



Oregon

Theodore R. Kulongoski, Governor

Department of Land Conservation and Development

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Salem, Oregon 97301-2524

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Second Floor/Director's Office: (503) 378-5518

Web Address: <http://www.oregon.gov/LCD>

NOTICE OF ADOPTED AMENDMENT

August 28, 2006

TO: Subscribers to Notice of Adopted Plan or Land Use Regulation Amendments

FROM: Mara Ulloa, Plan Amendment Program Specialist

SUBJECT: Yamhill County Plan Amendment
DLCD File Number 003-06



The Department of Land Conservation and Development (DLCD) received the attached notice of adoption. Copies of the adopted plan amendment are available for review at DLCD offices in Salem, the applicable field office, and at the local government office.

Appeal Procedures*

DLCD ACKNOWLEDGMENT or DEADLINE TO APPEAL: September 12, 2006

This amendment was submitted to DLCD for review prior to adoption with less than the required 45-day notice. Pursuant to ORS 197.830 (2)(b) only persons who participated in the local government proceedings leading to adoption of the amendment are eligible to appeal this decision to the Land Use Board of Appeals (LUBA).

If you wish to appeal, you must file a notice of intent to appeal with the Land Use Board of Appeals (LUBA) no later than 21 days from the date the decision was mailed to you by the local government. If you have questions, check with the local government to determine the appeal deadline. Copies of the notice of intent to appeal must be served upon the local government and others who received written notice of the final decision from the local government. The notice of intent to appeal must be served and filed in the form and manner prescribed by LUBA, (OAR Chapter 661, Division 10). Please call LUBA at 503-373-1265, if you have questions about appeal procedures.

***NOTE: THE APPEAL DEADLINE IS BASED UPON THE DATE THE DECISION WAS MAILED BY LOCAL GOVERNMENT. A DECISION MAY HAVE BEEN MAILED TO YOU ON A DIFFERENT DATE THAN IT WAS MAILED TO DLCD. AS A RESULT YOUR APPEAL DEADLINE MAY BE EARLIER THAN THE DATE SPECIFIED ABOVE.**

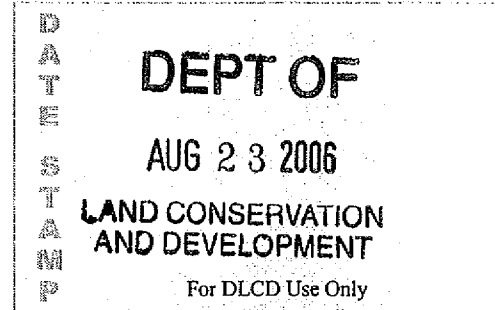
Cc: Doug White, DLCD Community Services Specialist
Gary Fish, DLCD Regional Representative
Ken Friday, Yamhill County

<paa> yl



2 Notice of Adoption

THIS FORM **MUST BE MAILED** TO DLCD
WITHIN 5 WORKING DAYS AFTER THE FINAL DECISION
PER ORS 197.610, OAR CHAPTER 660 - DIVISION 18



Jurisdiction: Yamhill County Local file number: PAZ-01-06
Date of Adoption: 8/16/2006 Date Mailed: 8/22/2006
Date original Notice of Proposed Amendment was mailed to DLCD: 1/20/2006

- Comprehensive Plan Text Amendment
- Land Use Regulation Amendment
- New Land Use Regulation
- Comprehensive Plan Map Amendment
- Zoning Map Amendment
- Other: Exception to Goals 3, 4, 14

Summarize the adopted amendment. Do not use technical terms. Do not write "See Attached".
Exception to Goals 3, 4 and 14, a comprehensive plan amendment from Ag/Forestry Large Holding to Commercial and a zoning map amendment from EF-80 to RC Recreation Commercial (with a limited use overlay zone) to allow a boutique hotel with approximately 50 rooms, a spa, restaurant and meeting facilities.

Describe how the adopted amendment differs from the proposed amendment. If it is the same, write "SAME". If you did not give Notice for the Proposed Amendment, write "N/A".
The acreage was reduced from 72 acres to approximately 12 acres.

Plan Map Changed from: Ag/Forestry Large Holding to: Commercial

Zone Map Changed from: EF-80 Exclusive Farm to: RC Recreation Commercial

Location: 17350 NE Timmons Lane, Dayton Acres Involved: Approx 12

Specify Density: Previous: _____ New: _____

Applicable Statewide Planning Goals: 1, 2, 3, 9, 12 and 14

Was an Exception Adopted? YES NO

DLCD File No.: 003-06(14952)

Did the Department of Land Conservation and Development receive a Notice of Proposed Amendment.....

Forty-five (45) days prior to first evidentiary hearing? Yes No

If no, do the statewide planning goals apply? Yes No

If no, did Emergency Circumstances require immediate adoption? Yes No

Affected State or Federal Agencies, Local Governments or Special Districts:

ODOT

Local Contact: **Ken Friday** Phone: **(503) 434-7516** Extension: **3630**

Address: **525 NE Fourth St.** City: **McMinnville**

Zip Code + 4: **97128-** Email Address: **fridayk@co.yamhill.or.us**

ADOPTION SUBMITTAL REQUIREMENTS

This form **must be mailed** to DLCD **within 5 working days after the final decision**
per ORS 197.610, OAR Chapter 660 - Division 18.

1. Send this Form and TWO (2) Copies of the Adopted Amendment to:

**ATTENTION: PLAN AMENDMENT SPECIALIST
DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT
635 CAPITOL STREET NE, SUITE 150
SALEM, OREGON 97301-2540**

2. Submit **TWO (2) copies** the adopted material, if copies are bounded please submit **TWO (2) complete copies** of documents and maps.
3. Please Note: Adopted materials must be sent to DLCD not later than **FIVE (5) working days** following the date of the final decision on the amendment.
4. Submittal of this Notice of Adoption must include the text of the amendment plus adopted findings and supplementary information.
5. The deadline to appeal will not be extended if you submit this notice of adoption within five working days of the final decision. Appeals to LUBA may be filed within **TWENTY-ONE (21) days** of the date, the Notice of Adoption is sent to DLCD.
6. In addition to sending the Notice of Adoption to DLCD, you must notify persons who participated in the local hearing and requested notice of the final decision.
7. **Need More Copies?** You can copy this form on to 8-1/2x11 green paper only; or call the DLCD Office at (503) 373-0050; or Fax your request to:(503) 378-5518; or Email your request to **mara.ulloa@state.or.us** - ATTENTION: PLAN AMENDMENT SPECIALIST.

BEFORE THE BOARD OF COMMISSIONERS OF THE STATE OF OREGON
FOR THE COUNTY OF YAMHILL
SITTING FOR THE TRANSACTION OF COUNTY BUSINESS

Approval of a Comprehensive Plan amendment from)
Agriculture/Forestry Large Holding to Commercial and a)
Zone Change from EF-80 Exclusive Farm Use to) Ordinance 790
Recreational Commercial (RC), Taking Exceptions to)
Planning Goals 3, 4 and 14, Docket PAZ-01-06,)
Applicant David Kahn and the Hazel B. Timmons Trust,)
Tax Lot 3333-320, and Declaring an Emergency)

THE BOARD OF COMMISSIONERS OF YAMHILL COUNTY, OREGON (the "Board") sat for the transaction of county business on August 16, 2006, Commissioners Leslie Lewis, Kathy George and Mary P. Stern being present.

IT APPEARING TO THE BOARD that David Kahn and the Hazel B. Timmons Trust applied to the Yamhill County Department of Planning (Planning Docket PAZ-01-06) for a Comprehensive Plan amendment zone change and exceptions to Statewide Planning Goals 3, 4, and 14 and

IT APPEARING TO THE BOARD that the matter was heard by the Yamhill County Planning Commission at duly noticed public hearings on March 2 and May 4, 2006, after which the Commission voted to recommend approving the application by a vote of 7-1; the Board held a duly noticed public hearing June 7, 2006. After due consideration of the Application and the objections presented, the Board tentatively voted 3-0 to approve the Application, NOW, THEREFORE,

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

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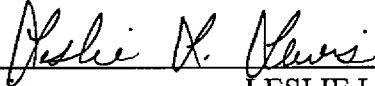
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DONE this 16th day of August, 2006, at McMinnville, Oregon.

ATTEST

YAMHILL COUNTY BOARD OF COMMISSIONERS

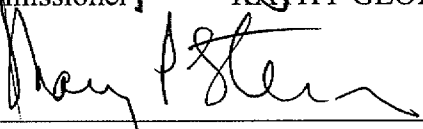
JAN COLEMAN
County Clerk



Chair LESLIE LEWIS

By 
Deputy


Commissioner KATHY GEORGE

APPROVED AS TO FORM:


Commissioner MARY P. STERN


Rick Sanai
Assistant County Counsel

ORDINANCE 790 - FINDINGS

I. INTRODUCTION

This document supports Yamhill County Ordinance No. 790, which adopts exceptions to Statewide Planning Goals 3, 4 and 14, and approves related map amendments to the Yamhill County Comprehensive Plan ("YCCP" or "Plan") and Yamhill County Zoning Ordinance ("YCZO") affecting approximately 12 acres of property on a 65.86-acre parcel. This decision approves Plan map amendments from Agriculture/Forestry Large Holding to Commercial, and zoning map amendments from Exclusive Farm Use (EFU) to Recreational Commercial (RC) in order to allow the development of a luxury wine country hotel and associated facilities.

II. APPLICANT

The application was submitted by David Kahn and the Hazel B. Timmons Trust (the "applicants"). The subject property is owned by the Hazel B. Timmons Trust.

III. DESCRIPTION OF SITE AND PROPOSAL

The subject property is a 65.86-acre parcel located at 7209 NE Breyman Orchards Road near Dayton, Oregon (Tax Lot 320). The parcel is located in Section 33, Township 3 South, Range 3 West of the Willamette Meridian, in an area known as the Red Hills of Dundee. The property is an irregularly shaped parcel that includes land on both sides of a steeply sloped hill, and contains a vacant residence on the ridge at the top of the hill. The property includes fallow fields of open grass on the south side of the hill, and a forested area on the north side of the hill. Elevations on the property range from between approximately 700 feet and 900 feet above sea level.

The subject property is bounded on the north by forested lands and by the Timmons Quarry, which is adjacent to the northwest boundary of the property. The Domaine Drouhin vineyards and winery are located to the south. A bed and breakfast, known as Wine Country Farms, is located to the southwest across Breyman Orchards Road. Forest land is immediately adjacent to the eastern property line and there are vineyards further to the east. Vineyards and one winery are found west of the property.

According to the U.S. Department of Agricultural Soil Conservation Service State Soil Geographic Database, the dominant soil type in the area is "Jory" with a silty clay-loam surface texture. The soils are considered well-drained and the water

table is more than 6 feet deep. The soils fit within the Class C hydrologic group indicating slow infiltration rates. However, the high elevation of the property makes vineyards commercially impractical, and the property has not been used for any agricultural purposes for at least 10 years. The owners are not receiving any farm or forestry tax deferral for the property.

The applicants propose to develop a luxury wine country hotel on the southern portion of the parcel, on the ridge that is the highest part of the property in a location that is generally indicated on the conceptual site diagram prepared by OTAK and submitted by the applicants. The remainder of the 65-acre parcel will remain in EFU zoning. The property will be accessed from NE Breyman Orchards Road. Northeast Timmons Lane travels from the end of NE Breyman Orchards Road northeast across the parcel to the existing residence and pump house on the property.

The applicants' proposal is to develop a hotel modeled after certain high-end wine country hotels in Napa Valley – specifically, Auberge du Soleil, Calistoga Ranch and Meadowood. The hotel will be relatively small, with approximately 50 rooms, a restaurant, a spa, and limited meeting facilities. The proposed hotel will support and enhance the Yamhill County economy by providing a unique luxury hotel in the heart of wine country that will allow wine country tourists to stay in Yamhill County rather than in Portland. In order to provide the requisite destination wine country experience similar to the identified Napa Valley hotels, the hotel must be located in a quiet and idyllic rural setting that affords privacy as well as expansive views of the surrounding wine country, and must also be in close proximity to wineries with tasting rooms.

IV. COUNTY PROCEDURES

The application was filed on January 20, 2006. An initial public hearing was held before the County Planning Commission on March 2, 2006, at which hearing the applicants, their representatives, and many interested individuals presented testimony to the Planning Commission. The hearing was continued until May 4, 2006 in order to allow all parties the opportunity to submit additional written materials. On April 24, 2006, the applicant submitted a revised application narrative, together with additional supporting materials, which included detailed responses to issues raised by opponents and the Planning Commission.

The Planning Commission heard further testimony at its May 4, 2006 hearing. At the close of the public testimony, the Planning Commission held the record open until May 18, 2006 for all parties to submit additional evidence into the record, and until May 25, 2006 for all parties to submit responses to evidence submitted during the first open record period. The Planning Commission provided the applicant a final

five-day period to provide final written argument, which the applicant submitted on May 30, 2006.

The Planning Commission considered all of the materials submitted during the open record period and deliberated to a decision at its meeting on June 1, 2006. At that meeting, the Planning Commission voted 7-1 in favor of recommending approval of the application.

The Board of Commissioners held a public hearing on June 7, 2006, and heard testimony from the applicants, the applicants' representatives, and interested members of the public. At the close of the public hearing, the Board held the record open until June 19, 2006 for all parties to submit additional evidence into the record, and until June 26, 2006 for all parties to submit responses to evidence submitted during the first open record period. Two items were submitted by email after the 5:00 p.m. deadline on June 26, 2006: an email from Jason Lett forwarding correspondence from Katherine Elstrom, and an email from Alan Campbell. Those two items were expressly excluded from the record by the Board. The Board provided the applicant a final three-day period to provide final written argument, which the applicant submitted on June 29, 2006.

The Board of Commissioners considered all of the materials submitted during the open record period and deliberated to a decision at its meeting on July 5, 2006. At that meeting, the Board of Commissioners voted 3-0 in favor of approving the application.

V. INCORPORATION OF STAFF REPORTS

The Board of Commissioners hereby adopts and incorporates by reference the county staff reports dated March 2, 2006, June 1, 2006 and July 5, 2006. In the event of a discrepancy between the incorporated staff reports and these findings, the express findings of the Board shall govern.

VI. APPLICABLE STANDARDS AND CRITERIA

This application involves amendments to acknowledged county comprehensive plan provisions and land use regulations, as well as exceptions to Statewide Planning Goals 3, 4 and 14. Under Oregon's land use statutes and goals, this application must be found to comply with a multitude of standards and criteria, including the following:

A. Statutes

1. ORS 197.340(1) – Goals provided equal weight.

2. ORS 197.610 and 197.615 – Post-acknowledgment amendment procedures.
3. ORS 197.712(2)(g) – Economic development obligation to provide reasonable opportunities for economic development on lands outside urban growth boundaries.
4. ORS 197.732 – Goal exception standards.
5. ORS 197.763 – Notice and procedures for quasi-judicial hearings.

B. Statewide Planning Goals

1. Goal One – Citizen Involvement
2. Goal Two – Land Use Planning
3. Goal Three – Agricultural Lands
4. Goal Four – Forest Lands
5. Goal Five – Open Spaces, Scenic and Historic Areas and Natural Resources
6. Goal Six – Air, Water and Land Resource Quality
7. Goal Seven – Areas Subject to Natural Disasters and Hazards
8. Goal Eight – Recreational Needs
9. Goal Nine – Economic Development
10. Goal Ten – Housing
11. Goal Eleven – Public Facilities and Services
12. Goal Twelve – Transportation
13. Goal Thirteen – Energy Conservation
14. Goal Fourteen – Urbanization

C. State Agency Rules

1. OAR Chapter 660, Division 4 – Interpretation of Goal 2 Exception Process:
 - OAR 660-004-000 Purpose
 - OAR 660-004-005 Definitions
 - OAR 660-004-0010 Application of the Goal 2 Exception Process to Certain Goals
 - OAR 660-004-0015 Inclusion as Part of the Plan
 - OAR 660-004-0018 Planning and Zoning for Exception Areas
 - OAR 660-004-0020 Goal 2, Part II(c), Exception Requirements
 - OAR 660-004-0022 Reasons Necessary to Justify an Exception Under Goal 2, Part II(c)
 - OAR 660-004-0030 Notice and Adoption of an Exception
2. OAR Chapter 660, Division 12 – Transportation Planning
 - OAR 660-012-0060 Plan and Land Use Regulation Amendments
 - OAR 660-012-0065 Transportation Improvements on Rural Lands
3. OAR Chapter 660, Division 14 – Application of the Statewide Planning Goals to Newly Incorporated Cities and to Urban Development on Rural Lands:
 - OAR 660-014-0040 Establishment of New Urban Development on Undeveloped Rural Lands
4. OAR Chapter 660, Division 18 – Plan and Land Use Regulation Amendment Review

D. County Comprehensive Plan Provisions

The following Yamhill County Comprehensive Plan provisions are implicated by this application:

1. Urban Growth and Change and Economic Development
 - a. Urban Area Development
 - b. Rural Area Development
 - c. Economic Development
 - d. Commercial Development
2. The Land and Water
 - a. Agricultural Lands
 - b. Forest Lands
 - c. Water Resources
3. Transportation, Communications and Public Utilities
 - a. Transportation
4. Environmental Quality
 - a. Air, Water and Land Resource Quality

E. YCZO Provisions

The following Yamhill County Zoning Ordinance provisions are implicated by this application:

Section 1204 – Goal Exceptions

Section 1208 – Quasi-judicial Zone District Boundary Changes

F. Overlapping Requirements, Exceptions, and Roadmap to Findings.

The above-referenced land use standards and criteria require demonstration of compliance with a broad array of state and local provisions. It is not always easy to

determine which specific statutory, goal, rule, plan and/or code provisions apply to a given proposal. Nor is it easy to resolve all of the inherent conflicts and interpretative issues that arise out of these frequently overlapping and occasionally inconsistent regulations.

The proposed map amendments comply with most of the provisions of the applicable goals and comprehensive plan provisions; however, the proposed amendments do not comply with certain other goal and plan policies that require "urban" levels of development to be located within urban growth boundaries and that prohibit development of agricultural lands. These departures from the requirements of Goals 3, 4 and 14, and from acknowledged comprehensive plan provisions implementing those goals, require the approval of "exceptions" to the goals. Exceptions are amendments to comprehensive plan provisions that set forth facts and reasons authorizing and justifying the necessary departures from the goals. In this instance, the applicant has requested "reasons" exceptions to Goals 3 and 4, and also an exception to Goal 14. The county's approval of these goal exceptions under the applicable state statutes and rules authorize the proposed amendments despite the fact that the amendments would otherwise conflict with the goals.

In these findings, applicable standards and criteria are set forth in bold-face headings and/or italicized type followed by the county's findings including facts, reasons and legal conclusions. These findings are organized so that the analysis begins with state law and proceeds to local law. Thus, the next section deals with state statutes and their implementing administrative rules, followed by a section addressing the Statewide Planning Goals and their implementing administrative rules, and a section addressing the standards for goal exceptions. Those sections are followed by sections addressing applicable standards and criteria from the county comprehensive plan and zoning ordinance. Often the same or similar criteria are found in more than one source. These findings attempt to minimize repetition and redundancy, using cross-references where possible and adding or repeating material only where necessary.

VII. STATE STATUTES

A. ORS 197.610 and 197.615 – Postacknowledgment Amendments

ORS 197.610(1) and OAR 660-018-0020 require the county to forward a proposal to amend its acknowledged comprehensive plan or land use regulations to the DLCDC director at least 45 days prior to the initial hearing. The county sent the requisite notice of the proposed amendments to DLCDC on January 20, 2006. DLCDC participated in the proceedings and submitted three letters regarding the application.

After final approval and adoption of amendments to a comprehensive plan or land use regulation, ORS 197.615(1) and OAR 660-018-0040 require the county to submit a copy of the text of the amendment and supporting findings to DLCD within five business days after the final decision is adopted. The county must also provide notice of the adopted amendment to persons who participated in the local proceedings and requested in writing that they be provided such notice. The county will comply with these requirements upon final adoption of these findings.

B. ORS 197.712(2)(g) – Economic Development Obligation

This statute requires the county to provide "reasonable opportunities to satisfy local and rural needs for residential and industrial development and other economic activities on appropriate lands outside urban growth boundaries, in a manner consistent with conservation of the state's agricultural and forest land bases." The fact that these amendments are consistent with this purpose is demonstrated by the findings addressing Goal 9 in Section VIII.I of these findings, and by the findings justifying exceptions to Goals 3, 4 and 14 in Section IX below.

C. ORS 197.732 – Goal Exceptions

The requirements established by ORS 197.732 for goal exceptions, as well as the identical requirements of Goal 2, Part II and OAR 660 Divisions 4 and 14 are addressed in Section IX of these findings.

D. ORS 197.763 – Quasi-Judicial Land Use Hearing Procedures

The county provided mailed notice of the application to all owners of record within 750 feet of the subject property more than ten days prior to the first evidentiary hearing on the application, as required by ORS 197.763(2)-(3). More than ten days prior to the hearing before the Board of Commissioners, the county provided notice to all owners of record within 750 feet of the subject property and to all interested parties identified during the initial evidentiary hearing. The county held three evidentiary hearings on the application – two before the Planning Commission on March 2, 2006 and May 4, 2006, and another before the Board of Commissioners on June 7, 2006.

During the course of the proceedings, all documents and evidence submitted to the county by the applicant and other parties were available to the public for review at the County Planning Department offices, as required by ORS 197.763(4)(a). All county staff reports were available at least seven days prior to the hearing for which they were prepared, as required by ORS 197.763(4)(b). At the beginning of each public hearing, County Counsel made a statement identifying the applicable procedures and criteria, as required by ORS 197.763(5). Both the Planning

Commission and the Board of Commissioners held the record open after the close of the hearings to allow parties the opportunity to provide new evidence and respond to new evidence, as provided by ORS 197.763(6).

VIII. STATEWIDE PLANNING GOALS

The Board finds that the requested amendments are consistent with all of the applicable Statewide Planning Goals, as addressed below.

A. Goal 1 - Citizen Involvement

Goal 1 requires local government to develop a citizen involvement program to ensure the opportunity for citizens to be involved in all phases of the planning process. Because Goal 1 establishes a requirement for local government to develop a program, it is not directly applicable to this decision. However, the county's citizen involvement plan has been adopted by the county and acknowledged by the Land Conservation and Development Commission. The hearings and county evaluation process for this case has been governed by that acknowledged program. For this particular request, multiple public hearings have been held by the county. The Board finds that Goal 1 has been met generally by the county and specifically in this instance.

B. Goal 2 - Land Use Planning

Part I of Goal 2 requires the establishment of the land use planning and policy framework as a basis for all decisions and actions. Part II of Goal 2 relates to the exception process that must be followed when an applicant or local jurisdiction requests an exception to a Statewide Planning Goal. The first part of Goal 2 has been met by acknowledgement of the county's comprehensive plan by LCDC. With respect to part 2, findings regarding the applicable exception criteria are set forth in Section IX below.

C. Goal 3 – Agricultural Lands

Goal 3 relates to the preservation of agricultural lands. The application requests map amendments that would allow commercial development on lands that are currently in an agriculture/forest plan map designation, and therefore an exception to Goal 3 is required. Findings addressing the applicable exception criteria are set forth in Section IX below.

D. Goal 4 – Forest Lands

Goal 4 relates to the preservation of forest lands. The application requests map amendments that would allow commercial development on lands that are currently in an agriculture/forest plan map designation. Yamhill County has interpreted that a Goal 4 exception is not required since the property is zoned for exclusive farm use (EFU). However, opponents have asserted that a Goal 4 exception is required, and findings in support of a Goal 4 exception are included in case it is determined that such an exception is required. Findings addressing the applicable exception criteria are set forth in Section IX below.

E. Goal 5 – Open Spaces, Scenic and Historic Areas and Natural Resources

No Goal 5 natural resources (wetlands, riparian areas, wildlife habitat, etc.) are present on the subject property.

F. Goal 6 – Air, Water and Land Resources Quality

Goal 6 addresses waste and process discharges from future development and requires local governments to determine that the future discharges, when combined with existing development, would not threaten to violate or violate applicable state or federal environmental quality statutes, rules and standards. The applicants have submitted evidence establishing that they will comply with any applicable state and federal environmental laws and regulations all down the line. Therefore, Goal 6 will be met.

G. Goal 7 – Area Subject to Natural Disasters and Hazards

No such areas have been identified on the site; therefore, Goal 7 is not applicable.

H. Goal 8 – Recreational Needs

The area is not identified as a recreational resource by the county, and the application does not request approval as a destination resort; therefore, Goal 8 is not applicable.

I. Goal 9 – Economic Development

Goal 9 requires that local government provide adequate opportunities for a variety of economic activities vital to the health, welfare and prosperity of the citizens of Oregon. The new hotel will encourage economic development in Yamhill County

by stimulating the vineyard, winery, and tourism industries in the County, and providing new employment opportunities at the hotel and restaurant. The construction of the hotel will also result in a number of temporary construction jobs that will benefit the county. The Board finds that the amendments are consistent with Goal 9.

J. Goal 10 – Housing

Goal 10 relates to housing needs, and is not applicable to this application.

K. Goal 11 – Public Facilities and Services

Goal 11 requires local governments to plan and develop a timely, orderly and efficient arrangement of public facilities and services to serve as a framework for urban and rural development. The applicants have established that necessary public services such as fire protection are available. Water and waste treatment systems will be provided through private systems. The applicants have submitted substantial evidence in the form of testimony from Newton Consultants regarding the feasibility of providing water and from Environmental Management Systems regarding the feasibility of on-site wastewater treatment at the site. The Board's decision is conditioned upon the applicants' ability to obtain a permit for a well that will provide adequate water for the proposed use. The Board finds that the amendments are consistent with Goal 11.

L. Goal 12 – Transportation

Goal 12 requires a safe, convenient, and economic transportation system. The traffic impact analysis (TIA) prepared by Lancaster Engineering dated April 2006 demonstrates that the proposed map amendments will not have significant adverse impact on the county transportation plan nor will it prevent the county from meeting any of its citizens' transportation needs.

Goal 12 is implemented by the Transportation Planning Rule (TPR), which is set forth at OAR Chapter 660, Division 12. The TPR creates specific requirements for compliance and coordination among affected units of local government for the preparation, adoption, refinement, implementation and amendment of transportation system plans and local comprehensive plans and land use regulations.

The TPR requires that any amendments to comprehensive plans or land use regulations that "significantly affect a transportation facility" must assure that the allowed land uses "are consistent with the identified function, capacity and performance standards of the facility." An amendment "significantly affects" a transportation facility if it would: (1) change the functional classification of an

existing or planned transportation facility; (2) change standards implementing a functional classification system; (3) allow types land uses or levels of development that are inconsistent with the functional classification of an existing or planned transportation facility; (4) reduce the performance standards of an existing or planned facility below minimally acceptable levels identified in the local transportation system plan; or (5) worsen the performance of an existing or planned transportation facility that is otherwise projected to perform below the minimum acceptable performance standard identified in the TSP or comprehensive plan. OAR 660-012-0060(1).

For the proposed amendments to demonstrate compliance with the TPR, the Board must conclude that the traffic impacts from the proposed hotel are either within the performance standards of the impacted transportation facility or that adverse impacts are mitigated.

The Lancaster TIA considers whether any transportation facilities would be "significantly affected" by the proposed facility within the meaning of the TPR. The TIA concludes that traffic generated as a result of the proposed amendments:

- will not require the reclassification of an existing or planned roadway,
- will not alter standards of a functional classification system,
- will not create traffic volumes that are inconsistent with the current roadway functional classification system, and
- will not reduce the performance of the roadway system below acceptable performance standards.

The Lancaster TIA considers the traffic impacts of a 50-unit hotel, and analyzes current and future operations of four intersections of Highway 99W that are likely to be utilized by traffic generated by the proposed hotel. The TIA concludes that the proposed hotel would generate approximately 44 trips during the Saturday peak hour, including hotel guests, visitors, employees, delivery services, and other traffic. The Saturday peak hour rate is 25 percent higher than the weekday evening peak hour rate based on occupied rooms.

The TIA finds that the study area intersections on Highway 99W are currently operating acceptably under ODOT operational standards. By 2025, as background traffic volumes continue to increase, the intersection of Highway 18 and Highway 99W is expected to operate over capacity if the Newburg-Dundee Bypass is not constructed. However, even without considering the positive effects of the Bypass, the TIA concludes that the remaining three study area intersections will continue to

operate well within ODOT standards and will have sufficient capacity to accommodate traffic from the proposed development. When the Bypass is constructed, the volume-to-capacity ratios for all four relevant intersections will drop to between 0.03 and 0.23, which is well below minimum applicable standards. However, because ODOT does not consider the Bypass to be a "planned facility" within the meaning of the new TPR, the Bypass cannot be considered for purposes of satisfying the TPR requirements. Therefore, regarding the intersection of Highway 18 and Highway 99W, the TIA concludes that McDougall Road to the east, and Stoller Road and McDougall Road to the west, will offer alternative routes to access Highway 99W and Highway 18, which alternative routes will have adequate capacity to accommodate traffic from the proposed development in 2025 without the Bypass in place.

The Board finds that Goal 12 and the TPR are satisfied. The Board of Commissioners expressly adopts and incorporates into its findings the Lancaster TIA dated April 2006, as well as the supplemental memoranda placed in the record by Lancaster dated May 18, 2006, June 7, 2006 and June 17, 2006. To the extent there is any discrepancy between the Lancaster materials adopted by the Board and these findings, the express findings of the Board shall govern.

M. Goal 13 – Energy Conservation

Goal 13 requires that land uses maximize conservation of all forms of energy based on sound economic principles. The goal is implemented by local plans and regulations that control location, orientation and density of development to minimize net energy consumption. As required by a condition of approval imposed by the Board, future site design review approval of the proposed hotel will require "green development" provisions, including steps designed to conserve energy, reduce vehicle trips, and conserve waste water and building materials.

N. Goal 14 – Urbanization

Compliance with the Goal 14 exception criteria is addressed below in Section IX.B of the findings, which conclude that the applicable exception criteria are satisfied.

O. Goal 15 – Willamette River Greenway

This Statewide Planning Goal is not applicable to this application.

P. Goal 16 – Estuarine Resources

This Statewide Planning Goal is not applicable in Yamhill County.

Q. Goal 17 - Coastal Shorelands

This Statewide Planning Goal is not applicable in Yamhill County.

R. Goal 18 – Beaches and Dunes

This Statewide Planning Goal is not applicable in Yamhill County.

S. Goal 19 – Ocean Resources

This Statewide Planning Goal is not applicable in Yamhill County.

For the reasons stated above, the Board finds that the proposed amendments are consistent with all applicable Statewide Planning Goals.

IX. GOAL EXCEPTIONS

Goal exceptions are authorized under statewide planning statutes, goals and administrative rules in order to provide flexibility for situations in which a departure from the strict application of the goals is justified based on site-specific and project-specific conditions. Approval of a goal exception does not establish precedent for allowing future goal exceptions. Goal 2 defines the term "exception" as follows:

"Exception means a comprehensive plan provision, including an amendment to an acknowledged comprehensive plan, that:

- "(a) Is applicable to specific properties or situations and does not establish a planning or zoning policy of general applicability;
- "(b) Does not comply with some or all goal requirements applicable to the subject properties or situations; and
- "(c) Complies with standards for an exception."

There are three types of exceptions: (1) "developed" exceptions are justified where the property is physically developed to the point where resource use is no longer practicable; (2) "committed" exceptions are justified where the nature of nearby physical development makes resource use impracticable; and (3) "reasons" exceptions are justified where there is a need for development at the site in question and where the applicant establishes that reasons justify why the policy embodied in the applicable goals should not apply, the site compares favorably with other possible locations for

the proposed development, and the proposed use is compatible with other adjacent uses or can be made compatible through measures designed to reduce impacts.

A. Application of OAR Chapter 660 Exception Criteria

The application requests "reasons" exceptions to Goals 3, 4 and 14. The general criteria for reasons exceptions are set forth in LCDC's administrative rules at OAR 660-004-0020. The rules then provide additional "reasons" that can justify an exception at OAR 660-004-0022, including criteria that must be applied to more specific types of uses. Then, where an exception to Goal 14 is required to allow "urban" levels of use on rural land, still another set of criteria are set forth at OAR 660-014-0040. Thus, for an application that requires reasons exceptions to Goal 3 and Goal 4 along with an exception to Goal 14, the overlapping nature of these three sets of rules results in a particularly complex and Byzantine process even by "normal" exception rule standards.

The Board of Commissioners finds that the language of the exception rules, together with LUBA case law applying those rules, establish that where an exception to Goal 14 is required in conjunction with exceptions to Goal 3 or Goal 4, the exception criteria of OAR 660-014-0040 must be applied to the exclusion of the reasons exception criteria in OAR 660-004-0020 and 0022. The explanation for this conclusion is spelled out by LUBA in *Caine v. Tillamook County*, 25 Or LUBA 209 (1993), which involved an exception to Goal 14 and Goal 4. In *Caine*, the question arose regarding which specific exception criteria should be applied, and LUBA explained as follows:

"We recognize that the parties do not argue that OAR 660-04-020 and 660-04-022 do not apply to the challenged decision. Further, it is unclear whether the challenged decision applies the standards of OAR 660-04-020 and 660-04-022. However, we believe resolution of this threshold issue is important to a useful disposition of this appeal. Accordingly, we determine whether OAR 660-04-020 and 660-04-022 apply to the challenged decision.

"OAR 660-04-000(1) provides:

' * * * *Except as provided for in OAR 660 Division 14,*
this Division interprets the exceptions process as it applies
to state-wide Goals 3 to 19." (Emphasis supplied.)

"In addition, OAR 660-04-022(1) provides:

*'For uses not specifically provided for in * * * OAR 660, Division 14, the reasons shall justify why the state policies embodied in the applicable goals should not apply. Such reasons include but are not limited to the following:*

*' * * * * ' (Emphasis supplied.)*

"By its own terms, OAR 660-04-022 applies to a reasons exception to applicable goals, only to the extent that OAR 660, Division 14 does not. Further, nothing in OAR 660-04-020 and 660-04-022 suggests that either of those rules were intended to impose additional standards to those articulated by OAR 660, Division 14. Therefore, the question is whether OAR 660, Division 14 applies to the proposal.

"OAR 660-14-000 states that Division 14:

*' * * * Specifies the satisfactory method of applying Statewide Planning Goals 2, 3, 4, 11 and 14 to the incorporation of new cities.'*

"OAR 660-14-040, the rule on the incorporation of new cities on undeveloped rural land, includes provisions applicable to 'new urban development on rural land.' OAR 660-14-040(2). Specifically, OAR 660-14-040(2) provides that:

"A county can justify an exception to Goal 14 to allow new urban development on rural land. Reasons which can justify why the policies in Goals 3, 4, 11 and 14 should not apply can include but are not limited to [certain suggested reasons]."

"The basic issue in this appeal proceeding is whether the county's exceptions to Goals 4 and 14 are adequate. Moreover, there is no dispute that the proposal will allow the placement of urban level development on rural land. Accordingly, OAR 660-14-040 applies to the challenged exceptions to Goals 4 and 14 and OAR 660-04-020 and 660-04-022 do not apply. Therefore, no purpose is served in reviewing petitioner's challenges to the proposal's compliance with OAR 660-04-020 and 660-04-022." *Caine*, 25 Or LUBA at 219-220.

The situation reviewed by LUBA in the *Caine* decision is identical to the situation before the Board of Commissioners in this matter, in that exceptions to both

a resource goal and Goal 14 were required, and LUBA concluded that only the Goal 14 exception criteria should be applied. LUBA also addressed the interplay between the Division 4 and Division 14 exception criteria in *DLCD v. Umatilla County*, 39 Or LUBA 715 (2001), where LUBA explained:

"Under this framework, determining which criteria apply requires that the local government identify the character of the use for which a reasons exception is proposed. If the proposed exception involves circumstances or uses not governed by OAR 660-004-0022(2) through (10) or OAR Chapter 660, division 14, then OAR 660-004-0022(1)(a)-(c) provide the applicable criteria for determining whether reasons justify the proposed exception. If, on the other hand, the proposed exception is intended to allow *urban* development, then OAR 660-004-0022(1) directs the county to OAR 660-014-0040. Conversely, if the proposed exception is intended to allow *rural residential* development, then OAR 660-004-0022(1) directs the county to OAR 660-004-0022(2)." *DLCD v. Umatilla County*, 39 Or LUBA at 721-22.

The present application involves an exception that would allow the development of a 50-unit hotel, which is an urban level of commercial use and not "rural" use. Under the express language of the applicable LCDC rules, and for the reasons expressed by LUBA in the above-quoted cases, the Board concludes that the criteria for reviewing the proposed exceptions to Goals 3, 4 and 14 are the Division 14 rules at OAR 660-014-0040, and the reasons exception criteria at OAR 660-004-0020 and 0022 do not apply. However, as a precaution in the event that this decision is appealed and LUBA decides to reverse its prior decisions in *Caine* and *DLCD v. Umatilla County*, the Board also adopts findings that separately address the criteria of OAR 660-004-0020 and 0022 in Sections IX.C and D below.

B. OAR 660-014-0040 – Reasons Justifying the Exceptions

As explained above, the applicable exception criteria are set forth in the Division 14 rules at OAR 660-014-0040, which is entitled "Establishment of New Urban Development on Undeveloped Rural Land." For the reasons stated below, the Board finds that the application satisfies these criteria, and that the applicant has thereby established that sufficient reasons exist under Goal 2 and the Division 14 rules to justify the necessary exceptions to Goals 3, 4 and 14.

OAR 660-014-0040(2) provides that one means by which a county can justify a Goal 14 exception is to provide reasons that justify why the policies in Goals 3, 4, 11 and 14 should not apply, including findings that urban levels of facilities and services

are necessary to support an economic activity that is dependent upon an adjacent or nearby natural resource. However, the rule expressly states that this is not the only "reason" on which the county can justify an exception to the goals. Although proximity to a nearby natural resource is not an exclusive test for justifying exceptions under the Division 14 rules, for the reasons addressed in more detail below regarding the specific locational requirements of the proposed wine country hotel, the Board finds that this element of the rule is satisfied by the subject property's proximity to the county's wine country agricultural resources.

The proposed hotel will not create a permanent "urban population" on the subject property in the same way that expansion of an urban growth boundary would result in an urban population. The only significant development on the 65-acre property will be the hotel, which will only be temporarily inhabited by visiting hotel guests and hotel staff, and will also be subject to seasonal variations in levels of use. While the hotel will certainly increase the number of people on the property above current levels, it will not result in an "urban population" of the property within any rational meaning of that term, although the hotel will rely upon residents of urban population centers for its success. The hotel will provide urban levels of facilities and services on rural land within the meaning of Goal 14, and will allow development on land zoned for resource uses under Goals 3 and 4, and therefore exceptions to those goals are required.

The applicants' proposed wine country hotel is targeted at a specific demographic of relatively more affluent "core" wine consumers, who are the most likely wine country tourists. As explained in the ECONorthwest analysis and materials cited therein, these more affluent tourists seek small hotels and resorts, which offer more privacy and a wider array of services and amenities, rather than bed and breakfast-type accommodations. In fact, according to the profile prepared for the Washington State Business and Tourism Office titled "Washington Wine Country Visitor Profile 2003," wine country tourists prefer hotels over B&Bs by a ten-to-one ratio. The specific demographic characteristics of wine country tourists and the types of accommodations and amenities they seek are addressed in detail in the April 24, 2006 ECONorthwest analysis at pages 2-4. For such tourists, a vacation to wine country is typically an opportunity to get away from stressful jobs and noisy urban environments, and seek refuge in a quiet, relaxing, upscale environment where they can enjoy fine wines and food, and also pursue their interest in wine by visiting wineries with tasting rooms and related facilities. Wine country tourists are currently well-served by Napa Valley hotels such as Auberge du Soleil, Meadowood and Calistoga Ranch, which provide this type of wine country experience in a quiet rural atmosphere among vineyards and near wineries. As discussed in more detail below,

the applicants' proposal is modeled after these hotels, which provide a very distinct type of lodging product with distinct site-related characteristics.

As explained in the economic analysis and supplemental materials prepared by ECONorthwest, despite the fact that Oregon (and Yamhill County in particular), is the home to many internationally known wineries that produce world-class wines, Oregon lacks a full-service "destination" hotel in the wine country area of the type found in Napa Valley, such as Meadowood, Auberge du Soleil and Calistoga Ranch. The proposed hotel will generate significant economic benefits to the County. At present, wine country tourists who decide to visit Yamhill County on a vacation are far more likely to stay in Portland than in Yamhill County, and must make at least a 60-mile round trip drive in order to visit wineries. In addition to depriving Yamhill County of tourist-related income, this situation also results in higher vehicle miles traveled and carbon emissions. As stated in the ECONorthwest study, "millions of potential tourism dollars are likely going unspent in Yamhill County because Oregon's wine country is inconvenient and does not have adequate accommodations for wine country tourists."

The need for a hotel of this type in the wine country of Yamhill County was recognized as early as 1988, when a report commissioned by Yamhill County identified a "pressing need" for a lodging and dining establishment like the proposed hotel designed to serve growing numbers of wine country tourists. That report is dated August 22, 1988 and is titled "A Feasibility Study for Destination Resort Development." The study was prepared by INTRA for the purposes of determining the potential size and type of future destination resorts in Yamhill County, identifying the target markets for such a resort, projecting the employment and economic impacts, and developing siting criteria and identifying one or more appropriate sites for such development in Yamhill County. (See INTRA Study, page 1-1). The 1988 study was submitted into the record by the applicants on May 18, 2006 and is adopted and incorporated by the Board as part of these findings.

As stated in the INTRA study, even as long ago as 1988 Yamhill County was attempting to capitalize on the tourism benefits associated with its growing wine industry by encouraging economic development associated with wine tasting and wine country tourism. The study found that "the secret to establishing Yamhill County as the wine-tasting capital of Oregon is the creation of attractive, visitor-oriented facilities." (INTRA Study, page 4-11). The study noted that "as the local wine industry gains momentum and as wine tasting in Yamhill County becomes a form of recreation, there will be a pressing need for additional overnight accommodations and dining opportunities in the County." (INTRA Study, page 2-2). The study also found that "there is a growing need for additional facilities to serve the small meeting and

conference market." (INTRA Study, page 4-20). The study concluded that the county's wine industry was a significant tourism amenity and that the county should attempt to meet the identified needs and economic opportunities presented by the growth of the wine industry by locating a small destination resort in the wine country area. One of the locations identified for the proposed resort was the Red Hills of Dundee, where the subject property is located. (INTRA Study, page 6-1).

Eighteen years later, the Board finds that the needs and economic opportunities identified by the 1988 study have still gone largely unmet. Although there has certainly been a proliferation of bed and breakfast establishments in the wine country area, there has been no development similar to the "destination" wine country hotel that was proposed in 1988. As discussed in more detail below, a hotel of this type will fill a particular niche of overnight accommodation need that has never been met by Yamhill County, which is the reason why so many visitors to Yamhill County's world-class wineries only make day trips to the county, staying at nicer hotels in Portland instead. The Board of Commissioners finds that this unfortunate situation creates one of the "reasons" that justifies the proposed exception. As stated in the testimony of Tim Harmon of Auberge du Soleil, and repeated by Commissioner Stern during deliberations, "Yamhill County wines are known as some of the finest wines in the world, and they deserve a world class resort that compliments and supports them."

The need identified by the 1988 study was also well-described in the oral and written testimony of many individuals who have appeared before the planning commission in this matter. As explained in the correspondence from Dr. Eric Fruits of ECONorthwest dated May 17, 2006, multiple parties, including opponents of the application, testified regarding the existing need for a hotel of this type in Yamhill County. One such individual is Jack Czarnecki, the owner and chef of the Joel Palmer House Restaurant in Dayton. Mr. Czarnecki is a nationally recognized and well-respected chef who is currently a director of Distinguished Restaurants of North America, a board member of the American Institute of Wine and Food, and a founding member of the Society of American Cuisine. Since opening in 1997, the Joel Palmer House has become nationally recognized as one of the best restaurants not just in Yamhill County, but in all of the Pacific Northwest. In his capacity as chef and proprietor of a nationally acclaimed restaurant in Dayton, Mr. Czarnecki has the opportunity to interact with hundreds of guests who travel to Yamhill County to experience the food and wine of the region. In correspondence to the planning commission dated May 17, 2006, Mr. Czarnecki testified as follows:

"We see many of the tourists who visit this county. Most of them visiting from around the world as well as from around the country are coming for the world class pinot noir produced here. These are travelers

who frequently visit the wine growing areas of France, Spain, Germany, Italy, and California. They are puzzled that we do not have a world class facility for accommodating these individuals who spend hundreds if not thousands of dollars annually on wine. Many of these visitors are restaurateurs who carry the wines in their establishments. But where do they stay? Indeed we have many fine B&Bs in the area, but that type of accommodation is NOT acceptable for many of these guests who are more comfortable with the amenities a small hotel provides. Amenities are key here because these individuals are used to luxury accommodations, not motel-type creature comforts. Any issue of Wine Spectator will easily illustrate the types of small hotels prevalent in these other wine areas. Thus, Yamhill County is at a COMPETITIVE DISADVANTAGE when it comes to competing with those areas for accommodations. Our own Yamhill County Visitors Association tried to enact a room tax to use for promotion of our great county but was turned down. Opponents averred that other methods could be used to promote this area. Well, here is one of those methods - the building of a small luxury hotel to strengthen the magnet of this area to attract more tourists. It is a shame how many of these tourist come down for a day because we do not have what they consider proper accommodations. They are staying at the Vineyard Suites, The Heathman, The Benson, etc. – all quality, UPSCALE, hotels an hour away! They should be staying here and spending their dollars here."

Similar testimony was provided by Paul Hart of Rex Hill Winery, who stated in correspondence dated May 18, 2006:

"Our winery is visited by more than 40,000 people each year and the two most frequent non-wine questions we get from are visitors are where can I eat and where can we sleep nearby. The first question is being answered by the development of several first rate restaurants to which we are proud to send our visitors. The answer to the second question is much harder, especially if the guests are looking for first class accommodations. Although the many local Bed and Breakfasts provide a satisfying and comfortable experience for their guests, the few which can provide truly first class experience are usually reserved.

"The result for many guests now is that they stay in a hotel in Portland and commute to the Yamhill County wine country during the day."

The Board agrees with the above-quoted testimony and finds that this application provides Yamhill County with a significant and timely opportunity for economic development by providing a major boost to the county's wine industry in general, and the wine tourism industry in particular. The Board finds that approval of this application furthers economic development in Yamhill County, consistent with the requirements of Goal 9, which requires the county to provide adequate opportunities for a variety of economic activities vital to the health, welfare and prosperity of the citizens of Oregon. As addressed in more detail in the Board's findings below regarding the ESEE requirements, the new hotel will encourage economic development in Yamhill County by stimulating the vineyard, winery, and tourism industries in the County, and providing new employment opportunities at the hotel and restaurant. The construction of the proposed hotel will also result in a number of temporary construction jobs that will benefit the county.

The Board also finds that ORS 197.340(1) must be considered in this application. ORS 197.340(1) provides that local governments, as well as both DLCD and LCDC, "shall give the goals equal weight in any matter in which the goals are required to be applied." The Board finds this to mean that Goal 9 has as much weight as Goals 3, 4 or 14 in this proceeding. The Board finds, based on substantial evidence in the whole record, that the economic development potential of this application for the county outweighs any concerns regarding Goals 3, 4 or 14. Specifically, the significant economic advantages associated with the proposed hotel outweigh concerns regarding the placement of an "urban" use on rural land, or the loss of 12 acres of EFU-zoned land that is not commercially viable for agricultural production and has not been in agricultural production for at least ten years.

The Board also agrees with the evidence submitted by ECONorthwest and the applicants regarding the characteristics of the proposed hotel that are necessary to meet the needs of the identified wine country tourists – those characteristics are similar to a private country estate that will also provide a complete wine country experience, including a rural setting among vineyards and proximity to wineries with tasting rooms. This conclusion is consistent with the findings of the 1988 INTRA study, which identified the Red Hills of Dundee as a potential location for the proposed wine country resort. It is also consistent with evidence submitted by the applicants regarding the three successful Napa Valley hotels that their proposal is modeled after. Based on this evidence, and as addressed in more detail below, the Board finds that the proposed hotel is entirely dependent upon critical locational factors, including proximity to wineries with on-site tasting rooms, vineyards, and other wine tourism opportunities, relative seclusion resulting from distance from major highways and population centers, and an idyllic rural setting with expansive views of the surrounding countryside and nearby vineyards. These locational

requirements, together with the identified need for a hotel of this kind in Yamhill County, the county's need to expand and diversify its economy and promote its growing wine industry, and other reasons contained in the materials submitted by the applicants and addressed in these findings, provide the reasons that justify the exceptions to Goals 3, 4 and 14 to allow siting of the proposed wine country hotel. Also, the Board finds that the subject property has not been in commercial agricultural use for at least 10 years, in part because elevations on the site are too high for quality grape production, that the current property owners have been unable to sell the property for agricultural purposes, and that the property is not in farm or forest tax deferral. Therefore, the removal of this 12 acres of land from agricultural zoning will not have any discernable impact on the county's agricultural economy.

Additional reasons supporting the development of the proposed hotel and the required goal exceptions are set forth in the applicants' materials, including the analysis provided by ECONorthwest. The Board expressly adopts and incorporates as part of its findings the following materials submitted by the applicants: (1) the application narrative dated April 24, 2006; (2) the ECONorthwest analysis entitled "Characteristics of a Luxury Wine Country Hotel in Yamhill County, Oregon," dated April 24, 2006; (3) the alternatives analysis submitted by the applicants dated April 24, 2006; (4) correspondence provided by Dr. Eric Fruits of ECONorthwest dated May 17, 2006, May 25, 2006 and June 19, 2006, together with all attachments including the 1988 INTRA study; (5) correspondence from Perkins Coie dated May 18, 2006, together with its five attachments; and (6) correspondence from Perkins Coie dated June 19, 2006, together with its six attachments. To the extent there is any discrepancy between the above-referenced materials adopted by the Board and these findings, the express findings of the Board shall govern.

"(3) To approve an exception under section (2) of this rule, a county must also show:

"(a) That Goal 2, Part II(c)(1) and (c)(2) are met by showing that the proposed urban development cannot be reasonably accommodated in or through expansion of existing urban growth boundaries or by intensification of development in existing rural communities;

As explained above, the Board finds that the proposed development has specific locational requirements that cannot be reasonably accommodated in an urban area or an existing rural community. The type of hotel accommodations required to meet the needs of the targeted wine country tourists include characteristics similar to a private country estate, in a rural setting among vineyards. The Board agrees with the applicants' alternatives analysis, and finds that the proposed hotel requires at least 35

acres in a quiet and idyllic rural setting, which provides privacy, serenity, expansive views of the surrounding countryside, as well as close proximity to vineyards, wineries, wine tasting rooms and related uses that are compatible with a relaxing wine country "getaway" vacation. These necessary site characteristics are a fundamental part of the success of this type of hotel, as demonstrated by the success of the three Napa Valley hotels described by the applicants in their June 19, 2006 memorandum entitled "Characteristics of Napa Valley Hotels: Meadowood, Auberge du Soleil and Calistoga Ranch." As described in that memorandum and the accompanying aerial photographs and site descriptions, the specific type of hotel development being proposed precludes a location within an urban area:

"The type of facility being proposed by the applicant would be unique to Oregon, and is modeled after three hotels that are in a very rare class of their own, which cannot be compared to similarly sized hotels that are located in cities. These are luxurious "getaway" hotels that are specifically designed and located so as to provide guests with a beautiful and secluded environment, where they can spend several days in the heart of wine country, enjoying local wines as well as an excellent on-site restaurant, spa facilities, and other amenities. These hotels are unique in their extremely high standards of service, world-class amenities, and their idyllic rural location amidst the vineyards and forests of Napa Valley. These characteristics are also the necessary characteristics of the applicant's proposal, which, like the three hotels considered in this memo, could never succeed if located adjacent to a highway or in a noisy urban environment.

"As shown on the attached photographs and tables, the applicant's proposed site and development characteristics are nearly identical to those of Meadowood, Auberge du Soleil, and Calistoga Ranch. Each are located in a beautiful and secluded rural setting with expansive views of the countryside, in close proximity to vineyards and wineries, on a minimum of 33 acres, and each provide the types of amenities for guests that are expected at hotels of this type.

"Many opponents of the application have argued that there is no reason the proposed hotel could not be located in an urban area. While a run-of-the-mill 50-room hotel might be successful somewhere within the Newberg UGB, the proposal is to create a hotel that is targeted at the same 'core' wine tourist demographic as the three Napa Valley locations. Like Meadowood, Auberge du Soleil, and Calistoga Ranch, the proposed use requires a serene and secluded rural environment. As explained in the written testimony of Tim Harmon, manager of Auberge du Soleil: 'a quiet rural setting among

vineyards is a necessary element of success for a wine country hotel of this type. This type of luxury resort requires seclusion, views, and ambiance that simply could not be found in an urban environment."

The subject property is unique in that it provides all of the necessary site-related requirements. The subject property is in the heart of Yamhill County's wine country, within 20 minutes' driving time of more than 20 wineries, including approximately 12 nearby wineries with the desired vineyard setting and on-site tasting rooms, and within walking distance of two. At approximately 65 acres, it is large enough to meet the site size requirement. The property also provides a quiet rural setting with beautiful hilltop views of the countryside, and includes enough acreage to ensure that the hotel will be surrounded by landscaping, open space, and other resource-related uses that will be compatible with the needs of the hotel guests. Any site that did not include these features would not provide the necessary features to meet the required need and would not result in a successful project. Additionally, the Board finds that approving an exception for the subject property allows the proposed hotel to be developed without taking any viable agricultural uses out of production.

The Board also relies on the testimony placed in the record by ECONorthwest and by Tim Harmon of Auberge du Soleil. In correspondence dated May 25, 2006, Mr. Harmon explained:

"In my experiences with hotels of this type, the 35-acre site size identified in the application is the minimum size that would be required to operate the proposed hotel with associated restaurant, spa, meeting facilities and grounds. A site of this size, which is consistent with our other properties, is essential to create a low density project that is both environmentally sensitive and that will have little or not impact to the surrounding area.

"Also, as I explained at the hearing, a quiet rural setting among vineyards is a necessary element of success for a wine country hotel of this type. This type of luxury resort requires seclusion, views, and ambiance that simply could not be found in an urban environment. A luxury hotel simply will not work if it is located in a town or city location."

This issue is also addressed in the correspondence from ECONorthwest dated May 18, 2006 and May 25, 2006, as well as their initial analysis dated April 24, 2006. The May 18, 2006 letter explains:

"The placement of existing luxury wine country hotels indicates that tourists demand more isolated rural settings that foster a feeling of seclusion and relaxation. For example, Auberge du Soleil and Meadowood are located on

private vineyard estates in rural locations; Calistoga Ranch is located in a secluded canyon with an on-site vineyard. No 4- or 5-star wine country hotels are located in urbanized areas.

"ECONorthwest notes in its report that nearly two-thirds of the B&B rooms available in Yamhill County are located outside of urbanized areas. This is a clear indicator that B&B tourists heavily favor non-urbanized settings for their overnight visits to Yamhill County. The most widely cited exemplar of luxury accommodations in Yamhill County, the Black Walnut Inn and Vineyard, is in a 'private and comfortable setting,' 'set amid vineyards, orchards and acres of forest.

"[Tim] Harmon, CEO of Auberge Resorts testified on May 4, 2006, noted that all of Auberge's properties were located outside of urban areas and that a 'city location defeats a resort.' Indeed, he testified, 'If it would work in a city, then we would do it.' He admitted that rural areas have challenges of their own, specifically higher building costs. However, the demand for rural locations and the rates such demand can generate, makes rural luxury development financially feasible."

For the reasons described above, and additional reasons provided by the applicants and the materials submitted by ECONorthwest, the Board agrees that the proposed development could not be reasonably accommodated in or through expansion of existing UGBs, or in existing rural communities, which are generally located along busy state highways. The applicant has provided substantial evidence to support a finding that the specific requirements for the proposed luxury wine country hotel include certain features, amenities, views, and a location that would preclude an urban setting. The Board also adopts and incorporates by reference its findings in Sections IX.C and D below addressing the Division 4 exception rules as part of these findings addressing the Division 14 exception rules.

(b) That Goal 2, Part II(c)(3) is met by showing that the long-term environmental, economic, social and energy consequences resulting from urban development at the proposed site with measures designed to reduce adverse impacts are not significantly more adverse than would typically result from the same proposal being located on other undeveloped rural lands, considering:

(A) Whether the amount of land included within the boundaries of the proposed urban development is appropriate, and

(B) *Whether urban development is limited by the air, water, energy and land resources at or available to the proposed site, and whether urban development at the proposed site will adversely affect the air, water, energy and land resources of the surrounding area.*

The Board finds that the long-term environmental, economic, social and energy consequences resulting from locating the hotel on the subject property will not be significantly more adverse than locating the hotel on other undeveloped rural lands. The Board notes that this rule does not create a particularly high standard, but simply requires a determination that the ESEE consequences resulting from the proposed hotel "are not *significantly* more adverse" than would result from the hotel being placed on another undeveloped rural lands.

The analysis required by this section of the rule is addressed in the applicants' ESEE analysis, which the Board adopts and incorporates as part of its findings. Specifically, the Board adopts and incorporates the following: (1) the applicants' alternatives analysis dated April 24, 2006; (2) the applicants' revised ESEE analysis dated May 18, 2006; and (3) correspondence from Perkins Coie dated May 18, 2006 and June 19, 2006, which provide additional analysis of the ESEE consequences arising out of specific alternative sites identified by opponents Sid Friedman of 1000 Friends of Oregon and Kathy Miller. To the extent there is any discrepancy between the above-referenced materials adopted by the Board and these findings, the express findings of the Board shall govern.

As an initial matter, the Board finds that the alternative locations on resource land identified by project opponents Kathy Miller, in her letter dated May 2, 2006, and Sid Friedman of 1000 Friends of Oregon in his letter dated March 2, 2006 were not identified or described with sufficient specificity for the applicants or the Board to properly analyze the ESEE consequences associated with those properties as compared to the subject property. The Board agrees with the applicants' statements in the May 18, 2006 revised ESEE analysis that "Ms. Miller has not provided sufficiently specific facts regarding why she believes [the sites] would have significantly fewer adverse impacts to require the applicant to provide a detailed evaluation," and that "Mr. Friedman has not provided detailed information explaining why the [sites] would have less adverse ESEE consequences than the subject property." Despite the lack of information provided by Ms. Miller, the applicants undertook their own investigation of the identified parcels, and submitted evaluations of those properties in correspondence to the Board dated June 19, 2006, which evaluations are adopted and incorporated by the Board as part of these findings. The Board also expressly adopts the applicants' analysis regarding the sites referenced by Mr. Friedman in the revised ESEE analysis dated May 18, 2006.

The Board finds that the ESEE impacts that will result from siting the proposed hotel on the subject property are not significantly more adverse than if the hotel were located on other undeveloped rural lands. As discussed above in the Board's findings regarding other subsections of the Goal 14 rule, the proposed wine country hotel is extremely dependent on certain critical locational factors, including proximity to wineries with on-site tasting rooms, vineyards, and other wine tourism opportunities, relative seclusion resulting from distance from major highways and population centers, and an idyllic rural setting with expansive views of the surrounding countryside and nearby vineyards. The applicants' alternatives analysis and ESEE analysis reviewed the potential alternative sites based on three criteria that are essential to the viability of the proposed hotel: (1) minimum site size of 35 acres set among or adjacent to vineyards; (2) maximum 20-minute travel time from the highest concentration of vineyards and wineries with tourist amenities; and (3) accessible to improved local and regional transportation facilities while not negatively affected by noise or view of such facilities.

As explained in the applicants' ESEE analysis and the materials submitted by ECONorthwest, the ultimate success of the hotel, and the resulting economic benefits to Yamhill County and its residents, are entirely dependent on these characteristics, which are all present at the subject property. Therefore, the economic aspect of the ESEE analysis weighs heavily in favor of the subject property, rather than other undeveloped rural lands that do not provide the same necessary characteristics, including the alternative locations identified in the materials submitted by Kathy Miller and 1000 Friends of Oregon.

Evidence provided by ECONorthwest indicates that the proposed hotel will provide seasonal employment for a minimum of 50 employees using an approximate average of one staff person to support each hotel room. In addition, the hotel is intended to support convention and meeting facilities as well as banquet rooms for private events such as weddings in the off season. The proposed hotel is expected to facilitate sale and consumption of wines produced at local wineries and will also facilitate and extend the name recognition of Yamhill County wineries stimulating sales in other national and international markets. The Board finds that in other locations such as Napa Valley, California, such wine country hotels also support sightseeing, shopping in local shops and art galleries, antiques, and dining at restaurants in nearby areas. Consequently, the proposed hotel will have a positive economic impact on nearby commercial and retail establishments. Also, the hotel will provide additional employment, which will make more money available in Yamhill County for commercial transactions generally.

The economic effect of the hotel on Yamhill County local wineries will be very positive due to increased use of tasting rooms and increased exposure of the local product to the wine drinkers irrespective of the site selected. The interaction between hotel guests and the local wineries, and the resulting economic benefit derived from that interaction, are greater for the subject property than other potential locations in other parts of the county, because of the site's unique proximity to so many wineries. The targeted clientele of the hotel will include wine tourists from all over the country and the world, which will provide increased visibility, recognition and distribution of Yamhill County wines in the global marketplace. As noted at the hearing before the Board, the national and international wine-related press have been inquiring with the applicants about the status of the proposed hotel, and an article about the proposal has already been published in Wine Spectator magazine.

The Board finds that the hotel will provide significant economic benefits to Yamhill County, so long as it is successful. As described elsewhere in these findings, in order to be successful the hotel requires certain locational characteristics including a rural setting among vineyards with expansive views of the countryside, and proximity to vineyards and wineries with tasting rooms. As explained in the applicants' revised ESEE analysis dated May 18, 2006 and the correspondence from Perkins Coie dated June 19, 2006, and as indicated on the maps submitted by the applicants on April 24, 2006 and May 18, 2006, the majority of alternative locations in rural areas identified by the opponents lack the requisite proximity to wineries with tasting rooms and other tourist facilities. In particular, the two properties owned by Sid Friedman of 1000 Friends of Oregon are too distant from Highway 99W and too remote from the identified concentration of wineries among vineyards with tasting rooms and other tourist facilities. Also, uncontroverted evidence in the record indicates that access to the Friedman properties is sub-standard, requiring travel on an unpaved gravel road used by logging trucks. As explained in the applicants' materials, the alternative sites identified by Ms. Miller are also either located in areas that have no view, are too distant from wine country, or are otherwise located in areas that would be incompatible with or inappropriate for the proposed luxury hotel.

The Board accepts the applicants' analysis of the relative environmental, social and energy consequences of siting the proposed hotel at the subject property rather than at other identified rural locations. The environmental, social and energy consequences related to the proposed site will not be significantly different from other potential locations on resource land. The amount of land proposed to be included within the boundaries of the proposed development is appropriate, because the applicant is requesting an exception only affecting an approximately 12-acre portion of the entire 65-acre site, which is the minimum amount of land required for the footprint of the hotel, and will allow the remainder of the subject property to remain in

EFU zoning and to be placed in agricultural use. The applicants propose to plant the southern portions of the property in grapes, which would enhance the wine country atmosphere and would also result in a net increase in the amount of land being put to agricultural use on the subject property.

The Board finds that the site is not limited by soil, air, water or energy capacity nor will the proposed use adversely affect air, water, energy and land resources of the surrounding area. The applicants have submitted substantial evidence regarding the feasibility of obtaining the necessary permits for water rights, which will include monitoring provisions designed to assure that a new well for the hotel will not adversely affect other water rights in the area. The Board is attaching a condition of approval requiring that the applicant must obtain a water right for the hotel within three years after any appeals of this decision are resolved; in the event such water right is not obtained, the applicants shall be required to initiate necessary map amendments to return the property to EFU zoning.

(c) That Goal 2, Part II(c)(4) is met by showing that the proposed urban uses are compatible with adjacent uses or will be so rendered through measures designed to reduce adverse impacts considering:

(A) Whether urban development at the proposed site detracts from the ability of existing cities and service districts to provide services; and

(B) Whether the potential for continued resource management of land at present levels surrounding and nearby the site proposed for urban development is assured.

The Board finds that the proposed hotel will be compatible with adjacent uses, or will be rendered compatible through measures designed to reduce any adverse impacts. The proposed hotel will only require approximately 12 acres of the 65-acre property. As indicated on the applicant's proposed site plan, the hotel will be located toward the center of the parcel, away from surrounding adjacent uses, which will create buffers that will minimize external impacts. The Board is also imposing conditions of approval that will reduce potential impacts. The adjacent Timmons Quarry property to the northwest is being purchased by the developer of the proposed hotel, and the Board is attaching a condition of approval requiring that the site will no longer be used as a quarry. Property to the north is forested, but is not being managed for commercial forestry purposes. There are vineyards and wineries adjacent to the property on the south and west, and a bed and breakfast called Wine Country Farms is located to the southwest, across Breyman Orchards Road. The Board is attaching a condition of approval stating that it is not the responsibility of adjacent agricultural

operators to modify their existing accepted practices to accommodate the hotel and/or its guests.

Regarding the compatibility of the proposed hotel with adjacent agricultural uses, the Board finds that the applicants' proposed wine country hotel is targeted at a specific demographic of relatively more affluent "core" wine consumers, who are the most likely wine country tourists. As explained in the ECONorthwest analysis and materials cited therein, these more affluent tourists seek small hotels and resorts, which offer more privacy and a wider array of services and amenities, rather than bed and breakfast-type accommodations. In fact, according to the profile prepared for the Washington State Business and Tourism Office titled "Washington Wine Country Visitor Profile 2003," wine country tourists prefer hotels over B&Bs by a ten-to-one ratio. The specific demographic characteristics of wine country tourists and the types of accommodations and amenities they seek are addressed in detail in the April 24, 2006 ECONorthwest analysis at pages 2-4. For such tourists, a vacation to wine country is typically an opportunity to get away from stressful jobs and noisy urban environments, and seek refuge in a quiet, relaxing, upscale environment where they can enjoy fine wines and food, and also pursue their interest in wine by visiting wineries with tasting rooms and related facilities.

As documented in the applicants' submittals and elsewhere in these findings, the identified wine country tourists are seeking resort-hotel types of accommodations that include characteristics similar to a private country estate and also provide a complete wine country experience, including a setting among vineyards and proximity to wineries with vineyards and tasting rooms. The Board finds that guests using the hotel will expect to share the environment and atmosphere of the vineyards and wine country, and that agricultural practices associated with wine production will be accepted, and even welcomed, as part of the overall wine country experience. Guests in the targeted demographic will understand the wine industry, and will expect and accept the necessary agricultural practices associated with growing and harvesting grapes, which practices will actually enhance their overall wine country experience.

On this point, the Board also relies upon evidence submitted into the record on May 25, 2006 by Tim Harmon of Auberge du Soleil, which is one of the Napa Valley hotels the applicants' proposal is modeled after. Auberge du Soleil is located immediately adjacent to the vineyards of Rutherford Ranch and Rutherford Hill. As stated by Mr. Harmon in his letter:

"I understand that several opponents of the project have argued that the proposed hotel would be inherently incompatible with agricultural practices on nearby vineyards, because the guests will be bothered by

noise and activities required for those operations. However, guests at a hotel of this type are typically looking for a legitimate wine country experience, and to the extent there are agricultural activities going on, for example, at the adjacent vineyards of Domaine Drouhin Oregon, it is my experience that such activities will only enhance the experience of the guests. For example, the Auberge du Soleil is directly adjacent to two wineries, Rutherford Ranch and Rutherford Hill. The relationship is mutually beneficial: we provide a place for their guests to stay and we feature their wines at our restaurant while they provide our guests with a nearby wine country experience."

The Board also relies on correspondence submitted on June 19, 2006 by the General Manager of Rutherford Ranch Winery, which explains that since 1985 Auberge du Soleil has been operating immediately adjacent to Rutherford Ranch, and since that time there have been no conflicts between the hotel and winery operations, and that "it has been our experience that guests at a hotel of this type are specifically seeking the opportunity to interact with the wine country atmosphere, and the proximity to our winery and vineyards only serve to enhance that experience."

Several opponents have generally raised the possibility of conflicts between the hotel and agricultural practices, citing in particular noise cannons that are used in some vineyard operations to scare birds away from the vines. The Board notes that there has been no evidence put into the record regarding whether Domaine Drouhin or other nearby vineyard owners actually use noise cannons on their property, and therefore these alleged concerns are purely speculative. The Board also notes that, if such noise cannons are actually used on property near the proposed hotel, those devices are typically used only during relatively short periods of the year near harvest, and in any event do not create an inherent incompatibility with the hotel.

Regarding potential impacts from traffic, access to the site will be from the south on Breyman Orchards Road. As concluded in the TIA prepared by Lancaster Engineering, the proposed hotel will generate only approximately 44 trips during the peak hour on Saturday, and there are no resulting capacity issues on Breyman Orchards Road. The Board finds that traffic generated by the proposed hotel will be compatible with other uses to the south and west.

The Board finds that the proposed urban development on the subject property will have no impact on the ability of existing cities and service districts to provide services. Also, for the reasons stated above and in the materials adopted and incorporated as part of these findings, the Board finds that continued resource management of nearby land will not be affected by the proposed hotel. The proposed

map amendment and exceptions only apply to approximately 12 acres of the 65-acre site, and there will be significant buffers between the hotel and adjacent agricultural uses. The nature of the proposed use is very low-impact with regard to adjacent uses, and will be sensitive to the needs of nearby vineyards due to the interests of the clientele, who are specifically seeking a "wine country" vacation. Also, as noted above, the Board is imposing a condition of approval requiring that it is not the responsibility of adjacent agricultural operators to modify their existing accepted practices to accommodate the hotel and/or its guests. In response to concerns raised by one of the opponents, hotel guests will obviously not be permitted to trespass onto any adjacent vineyard properties.

(d) That an appropriate level of public facilities and services are likely to be provided in a timely and efficient manner.

The applicants have established that any necessary public services are available. Water and waste treatment systems will be provided through private systems. The applicants have submitted substantial evidence in the form of testimony from Newton Consultants, Inc. regarding the feasibility of providing water and from Environmental Management Systems regarding the feasibility of on-site wastewater treatment at the site. The Board finds that testimony from water consultants Newton Consultants, Inc. supports a finding that it is feasible to provide appropriate levels of water for the proposed use in a timely and efficient manner. The Board adopts this finding of feasibility based on all of the oral testimony provided at the hearings by Newton Consulting representatives, as well as the written submittals in the record from Newton Consulting dated April 20, 2006 and May 25, 2006. The Board is attaching conditions of approval requiring that the applicant must obtain a water right that can provide adequate water for the hotel within three years after any appeals of this decision are resolved; in the event such water right is not obtained, the applicants shall be required to initiate necessary map amendments to return the property to EFU zoning. The Board also finds that any other necessary public facilities and services, including fire protection, can also be readily provided.

The Board finds that OAR 660-014-0040(3)(e) is not applicable, because no urban growth boundary or establishment of a new city is proposed.

C. OAR 660-004-0020(4) – Reasons Justifying the Exceptions

As explained above, the Board finds that by demonstrating compliance with the criteria of OAR Chapter 660, Division 14, the applicants have satisfied all applicable requirements and provided the necessary reasons to support approval of the requested exceptions to Goals 3, 4 and 14 under the provisions of the rules and LUBA's opinions

in *Caine* and *DLCD v. Umatilla County*. However, in the event that LUBA elects to reverse its earlier decisions and conclude that the Division 4 rules must also be applied for purposes of obtaining exceptions to Goals 3 and 4, the Board includes the following findings.

OAR 660-004-0020(4) and Goal 2, Part II(c) establish 4 factors to be addressed when taking a "reasons" exception to a Statewide Planning Goal. Those factors and related findings are set out below. The Board also adopts and incorporates by reference the reasons set forth in its findings in Section IX.B above regarding the Division 14 rules as part of its findings addressing the Division 4 rules.

- (a) *Reasons justify why the state policy embodied in the applicable goals should not apply. The exception shall set forth the facts and assumptions used as the basis for determining that a state policy embodied in a goal should not apply to specific properties or situations including the amount of land for the use being planned and why the use requires a location on resource land.*

The state policy contained in Goals 3 and 4 provide for the protection of agricultural and forested lands. Nevertheless, the Board finds that the specific locational requirements for a hotel of this type, as described in Section IX.B of these findings, do not provide the opportunity to site the hotel within an existing exception area or within an urban growth boundary. The proposal will further the economic development of Yamhill County, and will specifically bolster the county's burgeoning wine industry. The proposed hotel will also encourage the use of locally produced products and will generate new employment opportunities. The requested exception affects only approximately 12 acres of the 65-acre site, and that land has not been used for agricultural production in at least 10 years. The high elevation of the property precludes commercial vineyard uses. The proposed exception will not take any land that is currently in agricultural use out of production.

As explained in the economic analysis and supplemental materials prepared by ECONorthwest, despite the fact that Oregon (and Yamhill County in particular), is the home to many internationally known wineries that produce world-class wines, Oregon lacks a full-service "destination" hotel in the wine country area of the type found in Napa Valley, such as Meadowood, Auberge du Soleil and Calistoga Ranch. The proposed hotel will generate significant economic benefits to the County. At present, wine country tourists who decide to visit Yamhill County on a vacation are far more likely to stay in Portland than in Yamhill County, and must make at least a 60-mile round trip drive in order to visit wineries. In addition to depriving Yamhill County of tourist-related income, this situation also results in higher vehicle miles traveled and

carbon emissions. As stated in the ECONorthwest study, "millions of potential tourism dollars are likely going unspent in Yamhill County because Oregon's wine country is inconvenient and does not have adequate accommodations for wine country tourists."

The applicants' proposed wine country hotel is targeted at a specific demographic of relatively more affluent "core" wine consumers, who are the most likely wine country tourists. As explained in the ECONorthwest analysis and materials cited therein, these more affluent tourists seek small hotels and resorts, which offer more privacy and a wider array of services and amenities, rather than bed and breakfast-type accommodations. In fact, according to the profile prepared for the Washington State Business and Tourism Office titled "Washington Wine Country Visitor Profile 2003," wine country tourists prefer hotels over B&Bs by a ten-to-one ratio. The specific demographic characteristics of wine country tourists and the types of accommodations and amenities they seek are addressed in detail in the April 24, 2006 ECONorthwest analysis at pages 2-4. For such tourists, a vacation to wine country is typically an opportunity to get away from stressful jobs and noisy urban environments, and seek refuge in a quiet, relaxing, upscale environment where they can enjoy fine wines and food, and also pursue their interest in wine by visiting wineries with tasting rooms and related facilities. Wine country tourists are currently well-served by Napa Valley hotels such as Auberge du Soleil, Meadowood and Calistoga Ranch, which provide this type of wine country experience in a quiet rural atmosphere among vineyards and near wineries.

The type of hotel accommodations required to meet the needs of the identified wine country tourists include characteristics similar to a private country estate that will also provide a complete wine country experience, including a rural setting among vineyards and proximity to wineries with tasting rooms. The proposed hotel is entirely dependent upon critical locational factors, including proximity to wineries with on-site tasting rooms, vineyards, and other wine tourism opportunities, relative seclusion resulting from distance from major highways and population centers, and an idyllic rural setting with expansive views of the surrounding countryside and nearby vineyards. These locational requirements, together with the identified need for a hotel of this kind in Yamhill County, the county's need to expand and diversify its economy and promote its growing wine industry, and other reasons contained in the materials submitted by the applicants and addressed in these findings, provide the reasons that justify the exceptions to Goals 3, 4 and 14 to allow siting of the proposed wine country hotel. Also, the Board finds that the subject property has not been in commercial agricultural use for at least 10 years, in part because elevations on the site are too high for quality grape production, that the current property owners have been unable to sell the property for agricultural purposes, and that the property is not in

farm or forest tax deferral. Therefore, the removal of this 12 acres of land from agricultural zoning will not have any discernable impact on the county's agricultural economy.

Reasons supporting the development of the proposed hotel are set forth in the applicants' materials, including the analysis provided by ECONorthwest. The Board expressly adopts and incorporates as part of its findings the following materials submitted by the applicants: (1) the application narrative dated April 24, 2006; (2) the ECONorthwest analysis titled "Characteristics of a Luxury Wine Country Hotel in Yamhill County, Oregon," dated April 24, 2006; (3) the alternatives analysis submitted by the applicants dated April 24, 2006; (4) correspondence provided by Dr. Eric Fruits of ECONorthwest dated May 17, 2006, May 25, 2006 and June 19, 2006, together with all attachments; (5) correspondence from Perkins Coie dated May 18, 2006, together with its five attachments; and (6) correspondence from Perkins Coie dated June 19, 2006, together with its six attachments. To the extent there is any discrepancy between the above-referenced materials adopted by the Board and these findings, the express findings of the Board shall govern.

The Board finds that this application provides Yamhill County with a significant and timely opportunity for economic development and a major boost to the county's wine industry in general, and the wine tourism industry in particular; these economic advantages to the county outweigh the countervailing loss of a mere 12 acres of EFU-zoned land that is not viable for agricultural production and has not been in agricultural production for at least ten years. The Board finds that the policies embedded in Goal 3 and Goal 4 regarding protection of farm and forest land should not apply to this proposed development, because it is a locationally dependent use that can only be sited in a rural setting, outside of urban growth boundaries. This locationally dependent use requires a minimum of 35 acres in an idyllic rural setting in Yamhill County's wine country, but away from major highways, with expansive views of the surrounding countryside and adjacent vineyards.

(b) Areas which do not require an exception cannot reasonably accommodate the use.

This portion of the rule requires consideration of possible alternative locations for the use that would not require a new exception; in other words, existing exception areas or other locations inside an existing UGB. The rule provides that "economic factors can be considered along with other relevant factors in determining that the use cannot reasonably be accommodated in other areas." Regarding the required scope of the alternatives analysis, OAR 660-004-0020(2)(b)(C) provides as follows:

"Initially, a local government adopting an exception need assess only whether those similar types of areas in the vicinity could not reasonably accommodate the proposed use. Site specific comparisons are not required of a local government taking an exception, unless another party to the local proceeding can describe why there are specific sites that can more reasonably accommodate the proposed use. A detailed evaluation of specific alternative sites is thus not required unless such sites are specifically described with facts to support the assertion that the sites are more reasonable by another party during the local exceptions proceeding."

Based on the requirements of this rule, the applicants prepared an alternatives analysis dated April 24, 2006, which provides a broad review of similar types of areas ranging from urban areas to exception areas, and applies certain specific locational and site-related criteria as part of the analysis. The alternatives analysis includes an attached table and maps that identify certain general and specific areas that were considered as part of the applicants' review, and applies the wine country hotel siting criteria to those areas, concluding that none of those areas could reasonably accommodate the proposed use. The Board expressly adopts and incorporates the applicants' alternatives analysis dated April 24, 2006 and the attached table and maps as part of the Board's findings under this criterion.

As required by the above-quoted portion of OAR 660-004-0040(2)(b)(C), where opponents of the project identified specific alternative sites with sufficient facts to support their assertion that those sites are more reasonable, the applicants provided a more detailed site-specific analysis. In addition to the April 24, 2006 alternatives analysis, the applicants provided responses regarding specific alternative sites in the ECONorthwest analysis titled "Characteristics of a Luxury Wine Country Hotel in Yamhill County, Oregon," dated April 24, 2006, and correspondence from Perkins Coie dated May 18, 2006 and June 19, 2006. The Board expressly adopts and incorporates these documents, as well as the attached maps and other documents, as part of the Board's findings. To the extent there is any discrepancy between the above-referenced materials adopted by the Board and these findings, the express findings of the Board shall govern.

The geographic area for the applicants' alternatives analysis includes lands east of Newberg to west of McMinnville, and south to Dayton and north to Yamhill. Land categories within this area were evaluated against specific siting criteria for the wine country hotel in order of the urbanization hierarchy: inside urban growth boundaries, in county-zoned Recreational Commercial lands, and exception areas. This analysis of alternative sites satisfies the underlying questions that must be addressed when

concluding that "areas which do not require a new exception cannot reasonably accommodate the use." As required by OAR 660-004-0020 Goal 2, Part II(c), Exception Requirements (2)(b)(B)(i-iii), these questions are:

- (i) Can the proposed use be reasonably accommodated on nonresource land that would not require an exception, including increasing the density of uses on nonresource land?
- (ii) Can the proposed use be reasonably accommodated on resource land that is already irrevocably committed to nonresource uses?
- (iii) Can the proposed use be reasonably accommodated inside an urban growth boundary?

The Board finds that a wine country hotel is a distinct type of lodging product that has distinct site-related characteristics. This finding is based on evidence in the record established by the ECONorthwest study entitled "Characteristics of a Luxury Wine Country Hotel in Yamhill County, Oregon," together with other evidence in the record including but not limited to the applicants' analyses of the site characteristics of Auberge du Soleil, Meadowood and Calistoga Ranch in Napa Valley, supplemental memoranda from ECONorthwest and the testimony of Tim Harmon of Auberge. Generally, lodging is dependent upon visibility from and easy access to highways as well as proximity to businesses. However, wine country hotels require more isolated rural settings that foster a feeling of seclusion and relaxation. As documented in the ECONorthwest study and other evidence in the record, the market for a wine country hotel consists of "core" wine consumers who seek accommodations within wine country that are sophisticated, private and luxurious. Furthermore, inherent in the definition of a wine country hotel is its setting within "wine country"; that is, a location among the very vineyards and wineries without which the wine country hotel would have no basis. In the same manner as a beach hotel must be located on or near the beach, a wine country hotel must be located in the midst of wine country.

Based upon the distinct and necessary characteristics of wine country hotels, the applicants applied a set of specific locational criteria for evaluation of the alternative areas within the lands hierarchy. These include: (1) a minimum site size of 35 acres set among or adjacent to vineyards; (2) maximum 20-minute travel time from the highest concentration of vineyards and wineries with tourist amenities in Yamhill County; and (3) accessible to improved local and regional transportation facilities while not being negatively affected by traffic noise or view of these facilities.

Consistent with the facilities and amenities found in other wine country hotels such as Auberge du Soleil in Napa Valley, OTAK, Inc. submitted a conceptual development program and site plan for a wine country hotel that requires a minimum of 35 acres. This provides for the necessary acreage for the footprint of the facilities and the accessory estate-like setting and amenities. The second part of this criterion requires that the site be located among or adjacent to vineyards. Because a wine country hotel is wholly dependent upon its location among vineyards and wineries, this is a fundamental siting criterion that, by definition, must be met.

As provided in the ECONorthwest study and the applicants' alternatives analysis, close proximity to wineries is defined as being within a maximum 20-minute drive time. Accordingly, all areas within the land hierarchy were evaluated for drive time to a central point within the greatest concentration of wineries in Yamhill County, which is that area located between Dundee and Lafayette north of Highway 99W. This area was identified as the most suitable subarea for a wine country hotel within the overall alternatives analysis area for two reasons.

First, as shown on the area maps attached to the applicants' April 24, 2006 and May 18, 2006 submittals, this area contains the greatest concentration of wineries in Yamhill County: approximately 22 wineries, including 12 with tasting rooms. No other subarea in the county contains as many wineries in such close proximity to each other. This cluster provides a critical mass of winery tourist facilities that, in turn, creates the most viable market for a wine country hotel. As such, it is that area to which the siting of a wine country hotel is most reasonably focused.

Second, the geographic setting of these wineries and tasting rooms is predominantly the rustic, vineyard setting that patrons of a wine country hotel seek in their overall wine tourism experience. Therefore, this subarea location is the most congruent with the needs of the core wine market.

Access to a wine country hotel must balance the competing needs of accessibility to regional and local facilities, while not suffering from the negative effects of these, such as noise and unattractive views. In Yamhill County's wine country, the vast majority of wine tourists, and consequently future patrons of a wine country hotel, approach this area from the east along Highway 99W. Accordingly, alternative sites within proximity to Highway 99W are the most reasonable for the siting of the wine country hotel, which is key for the success of a wine country hotel in addition to the environmental benefits conveyed by not increasing vehicle miles traveled. Local facilities should be improved or, if not improved, limited to short distances that do not impede travel to a luxury wine country hotel. Accessibility must be tempered by the need to limit exposure to the negative impacts of transportation

facilities. Therefore, sites must be located out of visual and audible distances of transportation facilities as a means to preserve the fundamental bucolic setting of a wine country hotel.

The table attached to the applicants' alternatives analysis contains the detailed analysis in which the wine country hotel siting criteria were applied generally to the lands in the study area. Based on this analysis, the Board finds that there are no alternative sites within the area that can "reasonably accommodate" the wine country hotel.

Regarding other specific sites identified by opponents of the project, the applicants provided responses to the extent that those sites were identified with sufficiently specific facts to support a claim that those areas could accommodate the proposed hotel. For example, in correspondence dated March 2, 2006, 1000 Friends of Oregon generally identified the entire Newberg urban reserve area, which comprises over 400 acres of land adjacent to the existing urban growth boundary. By generally identifying over 400 acres of land, 1000 Friends of Oregon did not identify any particular "site" with sufficiently specific facts to support the assertion that those locations are more reasonable. Similarly, the March 2, 2006 1000 Friends of Oregon correspondence also references several other large areas such as the "Southwest Dundee Exception Area," the "Red Hills Road Exception Area," and the "Dundee Riverside" without providing the requisite description of specific alternative sites with facts to support their claim that those areas could reasonably accommodate the proposed hotel. The Board finds that these sites were not identified with sufficient specificity by 1000 Friends to require detailed responses from the applicants or to allow the Board to make site-specific findings regarding whether they could reasonably accommodate the proposed use.

The same deficiencies exist regarding all 23 sites identified in correspondence from Kathy Miller dated May 2, 2006. In that letter, Ms. Miller identifies 23 alternative sites by tax lot number and acreage, and generally states that those sites are more reasonable because they are "not 94% high value farmland and can be accessed by roads that are not sub-standard." However, the roads to the subject property are also "not sub-standard," and Ms. Miller's general statements do not provide sufficient facts on which the Board could find that the alternative sites are either more or less reasonable than the subject property. The Board finds that these sites were not identified with sufficient specificity by Ms. Miller to require detailed responses from the applicants or to allow the Board to make site-specific findings regarding whether they could reasonably accommodate the proposed use.

Nonetheless, in the event that LUBA finds that the opponents did specifically describe facts to support their assertions that the sites are more reasonable, the Board adopts the following findings regarding all of the specific alternative sites.

Dundee Riverside

As stated above, 1000 Friends of Oregon failed to provide a sufficiently detailed factual description of this area that would allow the Board to make site-specific findings regarding whether there are specific properties that could reasonably accommodate the proposed use. According to 1000 Friends of Oregon, this area consists of approximately 275 acres of land in the eastern portion of the City of Dundee between existing development and the Willamette River. The Board agrees with the applicants' analysis that this area could not reasonably accommodate the proposed hotel for each of the following independent reasons: (a) as indicated by maps submitted into the record by the applicants, this area is directly in the path of the approved Newberg-Dundee bypass corridor, and would be either directly impacted by the construction of the bypass or would be rendered unsuitable for the proposed hotel due to the external impacts of the bypass, notably noise and view; (b) the area is within the UGB and is therefore designated to be developed at urban levels, which is not consistent with the specific locational criteria discussed above and in Section IX.B of these findings, which require a quiet rural setting; and (c) the area does not satisfy the wine country hotel siting criterion requiring a vineyard setting.

Newberg Urban Reserve Areas

As stated above, 1000 Friends of Oregon failed to provide a sufficiently detailed factual description of this area that would allow the Board to make site-specific findings regarding whether there are specific properties that could reasonably accommodate the proposed use. These areas total over 400 acres and are located to the north/east, south and west of the City of Newberg. The Board adopts and incorporates the analysis set forth in the table attached to the applicants' alternatives analysis regarding these areas. Like the Dundee Riverside area addressed above, the south Newberg urban reserve area is directly in the path of the approved Newberg-Dundee bypass corridor, and is therefore unsuitable for the same reasons. Regarding the north and east urban reserve areas, the Board finds that these areas have been specifically identified as a high priority for future expansion of the Newberg UGB and future urban development, which is not consistent with the specific locational criteria discussed above and in Section IX.B of these findings that require a quiet rural setting; also, the areas to the north and east do not satisfy the wine country hotel siting criterion requiring a vineyard setting and also have relatively poor access to Highway 99W. Regarding the west Newberg urban reserve area, it does not appear that 1000

Friends of Oregon have actually identified this area as a potential alternative site, because their March 2, 2006 letter only identifies the former Urban Reserve Areas A-D, and does not include areas E and F, which are to the west. Because this western area was not specifically identified by project opponents, the Board has no basis on which to make specific findings regarding the relative reasonableness of that area, except to adopt the analysis provided in the table attached to the applicants' alternatives analysis.

Austin Property

This property includes commercially zoned land within the City of Newberg near the railroad tracks. The Board finds that the property is within the UGB and is therefore designated to be developed at urban levels, which is not consistent with the specific locational criteria discussed above and in Section IX.B of these findings, which require a quiet rural setting. Specifically, the property is located in a busy commercial and industrial area near the railroad tracks, which would preclude successful development of the specific type of luxury wine country hotel being proposed. Also, the property does not satisfy the siting criterion requiring a vineyard setting. Finally, the Board notes that evidence in the record indicates that the Austin property is already being developed for another hotel use, and the property would therefore not be available for use by the applicants in any event.

Springbook Oaks

This is an area located in the eastern portion of the City of Newberg that is planned and designated as a live-work environment, with mixed residential and light industrial and office development. The Board finds that, based on evidence placed in the record by the applicants received from Newberg planning staff, most of the area described in the 1000 Friends of Oregon letter has already been developed in the manner planned by the city and therefore could not reasonably accommodate the proposed hotel. This evidence has not been disputed by any of the opponents in their subsequent evidentiary submittals. The Board further finds that for the same reasons expressed above regarding other urban sites identified by opponents, the urban location would preclude successful development of the specific type of luxury wine country hotel being proposed.

Red Hills Road Exception Area

As stated above, 1000 Friends of Oregon failed to provide a sufficiently detailed factual description of this area that would allow the Board to make site-specific findings regarding whether there are specific properties that could reasonably accommodate the proposed use. The area is simply described by 1000 Friends in their

March 2, 2006 letter as a 164-acre exception area in a rural setting within a 20-minute drive of "many wineries," concluding with the erroneous statement that "Red Hills Road provides access to the heart of wine country." However, the applicants provided a significantly more detailed analysis of this exception area in correspondence from Perkins Coie dated June 19, 2006, which explains that this location could not reasonably accommodate the proposed hotel based on the criteria applied in the alternatives analysis and other obvious shortcomings. The area is heavily parcelized, consisting primarily of parcels between three and seven acres. It is not located in a vineyard setting; rather, this exception area is primarily characterized by existing rural residential uses on smaller parcels. The property does not have a suitable view, and is not in sufficiently close proximity to the concentration of wineries identified by the applicant. Access to the heart of wine country from this area is indirect, and would need to be via Highway 240 to the north, because Red Hills Road is an unimproved gravel road to the south. This evidence was not disputed by any of the opponents during the subsequent open record period, and therefore the Board accepts the evidence submitted by the applicants and rejects this as a viable alternative site.

Southwest Dundee Exception Area

As stated above, 1000 Friends of Oregon failed to provide a sufficiently detailed factual description of this area that would allow the Board to make site-specific findings regarding whether there are specific properties that could reasonably accommodate the proposed use. In fact, evidence submitted by the applicants in the ECONorthwest analysis dated April 24, 2006 indicates that according to Dundee planning staff there is no exception area to the southwest of Dundee. In subsequent letters to the county that include specific responses to the ECONorthwest analysis, 1000 Friends of Oregon has failed to provide any further statements or evidence regarding the existence of a "southwest Dundee exception area" or its relative suitability for the proposed use. Therefore, the Board accepts the evidence submitted by the applicants and rejects this as a viable alternative site.

Flying M Ranch

As indicated on the area maps attached to the applicants' April 24, 2006 and May 18, 2006 submittals, the Flying M Ranch is located a significant distance from the wine country area, in the far northwest portion of the maps. The Flying M Ranch is accessed by dirt and gravel roads and is an approximately 55-minute drive from the concentration of wineries in Yamhill County that were considered by the applicants. The Board notes that the 1988 INTRA study also specifically rejected the Flying M Ranch for further consideration as a potential resort site for the same reason, concluding that "the Flying M Ranch is a destination in its own right for residents and

visitors alike. However, its distance from the 99W/18 corridor makes it an unlikely base for visitors touring the Wine Country." (INTRA Study, page 4-17). Also, the Board concurs with the applicants' conclusion that the site does not provide the necessary vineyard setting or views required for the proposed hotel.

Riverwood Golf Course

Although this site was formerly zoned Recreation Commercial, it has been recently rezoned EFU and converted from a golf course to a filbert orchard. The Board finds that this property is not properly considered as part of the alternatives analysis under OAR 660-004-0020 for this reason. Also, separately and independently, the Board finds that because of the recent conversion to farm use, the property is not available for use as a hotel. Finally, the Board agrees with the statements in the applicants' alternatives analysis regarding the fact that the property does not provide the necessary vineyard setting or views required for the proposed hotel, and therefore could not reasonably accommodate the proposed use.

Miller Sites P, Q and R

As stated above, Kathy Miller in her correspondence dated May 2, 2006 failed to provide a sufficiently detailed factual description of this area that would allow the Board to make site-specific findings regarding whether these properties could reasonably accommodate the proposed use. Nonetheless, as indicated on the maps attached to the applicants' May 18, 2006 submittal, many of the sites identified by Ms. Miller, including sites P, Q and R, are located north and west of Willamina, approximately one hour away from the heart of wine country. These properties are too far down Highway 99W, requiring significantly further travel from Portland and the county's wineries. Therefore, for the reasons stated in the applicants' alternatives analysis and correspondence from Perkins Coie dated May 18, 2006, the Board finds that these sites are too remote to reasonably accommodate the proposed hotel.

Miller Site A-6

As stated above, Ms. Miller in her correspondence dated May 2, 2006 failed to provide a sufficiently detailed factual description of this area that would allow the Board to make site-specific findings regarding whether this property could reasonably accommodate the proposed use. In contrast, in correspondence from Perkins Coie dated June 19, 2006, the applicants submitted the following detailed evidence into the record, which was not challenged by Ms. Miller or other opponents: "This property is located south of Highway 240 and can only be accessed via Highway 240 and a narrow private road from the east (Herring Lane). It is traversed on the north side by BPA power transmission lines and towers. It is not located among vineyards and has

no appreciable view. The property is located adjacent to a llama farm and other agricultural uses. Access to the property is poor and it is beyond the 20-minute minimum travel time to the concentration of wineries identified by the applicant in the alternatives analysis. The area is also characterized by rural residential development that would be inconsistent with the proposed use." The Board accepts the detailed and uncontroverted evidence submitted by the applicants and finds that this property could not reasonably accommodate the use.

Miller Site I

As stated above, Ms. Miller in her correspondence dated May 2, 2006 failed to provide a sufficiently detailed factual description of this area that would allow the Board to make site-specific findings regarding whether this property could reasonably accommodate the proposed use. In contrast, in correspondence from Perkins Coie dated June 19, 2006, the applicants submitted the following detailed evidence into the record, which was not challenged by Ms. Miller or other opponents: "This site is located about half a mile up a gravel road beyond Lemelson Vineyards, and is too distant from the concentration of wineries identified by the applicant to reasonably accommodate the proposed hotel. Also, the property is heavily forested, is not set among vineyards, and has no view. The area is characterized by nearby agricultural uses and forest. The environmental consequences of locating the hotel on this site would be more adverse due to the need to remove a significant amount of trees for development of the hotel." The Board accepts the detailed and uncontroverted evidence submitted by the applicants regarding this site in both their April 24, 2006 and May 18, 2006 submittals, and finds that because of the lack of a vineyard setting, lack of requisite views, and lack of proximity to the winery concentration and Highway 99W, this property could not reasonably accommodate the proposed hotel use.

As concluded in the applicants' alternative sites analysis and supplemental materials, there are no other exception areas or areas within urban growth boundaries that are of sufficient size and location to reasonably accommodate this type of use. The use requires at least 35 acres of relatively secluded property in a rural wine country area, among vineyards and away from major highways, with expansive views of the countryside. The Board finds that the applicants have considered both urbanized and unincorporated portions of Yamhill County, and correctly concluded that no other parcels in Yamhill County that would not require an exception could reasonably accommodate the proposed luxury wine country hotel.

- (c) *The long-term environmental, economic, social and energy consequences resulting from the use of the proposed site with*

measures designed to reduce adverse impacts are not significantly more adverse than would typically result from the same proposal being located in other areas requiring a goal exception. The exception shall describe the characteristics of each alternative area considered by the jurisdiction for which an exception might be taken, the typical advantages and disadvantages of using the area for use not allowed by the goal and the typical positive and negative consequences resulting from the use at the proposed site with measures designed to reduce adverse impacts.

The analysis required by this section of the rule is provided above in Section IX.B of these findings addressing OAR 660-014-0040(3)(b), and in the ESEE analysis and supplemental detailed site information submitted by the applicants in correspondence from Perkins Coie. The Board notes that all this rule requires is a determination that the ESEE consequences resulting from the proposed hotel "are not *significantly* more adverse" than would result from the hotel being placed in another undeveloped rural area that would also require an exception. This rule does not create a particularly high standard. For the same reasons set forth in Section IX.B of these findings, the Board finds that the long-term ESEE consequences resulting from developing the hotel on the proposed site are not significantly more adverse than would result from the hotel being placed in another undeveloped rural area that would also require a goal exception, particularly with the stated conditions of approval and other identified measures designed to reduce adverse impacts.

- (d) *The proposed uses are compatible with other adjacent uses or will be rendered through measures designed to reduce adverse impacts. The exception shall describe how the proposed use will be compatible with the adjacent land uses. The exception shall demonstrate that the proposed use is situated in such a manner as to be compatible with surrounding natural resources and resource management or production practices.*

The analysis required by this section of the rule is provided above in Section IX.B of these findings addressing OAR 660-014-0040(3)(c). For the same reasons set forth in Section IX.B of these findings, the Board finds that the proposed uses are compatible with other adjacent uses, particularly with the stated conditions of approval and other identified measures designed to reduce adverse impacts. The proposed hotel will be situated on only approximately 12 acres of the 65-acre site, and will be buffered from adjacent agricultural uses by open space and vineyards that will be planted by the applicants.

D. OAR 660-004-0022

This administrative rule supplements OAR 660-004-0020 by providing examples of the types of reasons that may be relied upon to justify an exception to Goal 3 or Goal 4 for certain types of uses.

- (a) *For uses not specifically provided for in subsequent sections of 660-004 or 660-014 the reasons shall justify why the state Policy embodied in the applicable goal should not apply. Such reasons include but are not limited to the following:*
- (1) *There is a demonstrated need for the proposed use or activity based on one or more of the requirements of Statewide Goals 3 to 19; and either*
- (2) *A resource upon which the proposed use or activity is dependent can be reasonably obtained only if the proposed exception site and the use or activity requires a location near the resource. An exception based on this subsection must include an analysis of the market area to be served by the proposed use or activity and must demonstrate that the proposed exception site is the only one within that market area at which the resource depended upon can reasonably be obtained; or*
- (3) *The proposed use or activity has special features or qualities that necessitate its location on or near the proposed exception site.*

The express language of this section of the rules states that it does not apply where, as here, the requested exception contemplates uses provided for under the Division 14 rules. As explained above in Section IX.A of these findings, the Board finds that OAR 660-004-0022 does not apply where an "urban" use is requested that requires application of the Goal 14 rule at OAR 660-014-0040. However, the Board adopts the following findings in the event that LUBA decides to re-interpret the rules and reverse its prior decisions on this issue.

The demonstrated need for this proposed use is established above in Section IX.B of these findings, which are incorporated here by reference. Under OAR 660-004-0022(1), one example of a reason that can be relied upon to establish the justification for an exception is that the exception will enable a local government to meet one or more of its planning obligations. Such obligations can be found in both

the Statewide Planning Goals and in the county's acknowledged comprehensive plan. The Board finds that in Yamhill County, the requested exceptions for the proposed hotel are necessary to allow a use that has been identified as an essential means by which the county can meet its requirements under Statewide Planning Goal 9, "Economic Development," and implementing policies of the Yamhill County Comprehensive Plan, in order to achieve the county's goals of diversification and stabilization of the local economy.

The Board finds that ORS 197.340(1) requires that local governments, DLCD and LCDC, "shall give the goals equal weight in any matter in which the goals are required to be applied." The Board finds this to mean that Goal 9 has as much weight as Goals 3, 4 or 14 in this proceeding. The Board finds, based on substantial evidence in the whole record, that the economic development potential of this application for the county outweighs any concerns regarding inconsistencies with Goals 3, 4 or 14. Specifically, the significant economic advantages associated with the proposed hotel outweigh concerns regarding the placement of an "urban" use on rural land, or the loss of 12 acres of EFU-zoned land that is not viable for agricultural production and has not been in agricultural production for at least ten years.

As explained in the economic analysis and supplemental materials prepared by ECONorthwest, despite the fact that Oregon (and Yamhill County in particular), is the home to many internationally known wineries that produce world-class wines, Oregon lacks a full-service "destination" hotel in the wine country area of the type found in Napa Valley, such as Meadowood, Auberge du Soleil and Calistoga Ranch. The proposed hotel will generate significant economic benefits to the County. At present, wine country tourists who decide to visit Yamhill County on a vacation are far more likely to stay in Portland than in Yamhill County, and must make at least a 60-mile round trip drive in order to visit wineries. In addition to depriving Yamhill County of tourist-related income, this situation also results in higher vehicle miles traveled and carbon emissions. As stated in the ECONorthwest study, "millions of potential tourism dollars are likely going unspent in Yamhill County because Oregon's wine country is inconvenient and does not have adequate accommodations for wine country tourists."

The need for a hotel of this type in the wine country of Yamhill County was recognized as early as 1988, when the INTRA study commissioned by Yamhill County identified a "pressing need" for a lodging and dining establishment like the proposed hotel designed to serve growing numbers of wine country tourists. That study indicates that even as long ago as 1988 Yamhill County was attempting to capitalize on the tourism benefits associated with its growing wine industry by encouraging economic development associated with wine tasting and wine country

tourism. The study found that "the secret to establishing Yamhill County as the wine-tasting capital of Oregon is the creation of attractive, visitor-oriented facilities." (INTRA Study, page 4-11). The study noted that "as the local wine industry gains momentum and as wine tasting in Yamhill County becomes a form of recreation, there will be a pressing need for additional overnight accommodations and dining opportunities in the County." (INTRA Study, page 2-2). The study also found that "there is a growing need for additional facilities to serve the small meeting and conference market." (INTRA Study, page 4-20). The study concluded that the county's wine industry was a significant tourism amenity and that the county should attempt to meet the identified needs and economic opportunities presented by the growth of the wine industry by locating a small destination resort in the wine country area. One of the locations identified for the proposed resort was the Red Hills of Dundee, where the subject property is located. (INTRA Study, page 6-1).

The Board finds that the needs and economic opportunities identified by the 1988 study have still gone largely unmet. Although there has certainly been a proliferation of bed and breakfast establishments in the wine country area, there has been no development similar to the "destination" wine country hotel that was proposed in 1988. As discussed in more detail below, a hotel of this type will fill a particular niche of overnight accommodation need that has never been met by Yamhill County, which is the reason why so many visitors to Yamhill County's world-class wineries only make day trips to the county, staying at nicer hotels in Portland instead. As stated in the testimony of Tim Harmon of Auberge du Soleil, and repeated by Commissioner Stern during deliberations, "Yamhill County wines are known as some of the finest wines in the world, and they deserve a world class resort that compliments and supports them." Additional testimony regarding the need for a hotel of this type is discussed above in Section IX.B of these findings, and in the ECONorthwest analysis dated April 24, 2006 and supplemental correspondence from ECONorthwest that has been adopted and incorporated by the Board.

The Board finds that there is an identified and unmet need for a hotel of this type in order for the county to meet its obligations under Goal 9 to provide opportunities for economic activities vital to the health, welfare and prosperity of its citizens. The need for this hotel is also supported by Yamhill County Comprehensive Plan Section 1.F, which relates to Economic Development and recognizes that economic diversification "results in a stronger, more stable local economy by increasing employment opportunities." The Economic Development Plan provisions require the county to "maintain a rate and pattern of economic growth sufficient to prevent recurring high levels of unemployment and under-employment in the county, balance the real property tax base of the various cities, and strengthen local economic bases." The Board finds that the Plan identifies a need to diversify the economy,

encourage economic growth and strengthen local economic bases. The proposed hotel responds to that need by furthering economic activity within the wine industry, stimulating additional tourism in Yamhill County, and strengthening the local economic base and the county's tax base. The proposed hotel will provide the county with an important vehicle, not otherwise available, to meet the identified economic needs and goals by providing diversification and strengthening the local economy.

Evidence provided by ECONorthwest indicates that the proposed hotel will provide seasonal employment for a minimum of 50 employees using an approximate average of one staff person to support each hotel room. In addition, the hotel is intended to support convention and meeting facilities as well as banquet rooms for private events such as weddings in the off season. The proposed hotel is expected to facilitate sale and consumption of wines produced at local wineries and will also facilitate and extend the name recognition of Yamhill County wineries stimulating sales in other national and international markets. The Board finds that in other wine-producing areas such as Napa Valley, California, wine country hotels also support sightseeing, shopping in local shops and art galleries, antiques, and dining at restaurants in nearby areas. Consequently, the proposed hotel will have a positive economic impact on nearby commercial and retail establishments. Also, the hotel will provide additional employment, which will make more money available in Yamhill County for commercial transactions generally, and will also increase the county's overall tax base.

The economic effect of the hotel on Yamhill County local wineries will be very positive due to increased use of tasting rooms and increased exposure of the local product to the wine drinkers irrespective of the site selected. The interaction between hotel guests and the local wineries and other local businesses will result in significant economic benefits to the county's wine tourism industry and also to the county as a whole. The targeted clientele of the hotel will include wine tourists from all over the country and the world, which will provide increased visibility, recognition and distribution of Yamhill County wines in the global marketplace. As noted at the hearing before the Board, the national and international wine-related press have been inquiring with the applicants about the status of the proposed hotel, and an article about the proposal has already been published in Wine Spectator magazine. The resulting economic benefit derived from the hotel will allow the county to meet its obligations under Goal 9 and Plan Policy 1.F to maintain economic growth and strengthen the local economic base.

The Board finds that, for the reasons explained above in Section IX.B of these findings, the proposed use or activity has special features and qualities that necessitate its location on or near the proposed exception site. The subject property is unique in

that it provides all of the necessary site-related requirements identified in the applicants' alternatives analysis. The subject property is in the heart of Yamhill County's wine country, within 20 minutes' driving time of more than 20 wineries, including approximately 12 nearby wineries with the desired vineyard setting and on-site tasting rooms, and within walking distance of two. At approximately 65 acres, it is large enough to meet the site size requirement. The property also provides a quiet rural setting with beautiful hilltop views of the countryside, and includes enough acreage to ensure that the hotel will be surrounded by landscaping, open space, and other resource-related uses that will be compatible with the needs of the hotel guests. Any site that did not include these features would not meet the required need and would not result in a successful project. Fortunately, the subject property also allows the proposed hotel to be developed without taking any viable agricultural uses out of production.

As explained above, and in the ECONorthwest analysis, the hotel will be a significant economic generator for the area and for the County in general. Its location is necessary for it to achieve its success. In order to attract visitors and "core" wine tourists, it must be located in a wine country location, on a parcel with sufficient size and views to provide a "destination" wine country experience.

X. COMPREHENSIVE PLAN POLICIES

The application complies with most, but not all, of the applicable Yamhill County Comprehensive Plan policies. However, the only Plan policies that are inconsistent with the map amendments are those policies that require "urban" levels of development to be located within urban growth boundaries and that prohibit development of agricultural lands. These departures from the county's acknowledged Plan provisions may be allowed based on the Board's approval of the requested goal exceptions. The county's approval of the requested goal exceptions under the applicable state statutes and rules authorize the proposed amendments despite the fact that the amendments would otherwise conflict with certain Plan policies. Therefore, as indicated below, the Board's decision approving the requested exceptions means that many otherwise applicable Plan policies are not relevant.

Plan Section I – Urban Growth and Change and Economic Development

A. Urban Area Development

Goal Statement 1: To encourage the containment of growth within existing urban centers, provide for the orderly, staged, diversified and compatible development of all of the cities of Yamhill County, and assure an efficient transition from rural to urban land use.

Policy A: Yamhill County will, in cooperation with the cities and special districts of the county, encourage urban growth to take the form of a series of compact, balanced communities, each with its own business and community center and each related to industrial areas and other centers of employment.

Policy C: Yamhill County will recognize the lands within established urban growth boundaries as the appropriate and desired location for urban development.

Goal Statement 2: To encourage the containment of urban services and facilities and other public capital improvements within existing urbanizing areas in order to achieve an orderly pattern of urban growth.

These county goal statements and associated policies are intended to implement Goal 14 by requiring urban levels of development to occur within urban areas. The Board has adopted findings identifying the reasons why the policies and standards of Goal 14 should not apply to the present application, and explaining why the proposed development meets the applicable exception criteria. Therefore, these county goals and policies implementing Goal 14 are not relevant to this application.

B. Rural Area Development

Goal Statement 1: To provide an adequate amount of land, development areas and sites to accommodate those uses which are customarily found in rural areas or require or are better suited to rural locations, without compromising the basic goal relating to urban containment and orderly urban development.

The Board finds that the application is consistent with this goal statement. As explained in the applicants' alternatives analysis and the ECONorthwest analysis, and as set forth in the Board's findings in Section IX.B above, the proposed hotel use can only be located in a rural setting, rather than an urban setting, and other sites that do not require exceptions cannot reasonably accommodate the proposed use. The development of a single hotel on 12 acres will not compromise the basic goal of providing a compact urban form and orderly urban development.

Policy B: All proposed rural area developments shall be based on a reasonable expectation of the demand for the use of such land or facilities within a reasonable period of time and no large-scale development shall be approved without:

- 1. The submission and approval of a layout and design concept, with provision for the staging and servicing of all phases of the development;*

2. The approval of all federal and state agencies relative in any applicable health, safety and environmental controls; and

3. An adequate demonstration of the financial capacity and responsibility of the proponents to complete the development and provide for operation and maintenance services.

The Board finds that these policies will be addressed in conformance with applicable YCZO standards at the time of Site Design Review and actual development of the proposed hotel. For purposes of the map amendments and exceptions at issue in this proceeding, the applicant has submitted a proposed site plan that identifies the approximate location of the hotel and the area of the requested map amendments. Also, for the reasons explained in the ECONorthwest analysis and supplemental memoranda, and in the Board's findings in Section IX above, the requested exception is consistent with this policy because the proposed development is based on a reasonable expectation of the demand for a luxury wine country hotel in Yamhill County.

Policy C: All proposed rural area development and facilities:

1. Shall be appropriately, if not uniquely, suited to the area or site proposed for development;

2. Shall not be located in any natural hazard area, such as a floodplain or area of geologic hazard, steep slope, severe drainage problems or soil limitations for building or sub-surface sewage disposal, if relevant;

3. Shall be furnished with adequate access and an adequate individual or community water supply, if required; and shall not be justified solely or even primarily on the argument that the land is less costly than alternative better sites or that federal or state aid is available in the form of subsidized water supply or sewerage extensions from nearby urban centers.

The Board finds that the proposed development is consistent with these policies. For the reasons explained in Section IX of these findings regarding the specific locational requirements for the proposed hotel, the hotel is appropriately, if not uniquely, suited to the site proposed for development. Also, the proposed hotel will not be located in a natural hazard area and has adequate access. The Board has found that water service for the hotel is feasible, and has conditioned its approval on the applicant's ability to provide adequate water supply and to obtain the necessary permit for a well within three years.

Policy D: *No proposed rural area development shall require or substantially influence the extension of costly services and facilities normally associated with urban centers, such as municipal water supply and sanitary sewerage or power, gas and telephone services, nor shall it impose inordinate additional net costs on mobile, centralized public services, such as police and fire protection, school busing or refuse collection.*

The Board finds that for the reasons stated elsewhere in these findings, the proposed development does not require the extension of costly utilities to the site, and does not impose inordinate additional net costs on public services such as police and fire protection.

C. Alternative Development

The Board finds that these policies are not applicable to the present application, and do not create mandatory approval criteria in any event.

D. City Growth and Development

The Board finds that these policies apply to urban development within cities, annexation and urban reserve areas, and are therefore not applicable to the present application.

E. Housing

The Board finds that these goals and policies relate to the provision of adequate housing in Yamhill County, and do not apply to the present application.

F. Economic Development

The Plan indicates that the county has found that economic diversification generally results in a stronger and more stable local economy because it increases employment opportunities, and that high levels of unemployment have traditionally been a problem. The Plan also acknowledges that new industries have entered the county to help alleviate this situation.

Goal Statement: *To maintain a rate and pattern of economic growth sufficient to prevent recurring high levels of unemployment and under-employment in the county, balance the real property tax base of the various cities, and strengthen local economic bases.*

Policy A: *Yamhill County will, in cooperation with the cities, local chambers of commerce and affiliated industrial promotion grounds, and State agencies concerned with the State and regional economic development, encourage a diversified employment base, the strengthening of trade centers, and the attraction of both capital and labor intensive enterprises, consistent with the needs of each community and the County as a whole.*

The Board finds that the proposed hotel and accessory uses including the meeting facility, restaurant and spa will encourage a diversified employment base in the county. The proposed hotel will require the hiring of a minimum of 50 employees. It also will result in attraction of tourists and business oriented visitors to the area who are likely to patronize the local wineries and vineyards, as well as many other area businesses. The hotel will also support the Yamhill County wine industry by attracting a nationwide clientele of wine consumers who are seeking this type of wine country tourist experience. The Board adopts and incorporates by reference its findings in Section IX.B regarding the beneficial economic impacts of the hotel on the economy of the county.

Policy B: *Yamhill County will encourage economic development projects which do not conflict with the predominant timber and agricultural character of the county.*

The approximately 65-acre property contains several areas formerly in agricultural use but which have not been in commercial agricultural use for at least 10 years. Based on evidence in the record, the Board finds that elevations on the site are too high for quality grape production, the current property owners have been unable to sell the property for agricultural purposes, and the property is not in farm or forest tax deferral. The Board has adopted findings approving exceptions to Goals 3 and 4 for the subject property, and finding that the removal of this 12 acres of land from agricultural zoning will not have any discernable impact on the county's agricultural economy. The Board finds that the hotel will not conflict with the predominant timber and agricultural character of the county, and will further Plan policies regarding economic development and diversification of the county's economy. The proposed hotel would provide overnight accommodations for tourists and meeting facilities that will allow larger groups of people to remain in the area, which would supplement and enhance the local vineyard industry and the county's growing wine tourism industry. The Board adopts and incorporates by reference its findings in Section IX.B regarding the beneficial economic impacts of the hotel on the economy of the county.

Policy C: *Yamhill County will ensure citizen participation in economic development planning through the continued involvement of the Yamhill County Economic Development Committee.*

Policy D: *Yamhill County will develop an Overall Economic Development Program which is consistent with the county comprehensive plan. This program will be outlined in an updated Overall Economic Development Plan which, upon completion, will be incorporated into the economic element of the county comprehensive plan.*

The Board finds that these policies create citizen involvement and planning requirements that do not create mandatory approval criteria for the county's review of quasi-judicial map amendment applications.

G. Commercial Development

Goal Statement: *To create an environment for commercial development which will preserve and enhance the vitality of the central business districts, assure safer, more convenient and attractive community and neighborhood commercial centers, and protect prime commercial sites for use in advance of need.*

Policy C: *Commercial uses unsuited to downtown areas will normally be restricted to other areas within the urban growth boundary.*

Policy E: *Highway service and tourist commercial uses catering to the needs of the traveling public will be encouraged to locate within existing urban centers. Traditional central commercial uses will be encouraged to locate or relocate only in existing town centers and the dispersal of such uses to peripheral highway locations will be discouraged.*

Policy G: *Recreational commercial uses will be encouraged to locate within urban growth boundaries or in compatible urban areas where their location and space requirements can be most satisfactorily fulfilled.*

The Board finds that these county goal statements and associated policies are not stated as mandatory approval criteria, but create aspirational goals directing the county to "encourage" commercial development to occur in urban areas; as such, these general planning policies designed to "encourage" growth in a certain location cannot be relied upon by the county as a means to deny the present quasi-judicial plan amendment application. The Board also finds that these policies are intended to implement Goal 14 by encouraging commercial development to occur in downtown

areas within urban growth boundaries. The Board has adopted findings identifying specific reasons why the policies and standards of Goal 14 should not apply to the present application, and explaining why the proposed development meets the applicable exception criteria. Therefore, even if these county goals and policies contained mandatory approval criteria, they are not relevant to this application.

H. Industrial Development

The Board finds that these goals and policies regarding industrial development do not apply to the present application.

Plan Section II – The Land and Water

A. Agricultural Lands

Goal Statement 1: To conserve Yamhill County's farm lands for the production of crops and livestock and to ensure that the conversion of farm land to urban use where necessary and appropriate occurs in an orderly and economical manner.

Goal Statement 2: To conserve Yamhill County's soil resources in a manner reflecting their suitability for forestry, agriculture and urban development and their sustained use for the purposes designated on the county plan map.

The Board finds that these goal statements and related implementing policies are intended to implement Goal 3 by generally prohibiting development of agricultural lands. The Board has adopted findings identifying specific reasons why the policies and standards of Goal 3 should not apply to the present application, and explaining why the proposed development meets the applicable exception criteria. Therefore, these county goals and policies implementing Goal 3 are not relevant to this application.

B. Forest Lands

Goal Statement: To conserve and manage efficiently the county's forest and range resources, thereby ensuring a sustained yield of forest products, adequate grazing areas for domestic livestock, habitat for fish and wildlife, protection of forest soils and watershed, and preservation of recreational opportunities.

The Board finds that these goal statements and related implementing policies are intended to implement Goal 4 by generally prohibiting development of forest

lands. The Board has adopted findings identifying specific reasons why the policies and standards of Goal 4 should not apply to the present application, and explaining why the proposed development meets the applicable exception criteria. Therefore, these county goals and policies implementing Goal 4 are no longer relevant to this application.

C. Water Resources

Goal Statement: *To conserve and to manage efficiently our water resources in order to sustain and enhance the quantity and quality of flows for all consumptive and non-consumptive uses and to abate flood, erosion and sedimentation problems.*

Policy A: *Yamhill County will cooperate with federal and state agencies, the cities of the county, and the local soil and water conservation district to identify, conserve and develop water resources on a long-range, multiple-use basis in response to need, with full consideration given to the benefits, costs, potential uses and the carrying capacity of the resource.*

The Board finds that Policy A creates a planning requirement that directs the county to cooperate with other public entities regarding the identification and conservation of water resources in response to need. This policy does not create a mandatory approval criterion for a quasi-judicial map amendment. Further, the Board has included conditions of approval requiring the applicants to obtain an adequate water supply for the hotel by obtaining the necessary permits from the Oregon Water Resources Department (OWRD) within three years. The state permitting process will require consideration of water availability and impacts of a new well on the carrying capacity of the groundwater resource. As explained in the opinion provided by Newton Consultants, OWRD ground water permits include conditions on ground water rights requiring the applicants to demonstrate that the project's wells have no measurable impact on surrounding wells.

Policy I: *Where conflicting uses are identified or intended, in specific proposals or programs, the economic, social, environmental and energy consequences of the conflicting uses shall be determined as used as a basis for decision-making.*

Evidence in the record from Newton Consultants indicates that it is feasible for the applicants to obtain a permit for a new well in the marine sediments that can operate without interfering with other wells in the area. Extension of wells into the marine sediments, together with properly designed and constructed well seals, can be relied upon as a way to reduce potential for well interference to the satisfaction of

OWRD. The state permitting process will require consideration of water availability and impacts of a new well on the carrying capacity of the groundwater resource. As explained in the opinion provided by Newton Consultants, OWRD ground water permits typically include conditions on ground water rights requiring the applicants to demonstrate that the projects' wells have no measurable impact on surrounding wells. Therefore, the Board finds that there is no direct evidence that the hotel will be a "conflicting use" with any other uses in the area within the meaning of Policy I.

D. Fish and Wildlife

The Board finds that these goals and policies regarding protection of fish and wildlife do not apply to the present application, because there is no identified fish or wildlife habitat on the subject property and the proposed development will not otherwise impact fish or wildlife habitat.

E. Open Space

The county's goals and policies regarding open space require adoption of an inventory of significant open space and scenic resources as part of the county's Goal 5 inventory. The subject property is not included on any inventory of significant resources under Goal 5, including open space. The Board finds that these goals and policies do not apply to the present application.

F. Mineral and Aggregate Resources

G. Ecologically and Scientifically Significant Natural Areas

H. Outstanding Scenic Views and Sites

I. Historic Areas, Sites, Structures and Objects and Cultural Areas

J. Wild and Scenic Waterways

The goals and policies regarding these resources all relate to areas that are included on the county's inventory of significant resources under Goal 5. The 12 acres subject to this request do not include any resources on the county's Goal 5 inventory, and these sections of the Plan do not apply.

Plan Section III – Transportation, Communication and Public Utilities

A. Transportation

Goal Statement: *To provide and encourage an efficient, safe, convenient and economic transportation and communication system, including road, rail, waterways, public transit and air, to serve the needs of existing and projected urban and rural development within the county, as well as to accommodate the regional movement of people and goods and the transfer of energy, recognizing the economic, social and energy impacts of the various modes of transportation.*

Policy B: *All transportation-related decisions will be made in consideration of land use impacts including but not limited to adjacent land use patterns, both existing and planned, and their designated uses and densities*

Policy J: *All county transportation-related decisions will be made in particular consideration of energy efficiency and conservation.*

Policy O: *All transportation-related decisions will be made in support of the efficient and economic movement of people, goods, and services throughout the region, and will be based on the location and adequacy of facilities for such goods and services.*

The Board finds that for the reasons explained in Section VIII.L of these findings regarding Goal 12 and the TPR, and for the reasons explained in the Lancaster TIA and supplemental memoranda adopted by the Board, the map amendments and exceptions are consistent with the county's goal to provide an efficient, safe, convenient and economic transportation and communication system, and with the relevant policies designed to implement the goal. Even without considering the eventual construction of the Newberg-Dundee Bypass, which has long been tomorrow's dream for the county but is now approaching reality, the intersections that would be impacted by the hotel will continue to operate acceptably. To the extent this decision is a "transportation-related decision" within the meaning of the above-quoted policies, the Board has considered the land use impacts associated with the development of the proposed hotel, including nearby land uses, and has also considered the energy efficiencies that will result from allowing individuals who would otherwise stay overnight in Portland and make day trips to Yamhill County's wine country to stay locally instead. As concluded in the Lancaster TIA, the proposed hotel will have no significant effect on efficient and economic transportation throughout the region, and will not significantly effect any transportation facilities within the meaning of the TPR.

Plan Section V – Environmental Quality

A. Air, Water and Land Resource Quality

Goal Statement 1: *To conserve and to protect natural resources, including air, water, soil and vegetation and wildlife, from pollution or deterioration which would dangerously alter the ecological balance, be detrimental to human health, or compromise the beauty and tranquility of the natural environment*

Goal Statement 2: *To preserve and enhance the charm and amenity values of the county, while accommodating change, through ensuring harmony between urban development and the natural environment, at the same time cultivating more attractive urban environments in which to live, work and play*

The Board finds that the approval of the requested map amendments and exceptions is consistent with these two goal statements and implementing policies. There is not a sliver of evidence in the record to suggest that the proposed hotel would "dangerously alter the ecological balance." Nor is there substantial evidence in the record to support a finding that the hotel would otherwise be detrimental to human health or compromise the beauty and tranquility of the natural environment. In order to ensure environmental quality and promote sustainability, the Board has imposed a condition of approval requiring the applicants to include "green development" provisions, to be determined in the Site Design Review approval, including but limited to the following: (a) vehicle trip reduction; (b) energy conservation; (c) waste water reuse; and (d) building material conservation. The proposed hotel will provide harmonious development that does not detract from the beauty of the natural rural environment, but instead fits seamlessly in its surroundings.

XI. ZONING ORDINANCE PROVISIONS

Pursuant to Section 1204 of the Yamhill County Zoning Ordinance ("YCZO"), this application was processed through a Type C Procedure as described in YCZO Section 1301.01.C. Under YCZO 1208.02, a quasi-judicial change to a zoning map may be authorized provided that the applicant demonstrates compliance with the following criteria:

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

Compliance with all applicable goals, policies and provisions of the YCCP is addressed in Section X of these findings.

- B. *There is an existing, demonstrable need for the particular uses allowed by the requested zone, considering the importance of such uses to the citizenry or the economy of the area, the existing*

market demand which such uses will satisfy, and the availability and location of other lands so zoned and their suitability for the uses allowed by the zone.

The Board finds that substantial evidence in the record establishes that there is an existing demonstrable need for the particular use allowed by the requested zone. Detailed findings addressing the "need" criterion are set forth above in Section IX, and those findings are adopted and incorporated by reference. The use allowed by the requested zone, pursuant to an exception granted for applicable Goals, is a luxury wine country hotel. The analysis submitted by ECONorthwest demonstrates that the need exists for such a facility to serve Oregon's wine country. The Board has already adopted findings that the proposed use is important to the citizenry and the economy of the area. The use will generate an economic boost for Yamhill County by promoting the wine growing region and its vineyards and vendors, without creating undue traffic burdens, impact on water resources or withdrawing valuable land from agricultural production. The scale of the proposed hotel is consistent with the character of the Yamhill County wine country. The use not only benefits the economy but also the citizens of the state by promoting the wine growing industry and those citizens who work in the industry.

The ECONorthwest analysis also demonstrates that there is a significant existing market demand for the use. The market demand is not met by existing hotel facilities or bed and breakfast establishments. Notwithstanding that existing overnight accommodations in the county are well run and meet a need, this kind of facility represents an unfulfilled need given the explosive growth of the county's wine-related economy and wine tourism in general.

No other location is appropriate for this use. As explained in Section IX of these findings, and addressed in detail in the ECONorthwest analysis, the applicant has established that no other lands zoned RC are suitable for the use given either their location, size, or proximity to highways and urban areas. The subject property is appropriate for the use because of its reasonable access to State Highway 99, its proximity to vineyards and wineries, its views to the south and its distance from urban areas.

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

The Board finds that the proposed zone change is appropriate considering the surrounding land uses. The surrounding land uses consist of a bed and breakfast, the pre-existing quarry, and several wineries and related vineyards. The Board has already adopted findings in Section IX.B that the proposed use will not have adverse external impacts that could affect the wineries and vineyards, and the Board has adopted a condition of approval requiring that existing agricultural uses shall not be required to modify their existing accepted practices to accommodate the hotel, and other conditions that will ensure compatibility with adjacent uses. The proposed hotel is likely to be beneficial to the adjacent bed and breakfast because it will provide additional visibility to the area, and additional potential guests for the bed and breakfast. The Board finds that, for the reasons stated above in Section IX, the zone change is appropriate for the density and pattern of development in the area, based on the limited nature of the rezoning of the 65-acre parcel, the proposed location of the hotel on the site and its relatively small size, the extinguishing of the existing quarry use, and the reasons explained above regarding the locationally-specific nature of the proposed use. Also, the hotel will not introduce large-scale traffic demands, and proposes no public utilities. The Board has adopted findings regarding availability of utilities and services. The only public services necessary to support the use are public roads, sheriff services and fire service. The existing public road is appropriate for sheriff and fire services reaching the use.

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

Detailed findings addressing alternative locations are set forth above in Section IX of these findings. As previously stated, the proposed use has special features that necessitate location on the proposed site, which provides excellent access to the county's expanding wine industry. As explained in the ECONorthwest analysis and the applicants' separate alternatives analysis, there are no other areas in the county with zoning that would allow the proposed use that are sufficient size and location to accommodate this type of use. The use requires at least 35 acres in the wine country area, away from major highways, with expansive views of the countryside. The analyses submitted by the applicants consider both urbanized and unincorporated portions of Yamhill County, and correctly conclude that no other parcels in Yamhill County already designated for the proposed use would accommodate the proposed hotel.

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

Compliance with the applicable OARs governing exceptions is addressed in Section IX above.

XII. RESPONSES TO ISSUES RAISED BY OPPONENTS

The majority of issues raised by opponents that are relevant to applicable approval criteria are addressed in the findings set forth above. In addition to those findings, the Board adopts the following findings in response to specific issues raised by opponents.

A. Lack of Precedential Effect

Several opponents suggest that if the Board of Commissioners approves this application and related goal exceptions, the decision will create precedent that will require the county to also approve future applications for development on farmland. However, the statute regarding exceptions expressly requires that approval of an exception does not establish precedent for future applications:

"As used in this section, 'exception' means a comprehensive plan provision, including an amendment to an acknowledged comprehensive plan, that is applicable to specific properties or situations and does not establish a planning or zoning policy of general applicability." ORS 197.732(8)(a).

The Board finds that approval of one quasi-judicial land use application cannot legally set a precedent for future land use approvals. LUBA has recognized that a local government cannot be bound by findings that were made in previous land use decisions. *See, e.g., Jaffer et al. v. City of Monmouth*, LUBA No. 2005-123, April 24, 2006, at slip op. 8 (holding that a prior denial of a similar application on the same property did not create binding precedent in subsequent city decision). In *Femling v. Coos County*, 34 Or LUBA 328 (1988), LUBA rejected arguments that the county could be bound by prior findings on another land use application, explaining that:

"We held in *Nelson v. Clackamas County*, 19 Or LUBA 131, 140 (1990) that our system of land use adjudication 'is incompatible with giving preclusive effect to issues previously determined by a local government tribunal in another proceeding.' Similarly, the county is not bound to resolve 'claims' made in one application consistently with 'claims' in earlier applications *Nelson*, 19 Or LUBA at 136. In short, nothing the county decided in the 1993 proceeding precludes or binds its decision in this proceeding."

Exceptions to the Statewide Planning Goals are very difficult to obtain, and each application must stand or fall on its own specific factual situation. The Board's conclusion that the applicable approval criteria are satisfied regarding the present application does not create any precedent requiring that future exception applications must also be approved.

B. Demand Exists for One Hotel

Concerns were raised by DLCD and other individuals regarding the approval of this application creating a "line at the door" of applicants attempting to site similar hotel projects by relying on the same or similar reasons for the exceptions as the applicants here. However, the Board finds that evidence in the record establishes that the county will only be able to support one hotel of the unique variety proposed by the applicants, and there is no economic basis to support a demand for a second hotel of this type. The Board believes there is an opportunity for one such development and more than one such development could not satisfy the applicable criteria because it would not be economically viable. A second similar hotel would not be justifiable economically as a coattail rider on the approval of this application.

C. The Application Does Not Propose a "Destination Resort."

Several opponents argued that the application requested the siting of a "small destination resort," and therefore should be denied under the destination resort criteria of ORS 197.445 due to its location within 24 miles of the Metro UGB. However, the application does not propose a destination resort pursuant to ORS 197.435-467. The site does not qualify as a destination resort location because it is not within the map of eligible lands adopted by Yamhill County pursuant to ORS 197.455. Also, the applicants' proposal is for map amendments affecting only approximately 12 acres of property, which is less than the 20-acre minimum established by ORS 197.445(7). Further, the applicant is not proposing to spend the amounts required for "recreational facilities" under the same statutory section. The Board finds that opponents have not explained why the county should be required to treat an application as a "destination resort" where the application does not fit within the statutory criteria for such a resort and the applicants have not requested treatment as a destination resort under the county's plan and the applicable statutes. *See Doherty v. Morrow County*, 44 Or LUBA 141 (2003).

D. Compliance With Goal 14 Exception Criteria

Opponents express general disagreement with the premise that the county may approve an "urban" hotel use on rural land under the applicable goal exception criteria. However, the Board finds that this is precisely what the Goal 14 exception

rules are designed to allow, so long as those criteria are satisfied. Opponents assert that the applicant may not be allowed to rely in part on a need for specific "rural" characteristics in order to satisfy the applicable criteria for a goal exception. However, the actual criteria set forth in the applicable state rules contain no such prohibition. Rather, the rules provide that the county may approve the requested exception if it finds that the proposed development cannot be "reasonably accommodated" within an urban area or through the expansion of a UGB. The applicant has submitted a significant amount of evidence on which the Board has adopted findings that the proposed use cannot be reasonably accommodated on urban land, or other land that would not require an exception, and that the applicable criteria for the requested exceptions are met.

DLCD and other opponents have identified certain hotels in Napa Valley and Sonoma Valley that are located in urban areas, and offered those hotels as evidence that a wine country hotel does not need to be located in a rural setting. However, as explained in the Board's findings in Section IX.B above, relying on the materials submitted by the applicants and ECONorthwest, the applicants are proposing a very distinct and unique type of luxury wine country hotel that cannot be duplicated in an urban area. Indeed, evidence in the record from ECONorthwest dated May 25, 2006 addresses several of the other California hotels identified by opponents, and notes that one of those hotels, the Hotel Healdsburg, is regularly complained about by guests due to the noise of the surrounding urban area, and as a result the hotel provides earplugs in each room for its guests. As discussed in the ECONorthwest correspondence, other hotels identified by opponents can be readily distinguished from what is being proposed by applicants here based on level of service and amenities provided, as well as the overall environment. The proposed hotel is targeted at a distinct clientele of "core" wine consumers who will travel great distances in order to be able to enjoy a true wine country experience in Yamhill County. As described in more detail in Section IX.B of these findings, that experience cannot be found in an urban setting.

E. Appropriateness of RC Zoning

Opponents assert that it is not clear from the YCZO list of allowed uses in the Recreational Commercial zone whether the proposed hotel would be an allowed use in that zone, because it is not clear what the "recreational" element of the proposed hotel will be. First, the Board notes that there is not currently a development application before the county for the proposed hotel, and this issue will be most appropriately determined at the time an actual development application is submitted, rather than during this map amendment process. The Board also notes that the applicant's tentative proposal includes recreational uses such as tennis courts, a swimming pool, and hiking trails on the property, and that the RC zone also expressly allows "any use

not specifically listed as a permitted or conditional use in this district that is similar in character, scale and performance to the permitted uses specified in subsection 601.02." YCZO 601.04. Such a use may be allowed as a "similar use," subject to the provisions of YCZO 1206.

F. Site Size

Several opponents contend that because the applicants are requesting a rezone for only 12 acres of the entire 65-acre parcel, the applicants erroneously imposed a 35-acre minimum site size for purposes of the alternatives analysis. However, the Board finds that the basis for the 12-acre request is simply to minimize the amount of EFU land that is redesignated by only changing the map designations for the footprint of the hotel, parking, and access road to the property. The fact that the paved and constructed areas of the site plan only constitute 12 acres does not change the need for a minimum of 35 acres to site the hotel. The additional property is required for open space, views, and a proposed vineyard, which leaves land in agricultural production and contributes to the necessary ambiance of a luxury wine country hotel. The Board finds that the opponents' suggestion that this hotel could be successfully located on a 12-acre site in an urban area is incorrect. The expected economic benefit to the county and its wine tourism industry will not occur if the hotel is not successful.

G. Applicability of Goal 9

In correspondence dated June 7, 2006, DLCD raises concerns regarding the application of the exceptions criteria, noting that the applicant has based its proposal in part on the economic development elements of Goal 9, and asserting that there is no Goal 9 requirement that applies to this application. The Board disagrees with DLCD's apparent position that Goal 9 is essentially meaningless. Goal 9 expressly states that its purpose is "to provide adequate opportunities ... for a variety of economic activities vital to the health, welfare and prosperity of Oregon's citizens." The Board finds that Goal 9 is designed to encourage economic development, which will be one direct result of the proposed wine country hotel. The benefits of the proposed hotel on the Yamhill County economy are explained in the analysis and supplemental memoranda submitted by Eric Fruits of ECONorthwest, and the economic need for a hotel of this type has been well documented through evidence placed in the record before the Planning Commission and the Board. DLCD concedes that providing overnight lodging "may well be needed to support the economy of the county," and the Board agrees with this statement. The Board notes that ORS 197.340(1) provides that local governments, as well as both DLCD and LCDC, "shall give the goals equal weight in any matter in which the goals are required to be applied." Because the Statewide Planning Goals are intended to have equal weight, the county's need for

economic development can certainly provide a justification for exceptions under Goals 2 and 14, provided that all of the applicable criteria are met.

XIII. CONCLUSION

Based on all of the findings set forth above and all of the evidence in the record, the Board of Commissioners approves the applications with a limited use overlay that contains the following conditions:

CONDITIONS OF APPROVAL:

The Board attaches the following conditions of approval to its findings regarding Ordinance No. 790.

1. Quarry rights will be terminated with final approval of the comprehensive plan and zoning map amendments and final approval of Site Design Review. Final approval shall be the date that all appeals are exhausted on the above land use applications.
2. The applicant's Site Design Review application shall include "green development" provisions, to be determined in the Site Design Review approval and shall include, but not be limited to, the following: (a) vehicle trip reduction; (b) energy conservation; (c) waste water reuse; and (d) building material conservation.
3. The Site Design Review application shall include a construction management plan. The applicant shall coordinate with neighboring property owners during construction to minimize construction impacts on surrounding property owners.
4. The approved use shall include a hotel operator with a demonstrated track record of successfully executing boutique "get-away" hotels. The hotel operator shall strive for a high rating by a rating group such as *The Mobil Guide* or *The Michelin Guide*.
5. This exception approval shall be limited to the description of the use and the acreage proposed by the applicant at the June 7, 2006 public hearing.
6. The Site Design Review shall be a Type "C" process before the Planning Commission as described in Section 1301.01(C) of the Yamhill County Zoning Ordinance.
7. During Site Design Review the applicant shall demonstrate that the well will provide an adequate quantity and quality of water for the proposed use.

8. If the applicant does not receive a water right within three years of the final date that all appeals have been resolved on the zone change, the Planning Commission shall initiate a comprehensive plan amendment and zone change from RC Recreation Commercial to EF-80 Exclusive Farm Use pursuant to Section 1208.01(A) of the Yamhill County Zoning Ordinance.

9. The applicant shall waive their Measure 37 (2004) claim upon final approval of their comprehensive plan and zoning map amendment. Final approval shall be the date that all appeals are exhausted on the above land use application.

10. Prior to issuance of development permits, the landowner shall sign an affidavit acknowledging the following declaratory statement and record it in the deed and mortgage records for Yamhill County: "The subject property is located in an area designated by Yamhill County for agricultural uses. It is the county policy to protect agricultural operations from conflicting land uses in such designated areas. Accepted agricultural practices in this area may create inconveniences for the owners, occupants, or guests of the proposed hotel. It is not the agricultural operator's responsibility to modify accepted practices to accommodate the owner, occupants or guests of the hotel, with the exception of such operator's violation of state law."

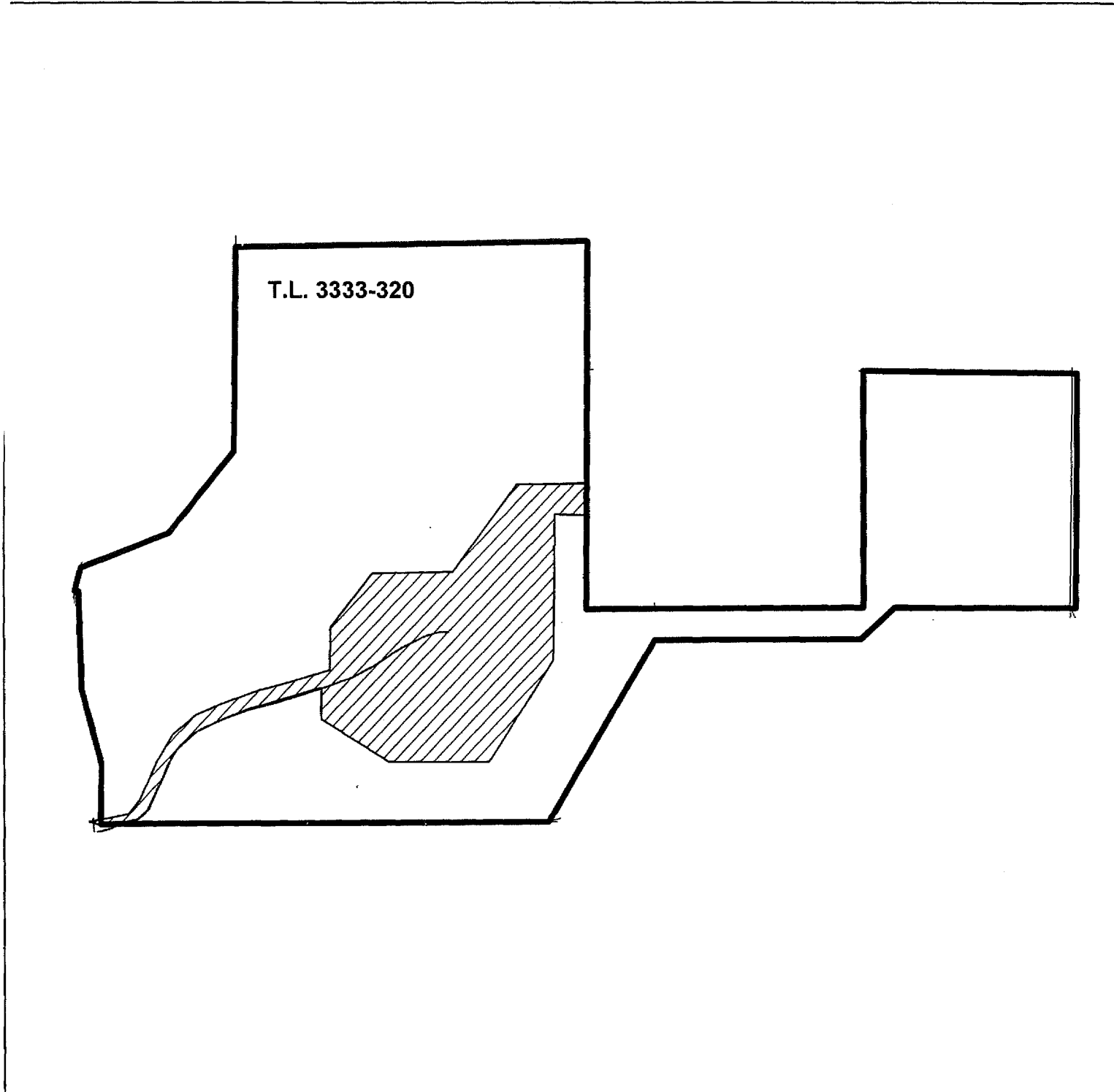
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Exhibit A
Ordinance 790
8/15/06
BO. 06-564

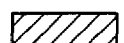
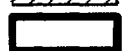
EXHIBIT "B" FOR ORDINANCE No. 790

COMPREHENSIVE PLAN AMENDMENT FROM
AGRICULTURE/FORESTRY LARGE HOLDING TO COMMERCIAL

ZONE CHANGE FROM EF-80 EXCLUSIVE FARM USE
TO RC RECREATION COMMERCIAL USE



Legend

-  Area Subject to Amendment
-  Subject Parcel



ORDINANCE No.: 790

EXHIBIT "B"

B.O.06-564

Prepared by Yamhill County Department of Planning and Development



BOARD OF COUNTY COMMISSIONERS

KATHY GEORGE • LESLIE LEWIS • MARY P. STERN

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August 17, 2006

Michael Robinson
Roger Alfred
Perkins Coie, LLP
1120 NW Couch St, 10th Floor
Portland, OR 97209

David Kahn
11363 SW Aventine Circus
Portland, OR 97219

RE: Planning Docket PAZ-01-07 / Ordinance 790
Applicants: David Kahn and Hazel B. Timmons Trust

Dear Mr. Kahn, Mr. Robinson, and Mr. Alfred:

At the August 16, 2006 formal session of the Board of Commissioners, the Board adopted Ordinance 790, approving the request for a Comprehensive Plan amendment and zone change on Tax Lot 3333-320.

Findings in support of the Board's decision are contained in Exhibit "A" of Ordinance 790, a copy of which is enclosed. Copies may also be reviewed in the Planning Department during normal business hours. The Planning Department is located at 525 NE Fourth Street, McMinnville, Oregon.

This action constitutes a final action by Yamhill County on the application, but you should be aware that a final land use decision by a local government may be appealed to the Land Use Board of Appeals in most circumstances. An appeal must be filed within 21 days of the date the decision became final, which was August 16, 2006. A successful appeal could revoke this approval.

If you have any questions regarding the county's action, you may contact me at the phone number listed above or the Planning Department (434-7516).

Sincerely,

Leslie Lewis, Chair
Board of Commissioners

LL-CW:cw
Enclosure

cc: Planning Department & Martin Chroust-Masin
Interested parties per attached list (w/out attachment)