DECISION AND FINDINGS OF
THE DESCHUTES COUNTY HEARINGS OFFICER

FILE NUMBERS:	File No. 247-22-000757-A (Appeal of files 247-22-000024-CU and 247-22-000025-SP)
HEARING DATE:	October 26, 2022, 6:00 p.m.
HEARING LOCATION:	Videoconference and Barnes & Sawyer Rooms Deschutes Services Center 1300 NW Wall Street Bend, OR 97708
APPLICANT/OWNER:	John Herman
SUBJECT PROPERTY:	Tax Lot 00700, Map 15-10-10 Situs Address: 68540 E Highway 20, Sisters, OR 97759
APPELLANT:	Central Oregon LandWatch
REQUEST:	Appeal of an administrative decision: (1) approving a conditional use for a meadery and associated activities as a commercial activity in conjunction with farm use; (2) approving a site plan approval for the meadery.
HEARINGS OFFICER:	Tommy A. Brooks

SUMMARY OF DECISION: The Hearings Officer finds that the Applicant has not met its burden of proof with respect to a commercial activity in conjunction with farm use and, therefore, SUSTAINS the appeal, and DENIES the Application, based on the findings in this Decision.

I. APPLICABLE STANDARDS AND CRITERIA

Deschutes County Code (DCC)
Title 18, Deschutes County Zoning Ordinance
- Chapter 18.16, Exclusive Farm Use Zones
- Chapter 18.120, Exceptions
- Chapter 18.128, Conditional Use

II. BACKGROUND AND PROCEDURAL FINDINGS

A. Nature of Proceeding

This matter comes before the Hearings Officer as an appeal of a decision by the Deschutes County Planning Department ("Staff") in which Staff approved: (1) the operation of a meadery as a commercial activity in conjunction with a farm use (File 247-22-000024-CU); and (2) a site plan for the meadery (File 247-22-000025-SP) (together, the "Staff Decision").

The specific proposal in the Application underlying the Staff Decision is the Applicant's proposal to operate a meadery on the Subject Property. According to the Applicant and other information in the record, a meadery makes mead, a type of wine fermented from honey rather than from grapes. Mead is sometimes referred to as "honey wine," and a meadery is sometimes referred to as a "honey winery." The Applicant currently maintains beehives on the Subject Property from which honey is harvested and engages in the production of mead. The Applicant plans to use honey from the Subject Property and from other farms around the county and state as part of the planned meadery, which will produce mead on a larger scale for sale. In addition to the meadery itself, the Applicant proposes other commercial activities such as an indoor tasting room, an outdoor tasting area, food carts, "winery-related" events, and other unidentified activities "related to the production, sale, marketing, and distribution of wine, farm products, and related incidental items." The Application includes a request for use of the Subject Property as a music venue to support local events that may not be winery related, such as the Sisters Folk Festival. This decision will refer to the meadery and the proposed commercial activities as the "Meadery."

B. Notices, Decision, Appeal, and Hearing

The Application was filed on January 19, 2022. On January 28, 2022, the County issued a Notice of Application to several public agencies and to property owners in the vicinity of the Subject Property (together, "Application Notice"). The Application Notice invited comments on the Application.

On September 7, 2022, Staff issued a decision on the Application, styled "Findings and Decision" (the "Staff Decision"). On September 19, 2022, the County received an Appeal Application with a Notice of Appeal on behalf of Central Oregon Landwatch ("Appellant"), seeking review of the Staff Decision. There is no dispute in this proceeding that the appeal documents were timely filed.

On September 30, 2022, the County mailed a Notice of Public Hearing ("Hearing Notice") announcing an evidentiary hearing ("Hearing") for the appeal of the Staff Decision. Pursuant to the Hearing Notice, I presided over the Hearing as the Hearings Officer on October 26, 2022, opening the Hearing at 6:01 p.m. The Hearing was held via videoconference, with Staff, the Applicant, and a representative of Appellant present in the hearing room. The Hearings Officer appeared remotely.

At the beginning of the Hearing, I provided an overview of the quasi-judicial process and instructed participants to direct comments to the approval criteria and standards, and to raise any issues a participant wanted to preserve for appeal if necessary. I stated I had no *ex parte* contacts to disclose or bias to declare. I asked for but received no objections to the County's jurisdiction over the matter or to my participation as the Hearings Officer.

No participant requested that the record remain open. The Hearing concluded at approximately 7:35 p.m. At that time, I closed the Hearing and the record, and I took this matter under advisement.

C. 150-day Clock

The Applicant submitted the Application on January 19, 2022. Staff reviewed the Application and, on February 18, 2022, notified the Applicant that the Application was incomplete ("Incomplete Notice"). The Applicant provided additional information on or about March 8, 2022 and March 17, 2022, and continued to provide information to the record in response to Staff inquiries. On July 15, 2022, Applicant's attorney notified Staff that the Applicant had provided information in response to the Incomplete Notice, thereby confirming that the Applicant believed the Application to be complete as of that date.

Using July 15, 2022, as the date of completeness, the deadline within which the County must make a final decision under ORS 215.427 – "the 150-day clock" – is December 12, 2022.

III. SUBSTANTIVE FINDINGS AND CONCLUSIONS

A. Adoption of Findings in Staff Decision

The Staff Decision contains comprehensive findings related to the Application and the Subject Property. The vast majority of the findings in the Staff Decision are not challenged in this Appeal, and, although this proceeding is *de novo*, most criteria in the Staff Decision are not re-addressed by the participants during the appeal. As a result, I hereby adopt the findings in the Staff Decision as my findings, as supplemented and modified by the findings in this Decision, which address the issues and criteria that were raised on appeal. To the extent any of the findings in this Decision conflict with the findings in the Staff Decision, my intent is to have these findings control.

B. Issues on Appeal

The Appellant's Notice of Appeal sets forth several bases for appeal of the Staff Decision, and Appellant raised other issues during the Hearing. Appellant seeks denial of the Application based on the following assertions: (1) a meadery is not an allowed use in the Exclusive Farm Use ("EFU") zone either because no local or state law allows such a use, or because a meadery is not a "winery", which can be allowed by statute; (2) there is insufficient evidence on which to base a finding that there is any farm use currently on the Subject Property; (3) there is insufficient evidence on which to base a finding that the Meadery will produce income that is "incidental" or "subordinate" to income from farm uses on the Subject Property; (4) the Applicant has not adequately addressed the farm impacts test required by ORS 215.296; and (5) the Staff Decision violates ORS 215.416(8) because it is based on provisions relating to grape wineries rather than a meadery. The findings below address each of those issues.

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1. Is a meadery an allowed use in the EFU zone?

The Applicant's proposed Meadery includes meadery facilities for processing mead and several associated commercial activities such as tasting areas, food carts, and incidental sales of mead-related items. Appellant asserts that the Meadery is not an allowed use in the EFU zone.

ORS 215.203 establishes a statewide construct for determining which uses are allowed in the EFU zone. Under that statute, an EFU zone "shall be used exclusively for farm use except as otherwise provided in ORS 215.213, 215.283 or 215.284."[1] ORS 215.213 and ORS 215.284 are not applicable in the present matter. ORS 215.283 sets forth various specific uses, other than "farm uses", that are allowed in the EFU zone. The non-farm uses in ORS 215.283(1) are uses a county must allow by right, subject only to statutory standards rather than local standards.[2] The non-farm uses listed in ORS 215.283(2), in contrast, are considered "conditional" uses that a county can choose to allow, and in doing so a county can impose additional restrictions on those uses.[3]

Appellant is correct that neither the Deschutes County Code ("DCC" or "Code") nor ORS 215.283 expressly lists "meadery" as an allowed non-farm use in the EFU zone. ORS 215.283(1)(n) does list a "winery" as a use permitted by right, but only if the winery is the type of winery described in ORS 215.452 or ORS 215.453. DCC 18.16.025(F) mirrors that statute and also refers to ORS 215.452, which the Code incorporates through DCC 18.16.038(B). By the express terms of those statutory and Code provisions, such wineries are wineries that produce wine from grapes.[4] Those statutes therefore do not provide a basis for permitting the Meadery, which processes honey rather than grapes.

In contrast to the winery example, ORS 215.283 and the Code also establish broader categories of non-farm uses that encompass multiple specific uses. ORS 215.283(1)(c), for example, authorizes "utility facilities necessary for public service", but that category has been applied to allows different types of specific utilities.[5] The absence of the word "meadery" in the statute or Code, therefore, does not mean a meadery cannot ever be approved, and it is possible to approve a meadery under one of the listed use categories, as long as the Meadery is a type of use contemplated by that broader category.

The broader category the Applicant seeks as the basis for approving the Meadery is set forth in ORS 215.283(2)(a) – "commercial activities that are in conjunction with farm use." The express terms of that statute do not limit that category to any particular type of commercial activity and, instead, require only that the commercial activity be in conjunction with a farm use. Indeed, that is how the courts have applied that statute. Applying ORS 215.283(2)(a) prior to the legislature's enactment of ORS 215.452 and ORS 215.453, which now expressly allow certain wineries as a non-farm use, the Oregon Supreme Court upheld the issuance of a conditional use permit for a winery in the EFU zone as a commercial activity in

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[1] ORS 215.203(1).
[2] *Brentmar v. Jackson Cty.*, 321 Or 481, 496 (1995).
[3] *Id.*
[4] *See, e.g.*, ORS 215.452(1), authorizing wineries that "produce wine" and that either includes an onsite vineyard, includes a contiguous vineyard, or sources grapes from a contiguous vineyard.
[5] *See, e.g., Dayton Prairie Water Ass'n v. Yamhill County*, 38 Or LUBA 14 (2000) (applying statute to approve water facilities); *c.f. WKN Chopin, LLC v. Umatilla County*, 66 Or LUBA 1 (2012) (applying statute to approve electric transmission line).

conjunction with a farm use.[6] It did so because the winery at issue in that case satisfied the criteria of ORS 215.283(2)(a) and despite the fact that "winery" was not separately listed as an allowed use in the EFU zone.

Based on the foregoing, I find that the Meadery is an allowed use in the EFU zone as long as the proposed use satisfies the standards required for "commercial activities that are in conjunction with farm use" as contemplated by DCC 18.16.030, which is the County's version of ORS 215.283(2)(a).[7]

a. Is the Subject Property currently in farm use?

Appellant asserts that a farm use is "a predicate for the approval of a commercial activity in conjunction with farm use." More particularly, Appellant's assertion is that "a current farm use" must be shown before any commercial activities in conjunction with farm use can be permitted. Appellant argues that the record is not sufficient to demonstrate that the Subject Property is "currently" in farm use, as defined by ORS 215.203(2). In support of this argument, Appellant relies on *Friends of Marion County v. Marion County*, -- Or LUBA – , LUBA No. 2021-088/089 (Apr. 21, 2022) ("*Friends of Marion County*").

As presented to the Hearings Officer, Appellant argues only that the Applicant has not demonstrated a "current" farm use. The difficulty with Appellant's argument is that it does not address whether the proposed use of the Subject Property as a Meadery, which would occur in the future, will be in conjunction with a farm use that will exist at that time. Rather, Appellant's written and oral comments acknowledge that the activities the Applicant proposes to produce mead in the future – which include beekeeping and honey production – are farm uses. I therefore understand Appellant's argument to be that, regardless of what future farm uses occur as part of the proposal, the Applicant must nevertheless demonstrate that there are currently farm uses on the Subject Property.

The *Friends of Marion County* case and other cases interpreting ORS 215.283(2)(a) make it clear that a "farm use" must exist if there is to be an allowed commercial activity in conjunction with that farm use. Contrary to Appellant's argument, however, those cases do not hold that the farm use must already be in existence at the time of the application. In other words, they do not prevent an applicant from proposing a future commercial activity that will be in conjunction with a future farm use developed at the same time, and in fact, those cases imply or acknowledge that the farm use can be developed in the future.

In *Friends of Marion County*, for example, the issue LUBA addressed was the argument that "none of the findings or the evidence in the record demonstrates that intervenors currently operate or will operate a farm use."[8] LUBA reversed the county's approval in that case based on its conclusion that a farm use did not currently exist. However, the county's findings in that case determined that the current uses on the subject property were "farm uses" and the county required the applicant to maintain those same uses as part of the approval of the commercial uses the applicant proposed. Because LUBA concluded that the

[6] *Craven v. Jackson County*, 308 Or 281 (1989).
[7] I also note that Appellant's representative appears to have agreed with this conclusion during the Hearing. In response to a question from the Hearings Officer asking if all meaderies are excluded from the EFU zone as a matter of law, the representative responded that was likely not the case and that it would need to be determined on a case-by-case basis under ORS 215.283(2)(a).
[8] *Friends of Marion County* at *10.

current activities were not "farm uses" as defined by statute, the applicant could therefore not rely on those same activities as a basis for the approval of commercial uses in conjunction with farm uses. That case did not involve a record that contemplated the further development of farm uses like the record in this matter does. *Craven* also illustrates this point. In that case, the Court considered a conditional use permit granted to an applicant who "proposes to establish a vineyard and winery", which "winery is to be constructed before the accompanying vineyard is fully planted."[9] Thus, the Court approved the commercial activity in conjunction with a farm use that was not yet established. The Court was concerned only whether the farm use would exist at the same time the proposed commercial activities were conducted.

Based on the foregoing, I cannot agree with Appellant's assertion that the Applicant is required to show that a farm use "currently" exits on the Subject Property. As in *Craven*, the permit can be issued as long as the commercial activities are conducted in conjunction with a farm use, which farm use may be developed in tandem with the commercial activities once the permit is issued.

If the Applicant were required to show that the Subject Property, as it currently exists, is in farm use, this would be a more difficult issue to resolve. Appellant takes issue with the fact that the Applicant has not demonstrated a "profit" from farm activities. As explained in *Friends of Marion County*, "profit" is a broad term, and profit exists "so long as crops are raised, harvested and sold for a gross profit."[10] In that case, LUBA held that a farmer had not demonstrated a profit where the farmer "simply testified that they sold the field crops with no other documentation of their production or sale." Here, while it is an extremely close call, I find the Applicant has provided more than mere testimony that it has sold crops. The Applicant has also testified that there has been a gross profit from those sales and that the revenue earned has been reinvested in the farming operation. Based on this record, and although the Applicant has provided little corroboration of revenue from the current farm, I find it more likely than not that the Subject Property is currently in farm use.

b. Does the Meadery satisfy the standard for commercial activities in conjunction with farm use?

Appellant asserts that the Meadery does not meet the standard for allowing commercial activities in conjunction with farm use. Appellant's specific arguments are that the Meadery is not incidental and subordinate to Applicant's planned farm uses, and that it does not enhance the local agricultural community.

Appellant's arguments are grounded in the case law that interprets ORS 215.283(2)(a). One clear articulation of the standard from the Court of Appeals states that any commercial activity beyond the direct processing and selling of a farm product must "be both 'incidental' and subordinate to" the farm use.[11] In *Friends of Yamhill County*, the Court of Appeals addressed a county's approval of a permit to allow 44

[9] *Craven*, 308 Or at 283-84.
[10] *Friends of Marion County* at *16 *citing Cox v. Polk County*, 39 Or LUBA 1, 7-12 (2000).
[11] *Friends of Yamhill County v. Yamhill County*, 255 Or App 636, 650-51 (2013) *citing Craven*, 308 Or at 289.

annual events as part of a winery.[12] Finding the approval to be "dangerously close" to creating a scenario in which the incidental and secondary activities overtake the primary activity, the court nevertheless upheld the approval. The court explained that its decision was based on a condition of approval that limited non-farm income from the commercial activity from exceeding 25 percent of the gross income from the farm use activity, which was the onsite retail sales of wine.[13]

The Applicant's proposal and the Staff Decision in this matter imposed a condition of approval similar to the condition in *Friends of Yamhill County*. Specifically, the Staff Decision imposes a condition that requires the Applicant to confirm, on an annual basis, that no less than 25% of the honey used to produce mead is generated from the Subject Property. However, this condition of approval does not address the same issue the court was concerned with in *Friends of Yamhill County*. The condition in *Friends of Yamhill County* ensured that the scale of the non-farm commercial use was not greater, and therefore subordinate to, the primary farm use. In contrast, the condition in the Staff Decision that the Applicant relies on controls only the scale of the farm product being used for the commercial activity, ensuring that the Subject Property is the primary source of the farm product. That condition does not appear to impose any limitations on the scale of the non-farm commercial uses. Thus, for example, even if the Applicant sourced all of its honey from the Subject Property, nothing would prevent the Applicant from holding events and selling food from food carts in a manner the produces significantly more income than the farm use. If that occurred, the non-farm commercial activities would end up being the primary activity rather than the secondary activity.

As the Appellant points out, there are other components of the Application indicating that the non-farm commercial uses are not subordinate to the farm use. For example, the Applicant intends to have four employees for the Meadery, but perhaps only one, if any, for the farm operations. It is perhaps possible to have such a disparity in employees and still have the farm use be the primary use. However, as the Appellant notes, the Applicant simply has not attempted to quantify the magnitude of the farm use or the magnitude of the non-farm commercial activities. Some attempt at quantifying those activities is necessary if they are to be compared for the purpose of identifying a primary use and a secondary use.[14] That burden lies with the Applicant. Based on the record before me, I find that the Applicant has not met that burden.[15]

Although I agree with the Appellant that the Applicant has not demonstrated the Meadery will be incidental and subordinate to a farm use, I disagree with the Appellant's argument that the Applicant has not demonstrated the Meadery enhances the local agricultural community. The *Craven* decision is informative in this regard. In that case, the Court determined that the proposed winery did enhance the local agricultural community because it provided a local market outlet for grapes of other growers in the area. The Court also noted that it would help transform a hayfield into a vineyard, which increases the

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[12] The application in that case was made pursuant to ORS 215.283(2)(a) as a commercial activity and not under ORS 215.283(1)(n) as a winery.

[13] The definition of "farm use" includes "the preparation, storage and disposal by marketing or otherwise of the products or by-products raised on such land for human or animal use." ORS 215.203(2)(a).

[14] *See. e.g., Chauncey v. Multnomah County*, 23 Or LUBA 599 (1992) (holding that an application without evidence establishing the quantity of products delivered or dollar amount of sales to cannot demonstrate, as a matter of law, the proposed use is a commercial activity in conjunction with farm use).

[15] Appellant also relies on *Friends of Yamhill County v. Yamhill County*, 301 Or App 726 (2020). That case, although it addresses commercial activities, applies ORS 215.283(4), and is therefore not directly applicable to this matter.

intensity and value of agricultural products. LUBA has built on the decision in *Craven* and stated that, to demonstrate an activity enhances the local agricultural community, "a commercial activity in conjunction with farm use must be either exclusively or primarily a customer or supplier of farm uses."[16]

The Applicant's proposal here is nearly identical to the situation in *Craven* and City of *Sandy v. Clackamas County*. Specifically, the Applicant proposes to purchase honey from other farmers. Although the Applicant will not be a supplier of other farm uses, it will be primarily a customer of farm uses. The Applicant also proposes to develop regenerative bee pastures, which enrich the soils and, ultimately, increases the intensity and value of agricultural products. I therefore find that the Applicant's proposal satisfies this part of the standard in ORS 215.283(2)(a).

Based on the foregoing, I find that the Application must be denied because the Applicant has not met its burden of demonstrating the Meadery – as proposed – will be incidental and subordinate to a primary farm use on the Subject Property.

c. Did the Applicant adequately address the farm impacts test required by ORS 215.296?

As noted above, a commercial activity in conjunction with farm use is an allowed use in the EFU Zone, subject to any additional conditions the County may impose in its Code. Pursuant to DCC 18.16.040, the County has imposed several limitations on conditional uses, including commercial activities in conjunction with farm use authorized under DCC 18.16.030. The specific restrictions in DCC 18.16.040(A)(1) and (2) are required by state law and are a codification of the restrictions in ORS 215.296(1). LUBA sometimes refers to these restrictions as the "Farm Impacts Test."

An applicant carries the burden of proving that ORS 215.296(1) has been met.[17] LUBA has a well-established methodology for demonstrating compliance with the farm impacts test.[18] Under that methodology, a proposal can be approved only if it: (1) describes farm practices on surrounding lands devoted to farm use; (2) explains why the proposed development will not force a significant change in those practices; and (3) explains why the proposed development will not significantly impact or increase the cost of those practices. To begin that process, LUBA has held that "[i]n applying ORS 215.296(1), it is entirely appropriate for the applicant to begin by visually surveying surrounding lands to identify the farm and forest uses to which those lands are devoted."[19] Other parties are then free to dispute the initial findings, or to add to the record additional evidence of nearby farm uses and farm practices that the applicant must respond to.[20]

In addressing the Farm Impacts Test, the Applicant initially followed the process described above by providing what amounted to a visual survey of the surrounding land. Specifically, the Applicant provided an inventory of all parcels within a one-mile radius of the Subject Property that are devoted to farm use. As part of that inventory, the Applicant also identified specific farm uses in the study area,

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[16] *City of Sandy v. Clackamas County*, 28 Or LUBA 316, 321 (1994).
[17] *Schrepel v. Yamhill County*, -- Or LUBA – (LUBA No. 2020-066), 2020 WL 8167220, at *6.
[18] *See Brown v. Union County*, 32 Or LUBA 168 (1996).
[19] *Dierking v. Clackamas County*, 38 Or LUBA 106, 120-21 (2000).
[20] *Id*.

noting that they included "a combination of grass hay, permaculture, forest, [and] bare land." Other information provided by the Applicant indicates that some properties have horses, cattle, and pastures.

The Applicant concludes, primarily based on geographic separation, that there will be no impacts to forest or farm practices on the farm uses identified in the inventory. For example, the Applicant states a nearby property "is buffered by our own dwellings, farm buildings, 12 acres of regenerative bee pasture, and a 20-acre field that will eventually become regenerative bee pasture. At this distance, the winery will not significantly change or increase the cost of any of the accepted farm practices on this farm property." The Applicant arrived at a similar conclusion for potential noise and light impacts, noting that, because of the adjacent noise and lights from Highway 20, these impacts are already accepted by all adjoining farm and forest land.

The flaw in the Applicant's analysis is that it does not actually identify any farm practices that are associated with the various farm uses it identifies. As applied by LUBA and the courts, the Farm Impacts Test must focus on impacts to farm practices. Further, the fact that a similar impact may already exist does not mean that an increase in that impact is necessarily acceptable. An impact that already exists may nevertheless force a significant change to the farm practices associated with that use, or significantly increase the costs of those practices. That determination cannot be made, however, unless the Applicant first identifies specific farm practices that may be impacted.

In summary, the record does not include a description of the farm practices on surrounding lands devoted to farm use, nor does it include any explanation for why the proposed development will not force a significant change or cost to those practices. It is quite possible that the meadery will not have significant impacts on farm practices, but the burden to demonstrate compliance with the Farm Impacts Test unequivocally lies with the Applicant. Without any analysis of the accepted farm practices that are associated with the identified farm uses, I cannot make a factual finding regarding the existence of those farm practices, or a finding that it is more likely than not that the Meadery will not force a significant change to those farm practices. I therefore find that the Applicant has not met its burden to demonstrate compliance with DCC 18.16.040(A)(1) and (2).

d. Did the Staff Decision comply with ORS 215.416(8)?

Because a meadery is a type of winery, the Applicant refers to the winery statutes and compares the proposed meadery to a grape winery. As noted in earlier findings, state statues contain provisions specific to grape wineries and grape wineries are allowed in the EFU zone either outright through ORS 215.283(1)(n), as implemented by ORS 215.452 and ORS 215.453, or conditionally through ORS 215.283(2)(a) as a commercial activity in conjunction with agriculture. Applicant's stated purpose for comparing a meadery to a winery is that using the winery statutes as a guide helps ensure the meadery remains "incidental and subordinate to farm use." Appellant asserts that this approach is akin to approving the meadery based on inapplicable criteria and, therefore, violates ORS 215.416(8). That statute requires that approval or denial of a permit application be based only on applicable standards and criteria set forth in a county's land use regulations. Appellant argues that the winery statutes are not applicable and, therefore, cannot be relied on for approval of the Meadery.

Even though this Decision reverses the outcome of the Staff Decision, ORS 215.416(8) applies to both the approval or denial of an application. I therefore find it appropriate to address whether the Staff Decision violated ORS 215.416(8). I find that it did not.

There is no dispute in this proceeding that the Applicant seeks approval of the meadery under ORS 215.283(2)(a) as a commercial activity in conjunction with agriculture. The Applicant refers to the winery statutes as a guide and Applicant's express request to the County was "We have suggested that the County consider imposing most of the limitations on the meadery that ORS 215.452 applies to small wineries as a means of assuring that activities associated with the meadery are incidental and subordinate to farm use." Indeed, the Applicant recognized that ORS 215.452 was not a basis for approval of the meadery where it referred to ORS 215.456, which points back to ORS 215.283(2)(a) as a means of approving a winery that cannot otherwise be approved under ORS 215.283(1)(n), ORS 215.452, and ORS 215.453.

Contrary to Appellant's assertion, the Staff Decision did not rely on the winery statutes and, therefore, did not rely on inapplicable criteria. Indeed, the Staff Decision very clearly articulated the standard under ORS 215.283(2)(a) and set forth the three components of such a use that Staff would review: (1) the use must be a "commercial" activity; (2) it must be "in conjunction with farm use;" and (3) it must not be the processing of farm crops as described in Section 18.16.025. The Staff Decision then made findings relating to each of those components, and did so without reference to the requirements of the winery statutes. The criteria the Staff Decision relied on are each incorporated into the County's Code. The Staff Decision therefore did not violate ORS 215.416(8).

C. Conditions of Approval

The Staff Decision imposed several conditions of approval as part of Staff's approval of the Application. The Hearings Officer notes that no participant challenged any condition of approval or otherwise asserted such conditions could not or should not be applied if the Application were approved. Because this Decision finds that the Application cannot be approved based on the current record, however, there is no basis to impose any conditions of approval.

IV. CONCLUSION

Based on the foregoing findings, I find the Applicant has not met its burden of proof with respect to the standards for approving commercial activities in conjunction with a farm use and with respect to the Farm Impacts Test. The appeal of the Staff Decision is therefore SUSTAINED, and the Application is DENIED.

Dated this 17th day of November 2022

Tommy A. Brooks
Deschutes County Hearings Officer