

**COUNTY OF YAKIMA, WASHINGTON  
HEARING EXAMINER'S DECISION**

**February 15, 2018**

<b>In the Matter of an Application</b>	)	
<b>For a Type 3 Use Submitted by:</b>	)	
	)	
<b>Lee Fergestrom on behalf of</b>	)	<b>CUP2017-00115</b>
<b>Fortuity Holdings, LLC, owner</b>	)	<b>PRJ2017-00189</b>
	)	
<b>To Establish a Destination Agricultural</b>	)	
<b>Tourist Operation as an Accessory Use</b>	)	
<b>To a Winery that is to be located at 160</b>	)	
<b>Lombard Loop Road northwest of Buena</b>	)	

**A. Introduction.** The preliminary background findings relative to the public hearing process conducted for this application are as follows:

(1) The Hearing Examiner conducted an open record public hearing regarding this application on February 1, 2018.

(2) The staff report prepared and presented by Senior Project Planner Dinah Reed detailed the pertinent considerations relative to the proposal and recommended approval of the application subject to conditions.

(3) The applicant's representative for this application is Bill Hordan of Hordan Planning Services. He testified in favor of the application after introducing the applicant's governing members, Lee Fergestrom and Emily Christensen, husband and wife, as well as winemaker Johnny Brose. Emily Christensen testified in favor of the application and

indicated that she has local roots, having attended West Valley High School, and that the grapes for the winery will be produced in the Yakima Valley.

(4) No one else testified and no written comments from the public were presented.

(5) This decision has been issued within ten business days of the public hearing.

**B. Summary of Decision.** This application is approved subject to conditions.

**C. Basis for Decision.** Based on a view of the site with no one else present on January 31, 2018; a consideration of the information contained in the staff report, exhibits, testimony and other evidence presented at an open record public hearing on February 1, 2018; and a review of the Yakima County Comprehensive Plan (*Horizon 2040*) and the Yakima County Zoning Ordinance (YCC Title 19); the Hearing Examiner makes the following:

## **FINDINGS**

**I. Applicant/Property Owner/Representative.** The applicant and property owner is Fortuity Holdings, LLC, 1925A 8<sup>th</sup> Avenue West, Seattle, Washington 98119. The governing members of Fortuity Holdings, LLC are Lee Fergestrom and Emily Christensen. The representative of the applicant and property owner for this application is Bill Hordan of Hordan Planning Services, 410 North 2<sup>nd</sup> Street, Yakima, Washington 98901.

**II. Location.** The location of the property is 160 Lombard Loop Road, Buena, Washington. It is on the east side of Lombard Loop Road about 700 feet north of Yakima Valley Highway

and about three miles northwest of the community of Buena. The Assessor's tax parcel number for the property is 201107-14002.

**III. Hearing Examiner Jurisdiction.** The details regarding the Hearing Examiner's jurisdiction in this matter may be summarized as follows:

(1) The proposal is subject to the Yakima County Unified Land Development Code, YCC Title 19. Table 19.14-1(12) in Chapter 19.14 of the Yakima County Code (YCC) lists a Destination Agricultural Tourist Operation as defined by YCC §19.01.070(1) as a Type 3 use requiring Type 3 review in the Agriculture (AG) and Rural-10/5 (R-10/5) zoning districts.

(2) YCC §19.30.030(3)(a) provides that Type 3 review procedures are specified by YCC §19.30.100 and YCC §16B.03.030(1)(e). YCC §19.30.100 lists additional or greater conditions that may be imposed, but YCC §19.30.080(7) lists the criteria upon which written findings and conclusions must be based. YCC §19.30.030(3)(b)(vi) provides that Type 3 Conditional Uses are not generally appropriate throughout the zoning district. YCC §19.01.070(21) provides that conditional uses are considered generally incompatible with adjacent and abutting property because of their size, emissions, traffic generation, neighborhood character or for other reasons, but may be permitted by the Hearing Examiner when he determines, after holding a public hearing, that the use complies with the provisions and standards of the zoning ordinance, YCC Title 19, and that difficulties related to the compatibility, the provisions of public services and the policies of the Comprehensive Plan have been adequately resolved.

(3) YCC §19.30.080(7) provides that the Hearing Examiner shall prepare written findings and conclusions stating the specific reasons upon which the decision or recommendation to approve, approve with conditions or deny an application is based by addressing at a minimum the following criteria:

(a) The present and future needs of the community will be adequately served by the proposed development and that the community as a whole will be benefited rather than injured by the use;

(b) The proposed use is compatible with neighborhood land uses, the goals, objectives and policies of the Comprehensive Plan and the legislative intent of the zoning district;

(c) The site of the proposed use is adequate in size and shape to accommodate the proposed use;

(d) All setbacks, spaces, walls and fences, parking, loading, sitescreening, landscaping and other features required by this Title;

(e) The proposed use complies with other development and performance standards of the zoning district and this Title;

(f) The site for the proposed use relates to streets and highways adequate in width and pavement type to carry the quantity and kind of traffic generated by the proposed use;

(g) The proposed use will have no substantial adverse effect on abutting property or the permitted use thereof;

(h) In the case of residential uses, the housing density of the development is consistent with the existing zoning densities, or the Comprehensive Plan, and that all other aspects of the development are consistent with the public health, safety and general welfare for the development and for adjacent properties; and

(i) The development complies with all criteria in Chapter 19.18 applicable to the proposed use, unless otherwise administratively adjusted.

(4) YCC §19.30.100 provides that the Hearing Examiner may impose additional or greater requirements as conditions for approval of a Type 3 conditional use to ensure that the proposal meets the standards and criteria for approval.

**IV. Application.** The main aspects of the uses proposed by this application may be described as follows:

(1) This application seeks approval to establish a Destination Agricultural Tourist Operation (ATO) as an accessory use to a Type 1 permitted Winery use to be established on a

parcel which is split-zoned. The northern 1.28 acres of the parcel are within the Agriculture (AG) zoning district and the southern 1.17 acres of the parcel are within the Rural-10/5 (R-10/5) zoning district. The Type 3 ATO accessory use would be located within the first floor and the grounds of an existing residential structure on the subject parcel that was formerly known as the Sawyer House.

(2) The Winery would be located within a new 40-foot by 60-foot building having a loft and a height of about 30 feet. Wine making on the property would consist of crushing, fermenting, aging, bottling and storage. A new 20-foot by 30-foot outdoor tasting room is also proposed in either of two alternative locations shown on the site plan. The public hours of operation of the Winery will generally be from about 10:00 a.m. to 5:00 p.m. daily. The Winery would replace the former floriculture greenhouse and nursery use of the parcel which was considered the primary use on the parcel when an ATO was approved as its accessory use in 2015 by CUP2015-00014. Prior to that, a Destination Winery/Agricultural Tourist Operation conditional use permit was approved for the parcel in December 2010, but that permit expired without the approved use being established.

(3) The proposed Destination Agricultural Tourist Operation would be an accessory or secondary event center use of the property for small weddings, seminars, receptions, family reunions and similar indoor and outdoor activities previously allowed for the ATO by CUP2015-000014. The first floor and grounds of the existing residence would be utilized for the ATO while the second floor of the residence would continue to be used for residential purposes. The ATO use would generally take place on weekends during summer months, but also at other times depending upon what rental times are requested. Events could occur at any time between 8:00 a.m. and 11:00 p.m. They could occur indoors on the first floor of the residential structure which could accommodate up to 99 people and would mainly be used for serving beverages and catered food. No on-site food preparation is proposed. Weather permitting, the outdoor patio and lawn areas could also be used for reception and other event activities to accommodate up to a total of 250 persons on the property.

(4) Access to the property is via a U-shaped driveway that wraps around the front yard in a north-south direction and joins Lombard Loop Road in two locations. There are 85 existing parking spaces as the required number of parking spaces for the uses that were approved by CUP2015-00014.

(5) One sign is proposed near the north driveway approach. The sign is proposed to be about 8 feet high and is proposed to be illuminated from the ground during events that take place at night.

(6) A Group B Public Community Water System was approved and installed under CUP2015-00014 which is designated as Sawyer Gardens Water System ID #AD323. The on-site restrooms are connected to an existing on-site septic system which was approved in connection with CUP2010-00022.

**V. Notices.** Notices of the February 1, 2018, open record public hearing at 1:30 p.m. were provided in the following ways:

Mailing of notice of hearing to property owners within 300 feet:	January 5, 2018
Publishing of notice of hearing in the Yakima Herald-Republic:	January 5, 2018
Posting of notice of hearing on the property:	January 12, 2018

No comments were received from any property owners or members of the public. A comment was received from the Yakima County Transportation Division to the effect that both existing road approaches to Lombard Loop Road will have to be approved with new permits requiring 30 feet of width due to the speed limit, the site distance, the two-way traffic, and the expected increase in traffic generated by the Winery, some of which may be larger vehicles transporting goods associated with wine making.

**VI. Environmental Review.** A State Environmental Policy Act (SEPA) Determination of Non-Significance (DNS) was issued for an Agricultural Tourist Operation by SEP2010-022 that included review of the proposed and now existing parking. The current proposal is categorically exempt from SEPA review per WAC 197-11.

**VII. Type 3 Review Criteria.** The requisite Type 3 review criteria prescribed by YCC §19.30.080(7) apply to the proposed Destination Agricultural Tourist Operation as an accessory use to the primary Winery use on the subject parcel in the following ways:

**(1) The present and future needs of the community will be adequately served by the proposed development and that the community as a whole will be benefited rather than injured by the use.** The present and future needs of the community will be adequately served by the proposed development and the community as a whole will be benefited rather than injured by the proposed use because there is an increasing demand in Yakima County for event facilities, especially when accessory to a Winery. Wineries in Yakima County are becoming major tourist attractions that bring visitors and enhance the economy of the local areas where they are located.

**(2) The proposed use is compatible with neighborhood land uses, the goals, objectives and policies of the Comprehensive Plan and the legislative intent of the zoning district.** The proposed Destination Agricultural Tourist Operation to be accessory to a Winery is compatible with neighborhood land uses, the goals, objectives and policies of the Comprehensive Plan and the legislative intent of the zoning district for the following reasons:

**(a) The proposed Destination Agricultural Tourist Operation to be accessory to a Winery use is compatible with neighborhood land uses because it is located within an enclave of attractively landscaped grounds that are surrounded by orchards and vineyards that will not be adversely affected by the proposed use and which will not adversely affect the proposed use. The parking lots and a parking circulation plan are proposed and arranged in such a manner so as to provide safe access from the event center to and from the parked vehicles and so as to provide a fire access lane per Yakima County Fire and Life Safety review. There is extensive vegetation on the grounds of the existing residence which will screen the proposed uses from Lombard Loop Road. The adjacent agricultural uses will also provide natural screening and noise reduction qualities which will dispense with the need for any other sitescreening in order for the proposed uses to be compatible with neighborhood land uses. A Final Determination of Non-Significance was issued for the ATO for SEP2016-023 on August 9, 2016, which was not appealed. Even though property owners within 300 feet of the site were notified of the application and of the public hearing of February**

1, 2018, no written comments in opposition to the proposed uses were submitted by any property owners and no property owners appeared to testify at the hearing.

(b) The proposed Destination Agricultural Tourist Operation to be accessory to a Winery use is compatible with the intent of the 2040 Comprehensive Plan Rural Self-Sufficient land use designation because it protects the environment and provides adequate facilities and services commensurate with the density of development, and is compatible with the intent of the 2040 Comprehensive Plan Agricultural Resource land use designation because it is an agriculturally related accessory use that supports agricultural production. More specifically, it is compatible with the 2040 Comprehensive Plan Goal LU-ER-AG 1 which is to maintain and enhance productive agricultural lands and discourage uses that are incompatible with farming activities. It is also compatible with the 2040 Comprehensive Plan Policy LU-ER-AG 1.5 which is to allow for accessory uses, including non-agricultural uses that support, promote or sustain agricultural operations and production such as event facilities and other amenities that are determined to support agriculturally related entrepreneurial efforts.

(c) The proposed Destination Agricultural Tourist Operation to be accessory to a Winery use is compatible with the legislative intent of the Rural-10/5 (R-10/5) zoning district because it maintains rural character where fire protection services and access to paved roads are available as prescribed for that zoning district by YCC §19.11.030(1)(b) and is compatible with the legislative intent of the Agriculture (AG) zoning district because it preserves and maintains areas for the continued practice of agriculture and is compatible with agricultural activities as prescribed for that zoning district by YCC §19.11.010(1)(b).

**(3) The site of the proposed use is adequate in size and shape to accommodate the proposed use.** The applicant's site plan, as supplemented by the Hearing Examiner's view of the site, establishes the fact that the site of the proposed uses is adequate in size and shape to accommodate the proposed uses.

**(4) All setbacks, spaces, walls and fences, parking, loading, sitescreening, landscaping and other features required by this Title.** Other features required by YCC Title 19 will be addressed under specific zoning ordinance criteria for other features. All of the setbacks, spaces, walls and fences, parking, loading, sitescreening and landscaping features required by the zoning ordinance, YCC Title 19, will be provided as follows:



(a) As to setbacks, YCC §19.10.040(6), YCC Table 19.11.010-2 and YCC Table 19.11.030-2 require 10-foot rear and side interior setbacks for the Winery building and 10-foot rear and 5-foot side interior setbacks for the accessory tasting room from property lines in the AG and R-10/5 zoning districts. Neither structure will be near a road or access easement and both structures will comply with setback requirements.

(b) As to walls and fences, YCC §19.10.040(9) governs the location and height of fences and walls to allow access by utility employees and emergency response personnel, and to maintain good appearance of residential areas and visual access along residential streets and between lots. Here neither fences nor walls are required or proposed.

(c) As to parking, YCC Table 19.22-2 requires the event facility as an eating or drinking establishment to have one parking space for each 250 square feet of floor area which would be 29 parking spaces (first floor of residence = 1,680 square feet plus the patio area gathering space = 5,445 square feet for a total of 7,125 square feet  $\div$  250 = 29). Said YCC Table requires the Winery tasting room as a commercial retail use to have one parking space for every 350 square feet of floor area which would be 2 parking spaces (600 square feet  $\div$  350 = 2). The 85 existing parking spaces will accommodate the event center and tasting room. The parking areas comply with the YCC §19.22.070 requirement to have a screen gravel, crushed rock or better surface which is graded and drained so that all surface water is disposed of on-site according to best engineering standards, YCC Chapter 12.10 and the Stormwater Management Manual for Eastern Washington.

(d) As to loading, YCC §19.22.060 requires that off-street loading and unloading spaces and parking for truck queuing shall be required for any commercial use involving the loading or unloading of trucks or other large vehicles, and shall be located only on the property served without projecting into the right-of-way of any public or private road. The applicant's site plan shows that these requirements have been satisfied. None of the parking or loading areas are shared with other uses or parcels in violation of YCC §19.10.040(2)(b).

(e) As to sitescreening and landscaping, there is extensive landscaping on the property already and the parcel is surrounded by orchards and vineyards that will

provide a natural screen. YCC Table 19.21-1 does not require landscaping in the AG or R-10/5 zoning districts.

**(5) The proposed use complies with other development and performance standards of the zoning district and the zoning ordinance, Title 19.** The proposed use complies with other development and performance standards of the zoning district and the zoning ordinance, Title 19, in the following manners:

(a) As to permitted land uses, YCC §19.10.040(4) and YCC Table 19.14-1(12) in YCC Chapter 19.14 provide that a Destination Agricultural Tourist Operation is a Type 3 conditional use in both the Agriculture (AG) and the Rural-10/5 (R-10/5) zoning districts and that a Winery is a Type 1 permitted use in the AG zoning district.

(b) As to building permit requirements, YCC §19.10.040(5) provides that no building may be erected without a building permit issued by the Building Official under RCW 19.27 and YCC Title 13 that is in conformity with the zoning ordinance, YCC Title 19. The Yakima County Building and Fire Safety Division should be contacted at (509) 574-2300.

(c) As to maximum lot coverage which is defined by YCC §19.01.070(12) as the percentage of the area of a lot covered by buildings, accessory structures or other impervious surfaces, YCC Table 19.11.010-2 and YCC Table 19.11.030-2 do not specify a maximum lot coverage for the AG or the R-10/5 zoning districts.

(d) As to maximum building height which is defined by YCC §19.01.070(2) as the vertical distance from grade plane to the average height of the highest roof surface, YCC Table 19.11.010-2 does not specify a maximum building height for the AG zoning district and YCC Table 19.11.030-2 specifies a maximum building height of 35 feet for the R-10/5 zoning district.

(e) As to exterior lighting, YCC §19.10.040(10) provides that exterior lighting is regulated to minimize light pollution to neighboring properties and to encourage true-color, full-spectrum light rendition in projects. Exterior lighting for all uses and signs shall be directed downward and otherwise arranged, fully shaded, screened, shielded, and of a design that results in the light being directed onto the site and of an intensity or brightness that does not reflect or cause glare or light intrusion into any adjacent or nearby residential use or interfere with the safe operation of motor

vehicles. The applicant is not proposing to add any exterior lighting with this proposal. Any new exterior lighting must comply with the standards set forth in YCC §19.10.040(10).

(f) As to floodplain development, YCC §19.10.040(11) provides that a pre-application meeting and a Flood Hazard Permit application are required for all new development in floodplains in order to minimize and mitigate potential adverse impacts to property and infrastructure while reducing risks to public health and safety. Since the subject parcel is not within a floodplain, a pre-application meeting is not required.

(g) As to stormwater requirements, YCC §19.10.040(12) provides that such requirements are intended to ensure public and private development projects comply with the National Pollution Discharge Elimination System (NPDES) permit requirements under the Federal Clean Water Act (CWA) where applicable. The applicant proposes, and this Decision requires, that all stormwater on the subject parcel must be retained on the subject parcel.

(h) As to signs, YCC §19.20.010 expresses the intent to accommodate and promote sign placement consistent with the character and intent of the zoning district, to promote proper sign maintenance, to promote elimination of visual clutter and to promote creative and innovative sign design. The applicant proposes a freestanding sign at the entrance near the road that is 32 square feet in size, eight (8) feet in height and illuminated externally. Freestanding signs are permitted in the AG and R-10/5 zoning districts as an accessory use to the permitted use per YCC Table 19.20-1. According to YCC Tables 19.20-2 and 19.20-3, one freestanding sign per street frontage that is a maximum of 32 square feet in size and a maximum of 10 feet in height is allowed in the AG and Rural-10/5 zoning districts. Any sign must comply with the sign requirements set forth in YCC Chapter 19.20.

**(6) The site for the proposed use relates to streets and highways adequate in width and pavement type to carry the quantity and kind of traffic generated by the proposed use.** The site for the proposed use does relate to streets and highways adequate in width and pavement type to carry the quantity and kind of traffic generated by the proposed use for the following reasons:

(a) YCC §19.10.040(3) requires that the approach to a County road shall be

reviewed by the County Engineer. In accordance with YCC §10.08.020 and YMC §19.10.040(3), the applicant shall obtain a new Road Approach Permit (RAP) from the Yakima County Transportation Division for all existing accesses to the County roadway system. The fact that the road approach application is in conjunction with a conditional use permit must be disclosed by the applicant at the time of application. No future building permits can be issued without the prior approval of the required new Road Approach Permits. Due to the speed limit, stopping sight distance and potential for two-way traffic at the road approach locations at this site, each of the accesses will require a road approach width of 30 feet. Two road approach permits (RAP2010-104 and 105) were issued as a condition of CUP2010-022 which were both permitted to be 20-foot accesses. The width of the southern access and the northern access will now have to be increased to 30 feet in order to better accommodate the traffic circulation expected from a winery and the possibility that larger vehicles will be used for the transportation of goods associated with wine making. No additional accesses will be permitted in conjunction with this CUP.

(b) YCC §19.10.040(7) provides that all corner lots at controlled or uncontrolled public or private street intersections or railroads shall maintain for safety vision purposes a triangular area where one angle of the triangle is formed by the planned right-of-way edges adjacent to the street or railroad under the planned right-of-way width required for the functional classification of the road listed in YCC Chapter 19.23. The sides of such triangle forming the corner angle shall be 30 feet in length measured along the sides of the aforementioned angle. The third side of the triangle shall be a straight line connecting the last two mentioned points. Within the area comprising the triangle, nothing shall be erected, placed, planted or allowed to grow in such a manner as to materially impede vision between the heights of two and one-half feet and ten feet above the centerline grades of intersecting streets and/or railroads. The functional classification of Lombard Loop Road is a Rural Minor Collector with a right-of-way of 20 feet on both sides of the centerline. According to aerial photographs of the location of the access points along Lombard Loop Road, the applicant meets the Vision Clearance Triangle requirements.

**(7) The proposed use will have no substantial adverse effect on abutting property or the permitted use thereof.** The proposed use will have no substantial adverse effect on abutting property or the permitted use thereof as discussed above in

subsection (2)(a) of this section. In addition, the Final SEPA Determination of Non-Significance (DNS) which determined that the proposed ATO use would not have any probable significant adverse effects became final without any appeals.

**(8) In the case of residential uses, the housing density of the development is consistent with the existing zoning densities, or the Comprehensive Plan, and that all other aspects of the development are consistent with the public health, safety and general welfare for the development and for adjacent properties.** The only residential use of the parcel will be within the second floor of the existing residence which will continue to be consistent with the existing zoning and Comprehensive Plan housing densities. All other aspects of the development will be compliant with the development standards for the site which have been adopted to promote the public health, safety and general welfare for the development and for adjacent properties.

**(9) The development complies with all criteria in Chapter 19.18 applicable to the proposed ATO use, unless otherwise administratively adjusted.** The proposed development complies with all of the criteria in YCC Chapter 19.18 applicable to Agricultural Tourist Operations, without the need for any administrative adjustments, for the following reasons:

(a) YCC §19.18.060(3)(a) requires all types of Agricultural Tourist Operations to be consistent with the intent that is expressed in YCC §19.18.060(1). YCC §19.18.060(1) expresses the intent that ATOs be accessory uses subject to standards which ensure that their physical development and public education in farming areas enables business diversification that supports, promotes and sustains agricultural operations and production. The proposed Destination Agricultural Tourist Operation will be consistent with that expressed intent because it will be an accessory use to a Winery which will enable business diversification and support agricultural production.

(b) YCC §19.18.060(3)(b) requires all types of Agricultural Tourist Operations to be operated by the owner, operator or occupant of the farming use. The ATO and Winery will both be operated by Lee Fergestrom and Emily Christensen who are the governing parties for the property owner, Fortuity Holdings, LLC.

(c) YCC §19.18.060(3)(c) requires all types of Agricultural Tourist Operations to comply with specific provisions applicable to the type of Agricultural Tourist Operation in this section of the zoning ordinance. The event center has indoor and outdoor space to host gatherings for special events and was previously approved under CUP2015-00014.

(d) YCC §19.18.060(3)(d) requires all types of Agricultural Tourist Operations to be subject to, and limited by, the appropriate licensing standards of the Yakima Health District where food handling is required. The property owners plan to have caterers for events. It is the responsibility of all caterers to obtain their own food handler permit from the Yakima Health District as well as an event permit from Yakima County Fire and Life Safety Division. The applicant has not proposed food handling or a restaurant associated with the event center.

(e) YCC §19.18.060(3)(e) requires all types of Agricultural Tourist Operations to be located on a farm consisting of one or more contiguous parcels with at least five producing acres in the crops used in the retail product. The subject parcel is only 2.45 acres in size, but since this ATO was previously approved as an accessory use to a primary agricultural use under YCC Title 15 (CUP2015-00014) which did not require “five producing acres in the crops used in the retail product,” this new requirement under YCC Title 19 therefore does not apply to this ATO.

(f) YCC §19.18.060(3)(f) requires all types of Agricultural Tourist Operations and their parking areas to be located and designed so that they will not interfere with agricultural operations on the site of the proposed use or on nearby properties. The existing 85 parking spaces are located and designed to be adjacent to existing structures so that the ATO will have very minimal, if any, interference with agricultural production.

(g) YCC §19.18.060(3)(g) requires all types of Agricultural Tourist Operations to be located within the general area already developed for building and residential uses and to not otherwise convert more than one acre of agricultural land to nonagricultural uses. The new Winery building will be located in the same location as the existing greenhouse, which will be removed

from the property. Since the proposed tasting room will be located within the existing area where agricultural production does not exist, neither of the new buildings will be located outside the area already developed for building uses nor convert any agricultural producing land into non-agricultural uses.

(h) YCC §19.18.060(3)(h) requires all types of Agricultural Tourist Operations to have adequate access from a County road consistent with the standards under YCC Chapter 19.23. ATOs that share a private road must submit a road maintenance agreement at the time of application that is signed by all legal property owners or their designees. Without the road maintenance agreement the application will be considered incomplete. The subject property is accessed directly from Lombard Loop Road, a maintained County road, and does not share access with other lots or parcels.

(i) YCC §19.18.060(3)(i) requires all types of Agricultural Tourist Operations to provide sufficient detail with applications proposing phased development of an ATO to enable the County, agencies and adjoining property owners to consider all aspects of the project at full build-out. Changes to an approved ATO that result in new uses that were not considered in the original approval are subject to the level of review for the requested change. The applicant is not proposing phased development.

(j) YCC §19.18.060(5)(a) provides that a Destination Agricultural Tourist Operation consists of an assortment of uses over and above any uses associated with a Retail Agricultural Tourist Operation, but may include ancillary entertainment/special events so long as indoor event facilities are no larger than 7,500 square feet. Here the first floor of the existing residence that will be open to the public has 1,680 square feet of floor area. The adjacent patio provides about 5,445 square feet of gathering space as measured from aerial photos for a total of 7,125 square feet of entertainment space.

(k) YCC §19.18.060(5)(b) provides that a Destination Agricultural Tourist Operation may include food service. Food may also be served to registered guests staying at overnight lodging facilities or boarding houses, or as provided as part of a specific event or class (e.g. wedding or seminar) subject to Yakima Health District licensing requirements, including a

commercial kitchen meeting YCC Title 13 standards if required. Here the applicant is not proposing a restaurant with this proposal, but will have caterers bring in food that is already prepared.

(l) YCC §19.18.060(5)(c) provides that a Destination Agricultural Tourist Operation may include commercial uses. Other commercial uses directly related to the ATO may be allowed, such as gift stores, art galleries or the like. The applicant is proposing to build a tasting room for the Winery and may have other commercial uses within the tasting room.

(m) YCC §19.18.060(5)(d) provides that a Destination Agricultural Tourist Operation may include overnight lodging facilities and boarding or lodging houses so long as they are limited to 12 overnight accommodations. The applicant is not proposing overnight lodging with this proposal.

### **VIII. Consistency of the Proposed Use with Development Regulations and the**

**Comprehensive Plan (YCC §16B.06.020).** The proposed Destination Agricultural Tourist Operation as an accessory use to the primary Winery use on the subject parcel would be consistent with development regulations and the Yakima County Comprehensive Plan (*Horizon 2040*) in the following ways:

(1) **The type of land use permitted at the site:** The type of use permitted at the site includes the proposed Type 3 Destination Agricultural Tourist Operation use as an accessory use to the primary Winery use on the subject parcel if, as is the case here, the Type 3 review criteria prescribed by the zoning ordinance are satisfied.

(2) **The level of development, such as units per acre, density of residential development or other measures of density:** The level of development of the proposed Destination Agricultural Tourist Operation use as an accessory use to the primary Winery use on the subject parcel is consistent with the density requirements of the zoning districts where the uses are located and also is consistent with the other existing development in the area.

(3) **The availability and the adequacy of public facilities:** The availability and



adequacy of public facilities is not a problem for the proposed Destination Agricultural Tourist Operation use as an accessory use to the primary Winery use on the subject parcel because a paved public road is available and adequate for access. Other utilities such as electricity are already currently available and adequate for the proposed facility. The proposed uses will be served by an approved well and an approved sewage disposal system.

**(4) The proposal's consistency with applicable development standards and the Comprehensive Plan:** The proposed Destination Agricultural Tourist Operation use as an accessory use to the primary Winery use on the subject parcel is being conditioned to promote compatibility with the area and to be consistent with applicable development standards of the zoning ordinance and of the Comprehensive Plan as discussed above.

## CONCLUSIONS

Based upon the foregoing Findings, the Hearing Examiner reaches the following Conclusions:

(1) The Hearing Examiner has jurisdiction to approve the Type 3 Destination Agricultural Tourist Operation as an accessory use to the primary Winery use on the subject parcel under the circumstances prescribed by the zoning ordinance, which circumstances warrant approval of this application subject to conditions.

(2) Prior State Environmental Policy Act (SEPA) review resulted in the issuance of a Determination of Non-Significance (DNS) under file no. SEP2010-022 which became final without any appeals.

(3) Public notice requirements for the public hearing have been satisfied.

(4) All of the testimony and evidence presented at the public hearing held on February 1, 2018, favored approval of this proposed Destination Agricultural Tourist Operation as an accessory use to the primary Winery use on the parcel subject to conditions.

(5) The Destination Agricultural Tourist Operation proposed to be an accessory use to the primary Winery use on the subject parcel will be adequately conditioned by the

conditions set forth below so as to satisfy all of the criteria set forth in YCC §19.30.080(7) for approval of a Type 3 use by Type 3 review.

(6) The Destination Agricultural Tourist Operation proposed to be an accessory use to the primary Winery use on the subject parcel will, as conditioned, satisfy the consistency criteria set forth in YCC §16B.06.020 for approval of a Type 3 use by Type 3 review.

(7) Any appeal of this decision to the Board of Yakima County Commissioners must contain the information required by YCC §16B.09.010 and must be delivered to the Yakima County Planning Division within 14 calendar days of the mailing of this decision.

## **DECISION**

The Type 3 Use Permit for the establishment of a Destination Agricultural Tourist Operation as an accessory use to the primary Winery use on the subject parcel as described in the application and documentation submitted relative to application CUP2017-00115 and PRJ2017-00189, is **APPROVED** subject to the following conditions:

(1) The applicant must obtain any necessary construction permits from the Yakima County Building and Fire Safety Division. The Yakima County Public Services Department Building and Fire Safety Division should be contacted at (509) 574-2300.

(2) The applicant shall obtain new Road Approach Permits for the existing road approaches onto Lombard Loop Road in order to increase their width to thirty (30) feet.

(3) The Winery must be established and must have received final inspections by the Building Division before the Tasting Room can be open to the public.

(4) Available hours of operation for the event center shall be from 8 a.m. to 11 p.m., typically on weekends, but may include other times and on other days as requested by customers of the event facility. The hours of operation of the Winery will be from 10 a.m. to 5 p.m. daily.

(5) Exterior lighting shall be directed downward and be otherwise arranged, fully shaded, screened, shielded, of a design that results in the light being directed onto the site and of an intensity or brightness that does not reflect or cause glare or light intrusion into any adjacent or nearby residential use or interfere with the safe operation of motor vehicles in accordance with YCC §19.10.040(10).

(6) The new sign shall comply with the sign requirements of YCC Chapter 19.20.

(7) Stormwater shall be retained on-site and upland drainage, if any, must be conveyed through the property in accordance with criteria found at YCC §12.10.130.

(8) The owners, their grantees and assignees in interest shall meet the terms of Compliance, Extensions, Expiration and Reinstatement requirements per YCC §16B.07.050. The applicant shall complete all required conditions, submit documentation that all conditions were met and request County inspection or review to determine that the requirements have been fulfilled within the timeframe specified in this Decision and any authorized extensions thereof.

(9) The project shall not extend beyond that described in this application and the associated site plan submitted with the application referenced as file number CUP2017-00115. Any future change(s) to this project shall be submitted to the Yakima County Planning Division for review and a decision based on County code.

(10) **Time Limit:** The conditions of approval for this Conditional Use Permit must be completed within three (3) years of the date of this Decision. Extension of time for cause may be granted pursuant to YCC §19.30.100(4)(c).

**DATED** this 15<sup>th</sup> day of February, 2018.

  
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**Gary M. Cuillier, Hearing Examiner**