  
6           EFU zone to allow sale and rental of trucks, trailers and other equipment, sale of portable  
7           storage buildings, and to provide mail box, UPS and fax services. 28 Or LUBA at 318. In  
8           concluding that the proposal exceeded the scope of what is permissible under *Craven*, LUBA  
9           explained:

10           “Where a commercial use exclusively or primarily purchases agricultural  
11           products directly from agricultural uses, the connection between the  
12           commercial use and agricultural uses is relatively easy to demonstrate. For  
13           example, in *Craven*, the Oregon Supreme Court concluded a winery qualified  
14           as a ‘commercial activity in conjunction with farm use’[.]”

15           “\* \* \* \* \*

16           “Similarly, the Oregon Court of Appeals had little difficulty concluding a hop  
17           warehouse that would store hops grown by many hops growers, and sell string  
18           and burlap used in hop production, qualified as a commercial activity in  
19           conjunction with farm use. *Earle v. McCarthy*, 28 Or App 541, 560 P2d 665  
20           (1977). In *Earle*, it appears all of the warehouse’s purchases and sales were to  
21           commercial hops growers.

22           “*Craven* and *Earle* stand for the relatively straightforward proposition that a  
23           commercial activity in conjunction with farm use must be either exclusively  
24           or primarily a customer or supplier of farm uses. That proposition also was  
25           the basis for the Land Conservation and Development Commission’s decision  
26           in *Balin v. Klamath County*, 3 LCDC 8, 19 (1979), where LCDC concluded a  
27           farm implement and irrigation equipment dealership qualified as a commercial  
28           activity in conjunction with farm use. However, in reaching that conclusion,  
29           LCDC identified another consideration:

30           “Clearly the statute is not intended to allow the establishment  
31           of grocery stores and gas stations on agricultural lands solely  
32           because they are situated in a primarily agricultural area and  
33           serve primarily agricultural needs. However, it can and should  
34           be read to express a legislative judgment that commercial  
35           activities limited to *providing products and services essential*  
36           *to the practice of agriculture* directly to the surrounding

1 agricultural businesses are sufficiently important to justify the  
2 resulting loss of agricultural land. The record shows that such  
3 an enterprise is proposed and is needed. (Emphasis added.) *Id.*'

4 "The above quoted language makes the point that even if a commercial  
5 activity primarily sells to farm uses, that may not be sufficient to allow the  
6 commercial activity to qualify as a commercial activity in conjunction with  
7 farm use. There is a second inquiry that must be satisfied. The products and  
8 services provided must be 'essential to the practice of agriculture.' While  
9 farmers must eat and farm equipment frequently operates on gasoline, that is  
10 not sufficient to make grocery stores or gas stations commercial activities in  
11 conjunction with farm use. The connection must be closer to the 'essential  
12 practice of agriculture.' In the cases cited above, that connection was found to  
13 be satisfied by a winery, a hops warehouse, and a farm implement and  
14 equipment business." 28 Or LUBA 320-22.

15 Petitioners focus on the "must be either exclusively or primarily a customer or  
16 supplier of farm uses" and "essential to the practice of agriculture" language in *Sandy* and  
17 *Balin*, which they characterizes as "factors" that must be satisfied to qualify as a CA/FU  
18 winery and argue the proposed commercial kitchen and events disqualify the Stoller Winery  
19 under those factors.

20 Petitioners read too much into *Sandy* and continue to ignore the real issue in this  
21 appeal, which is whether the proposed additional events and kitchen are correctly  
22 characterized as incidental and secondary aspects of the Stoller Winery, under the principles  
23 articulated in *Craven*. *Sandy* was not concerned with the issue of incidental activities  
24 associated with a CA/FU, but with whether the proposed use itself qualified as a CA/FU.  
25 The Stoller Winery will process grapes from the Stoller Vineyard and a winery that will  
26 process a vineyard's grapes into wine is certainly "essential to the practice of" operating a  
27 successful vineyard. The Stoller Winery clearly qualifies as a CA/FU under *Craven*, as  
28 explained in *Sandy*.

29 **E. The Commercial Kitchen and 44 Authorized Events are not Incidental or**  
30 **Secondary to the Winery and Exceed the Scope of a CA/FU Winery**

31 The closest question presented under petitioners' first assignment of error is whether  
32 the county's authorization of a building next to the existing Stoller Winery that will house a

1 wine tasting room and a commercial kitchen that is authorized to function as a restaurant at  
2 as many as 44 annual events is too substantial to qualify as a incidental and secondary aspect  
3 of the winery. If not, they are impermissible at a CA/FU winery under the Court of Appeals’  
4 and Supreme Court’s decisions in *Craven*. Stated differently, is this a case where the events  
5 and restaurant “tail” are so substantial that they will wag the winery “dog,” making them  
6 improper at a CA/FU winery?

7           There is no question that the 44 annual activities, tasting room and kitchen approved  
8 for the Stoller Winery push the “incidental and secondary” envelope considerably beyond the  
9 tasting room and incidental retail sales that were proposed for the winery in *Craven*.  
10 However, it does not appear that petitioners dispute that the activities, kitchen and tasting  
11 room will operate in concert to improve the chances that the Stoller Winery will be  
12 successful and continue to provide a customer for the Stoller Vineyard’s grapes. As  
13 conditioned, all of the activities are to be conducted to increase the onsite sales of Stoller  
14 wines.

15           The Court of Appeals’ tail wagging the dog limit on CA/FU wineries is an imperfect  
16 and uncertain check on wineries that propose to take on more and more of the trappings of an  
17 event venue on EFU zoned land and thereby potentially run afoul of the overarching  
18 legislative purpose of preserving agricultural land for farm use through EFU zoning. ORS  
19 215.243.<sup>21</sup> But as the Court of Appeals noted in *Craven*, while the legislature has embraced

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<sup>21</sup> ORS 215.243 provides:

“The Legislative Assembly finds and declares that:

- “(1) Open land used for agricultural use is an efficient means of conserving natural resources that constitute an important physical, social, aesthetic and economic asset to all of the people of this state, whether living in rural, urban or metropolitan areas of the state.
- “(2) The preservation of a maximum amount of the limited supply of agricultural land is necessary to the conservation of the state’s economic resources and the preservation

1 preservation of agricultural land for farm uses, it has also specifically authorized a large  
2 number of nonfarm uses in EFU zones, which it presumably has concluded are either  
3 supportive or at least not destructive of farm uses, if appropriately limited. *Craven*, 94 Or  
4 App 54.

5 In this case, as we have already noted, as far as we can tell it is not disputed that the  
6 authorized winery expansion will be supportive of the Stoller Vineyard, and in that respect  
7 will be supportive of a farm use. And while the authorized expansions go beyond the  
8 activities that are permissible under ORS 215.452 and 215.453 at wineries that are permitted  
9 under ORS 215.283(1)(n) today, they are not significantly different in scale or kind. Under  
10 the version of ORS 215.452 in effect before the 2011 amendments, ORS 215.452 wineries  
11 were allowed to hold private events without any express limit on the number of private  
12 events. The challenged decision authorizes 44 public and private events. However, like  
13 ORS 215.452 and 215.453, the challenged decision requires that income from such events be  
14 limited and requires that there be a close connection between the events and winery wine  
15 sales. *See* ns 5, 14, 18. The requirements in ORS 215.452(2)(c)(A) and 215.453(2)(c)(A)  
16 that services and events be “directly related to the sale or promotion of wine produced in  
17 conjunction with the winery” and the requirements in ORS 215.452(3) and 215.453(3) that  
18 gross income from sale of incidental items and services, which include events, “may not

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of such land in large blocks is necessary in maintaining the agricultural economy of the state and for the assurance of adequate, healthful and nutritious food for the people of this state and nation.

- “(3) Expansion of urban development into rural areas is a matter of public concern because of the unnecessary increases in costs of community services, conflicts between farm and urban activities and the loss of open space and natural beauty around urban centers occurring as the result of such expansion.
- “(4) Exclusive farm use zoning as provided by law, substantially limits alternatives to the use of rural land and, with the importance of rural lands to the public, justifies incentives and privileges offered to encourage owners of rural lands to hold such lands in exclusive farm use zones.”

1 exceed 25 percent of the gross income from the on-site retail sale of wine produced in  
2 conjunction with the winery” seem particularly important. The legislature presumably  
3 imposed those limits in an attempt to ensure that meal services and events at ORS 215.452  
4 and 215.453 wineries are incidental and secondary to wine production and sales. As we  
5 noted earlier, conditions were imposed on Stoller’s winery to require such a direct relation to  
6 the sale or promotion of wine, *see* n 5, and to require that “gross income from the non wine  
7 related activity may not exceed 25 percent of the gross income from the retail sale on-site of  
8 wine produced in conjunction with the winery.” Record 25 (condition 15).

9         Perhaps the most controversial part of the decision on appeal is the authorization of  
10 the onsite commercial kitchen to serve meals at the authorized public and private events. But  
11 as we have explained, that kitchen is conditioned in a number of ways to ensure that it  
12 remains incidental and secondary to the production and sale of wine at the winery. The  
13 kitchen is not limited to a limited service restaurant, as ORS 215.452 wineries are required to  
14 be. The kitchen is also authorized to operate more than the 25 days. But under the 2011  
15 amendments for larger wineries, which are codified at ORS 214.453, with county approval  
16 larger wineries may have full service restaurants such as the one approved in this decision  
17 that operate more than 25 days a year, with a county permit issued under standards similar to  
18 the standards applied in this case.

19         We conclude that the record supports a conclusion that the activities and kitchen  
20 authorized by the challenged decision will “reinforce the profitability of operations [at Stoller  
21 Vineyard] and the likelihood that agricultural use of the land will continue,” as was the case  
22 with the winery in *Craven*. We also conclude that the approved activities and kitchen, as  
23 limited, are not so substantial that they cannot be considered “incidental” and “secondary”  
24 under the Court of Appeals and Supreme Court’s decisions in *Craven*. We caution however,  
25 that the activities and kitchen approved in this case are approaching the point where, in the  
26 words of the Court of Appeals, they may be so substantial that they can no longer be

1 accurately viewed as “incidental” and “secondary” to the winery.<sup>22</sup> But we cannot say that  
2 the approved proposal reached that point in this case.

3 **PETITIONER’S THIRD ASSIGNMENT OF ERROR**

4 In approving permits for the nonfarm uses allowed by ORS 215.283(2), including  
5 CA/FU wineries, counties are required to find that the use will not:

6 “(a) Force a significant change in accepted farm or forest practices on  
7 surrounding lands devoted to farm or forest use; or

8 “(b) Significantly increase the cost of accepted farm or forest practices on  
9 surrounding lands devoted to farm or forest use.” ORS 215.296(1).

10 The county relied in part on a large map, which is included in the record as an oversized  
11 exhibit, that shows the large subject property bordered on the east, north and west by large  
12 parcels that are either forested or appear to be in farm use, with a few rural residences. The  
13 property is bordered on the south by McDougall Road, which runs in a generally east/west  
14 direction north of and approximately parallel to Highway 99. McDougall Road intersects  
15 with Highway 99 a short distance east and west of the subject property and creates an island  
16 of smaller rural parcels between McDougall Road and Highway 99, a number of which  
17 appear to be developed with residences. The issue presented under petitioners’ third  
18 assignment of error is whether the county adequately demonstrated that the expanded Stoller  
19 Winery operation that will be made possible by the challenged decision will not “[f]orce a  
20 significant change in accepted farm or forest practices on surrounding lands” or  
21 “[s]ignificantly increase the cost of accepted farm or forest practices” on those surrounding  
22 lands.

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<sup>22</sup> For example, if the kitchen authorized by the challenged decision had been permitted to operate as a restaurant 365 days a year, it is highly unlikely that such an addition to the winery could be approved as an “incidental” and “secondary” aspect of a CA/FU winery, without running afoul of the Court of Appeals “tail wagging the dog” limit in *Craven*. See n 6.

1           **A.     ORS 215.283(1) and (2) Apply to Stoller’s Existing Winery, as it will be**  
2           **Modified by the Challenged Decision**

3           Petitioners argue “the findings focus on the additional activities allowed by this  
4 application and, to the extent the County’s approval attempts to transform the entire winery  
5 to a conditional use winery, the applicant should have analyzed the impact of the entire  
6 winery, not just the impacts from the additional uses.” Petition for Review 21-22.

7           We agree with petitioners that had the county attempted to limit its review under ORS  
8 215.296(1)(a) and (b) to the impacts that can be expected from the approved tasting room and  
9 additional events—and ignored or declined to consider impacts from the existing winery—  
10 remand would be required. As petitioners correctly point out, the Stoller Winery began life  
11 in 2003 as an ORS 215.283(1)(n) permitted use winery and was not required at that time to  
12 consider its potential impacts on nearby farm and forest practices. Stoller Winery is now  
13 expanding to become a CA/FU winery. Such wineries are subject to ORS 215.296(1)(a) and  
14 (b). Stoller is not merely adding commercial activities that are in conjunction with farm use  
15 to an existing ORS 215.283(1)(n) permitted use winery to create a winery that is part  
16 permitted use winery and part CA/FU winery. As we explained earlier in this opinion the  
17 statutory authority for ORS 215.283(1)(n) and 215.452 permitted use wineries and the ORS  
18 215.283(2)(a) authority for CA/FU wineries are alternatives. The statutes do not authorize  
19 hybrid “permitted use-CA/FU” wineries. Stoller began under ORS 215.283(1)(n) and  
20 215.452 permitted use winery alternative, but now wants to expand in ways that are not  
21 permitted under ORS 215.452. To do so, Stoller must convert the existing winery to a  
22 CA/FU winery under ORS 215.283(2)(a). The correct inquiry in that circumstance is  
23 whether the Stoller Winery, with its expanded kitchen and events, satisfies ORS  
24 215.296(1)(a) and (b).

25           However, as our discussion below makes clear, there is nothing in the county’s  
26 decision that suggests it performed the kind of truncated or myopic analysis that petitioners  
27 suggest it did. To the contrary, the county expressly relied in large part on testimony that the

1 existing winery has not had significant impacts on surrounding lands to conclude that the  
2 expanded winery will not violate ORS 215.296(1)(a) and (b). The county naturally focused a  
3 great deal of its attention on the potential additional impacts that may be expected from the  
4 expanded kitchen and events, because those potential additional impacts were the focus of  
5 the testimony in opposition to the proposal. But it is simply not accurate to say the county  
6 attempted to ignore or shield the impacts of the existing winery from consideration under  
7 ORS 215.296(1)(a) and (b).

8 **B. The County’s Findings Regarding ORS 215.296(1)(a) and (b)**

9 There are two general categories of farm practices identified in the challenged  
10 decision: (1) potential traffic conflicts between winery visitors and farm traffic and other  
11 traffic, on McDougall Road primarily; (2) other farm practices on adjacent and nearby farms.  
12 The first category of impacts was discussed extensively by the applicant and addressed in the  
13 county’s decision. The second category of farm practices was not addressed very extensively  
14 by the applicant, but as explained below, was addressed by planning staff.

15 **1. Non-Traffic Impacts**

16 In addressing a different county standard that requires the county to find that the  
17 subject property is “suitable for the proposed use,” the county found:

18 “The Property comprises a total of 373 acres. The September 21 Staff Report  
19 indicates that the proposed new tasting room will be located approximately  
20 200 feet from the nearest property line and that this location will significantly  
21 buffer the use from adjoining neighbors. \* \* \* Several neighbors have stated  
22 that the Stoller’s operations do not disturb their respective properties or the  
23 local area. The large map of the area surrounding the Property also shows that  
24 the winery is a considerable distance from neighboring homes.” Record 17.

25 The November 21 Staff Report is also referenced in the county’s findings addressing ORS  
26 215.296(1)(a) and (b): “The September 21 Staff Report and Mr. Brandt’s hearing testimony  
27 also indicate that Stoller’s visitor activities thus far have occurred without impact to local

1 farming activities.” Record 15. The September Staff Report identifies the following  
2 accepted farming activities that might be affected by the proposed CA/FU winery:

3 “Among the accepted farming practices of the area are many that would be in  
4 conflict with this use. Some examples are spraying pesticides, burning fence  
5 lines and plowing fields which create large amounts of dust.” Record 534.

6 In recommending that the county find that the proposal complies with the county’s version of  
7 ORS 215.296(1)(a) and (b), the planning staff relied in part on the large size of the subject  
8 property and the 200 foot setback from adjoining farm properties in farm use to buffer the  
9 winery and its patrons from any accepted farm practices on nearby farms. To ensure that  
10 Stoller and future owners are aware that those adjoining farmers are not obligated to alter  
11 their accepted farm practices, the planning staff included the following recommendation:

12 “In order to alert [Stoller] and future owners of the parcel that neighboring  
13 farm uses are not required to modify their activities a condition will be placed  
14 on any approval to have the owners record an affidavit acknowledging the  
15 following declaratory statement and record it in the deed and mortgage  
16 records for Yamhill County:

17 ““The subject property is located in an area designated by  
18 Yamhill County for agricultural uses. It is the county policy to  
19 protect agricultural operations from conflicting land uses in  
20 such designated areas. Accepted agricultural practices in this  
21 area may create inconveniences for the owners or occupants of  
22 this property. However, Yamhill County does not consider it  
23 the agricultural operator’s responsibility to modify accepted  
24 practices to accommodate the owner or occupants of this  
25 property, with the exception of such operator’s violation of  
26 state law.” Record 534.

27 The county imposed a condition in accordance with the above planning staff suggestion.  
28 Record 25 (condition 13). The county also imposed a condition requiring that Stoller  
29 designate a person and phone number “to respond to neighborhood concerns.” Record 24  
30 (condition 5).

31 In finding that the winery expansion as conditioned will comply with ORS  
32 215.296(1)(a) and (b), the county relied on testimony from a number of adjoining and nearby

1 property owners that the Stoller Winery has not adversely affected practices on nearby  
2 properties.<sup>23</sup> The owner of a winery that adjoins the subject property opposed the Stoller  
3 proposal because he believes the winery would compete unfairly with businesses in nearby  
4 Dayton and Lafayette and should be required to comply with ORS 215.452, but took the  
5 position that “[t]he Stollers are good neighbors,” and his opposition was “not based on a ‘not  
6 in my backyard attitude.’ The proposed event center will not obstruct my view, nor am I  
7 worried about their guests parking in my driveway or damaging my property.” Record 493.

8 Petitioners argue that the “[t]he county’s findings on this issue describe the farming  
9 activities in the surrounding lands in a vague manner and never actually describe the farming  
10 practices on surrounding lands, much less how those practices would be affected by the

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<sup>23</sup> That testimony includes the following:

“\* \* \* As a land bordering neighbor and farmer I would like to explain to you that the activities at Stoller Vineyards have not disrupted our operations, and if anything, ha[ve] enhanced the existing charm of our town. The events and celebrations that have taken place at Stoller’s have not been a hindrance to us or caused unnecessary traffic problems in the area. I do not anticipate that the addition of a larger tasting room will create any problems. The vineyard has been respectful and mindful of the needs of nearby neighbors, and I support the building of additional tasting room space.” Record 331.

“\* \* \* As a lifelong resident of this area and also a farmer who farms next to the vineyard I have found the activities that the vineyard holds are well planned with no effect on our farming practices and I have not seen any traffic or other problems created by these activities. As a neighbor, I get to see first hand the pride of ownership that the Stollers’ and their employees put into the vineyard and surrounding area. With this I have full confidence that the expansion will be nothing but positive for the area.” Record 365.

“\* \* \* The improvements and beautification of [the Stoller] vineyard is welcomed and in no way disrupts our home, family or small farm. \* \* \*” Record 370.

“My name is Calvin Kearns and I reside at 16330 NE McDougall Rd. Dayton, Or. My residence is directly across McDougall Rd from Stoller Winery. And my business, C and D Landscaping Co. is located just down the road at 16800 NE McDougall Rd. I have lived here since 1979, and have had the great pleasure to see Bill and Cathy Stoller develop the property into a productive vineyard and winery. I believe this is truly optimizing the use of the agricultural property. Over the years, I have been aware of many events held at the winery and NONE of these events have ever created a traffic problem, nor disrupted my home or landscaping and nursery business.” Record 375.

1 commercial kitchen, tasting room, and events proposed by this application.” Petition for  
2 Review 21.

3           Petitioners are correct that in one place the findings the county adopted to address  
4 ORS 215.296(1)(a) and (b) merely state “the farming activities on these surrounding lands  
5 include viticulture, nursery stock and hay production, and other small farming uses  
6 associated with rural residential parcels.” Record 15. That finding may be adequate to  
7 identify the kind of farms that exist in the area, but it is not adequate to identify the nearby  
8 “accepted farming practices.” But as we have already explained, the county relied in part on  
9 the September 21 planning staff report which identifies a number of accepted farming  
10 practices in the area, including “spraying pesticides, burning fence lines and plowing fields.”  
11 As explained below, the county also identified possible conflicts between winery related  
12 traffic and farm equipment that must travel on nearby roads. Petitioners do not identify any  
13 additional accepted farming practices that the county failed to address. Neither do petitioners  
14 make any attempt to challenge the county’s reliance on the 200-foot setback to buffer winery  
15 events from accepted farming practices on nearby properties or the condition that requires  
16 Stoller to acknowledge and record their acknowledgment of the right of nearby farms to  
17 continue their accepted farming practices even if they might in the future have some impact  
18 on the winery. The county’s findings regarding ORS 215.296(1)(a) and (b) with regard to  
19 non-traffic related impacts on accepted farm practices are adequate and supported by  
20 substantial evidence.

21                           **2. Traffic Conflicts with Farm Equipment**

22           The county acknowledged testimony expressing concerns about possible conflicts  
23 between winery traffic and farm equipment using the same roads but relied on other evidence  
24 to conclude that such concerns did not rise to a level that would violate ORS 215.296(1)(a)  
25 and (b):

1           “\* \* \* Mr. Kruetzender also states, however, that ‘I’ve got grapes to move’  
2           and that ‘[a]n event center with lots of exiting vehicles is a recipe for disaster,  
3           but it would be especially problematic at grape harvest time.’ \* \* \* The Board  
4           however, does not find Mr. Kreuzbender’s general fear of Stoller event traffic  
5           on McDougall Road persuasive given the more specific letters from Stoller’s  
6           neighbors described above.<sup>24</sup>] Mr. Kreuzbender’s traffic comments are also  
7           contradicted by other testimony in the record, which is discussed in more  
8           detail in Findings C5(d) and (e) below. \* \* \*” Record 15,

9           The referenced Findings at C5(d) include the following:

10           “Several opponents of the proposed use argued that Stoller’s proposed events  
11           will generate a large number of cars that will interfere with local traffic  
12           patterns on event days. FYC [Friends of Yamhill County], for example  
13           argued in its November 10 letter that ‘[a]fter a large event at Stoller ends, a  
14           hundred or more will leave Stoller’s more or less simultaneously’ and that this  
15           will create ‘a recipe for disaster.’ This argument, however, is contradicted by  
16           the written and oral testimony of Cal Kearns, who lives across McDougall  
17           Road from the Stoller property and operates a business down the road at the  
18           intersection of McDougall, Highway 18 and Highway 99. Mr. Kearns  
19           testified that:

20           “None of [Stoller’s] events have ever created a traffic problem  
21           or issue. At the end of events, I have personally witnessed  
22           from my house, watching the cars and vehicles leave Stoller  
23           winery and vineyard, they can come down the driveway. Yes,  
24           they can turn east and head down McDougall Road to the  
25           intersection and go out that way. They can continue on  
26           McDougall road to where the truck scales are on 99 and enter  
27           the highway there. I’ve seen many vehicles come down, turn  
28           right, and go down here to the Stoller Road, and turn south on  
29           99W there. They can also turn north on Stoller Road and go  
30           into Lafayette. They can continue on McDougall Road west  
31           towards Lafayette as well. I have witnessed the cars, as they  
32           come down, go several directions. Never have I seen a stack of  
33           cars stack up anywhere. At this intersection down here, yes, it  
34           is true – there can be about three or four cars that can be there  
35           in a row before they begin to block some of the traffic on  
36           McDougall Road. Never have I witnessed that happen at the  
37           close of [an] event. In their statement, I believe that [FYC]  
38           said that a hundred or more cars can leave simultaneously,  
39           more or less. My personal experience is a lot less. Cars don’t

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<sup>24</sup> This is a reference to the letters described in n 23, *supra*.

1 leave these events at the same time. An event doesn't close  
2 and, all of a sudden people go out and get into a hundred cars  
3 and drive down the driveway at the same time. It just doesn't  
4 happen. They leave the event sporadically, so it's never caused  
5 any kind of a problem or issue." Record 18-19.

6 In addition to the above testimony, the county relied on testimony from the  
7 applicant's architect/planner, a private engineering consultant and the county engineer who  
8 all concluded that the traffic that could be expected from the expanded winery would not  
9 significantly affect the adjoining roadways. Record 233-35, 304-05, 521. The county also  
10 cited testimony that Stoller staff schedule events not to "conflict with harvest and other  
11 agricultural activities." Record 15.

12 While it is true that the county did not impose a condition to require that Stoller  
13 schedule winery events not to conflict with harvest and other agricultural activities, a  
14 reasonable person could conclude that Stoller will continue to attempt to do so in the future,  
15 with or without an condition. It is also true that the above findings and the evidence the  
16 findings rely on are addressing traffic impacts generally rather than traffic impacts on  
17 moving farm equipment specifically. However, there was only limited testimony that there  
18 have been any winery related traffic conflicts with agricultural equipment on nearby  
19 roadways. We conclude the county's findings are adequate to explain why the county found  
20 that the expanded Stoller winery will not result in traffic conditions that violate ORS  
21 215.296(1)(a) and (b). The evidence cited by the county in its findings is evidence a  
22 reasonable person could rely on to find as the county did.

23 Petitioners' third assignment of error is denied.

24 The county's decision is affirmed.