

## STAFF REPORT

Planning Department File No. 2024-11-05

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

Planning Commission Meeting Date: January 23, 2025

1. **APPLICANT:** Jesse Watson  
2905 River RD S  
Salem, OR 97302
2. **OWNER OF RECORD:** Sunset Valley Vineyards, LLC  
30420 SW Firdale Rd  
Cornelius, OR 97113
3. **PROPOSED ACTION:** Conditional use approval for commercial activity in conjunction with farm use for the purposes of operating a wine processing plant, shop, and tasting room facility.
4. **PROPERTY IDENTIFICATION:** Tax Lot 700, T20S, R46E, Sec. 18/19; Assessors Map 20S46E18; Malheur County Reference #10173/10177.
5. **PROPERTY LOCATION AND DIRECTIONS:** 2746 Norwood Drive, Nyssa, Oregon
6. **ZONING:** Exclusive Farm Use (EFU).
7. **PARCEL SIZE:** The parcel is 59.66 (tax lot 700 in section 18) acres.
8. **PARCEL USE:** Tax lot 700 had the dwelling which was destroyed in 2024 the remaining tax lot 200 is currently being used as farmland.
9. **SURROUNDING USE:** The entire property is surrounded by farmland.
10. **ACCESS:** Ivanhoe Avenue to the south of tax lot, or may access on the north via Norwood Drive.
11. **NATURAL HAZARDS:** No natural hazards have been identified.
12. **WATER RIGHTS:** The tax lots have a total of 46.60 acres of water rights.
13. **SOIL TYPE:** The soils on the property are predominately class IV; a small portion of the project site is located on class III soils.

**14. ZONING HISTORY:** A dwelling in conjunction with farm use was constructed on the parcel in 1940 and destroyed in 2024. 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

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

*This criteria has been met.*

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

**Proposed Finding: Letter notice was sent to adjoining landowners on January 6, 2025 and published in the Argus Observer on January 8, 2025 . No comments have been received.**

*This criteria has been met.*

- D. Availability of services and utilities.

**Proposed Finding:**

**ROADS:** The plan is to direct traffic to this facility by way of Norwood Drive, Nyssa, Oregon. The approach will have adequate visibility in both directions. Malheur County Road Department has no objections to this request as the existing approach has adequate visibility in both directions. Nyssa Road District

**FIRE & POLICE PROTECTION:** The Oregon State Fire Marshal provided requirements via letter dated September 5, 2024, which is attached to this staff report. (see conditions if application is approved)

**SEWER & WATER:** Applicant states a new septic system for the Tasting room and another for the Winery will be installed. Water will be provided by the an existing well.

**ELECTRICAL & TELEPHONE:** Idaho Power has already provided electricity to this property. Telephone will be provided to the site as it was a prior residence/farm.

**SOLID WASTE DISPOSAL: Tasting room (glass bottles and cardboard) recycled. Winery (grape pulp) to be turned into mulch on property then re-spread on vineyard.**

*The criteria for "D" has been met.*

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

**Proposed Finding: Applicant states, vineyard/winery will bring in new farm labor jobs. The Tasting room will provide a local site to go wine tasting and socialize without having to drive over 1 hour into Idaho wineries.**

*This criteria has been met.*

- 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.

**Proposed Finding: Applicant states, there are no rivers impacted by the proposal. Wildlife like game birds are enhanced by increased cover that vineyards currently provide. No habitat will be diminished but enhanced.**

*This criteria has been met.*

G. General Criteria

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

**Proposed Finding: Applicant states, the tasting room will be where the former residence of the property used to be. There is no overshadowing as we are at least quarter mile away from anyone's residence. The winery produces minimal noise or exterior light. Unlike the noise from corn driers you can hear miles away. Tasting room exterior light is generally indirect. Winery/Shop is like other farmers shops.**

*This criteria has been met.*

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

**Proposed Finding: Applicant states, landscaping for the tasting room is consistent with local native and desert type plants. Planted grass is a drought resistance varietal.**

*This criteria has been met.*

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

**Proposed Finding: Applicant made no findings for this criteria.**  
*Not applicable to this application request.*

4. Visual screening of outdoor waste and storage areas.

**Proposed Finding: Applicant states, tasting room will have a fenced area for garbage and recycling.**  
*This criteria has been met.*

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

**Proposed Finding: Applicant states, tasting room exterior lighting is 90% indirect lighting. Shop/winery exterior lighting will be focused to enhance the working areas not to spot light neighbors. Lighting will also have motion and day light sensors to reduce impact.**  
*This criteria has been met.*

6. Special criteria listed below, as applicable:

H. Allowance of Certain Uses: A use allowed under Section 6-3A-3 of this Title 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)

**Proposed Finding: Applicant states, The vineyard site is surrounded by primarily wheat, corn, onion, potatoes, etc... types of crops. We already coordinate with neighboring farmers re: their spray programs and how it may damage out vineyard. We also discuss our spray programs to ensure no crossing problems. The Winery will have no impact on surrounding agriculture. The vineyard uses much less water to support the fruit which allows the potential use for other farms during drought years.**

*This criteria has been met.*

## **OTHER PROPOSED FINDINGS OF FACT**

The applicant has submitted additional Findings of fact in the conditional use application per Oregon State Statute 215.452 – Winery.

- A. Less than 50,000 gallons of wine annually: **Applicant states, we produce less than 50,000 gallons**

- B. Long-term contract for the purchase of all of the grapes from at least 15 acres of a vineyard contiguous to the winery or obtains grapes from any combination of your vineyard and contract: **Applicant states, There is a 40 acre vineyard onsite.**
- C. Are you going to market and sell wine produced in the winery: **Applicant states, we will sell wine onsite. We may do the following: so we will be doing these activities: wine club activities, winemaker luncheons and dinners, winery and vineyard tours, meetings or business activities with winery suppliers, distributors, wholesale customers and wine-industry members, winery staff activities, open house promotions of wine produced in conjunction with the winery, required to be made available in conjunction with the consumption of wine on the premises by Liquor Control Act.**
- D. Carry out agri-tourism or other commercial events on the tract occupied by the winery. **Applicant states, We will do so accordingly to the permitting standards of the statute.**
- E. Host charitable activities for which the winery does not charge a facility rental fee. **Applicant states, we will do so accordingly to the permitting standards of the statute.**
- F. A winery may include on-site kitchen facilities licensed by the Oregon Health Authority. **Applicant states, there will be a kitchen in the Tasting Building.**
- G. Gross Income of the winery from the sale of incidental items or services provided. **Applicant states, incidental items will be 25% or less of the gross income.**
- H. A winery may carry out up to 18 days of agri-tourism or other commercial events annually on the tract occupied by the winery. **Applicant states, there will be a few Events but will go through the permitting process.**
- I. Events on the first six days of the 19-day limit per calendar year must be authorized by the local government through the issuance of a renewable multi-year license. **Applicant states, there will be a few Events but will go through the permitting process.**
- J. Is a Bed and Breakfast planned. **Applicant states, None**  
*Met all of the criteria listed in ORS 215.452.*

## **APPLICABLE CASE LAW**

Craven v. Jackson County, Oregon Supreme Court – 1989: The decision in this case supported a conditional use permit for a winery on exclusive farm use zoned property. It was 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. Additionally, the commercial and agricultural activities must occur together in the local community to satisfy the statute.

In other words, 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.

**PROPOSED FINDING: The proposed winery and tasting room on tax lot 700 as proposed by the property owner has met the applicable criteria as required in the Malheur County Development Code and the Oregon State Statutes 215.452 Winery; the vineyard will be supplying the grapes for the wine making on-site.**

**This activity does meet the definition of a commercial activity in conjunction with farm use.**  
*This criteria has been met.*

**Staff recommendation is for approval of this application with conditions for the Winery and Tasting Room.**

#### **PROPOSED CONDITIONS OF APPROVAL**

- a. All applicable federal, state, and local permits must be obtained and a copy provided to the Malheur County Planning Department.
- b. Once the Winery and Tasting Room are completed and ready for occupancy, permits from State Liquor License and Oregon Department of Health for preparing and serving food – a copy of these permits provided to the Malheur County Planning Department for filing in the application file for the Winery and Tasting Room.
- c. Check with Water Resource Department regarding the water rights on this property and using the existing well for the commercial use.
- d. All conditions must be met prior to the issuance of a zoning structural permit and the start of construction.
- e. All requirements of the Oregon State Fire Marshal’s letter (see attachment 1) shall be complied with prior to issuance of any permits for construction.

1. Areas without fire hydrants: if the structure is being built in an area without a public water supply system, then the water flow requirements will come from NFPA 1142; the following information will need to be provided in order to determine accurate water flow requirements. Building height, length, and width; use of the building; type of construction; and any exposure hazards that are 100 sq. ft. or larger and within 50 feet of the structure.
2. NFPA 1142 Calculation Formula: total volume of structure divided by occupancy hazard multiplied by construction classification will determine the minimum gallons of water required to be on site: total volume of the building – length (70 feet) x width (54 feet) x height (20 feet) = 75,000 cubic feet; Occupancy hazard (CH5 NFPA 1142) = 6 low hazard; Construction classification (CH6 NFPA 1142) type VB = 1.5; and  $75,000/6 \times 1.5 = 18,900$  gallons of water required at a rate of 750 gallons per minute.

Authorization of this conditional use shall be void after two (2) years unless substantial construction has taken place.

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Carol Parker, Planning Director

Date

#### **Attachments**

1. Application
2. Letter from Oregon State Fire Marshal
3. Letter from David Tiffany, Malheur County Road Department
4. ORS 215.452
5. Email from Carol Parker to Jesse Watson with Jesse Watson responses to ORS criteria for the application