



# ORDER

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

Before the Malheur County Planning Commission

Planning Department File No. 2024-11-005

Planning Commission Hearing Date: 23 January 2025

1. **APPLICANT:** Mr. Jesse Watson  
2905 River Rd S, Salem, OR 97302  
30420 SW Firdale Rd, Cornelius, OR 97113
2. **OWNER OF RECORD:** Sunset Valley Vineyards, LLC  
2746 Norwood Dr, Nyssa, OR 97913
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, Township 20S 46E Section 18/19; Assessors Map 20S46E18; Malheur County Reference numbers 010173 and 010177.
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:** The dwelling on Tax Lot 700 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 Ave to the south, or access from the north via Norwood Drive.
11. **NATURAL HAZARDS:** No natural hazards identified.
12. **WATER RIGHTS:** Both 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 was 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 based its decision upon the following criteria:

- A. Comprehensive Plan Goals and Policies, as applicable.
- B. Specific plan recommendations  
**Findings:** Malheur County Code did not have specific plan recommendations for a facility used for commercial application in conjunction with farm use.  
*This criterion has been met.*
- C. Existing development and viewpoints of property owners in the surrounding area.  
**Findings:** Letter notices were sent to adjoining landowners on 6 January 2025, which were published in the Argus Observer on 8 January 8 2025. No comments were received.  
*This criterion has been met.*
- D. Availability of services and utilities – **Findings**

**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 had no objections to this request. The existing approach has adequate visibility in both directions. Nyssa Road District

**FIRE and POLICE PROTECTION:** The Oregon State Fire Marshal provided requirements via their letter dated September 5, 2024, and attached to the staff report. (see conditions)

**SEWER and WATER:** Applicant stated new septic systems for tasting room and for the winery will be installed. Water to be provided by the existing well after testing (see conditions).

**ELECTRICAL and TELEPHONE:** Idaho Power provided electricity to this property previously. Telephone to be provided to the site (a prior residence and farm).

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

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

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

**Findings:** Applicant stated his vineyard and winery will bring farm labor jobs. Tasting rooms will provide wine tasting and socializing; without the 1-hour commute to Idaho wineries.

*This criterion has been met.*

- F. It will 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.

**Findings:** 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 criterion has been met.*

- G. General Criteria

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

**Findings:** Applicant stated, 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 dries you can hear miles away. Tasting room exterior light is generally indirect. Winery/Shop is like other farmers shops.

*This criterion has been met.*

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

**Findings:** Applicant stated landscaping for the tasting room will be consistent with local native and desert type plants. Planted grass to be a drought resistance variety.

*This criterion 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.

**Findings:** Applicant made no findings for these criteria.

*Not applicable to this application request.*

4. Visual screening of outdoor waste and storage areas.

**Findings:** Applicant stated tasting room will have a fenced area for garbage and recycling.

*This criterion has been met.*

5. Control and focusing of outdoor lighting (avoiding glare directed beyond property limits).

**Findings:** Applicant stated tasting room exterior lighting to be 90% indirect lighting. Any exterior lighting will be to enhance working areas and not to spot light neighbors. Lighting will include motion and day light sensors; to reduce impact.

*This criterion has been met.*

6. Special criteria listed, as applicable.

- H. Allowance of Certain Uses

Use allowed under Section 6-3A-3 was approved, only where it is found that the use will not:

1. Force significant change in accepted farm practices on surrounding lands devoted to farm use; or

2. Significantly increase cost of accepted farm practices on surrounding lands devoted to farm use. (Ordinance 86, 12-7-1993)

**Findings:** Applicant stated that the vineyard site is surrounded by primarily wheat, corn, onion, potatoes, etc. Applicant coordinates with neighboring farmers regarding their spray programs and how this may damage his vineyard. He has also discussed future spray programs, to avoid crossing problems. This Winery will have no impact on surrounding agriculture. The vineyard uses much less water to support the fruit, which will allow the potential use for other farms during drought years.

*These criteria have been met.*

## OTHER PROPOSED FINDINGS OF FACT

Applicant 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 stated less than 50,000 gallons produced.
- 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 stated that there is a 40-acre vineyard on-site.
- C. Marketing and selling winery product: Applicant stated that wine is to be sold on-site. The following activities considered: 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). Carry out AgriTourism or other commercial events on the tract occupied by the winery. The applicant has stated that it will be done accordingly, and to the permitting standards of the statute.
- D. Host charitable activities for which the winery does not charge a facility rental fee. The applicant has stated that it will be done accordingly, and to the permitting standards of the statute.
- E. A winery may include on-site kitchen facilities licensed by the Oregon Health Authority. The applicant has stated that there will be a kitchen in the Tasting Building.
- F. Gross Income of the winery from the sale of incidental items or services provided. The applicant has stated that incidental items will be 25% or less of the gross income.
- G. A winery may carry out up to 18 days of AgriTourism or other commercial events annually, on the tract occupied by the winery. The applicant has stated that there will be a few events considered, but commits to go through the county permitting process when necessary.
- H. 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.
- I. Is a Bed and Breakfast planned? The applicant has stated no.

*Has 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.

## **FINDINGS of FACT**

The future 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 the main supply of grapes for the wine making on-site.

This activity does meet the definition of a commercial activity in conjunction with farm use.

*These criteria have been met.*

**Staff Recommendation: Approve application with conditions, for the Winery and Tasting Room.**

## **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 the CUP application) shall be compliance, prior to the issuance of any permits for construction.
  1. Areas without fire hydrants: If structures are 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 – 70 ft x 54 ft x 20 ft = 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.
- f. Conditions discussed at the Planning Commission Hearing 23 January 2025:
  - Fire department will come inspect the safety of all entrances and turnarounds.
  - Any construction will meet the Oregon and International Fire Codes.
  - Owner will confirm coverage by the local fire department.
  - Fire Marshal will inspect containment for any onsite storage.
  - Owner will ensure the well on the property is tested for potability.
  - County Environmental Health Department will review the septic system.
  - Event permitting will be completed by owner, as needed.



## CONCLUSION

Based upon the APPROVED Findings of Fact, the Malheur County Planning Commission has made the following conclusion and decision:

Substantial evidence exists in the record to support the conclusion that this application has met the general and specific criteria established in the Malheur County Code and Oregon Revised Statutes for a commercial activity in an exclusive farm use zone.

## ORDER

*Vice-Chair Chad Gerulf made the motion to accept the County Staff Report and the Findings of Fact, for Planning File no. 2024-11-005.*

*Commissioner Carol Skerjanec seconded the motion.*

*Motion was unanimously approved by the Commissioners present.*

*Vice-Chair Chad Gerulf made the motion to accept the Application for a Conditional Use Permit for a Winery in an Exclusive Farm Use zone, pursuant to MCC 6-6-7, MCC 6-6-9, and OAR 660-033; on the condition that they have met all criteria required for the international fire code.*

*Commissioner Clark Forsyth seconded the motion.*

*Motion was unanimously approved by the Commissioners present.*

**This application for a conditional use, commercial activity for the purpose of operating a wine processing plant, shop, and tasting room facility, within an exclusive farm use zone, is approved.**

**Authorization shall be void after two years; unless substantial construction has taken place.**

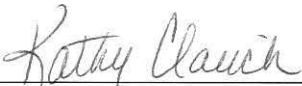
## DECISION APPEALS

The appellate body for appeals from final decisions of the Planning Commission is the Malheur 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, submitted to the County Planning Department, no later than 5:00 pm on the tenth day following the mailing of written notice of this decision.

Notice of appeals may not be received by fax or email. Notice must include a statement raising any issue relied upon for the appeal, with sufficient specificity to afford the Malheur County Court an adequate opportunity to respond to and resolve each issue.

All appeals on final decisions shall be based on the record of the hearing made before the Planning Commission. Therefore, no additional information or testimony (not included in the record of the Planning Commission hearing) may be brought before the appellate body.

The appellant must pay for the transcription of the hearing appealed from and submit the written transcript to the Malheur County Planning Department within ten (10) days after the date of Notice of Appeal is filed. Or, ten days after the hearing recording is mailed or given to the appellant; whichever is later.



Planning Commission Chairwoman Kathy Clarich

1-30-2025

Date