

**BEFORE THE PLANNING COMMISSION**

**Planning Department File No. 2023-02-017**

**CONDITIONAL USE APPLICATION  
FOR  
COMMERCIAL ACTIVITY IN CONJUNCTION WITH FARM USE**

Planning Commission Meeting Dates: March 23, 2023 and April 27, 2023

- 1. APPLICANT:** Partners Produce, Inc.  
2176 NE 21<sup>st</sup> Avenue  
Payette, Idaho 83661
- 2. OWNER OF RECORD:** Rodriguez Farm Holdings, LLC  
719 Morgan Avenue  
Ontario, Oregon 97914
- 3. PROPOSED ACTION:** Conditional use approval for commercial activity in conjunction with farm use for the purposes of operating an evaporation pond (having two sections) for onion wash water.
- 4. PROPERTY IDENTIFICATION:** Tax Lot 400, T18S, R46E, Sec. 11; Assessors Map 18S46E11; Malheur County Reference #7477.
- 5. PROPERTY LOCATION AND DIRECTIONS:** Heading west on SW 4<sup>th</sup> Avenue in Ontario, continue across the Yturri Beltline. SW 4<sup>th</sup> Avenue becomes Sugar Avenue. Property is approximately 2.7 miles from the beltline.
- 6. ZONING:** Exclusive Farm Use (C-A1).
- 7. PARCEL SIZE:** The parcel is 78.68 acres.
- 8. PARCEL USE:** Parcel is currently being used as farmland.
- 9. SURROUNDING USE:** The entire property is surrounded by farmland.
- 10. ACCESS:** Sugar Avenue. (Exhibit 3)
- 11. SANITATION REQUIREMENTS:** All required Oregon Department of Environmental Quality permits will be required.
- 12. FIRE PROTECTION:** The parcel is located within the Ontario Rural Fire Protection District (Exhibit 2).
- 13. NATURAL HAZARDS:** The majority of the development site is located within the

special flood hazard area. No other natural hazards have been identified.

- 14. WATER RIGHTS:** The commercial use would have a water right exemption if daily water usage is below 5,000 gallons. If the daily water usage goes above 5,000 gallons per day, then a commercial water right must be obtained.
- 15. SOIL TYPE:** The soils on the property are predominately class IV; a small portion of the project site is located on class III soils.
- 16. ZONING HISTORY:** A dwelling in conjunction with farm use was constructed on the parcel in 1940. No other zoning information is known.

#### **GENERAL CONDITIONAL USE CRITERIA**

**MCC 6-6-7 - GENERAL CRITERIA TO EVALUATE SUITABILITY:** In considering the suitability of proposed conditional uses, the Planning Commission shall base its decision upon the following criteria:

- A. Comprehensive Plan goals and policies, as applicable.
- B. Specific plan recommendations

**Finding: Malheur County Code does not have specific plan recommendations for a facility used for commercial application in conjunction with farm use.**

- C. Existing development and viewpoints of property owners in the surrounding area.

**Finding: Letter notice was sent to adjoining landowners on March 3, 2023 and published in the Argus Observer on March 1, 2023. No comments were received.**

- D. Availability of services and utilities.

#### **Findings:**

**ROADS:** The plan is to direct traffic to this facility by way of Sugar Avenue. The approach will have adequate visibility in both directions. The Rural Road Assessment District No. 3 has no objections to this application (Exhibit 3) as long as a full asphalt apron be added to the existing approach that ties into Sugar Avenue.

**FIRE & POLICE PROTECTION:** The pond will be located within the Ontario Rural Fire District. All driveways and facilities will comply with current fire and safety regulations (Exhibit 2).

**SEWER & WATER:** The facility will not require sewer or water services. The proposal is for evaporation ponds that services an onion packaging and

processing facility. These ponds will also be required to have the correct DEQ permits. Pursuant to all applicable Oregon Water Resources regulations, commercial water rights will be obtained as necessary.

**ELECTRICAL & TELEPHONE:** Electrical and telephone are currently available onsite. No telephone will be needed at this time, but electrical will be used to support the aeration process if required.

**SOLID WASTE DISPOSAL:** Solids generated from the evaporation ponds will be laboratory tested for land application compatibility. Compatible solids would be land applied or others hauled to approved local landfill.

- E. The effect of the proposed use on the stability of the community's social and economic characteristics.

**Finding:** This facility would allow for the continued operation of Partners Produce, Inc. which employs 120-150 workers and marketing for 20-35 local onion growers, largely from Malheur County.

- F. It does not interfere with traditional fish and wildlife use of habitats determined critical or sensitive in the Fish and Wildlife Habitat Protection Plan for Malheur County.

**Finding:** The pond will be fenced to keep potential wildlife out of the pond system. Some birds could occasionally land and enter the system.

- G. General Criteria

1. Increasing setbacks of structures to reduce possibilities of overshadowing adjoining property, mosquito, noise, odor or night lighting nuisances.

**Finding:** The pond will be set back 100' from a small existing irrigation water delivery canal to the south. A portable aeration system (bubblers) will be used to control odors on an as needed basis.

Mosquito abatement measures will be taken as required by Malheur County Vector Control District. Power will be brought in to operate the portable bubbler. The closest existing residence besides the home on the proposed parcel is over 2,400 feet away.

2. Landscaping improvements for the visual benefits of the subject site and for the improved appearance of the neighborhood and County.

**Finding:** The pond system is located at least 2,000 feet from Sugar Avenue. This will make any landscaping improvements unnecessary and nonbeneficial.

3. Location and size of driveway access points and right-of-way widening and improvement for present and future traffic circulation and safety.

**Finding: The farm road will be accessed off of Sugar Avenue on the east site of the farm tract. This access will consist of rock and gravel surface the entire loop onsite in an effort to limit off site tracking. The service road will be 20' wide with designed turn around to support fire apparatus.**

4. Visual screening of outdoor waste and storage areas.

**Finding: The proposed development is for an evaporation pond divided into two sections for purposes of evaporation. There will be berms surrounding the treatment ponds. No other screening is proposed.**

5. Control and focusing of outdoor lighting to avoid glare being directed beyond property limits.

**Finding: No lighting will be provided at the facility.**

6. Special criteria listed below, as applicable:

H. Allowance of Certain Uses: A use allowed under Section 6-3A-3 of this Title (the Malheur County Zoning Code) shall be approved only where it is found that the use will not:

1. Force a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest use; or
2. Significantly increase cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use. (Ord. 86, 12-7-1993)

**Finding: Surrounding lands produce forage crops, row crops or pasture. There will be no impacts to surrounding agricultural lands. The evaporation ponds allow local growers to expedite their onions to market which benefits not only Rodriguez Farms, LLC and other local farmers, but the end use customers that benefit from the washed product.**

## **OTHER FINDINGS OF FACT**

The applicant has submitted additional Findings of fact in the conditional use application.

## **APPLICABLE CASE LAW**

Craven v. Jackson County, 308 Or. 281, 779 Pd2d 1011 (1989): The foregoing decision was rendered by the Oregon Supreme Court. In *Craven*, Jackson County Planning and Zoning Board had approved a property owner's conditional use permit as being consistent with the county's

acknowledged comprehensive plan and statute. The property at issue was zoned exclusive farm use (EFU) and the owner was planting a vineyard on the property. The vineyard qualified as “farm use” under the zoning ordinance establishing the county’s EFU zone. The owner of the property proposed building a winery and retail tasting room on a portion of this EFU zoned property and submitted an application for a conditional use permit. The county granted the conditional use permit as being consistent with the county’s comprehensive plan and related statutes. A neighbor appealed the county’s decision to the Oregon Land Use Board of Appeals (“Board”) which upheld the county’s decision to grant the conditional use permit. The neighbor then appealed to the Oregon Court of Appeals which affirmed the Board’s decision. The Oregon Supreme Court thereafter affirmed the Court of Appeals’ decision and held that “when interpreting and applying the statutes in effect at the time of the property owner’s application for a conditional use permit, the local land use agency or the board could reasonably have concluded, based on the statutes, that the vineyard was farm use and that the winery and tasting room were either farm use or commercial activity in conjunction with farm use.” The Oregon Supreme Court found that a winery and the relating retail activity were commercial activities “in conjunction with farm use,” and were therefore lawful conditional uses of the land.

Part of this case was determining whether the retail activity of the winery met the definition of commercial activities “in conjunction with farm use,” within the meaning of ORS 215.283(2)(a). It was determined, and now largely held, that commercial activities in conjunction with farm use in areas zoned for exclusive farm use, “...must enhance farming enterprises of the local agricultural community to which exclusive farm use land hosting that commercial activity relates.” *Id.* at 289. Additionally, “...the commercial and agricultural activities must occur together in the local community to satisfy the statute.” *Id.* The Court found that not only will the winery and related tasting room and retail enhance the owner’s agricultural activities but the “wine production will provide a local market for grapes of other growers in the area, assisting with their agricultural efforts.” *Id.* In *Crane* the court agreed with the prior decisions that the winery and associated tasting and retail were a benefit to not only the owner of the property, but the agricultural community to which the commercial activity was located.

In summary, the commercial use must be either exclusively or primarily a customer or supplier of farm uses and such activities must either enhance the farming enterprises in the local agricultural community or occur together with agricultural activities in the local community.

**FINDING: The applicant operates a packing facility located just north of the City of Payette, Idaho. Their primary business is processing onions that are primarily grown in Malheur County, Oregon and the local farming community. Part of the process is washing the field run onions prior to further processing and packaging. The onion washing generates between 3.5-4.0 million gallons of wash wastewater annually. The current disposal of the wash wastewater is trucking it to wastewater evaporation ponds operating on the Clay Peak Landfill property located in northeast Payette County, Idaho. The volume of wastewater that this location is willing and/or able to receive in the future is uncertain and there are plans to reduce and potentially phase out the processing of wastewater from Partner’s Produce, Inc.**

Although, it would be typical that the County would approve both the processing plant and the wastewater evaporation ponds together, this exclusive relationship isn’t necessary. The

trucking and disposal of wastewater from a packing/processing operation of onions is a commercial use that is exclusive to the agricultural use of growing onions including the “preparation, storage and disposal by marketing or otherwise of the products or by-products raised on such land for human or animal use” (ORS 215.203(2)).

Further, the construction of the evaporation ponds will enhance the farming enterprise of the local agricultural community by providing a necessary replacement of the location to dispose of the wastewater generated when preparing the onions for market, which was necessary when Clay Peak Landfill notified the Applicant that they would either no longer accept the facilities effluent or reduce the flow they are willing to accept.

Therefore, this activity does meet the definition of a “commercial activity in conjunction with farm use.”

## **CONDITIONS OF APPROVAL**

### **1. PREREQUISITE:**

- a. All applicable federal, state, and local permits must be obtained.
- b. A floodplain development permit must be obtained from Planning and Zoning.
- c. All prerequisite conditions must be met prior to the issuance of a zoning permit and the continuation of construction.

### **2. PERFORMANCE STANDARDS:**

- a. Adequate firebreaks shall be constructed and maintained to minimize danger from potential wildfire and the access road shall be brought up to the International Fire Code standards.
- b. The driveway must be constructed to meet the requirements of the Ontario Rural Fire Protection District (Exhibit 2).
- c. A full width asphalt apron must be added to the existing approach that ties into Sugar Avenue at a minimum of 20’ in length from the road edge at a 2” compacted minimum (Exhibit 3)
- d. Must follow the recommendations of the Malheur County Vector Control District.
- e. Must provide and maintain leakage detection.
- f. Must follow all Oregon Department of Environmental Quality permitting requirements.
- g. Authorization of this conditional use shall be void after two (2) years unless

substantial construction has taken place.

- h. Must maintain compliance with Plan of Operations submitted into the record during the April 27, 2023 hearing by Larry D. Hinton, P.E., of CK3, LLC

### CONCLUSION

Based upon the foregoing findings of fact, the Malheur County Planning Commission makes the following conclusion and decision:

Substantial evidence exists in the record to support the conclusion that the application meets the general and specific criteria established in the Malheur County Code and Oregon Revised Statutes for granting a conditional use permit for commercial activities that are in conjunction with farm use.

### ORDER

This application for a conditional use permit for a commercial activity in conjunction with farm use is approved.

### APPEALS

The appellate body for appeals from the final decision of the Planning Commission is the County Court. To file an appeal an appellant must file a completed notice of appeal on a form prescribed by the Planning Department with a \$200.00 appeal fee with the Planning Department not later than 5:00 pm on the tenth day following the mailing of written notice of the decision. Notice of appeals may not be received by fax or email. The notice must include a statement raising any issue relied upon for the appeal with sufficient specificity to afford the County Court an adequate opportunity to respond to and resolve each issue. All appeals from the Planning Commission's final decision shall be based on the record of the hearing made before the Commission. Therefore, no additional information or testimony not included in the record of the hearing before the Planning Commission may be brought before the appellate body. The appellant must pay for the transcription of the hearing appealed from and submit the transcript to the Planning Department within ten (10) days after the date of notice of appeal is filed or ten days after the hearing tape is mailed or given to the appellant, whichever is later.

### MALHEUR COUNTY PLANNING COMMISSION

By: Kathy Clarich  
Kathy Clarich, Chair

Date: 5-11, 2023

Exhibit 1: Conditional Use Application

[Exhibit 2: Letter from Ontario Rural Fire Protection District](#)

[Exhibit 3: Letter from Rural Road Assessment District No. 3](#)

[Exhibit 4: Letter of opposition from Fred Trenkel](#)

[Exhibit 5: Letter of opposition signed by multiple neighbors](#)

[Exhibit 6: Road pictures submitted by Walt Longtin](#)

Exhibit 7: Materials submitted by Richard Oleson as provided by Idaho DEQ under the Freedom of Information Act – Partner’s Produce, Inc., Consent Order and related documents.

[Exhibit 8: Supplementary materials submitted by the applicants](#)

[Exhibit 9: Partners Produce PowerPoint – presented by Larry Hinton](#)

[Exhibit 10: Email submitted by Todd Winegar](#)

[Exhibit 11: Walt Longtin’s testimony](#)