

**BEFORE THE LAND USE HEARINGS OFFICER  
OF CLACKAMAS COUNTY, OREGON**

Regarding an appeal by Farah Ramchandani of a ) **FINAL ORDER**  
planning director decision approving a winery and tasting )  
room on a 23-acre parcel located at 33800 SW Ladd ) **Z0556-21-PDR**  
Hill Road in unincorporated Clackamas County, Oregon ) **(Stark Tasting Room)**

**A. SUMMARY**

1. On December 8, 2021, Kegan Flanderka (the “applicant”), filed an application for approval of a winery production facility and tasting room on a 23-acre parcel located at 33800 SW Ladd Hill Road; also known as tax lots 400 and 500, Section 30D, Township 3 South, Range 1 West, Willamette Meridian, Clackamas County (the “site”). The site and abutting properties to the north, south, and east are zoned EFU (Exclusive Farm Use). Properties to the west, across SW Ladd Hill Road, are zoned FF-10 (Farm Forest, 10-acre minimum lot size). The site is currently developed with two existing homes and associated accessory structures, all of which will be retained with this development.

a. The majority of the site is currently planted with grapes that will be used in the proposed winery production facility. In addition, while not under the same ownership, the two lots to the north of this parcel (Lots 31W30D 00301 and 31W30D 00300) are owned by the same family, are the current operational headquarters for Terra Vina Wines, and will supply the grapes grown on those parcels to the future winery as well.

b. The applicant proposed to construct a 4,400 square foot “main structure” for the processing of grapes, production of wine, and the storage of wine barrels and bottles. The main structure includes two loading areas, as well as an exterior concrete crush pad. This production facility will produce less than 50,000 gallons of wine annually. In addition, the applicant proposed to construct a 2,100 square foot “tasting room” adjacent to the main production facility to house a tasting room for the wines produced on-site and a commercial kitchen to produce food for direct consumption in association with the wine being served on-site. The tasting room will also provide retail sales of the wine being produced on-site directly to the consumer.

c. The site is within an identified “Sensitive Groundwater Area.” The applicant submitted a hydrogeologic review (Exhibits 22 and 24), which provides information and professional analysis of the geology and hydrogeology of the area in the immediate vicinity of the proposal. This study was further subject to peer review by the County’s consulting hydrogeologist (Exhibit 25), with both reports indicating the subject aquifer is capable of sustaining the proposed development with sufficient potable water, the proposed use is not likely to unreasonably interfere with existing wells in the vicinity, and the proposed development is not likely to unreasonably interfere with existing wells,

as required by Section 1006.03.E(2) of the Clackamas County Zoning and Development Ordinance (the “ZDO”).

2. On September 8, 2022, the planning director (the “director”) issued a written decision approving the application subject to conditions. (Exhibit 1). On September 15, 2022, Farah Ramchandani (the “appellant”) filed a written appeal of the director’s decision.

3. County Hearings Officer Joe Turner (the “hearings officer”) held a public hearing to receive testimony and evidence regarding the appeal. The applicant, County staff, and two area residents testified orally in support of the project. The appellant and three other area residents orally in support of the appeal. Other persons testified in writing in support of and in opposition to the proposed development. The principal contested issues in the case include the following:

- a. Whether the use is permitted in the EFU zone;
- b. Whether the adjacent property operating as Terra Vina Wines property is part of the proposed application;
- c. Whether the property owners can sell one of the tax lots that make up the site separate from the proposed use;
- d. Whether, and to what extent, the property owners can conduct activities and gatherings on the site;
- e. Whether traffic generated by the proposed use will create or exacerbate a hazard;
- f. Whether the County can consider other, non-safety related, traffic impacts of the proposed use;
- g. Whether the applicant can be required to reduce posted speed limits, install additional stop signs, or demonstrate compliance with sight distance requirements at existing intersections;
- h. Whether the applicant’s hydrogeologic review is sufficient to demonstrate compliance with the approval criteria in ZDO 1006.03(E)(2);
- i. Whether the applicant can be required to demonstrate County approval of a method of sewage disposal for the proposed use prior to approval of this application.

4. The hearings officer concludes the applicant sustained the burden of proof that the proposed use does or can comply with the applicable approval criteria of the ZDO subject to conditions of approval that ensure such compliance occurs in fact. The appellant

did not rebut substantial evidence in the record in support of the application. Therefore the hearings officer denies the appeal and upholds the planning director's decision, based on the findings and conclusions adopted or incorporated herein and subject to the conditions of approval at the end of this final order.

## **B. HEARING AND RECORD**

1. The hearings officer received testimony at the public hearing about the appeal on October 27, 2022. All exhibits and records of testimony have been filed with the Planning Division, Clackamas County Department of Transportation and Development. At the beginning of the hearing, the hearings officer made the statement required by ORS 197.763 and disclaimed any *ex parte* contacts, bias, or conflicts of interest. The following is a summary by the hearings officer of selected testimony offered at the public hearing.

2. County planner Clay Glasgow summarized the director's decision and the applicable approval criteria.

a. He noted the proposed winery and tasting room are permitted uses in the EFU zone, subject to the approval criteria in ORS 215.452. The purpose of the Type II review is to ensure that the use complies with the applicable criteria for the permitted use.

b. The site is located within a State identified "Sensitive Groundwater Area." The applicant submitted a hydrogeologic study (Exhibits 22 and 24) that concluded the proposed use will have no impact on groundwater levels in the area.

c. The applicant is only proposing a winery and tasting room with this application. The applicant is not proposing to operate an event facility on the site.

d. Although the site consists of two separate lots, they are "tied together" for purposes of this application. The property owners cannot sell one of the lots and continue to operate the proposed facility.

e. The County denied a septic permit for the site in 1989. The applicant will be required to obtain approval from the County Soils Department for a method of sewage disposal on the site. Sewage disposal methods may include the use of holding tanks for this use, as noted in Exhibit 20.

3. County transportation engineer Christian Snuffin testified that SW Ladd Hill Road is a relatively low volume roadway that currently carries an average of 495 vehicles per day. The County defines a "very low volume roadway" as a road carrying less than 400 vehicles per day. Three crashes were reported on this road between 2014 and 2020. The intersection of Wilsonville and Ladd Hill Roads was recently changed to a four-way stop. This application is subject to the approval criteria in ORS 215.452, which limit the County's transportation review to issues of safety and on-site circulation. Given the low traffic volume and limited crash history SW Ladd Hill Road is not a hazardous road.

4. The applicant, Kegan Flanderka, summarized the proposed use and responded to the appeal.

a. He noted that the proposed winery and tasting room are outright permitted uses in the EFU zone, provided the use complies with the criteria in ORS 215.452. The applicant proposed to construct a 6,500 square foot facility consisting of a 4,400 square foot production and storage facility and a 2,100 square foot tasting room, kitchen, and retail sales facility. The applicant will widen the existing driveway serving the site to accommodate two-way traffic. There is an existing vineyard on the site. The two abutting tax lots north of the site are also planted as vineyards, Terra Vina Wines, and are owned by the same family. Grapes from both properties will be used in the production facility on the site.

i. The 2,000 square foot tasting room will include a tasting room, kitchen, offices, and restrooms. The tasting room itself is limited to roughly 1,000 square feet and is relatively small compared to those at other wineries.

ii. This use is limited to a maximum 18 days of agri-tourism or other commercial events annually.

b. The hydrogeologic report demonstrates that the proposed use will not have an undue impact on the existing groundwater aquifer and water table in the area. The proposed facility will use roughly 1,000 gallons of water per day (“gpd”) for wine production, the tasting room, and kitchen, averaged over a year. Wine production requires between two and six gallons of water per gallon of wine. The hydrogeologic analysis assumed a “worst case scenario” of six gallons of water per gallon of wine. The analysis also included water use in the proposed kitchen. The vineyards will not be irrigated.

i. The hydrogeologic analysis is based on water usage of 5,000 gpd, the maximum permitted withdrawal for industrial uses, which is projected to result in a 2.7 to 4.5 foot reduction in groundwater levels in the area. The proposed use will have no impact on existing groundwater wells in the area. Opponents referred to problems with wells in Newberg, but Newberg is located in Yamhill County, which is outside of the Sensitive Groundwater Area identified by the state.

ii. The well extensions noted by opponents of the project were noted in in the hydrogeologic analysis, but they are located outside of the Sensitive Groundwater Area.

iii. The well on the Appellant’s property does not appear to tap into the Columbia River Basalt Aquifer. There has been a water tank on that property since at least 2007, prior to the Appellant’s purchase of her property. Therefore, the Appellant should have been aware of the limited water availability on that property when she purchased it.

c. The two tax lots that make up the site are “tied together” for purposes of this use. The property owners cannot sell one of the tax lots and continue to operate the winery and tasting room.

d. Terra Vine Wines located on the property to the north of the site is a vineyard, not a winery. They only grow grapes; they do not process them into wine. That property is planted with less than 15-acres of grapes and therefore, cannot operate a winery. The County approved a farmstand permit for that property, which allows vineyard tours.

e. The applicant must obtain County approval of a sewage disposal system for the site. The prior septic denials are not relevant, as technology has changed over time and properties that could not be served with septic systems in the past can now obtain approval. The property south of the site has an approved septic system. If necessary, the applicant could operate this facility without a septic system, using holding tanks and periodic pumping.

4. The Appellant, Farah Ramchandani, summarized her appeal.

a. She argued that many of the documents relied on by the applicant are “out of date.” The aerial photo included in the application does not show recent development on surrounding properties. The traffic counts are also outdated. Many properties in the area have been sold and redeveloped since the traffic counts were taken in 2020. These uses generated additional traffic and crashes on SW Ladd Hill Road. Traffic generated by this use will cause additional crashes. SW Ladd Hill Road was closed for a time due to an accident and fire. Traffic from this use will increase the risk of similar incidents.

b. She argued that the actual use will be much larger than suggested in the application. The applicant is proposing 22 parking spaces on the site with a gravel overflow parking area. The County approved a farm stand, casefile Z0136-21-PDR, on the Terra Vina Wines property north of the site in May 2021 and that property owner has been conducting events on that property for the past year.

c. The groundwater analysis is inadequate, as it fails to include a number of new wells or well extensions that were created due to the failure of existing wells. The 285-foot deep groundwater well on her property, located next door to the site, runs out of water every summer. She must have water trucked to her property. A neighboring resident extended their well from 280 feet to 327 feet in April 2021, which was not included in the applicant’s groundwater analysis. “Mr. Cross” lowered the pump in his well by 20 feet in order to maintain water service for his residence. Other wells in the area were deepened or pumps lowered and those were not considered in the applicant’s analysis.

d. The County previously denied septic permits for this site due to high groundwater on the site.

e. She argued that the property owners will expand this use beyond the scope of the approval.

5. Jennifer Miller-Davis testified that the owners of the Terra Vine Wines facility north of the site frequently hold large events on their property. She argued that the proposed winery production facility will impact groundwater levels in the area. It requires 4.7 liters of water to produce one liter of wine. This use will also generate additional traffic at the intersection of Edminston and Wilsonville Roads and that intersection should be changed to a four-way stop. The applicant should be required to install signage to direct customers to and from the winery via the intersection of Wilsonville and Ladd Hill Roads, which is a four-way stop. Many drivers exceed the posted speed limit on Wilsonville Road under existing conditions and this use will exacerbate that problem.

6. Anne and Frank Dufay testified in support of the application. They have never had any issues with water supply from their well. Although they are concerned about groundwater, they believe the scientific analysis in the applicant's hydrogeologic reports.

7. Tamra Busch-Johnsen expressed concern with the impact of this use on the groundwater table in the area. The groundwater analyses are not credible and the conclusion that the use is "unlikely" to impact groundwater levels is not conclusive. The analysis must consider the impacts of climate change with dry summers that may cause an increase in groundwater use and a reduction in groundwater recharge. She argued that a 2,000 square foot tasting room is excessive. Traffic from this use will create a hazard. She rides her horses on SW Ladd Hill Road and there are no shoulders. Many drivers speed on this road. The intersection of SW Kramien and Ladd Hill Roads is an unsafe blind corner.

8. Annette Cooley testified that many residents in the area had to extend their wells in order to maintain their water supply. This application should be denied in order to protect the water supply of existing residents. She argued that SW Kramien is unsafe.

9. At the conclusion of the hearing the hearings officer held the record open for a total of three weeks: one week, until November 3, 2022, to allow all parties the opportunity to submit additional testimony and evidence, a second week, until November 10, 2022, to allow all parties the opportunity to respond to the new evidence, and a third week, until November 17, 2022, to allow the applicant to submit a final argument. The record in this case on November 17, 2022.

### **C. DISCUSSION**

1. ZDO 1305.02.D.2 authorizes the hearings officer to hear appeals of planning director decisions. Pursuant to ORS 215.416(11)(a), appeals of administrative decisions must be reviewed as a *de novo* matter. The hearings officer is required to conduct an

independent review of the record. He is not bound by the prior decision of the planning director and does not defer to that decision in any way. New evidence may be introduced in an appeal, and new issues may be raised. The applicant must carry the burden of proof that the application complies with all applicable approval criteria in light of all relevant substantial evidence in the whole record, including any new evidence.

2. The proposed winery and tasting room are permitted uses in the EFU zone. ORS 215.452(1)(a). The site is currently planted with 15-acres of vineyard and the proposed winery will produce less than 50,000 gallons of wine. Therefore, objections to the establishment of a commercial use in the EFU zone are contrary to the law. The County must approve this application if it meets the approval criteria listed in ORS 215.452 and other applicable criteria discussed herein and in the director's decision.

a. Although the applicant proposed to utilize grapes produced on the Terra Vina Wines property north of the site, that property is in a separate ownership and use of Terra Vina Wines' grapes is not necessary to demonstrate compliance with the applicable approval criteria. Therefore, uses on the Terra Vina Wines property are not relevant to this application and the County has no authority to require that the site be combined with the Terra Vina Wines properties.

b. Grapes produced on the site are necessary to demonstrate compliance with the applicable approval criteria. Therefore, the applicant cannot sell one of the two tax lots that make up the site and continue operating the proposed winery and tasting room.

c. ORS 215.452(2)(b) authorizes wineries to conduct additional activities that are directly related to the sale or marketing of wine in addition to producing and distributing wine, including, but not limited to: wine tastings, wine club activities, winemaker luncheons and dinners, winery and vineyard tours, etc. ORS 215.452(3) allows the use of on-site kitchen facilities for the preparation of food and beverages incidental to on-site retail sale of wine. State law does not limit the size of tasting room facilities.

d. ORS 215.452(2)(d) authorizes wineries to "Carry out agri-tourism or other commercial events on the tract occupied by the winery subject to additional review and approvals set out in ORS 215.452(5), (6), (7) and (8). The applicant is not proposing such agri-tourism or other commercial events with this application. The applicant must obtain additional County approval for such events. The hearings officer cannot deny this application based on neighbor's unsupported concerns that the applicant or property owners will conduct such activities without required permits. Expansion without County approval would be violation of the permit and subject to enforcement action.

e. Noise from activities on the site is subject to the state noise limitations of OAR 340-0035.

3. State law prohibits the County from imposing additional approval criteria for this type of use, including review of traffic volumes and congestion. The County may only regulate traffic access and internal circulation ORS 215.452(11)(b) and public health and safety ORS 215.452(12)(b).

a. The applicant proposed to widen the existing driveway serving the site to accommodate two-way traffic. This is required by condition 6.

b. Based on neighbors' testimony, there are no speed limit signs on the roads serving the site. Therefore, the speed limit is 55 mph pursuant to the "basic speed rule" of ORS 811.105(e), subject to limitations for road conditions as set out in ORS 811.100. Residents testified that many drivers exceed reasonable speeds on roads in the area. However, speeding is an existing problem, which the applicant cannot be required to remedy.

c. There is no evidence that roads providing access to the site are inherently hazardous. As Mr. Snuffin testified, there have been very few reported crashes on roads in this area, indicating that these roads are not hazardous. Neighbors testified that roads in the area are narrow and winding, with blind corners, nonexistent shoulders, and other issues. However, these conditions are common on roads in the rural areas of the County and obvious to drivers. Reasonably prudent drivers will reduce their speed to accommodate such changing road conditions. Unfortunately not all drivers are prudent enough to observe speed limits and road conditions. However there is no evidence that the development proposed in this application will contribute a disproportionate share of imprudent drivers.

d. The appellant argued that development in the area has increased traffic volumes on area roads since traffic counts were last conducted in 2020. However, the appellant failed to provide any support for this assertion. The rural (FF-10 and EFU) zoning in this area significantly limit potential development and associated traffic increases.

e. The applicant cannot be required to demonstrate compliance with current County sight distance requirements at existing intersections. As discussed above, state law limits the County's review to issues of access and safety. Given the very limited number of reported crashes in this area, there is no evidence that lack of sight distance is a hazard.

f. The applicant has no authority to impose lower speed limits on area roads or install additional stop signs at intersections. Area residents can petition the County to review the need for such modifications, but the County cannot require this applicant to implement such measures.

4. The site is located within a State identified "Sensitive Groundwater Area" and the applicant is proposing to use an exempt use well to serve a new industrial, commercial,



or institutional development within the sensitive groundwater area. Therefore, this application is subject to ZDO 1006.03(E)(2).

a. The applicant submitted a hydrogeologic review as required by ZDO 1006.03(E)(3) (Exhibits 22 and 24) and the County's consulting geologist reviewed the applicant's report as required by ZDO 1006.03(E)(4) (Exhibit 25).

b. The hearings officer finds that the applicant's hydrogeologic review, as confirmed by the County's consulting geologist, demonstrates compliance with the applicable approval criteria set out in ZDO 1006.03(E)(2), i.e., that the subject aquifer is capable of sustaining the proposed development with sufficient potable water (ZDO 1006.03(E)(2)(a)), the proposed development is not likely to unreasonably interfere with existing wells (ZDO 1006.03(E)(2)(b)), and the proposed development is not likely to contribute to the overdraft of the affected aquifer (ZDO 1006.03(E)(2)(c)). There is no substantial evidence to the contrary. Neighbor's unsupported concerns about potential aquifer impacts are not substantial evidence sufficient to overcome the expert testimony of the licensed professional geologists for the applicant and the County.

i. The applicant's analysis was based on the "worst case scenario," assuming maximum water consumption in the winemaking process and water use in the proposed kitchen.

ii. The applicant's geologist considered the "well extensions" noted by neighbors as discussed in further detail in Exhibit 48.

iii. The fact that the appellant's existing well runs dry in the summer months is not determinative. As discussed in Exhibits 49 and 50, that well does not appear to draw from the Columbia River Basalt Aquifer that is the subject of the applicant's analysis.

iv. The applicant's geologist responded to the alleged inadequacies noted in the letter from the appellant's attorney, Exhibits 40 and 45. The hearings officer finds that the applicant's response adequately addresses the issues raised and the evidence in the record demonstrates that the application complies with ZDO 1006.03.

5. The applicant is required to obtain County approval of a method of sewage disposal for the proposed use as part of the building permit review process. Sewage disposal for the proposed commercial facility may utilize holding tanks and periodic pumping, as noted in Exhibit 20. Review and approval of sewage disposal facilities is within the exclusive jurisdiction of the County Septic and Onsite Wastewater Systems agency. The County is not required to find that it is feasible to obtain a septic or other sewage disposal permit as part of this review. The County is only required to find that the applicant is not precluded from obtaining such permits as a matter of law. *Wal-Mart Stores, Inc. v. City of Bend*, LUBA No. 2006-040, 52 Or LUBA 261, 285-287 (2006). In this case, there is no substantial evidence that the applicant is precluded from obtaining

required permits and approvals from these agencies. Therefore a condition of approval requiring the applicant to obtain approval is allowed.

#### **D. CONCLUSION**

Based on the above findings and discussion, the hearings officer concludes that the proposed development does or can comply with the applicable approval criteria, provided the applicant complies with conditions of approval warranted to ensure that the proposed development in fact complies with those standards. The appellant failed to rebut that proof with at least equally probative substantial evidence. Therefore the application should be approved subject to the conditions of approval adopted by the director.

#### **E. DECISION**

Based on the findings, discussion and conclusions provided or incorporated herein and the public record in this case, the hearings officer hereby approves Z0556-21-PDR (Stark Tasting Room), subject to the following conditions:

#### **Conditions of Approval**

1. Approval of this Land Use Permit application for a Winery is based on the application materials and site plan submitted on December 8, 2021. No site development shall occur under this permit beyond that specified in this decision. It shall be the responsibility of the property owner(s) to comply with this decision and the limitations of approval described herein.
2. A Winery must comply with all applicable building, plumbing, sanitation, and other requirements relating to health and safety and to siting requirements of the Exclusive Farm Use Zone (setbacks) at the time of construction.
3. The winery's gross income from the sale of incidental items or services (as provided in ORS 215.452(2)(c) to (e)) sold in the previous year shall not exceed 25 percent of the gross income of the onsite retail sale of wine that was produced in conjunction with the winery. The gross income of a winery does not include income received by third parties unaffiliated with the winery.
4. The winery owner shall at all times have at least 15 acres of planted vineyard or an executed contract for the purchase of wine grapes for the same amount of contiguous acreage or this approval will become void.
5. The structure and all onsite public gathering places of the winery shall located as shown on the submitted site plan.

6. Applicant to receive approval from Clackamas County Development Engineering regarding driveway, onsite circulation, and on-site parking prior of commencement of use. No additional access points on to Ladd Hill Road will be allowed.
7. Stormwater management shall be as required by Clackamas County Development Engineering.
8. Applicant to satisfy requirements of the Clackamas County Septic and Onsite Wastewater Systems Program, as detailed in this decision.
9. The winery owner may establish an onsite kitchen licensed by the Oregon Health Authority for the preparation of food and beverages as described in condition 7 above to include incidental sales of prepackaged and catered food and beverages required by the Liquor Control Act. The kitchen shall not utilize menu options or meal services that cause the kitchen facilities to function as a café or other dining establishment open to the public.
10. Agritourism and other commercial events have not been approved with this application. Specific operations that are allowed related to the sale or marketing of wine have been outlined in the findings above (wine tastings, wine club activities, vineyard tours, winemaker luncheons and dinners, meetings or business activities, winery staff activities, open house promotions, etc.) Other Agritourism and Commercial event hosting in conjunction with a winery will require further review and permitting as outlined in ZDO 401.
11. Approval of this land use permit is valid for four years from the date of the final written decision. During this four year period, the approval shall be implemented. “Implemented” means: A building permit for a new primary structure that is the subject of the application shall be obtained and maintained (ZDO Section 401.10(A)).
12. Prior to issuance of building permits, the applicant shall submit plans that clearly outline a waste and recycling enclosure that meets the requirements specified in [ZDO-1021](#). The applicant shall work with Clackamas County’s Sustainability & Solid Waste staff to finalize plans that comply with design standards

DATED this 5th day of December 2022.



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Joe Turner, Esq., AICP  
Clackamas County Land Use Hearings Officer

## **ENDANGERED SPECIES ACT NOTICE**

The federal Endangered Species Act (ESA) is not a criteria for approval of this application. The County has reviewed the approval standards in light of the requirements of the ESA, believes that the criteria for approval are consistent with the terms of the ESA and has submitted the Development Ordinances for consideration for a "4(d)" programmatic limitation. However, the analysis included in this decision does not include an evaluation by the County of the applications for consistency with the ESA nor does the decision reach any conclusions concerning that federal law. The applicant are responsible for designing, constructing, operating, and maintaining the activities allowed by an approval of this application in a manner that ensures compliance with the ESA. Any question concerning this issue should be directed to the applicant, their consultants, and the federal agencies responsible for administration and enforcement of the ESA for the affected species.

## **APPEAL RIGHTS**

ZDO 1307.10(F) provides that, with the exception of an application for an Interpretation, the Land Use Hearings Officer's decision constitutes the County's final decision for purposes of any appeal to the Land Use Board of Appeals (LUBA). State law and associated administrative rules promulgated by LUBA prescribe the period within which any appeal must be filed and the manner in which such an appeal must be commenced. Presently, ORS 197.830(9) requires that any appeal to LUBA "shall be filed not later than 21 days after the date the decision sought to be reviewed becomes final." This decision will be "final" for purposes of a LUBA appeal as of the date of mailing (which date appears on the last page herein).