

**BEFORE THE LAND USE HEARINGS OFFICER  
OF CLACKAMAS COUNTY, OREGON**

Regarding an application by Chateau De Lis LLC for approval ) **FINAL ORDER**  
of a conditional use permit to operate a home occupation )  
to host weddings and other events on a 133.47-acre parcel ) **Case No. Z0151-23-C**  
at 15201 S. Kirk Road in Clackamas County, Oregon ) **(Chateau De Lis)**

**I. SUMMARY**

1. The applicant, Chateau De Lis LLC, requests approval of a Conditional Use Permit (“CUP”) to operate a home occupation to host weddings and other events. The applicant proposes to locate the facility on a 133.47-acre parcel located at known as tax lots 803, 804, 900, 901, 902 and 990, Section 27, Township 3 South, Range 2 East, of the Willamette Meridian, in Clackamas County (the “site”).<sup>1</sup> The address of the residence where the events will take place is 15201 S. Kirk Road. The site and abutting properties to the east, west, and south are zoned EFU (Exclusive Farm Use). Abutting properties to the northwest and southeast are zoned RRFF-5 (Rural Residential Farm Forest, five acre minimum lot size). Abutting properties to the northeast are zoned FF-10 (Farm Forest, ten acre minimum lot size).

a. The site is currently developed with two single-family residences; the large residence near the center of the site, 15201 S. Kirk Road, and a second residence in the southern portion of the site, 15211 S. Kirk Road, as well as associated agricultural buildings. The remainder of the site is used for agriculture.

b. S. Kirk Road abuts the south boundary of the site. Access to the site is provided by two driveways that are located on the east and west boundaries of the site, both of which intersect S. Kirk Road. The driveways connect to form a loop road through the site. During events on the site the applicant proposes to require one-way traffic on the driveways, with vehicles entering the site via the west driveway and exiting the site via the east driveway.

c. With the exception of the western, ingress, driveway, a portion of which is located on tax lot 804, the applicant proposes to conduct most event related activities on tax lots 803 and 900. Existing improvements on those parcels include a single-family residence, a covered swimming pool (under construction), located near the center of the site, a 4,400 square foot “greenhouse” immediately east of the swimming pool and south of the patio/“outdoor living area,” a large patio/“outdoor living area” under a permanent canopy east of the residence, and a garage to the northeast of the residence. There are two large “water feature” ponds west of the residence. There are two “motor courts” located to the north (the north motor court”) and northwest (the “front motor court”) of the residence. Additional parking lots are proposed on either side of the access drive north of

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<sup>1</sup> The Public Notice for the application lists the site as 120-acres, but states “Tax lots 901 and 902 excluded from acreage.” (Exhibit 2 at 1). Tax lot 901 contains 4.98-acres and 902 contains 10.56-acres for a total of 133.47-acres

the residence (the north parking lot) and a parking area southeast of the residence (the south parking lot). (See the site plan included in the application, Exhibit 2 at 88).<sup>2</sup> At the hearing the applicant proposed to provide additional overflow parking in the fields on the site. (Applicant's testimony).

d. The applicant proposes to conduct a maximum of 60 events per year: 55 events with a maximum 75 guests per event and up to five events with a maximum 210 guests per event. The applicant proposes to conduct events within the covered pool building and greenhouse as well as outdoors on the patio/"outdoor living area." In addition, guests will be allowed to utilize a walking path around the perimeter of the site. (Exhibit 2 at 8).

2. Clackamas County Hearings Officer Joe Turner (the "hearings officer") held a public hearing about this application. County staff recommended the hearings officer approve the application subject to conditions. See the Staff Report to the Hearings Officer dated June 15, 2023 (the "Staff Report"). The applicant testified in support of the application and accepted the findings and recommendations in the Staff Report without exceptions. Two persons testified orally in support of the application and nine persons testified in opposition to the application. Other persons testified in writing, in opposition and in support of the proposal. The principal contested issues in the case include the following:

a. Whether the proposed use is listed as a conditional use in the EFU zone, ZDO 1203.03(A);

b. Whether state law, OAR 660-033-0130, prohibits the proposed use on the site, because of its location within three miles of an urban growth boundary (OAR 660-033-0130(2)) and because the residence does not meet requirements for a dwelling in the EFU zone (OAR 660-033-0130(1), (3), and (4));

c. Whether the characteristics of the subject property are suitable for the proposed use, ZDO 1203.03(B);

d. Whether the transportation system is safe and adequate to serve the proposed development (ZDO 1203.01(C) and 1007);

e. Whether operation of the proposed use will "[a]lter the character of the surrounding area in a manner that substantially limits, impairs or precludes the use of surrounding properties for the primary uses allowed in the underlying zoning district," ZDO 1203.01(D), specifically due to the following impacts:

i. Traffic backups and congestion;

ii. Vehicle exhaust fumes;

iii. On-site lighting;

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<sup>2</sup> The hearings officer cites to the .pdf page number of the scanned application.

- iv. Noise;
  - v. Attracting additional people to the area;
  - vi. Speeding on S. Kirk Road and Highway 213;
  - vii. Hazards for pedestrians and cyclists on S. Kirk Road;
  - viii. Increasing the potential for drivers to turn around in neighbors' driveways;
  - ix. Increasing the potential for drunk drivers on area roads; and
  - x. Impacts to property values;
- f. Whether the proposal satisfies the goals and policies of the Comprehensive Plan that apply to the proposed use. ZDO 806.02(E);
- g. Whether the proposed use complies with applicable requirements of ZDO 1000. ZDO 806.02(F);
- h. Whether the applicant will reside full-time on the site and be responsible for strategic decisions and day-to-day operations of the home occupation. ZDO 806.01(A);
- i. Whether the applicant can operate the facility with no more than five employees. ZDO 806.01(B);
- j. Whether the applicant will operate the home occupation “[s]ubstantially in the operator’s dwelling or other buildings normally associated with uses permitted in the buildings normally associated with uses permitted in the [EFU] zoning district.” ZDO 806.02(C);
- k. Whether the applicant will operate the facility in compliance with the noise level limits of ZDO 806.02(J);
- l. Whether the proposed use will force a significant change in, or significantly increase the cost of, accepted farm or forest practices on surrounding lands devoted to farm or forest. ZDO 401.05(A);
- m. Whether the County can ensure compliance with the conditions of approval.

3. The hearings officer concludes that the applicant sustained the burden of proof that the proposed use does or can comply with the relevant approval standards of the Clackamas County Zoning and Development Ordinance (the “ZDO”), provided the applicant complies with conditions of approval recommended by County staff or

warranted by the facts and law to ensure the proposed use complies in fact with those standards. Therefore the hearings officer approves the application subject to the conditions at the end of this final order based on the findings and conclusions in this final order.

## **II. HEARING AND RECORD HIGHLIGHTS**

1. The Hearings Officer received testimony at a public hearing about this application on June 22, 2023.<sup>3</sup> All exhibits and records of testimony are filed at Clackamas County Department of Transportation and Development. At the beginning of the hearing, the Hearings Officer made the declaration required by ORS 197.763. The Hearings Officer disclaimed any *ex parte* contacts, bias or conflicts of interest. The following is a summary by the hearings officer of selected testimony at the public hearing.

2. County planner Joy Fields summarized the Staff Report and her PowerPoint presentation, Exhibit 45.

a. She noted that the applicant proposes to host a maximum of 60 events per year; 55 events with a maximum 75 guests per event and up to five events with a maximum 210 guests per event. Event facilities are allowed in the EFU zone as a home occupation, subject to conditional use approval. The majority of activities will take place on 69.78-acre tax lot 900, where the larger residence and associated residential accessory structures are located. The access and egress roads will cross tax lots 803 and 804. Guests will also have access to a path around the perimeter of the entire 120+ acre site.

b. She requested the hearings officer add a condition requiring the applicant to implement the proposed Transportation Demand Management (“TDM”) plan discussed at page 17 of the Staff Report.

c. The hearings officer denied a similar application, Z0424-21-C, in March 2022. The current application addresses the grounds for denial that were set out in the prior decision.

d. She testified that both John and Chauncy Childs signed the application. Based on County tax records, John is the only owner of the 68-acre parcel where the majority of the use is proposed.

3. John and Chauncy Childs appeared on behalf of the applicant, Chateau De Lis LLC, summarized the proposed development, and responded to the Staff Report and neighbors’ comments. Mr. Childs testified that his family purchased the site in 2009 and began construction of the residence in 2010. At that time their children were living at home and his in-laws planned to live with them. However, construction was severely delayed due to legal disputes with their contractor. During that time their children moved out and his in-laws passed away.

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<sup>3</sup> The Staff Report incorrectly lists the hearing date as “January 22, 2023.”

a. Mr. Childs noted that the hearings officer denied his prior application for four reasons, all of which are addressed in this application.

i. The proposed home occupation to host events is not subject to the limitations in OAR 660-033-0130(2)(a). The table included in OAR 660-033-0120 lists uses authorized on agricultural lands, with different uses subject to different numbers included in the table. Restrictions associated with the numbers in OAR 660-033-0120 are set out in OAR 660-033-0130. Pursuant to OAR 660-033-0120, "Home occupations as provided in ORS 215.448" are only subject to sections (5) and (14) of OAR 660-033-0130. OAR 660-033-0130(5) requires a finding that the proposed use will not force a significant change in, significantly increase the cost of, accepted farm or forest practices on surrounding lands devoted to farm or forest use. 660-033-0130. OAR 660-033-0130(14) requires that the use must be operated substantially within the dwelling or other buildings normally associated with uses permitted in the zone, operated by a resident or employee of the resident, and include no more than five employees. Other provisions of OAR 660-033-0130 do not apply to this use.

ii. The use can comply with the noise limits of ZDO 806.02.J. Events will take place near the center of the site and sound will dissipate to well below 60 dB before it reaches the boundaries of the site. He recently held private weddings on the site that were attended by more than 100 people, friends and family. His neighbors did not notice or complain about these events until he put up signs directing guests to the site.

iii. This application includes a traffic study demonstrating that traffic from the use will not create significant congestion, cause a safety hazard, force a significant change in or significantly increase the cost of accepted farm or forest practices in the area, or unreasonably interfere with other uses permitted in the EFU zoning district. ODOT confirmed that traffic from the proposed facility will not significantly impact the intersection of S. Kirk Road and Highway 213.

(A) The traffic study was performed in September when school was in session. A 210 guest event will generate an average of 126 vehicles. The traffic study analyzed predicted traffic from a maximum, 210 guest, event with traffic from a 130 vehicle funeral occurring at the same time as well as a 210 guest event without a funeral. Based on the traffic analysis, traffic from a 210 guest event without a funeral will generate a six vehicle queue at the intersection of S. Kirk Road and Highway 213 during the p.m. peak hour. A 130 vehicle funeral combined with a 210 guest event on the site will generate a 38 vehicle queue. In the event that a funeral occurs at the same time as a large funeral, staff on the site will hold event traffic on the site until all funeral related vehicle queues have cleared in order to ensure that event traffic does not exacerbate funeral vehicle queues.

b. The proposed event facility will not create a hazard for children living in the area. Funerals at the existing cemetery already attract strangers to the area. In addition, the majority of events on the site will occur on weekends and in summer, when school is

not in session, or in the evenings when children are not walking home from the bus stop at S. Kirk Road and Highway 213.

c. Construction on the site is nearly complete and should wrap up by the end of the summer.

d. It is feasible to operate the facility with five employees. All similar facilities in the County are subject to the same standard and have been able to do so.

e. The prior owner of the site sold the property because they could not afford to continue farming 100 cows. Small farms need some source of additional income in order to stay in business.

f. He does not own or operate the website noted by Ms. Kimmel that purported to offer lodging on the site. That website belongs to a photographer he hired. He will have them remove the lodging offer.

g. Many people currently bike and walk on S. Kirk Road. Traffic from this use is unlikely to conflict with that use, as inbound guests generally arrive at staggered times and leave the facility at night when few people are walking on the road

h. He owns three existing dwellings: the primary residence and two approved farm help dwellings.

i. There is ample parking on the site to accommodate the proposed events. The site includes 106 parking spaces in three separate areas as well as a large field for overflow parking if needed during the summer months. They will provide handicapped parking spaces as required by the Code.

j. The majority of the lighting on the site will be for “way finding” and safety. Lights will be low and aimed at the ground.

k. They are no longer proposing a bathroom in the greenhouse. They will use portable toilets for all events on the site.

l. The County is responsible for maintaining the pavement on S. Kirk Road. He has no control over that issue. This use will result in a relatively minor increase in overall traffic on this road.

m. It is possible for emergency vehicles to pass vehicles queue on S. Kirk Road. There is sufficient shoulder to allow drivers to pull to the side to allow emergency vehicles to pass. Vehicle queues generated by this use will be no wider than queues generated by funerals at the existing cemetery.

4. Cathy Raffaely testified in support of the application. She noted that many homes and properties in the rural area are not maintained. Income from the proposed event

facility will enable the applicant to maintain the site to a higher standard, which will benefit the area. She expressed concerns with the width of S. Kirk Road and objected to any plan to reconnect that road to S. Beaver Glen Drive.

5. Gene Freeman testified in support of the application. He operates a farm on the site and provides organic milk and meat to several hundred families. The proposed event facility is an agri-tourism use that will expose attendees to agricultural activities in the area and encourage support of agriculture and protection of farmland. He cannot afford to continue operating his organic farm without this agri-tourism use. He has never had any issues with traffic from events on the site, which rarely cause delays. Vehicle queues from large funerals usually dissipate within ten to 15 minutes.

6. Katherine Mayo-Sorensen testified that she owns property abutting the west boundary of the site.

a. She questioned the accuracy of the applicant's traffic analysis, as the software used could not simulate 130 vehicles leaving the cemetery simultaneously. Funeral traffic was modeled over a 15 minute period. A large funeral and large event can occur at the same time. This is a "worst case scenario," but there is no guarantee it will not happen and the neighborhood should not have to bear this impact. S. Kirk Road cannot handle the additional traffic from 60 events per year in addition to the existing funeral traffic. Wedding guests generally leave within a relatively short period of time, after the DJ plays the last song. All of those vehicles leaving at the same time will generate significant queues at the intersection of S. Kirk Road and Highway 213.

b. She was aware of the recent private events occurring on the site, as event traffic travels past her home on S. Kirk Road to the south and on the western driveway located 15 to 20 feet from her fence line. Traffic from these events did not use the eastern driveway for egress as proposed by the applicant. All outbound traffic has utilized the western driveway.

c. Noise from events will be perceptible. 60 dB is a normal conversation. There is no way to prevent guests from celebrating loudly.

d. The use will change the character of the area. She can no longer ride her horses on S. Kirk Road due to traffic. The increased traffic is unfair to the neighborhood and this use will not have a positive impact on the area. The use may increase the risk of intoxicated drivers on roads in the area.

e. She questioned how the County will monitor and enforce the conditions of approval to ensure that the applicant continues to comply with limitations on capacity, noise, hours of operation, number of events, etc.

7. Elizabeth Raffaell-Brick testified on behalf of herself and her father Michael.

a. She testified that she grew up on S. Kirk Road and used to walk, ride bikes, and pick berries along the road. However, that is no longer safe to do so due to increased traffic volumes. Traffic volumes and speed can make it difficult to cross the road to collect the mail, especially construction traffic traveling to and from the site. She recently counted 16 dump truck trips traveling past her home. There are hills on S. Kirk Road that limit views of oncoming traffic.

b. The applicant's traffic study did not address traffic from wedding vendors or the safety of pedestrians and cyclists on S. Kirk Road. School buses drop students off at the intersection of S. Kirk Road and Highway 213 and they must walk home on S. Kirk Road.

c. There are 18 homes on S. Kirk Road, including one new home her father is constructing. These residents purchased in this area for the rural atmosphere, privacy and views. This use, including traffic from construction activities on the site, have significantly changed that. Residents were aware of the cemetery when they purchased their homes, but this new use will significantly alter the neighborhood.

d. The use will bring large numbers of strangers to the neighborhood, including a variety of vendors needed to staff and support the events.

e. Construction vehicles and equipment have severely damaged the pavement on S. Kirk Road.

f. 60 events per year equates to more than one event per week and the majority of events will occur in the summer, which will increase the number of events per week.

8. Dennis Hoffman noted that S. Kirk Road is a dead end street that provides the only way in and out of the neighborhood and severely limits the ability to quickly evacuate the area in the event of a fire or similar disaster. Traffic from weddings and funerals will make this significantly worse.

a. Drivers frequently speed on S. Kirk Road. He saw drivers heading to a funeral traveling at 40 to 45 mph when they should be traveling at 20 to 25 mph due to the narrow width of the roadway and the lack of shoulders. After a recent funeral traffic was backed up from Highway 213 all the way to the cemetery, with additional vehicles still on the cemetery property waiting to turn onto the road. A hay truck and trailer turned onto S. Kirk Road and had a difficult time maneuvering past the queued traffic. The truck and opposing traffic both had to move into the ditch for the truck to pass. Emergency vehicles would be subject to similar delays, which could increase response times.

b. A traffic study created by a private firm hired by the applicant may be biased in favor of the applicant.

c. Clackamas County does not maintain the pavement on S. Kirk Road.



9. Laurie Kimmel argued that there are discrepancies in the application.

a. Mrs. Childs did not sign the application. LUBA held that all property owners must sign a land use application. *Harris v. Marion County* 78 Or LUBA 209 (2018).

b. Page 8 of the application states that the site is currently developed with a single family residence. However, there are actually two existing homes on the site.

c. Page 9 states that there are no significant natural features on the site. However, there is a year-round creek, two lakes, and trails on the site.

d. Page 13 states that the vehicle queues will not exceed six vehicles during the p.m. peak hour. However anywhere from 25 to 100 vehicle will exit the site at the end of an event, which will generate significant queues that will block driveways and increase the risk of accidents. Drivers are likely to become impatient, especially residents who are unable to exit their driveways due to traffic queues.

e. She disputed the statement on page 20 of the Staff Report that traffic generated by the use is equivalent to two single-family homes.

f. The proposed use will generate a significant number of additional vehicles on Kirk Road that will degrade air quality and impact area residents and their families.

g. The application does not provide sufficient parking for the largest events and does not identify any handicap parking spaces.

h. Large events will require more than five employees.

i. Guests of the facility may drink and drive. She questioned whether the applicant will carry sufficient insurance to cover their liability in the event of an accident.

j. Lighting on the site should be dark sky friendly, downward facing, with the lowest wattage possible.

k. The applicant frequently exceeds noise standards at his gun range. How can the County ensure he will not exceed noise standards with the wedding facility as well.

l. The applicant proposes to use portable toilets for events but still shows a permanent restroom in the greenhouse building. The County sanitarian notes that the septic system must be sized for the largest events. A septic system large enough to serve 210 guests could exceed capacity and result in contamination.

m. She questioned whether the applicant is also proposing overnight lodging on the site, as their website lists "six themed rooms for couples" to rent. This is prohibited, citing the court of appeals decision in *Central Oregon Landwatch v. Deschutes County*.

n. The use will alter the character of the area to an extent it will limit or preclude the use of surrounding properties for permitted uses. Many drivers use Leland and Beaver Creek Roads to avoid congestion or accidents on Highway 213, but this is also a bike route. Drivers may turn into her neighborhood trying to get to the site. Speeding is a problem on Highway 213 under existing conditions.

o. The proposed use exceeds the limited scope allowed by OAR 660-033-0130, as it will exceed the facility and service capability of the area for septic disposal, traffic capacity, and because it is contrary to the purpose and intent of the comprehensive plan.

10. Rick Coufal agreed with the testimony of prior witnesses. He noted that S. Kirk Road is a "class 2 paved road," with a low priority for repair or repaving. Heavy truck traffic from construction on the site has damaged the pavement. Event traffic will make it even worse. There is limited sight distance available at the intersection of S. Kirk Road and Highway 213 due to obscuring vegetation to the south and topography to the north. Increased traffic from this use increases the risk of accidents at this intersection. S. Kirk Road is very narrow, making it difficult for large commercial vehicles to pass oncoming traffic.

11. Gary Linton argued that there is insufficient capacity to accommodate increased traffic from this use, construction traffic, and the dairy. Event traffic may also delay emergency vehicle access. There are many older residents in this area with health issues that may require emergency assistance. Fire engines are 9.16 feet wide. Traffic queues will make it very difficult for such a vehicle to travel on S. Kirk Road. He questioned how the County will enforce compliance with the conditions of approval given the limited staffing.

12. Mark Hillyard argued that the pavement on S. Kirk Road cannot accommodate additional traffic and the intersection of S. Kirk Road and Highway 213 does not meet ODOT sight distance standards. The application does not comply with OAR 660-033-0130(1), (2), (3), and (4) and ZDO 806 and 1020. Neighbors might be more supportive of this application if the applicant were to improve S. Kirk Road.

13. Stephen Rosenthal argued that his existing roofing business on S. Kirk Road does not generate 40 vehicle trips per day. They have five people working in the office. He testified that several people entered his property trying to get to a pond party on the site and had no idea who Mr. Childs was. Events on the site will increase the frequency of this occurrence, which is trespass onto his private property. There have been six accidents in the last 18 months at the intersection of S. Kirk Road and Highway 213. He questioned whether the applicant will manage events on the site or hire outside personnel. The Code requires that the applicant operate the facility themselves. Guests using the perimeter trail are likely to trespass onto neighboring properties. The applicant is currently allowing Girl Scouts and other groups to hold events on the site.

14. Catherine Raffaell argued that S. Kirk Road cannot support additional traffic from the venue given the condition of the pavement and single, dead end, access. This road can

barely support existing traffic without the proposed venue. She had to wait three minutes to make a left turn onto S. Kirk Road from southbound Highway 213 on the Sunday before the hearing. A log truck nearly rear-ended her as she was waiting to turn left. Many drivers speed as they approach S. Kirk Road on the downhill grade, unaware of the intersection and the potential for traffic to turn left at that location. There is no plan for a left turn lane or changes to the speed limit to address these potential hazards. There are few recorded accidents now because the existing residents are aware of these hazards. Event attendees are new to the area, unaware of these issues, and frequently excited and in a hurry to get to the site, increasing the risk of accidents.

15. At the end of the public hearing, the hearings officer held the record open for three weeks to allow all parties an opportunity to submit additional testimony and evidence, subject to the following schedule:

- a. For one week, until 5:00 p.m. on June 29, 2023, for all parties to submit additional testimony and evidence
- b. For a second week, until 5:00 p.m. on July 6, 2023, for all parties to respond to the whatever was submitted during the first weeks; and
- c. For a third week, until 5:00 p.m. on July 13, 2023, for the applicant to submit a final argument.

16. Exhibits 40 through 47 were submitted during the open record period.

### **III. DISCUSSION**

#### **PART I. SUBMITTAL REQUIREMENTS – CONDITIONAL USE PERMIT**

1. Subsection 1203.04 of the Zoning and Development Ordinance lists the information that must be included in a complete application for a conditional use permit.

This application includes a completed land use application form, site plan, application fee, and completed supplemental application addressing the approval criteria in Section 1203 of the ZDO. The application also includes a description of the proposed use and vicinity map. One Preliminary Statement of Feasibility was submitted, for surface water management. (Exhibit 1 at 25). All the submittal requirements under Subsection 1203.04 are included in the application. The application was originally submitted on April 6, 2023 and was deemed complete on April 26, 2023. The 150-day deadline for processing this application is September 25, 2023 (Exhibit 2 at 3).

Assertions that the application is incomplete are not relevant. The submittal requirements of ZDO 1307.07 and the application form are not applicable approval criteria. The County accepted the application as complete. The hearings officer has no authority to review the County's completeness determination or to deny the application for failure to comply with the submittal requirements.

ZDO 1307.07.C(1)(a)(vii) requires that the applicant and “[a]ll owners or all contract purchasers of the subject property, or the duly authorized representative(s)...” sign the application. Based on County assessor records, Mr. Childs is the sole owner of tax lot 900. However, Ms. Childs is a co-owner of some of the other parcels that make up the site. Therefore, she is required to sign the application. Contrary to Ms. Kimmel’s testimony, Ms. Childs signed the application. (Exhibit 2 at 4).

There are two existing residences on the site: the primary residence on tax lot 900 and a County approved farm help dwelling on tax lot 804. Based on Mr. Childs’ testimony the applicant owns other property that is also developed with a farm help dwelling. The fact that the application does not mention the additional dwellings is not grounds for denial of this application. The applicant proposed operate the majority of the use on tax lot 900. The two additional residences are not involved in the proposed use.

The application form requires the applicant include “significant natural features (rivers, streams, wetlands, slopes of 20% or greater, geologic hazards, mature trees or forested areas, drainage areas, etc.)” on the site plan. The ponds on the site do not constitute a “significant natural feature” listed in the application form. As noted in the Staff Report, the only “significant natural feature” on the site is a mapped RSCA stream near the east boundary of the site. The proposed use will have no impact on this stream. Therefore, failure to include this “significant natural feature” in the application does not preclude the applicant from demonstrating compliance with the applicable approval criteria.

**The submittal requirements of Subsection 1203.04 are met.**

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## **PART II. CONDITIONAL USE PERMIT**

1. **Subsection 1203.03** of the Zoning and Development Ordinance lists six criteria that must be satisfied in order to approve this Conditional Use.

a. **Subsection 1203.03(A):**

*The use is listed as a conditional use in the zoning district in which the subject property is located.*

i. The site is zoned EFU. Section 401 of the ZDO controls land uses in the underlying EFU zoning district. Table 401-1, lists the conditional uses which are allowed. Under Table 401-1 “Home occupation to host events, subject to Section 806... 401-05(A)(1) and (D)(1)” are allowed as a conditional use in the EFU zone This proposal involves a home occupation to host events. Therefore, the hearings officer finds that the proposed use is listed as a conditional use in the EFU zone. Compliance with the

approval criteria in Sections 401-05(A)(1), (D)(1), and 806 are discussed in findings below.

ii. Many persons argued that this type of event facility should not be allowed in the EFU zone. However, section 401 expressly allows such this type of use in the EFU zone, provided the use complies with all of applicable approval criteria. State law expressly authorizes the county to allow such uses in the EFU zone. *See* ORS 215.448. The decision to allow this type of use in the EFU zone was a policy choice by the Board of County Commissioners, which the hearings officer has no authority to review or reconsider in this proceeding.

**ZDO 1203.03(A) is met.**

**b. Section 1203.03(B):**

*The characteristics of the subject property are suitable for the proposed use considering size, shape, location, topography, existence of improvements and natural features.*

i. Size: The site contains 133.47-acres. The majority of the use and activities will occur on 69-acre tax lot 900. However, the applicant proposed to use portions of the adjacent tax lots he owns for access and for the proposed perimeter walking trail. The submitted site plan demonstrates that the property is of sufficient size to accommodate the proposed event area, along with parking and circulation area, landscaping, etc.

ii. Shape: The shape of the site is somewhat irregular, though this effect is mitigated by the size of site. This shape does not present any particular limitation to the proposed use of the site.

iii Topography: The portion of the site where the majority of event activities are proposed, near the existing home, slopes generally west to east and is not a limiting factor for the proposed use.

iv. Location, area: The site is located between the community of Beavercreek to the east and Highway 213 to the west, south of Oregon City. Based on Google Maps, the site and the structures are located within three miles of the Oregon City Urban Growth Boundary (“UGB”). Land use here is mixed, including commercial farms, rural residential use on acreage properties, commercial businesses, and a cemetery. The hearings officer finds that state law, OAR 660-033-0130, does not preclude the proposed use on this site.

(1) OAR 660-033-0120 includes a table of uses allowed on “agricultural lands,” which includes land zoned EFU. Uses in the table are identified as “A” indicating the use is allowed, “R” indicating the use “may be allowed, after required review,” and “\*” indicating the use is not allowed. OAR 660-033-0120(1)-(3). The table also includes numerical references corresponding to sections of OAR 660-033-0130. Where a

numerical reference is not included, the rule does not establish criteria for the use. OAR 660-033-0120(4). The table included in OAR 660-033-0120 lists “Home occupations as provided in ORS 215.448” as an “R5,14” indicating the use is allowed subject to OAR 660-033-0130(5) and (14).

(2) OAR 660-033-0130(5) requires a finding that the use will not force a significant change in, or significantly increase the cost of, accepted farm or forest practices on surrounding lands devoted to farm or forest use. OAR 660-033-0130(14) provides that “home occupations and the parking of vehicles may be authorized” and requires that the use “[s]hall be operated substantially in the operator’s dwelling or other buildings normally associated with uses permitted in the zone in which the property is located”, that the use [s]hall be operated by a resident or employee of a resident of the property on which the business is located and shall employ on the site no more than five full-time or part persons.” These requirements are reiterated in the approval criteria in ZDO 806.02, which are addressed in the findings below.

(3) This use is not subject to OAR 660-033-0130(1), (2), (3), and (4), as those sections are not included in the criteria for this use listed in OAR 660-033-0120.

v. Improvements: The site is currently developed with two single-family residences - the large residence currently under construction near the center of the site, 15201 S. Kirk Road, and a farm help dwelling, as well as residential and agricultural accessory structures. The site is also developed with access drives vehicle parking areas, and trails. The existing improvements on the site do not limit the proposed use.

vi. Natural Features: Based on county maps, the site is not located within a regulatory floodplain or a geologic hazard area. There are mapped RSCA streams on the site - tributaries of Beaver Creek (identified as PUBHh and PEM1k on the Statewide Wetlands Inventory) are located on tax lots 901, 902, and 991, though the proposed use will not impact the streams of associated buffers. The natural features on and near the site do not limit the proposed use.

**ZDO 1203.03(B) is met.**

c. **Section 1203.03(C):**

*The proposed use shall be consistent with Subsection 1007.07, concurrency, and safety of the transportation system is adequate to serve the proposed use.*

i. ZDO 1007.07 and concurrency:

(1) ZDO 1007.07 provides:

***TRANSPORTATION FACILITIES CONCURRENCY***

A. *Subsection 1007.07 shall apply to the following development applications: design review, subdivisions, partitions, and conditional uses.*”

B. *Approval of a development shall be granted only if the capacity of transportation facilities is adequate or will be made adequate in a timely manner. The following shall be exempt from this requirement:*

...

5. *Home occupations to host events, which are approved pursuant to Section 806; and*

...

(2) Although ZDO 1203.03(C) lists “concurrency,” home occupations to host events are exempt from concurrency requirements pursuant to ZDO 1007.07(B)(5).<sup>4</sup> The applicant is proposing a home occupation to host events. Therefore, the proposed use is not subject to concurrency requirements and the capacity of area streets is not relevant to this application except to the extent traffic from the use impacts safety or other applicable approval criteria.

ii. Safety and adequacy of the transportation system:

(1) ZDO 1007.02(D) provides:

*“Developments shall comply with the intersection sight distance and roadside clear zone standards of the Clackamas County Roadway Standards. In addition:*

1. *No planting, signing, or fencing shall be permitted which restricts motorists’ vision; and*

2. *Curbside parking may be restricted along streets with visibility problems for motorists, pedestrians, and/or bicyclists as deemed appropriate by the Department of Transportation and Development.”*

(2) The hearings officer finds that it is feasible to comply with applicable sight distance requirements. S. Kirk Road is not posted for speed and is therefore

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<sup>4</sup> ZDO 1007.07(B) provides, in relevant part:

B. Approval of a development shall be granted only if the capacity of transportation facilities is adequate or will be made adequate in a timely manner. The following shall be exempt from this requirement:

...

5. Home occupations to host events, which are approved pursuant to Section 806;

...

governed by the Basic Rule which allows speeds up to 55 miles per hour. Based on Roadway Standards Section 240, this very low volume local road requires a minimum of 405 feet of intersection sight distance at the proposed access points. County engineering staff concluded that adequate sight distance can be provided with a modification to the width of the easterly driveway approach. There is no evidence to the contrary. This is required by recommended condition IV.4 of the Staff Report. As conditioned, the use can comply with ZDO 1007.02(D).

(A) Neighbors argued that sight distance is inadequate at the intersection of S. Kirk Road and Highway 213. However, this intersection is subject to ODOT jurisdiction. The intersection sight distance standards of the Clackamas County Roadway Standards are inapplicable at this intersection.

(B) Planting, signing, and fencing can be designed and maintained so as to ensure it does not restrict motorists' vision. A condition of approval is warranted to that effect. As conditioned, the use can comply with ZDO 1007.02(D)(1).

(C) As discussed below, the applicant proposed to provide sufficient parking on the site to accommodate the maximum size event proposed. On-street parking is not needed to accommodate events on the site. As conditioned, the use can comply with ZDO 1007.02(D)(2).

(3) The hearings officer finds that, as conditioned, although traffic generated by the proposed use will be perceptible and may increase delays, it will not create a safety hazard.

(A) There was considerable testimony regarding sight distance and safety at the intersection of S. Kirk Road and Highway 213. This intersection falls under the jurisdictions of the Oregon Department of Transportation ("ODOT").

(I) ODOT was notified of the proposed event site and determined that a permit is not warranted for this use. ODOT did not raise any concerns with sight distance or other hazards at this intersection. ODOT requested the applicant place sandwich signs stating "Event traffic ahead" on shoulder of OR-213 in each direction when events are being held on the site. (Exhibit 2 at 53-54). A condition of approval is warranted to that effect.

(II) There is no evidence that this intersection is hazardous. The crash rate at this intersection is well below the accepted "action level" of one crash per million entering vehicles ("mev").<sup>5</sup> This intersection carries an average of 4,747,840 annual trips. Based on ODOT crash data, two crashes were reported at this intersection during the ten year period between January 1, 2011, and December 31, 2020 (Attachment

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<sup>5</sup> The Institute of Transportation Engineers (ITE) *Traffic Access and Impact Studies for Site Development – A Recommended Practice* states that "Accident rates vary, but any intersection will more than one accident per million entering vehicles is worthy of additional analysis."



5 of the application, Exhibit 2 at 50). This equates to a crash rate of 0.04 crashes per mev, well below the intersection crash rate action level. This low crash level indicates that the intersection is operating within acceptable safety limits. Additional traffic generated by the proposed use may result in a proportionate increase in the number accidents in the area. But the crash data demonstrates that this intersection is not inherently hazardous.

{1} The hearings officer acknowledges that the crash history may not reflect all of the crashes at this intersection. Some crashes are not reported. However the action rate of one crash per million entering vehicles is based on reported crashes. There is no substantial evidence that this location experiences an unusually high number of unreported crashes. The hearings officer finds that the reported crash history is the best evidence available regarding the crash history for this area.

{2} Neighbors argued that there are fewer crashes at this intersection because this road is primarily used by existing residents who are familiar with and accommodate the road conditions. Guests of the proposed facility will not be aware of those conditions and therefore, will increase the risk of crashes. However, this argument ignores the fact that the cemetery on S. Kirk Road generates similar large events with significant traffic by non-residents. If traffic generated by large events were causing additional crashes, that would be reflected in the data. In addition, the additional signage required by ODOT will notify drivers on Highway 213 about event traffic using the Kirk Road intersection.

(B) Based on the applicant's traffic analysis, events on the site will not create significant, long-duration backups on S. Kirk Road. County engineering staff reviewed and concurred with the applicant's analysis. There is no substantial evidence to the contrary. Neighbor's unsupported concerns about increased traffic are not substantial evidence sufficient to overcome the expert testimony of the traffic engineers for the County and the applicant.

(I) Neighbors are correct that actual vehicle queues are likely to be longer than indicated by the applicant's traffic model, which is based on the number of vehicles exiting the site and/or the cemetery over a 15 minute period. The model is reasonable, as it is not possible for all vehicles to exit the cemetery or the site simultaneously. However, as the photos of traffic generated by funeral events demonstrates, vehicle queues are cumulative. Vehicles backup at the S. Kirk Road/Highway 213 intersection while other vehicles continue to exit the cemetery, adding to the length of the vehicle queues. However, the hearings officer finds that it is feasible to manage traffic generated by the proposed use to ensure that it does not create similar extensive vehicle queues.

{1} Events on the site are limited to a maximum 210 guests, which will generate 126 vehicles,<sup>6</sup> whereas neighbors testified that funeral events generate 200 or more vehicles. Fewer vehicles will result in smaller vehicle queues.

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<sup>6</sup> Based on the vehicle occupancy rate used in the applicant's traffic study, 210 guests/1.67 guests per vehicle equals 126 guest trips.

{2} Funerals generally end during daylight hours when background traffic volumes are higher. Large events at the site are likely to end in the evenings, when background traffic volumes are lower, resulting in more traffic gaps on Highway 213, reducing delays and resulting queues at this intersection.

{3} Events on the site ending at the same time as a large funeral would cause significant congestion. However, the applicant proposed to implement a Transportation Demand Management (TDM) strategy that involves holding event traffic on the site until vehicle queues caused by funeral traffic dissipates. (Exhibit 2 at 12-13). A condition of approval is warranted requiring implementation of the proposed TDM strategy.

(II) Vehicle queues generated by this use will not significantly limit emergency vehicle access to the site. As noted below, S. Kirk Road is improved with approximately 18 feet of paved width, which is the minimum required for emergency vehicle access on two-way streets. The County notified Clackamas Fire District #1 of this application and they did not express any concerns or objections with the existing roads or access.

(C) The hearings officer finds that the condition of S. Kirk Road will not pose a hazard.

(I) There is no dispute that S. Kirk Road is not improved to current county standards. It has a narrow (18-foot wide) chip seal surface with limited shoulders and no striping. However, this is not an unusual situation for local roads in the rural areas of the county. 18 feet of roadway width is the minimum necessary to accommodate two-way vehicle traffic.

(II) Traffic generated by this development will cause additional wear and tear on this road, increasing the need for repair. However, traffic generated by existing development on this road also damages the road and contributes to the need for repair. Given the limited increase in annual traffic volume caused by the proposed use, the hearings officer finds that the proposed use will not significantly increase the need for repair or improvements to S. Kirk Road. It would be inequitable to require the applicant to bear the full burden of improvements where the proposed development is only responsible for a portion of the problem.

(III) Events such as weddings generate a larger number of vehicles per day than are typically on the roadway. However, as proposed, this use will generate a maximum 6,810 vehicle trips over the course of the entire year, based on the assumed carpool rate of 1.67 persons per vehicle used in the applicant's traffic analysis. (Attachment 9 of the application, Exhibit 2 at 55).<sup>7</sup> Based on the *Institute of*

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<sup>7</sup> Each 75 person event will generate 90 guest vehicle trips (75 guests/1.67 guests per vehicle = 45 vehicles. Two trips per vehicle, inbound and outbound, equals 90 guest vehicle trips). The applicant proposed to conduct up to 55 such events per year, resulting in 4,950 annual guest vehicle trips.

*Transportation Engineers Trip Generation Manual* (the “ITE Manual”), single family residences generate an average of ten vehicle trips per day, or 3,650 vehicle trips per year. Therefore, the annual volume of traffic generated by the proposed event facility is roughly equivalent to two new homes on S. Kirk Road. Transportation engineering staff concluded, based on the existing low traffic volume on S. Kirk Road and the limited number of annual trips generated by the proposed use, that the existing right-of-way and roadway are adequate to support the proposed event use. The hearings officer finds that the condition of the road will not create a hazard, based on the expert testimony of county transportation engineering staff. Neighbors’ unsubstantiated concerns to the contrary are not substantial evidence sufficient to overcome the expert testimony of county engineering staff.

(IV) Traffic from construction vehicles and equipment used to construct the home and other improvements on the site is not relevant to this application. This traffic will occur with or without approval of this application. In addition, such traffic is not an ongoing issue. The applicant expects to complete construction on the site by the end of the summer.

(V) The fact that S. Kirk Road is a dead end road does not make it inherently hazardous. Dead end streets are common in the region. This use will increase the number of people that will need to access this single exit in the event of a wildfire or similar emergency. However, emergency personnel will be able to direct traffic as necessary to facilitate evacuation if such an emergency occurred.

(4) Adequate access can be provided to the site. There are two driveways proposed to serve the event site from S. Kirk Road. The westerly driveway approach will serve as the primary access during events on the site, with a proposed road width of 20 feet. Guests and employees will exit the site via the easterly driveway, with a proposed road width of 16 feet. The design of these driveways exceed the minimum requirements of the Code and are adequate to serve the event site. The applicant will be required to provide plans for any existing and proposed roads, indicating a minimum cross section that is consistent with Roadway Standards Drawing R100. The two driveway approaches were previously permitted (EP005119) with construction of the primary residence, but the permits have not received a final inspection. The applicant will be required to complete the two driveway approaches, per Standard Drawing D500.

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Each 210 person event will generate 252 guest vehicle trips (210 guests/1.67 guests per vehicle equals 126 guest trips x two trips/vehicle = 252 trips). The applicant proposed to conduct up to five such events per year, resulting in 1,260 annual guest vehicle trips.

In addition, each event will generate ten employee trips (maximum five employees per event and two trips per employee). 60 events per year will generate 600 employee vehicle trips per year.

Therefore, the proposed event facility will generate 6,810 vehicle trips per year (4,950 + 1,260 + 600 = 6,810 annual trips).

(I) Neighbors argued that these driveways were approved for one-way traffic, with the western driveway limited to inbound trips and the eastern driveway limited to outbound trips. However, there is no substantial evidence in the record to support those assertions. These driveways were approved to serve the single-family residence on the site. Absent sight distance or other limitations, there is no reason to limit the driveways to one-way traffic when events are not occurring on the site. A condition of approval is warranted to limit the driveways to one-way access as proposed when events are occurring on the site. The fact that the applicant did not implement one-way traffic during previous private, non-commercial events on the site is irrelevant, as such events are not subject to the proposed conditions of approval.

(5) ZDO section 1007.07 requires a finding that the development is served by a transportation system that has adequate capacity to handle any increased vehicle trips generated by new development. However, as noted above, under ZDO Section 1007.07(B)(5) conditional uses to host events are exempt from the concurrency requirements. Therefore, this section is inapplicable.

**ZDO 1203.03(C) can be met with conditions of approval.**

**d. Section 1203.03(D):**

*The proposed use will not alter the character of the surrounding area in a manner that substantially limits, impairs or precludes the use of surrounding properties for the primary uses allowed in the zoning district(s) in which surrounding properties are located.”*

i. The property is located in the EFU zoning district south of Oregon City. The land use pattern in the area can be described as a mixture of rural residential, agriculture, and commercial uses, on acreage properties of various sizes. The primary uses allowed in the EFU zoning district are listed in Table 401-1 and these listed uses are generally farm and forest activities. Residential uses are not a permitted use in the EFU zone. However, ZDO 806.02(E) requires consideration of impacts on residential uses as well.

ii. This criterion does not require that the use have no impacts at all. Any new use or development will alter the character of the area to some extent by modifying existing views, generating additional traffic, installing new light sources, increasing noise, etc.-

The Code only prohibits impacts that *substantially* limit, impair or preclude the use of surrounding properties for the allowed primary uses, e.g. farm and forest activities. (Emphasis added). The Code does not define the word “substantially.” Therefore, the hearings officer must look to the plain and ordinary meaning of that term. *Sarti v. City of Lake Oswego*, 106 Or. App. 594, 597, 809 P.2d 701 (1991). Random House Unabridged Dictionary defines “substantial” as “by an ample or considerable amount; quite a lot.” “Substantial.” In Dictionary.com, Retrieved March 12, 2023, from <https://www.dictionary.com/browse/substantially>

iii. The hearings officer finds that traffic generated by the proposed use will not alter the character of the surrounding area in a manner that substantially limits, impairs or precludes the use of surrounding properties.

(A) The proposed use will generate traffic immediately after events on the site. During larger events that traffic is likely to backup at the S. Kirk Road/Highway 213 intersection, causing congestion on S. Kirk Road and potentially blocking access to driveways intersecting S. Kirk Road. This condition already occurs when burials are occurring at the cemetery. As discussed above, larger events on the site are likely to generate similar traffic volumes and delays. The applicant argues, based on the traffic analysis, that such queues will not exceed six vehicles. However, as discussed above, the traffic analysis does not account for cumulative queues as vehicles continue to exit the site and backup behind the existing vehicle queue. Therefore, the hearings officer finds that the applicant should be required to implement the proposed TDM strategy for all events on the site larger than 75 guests. A condition of approval is warranted to that effect.

(B) Traffic generated by this use will not cause a sufficient increase in congestion on Highway 213 to cause traffic to divert to other routes, as the additional traffic generated by this use represents only a small percentage of the total traffic on this roadway. In addition, most event traffic is likely to occur during off-peak hours, when background traffic volumes and congestion are lower.

vi. The hearings officer finds that other potential impacts of the use are not significant enough to alter the character of the surrounding area in a manner that substantially limits, impairs or precludes the use of surrounding properties for the primary uses.

(A) Vehicles traveling to and from the site will generate exhaust fumes that may be detectable on adjacent properties. However, the volume of traffic and associated exhaust generated by this use is miniscule compared to existing traffic volumes on the nearby Highway 213.

(B) The board adopted standards limiting noise and lighting impacts of this type of use. Although lighting and noise in compliance with these standards may be detectable on adjacent properties, the hearings officer finds that compliance with those adopted standards will ensure that the impacts will not substantially limit, impair or precludes the use of surrounding properties for permitted uses.

(C) The proposed facility will attract additional people to the area. However, there is no evidence that this will significantly impact the area, beyond the traffic impacts discussed above. Existing uses in the area – the cemetery, the “hunter jumper facility,” and other existing commercial uses on Kirk Road also attract people to the area and there is no evidence that people utilizing those services have caused substantial impacts to the area or that guests or employees of the proposed event facility are more likely to cause impacts than other visitors to the area.

(D) The applicant does not propose restoring the connection of S. Kirk Road to S. Beaver Glen Road.

(E) Neighbors expressed concerns with speeding traffic on Kirk Road and Highway 213. However, this is an existing problem which the applicant cannot be required to remedy. Reasonably prudent drivers will observe the posted speed limit and further reduce their speeds to accommodate road conditions such as narrow pavement or the presence of pedestrians and animals. Unfortunately, not all drivers are prudent. However, there is no evidence that the development proposed in this application will contribute a disproportionate share of imprudent drivers.

(F) Any increase in traffic will pose an increased risk for drivers, cyclists and pedestrians in the area. Higher vehicular traffic volume creates a marginally higher risk for pedestrians and bicyclists. It may well warrant a heightened degree of attentiveness to traffic when driving, cycling or walking in the neighborhood. But it will not substantially limit, impair or preclude the use of surrounding properties for permitted uses. School buses drop students at the intersection of S. Kirk Road and Highway 213, requiring them to walk home on S. Kirk Road. However, most events on the site will occur on weekends and during the summer months when school is not in session. The existing cemetery on S. Kirk Road generates similar traffic impacts and there is no evidence that such traffic has created a hazard.

(G) The proposed use is unlikely to significantly increase the risk of trespass due to drivers turning around in neighbor's driveways. Most drivers use GPS applications that direct them to the site. In addition, the applicant will post signs at the intersection of the ingress driveway and S. Kirk Road to clearly identify the site, which will limit the potential for drivers getting lost and needing to turn around in other driveways.

(H) The applicant can regulate or prohibit alcohol use on the site. Some attendees may bring their own alcohol or otherwise consume excessive amounts, which could create a hazard, especially if those attendees attempt to drive home. However, the applicant will have a strong interest in monitoring and enforcing limits on alcohol consumption and stopping intoxicated patrons from driving, in order to avoid legal liability. There is no evidence that this use will generate a significantly higher risk of drunk drivers than any other business that serves alcohol.

(I) Alleged property value impacts of the facility are not relevant to the applicable approval criteria. The Land Use Board of Appeals ("LUBA") held that "[p]otential loss of property value does not affect the use of surrounding properties for residential and other primary uses within the meaning of ZDO 1203.01(D). . ." *Tylka v. Clackamas County*, 34 Or LUBA 14 (1998). The hearings officer agrees with and adopts that conclusion.

(J) The applicant did not propose overnight lodging on the site. A condition of approval is warranted prohibiting advertising or allowing overnight lodging associated with this use.

(K) Allegations of past violations by the applicant (operating a shooting range, conducting unpermitted events, and other alleged code violations) are not relevant to the

applicable approval criteria for this application, as those uses/activities are not proposed as part of this application.

(1) The applicant's past behavior does not show that he cannot or will not operate the use in a manner that complies with the ZDO. If the applicant sustains the burden of proof that the application complies with the approval standards, or if it can comply provided certain conditions are imposed, the hearings officer must as a matter of law approve the application subject to those conditions, ORS 197.522(4).

(2) The use must comply with the conditions of approval, and it is in the applicant's best interest to do so. Failure to comply with the conditions can be a basis for enforcement and for modification or revocation of the CUP. The County will monitor and enforce the permit. The County's Community Environment Section exists for the purpose of identifying, responding to, and remedying alleged violations of County land use decisions and codes. Neighboring residents can assist in the enforcement process by reporting any violations they observe. If the applicant fails to comply with the conditions of approval, i.e., by exceeding the hours of operation, guest limits, maximum noise levels, or otherwise expanding or changing the use, the planning director may initiate proceedings to revoke the permit. But the hearings officer cannot assume that the applicant will not comply and deny the application on that basis.

(3) The fact that neighbors can assist in monitoring the use does not shift the responsibility to them to do so. The County continues to bear the responsibility for enforcing its laws. However neighbors may be in a better position to monitor the use on a continuing basis because of their proximity, and it may be in their interests to do so given the complaint-driven nature of the enforcement process.

**ZDO 1203.03(D) is met.**

e. **Section 1203.03(E):**

*The proposal satisfies the goals and policies of the Comprehensive Plan that apply to the proposed use."*

i. **Chapter 4, Land Use:** The site is designated Agriculture on the Comprehensive Plan map. The Agriculture Land Use Section in Chapter 4 of the Comprehensive Plan implements this Designation. Chapter 4 of the Comprehensive Plan sets out the following Goals and Policies:

(1) Agriculture Goals

- *Preserve agricultural use of agricultural land.*
- *Protect agricultural land from conflicting uses, high taxation and the cost of public facilities unnecessary for agriculture.*
- *Maintain the agricultural economic base of the County and increase the County's share of the agricultural market.*

- *Increase agricultural income and employment by creating conditions that further the growth and expansion of agriculture and attract agriculturally related industries.*
- *Maintain and improve the quality of air, water, and land resources.*
- *Conserve scenic and open space.*
- *Protect wildlife habitats.*

(2) The hearings officer finds that the proposed use is consistent with these goals. The existing residential development on the site has consumed some agricultural land and removed it from agricultural use. That is an existing impact that is not proposed as part of this application. The applicant proposes to operate the home occupation in and around the existing structures; the proposed use will not increase the portion of the site dedicated to non- farm uses or consume more agricultural land. Other proposed structures can be used for agriculture when not used for events. The remainder of the site will continue to be used for agriculture, consistent with these goals. The proposed use is permitted in the EFU zone. Therefore, the hearings officer cannot find that it is a conflicting use. No additional public facilities are needed to serve the proposed use. The development will not alter the existing scenic and open space or impact wildlife habitat, as all new development proposed with this application will occur within previously cleared areas near the existing residence on the site.

(3) Agriculture Policies

- 4.NN.1 The following areas shall be designated Agriculture:  
...
- 4.NN.2 Agriculturally related industries shall be encouraged.
- 4.NN.3 Land uses that conflict with agricultural uses shall not be allowed.
- 4.NN.4 New sewer facilities shall not be allowed in Agricultural areas, except when consistent with Policy 7.A.11 of Chapter 7, *Public Facilities and Services*.
- 4.NN.5 Roads shall be developed in a manner and to a level compatible with maintaining Agricultural areas.
- 4.NN.6 Education and dissemination of information on agricultural crops, methods, and technology; special tax assessment programs; and new land-use techniques should be encouraged.
- 4.NN.7 Lawfully established nonconforming structures and uses that are destroyed by fire, other casualty, or natural disaster shall be allowed to reconstruct, as provided by the Zoning and Development Ordinance.
- 4.NN.8 The Exclusive Farm Use (EFU) zoning district implements the goals and policies of the Agriculture plan designation and should be applied in Agriculture areas.
- 4.NN.9 Forest zoning districts which require a minimum lot size of 80 acres or larger may be applied in Agriculture areas provided the



primary uses are forest and forest- related and that permitted uses will not conflict with agricultural uses.

- 4.NN.10 Except on lands within urban growth boundaries or as provided by the Oregon Revised Statutes for abandoned or diminished mill sites, exceptions to Statewide Planning Goals 3 and 4 shall be required for a plan amendment from the Agriculture designation to any designation other than Forest.

(4) The hearings officer finds that the proposed use is consistent with these policies.

(A) The site is designated Agriculture on the county comprehensive plan map. Therefore, the use is consistent with Policy 4.NN.1.

(B) The use does nothing to discourage agriculturally related industries. Policy 4.NN.2.

(C) Portions of the site are currently developed with residential uses and the remainder of the site is in agricultural use. As noted above, the use is permitted in the EFU zone. Therefore, the Board has determined that it is not a conflicting land use, Policy 4.NN.3.

(D) No new sewer facilities are proposed. Therefore, the use is consistent with Policy 4.NN.4.

(E) No new roads are proposed and as discussed in the transportation findings, existing roads are adequate to serve the proposed use. Therefore, the use is consistent with Policy 4.NN.5.

(F) The proposed use will not preclude the county from providing education and information regarding the listed agricultural issues and the applicant proposed to include farm information in some of the events at the site; the Applicant proposed to invite event guests to tour the dairy and livestock operation on the site and to sample some of the farm products, in order to both enhance appreciation for agricultural uses and to expand the customer base of the existing farm. (Exhibit 2 at 8). This is consistent with Policy 4.NN.6.

(G) This application does not involve a non-conforming use or structure. Therefore, Policy 4.NN.7 is inapplicable.

(H) The site is zoned EFU, thereby implementing the agricultural plan designation as required by Policy 4.NN.8, and making Policy 4.NN.9 inapplicable.

(I) The applicant is not requesting a plan amendment. Therefore, Policy 4.NN.10 is inapplicable.

ii. Chapter 5, Transportation:

a. The transportation goals relate to the planning and provision of transportation facilities. No transportation facilities are proposed with this development. Therefore, the hearings officer finds that the proposed development is consistent with the transportation goals and policies of the comprehensive plan.

b. As discussed above, traffic generated by the proposed development will not exceed the capacity of streets in the area or create or exacerbate a hazard, based on the expert testimony of the applicant's traffic engineer and county transportation staff and the crash history at the intersection of Highway 213 and S. Kirk Road. Although the proposed use will generate higher traffic volumes when events are occurring on the site, the overall volume of traffic generated by the proposed use is equivalent to two new single-family residences. In addition, the majority of traffic generated by this use will occur during off-peak hours, when background traffic levels are lower. Recommended conditions of approval in the Staff Report will ensure that development on the site and within the public right-of-way complies with Code requirements that implement these policies. The hearings officer finds that the proposed use, subject to conditions, is consistent with the transportation policies of the comprehensive plan.

**ZDO 1203.03(E) can be met with conditions.**

f. Section 1203.03(F):

*The proposed use complies with any applicable requirements of the zoning district and overlay zoning district(s) in which the subject property is located, Section 800, and Section 1000.*

i. EFU Zoning Requirements: The hearings officer finds that the proposed use, as conditioned, complies with the applicable requirements of the EFU zone, ZDO 401.

(A) ZDO 401, Table 401-1, lists the uses permitted in the EFU zone. "Home Occupation to Host Events, subject to Section 806, 401.05(A)(1) & (D)(1)" is listed as a conditional use in the EFU zone. The applicant is proposing a home occupation to host events on site.

(B) ZDO 401.05 provides, in relevant part:

*The following criteria apply to some of the uses listed in Table 401-1, Permitted Uses in the EFU District. The applicability of a specific criterion to a listed use is established by Table 401-1.*

A. General Criteria:

1. *Uses may be approved only where such uses:*

- a. *Will not force a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest use; and*
- b. *Will not significantly increase the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use.*

...

(1) ORS 215.203(2)(a) defines “farm use” as:

*[T]he current employment of land for the primary purpose of obtaining a profit in money by raising, harvesting and selling crops or 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.*

(2) The proposed event facility is located near the center of the 133.47-acre site, well away from all surrounding farm operations. Light and noise generated on the site in compliance with applicable standards will not interfere with existing farm practices. Guests may walk on the proposed perimeter path however, they are unlikely to trespass onto or otherwise impact abutting properties provided the boundaries of the site are clearly identified. As discussed above, neighbors testified about a truck delivering hay to the area that was impacted by vehicle queues from a funeral. However, the hearings officer finds that it is feasible to control traffic generated by events on the site as necessary to limit traffic backups. Ms. Mayo-Sorenson testified that she no longer rides her horses on S. Kirk Road due to the volume of traffic but there is no evidence that riding horses on this road is an accepted farm or forest practice.

(C) ZDO 401.07 provides the following dimensional standards for the EFU zone:

- A. *Minimum Lot Size: New lots of record shall be a minimum of 80 acres in size...*
- B. *Minimum Front Setback: 30 feet.*
- C. *Minimum Side Setback: 10 feet.*
- D. *Minimum Rear Setback: 30 feet; however, accessory buildings shall have a minimum rear setback of 10 feet.*

(1) The applicant is not proposing a land division. Therefore, ZDO 401.07(A) is inapplicable. All of the existing and proposed structures meet or exceed the above setback requirements.

ii. Overlay Zoning: The site is not subject to any overlay zones.

iii. Section 800: Section 800 sets out Special Use Requirements for specific uses. Section 806.02 provides “Home occupations to host events shall comply with the following standards:”

(A) ZDO 806.02(A) provides:

*The operator shall reside full-time in a lawfully established dwelling unit on the tract on which the home occupation is located.*

(1) ZDO 806.01(C) defines “Operator” as:

*The person who conducts the home occupation, has majority ownership interest in the home occupation, and is responsible for strategic decisions and day-to-day operations of the home occupation.*

(2) The applicant testified that he resides on the site full-time and that he will conduct the home occupation be responsible for strategic decisions and day-to-day operations of the home occupation. (Exhibit 2 at 19). There is no substantial evidence to the contrary. The residence on tax lot 900 is legally established; the county approved building permits for the structure. Tax lot 900 is part of the tract on which the home occupation is proposed to be located. Neighbors testified that the applicant intends to utilize a “venue coordinator” to operate the facility. (However, that would violate the requirement that the applicant, the proposed “operator,” be “responsible for strategic decisions and day-to-day operations of the home occupation.” A condition of approval is warranted requiring that the applicant be responsible for strategic decisions and day-to-day operations of the home occupation.

(4) This criterion can be met with conditions.

(B) ZDO 806.02(B) provides:

*Employees: The home occupation shall have no more than five employees.*

(1) ZDO 806.01(A) defines “Employee” as:

*Any on-site person, whether they work full-time or part-time in the home occupation, including, but not limited to, the operator, partners, assistants, and any other persons participating in the operation of the home occupation. Except in the EFU, TBR, and AG/F Districts, persons employed by contract to provide services for a single event, such as caterers, photographers, and florists, are not considered employees.*

(2) The Court of Appeals interpreted the five employee limit to prohibit “[a] home occupation to ‘employ on the site’ more than five persons simultaneously.” *1000 Friends of Or. v. Clackamas Cnty.*, 309 Or App 499, 508, 483 P.3d 706 (2021). “Employees” includes persons directly employed by the operator as well as independent contractors (caterers, waitstaff, etc.) employed by attendees of the events. *Green v. Douglas County*, 245 Or App 430, 436, 263 P.3d 355, 359 (2011). Therefore, the applicant may employ more than five persons to operate the events, provided no more than five employees are on the site at any point in time.

(3) The applicant proposes to operate the facility with a maximum of five employees. Neighbors argued that it is not feasible to operate a facility of this size with only five employees. However, they failed to provide any support for this assertion. The Code allows events for up to 300 people subject to the five employee limit, so the Board presumably determined that it is feasible to do so. All similar event facilities in the County are subject to the same limitation.

(4) This criterion can be met.

(C) ZDO 806.02(C) provides:

*Type of Buildings: Notwithstanding the definition of home occupation in Section 202, Definitions, in the AG/F, EFU, and TBR Districts, the home occupation shall be operated substantially in the operator’s dwelling or other buildings normally associated with uses permitted in the applicable zoning district.*

(1) In this case, the applicant proposes to operate the home occupation in a covered swimming pool (under construction), located near the center of the site, a 4,400 square foot greenhouse immediately east of the swimming pool, and an outdoor living area that is under permanent canopy in the eastern side of the residence.

(A) The hearings officer finds that the greenhouse is a building normally associated with uses permitted in the EFU zone. Greenhouses are a common agricultural use. Although the design of the greenhouse proposed in this case is more ornate than most similar structures, it does not change the use.

(B) The hearings officer finds the covered swimming pool and “outdoor living area that is under permanent canopy” are attached to, and therefore part of, the operator’s dwelling. Event activities in these structures are “[s]ubstantially in the operator’s dwelling...”

(2) This criterion is met.

(D) ZDO 806.02(D) provides:

Tents: Temporary tents are allowed as follows:

...

(1) The applicant states that he does not intend to use tents at this time. (Exhibit 2 at 20). If the applicant chooses to use tents in the future, such use must comply with the requirements of this Section.

(2) This criterion can be met.

(E) ZDO 806.02(E) provides:

Impacts on Dwellings: In the AG/F, EFU, and TBR Districts, the evaluation of compliance with Subsection 1203.03(D) shall include consideration of impacts on dwellings even though dwellings are not primary uses in these zoning districts.

(1) The impacts of the proposed use are addressed in the findings above addressing ZDO 1203.03(D). Those findings considered the impact of the use on dwellings.

(2) This Code section establishes a review standard. It does not include an approval criterion that must be met.

(F) ZDO 806.02(F) provides:

Hours of Operation: During the months of November through March, no event shall take place outside the hours of 9:00 a.m. to 10:00 p.m. During the months of April through October, no event shall take place outside the hours of 8:00 a.m. to 10:00 p.m. These time restrictions do not apply to persons involved in the set-up or clean-up of the facilities.

(1) The applicant proposes to operate the facility in compliance with these requirements.

(2) This criterion can be met.

(G) ZDO 806.02(G) provides:

Frequency of Events: A maximum of two events shall be allowed per day, and no more than one event shall occur at any one time. During the months of November through March, no more than five events shall be allowed per week.

*During the months of April through October, no more than seven events shall be allowed per week.*

(1) The applicant proposes to operate the facility in compliance with these requirements.

(2) This criterion can be met.

(H) ZDO 806.02(H) provides:

*Guests: The maximum number of guests for any single event is 300. However, to the extent necessary to comply with Subsection 1203.03, a lower limit may be imposed based on site capacity constraints.*

(1) The applicant proposes up to 55 events annually with maximum of 75 guests per event and up to five events annually with maximum of 210 guests per event.

(2) This criterion can be met.

(I) ZDO 806.02(I) provides:

*Lighting: All lighting used during events shall comply with Subsection 1005.05(A).*

(1) As discussed in the findings above, it is feasible to design, locate, and shield the proposed outdoor lights to comply with ZDO 1005.05(A).

(2) This criterion can be met.

(J) ZDO 806.02(J) provides:

*Noise: Noise shall be regulated as follows:*

- 1. From 7:00 a.m. until 10:00 p.m. on Friday and Saturday and until 9:00 p.m. on all other days of the week, the average peak sound pressure level, when measured off the subject property, of noise created by the home occupation shall not exceed the greater of 60 dB(A) or the ambient noise level. During all other hours, the average peak sound pressure level, when measured off the subject property, of noise created by the home occupation shall not exceed the greater of 50 dB(A) or the ambient noise level.*

- a. *Noise generated by vehicles entering or exiting the subject property, but not by idling vehicles, shall be exempt from Subsection 806.02(J)(1).*
  - b. *Subsection 806.02(J)(1) shall not apply to noise detectable on public rights-of-way and railroad rights-of-way.*
2. *A noise study may be required to demonstrate compliance with Subsection 806.02(J)(1). If a noise study is required, measurements shall be made with a sound level meter. The sound level meter shall be an instrument in good operating condition, meeting the requirements of a Type I or Type II meter, as specified in ANSI Standard 1.4-1971. The sound level meter shall contain at least an A-weighted scale, and both fast and slow meter response capability. Personnel making measurements shall have completed training in the use of the sound level meter, and measurement procedures consistent with that training shall be followed.*

(1) As noted in the application, the ambient noise level in the area is roughly 60 dBA. (Exhibit 2 at 89). There is no substantial evidence to the contrary. Therefore, noise on the site may not exceed 60 dBA. The hearings officer finds that it is feasible to comply with the 60 dB(A) noise limit. As discussed in the application, noise levels decline exponentially with distance. The event facility is proposed near the center of the site, 620 feet or more from the nearest property boundary. The applicant proposed to limit noise levels at the event facility to a maximum 95 dBA, which is likely ensure compliance with the 65 dBA standard at the boundaries of the site. Although sounds from events on the site may be audible on adjacent properties, it can comply with adopted noise limits.

(2) Neighbors' assertions that noise from the applicant's gun range exceeds 60 dBA are irrelevant, as use of the gun range is not proposed as part of this application. Neighbors may report alleged noise violations to the County enforcement section.

(3) This criterion is met as conditioned.

(K) ZDO 806.02(K) provides:

*Parking: The home occupation shall comply with Section 1015, Parking and Loading, except as modified by Subsection 806.02(K).*

1. *On-street parking shall be prohibited on the day of an event.*



2. *An alternative to the parking area surface required pursuant to Subsection 1015.01(B) may be approved based on the following criteria:*
  - a. *It is appropriate considering season, duration, and intensity of use.*
  - b. *It shall be surfaced with hardy grasses, wood chips, or other similar organic materials sufficient to adequately stabilize the ground surface for parking.*
  - c. *In order to minimize tracking of soil onto the roadway, a driveway surfaced with screened gravel or better must extend a minimum of 200 feet in length from the interior edge of the roadway that provides access to the subject property. A traffic management plan must direct all vehicular traffic along the required driveway prior to such traffic entering the roadway.*

(1) As discussed below, the applicant proposed more than enough parking spaces on the site to comply with the minimum parking requirement of ZDO 1015 and it is feasible to design the parking lots to be consistent with the standards of that section. There is no need for on-street parking. All required parking areas will be pavement or gravel surfaced.

(2) At the hearing the applicant stated that overflow parking may be allowed in the fields on the site if needed during the summer months. This is allowed, provided it complies with ZDO 806.02.K(2). A condition of approval is warranted to that effect.

(3) This criterion is met as conditioned.

(L) ZDO 806.02(B) provides:

*Portable Restrooms: Portable restroom facilities shall:*

- 1. Include hand-sanitizing or hand-washing facilities;*
- 2. Comply with the standards of the service provider and the applicable regulations of the Oregon Department of Environmental Quality;*
- 3. Be screened from adjacent lots and rights-of-way by sight-obscuring fences or plantings; and*
- 4. Be located a minimum of 50 feet from all lot lines.*

(1) This criterion can be met.

(M) ZDO 806.02(M) provides:

*Signs: One temporary sign shall be allowed in addition to signs permitted pursuant to Section 1010, Signs. The sign shall not exceed eight square feet in area; shall be placed on private property on the day of the event; shall be removed no more than 24 hours after the event; and shall be physically attached to the premises in a manner which both prevents the sign from being moved or blown from its location, and allows the prompt removal of the sign.*

- (1) ZDO 1010.11 allows offsite traffic control and identification signs in natural resource districts, subject to approval of temporary sign permit.
- (3) ZDO 1010.02.B requires ODOT approval of all off-premises signs which are visible from a state highway.
- (4) ODOT required the applicant provide “[o]ne sandwich [sign] on shoulder of OR-213 in each direction ‘Event traffic ahead’.” (Exhibit 2 at 53-54). The hearings officer finds that such signs are “traffic control and identification signs allowed by ZDO 1010.11, as the site is located in a natural resource district as defined by ZDO 200 and 400 and the signs are expressly intended to notify drivers of potential event related traffic.”<sup>8</sup> The applicant must obtain ODOT and County approval of such signs pursuant to ZDO 1010.02.B and 1010.11. A condition of approval is warranted to that effect.
- (5) This criterion can be met as conditioned.

(N) ZDO 806.02(N) provides:

*Storage: Equipment, furniture, goods, and other amenities used for events shall be stored indoors on non-event days.*

(1) The applicant proposes to store all equipment, furniture, goods, and other amenities used for events indoors in one of the existing or proposed buildings on non-event days.

(2) This criterion is met.

(O) ZDO 806.02(O) provides:

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<sup>8</sup> ZDO 202 provides “ZONING DISTRICT, NATURAL RESOURCE: A zoning district regulated by Section 400, Natural Resource Districts.” The EFU zone is a “Natural Resource District listed in ZDO 400. ZDO 401.

*Appearance: On non-event days, the use shall not take an outward appearance nor manifest any characteristics of a business or operation of a service commercial nature, except for those characteristics normally associated with or allowed for a primary use in the subject zoning district, or, in the AG/F, EFU, and TBR Districts, for a use identified as “allowed” by Table 407-1, Permitted Uses in the AG/F District, 401-1, Permitted Uses in the EFU District, or 406-1, Permitted Uses in the TBR District, respectively.*

(1) As noted above, the event site is located 620 feet or more from the nearest property boundary, which limits visibility of the event facility. Compliance with the storage requirement above will ensure that the use does not project an outward appearance nor manifest any characteristics of a business or operation of a service commercial nature, other than the proposed permanent sign, which is allowed by the Code.

(2) This criterion is met.

iv. Section 1000: The Staff Report addressed Sections 1002, 1005, 1006, 1007, 1008, 1009, 1010, 1015, and 1021. The Staff Report did not explain why other sections were not considered and addressed. Therefore, the findings below address all of the subsections of Section 1000.

(A) Section 1002, Protection of Natural Features:

(1) Subsection 1002.01 - Hillsides:

*A. Development on slopes greater than or equal to 20 percent...shall be subject to the following standards:*

(I) The site does not contain slopes in greater than or equal to 20 percent. Therefore, ZDO 1002.01 is inapplicable.

(2) Subsection 1002.02 - Development Restriction Following Excessive Tree Removal. This section applies to land inside the Portland Metropolitan Urban Growth Boundary, except land specially assessed as forestland on September 28, 2010. The site is not inside the Portland Metropolitan Urban Growth Boundary and it was not specially assessed as forestland on September 28, 2010. Therefore, ZDO 1002.02 is inapplicable.

(3) Subsection 1002.03 - Trees And Wooded Areas:

*A. Existing wooded areas, significant clumps or groves of trees and vegetation, consisting of conifers, oaks and*

*large deciduous trees, shall be incorporated in the development plan wherever feasible. The preservation of these natural features shall be balanced with the needs of the development, but shall not preclude development of the subject property, or require a reduction in the number of lots or dwelling units that would otherwise be permitted. Site planning and design techniques which address incorporation of trees and wooded areas in the development plan include, but are not limited to, the following:*

...

*B. Trees and wooded areas to be retained shall be protected during site preparation and construction according to County design and specifications by:*

...

(I) All new development on the site is proposed in previously cleared areas of the site; no trees are proposed for removal with this application. The applicant can be required to comply with the tree preservation requirements of ZDO 1002.03(B) to ensure protection of the remaining trees on the site during site preparation and construction. The application can be conditioned to comply with ZDO 1002.03.

(4) Subsection 1002.04 - River and Stream Corridors:

*The following standards shall apply to land that is outside both the Metropolitan Service District Boundary and the Portland Metropolitan Urban Growth Boundary.*

*A. Developments shall be planned, designed, constructed, and maintained so that:*

- 1. River and stream corridors are preserved to the maximum extent feasible and water quality is protected through adequate drainage and erosion control practices; and*
- 2. Buffers or filter strips of natural vegetation are retained along all river and stream banks.*

(I) The site is located outside both the Metropolitan Service District Boundary and the Portland Metropolitan Urban Growth Boundary and contains mapped RSCA streams. Therefore, it is subject to Subsection 1002.04. However, no development is proposed in proximity to the streams. The application complies with ZDO 1002.04.

(5) Subsection 1002.05 - Deer and Elk Winter Range: The site is not located within mapped deer and elk winter range. Therefore, ZDO 1002.05 is inapplicable.

(6) Subsection 1002.06 - Mount Hood Resource Protection Open Space: The site is not located in a mapped Resource Protection Open Space area. Therefore, ZDO 1002.06 is inapplicable.

(7) Subsection 1002.07 - Significant Natural Areas: The site is not located in an identified significant natural area. Therefore, ZDO 1002.07 is inapplicable.

(8) Subsection 1002.08 - Significant Landforms And Vegetation: All new development is proposed in previously cleared areas of the site; no significant landform alterations or vegetation removal is proposed. Therefore, ZDO 1002.08 is inapplicable.

*The application complies with Section 1002.*

(B) Section 1003 - Hazards to Safety. The site is not located within any mapped geologic, flood, soil, fire hazard areas. Therefore, Section 1003 is inapplicable.

*Section 1003 is inapplicable.*

(C) Section 1004 - Historic Protection: The site does not contain any structures or areas of historic, cultural, or archaeological significance.

*Section 1004 is inapplicable.*

(D) Section 1005 - Sustainable Site and Building Design: Section 1005 of the ZDO sets forth the standards, requirements and considerations that pertain to additional techniques to meet sustainability goals. The hearings officer has reviewed Section 1005 and finds the following criteria apply:

(1) Subsection 1005.01 is a purpose statement. It does not include applicable approval criteria.

(2) Subsection 1005.02 Applicability, provides:

*Section 1005 applies to institutional, commercial, and industrial development; multifamily dwellings; and developments of more than one two- or three-family dwelling.*

(I) The proposed event facility is a “commercial use” as defined by ZDO 202. Therefore, the proposed development is subject to Section 1005.

(3) Subsection 1005.03 - General Site Design Standards (A-D) discusses site design standards such as clustering buildings to the extent possible, providing efficient on-site circulation for vehicles and pedestrians, considering the potential for use of both passive and active solar when laying out buildings, etc. The hearings officer finds that the proposed development complies with these standards, based on the following:

(I) The applicant proposed to cluster the buildings near the center of the site to allow efficient sharing of walkways and on-site vehicular circulation. The application complies with ZDO 1005.03(A).

(II) The greenhouse building is proposed with its longest elevation oriented within 20 degrees of true south in order to maximize the south-facing dimensions. As discussed below, the meditation building cannot be approved through this application. No other new buildings are allowed as part of the proposed use. The application complies with ZDO 1005.03(B).

(III) No setback reductions are proposed. All existing and proposed structures exceed the setback requirements of the EFU zone. Therefore, ZDO 1005.03(C) is inapplicable.

(IV) The site design includes pedestrian walkways connecting the buildings to each other, to outdoor activity areas (the patio and trails), and to the proposed parking areas, creating a continuous, inter-connected walkway system within the site. Conditions of approval require compliance with driveway crossing, lighting, and surfacing standards. The application complies with ZDO 1005.03(D).

(V) The site is located outside of the UGB. Therefore, ZDO 1005.03(E) and (F) are inapplicable.

(VI) ZDO 1005.03(G) through (L) are all inapplicable, as the site is not located on a transit street, at a transit stop, in any of the listed zones, and there is no minimum FAR requirement in the EFU zone.

(VII) The application can be conditioned to comply with ZDO 1005.03.

(4) Subsection 1005.04 - Building Design:

A. *The following standards apply to building facades [sic] visible from a public or private street or accessway and to all building façades where the primary entrance is located.*

(I) The hearings officer finds that the proposed greenhouse complies with the standards of this section. The residence on the site is an existing structure that is not proposed as part of this development that is not subject to these standards. Otherwise the application complies with ZDO 1005.04.

(5) Subsection 1005.05 - Outdoor Lighting:

A. *Outdoor lighting devices:*

1. *“Shall be architecturally integrated with the character of the associated structures, site design and landscape.*
2. *Shall not direct light skyward.*
3. *Shall direct downward and shield light; or direct light specifically toward walls, landscape elements or other similar features, so that light is directed within the boundaries of the subject property;*
4. *Shall be suitable for the use they serve, e.g. bollard lights along walkways, pole mounted lights for parking lots;*
5. *Shall be compatible with the scale and intensity of uses they are serving. Height of pole mounted fixtures shall not exceed 25 feet or the height of the tallest structure onsite, whichever is less; and*
6. *At entrances, shall be glare-free. Entrance lighting may not exceed a height of 12 feet and must be directed downward.”*

(I) The applicant discussed lighting, and notes general style on site provides for relatively discrete outdoor lighting. The hearings officer finds that it is feasible to comply with these criteria and this standard can be met with a condition.

*The standards of Section 1005 are met as conditioned.*

(E) Section 1006, Water Supply, Sanitary Sewer, Surface Water; and Utilities Concurrency:

(1) Subsection 1006.01 - General Standards:

- A. *The location, design, installation, and maintenance of all utility lines and facilities shall be carried out with minimum feasible disturbance of soil and site consistent with the rules and regulations of the surface water management regulatory authority.*
- B. *All development that has a need for electricity, natural gas, and communications services shall install them pursuant to the requirements of the utility district or company serving the development. Except where otherwise prohibited by the utility district or company, all such facilities shall be installed underground.*
- C. *Coordinated installation of necessary water, sanitary sewer, and surface water management and conveyance facilities is required.*
- D. *Easements shall be provided along lot lines as deemed necessary by the County, special districts, and utility*

*companies. Easements for special purpose uses shall be of a width deemed appropriate by the responsible agency.*

(I) The site is currently served by water, septic, and utilities. If additional facilities are required, the County can ensure compliance with ZDO 1006.01 through the permitting process for installation of such facilities.

(2) Subsection 1006.02 - Street Lights: Subsection 1006.02 applies to development inside the Portland Metropolitan Urban Growth Boundary. The site is not inside the Portland Metropolitan Urban Growth Boundary. Therefore, ZDO 1006.02 is inapplicable.

(3) Subsection 1006.03 - Water Supply

*A. All development which has a need for, or will be provided with, public or community water service shall install water service facilities and grant necessary easements pursuant to the requirements of the district or company serving the development.*

(I) This development will not utilize public or community water service. Therefore, ZDO 1006.03(A) is inapplicable.

*B. Approval of a development that requires public or community water service shall be granted only if the applicant provides a preliminary statement of feasibility from the water system service provider.*

...

(II) This development will not utilize public or community water service. Therefore, ZDO 1006.03(B) is inapplicable.

*C. Prior to final approval of any partition or subdivision, the applicant shall provide evidence that any wells in the tract subject to temporary or permanent abandonment under Oregon Revised Statutes (ORS) 537.665 have been properly abandoned.*

(III) The applicant is not proposing a partition or subdivision. Therefore, ZDO 1006.03(C) is inapplicable.

*D. The following standards apply inside the Portland Metropolitan Urban Growth Boundary, Government Camp, Rhododendron, Wemme/Welches, Wildwood/Timberline, and Zigzag Village:*



(IV) The site is not located inside the Portland Metropolitan Urban Growth Boundary, Government Camp, Rhododendron, Wemme/Welches, Wildwood/Timberline, and Zigzag Village. Therefore, ZDO 1006.03(D) is inapplicable.

*F.<sup>9</sup> The following standards apply outside the Portland Metropolitan Urban Growth Boundary, Government Camp, Rhododendron, Wemme/Welches, Wildwood/Timberline, and Zigzag Village:*

*1. Applicants shall specify a lawful water source for the proposed development, such as a public or community water system, certificated water right, or exempt-use well.*

(V) The site is served by an on-site well. This standard is met.

(4) Subsection 1006.04 - Sanitary Sewer Service

*All development that has a need for sanitary sewers shall install the facilities pursuant to the requirements of the district or company serving the development.*

(I) This development is not served by sanitary sewers. Therefore, ZDO 1006.04 is inapplicable.

(5) Subsection 1006.05 – Onsite Wastewater Treatment:

*A. All development proposing subsurface sewage disposal shall receive approval for the system from the County prior to submittal of a land use application for development. Said systems shall be installed pursuant to Oregon Revised Statutes 454.605 through 454.745 and Chapters 171, 523, and 828; Oregon Administrative Rules Chapter 340, Divisions 71 and 73; and the policies of the County.*

(I) Sewage disposal for existing development on the site is accommodated by an existing on-site septic system. The applicant proposes to utilize portable restroom facilities for all guests and employees on the site, which is allowed by ZDO 806.02(L), subject to certain standards. The prior application proposed an ADA restroom in the greenhouse building. However, the applicant eliminated that facility in the current application. The application can be conditioned to ensure compliance with these standards.

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<sup>9</sup> There is no subsection “E” in ZDO 1006.03.

(6) Subsection 1006.06 - Surface Water Management and Erosion Control:

(I) DTD Engineering is the surface water authority in the area and signed off on the Statement of Feasibility on October 1, 2021, indicating it is feasible for the proposal to comply with the standards. (Exhibit 2 at 26). Condition IV.6.b requires such approval.

(7) Subsection 1006.07- Preliminary Statements Of Feasibility Exceptions:

A. *A land use application shall be deemed complete and may be approved without the submittal of one or more of the preliminary statements of feasibility required by Subsections 1006.03, 1006.04, and 1006.06 if the applicant demonstrates that a good faith attempt has been made to obtain the statement(s).*

(I) The application included the required preliminary statements of feasibility. This subsection is met.

*The standards of Section 1006 can be satisfied as conditioned.*

(F) Section 1007, Roads and Connectivity:

(1) Subsection 1007.01 – General Provisions:

A. *The location, alignment, design, grade, width, and capacity of all roads shall be planned, coordinated, and controlled by the Department of Transportation and Development and shall conform to Section 1007, Chapters 5 and 10 of the Comprehensive Plan, and the Clackamas County Roadway Standards. Where conflicts occur between Section 1007, the Comprehensive Plan, and the Clackamas County Roadway Standards, the Comprehensive Plan shall control.*

(I) S. Kirk Road is designated a rural local roadway.

B. *Right-of-way dedications and improvements shall be required of all new developments, including partitions, subdivisions, multifamily dwellings, two- and three-family dwellings, condominiums, single-family dwellings, and commercial, industrial, and institutional uses, as deemed necessary by the Department of Transportation and Development and consistent with*

*Section 1007, Chapters 5 and 10 of the Comprehensive Plan, and the Clackamas County Roadway Standards.*

(II) S. Kirk Road is located within a 40-foot wide public right-of-way, with an improved width of approximately 18 feet in the vicinity of the project site. Given the limited number of additional vehicle trips generated by the proposed development, the hearings officer finds that the cost of additional right-of-way dedication and frontage improvements would exceed the roughly proportional impact of the proposed development, resulting in an unconstitutional exaction, based on the U.S. Supreme Court's decisions in *Nollan v. California Coastal Commission*, 483 U.S. 825, 107 S.Ct. 3141, 97 L.Ed.2d 677 (1987) and *Dolan v. City of Tigard*, 512 U.S. 374, 384, 114 S.Ct. 2309, 129 L. Ed. 2d 304 (1994).

*C. New developments shall have access points connecting with existing private, public, county, or state roads.*

(III) The applicant proposed to utilize the existing driveways to access the site. No new access points are proposed. The application complies with this criterion.

*D. Street alignments, intersections, and centerline deflection angles shall be designed according to the standards set forth in Chapters 5 and 10 of the Comprehensive Plan and the Clackamas County Roadway Standards.*

(IX) No streets or intersections are proposed. This criterion is inapplicable.

*E. All roads shall be designed and constructed to adequately and safely accommodate vehicles, pedestrians, and bicycles according to Chapters 5 and 10 of the Comprehensive Plan and the Clackamas County Roadway Standards. Development-related roadway adequacy and safety impacts to roadways shall be evaluated pursuant to the Clackamas County Roadway Standards and also to Oregon Department of Transportation standards for state highways.*

(V) S. Kirk Road is not improved to current county standards. However, the condition of the existing roadway does not pose a significant safety hazard. The road is relatively flat and straight. Vehicles, pedestrians, and bicycles are clearly visible to oncoming drivers. The road does not have a high accident rate and there is no other evidence that the condition of this roadway poses a hazard. As noted above, the applicant cannot be required to improve the roadway,

as the cost of the improvements would exceed the roughly proportional impact of the development on the need for such improvements. This criterion is met.

*F. Roadways shall be designed to accommodate transit services where transit service is existing or planned and to provide for the separation of motor vehicles, bicycle, and pedestrian traffic, and other modes as appropriate.*

(VI) There is no existing or planned transit service on S. Kirk Road. This criterion is inapplicable.

*G. The needs of all modes of transportation shall be balanced to provide for safe and efficient flow of traffic. Where practical, pedestrian crossing lengths shall be minimized and the road system shall be designed to provide frequent pedestrian connections.*

(VII) No changes to the existing roadway are proposed or required with this application. This criterion is inapplicable.

*The standards of Section 1007 can be satisfied as conditioned.*

(G) Section 1009, Landscaping: Table 1009-01 does not provide a minimum landscape requirement for development in the EFU zone. The applicant proposed to install landscaping throughout the developed portion of the site. Conditions of approval can be imposed to ensure that such landscaping complies with the requirements of this section. In addition, ZDO 1009.01(C) requires that the applicant remove all existing invasive non-native or noxious vegetation on the site.

*The standards of Section 1009 can be satisfied with conditions.*

(H) Section 1010, Signs:

(1) The applicant proposes to provide one permanent sign located at the main entrance on S. Kirk Road indicating the street address and "Chateau de Lis." On the day of events the applicant also proposes to place a temporary sign at the main entrance indicating the specific event being held. The proposed freestanding commercial sign is permitted in the EFU zone subject to the size, design, and location limitations of ZDO 1010.07(A)(2), subject to the applicant obtaining approval of a sign permit. The proposed temporary sign is exempt from permit requirements but subject to the limitations of ZDO 1010.13(A) and 806.02(M). In addition, ODOT required that the applicant place temporary 'Event traffic ahead' signs on the shoulder of OR-213. (Exhibit 2 at 53-54).

*The standards of Section 1010 can be met subject to conditions.*

(I) Section 1011, Open Space And Parks:

(1) The site is not designated open space or parks.

*Section 1011 is inapplicable.*

(J) Section 1012 - Lot Size and Density:

(1) The application does not propose a land division.

*Section 1012 is inapplicable.*

(K) Section 1013, Planned Unit Developments

(1) The application does not propose a planned unit development.

*Section 1013 is inapplicable.*

(L) Section 1015,<sup>10</sup> Parking and Loading:

(1) ZDO Section 1015 requires adequate on site circulation for the parking and maneuvering of all vehicles anticipated to use the site. For uses outside the UGB, parking and maneuvering areas require a surface of screened gravel or better. ZDO 806.02(K)(2) allows alternative parking surfaces, such as hardy grasses, wood chips, or other similar organic materials. The applicant proposes to provide paved and gravel surfaced parking areas. No alternative parking surfaces are proposed.

(2) ZDO Table 1015-1 requires a minimum of one parking space per three guests and one space for each employee for the proposed home occupation to host events. There is no parking maximum for this use. The applicant proposes to accommodate a maximum 210 guests and five employees, which requires a minimum 75 parking spaces.<sup>11</sup> The applicant proposes to provide 185 parking spaces on the site, which is more than adequate to meet the requirements of the Code.

(3) Parking spaces must meet the minimum standards of ZDO 1015 and Roadway Standards Drawing P100/P200. Parking spaces shall be adequately delineated. For paved surfaces, parking spaces shall be striped. For a gravel surface, tire stops or a similar physical feature shall be provided to delineate each gravel parking space. The applicant shows a main parking area for those events totaling less than 50 guests, along with an overflow parking area for larger events. The applicant will be required to provide a detailed plan with dimensions, identifying the parking spaces and circulation area and method of delineation for gravel parking spaces. Handicapped (ADA) parking spaces and adjacent accessible areas shall be paved with asphalt, concrete, or an equivalent approved by Clackamas County Engineering staff, as required by the Building Department. As conditioned, adequate circulation and parking can be provided.

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<sup>10</sup> There is no Section 1014 in the Code.

<sup>11</sup> 210 guest/1 space per guest = 70 parking spaces. Plus one space per five employees = 75 parking spaces.

(4) The applicant stated that overflow parking may be allowed in the fields on the site if needed during the summer months. This additional parking is not needed to support the maximum 210 guests proposed on the site. However, it is allowed pursuant to ZDO 806.02.K(2), discussed above.

*Section 1015 is met as conditioned.*

(M) Section 1017, Solar Access: Section 1017 is inapplicable, as the site is not located in the VR-4/5, VR-5/7, R-5, R-7, R-8.5, R-10, R-15, R-20, and R-30 Districts.

*Section 1017 is inapplicable.*

(N) Section 1021,<sup>12</sup> Solid Waste and Recyclable Material Collection: outlines the standards for refuse and recycling for commercial developments.

(1) The applicant did not address this standard. The hearings officer finds that it is feasible to provide for solid waste and recycling service for the proposed use. Proposed condition II.4 in the Staff Report requires that the applicant demonstrate actual compliance with the applicable portions of Section 1021.

*Section 1021 is met as conditioned.*

Summary: The applicant can comply with all applicable sections of Section 1000.

## **D. CONCLUSION**

Based on the findings and discussion provided or incorporated herein, the hearings officer approves the application, Case No. Z0151-23-C (Chateau De Lis), subject to conditions of approval.

## **E. DECISION**

Based on the findings, discussion and conclusions provided or incorporated herein and the public record in this case, the hearings officer hereby approves Case No. Z0151-23-C (Chateau De Lis) subject to the following conditions:

### **I. General Conditions:**

- 1) This land use permit is based on the submitted written narrative and plan(s) dated April 6, 2023. The application was deemed complete on April 26, 2023. The applicant submitted additional information that included a water usage analysis, on May 24, 2023 that was referenced in the original narrative but was erroneously not included in the final application file. No work shall occur under this permit

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<sup>12</sup> There are no Sections 1018-1020 in the Code.

other than that which is specified within these documents. It shall be the responsibility of the property owner(s) to comply with this document(s) and the limitation of approval described herein.

- 2) The applicant is advised to take part in a Post Land Use Transition meeting. County staff would like to offer you an opportunity to meet and discuss this decision and the conditions of approval necessary to finalize the project. The purpose of the meeting is to ensure you understand all the conditions and to identify other permits necessary to complete the project. If you would like to take advantage of this meeting please contact Wendi Coryell at (503) 742-4710 or at [wendicor@co.clackamas.or.us](mailto:wendicor@co.clackamas.or.us)
- 3) **Prior to the issuance of building permits**, the applicant shall submit a statement of use to Wendi Coryell in the Clackamas County Engineering Division. Wendi may be contacted at 503-742-4657, or [wendicor@co.clackamas.or.us](mailto:wendicor@co.clackamas.or.us) The statement of use is used to calculate the Transportation System Development charge. A Transportation System Development Charge (TSDC) is included in the final calculation of the building permit fees for new instructional projects; this includes additions and tenant improvements that increase the number of daily trips to the site.
- 4) The conditional use approval is valid for four years from the date of the final written decision. If the County's final written decision is appealed and subsequently approved, the approval period shall commence on the date of the final appellate decision. During this four year period, the approval shall be implemented, or the approval will become void. "Implemented" means all major development permits shall be obtained and maintained for the approved conditional use, or if no major development permits are required to complete the development contemplated by the approved conditional use, "implemented" means all other necessary County development permits (e.g. grading permit, building permit for an accessory structure) shall be obtained and maintained. A "major development permit" is:
  - a) A building permit for a new primary structure that was part of the conditional use approval; or
  - b) A permit issued by the County Engineering Division for parking lot or road improvements required by the conditional use approval.
- 5) This Conditional Use approval is granted subject to the above and below stated conditions. Failure to comply with any of the conditions of approval constitutes a violation of this permit and may be cause for revocation of this approval.

**II. Planning and Zoning Conditions:** Joy Fields, (503) 742-4510, [jfields@clackamas.us](mailto:jfields@clackamas.us)

- 1) Development of the subject property is subject to the provisions of ZDO Sec.1203 and those other relevant codes and ordinances adopted by the Board of County Commissioners pursuant to subsection 1001.03 of the ZDO, including, but not limited to, the County Roadway Standards, County Excavation and Grading Ordinance, and Oregon Structural Specialty Code, etc.
- 2) Any outdoor lighting [ZDO 1005.05(A) and (B)] and 806.03(M) shall be located and designed so that it does not shine onto adjacent properties, upwards or rights-of-way. If additional lighting will be installed, the applicant will submit an outdoor lighting system design plan prior to installation of the outdoor lighting system for review and approval by Planning and Zoning Division.
- 3) All signs shall be in compliance with ZDO Section 1010.06 and 1010.13.
  - (A) One temporary sign shall be allowed in addition to signs permitted pursuant to Section 1010. The sign shall not exceed eight square feet in area; shall be placed on private property on the day of the event; shall be removed no more than 24 hours after the event; and shall be physically attached to the premises in a manner which both prevents the sign from being moved or blown from its location, and allows the prompt removal of the sign.
  - (B) The applicant shall obtain ODOT approval of and place two sandwich signs stating, "Event traffic ahead", one on each shoulder of OR-213, when events are being held on the site. The signs shall be placed within the right of way on the day of the event; shall be removed no more than 24 hours after the event; and shall be physically attached in a manner which both prevents the sign from being moved or blown from its location, and allows the prompt removal of the sign.
  - (C) The applicant shall obtain County permits for all signs as required by ZDO 1010.02.A.
- 4) **Prior to final occupancy permit issuance:** the applicant shall submit a plan showing satisfaction of requirements from Section 1021 of the Zoning and Development Ordinance, regarding trash/recycling. Applicant shall work with County's Sustainability and Solid Waste staff to finalize plans that comply with design standards. Detailed information, including ZDO 1021, is available on the county web site [www.co.clackamas.or.us](http://www.co.clackamas.or.us) under "Garbage & Recycling."
- 5) **Prior to final occupancy permit issuance:** The applicant shall obtain all County Health Department Licenses and comply with County Health Department regulations.
- 6) **Prior to final occupancy permit issuance:** The applicant shall obtain any applicable OLCC Licenses and comply with OLCC regulations.



- 7) The operator of the home occupation shall be a resident of the property on which the home occupation is located and shall be responsible for strategic decisions and day-to-day operations of the home occupation.
- 8) The home occupation shall have no more than five full-time or part-time employees on site.
- 9) During the months of November through March, no event shall take place outside the hours of 9:00 a.m. to 10:00 p.m. During the months of April through October, no event shall take place outside the hours of 8:00 a.m. to 10:00 p.m. These time restrictions do not apply to persons involved in the set-up or clean-up of the facilities.
- 10) During the months of November through March, no more than five events shall be allowed per week. During the months of April through October, no more than seven events shall be allowed per week.
- 11) A maximum of 60 events annually shall be allowed (based information submitted by applicant.)
- 12) The maximum number of guests for 55 of the events shall not exceed 75 and up to five events are limited to a maximum of 210 guests.
- 13) Noise shall be regulated as follows:
  - A. From 7:00 a.m. until 10:00 p.m. on Friday and Saturday and until 9:00 p.m. on all other days of the week, the average peak sound pressure level of the noise shall not exceed the greater of 60 dB(A) or the ambient noise level when measured off the subject property. During all other hours, the average peak sound pressure level of the noise shall not exceed the greater of 50 dB(A) or the ambient noise level when measured off the subject property.
    - i. Noise generated by vehicles entering or exiting the subject property, but not by idling vehicles, shall be exempt from Subsection 806.03(N)(1).
    - ii. Subsection 806.03(N)(1) shall not apply to noise detectable on public rights-of-way and railroad rights-of-way.
- 14) Restroom facilities shall be as follows:
  - A. Portable restroom facilities shall be used and include hand-sanitizing or hand-washing facilities.
  - B. Portable restroom facilities shall be subject to the standards of the service provider and the County Septic & Onsite Wastewater System Programs.

- C. Portable restroom facilities shall be screened from adjacent properties and rights-of-way by sight-obscuring fences or plantings and shall be located a minimum of 50 feet from all lot lines.
  - D. Event guests and employees shall not be allowed to use the permanent restroom facilities on the site without additional County approval.
- 15) Overnight lodging associated with this use is prohibited.
- 16) For all events larger than 75 guests the applicant shall implement a transportation demand management (TDM) strategy similar to that described in Exhibit 2 at 12-13. The TDM strategy shall station employees at the intersection of S. Kirk Road and Highway 213 and on the egress driveway. Employees shall hold vehicles on the site as necessary to ensure that no more than ten event related vehicles are queued at the intersection of S. Kirk Road and Highway 213.
- 18) **Prior to final occupancy permit issuance:** The applicant shall remove all existing invasive non-native or noxious vegetation on the site.

**III. Building Code Division Conditions:** Richard Carlson, (503) 742-4769, [richardcar@co.clackamas.or.us](mailto:richardcar@co.clackamas.or.us)

**General Conditions:**

- 1) All construction activities, and all changes of use (occupancy type), shall comply with applicable Oregon Specialty Codes and local ordinances. All such codes and ordinances apply to all such activities, even when permits and inspections are not required.
- 2) Compliance with the following conditions is required prior to the commencement of any new use or occupancy:
  - a. All necessary development permits (septic, building, electrical, grading, driveways, etc.) for the property, facility, and associated buildings shall be obtained.
  - b. The plans must meet the minimum structural integrity and life safety requirements of the applicable Oregon Specialty Codes.
  - c. Any additional information required by the Building Codes Division, such as engineering, details, and specifications, must be provided to the Plans Examiner reviewing the project.
  - d. All necessary permits and approved plans must be issued and maintained onsite as required.
  - e. All required inspections, corrections, and final approval must be obtained.
- 3) Existing trees and wooded areas shall protected during site preparation and construction consistent with the requirements of ZDO 1002.03(B).

Trees and wooded areas to be retained shall be protected during site preparation and construction according to County design and specifications by:

**IV. Engineering Division Conditions:** Ken Kent, (503 742-4673 [kenken@clackamas.us](mailto:kenken@clackamas.us))

- 1) All frontage improvements in, or adjacent to Clackamas County right-of-way, or on site, shall be in compliance with *Clackamas County Roadway Standards*.
- 2) The applicant shall obtain a Development Permit from Clackamas County Department of Transportation and Development prior to the initiation of any construction activities associated with the project. This includes and is not limited to receiving the final inspection for the two driveway approaches were previously permitted (EP005119) with construction of the primary residence and receiving any additional permits deemed necessary during the construction of the accessory structures.
- 3) The main westerly driveway approach serving the event site shall be paved to a minimum width of 20 feet and length of 20 feet, per Standard Drawing D500. The easterly event site driveway shall be paved to a minimum width of 12 feet and length of 20 feet, per Standard Drawing D500.
- 4) Minimum intersection sight distance of 405 feet shall be provided to the east and west at the proposed driveways serving the event site. Intersection sight distance shall be measured 14.5 feet back from the edge of pavement at a height of 3.5 feet to an object height of 3.5 feet in the center of the oncoming travel lane.
- 5) The applicant shall provide adequate on site circulation for the parking and maneuvering of all vehicles anticipated to use site, as follows:
  - a) Parking spaces and drive aisles shall meet that standards of *ZDO* Section 1015 and *Roadway Standards* Drawings P100/P200. Each parking space will be required to meet minimum width and length of 8.5 feet by 16 feet, with a 24 foot drive isle width. Parallel parking spaces require a width of 8 feet and length of 22 feet.
  - b) The main access road providing access the event facility site shall be surfaced with screened gravel or better and no less than 20 feet in width. The egress road serving the event facility site shall be surfaced with screened gravel or better and no less than 16 feet in width. Access and egress roads shall be signed and/or striped to require one-way travel and event guests and employees shall be required to comply with these restrictions.
  - c) Roads and parking areas shall be constructed per Standard Drawing R100. Plans shall be provided existing and new roads and parking areas, indicting existing and proposed cross sections.
  - d) Parking spaces shall be adequately delineated. For paved surfaces, parking spaces shall be striped. For a gravel surface, wheel stops or a similar physical features shall be provided to delineate each gravel parking space. Any alternative surface parking areas shall comply with *ZDO* 806.02.K(2).

- e) The applicant shall provide a dimensioned site plan indicating each parking space and drive aisles.
  - f) Handicapped (ADA) parking spaces and adjacent accessible areas shall be paved with asphalt concrete or an equivalent approved by Clackamas County Engineering staff, as required by the Building Department.
  - g) Drainage facilities shall be designed and constructed in conformance with *Clackamas County Roadway Standards* Chapter 4, providing water quality treatment and conveyance to a suitable outfall.
- 6) Prior to the issuance of a building permit and/or site development, the applicant shall submit to Clackamas County Engineering Office:
- a) Written approval from the Clackamas Fire District #1 for the planned access, circulation, fire lanes and water source supply. The approval shall be in the form of site and utility plans stamped and signed by the Fire Marshal.
  - b) Written approval from the Clackamas County Engineering for surface water management facilities and erosion control measures.
  - c) A set of street and site improvement construction plans, in conformance with *Clackamas County Roadway Standards* Section 140, to Clackamas County's Engineering Office and obtain written approval, in the form of a Development Permit.
    - i) The permit will be for driveway, drainage, parking and maneuvering areas, and other site improvements.
    - ii) The minimum fee deposit is required upon submission of plans for the Development Permit. The fee will be calculated based on 8.83% of the public improvements and 5% of the onsite transportation improvements, according to the current fee schedule.
    - iii) The applicant shall have an Engineer, registered in the state of Oregon, design and stamp construction plans for all required improvements, or provide alternative plans acceptable to the Engineering Division.

DATED this 26th day of July 2023.



Joe Turner, Esq., AICP  
Clackamas County Land Use Hearings Officer

## ENDANGERED SPECIES ACT NOTICE

The federal Endangered Species Act (ESA) is not a criteria for approval of this application. The County has reviewed the approval standards in light of the requirements of the ESA, believes that the criteria for approval are consistent with the terms of the ESA and has submitted the Development Ordinances for consideration for a "4(d)" programmatic limitation. However, the analysis included in this decision does not include an evaluation by the County of the applications for consistency with the ESA nor does the decision reach any conclusions concerning that federal law. The applicant are responsible for designing, constructing, operating and maintaining the activities allowed by an approval of this application in a manner that ensures compliance with the ESA. Any question concerning this issue should be directed to the applicant, their consultants and the federal agencies responsible for administration and enforcement of the ESA for the affected species.

## APPEAL RIGHTS

ZDO 1304.01 provides that the Land Use Hearings Officer's decision is the County's final decision for purposes of any appeal to the Land Use Board of Appeals (LUBA). State law and associated administrative rules adopted by LUBA describe when and how any appeal must be filed. Presently, ORS 197.830(8) requires that any appeal to LUBA "shall be filed not later than 21 days after the date the decision sought to be reviewed becomes final." ZDO 1304.02 provides that this decision will be "final" for purposes of a LUBA appeal as of the date of mailing (which date appears on the last page herein).