



## MEMORANDUM

**TO:** Deschutes County Board of County Commissioners

**FROM:** Nathaniel Miller, AICP, Associate Planner

**DATE:** January 23, 2023

**RE:** Work Session: A Commercial Activity in Conjunction with Farm Use (Meadery) in the Exclusive Farm Use Zone.

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The Board of County Commissioners (Board) will conduct a Work Session on January 23, 2023, in preparation for a Public Hearing on January 25, 2023, to consider a request for a commercial activity in conjunction with farm use to establish a Meadery. The applications and appeals are identified as file nos. 247-22-000024-CU, 22-025-SP, 22-757-A, 22-914-A. The subject property is located approximately 0.5 miles southeast of the city limits of Sisters along Highway 20 which borders the property to the southwest. The property is addressed at 68540 Highway 20, Sisters, and is further identified on County Assessor's Map 15-10-10 as tax lot 700. A location map is included as ***Attachment A***.

### I. BACKGROUND

The Applicant, John Herman, has requested a Conditional Use Permit for commercial activities in conjunction with farm use to establish a Meadery (Honey Winery) with associated uses in the Exclusive Farm Use Zone (EFU), and within the Airport Safety (AS), Surface Mining Impact Area (SMIA) and Landscape Management (LM) Combining Zones. The request also includes a Site Plan Review for the Meadery and associated uses. The proposed Meadery would be situated on the southern portion of the property along Highway 20 and within the existing developed building, lawn, and road network. The Meadery Production and Meadery Operations (processing & tasting room) would be centralized in an existing farm structure (Winery Building) with the Winery Related Events and parking areas around this location.

On September 7, 2022, the Deschutes County Planning Division administratively approved a conditional use permit and site plan request (file nos. 247-22-000024-CU, 247-22-000025-SP) for the proposed Meadery. An appeal was filed on September 19, 2022 by Central Oregon LandWatch (file no. 247-22-000757-A) to that decision requesting a Public Hearing. The initial Public Hearing before

the Hearings Officer was on Wednesday, October 26th, 2022. The Hearings Officer issued a decision on November 18th, 2022 which denied the proposal. On November 29, 2022, the applicant filed an appeal to the Hearing Officer decision (file no. 247-22-000914-A) requesting a *limited de novo* review from the Board. In a Consideration to Hear on December 21, 2022, the Board agreed to hear the appeal *de novo* in a Public Hearing.

## II. PUBLIC COMMENT

- Central Oregon LandWatch contacted the Planning Division on January 28, 2022 with concerns of the proposal meeting the applicable criteria. As noted above, Central Oregon LandWatch filed a timely appeal (file no. 247-22-000757-A) on September 19, 2022 to the staff decision. The Notice of Appeal from Central Oregon LandWatch includes six (6) main points of objection.
- Neighbor, Matt Cohen contacted the Planning Division on February 14, 2022 with concerns about the how access points on Highway 20 can accommodate increased traffic volumes.

## III. HEARINGS OFFICER DECISION

The Deschutes County Hearings Officer rendered a final decision denying the Applicant's request for a Conditional Use Permit for the Meadery on the grounds that:

- The applicant has not satisfied the standard for a Commercial Activity in Conjunction with Farm Use demonstrating that the Meadery use will be incidental and subordinate to the farm use on the property. These standards are outlined in DCC 18.16.030(E) with the incorporation of relevant case law *Friends of Yamhill County v. Yamhill County*, 255 Or App 636, 298 P3d 586 (2013)<sup>1</sup>.
- The applicant did not adequately address impacts to farm uses in the area pursuant to Deschutes County Code (DCC) 18.16.040(A)(1) and (2).<sup>2</sup> The corresponding Oregon Revised Statute (ORS) is ORS 215.296(1), which is also known as the "Farm Impacts Test".

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<sup>1</sup> The Oregon Court of Appeals has developed a test for evaluating commercial activities in conjunction with farm use. *Friends of Yamhill County v. Yamhill County*, 255 Or App 636, 298 P3d 586 (2013). It requires four findings:

1. The use relates to a farm use occurring on the subject property; and
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
3. The use enhances the quality of the agricultural enterprise; and
4. The use promotes the policy of preserving farm land for farm use

<sup>2</sup> 1. Will not force a significant change in accepted farm or forest practices as defined in ORS 215.203(2)(c) on surrounding lands devoted to farm or forest uses; and 2. Will not significantly increase the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use; [...]

#### **IV. APPEAL FROM APPLICANT (247-22-000914-A)**

The Applicant (John Herman) submitted a timely appeal of the Hearings Officer's decision on November 29, 2022. The Applicant requested the Board conduct a Public Hearing to review the following issues:

- Whether the Hearings Officer erred in finding the Applicant did not demonstrate that the Meadery use will be incidental and subordinate to the farm use on the property and fulfill the requirements of DCC 18.16.030(E).
- Whether the Hearings Officer erred in finding that the Applicant did not fully satisfy the requirements of DCC 18.16.040 (A) (1) and (2), being the Farm Impacts Test.
- Whether the applicant and subject property is currently engaged in farm activities with the intent to make a profit in money.

#### **V. RECORD**

The record for file nos. 247-22-000024-CU, 247-22-000025-SP (appeal file nos. 247-22-000757-A and 247-22-000914-A) is as presented at the following Deschutes County Community Development Department website:

<https://www.deschutes.org/cd/page/247-22-000024-cu-and-247-22-000025-sp-conditional-use-and-site-plan-review-meadery>

#### **VI. NEXT STEPS**

Based on the feedback received from the Board at the Work Session, Staff will prepare for the upcoming Public Hearing.

#### **ATTACHMENT(S):**

**Attachment A** - 2023-01-23 BOCC Location Map 22-024-CU, 22-025-SP, 22-757-A, 22-914-A