



## MEMORANDUM

**TO:** Board of County Commissioners

**FROM:** Nathaniel Miller, Associate Planner

**DATE:** December 21, 2022

**RE:** Consideration to Hear - Deschutes County Land Use File Nos. 247-22-000024-CU, 22-025-SP, 22-757-A, 22-914-A: Commercial Activity in Conjunction with Farm Use (Meadery).

The Board of County Commissioners (Board) will conduct a meeting on December 21, 2022 and consider hearing an appeal of a Hearings Officer Decision (File Nos. 247-22-000024-CU, 025-SP, 22-757-A) denying an application for a Meadery.

### I. BACKGROUND

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.

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 Review 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 (reference appeal 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.

## II. 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".

## III. APPEALS

### Applicant

The Applicant (John Herman) submitted a timely appeal of the Hearings Officer's Decision on November 29, 2022. The Applicant requests the Board initiate review and conduct a 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 Applicant did not fully satisfied the requirements of DCC 18.16.040 (A)(1) and (2).

---

<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; [...]

- Whether the applicant and subject property is currently engaged in farm activities with the intent to make a profit in money.

The Applicant is requesting the Board waive the transcript requirements outlined in DCC 22.32.024(D). Further, it appears to staff that the Applicant requests a *limited de novo* review centered on the above-referenced issues.

#### **IV. BOARD OPTIONS**

There are three versions of Order No. 2023-002. In determining whether to hear an appeal, the Board may consider only:

1. The record developed before the Hearings Officer;
2. The notice of appeal; and
3. Recommendation of staff.

In addition, if the Board decides to hear the appeal, it may consider providing time limits for public testimony.

##### Reasons to hear:

- The Board may want to take testimony and make interpretations relating to the Hearings Officer's decision.
- The Board may also want to reinforce or refute some or all of the decision findings/interpretations prior to Land Use Board of Appeals (LUBA) review.

##### Reasons not to hear:

- The issues are a matter of statewide importance since they are regulated under State law; the Board may not be granted deference if appealed to LUBA.

If the Board decides that the Hearings Officer's decision shall be the final decision of the county, then the Board shall not hear the appeal and the party appealing may continue the appeal as provided by law. The decision on the land use applications becomes final upon the mailing of the Board's decision to decline review.

#### **V. STAFF RECOMMENDATION**

If the Board decides to hear the appeal, staff recommends a *de novo* review which allows the Board to consider the entire record and include new evidence and testimony as they see appropriate. As outlined below, the 150<sup>th</sup> day for the application is April 13, 2023. Staff notes that the applicant has initiated a 120 day toll which extends the clock so the Board has time to review the proposal.

**VI. 150-DAY LAND USE CLOCK**

The application for 247-22-000024-CU, 247-22-000025-SP was considered complete and the 150-day clock was started on July 15, 2022. The applicant initiated the first toll from September 21, 2022 to September 23, 2022 which extended the clock by two (2) days. The Applicant initiated the second toll on November 29, 2022 to March 29, 2023 which extends the clock by one hundred and twenty (120) days. With the tolls from the Applicant, the original 150-day clock is extended past the original 150<sup>th</sup> day noted in the decision as December 12, 2022. The 150th day on which the County must take final action on this application is April 13, 2023.

**VII. RECORD**

The record for file no. 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>

Attachments:

<b>Document</b>	<b>Item No.</b>
2022-12-21 BOCC DRAFT Order 2023-002 De Novo	1
2022-12-21 BOCC DRAFT Order 2023-002 Limited De Novo	2
2022-12-21 BOCC DRAFT Order 2023-002 Decline to Hear	3
2022-12-21 Location Map - 247-22-000024-CU, 22-025-SP, 22-757-A, 22-914-A	4