



BOARD OF COMMISSIONERS

BOARD OF COUNTY COMMISSIONERS MEETING

9:00 AM, WEDNESDAY, MARCH 8, 2023

Barnes Sawyer Rooms - Deschutes Services Building - 1300 NW Wall St – Bend

(541) 388-6570 | www.deschutes.org

AGENDA

MEETING FORMAT: In accordance with Oregon state law, this meeting is open to the public and can be accessed and attended in person or remotely, with the exception of any executive session.

Members of the public may view the meeting in real time via the public meeting portal at www.deschutes.org/meetings. To view the meeting via Zoom, see below.

Citizen Input: The public may comment on any topic that is not on the current agenda. *Comments and testimony regarding public hearings are allowed at the time of the public hearing.* Alternatively, comments may be submitted on any topic at any time by emailing citizeninput@deschutes.org or leaving a voice message at 541-385-1734.

When in-person comment from the public is allowed at the meeting, public comment will also be allowed via computer, phone or other virtual means.

Zoom Meeting Information: This meeting may be accessed via Zoom using a phone or computer.

- To join the meeting from a computer, copy and paste this link: bit.ly/3h3oqdD.
- To join by phone, call 253-215-8782 and enter webinar ID # 899 4635 9970 followed by the passcode 013510.
- If joining by a browser, use the raise hand icon to indicate you would like to provide public comment, if and when allowed. If using a phone, press *6 to indicate you would like to speak and *9 to unmute yourself when you are called on.



Deschutes County encourages persons with disabilities to participate in all programs and activities. This event/location is accessible to people with disabilities. If you need accommodations to make participation possible, call (541) 388-6572 or email brenda.fritsvold@deschutes.org.

CALL TO ORDER

PLEDGE OF ALLEGIANCE

CITIZEN INPUT: Citizen Input may be provided as comment on any topic that is not on the agenda.

***Note:** In addition to the option of providing in-person comments at the meeting, citizen comments may be emailed to citizeninput@deschutes.org or you may leave a brief voicemail at 541.385.1734.*

CONSENT AGENDA

1. Consideration of approval of Board Order No. 2023-010 for a Road and Access Easement over County-owned property near Eagle Road in Bend
2. Consideration of Board Signature on letters reappointing Gordon Foster, Oliver Tatom and Nick Ahnen to the Deschutes County Project Wildfire Steering Committee and letter of thanks to Jessica LaBerge for her service on the Committee
3. Approval of Minutes of the February 24 2023 BOCC Legislative Update Meeting
4. Approval of the February 15, 2023 BOCC meeting minutes

ACTION ITEMS

5. **9:10 AM** Proclamation: American Red Cross Month
6. **9:15 AM** Deschutes County property associated with DSL land exchange
7. **9:45 AM** Annual Update from Economic Development for Central Oregon
8. **10:15 AM** Notice of Intent to Award a contract for the Deschutes Market Rd/Hamehook Rd Intersection Improvement Project
9. **10:25 AM** Deliberations regarding a commercial activity in conjunction with farm use (meadery) in the Exclusive Farm Use zone on Highway 97 near Sisters

OTHER ITEMS

These can be any items not included on the agenda that the Commissioners wish to discuss as part of the meeting, pursuant to ORS 192.640.

- A. Multi-Agency Coordination (MAC) Update

B. Safe Parking Support Services Update

EXECUTIVE SESSION

At any time during the meeting, an executive session could be called to address issues relating to ORS 192.660(2)(e), real property negotiations; ORS 192.660(2)(h), litigation; ORS 192.660(2)(d), labor negotiations; ORS 192.660(2)(b), personnel issues; or other executive session categories.

Executive sessions are closed to the public; however, with few exceptions and under specific guidelines, are open to the media.

10. Executive Session under ORS 192.660 (2) (d) Labor Negotiations

ADJOURN



BOARD OF COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

MEETING DATE: March 8, 2023

SUBJECT: Road and Access Easement over County-owned property near Eagle Road in Bend

RECOMMENDED MOTION:

Move approval of Board Signature of Order No. 2023-010 to authorize a Road and Access Easement near Eagle Road in Bend, and to authorize the Deschutes County Property Manager to execute the Road and Access Easement

BACKGROUND AND POLICY IMPLICATIONS:

In 1976, Deschutes County acquired a 0.64-acre property by Bargain & Sale Deed for zero consideration. The property is located just east of Eagle Road, Bend, and currently serves as access to roughly four adjacent privately owned parcels. The property known as Map and Tax Lot 171226AB00500 has a Real Market Value of zero as determined by the Deschutes County Assessor's Office.

It appears that the intent of the grantor in the 1976 transaction was to dedicate the property to public road right-of-way, but it has remained in the County's real property inventory since that time. Because the access road does not meet road standards, the Road Department confirmed it is unable to recommend a dedication to public right-of-way. Therefore, the property should remain in the County's real property inventory until such time the area is annexed into the City of Bend and a possible dedication to public right-of-way can be considered at that time.

Two adjacent property owners, Jason and Danielle Wohlfahrt who own Map and Tax Lot 171226AB00100, and Rosengarth Investments, LLC who own Map and Tax Lots 171226AB00300 and 171226AB00400 have requested a Road and Access Easement over the County-owned property. Though the County-owned property is currently used for access, no previously access easements could be located, which is now prompting granting legal access.

In exchange for the Road and Access Easement, Wohlfahrt and Rosengarth agree to maintain the access road at their sole cost and expense and pay for recording fees associated with the transaction.

BUDGET IMPACTS:

None.

ATTENDANCE:

Kristie Bollinger, Property Manager

REVIEWED

LEGAL COUNSEL

03/08/2023 Item #1.

For Recording Stamp Only

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON

An Order Designating the Deschutes County
Property Manager, Kristie Bollinger as the
Deschutes County Representative to Execute a
Road and Access Easement Over Deschutes
County Owned Property Known as Map and Tax
Lot 171226AB00500 to Benefit Adjacent Map
and Tax Lots 171226AB00100, 171226AB00300
and 171226AB00400, Bend, Oregon 97701

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ORDER NO. 2023-010

WHEREAS, the Board of County Commissioners of Deschutes County has authorized granting a Road and Access Easement over County-owned property known as Map and Tax Lot 171226AB00500 to benefit adjacent private properties known as Map and Tax Lots 171226AB00100, 171226AB00300 and 171226AB00400; and

WHEREAS, private property owners, Danielle and Jason Wohlfehrt (Wohlfehrt) who currently own Map and Tax Lot 171226AB00100 and Rosengarth Investments LLC (Rosengarth) who currently owns Map and Tax Lots 171226AB00300 and 171226AB00400, have requested Deschutes County to grant a perpetual Road and Access Easement over County-owned property known as Map and Tax Lot 171226AB00500 for the purpose of ingress/egress and road maintenance; and

WHEREAS, Deschutes County agrees to grant said Easement in exchange for Wohlfehrt and Rosengarth completing road maintenance at their sole cost and expense to maintain the County-owned property known as Map and Tax Lot 171226AB00500; and

WHEREAS, upon the issuance of this Order, Deschutes County Property Management staff will finalize the Road and Access Easement for recording in the official records at the Deschutes County Clerk’s Office at the sole cost and expense of Wohlfehrt and Rosengarth; now, THEREFORE,

THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON, HEREBY ORDERS as follows:

Section 1. The Deschutes County Property Manager, Kristie Bollinger is designated as the Deschutes County representative to execute a Road and Access Easement over Deschutes County-owned property known as Map and Tax Lot 171226AB00500 to benefit adjacent private properties known as Map and Tax Lots 171226AB00100, 171226AB00300 and 171226AB00400.

Dated this _____ of _____, 2023

BOARD OF COUNTY COMMISSIONERS
OF DESCHUTES COUNTY, OREGON

ANTHONY DEBONE, Chair

PATTI ADAIR, Vice Chair

ATTEST:

Recording Secretary

PHIL CHANG, Commissioner



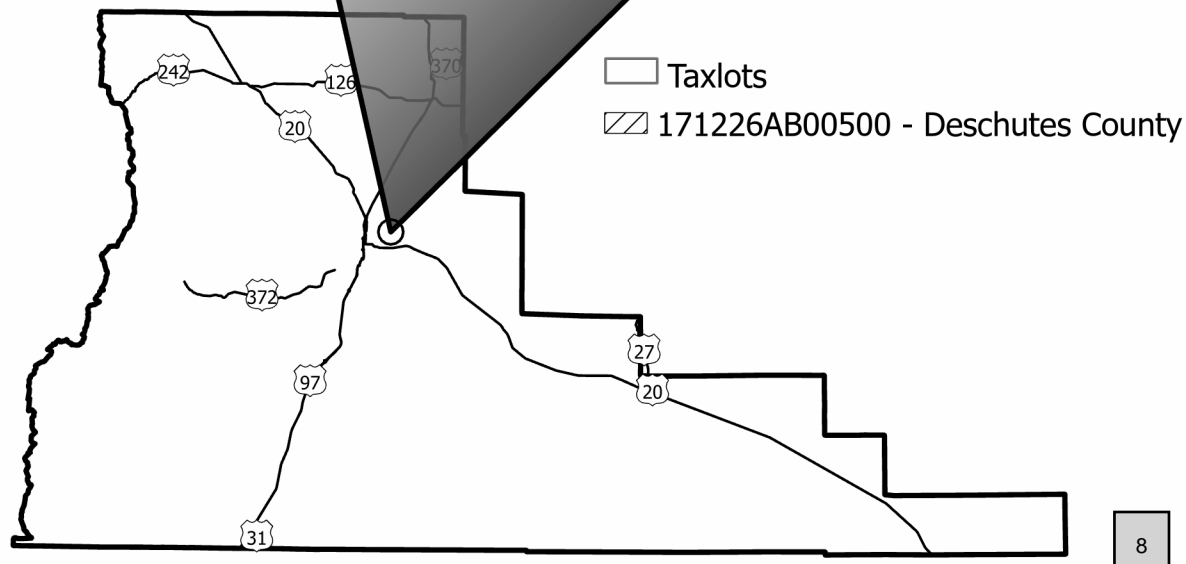
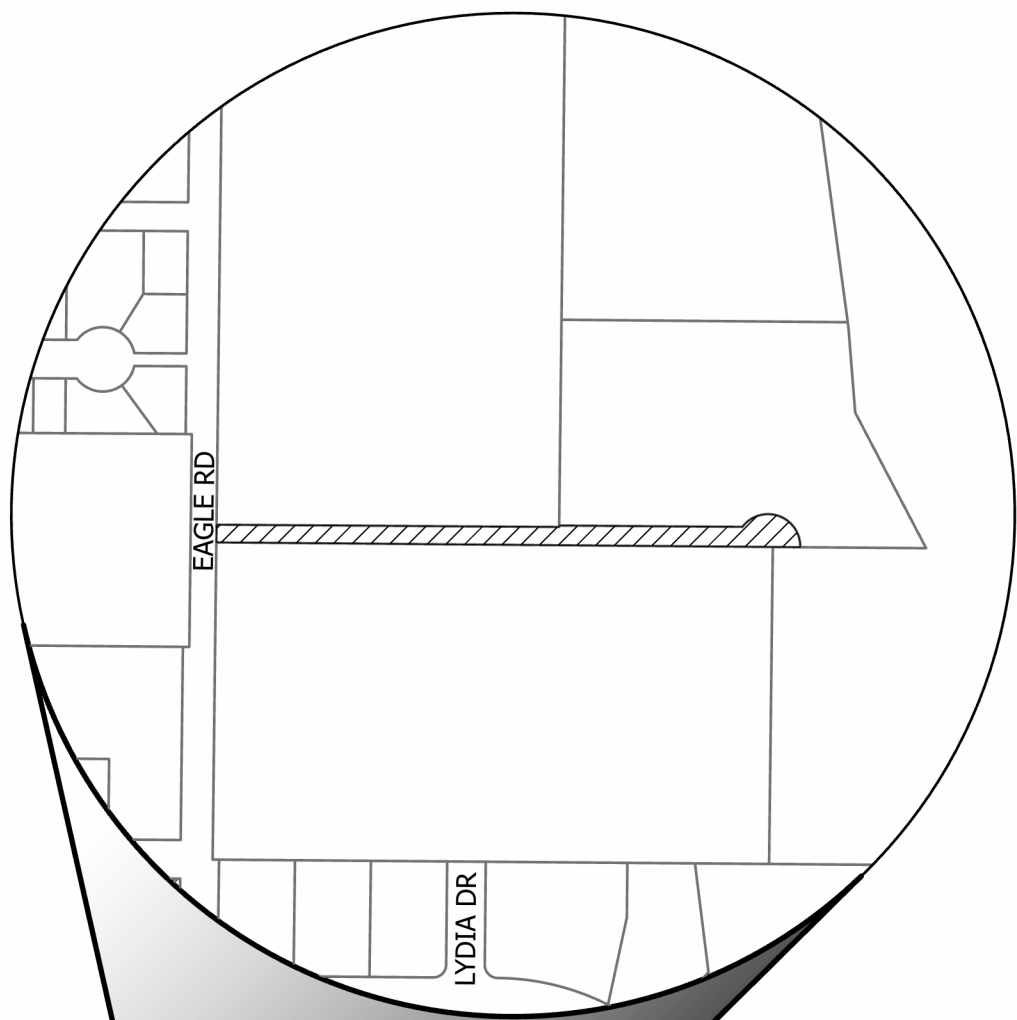
DESCHUTES COUNTY VICINITY MAP

Maptax #171226AB00500

0.64-acres

03/08/2023 Item #1.

N



For Recording Stamp Only

**BEFORE THE BOARD OF COUNTY COMMISSIONERS OF
DESCHUTES COUNTY, OREGON**

A Proclamation Declaring March 2023 to be American Red Cross Month

PROCLAMATION

WHEREAS, in times of crisis, people in Deschutes County come together to care for one another. This humanitarian spirit is part of the foundation of our community and is exemplified by American Red Cross Cascades Region volunteers and donors; and

WHEREAS, In 1881, Clara Barton founded the American Red Cross, turning her steadfast dedication for helping others into a bold mission of preventing and alleviating people’s suffering. Today, we honor the kindness and generosity of Red Cross volunteers here in Deschutes County and the Cascades Region, who join the millions of people across the United States who volunteer, give blood, donate financially, or learn vital life-preserving skills through the Red Cross; and

WHEREAS, In the Cascades Region, serving Oregon and SW Washington, the contributions of more than 2,500 local Red Cross volunteers give hope to the most vulnerable in their darkest hours. The Red Cross does so by providing more than 1,600 emergency overnight shelter stays, along with food and comfort for families devastated by more than 800 local disasters, like home fires. Through the generosity of those donating more than 182,000 units of essential blood for accident and burn victims, heart surgery and organ transplant patients, and those receiving treatment for leukemia, cancer, or sickle cell disease. Or by supporting service members and veterans an average of nine times a day, along with their families and caregivers through the unique challenges of military life. And by helping to save the lives of others with first aid, CPR, and other skills; or delivering international humanitarian aid; and

WHEREAS, In Deschutes County, the Red Cross works with local agencies and faith-based organizations to support emergency shelters by providing shelter training, coordinating resources, and integrating into local mass care planning efforts; and

WHEREAS, the work of the Red Cross to prevent and alleviate human suffering is vital to strengthening community resilience before, during and after a disaster;

NOW, THEREFORE, the Deschutes County Board of Commissioners proclaims the month of March as AMERICAN RED CROSS MONTH in Deschutes County and recognizes all who continue to advance the noble legacy of American Red Cross founder Clara Barton, who lived by her words, "You must never think of anything except the need, and how to meet it."

DATED this 8th Day of March, 2023 by the Deschutes County Board of Commissioners.

ANTHONY DeBONE, Chair

PATTI ADAIR, Vice Chair

PHIL CHANG, Commissioner

ATTEST:

Recording Secretary



BOARD OF COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

MEETING DATE: March 8, 2023

SUBJECT: Deschutes County property associated with DSL land exchange

BACKGROUND AND POLICY IMPLICATIONS:

In order to move forward with a land swap with the Department of State Lands (DSL), Deschutes County is required to address the dispersed camping occurring on the County's land.

To assist with this process, the Board approved the extension of a limited duration position to serve as the Project Manager to work with other county staff, the City of Redmond and area non-profits on this work.

The new model for closing encampments includes identifying where people can go. Ideally, people who are camping transition to housing or shelter. However, there is not always available housing/shelter and some individuals decline these options. Instead of people dispersing to adjacent publicly-owned land, staff recommends the following:

- 1. With input from service providers, have County staff identify County-owned land close the 137-acre parcel involved in the DSL land swap that can be used for relocation. Attached is a map of the area.
2. Develop an RFP/RFQ to identify a service provider to provide a supported camp on the County-owned land identified in #1. The supported camp would include basic needs amenities such as portable restrooms, waste disposal containers and pickup, access to drinking water, and other amenities as identified.
3. Provide flexible funds (up to a specified amount) to a non-profit(s) to be used to assist with relocating people camping on the County-owned 137-acres.

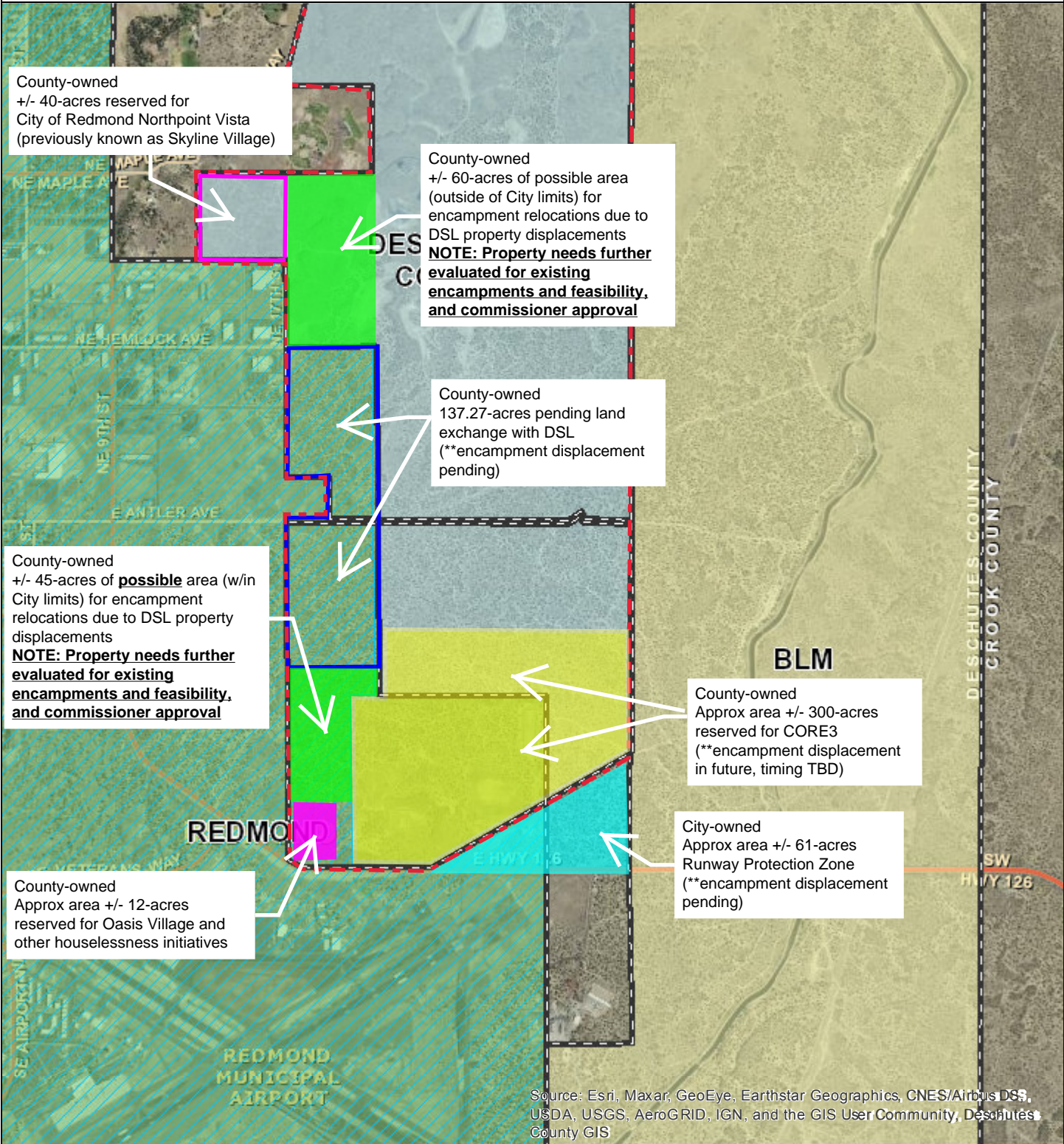
BUDGET IMPACTS:

At a future Board meeting, staff will return with an estimated cost.

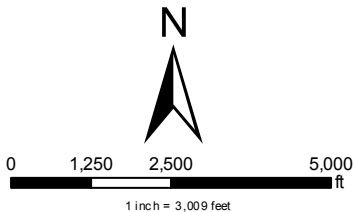
ATTENDANCE:

Erik Kropp, Deputy County Administrator
Cheyenne Purrington, Director of the Coordinated Houseless Response Office

County-owned Property East Redmond



This map is for depiction purposes only and is not deemed to be accurate.



As of February 2023

Red dashed line = Outlines County-owned property
Gradient green overlay = Redmond city limits
Hatched overlay = UGB



BOARD OF COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

MEETING DATE: March 8, 2023

SUBJECT: Economic Development Grant Annual Update from Economic Development for Central Oregon

RECOMMENDED MOTION: N/A

BACKGROUND AND POLICY IMPLICATIONS:

During the FY23 video lottery allocation discussion, the Board initiated a \$279,450 grant award to Economic Development for Central Oregon (EDCO). EDCO will provide the Board with an update on the use of County funds over the past year and the outcomes of funded activities.

A breakdown of the grant funds awarded in FY23 is as follows:

- EDCO Regional Capacity/Operational Support - \$134,550
- Supporting Entrepreneurship & Early Stage Companies - \$41,400
- Local Economic Development Capacity:
 - Bend - \$15,525
 - Sunriver/La Pine - \$36,225
 - Redmond - \$15,525
 - Sisters - \$36,225

In the past, this presentation was closer to budget week, but has moved earlier in the year to better align with the video lottery budget development process.

BUDGET IMPACTS:

Economic development grants are made available through the Video Lottery Fund, which is supported by state lottery proceeds. These grants were budgeted for FY 2022-23.

ATTENDANCE:

Stephanie Robinson, Administrative Analyst
Jon Stark, EDCO CEO



BOARD OF COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

MEETING DATE: March 8, 2023

SUBJECT: Notice of Intent to Award a contract for the Deschutes Market Rd/Hamehook Rd Intersection Improvement Project

RECOMMENDED MOTION:

Move approval of Chair signature of Document No. 2023-059, a Notice of Intent to Award a contract for the Deschutes Market Rd/Hamehook Rd Intersection Improvement Project.

BACKGROUND AND POLICY IMPLICATIONS:

Deschutes County Road Department prepared bid solicitation documents for the Deschutes Market Rd/Hamehook Rd Intersection Improvement project. The project scope of work includes construction of a single-lane roundabout at the intersection of Deschutes Market Road with Hamehook Road. The project was advertised in the Daily Journal of Commerce and The Bulletin on February 1, 2023. The Department opened bids at 2:00 P.M. on February 22, 2023.

Seven (7) bids were received for this project. The bid results are as follows:

<u>BIDDER</u>	<u>TOTAL BID AMOUNT</u>
BAR SEVEN A COMPANIES	\$ 1,645,597.00
KNIFE RIVER CORPORATION - NORTHWEST	\$ 1,717,271.00
TAYLOR NORTHWEST LLC	\$ 1,741,126.45
JAL CONSTRUCTION INC. dba 1859 INFRASTRUCTURE	\$ 1,775,667.00
DESCHUTES CONSTRUCTION CORPORATION	\$ 1,823,779.98
K&E EXCAVATING, INC.	\$ 1,928,289.00
Engineer's Estimate	\$ 1,935,906.60

This action issues a Notice of Intent to Award the contract to the apparent low bidder, BAR SEVEN A COMPANIES, and allows seven days for concerned parties to protest the award. If there is no protest within the seven-day period, the contract will be awarded to the apparent low bidder. The bid tabulation, including the Engineer's estimate, is attached.

BUDGET IMPACTS:

A portion of the project cost is budgeted in the Road Capital Improvement Plan (CIP) budget for Fiscal Year 2023. The remaining project cost will be included in the proposed Road CIP budget for Fiscal Year 2024.

ATTENDANCE:

Cody Smith, County Engineer/Assistant Road Department Director



BOARD OF COUNTY COMMISSIONERS

March 8, 2023

Posted on the Deschutes County, Oregon Bids and RFPs website at <http://www.deschutescounty.gov/rfps> prior to 5:00 PM on the date of this Notice.

Subject: **Notice of Intent to Award Contract**
Contract for Deschutes Market Rd/Hamehook Rd Intersection Improvement

To Whom It May Concern:

On March 8, 2023, the Board of County Commissioners of Deschutes County, Oregon considered proposals for the above-referenced project. The Board of County Commissioners determined that the successful bidder for the project was BAR SEVEN A COMPANIES, with a bid of One Million Six Hundred Forty Five Thousand Five Hundred Ninety Seven and 0/100 Dollars (\$1,645,597.00).

This Notice of Intent to Award Contract is issued pursuant to Oregon Revised Statute (ORS) 279C.375. Any entity which believes that they are adversely affected or aggrieved by the intended award of contract set forth in this Notice may submit a written protest within seven (7) calendar days after the issuance of this Notice of Intent to Award Contract to the Board of County Commissioners of Deschutes County, Oregon, at Deschutes Services Building, 1300 NW Wall Street, Bend, Oregon 97703. **The seven (7) calendar day protest period will end at 5:00 PM on March 15, 2023.**

Any protest must be in writing and specify any grounds upon which the protest is based. Please refer to Oregon Administrative Rules (OAR) 137-047-0740. If a protest is filed within the protest period, a hearing will be held at a regularly-scheduled business meeting of the Board of County Commissioners of Deschutes County Oregon, acting as the Contract Review Board, in the Deschutes Services Building, 1300 NW Wall Street, Bend, Oregon 97703 within two (2) weeks of the end of the protest period.

If no protest is filed within the protest period, this Notice of Intent to Award Contract becomes an Award of Contract without further action by the County unless the Board of County Commissioners, for good cause, rescinds this Notice before the expiration of the protest period.

If you have any questions regarding this Notice of Intent to Award Contract or the procedures under which the County is proceeding, please contact Deschutes County Legal Counsel: telephone (541) 388-6625; FAX (541) 383-0496; or e-mail to david.doyle@deschutescounty.gov.

Be advised that if no protest is received within the stated time period, the County is authorized to process the contract administratively.

Sincerely,

Anthony DeBone, Chair

DESCHUTES MARKET RD / HAMEHOOK RD
 INTERSECTION IMPROVEMENT
 DESCHUTES COUNTY, OREGON
 PROJECT # W66107

BID RESULTS

BID OPENING 2:00 PM 2/22/2023

				ENGINEER'S ESTIMATE		BAR SEVEN A COMPANIES 1060 SE LAKE RD REDMOND, OR 97756		KNIFE RIVER CORPORATION - NORTHWEST 64500 O.B. RILEY RD BEND, OR 97703		TAYLOR NORTHWEST LLC 18500 BULL SPRINGS RD BEND, OR 97703		JAL CONSTRUCTION, INC. dba 1859 INFRASTRUCTURE 123 SE 4TH ST BEND, OR 97702		DESCHUTES CONSTRUCTION CORPORATION 494 SW VETERANS WAY, SUITE 5 REDMOND, OR 97756		K & E EXCAVATING, INC. 3871 LANGLEY ST. SE SALEM, OR 97317	
				UNIT PRICE	TOTAL	UNIT PRICE	TOTAL	UNIT PRICE	TOTAL	UNIT PRICE	TOTAL	UNIT PRICE	TOTAL	UNIT PRICE	TOTAL	UNIT PRICE	TOTAL
ITEMS	UNIT	QTY															
1	Mobilization	LS	1.0	\$150,000.00	\$150,000.00	\$62,000.00	\$62,000.00	\$137,886.50	\$137,886.50	\$213,100.00	\$213,100.00	\$161,500.00	\$161,500.00	\$159,830.76	\$159,830.76	\$190,000.00	\$190,000.00
2	Temporary Protection & Direction of Traffic	LS	1.0	\$15,000.00	\$15,000.00	\$10,500.00	\$10,500.00	\$43,101.00	\$43,101.00	\$14,200.00	\$14,200.00	\$20,000.00	\$20,000.00	\$5,615.70	\$5,615.70	\$10,000.00	\$10,000.00
3	Temporary Signs	SQFT	665.0	\$23.00	\$15,295.00	\$22.00	\$14,630.00	\$28.00	\$18,620.00	\$32.35	\$21,512.75	\$25.00	\$16,625.00	\$31.45	\$20,914.25	\$32.00	\$21,280.00
4	Portable Changeable Message Signs	EACH	3.0	\$6,500.00	\$19,500.00	\$4,620.00	\$13,860.00	\$3,650.00	\$10,950.00	\$5,100.00	\$15,300.00	\$2,500.00	\$7,500.00	\$3,260.35	\$9,781.05	\$1,500.00	\$4,500.00
5	Flaggers	HOUR	1,750.0	\$70.00	\$122,500.00	\$75.00	\$131,250.00	\$74.50	\$130,375.00	\$78.40	\$137,200.00	\$68.00	\$119,000.00	\$78.62	\$137,585.00	\$68.00	\$119,000.00
6	Flagger Station Lighting	EACH	3.0	\$2,500.00	\$7,500.00	\$5,500.00	\$16,500.00	\$2,220.00	\$6,660.00	\$175.00	\$525.00	\$600.00	\$1,800.00	\$869.43	\$2,608.29	\$2,500.00	\$7,500.00
7	Temporary Barricades, Type III	EACH	24.0	\$115.00	\$2,760.00	\$575.00	\$13,800.00	\$1.00	\$24.00	\$185.00	\$4,440.00	\$100.00	\$2,400.00	\$32.60	\$782.40	\$150.00	\$3,600.00
8	Temporary Plastic Drums	EACH	73.0	\$45.00	\$3,285.00	\$35.00	\$2,555.00	\$1.00	\$73.00	\$58.00	\$4,234.00	\$25.00	\$1,825.00	\$58.69	\$4,284.37	\$35.00	\$2,555.00
9	Temporary Striping	FOOT	900.0	\$0.50	\$450.00	\$3.00	\$2,700.00	\$1.50	\$1,350.00	\$1.75	\$1,575.00	\$1.50	\$1,350.00	\$1.68	\$1,512.00	\$1.70	\$1,530.00
10	Stripe Removal	FOOT	900.0	\$0.45	\$405.00	\$3.00	\$2,700.00	\$1.50	\$1,350.00	\$1.75	\$1,575.00	\$1.50	\$1,350.00	\$1.68	\$1,512.00	\$1.70	\$1,530.00
11	Legend Removal	SQFT	96.0	\$3.00	\$288.00	\$20.00	\$1,920.00	\$6.00	\$576.00	\$7.00	\$672.00	\$6.00	\$576.00	\$6.74	\$647.04	\$6.50	\$624.00
12	Erosion Control	LS	1.0	\$10,000.00	\$10,000.00	\$7,150.00	\$7,150.00	\$7,600.00	\$7,600.00	\$5,050.00	\$5,050.00	\$12,000.00	\$12,000.00	\$5,615.70	\$5,615.70	\$15,000.00	\$15,000.00
13	Pollution Control Plan	LS	1.0	\$2,000.00	\$2,000.00	\$1,650.00	\$1,650.00	\$500.00	\$500.00	\$180.00	\$180.00	\$1,500.00	\$1,500.00	\$684.37	\$684.37	\$2,000.00	\$2,000.00
14	Construction Survey Work	LS	1.0	\$22,000.00	\$22,000.00	\$19,800.00	\$19,800.00	\$15,000.00	\$15,000.00	\$17,550.00	\$17,550.00	\$19,500.00	\$19,500.00	\$20,216.52	\$20,216.52	\$30,000.00	\$30,000.00
15	Removal of Structures and Obstructions	LS	1.0	\$30,000.00	\$30,000.00	\$1,625.00	\$1,625.00	\$7,275.00	\$7,275.00	\$1,870.00	\$1,870.00	\$5,000.00	\$5,000.00	\$4,228.37	\$4,228.37	\$5,000.00	\$5,000.00
16	Removal of Surfacing	SQYD	5,250.0	\$8.00	\$42,000.00	\$6.10	\$32,025.00	\$3.00	\$15,750.00	\$6.70	\$35,175.00	\$5.50	\$28,875.00	\$5.20	\$27,300.00	\$4.00	\$21,000.00
17	Removal of Fences	LS	1.0	\$1,800.00	\$1,800.00	\$1,985.00	\$1,985.00	\$750.00	\$750.00	\$1,455.00	\$1,455.00	\$3,300.00	\$3,300.00	\$1,243.48	\$1,243.48	\$3,000.00	\$3,000.00
18	Removal of Pipes	LS	1.0	\$25,000.00	\$25,000.00	\$34,355.00	\$34,355.00	\$2,600.00	\$2,600.00	\$17,900.00	\$17,900.00	\$15,000.00	\$15,000.00	\$7,047.29	\$7,047.29	\$50,000.00	\$50,000.00
19	Asphalt Pavement Saw Cutting	FOOT	140.0	\$2.00	\$280.00	\$5.50	\$770.00	\$5.20	\$728.00	\$4.75	\$665.00	\$5.00	\$700.00	\$6.74	\$943.60	\$3.50	\$490.00
20	Clearing and Grubbing	LS	1.0	\$15,000.00	\$15,000.00	\$15,900.00	\$15,900.00	\$10,250.00	\$10,250.00	\$3,725.00	\$3,725.00	\$6,000.00	\$6,000.00	\$6,266.71	\$6,266.71	\$9,450.00	\$9,450.00
21	Embankment In Place	CUYD	3,700.0	\$33.00	\$122,100.00	\$36.30	\$134,310.00	\$36.00	\$133,200.00	\$27.75	\$102,675.00	\$48.00	\$177,600.00	\$63.88	\$236,356.00	\$48.00	\$177,600.00
22	Loose Riprap, Class 50	CUYD	8.4	\$159.00	\$1,335.60	\$230.00	\$1,932.00	\$101.19	\$850.00	\$185.00	\$1,554.00	\$135.00	\$1,134.00	\$207.76	\$1,745.18	\$90.00	\$756.00
23	Riprap Basins	EACH	9.0	\$150.00	\$1,350.00	\$230.00	\$2,070.00	\$500.00	\$4,500.00	\$250.00	\$2,250.00	\$135.00	\$1,215.00	\$159.53	\$1,435.77	\$250.00	\$2,250.00
24	8 Inch Storm Sewer Pipe	FOOT	180.0	\$155.00	\$27,900.00	\$177.50	\$32,025.00	\$94.85	\$17,073.00	\$125.00	\$22,500.00	\$85.00	\$15,300.00	\$62.24	\$11,203.20	\$90.00	\$16,200.00
25	Concrete Inlets, Type G-2	EACH	6.0	\$2,500.00	\$15,000.00	\$4,125.00	\$24,750.00	\$4,000.00	\$24,000.00	\$2,600.00	\$15,600.00	\$4,000.00	\$24,000.00	\$1,840.14	\$11,040.84	\$2,900.00	\$17,400.00
26	Aggregate Base & Shoulders	TON	3,150.0	\$30.00	\$94,500.00	\$35.00	\$110,250.00	\$23.85	\$75,127.50	\$38.00	\$119,700.00	\$37.52	\$118,188.00	\$33.00	\$103,950.00	\$33.00	\$103,950.00
27	Level 3, 1/2 Inch ACP Mixture, PG 70-28ER	TON	650.0	\$135.00	\$87,750.00	\$106.70	\$69,355.00	\$96.00	\$62,400.00	\$112.00	\$72,800.00	\$97.00	\$63,050.00	\$108.94	\$70,811.00	\$110.00	\$71,500.00
28	Level 3, 1/2 Inch ACP Mixture, PG 64-28	TON	1,640.0	\$115.00	\$188,600.00	\$104.50	\$171,380.00	\$99.50	\$163,180.00	\$109.50	\$179,580.00	\$95.00	\$155,800.00	\$106.70	\$174,988.00	\$105.00	\$172,200.00
29	Extra for Asphalt Approaches	EACH	2.0	\$1,100.00	\$2,200.00	\$1,045.00	\$2,090.00	\$775.00	\$1,550.00	\$1,100.00	\$2,200.00	\$950.00	\$1,900.00	\$1,066.98	\$2,133.96	\$400.00	\$800.00
30	Concrete Curbs, Low Profile Mountable Curb - Islands & Shoulders	FOOT	2,125.0	\$22.00	\$46,750.00	\$23.76	\$50,490.00	\$23.20	\$49,300.00	\$23.75	\$50,468.75	\$27.00	\$57,375.00	\$24.26	\$51,552.50	\$27.00	\$57,375.00
31	Concrete Curbs, Low Profile Mountable Curb - Truck Apron	FOOT	315.0	\$22.00	\$6,930.00	\$24.20	\$7,623.00	\$25.25	\$7,953.75	\$26.70	\$8,410.50	\$28.00	\$8,820.00	\$24.71	\$7,783.65	\$31.00	\$9,765.00
32	Concrete Curbs, High Strength Modified	FOOT	210.0	\$30.00	\$6,300.00	\$45.40	\$9,534.00	\$46.05	\$9,670.50	\$26.50	\$5,565.00	\$50.00	\$10,500.00	\$46.27	\$9,716.70	\$31.00	\$6,510.00
33	Stamped Concrete, 6 Inches Thick, Concrete Surfacing	SQFT	3,440.0	\$10.00	\$34,400.00	\$10.90	\$37,496.00	\$11.00	\$37,840.00	\$10.00	\$34,400.00	\$10.00	\$34,400.00	\$11.12	\$38,252.80	\$11.00	\$37,840.00
34	Stamped Concrete, 8 Inches Thick, Concrete Surfacing	SQFT	4,122.0	\$12.00	\$49,464.00	\$14.50	\$59,769.00	\$13.50	\$55,647.00	\$11.60	\$47,815.20	\$13.00	\$53,586.00	\$14.60	\$60,181.20	\$13.00	\$53,586.00
35	Bicycle Exit Ramp, Concrete Surfacing	SQFT	390.0	\$30.00	\$11,700.00	\$9.40	\$3,666.00	\$20.75	\$8,092.50	\$15.00	\$5,850.00	\$9.00	\$3,510.00	\$9.55	\$3,724.50	\$15.00	\$5,850.00
36	Thermoplastic, Sprayed, Surface, Non-Profiled	FOOT	5,615.0	\$2.00	\$11,230.00	\$2.40	\$13,476.00	\$1.85	\$10,387.75	\$2.15	\$12,072.25	\$2.00	\$11,230.00	\$2.08	\$11,679.20	\$2.00	\$11,230.00
37	Pavement Legend, Type B-HS: Bicycle Lane Stencil	EACH	3.0	\$260.00	\$780.00	\$693.00	\$2,079.00	\$300.00	\$900.00	\$350.00	\$1,050.00	\$300.00	\$900.00	\$336.94	\$1,010.82	\$325.00	\$975.00
38	Pavement Legend, Type A: Yield Line Triangle	EACH	27.0	\$150.00	\$4,050.00	\$96.00	\$2,592.00	\$50.00	\$1,350.00	\$58.00	\$1,566.00	\$50.00	\$1,350.00	\$56.16	\$1,516.32	\$55.00	\$1,485.00
39	Pavement Legend, Type AB: Speed Reduction Transverse Bars	EACH	112.0	\$12.00	\$1,344.00	\$24.00	\$2,688.00	\$13.00	\$1,456.00	\$15.00	\$1,680.00	\$13.00	\$1,456.00	\$14.60	\$1,635.20	\$14.00	\$1,568.00
40	Remove Existing Signs	LS	1.0	\$2,000.00	\$2,000.00	\$385.00	\$1,200.00	\$1,200.00	\$1,200.00	\$1,385.00	\$1,385.00	\$780.00	\$780.00	\$986.12	\$986.12	\$1,300.00	\$1,300.00
41	Remove And Reinstall Existing Signs	LS	1.0	\$1,000.00	\$1,000.00	\$220.00	\$220.00	\$1,800.00	\$1,800.00	\$2,080.00	\$2,080.00	\$900.00	\$900.00	\$1,411.79	\$1,411.79	\$2,000.00	\$2,000.00
42	Sign Support Footings	LS	1.0	\$57,000.00	\$57,000.00	\$11,100.00	\$11,100.00	\$15,750.00	\$15,750.00	\$18,200.00	\$18,200.00	\$5,500.00	\$5,500.00	\$12,403.96	\$12,403.96	\$18,000.00	\$18,000.00
43	Triangular Base Breakaway Supports	LS	1.0	\$17,400.00	\$17,400.00	\$990.00	\$990.00	\$14,000.00	\$14,000.00	\$16,170.00	\$16,170.00	\$14,000.00	\$14,000.00	\$11,268.46	\$11,268.46	\$16,000.00	\$16,000.00
44	Perforated Steel Square Tube Slip Base Sign Supports	LS	1.0	\$39,600.00	\$39,600.00	\$4,260.00	\$4,260.00	\$21,000.00	\$21,000.00	\$24,255.00	\$24,255.00	\$19,000.00	\$19,000.00	\$29,063.49	\$29,063.49	\$24,000.00	\$24,000.00
45	Signs, Standard Sheeting, Sheet Aluminum	SQFT	142.0	\$30.00	\$4,260.00	\$16.50	\$2,343.00	\$40.00	\$5,680.00	\$46.50	\$6,603.00	\$30.00	\$4,260.00	\$53.91	\$7,655.22	\$45.00	\$6,390.00
46	Signs, Standard Sheeting, Plywood	SQFT	85.0	\$30.00	\$2,550.00	\$9.00	\$765.00	\$45.00	\$3,825.00	\$52.00	\$4,420.00	\$30.00	\$2,550.00	\$78.62	\$6,682.70	\$50.00	\$4,250.00
47	Pole Foundations	LS	1.0	\$35,000.00	\$35,000.00	\$18,700.00	\$18,700.00	\$27,840.00	\$27,840.00	\$32,155.00	\$32,155.00	\$28,000.00	\$28,000.00	\$31,268.22	\$31,268.22	\$15,000.00	\$15,000.00
48	Switching, Conduit, & Wiring	LS	1.0	\$90,000.00	\$90,000.00	\$128,360.00	\$128,360.00	\$152,635.00	\$152,635.00	\$176,250.00	\$176,250.00	\$155,000.00	\$155,000.00	\$171,430.47	\$171,430.47	\$220,000.00	\$220,000.00
49	Water Quality Drainage Swales	SQYD	402.0	\$75.00	\$30,150.00	\$78.00	\$31,356.00	\$88.50	\$35,577.00	\$55.25	\$22,210.50	\$150.00	\$60,300.00	\$55.45	\$22,290.90	\$80.00	\$32,160.00
50	Permanent Seeding	ACRE	0.7	\$4,500.00	\$3,150.00	\$2,920.00	\$2,044.00	\$7,714.29	\$5,400.00	\$10,100.00	\$7,070.00	\$6,600.00	\$4,620.00	\$9,771.32	\$6,839.92	\$9,500.00	\$6,650.00
51	Conifer Trees, 6 Foot Height	EACH	3.0	\$1,000.00	\$3,000.00	\$550.00	\$1,650.00	\$1,275.00	\$3,825.00	\$925.00	\$2,775.00	\$1,200.00	\$3,600.00	\$898.51	\$2,695.53	\$800.00	\$2,400.00
52	Boulders	EACH	20.0	\$200.00	\$4,000.00	\$175.00	\$3,500.00	\$100.00	\$2,000.00	\$170.00	\$3,400.00	\$200.00	\$4,000.00	\$182.70	\$3,654.00	\$250.00	\$5,000.00
53	Rock Mulch	TON	80.0	\$200.00	\$16,000.00	\$60.00	\$4,800.00	\$108.00	\$8,640.00	\$140.00	\$11,200.00	\$100.00	\$8,000.00	\$65.49	\$5,239.20	\$90.00	\$7,200.00
54	Type 1-5W Fence	FOOT	530.0	\$25.00	\$13,250.00	\$24.80	\$13,144.00	\$10.50	\$5,565.00	\$14.00	\$7,420.00	\$10.00	\$5,300.00	\$25.27	\$13,393.10	\$25.00	\$13,250.00
55	Remove and Reinstall Mailbox Supports	EACH	2.0	\$500.00	\$1,000.00	\$825.00	\$1,650.00	\$750.00	\$1,500.00	\$865							



BOARD OF COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

MEETING DATE: March 8, 2023

SUBJECT: Deliberations regarding a commercial activity in conjunction with farm use (meadery) in the Exclusive Farm Use zone on Highway 97 near Sisters

RECOMMENDED MOTION:
To be determined.

BACKGROUND AND POLICY IMPLICATIONS:
The Board will conduct deliberations concerning a request for a commercial activity in conjunction with farm use to establish a meadery on Highway 97 near Sisters (file nos. 247-22-000024-CU, 025-SP, 757-A, 914-A).

BUDGET IMPACTS:
None.

ATTENDANCE:
Nathaniel Miller, Associate Planner
Jacob Ripper, Principal Planner



MEMORANDUM

TO: Deschutes County Board of County Commissioners

FROM: Nathaniel Miller, AICP, Associate Planner

DATE: March 8, 2023

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

The Board of County Commissioners (Board) is conducting deliberations on March 8, 2023, to consider a final decision for a commercial activity in conjunction with farm use to establish a Meadery. The applications and appeals are identified as file nos. 247-22-000024-CU, 025-SP, 757-A, 914-A.

I. BACKGROUND

Staff issued an approval on September 7, 2022, which was appealed by Central Oregon LandWatch (COLW). A public hearing was conducted by a Hearings Officer on October 26, 2022. The Hearings Officer denied the applicant for failure to demonstrate compliance with the Farm Impacts Test, and demonstrating that the Meadery would be incidental and subordinate to the farm use on November 18, 2022. The applicant appealed the denial, and the Board conducted a public hearing on January 25, 2023. The hearing and record were closed on the same day.

The attached Decision Matrix (**Attachment B**) is designed to assist the Board in their deliberations. It focuses on the contested aspects of the application and that require Board determinations or interpretations. There are seven key issues identified in testimony and materials that are related to approval criteria for the subject application. There is one issue area for discussion (Item 4) which is a correction and is not an approval criteria.

II. SUMMARY

Please see the Decision Matrix for Issue items and summaries.

V. RECORD

At the hearing, the applicant submitted written testimony and provided oral testimony, but did not raise new issues. The applicant provided new evidence prior to the hearing that was not previously in the record through a letter from the applicant’s attorney and a revised Burden of Proof. The appellant did not raise new issues, but reiterated their main objection topics during oral testimony. A new letter of objection from the opponent was also submitted prior to the hearing. One member of the public at the hearing testified in support of the applicant’s proposal. These submittals can be accessed on the project website and record located at the link below.

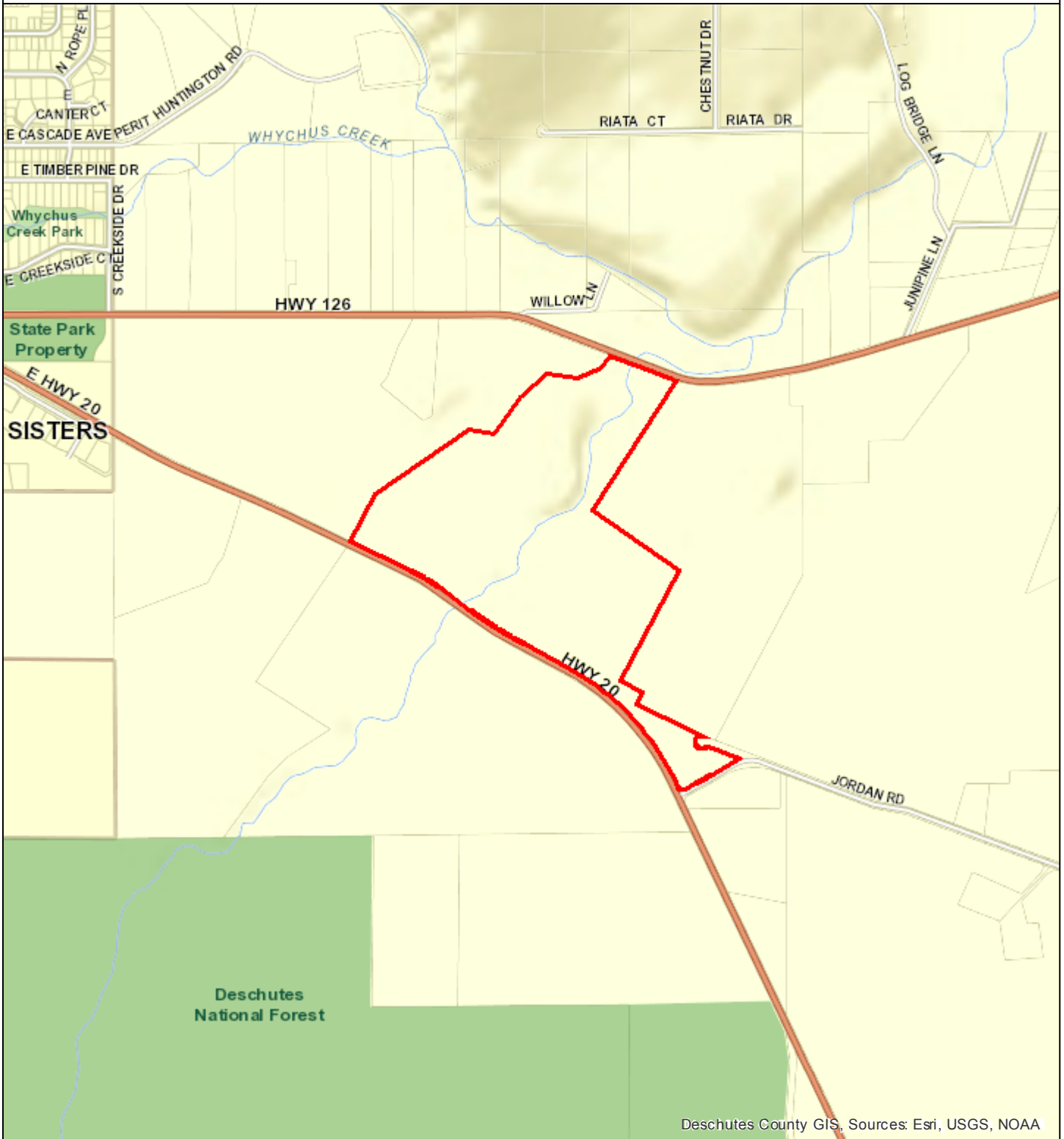
The record for file nos. 247-22-000024-CU, 247-22-000025-SP (appeal file nos. 247-22-000757-A and 247-22-000914-A) is as presented at the following Deschutes County Community Development Department website:

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

- Attachment A:** Location Map
- Attachment B:** Decision Matrix
- Attachment C:** Matt Cohen Email from January 25, 2023
- Attachment D:** Applicant’s Proposed Conditions of Approval

File: 247-22-000024-CU, 025-SP, 22-757-A, 22-914-A

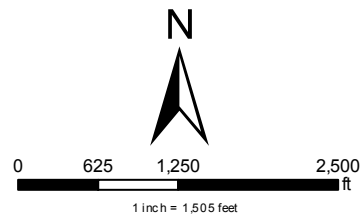
68540 Highway 20



Deschutes County GIS, Sources: Esri, USGS, NOAA



Date: 12/8/2022



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

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

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

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

Issue Area and Approval Criteria	Hearings Officer's Decision	Opponent's Position	Applicant's Position	Staff Comment	Board Determination
<p>Should the January 25, 2023, Matt Cohen email be treated as a hearing exhibit and excluded from the record, or should the record be reopened to allow participants to address the email as a record item?</p> <p>DCC 22.24.090</p> <p>Summary:</p> <p>During the BOCC Public Hearing on January 25, 2023 staff received an email from Matt Cohen who raised several points of opposition. In his email, Mr. Cohen provides the following objections which are summarized by staff:</p> <ul style="list-style-type: none"> • Per DCC 18.144.040, the applicant has not demonstrated adequate ADA access to all proposed facilities. • The applicant has not received written permission from the Oregon Department of Transportation for the change of use on the property as required by ORS 374.305 • The applicant should have to submit a photometric light study to demonstrate compliance with DCC 18.124.040. 	<p>N/A</p>	<p>No comment.</p>	<p>The email from Matt Cohen should be excluded from the record. Deschutes County's procedures ordinance requires that hearing exhibits follow the standards outlined in DCC 22.24.090 and DCC 22.24.120. These standards require hearing exhibits to be marked and read into the record at the time of the hearing to afford applicant the opportunity to respond.</p>	<p>Deschutes County's procedure ordinance Title 22 gives limited guidance on how to treat an email received during a BOCC public hearing in which:</p> <ol style="list-style-type: none"> 1. The email is not presented within the public hearing venue and treated as an official exhibit, or 2. The email is presented during a hearing and no open record period is given whereby parties have an opportunity to address the comments. <p>The Board can choose to omit the entry as it fails to meet the standards of a hearing exhibit as outlined in DCC 22.24.090 and DCC 22.24.120.</p> <p>Alternatively, the Board can choose to reopen the record to allow the applicant to address the comments and to ensure that no procedural error is made. If the Board chooses to reopen the record, staff recommends an open record period of 7-7-7. This will allow for the following phases:</p> <ul style="list-style-type: none"> • 7 day new evidence and testimony (including the Jan. 25 Cohen email) • 7 day rebuttal • 7 day applicant's final argument 	<p>The email is a record item, not a hearing exhibit. The record should be reopened so that it can be addressed.</p> <hr/> <p>The email is a hearing exhibit. It should be excluded from the record as it does not conform to DCC 22.24.090 and DCC 22.24.120.</p>

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

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

<p>in conjunction with the winery.</p> <ul style="list-style-type: none">• All honey 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 25% gross sales rule and honey source conditions of approval. A violation of either requirement in two consecutive years renders the approval void.				<p>Staff Note: The property line adjacent to Highway 20 was excluded as typical noise from vehicular traffic would be expected to exceed 65 dBA regularly.</p>	
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Nathaniel Miller

From: Matt Cohen <mattc@csconstruction.com>
Sent: Wednesday, January 25, 2023 1:42 PM
To: Nathaniel Miller
Subject: Herman Land Use / Meadery Public Comments

Follow Up Flag: Follow up
Flag Status: Flagged

[EXTERNAL EMAIL]

Nathaniel – Please accept the following comments in regards to the Public Hearing for the Herman Property on 1/25/23. Sorry, I had to drop off the call before the public testimony came up.

1. Pursuant to DCC 18.144.040, part D item #12 and #13 the applicant has not demonstrated ADA access to all proposed facilities including a site plan showing how existing and proposed topography and surfacing will allow for an accessible path of travel to all proposed public improvements that are a component of the project. Furthermore the applicants request to waive the requirement for paved surfaces and use gravel does not provide for an accessible path of travel between components of the proposed project. To comply with the DCC a continuous unobstructed path connecting all accessible elements and spaces of the proposed improvements shall be shown and included on the site plan. Hardened materials such as concrete or asphalt will need to be provided in order to comply with the American with Disabilities Act.
2. The applicant has not established compliance with ORS 374.305, which 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. I have reviewed the revised Burden of Proof submitted by the Applicant dated 10/26/22 and I do not see anything responding to this requirement. Clearly there is a change of use here to a commercial use and as such this requirement should be included as a condition of approval.
3. The applicant has noted site lighting will not be modified. As part of the change of use to a commercial use the Building Code will require egress lighting at the exterior to comply with life, safety requirements. The applicant has stated no changes will be required and we have not found this to be the case on similar projects as the addition of lights will be needed to comply with the commercial building code. We request the applicant be required to provide a photometric light study, with existing and proposed lights that demonstrate compliance with 18.124.040, part D, #11. If this is reviewed and approved as part of the Building Permit process as requested by the Applicant, public comment on this component of the application is eliminated which is contradictory to the LU process.

Thanks, Matt

Matt Cohen
Managing Partner



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IV. 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

- i. Pursuant to ORS 215.456(2), 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 this 25% requirement for two consecutive years shall cause the commercial activities in conjunction with farm use permit to become void.
- ii. 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.
- iii. The winery shall submit reports of compliance with items i. and ii., 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 foods 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 at 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 for events shall be set at or below 100 dBA. Any other outdoor speaker associated with the winery shall be set at or below 60 dBA.

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.