

REVIEWED  
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LEGAL COUNSEL

For Recording Stamp Only

**DECISION OF THE DESCHUTES COUNTY BOARD OF COUNTY COMMISSIONERS**

**FILE NUMBER:** 247-22-000024-CU, 247-22-000025-SP, 247-22-000757-A, 247-22-000914-A

**SUBJECT PROPERTY/  
OWNER:**

Mailing Name: HERMAN, JOHN & RENEE ET AL  
Map and Taxlot: 1510100000700  
Account: 135891  
Situs Address: 68540 HWY 20, SISTERS, OR 97759

**APPLICANT:** John Herman

**ATTORNEY FOR  
APPLICANT:**

Liz Fancher  
2465 NW Sacagawea Lane  
Bend, OR 97703

**STAFF REVIEWER:** Nathaniel Miller, AICP, Associate Planner

**REQUEST:** The applicant request a Conditional Use Permit for commercial activities in conjunction with farm use to establish a Meadery (Honey Winery) with associated uses. The request also includes a Site Plan Review for the Meadery.

**I. APPLICABLE CRITERIA**

Title 18 of the Deschutes County Code, the County Zoning Ordinance:

- Chapter 18.04, Title, Purpose and Definitions
- Chapter 18.16, Exclusive Farm Use Zones (EFU)
- Chapter 18.80, Airport Safety Combining Zone (AS)
- Chapter 18.84, Landscape Management Combining Zone (LM)
- Chapter 18.56, Surface Mining Impact Area Combining Zone (SMIA)

Chapter 18.116, Supplementary Provisions  
Chapter 18.120, Exceptions  
Chapter 18.124, Site Plan Review  
Chapter 18.128, Conditional Use

Title 22, Deschutes County Development Procedures Ordinance

## II. **BASIC FINDINGS**

**LOT OF RECORD:** The subject property is a legal lot of record being platted Parcel 1 of Minor Partition MP-02-44.

**SITE DESCRIPTION:** The subject 83.48-acre property is a developed ranch with 2 single-family dwellings, farm buildings, and supporting ranch infrastructure. The majority of the property is pastureland on the northwest and southeast sides. The developed portion of the property is along the southwest property line which abuts Highway 20. There is a light cover of Ponderosa Pine trees and other vegetation at the northeast, southeast, and around the ranch houses and barns. The property is irregular in shape, and fronts on Highway 20 to the southwest and Highway 126 to the northeast. The grade of the property is relatively even across the parcel. The subject property is depicted in *Image One* below.

***Image One – Subject Property***



**PROPOSAL:** The applicant requests a Conditional Use Permit for commercial activities in conjunction with farm use to establish a Meadery (Honey Winery) with associated uses. The Meadery will operate similarly to a small grape winery [ORS 215.452 & DCC 18.16.038(B)(2)] combining wine production and onsite sales, events, consumption, and education but with additional limitations prescribed by conditions of approval. As outlined below, the proposed Meadery as the commercial activity includes the following associated uses (actions) and subordinate features:

Associated Uses (Actions)

1. Mead Production, Aging, & Packaging
2. Market and sell wine produced in conjunction with the winery and directly related activities only<sup>1</sup>

Subordinate Features (Limited to 25 percent of the gross income from the on-site retail sale of wine produced in conjunction with the winery)

1. Market and sell items directly related to the sale or promotion of wine produced in conjunction with the winery including food sales
2. 10 Winery Related Events<sup>2</sup> excluding weddings

The proposed Meadery use will occur in an existing 3,000-square-foot farm building which will be converted to the “Winery Building.” The production, parking, tasting area and food cart adjoin, or are in close proximity to, the Winery Building. The Winery Related Events will be staged in the same general area but include a lawn and stage area to the northwest, as well as additional parking to the north and east.

As the Associated Uses (Actions) and Subordinate Features differ with respect to characteristics, function, and location on the site, the Board classifies the uses into the following three aspects for the purposes of this review:

**I. Mead Production**

Mead Production, Aging, & Packaging

**II. Winery Operations**

Winery Indoor & Outdoor Tasting Area & Wine Sales  
Up to 1 Food Cart

**III. Winery Related Events**

Events (10 Events Annually)  
• Up to 2 Additional Food Carts

The application also includes a Site Plan Review for the Meadery. The general location of the Meadery including the Winery Building is depicted in **Image Two** below.

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<sup>1</sup> The Meadery application proposes to conduct certain activities allowed and as limited by ORS 215.452, while recognizing that a meadery (honey winery) is similar to, but operates differently than, a small grape winery. Certain of these activities are further limited by the conditions of approval of this decision. The applicant did not seek approval of an ORS 215.452 winery because it does not have a vineyard.

<sup>2</sup> The term “Winery Related Events” is the same as “agri-tourism and other commercial events” allowed by ORS 215.452(5) for grape wineries.

**Image Two - Meadery (General Location)**



The Winery Related Events will be located at the Meadery location and will include additional parking spaces to the east and the lawn area to the northwest. The general location of the Meadery with the location of Winery Related Events is depicted in **Image Three** below.

**Image Three - Meadery with Winery Related Events Area (General Location)**



The general site plan for the Meadery (Mead Production & Winery Operations) and the site plan for the Meadery with Winery Related Events is included with the decision as **Attachment A** and

**Attachment B.** The applicant proposes to use the existing 3,000-square-foot building for the Winery Building. No new substantial development is currently proposed.

**SURROUNDING LAND USES:** Immediately surrounding properties to the north, west, south and east are all EFU-zoned lots in relatively similar sizes to the subject property. These surrounding properties are predominately pastureland. The neighboring properties to the east are developed with a single-family dwellings. Farm uses are visible from aerial imagery for the majority of properties abutting the subject parcel.

**LAND USE HISTORY:**

- MP-02-44: Minor Partition creates property as Parcel 1 with 83.48 acres
- FPA-04-16: Final Plat Approval for MP-02-44
- 247-22-000024-CU, 247-22-000025-SP: Subject review for a Conditional Use Permit and Site Plan approval for a Meadery

Property records contain additional land use approvals that pre-date the creation of the subject parcel. These land use documents can be accessed through Deschutes County's land information website Dial: <https://dial.deschutes.org/Search/General>.

**PUBLIC AGENCY COMMENTS:** The Planning Division mailed notice on January 28, 2022, to several public agencies and received the following comments:

Deschutes County Building Division, Randy Scheid

NOTICE: The Deschutes County Building Safety Divisions code mandates that Access, Egress, Setbacks, Fire & Life Safety, Fire Fighting Water Supplies, etc. must be specifically addressed during the appropriate plan review process with regard to any proposed structures and occupancies.

Accordingly, all Building Code required items will be addressed, when a specific structure, occupancy, and type of construction is proposed and submitted for plan review.

Deschutes County Senior Transportation Planner, Peter Russell

A Trip Generation Forecast was included with the response to the Incomplete Letter that was submitted to the Planning Division on March 8, 2022.

In response to the submittal, Peter Russell provided the following comment:

The trip generation letter is acceptable and answers the transportation questions. Thanks for sending it along.

At staff's request, Peter Russell provided updated SDC rates for the current fiscal year on July 21, 2022:

Here are the updated calcs using the new SDC rate of \$5,080 per peak hour trip.

Board Resolution 2013-020 sets the transportation system development charge (SDC) amount and the applicant initially used an outdated rate of \$4,757 per peak hour trip. In the provided Trip Generation Forecast, it was considered that since the tasting room would be closed 2 out of 5 weekdays, the average weekday traffic would not be accurately calculated by directly applying an Institute of Traffic Engineers (ITE) trip generation rate. The average rate was calculated as shown in Table 4 below:

**Table 4 – Final Trip Generation Forecast**

ITE Land Use	Size (units)	PM Peak Hour Trip Ends			
		In	Out	Total	Daily
Wine Tasting Room 970	1.537 t.s.f.	3	4	7	42
Manufacturing 140	1.463 t.s.f.	0	1	1	7
Food Cart Pod 926	Food Carts	See wine-tasting below			
Wine Tasting Room 970	0.096 t.s.f.	0	1	1	4
Internal Trips for Employees Living in Site (50 percent of Manufacturing trips)		0	0	0	-4
<b>Subtotal – External Trips</b>		<b>3</b>	<b>6</b>	<b>9</b>	<b>49</b>
Pass-by trips for Tasting Room (25 percent)		1	1	2	11
<b>Total Non-Passby Trips</b>		<b>2</b>	<b>5</b>	<b>7</b>	<b>39</b>

Also, the food cart would not attract traffic at this location as a stand-alone operation. To account for this, it was considered to be a small-kitchen extension of the wine-tasting operation. The resulting forecast was 9 p.m. peak hour trips and for 49 daily trips, of which 7 p.m. peak hour trips and 39 daily trips would be non-pass-by, aka site-generated, trips. This is a reasonably conservative approach considering that the family would also work on the site, which would eliminate some work trips – and that some of the trips would likely be pass-by trips for people driving between Bend and Sisters. At this level of weekday traffic generation, no further traffic studies are needed under Deschutes County Code (DCC) 18.116.310(C)(a). The resulting SDC is \$35,560 (\$5,080 X 7). The SDC is due prior to issuance of certificate of occupancy; if a certificate of occupancy is not applicable, then the SDC is due within 60 days of the land use decision becoming final. The County has both an SDC appeal process and a 10-year payment plan option; **however, if the 10-year payment plan is used, the County becomes the holder of a first-place lien.**

**THE PROVIDED SDC AMOUNT IS ONLY VALID UNTIL JUNE 30, 2023. DESCHUTES COUNTY'S SDC RATE IS INDEXED AND RESETS EVERY JULY 1. WHEN PAYING AN SDC, THE ACTUAL AMOUNT DUE IS DETERMINED BY USING THE CURRENT SDC RATE AT THE DATE THE BUILDING PERMIT IS PULLED.**

Oregon Department of Agriculture – Food Safety Program, Jon Harrang

To Whom it May Concern,

Food/beverage processing facilities such as those that produce Mead (honey wine) must be licensed and inspected by ODA Food Safety Program. A tasting room associated with the production facility would also be subject to licensing and inspection. The processing facility must comply with the minimum standards set forth in 21 CFR 117. The tasting room would be subject to the Retail Food Code, OAR 603 Division 25. An adequate supply of potable water is required. In addition, the firm must demonstrate that solid and liquid waste are being properly disposed of. A septic authorization letter from Deschutes County Environmental Health or the equivalent approval from DEQ would be needed as a prerequisite for licensing, depending on which agency has the jurisdiction in this matter. Please note that OLCC and TTB may have additional requirements which relate to production, sales, and serving of alcoholic beverages to the public.

Food cart licensing and inspection would be handled by Deschutes County Environmental Health Department.

Please contact me if Deschutes County Planning Staff or the applicant should have any questions and/or if further discussion or clarification are needed.

Deschutes County Health Services, Eric Mone

I received this Notice of Application for a Conditional Use permit at 68540 HWY 20, Sisters. Thanks for sending. A few considerations:

- if this property is served by a private well, it needs to be reviewed and approved as a Public Water System by either Oregon Dept of Ag (ODA) or our EH dept
- Licensure of Meadery will depend on their predominant activity (sales, tasting room, foodservice); that will determine whether licensure required by ODA or EH
- Mobile Food Units (MFU, e.g. carts) will all require licensure by EH
- Not sure if the MFU's will only be on site for events a few times per year or permanent. If permanent, it would be best for Public Health purposes if they were tied into the on-site septic system, the well, and a power source on site.
- Todd's team is reviewing septic system so that will be a major consideration

As this application process moves forward, please let me know if you have any questions.

Oregon Department of State Lands (DSL), Mathew Unitis

We have completed our review of the Wetland Land Use Notification that was prepared for John Herman - John Herman The WLUN form was submitted to the Department for review/response and given the file number WN2022-0080

The results and conclusions from that review are explained in the attached pdf documents. If the attached documents are illegible or difficult to open, you may contact the Department and request paper copies. Otherwise, please review the attachments carefully and direct any questions or comments to Jurisdiction Coordinator, Matthew Unitis at 503-986-5262 or [Matthew.Unitis@dsl.oregon.gov](mailto:Matthew.Unitis@dsl.oregon.gov). Thank you for your interest in the project.

Additional resources that may be helpful:

[DSL Coordinator List \(https://www.oregon.gov/dsl/ww/pages/wwstaff.aspx\)](https://www.oregon.gov/dsl/ww/pages/wwstaff.aspx)

[R/F Fee Schedule \(https://www.oregon.gov/dsl/WW/Documents/RemovalFillFees.pdf\)](https://www.oregon.gov/dsl/WW/Documents/RemovalFillFees.pdf)

Aquatic Resource Management Program  
Oregon Department of State Lands  
775 Summer St. NE, Ste. 100  
Salem, OR 97301-1279  
Fax: (503) 378-4844  
<https://www.oregon.gov/dsl/Pages/index.aspx>

The Wetland Land Use Notice Response includes the following comments:

**Wetland/Waterway/Other Water Features**

There are/ may be wetlands, waterways or other water features on the property that are subject to the State Removal- Fill Law based upon a review of wetland maps, the county soil survey and other available information.

The National Wetlands Inventory shows wetland, waterway or other water features on the property

**Your Activity**

A state permit will not be required for the proposed project because, based on the submitted site plan, the project avoids impacts to jurisdictional wetlands, waterways, or other waters.

The full DSL Wetland Land Use Notice Response is included as **Attachment C**.

The following agencies did not respond to the notice: Deschutes County Assessor, Three Sisters Irrigation, Deschutes County Environmental Soils Division, Sisters-Camp Sherman Fire District, Deschutes County Road Department, Oregon Department of Fish and Wildlife, Oregon Department of Transportation, and US Fish and Wildlife Service.



**PUBLIC COMMENTS:** The Planning Division mailed notice of the conditional use application to all property owners within 750 feet of the subject property on December 12, 2021. The applicant also complied with the posted notice requirements of Section 22.24.030(B) of Title 22. The applicant submitted a Land Use Action Sign Affidavit indicating the applicant posted notice of the land use action on January 28, 2022. Public comments were received and are included in the record.

Central Oregon LandWatch, Kristy Sabo

January 28, 2022

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Concern over Application 247-22-000024-CU:

While we are still reviewing the applications and all of the issues, we are initially concerned that the Conditional Use application for a Meadery in Conjunction with Farm Use does not meet all of the applicable criteria/ that the burden of proof is not satisfied for all criteria, specifically under DCC 18.128. Thank you for your attention to these views, and please keep us informed of any decisions in this matter.

The Boards notes that Central Oregon LandWatch submitted the following comments on January 25, 2023 specific to the project's revised operational scope and conditions of approvals:

Hello Nathaniel and Will,

Central Oregon LandWatch submits this comment to the Board of County Commissioners for today's hearing on Application File Nos. 247-22-000024-CU and 247-22-000025-SP. LandWatch does not oppose the application so long as the applicant's proposed conditions of approval are adopted in a final decision by the Board.

If the applicant's proposed conditions of approval are not adopted in a final decision by the Board, then LandWatch renews its comments against this application, which the Hearings Officer agreed with, attached here.

Regards,

Rory Isbell

As addressed below in this decision, the Board applies the revised conditions of approval as proposed by the applicant.

Neighbor, Matt Cohen

February 14, 2022

The applicant within the burden of proof did not address the "Change of Use" for the existing driveway that is currently served and accessed via the State Highway Connection. Based on

information contained in the application the applicant is requesting a conditional use be approved for "Commercial Activities in Conjunction with Farm Use." The existing driveway is not presently approved for Commercial Activity, and as such a modification will require the approval of the Oregon Department of Transportation in compliance with the permitting process for a Private Approach to a State Highway in compliance with ORS 374. Furthermore, the applicant within the burden of Proof has not provided a TIA such that the traffic impacts of the conditional use being proposed can be properly evaluated.

For the record, I am not opposed to this Conditional Use, but I am concerned about how the existing access points off of Highway 20 can safely accommodate the proposed volume of traffic. Assuming the bulk of the traffic that will be visiting the site will result from trips generated in the City of Sisters, it means drivers will be forced to make a left hand turn across an active lane of a state highway without the safety and protection of a center turn lane, this is furthermore complicated by the fact the existing driveway is located on a curve with limited site distance, giving drivers approaching from the west an unreasonable amount of time to react to a vehicle stopped in the highway awaiting a break in traffic to make a turn.

I reside at 16165 Jordan Road (just 1/8 mile to the east) and I am forced to make the same turn into our driveway approach off of Highway 20. We experience close calls at this intersection on a daily basis and tragically a motorcyclist was killed at this intersection in July 2020 when another vehicle failed to stop for a vehicle that was stopped making a left hand turn across traffic.

I recognize that ultimately ODOT is responsible for the safety and access of our State Highways and will evaluate the application in compliance with all Engineering standards and if required identify any modifications or improvements necessary to protect the public interest. However as a member of the public using this section of the Highway I want to be sure the Conditional Use Application considers and takes into account the ODOT access standards and that this information is presented as findings to the public for review and comment before a decision is issued by the County.

No comments were received from the Oregon Department of Transportation expressing any concerns regarding the subject property's existing access to Highway 20. The Board notes that this decision requires the applicant to obtain additional governmental approvals, if any, required to conduct approved land uses.

ODOT access standards are not land use approval criteria for the applicant's site plan or conditional use application. County transportation planner Peter Russell has reviewed this application and has not expressed concern about highway safety or compliance with any conditional use or site plan approval criteria. The applicant's transportation system letter shows that the volume of traffic associated with the winery will be very low and, therefore, will have no more than a negligible impact on traffic safety, if any.

On September 7, 2022, the Deschutes County Planning Division issued an administrative decision. That decision was appealed by Central Oregon LandWatch. A hearing was conducted by a county

hearings officer who issued a decision mailed November 18, 2022 denying the application for two reasons. These reasons were that the hearings officer found that the applicant failed to provide sufficient evidence of compliance with the "incidental and subordinate" and "farm impacts" tests. John Herman appealed the hearings officer's decision to the Board of Commissioners on November 29, 2022. On December 21 2022, the Board agreed to hear the appeal *de novo* and waived the transcript requirement. BOCC Order No. 2023-02.

A hearing regarding the Herman appeal was held by the Board on January 25, 2023. During the hearing, a comment was e-mailed to planner Nathaniel Miller by Matt Cohen and received by the County's computer server prior to the close of the hearing. The Cohen e-mail was not presented to the Board prior to the close of the record at the end of the January 25, 2023 hearing nor was it marked as a hearing exhibit. The applicant objected to inclusion of this e-mail in the record because it was not received as an exhibit during the land use hearing following the procedures of DCC 22.24.090 and was not available for review by the public at the hearing as required by DCC 22.24.120(G). The Board allowed this e-mail to be included in the record because it was a "record item" due to its receipt by the County's server – an item that is not required to be filed in the manner specified for hearings exhibits in DCC 22.24.090.

The Board makes the following findings regarding the issues raised in Mr. Cohen's January 25, 2023 e-mail:

- A. Mr. Cohen claims "[p]ursuant to DCC 18.144.040, part D item #12 and #13, the applicant has not demonstrated ADA access to all proposed facilities." He also claims the waiver of the requirement to pave parking areas does not provide for ADA accessible paths. The Board finds that Mr. Cohen meant to refer to DCC 18.124.040(D)(12) and (13). DCC 18.124.040(D) is a list of information required to provide a complete site plan. It does not specify relevant approval criteria. It does not provide a basis for denial of the Herman site plan application. Notwithstanding approval of the waiver of paving requirements and Condition of Approval S, the Board finds that applicant may pave any graveled area required to be paved if required to do so by Building Division ADA review.
- B. Mr. Cohen argues that the applicant has failed to demonstrate compliance with ORS 374.305 which he claims requires "anyone wanting to construct a new approach or change the use of an existing connection to a State Highway to first obtain written permission from ODOT." ORS 374.305 is not a land use requirement. It requires that a change in the manner of using an approach road be approved by ODOT. ODOT has interpreted that requirement in administrative rules to apply only to certain changes of use and has not requested that Mr. Herman obtain approval of a change the use of his access to Highway 20 as a condition of approval of this application.
- C. Mr. Cohen claims that egress lighting will be required by the Building Division. The Board finds that Condition FF of this decision anticipates this possibility and requires compliance with all relevant site plan criteria related to lighting. Mr. Cohen also requested a photometric light study to show compliance with DCC 18.124.040(D)(11) and a public review of compliance. As determined in item A above, DCC 18.124.040(D) does not supply relevant

approval criteria. The only applicable approval criterion that addresses exterior lighting requirements for the Herman property is DCC 18.124.060(J). It requires that “[a]ll exterior lighting shall be shielded so that direct light does not project off site.” Compliance with DCC 18.124.060(J) has been assured by the imposition of Condition of Approval FF which requires compliance with that standard. The application of this standard to outdoor lighting does not require the exercise of discretion by the County and, therefore, the public does not have a right to insist on a post-approval review to assure compliance. Furthermore, if exterior lighting is required for the winery building and is provided, Mr. Cohen will be able to determine whether the requirements of DCC 18.124.060(J) are or are not met by looking at the lights. If a violation occurs, it may be rectified by enforcement of the condition of approval. A review of photometric light studies is not required to determine compliance.

### III. **FINDINGS & CONCLUSIONS**

#### **Title 18 of the Deschutes County Code, County Zoning**

#### **Chapter 18.16, Exclusive Farm Use Zones (EFU)**

##### Section 18.16.020 Uses Permitted Outright.

##### **A. *Farm use as defined in DCC Title 18.***

**FINDING:** DCC 18.04.030 defines “farm use” as the following:

*“Farm use” means the current employment of land for the primary purpose of obtaining a profit in money by raising, harvesting and selling crops or by the feeding, breeding, management and sale of, or the produce of, livestock, poultry, fur-bearing animals or honeybees or for dairying and the sale of dairy products or any other agricultural or horticultural use or animal husbandry or any combination thereof. “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. “Farm Use” also includes the current employment of the land for the primary purpose of obtaining a profit in money by stabling or training equines, including but not limited to, providing riding lessons, training clinics and schooling shows. “Farm use” also includes the propagation, cultivation, maintenance and harvesting of aquatic species and bird and animal species to the extent allowed by the rules adopted by the State Fish and Wildlife Commission. “Farm use” includes the on-site construction and maintenance of equipment and facilities used for the activities described above. “Farm use” does not include the use of land subject to the provisions of ORS chapter 321, except land used exclusively for growing cultured Christmas trees as defined in ORS 215.203(3). Current employment of the land for farm use also includes those uses listed under ORS 215.203(2)(b).*

The applicant provided the following response in the Burden of Proof:

The subject property is employed in farm use. Our current revenue streams are from the

sale of bee colonies (sold out both the 2021 and 2022 seasons,), hive sponsorships, the boarding of horses (since purchasing the ranch in mid 2020), and strategic crop share agreements with local graziers for the production and sale of beef. We also hayed a field in 2021 and 2022 in order to feed our boarded horses and sell. We do all of these farm uses with the intention of making a profit in money. So far, we have reinvested all profits back into these farming ventures with the intention of generating a greater profit in money. Meanwhile, we continue to invest financially in our Regenerative Bee Pastures (bi-annual seeding, irrigation, cultivation) and apiaries (equipment and off-season feed) with the goal of generating a profit in money. This year we have more than doubled both our bee and honey sales, and have more than tripled the size of our apiary, as well as doubled the amount of grazing days possible by beef cattle.

In 2022, our farm grossed \$31,405 in income from these farm uses, and produced an additional \$10,000 to \$12,000 worth of honey we are stockpiling to make mead. This income is expected to increase in 2023 or 2024 when we plant an additional 22 acres of bee pastures to support the growth of our apiary. (See Exhibit S)

Furthermore, the term “current employment of land for farm use” is defined by ORS 215.203(b)(C) to include the subject property which includes “land planted in orchards or other perennials prior to maturity.” Our Regenerative Bee Pastures contain a dramatic combination of establishing perennials, including such flora as alfalfa, nine types of clover, sainfoin, vetch, plantain, and drought tolerant grasses such as Sorghum Sudan. As noted in the application, we currently have over 30 acres of Regenerative Bee Pastures, with 22 more acres planned for production this or the following season. These Regenerative Bee Pastures exponentially increase our ability to proliferate bee colonies for sale, harvest plant nectar in the form of honey, harvest hay, and graze cattle for the sale of beef.

John Herman is the owner of two companies, and moved from part time to full time development/operation of the bee ranch in January of 2021. Lazy Z Ranch LLC is the single-member LLC which cultivates the land for bee and honey production for a profit in money (as well as runs the horse boarding facility and assists with high density grazing operations). Once approved, Lazy Z Meadery LLC is the company that will run the Meadery, instantly creating an additional market for the bee and honey business operated on the subject property by Lazy Z Ranch LLC and for other Central Oregon beekeepers, such as Jimmy at Broadus Bees, Devon at Prescott Apiaries, and Matt at Apricot Apiaries. All ingredients in mead are grown/cultivated/harvested on farms and our commitment to creating a uniquely Central Oregon mead as Lazy Z Meadery LLC’s value-added farm product bolsters farm use profitability for all farmers involved, including Lazy Z Ranch LLC (See Exhibit U).

In addition, we only sell our bees to people in the Sisters area, and maintain these relationships to ensure the proliferation of more pollination and honey production, benefitting not only the profitability of our ranch and future winery, but farms and ranches for miles in every direction.

The Board finds the subject property is actively engaged in farm use as defined by County code and

Section 18.16.030. Conditional Uses Permitted- High Value and Non-high Value Farmland

***The following uses may be allowed in the Exclusive Farm Use zones on either high value farmland or non-high value farmland subject to applicable provisions of the Comprehensive Plan, DCC 18.16.040 and 18.16.050, and other applicable sections of DCC Title 18.***

...

***E. Commercial activities that are in conjunction with farm use, but not including the processing of farm crops as described in DCC 18.16.025.***

**FINDING:** The Board finds the use permitted conditionally under this paragraph includes three components: (1) it must be a “commercial” activity;” (2) it must be “in conjunction with farm use.” The processing of farm crops is allowed by Section 18.16.025 is not a conditional use and does not require approval as a commercial activity in conjunction with farm use. Mead Production, Winery Operations, and Winery Related events are all authorized by approval of the proposed commercial activity in conjunction with farm use.

Operational Characteristics

**I. Winery Operations**

The Winery Operations will have the following characteristics:

- Located in, and outside adjacent to, the Winery Building
- Open Year Round
- Open from 12:00pm to 10:00pm Thursday to Sunday, and on Holidays which fall on a Monday when Mead Production is not open. Mead production will typically occur when the winery is closed.
- Up to 4 Employees
- Up to 126 Weekly Visitors during “Off Season” and up to 246 Weekly Visitors during “Peak Season”
- 1 Food Cart
- Occurs on less than 2% of the subject property (includes Mead Production location)

**II. Winery Related Events**

The Winery Related Events will have the following characteristics and be *in addition to* the above-mentioned Mead Production and Winery Operations:

- Located at the Winery Building and Lawn/Stage Area
- Open Year Round (Primarily May – October)
- Open from 10:00am to 10:00pm
- Up to 5 Employees
- 5 Events of Up to 250 Visitors Per Event
- 5 Events of Up to 150 Visitors Per Event
- Up to 2 Additional Food Carts
  - Hours from 10:00am to 10:00pm

- Occurs on less than 3% of the subject property (includes Winery Operations location)

The employee count includes the applicant as the owner/operator and excludes the 1 food cart employee for Winery Operations and the 2 food cart employees during a Winery Related Event.

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 enterprises of the local agricultural community; and
4. The use promotes the policy of preserving farm land for farm use

The use approved by Yamhill County was characterized as an “event venue and commercial food service facility” by opponents. It was proposed in conjunction with a winery. The Court of Appeals rejected the argument that these uses cannot be considered “in conjunction with farm use.” Instead, it found that the Supreme Court decision in *Craven v. Jackson County*, 308 Or 281, 779 P2d 1011 (1989) merited approval of the use. In *Craven*, the courts upheld that a commercial activity in conjunction with farm use is one that assists farms in processing and marketing crops as well as one that aids farmers in producing crops. According to the applicant in *Craven*, their farm-to-table meals both sell the farm products in a prepared form and aid the farm operation in processing and marketing crops to the public.

The following findings address how the various aspects of the applicant’s proposal meet the *Friends of Yamhill County* test:

### **Related to Farm Use**

A honey winery is related to the production of honey and bee pastures and pollinator gardens that have been established on the subject property. The production of mead involves the processing of honey, a farm product produced on site, for sale at the proposed winery. As a result, the proposed commercial activity in conjunction with farm use that includes both the production and sale of wine relates to a farm use occurring on the subject property.

The applicant also proposes one food cart to serve food while the Winery is open. To demonstrate how the food cart is related to the farm uses on the site, the applicant provided the following statement:

All food carts will offer honey to patrons as a condiment for food sold at the cart and/or feature honey in at least one food item offered at the food cart. The food carts will, from time-to-time, sell beef. The ranch relies on targeted, ultra-high density cattle grazing to improve the health of the soil in its bee pastures.

There will be a maximum of one food cart on site except on the limited number of days when events will occur on the property. The purpose of the single food cart is to highlight honey in another capacity (ingredient in food), provide food with mead to lessen the impact of consuming alcohol, and to make consuming mead more enjoyable – hence increasing sales of mead made from honey produced by one of the farm uses occurring on-site. The purpose of the food carts for events is to meet the food needs of guests. The primary purpose of events is to raise awareness and sales of mead in the tasting room and in off-site retail locations if/when retail sales occur in the future.

This decision also authorizes a maximum of ten agri-tourism or commercial events per year, events referred to as Winery Related Events. The Winery Related Events support the Meadery/Winery. The application materials state:

“The purpose of having the events is to bolster the marketing/sale/brand of the Meadery/Winery. Events will be selected based on their commitment to feature Lazy Z products. All listed examples are just that: examples of the type of events that would support the Meadery/Winery through customer engagement and differentiated experience of our products.”

The property is engaged in several farm uses in addition to the production of honey such as the sale of bee colonies, hive sponsorships, horse boarding, crop share agreements with local graziers for the production and sale of beef, growing and selling pumpkins, and hay production and sales. To demonstrate how Winery Related Events are related to the farm uses on the site, the applicant provided the following statement:

“The tasting room facility will remain open at events and ranch wines will be featured at all events. Examples include mead/wine festivals, family gatherings that feature our wine products, concerts that raise awareness for pollinator habitat, etc. The bee ranch/farmhouse meadery "theme" would be present at all events. All events would point back to the ranch mead, pollinators, and/or regenerative farming. Promotional materials for events will typically include information advertising the winery and ranch. Events are an accepted practice at any winery for the purpose of increasing sales of wine as well as generating income to help support farming operations.

The ranch also raises hay. Hay bales can be used as decorations at events, if necessary, to promote the sale of hay. The ranch boards horses and raises goats. The events will raise awareness of the horse boarding operation and goat products. The ranch also grazes cattle to enhance the productivity of its regenerative bee pastures. Grass-fed beef will be featured at the events in at least one of the three food carts.”

The applicant also proposes up to two food carts to serve food during a Winery Related Event. To demonstrate how the food cart is related to the farm uses on the site, the applicant provided the following statement:

“All food carts will offer honey to patrons as a condiment for food sold at the cart and/or feature honey in at least one food item offered at the food cart. The food carts will, from



time-to-time, sell beef. The ranch relies on targeted, ultra-high density cattle grazing to improve the health of the soil in its bee pastures.

There will be a maximum of one food cart on site except on the limited number of days when events will occur on the property. The purpose of the single food cart is to highlight honey in another capacity (ingredient in food), provide food with mead to lessen the impact of consuming alcohol, and to make consuming mead more enjoyable – hence increasing sales of mead made from honey produced by one of the farm uses occurring on-site. The purpose of the food carts for events is to meet the food needs of guests. The primary purpose of events is to raise awareness and sales of mead in the tasting room and in off-site retail locations if/when retail sales occur in the future.”

Based on the above findings, the Board finds the food carts to be related to the farm uses on the site. To ensure compliance with this requirement and the incidental and subordinate test discussed below, the following condition of approval is imposed:

#### Food Carts

A maximum of one food cart is allowed to provide food for tasting room visitors. A maximum of two additional food carts may be allowed at events. All food carts shall offer honey as a condiment and shall have at least one food item featuring honey on the menu.

Based on the above, the Board finds the Winery Related Events and food carts to be related to the farm uses on the site.

#### **Activity is incidental and subordinate**

The farm use of the Herman property is raising honey bees to produce honey, cultivating regenerative bee pastures, growing crops (pumpkins and berries), grazing livestock, and boarding horses. The law allows the Board to approve the winery as a commercial activity in conjunction with farm use. DCC 18.16.030(E).

When a winery is approved as a commercial activity in conjunction with farm use, the following “incidental and subordinate” test applies:

“[A]ny commercial activity beyond the direct processing and selling of wine must, to be approved as a commercial activity in conjunction with the farm use of viticulture, [must be] both incidental and subordinate to the processing and selling activities of the winery.”

*Friends of Yamhill County v. Yamhill County*, 255 Or App 636, 650-651, 298 P3d 586 (2013) discussing *Craven v. Jackson County*, 308 Or 281, 779 P2d 1011 (1989).

The processing and selling of wine is a part of the farm use. It is not subject to the “incidental and subordinate” test. Only other commercial activities associated with a winery require approval as a conditional use in conjunction with farm use. In *Craven*, this included the incidental sale of items such as t-shirts, wine glasses and cork screws. As determined by the appealed Staff Decision, the

incidental and subordinate test applies to “any commercial activity beyond processing and selling farm products.” *Staff Decision 247-22-000024-CU/-25-SP*, p. 16.

Mr. Herman is harvesting honey from his apiary to use in making wine. Under the *Craven* analysis the making and sale of wine is a part of or accessory to farm use. Honey is the sugar of the plants being cultivated in the regenerative bee pastures. Mr. Herman has established over 30 acres of regenerative bee pastures. They produce abundant and high-quality honey that he will use to make honey wine.

This decision imposes the following condition of approval:

“The gross income of the winery from any activity other than the production or sale of wine may not exceed 25 percent of the gross income from the on-site retail sale of wine produced in conjunction with the winery. The gross income of a winery does not include income received by third parties unaffiliated with the winery.”

This condition, in addition to other elements of the applicant’s proposal, acts to achieves compliance with the incidental and subordinate test of *Craven*.

Mr. Herman’s application also achieves compliance with the incidental and subordinate test by confining winery activities to those allowed for small wineries by ORS 215.452 and imposing additional restrictions in the conditions of approval of this decision. The following is a summary of the additional restrictions that achieve compliance with the incidental and subordinate test:

- 30 acres of the winery property must be maintained as bee pasture.
- Honey will be produced on site and sold or used to make wine.
- Agritourism and other commercial events are reduced to ten days per year. Attendance is capped at 150 persons for five events and 250 persons for five events.
- The winery must gross \$40,000 from the on-site retail sale of wine produced in conjunction with the winery prior to conducting agritourism and other commercial events.
- Annual reporting of compliance with the 25% gross sales rule of ORS 215.246. A violation of this requirement in two consecutive years renders this approval void.
- All honey must be produced in Oregon and 90% of the honey used to make mead must come from a subset of Oregon counties.
- Annual reporting of compliance with the honey source condition of approval. A violation of this requirement in two consecutive years renders this approval void.
- Limits on the number and operation of food carts.

Further, this Decision assures compatibility with area farm uses by imposing conditions on events of the type that may be imposed to achieve subordination for ORS 215.452 wineries. These include limits on the number of event attendees, hours of operation, access, parking, and noise. Other limits imposed that aid in achieving compliance with the incidental and subordinate test include limits on lighting, visual impacts from Highway 20, size of outdoor seating, and landscaping.

Finally, the hearings officer raised a concern regarding the number of employees that might be employed by the winery. He did not, however, account for the fact that most of the time spent by these employees will be spent to produce and sell wine – activities not subject to the incidental and subordinate test. Additionally, the hearings officer did not recognize the fact that a considerable amount of farm labor is required. It is provided by the Hermans, friends and family of the Hermans, independent contractors (work in bee pastures), and by the owner of the cattle that graze in the regenerative bee pastures.<sup>3</sup>

Almost all visitors will be coming to the Herman property to buy or taste wine. Most employee time will be spent producing and selling wine; not engaging in activities subject to the incidental and subordinate test such as selling/preparing food or selling promotional items. Additionally, the Herman farm requires labor from contractors (bee pasture preparation), family and friends, and the rancher whose cattle graze on the Herman property.

The nature and intensity of the farm use occurring on the Herman property makes it clear that the farm use is the primary and dominant use of the property. A large part of the subject property is devoted to crop, bee pasture and livestock production (currently 76%) and horse boarding (currently 6%). These activities are all labor-intensive. Livestock grazing prepares the bee pastures for annual planting.

The Winery Related Events will include the sale of wine and farm goods, wine tasting, commercial and recreational functions, and educational opportunities. These uses will occur within the 3,000-square-foot Winery Building, an outdoor area that is approximately 2,500 square feet, and an outdoor lawn area of approximately 13,000 square feet for a total of approximately 0.43 acres. In contrast, the regenerative bee pastures and apiaries cover an area of approximately 30 acres, with additional bee pastured planned to occur in the near future. The Winery Related Events are limited to 10 events/10 days per year. The bee pastures will be operational 365 days per year. For these reasons, the areas of operation and operating days of events will be incidental and subordinate to the bee pastures, associated livestock grazing and apiaries, as well as to wine production and sales.

Based on the above, and as conditioned, the Board finds that Winery Related Events will be incidental and subordinate to the farm use on the property.

### **Enhance farm enterprises of the local agricultural community**

The Burden of Proof States:

“The proposed use will enhance the quality of the agricultural enterprise by providing a market for farm products used to make honey wine (honey and other farm produce used in various honey wines). It will provide income to allow the Hermans to expand their bee pastures and pollinator gardens and the number of hives kept on their property. The winery will also support the agricultural enterprise of beekeeping by developing and selling hives to other area farmers, providing a valuable on-ranch educational experience regarding the

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<sup>3</sup>Income from cattle is shared and only that part earned by the Herman family is stated as the income from farm use on the Herman property. Mr. Herman assists with the care of the cattle when they are grazing on his property.

importance of pollinators/pollination, as well as the acquisition of additional honey from other local beekeepers for winemaking. It will also support the broader agricultural community dependent on bees to pollinate farm crops and the growth of and establishment of commercial beekeepers in the area”.

The Board agrees with the applicant’s findings.

The local agricultural community includes commercial apiaries, including Broadus Bees. They will be able to market honey to the Herman winery. The existence of an expanded market for honey will also provide an incentive for area farms to raise bees and produce honey for sale to the winery. The winery also supports the maintenance and development of bee pastures, with associated livestock grazing, on the subject property. The associated livestock grazing operation occurs both on the subject property and on other lands in the local agricultural community.

As noted by the Hearings Officer, The *Craven* decision is informative in this regard. It found that a winery improves the local agricultural community because it provides a local market outlet for grapes of other growers in the area. The Court also noted that it helps transform a hayfield into a vineyard, which increases the intensity and value of agricultural products. LUBA has also found in *City of Sandy v. Clackamas County* 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.”<sup>4</sup> In this case, the Herman Meadery/winery is primarily a customer of honey, a farm product produced by the Herman farm and other area farms.

We agree with the Hearings Officer finding that 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 and to consume honey it produces on its property. The Applicant also proposes to develop regenerative bee pastures which enrich the soils and, ultimately, increase the intensity and value of agricultural honey products. The Applicant’s proposal, therefore, enhances farm enterprises in the local farm community.

Events at the Winery will help promote the sale of mead, honey, meat and vegetables from Lazy Z Ranch. The sale of farm products by the ranch is a use permitted outright in the EFU-SC zoning district. Events, therefore, will support both winery and farm uses occurring on-site, increasing profitability for the Ranch as a whole. This marketing strategy should increase revenue for the Meadery and the Herman family. This additional revenue will enable the applicant to maintain and improve the ranch.

### **Promotes the policy of preserving farm land for farm use**

Wineries promote the preservation of farm land for farm use by creating a strong demand for the farm products used to make wine (grapes or honey). The activities associated with winemaking help market wine and help make it profitable to do so. Most farms in Deschutes County are unprofitable and the cost of acquiring land is high making it necessary for farmers to engage in commercial activities in conjunction with farm use or similar activities to achieve a profit. Making farms

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<sup>4</sup> *City of Sandy v. Clackamas County*, 28 Or LUBA 316, 321 (1994).

profitable is of key importance in assuring that the land will remain in farm use rather than be allowed to fall into disuse. The production and on-ranch sale of mead provides a viable path to profitability on behalf of the farm use of pollinator habitat and bee ranching.

Winery Related Events promote the Meadery and farm products sold at the ranch. As discussed above, and as the application materials note, this enables the applicant to create a more financially viable farm operation and preserves the land for farm use. The promotion of wine and farm products (meat, crops, honey) at events promotes the policy of preserving farm land for farm use by supporting the continued operation of the farm. Conditions of approval have been imposed to assure that events fulfill this purpose.

Based on the information and analysis above, the Board finds the proposed commercial activity in conjunction with a farm use, as conditioned, meets each of the four (4) factors established by *Friends of Yamhill County* (2013).

Section 18.16.040. Limitations on Conditional Uses.

- A. Conditional uses permitted by DCC 18.16.030, 18.16.031, and 18.16.033 may be established subject to ORS 215.296, applicable provisions in DCC 18.128, and upon a finding by the Planning Director or Hearings Body that the proposed use:**
- 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; and**

**FINDING:** Addressing the criteria above, the applicant provided findings for the entire scope of the Meadery including the Mead Production, Winery Operations, and Winery Related Events. The applicant inventoried the farm uses and farm practices occurring within a one mile of the subject property boundary. An extensive, lot-by-lot analysis of Farm Impacts Test has been conducted and was attached as Exhibit Q of the applicant’s revised burden of proof. The specific findings provided therein provide the factual basis for the findings provided below.

The applicant studied an area within a one-mile radius of the winery. This area exceeds the area that might be impacted by any aspect of the approval of this application because properties on the perimeter are not within sight or sound of the winery property and traffic associated with the use is negligible. All properties in this area zoned EFU, MUA, Surface Mining, Flood Plain, or Forestry were inventoried. There are rural residential areas within the one-mile radius. Those not engaged in farm or forest use were not included in the inventory. Land in the City of Sisters was also not included because it is not engaged in farm or forest uses. The one-mile distance was selected because it is the same area used by Deschutes County to assess the impacts of nonfarm dwellings on farm practices and costs. The properties and uses in the one-mile area are listed below. The applicant provided the following analysis in the revised Burden of Proof:

<b>Tax Lot</b>	<b>Name</b>	<b>Use</b>
1510000001400	USA	Open space, National Forest managed by USFS
1510000001401	William Smith Properties	Single family dwelling, Livestock operation
1510020000100	Deggendorfer	Irrigated permanent pasture, Livestock operation
1510020000200	Bradley	Irrigated permanent pasture, Livestock operation
1510020000300	Bradley	Single family dwelling, No farm use
1510020000400	Smith & Hefter	Single family dwelling, No farm use
1510020000500	May	Single family dwelling, No farm use
1510090001002	City of Sisters	Open space, No farm or forestry use
1510100000400	Rognlien	Single family dwelling, No farm use
1510100000500	Parker	Single family dwelling, No farm use
1510100000702	Amestoy	Single family dwelling, Irrigated permanent pasture, Livestock operation
1510100000704	City of Sisters	Livestock operation
1510100000705	Jaros	Single family dwelling, Livestock operation
1510100000706	Hawks Haven	Irrigated permanent pasture
1510100000708	Plank	Single family dwelling, No farm use
1510100000800	Willitts	Single family dwelling, Livestock operation
1510110000199	Central Electric	Power Lines, No farm use
1510110000200	Hannemann	Single family dwelling, No farm use
1510110000202	Pulver	Single family dwelling, Livestock operation
1510110000203	OR Dept. of Forestry	OR Dept. of Forestry Office, No farm use
1510110000300	Kauffman	No farm use
1510110000400	Leonard	Single family dwelling, Livestock operation
1510110000500	Leonard	Single family dwelling, Livestock operation
1510110000501	Leonard	Single family dwelling, Livestock operation
1510110000600	Pearce	Single family dwelling, No farm use
1510110000601	Madron	Single family dwelling, No farm use
1510110000602	Schlieter	Single family dwelling, No farm use
1510110000603	Aldinger	Single family dwelling, No farm use
1510110000604	Pike	Single family dwelling, No farm use
1510110000605	Pike	Single family dwelling, No farm use
1510110000606	Graves	Single family dwelling, No farm use
1510110000607	Smith	Single family dwelling, No farm use
1510110000608	Smith	Single family dwelling, No farm use
1510110000609	Pearce	Single family dwelling, No farm use
1510110000610	Henderson	Single family dwelling, No farm use
1510110000800	Devries Investment	Single family dwelling, Livestock operation
1510110000801	Collins	Single family dwelling, No farm use
1510110000900	CFC Group	Single family dwelling, No farm use
1510110000901	Kirk	Single family dwelling, No farm use

1510110000902	Smith	Single family dwelling, No farm use
1510110001000	Tewalt	Single family dwelling, No farm use
1510110001001	Corning and Estey	Single family dwelling, Irrigated permanent pasture
1510110001100	State of Oregon	ODOT Maintenance Station, No farm use
1510110001200	Helm	No farm use
1510110001201	Helm	Single family dwelling, No farm use
1510110001202	Davis	Single family dwelling, No farm use
1510110001300	Morrow	Single family dwelling, Irrigated Permanent Pasture, Livestock operation
1510110001301	Partipilo	Single family dwelling, No farm use
1510110001302	Mostek	Single family dwelling, No farm use
1510110001400	Gardner	Single family dwelling, Livestock operation
1510140000300	Defoe	Single family dwelling, No farm use
1510140000400	Shake, Log and Timber	Single family dwelling, No farm use
1510140000600	Brittain	Single family dwelling, No farm use
1510140000601	Anderson	Single family dwelling, No farm use
1510140000700	TSID	Three Sisters Irrigation District
1510140001800	Gardner	Livestock operation
1510140001900	MAC Trust	Single family dwelling, Irrigated permanent pasture, Livestock Operation
1510140001901	Wigle	Single family dwelling, No farm use
1510140001902	Ingelse	Single family dwelling, No farm use
1510150000100	Green	No farm use
1510150000101	Restrepo	Single family dwelling, No farm use
1510150000200	City of Sisters	Effluent water disposal, Irrigated permanent pasture
1510150000300	Marshall	No farm use

*FINDINGS: 18.16.040(A)(1) & (2), ...will not force a significant change in, or significantly increase the cost of, accepted farm or forest practices...*

This criterion is the local codification of the Farm Impacts Test from ORS 215.296(l). The Farm Impacts Test requires a farm-by-farm and farm practice-by-farm practice analysis. *See Stop the Dump Coal v. Yamhill Cty.*, 364 Or 432, 445 (2017). However, the test is relevant only to farm and forest uses and farm and forest practices.

ORS 215.203(2)(a) defines "farm use" as "the current employment of land for the primary purpose of obtaining a profit in money..." (underline added). The same is true for an "accepted farm practice" which is defined as "a mode of operation that is common to farms of a similar nature, necessary for the operation of such farms to obtain a profit in money, and customarily utilized in conjunction with farm use." ORS 215.203(2)(c) (underline added). The Code parallels these definitions. It may be noted, that according to the USDA's 2017

Census of Agriculture for Oregon, the net income from farm operations in Deschutes County was a loss of over \$19 million.

The first inquiry in analyzing farm and forest impacts is to evaluate the applicant's proposal (the non-farm use) and its potential impacts. Second, in reviewing impacts, it must be determined whether surrounding properties are in fact engaged in farm use. In an excess of caution, we have identified and assessed impacts herein and on the applicant's Exhibit Q without regard to whether the property owner is seeking to obtain a profit in money from farm or forest activities. Third, the proposal is reviewed for whether its impact will "force a significant change" in the accepted farm or forest practice and/or force a significant increase in cost of that accepted farm or forest practice.

### **Analyzing Potential Farm and Forest Impacts of the Meadery and Meadery Related Events**

Potential farm and forest impacts of a meadery and winery related events could be visual (outdoor lighting), auditory (outdoor sound/music), traffic and/or dust (from additional vehicles), complaints regarding farm and forest practices, and/or trespass (from additional people).

### **Methodology for Identifying Farm Uses and Practices**

To perform the Farm Impacts Test, all tax lots within one (1) mile of the subject property were queried from county GIS data, yielding 63 tax lots. This is a significant number of tax lots. Many lots are small lots developed with single-family homes or other nonfarm uses that are not used for any agricultural activity.

The following analysis: (1) describes the farm and forest practices on surrounding lands devoted to farm use; (2) explains why the proposed winery and winery related events will not force a significant change in those practices; and (3) explains why the proposed winery and winery related events will not significantly increase the cost of those practices.

To describe farm practices used by the identified surrounding properties, a combination of methods was employed. First, tax lots were surveyed using satellite images available on DIAL and Google Earth to visually establish whether a particular property was engaged in any farm use. Second, the applicant drove to each and every identified property to further clarify and resolve which properties are engaged in farm uses. The applicant also met with many neighbors to specifically discuss their various uses, which is described in further detail in Exhibit Q. Exhibit Q also contains the complete list of 63 tax lots where the Farm Impacts Test and analysis was conducted.

The farm practices occurring on those properties engaged in farm use are typical of other similar operations. The farm practices that might be conducted by certain farm uses have been identified by Oregon State University on sheets that are provided to persons who seek to site nonfarm dwellings on lands zoned EFU. This information was used to assure that all accepted farm uses that might occur on any farm property were included in the analysis



below and on Exhibit Q. A copy of that list is included as Exhibit P of the final revised burden of proof. Forest practices are identified and correctly addressed on Exhibit Q of the final revised burden of proof.

### **General Analysis**

The subject property is surrounded by properties zoned EFU, MUA, Forestry, Flood Plain, Surface Mining, Rural Residential, and the City of Sisters. Only properties zoned EFU, MUA, Surface Mining, Flood Plain, or Forestry were inventoried. There are rural residential exception areas within the one-mile radius, but they are not engaged in farm or forest use, so they are not included on the inventory. Land in the City of Sisters was also not included for the same reason. The one-mile distance was selected because it is the same area used by Deschutes County to assess the impacts of nonfarm dwellings on farm practices and costs. Many lots in this area are so far away from the Herman property that it is evident that the winery will have no impact on farm or forest uses.

The farm uses and agricultural uses that exist in the area are best categorized as either livestock uses (predominantly cattle or horse operations) or permanent pasture operations. The farm practices and their potential impacts for these farm uses are identified by OSU in Exhibit P.

Within the study area are a combination of grass hay, permanent pasture, forest, bare land, and/or residential uses. Winery operations will not force a significant change in, or increase the cost of, any surrounding farm or forest practices due to siting of the proposed commercial activities on the subject property. Distance from the proposed uses to surrounding farm or forest properties, existing onsite property features, and permanent features adjacent to the subject property will act as buffers to any potential impacts on neighboring farm and forest practices. For example, properties to the south will be buffered by Highway 20. Farm uses to the east and northeast are more than .25 miles from the proposed winery location and will be buffered by on-site farm fields and existing buildings. There is only one property zoned EFU directly north or northwest within 1 mile; all others are residentially-zoned lands. The city limits of Sisters and farm and forest properties to the west are more than .25 miles from the proposed winery location and are buffered by existing on-site dwellings, farm buildings, and farm fields.

With respect to a potential for noise to create a significant change in accepted farming or forest practices on adjoining lands from the meadery, there could be a slight yet imperceptible increase in noise from the vehicles traveling to and from the applicant's property, as well as the additional visitors to the site as meadery and/or event patrons and the playing of music. The subject property is located on Highway 20, and the noise created by a typical highway is 70-80 dBa at a distance of 50 ft. This constant wall of traffic sound is already accepted by all adjoining farm and forest land.

The meadery will have a small outdoor speaker in the Outdoor Seating & Garden area playing music at a level at or below the level of noise generated by the highway. This noise will be

reduced, also, the sunken topography of the site. The winery will have occasional outdoor music for some of the 10 (maximum) agri-tourism and commercial events. The applicant proposed a maximum decibel level of 100 dBA on the Lawn Event Site. The Board has found, however, that measuring event and winery noise at the property line of the site is preferable. It has considered State of Oregon noise regulations and has considered the sound level of the highway and finds that the following condition of approval will assure that winery noise will not force a significant change in accepted farm and forest practices on adjoining lands:

#### Speaker Noise Level

All outdoor speakers shall be set so that the maximum dBA level of winery noise, 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.

At 65 dBA, no change to or increase in the cost of accepted farm practices will occur.<sup>5</sup> All sources of sound, including people, vehicles, and/or music will be completely absent by 10pm and will not resume again until the opening of business the next day. The following additional condition has been imposed to address potential noise complaints:

#### Winery Related Events

Applicant/owner shall have a representative at the site during all Winery Related Events involving outdoor amplified noise/music. That representative shall have the authority and responsibility to immediately respond to noise complaints and to ensure immediate correction occurs.

With respect to a potential for light to create a significant change in accepted farming or forest practices on adjoining lands from the meadery, all additional outdoor sources of light will be directed downward and away from property lines. Even given this consideration, the highway is a constant source of headlights at night, and all adjoining farm practices are already well accustomed to far more intrusive and direct light sources. No area farm practices have incurred additional costs due to existing light impacts from the highway, and no area farm practices will incur additional costs from the minimal additional indirect lighting created by the winery.

One possible result of the proposed winery uses would be a slight increase in traffic on Highway 20 directly in front of the subject property. The subject property is accessed directly off of Highway 20, and is more than 1,900 feet from the next closest highway access to the east (Jordan Rd), and 2,100 feet from the next closest highway access to the west (Jaros property). This distance gives ample opportunity for ingress/egress from the winery without impacting other farmers' ingress/egress points on Highway 20. As outlined in the attached

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<sup>5</sup> Neither the Oregon Statutes nor Oregon Administrative Rules ("OAR") specify a maximum noise level for events or concerts to ensure minimization of noise impacts on noise sensitive uses such residential uses. The appealed staff decision looked to OAR 340-035-0030, Noise Regulations for In-Use Motor Vehicles, and 340-035-0045, Noise Control Regulations for Airports, as being instructive. They are not instructive, however, because agricultural uses are not noise sensitive uses and all uses occurring adjacent to the boundaries of the Herman property are agricultural uses. OAR 340-035-0010(38). The 50 dBA auxiliary equipment noise level relied on by the staff decision applies between 10:00 pm and 7:00 am. This permit will allow no amplified sound during that time period. The airport noise standard of OAR 340-035-0045 is not comparable because it is an "Annual Average Day-Night Airport Noise Level" which would allow for averaging event noise with other noise generated by the property over the course of a year rather than measuring noise at any one point in time at a property boundary.

Trip Generation Forecast (Exhibit K), the meadery is projected to max out at 7 non-passby p.m. peak hour trips and 39 daily non-passby trips. Over the course of a full afternoon/evening, this is a minimal addition of new traffic to Highway 20. Winery related events are few and far between, and will be mitigated using on-site traffic control. Occasional deliveries will increase traffic use as well. Given that most farming practices involving use of the highway already occur at slower speeds (eg: tractors, cattle trucks, excavation equipment) and during normal work hours (or earlier), the vast majority of the new non-passby trips will not overlap with or impact already-minimal neighboring farm traffic. Hypothetically, increased traffic could impede highway-eligible pasture machinery and/or livestock haulers by slowing their ability to get to and from a permanent pasture farm use. Possible additional costs could be additional hourly pay to a haying company bringing equipment to the property via Highway 20. At most, the proposed uses will only minimally increase these impacting factors (in reality, adding a maximum of a couple minutes, total); more than likely, the proposed uses will create no additional impact at all. Regular farm-related traffic impacts are already occurring to and from the subject property using the Highway 20 service drive (eg., tractor and farm implement transportation, cattle trucks, horse trailer transportation, freight deliveries, hay trailers, etc.), and are not negatively impacting and/or increasing the cost of neighboring farm or forestry uses and practices nor negatively impacted (change use or increase cost) by non-farm traffic. Because there will be only minimal and inconsequential additional traffic impacts, the proposed winery will certainly not increase the costs of the identified neighboring farm practices.

All service drives and parking areas will be maintained gravel, eliminating the possibility of dust kicking up and impacting neighboring farm uses. Given that all neighboring properties are a minimum of 0.25 miles from the winery and winery related events area of the Herman farm - with the exception of the City of Sisters' parcel directly across Highway 20 - nothing even potentially kicked up in the air by the winery uses will travel far enough to impact neighboring farm practices in any way. Therefore, no costs of these farm practices will be impacted by any additional dust created by the proposed winery.

The however-slight increase in human activity on the subject property might increase the possibility for trespass onto neighboring properties, and negatively impact animal farm practices if an animal were scared by an uninvited/unexpected human. Because of the aforementioned distance from the winery uses to all property lines, given that the winery service drives do not connect to other neighboring properties and the winery use area is fenced off from the rest of the Herman property, and given that the winery uses are buffered by regenerative bee pastures and highways, it is highly unlikely that any trespass will occur or that it will impact farm practices on neighboring farms. Therefore, given the de minimis potential for impact resulting from additional human trespass, it is reasonable to conclude that this proposed use will not significantly increase the cost of neighboring farm practices.

Another potential impact to neighboring farm practices would be solid waste generated by winery operations and events. The subject property has already been approved with an extensive septic assessment completed by Deschutes County Staff, ensuring waste created by winery operations will not negatively impact neighboring farm practices. When possible,

the winery intends to buffer winery waste and land-apply, positively impacting soil health and closing a sustainability loop. When portable restrooms are used for winery related events, the waste created will be removed from the property by the portable restroom service, ensuring it does not negatively impact neighboring farm practices in any way. Therefore, given the *de minimis* potential for impact resulting from additional waste production, it is reasonable to conclude that this proposed use will not significantly increase the cost of neighboring farm practices.

**The most common farm uses within the subject area are livestock and crop operations.**

Livestock (exclusively cow/calf operations and/or horse operations) involve some combination of the potentially year-round farm practices of grazing, dry lot feeding, and/or moving livestock to or through unvegetated area. As demonstrated above, all potential visual, auditory, traffic, waste, trespass, and/or dust impacts created by the winery will have no impact on these typical farming practices. Given that the subject property is also involved in these farm uses and practices provides further evidence that the proposed winery uses will not negatively impact neighboring farm uses. The proposed use is not predicated on – nor will it require – any neighboring livestock farm practices to be discontinued and/or changed in any way. Given the *de minimis* impact of the proposed use, it is reasonable to conclude that the proposed use will not significantly increase the cost of neighboring livestock and all associated practices and potential impacts.

Crop operations (almost exclusively permanent pasture) involve some combination of the farm practices of re-seeding (Spring, during the daytime), ground spraying of herbicides for weed control (Spring and Summer, during the daytime), harvesting/baling for hay (July and August, early morning before the sun is up or later in the day), spreading of manure for fertilizer (Spring, during the daytime), and/or irrigation (April to September). As demonstrated above, all potential visual, auditory, traffic, waste, trespass, and/or dust impacts created by the winery will have no impact on these typical farming practices. Given that the subject property is also involved in this farm use and many of these farm practices should further evidence that the proposed winery uses will not negatively impact neighboring farm uses, and the proposed use is not predicated on – nor will it require – any neighboring crop farm practices to be discontinued and/or changed in any way. Given the *de minimis* impact of the proposed use, it is reasonable to conclude that the proposed use will not significantly increase the cost of neighboring crop operations and all associated practices and potential impacts.

There are six parcels immediately adjacent to the Lazy Z Ranch. A map with distances from the proposed winery and outdoor space is included as Exhibit F of our application.

Adjacent properties bordering the **south** and **southwest** are owned by the City of Sisters and are used for effluent water disposal and leased for cold-season grazing of horses owned by Black Butte Stables. There is only one field currently in permanent pasture production on this property and it is more than 1,800 feet from the proposed winery uses. Further out in

these directions are forestland owned by the USA and a private property owner. No active farm practices are occurring on the large USA forest lot and no current active forest practices were observed occurring at this time. Exhibit Q, however, addresses potential impacts on future forest practices on this distant property and demonstrates that approval of the winery will not result in a substantial change or increase in cost of conducting future forest practices. The privately owned property is used to keep horses and is not in farm use. The property is separated from the proposed winery activities by Highway 20 and land owned by the City of Sisters uses seasonally for grazing horses. The impact analysis for the City of Sisters property which is closer to the winery than this forest-zoned property demonstrates compliance with the farm impacts test. Therefore, for all the aforementioned reasons, the winery should not significantly change or increase the cost of any of the accepted farm or forest practices for our neighbor to the south.

The farm property adjacent to the **east** of the subject property is the Amestoy property. It is engaged in farm use, primarily permanent pasture, and the occasional short-term grazing of livestock. Farm practices include grazing, moving livestock to or through unvegetated area, re-seeding, ground spraying of herbicides, harvesting/baling of hay, and irrigation. This property's farm uses are separated from the proposed winery activities by approximately 0.25 mile, the Lazy Z corrals, our own 18-acre regenerative bee pasture, and wooden fencing. Therefore, for all the aforementioned reasons, the winery will not significantly change or increase the cost of any accepted farm practices for our neighbor to the east.

The Morrow and Plank properties briefly border the subject property across Jordan Road to the **southeast**. The Morrow property's farm uses of permanent pasture and livestock (horse and cow/calf) operations, exist more than 1,700 feet from the proposed use, and are buffered by the entirety of the Amestoy property and Jordan Road. The Plank property is not in farm use. Therefore, for all the aforementioned reasons, the winery will not significantly change or increase the cost of any accepted farm practices for our neighbors to the southeast.

The adjacent property to the **west** of the subject property is the Hawk's Haven property. They maintain a permanent pasture. This property is approximately 0.25 to 0.5 miles away from the proposed location of the winery activities. It 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. Therefore, for all the aforementioned reasons and those mentioned on Exhibit Q, the winery will not significantly change or increase the cost of any of the accepted farm practices for our neighbor to the west.

The split-zoned property bordering the **north** is owned by the Parker Living Trust (EFU, FP and RR10) and is not in farm use. The property is separated from the proposed winery activities by farm buildings, 12 acres of regenerative bee pasture, a 20-acre field that will eventually become regenerative bee pasture, and Highway 126. Therefore, for all the aforementioned reasons, the winery should not significantly change or increase the cost of any of the accepted farm or forest practices for our neighbor to the north.

All additional farm and forest use properties inventoried for this study area are engaged in some combination of the same farm or forestry uses and practices, have the same potential impacts, and exist at an even further distance from the proposed winery. For these reasons we find that the application will not force a change in or increase the costs of accepted farm or forest practices in the area.

The Board finds, due to the distances to neighboring properties engaged in farm use, existing activity from Highway 20, and with the above-referenced conditions of approval, the proposed use will not force a significant change or increase the cost of accepted farm uses on surrounding lands. It also will not cause a significant change or increase the cost of accepted forest practices occurring on forest lands within the one-mile radius area studied by the applicant on his Exhibit Q.

**3. *That the actual site on which the use is to be located is the least suitable for the production of farm crops or livestock.***

**FINDING:** Addressing the criterion above, the applicant provided findings for the entire scope of the Meadery including the Mead Production, Winery Operations, and Winery Related Events.

The Burden of Proof states:

*FINDINGS: 18.16.040(A)(3), ...least suitable for the production of farm crops or livestock.*

The proposed winery, parking lot(s), food cart(s), indoor tasting room, outdoor tasting area, and garden seating will be sited either within the existing farm building on the south side of the property at its approximate east-west center near Highway 20, or on the large, graveled area surrounding it. The proposed lawn seating, lawn games area, and stage will be sited on an existing grass lawn within the developed portion of the property adjacent to the existing driveway and barn. These site features already exist as non-irrigable farmland that is not suitable for livestock. All proposed activity, including expanded space for 10 annual events, is located on less than 2.4% of the subject property and has been long developed as the site least suitable for the production of farm crops or livestock. Thus, the proposed winery and commercial activities site is the least suitable part of the property for the production of farm crops or livestock. Repurposing the selected area will avoid new negative impacts to ongoing farm or forest uses, practices, and/or costs of such practices both onsite and within the surrounding area.

The Board concurs with the applicant's analysis and finds that the Meadery site is located on previously disturbed terrain and is the least suitable for the productions of farm crops or livestock. This criterion is met.

**B. *A commercial activity allowed under DCC 18.16.030(E) shall be associated with a farm use occurring on the parcel where the commercial use is proposed. The commercial activity may use, process, store or market farm products produced outside of Deschutes County.***

**FINDING:** Addressing the criteria above, the applicant provided findings for the entire scope of the Meadery including the Mead Production, Winery Operations, and Winery Related Events.

The Burden of Proof states:

All commercial activities proposed are related to the proposed winery, existing beekeeping, and other farm uses taking place on the same parcel as the proposed commercial activities. The winery will produce and store mead made from honey produced on the Lazy Z Ranch. The tasting room and other proposed facilities will facilitate the marketing of the farm's mead, honey and other farm crops and livestock.

The Board concurs with the applicant's analysis. As noted above under DCC 18.16.025, the Meadery will potentially use honey from outside Deschutes County but limits on the source of honey have been imposed in the conditions of approval to address concerns raised by Central Oregon LandWatch.

Section 18.16.060. Dimensional Standards.

- E. *Building height. No building or structure shall be erected or enlarged to exceed 30 feet in height, except as allowed under DCC 18.120.040.***

**FINDING:** The proposal does not include a request for any new structural development. The proposed indoor area of the Meadery will be located in the existing 3,000 square foot building. The site plan does include a stage, but the applicant is undecided if the stage will be constructed permanently or be a temporary stage. To ensure compliance, The Board includes the following conditions of approval:

Height Standard

No building or structure shall be erected or enlarged to exceed 30 feet in height, except as allowed by DCC 18.120.040.

Section 18.16.070. Yards.

- A. *The front yard shall be a minimum of: 40 feet from a property line fronting on a local street, 60 feet from a property line fronting on a collector street, and 100 feet from a property line fronting on an arterial street.***
- B. *Each side yard shall be a minimum of 25 feet, except that for a nonfarm dwelling proposed on property with side yards adjacent to property currently employed in farm use, and receiving special assessment for farm use, the side yard shall be a minimum of 100 feet.***
- C. *Rear yards shall be a minimum of 25 feet, except that for a nonfarm dwelling proposed on property with a rear yard adjacent to property currently employed in farm use, and receiving special assessment for farm use, the rear yard shall be a minimum of 100 feet.***
- D. *The setback from the north lot line shall meet the solar setback requirements in***

**Section 18.116.180.**

- E. In addition to the setbacks set forth herein, any greater setbacks required by applicable building or structural codes adopted by the State of Oregon and/or the County under DCC 15.04 shall be met.**

**FINDING:** The proposal does not include a request for any new structural development, with the possible exception of the stage. To ensure compliance, the Board includes the following conditions of approval:

Zoning Setbacks

Any proposed development shall comply with the setbacks set forth in the Exclusive Farm Use Zone as prescribed in DCC 18.16.070 (A-D).

General Setbacks

In addition to the setbacks set forth herein, any greater setbacks required by applicable building or structural codes adopted by the State of Oregon and/or the County under DCC 15.04 shall be met.

Section 18.16.080. Stream Setbacks.

**To permit better light, air, vision, stream pollution control, protection of fish and wildlife areas and preservation of natural scenic amenities and vistas along streams and lakes, the following setbacks shall apply:**

- A. All sewage disposal installations, such as septic tanks and septic drainfields, shall be set back from the ordinary high water mark along all streams or lakes a minimum of 100 feet, measured at right angles to the ordinary high water mark. In those cases where practical difficulties preclude the location of the facilities at a distance of 100 feet and the County Sanitarian finds that a closer location will not endanger health, the Planning Director or Hearings Body may permit the location of these facilities closer to the stream or lake, but in no case closer than 25 feet.**
- B. All structures, buildings or similar permanent fixtures shall be set back from the ordinary high water mark along all streams or lakes a minimum of 100 feet measured at right angles to the ordinary high water mark.**

**FINDING:** There are no streams or lakes in the project vicinity.

Section 18.16.090. Rimrock Setback.

**Notwithstanding the provisions of DCC 18.16.070, setbacks from rimrock shall be as provided in DCC 18.116.160 or 18.84.090, whichever is applicable.**

**FINDING:** There is no rimrock in the project vicinity.



## Chapter 18.56, Surface Mining Impact Area Combining Zone (SMIA)

**FINDING:** The subject property is located within the SMIA Zone in association with mine site 277.

### Section 18.56.080. Use Limitations.

***No dwellings or additions to dwellings or other noise sensitive or dust sensitive uses or structures shall be erected in any SMIA Zone without first obtaining site plan approval under the standards and criteria set forth in DCC 18.56.090 through 18.56.120.***

**FINDING:** The proposed Meadery and related events are not noise-sensitive or dust-sensitive uses. The provisions of DCC 18.56 do not apply to this review.

## Chapter 18.80, Airport Safety Combining Zone (AS)

### Section 18.80.020. Application of Provisions.

***The provisions of DCC 18.80.020 shall only apply to unincorporated areas located under airport imaginary surfaces and zones, including approach surfaces, transitional surfaces, horizontal surfaces, conical surfaces and runway protection zones. While DCC 18.80 identifies dimensions for the entire imaginary surface and zone, parts of the surfaces and/or zones do not apply within the Redmond, Bend or Sisters Urban Growth Boundaries. The Redmond Airport is owned and operated by the City of Redmond, and located wholly within the Redmond City Limits.***

***Imaginary surface dimensions vary for each airport covered by DCC 18.80.020. Based on the classification of each individual airport, only those portions (of the AS Zone) that overlay existing County zones are relevant.***

***Public use airports covered by DCC 18.80.020 include Redmond Municipal, Bend Municipal, Sunriver and Sisters Eagle Air. Although it is a public-use airport, due to its size and other factors, the County treats land uses surrounding the Sisters Eagle Air Airport based on the ORS 836.608 requirements for private-use airports. The Oregon Department of Aviation is still studying what land use requirements will ultimately be applied to Sisters. However, contrary to the requirements of ORS 836.608, as will all public-use airports, federal law requires that the FAA Part 77 surfaces must be applied. The private-use airports covered by DCC 18.80.020 include Cline Falls Airpark and Juniper Airpark.***

**FINDING:** The proposed Meadery is located beneath the conical surface for the Sisters Eagle Air Airport. Therefore, the provisions of this chapter apply.

### Section 18.80.028. Height Limitations.

***All uses permitted by the underlying zone shall comply with the height limitations in DCC 18.80.028. When height limitations of the underlying zone are more restrictive than those***

**of this overlay zone, the underlying zone height limitations shall control. [ORS 836.619; OAR 660-013-0070]**

- A. Except as provided in DCC 18.80.028(B) and (C), no structure or tree, plant or other object of natural growth shall penetrate an airport imaginary surface. [ORS 836.619; OAR 660-013-0070(1)]**
- B. For areas within airport imaginary surfaces but outside the approach and transition surfaces, where the terrain is at higher elevations than the airport runway surfaces such that existing structures and permitted development penetrate or would penetrate the airport imaginary surfaces, a local government may authorize structures up to 35 feet in height.**
- C. Other height exceptions or variances may be permitted when supported in writing by the airport sponsor, the Department of Aviation and the FAA. Applications for height variances shall follow the procedures for other variances and shall be subject to such conditions and terms as recommended by the Department of Aviation and the FAA (for Redmond, Bend and Sunriver.)**

**FINDING:** The proposed Meadery is under the Conical Surface for the Sisters Eagle Air Airport. The Burden of Proof states that no new development is included in the proposal. However, the Board notes that the site plan includes a stage and that the proposal may include supporting infrastructure in the future that is not yet known, or understood to require a building permit. The application materials also indicate that the Winery Building could be renovated at a later date. As such this decision provides the following analysis. The highest elevation at the Meadery location, which is under the Conical Surface, is approximately 3,171 feet. Pursuant to DCC 18.16.060, no building or structure shall be erected or enlarged to exceed 30 feet in height. As conditioned above, no new future development will exceed 30 feet and will therefore not rise above 3,201 feet in elevation. The closest point at which the Conical Surface crosses the Meadery, the imaginary surface will be at an elevation of approximately 3,501 feet. Therefore, the Board finds that, as conditioned, any future development will not penetrate the imaginary surface. This criterion will be met.

Section 18.80.044. Land Use Compatibility.

**Applications for land use or building permits for properties within the boundaries of this overlay zone shall comply with the requirements of DCC 18.80 as provided herein. When compatibility issues arise, the Planning Director or Hearings Body is required to take actions that eliminate or minimize the incompatibility by choosing the most compatible location or design for the boundary or use. Where compatibility issues persist, despite actions or conditions intended to eliminate or minimize the incompatibility, the Planning Director or Hearings Body may disallow the use or expansion, except where the action results in loss of current operational levels and/or the ability of the airport to grow to meet future community needs. Reasonable conditions to protect the public safety may be imposed by the Planning Director or Hearings Body. [ORS 836.619; ORS 836.623(1); OAR 660-013-0080]**

- A. Noise. Within airport noise impact boundaries, land uses shall be established consistent with the levels identified in OAR 660, Division 13, Exhibit 5 (Table 2 of DCC 18.80). Applicants for any subdivision or partition approval or other land use approval or building permit affecting land within airport noise impact boundaries,**

***shall sign and record in the Deschutes County Book of Records, a Declaration of Anticipated Noise declaring that the applicant and his successors will not now, or in the future complain about the allowed airport activities at the adjacent airport. In areas where the noise level is anticipated to be at or above 55 Ldn, prior to issuance of a building permit for construction of a noise sensitive land use (real property normally used for sleeping or as a school, church, hospital, public library or similar use), the permit applicant shall be required to demonstrate that a noise abatement strategy will be incorporated into the building design that will achieve an indoor noise level equal to or less than 55 Ldn. [NOTE: FAA Order 5100.38A, Chapter 7 provides that interior noise levels should not exceed 45 decibels in all habitable zones.]***

**FINDING:** The subject property is not within the noise impact boundary associated with the Airport. This criterion does not apply.

- B. Outdoor lighting. No new or expanded industrial, commercial or recreational use shall project lighting directly onto an existing runway or taxiway or into existing airport approach surfaces except where necessary for safe and convenient air travel. Lighting for these uses shall incorporate shielding in their designs to reflect light away from airport approach surfaces. No use shall imitate airport lighting or impede the ability of pilots to distinguish between airport lighting and other lighting.***

**FINDING:** The proposed use is a commercial and recreational use. This criterion requires that no use shall imitate airport lighting or impede the ability of pilots to distinguish between airport lighting and other lighting. To ensure compliance, a condition of approval has been added. This criterion will be met.

Lighting in the Airport Safety Combining Zone

No Meadery development, or any of the associated Meadery uses, shall imitate airport lighting or impede the ability of pilots to distinguish between airport lighting and other lighting.

- C. Glare. No glare producing material, including but not limited to unpainted metal or reflective glass, shall be used on the exterior of structures located within an approach surface or on nearby lands where glare could impede a pilot's vision.***

**FINDING:** To ensure compliance, a condition of approval has been added. This criterion will be met.

Glare Producing Materials in the Airport Safety Combining Zone

No glare producing material, including but not limited to unpainted metal or reflective glass, shall be used on the exterior of structures located within an approach surface or on nearby lands where glare could impede a pilot's vision.

- D. Industrial emissions. No new industrial, mining or similar use, or expansion of an existing industrial, mining or similar use, shall, as part of its regular operations,***

***cause emissions of smoke, dust or steam that could obscure visibility within airport approach surfaces, except upon demonstration, supported by substantial evidence, that mitigation measures imposed as approval conditions will reduce the potential for safety risk or incompatibility with airport operations to an insignificant level. The review authority shall impose such conditions as necessary to ensure that the use does not obscure visibility.***

**FINDING:** The proposed use is not an industrial, mining or similar use, or expansion of an existing industrial, mining or similar use. This criterion does not apply.

**E. *Communications Facilities and Electrical Interference. No use shall cause or create electrical interference with navigational signals or radio communications between an airport and aircraft. Proposals for the location of new or expanded radio, radiotelephone, and television transmission facilities and electrical transmission lines within this overlay zone shall be coordinated with the Department of Aviation and the FAA prior to approval. Approval of cellular and other telephone or radio communication towers on leased property located within airport imaginary surfaces shall be conditioned to require their removal within 90 days following the expiration of the lease agreement. A bond or other security shall be required to ensure this result.***

**FINDING:** The proposed use will not cause or create electrical interference. This criterion is met.

**F. *Limitations and Restrictions on Allowed Uses in the RPZ, Transitional Surface, Approach Surface, and Airport Direct and Secondary Impact Areas. For the Redmond, Bend, Sunriver, and Sisters airports, the land uses identified in DCC 18.80 Table 1, and their accessory uses, are permitted, permitted under limited circumstances, or prohibited in the manner therein described. In the event of conflict with the underlying zone, the more restrictive provisions shall control. As used in DCC 18.80.044, a limited use means a use that is allowed subject to special standards specific to that use.***

**FINDING:** The proposed structure(s) will not be located within/beneath one of the identified surfaces. This criterion is met.

#### 18.80.054 Conditional Uses

***Uses permitted conditionally shall be those identified as conditional uses in the underlying zone with which the AS Zone is combined, and shall be subject to all conditions of the underlying zone except as provided in DCC 18.80.044.***

**FINDING:** The proposed use is a conditional use in the underlying zone. Above, the Board addressed the applicable criteria under DCC 18.80.044. Therefore, the proposed use is allowed as a conditional use in the AS Combining Zone.

## Chapter 18.84, Landscape Management Combining Zone (LM)

### Section 18.84.020. Application of Provisions.

***The provisions of DCC 18.84 shall apply to all areas within one-fourth mile of roads identified as landscape management corridors in the Comprehensive Plan and the County Zoning Map. The provisions of DCC 18.84 shall also apply to all areas within the boundaries of a State scenic waterway or Federal wild and scenic river corridor and all areas within 660 feet of rivers and streams otherwise identified as landscape management corridors in the comprehensive plan and the County Zoning Map. The distance specified above shall be measured horizontally from the center line of designated landscape management roadways or from the nearest ordinary high water mark of a designated landscape management river or stream. The limitations in DCC 18.84.20 shall not unduly restrict accepted agricultural practices.***

**FINDING:** Highway 20 is identified on the County Zoning Map as the landscape management feature(s). The subject property falls within the Landscape Management Combining Zone for this/these feature(s), therefore, the provisions of this chapter apply.

### Section 18.84.050. Use limitations.

- A. Any new structure or substantial exterior alteration of a structure requiring a building permit or an agricultural structure within an LM Zone shall obtain site plan approval in accordance with DCC 18.84 prior to construction. As used in DCC 18.84 substantial exterior alteration consists of an alteration which exceeds 25 percent in the size or 25 percent of the assessed value of the structure.***
- B. Structures which are not visible from the designated roadway, river or stream and which are assured of remaining not visible because of vegetation, topography or existing development are exempt from the provisions of DCC 18.84.080 (Design Review Standards) and DCC 18.84.090 (Setbacks). An applicant for site plan review in the LM Zone shall conform with the provisions of DCC 18.84, or may submit evidence that the proposed structure will not be visible from the designated road, river or stream. Structures not visible from the designated road, river or stream must meet setback standards of the underlying zone.***

**FINDING:** As noted above, with the possible exception of the stage and future improvements, no new development is included in the proposal. Based upon a site visit, staff noted that any new future development will be visible from Highway 20 due to its close proximity and lack of significant vegetative buffering or topographical changes. As such, the Board includes the following condition of approval:

### Future Meadery Development in the Landscape Management Combining Zone

The applicant shall apply for a Landscape Management Review for any new structure or substantial exterior alteration of a structure requiring a building permit. A substantial exterior alteration is defined as exceeding 25 percent in the size or 25 percent of the assessed value of the structure.

## Chapter 18.116, Supplementary Provisions

### Section 18.116.020, Clear Vision Areas.

- A. *In all zones, a clear vision area shall be maintained on the corners of all property at the intersection of two streets or a street and a railroad. A clear vision area shall contain no planting, fence, wall, structure, or temporary or permanent obstruction exceeding three and one-half feet in height, measured from the top of the curb or, where no curb exists, from the established street centerline grade, except that trees exceeding this height may be located in this area provided all branches and foliage are removed to a height of eight feet above the grade.***

**FINDING:** As explained in greater detail under DCC 18.116.030(F)(7), the subject property has a required clear vision area located at the intersection of the service drive and Highway 20. As proposed, this area will contain no planting, fence, wall, structure, or temporary or permanent obstruction exceeding three and one-half feet in height. By staff's assessment, the existing Juniper tree is in the clear vision area and is subject to the provision above. As a condition of approval, the clear vision area shall be maintained in accordance with DCC 18.116.020(A).

#### Clear Vision Area

The clear vision area located at the intersection of the service drive/driveway and Highway 20 shall be maintained in accordance with DCC 18.116.020(A). All branches and foliage of the existing Juniper tree are to be removed to a height of eight feet above the grade within 30 days of this decision becoming final.

- B. *A clear vision area shall consist of a triangular area on the corner of a lot at the intersection of two streets or a street and a railroad. Two sides of the triangle are sections of the lot lines adjoining the street or railroad measured from the corner to a distance specified in DCC 18.116.020(B)(1) and (2). Where lot lines have rounded corners, the specified distance is measured from a point determined by the extension of the lot lines to a point of intersection. The third side of the triangle is the line connecting the ends of the measured sections of the street lot lines. The following measurements shall establish clear vision areas within the County:***
- 1. In an agricultural, forestry or industrial zone, the minimum distance shall be 30 feet or at intersections including an alley, 10 feet.***
  - 2. In all other zones, the minimum distance shall be in relationship to street and road right of way widths as follows:***

<b><i>Right of way Width</i></b>	<b><i>Clear vision</i></b>
<b><i>80 feet or more</i></b>	<b><i>20 feet</i></b>
<b><i>60 feet</i></b>	<b><i>30 feet</i></b>
<b><i>50 feet and less</i></b>	<b><i>40 feet</i></b>

**FINDING:** As noted above, the proposal has a clear vision area at the intersection of the service drive/driveway and Highway 20. As conditioned, the proposal will meet this criterion.

Section 18.116.030, Off street Parking and Loading.

- A. Compliance. No building or other permit shall be issued until plans and evidence are presented to show how the off street parking and loading requirements are to be met and that property is and will be available for exclusive use as off-street parking and loading. The subsequent use of the property for which the permit is issued shall be conditional upon the unqualified continuance and availability of the amount of parking and loading space required by DCC Title 18.**

**FINDING:** The Burden of Proof states:

Proposed off-street parking is depicted on site plans (Exhibit C). Three parking areas are proposed for guest/customer/employee use. Loading/unloading of equipment or supplies will be completed adjacent to the proposed Winery Building.

The Board concurs with the applicant's statement.

- B. Off-Street Loading. Every use for which a building is erected or structurally altered to the extent of increasing the floor area to equal a minimum floor area required to provide loading space and which will require the receipt or distribution of materials or merchandise by truck or similar vehicle, shall provide off-street loading space on the basis of minimum requirements as follows:**
  - 1. Commercial, industrial and public utility uses which have a gross floor area of 5,000 square feet or more shall provide truck loading or unloading berths subject to the following table:**

<b>Sq. Ft. of Floor Area</b>	<b>No. of Berths Required</b>
<b>Less than 5,000</b>	<b>0</b>
<b>5,000-30,000</b>	<b>1</b>
<b>30,000-100,000</b>	<b>2</b>
<b>100,000 and Over</b>	<b>3</b>

**FINDING:** As noted above, the existing Winery Building is 3,000 sq. ft. Therefore, no loading berth is required.

- C. Off-Street Parking. Off-street parking spaces shall be provided and maintained as set forth in DCC 18.116.030 for all uses in all zoning districts. Such off-street parking spaces shall be provided at the time a new building is hereafter erected or enlarged or the use of a building existing on the effective date of DCC Title 18 is changed.**

**FINDING:** The Board finds this criterion requires parking be provided and maintained for all uses. As a condition of approval, required parking facilities shall be provided prior to or concurrently with

construction and/or initiation of the proposed use.

Meadery Parking

Required parking facilities shall be provided prior to or concurrently with construction and/or initiation of the proposed use.

**D. Number of Spaces Required. Off-street parking shall be provided as follows:**

...

- 9. Other uses not specifically listed above shall be provided with adequate parking as required by the Planning Director or Hearings Body. The above list shall be used as a guide for determining requirements for said other uses.**

**FINDING:** As noted above, the proposed Meadery has three aspects: Mead Production, Winery Operations, and Winery Related Events. For addressing this criterion, and the specific parking categories of the code, this decision addresses the parking standards according to each specific aspect of the proposal.

**Mead Production**

For Mead Production, the Board finds the closest applicable parking standard to be industrial.

7. Industrial.

Use	Requirements
Manufacturing establishment	1 space per employee on the largest working shift

As noted above, the Mead Production facility will employ up to 3 persons. The applicant proposes for himself to be included in the number of employees and that parking for him will be provided at his residence. As such, 2 parking spaces are required.

The total required amount of vehicle parking for Mead Production is 2 spaces.

**Winery Operations**

For Winery Operations, the Board finds the closest applicable parking standards to be commercial.

6. Commercial.

Use	Requirements
Eating or drinking establishments	1 space per 100 sq. ft. of gross floor area.

According to the application materials, the proposed tasting room will be 1,560 square feet. The applicant also proposes an additional 300 square feet of outdoor seating which results in a total of 1,860 square feet. Therefore, the required parking spaces is 18.6, or 19 spaces. To ensure a compliance with the parking standards, the Board includes the following condition of approval:



### Indoor and Outdoor Serving/ Seating Areas

During open hours for Winery Operations, the indoor serving and seating area shall not exceed 1,560 square feet and the outside serving and seating area shall not exceed 300 square feet.

### Food Cart/Mobile Food Units (MFUs)

Up to 1 food cart will be on site during business hours for the Winery Operations. Parking for the food carts is accounted for in the food cart parking area which contains 3 parking spaces. The Board identifies the food cart area which is separated from the normal parking areas and excludes the food cart employee and vehicle from the calculation.

The total required amount of vehicle parking for Winery Operations is 19 spaces.

### **Winery Related Events**

Within DCC 18.116.030, there are no parking requirement standards for events. The applicant has proposed a total number of 250 maximum attendees per event. In consultation with the Senior Transportation Planner, and using an occupancy rate of 2.5 persons per vehicle, planning staff calculated that 100 parking spaces are needed. The Winery Related Events of the Meadery will employ up to 5 persons. The applicant proposes for himself to be included in the number of employees and that parking for him will be provided at his residence. As such, 4 more parking spaces are required. Therefore, the total required vehicle parking for Winery Related Events is 104 spaces.

### Food Cart/Mobile Food Units (MFUs)

Up to 2 additional food carts will be on site during business hours for the Winery Events. Parking for the food carts is accounted for in the food cart parking area which contains 3 parking spaces. The Board identifies the food cart area which is separated from the normal parking areas and excludes the food cart employees and vehicles from the calculation.

The total required amount of vehicle parking for Winery Related Events is 104 spaces.

As the Mead Production will not be open at the same time as the Winery Operations, the Board uses the number of parking spaces of Winery Operations in combination with Winery Related Events to eliminate redundancy. Therefore, the Board finds that a minimum of 19 spaces are required to be available on site under normal operating hours for the Winery Operations and an additional 104 parking spaces are required to be available on site when a Winery Related Event is scheduled. Therefore, the total required parking requirement when a Winery Related Event is scheduled during the open hours for the Winery Operations, is 123 parking spaces.

### **Proposed Parking**

#### Winery Operations/ Normal Hours

On the revised *Site Plan for Subject Use* which was submitted on July 15, 2022, the applicant has identified two parking lots to be used for the Meadery. In accordance with the minimum parking stall dimensions of 9' x 20', the applicant proposes two parking lots with sufficient area for 18 spaces,

plus 1 ADA Space for a total of 19 spaces.

#### Winery Related Events

On the revised *Exhibit H: Event Map*, which was submitted on July 15, 2022, the applicant has identified 9 additional parking areas, and expanded the lots for Winery Operations to be used for the Meadery, during an event. In accordance with the minimum parking stall dimensions of 9' x 20', the applicant proposes these parking locations with sufficient area for an additional 104 spaces.

Combined with the required parking spaces for Winery Operations, the Board calculates the total number of required parking spaces to be 123. The Board finds the number of proposed parking spaces proposed (19 + 104 = 123) complies with the number of spaces required by this criterion.

#### **E. General Provisions. Off-Street Parking.**

- 1. More Than One Use on One or More Parcels. In the event several uses occupy a single structure or parcel of land, the total requirement for off-street parking shall be the sum of requirements of the several uses computed separately.**

**FINDING:** According to the application materials, there is a residential use and a farm use alongside the proposed Meadery. The residential use and farm use parking is independent of the proposed Meadery and the existing parking locations for these uses are located outside the area identified for the Meadery. Per DCC 18.116.030(D)(1), 2 spaces are required for the residential use. The Board finds parking for the 2 required spaces associated with residence can be accommodated in and around the dwelling. DCC 18.116 does not provide a parking standard for farm uses. According to the applicant, Lazy Z Ranch employs no staff other than the farm operator who lives in the dwelling on the property. These parking spaces are accounted for next to the dwelling. As detailed above, required parking for the Meadery, Winery Operations and Winery Related Events will be accommodated in the various parking areas on the site which contain 123 parking spaces. Based on the above, the Board finds all required parking for the existing and proposed uses will be accommodated on-site.

- 2. Joint Use of Facilities. The off-street parking requirements of two or more uses, structures or parcels of land may be satisfied by the same parking or loading space used jointly to the extent that it can be shown by the owners or operators of the uses, structures or parcels that their operations and parking needs do not overlap at any point of time. If the uses, structures or parcels are under separate ownership, the right to joint use of the parking space must be evidence by a deed, lease, contract or other appropriate written document to establish the joint use.**

**FINDING:** As noted above, the subject property has a residential use and a farm use. The applicant considers himself to be an employee of the Meadery and has proposed that the existing parking space at the residence be applied toward his parking requirement. Parking for the residence is to the northwest of the proposed Meadery and has designated parking for the residential use. As noted above, no other individuals are employed at the farm other than the farm operator who lives

in the dwelling on the property. For the purposes of addressing this criterion, the parking for the farm use and the residential use are the same. The parking areas for the residential/farm use and the Meadery use are in separate locations and will not overlap. This criterion is met.

- 3. Location of Parking Facilities. Off-street parking spaces for dwellings shall be located on the same lot with the dwelling. Other required parking spaces shall be located on the same parcel or another parcel not farther than 500 feet from the building or use they are intended to serve, measured in a straight line from the building in a commercial or industrial zone. Such parking shall be located in a safe and functional manner as determined during site plan approval. The burden of proving the existence of such off-premise parking arrangements rests upon the applicant.**

**FINDING:** The proposed required parking spaces are be located on the same parcel.

- 4. Use of Parking Facilities. Required parking space shall be available for the parking of operable passenger automobiles of residents, customers, patrons and employees only and shall not be used for the storage of vehicles or materials or for the parking of trucks used in conducting the business or used in conducting the business or use.**

**FINDING:** The Board includes this criterion as a condition of approval.

#### Meadery Parking

Required parking space shall be available for the parking of operable passenger automobiles of residents, customers, patrons and employees only and shall not be used for the storage of vehicles or materials or for the parking of trucks used in conducting the business or used in conducting the business or use.

- 5. Parking, Front Yard. Required parking and loading spaces for multi-family dwellings or commercial and industrial uses shall not be located in a required front yard, except in the Sunriver UUC Business Park (BP) District, Airport Development (AD) Zone, and properties fronting Spring River Road in the Spring River Rural Commercial Zone, but such space may be located within a required side or rear yard.**

**FINDING:** As outlined in DCC 18.04 a commercial use is defined as:

***“Commercial use” means the use of land primarily for the retail sale of products or services, including offices. It does not include factories, warehouses, freight terminals or wholesale distribution centers.***

As noted above, the primary use of the land is farming. The proposed Meadery is incidental and subordinate to the existing farm use. The Board finds the proposed Meadery is a “commercial event or activity.” As outlined in DCC 18.04, a commercial event or activity is defined as:

***“Commercial event or activity” means any meeting, celebratory gathering, wedding, party, or similar uses consisting of any assembly of persons and the sale of goods or services. It does not include agri-tourism. In DCC 18.16.042, a commercial event or activity shall be related to and supportive of agriculture.***

As the proposed Meadery is not a commercial use, this criterion is not applicable.

- 6. On-Street Parking Credit. Notwithstanding DCC 18.116.030(G)(2), within commercial zones in the La Pine Planning Area and the Terrebonne and Tumalo unincorporated communities, the amount of required off-street parking can be reduced by one off-street parking space for every allowed on-street parking space adjacent to a property up to 30% of the required off-street parking. On-street parking shall follow the established configurations in the parking design standards under DCC 18.116.030 Table 1. To be considered for the parking credit, the proposed parking surface, along the street frontage under review, must have a defined curb line and improved as required under DCC 17.48, with existing pavement, or an engineered gravel surface. For purposes of establishing credit, the following constitutes an on-street parking space:***
  - a. Parallel parking (0 degree), each 20 feet of uninterrupted curb;***
  - b. Diagonal parking (60 degree), each with 11 feet of curb;***
  - c. Perpendicular parking (90 degree), each with 10 feet of curb;***
  - d. Curb space must be connected to the lot that contains the use;***
  - e. Parking spaces that would not obstruct a required clear vision area, nor any other parking that violates any law or street standard; and***
  - f. On-street parking spaces credited for a specific use may not be used exclusively by that use, but shall be available for general public use at all times. No signs or actions limiting general public use of on-street spaces are permitted.***

**FINDING:** No on-street parking is proposed.

- F. Development and Maintenance Standards for Off-Street Parking Areas. Every parcel of land hereafter used as a public or private parking area, including commercial parking lots, shall be developed as follows:***
  - 1. Except for parking to serve residential uses, an off-street parking area for more than five vehicles shall be effectively screened by a sight obscuring fence when adjacent to residential uses, unless effectively screened or buffered by landscaping or structures.***

**FINDING:** The Burden of Proof states:

The proposed winery location is not adjacent to residential uses. The closest residential uses in the area are over 1,600 feet from proposed parking areas, and they do not abut the subject property. The applicant believes nearby residential uses will be effectively screened

by distance, existing onsite buildings, existing onsite trees, and existing wetland vegetation surrounding the large pond adjacent to Highway 20.

The Board concurs with the applicant's statement.

2. ***Any lighting used to illuminate off-street parking areas shall be so arranged that it will not project light rays directly upon any adjoining property in a residential zone.***

**FINDING:** There are no adjoining properties in a residential zone.

3. ***Groups of more than two parking spaces shall be located and designed to prevent the need to back vehicles into a street or right of way other than an alley.***

**FINDING:** Given the service drive distance from Highway 20 to the parking lots, the Board finds the parking spaces are located and designed to prevent the need to back vehicles into a street or right of way other than an alley.

4. ***Areas used for standing and maneuvering of vehicles shall be paved surfaces adequately maintained for all weather use and so drained as to contain any flow of water on the site. An exception may be made to the paving requirements by the Planning Director or Hearings Body upon finding that:***
  - a. ***A high water table in the area necessitates a permeable surface to reduce surface water runoff problems; or***
  - b. ***The subject use is located outside of an unincorporated community and the proposed surfacing will be maintained in a manner which will not create dust problems for neighboring properties; or***
  - c. ***The subject use will be in a Rural Industrial Zone or an Industrial District in an unincorporated community and dust control measures will occur on a continuous basis which will mitigate any adverse impacts on surrounding properties.***

**FINDING:** The Burden of Proof states:

The subject property is outside of an unincorporated community, and is zoned Exclusive Farm Use. We are requesting an exception to the paving requirement because we are located outside of an unincorporated community. With the exception of a paved skirt extending off of Highway 20 to our property line, all parking areas and service drives have been gravel surfaces for decades and appropriately maintained by regular re-graveling and grading as needed (see Exhibit J). With the exception of the City of Sisters' farm parcel located across Highway 20, there are no properties within a quarter mile of all parking spaces and service drives, and we are the only ones who would have to deal with our dust, which does not exist due to gravel type and maintenance.

The Board finds that the proposed use is located outside of an unincorporated community and is

eligible for an exemption to the paved surface requirement pursuant to this criterion. As depicted in the site plan and on Exhibit J, the areas identified as parking or services drives are required to be adequately maintained with gravel surfaces. This applies to parking for Mead Production, Winery Operations, and Winery Related Events. The Board notes the applicant has submitted a Maintained Gravel Map which is included as an **Attachment D**. The Board includes a condition of approval that these areas will be graveled prior to the initiation of use and be maintained at all times. The gravel surfacing requirements of this condition may also be met by paving if paving is required by Building Division review.

#### Graveled Surface for Standing and Maneuvering of Vehicles

**Prior to the initiation of use**, the applicant shall gravel all areas for the standing and maneuvering of vehicles onsite as depicted on the Maintained Gravel Map. This includes the individual parking areas as proposed and all service drives which provide access for Mead Production, Winery Operation, and Winery Related Events. **At all times**, the graveled surfaces shall be maintained in a manner which will not create dust problems for neighboring properties.

5. ***Access aisles shall be of sufficient width for all vehicular turning and maneuvering.***

**FINDING:** The applicant proposes one-way and two-way access aisles, which requires a minimum width of 12 feet and 24 feet, respectively. Normal mead/winery operations and events are analyzed independently under this criterion.

#### **Mead Production and Winery Operations**

As illustrated on the site plan, the access aisles will be 24 feet in width for 2-way access aisles. The proposed access aisles are of sufficient width for all vehicular turning and maneuvering and comply with standards for parking lot design under sub-section (G), below. The Meadery service drives map for Mead Production and Winery Operations is included as **Attachment E**.

#### **Winery Related Events**

As illustrated on the site plan, the access aisles will be 12 feet for one-way access aisles and 24 feet in width for two-way access aisles. The proposed access aisles are of sufficient width for all vehicular turning and maneuvering and comply with standards for parking lot design under sub-section (G), below. The Meadery service drives map for Winery Related Events is included as **Attachment F**.

6. ***Service drives to off-street parking areas shall be designed and constructed to facilitate the flow of traffic, provide maximum safety of traffic access and egress and maximum safety of pedestrians and vehicular traffic on the site. The number of service drives shall be limited to the minimum that will accommodate and serve the traffic anticipated. Service drives shall be clearly and permanently marked and defined through the use of rails, fences, walls or other barriers or markers. Service drives to drive in establishments shall be designed to avoid backing movements or other maneuvering within a street other than an alley.***

**FINDING:** For the purposes of this decision, the Board finds a “service drive” includes any vehicle maneuvering surface that connects to a road or street, but is not immediately adjacent to a parking space. The Burden of Proof states:

The entrance service drive to the parking area is fenced and gated. It is a wide area that allows for a flow of two-way traffic into and out the site and designated parking areas (Exhibit G). The drive is marked with fencing. It is designed to avoid backing movements onto Highway 20.

There is only one service drive for the meadery. It is clearly and permanently marked and defined by natural and physical barriers. On the entrance from the highway, white vinyl fencing ushers the customer onto the property. Once through the gate, the service drive is barriered to the west by the parking spaces and the pond, and to the east by the ADA parking spot and the winery building itself. Directly to the north is the barn, which will have a sign to enhance the natural funnel to the northeast parking spaces. The service drive at this section is barriered to the north by metal panel fencing and to the south by the winery building. The driveway to the dwellings located to the northwest of the service drive will have a permanent “private driveway” sign and blocked by a rope during open hours. All service drives for the additional 18 annual events are bound by fencing. Additional permanent structures and/or barriers are unnecessary for clarity, and have potential to render the space unusable for the maneuvering of cattle trucks and other farm implements when the Meadery is closed to the public.

Normal mead/winery operations and events are analyzed independently under this criterion.

### **Mead Production and Winery Operations**

For Mead Production and Winery Operations, the proposed parking plan and services drives are sufficient for providing access throughout the site as proposed. The area around the Winery Building is clear of obstructions and visibility will be maintained by the use of large graveled surfaces. As identified in the applicant’s response, the use of natural features, fences, and structures to direct vehicular and pedestrian traffic are acceptable to meet this criterion provided that directions are clear to both vehicle drivers and pedestrians on site. However, as noted below under 18.124.160(E), the intermixing of vehicle and pedestrian traffic in an open area could potentially create confusion and conflict in an undefined space. The response in the application does not address pedestrian walkways and if they are sufficiently separated from drive aisles by distance, curbing, or landscaping. The submitted site plan and application materials do not indicate if pedestrian crosswalks in parking lots will be marked. The Board notes that the applicant proposes signage to articulate traffic direction. As such, the Board includes a condition of approval to ensure that appropriate sign locations, sign messaging, and demarcations, are utilized to provide a safe environment for vehicle and pedestrian traffic and ensure compliance with this criterion. This condition of approval will be satisfied through a sign plan submitted to the Planning Division to demonstrate how vehicular and pedestrian traffic will be coordinated to provide a safe environment.

## Winery Related Events

For Winery Related Events, the proposed parking plan and service drives are sufficient for providing access throughout the site as proposed. The area around the Winery Building and "Lawn Event Site" are clear of obstructions and visibility will be maintained by the use of large, graveled surfaces. As identified in the applicant's response, the use of natural features, fences, and structures to direct vehicular and pedestrian traffic are acceptable to meet this criterion provided that directions are clear to both vehicle drivers and pedestrians on site. The same concerns were raised by staff, and elevated, by the fact that the number of vehicles and pedestrians will be dramatically increased when compared to day-to-day operations at the Meadery. As illustrated on the site plan, additional parking spaces and service drives will be active with vehicles and pedestrians. Moreover, as noted in the application materials, more vendors, entertainers with vehicles and equipment, as well as temporary infrastructure will also be on site. In the chance of an emergency situation, a defined and articulated space is even more necessary to ensure safety. As such, the Board includes elements specific to temporary Winery Related Events which will be included in the sign plan.

### Safety of Traffic Access & Egress, and Pedestrians and Vehicular Traffic for the Meadery

**Prior to the Initiation of Use**, the applicant shall submit a sign plan to the Planning Division illustrating that the site, with the installation of signage throughout, is adequate for providing safety of traffic access and egress, as well as safety for pedestrians and vehicular traffic.

1. Mead Production and Winery Operations in Accordance with Meadery Site Plan/Sign Plan:
  - Appropriate sign locations, sign messaging, and demarcations, are utilized to provide a safe environment for vehicle and pedestrian traffic throughout the site.
2. Winery Related Events in Accordance with the Meadery Events Site Plan/Sign Plan:
  - In addition to Mead Production and Winery Operations, appropriate temporary sign locations, sign messaging, and demarcations, are utilized to provide a safe environment for vehicle and pedestrian traffic throughout the site.
  - Highlight areas of significance (e.g. portable toilets & pedestrian only areas) during temporary Winery Related Events.

No "drive-in" establishment is proposed. As conditioned, the proposal will meet this criterion.

7. ***Service drives shall have a minimum vision clearance area formed by the intersection of the driveway centerline, the street right of way line and a straight line joining said lines through points 30 feet from their intersection.***

**FINDING:** For the purposes of this decision, the Board finds a "Service drive" includes any vehicle maneuvering surface that connects to a road or street, but is not immediately adjacent to a parking space. The Board finds "vision clearance area" became "clear vision area" in 1991 (Ord 91-038) but that this reference was not updated. For the purposes of this decision, the Board uses "vision clearance area" and "clear vision area" as the equivalent.

The subject property has a required service drive clear vision area located at the intersection of



Highway 20 and the Meadery entrance. As proposed, this area will contain no planting, fence, wall, structure, or temporary or permanent obstruction exceeding three and one-half feet in height. As a condition of approval, the service drive clear vision area shall be maintained in accordance with DCC 18.116.020(A).

8. ***Parking spaces along the outer boundaries of a parking area shall be contained by a curb or bumper rail placed to prevent a motor vehicle from extending over an adjacent property line or a street right of way.***

**FINDING:** The Board finds a curb or bumper rail are only needed under this criterion where needed to prevent a motor vehicle from extending over an adjacent property line or a street right of way. No parking area is immediately adjacent to a property line or a street right of way.

- G. ***Off-Street Parking Lot Design. All off-street parking lots shall be designed subject to County standards for stalls and aisles as set forth in the following drawings and table:***

***(SEE TABLE 1 AT END OF CHAPTER 18.116)***

1. ***For one row of stalls use "C" + "D" as minimum bay width.***
2. ***Public alley width may be included as part of dimension "D," but all parking stalls must be on private property, off the public right of way.***
3. ***For estimating available parking area, use 300-325 square feet per vehicle for stall, aisle and access areas.***
4. ***For large parking lots exceeding 20 stalls, alternate rows may be designed for compact cars provided that the compact stalls do not exceed 30 percent of the total required stalls. A compact stall shall be eight feet in width and 17 feet in length with appropriate aisle width.***

**FINDING:** The proposed parking lot has been designed subject to County standards.

Section 18.116.031, Bicycle Parking.

***New development and any construction, renovation or alteration of an existing use requiring a site plan review under DCC Title 18 for which planning approval is applied for after the effective date of Ordinance 93-005 shall comply with the provisions of DCC 18.116.031.***

- A. ***Number and Type of Bicycle Parking Spaces Required.***

1. ***General Minimum Standard.***
  - a. ***All uses that require off-street motor vehicle parking shall, except as specifically noted, provide one bicycle parking space for every five required motor vehicle parking spaces.***
  - b. ***Except as specifically set forth herein, all such parking facilities shall include at least two sheltered parking spaces or, where more than 10 bicycle spaces are required, at least 50 percent of the bicycle parking spaces shall be sheltered.***

**FINDING:** As noted above, the proposed use requires vehicular parking spaces. As noted below, the applicant requests an exception to the requirement of bicycle parking.

- c. When the proposed use is located outside of an unincorporated community, a destination resort, and a rural commercial zone, exceptions to the bicycle parking standards may be authorized by the Planning Director or Hearings Body if the applicant demonstrates one or more of the following:**
- i The proposed use is in a location accessed by roads with no bikeways and bicycle use by customers or employees is unlikely.**
  - ii. The proposed use generates less than 50 vehicle trips per day.**
  - iii. No existing buildings on the site will accommodate bicycle parking and no new buildings are proposed.**
  - iv. The size, weight, or dimensions of the goods sold at the site makes transporting them by bicycle impractical or unlikely.**
  - v. The use of the site requires equipment that makes it unlikely that a bicycle would be used to access the site. Representative examples would include, but not be limited to, paintball parks, golf courses, shooting ranges, etc.**

**FINDING:** The Burden of Proof states:

19 required parking spaces are proposed (Exhibit C). The applicant requests an exception to the bicycle parking standards for the proposed use for the following reasons:

- The owners and all employees will drive to and from the property. The applicant believes Highway 20 is too dangerous for bicycle use. It has no bikeways making it highly unlikely bicycles will be used by customers or employees.
- The subject property is located outside of an unincorporated community, a destination resort, or a rural commercial zone where bike use is common.
- It is anticipated that all customers will arrive and leave the property by vehicle and will not use bicycles.
- It is not practical to transport materials used in winemaking to the site via bicycle.
- No new buildings are proposed.

The Board concurs with the applicant’s analysis that Highway 20 has no bikeways making it highly unlikely bicycles will be used by customers or employees. Further, the subject property is not within an unincorporated community, destination resort or rural commercial zone. For these reasons, the Board grants an exception to the bicycle parking requirements.

Section 18.116.310 Traffic Impact Studies

**C. Guidelines for Traffic Impact Studies**

- 1. All traffic impact studies shall be stamped and signed by the registered**

- professional engineer who is licensed in the State of Oregon and is otherwise qualified to prepare traffic studies.*
2. *The County Engineer shall determine when the report has satisfied all the requirements of the development's impact analysis. Incomplete reports shall be returned for completion.*
  3. *The following vehicle trip generation thresholds shall determine the level and scope of transportation analysis required for a new or expanded development.*
    - a. *No Report is required if there are fewer than 50 trips per day generated during a weekday.*
    - b. *Site Traffic Report (STR): If the development or change in use will cause the site to generate 50-200 daily trip ends, and less than 20 peak hour trips, a Site Traffic Report may be required at the discretion of the County Engineer.*
    - c. *Traffic Impact Analysis (TIA): If the development or change in use will generate more than 200 trip ends and 20 or more peak hour trips, then a Traffic Impact Analysis (TIA) shall be required.*
  4. *The peak hour shall be the highest continuous hour of traffic measured between 4:00 and 6:00 PM, unless site trip generation characteristics warrant consideration of alternative periods as determined by the County Engineer. (An example would be a use with a high 7:00 and 9:00 AM peak and a low PM peak such as a school.)*

**FINDING:** The Burden of Proof states:

The site's sole access is to Highway 20, and no county roads are involved. In coordination with the Senior Transportation Planner, Peter Russell, we commissioned a Trip Generation Forecast from Professional Engineer Scott Ferguson of Ferguson & Associates, Inc. The completed Forecast is attached (Exhibit K) and demonstrates that the land use proposed in our application is forecast to generate less than 50 weekday trips, and therefore a Site Traffic Report (STR) is not necessary.

The trip generation letter was evaluated by Deschutes County Senior Transportation Planner, Peter Russell. His comments are included above and no Site Traffic Report (STR) is required for the proposal.

## **Chapter 18.120, Exceptions**

### Section 18.120.010. Nonconforming Uses.

***Except as otherwise provided in DCC Title 18, the lawful use of a building, structure or land existing on the effective date of DCC Title 18, any amendment thereto or any ordinance codified therein may be continued although such use or structure does not conform with the standards for new development specified in DCC Title 18. A nonconforming use or***

*structure may be altered, restored or replaced subject to DCC 18.120.010. No nonconforming use or structure may be resumed after a one-year period of interruption or abandonment unless the resumed use conforms with the provisions of DCC Title 18 in effect at the time of the proposed resumption.*

**A. Expansion or Replacement of a Nonconforming Structure.**

- 1. Nonconforming Structure.** *For the purposes of DCC 18.120.010, a nonconforming structure is one that was lawfully established and violates current setbacks of DCC Title 18 but conforms with respect to use.*
- 2. Replacement or Expansion without Additional Encroachment in Setback Area.** *A nonconforming structure may be replaced with a new structure of the same size on the same footprint as the preexisting nonconforming structure or may be expanded with an addition that does not project into the required setback area at any point, subject to all other applicable provisions of DCC Title 18.*
- 3. Replacement or Expansion with Additional Encroachment in Setback Area.** *Replacement or expansion of a nonconforming structure that would involve an additional projection into the front, side or rear yard setback area at any point along the footprint of the existing or preexisting structure may be allowed provided such additional projection into the setback area (1) does not exceed 900 square feet; (2) does not exceed the floor space of the existing or preexisting structure; (3) does not cause the structure to project further toward the front, side or rear property lines than the closest point of the existing or preexisting structure; and (4) meets the variance approval standards set forth in DCC 18.132.025(A)(1) through (4).*

**FINDING:** The Burden of Proof states:

Deschutes County Assessor's records indicate the existing 3,000 square foot farm building (described therein as a shop/machine shed) was constructed in 1970 (see attached Assessor's Improvement Summary, Exhibit L). There were no zoning regulations or building permit requirements in effect in 1970. However, evidence exists that this building is much older than 1970, including the photos and map from a 1959 farm insurance policy provided by a previous owner (Exhibit M).

This building has been part of the farm use on the Herman property since its construction. It is within 100' of Highway 20, approximately 75' from the property line. The applicant proposes no additions to the building. However, on the exterior, new siding and roofing is proposed to make it more appealing and compatible with the proposed wine production/tasting facility. The interior layout will be altered as depicted in the attached sample winery building site plan. Additionally, the winery will be connected to an existing onsite well for potable water, and a new onsite septic system will be installed for waste treatment (see attached site plan, Exhibit C).

The building in question is surrounded by a gravel area that has been used as a driveway and outdoor storage area since construction of the nonconforming farm building under

discussion. The applicant proposes to alter the use of this existing gravel area to site some of the proposed commercial activities in conjunction with farm use. This will concentrate uses associated with the proposed winery within close proximity to the winery building on previously-developed portions of the farm, thus limiting new impacts to necessary farm fields and portions of the property devoted to livestock. Uses proposed in this location are depicted on this application's site plans (Exhibit C) and include food truck(s) east of the winery building, outdoor garden seating (e.g., picnic tables) to the south that may, seasonally, include a tent.

The Board concurs with the applicant's analysis. According to Deschutes County records, the existing 3,000-square-foot farm building predates county zoning permitting program which was established in 1973. The Board finds that the farm building is a lawfully established and non-conforming structure. Pursuant to DCC 18.120.010(D), general maintenance is permitted on a non-conforming structure. The applicant proposed interior changes for the Meadery and exterior renovations which included siding and roofing. The Board considers these changes minor in nature and appropriately classified as maintenance. However, if any changes are made to the building which change either the footprint or height of the building, an alteration of a non-conforming structure approval is required from the Planning Division. The Board includes the following conditions of approval:

#### Alteration of a Non-Conforming Structure

The applicant shall receive approval for a non-conforming use alteration if any changes to height or footprint of the 3,000-square-foot farm building/Meadery building are proposed.

#### Renovation Permitting

For the proposed renovations to the Meadery building, the applicant shall obtain all the appropriate permitting from the Deschutes County Building Division and the Environmental Soils Division.

### **Chapter 18.124, Site Plan Review**

#### Section 18.124.030. Approval Required.

- A. No building, grading, parking, land use, sign or other required permit shall be issued for a use subject to DCC 18.124.030, nor shall such a use be commenced, enlarged, altered or changed until a final site plan is approved according to DCC Title 22, the Uniform Development Procedures Ordinance.**
- B. The provisions of DCC 18.124.030 shall apply to the following:**
  - 1. All conditional use permits where a site plan is a condition of approval;**
  - 2. Multiple family dwellings with more than three units;**
  - 3. All commercial uses that require parking facilities;**
  - 4. All industrial uses;**
  - 5. All other uses that serve the general public or that otherwise require parking facilities, including, but not limited to, landfills, schools, utility facilities,**

- churches, community buildings, cemeteries, mausoleums, crematories, airports, parks and recreation facilities and livestock sales yards; and*
- 6. As specified for Flood Plain Zones (FP) and Surface Mining Impact Area Combining Zones (SMIA).**
  - 7. Non-commercial wind energy system generating greater than 15 to 100 kW of electricity.**
- C. The provisions of DCC 18.124.030 shall not apply to uses involving the stabling and training of equine in the EFU zone, noncommercial stables and horse events not requiring a conditional use permit.**
  - D. Noncompliance with a final approved site plan shall be a zoning ordinance violation.**
  - E. As a condition of approval of any action not included in DCC 18.124.030(B), the Planning Director or Hearings Body may require site plan approval prior to the issuance of any permits.**

**FINDING:** The proposed use requires actions described in section (A), above, and falls within a use category described in section (B). Site plan review is required.

Section 18.124.060. Approval Criteria.

**Approval of a site plan shall be based on the following criteria:**

- A. The proposed development shall relate harmoniously to the natural environment and existing development, minimizing visual impacts and preserving natural features including views and topographical features.**

**FINDING:** In *Father's House*, files 247-18-000061-CU, 247-18-000062-SP, 247-18-000624-A, and 247-18-000643-A, the Board of County Commissioners (Board) made the following finding regarding this standard.

*The Board agrees that DCC 18.124.060(A) is subjective and, at times, difficult to apply as the Hearings Officer observed. However, as the Board interprets the provision, DCC 18.124.060(A) does not require a particularly onerous exercise. It requires an applicant to show that its proposed site plan relates "harmoniously" to the natural environment and existing development. Unlike the conditional use standards of DCC 18.128.015(B), this standard does not indicate harmony achieved with "surrounding properties." However, the Board understands that the standard implies that the proposed development shall relate harmoniously on and off the subject property and generally speaking, in the vicinity, by "minimizing visual impacts and preserving natural features including views and topographical features."*

*The code does not define what it means to "relate harmoniously." The Hearings Officer reported that the online Oxford Living Dictionary defines "harmoniously" to mean arranging something "in a way that forms a pleasing or consistent whole." Both parties in this case, provided various interpretations of the term "harmonious." The Board is not adopting one interpretation of the term over another as each contributes equally to this evaluation. The Board concurs with the Hearings Officer that there is no "particularly useful case law defining*

*or applying this term.” In addition, the Board agrees, that the Hearings Officer is correct that a site plan should be approved in light of this meaning of “harmonious,” so long as the proposed site plan does not create “more disharmony than other uses allowed by right or conditionally in the MUA-10 zone.” In this regard, the Board finds that this standard presumes the use is approved and evaluates only whether the site plan for the use “relates harmoniously.” The Board finds that the proposed church site plan meets the standard set forth in DCC 18.124.060(A).*

*Specifically, the Board interprets DCC 18.124.060(A) to mean that an applicant must demonstrate that the site plan has arranged the development in a way that evaluates the natural environment and existing development in the area and in the process has minimized visual impacts and reasonably preserved natural features including views and topographic features. Minimizing visual impact, as with this case, may include introduced landscaping, design layout, and specific design elements such as siding and roofing color and material. In doing so, this enables the County decision maker to find that the site plan’s impacts create no more disharmony than other uses allowed by right or conditionally in the MUA Zone.*

*The Board agrees, in part, with the Hearings Officer that this standard is considered differently when compared to the term “compatibility” and its associated standard of DCC 18.128.015(B). The chief differences between the two standards is that the DCC 18.128.015(B) compatibility standard evaluates the compatibility of the proposed use on existing and projected uses of surrounding properties and does so in light of specific factors that are not reproduced in DCC 18.124.060(A). The DCC 18.124.060(A) “harmonious” standard evaluates whether a proposed site plan “relates harmoniously to existing development and the natural environment” considering whether the site plan shows that the applicant has reasonably mitigated its impacts and reasonably preserved views. The Board observes that not every use that requires site plan approval also requires a conditional use permit. However, the Board finds that it is possible that a permitted or approved use is arranged so poorly on a site, that a proposed site plan must be denied under this standard. That is not the case here.*

The Board’s findings, cited above, make it clear that the use itself is not the subject of review under this criterion. Rather, this criterion only evaluates whether the site plan for the use “relates harmoniously.” The Board reads *Father’s House* to require a demonstration, “...the site plan has arranged the development in a way that evaluates the natural environment and existing development in the area and in the process has minimized visual impacts and reasonably preserved natural features including views and topographic features.”

The Burden of Proof States:

The proposed winery and commercial activities in conjunction with farm use will be sited on previously-developed portions of the property so as to avoid new impacts to the natural environment, thus respecting it. No new structures are proposed, rather existing ones will be used. This will respect existing development by avoiding unnecessary crowding and fully utilizing existing structures. Parking areas are proposed in locations that have been altered

by a history of farm vehicle use and are of a size and design that will facilitate safe flow of vehicular and pedestrian traffic within and around existing development.

The visual impact of proposed use will be minimized by location. All proposed outdoor activities will be buffered from surrounding uses by existing buildings, vegetation and distance. Since these activities will be integrally related to and dependent upon the existing farm use of the subject property, the applicant believes the proposed winery and commercial activities in conjunction with farm use will relate harmoniously to the natural environment and existing development.

The Board concurs with the applicant's analysis. The proposed site plan demonstrates a design scheme that utilizes previously disturbed ground and proposed activities that are in sheltered areas where the natural and existing features are incorporated and enhanced. Further, because the only new structure proposed is a ground-level stage, no impacts to any scenic views will occur. This criterion will be met.

***B. The landscape and existing topography shall be preserved to the greatest extent possible, considering development constraints and suitability of the landscape and topography. Preserved trees and shrubs shall be protected.***

**FINDING:** Given the limited new development, the Board finds the landscape and existing topography will be preserved to the greatest extent possible, considering development constraints and suitability of the landscape and topography. No significant changes to topography are proposed. The Board finds all trees and shrubs existing on-site, not removed by necessity of the proposed development, are "preserved trees and shrubs." The Board includes the following condition of approval:

Preservation of Landscape and Existing Topography

All trees and shrubs existing on-site, not removed by necessity of the proposed development, shall be protected, unless lawfully changed/removed by outright uses (such as farm use) or such change/removal is approved by future land use approvals.

***C. The site plan shall be designed to provide a safe environment, while offering appropriate opportunities for privacy and transition from public to private spaces.***

**FINDING:** The Burden of Proof states:

The proposed winery and commercial activities in conjunction with farm use will be centered around the existing farm building and its surrounding gravel area. Occasional events will be held on an existing lawn area adjacent to the old barn. Farm uses and other private portions of the property will be separated from these areas by existing fencing and distance. Site plans have been designed to provide a safe environment by separating proposed parking areas and driveways from pedestrian areas (Exhibit C).



## Safe Environment

The Board finds this criterion requires demonstration the site is designed to address common safety hazards, including fire safety, and to address any site-specific natural hazards. The Board finds pedestrian, bicycle, and vehicle safety is addressed under sub-sections (E) and (K) of this section. With regard to natural hazards, none have been identified on the site.

The proposed Meadery includes food and beverage sales onsite. As such, staff included comments from Eric Mone from Deschutes County Health Services under this criterion and comments from Jon Harrang from the Oregon Department of Agriculture in the administrative decision that are quoted below. Specific conditions of approval related to these comments are included in the comment text.

### Deschutes County Health Services, Eric Mone

I received this Notice of Application for a Conditional Use permit at 68540 HWY 20, Sisters. Thanks for sending. A few considerations:

**(1)** - if this property is served by a private well, it needs to be reviewed and approved as a Public Water System by either Oregon Dept of Ag (ODA) or our EH dept

The Meadery will be served by a private well and this decision includes the following condition of approval:

### Private Well

***Prior to the Initiation of Use of any Aspect of the Meadery***, the property owners shall have the well, which provides water to the property and use, reviewed and approved as a Public Water System by either the Oregon Department of Agriculture (ODA) or the Deschutes County Environmental Health Department.

**(2)** - Licensure of Meadery will depend on their predominant activity (sales, tasting room, food service); that will determine whether licensure required by ODA or EH

The Board includes the following condition of approval:

### Meadery Licensing From Deschutes County Environmental Health Department

***Prior to the Initiation of Use of any Aspect of the Meadery***, the property owner shall obtain all necessary permits from the Deschutes County Environmental Health Department.

**(3)** - Mobile Food Units (MFU, e.g. carts) will all require licensure by EH

The Board includes the following condition of approval:

Meadery Food Cart/ Mobile Food Unit Licensing

**Prior to the Initiation of Service of the Mobile Food Units (MFUs)**, the property owner shall obtain all necessary permits from the Deschutes County Environmental Health Department for the Mobile Food Units (MFUs) operating on the property.

(4) - Not sure if the MFU's will only be on site for events a few times per year or permanent. If permanent, it would be best for Public Health purposes if they were tied into the on-site septic system, the well, and a power source on site.

The Board notes the proposal included one food cart to be operational when the Winery Building and Winery Operations are open to the public. One food cart will be permanent. Up to two more food carts are planned to be in use and open to the public only during an event. As such the Board considers these two food carts to be temporary.

The Board includes the following condition of approval:

Permanent Food Cart Utility Servicing

**Prior to the Initiation of Service of the Permanent Mobile Food Unit (MFU)**, the permanent Food Cart (MFU) shall be connected to the on-site septic system, the well, and a power source on site while providing food and beverage service at the Meadery.

(5) - Todd's team is reviewing septic system so that will be a major consideration

The Board includes the following conditions of approval:

Meadery Septic System

- **Prior to the Initiation of Use for the Mead Production**, the property owner shall obtain all necessary permits from the Deschutes County Onsite Wastewater Division for the Mead Production facilities.
- **Prior to the Initiation of Use for the Winery Operations**, the property owner shall obtain all necessary permits from the Deschutes County Onsite Wastewater Division specific to the Winery Operations.
- **Prior to the Initiation of Use for the Winery Related Events**, the property owner shall obtain all necessary permits from the Deschutes County Onsite Wastewater Division for the Winery Related Events including any temporary facilities that will be operational on site.

Oregon Department of Agriculture – Food Safety Program, Jon Harrang

To Whom it May Concern,

Food/beverage processing facilities such as those that produce Mead (honey wine) must be licensed and inspected by ODA Food Safety Program. A tasting room associated with the production facility would also be subject to licensing and inspection. The processing facility

must comply with the minimum standards set forth in 21 CFR 117. The tasting room would be subject to the Retail Food Code, OAR 603 Division 25. An adequate supply of potable water is required. In addition, the firm must demonstrate that solid and liquid waste are being properly disposed of. A septic authorization letter from Deschutes County Environmental Health or the equivalent approval from DEQ would be needed as a prerequisite for licensing, depending on which agency has the jurisdiction in this matter. Please note that OLCC and TTB may have additional requirements which relate to production, sales, and serving of alcoholic beverages to the public.

Food cart licensing and inspection would be handled by Deschutes County Environmental Health Department.

Please contact me if Deschutes County Planning Staff or the applicant should have any questions and/or if further discussion or clarification are needed.

Based upon the comments from Jon Harrang, the Board includes the following conditions of approval:

Meadery Licensing From the Oregon Department of Agriculture

***Prior to the Initiation of Use of any Aspect of the Meadery,*** the property owner shall obtain all necessary permits and approvals from the Oregon Department of Agriculture Food Safety Program for the Mead Production, Winery Operations, and Winery Related Events.

Meadery Licensing From the Oregon Liquor and Cannabis Commission (OLCC)

***Prior to the Initiation of Use of any Aspect of the Meadery,*** the property owner shall obtain all necessary permits and approvals from the Oregon Liquor and Cannabis Commission for the Mead Production, Winery Operations, and Winery Related Events.

Meadery Licensing From the US Alcohol and Tobacco Tax and Trade Bureau (TTB)

***Prior to the Initiation of Use of any Aspect of the Meadery,*** the property owner shall obtain all necessary permits and approvals from the US Alcohol and Tobacco Tax and Trade Bureau for the Mead Production, Winery Operations, and Winery Related Events.

**Transition from Public to Private Space**

As noted in the applicant's response, the site has a residential use. The Board concurs that sufficient distance and space exist and create a natural buffer between the residential use and the Meadery. With the exception of the Meadery tours that include a survey of the regenerative bee pastures, the Meadery is adequately separated from the on-site residential use. Regarding those private spaces and residential uses which surround the subject property, the Board finds that the existing buildings and vegetation, along with substantial distances from the proposed use, create a sufficient buffer.

- D. When appropriate, the site plan shall provide for the special needs of disabled persons, such as ramps for wheelchairs and Braille signs.***

**FINDING:** The Deschutes County Building Division was sent a request for comment on this

application. In the State of Oregon, ORS 455.720 and 447.210 through 447.992 are administered by the Deschutes County Building Safety Division. Deschutes County Building Safety Division is required to determine if a structure is an Affected Building and if so, apply the appropriate sections of Chapter 11 and the American National Standards Institute code A117.1-2009. Consequently, the structures will comply with state and federal ADA requirements. If an Affected Building is approved, inspected and finalized by the Deschutes County Building Safety Division, it meets all code requirements as an accessible structure. The Board finds that such a review is required prior to the issuance of building permits. As conditioned above under 18.120.010(A)(1-3), the Meadery building will comply with this criterion.

- E. The location and number of points of access to the site, interior circulation patterns, separations between pedestrians and moving and parked vehicles, and the arrangement of parking areas in relation to buildings and structures shall be harmonious with proposed and neighboring buildings and structures.***

**FINDING:** The Burden of Proof States:

No new structures are proposed. The proposed development will not alter existing driveways or the one point of access to the site from Highway 20. The site plan has been designed to maintain sufficient and safe interior circulation patterns, separation between pedestrians and moving and parked vehicles, and arrangement of parking areas in relation to buildings and structures (Exhibit C). The applicant believes that existing and proposed features will continue to be harmonious with the site's ongoing farm use and neighboring buildings and structures.

The Board concurs with the applicant's analysis that the use of existing buildings contributes to the ongoing harmony with the surrounding properties. With no new substantial development proposed for the Meadery, the Board finds that there will not be any significantly adverse impacts on-site and/or neighboring proposed and existing buildings and structures. County staff has advised that it is unaware of any buildings and structures proposed for neighboring properties.

As noted above under 18.116.030(F)(6), the Meadery's large parking areas and intermixing of vehicle and pedestrian traffic raises safety concerns for normal operation and events. The applicant proposes the use of built features, natural features and signage around Meadery building to ensure safety and circulation. In accordance with this proposed action, the Board includes a condition of approval that a sign plan be submitted to the Planning Division which confirms safety for interior circulation patterns. As conditioned above, this criterion will be met.

- F. Surface drainage systems shall be designed to prevent adverse impacts on neighboring properties, streets, or surface and subsurface water quality.***

**FINDING:** The subject proposal does not include impervious surfaces such as paving or new development, with the possible exception of the stage. Given its small size in comparison to the size of the property, the Board does not anticipate adverse drainage impacts on neighboring properties, streets, or surface and subsurface water quality.

- G. Areas, structures and facilities for storage, machinery and equipment, services (mail, refuse, utility wires, and the like), loading and parking and similar accessory areas and structures shall be designed, located and buffered or screened to minimize adverse impacts on the site and neighboring properties.**

**FINDING:** The Burden of Proof states:

No new structures are proposed. The exterior of the existing farm building to house the proposed winery is weathered and in need of maintenance. It will be repaired and updated with new siding in earth-tone colors to make it more functional, natural looking, and visually appealing. All production and storage facilities are proposed inside the winery building, which will screen machinery and equipment. Parking areas, food cart(s), refuse containers, and temporary toilet facilities are proposed and will be located at least 100' from Highway 20 and will be located so that they are screened from the remainder of the site and neighboring properties by existing onsite buildings, fencing, and landscaping (Exhibit C, Site Plans). No adverse impacts from the proposed winery and commercial activities in conjunction with farm use are anticipated to the site or neighboring properties.

The Board concurs with the applicant's analysis.

- H. All above ground utility installations shall be located to minimize adverse visual impacts on the site and neighboring properties.**

**FINDING:** The applicant has not proposed above ground utility installations as a part of this project.

- I. Specific criteria are outlined for each zone and shall be a required part of the site plan (e.g. lot setbacks, etc.).**

**FINDING:** Specific criteria for each zone mapped on the subject property have been addressed above.

- J. All exterior lighting shall be shielded so that direct light does not project off site.**

**FINDING:** The applicant has not proposed exterior lighting as a part of this project. As a condition of approval, all exterior lighting shall be shielded so that direct light does not project off site.

#### Exterior Lighting

All exterior lighting shall be shielded so that direct light does not project off site.

- K. Transportation access to the site shall be adequate for the use.**
- 1. Where applicable, issues including, but not limited to, sight distance, turn and acceleration/deceleration lanes, right-of-way, roadway surfacing and widening, and bicycle and pedestrian connections, shall be identified.**
  - 2. Mitigation for transportation-related impacts shall be required.**

3. **Mitigation shall meet applicable County standards in DCC 18.116.310, applicable Oregon Department of Transportation (ODOT) mobility and access standards, and applicable American Association of State Highway and Transportation Officials (AASHTO) standards.**

**FINDING:** The Deschutes County Road Department, Deschutes County Transportation Planner, and the Oregon Department of Transportation were sent a request for comment on this application. Comments from the Senior Transportation Planner are included above. No infrastructure concerns and no required improvements are identified in the record.

Section 18.124.070. Required Minimum Standards.

- A. **Private or shared outdoor recreation areas in residential developments.**
  1. **Private Areas. Other than a development in the Sunriver UUC Town Center District, each ground level living unit in a residential development subject to site plan approval shall have an accessible outdoor private space of not less than 48 square feet in area. The area shall be enclosed, screened or otherwise designed to provide privacy for unit residents and their guests.**

**FINDING:** No residential development subject to site plan approval is proposed.

2. **Shared Areas. Usable outdoor recreation space shall be provided for the shared use of residents and their guests in any apartment residential development, as follows:**
  - a. **Units with one or two bedrooms: 200 square feet per unit.**
  - b. **Units with three or more bedrooms: 300 square feet per unit.**

**FINDING:** No apartment residential development is proposed.

3. **Usable outdoor recreation space shall be provided in the Sunriver UUC Town Center District on a district-wide basis as follows:**
  - a. **A minimum of one hundred square feet of outdoor recreation space per Multi-family Dwelling unit or Townhome that is accessible to residents or guests staying in Multi-family Dwelling or Townhome units.**
  - b. **Outdoor recreation spaces may include bicycle paths, plazas, play areas, water features, ice rinks, pools and similar amenities that are located outdoors.**
  - c. **Outdoor recreation space must include recreation for children who are district residents, such as a maintained playground area with approved equipment such as swings or slides.**

**FINDING:** The proposal is not located in the Sunriver UUC Town Center District.

4. ***Storage. In residential developments, convenient areas shall be provided for the storage of articles such as bicycles, barbecues, luggage, outdoor furniture, etc. These areas shall be entirely enclosed.***

**FINDING:** No residential development is proposed.

**B. Required Landscaped Areas.**

1. ***The following landscape requirements are established for multi family, commercial and industrial developments, subject to site plan approval:***
  - a. ***A minimum of 15 percent of the lot area shall be landscaped.***
  - b. ***All areas subject to the final site plan and not otherwise improved shall be landscaped.***

**FINDING:** The Burden of Proof states:

The proposed winery and commercial activities in conjunction with farm use is not a multi-family or industrial use requiring landscaping.

A multi-family development is not proposed. Commercial and industrial uses are defined in DCC 18.04 as follows,

“Commercial use” means the use of land primarily for the retail sale of products or services, including offices. It does not include factories, warehouses, freight terminals or wholesale distribution centers.

“Industrial use” means the use of land primarily for the manufacture, processing, storage or wholesale distribution of products, goods or materials. It does not include commercial uses.

As noted above, the primary use on the parcel is a farm use. The proposed commercial activities are in conjunction with this farm use, and will be incidental and subordinate to the farm use. For these reasons, the Board finds the proposal is not for residential, commercial, or industrial development. These criteria do not apply.

2. ***In addition to the requirement of DCC 18.124.070(B)(1)(a), the following landscape requirements shall apply to parking and loading areas:***
  - a. ***A parking or loading area shall be required to be improved with defined landscaped areas totaling no less than 25 square feet per parking space.***
  - b. ***In addition to the landscaping required by DCC 18.124.070(B)(2)(a), a parking or loading area shall be separated from any lot line adjacent to a roadway by a landscaped strip at least 10 feet in width, and from any other lot line by a landscaped strip at least five feet in width.***
  - c. ***A landscaped strip separating a parking or loading area from a street shall contain:***

- 1) ***Trees spaced as appropriate to the species, not to exceed 35 feet apart on the average.***
  - 2) ***Low shrubs not to reach a height greater than three feet zero inches, spaced no more than eight feet apart on the average.***
  - 3) ***Vegetative ground cover.***
- d. ***Landscaping in a parking or loading area shall be located in defined landscaped areas which are uniformly distributed throughout the parking or loading area.***
  - e. ***The landscaping in a parking area shall have a width of not less than five feet.***
  - f. ***Provision shall be made for watering planting areas where such care is required.***
  - g. ***Required landscaping shall be continuously maintained and kept alive and attractive.***
  - h. ***Maximum height of tree species shall be considered when planting under overhead utility lines.***

**FINDING:** The Burden of Proof states:

This information is provided on the site plans filed with the County. Our proposal is to provide permanent parking areas for the tasting room and daily operations. Event parking will be similar to that allowed for events authorized by a temporary event permit such as in the Downs decision issued by the Board of Commissioners and for Pole Creek Ranch's events – without all of the features required for year-round uses. The creation of a permanent parking area for events that meets all of these requirements would harm farm use of the property as the event parking area could be needed for farm vehicle use and/or strategic movement of animals on almost every day of the year – except event days.

The landscaped areas shown on the site plan exceed 25 square feet per parking space for the meadery.

The parking lot is separated from a road way by a landscaped strip of 10' feet. The parking area does not adjoin and is not close to any other property line and is separated from those lot lines by buildings and natural landscaped areas and cultivated farm fields.

The landscape strip separating the parking area from the street (the area west of the driveway) contains numerous trees with spacing that does not exceed 35 feet apart, shrubs, and vegetative ground cover. The outdoor seating area is proposed on the east side of the driveway so parking lot landscaping is not required. A landscaped area is, however, proposed to screen the outdoor seating area from the highway. If necessary, it could be landscaped to landscaped strip standards – standards that can be met during development of the site.

The landscaping in the parking area is appropriately distributed throughout the permanent parking areas. If these areas are determined to be required for event parking, we propose using plants in planters to serve as temporary landscaping that can be moved to avoid obstructing farm vehicle and/or animal traffic on the property at all other times.



Landscaped areas will be at least 5 feet wide. The applicant will water plants that require watering and will continuously maintain landscaping. Landscape area trees will not be located under overhead utility lines.

It should also be noted that this is an 83 acre rural farm, not an urban development. As such, the entirety of the commercial operations are surrounded by acres and acres of landscaping and farmland, including trees, shrubs, ponds, lawns, gardens, row-crops, regenerative bee pastures, etc, in addition to all of the existing and proposed parking lot landscaping mentioned above and in our Burden of Proof. Landscaping requirements are intended to maintain nature within an urban environment. Our ranch is under zero risk of being turned into a concrete jungle, and our very existence as a business is predicated on the cultivation of nature. As such, any requirement to cultivate additional landscaping mere feet from acres and acres of managed nature seems rather unnecessary for our specific application, and misses the spirit of the requirement. Our customers want to visit a rural bee ranch/farmhouse meadery with a rural bee ranch/farmhouse meadery parking lot, not an urban development with an urban development parking lot.

The Board finds that proposed landscaping, as presented on the site plan (Mead Production and Winery Operations (Exhibit C)), complies with the criteria above. For 123 parking spaces, 3,075 square feet of landscaping is required. According to staff calculations, and as presented on the site plan, the applicant proposes more than 3,500 square feet in the landscaped strip separating the use from Highway 20 alone. This strip is identified on the site plan as being 25 feet in width. Other proposed landscaping areas distributed around the site will increase this figure to substantially exceed this requirement. Staff noted in its administrative decision that the temporary parking for Winery Related Events is addressed by the same standards and the extended parking to the southeast is set back behind a field. As the delineated landscaped areas do not indicate specific plantings or dimensions, and to ensure compliance with the above criteria, the Board includes the following conditions of approval:

#### Meadery Landscaping – General Standards

The landscaping for the Meadery as presented as Exhibit C in the application materials, shall comply with the following standards:

- The landscaping in a parking area shall have a width of not less than five feet.
- Provision shall be made for watering planting areas where such care is required.
- Required landscaping shall be continuously maintained and kept alive and attractive.
- Maximum height of tree species shall be considered when planting under overhead utility lines.

#### Meadery Landscaping – Landscaping Strip along Highway 20

The landscaping strip between Meadery parking and Highways 20, as presented as Exhibit C in the application materials, shall contain:

- Trees spaced as appropriate to the species, not to exceed 35 feet apart on the average.
- Low shrubs not to reach a height greater than three feet zero inches, spaced no more than eight feet apart on the average.
- Vegetative ground cover.

**C. Non-motorized Access.**

- 1. Bicycle Parking.** *The development shall provide the number and type of bicycle parking facilities as required in DCC 18.116.031 and 18.116.035. The location and design of bicycle parking facilities shall be indicated on the site plan.*

**FINDING:** The applicant has requested an exception to the bicycle parking requirements. This criterion is not applicable.

- 2. Pedestrian Access and Circulation:**

- a.** *Internal pedestrian circulation shall be provided in new commercial, office and multi family residential developments through the clustering of buildings, construction of hard surface pedestrian walkways, and similar techniques.*
- b.** *Pedestrian walkways shall connect building entrances to one another and from building entrances to public streets and existing or planned transit facilities. On site walkways shall connect with walkways, sidewalks, bikeways, and other pedestrian or bicycle connections on adjacent properties planned or used for commercial, multi family, public or park use.*
- c.** *Walkways shall be at least five feet in paved unobstructed width. Walkways which border parking spaces shall be at least seven feet wide unless concrete bumpers or curbing and landscaping or other similar improvements are provided which prevent parked vehicles from obstructing the walkway. Walkways shall be as direct as possible.*
- d.** *Driveway crossings by walkways shall be minimized. Where the walkway system crosses driveways, parking areas and loading areas, the walkway must be clearly identifiable through the use of elevation changes, speed bumps, a different paving material or other similar method.*
- e.** *To comply with the Americans with Disabilities Act, the primary building entrance and any walkway that connects a transit stop to building entrances shall have a maximum slope of five percent. Walkways up to eight percent slope are permitted, but are treated as ramps with special standards for railings and landings.*

**FINDING:** The Board finds that no new commercial development is proposed. The applicant proposes a commercial activity in conjunction with the existing farm use on the subject property. Therefore, no new pedestrian walkways are required. The only building in use will be the Winery Building and the applicant has submitted a Burden of Proof and Site Plans in support of a safe environment for internal vehicular and pedestrian traffic. The Board notes that no pedestrian walkways or bicycle lanes currently exist on Highway 20 and efforts to connect the Winery Building, or other locations on site, would be impractical. The Winery Building is existing, and as sited, will concentrate activity at and around the structure. Internal pedestrian circulation, safety, and ADA

requirements are addressed above. These criteria are met.

**D. Commercial Development Standards:**

1. ***New commercial buildings shall be sited at the front yard setback line for lots with one frontage, and at both front yard setback lines for corner lots, and oriented to at least one of these streets, except in the Sunriver UUC Business Park (BP) District and Town Center (TC) District and properties fronting Spring River Road in the Spring River Rural Commercial Zone. The building(s) and any eaves, overhangs or awnings shall not interfere with the required clear vision area at corners or driveways.***

**FINDING:** No new commercial buildings are proposed.

2. ***To meet the standard in paragraph (1) of this subsection, buildings developed as part of a shopping complex, as defined by this title, and planned for the interior, rear or non-street side of the complex may be located and oriented toward private interior streets within the development if consistent with all other standards of paragraph (1) above and this paragraph. Interior streets used to satisfy this standard may have on-street parking and shall have sidewalks along the street in front of the building. Such sidewalks shall connect to existing or future sidewalks on public streets accessing the site. The master plan for the shopping complex shall demonstrate that at least one half of the exterior perimeter of the site that abuts each public street, will be developed with buildings meeting the standards of paragraphs (D)(1) or (D)(3) of this subsection.***

**FINDING:** No shopping complex is proposed.

3. ***An increase in the front yard setback may be allowed where the applicant can demonstrate that one or more of the following factors makes it desirable to site the new building beyond the minimum street setback:***
  - a. ***Existing development on the site;***
  - b. ***Lot configuration;***
  - c. ***Topography of the lot;***
  - d. ***Significant trees or other vegetative features that could be retained by allowing a greater setback;***
  - e. ***Location of driveway access. Such an increase in the front yard shall be the minimum necessary to accommodate the reason for the increase.***
  - f. ***Architectural features, driveways, landscaping areas equal to or greater than the depth of the structure, and outdoor commercial areas, when at least one half of the structure meets the minimum street setback.***

**FINDING:** No increase in the front yard setback has been requested.

4. ***Off street motor vehicle parking for new commercial developments in excess of 10,000 square feet shall be located at the side or behind the building(s), except in the Sunriver UUC Business Park (BP) District and Town Center (TC) District. Off-street parking proposed with a shopping complex, as defined by this title, and intended to serve buildings located in the interior or rear of the complex may have parking in front of the building provided the overall master plan for the site satisfies paragraph (2) of this subsection.***

**FINDING:** No off street motor vehicle parking for new commercial developments in excess of 10,000 square feet is proposed.

### **Chapter 18.128, Conditional Use**

#### Section 18.128.010, Operation.

- A. ***A conditional use listed in DCC Title 18 shall be permitted, altered or denied in accordance with the standards and procedures of this title; DCC Title 22, the Uniform Development Procedures Ordinance; and the Comprehensive Plan.***
- B. ***In the case of a use existing prior to the effective date of DCC Title 18 and classified in DCC Title 18 as a conditional use, any change in use or lot area or an alteration of structure shall conform with the requirements for a conditional use.***

**FINDING:** The proposed conditional use is reviewed in accordance with the standards and procedures of this title; DCC Title 22, the Uniform Development Procedures Ordinance; and the Comprehensive Plan. No prior use now classified as a conditional use is being modified by this proposal.

#### Section 18.128.015, General Standards Governing Conditional Uses.

***Except for those conditional uses permitting individual single family dwellings, conditional uses shall comply with the following standards in addition to the standards of the zone in which the conditional use is located and any other applicable standards of the chapter:***

**FINDING:** The use subject to conditional use review is a commercial activity in conjunction with farm use.

- A. ***The site under consideration shall be determined to be suitable for the proposed use based on the following factors:***
1. ***Site, design and operating characteristics of the use;***

**FINDING:** The Burden of Proof States:

FINDINGS: Site: The subject property is a working farm including cattle/horses/bees on irrigated and non-irrigated fields and pastures, a large pond, two dwellings, and multiple

agricultural buildings. The property is located in the EFU zone. It is surrounded by similar farms. Farm crops and honey produced onsite will be used to produce and market mead in the proposed winery. All proposed commercial activities will be dependent upon and related to the property's farm use. The applicant believes the site is suitable for the proposed use and that it will be compatible with the farm uses in the area.

Design: The applicant proposes to remodel an existing building to accommodate the proposed winery and associated commercial activities. Outdoor seating, food and lawn areas are proposed adjacent to and nearby the proposed winery. Graveled parking areas and as-needed temporary sanitation units will also be clustered near the winery. The applicant believes the design of the proposed use is suitable for the site and will be compatible with its surrounding development.

Operating Characteristics: The proposed winery preparation, production, and storage will occur inside a remodeled shop building. Most other proposed activities will revolve around the winery. The site has ample space within existing developed areas for the proposed uses with parking, access, driveways, and outdoor lawn area and garden areas for patrons to enjoy the wine and outdoor atmosphere. The applicant believes that this working farm is a suitable site for the proposed uses.

The Board concurs with the applicant's analysis finds that nothing about the site which would preclude locating the project in this area. The site and farm property is suitable. The Board also finds the design of the proposal and the operating characteristics are suitable to the farm property.

**2. Adequacy of transportation access to the site; and**

**FINDING:** Transportation access to the site is addressed in the comments by Peter Russell, Senior Planner. Comments from the Deschutes County Road Department and Deschutes County Transportation Planner did not identify any transportation infrastructure deficiencies. Comments from other agencies and the general public, other than high traffic volumes on Highway 20, did not identify any transportation infrastructure deficiencies. The Board finds, as conditioned, the site is suitable for the proposed use based on adequacy of transportation access to the site.

**3. The natural and physical features of the site, including, but not limited to, general topography, natural hazards and natural resource values.**

**FINDING:** The Burden of Proof states:

The proposed winery and commercial activities in conjunction with farm use will be sited within and near an existing building in the only developed portion of the property. This area of the site is level and has no topographical constraints. The site is a working farm with no known natural hazards (e.g. flood plain) or natural resource values (e.g. wildlife habitat, wetlands). The applicant believes the site is suitable for the proposed use based on the natural and physical features of the site.

The site is generally level and presents no topographical constraints on the proposed use. The *Deschutes County Natural Hazards Mitigation Plan* (2015) identifies drought, earthquake, flood, landslide, volcanic, wildfire, windstorm, and winter storm hazards in the County. Of these, wildfire is of special concern regarding the suitability of the use. Natural resource values typically include agricultural soils, forest lands, wildlife and their habitats, wetlands, and natural water features. The Board finds the only natural resource value to be preserved are the agricultural soils on-site. As discussed previously, the Board finds the development will preserve the existing farmland by utilizing an existing building and previously disturbed areas. Comments from agencies and the general public did not identify any site unsuitability due to general topography, natural hazards, or natural resource values.

Based on the above, the Board finds the site is suitable considering the natural and physical features of the site.

***B. The proposed use shall be compatible with existing and projected uses on surrounding properties based on the factors listed in DCC 18.128.015(A).***

**FINDING:** The Burden of Proof states:

Some properties surrounding the subject site are in farm use, primarily cattle, horses, and pasture. Scattered dwellings are present within 0.25 to 1 mile of the property. There is also undeveloped land that is not being farmed directly across Highway 20 from the developed portion of the subject property where the winery and commercial activities in conjunction with farm use are proposed. These activities will be dependent upon and related to the ongoing farm use on the subject property. Future farm uses and dwellings may be possible on adjacent properties, however, these would be limited by EFU zoning restrictions and the availability of water rights for irrigation. No changes to topography are proposed, no known natural hazards are present, and no impacts are anticipated to agricultural land in the surrounding area. Therefore, the applicant believes the proposed winery and commercial activities in conjunction with farm use will not adversely impact adjacent properties or uses.

The Board finds this criterion requires that the proposed use must be compatible with existing and projected uses on surrounding properties. The Board finds "surrounding properties" are those that might be significantly adversely impacted by their proximity to the proposed use. Existing uses on surrounding properties include primarily farm uses. The only exception would be the property to the south which is owned by the City of Sisters. Projected uses on surrounding properties are those that have received approvals, or are allowed outright and are typical of development of the areas. No recent land use approval on the adjacent properties indicate other potential uses other than farming. The Board finds existing uses are a reasonable representation of uses allowed in the underlying zones of surrounding properties. For this reason, the Board finds projected uses are likely to be similar to existing uses.

**(A)(1). Site, design and operating characteristics of the use;**

The Board finds the proposed use would be unsuitable if the siting, design and operating characteristics of the use significantly adversely impacted existing and projected uses on surrounding properties. Typically, potential adverse impacts could include visual, noise, dust, and odor impacts. The proposal, as sited on the southern property line of the property and designed to be integrated into the existing farm use, ensures compatibility with the existing farm uses on the surrounding properties. As noted in the application materials, the distance to neighboring properties, along with intervening vegetation and structures, contribute to compatibility between the proposed Meadery and surrounding uses by reducing potential visual, noise, and dust impacts. The proximity to Highway 20 and its existing traffic noise, along with conditions of approval related to number of events and decibel levels, will further mitigate noise impacts. For these reasons, the Board finds the site, design and operating characteristics of the Meadery will be compatibility with surrounding land uses.

**(A)(2). Adequacy of transportation access to the site; and**

The Board finds the proposed use would be unsuitable if access to the site would significantly adversely impact existing and projected uses on surrounding properties. Highway 20 is classified as a Rural Arterial and under the jurisdiction of the Oregon Department of Transportation (ODOT). No adverse comments were received from ODOT. Further, no comments indicating impacts to any nearby county roads were raised by the County's Senior Transportation Planner or the Road Department. For these reasons, the Board finds the subject proposal will not adversely impact transportation access to surrounding properties. Furthermore, the existing access to the site provides adequate access to the winery.

**(A)(3). The natural and physical features of the site, including, but not limited to, general topography, natural hazards and natural resource values.**

The Board finds the proposed use would be unsuitable if it significantly adversely impacted off-site topography, natural hazards, or natural resource values. The *Deschutes County Natural Hazards Mitigation Plan* (2015) identifies drought, earthquake, flood, landslide, volcanic, wildfire, windstorm, and winter storm hazards in the County. Of these, wildfire is of special concern regarding the suitability of the use. Natural resource values typically include agricultural soils, forest lands, wildlife and their habitats, wetlands, and natural water features. Natural resource values on surrounding properties include pasture land and native vegetation typical of this area.

Comments from agencies and the general public did not identify concerns to surrounding properties related to general topography, natural hazards, or natural resource values. Further, the Board finds the operating characteristics of the use would not result in impacts to the natural and physical features on surrounding properties.

**C. These standards and any other standards of DCC 18.128 may be met by the imposition of conditions calculated to insure that the standard will be met.**

**FINDING:** To the extent this decision is conditioned under DCC 18.128 criterion, the Board notes such conditions are authorized by this criterion.

Section 18.128.020, Conditions.

***In addition to the standards and conditions set forth in a specific zone or in DCC 18.124, the Planning Director or the Hearings Body may impose the following conditions upon a finding that additional restrictions are warranted.***

- A. Require a limitation on manner in which the use is conducted, including restriction of hours of operation and restraints to minimize environmental effects such as noise, vibrations, air pollution, glare or odor.***
- B. Require a special yard or other open space or a change in lot area or lot dimension.***
- C. Require a limitation on the height, size or location of a structure.***
- D. Specify the size, number, location and nature of vehicle access points.***
- E. Increase the required street dedication, roadway width or require additional improvements within the street right of way.***
- F. Designate the size, location, screening, drainage, surfacing or other improvement of a parking or loading area.***
- G. Limit or specify the number, size, location, height and lighting of signs.***
- H. Limit the location and intensity of outdoor lighting and require shielding.***
- I. Specify requirements for diking, screening, landscaping or other methods to protect adjacent or nearby property and specify standards for installation and maintenance.***
- J. Specify the size, height and location of any materials to be used for fencing.***
- K. Require protection and preservation of existing trees, vegetation, water resources, wildlife habitat or other significant natural resources.***
- L. Require that a site plan be prepared in conformance with DCC 18.124.***

**FINDING:** To the extent that any conditions of approval contained in this decision require improvement to the site beyond the minimum standards of DCC Title 18, the Board finds such conditions are authorized by this section.

Section 18.128.040, Specific Use Standards.

***A conditional use shall comply with the standards of the zone in which it is located and with the standards and conditions set forth in DCC 18.128.045 through DCC 18.128.370.***

**FINDING:** As described herein, the proposed conditional use complies with the standards of the zone in which it is located and with the standards and conditions set forth in DCC 18.128.045 through DCC 18.128.370, as applicable.



## **SYSTEM DEVELOPMENT CHARGE**

Board Resolution 2013-020 sets the transportation system development charge (SDC) amount and the applicant initially used an outdated rate of \$4,757 per peak hour trip. In the provided Trip Generation Forecast, it was considered that since the tasting room would be closed 2 out of 5 weekdays, the average weekday traffic would not be accurately calculated by directly applying an Institute of Traffic Engineers (ITE) trip generation rate. The average rate was calculated as shown in Table 4 above. Also, the food cart would not attract traffic at this location as a stand-alone operation. To account for this, it was considered to be a small-kitchen extension of the wine-tasting operation. The resulting forecast was 9 p.m. peak hour trips and for 49 daily trips, of which 7 p.m. peak hour trips and 39 daily trips would be non-passby, aka site-generated, trips. This is a reasonably conservative approach considering that the family would also work on the site, which would eliminate some work trips – and that some of the trips would likely be pass-by trips for people driving between Bend and Sisters. At this level of weekday traffic generation, no further traffic studies are needed under Deschutes County Code (DCC) 18.116.310(C)(a). The resulting SDC is \$35,560 (\$5,080 X 7). The SDC is due prior to issuance of certificate of occupancy; if a certificate of occupancy is not applicable, then the SDC is due within 60 days of the land use decision becoming final. The County has both an SDC appeal process and a 10-year payment plan option; **however, if the 10-year payment plan is used, the County becomes the holder of a first-place lien.**

**THE PROVIDED SDC AMOUNT IS ONLY VALID UNTIL JUNE 30, 2023. DESCHUTES COUNTY'S SDC RATE IS INDEXED AND RESETS EVERY JULY 1. WHEN PAYING AN SDC, THE ACTUAL AMOUNT DUE IS DETERMINED BY USING THE CURRENT SDC RATE AT THE DATE THE BUILDING PERMIT IS PULLED.**

### **IV. CONCLUSION**

Based on the foregoing findings, the Board of Commissioners concludes that the proposed use can comply with the applicable standards and criteria of the Deschutes County zoning ordinance if conditions of approval are met.

**Other permits may be required. The applicants are responsible for obtaining any necessary permits from the Deschutes County Building Division and Deschutes County Environmental Soils Division as well as any required state and federal permits.**

### **V. DECISION**

**APPROVAL**, subject to the following conditions of approval.

### **VI. CONDITIONS OF APPROVAL**

- A.** This approval is based upon the application, site plan, specifications, and supporting documentation submitted by the applicant. Any substantial change in this approved use will require review through a new land use application.

**B.** The applicant shall obtain any necessary permits from the Deschutes County Building Division and Environmental Soils Division.

**C.** Annual Reporting – Incidental and Subordinate/Honey Sourcing

1. The gross income of the winery from any activity other than the production or sale of wine may not exceed 25 percent of the gross income from the on-site retail sale of wine produced in conjunction with the winery. The gross income of a winery does not include income received by third parties unaffiliated with the winery. Failure of the landowner to demonstrate compliance with the 25% requirement for two consecutive years shall cause the commercial activities in conjunction with farm use permit to become void.
2. 90% of honey used to produce mead or other honey products must come from Deschutes County, adjoining counties, high desert counties (Wasco and Grant) and Marion, Jackson and Douglas counties. 100% of honey used to produce mead or other honey products must come from Oregon. Failure of the landowner to demonstrate compliance with this requirement for two consecutive years shall cause the commercial activities in conjunction with farm use permit to become void.
3. The winery shall submit reports of compliance with items 1 and 2 above, by April 30 of each year.

**D.** Farm Use – Incidental and Subordinate

This approval is based on the continued existence of at least 30 acres of bee pasture on the winery property and the production on site of honey by bees. All honey produced on-site shall be used to make wine or be sold as honey to the public.

**E.** Food Carts

A maximum of one food cart is allowed to provide food for tasting room visitors. A maximum of two additional food carts may be allowed at events. All food carts shall offer honey as a condiment and shall have at least one food item featuring honey on the menu.

**F.** Winery Related Events

All Winery Related Events (agritourism and other commercial events) shall be in support of and associated with the Meadery and the promotion of the Lazy Z Ranch. Winery Related Events are limited to 10 days or fewer in a calendar year. Maximum attendance shall be capped at 250 persons for five events and 150 for five events. Weddings shall not be allowed. Winery related events may not commence until the winery submits to the County a written statement that is prepared by a certified public accountant certifying that the winery has reached \$40,000 in gross income from the on-site retail sale of wine produced in conjunction with the winery.

- G.** Winery Related Events  
Applicant/owner shall have a representative at the site during all Winery Related Events involving outdoor amplified noise/music. That representative shall have the authority and responsibility to immediately respond to noise complaints and to ensure immediate correction occurs.
- H.** Speaker Noise Level  
All outdoor speakers shall be set so that the maximum dBA level of winery noise, 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.
- I.** Height Standard  
No building or structure shall be erected or enlarged to exceed 30 feet in height, except as allowed by DCC 18.120.040.
- J.** Zoning Setbacks  
Any proposed development shall comply with the setbacks set forth in the Exclusive Farm Use Zone as prescribed in DCC 18.16.070 (A-D)
- K.** General Setbacks  
In addition to the setbacks set forth herein, any greater setbacks required by applicable building or structural codes adopted by the State of Oregon and/or the County under DCC 15.04 shall be met.
- L.** Lighting in the Airport Safety Combining Zone  
No Meadery development, or any of the associated Meadery uses, shall imitate airport lighting or impede the ability of pilots to distinguish between airport lighting and other lighting.
- M.** Glare Producing Materials in the Airport Safety Combining Zone  
No glare producing material, including but not limited to unpainted metal or reflective glass, shall be used on the exterior of structures located within an approach surface or on nearby lands where glare could impede a pilot's vision.
- N.** Future Meadery Development in the Landscape Management Combining Zone  
The applicant shall apply for a Landscape Management Review for any new structure or substantial exterior alteration of a structure requiring a building permit. A substantial exterior alteration is defined as exceeding 25 percent in the size or 25 percent of the assessed value of the structure.
- O.** Clear Vision Area  
The clear vision area located at the intersection of the service drive/driveway and Highway 20 shall be maintained in accordance with DCC 18.116.020(A). All branches and foliage of the existing Juniper tree are to be removed to a height of eight feet above the grade within 30 days of this decision becoming final.

- P.** Meadery Parking  
Required parking facilities shall be provided prior to or concurrently with construction and/or initiation of the proposed use.
- Q.** Indoor and Outdoor Serving/ Seating Areas  
During open hours for Winery Operations, the indoor serving and seating area shall not exceed 1,560 square feet and the outside serving and seating area shall not exceed 300 square feet.
- R.** Meadery Parking  
Required parking space shall be available for the parking of operable passenger automobiles of residents, customers, patrons and employees only and shall not be used for the storage of vehicles or materials or for the parking of trucks used in conducting the business or used in conducting the business or use.
- S.** Graveled Surface for Standing and Maneuvering of Vehicles  
**Prior to the initiation of use**, the applicant shall gravel all areas for the standing and maneuvering of vehicles onsite as depicted on the Maintained Gravel Map. This includes the individual parking areas as proposed and all service drives which provide access for Mead Production, Winery Operation, and Winery Related Events. **At all times**, the graveled surfaces shall be maintained in a manner which will not create dust problems for neighboring properties.
- T.** Safety of Traffic Access & Egress, and Pedestrians and Vehicular Traffic for the Meadery  
**Prior to the Initiation of Use**, the applicant shall submit a sign plan to the Planning Division illustrating that the site, with the installation of signage throughout, is adequate for providing safety of traffic access and egress, as well as safety for pedestrians and vehicular traffic.
1. Mead Production and Winery Operations in Accordance with Meadery Site Plan/ Sign Plan:
    - Appropriate sign locations, sign messaging, and demarcations, are utilized to provide a safe environment for vehicle and pedestrian traffic throughout the site.
  2. Winery Related Events in Accordance with the Meadery Events Site Plan/ Sign Plan:
    - In addition to Mead Production and Winery Operations, appropriate temporary sign locations, sign messaging, and demarcations, are utilized to provide a safe environment for vehicle and pedestrian traffic throughout the site.
    - Highlight areas of significance (e.g. portable toilets & pedestrian only areas) during temporary Winery Related Events.
- U.** Alteration of a Non-Conforming Structure  
The applicant shall receive approval for a non-conforming use alteration if any changes to height or footprint of the 3,000 square foot farm building/ Meadery building are proposed.

- V. Renovation Permitting  
For the proposed renovations to the Meadery building, the applicant shall obtain all the appropriate permitting from the Deschutes County Building Division and the Environmental Soils Division.
- W. Preservation of Landscape and Existing Topography  
All trees and shrubs existing on-site, not removed by necessity of the proposed development, shall be protected, unless lawfully changed/removed by outright uses (such as farm use) or such change/removal is approved by future land use approvals.
- X. Private Well  
**Prior to the Initiation of Use of any Aspect of the Meadery**, the property owners shall have the well, which provides water to the property and use, reviewed and approved as a Public Water System by either the Oregon Department of Agriculture (ODA) or the Deschutes County Environmental Health Department.
- Y. Meadery Licensing From Deschutes County Environmental Health Department  
**Prior to the Initiation of Use of any Aspect of the Meadery**, the property owner shall obtain all necessary permits from the Deschutes County Environmental Health Department.
- Z. Meadery Food Cart/ Mobile Food Unit Licensing  
**Prior to the Initiation of Service of the Mobile Food Units (MFUs)**, the property owner shall obtain all necessary permits from the Deschutes County Environmental Health Department for the Mobile Food Units (MFUs) operating on the property.
- AA. Permanent Food Cart Utility Servicing  
**Prior to the Initiation of Service of the Permanent Mobile Food Unit (MFU)**, the permanent Food Cart (MFU) shall be connected to the on-site septic system, the well, and a power source on site while providing food and beverage service at the Meadery.
- BB. Meadery Septic System Permitting From Deschutes County Onsite Wastewater Division
- **Prior to the Initiation of Use for the Mead Production**, the property owner shall obtain all necessary permits from the Deschutes County Onsite Wastewater Division for the Mead Production facilities.
  - **Prior to the Initiation of Use for the Winery Operations**, the property owner shall obtain all necessary permits from the Deschutes County Onsite Wastewater Division specific to the Winery Operations.
  - **Prior to the Initiation of Use for the Winery Related Events**, the property owner shall obtain all necessary permits from the Deschutes County Onsite Wastewater Division for the Winery Related Events including any temporary facilities that will be operational on site.

- CC.** Meadery Licensing From the Oregon Department of Agriculture  
*Prior to the Initiation of Use of any Aspect of the Meadery*, the property owner shall obtain all necessary permits and approvals from the Oregon Department of Agriculture Food Safety Program for the Mead Production, Winery Operations, and Winery Related Events.
- DD.** Meadery Licensing From the Oregon Liquor and Cannabis Commission (OLCC)  
*Prior to the Initiation of Use of any Aspect of the Meadery*, the property owner shall obtain all necessary permits and approvals from the Oregon Liquor and Cannabis Commission for the Mead Production, Winery Operations, and Winery Related Events.
- EE.** Meadery Licensing From the US Alcohol and Tobacco Tax and Trade Bureau (TTB)  
*Prior to the Initiation of Use of any Aspect of the Meadery*, the property owner shall obtain all necessary permits and approvals from the US Alcohol and Tobacco Tax and Trade Bureau for the Mead Production, Winery Operations, and Winery Related Events.
- FF.** Exterior Lighting  
 All exterior lighting shall be shielded so that direct light does not project off site.
- GG.** Meadery Landscaping – General Standards  
 The landscaping for the Meadery as presented as Exhibit C in the application materials, shall comply with the following standards:
- The landscaping in a parking area shall have a width of not less than five feet.
  - Provision shall be made for watering planting areas where such care is required.
  - Required landscaping shall be continuously maintained and kept alive and attractive.
  - Maximum height of tree species shall be considered when planting under overhead utility lines.
- HH.** Meadery Landscaping – Landscaping Strip along Highway 20  
 The landscaping strip between Meadery parking and Highways 20, as presented as Exhibit C in the application materials, shall contain:
- Trees spaced as appropriate to the species, not to exceed 35 feet apart on the average.
  - Low shrubs not to reach a height greater than three feet zero inches, spaced no more than eight feet apart on the average.
  - Vegetative ground cover.

**VII. DURATION OF APPROVAL, NOTICE, AND APPEALS**

The applicant shall initiate the use for the proposed development within two (2) years of the date this decision becomes final, or obtain approval of an extension under Title 22 of the County Code, or this approval shall be void.

**This decision becomes final twelve (12) days after the date mailed**, unless appealed by a party of interest. To appeal, it is necessary to submit a Notice of Appeal, the appeal fee of \$250.00 and a statement raising any issue relied upon for appeal with sufficient specificity to afford the Hearings Body an adequate opportunity to respond to and resolve each issue.

Copies of the application, all documents and evidence submitted by or on behalf of the applicant and applicable criteria are available for inspection at no cost. Copies can be purchased for 25 cents per page.

**NOTICE TO MORTGAGEE, LIEN HOLDER, VENDOR OR SELLER: ORS CHAPTER 215 REQUIRES THAT IF YOU RECEIVE THIS NOTICE, IT MUST BE PROMPTLY FORWARDED TO THE PURCHASER.**

**Attachment A:** Site Plan for Mead Production and Winery Operations

**Attachment B:** Site Plan for Winery Related Events

**Attachment C:** DSL Wetland Land Use Notice Response

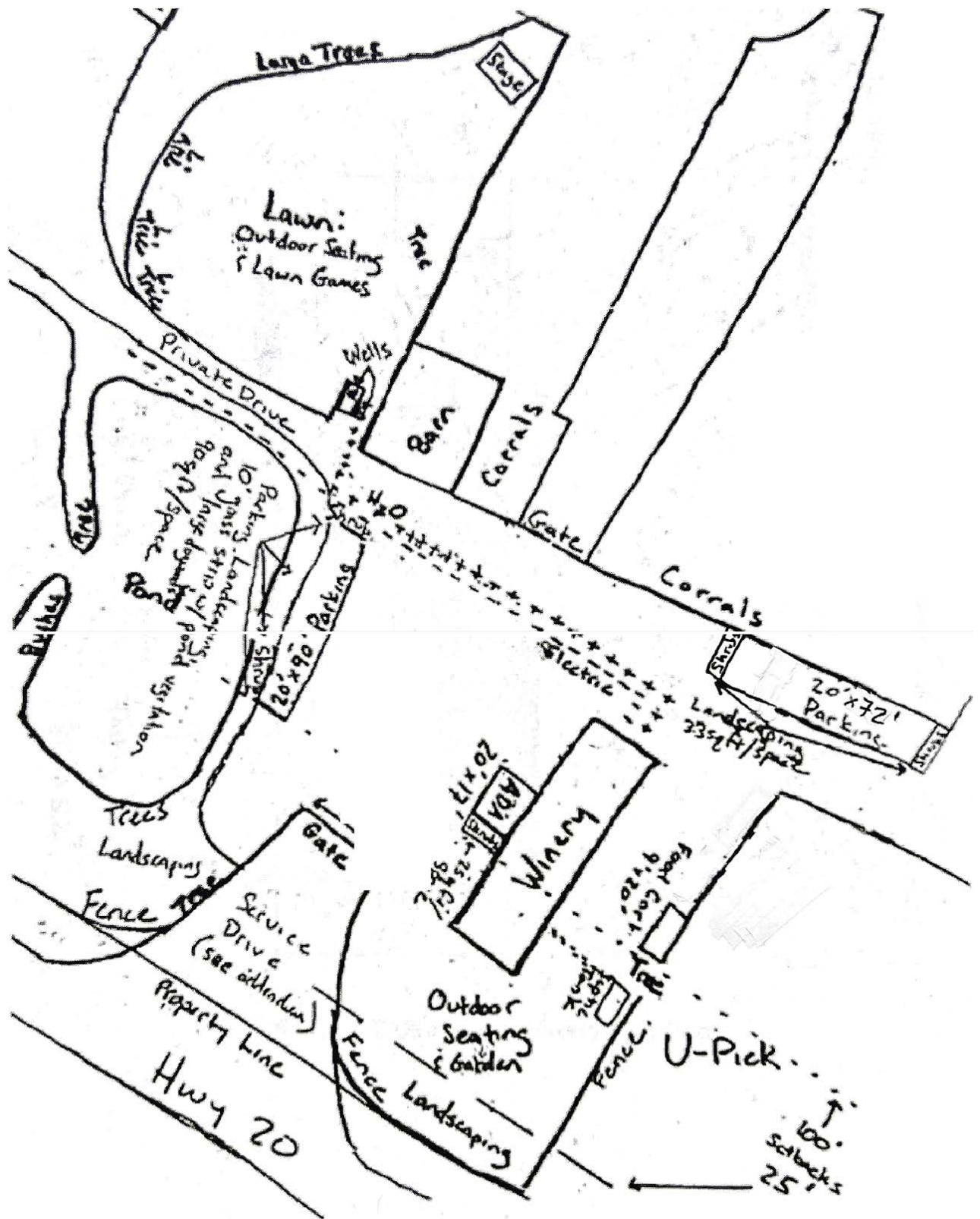
**Attachment D:** Maintained Gravel Map

**Attachment E:** Site Plan for Meadery Service Drives

**Attachment F:** Site Plan for Winery Related Events Service Drives

Site Plan for Mead Production and Winery Operations - Attachment A

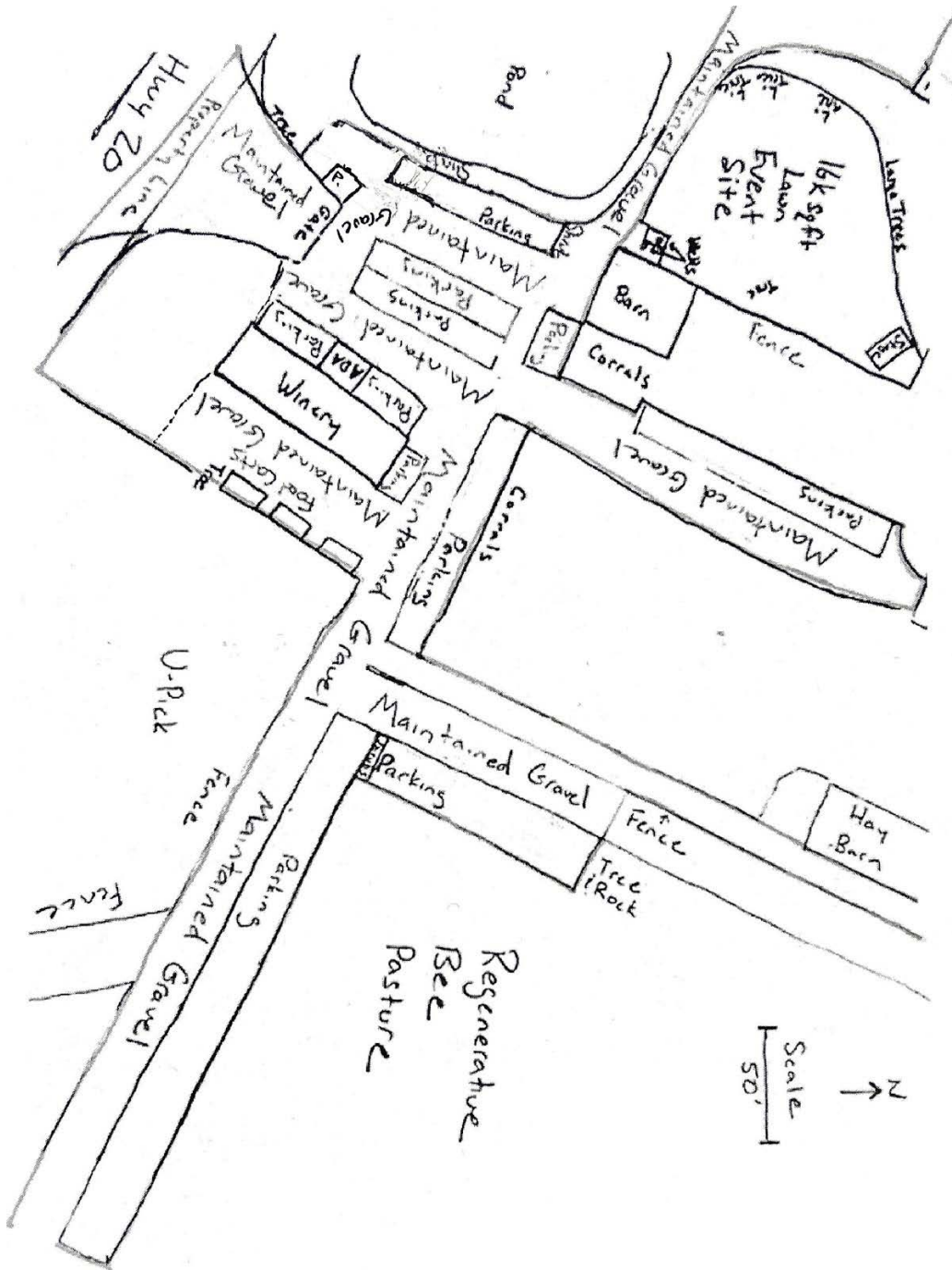
Exhibit C: SITE PLANS





Site Plan for Winery Related Events - Attachment B

Exhibit H: EVENT MAP



Our VSP units are an excellent choice for weddings, parties or other special events. Lighting inside and out is great for evening events. Heating and air conditioning for comfort. Attractive inside and out.


Specifications:

- 8' Wide x 28' Long
- Central A/C w/heat
- Fire Proof Entrance/Exit Doors
- Fresh Water 275 Gallons
- Warm Water 160 Gallons
- Full In Doorsteps & Handrails
- Backboard Heat
- 4 Women's Accommodations
- 4 Men's Urinals
- Trash Recipients
- Mirrors
- Flushing Toilets & Urinals
- Steel Sinks w/ Soap



Example of Portable Toilet Trailer for Winery-Related Events

# DSL Wetland Land Use Notice Response – Attachment C



## Wetland Land Use Notice Response

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### Response Page

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**Department of State Lands (DSL) WN#\***  
WN2022-0080

### Responsible Jurisdiction

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<b>Staff Contact</b> Nathaniel Miller	<b>Jurisdiction Type</b> County	<b>Municipality</b> Deschutes
<b>Local case file #</b> 247-22-000024-CU, 025-SP	<b>County</b> Deschutes	

### Activity Location

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Township	Range	Section	QQ section	Tax Lot(s)
15S	10E	10		700

Street Address  
68540 Hwy 20  
Address Line 2

City  
Sisters

Postal / Zip Code  
97759

State / Province / Region  
OR

Country  
Deschutes

**Latitude**  
44.281642

**Longitude**  
-121.522738

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### Wetland/Waterway/Other Water Features

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There are/may be wetlands, waterways or other water features on the property that are subject to the State Removal-Fill Law based upon a review of wetland maps, the county soil survey and other available information.

The National Wetlands Inventory shows wetland, waterway or other water features on the property

### Your Activity

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A state permit will not be required for the proposed project because, based on the submitted site plan, the project avoids impacts to jurisdictional wetlands, waterways, or other waters.

### Applicable Oregon Removal-Fill Permit Requirement(s)

- A state permit is required for 50 cubic yards or more of fill removal or other ground alteration in wetlands, below ordinary high water of waterways, within other waters of the state, or below highest measured tide.

## Closing Information

### Additional Comments

Please note that the ponds onsite may be jurisdictional to removal/fill law. If 50 cubic yards or more of disturbance are proposed in this area, a state permit may be needed.

**This is a preliminary jurisdictional determination and is advisory only.**

This report is for the State Removal-Fill law only. City or County permits may be required for the proposed activity.

### Contact Information

- For information on permitting, use of a state-owned water, wetland determination or delineation report requirements please contact the respective DSL Aquatic Resource, Proprietary or Jurisdiction Coordinator for the site county. The current list is found at: <http://www.oregon.gov/dsl/ww/pages/wwstaff.aspx>
- The current Removal-Fill permit and/or Wetland Delineation report fee schedule is found at: <https://www.oregon.gov/dsl/WW/Documents/Removal-FillFees.pdf>

### Response Date

2/28/2022

### Response by:

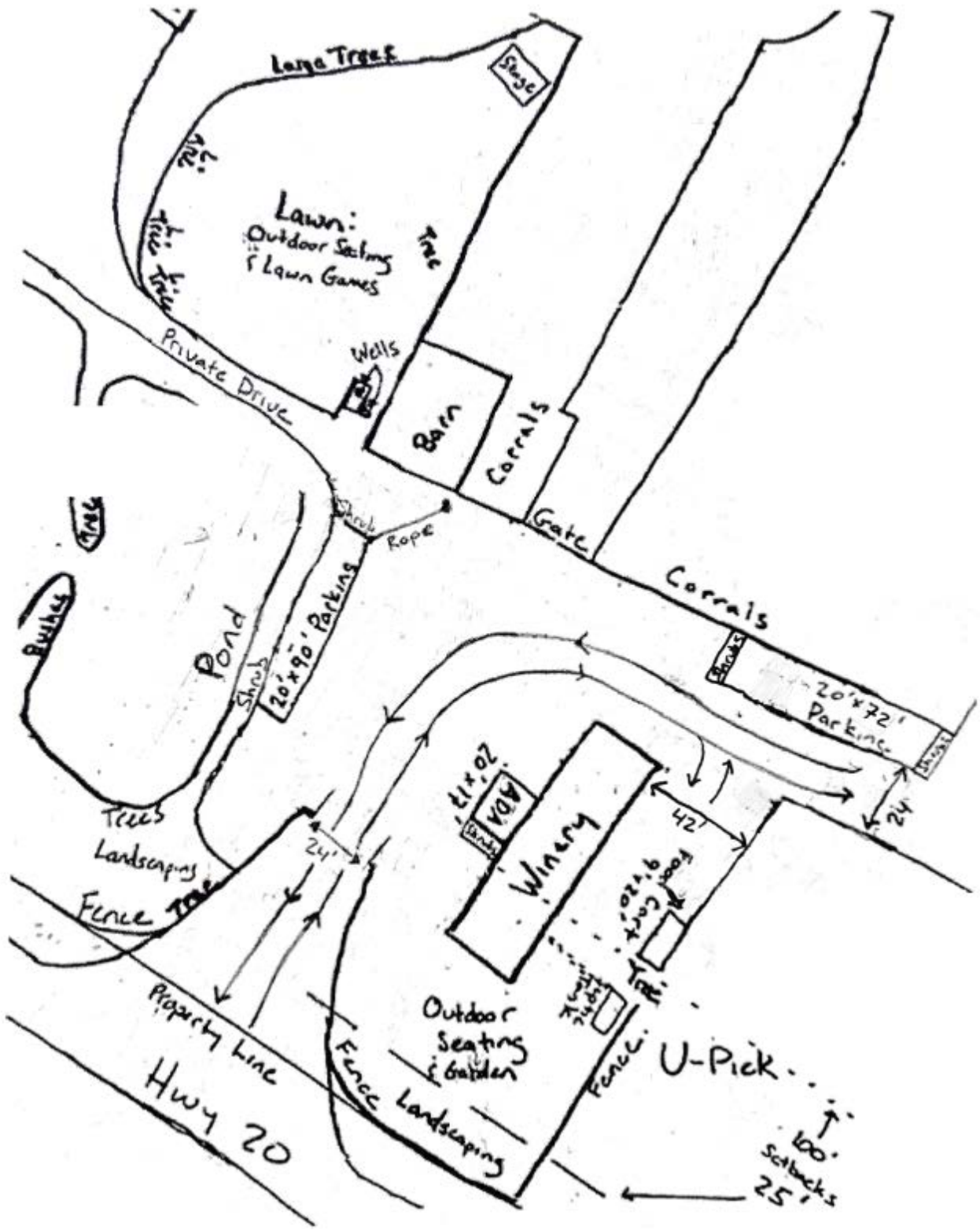
Matthew Unitis

### Response Phone:

503-986-5262



Meadery Service Drive - Attachment E



Service Drives for Events - Attachment F

