



## COMMUNITY DEVELOPMENT

### **HEARINGS OFFICER HEARING - LAND USE: DESCHUTES COUNTY FILE NOS. 247-22-000464-CU, 466-SP**

6:00 PM, TUESDAY, OCTOBER 10, 2023

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

(541) 388-6575 | [www.deschutes.org](http://www.deschutes.org)

## **AGENDA**

### **MEETING FORMAT**

This meeting will be conducted electronically, by phone, in person, and using Zoom.

Members of the public may view the meeting in real time via the Public Meeting Portal at [www.deschutes.org/meetings](http://www.deschutes.org/meetings).

Members of the public may listen, view, and/or participate in this meeting using Zoom. Using Zoom is free of charge. To login to the electronic meeting online using your computer, copy this link:

<https://us02web.zoom.us/j/83847211331>

Passcode: None

Using this option may require you to download the Zoom app to your device.

Members of the public can access the meeting via telephone, dial: 1-253-215-8782. When prompted, enter the following Webinar ID: 838 4721 1331. Written comments can also be provided for the public comment section to [Nathaniel.Miller@deschutes.org](mailto:Nathaniel.Miller@deschutes.org) by 4:00pm on Monday, October 9, 2023. They will be entered into the record.

### **PUBLIC HEARING**

1. The applicant requests a Conditional Use Permit and Site Plan Review to establish a winery as a Commercial Activity in Conjunction with Farm Use in the Multiple Use Agricultural Zone (MUA10).



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, please call (541) 617-4747.

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## COMMUNITY DEVELOPMENT

### NOTICE OF PUBLIC HEARING

#### **HEARING FORMAT**

The Deschutes County Hearings Officer will conduct the public hearing described below by video and telephone. If participation by video and telephone is not possible, in-person testimony is available. Options for participating in the public hearing are detailed in the Public Hearing Participation section.

#### **PROJECT DESCRIPTION**

**FILE NUMBERS:** 247-22-000464-CU, 247-22-000466-SP

**OWNER:** Duane & Dina Fay Barker

**APPLICANT:** Lava Terrace Cellars

**PROPOSAL:** The applicant requests a Conditional Use Permit and Site Plan Review to establish a winery as a Commercial Activity in Conjunction with Farm Use in the Multiple Use Agricultural Zone (MUA10).

**LOCATION:** The subject property has an assigned address of 20520 Bowery Lane, Bend, OR 97703 and is identified on the County Assessor Tax Map 17-12-09B, as Tax Lot 1000.

**HEARING DATE:** Tuesday, October 10, 2023

**HEARING START:** 6:00 pm

**STAFF PLANNER:** Nathaniel Miller, Associate Planner  
Phone: 541-317-3164  
Email: Nathaniel.Miller@Deschutes.org

**RECORD:** Record items can be viewed and downloaded from:  
<https://www.deschutes.org/cd/page/247-22-000464-cu-247-22-000466-sp-lava-terrace-cellars-winery-vinyard>

## **TIME LIMITS**

The Deschutes County Planning Division has set the following time limits for testimony at the hearing:

- Applicant: 30 minutes
- Public Agencies: 10 minutes
- General Public: 3 minutes
- Applicant Rebuttal: 10 minutes

Please note, the above time limits can be modified or eliminated by the Hearings Officer at their discretion.

## **STANDARDS AND APPLICABLE CRITERIA:**

Deschutes County Code (DCC)

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

Chapter 18.04, Title, Purpose and Definitions

Chapter 18.32, Multiple Use Agricultural Zone (MUA10)

Chapter 18.116, Supplementary Provisions

Chapter 18.124, Site Plan Review

Chapter 18.128, Conditional Use

Title 22, Deschutes County Development Procedures Ordinance

## **PUBLIC HEARING PARTICIPATION**

- If you wish to provide testimony during the public hearing, please contact the staff planner by 4 pm on Monday, October 9, 2023. Testimony can be provided as described below.
- Members of the public may listen, view, and/or participate in this hearing using Zoom. Using Zoom is free of charge. To login to the electronic meeting online using your computer, copy this link: <https://us02web.zoom.us/j/83847211331>. Using this option may require you to download the Zoom app to your device.
- Members of the public can access the meeting via telephone, dial 1-253-215-8782. When prompted, enter the following Webinar ID: 838 4721 1331.
- Written comments can also be submitted to the record. Please see the Document Submission section below for details regarding written submittals.
- If participation during the hearing by video and telephone is not possible, the public can provide testimony in person at 6 pm in the Barnes and Sawyer Rooms of the Deschutes Services Center, 1300 NW Wall Street, Bend.

All documents and evidence submitted by or on behalf of the applicant and applicable criteria are available for inspection at no cost at the Deschutes County Community Development Department (CDD) at 117 NW Lafayette Avenue. Seven (7) days prior to the public hearing, a copy of the staff report will be available for inspection at no cost at CDD and on the websites listed above. Copies of all documents, evidence and the staff report can be purchased at CDD for (25) cents a page.

**ALL INTERESTED PERSONS MAY APPEAR, BE HEARD, BE REPRESENTED BY COUNSEL, OR SEND WRITTEN SIGNED TESTIMONY. ANY PARTY TO THE APPLICATION IS ENTITLED TO A CONTINUANCE OF THE INITIAL EVIDENTIARY HEARING OR TO HAVE THE RECORD LEFT OPEN IN ACCORDANCE WITH SECTION 22.24.140 OF THE DESCHUTES COUNTY CODE.**

Failure to raise an issue in person at a hearing or in writing precludes appeal by that person to the Land Use Board of Appeals (LUBA), and that failure to provide statements or evidence sufficient to afford the decision maker an opportunity to respond to the issue precludes appeal to LUBA based on that issue.

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, please contact the staff planner identified above.

### **DOCUMENT SUBMISSION**

Any person may submit written comments on a proposed land use action. Documents may be submitted to our office in person, U.S. mail, or email.

#### **In Person**

We accept all printed documents.

#### **U.S. Mail**

Deschutes County Community Development  
Planning Division, Nathaniel Miller  
P.O. Box 6005  
Bend, OR 97708-6005

#### **Email**

Email submittals should be directed to [Nathaniel.Miller@deschutes.org](mailto:Nathaniel.Miller@deschutes.org).

#### **Limitations**

- Deschutes County does not take responsibility for retrieving information from a website link or a personal cloud storage service. It is the submitter's responsibility to provide the specific

information they wish to enter into the record. We will print the email which includes the link(s), however, we will not retrieve any information on behalf of the submitter.

- Deschutes County makes an effort to scan all submittals as soon as possible. Recognizing staff availability and workload, there is often a delay between the submittal of a document to the record, and when it is scanned and uploaded to Accela Citizen Access (ACA) and Deschutes County Property Information (DIAL).
- To ensure your submission is entered into the correct land use record, please specify the land use file number(s).
- For the open record period after a public hearing, electronic submittals are valid **if received by the County's server** by the deadline established for the land use action.

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

This Notice was mailed pursuant to Deschutes County Code Chapters 22.20 and 22.24.

**File: 247-22-000464-CU, 466-SP**

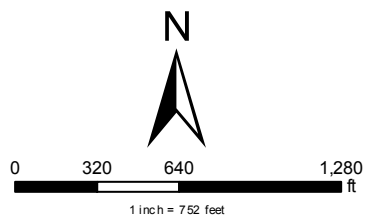
20520 Bowery Lane, Bend, OR 97703



Deschutes County GIS, Sources: Esri, USGS, NOAA



Date: 9/7/2023



owner	agent	inCareOf	address	cityStZip	type	cdd id	email
Deschutes Assessor			ELECTRONIC		NOPH	22-464-CU, 466-SP	
Deschutes Building Safety	randy.scheid@deschutes.org		ELECTRONIC		NOPH	22-464-CU, 466-SP	
Deschutes Onsite Wastewater	todd.cleveland@deschutes.org		ELECTRONIC		NOPH	22-464-CU, 466-SP	
Deschutes Road Department	cody.smith@deschutes.org		ELECTRONIC		NOPH	22-464-CU, 466-SP	
Deschutes Transportation	tarik.rawlings@deschutes.org		ELECTRONIC		NOPH	22-464-CU, 466-SP	
Oregon Department of Agriculture	jharrang@oda.state.or.us		ELECTRONIC		NOPH	22-464-CU, 466-SP	
Bend Fire Department	jbond@bendoregon.gov		ELECTRONIC		NOPH	22-464-CU, 466-SP	
Avion Water Company	tel@avionwater.com		ELECTRONIC		NOPH	22-464-CU, 466-SP	
Bend Planning Department	planning@bendoregon.gov		ELECTRONIC		NOPH	22-464-CU, 466-SP	
Deschutes Environmental Health	eric.mone@deschutes.org		ELECTRONIC		NOPH	22-464-CU, 466-SP	
Don Morehouse	Donald.MOREHOUSE@odot.oregon.gov		ELECTRONIC		NOPH	22-464-CU, 466-SP	
Swalley Irrigation District			64672 COOK AVE.	BEND, OR 97701	NOPH	22-464-CU, 466-SP	
RILEY, KEVIN & CALLI			20545 BOWERY LN	BEND, OR 97703	NOPH	22-464-CU, 466-SP	
JENSEN, STEPHEN V & LOEL R			20525 BOWERY LN	BEND, OR 97701	NOPH	22-464-CU, 466-SP	
CASCADIA ORGANICS LLC			20515 BOWERY LN	BEND, OR 97703	NOPH	22-464-CU, 466-SP	
TRYON, MARK & SHARON L			20019 BEAVER LN	BEND, OR 97701	NOPH	22-464-CU, 466-SP	
VAIL RANCH TRUST			20510 BOWERY LN	BEND, OR 97703	NOPH	22-464-CU, 466-SP	
BARKER, DUANE & DINA FAY			20520 BOWERY LN	BEND, OR 97703	NOPH	22-464-CU, 466-SP	
DIXON, AARON B & MARCY			20530 BOWERY LN	BEND, OR 97703	NOPH	22-464-CU, 466-SP	
TOBY BAYARD			20555 BOWERY LN	BEND, OR 97703	NOPH	22-464-CU, 466-SP	
MICHEL BAYARD			20555 NOWERY LN	BEND, OR 97703	NOPH	22-464-CU, 466-SP	
MAX AND JULIE ROBERTSON			64698 HUNNEL RD	BEND, OR 97703	NOPH	22-464-CU, 466-SP	
TOM AND KAREN ANDRADE			64715 HUNNEL ROAD	BEND, OR 97703	NOPH	22-464-CU, 466-SP	
LARRY AND NANCY GREEN			64727 HUNNELL ROAD	BEND, OR 97703	NOPH	22-464-CU, 466-SP	
SUE VORENBERG			2671 NIAGRA CT	BEND, OR 97703	NOPH	22-464-CU, 466-SP	
HILARY GARRETT			21663 PALOMA DR	BEND, OR 97701	NOPH	22-464-CU, 466-SP	
KEVIN RILEY			20545 BOWERY LN	BEND, OR 9703	NOPH	22-464-CU, 466-SP	
MAUREEN SCHLERF			60633 NEWCASTLE DR	BEND, OR 97702	NOPH	22-464-CU, 466-SP	
CHIP AND CLAUDIA ARTHUR			20545 POHAKU ROAD	BEND, OR 97703	NOPH	22-464-CU, 466-SP	
BRAD COX			20580 BOWERY LANE	BEND, OR 97703	NOPH	22-464-CU, 466-SP	
KRISTEN SABO			2843 NW LOLO DR #200	BEND, OR 97703	NOPH	22-464-CU, 466-SP	
AARON DIXON			20530 BOWERY LN	BEND, OR 97703	NOPH	22-464-CU, 466-SP	
GARY KRAMBEAL			20635 BOWERY LANE	BEND, OR 97703	NOPH	22-464-CU, 466-SP	
DENNIS GANT			64636 HUNNEL ROAD	BEND, OR 97703	NOPH	22-464-CU, 466-SP	
MARK AND SHARON TRYON			20505 BOWERY LANE	BEND, OR 97703	NOPH	22-464-CU, 466-SP	
CRYSTAL DOLLHAUSEN			20510 BOWERY LANE	BEND, OR 97703	NOPH	22-464-CU, 466-SP	
BRUCE LEVIN			20620 BOWERY LANE	BEND, OR 97703	NOPH	22-464-CU, 466-SP	
VAN AND LOELL JENSEN			20525 BOWERY LANE	BEND, OR 97703	NOPH	22-464-CU, 466-SP	
KREG AND JULY ROTH			63980 HUNNELL ROAD	BEND, OR 97703	NOPH	22-464-CU, 466-SP	
CAROLE HANSEN			20550 BOWERY LANE	BEND, OR 97703	NOPH	22-464-CU, 466-SP	
RICK LLOYD			20575 BOWERY LANE	BEND, OR 97703	NOPH	22-464-CU, 466-SP	
CHRIS FOOTE HYATT			200 W 34TH AVE #345	ANCHORAGE, AK 99503	NOPH	22-464-CU, 466-SP	
THOMAS HYATT			14988 W LOON CIRCLE	WASILLA, AK 99623	NOPH	22-464-CU, 466-SP	





## COMMUNITY DEVELOPMENT

### STAFF REPORT

**FILE NUMBER:** 247-22-000464-CU, 247-22-000466-SP

**HEARING DATE:** October 10, 2023, 6:00pm

**HEARING LOCATION:** Barnes and Sawyer Hearing Rooms<sup>1</sup>  
Deschutes Service Center  
1300 NW Wall Street  
Bend, OR 97701

**SUBJECT PROPERTY/  
OWNER:** Mailing Name: BARKER, DUANE & DINA FAY  
Map and Taxlot: 171209B001000  
Account: 113221  
Situs Address: 20520 BOWERY LN, BEND, OR 97703

**APPLICANT:** Lava Terrace Cellars

**ATTORNEY:** Elaine Albrich  
Davis Wright Tremaine, LLP

**REQUEST:** The applicant requests a Conditional Use Permit and Site Plan Review to establish a winery as a Commercial Activity in Conjunction with Farm Use in the Multiple Use Agricultural Zone (MUA10).

**STAFF CONTACT:** Nathaniel Miller, AICP, Associate Planner  
Phone: 541-317-3164  
Email: [Nathaniel.Miller@deschutes.org](mailto:Nathaniel.Miller@deschutes.org)

**HEARINGS BODY:** Hearings Officer

**RECORD:** Record items can be viewed and downloaded from:  
[www.buildingpermits.oregon.gov](http://www.buildingpermits.oregon.gov)

<sup>1</sup> The public hearing will also be conducted virtually via Zoom through the following web links and phone numbers: <https://us02web.zoom.us/j/83847211331> or telephone number 1-253-215-8782. For phone participation, when prompted, enter the following Webinar ID: 838 4721 1331.

## I. APPLICABLE CRITERIA

### Deschutes County Code (DCC)

#### Title 15, Deschutes County Buildings & Construction Ordinance

Chapter 15.08, Signs

#### Title 18, Deschutes County Zoning Ordinance

Chapter 18.04, Title, Purpose and Definitions

Chapter 18.32, Multiple Use Agricultural Zone (MUA10)

Chapter 18.116, Supplementary Provisions

Chapter 18.124, Site Plan Review

Chapter 18.128, Conditional Use

#### Title 22, Deschutes County Development Procedures Ordinance

Chapter 22.20 Review of Land Use Action Applications

## II. BASIC FINDINGS

**LOT OF RECORD:** Verification is not required under DCC 22.04.040(B)(2)(e).

**SITE DESCRIPTION:** The subject 5.45-acre property is developed with a residence and accessory structures on the southern portion of the property. Surrounding the structures to the north, east, and south are vineyards. A small road network connects the development to the south to the multiple parts of the property under grape production. There is an approximate 0.5-acre area with a cover of native vegetation and trees in the middle of the property along the western property line. The property is irregular in shape and fronts on Bowery Lane to the east and south. The grade varies across the property with a decrease in elevation from the south to the north. The subject property is depicted in **Image One** below.

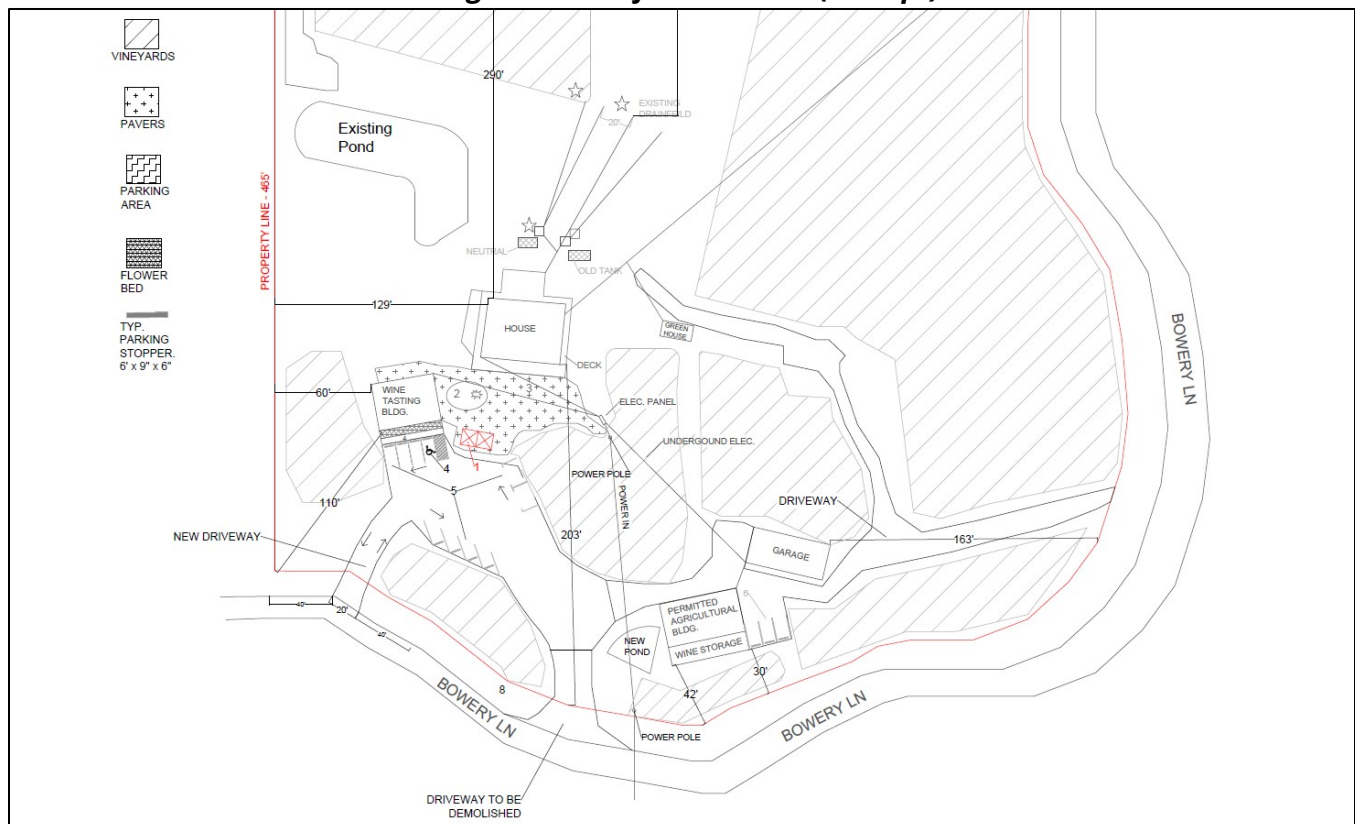
**Image One - 20520 Bowery Lane**



**REVIEW PERIOD:** The subject applications were submitted on June 7, 2022, and deemed incomplete by the Planning Division on July 7, 2022. On December 2, 2022, the applicant requested that the application be deemed complete and subsequently “tolled” starting December 4, 2022. The application was extended for 215 days until July 7, 2023, at which point the application was again active within the 150-day clock. The applicant requested to waive the 150-day clock when notice for the public hearing on October 10, 2023, was mailed. Staff received confirmation from the applicant’s legal counsel waiving the 150-day clock on September 14, 2023.

**PROPOSAL:** As noted above, the property owner requests a Conditional Use Permit and Site Plan Review for a winery as a commercial activity in conjunction with farm use in the Multiple Use Agricultural Zone (MUA10). The property owner proposes to convert a portion of an existing accessory building into a tasting room and office space. The proposal also includes the conversion of an existing barn for small scale wine production and wine storage. The approval would include the production of up to 2,000 cases of wine annually as well as hosting wine related events on the property, wine tastings, wine dinners, and other wine marketing events directly related to the sale and promotion of wine produced from the vineyard. No new buildings or structures are included in the proposal. An excerpt of the submitted site plan in **Image Two** below.

**Image Two – Project Site Plan (Excerpt)**



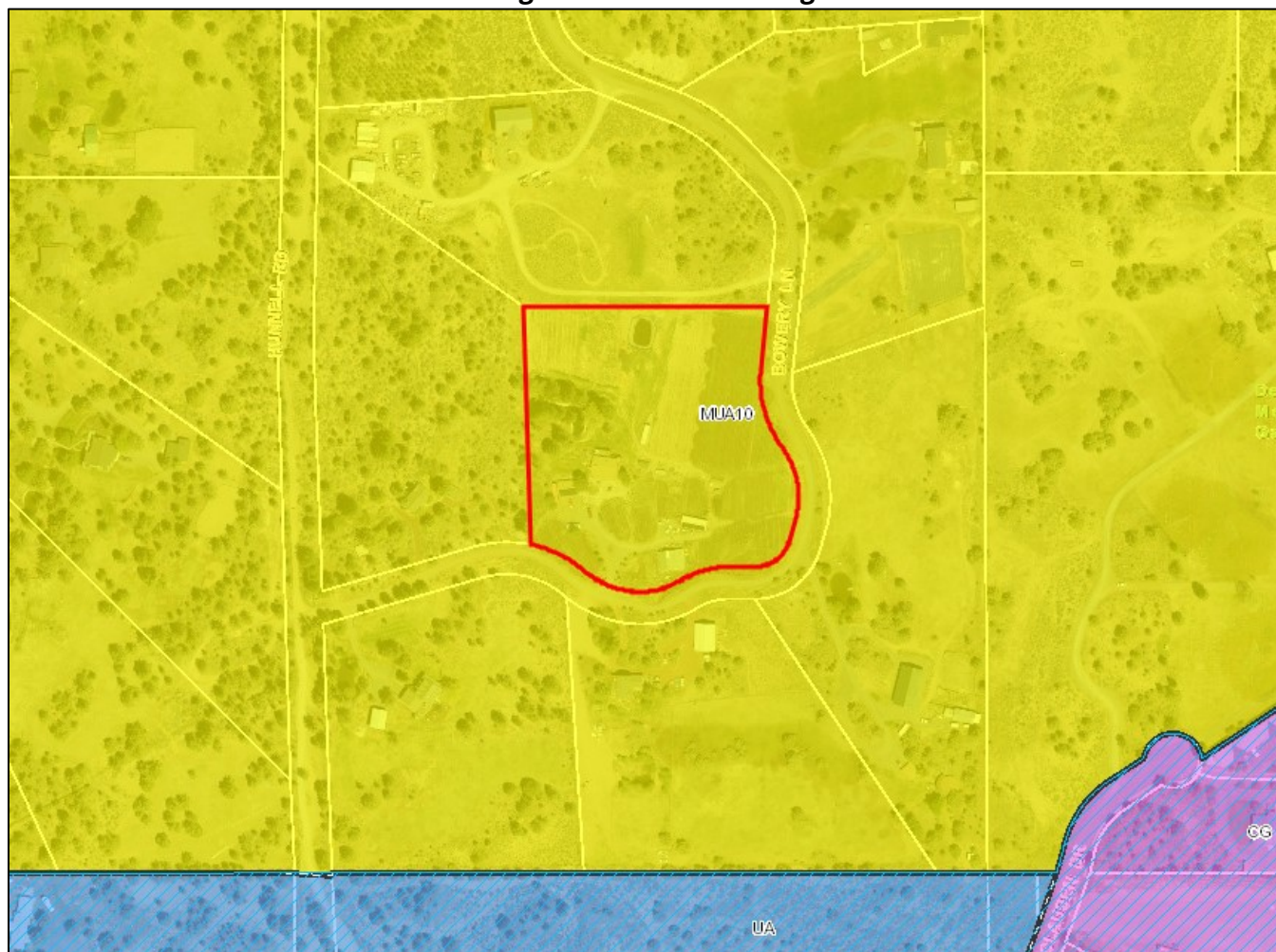
The full site plan is included with the Staff Report as **Attachment A**.

**SURROUNDING LAND USES:** The immediately surrounding properties to the north, east, south, and west are all MUA10-zoned lots in similar sizes and shapes to the subject property. These



properties are predominately developed with single-family dwellings, and each are greater than 5 acres. The neighborhood can be characterized as containing established residential uses with properties containing pastured lands or naturally vegetated areas. Beyond the neighborhood are more commercial uses to the west and north. Deschutes Memorial Gardens is to the east and the City of Bend Urban Growth Boundary (UGB) is to the south. The zoning is depicted in Image Three below.

**Image Three – Area Zoning**



#### **LAND USE HISTORY:**

- 247-18-000126-AD: An Administrative Determination for a Type 1 Home Occupation for wine storage.

**PUBLIC AGENCY COMMENTS:** The Planning Division mailed notice on June 15, 2022, to several public agencies and received the following comments:

Oregon Department of Agriculture, Jon Harrang

To Whom it May Concern,

Wineries and associated tasting rooms are typically licensed/inspected by ODA Food Safety Program. Lava Terrace Cellars is currently licensed/inspected by ODA. The firm has a warehouse license which enables them to store and sell bottled wine which is produced off-site.

Plan review by ODA-FSP is required as the firm expands their range of winery-related activities, operations, and facilities.

The firm must comply with 21 CFR 117 for food processing activities (i.e. wine production) and OAR 603 Division 25 for any kind of foodservice operations (wine tasting, etc.)

Please note that OLCC/TTB likely have additional, separate requirements and/or conditions that must be met.

Septic Authorization via Deschutes County is required, along with an adequate supply of potable water before ODA can license/approve any expansion of current operations at this location.

Please contact me if you have any questions or if I may further assist.

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

I have reviewed the transmittal materials for a proposed winery as a commercial activity in conjunction with a farm use on a 5.45-acre parcel in the Multiple Use Agriculture (MUA-10) zone at 20520 Bowery Ln., aka County Assessor's Map 17-12-09B, Tax Lot 1000.

The applicant has submitted a traffic analysis dated June 3, 2022, by Transight. Staff agrees with the study's methodology, assumptions, and conclusions with two minor exceptions. In the past, the County has assumed an occupancy rate of 2.75 people per vehicles for events tied to agricultural properties (weddings, music festivals, farm to fork dinners, etc.) and the traffic study assumes 3 people per vehicle. The burden of proof assumes 37 vehicles a day on page 11 (which would equal 74 daily trips as  $37 \times 2$ ) and 37 vehicle trips on page 14. Based on the ITE trip generation rate for Wine Tasting Room (Land Use 970) and size of the building to be used for the tasting, staff finds that 37 daily trips is correct

The property accesses Bowery Lane, which is a public road not maintained by Deschutes County, otherwise known as a Local Access Road (LAR), and functionally classified as a local road. Nevertheless, Deschutes County remains the road authority and the applicant will need to provide either an access permit approved by Deschutes County or be required to obtain one as a condition of approval to meet the access permit requirements of DCC 17.48.210(A). Additionally, based on aerial photographs and the tax lot imagery in DIAL, the applicant's fence appears to be in the public right of way and must be moved back onto the applicant's property. The relocation of the fence should be made a condition of approval.

Board Resolution 2013-020 sets a transportation system development charge (SDC) rate of \$4,757 per p.m. peak hour trip. The ITE indicates Winery (LU 970) generates 7.31 p.m. peak hour trips per 1,000 square feet and thus would result in 5.84 p.m. peak hour trips ( $7.31 \times 0.800$ ). Warehouse (LU 150) generates 0.18 p.m. peak hour trips per 1,000 square feet, and thus would result in 0.31 p.m. peak hour trips ( $0.18 \times 1.750$ ). Combined, the Wine Tasting Room and the Warehouse would produce 6.1 p.m. peak hour trips ( $5.84 + 0.31$ ). The resulting SDC is \$29,018 ( $\$4,757 \times 6.1$ ). 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 PROVIDED SDC AMOUNT IS ONLY VALID UNTIL JUNE 30, 2022. 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.**

**ON JULY 1, 2022, THE SDC RATE GOES UP TO \$5,080 PER P.M. PEAK HOUR TRIP AND THE SDC WOULD INCREASE TO \$30,988 ( $6.1 \times \$5,080$ ). THAT SDC AMOUNT WILL BE GOOD THROUGH JUNE 30, 2022.**

Staff notes that the Senior Transportation Planner sent an updated SDC calculation to planning staff in an email on September 5, 2023. The email states:

...

**Additionally, the SDC amount has now increased to \$5,603 per p.m. peak hour trip, which bumps the SDC up to \$34,178 ( $\$5,603 \times 6.1$ ). That amount is valid until June 30, 2024 as the County's SDC rate is indexed and resets every July 1.**

...

Deschutes County Road Department, Cody Smith

I have reviewed the application materials for the above-referenced file numbers, proposing various commercial activities in conjunction with a winery on Tax Lot 171209B001000. The subject property is accessed by and abuts Bowery Lane. Road Department records indicate that Bowery Lane has the following attributes where it provides access to or abuts the subject property:

- Road Status: Local Access Road (not County maintained)
- Surface Type: Aggregate
- Surface Width: ~16 ft.
- Functional Classification: Local
- Right of Way Width: 60 ft.
- Right of Way Instrument: Dedication Deed Nos. 1970-1720115 and 2004-41598

Road Department staff note the following:

- Bowery Lane includes a timber covered bridge east of the subject property near the intersection with US97. The bridge crosses a piped section of the Swalley Main Canal and appears to be functionally obsolete. As Bowery Lane is a local access road, Road Department staff have no records attesting to the structural capacity or condition of the bridge. Road Department staff understand that Bowery Lane, including the bridge, is maintained by the Rock o' the Range HOA.
- The Road Department is presently delivering the Hunnell Road: Loco Rd to Tumalo project. This project, which is anticipated to be completed by March 31, 2024, together with the anticipated Caraway master-planned development, will improve Hunnell Road between Tumalo Road and Cooley Road to a collector standard. Hunnell Road and the western section of Bowery Lane will provide an acceptable ingress and egress route for the proposed land uses.
- A review of the Deschutes County Dial website: (<https://dial.deschutes.org/Real/InteractiveMap/113221>) indicates that existing agricultural uses and other improvements along the frontage to the subject property may be encroaching within the 60 ft.-wide public right of way for Bowery Lane.
- There are currently two driveway access permit applications pending for the subject property, File Nos. 247-23-001716-DA and 247-23-001716-DA-01.

**Deschutes County Road Department requests that approval of the proposed land uses be subject to the following conditions:**

Prior to issuance of a building permit:

- Applicant shall cause for the removal of all private property, including fences, posts, walls, crops, landscaping, and other features, from the existing public right of way for Bowery Lane along the frontage to the subject property.
- Applicant shall obtain driveway access permits for all driveway accesses to Bowery Lane for the subject property pursuant to DCC 12.28.050 and 17.48.210(A).

At all times:

- Wayfinding or directional messaging provided by the Applicant to vendors and patrons of the proposed commercial activities shall direct vendors and patrons to

utilize Hunnell Road and the western section of Bowery Lane for ingress and egress to the subject property.

Please let me know if there are any questions regarding these comments.

Deschutes County Health Services, Jeff Freund

-It appears as if this property is supplied drinking water by Avion PSW# 41-00091 Avion is an approved public system, but they may want to check with them to ensure all good to go. If there are other water sources (wells) on the property, they could not be used for public use without going through the approval process. If there is irrigation on the property, may want to check with COI or the irrigation provider and make sure all ok with the new agricultural/commercial use.

-Oregon Department of Agriculture will likely license this facility. However, check with us and ODA as some business models could require licensure from Deschutes County for food service.

Deschutes County Health Services, Eric Mone

Echoing what Jeff said here. I copied ODA staff on this email (Jon and Adam). Their business model appears to be one that ODA would license but if they are selling more glasses of wine and food for immediate consumption than bottles of wine, they may swing our way.

The following agencies did not respond to the notice: Deschutes County Assessor, Deschutes County Onsite Wastewater Division, and Swalley Irrigation District.

**PUBLIC COMMENTS:** The Planning Division mailed notice of the conditional use application to all property owners within 250 feet of the subject property on June 15, 2022. 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 June 21, 2022. Public comments were received and are referenced and summarized below. The entirety of each submitted comment can be accessed on the proposal webpage here: <https://www.deschutes.org/cd/page/247-22-000464-cu-247-22-000466-sp-lava-terrace-cellars-winery-vinyard>. Staff notes that 32 comments were received in opposition, 1 comment expressed concern, and 1 comment is in support of the proposal.

- Neighbor, Bruce Levin, June 21, 2022 - Letter of Opposition
  - Access from Bowery Lane – maintenance and traffic safety
  - Conflict with Rock O’ the Range Homeowners Association (HOA) rules
  - Noncompliance with land use sign posting requirements of DCC Title 22
- Neighbor, Crystal Dollhausen, June 21, 2022 - Letter of Opposition
  - Access from Bowery Lane – maintenance and traffic safety
  - Conflict with Rock O’ the Range Homeowners Association (HOA) rules



- Noncompliance with land use sign posting requirements of DCC Title 22
- Neighbor, Carole Hansen, June 21, 2022 - Letter of Opposition
  - Access from Bowery Lane – maintenance and traffic safety
  - Conflict with Rock O’ the Range Homeowners Association (HOA) rules
  - Noncompliance with land use sign posting requirements of DCC Title 22
- Neighbor, Gary Krambeal, June 21, 2022 - Letter of Opposition
  - Access from Bowery Lane – maintenance and traffic safety
  - Conflict with Rock O’ the Range Homeowners Association (HOA) rules
  - Noncompliance with land use sign posting requirements of DCC Title 22
- Neighbor, Kreg and July Roth, June 21, 2022 - Letter of Opposition
  - Access from Bowery Lane – maintenance and traffic safety
  - Conflict with Rock O’ the Range Homeowners Association (HOA) rules
  - Noncompliance with land use sign posting requirements of DCC Title 22
- Central Oregon LandWatch, Kristen Sabo, June 21, 2022 - Letter of Concern
  - The proposal does not conform with the criteria for a winery pursuant to ORS 215.452
- Neighbor, Toby and Michel Bayard, June 21, 2022 - Letter of Opposition
  - Noncompliance with noticing requirements of DCC Title 22
  - Conflict with Rock O’ the Range Homeowners Association (HOA) rules
  - Access – Commercial traffic, maintenance, and traffic safety
- Neighbor, Mark and Sharon Tryon, June 21, 2022 - Letter of Opposition
  - Access from Bowery Lane – maintenance and traffic safety
  - Conflict with Rock O’ the Range Homeowners Association (HOA) rules
  - Noncompliance with land use sign posting requirements of DCC Title 22
- Neighbor, Rick Lloyd, June 21, 2022 - Letter of Opposition
  - Access from Bowery Lane – maintenance and traffic safety
  - Conflict with Rock O’ the Range Homeowners Association (HOA) rules
  - Noncompliance with land use sign posting requirements of DCC Title 22
- Neighbor, Van and Loell, June 21, 2022 - Letter of Opposition
  - Access from Bowery Lane – maintenance and traffic safety
  - Conflict with Rock O’ the Range Homeowners Association (HOA) rules
  - Noncompliance with land use sign posting requirements of DCC Title 22
- Neighbor, Chris Foote Hyatt, June 24, 2022 - Letter of Opposition
  - Incorrect or insufficient information on application form
  - Access – maintenance and traffic safety
  - Impacts from use – e.g. noise, dust, light, water, property values, and wastewater

- Neighbor, Gary Krambeal, June 24, 2022 - Letter of Opposition
  - Traffic Safety
- Neighbor, Thomas Hyatt, June 24, 2022 - Letter of Opposition
  - Access from Hunnell Road and Bowery Lane – maintenance and traffic safety
  - Lacking information in the traffic study
- Neighbor, Brad Cox, June 25, 2022 - Letter of Opposition
  - Access from Bowery Lane & Bridge – maintenance and traffic safety
- Friend of a Neighbor, Maureen Schlerf, June 28, 2022 - Letter of Opposition
  - Commercial use impacts – e.g. water and traffic
- Neighbor, Aaron Dixon, June 30, 2022 – Letter of Support
  - Support for local farmers
- Neighbor, Dennis and Sharon Gant, June 30, 2022 – Letter of Opposition
  - Access from Hunnell Road and Bowery Lane – maintenance and traffic safety
- Kevin Riley, July 1, 2022 – Letter of Support
  - Support for local farmers
- Neighbor, Chip and Claudia Arthur, July 6, 2022 - Letter of Opposition
  - Access from Hunnell Road and Bowery Lane – maintenance and traffic safety
- Neighbor, Sue Vordenberg, July 7, 2022 - Letter of Opposition
  - Access from Hunnell Road and Bowery Lane – maintenance and traffic safety
- Neighbor, Toby Bayard, July 8, 2022 - Letter of Opposition
  - Water usage
- Neighbor, Tom and Karen Andrade, July 8, 2022 - Letter of Opposition
  - Access from Hunnell Road and Bowery Lane – maintenance and traffic safety
- Neighbor, Tom and Karen Andrade, July 8, 2022 - Letter of Opposition
  - Commercial use impacts in a rural use area
  - Access from Hunnell Road and Bowery Lane – maintenance and traffic safety
- Neighbor, Larry and Nancy Green, July 9, 2022 - Letter of Opposition
  - Access from Hunnell Road and Bowery Lane – maintenance and traffic safety
- Neighbor, Hilary Garrett, July 9, 2022 - Letter of Opposition
  - Incompatible with DCC criteria and neighborhood

- Neighbor, Michel Bayard, July 18, 2022 - Letter of Opposition
  - Adequate parking for the winery
  - Wineries versus vineyards
  - Environmental impacts
  - Use incompatible with DCC criteria
- Neighbor, Toby Bayard, August 12, 2022 - Letter of Opposition
  - Code Compliance Information
- Neighbor, Toby Bayard, August 12, 2022 - Letter of Opposition
  - Code Compliance Information
- Neighbor, Toby Bayard, August 13, 2022 - Letter of Opposition
  - Ground water concerns
- Neighbor, Michel Bayard, August 15, 2022 - Letter of Opposition
  - Ground water concerns
- Neighbor, Max and Julie Robertson, August 19, 2022 - Letter of Opposition
  - Commercial use impacts
- Neighbor, Toby Bayard, May 18, 2023 - Letter of Opposition
  - Notice of pending lawsuit
- Neighbor, Toby Bayard, August 10, 2023 - Letter of Opposition
  - Notice of pending lawsuit & additional materials
- Neighbor, Toby Bayard, August 11, 2023 - Letter of Opposition
  - Correction for URL

The below comments were received to be included as testimony in the public hearing. These comments were received between September 8, 2023, and the publishing of the subject Staff Report.

- Neighbor, Toby Bayard, September 8, 2023 – Testimony in Opposition
  - Illegal use of property in the MUA10 Zone.
  - Conflict with Rock O’ the Range Homeowners Association (HOA) rules
  - Traffic impact
  - Noise impacts
- Neighbor, Jenson, September 18, 2023 – Testimony in Opposition
  - Noise impacts
  - Illegal use of property in the MUA10 Zone.
  - Traffic safety

### III. FINDINGS & CONCLUSIONS

#### Title 15 of the Deschutes County Code, Title 15 - Buildings & Construction

##### Chapter 15.08, Signs

###### Section 15.08.040, Specific Definitions..

***For the purposes of DCC 15.08, unless otherwise apparent from the context, certain words and phrases used in DCC 15.08 are defined as set forth in DCC 15.08.040.***

***"Sign" means any identification, display, description or illustration which is affixed to or otherwise represented directly or indirectly upon a building or outdoor surface or piece of land and which is used or intended to direct attention to an object, product, place, activity, person, institution or business and includes, where applicable, the sign structures, display surface and all other components of the sign.***

**FINDING:** The applicant does not propose a business sign with the proposal. However, as noted below under DCC 18.124.060(D), smaller informational or directional signs may be required on the site. As such, staff recommends the following condition of approval be included in any decision which approves the application:

###### Winery Signage

All signs on the property for the winery shall comply with Deschutes County Sign Code, Title 15. The property owner shall obtain all required permits for signage pursuant to Title 15.

#### Title 22, Deschutes County Development Procedures Ordinance

##### Chapter 22.08 General Provisions

###### 22.08.010 Application Requirements

- A. *Property Owner. For the purposes of DCC 22.08.010, the term "property owner" shall mean the owner of record or the contract purchaser and does not include a person or organization that holds a security interest.***
- B. *Applications for development or land use actions shall:***
  - 1. *Be submitted by the property owner or a person who has written authorization from the property owner as defined herein to make the application;***

**FINDING:** Comments were received in the record which indicate inaccuracy of the actual applicant. The subject application was submitted by *Lava Cellars Terrace (C/O Duane and Dina Barker)* and the application appears to be signed by one of the property owners (Duane or Dina Barker).

Staff notes that Lava Terrace Cellars, LLC is a registered name by the Oregon Secretary of State and

Duane and Dina Barker are managing members.

Staff requests the Hearings Officer make specific findings on whether these criteria are met.

## **Chapter 22.20 Review of Land Use Action Applications**

### Section 22.20.015, Code Enforcement and Land Use.

- A. *Except as described in (D) below, if any property is in violation of applicable land use regulations and/or conditions of approval of any previous land use decisions or building permits previously issued by the County, the County shall not:***
  - 1. *Approve any application for land use development;***
  - 2. *Make any other land use decision, including land divisions and/or property line adjustments;***
  - 3. *Issue a building permit.***
- B. *As part of the application process, the applicant shall certify:***
  - 1. *That to the best of the applicant's knowledge, the property in question, including any prior development phases of the property, is currently in compliance with both the Deschutes County Code and any prior land use approvals for the development of the property; or***
  - 2. *That the application is for the purposes of bringing the property into compliance with the Deschutes County land use regulations and/or prior land use approvals.***
- C. *A violation means the property has been determined to not be in compliance either through a prior decision by the County or other tribunal, or through the review process of the current application, or through an acknowledgement by the alleged violator in a signed voluntary compliance agreement ("VCA").***
- D. *A permit or other approval, including building permit applications, may be authorized if:***
  - 1. *It results in the property coming into full compliance with all applicable provisions of the federal, state, or local laws, and Deschutes County Code, including sequencing of permits or other approvals as part of a voluntary compliance agreement;***
  - 2. *It is necessary to protect the public health or safety;***
  - 3. *It is for work related to and within a valid easement over, on, or under the affected property; or***
  - 4. *It is for emergency repairs to make a structure habitable or a road or bridge to bear traffic.***
- E. *Public Health and Safety.***
  - 1. *For the purposes of this section, public health and safety means the actions authorized by the permit would cause abatement of conditions found to exist on the property that endanger life, health, personal property, or safety of the residents of the property or the public.***

2. ***Examples of that situation include, but are not limited to issuance of permits to replace faulty electrical wiring, repair or install furnace equipment; roof repairs; replace or repair compromised utility infrastructure for water, sewer, fuel or power; and actions necessary to stop earth slope failure.***

**FINDING:** The Board provided interpretive guidance to all Deschutes County Hearings Bodies related to DCC 22.20.015 in *Tumalo Irrigation District* (247-17-000775-ZC, 247-17-000776-PA). Staff finds the following Board comments to be relevant to this case and decision:

As DCC 22.20.015 is a relatively new provision first adopted in 2015 and frequently arises in contested land use hearings, the Board takes this opportunity to provide interpretation and guidance on the implementation of this provision.

As discussed more fully below, the Board interprets DCC 22.20.015 to require a sequential three-step analysis.

1. Is there a previously “adjudicated violation” on the property?
2. Does the subject land use application present the best forum for adjudicating a new allegation, i.e. is there time to investigate something more than a vague allegation?
3. When there is an “adjudicated violation” or the property is found to be in violation as part of the land use application process, can the land use permit nevertheless be issued pursuant to DCC 22.20.015(D) and (E)?

First, the Board starts by noting that the primary purpose (and benefit) of DCC 22.20.015 is to address “adjudicated violations,” i.e. violations that were already conclusively determined through the normal applicable code enforcement process prior to an applicant submitting a land use application. This interpretation is supported by the use of the past tense in the codified definition of “violation” in DCC 22.20.015(C): “[a] violation means the property has been determined to not be in compliance either through a prior decision by the County or other tribunal, ... or through an acknowledgment by the alleged violator in a signed voluntary compliance agreement (‘VCA’)” (emphasis added).

Second, differing from the “adjudicated violations” scenario described above, there are cases where the Board anticipates that a County hearings body will need to determine if a property is in violation during the land use application process. DCC 22.20.015(C) addresses this possibility by including in the definition of “violation” the phrase “or through the review process of the current application.” However, the Board cautions that County hearings bodies should take up this inquiry in rare cases because of the obvious practical difficulties born from comingling the County’s land use application process with the separate and distinct code enforcement process. For example, when a vague allegation is alleged by an opponent late in the land use application process, there rarely will be time to comprehensively investigate and appropriately adjudicate that violation due to the 150-day time limit for issuing final decisions per ORS 215.427. Nothing within DCC 22.20.015 requires a County hearings body to process a code complaint pursuant to the County’s adopted Code Enforcement Policy and Procedures Manual and conclusively determine the status of a

previously un-adjudicated violation solely on the basis that an opponent submits a vague and unsubstantiated allegation during the land use application process.

As such, the Board interprets DCC 22.20.015 to require something more than a vague allegation (i.e., clear evidence of a violation) to compel the County hearings body to determine if a property is in violation and the pending land use application process is the appropriate forum in which to determine whether a violation exists. As discussed below, this case does not provide a sufficient basis for determining what more is needed and the Board thereby will wait for a subsequent case to establish a bright-line rule. Further, prior to electing to adjudicate an allegation as part of the land use application process, the Board interprets DCC 22.20.015 as necessitating the County hearings body to likewise consider procedural, equitable, and legal issues, including but not limited to the time it will take to conduct an investigation pursuant to the Code Enforcement Policy and Procedures Manual, the severity of the alleged violation (i.e., clear cutting vegetation in a wetland is severe while minimal solid waste that is not creating a public health hazard is not), and the 150-day land use decision making clock.

Third, the Board takes this opportunity to reiterate what is self-evident in DCC 22.20.015. A County hearings body's inquiry is not completed by simply noting a past "adjudicated violation" or finding that a property is in violation. DCC 22.20.015(D) and (E) compel a subsequent analysis to determine, for example, if the permit "protect[s] the public health and safety" or "results in the property coming into full compliance." Further, the final phrase of DCC 22.20.015(D)(1) notes that "coming into full compliance" also "include[s] sequencing of permits or other approvals as part of a voluntary compliance agreement." The Board thereby interprets that aforementioned language to specifically allow a County hearings body to approve a land use permit conditioned on the applicant subsequently executing and complying with a voluntary compliance agreement even for an unrelated violation on the same property.

With consideration to the above-mentioned interpretive guidance from the BOCC, staff notes that code compliance case No. 247-21-000164-CE was opened on the property for the current unpermitted winery. According to notes in the record, the unpermitted winery is confirmed as a code violation. The applicant has coordinated with Deschutes County Staff and a Conditional Use Permit and Site Plan Review application are submitted. Staff notes that with the approval of the proposed Winery and acquisition of appropriate associated construction permitting, the winery would be compliant with the Deschutes County Code. As such, staff finds that the above criteria can be met though a condition of approval.

Staff recommends the following condition of approval be included in any decision which approves the application:

Code Compliance for Case No. 247-21-000164-CE: ***Prior to any initiation of use***, the unpermitted winery on the property shall receive all required permits from Deschutes County for the winery and any related construction. The applicant shall provide all necessary receipts of approval/ closure to the Planning Division to demonstrate compliance.

## Chapter 22.24 Land Use Action Hearings

### Section 22.24.030 Notice of Hearing or Administrative Action

#### **A. Individual Mailed Notice.**

1. ***Except as otherwise provided for herein, notice of a land use application shall be mailed at least 20 days prior to the hearing for those matters set for hearing, or within 10 days after receipt of an application for those matters to be processed administratively with notice. Written notice shall be sent by mail to the following persons:***
  - a. ***The applicant.***
  - b. ***Owners of record of property as shown on the most recent property tax assessment roll of property located:***
    - (1) ***Within 100 feet of the property that is the subject of the notice where any part of the subject property is within an urban growth boundary;***
    - (2) ***Within 250 feet of the property that is the subject of the notice where the subject property is outside an urban growth boundary and not within a farm or forest zone, except where greater notice is required under DCC 22.24.030(A)(4) for structures proposed to exceed 30 feet in height; or***
    - (3) ***Within 750 feet of the property that is the subject of the notice where the subject property is within a farm or forest zone, except where greater notice is required under DCC 22.24.030(A)(4) for structures proposed to exceed 30 feet in height.***

**FINDINGS:** Comments were received in the record which allege that individuals were excluded from mailed notices. Staff notes that noticing mailing distances follow the standards above and staff confirms that all noticing for the project is being sent at a radius of 250' from the subject property.

Staff requests the Hearings Officer make specific findings on whether these criteria are met.

#### **B. Posted Notice.**

1. ***Notice of a land use action application for which prior notice procedures are chosen shall be posted on the subject property for at least 10 continuous days prior to any date set for receipt of comments. Such notice shall, where practicable, be visible from any adjacent public way.***

**FINDINGS:** Comments received in the record state that the land use action sign was not posted with sufficient time for comments. Staff notes that the applicant submitted the Land Use Action Sign Affidavit indicating compliance with this criterion. According to the affidavit, the sign was posted on the property on June 21, 2022. Staff notes that comments are allowed to be submitted until the closure of the record.



Staff requests the Hearings Officer make specific findings on whether this criterion is met.

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

### **Chapter 18.32, Multiple Use Agricultural Zone (MUA-10)**

#### Section 18.32.030. Conditional Uses Permitted.

***The following uses may be allowed subject to DCC 18.128:***

- C. Commercial activities in conjunction with farm use. The commercial activity 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 in Deschutes County or an adjoining County.***

**FINDING:** The applicant is requesting to establish a commercial activity in conjunction with the existing vineyard on the property. The Burden of Proof states:

The winery, consisting of wine production and a tasting room, are commercial activities associated with Applicant's existing vineyard operations, which are a farm use under DCC 18.04.030. The proposed use promotes the sale of wine made from farm products (grapes) produced from vineyards in Deschutes County, including Applicant's vineyard. The proposed use is also consistent with the definition of "commercial agriculture enterprise" in DCC 18.04.030 because the proposed use contributes to the area's existing agricultural economy and help maintain agricultural processors and established farm markets. Accordingly, Applicant's proposed use is a commercial activity in conjunction with farm use under DCCC 18.32.030(C). Currently, wine is produced at a third-party facility offsite but Applicant seeks some or all of the production onsite as a part of this application. No new buildings are being proposed as part of this application. The wine production area will be located in an existing barn and the tasting room area will be located in the existing accessory building (the office) and outdoor area, as shown on Exhibit C (Proposed Site Plan).

A detailed review of DCC 18.32.030(C) follows. Additionally, compliance with DCC 18.124, Site Plan Review, and DCC 18.128, Conditional Uses, are also addressed below.

Staff notes, and as discussed by the Hearings Officer in *Tumalo Land Partners*, file nos. 247-18-000244-CU, 245-SP, and 246-LM, this use category is similar to a described use in the Exclusive Farm Use zone, which has been the subject of extensive discussion and many LUBA cases. While those cases involving EFU-zoned lands may be helpful in thinking about the use in the MUA-10 Zone, the case law on EFU-zoned properties are not dispositive on the MUA-10 use as the MUA-10 Zone is a non-resource zone and is not subject to the statutory protections of the EFU Zone.

In this analysis of commercial activities in conjunction with farm use, staff follows the Deschutes County Board of Commissioners in *Rank* (file no. 247-15-000472-MC) and the Hearings Officer in

*Tumalo Land Partners* by using a 4-step test. The 4-step test includes whether there is a farm use and commercial activity associated with that farm use on the parcel; whether the proposal is a commercial activity; and whether the farm products produced in Deschutes County or an adjoining county.

### **Is there a farm use?**

Farm use is defined in Chapter 18.04 as:

*“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).*

Most of the 5.45-acre property is developed as a vineyard and supporting infrastructure typical of a farm use. A survey of aerial imagery indicates that the property has contained pastureland since 1994 and vineyards appear on the property since 2014.

Staff requests the Hearings Officer make specific findings on whether there is a farm use and compliance with DCC 18.32.030(C).

### **Is the commercial activity associated with that farm use on the parcel?**

According to the application materials the property owner proposes a number of activities including tasting and events. Under the proposal section, the Burden of Proof states:

Applicant seeks approval for the wine production, tasting activities, and other wine marketing events directly related to the sale and promotion of wine as a “conditional use winery” under Deschutes County Code (“DCC”) 18.128(C) [*sic*] allowing “commercial activities in conjunction with farm use” in the MUA10 zone.

Applicant proposes to convert a portion of the existing 800 square foot ("SF") accessory building to a tasting room and office space for Applicant's wines produced from grapes from the property's vineyard. Applicant also proposes to convert an existing barn for small-scale wine production and wine storage. See Exhibit C (Proposed Site Plan). Specifically, Applicant seeks approval to produce up to 2,000- cases of wine annually and host wine-related events on the property, including wine tastings, wine dinners, and other wine marketing events directly related to the sale and promotion of wine produced from the onsite vineyard in the tasting room (336 SF) and outside areas. No new buildings or structures are proposed as part of the new use.

Applicant proposes to hold wine tastings and other wine-related events during season hours:

- Summer Hours (Memorial Day Weekend – September 30th): by appointment or invite only, 3 to 4 days per week during the hours of 12 to 7 p.m.
- Winter Hours (October 1st – January 1st): by appointment or invite only, on Friday and Saturdays with additional appointments on holiday weekends (Thanksgiving, Christmas, New Year's) during the hours of 12 to 7 pm.
- Closed (January 2nd – Second week of March).
- Spring Hours (Second week of March – First week of April): by appointment or invite only, 3 to 4 days per week for the traditional school spring break for Oregon, California, and Washington (tourist season) during the hours of 12 to 7 pm.

Applicant anticipates an average of 6-8 people per tasting appointment time.

If the Hearing officer finds the hours of operation are satisfactory, this condition of approval, or modified version of the condition, could be included in any decision which approves the application.

#### Winery Hours of Operation

**At all times**, the property owner shall observe the following hours of operation:

- Summer Hours (Memorial Day Weekend – September 30th): by appointment or invite only, 3 to 4 days per week during the hours of 12 to 7 p.m.
- Winter Hours (October 1st – January 1st): by appointment or invite only, on Friday and Saturdays with additional appointments on holiday weekends (Thanksgiving, Christmas, New Year's) during the hours of 12 to 7 pm.
- Closed (January 2nd – Second week of March).
- Spring Hours (Second week of March – First week of April): by appointment or invite only, 3 to 4 days per week for the traditional school spring break for Oregon, California, and Washington (tourist season) during the hours of 12 to 7 pm.

Staff identifies the following requested aspects of the use:

- Wine Production
- Wine Tastings
- Winery Events

While most of the proposal appears to be the sale of wine and wine tastings by appointment, the winery related events, and the full nature and extent of this aspect remain unclear to staff. Staff requests the Hearings Officer make specific findings on whether the commercial activity is associated with that farm use on the parcel and if there is compliance with DCC 18.32.030(C).

### **Is the proposal a commercial activity?**

Staff notes that while the sale of wine is certainly a commercial use<sup>2</sup>, the fermenting of wine is an industrial use<sup>3</sup>. However, this criterion allows the commercial activity to process<sup>4</sup> farm products.

### **Are the farm products produced in Deschutes County or an adjoining county?**

The application materials state that wine production will occur on the subject property, or potentially at an offsite facility, and that some of the grapes will be sourced from other vineyards on properties in Deschutes County. The volumes of grapes being purchased or sold, and the extent of impacts from these transactions, are unclear to staff.

Staff requests the Hearings Officer make specific findings on whether the farm products are produced in Deschutes County, or in an adjoining county, and if there is compliance with DCC 18.32.030(C).

### Section 18.32.040. Dimensional Standards

#### ***In an MUA Zone, the following dimensional standards shall apply:***

...

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

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

Applicant is not proposing to erect or enlarge any building or structure. The existing structures will be converted to the wine production and tasting room areas comply with the MUA height requirement. Accordingly, the proposed use complies with DCC 18.32.040(D).

<sup>2</sup> DCC 18.04.030 - "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.

<sup>3</sup> DCC 18.04.030 - "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.

<sup>4</sup> <https://www.merriam-webster.com/dictionary/process>

a : to subject to a special process or treatment (as in the course of manufacture or film development)

Staff notes that any change of occupancy is administered through the Deschutes County Building Division.

Staff recommends the following conditions of approval be included in any decision which approves the application:

General Division Permitting

The property owner shall obtain any necessary permits from the Deschutes County Building Division and Onsite Wastewater Division.

Building and Structure Height

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

Section 18.32.050. Yards

- A. The front yard setback from the property line shall be a minimum of 20 feet for property fronting on a local street right of way, 30 feet from a property line fronting on a collector right of way, and 80 feet from an arterial right of way unless other provisions for combining accesses are provided and approved by the County.**
- B. Each side yard shall be a minimum of 20 feet. For parcels or lots created before November 1, 1979, which are one-half acre or less in size, the side yard setback may be reduced to a minimum of 10 feet. For parcels or lots adjacent to property receiving special assessment for farm use, the adjacent side yard for a dwelling shall be a minimum of 100 feet.**
- C. Rear yards shall be a minimum of 25 feet. Parcels or lots with rear yards adjacent to property receiving special assessment for farm use, the rear yards for a dwelling shall be a minimum of 100 feet.**
- D. The setback from the north lot line shall meet the solar setback requirements in DCC 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 dwelling with side and/or rear yards adjacent to property receiving special assessment for farm use. According to the assessor's records, the subject property includes 4 permanent structures. Staff noted that the residence and two of the accessory structures predate Deschutes County's permit program. The barn (1,512 sq. ft.) is proposed to be converted into the wine storage and production facility. Staff notes that this structure was permitted through permit no. AG-13-13. According to aerial imagery and the permitting records, it is unclear to staff if this structure meets the front yard setback requirement and can be approved by the Planning Division if a new permit from the Building Division is required. According to imagery, the structure is approximately 17 feet from the south property line and 20 feet is required from a property line which abuts a right of way classified as a "Local Street Right of Way". The site plan on record with this permit illustrates a 45-foot setback from Bowery Lane. Staff has coordinated with the Building

Division and Planning review for the conversion of this permit will be required.

As such, staff recommends the following conditions of approval be included in any decision which approves the application:

#### Front Yard Setback for Wine Storage Building

**Prior to the issuance of building permits**, the property owner will submit confirmation that the Wine Storage Building meets the front yard setback requirements.

#### Solar Setbacks

As a condition of approval, structural setbacks from any north lot line shall meet the solar setback requirements in DCC 18.116.180.

#### 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 18.32.060. Stream Setbacks

***To permit better light, air, vision, stream pollution control, fish and wildlife areas and to preserve the natural scenic amenities and vistas along the 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 18.32.070. Rimrock Setback

***Setbacks from rimrock shall be as provided in DCC 18.116.160.***

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

## 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.***
- 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:** The Burden of Proof states:

The property can be accessed via Bowery Lane either from Hunnell Road or Hwy 97. Hunnell Road will be paved in late 2022 or early 2023. Access to the property is proposed mostly from Hunnell Road as described in the Transportation Memo included as Exhibit D (Transportation Memo). Adequate sight distance is available from the proposed driveway approach to the property.

Staff notes that a clear vision area exists at the intersection of the proposed service drive (driveway) and Bowery Lane, as well as several other points of access which are illustrated on the site plan. No details are presented in the submitted site plan which demonstrates compliance with this standard. Staff notes that during the site visit on September 27, 2023 the property owner mentioned that they would like two points of access for the use off Bowery Lane.

Staff requests the Hearings Officer make specific findings on whether these criteria are met. Staff

also recommends the following conditions of approval be included in any decision which approves the application:

#### Clear Vision Areas on the Site Plan

**Prior to the issuance of building permits**, a revised and final site plan shall be submitted to the Planning Division which correctly illustrates the clear vision areas at all access points.

#### Clear Vision Area

The clear vision areas located at the intersection of the service drives/driveways and Bowery Lane, as well as other points of access, shall be maintained in accordance with DCC 18.116.020(A).

#### 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:

Applicant will provide off-street parking as shown on Exhibit D. In total, Applicant will provide 9 parking spaces, including one ADA parking space, which will be more than sufficient to accommodate workers and guests on the property. Applicant will hold tastings via appointments only, with 6 to 8 patrons per time slot. Applicant estimates an occupancy of 3 patrons per car, and thus only anticipates needing 2 to 3 parking spaces to accommodate guests at any one time.

As described herein, the off street parking and loading requirements are met and, as conditioned, that property is and will be available for exclusive use as off-street parking and loading. Staff recommends the following condition of approval be included in any decision which approves the application:

#### Available Parking

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.

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

**FINDING:** No loading berth is required.

2. ***Restaurants, office buildings, hotels, motels, hospitals and institutions, schools and colleges, public buildings, recreation or entertainment facilities and any similar use which has a gross floor area of 30,000 square feet or more shall provide off street truck loading or unloading berths subject to the following table:***

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

**FINDING:** No loading berth is required.

3. ***A loading berth shall contain space 10 feet wide, 35 feet long and have a height clearance of 14 feet. Where the vehicles generally used for loading exceed these dimensions, the required length of these berths shall be increased.***

**FINDING:** No loading berth is required.

4. ***If loading space has been provided in connection with an existing use or is added to an existing use, the loading space shall not be eliminated if elimination would result in less space than is required to adequately handle the needs of the particular use.***

**FINDING:** No elimination of a loading space is proposed.

5. ***Off-street parking areas used to fulfill the requirements of DCC Title 18 shall not be used for loading and unloading operations except during periods of the day when not required to take care of parking needs.***

**FINDING:** This criterion is not addressed in the Burden of Proof. Staff notes that off-street parking areas used to fulfill the requirements of DCC Title 18 shall not be used for loading and unloading operations except during periods of the day when not required to take care of parking needs.

Staff recommends the following condition of approval be included in any decision which approves the application:

Parking and Loading/ Unloading

Off-street parking areas used to fulfill the requirements of DCC Title 18 shall not be used for loading and unloading operations except during periods of the day when not required to take care of parking needs.

- 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.**
- 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:** The Burden of Proof states:

A 336 SF tasting room is proposed, and Applicant's proposed winery will have a maximum of 3 employees on the largest working shift for both wine production and the tasting room. Applicant proposes 4 parking spaces for the tasting room and 3 spaces for employees. In total, proposes 9 parking spaces including an ADA space.

Staff notes criterion C. 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.

Staff recommends the following condition of approval be included in any decision which approves the application:

Establishment of Parking

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

**Wine Production**

For wine production, staff 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 winery will employ up to 3 persons.

The total required amount of vehicle parking for wine production is 3 spaces.

### **Tasting Room**

For the tasting room, staff finds the closest applicable parking standard to be an eating or drinking establishment.

#### **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 336 square feet. The applicant also proposes an additional 200 square feet of outdoor seating which results in a total of 536 square feet. Therefore, by staff's calculation, the required parking for commercial use is 6 spaces.

It is unclear to staff what the parking requirement would be for any "winery event" larger than what is proposed as tasting activities. The Burden of Proof offers no details to staff.

Combining both uses on the property, and excluding any count incorporating larger winery events, the required number of parking is 9 spaces. On the submitted site plan, 13 spaces are illustrated. Staff notes that any adjustment in the parking count allocating space for a "winery event" would require new analysis for bicycle parking standards under DCC 18.116.131(A)(1)(a-b) and the landscaping standards of DCC 18.124.070(B)(2)(a-h).

Staff requests the Hearings Officer make specific findings on whether these criteria are met.

#### **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:** The total requirement for off-street parking is calculated as the sum of requirements of all on-site uses computed separately.

- 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:** No joint use of parking facilities is proposed.

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 will 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:** Staff recommends the following condition of approval be included in any decision which approves the application:

Use of Parking Facilities for the Winery

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 winery is incidental and subordinate to the existing farm use. Staff finds the proposed winery 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 winery 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 residential uses are buffered from the proposed parking areas by distance and the cultivated vineyard on the property.

Staff requests the Hearings Officer make specific findings on whether this criterion is met.

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:** The Burden of Proof states:

Applicant proposes that this requirement be included as a condition of approval. Applicant can meet this requirement.

Staff recommends the following condition of approval be included in any decision which approves the application:

#### Parking Area Lighting

Any lighting used to illuminate the off-street parking area shall be so arranged that it will not project light rays directly upon any adjoining property 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:** The Burden of Proof states:

The parking areas are designed so that vehicles will not need to back into a street or right of way.

Staff concurs with the applicant's analysis.

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 proposed use is located outside of an unincorporated community and the Applicant proposes to gravel, grade and water the parking area to mitigate any dust problems for neighboring properties. Because of the low intensity of Applicant's proposed use, Applicant does not expect any significant dust impact. Additionally, Applicant will encourage carpooling and bicycling to Applicant's property, further reducing dust concerns. Accordingly, Applicant's proposed use complies with DCC 18.116.030(F)(4).

Staff requests the Hearings Officer make specific findings on whether this criterion is met and an exception from the paving requirement is granted. Staff also recommends the following condition of approval be included in any decision which approves the application and allows for graveled surfaces:

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 site plan. This includes the individual parking areas as proposed and all service drives which provide access for the winery. **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 (1) access aisle from Bowery lane to the end of the parking areas which appears to facilitate two-way traffic. As noted below, two-way aisles require a minimum width of 24 feet for two-way traffic. As illustrated on the site plan, the aisles widths vary through the parking areas and no dimensions are provided.

Staff requests the Hearings Officer make specific findings on whether this criterion is met.

Staff recommends the following condition of approval be included in any decision which approves the application:

Access Aisles

**Prior to the issuance of building permits**, the property owner shall submit a revised site plan depicting access aisles at a minimum width of 24 feet for all two-way traffic and a minimum width of 12 feet for all one-way traffic.

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, staff 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 proposed service drive connects to Bowery Lane extends to the proposed parking areas and beyond to the employee parking on the east side of the wine storage building. In land use file 247-18-000545-CU/546-SP/811-MA/247-19-000141-A, the Board of County Commissioners found that *an improved 24-foot wide service drive is necessary 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.* As for service drive boundaries being clearly and permanently marked, the burden of proof and the site plan do not demonstrate how the proposal complies with this criterion. No “drive-in” establishment is proposed.

Staff requests the Hearings Officer make specific findings on whether this criterion is met.

Staff recommends the following conditions of approval be included in any decision which approves the application:

#### Service Drive Width

***Prior to the issuance of building permits,*** the property owner shall submit a revised site plan depicting service drives at a minimum width of 24 feet for all two-way access aisles and a minimum width of 12 feet for all one-way access aisles.

#### Service Drive Boundaries

***Prior to the issuance of building permits,*** the property owner shall submit a revised site plan depicting service drive boundaries which are clearly and permanently marked and defined through the use of rails, fences, walls or other barriers or markers.

- 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, staff 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. Staff finds “vision clearance area” became “clear vision area” in 1991 (Ord 91-038) but that this reference was not updated. For this purposed of this decision staff, uses “vision clearance area” and “clear vision area” as the equivalent.

As noted above, the subject property has a required service drive clear vision area located at the intersection of the service drive and Bowery Lane. According to the submitted site plan, other access points are also represented. As noted, the clear vision areas are not depicted on the submitted site plan.

Staff requests the Hearings Officer make specific findings on whether this criterion is met.



Staff recommends the following condition of approval be included in any decision which approves the application:

Clear Vision Areas on the Site Plan

**Prior to the issuance of building permits**, a revised and final site plan shall be submitted to the Planning Division which correctly illustrates the clear vision areas at all access points.

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:** Staff notes 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 Burden of Proof states:

Per DCC 18.116.030, Table 1, access aisles for two-way vehicular travel require a minimum width of 24 feet. Applicant will provide room for two way traffic on the parking lot, and will regulate incoming and exiting traffic to ensure safe access and exit from the property.

The applicant submitted a site plan as a PDF document depicting parking areas. However, the site plan is not set to scale and the parking spaces are not dimensioned. As noted above the service drive is illustrated as 20' in width at the point of connection with Bowery Lane. Other parts of the service drive, and other service drives, are not dimensioned.

Staff requests the Hearings Officer make specific findings on whether these criteria are met.

Staff recommends the following condition of approval be included in any decision which approves the application:

### Off-street Parking Lot Design

**Prior to the issuance of building permits**, a revised and final site plan shall be submitted to the Planning Division which illustrates the parking aisles and spaces and demonstrates compliance with DCC 18.116.030(G)(1-4).

### 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.***
- 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:

Applicant will provide a bike rack on the east parking lot capable of holding 7 bikes as shown on Exhibit D. Applicant will encourage patrons to bike to the property to further regulate traffic and minimize traffic impacts. Accordingly, Applicant's proposed use complies with DCC 18.116.031(A).

As noted above, the proposal includes 13 vehicular parking spaces. Therefore, 2 bicycle parking spaces are required, of which 2 spaces must be sheltered. The applicant has not requested exceptions to the bicycle parking standards. No bicycle parking is depicted on the submitted site plans.

Staff requests the Hearings Officer make specific findings on whether these criteria are met.

Staff recommends the following condition of approval be included in any decision which approves the application:

#### Bicycle Parking Spaces

**Prior to the issuance of building permits**, a revised and final site plan shall be submitted to the Planning Division which illustrates the required sheltered bicycle parking spaces.

#### **2. Special Minimum Standards.**

- a. Multi-Family Residences. Every residential use of four or more dwelling units shall provide at least one bicycle parking space for each unit. In those instances in which the residential complex has no garage, required spaces shall be sheltered.**
- b. Parking Lots. All public and commercial parking lots and parking structures shall provide a minimum of one bicycle parking space for every 10 motor vehicle parking spaces.**
- c. Schools. Schools, both public and private, shall provide one bicycle parking space for every 25 students, half of which shall be sheltered.**
- d. Colleges. One-half of the bicycle parking spaces at colleges, universities and trade schools shall be sheltered facilities.**

**FINDING:** The applicant is not proposing any of the uses listed in subsections (a)-(d). These criteria do not apply.

#### **3. Trade Off with Motor Vehicle Parking Spaces.**

- a. One motor vehicle parking space may be deleted from the required number of spaces in exchange for providing required bicycle parking.**
  - i. Any deleted motor vehicle space beyond the one allowed above shall be replaced with at least one bicycle spaces.**
  - ii. If such additional parking is to be located in the area of the deleted automobile parking space, it must meet all other bicycle parking standards.**
- b. The Hearings Body or Planning Director may authorize additional bicycle parking in exchange for required motor vehicle parking in areas of demonstrated, anticipated, or desired high bicycle use.**

**FINDING:** No trade off with motor vehicle parking is proposed.

#### **4. Calculating number of bicycle spaces.**

- a. *Fractional spaces shall be rounded up to the next whole space.*
- b. *For facilities with multiple uses (such as a commercial center) bicycle-parking requirements shall be calculated by using the total number of motor vehicle spaces required for the entire development.*

**FINDING:** Bicycle parking has been calculated by the rounding up of fractional spaces and accounting for the total number of motor vehicle spaces required for the entire development. Staff notes that the calculations have been made by staff. However, as noted under DCC 18.116.030(D), it is unclear if the proposed parking is adequate for wine-related events.

Staff requests the Hearings Officer make specific findings on whether these criteria are met.

**B. Bicycle Parking Design.**

**1. General Description.**

- a. *Sheltered Parking. Sheltered parking may be provided within a bicycle storage room, bicycle locker, or racks inside a building; in bicycle lockers or racks in an accessory parking structure; underneath an awning, eave, or other overhang; or by other facility as determined by the Hearings Body or Planning Director that protects the bicycle from direct exposure to the elements.*
- b. *Unsheltered parking may be provided by bicycle racks.*

**FINDING:** These criteria are unaddressed by the applicant.

Staff requests the Hearings Officer make specific findings on whether these criteria are met.

**2. Location.**

- a. *Required bicycle parking that is located outdoors shall be located on-site within 50 feet of main entrances and not farther from the entrance than the closest motor vehicle parking space.*
  - i. *Bicycle parking shall be located in areas of greatest use and convenience to bicyclist.*
  - ii. *Such bicycle parking shall have direct access to both the public right of way and to the main entrance of the principal use.*
  - iii. *Bicycle parking shall not impede or create a hazard to pedestrians.*
  - iv. *Parking areas shall be located so as not to conflict with clear vision areas as prescribed in DCC 18.116.020.*

**FINDING:** These criteria are unaddressed by the applicant.

Staff requests the Hearings Officer make specific findings on whether these criteria are met.

- b. *Bicycle parking facilities shall be separated from motor vehicle parking and drive areas by a barrier or sufficient distance to prevent damage to the parked bicycle.*

**FINDING:** This criterion is unaddressed by the applicant.

Staff requests the Hearings Officer make specific findings on whether this criterion is met.

- c. ***Where bicycle parking facilities are not directly visible and obvious from the public right(s) of way, entry and directional signs shall be provided to direct bicyclists for the public right of way to the bicycle parking facility. Directions to sheltered facilities inside a structure may be signed, or supplied by the employer, as appropriate.***

**FINDING:** This criterion is unaddressed by the applicant.

Staff requests the Hearings Officer make specific findings on whether this criterion is met.

- 3. ***Dimensional Standards.***
  - a. ***Each bicycle parking space shall be at least two by six feet with a vertical clearance of seven feet.***
  - b. ***An access aisle of at least five feet wide shall be provided and maintained beside or between each row of bicycle parking.***
  - c. ***Each required bicycle parking space shall be accessible without moving another bicycle.***

**FINDING:** These criteria are unaddressed by the applicant.

Staff requests the Hearings Officer make specific findings on whether these criteria are met.

- 4. ***Surface. The surface of an outdoor parking facility shall be surfaced in the same manner as the motor vehicle parking area or with a minimum of one-inch thickness of aggregate material. This surface will be maintained in a smooth, durable, and well-drained condition.***

**FINDING:** This criterion is unaddressed by the applicant.

Staff requests the Hearings Officer make specific findings on whether this criterion is met.

- 5. ***Security.***
  - a. ***Bicycle parking facilities shall offer security in the form of either a lockable enclosure in which the bicycle can be stored or a stationary object (i.e., a "rack") upon which the bicycle can be locked. Structures that require a user-supplied lock shall accommodate both cables and U-shaped locks and shall permit the frame and both wheels to be secured (removing the front wheel may be necessary). All bicycle racks, lockers, or other facilities shall be permanently anchored to the surface of the ground or to a structure.***

**FINDING:** This criterion is unaddressed by the applicant.

Staff requests the Hearings Officer make specific findings on whether this criterion is met.

- b. Lighting shall be provided in a bicycle parking area so that all facilities are thoroughly illuminated and visible from adjacent sidewalks or motor vehicle parking.***

**FINDING:** This criterion is unaddressed by the applicant.

Staff requests the Hearings Officer make specific findings on whether this criterion is met.

- 6. Other means that provide the above level of bicycle parking may be approved by the Hearings Body or the Planning Director.***

**FINDING:** No other means have been provided by the applicant.

Section 18.116.035, Bicycle Commuter Facilities.

- A. Each commercial or public building having a work force of at least 25 people shall have bicycle commuter facilities consisting of shower(s) and changing rooms(s). For facilities with more than one building (such as a college), bicycle commuter facilities may be located in a central location.***
- B. This provision shall apply to (1) new development requiring off-street parking and (2) 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.***

**FINDING:** Staff notes that no commercial or public building having a work force of at least 25 people exists or is proposed for this site.

## **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.

Staff understands the Board’s findings, cited above, to make clear 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.” Staff 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:

No new buildings are being proposed as part of Applicant’s proposed use. The siting of the tasting room and the winery will not cause any adverse impacts to natural features or to views from neighboring properties. The proposed use will naturally complement existing vineyard uses at the property. Applicant will encourage use of the newly built Hunnel Road



to minimize dust impact from traffic to and from the property. Accordingly, Applicant's proposed use complies with DCC 18.124.060(A).

Staff requests the Hearings Officer make specific findings on whether this criterion is 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:** The Burden of Proof states:

Applicant's proposed use will not impact the existing landscape and existing topography. No clearing of trees or shrubs is proposed as part of Applicant's proposed use. Applicant's entire property has been landscaped: vineyard occupies 3.5 acres of the property, pasture land is approximately 0.5 acres, ponds and water holding areas occupy 0.25 acres, and native land occupies approximately 0.25 acres. All areas immediately surrounding the buildings are fully landscaped and maintained. Accordingly, Applicant's proposed use complies with DCC 18.124.060(B).

Staff requests the Hearings Officer make specific findings on whether this criterion is met.

Staff recommends the following condition of approval be included in any decision which approves the application:

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 residential 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:

Per Exhibit D, Applicant is providing a safe site by providing areas for vehicle turning movements and drives of adequate width for safe vehicle travel, which offers appropriate opportunities for privacy and a transition from public space along Hunnel Road and Bowery Lane to the private spaces on site. Accordingly, Applicant's proposed use complies with DCC 18.124.060(C).

**Safe Environment**

Staff notes this criterion requires demonstration the site is designed to address common safety hazards, including fire safety, and to address any site-specific natural hazards. Staff notes pedestrian, bicycle, and vehicle safety is addressed under sub-sections (E) and (K) of this section.

With regard to fire safety, or other natural hazards, none have been identified on the site. Staff notes that Bend Fire & Rescue were notified of the proposal.

Staff recommends the following condition of approval be included in any decision which approves the application:

Confirmation from Bend Fire & Rescue

**Prior to the issuance of building permits,** Receipt of approval will be provided to the Planning Division from Bend Fire & Rescue that the access and site design for emergency vehicles are acceptable.

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

Deschutes County Health Services, Jeff Freund

-It appears as if this property is supplied drinking water by Avion PSW# 41-00091 Avion is an approved public system, but they may want to check with them to ensure all good to go. If there are other water sources (wells) on the property, they could not be used for public use without going through the approval process. If there is irrigation on the property, may want to check with COI or the irrigation provider and make sure all ok with the new agricultural/commercial use.

-Oregon Department of Agriculture will likely license this facility. However, check with us and ODA as some business models could require licensure from Deschutes County for food service.

Deschutes County Health Services, Eric Mone

Echoing what Jeff said here. I copied ODA staff on this email (Jon and Adam). Their business model appears to be one that ODA would license but if they are selling more glasses of wine and food for immediate consumption than bottles of wine, they may swing our way.

Based upon the comments from Deschutes County Health Services, staff recommends the following conditions of approval:

Use of Private Well

**Prior to the Initiation of Use of the Winery,** the property owners shall have the well, if it will provide any water to the public, reviewed and approved as a Public Water System by either the Oregon Department of Agriculture (ODA) or the Deschutes County Environmental Health Department.

Licensing From Deschutes County Environmental Health Department

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

Oregon Department of Agriculture – Food Safety Program, Jon Harrang

To Whom it May Concern,

Wineries and associated tasting rooms are typically licensed/inspected by ODA Food Safety Program. Lava Terrace Cellars is currently licensed/inspected by ODA. The firm has a warehouse license which enables them to store and sell bottled wine which is produced off-site. Plan review by ODA-FSP is required as the firm expands their range of winery-related activities, operations, and facilities. The firm must comply with 21 CFR 117 for food processing activities (i.e. wine production) and OAR 603 Division 25 for any kind of foodservice operations (wine tasting, etc.)

Please note that OLCC/TTB likely have additional, separate requirements and/or conditions that must be met.

Septic Authorization via Deschutes County is required, along with an adequate supply of potable water before ODA can license/approve any expansion of current operations at this location.

Please contact me if you have any questions or if I may further assist.

Based upon the comments from Deschutes County Environmental Health, staff recommends the following conditions of approval:

Licensing From the Oregon Department of Agriculture

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

Licensing From the Oregon Liquor and Cannabis Commission (OLCC)

***Prior to the Initiation of Use of any Aspect of the Winery***, the property owner shall obtain all necessary permits and approvals from the Oregon Liquor and Cannabis Commission.

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.

Staff requests the Hearings Officer make specific findings on whether the aspect of a safe environment in the criterion is met.

## Transition from Public to Private Space

It is unclear if this aspect of the criterion is satisfied by the applicant's response.

Staff requests the Hearings Officer make specific findings on whether the aspect of appropriate opportunities for privacy and transition from public to private spaces in the criterion is met.

***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. Staff notes that such a review is required prior to the issuance of building permits.

***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:

The parking area is set back from development on adjoining lots with vegetative screening to assure that the use is harmonious with proposed and neighboring properties and structures. Accordingly, Applicant's proposed use complies with DCC 18.124.060(E).

Staff notes this criterion is met where the described facilities provide for a safe and efficient flow of vehicular, bicycle, and pedestrian traffic. In addition, such facilities must be "harmonious with proposed and neighboring buildings and structures". Staff finds this means that such facilities must not significantly adversely impact on-site and/or neighboring proposed and existing buildings and structures.

Staff requests the Hearings Officer make specific findings on whether this criterion is met.

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

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

Applicant's entire property has natural surface drainage outside of building footprints, and

no impervious surfaces exist on the property. All water drains to the pond and grass areas below the buildings. Accordingly, there will be no impact to neighboring properties, streets, or surface and subsurface water quality, and Applicant's proposed use complies with DCC 18.124.060(F).

Staff notes that a letter/report from a licensed professional engineer is required to ensure compliance with this criterion and to demonstrate that the site drainage facilities have been designed in accordance with the Central Oregon Stormwater Manual. Staff requests the Hearings Officer make specific findings on whether this criterion is met.

Staff recommends the following conditions of approval be included in any decision which approves the application:

Surface Drainage Systems - General

- 1) ***Prior to initiation of use and/or issuance of building permits***, the applicant shall provide a statement from a licensed professional engineer that the "surface drainage systems shall be designed to prevent adverse impacts on neighboring properties, streets, or surface and subsurface water quality";
- 2) The property owner shall maintain any such systems in good working condition.

Surface Drainage Systems – Central Oregon Stormwater Manual

***Prior to issuance of the Certificate of Occupancy***, the applicant shall provide certification by a licensed professional engineer that the drainage facilities have been designed and constructed in accordance with the current Central Oregon Stormwater Manual to receive and/or transport at least the design storm (as defined in the Central Oregon Stormwater Manual) for all new surfacing stormwater drainage.

***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:

Applicant is not proposing any new structures or facilities. The tasting room area and the winery will be screened and buffered from neighboring properties by existing vegetation. Accordingly, Applicant's proposed use complies with DCC 18.124.060(G).

Staff requests the Hearings Officer make specific findings on whether this criterion is met.

***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 Burden of Proof states:

Applicant proposes to include this criterion as a condition of approval.

As such, staff recommends the following conditions of approval be included in any decision which approves the application:

#### 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 Burden of Proof states:

Applicant will work to keep traffic at the lowest levels possible during hours of operation. Applicant already contributes to standard road maintenance as needed and required for normal operation. Applicant will operate the tasting room three to four days per week based on a "by appointment or invite only" basis, and expects a maximum of 37 weekday trips, which is based on a worst case scenario analyzing all 800 SF of the existing building for the tasting room. Accordingly, evidence demonstrates that any impact from traffic generated by the tasting room will be minimum. Upon completion of the Hunnel Rd pavement, Applicant anticipates increasing activities at the tasting room, as road access allows. Given's Applicant minimum traffic impact and mitigation measures, Applicant's proposed use complies with DCC 18.124.060(J).

Both the Deschutes County Road Department and the Deschutes County Senior Transportation Planner provided comments on the proposal and are included above. The issues outlined are summarized as:

- Obtaining the appropriate driveway access permits

- Removing the fence and agriculture out of the right-of-way
- Payment of SDCs

Staff requests the Hearings Officer make specific findings on whether these criteria are met.

The Deschutes County Road Department recommends the following conditions of approval to be issued with any approval of the application:

#### Evacuation of the Right of Way

**Prior to the issuance of building permits**, the property owner shall cause for the removal of all private property, including fences, posts, walls, crops, landscaping, and other features, from the existing public right of way for Bowery Lane along the frontage to the subject property.

#### Driveway Access Permits

**Prior to the issuance of building permits**, the property owner shall obtain driveway access permits for all driveway accesses to Bowery Lane for the subject property pursuant to DCC 12.28.050 and 17.48.210(A).

#### Ingress and Egress via Hunnell Road

**At all times, once Hunnell Road construction is complete**, wayfinding or directional messaging provided by the property owner to vendors and patrons of the proposed commercial activities shall direct vendors and patrons to utilize Hunnell Road and the western section of Bowery Lane for ingress and egress to the subject property.

#### 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:** 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 winery is a commercial activity in conjunction with this farm use, and will be incidental and subordinate to the farm use. For these reasons, staff 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.***

**FINDING:** The Burden of Proof provides the following response to DCC 18.124.070(B)(1)(a-b) above and DCC 18.124.070(B)(2)(a-h) below:

As shown on the Aerial Photograph submitted with this Application, the entire property is already landscaped. No clearing of trees or shrubs is proposed as part of Applicant's proposed use. Applicant's entire property has been landscaped: vineyard occupies (or will occupy) about 4 acres of the property, pasture land is approximately 0.5 acres, ponds and water holding areas occupy 0.25 acres, and native land occupies approximately 0.25 acres. All areas immediately surrounding the buildings are fully landscaped and maintained. Accordingly, Applicant's proposed use complies with DCC 18.124.070(B)

Staff notes that, unlike section (B)(1), this criterion requires "defined landscaping". Staff finds that "defined landscaping" does not have a definition in the code. Merriam-Webster's dictionary definition of "defined"<sup>5</sup> is "to show the shape, outline, or edge of (something) very clearly". Thus this criterion cannot be met by un-differentiated natural landscaping. It is unclear to staff whether this criterion can be satisfied by the existing vegetation of the farm use.

The submitted application materials do not include defined landscaping area(s) of 325 square feet as required for the 13 proposed parking spaces.

Staff requests the Hearings Officer make specific findings on whether this criterion is met.

- 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.***

**FINDING:** The proposed parking areas are not adjacent to a roadway.

- 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.***

<sup>5</sup> <https://www.merriam-webster.com/dictionary/defined>

- 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:** As noted above under DCC 18.124.070(B)(2)(a), it is unclear whether the existing vegetation from the farm use can be used to satisfy this requirement.

Staff requests the Hearings Officer make specific findings on whether these criteria are met.

**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:** To the extent bicycle parking is required under this approval, the number and type of bicycle parking facilities are described above, under findings for DCC 18.116.031 and 18.116.035. The location and design of bicycle parking facilities are not indicated on the site plan submitted with this application.

**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:** Staff notes 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 buildings in use will be the Wine Tasting Building and Wine Storage 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. Staff notes that no pedestrian walkways or bicycle lanes currently exist on Bowery Lane and efforts to connect the Wine Tasting Building, or other locations on site, would be impractical. The Wine Tasting Building is existing, and as sited, will concentrate activity at and around the structure. Internal pedestrian circulation, safety, and ADA requirements are addressed above.

**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.

Section 18.124.080, Other Conditions.

***The Planning Director or Hearings Body may require the following in addition to the minimum standards of DCC Title 18 as a condition for site plan approval.***

- A. ***An increase in the required yards.***
- B. ***Additional off street parking.***
- C. ***Screening of the proposed use by a fence or landscaping or combination thereof.***
- D. ***Limitations on the size, type, location, orientation and number of lights.***
- E. ***Limitations on the number and location of curb cuts.***
- F. ***Dedication of land for the creation or enlargement of streets where the existing street system will be impacted by or is inadequate to handle the additional burden caused by the proposed use.***
- G. ***Improvement, including but not limited to paving, curbing, installation of traffic signals and constructing sidewalks or the street system that serves the proposed use where the existing street system will be burdened by the proposed use.***

- H. Improvement or enlargement of utilities serving the proposed use where the existing utilities system will be burdened by the proposed use. Improvements may include, but shall not be limited to, extension of utility facilities to serve the proposed use and installation of fire hydrants.**
- I. Landscaping of the site.**
- J. Traffic Impact Study as identified in Title 18.116.310.**
- K. Any other limitations or conditions that are considered necessary to achieve the purposes of DCC Title 18.**

**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, staff notes such conditions are authorized by this section.

## **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;**
  - 2. Adequacy of transportation access to the site; and**
  - 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 subject property is about 5.5 acres in size is developed with a vineyard and several buildings. The property is currently used residential purposes and a vineyard. Applicant is proposing to operate a 336 SF tasting room near the center of the parcel thus providing a buffer between abutting properties and the commercial activity. Applicant also proposes to convert an existing barn into a small-scale wine production operation, seeking approval to produce up to 2,000 cases of wine annually and host wine-related events on the property, including wine tastings, wine dinners, and other wine marketing events directly related to the sale and promotion of wine produced from the onsite vineyard in the tasting room. See Exhibit C (Proposed Site Plan).

Applicant will only hold wine tastings and other wine-related events three to four days per week, by appointment or invite only during the hours of 12 to 7 p.m. Applicant anticipates an average of 6-8 people per tasting appointment time. Access to the property via Hunnel Road and Bowery Lane is adequate, as shown on Exhibit D. The natural and physical features of the site include mature trees and vegetation. There are no Goal 5 inventoried natural resources on the site that merit protection. There are no specific natural hazards on the property. Because of the existing vineyard and winery and the minimum impact on neighboring properties, Applicant's proposed use complies with DCC 18.128.015(A).

For the purpose of confirming compliance with DCC 18.128.015(A)(1-3), staff notes that each criteria is addressed independently.

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

***Site***

Staff requests the Hearings Officer make specific findings on whether the aspect of this criterion is met.

***Design***

Staff requests the Hearings Officer make specific findings on whether the aspect of this criterion is met.

***Operating Characteristics***

Staff requests the Hearings Officer make specific findings on whether this criterion is met.

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

**FINDING:** Transportation access is provided to the site by Bowery Lane. Comments from the Deschutes County Road Department and Deschutes County Transportation Planner identify issue

areas with the proposal and these are included above under DCC 18.124.060(K). Comments from the general public identified transportation infrastructure deficiencies. Staff notes that the Oregon Department of Transportation (ODOT) was sent a request for comment on the proposal and any concerns pertaining to vehicle access from Highway 97. No comment has been received from ODOT to date.

Staff requests the Hearings Officer make specific findings on whether this criterion is met.

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

**FINDING:** The site contains undulating terrain and presents no topographical constraints on the proposed use. A site visit was conducted on September 27, 2023. 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.

Comments from agencies and the general public did not identify any site unsuitability due to general topography, or natural hazards.

Staff requests the Hearings Officer make specific findings on whether this criterion is met.

**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:

The area surrounding the subject property consists mainly of large acre residential properties, farm-zoned parcels, and a cemetery. Most surrounding properties are zoned Multiple Use Agricultural. Some properties to the south are zoned "Urbanizable Area" or "Commercial General." Compatibility concerns include noise, odor, lights, traffic, property values, visual impacts, waste/wastewater and water demand. Only the impacts associated with the tasting room are addressed.

Noise: Applicant's proposed use will be limited by its hours of operations and number of guests, and Applicant does not expect the tasting room would generate any detectable off-site noise. Outside seating area may have soft music played in the background, which would not be noticeable from neighboring properties. The proposed winery will be limited to 2,000 cases a year and production activities will take place during the day. Any noise is likely to be lower and less dominant than the noise of Hwy 97.

Odor: Applicant does not expect any odor impact from the proposed tasting room activities. Most of the wine production activities will be located indoors and will generate any odor impact for neighboring properties.

Lights: The proposed conditions of approval will ensure that any off-site light impacts will not be significant. Applicant proposes to install 8 outdoor lights, no higher than 10 feet from the ground. Soft string lighting will be added to the patio area and will blend in the natural setting. Applicant also proposes 3 main lights in front of the tasting room for access, and 2 main lights in parking area for night access.

Traffic: Applicant will only hold tastings and other wine-related events three to four days per week, by appointment or invite only during the hours, from 12 to 7 p.m. As such Applicant only expects a maximum of 37 vehicles per day, which is a worst case scenario.

Property Value: Applicant's proposed use will not have any impact on neighboring properties' value.

Visual Impacts: No new buildings or structures are being proposed as part of Applicant's proposed use. Existing vineyard and landscape will prevent any visual impacts from the proposed use to neighboring properties.

Water Demand: Applicant's existing water supplies are adequate to accommodate the proposed use, estimated, on average, at 300 gallons per day.

Waste/Waster [sic]: Applicant will upgrade to the extent necessary the existing on-site wastewater system to accommodate the proposed use. Applicant does not expect any significant waste from the proposed use.

Accordingly, Applicant's proposed use complies with DCC 18.128.015(B).

Staff notes this this criterion requires that the proposed use must be compatible with existing and projected uses on surrounding properties. Staff finds "surrounding properties" are those that might be significantly adversely impacted by their proximity to the proposed use. Existing uses on surrounding properties include residential uses and small-scale farm uses.

Projected uses on surrounding properties are those that have received approvals or are allowed outright and are typical of development of the areas. No land use approvals are identified in the records for those properties immediately adjacent to the subject property. Staff finds existing uses are a reasonable representation of uses allowed in the underlying zones of surrounding properties. For this reason, staff finds projected uses are likely to be similar to existing ones.

For the purpose of confirming compliance with DCC 18.128.015(B), staff notes that each criterion is addressed independently.

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

Staff notes 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.



Staff requests the Hearings Officer make specific findings on whether this aspect of the criterion is met.

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

Staff notes the proposed use would be unsuitable if access to the site would significantly adversely impact existing and projected uses on surrounding properties. As outlined above issues were raised from the Deschutes County Road Department pertaining to the right-of way area on Bowerly Lane, driveway permitting and access.

Staff requests the Hearings Officer make specific findings on whether this aspect of the criterion is met.

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

Staff notes the proposed use would be unsuitable if it significantly adversely impacted off-site topography, natural hazards, or natural resource values. Natural hazards on surrounding properties include wildfire. Natural resource values on surrounding properties include trees and native vegetation.

Staff requests the Hearings Officer make specific findings on whether this aspect of the criterion is met.

***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, Staff 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, staff notes 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 a transportation system development charge (SDC) rate of \$4,757 per p.m. peak hour trip. The ITE indicates Winery (LU 970) generates 7.31 p.m. peak hour trips per 1,000 square feet and thus would result in 5.84 p.m. peak hour trips ( $7.31 \times 0.800$ ). Warehouse (LU 150) generates 0.18 p.m. peak hour trips per 1,000 square feet, and thus would result in 0.31 p.m. peak hour trips ( $0.18 \times 1.750$ ). Combined, the Wine Tasting Room and the Warehouse would produce 6.1 p.m. peak hour trips ( $5.84 + 0.31$ ). The resulting SDC is \$29,018 ( $\$4,757 \times 6.1$ ). 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 PROVIDED SDC AMOUNT IS ONLY VALID UNTIL JUNE 30, 2022. 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.**

**ON JULY 1, 2022, THE SDC RATE GOES UP TO \$5,080 PER P.M. PEAK HOUR TRIP AND THE SDC WOULD INCREASE TO \$30,988 ( $6.1 \times \$5,080$ ). THAT SDC AMOUNT WILL BE GOOD THROUGH JUNE 30, 2022.**

Staff notes that the Senior Transportation Planner sent an updated SDC calculation to planning staff in an email on September 5, 2023. The email states:

...

**Additionally, the SDC amount has now increased to \$5,603 per p.m. peak hour trip, which bumps the SDC up to \$34,178 (\$5,603 X 6.1). That amount is valid until June 30, 2024 as the County's SDC rate is indexed and resets every July 1.**

#### **IV. CONCLUSION AND RECOMMENDATION:**

Based upon the preceding analysis, staff believes that additional information is necessary to determine if the property owner can meet all of the required approval criteria. Staff recommends the Hearings Officer review the issues raised in the Staff Report specifically:

##### **Title 22 - Procedures Ordinance**

- Whether application processing, pertaining to the signature of the property owner, comply with the standards of DCC 22.08.010(A&B).
- Whether application processing, pertaining to mailed notice, comply with the standards of DCC 22.24.030(A).
- Whether application processing, pertaining to land use action sign posting, comply with the standards of DCC 22.24.030(B).

##### **Title 18 – Zoning Ordinance**

###### Commercial Activity in Conjunction with Farm Use

- Whether there is a farm use and compliance with DCC 18.32.030(C).
- Whether the commercial activity is associated with that farm use on the parcel and if there is compliance with DCC 18.32.030(C).
- Whether the farm products are produced in Deschutes County, or in an adjoining county, and if there is compliance with DCC 18.32.030(C).

###### Off-Street Parking

- Whether the proposal meets the clear vision requirements of DCC 18.116.020(A&B).
- Whether the proposal meets the parking requirements of DCC 18.116.030(D)(9).
- Whether the proposal meets the parking screening requirements of DCC 18.116.030(F)(1).
- Whether the proposal meets the requirements for the paving exception of DCC 18.116.030(F)(4)(a-c).
- Whether the proposal meets the access aisles requirements of DCC 18.116.030(F)(5).

- Whether the proposal meets the service drive safety and boundary requirements of DCC 18.116.030(F)(6).
- Whether the proposal meets the service drive clear vision requirements of DCC 18.116.030(F)(7).
- Whether the proposal meets the off-street parking lot design requirements of DCC 18.116.030(G)(1-4).

#### Bicycle Parking

- Whether the proposal meets the bicycle parking standards of DCC 18.116.031(A)(1)(a-c).
- Whether the proposal meets the bicycle parking standards of DCC 18.116.031(A)(2)(b).
- Whether the proposal meets the bicycle parking standards of DCC 18.116.031(A)(4)(a & b).
- Whether the proposal meets the bicycle parking standards of DCC 18.116.031(B)(1)(a & b).
- Whether the proposal meets the bicycle parking standards of DCC 18.116.031(B)(2)(a)(i-iv).
- Whether the proposal meets the bicycle parking standards of DCC 18.116.031(B)(2)(a)(i-iv).
- Whether the proposal meets the bicycle parking standards of DCC 18.116.031(B)(2)(b).
- Whether the proposal meets the bicycle parking standards of DCC 18.116.031(B)(2)(c).
- Whether the proposal meets the bicycle parking standards of DCC 18.116.031(B)(3)(a-c).
- Whether the proposal meets the bicycle parking standards of DCC 18.116.031(B)(4).
- Whether the proposal meets the bicycle parking standards of DCC 18.116.031(B)(5)(a).
- Whether the proposal meets the bicycle parking standards of DCC 18.116.031(B)(5)(b).

#### Site Plan Review

- Whether the proposal meets the Site Plan Review standards of DCC 18.124.060(A).
- Whether the proposal meets the Site Plan Review standards of DCC 18.124.060(B).
- Whether the proposal meets the safe environment standard of DCC 18.124.060(C).

- Whether the proposal meets the appropriate opportunities for privacy and transition from public to private spaces standard of DCC 18.124.060(C).
- Whether the proposal meets the Site Plan Review standards of DCC 18.124.060(E).
- Whether the proposal meets the Site Plan Review standards of DCC 18.124.060(F).
- Whether the proposal meets the Site Plan Review standards of DCC 18.124.060(G).
- Whether the proposal meets the Site Plan Review standards of DCC 18.124.070(B)(2)(a).
- Whether the proposal meets the Site Plan Review standards of DCC 18.124.070(B)(2)(d-h).

#### Conditional Uses

- Whether the proposal meets the Conditional Use site suitability standards of DCC 18.128.015(A)(1)
- Whether the proposal meets the Conditional Use site suitability standards of DCC 18.128.015(A)(2)
- Whether the proposal meets the Conditional Use suitability standards of DCC 18.128.015(A)(3)
- Whether the proposal meets the Conditional Use suitability standards of DCC 18.128.015(B)

Staff recommends the following conditions of any approval:

#### **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.** General Division Permitting  
The property owner shall obtain any necessary permits from the Deschutes County Building Division and Onsite Wastewater Division.
- C.** Winery Signage  
All signs on the property for the winery shall comply with Deschutes County Sign Code, Title 15. The property owner shall obtain all required permits for signage pursuant to Title 15.

- D.** Code Compliance for Case No. 247-21-000164-CE: ***Prior to any initiation of use***, the unpermitted winery on the property shall receive all required permits from Deschutes County for the winery and any related construction. The applicant shall provide all necessary receipts of approval/ closure to the Planning Division to demonstrate compliance.
- E.** Winery Hours of Operation  
***At all times***, the property owner shall observe the following hours of operation:
- Summer Hours (Memorial Day Weekend – September 30th): by appointment or invite only, 3 to 4 days per week during the hours of 12 to 7 p.m.
  - Winter Hours (October 1st – January 1st): by appointment or invite only, on Friday and Saturdays with additional appointments on holiday weekends (Thanksgiving, Christmas, New Year's) during the hours of 12 to 7 pm.
  - Closed (January 2nd – Second week of March).
  - Spring Hours (Second week of March – First week of April): by appointment or invite only, 3 to 4 days per week for the traditional school spring break for Oregon, California, and Washington (tourist season) during the hours of 12 to 7 pm.
- F.** Building and Structure Height  
 No building or structure shall be erected or enlarged to exceed 30 feet in height, except as allowed by DCC 18.120.040
- G.** Front Yard Setback for Wine Storage Building  
***Prior to the issuance of building permits***, the property owner will submit confirmation that the Wine Storage Building meets the front yard setback requirements.
- H.** Solar Setbacks  
 As a condition of approval, structural setbacks from any north lot line shall meet the solar setback requirements in DCC 18.116.180.
- I.** 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.
- J.** Clear Vision Areas on the Site Plan  
***Prior to the issuance of building permits***, a revised and final site plan shall be submitted to the Planning Division which correctly illustrates the clear vision areas at all access points.
- K.** Clear Vision Area  
 The clear vision areas located at the intersection of the service drives/driveways and Bowery Lane, as well as other points of access, shall be maintained in accordance with DCC 18.116.020(A).

- L.** Available Parking  
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.
- M.** Parking and Loading/ Unloading  
Off-street parking areas used to fulfill the requirements of DCC Title 18 shall not be used for loading and unloading operations except during periods of the day when not required to take care of parking needs.
- N.** Establishment of Parking  
Required parking facilities shall be provided prior to or concurrently with construction and/or initiation of the proposed use.
- O.** Use of Parking Facilities for the Winery  
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.
- P.** Parking Area Lighting  
Any lighting used to illuminate the off-street parking area shall be so arranged that it will not project light rays directly upon any adjoining property in a residential zone.
- Q.** 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 site plan. This includes the individual parking areas as proposed and all service drives which provide access for the winery. **At all times**, the graveled surfaces shall be maintained in a manner which will not create dust problems for neighboring properties.
- R.** Access Aisles  
**Prior to the issuance of building permits**, the property owner shall submit a revised site plan depicting access aisles at a minimum width of 24 feet for all two-way traffic and a minimum width of 12 feet for all one-way traffic.
- S.** Service Drive Width  
**Prior to the issuance of building permits**, the property owner shall submit a revised site plan depicting service drives at a minimum width of 24 feet for all two-way access aisles and a minimum width of 12 feet for all one-way access aisles.
- T.** Service Drive Boundaries  
**Prior to the issuance of building permits**, the property owner shall submit a revised site plan depicting service drive boundaries which are clearly and permanently marked and defined through the use of rails, fences, walls or other barriers or markers.

- U. Clear Vision Areas on the Site Plan  
**Prior to the issuance of building permits**, a revised and final site plan shall be submitted to the Planning Division which correctly illustrates the clear vision areas at all access points.
- V. Off-street Parking Lot Design  
**Prior to the issuance of building permits**, a revised and final site plan shall be submitted to the Planning Division which illustrates the parking aisles and spaces and demonstrates compliance with DCC 18.116.030(G)(1-4).
- W. Bicycle Parking Spaces  
**Prior to the issuance of building permits**, a revised and final site plan shall be submitted to the Planning Division which illustrates the required sheltered bicycle parking spaces.
- X. 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 residential use) or such change/removal is approved by future land use approvals.
- Y. Confirmation from Bend Fire & Rescue  
**Prior to the issuance of building permits**, Receipt of approval will be provided to the Planning Division from Bend Fire & Rescue that the access and site design for emergency vehicles are acceptable.
- Z. Use of Private Well  
**Prior to the Initiation of Use of the Winery**, the property owners shall have the well, if it will provide any water to the public, reviewed and approved as a Public Water System by either the Oregon Department of Agriculture (ODA) or the Deschutes County Environmental Health Department
- 1. Licensing From Deschutes County Environmental Health Department  
**Prior to the Initiation of Use of the Winery**, the property owner shall obtain all necessary permits from the Deschutes County Environmental Health Department.
- 2. Licensing From the Oregon Department of Agriculture  
**Prior to the Initiation of Use of any Aspect of the Winery**, the property owner shall obtain all necessary permits and approvals from the Oregon Department of Agriculture Food Safety Program.
- 3. Licensing From the Oregon Liquor and Cannabis Commission (OLCC)  
**Prior to the Initiation of Use of any Aspect of the Winery**, the property owner shall obtain all necessary permits and approvals from the Oregon Liquor and Cannabis Commission.
- 4. Licensing From the US Alcohol and Tobacco Tax and Trade Bureau (TTB)  
**Prior to the Initiation of Use of any Aspect of the Winery**, the property owner shall obtain all necessary permits and approvals from the US Alcohol and Tobacco Tax and Trade Bureau.



5. Surface Drainage Systems - General

- 1) **Prior to initiation of use and/or issuance of building permits**, the applicant shall provide a statement from a licensed professional engineer that the "surface drainage systems shall be designed to prevent adverse impacts on neighboring properties, streets, or surface and subsurface water quality";
- 2) The property owner shall maintain any such systems in good working condition.

6. Surface Drainage Systems – Central Oregon Stormwater Manual

**Prior to issuance of the Certificate of Occupancy**, the applicant shall provide certification by a licensed professional engineer that the drainage facilities have been designed and constructed in accordance with the current Central Oregon Stormwater Manual to receive and/or transport at least the design storm (as defined in the Central Oregon Stormwater Manual) for all new surfacing stormwater drainage.

7. Exterior Lighting

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

8. Evacuation of the Right of Way

**Prior to the issuance of building permits**, the property owner shall cause for the removal of all private property, including fences, posts, walls, crops, landscaping, and other features, from the existing public right of way for Bowery Lane along the frontage to the subject property.

9. Driveway Access Permits

**Prior to the issuance of building permits**, the property owner shall obtain driveway access permits for all driveway accesses to Bowery Lane for the subject property pursuant to DCC 12.28.050 and 17.48.210(A).

10. Ingress and Egress via Hunnell Road

**At all times, once Hunnell Road construction is complete**, wayfinding or directional messaging provided by the property owner to vendors and patrons of the proposed commercial activities shall direct vendors and patrons to utilize Hunnell Road and the western section of Bowery Lane for ingress and egress to the subject property.

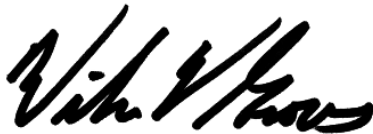
**V. DURATION OF APPROVAL.**

Staff recommends the Hearings Officer include the following statement as part of any approval.

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 of mailing, unless appealed by a party of interest.

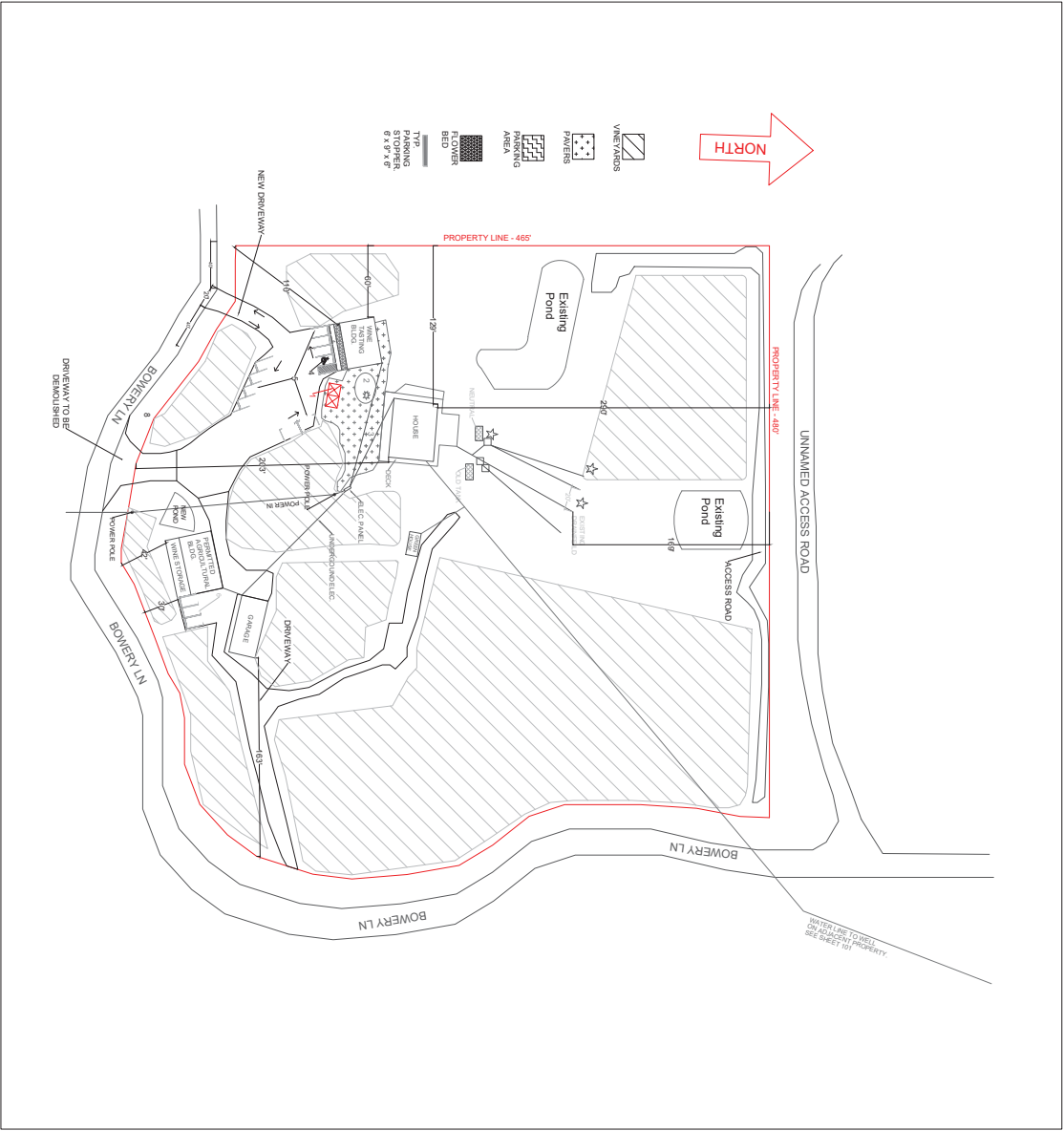
**DESCHUTES COUNTY PLANNING DIVISION**

Written by: Nathaniel Miller, AICP, Associate Planner



Reviewed by: Will Groves, Planning Manager

**Attachment A – Site Plan**



100 SITE PLAN  
SCALE 1/4" = 1'

General Notes

1. OUTDOOR LTC PATIO & SEATING WITH TENTS. TOTAL 200 SQUARE FOOT AREA CALCULATED IN PARKING

2. FLOWER BED AND LARGE TREE

3. PRIVATE PATIO SPACE REQUIRED

4. ADA ACCESSIBLE PARKING SPACE REQUIRED TEN (10) VISITOR PARKING SPACES

6. REQUIRED THREE (3) EMPLOYEE PARKING SPACES

7. FLOWER BED BEHIND SIDEWALK

8. AREA SURROUNDING DRIVEWAY: MULCH AND DIRT. NO VISUAL OBSTACLES

Print Name and Address

No.

Revised/Issue

Date

Print Name and Address

BARKER  
20520 BOWERY LN  
BEND, OR. 97701

Project Sheet

Date

6/19/2023

Scale

As Noted

100

