

Issue Area and Approval Criteria	Hearings Officer's Decision	Opponent's Position	Applicant's Position	Staff Comment	Board Determination
<p>Is the subject property currently engaged in farm activities with the intent to make a profit in money?</p> <p><b>DCC 18.16.030(E)</b></p> <p>Summary: DCC 18.16.030(E) states, in part, "Commercial activities that in conjunction with farm use are allowed in the Exclusive Farm Use Zone."</p> <p>DCC 18.04.030 defines farm use as:</p> <p><i>"Farm use" means the current employment of land for the primary purpose of obtaining a profit in money..."</i></p> <p>The applicant submitted new evidence in the record on January 25<sup>th</sup>, 2023, including income received from farming, demonstrating that the property is engaged in farm activities with the intention to make a profit.</p>	<p>Yes, the applicant has demonstrated that the property is engaged in farm use.</p>	<p>No, the current decision fails to find whether the subject property is in farm use. However, the proposal will be acceptable with the imposition of the applicant's proposed conditions of approval.</p>	<p>Yes, the property is engaged in farm use. A number of farm activities and gross profit are listed in the revised Burden of Proof.</p>	<p>The applicant has demonstrated that the property is engaged in farm use. The applicant has provided testimony to those uses and provided a gross income figure.</p>	<p>No: May be denied</p> <hr/> <p>Yes: May be approved</p>

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<p>Is the Meadery incidental and subordinate to the farm use on the property?</p> <p><b>DCC 18.16.030(E)</b></p> <p>Summary:  <i>Per Friends of Yamhill County v. Yamhill County, 255 Or App 636, 298 P3d 586 (2013),</i> the Oregon Court of Appeal developed a 4-prong test for evaluating commercial activities in conjunction with farm use. This test is detailed below.</p> <ol style="list-style-type: none"> <li>1. The use relates to a farm use occurring on the subject property; and</li> <li>2. Any commercial activity beyond processing and selling farm products must be incidental and subordinate to the farm use (frequency and intensity when compared to the farm use on site, spatially, operating hours); and</li> <li>3. The use enhances the quality of the agricultural enterprise; and</li> <li>4. The use promotes the policy of preserving farm land for farm use</li> </ol> <p>As stated under test criterion number 2, the commercial activity beyond processing and selling farm products must be</p>	<p>No, the applicant has not sufficiently demonstrated that the uses will be incidental and subordinate.</p>	<p>No, the commercial activities approved by the current decision will not be incidental and subordinate to farm uses and are not essential to the practice of agriculture. However, the proposal will be acceptable with the imposition of the applicant's proposed conditions of approval.</p>	<p>Yes, the Meadery will be incidental and subordinate to the farm uses as conditioned.</p>	<p>The applicant has demonstrated that the proposal will be incidental and subordinate to the farm use. The applicant has provided additional conditions of approval to ensure compliance.</p> <p>Staff notes that the applicant's attorney's statements under this issue area, and conditions of approval listed below, reference ORS 215.456, and by extension ORS 215.452 and ORS 215.453. Staff's understanding of ORS 215.456 is that this provision is for grape wineries. While the Board may choose to employ ORS 215.456 and limitations for the subject application, staff's recommendation would be to impose the proposed conditions of approval under DCC 18.16.030(E) and the 4-prong test outlined through <i>Friends of Yamhill County v. Yamhill County</i>.</p>	<p>No: May be denied</p> <hr/> <p>Yes: May be approved</p>

<p>incidental and subordinate to the farm use.</p> <p>The applicant submitted new evidence into the record on January 25<sup>th</sup>, 2023, demonstrating that the Meadery will be incidental and subordinate to the farm use on the property. The applicant also proposes additional conditions of approval to be added to the decision. These conditions are listed below. (continued)</p>					
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<p>Does the application fully satisfy the requirements of the Farm Impacts Test?</p> <p><b>DCC 18.16.040 (A) (1-2) "Farms Impacts Test"</b></p> <p>Summary: DCC 18.16.040 (A)(1-2) states, in part, that a proposed use <u>will not force a significant change</u> in accepted farm or forest practices, or <u>will not significantly increase the cost of accepted farm or forest practices</u> on surrounding lands devoted to farm or forest use. The Farm Impact Test, it the applicants analysis of how the use will comply with these criteria.</p> <p>The applicant submitted new analysis into the record on January 25<sup>th</sup>, 2023, demonstrating that the Farm</p>	<p>No, the applicant has not fulfilled the requirements of the Farm Impacts Test.</p>	<p>No, the current decision fails to satisfy the farm impacts test at ORS 215.296. However, the proposal will be acceptable with the imposition of the applicant's proposed conditions of approval.</p>	<p>Yes, the application adequately address the criterion under DCC 18.16.040(A)(1-2), the Farm Impacts Test. New analysis is provided in the revised Burden of Proof.</p>	<p>The Farm Impacts Test is project specific and contingent upon the anticipated impacts of the proposal. The applicant has provided a detailed account of the farm practices within 1-mile.</p>	<p>No: May be denied</p> <p>Yes: May be approved</p>

<p>Impacts Test is Complete and these criteria are satisfied.</p>					
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<p>Can the transportation System Development Charges (SDCs) be reduced based upon the revised site traffic report?</p> <p><b>No Approval Criterion</b></p> <p>Summary: The applicant requests that SDC amount be changed to correctly reflect the amount due for the proposal. The initial SDC was based on a proposal that included the Meadery and several food carts, which would have produced 13.31 p.m. peak hour trips at the then-current SDC rate of \$4,757 per p.m. peak hour trip for an SDC of \$63,316. The applicant reduced the number of food carts and provided a fuller explanation of the use of the site and the applicant's traffic engineer submitted a new traffic analysis based upon staff comments. The number of peak trips dropped to seven; however, the now current SDC rate is \$5,080 per peak hour trip, resulting in an SDC of \$35,560. The County's Senior Transportation Planner agrees the correct SDC amount is \$35,560 based on the proposal now before the Board.</p>	<p>N/A</p>	<p>N/A</p>	<p>Not appropriate forum to challenge the county methodology for SDCs.</p>	<p>Staff notes the SDC calculation and amount are not associated with an approval criterion. That said, the Board can opt to reflect the required SDC fee as part of its decision.</p>	<p>Any discussion or findings offered by the Board will be part of the record but will not impact approval or denial of the application.</p>

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<p>Should the January 25, 2023, Matt Cohen email be treated as a hearing exhibit and excluded from the record, or should the record be reopened to allow participants to address the email as a record item?</p> <p><b>DCC 22.24.090</b></p> <p>Summary:</p> <p>During the BOCC Public Hearing on January 25, 2023 staff received an email from Matt Cohen who raised several points of opposition. In his email, Mr. Cohen provides the following objections which are summarized by staff:</p> <ul style="list-style-type: none"> <li>Per DCC 18.144.040, the applicant has not demonstrated adequate ADA access to all proposed facilities.</li> <li>The applicant has not received written permission from the Oregon Department of Transportation for the change of use on the property as required by ORS 374.305</li> <li>The applicant should have to submit a photometric light study to demonstrate compliance with DCC 18.124.040.</li> </ul>	<p>N/A</p>	<p>No comment.</p>	<p>The email from Matt Cohen should be excluded from the record. Deschutes County's procedures ordinance requires that hearing exhibits follow the standards outlined in DCC 22.24.090 and DCC 22.24.120. These standards require hearing exhibits to be marked and read into the record at the time of the hearing to afford applicant the opportunity to respond.</p>	<p>Deschutes County's procedure ordinance Title 22 gives limited guidance on how to treat an email received during a BOCC public hearing in which:</p> <ol style="list-style-type: none"> <li>The email is not presented within the public hearing venue and treated as an official exhibit, or</li> <li>The email is presented during a hearing and no open record period is given whereby parties have an opportunity to address the comments.</li> </ol> <p>The Board can choose to omit the entry as it fails to meet the standards of a hearing exhibit as outlined in DCC 22.24.090 and DCC 22.24.120.</p> <p>Alternatively, the Board can choose to reopen the record to allow the applicant to address the comments and to ensure that no procedural error is made. If the Board chooses to reopen the record, staff recommends an open record period of 7-7-7. This will allow for the following phases:</p> <ul style="list-style-type: none"> <li>7 day new evidence and testimony (including the Jan. 25 Cohen email)</li> <li>7 day rebuttal</li> <li>7 day applicant's final argument</li> </ul>	<p>The email is a record item, not a hearing exhibit. The record should be reopened so that it can be addressed.</p> <hr/> <p>The email is a hearing exhibit. It should be excluded from the record as it does not conform to DCC 22.24.090 and DCC 22.24.120.</p>

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<p>Can the 25% requirement for Mead honey to be produced on site be removed?</p> <p><b>DCC 18.16.025</b></p> <p>Summary:</p> <p>The provisions of DCC 18.16.025 provide guidelines for farm crop processing and connects onsite farm production with the commercial product.</p> <p>The applicant's newly submitted evidence into the record on January 25<sup>th</sup>, 2023, advocates for the removal of this condition as a Commercial Activity in Conjunction with Farm Use is a distinct track and can accommodate the same results through the new conditions of approval.</p>	<p>N/A</p>	<p>No comment. The opponent is supportive of the applicant's proposed conditions of approval.</p>	<p>Yes, the processing of wine does not require an additional approval as a farm crop processing operation in order to be allowed as a commercial activity in conjunction with farm use.</p>	<p>The proposal contains a farm crop processing component in which the 25% requirement and condition of approval listed in the decision is standard. However, condition of approval nos. 1 &amp; 9 proposed by the applicant can be applied under 18.16.030(E).</p>	<p>No: The 25% requirement may be imposed.</p> <hr/> <p>Yes: The 25% requirement may be removed.</p>
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<p>Is a Meadery allowed in the Exclusive Farm Use Zone?</p> <p><b>DCC 18.16.030</b></p> <p>Summary:</p> <p>The opponent asserts that the only uses allowed on EFU land, either outright or conditionally, are those listed at ORS</p>	<p>Yes, a Meadery is an allowed use in the Exclusive Farm Use Zone.</p>	<p>No, a Meadery is not an allowed use in the Exclusive Farm Use Zone.</p>	<p>Yes, a Meadery is an allowed use in the Exclusive Farm Use Zone.</p>	<p>Staff understands the Meadery to be allowed through the provisions DCC 18.16.030 (E) as a commercial activity in conjunction with farm use.</p>	<p>No: A Meadery is not allowed in the EFU Zone. The application must be denied.</p> <hr/> <p>Yes: A Meadery is allowed in the EFU Zone. The application may be approved.</p>

<p>215.283(1)-(2). A meadery is not among those listed uses.</p>					
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<p>Can the Applicant's Conditions of Approval be adopted into a Decision?</p> <p>As summarized by the applicant:</p> <ul style="list-style-type: none"> <li>• 30 acres of the winery property must be maintained as bee pasture.</li> <li>• 100% of honey used to make wine or sold as a farm product.</li> <li>• Agritourism and other commercial events are reduced to ten days per year.</li> <li>• Agritourism and special event attendance capped at 250 persons for five events and 150 for five events.</li> <li>• Weddings are not allowed.</li> <li>• Limits on the number and operation of food carts.</li> <li>• No agritourism or special event may occur until after the winery has achieved gross income of \$40,000 from the onsite sale of wine produced in conjunction with the winery.</li> <li>• The winery must comply ORS 215.456(2)'s 25% limit on gross winery income from sales other than the on-site retail sale of wine produced</li> </ul>	<p>N/A</p>	<p>The opponent is supportive of the applicant's proposed conditions of approval.</p>	<p>Proposed by applicant</p>	<p><b>Comment 1:</b>                  ORS 215.456 is specific to grape wineries. Applying to ORS 215.456 to a winery other than a grape winery is untested.</p> <p>However, these conditions of approval, as well as all other related to "Incidental and Subordinate" can be added in a decision under DCC 18.030 (E).</p> <p><b>Comment 2:</b>                  As proposed, condition of approval "H" reads:</p> <p><b>H. <u>Speaker Noise Level.</u></b>                  All outdoor speakers for events shall be set at or below 100 dBA. Any other outdoor speaker associated with the winery shall be set at or below 60 dBA.</p> <p>To ensure that monitoring of noise can be conducted off site, staff recommends the following modification to the condition of approval:</p> <p><b>H. <u>Speaker Noise Level.</u></b>                  All outdoor speakers shall be set so that the maximum dBA level, as measured from right angles from the source of the noise, does not exceed 65 dBA at all property lines with the exception of the southwest property line abutting Highway 20.</p>	<p>No: The conditions of approval may not be imposed.</p> <hr/> <p>Yes: The conditions of approval may be imposed, as proposed.</p> <hr/> <p>Yes: The conditions of approval may be imposed, but with the following modifications.</p>

<p>in conjunction with the winery.</p> <ul style="list-style-type: none"><li>• All honey be produced in Oregon and 90% of the honey used to make mead must come from a subset of Oregon counties.</li><li>• Annual reporting of compliance with the 25% gross sales rule and honey source conditions of approval. A violation of either requirement in two consecutive years renders the approval void.</li></ul>				<p>Staff Note: The property line adjacent to Highway 20 was excluded as typical noise from vehicular traffic would be expected to exceed 65 dBA regularly.</p>	
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