

BEFORE THE LAND USE HEARINGS OFFICER
CLACKAMAS COUNTY, OREGON

Regarding an Application for a Conditional Use
Permit for a Home Occupation to Host Events.

Case File No: Z0169-23-C
(Bany Event Hosting)

A. SUMMARY

1. The Applicant is Kevin Bany. The property owners are Kevin Bany, Deanna Bany, and Tammy Plummer. The subject Property is an approximately 40 acre square-shaped parcel located at 35598 S Farm Rd., Woodburn, OR 97071, in Clackamas County, also known as T5S R1E Section 32 Tax Lot 1400. The Property is within the Exclusive Farm Use (EFU) zoning district, with a Comprehensive Plan designation of Agriculture, and is in a remote rural location on S Farm Rd. (aka Thompson Rd.) located west of Hwy 213 between S Monte Cristo Rd. and S Oster Rd. The Property is improved with a single-family residential structure (dwelling) and accessory structures. The Property is planted with nearly 27 acres of marionberries and approximately 4 acres of other plantings, including a garden, trees, and an orchard.
2. The Applicant seeks approval of a conditional use permit to operate a home occupation to host events on the Property, such as weddings, family reunions, company gatherings, etc. The events will include no more than 150 people per event, and will take place in a (proposed) 64-foot by 32-foot building with two covered patios on the sides, one is 15 feet deep and the other is 19 feet deep. The 2,000 square foot building will include a kitchen, three bathrooms, and an open event space. The Applicant proposes a gravel parking lot with 40 vehicle parking spaces. The specific request is to host up to 105 guests per event, up to a maximum of 150 guests at any given event.
3. County staff reviewed the application, including additional submitted application materials, and submitted a staff report to the Hearings Officer recommending approval of the application subject to a number of proposed conditions of approval and requirements to clarify certain parts of the proposal. The applicant does not dispute these proposed conditions of approval.
4. On September 7, 2023, Hearings Officer Carl Cox (the “Hearings Officer”) conducted a public hearing to receive testimony and evidence in support of and in opposition to the Applicants’ proposal.

B. APPLICATION

1. The Applicant originally submitted this application on April 17, 2023, with the County issuing notice of incomplete application on May 3, 2023 with a list of missing information required for a complete application. Among other things, the original application included a preliminary statement of feasibility from the Clackamas County DTD stating that adequate surface water management, treatment, and conveyance is available or can be made available to serve the proposal. The Applicant submitted additional application materials on May 10,

2023, and on June 23, 2023 the Applicant submitted additional required application materials. The application was deemed complete by County staff on July 27, 2022. As the subject property is not located inside an urban growth boundary, the 150-day deadline for final action on the application pursuant to ORS 215.427(1) is November 20, 2023. On August 2, 2023, the County mailed notice of the scheduled September 7, 2023 public hearing on the application, providing the notice to interested agencies, Community Planning Organization(s) and owners of property within 2,640 feet of the subject Property. [Exhibits 2, 2a, 2b, 3, 4, 5]

2. In the completed application (as supplemented in May and June 2023), the Applicant provided additional responses to the ZDO Section 806 required criteria and standards, providing responsive statements to the listed criteria, and these statements concerning the proposal's impact on surrounding properties, noise and traffic and buildings:

“Again, this home-based event business & building does not change the current use of our property nor affect in anyway the surrounding farms to continue their current use. This will not negatively impact our farm or any surrounding farms, in fact it will allow use to better utilize our gardens and produce with the addition of a canning kitchen as well as help us share the experience of our farm and the beauty of the area with our community and beyond.”

“Just as the event center approximately 1 mile south of us and another two within 5 miles SE and NW of our property, have not forced any change in any surrounding farm practices or costs, (including our own) neither will our proposed business cause any changes.”

3. The Applicants provided a site plan and rough sketches of their proposed new building that will be used both as the primary event location and as a canning kitchen depicting an approximately 2,000 square foot single-story structure with open covered carport areas on each end, with inside areas that include a kitchen, a common area, and an area designated as a bride's changing area, and showing three separate bathrooms: one in the bride's changing room and two bathrooms opening to the outside, with no explanation concerning how such a structure is normally associated with properties within the EFU zoning district, other than its use as a canning kitchen and produce preparation facility.
4. Kenneth Kent, Senior Planner with Clackamas County Development Engineering, reviewed the application and submitted an August 24, 2023 memorandum with comments, an analysis of the current transportation infrastructure, and analysis of the impact of the proposal to the existing infrastructure. In this memorandum, Mr. Kent reported that S. Farm Road is a rural local roadway located within a 60-foot wide public right-of-way, with an improved width of approximately 18 feet. Mr. Kent noted that events such as weddings generate a larger number of vehicles on days when an event occurs than are typically on the roadway. Mr. Kent calculated that the average number of vehicle trips over the course of the entire year would be approximately 2,100 to 3,000, depending how many attendees travel together, and is equivalent to the vehicle trips generated by approximately one single family home. Mr. Kent concluded that: “Based on the limited number of annual trips generated by the event use, the existing right-of-way and roadway are adequate to support the proposed event use.”
5. In his August 24, 2023 memorandum, Mr. Kent noted that the project site currently has five gravel approaches on S Farm Road, with the two northern driveways proposed as access for the event hosting use. Mr. Kent stated that the applicant will be required to bring the existing

approaches that will serve the event site up to current standards and pave the first 20 feet from the edge of S Farm Road at a minimum width of 20 feet, per Roadway Standards Drawing D500. Mr. Kent further noted that, beyond the paved approach, the applicant will be required to provide a 20-foot wide gravel road to the event parking area, consistent with Roadway Standards Drawing R100. Mr. Kent calculated minimum sight distances for the property site along S Farm Road, concluding that, with conditions, adequate sight distance is feasible for the proposed access. Mr. Kent reviewed parking requirements for the proposal, making findings with respect to these requirements and concluding that, with recommended conditions, adequate circulation and parking can be provided. Mr. Kent submitted a number of proposed conditions of approval from County Development Engineering staff related to review of the proposal and relevant requirements detailed in the County's Zoning and Development Ordinance (ZDO) and the County's Site Development and Roadway Construction Standards (Roadway Standards). These recommended conditions of approval were included in Ms. Lord's August 31, 2023 staff report.

C. PRE-HEARING PUBLIC COMMENTS

1. The County received one written comment in advance of the public hearing in this matter, from Max Jaeger of Fessler Farms Inc. Mr. Jaeger submitted a letter in opposition to this proposal, supplementing the written comment with an amended copy of the same letter the day prior to the scheduled September 7, 2023 hearing. In his letter, Mr. Jaeger asserts that farm practices are time sensitive and while he tries to use the utmost respect for his neighbors, when it comes to related dust, noise, and chemicals, he and the rest of the employees at Fessler Farms need to efficiently and effectively do their jobs in crucial times. Further, Mr. Jaeger points out that many people have made this quiet area their home and an event center will bring more noise to disturb the peace of the community. In addition, Mr. Jaeger points to the existing roads, contending that Monte Cristo, Oster, Drake, and Farm Roads are not meant for the added traffic, describing most of these roads as not much more than a single lane road with little or no shoulder and full of potholes, contending approving the proposal will not only add traffic, but will also worsen and degrade the conditions of the roads.
2. In his amended comment letter, Mr. Jaeger notes that they tend to make a lot of dust in the orchards from dragging to level the orchards, harvesting the hazelnuts, driving through to spray, or mowing through the orchard. Mr. Jaeger reports that some of the air blast foliar sprays are time sensitive and must be sprayed in a timely manner, contending that if there is an event it would create more of a hassle for them to either push longer hours to complete the task or complete it later than planned. Mr. Jaeger asserts that the same goes for harvesting the hazelnuts, noting the 2022 harvest was extremely dusty and if they have to shut it down due to an event across the street, it will put them behind or potentially cause them to not finish harvesting if the rain is coming, adding strain and difficulty to the job.

D. PUBLIC HEARING, ADDITIONAL SUBMISSIONS, AND RECORD HIGHLIGHTS

1. The Hearings Officer received testimony and evidence at the September 7, 2023 public hearing about this application. All exhibits and records of testimony are filed with the Planning Division, Clackamas County Department of Transportation and Development. The public hearing was conducted virtually over the Zoom platform due to the coronavirus. 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 Hearings Officer stated that the only relevant criteria were those identified in the County's staff report, that participants should direct their comments to those criteria, and failure to raise all arguments may result in waiver of arguments at subsequent appeal forums.

2. At the hearing, County Planner Melissa Lord appeared on behalf of the County, with Kevin Bany and Tammy Plummer (together "Applicants") appearing in support of the application. Ms. Lord shared a PowerPoint presentation and described the application and supplemental materials submitted by the Applicants in support of their proposal for a conditional use permit for a home occupation to host events, such as weddings, and discussed the staff report and related exhibits, including the letter of opposition (as amended) submitted by Mr. Jaeger. Ms. Lord pointed to the proposal descriptions provided by the Applicants, stating there would be no more than 150 people per event, with an average of 105 people per event. Ms. Lord pointed to the descriptions of the events taking place on the lawn and within a proposed 64-foot by 32-foot building with two covered patios on either side, with this 2,000 square foot building including a kitchen, bathrooms, and an open event space. Ms. Lord also pointed to the proposal's description of a gravel parking lot with 40 vehicle parking spaces.
3. Ms. Lord shared a slide showing the site plan submitted by the Applicants, pointed out the locations of the access and egress proposed for use, the location of the proposed new building, and locations of existing improvements and uses on the Property. Ms. Lord noted that a home occupation to host events within the EFU is a condition use subject to ZDO Section 1203, pointing to key ZDO requirements and relevant issues concerning: a) Section 1015: Parking; b) Sections 806.02(C) and 1203.03(D): Outdoor uses; c) Section 806.02(J): Noise; d) Section 401.05(A)(1): Cost of farming; and, e) Section 1021: Solid waste and recycling. Ms. Lord shared several slides and provided discussion concerning the approval criteria for each of these key requirements.
4. With respect to parking, Ms. Lord noted that while the applicant proposes a gravel parking area with 40 parking spaces, at least 55 spaces are required, pointing to related proposed conditions of approval. The Hearings Officer discussed this issue with the Applicants, who agreed with the proposed conditions of approval, stating that they would provide the required minimum 55 parking spaces and simply did not understand the minimum requirement.
5. With respect to ZDO Sections 806.02(C) and 1203.03(D), Ms. Lord pointed out that the applicant proposes that the events will occur within a proposed new building and on the lawn, but noted that the applicant provided no details regarding the use of the lawn such that staff could determine that the use will be "substantially" in a building. Further, Ms. Lord pointed out that the applicant's narrative states that the events will occur on the lawn and in a temporary tent prior to the construction of the proposed building. Ms. Lord recommended that the hearings officer not approve the request to utilize exclusively the lawn and a tent for events, asserting that the noise and visual impacts to surrounding neighbors will be different than they would be if the events occurred within a building. The Hearings Officer discussed this issue with the Applicants, who agreed with the proposed related conditions of approval, stating that they would build the proposed building prior to hosting any events. The Hearings Officer discussed the details of the Applicant's event hosting, with Applicants explaining that

a temporary tent was anticipated for a wedding ceremony or similar event, with food, drinks, reception, and dancing taking place inside the proposed building, and would not allow amplified music outside the building.

6. The Hearings Officer also discussed details concerning the Applicants' proposed building, with the Applicants' explaining that the building would include a kitchen and prep area that would be used for canning and produce preparation in conjunction with their farm use of the Property, and operation of a farm stand. The Hearings Officer pointed out that the drawings for the proposed building showed three separate bathrooms, two of which were shown on the outside of the proposed building (doors opening to the outside, and not to the interior of the structure) and asked the Applicants to provide examples of buildings normally associated with uses permitted in the EFU zoning district. The Hearings Officer stated he was familiar with such structures being commonly associated with public parks, fairgrounds, or similar locations providing multiple bathrooms available to the public in these public spaces, but he was not familiar with any normal use of such a structure in the EFU zone. The Applicants described certain farm stands with bathrooms opening to the outside, with Ms. Lord contending that such farm stands should not be assumed approved by County Planning and Zoning, referring to regulations concerning farm stands. The Applicants discussed this issue further with the Hearings Officer, agreeing to a condition requiring that the proposed structure not have bathrooms with entrances/exits leading directly to the outside of the structure, and limiting the structure to a maximum of two bathrooms consistent with similar accessory structures normally associated with uses permitted in the EFU zone.
7. With respect to ZDO Sections 806.02(J) Noise, Ms. Lord pointed to this ZDO's restrictions concerning noise, and requirements that 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, or noise created by the home occupation shall not exceed the greater of 60 dB(A) or the ambient noise level. These requirements further state that, during all other hours, the average peak sound pressure level, when measured off the subject property, or noise created by the home occupation shall not exceed the greater of 50 dB(A) or the ambient noise level. Ms. Lord pointed out that the applicant materials are unclear about the extent to which the outdoor lawn of the property will be used for the events, and it is unclear how the proposal will comply with this standard. The Hearings Officer discussed these requirements with the Applicants, discussing the proposed building and event site's location approximately 900 feet from the nearest neighbor's home, intervening grove of trees, and the Applicants' agreement to restrict amplified music and dancing to the event space within the proposed new building, with a related condition of approval. The Applicants agreed to this condition, and Ms. Lord also agreed that, as conditioned, staff could find that the proposal will comply with this standard.
8. With respect to ZDO approval criteria in Section 401.05(A)(1), Ms. Lord pointed to this sections requirements that the uses may only be approved where the uses: (A) Will not force a significant change in 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. Ms. Lord pointed to the application narrative stating that one mile south of the property there is an event venue that has been operating, contending this event venue has not changed the cost of farming on the subject property. The

application describes two other event venues within five miles of the subject property, also contending that these event venues have not caused change in surrounding farm practices or cost, including on the subject property. Ms. Lord points out that the application provided no evidence to support this claim. Ms. Lord further points out that the application states that the proposed use will not force a significant change in, or significantly increase the cost of the accepted farming or forest practices, but lacks supporting evidence. The Hearings Officer discussed these requirements with the Applicants, with the Applicants describing area farm uses as similar to their own activities. The Applicants stated that area farmers use trucks in their farming operations and orchards for a variety of purposes, just as they themselves do, including application of chemical sprays, but assert that these activities do not affect neighboring properties or uses. The Applicants contend that there is not much use of the roads by the trucks, and assert that use of the roads by individuals driving to and from their property for the proposed event hosting venue will not affect farm use of the roads. Applicants further point to the findings by Mr. Kent concerning the capacity of the area roads to accommodate the proposed use, and the minimal anticipated impact.

9. With respect to ZDO approval criteria in Section 1021 Solid waste and recycling, Ms. Lord pointed out that the proposal contained no information in the application materials addressing solid waste. The Hearings Officer discussed these requirements with the Applicants, who apologized for missing this section, agreed that their proposal would require solid waste and recycling facilities meeting County standards, and agreed with the related proposed condition of approval. The Applicants stated that they did not object to any of the conditions of approval proposed by County staff, or the additional conditions as discussed at the hearing. Ms. Lord indicated that, based upon these additional statements and clarifications of the proposal from the Applicants, and with the proposed conditions of approval, County staff recommended approving it.
10. The Hearings Officer asked the Applicants if they had anything further to add for consideration in making a determination concerning the application, and they indicated that they had nothing further to add. The Hearings Officer asked if any member of the general public or audience had a comment or statement to make concerning the application, and no one requested such an opportunity. Prior to ending the public hearing and closing the record, the Hearings Officer asked whether any of the parties or members of the audience wanted an opportunity to provide additional evidence, arguments, or testimony. As no one requested such opportunity, the Hearings Officer discussed with the Applicants whether they wanted to waive the open-record rebuttal period and waive the open-record “last word” open-record period, and they indicated they did. The Hearings Officer closed the hearing, leaving the record open until 4:00 p.m. that day to provide the County time to enter additional exhibits shared at the hearing into the record.

E. DISCUSSION

The evidence presented is reliable, probative and substantial evidence upon which to base a determination in these matters. This application is being processed as a Type III Permit, pursuant to Section 1307. A Type III Permit is quasi-judicial in nature, and involves land use actions governed by standards and approval criteria that require the use of discretion and judgment. The issues associated with the land use action may be complex and the impacts significant, and conditions of

approval may be imposed to mitigate the impacts and ensure compliance with this Ordinance and the Comprehensive Plan. The Type III procedure is a quasi-judicial review process where the review authority receives testimony, reviews the application for conformance with the applicable standards and approval criteria, and issues a decision.

CONDITIONAL USE PERMIT

This application is subject to the standards and criteria of Clackamas County Zoning and Development Ordinance (ZDO) Section 1203, Sections 202, 401, 806, 1000-series, 1203 and 1307; and the Comprehensive Plan. The Clackamas County Planning and Zoning Staff have reviewed these Sections of the ZDO and Comprehensive Plan in conjunction with this proposal and make the following findings and conclusions, adopted and/or modified or replaced by the Hearings Officer, as denoted by boldface type in italics:

1) PROJECT OVERVIEW:

Background: The applicant is requesting the review and approval of a conditional use permit to host events, such as weddings, family reunions, company gatherings, and similar events, within a proposed 2,000 square foot building. The events will include no more than 150 people per event, and will take place in a (proposed) 64-foot by 32-foot building with two covered patios on either side, one is 15 feet deep and the other is 19 feet deep. The 2,000 square foot building will include a kitchen, three bathrooms and an open event space. The applicant proposes a gravel parking lot with 40 vehicle parking spaces.

The proposal was modified at the hearing to include 55 vehicle parking spaces. The proposed building was also modified at the hearing to include only two bathrooms, each opening only to the interior of the structure, to ensure it remains a building “normally associated with uses permitted” in the EFU zoning district. The proposal was further modified at the hearing to provide that events will occur substantially in the proposed new building, and to clarify that the applicants will build the proposed building (and obtain a certificate of occupancy) prior to hosting any events. The proposal was also modified to clarify that amplified music will only be allowed within the proposed building, and not outside. This restriction, together with the remote and sheltered location of the event venue, will ensure that County requirements concerning noise, and concerning operating the home occupation substantially in a building normally associated with uses permitted in the EFU zone, will be met. The Applicants also provided clarification concerning statements asserting that the proposal would not force a significant change in farm or forest practices on surrounding lands, or significantly increase the cost of accepted farm or forest practices on surrounding properties, in support of the proposal. Further, the Applicants agreed to meet county requirements concerning solid waste and recycling.

A pre-application conference was held with the applicant on March 28, 2023 to discuss the preliminary proposal (reference file ZPAC0019-23).

Site Description: The subject property is approximately 40 acres in area and is currently developed with a dwelling, greenhouse, and other accessory buildings. The property is largely in farm use there are 27 acres of marionberries planted on the property. Additionally,

there is approximately 3 acres of garden area and an acre of mature trees. The properties surrounding this subject property are largely in farm use as well.

There are no mapped wetlands, steep slopes, water quality resources or other environmental hazards on the subject property regulated by the Zoning and Development Ordinance. There is a “small” stream regulated by ZDO Section 704 that touches the southeastern tip of the subject property; however no development is occurring within 50 feet of the stream and so no review of Section 704 is necessary. The Oregon Statewide Wetlands Inventory shows there is a perennial stream on the property, and there are hydric soils on parts of the property as well. Based upon the site plan provided by the applicant, the proposed new buildings does not impact the area of hydric soils and will not be located near the perennial stream. The Department of State Lands received a copy of the proposed application for review.

Public Comment: At the time of this staff report, the Planning and Zoning Division received one written public comment pertaining to this proposal (reference Exhibit 10) in opposition to the proposal. Responses to the concerns raised are provided through this staff report. The main themes of the comment is surrounding the character of the neighborhood and the threat to farming that would be caused by an event venue, roadway concerns, and the compatibility of the proposed use with the EFU district and surrounding natural resource properties. ***This comment was amended prior to the hearing, was reviewed and discussed, and considered.***

Key issues: Upon reviewing the application materials, staff was challenged to review the following items. If the applicant is able to demonstrate compliance with the items mentioned below staff would recommend approval.

1. **Section 1015 Parking:** The applicant proposes to have a maximum of 150 guests at an event, and up to five employees; therefore, a minimum of 55 parking spaces are required.
 - A. The applicant proposes to have a gravel parking area with 40 parking spaces. Due to the level of detail provided on the site plan, it is difficult to determine whether or not this standard can be met with a condition of approval.
2. **Section 806.02(C) and 1203.03(D):** 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.
 - A. The applicant proposes that the events will occur within a (proposed) building and on the lawn; however, no details regarding the use of the lawn was provided by the applicant and so staff cannot determine that the use will be “substantially” in a building.
3. **Section 806.02(J) Noise.** The application materials are unclear about the extent to which the outdoor lawn of the property will be used for the events and so it is unclear how the proposal will comply with this standard.
4. **Section 401.05(A)(1)** The application materials state that the proposed use will not force a significant change in, or significantly increase the cost of the accepted farming or forest practices but lack supporting evidence.

5. **Section 1021 Solid waste and recycling.** The requirements and standards of Section 1021 are applicable to this proposal; yet no information was provided in the application materials addressing solid waste.

Each of the above-described key issues were reviewed and discussed at the hearing, with the applicant modifying or clarifying the proposal to address each of these issues, and agreeing to proposed conditions of approval designed to ensure the proposal meets these requirements.

1) **ZDO SECTION 1203.02 CONDITIONAL USES**

A. **1203.02: Submittal Requirements**

This application includes a completed land use application form, site plan, application fee and completed supplemental application addressing the criteria in ZDO Section 1203. The application also includes a description of the proposed use and vicinity map. All the submittal requirements under Subsection 1203.02 are included in the application. The application was submitted on April 17, 2023 and additional materials received were on May 10 and June 23, 2023. Following submission of additional requested information, the application was deemed complete on June 23, 2023.

The submittal requirements of Subsection 1203.02 are met. The subject property is not located inside an urban growth boundary. The 150-day deadline for processing this application is November 20, 2023.

- B. **1203.03(A):** The use is listed as a conditional use in the zoning district in which the subject property is located.

Staff Finding: The subject property is located in the Exclusive Farm Use (EFU) district. ZDO Section 401, Table 401-1 of the ZDO controls land uses in the underlying EFU district. Home occupation to host events, subject to Section 806, is listed as a conditional use. This criterion is met. *The Hearings Officer concurs.*

- C. **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.

Finding: The subject property is approximately 40 acres in size and is gently sloped. The property is planted with nearly 27 acres of marionberries and approximately 4 acres of other plantings including a garden, trees and an orchard. The existing structures (dwelling and the accessory buildings) are located along the western property line near S Farm Rd.

The property is located on the west side of Farm Rd., between S Monte Cristo Rd and S Oster Rd. The properties in the surrounding area are predominantly in farm use, and some have dwellings on the property as well.

The proposed event building and event area will take place in a cluster near the existing buildings and improvements on the property. The result of this cluster will continue to maximize the amount of available land for farming and other farm uses. There is an existing driveway that serves the property and will continue to serve the proposed event parking area.

The nearest dwelling, north of the subject property on Farm Rd, is approximately 900 feet away from the proposed event area. Between the neighboring houses in the area are acres of farmland, including a nearly 100-acre orchard across the street. The large size of the property allows there to be separation between the proposed use and the improvements on surrounding properties. Combined with size, the shape of the property does not present any significant limitation to the proposed use of the site. There is a “small” stream regulated by ZDO Section 704 that touches the southeastern tip of the subject property; however no development is occurring within 50 feet of the stream and so no review of Section 704 is necessary. The property appears to be impacted by hydric soils, according to a Statewide Wetlands Inventory map, although new construction may not be proposed in the areas of hydric soils. Staff sent notice of the land use application to the Department of State Lands (DSL) for their review and consideration; at the time of this staff report, a response has not been received. An advisory note to the applicant is added to this report notifying them that there may be requirements from DSL, and if so they must comply with those State requirements.

Staff Finding: When considering the characteristics of the subject property, staff finds that this criterion is met. *The Hearings Officer concurs in the staff finding that this criterion is met.*

- D. **1203.03(C):** The proposed use is consistent with Subsection 1007.07, and safety of the transportation system is adequate to serve the proposed use.

Staff Finding: Staff reviewed the proposal for compliance with 1007.07. The findings are included in the staff report below.

- E. **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.

Finding: The site is in the Exclusive Farm Use (EFU) district and is surrounded by other properties in EFU district. Permitted uses of the EFU district is included in ZDO Section 401.

Pursuant to Subsection 806.02(E), the evaluation of compliance with Subsection 1203.03(D) shall include consideration of impacts on dwellings even though dwellings are not primary uses in this zoning district. This criterion does not require the proposed use to not have any impacts, rather the impacts must not substantially limit, impair or preclude the use of surrounding properties for the allowed primary uses.

Lands in the surrounding area are in farm use along with rural residential home-sites. Properties in the surrounding area are primarily developed with a dwelling and accessory buildings and are sited on large acreage (approximately 10 or 40+ acres). A comment submitted to the record for consideration, Exhibit 10, discusses concern that the proposed use is not consistent with the character of the neighborhood and may impair the neighbors’ ability to continue to farm their land. Staff reviewed the comment and did not find that there were any examples or evidence that support this claim.

S Farm Rd is a paved public road and the property is accessed by an existing driveway. S Farm Rd has an improved width of approximately 18 feet wide. A recommended

condition of approval will require that the applicants pave the first 20 feet of the driveway, and after that it will be a gravel driveway with a width of 20 feet. There will be limited impacts of dust or dirt deriving from event attendees because of the 20 feet paved at Farm Rd.

The proposed events will take place primarily within a (proposed) building. Dwellings on properties within the surrounding area are at least 900 feet away from the event area. Between the event area and the nearest dwelling (excluding the one on the subject property that the event operator resides in) north on Farm Rd. the applicant states that there is a grove of trees and fields. The distance and proximity of trees should act to buffer the event venue to the nearby residences and limit potential impacts such as noise. The applicant's narrative states that events will occur on the lawn and in a temporary tent prior to the construction of the proposed building; however, staff recommends that the hearings officer does not approve the request to utilize exclusively the lawn and a tent for events, because the noise and visual impacts to surrounding neighbors will be different than they would if the events occurred within a building.

The proposed event building is designed to match the existing structure on site, so there will be visual continuity and compatibility between the buildings on the property.

Staff Finding: As proposed, staff finds this criterion can be met with conditions. *The Hearings Officer concurs in the above analysis, finding that, as modified, clarified, and conditioned, this criterion can be met.*

- F. **1203.03(E):** The proposed use is consistent with the applicable goals and policies of the Comprehensive Plan.

Staff Finding: The applicant does not directly address the Comprehensive Plan, though through the submitted narrative touches on a few points. The subject properties are designated Agriculture on the Comprehensive Plan map. Exclusive Farm Use (EFU) zoning district implements the goals and policies of the Agriculture plan designation. Chapter 4, Land Use: Agriculture Polices – 4.NN of the Comprehensive Plan is applicable. The goals include preserving agricultural use of agricultural lands and maintaining agricultural economies and land.

The subject property is 40 acres in size and approximately two-thirds of the land use currently in farm use. The applicant intends on using the proposed building to support their existing farm operation and the new building will not reduce the amount of existing farm crops planted on the property.

This criterion is met. *The Hearings Officer concurs.*

- G. **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, and Section 1000 Development Standards.

Staff Finding: Staff reviewed compliance with ZDO Section 1000, as applicable. The findings are included in the staff report below.

2) ZDO SECTION 1000 DEVELOPMENT STANDARDS

Not all review subsections in ZDO Section 1000 are applicable. Below is an evaluation of the criteria that are applicable to the proposed conditional use.

- A. Sections 1002, 1003, and 1004 are not applicable to the subject property.
- B. Section 1005 relates to the design of the buildings and the site.

Finding: The proposal involves constructing a new building that will be clustered near the existing buildings on the property. These buildings are located near Farm Rd. The applicant's narrative says that the proposed building will be designed to be of similar size and aesthetic as an existing barn on the property. The building will have board and batten detailing and eaves to add visual interest.

Subsection 1005.04 provides requirements for outdoor lighting. Recessed lighting is proposed under the covered awning which will ensure that light is not directed skyward. No other outdoor lighting is proposed. Staff recommends a condition of approval ensuring compliance with this criterion. ***The Hearings Officer concurs, adopting the proposed condition of approval.***

- C. **1006.03(E) Water Supply.** The following standards apply outside the Portland Metropolitan Urban Growth Boundary, Government Camp, Rhododendron, Wemme/Welches, Wildwood/Timberline, and Zigzag Village:

- a. 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.

Finding: The property is not within a public or private water district, and is not within a groundwater limited area. Applicants for any development permit 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. This criterion can be met with a condition of approval. ***The Hearings Officer concurs, adopting the proposed condition of approval.***

- D. **1006.05 Onsite Wastewater Treatment.** All development proposing onsite wastewater treatment 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.

Finding: The subject property is not located in a public sanitary sewer district. Sewage disposal for existing development on site is accommodated by an on-site septic system. The applicant completed a site evaluation for an onsite wastewater treatment system for an event center in 2021, permit number SE037321, confirming that it is feasible to have a system that supports the proposed use. A septic permit issued by the Clackamas County Onsite Wastewater Program will be necessary to install a new system or to upgrade the current system. This criterion can be met with conditions. ***The Hearings Officer concurs, adopting the proposed condition of approval.***

- E. **1006.06 Surface Water Management and Erosion Control.** The following surface water management and erosion control standards apply:

- a. Positive drainage and adequate conveyance of surface water shall be provided from roofs, footings, foundations, and other impervious or near-impervious surfaces to an appropriate discharge point.
- b. The requirements of the surface water management regulatory authority apply. If the County is the surface water management regulatory authority, the surface water management requirements of the Clackamas County Roadway Standards apply
- c. Approval of a development shall be granted only if the applicant provides a preliminary statement of feasibility from the surface water management regulatory authority. The statement shall verify that adequate surface water management, treatment and conveyance is available to serve the development or can be made available through improvements completed by the developer or the system owner.
 - i. The service provider may require a preliminary storm water management plan, storm drainage report, natural resource assessment and buffer analysis prior to signing the preliminary statement of feasibility
 - ii. The statement shall be dated no more than one year prior to the date a complete land use application is filed and need not reserve surface water treatment and conveyance system capacity for the development.

Finding: In those areas that are not within a surface water management district, the preliminary statement of feasibility shall be signed by the Surface Water Management Agency of Clackamas County (SWMACC).

Clackamas County is the surface water management authority for the area including the subject site. The applicant has submitted a Preliminary Statement of Feasibility signed by Development Engineering indicating that adequate surface water management, treatment, and conveyance is available to service the development or can be made available through improvements completed by the development or the system owner. As conditioned, this criterion is met. *The Hearings Officer concurs, adopting the proposed condition of approval.*

- F. **1007 Roads and Connectivity.** 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.

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.

Developments shall comply with the intersection sight distance and roadside clear zone standards of the Clackamas County Roadway Standards.

Transportation Facilities Concurrency applies to the following development applications, with exceptions: design review, subdivisions, partitions, and conditional uses.

Finding: The Clackamas County Development Engineering division reviewed the application materials and provide the following comments:

Based on vehicular trips to the project site as well as on-site parking and circulation, Engineering Division staff finds that the application is subject to the provisions of Clackamas County Zoning and Development Ordinance (ZDO) Section 1007 pertaining to roads and connectivity, ZDO Section 1015 pertaining to parking and loading, and Chapter 4 of the Roadway Standards pertaining to surface water management. As specified under ZDO Section 1007, development applications are required to provide adequate access to current county standards, which may include right-of-way dedication, frontage improvements, on-site access and parking.

S Farm Road is a rural local roadway, located within a 60-foot wide public right-of-way, with an improved width of approximately 18 feet. It is recognized that events, such as weddings, generate a larger number of vehicles on days when an event occurs than are typically on the roadway. However, the average number of vehicle trips over the course of the entire year would be approximately 2,100 to 3,000, depending how many attendees travel together, and is equivalent to the vehicle trips generated by approximately one single family home. Based on the limited number of annual trips generated by the event use, the existing right-of-way and roadway are adequate to support the proposed event use.

The project site currently has five gravel driveway approaches on S Farm Road. The two northern driveways are proposed as access for the event hosting use. The applicant will be required to bring the existing approaches that will serve the event site up to current standards and pave the first 20 feet from the edge of S Farm Road at a minimum width of 20 feet, per Roadway Standards Drawing D500. Beyond the paved approach, the applicant will be required to provide 20-foot wide gravel road to the event parking area, consistent with Roadway Standards Drawing R100.

S Farm Road does not have a posted speed limit and is therefore governed by the Basic Rule, which allows speeds up to 55 miles per hour. S Farm Road is a very low volume local road and based on Table 2-9 of the Clackamas County Roadway Standards, a minimum of 405 feet of sight distance is required. With conditions, adequate sight distance is feasible for the proposed access.

Pursuant to Subsection 1007.07, 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. Home occupations to host events, which are approved pursuant to Section 806, are exempt from this requirement. Compliance with 1007.07 is required pursuant to Section 1203.03(C). The applicant is applying for a conditional use permit to operate a Home Occupation to Host Events which is a conditional use in the EFU zoning district. Under ZDO Section 1007.07(B)(5) home occupations host events are exempt from the concurrency requirements.

Finding: As proposed, these standards are met with conditions. *The Hearings Officer concurs, adopting the proposed condition of approval. I considered the description of these roads provided by Mr. Jaeger, but found the analysis by Mr. Kent, and supporting descriptions by the Applicants, persuasive.*

- F. 1010 Signs; 1010.07 Signs in Natural Resource Districts.** Pursuant to Section 806.02(M), any signage associated with the Home Occupation to Host Events is subject to the applicable standards of Section 1010.

Finding: The application materials submitted do not mention the use of event signage. Staff recommends that a condition of approval be imposed to ensure future compliance with this criterion should signage be proposed. *The Hearings Officer concurs, adopting the proposed condition of approval.*

- G. 1015 Parking and Loading.** Outside the UGB, areas used for parking, loading, and maneuvering of vehicles shall be surfaced with screened gravel or better, and shall provide for suitable drainage [1015.01(B)]. Off-street parking areas are governed by Subsection 1015.02(A) and minimum automobile parking space requirements for a Home Occupation to Host Events is provided in Table 1015-1: 1 space per 3 guests based on the maximum number of guests permitted for any single event. An additional space shall be provided for each employee.

Finding: Applicant plans to use driveway access from S. Farm Road to access proposed parking and event area, as shown on submitted site plans.

At least one parking space per three guests is required, and an additional space must be provided for each employee. The applicant proposes to have a maximum of 150 guests at an event, and up to five employees; therefore, a minimum of 55 parking spaces are required.

The applicant proposes to have a gravel parking area with 40 parking spaces, each 8.5 feet by 16 feet in size. Pursuant to Section 1015.01(B), outside the Urban Growth Boundary areas used for parking, loading, and maneuvering of vehicles shall be surfaced with screened gravel or better, and shall provide for suitable drainage. An alternative to Section 1015.01(B) was not requested.

As proposed, the minimum number of vehicle parking spaces standard is not met. Due to the level of detail provided on the site plan, it is difficult to determine whether or not this standard can be met with a condition of approval. Based upon the available land area, it seems likely there is adequate space to accommodate the minimum required parking and circulations area. If approved, staff recommends a condition of approval to ensure compliance with this standard and to obtain an updated site plan from the applicant that adequately demonstrates compliance. *The Hearings Officer concurs in the above analysis, finding that, as modified, clarified, and conditioned, this criterion can be met.*

- H. 1021 Solid Waste and Recyclable Material Collection.** Outlines the standards for refuse and recycling for commercial developments.

Finding: The requirements and standards of Section 1021 are applicable to this proposal; yet no information was provided in the application materials addressing solid waste. There is insufficient information for staff to make a determination on whether or not this criterion can be met with the proposed application. It may be possible that a commercial garbage and recycling service is not available at this site; if that is the case, then the standard residential pick-up will be necessary. If the application is approved, staff recommends that a condition of approval should be included regarding specific plan for this issue that adequately address Section 1021. *The Hearings Officer concurs in the above analysis, finding that as conditioned these criteria can be met.*

3) ZDO SECTION 806 HOME OCCUPATIONS TO HOST EVENTS

- A. **806.02(A):** The operator shall reside full-time in a lawfully established dwelling unit on the tract on which the home occupation is located.

Finding: The applicant states that the home occupation operators will be Kevin Bany, Deanna Bany and Tammy Plummer, who all reside full-time on the subject property. The dwelling was established in 1976. Staff finds that this criterion can be met with a condition of approval. *The Hearings Officer concurs, adopting the proposed condition of approval.*

- B. **806.02(B):** The home occupation shall have no more than five employees.

Finding: The definition of “Employee” under Section 806.01(A) is “Any on-site person, whether they work full-time or part-time in the home occupation business, including, but not limited to, the operator, partners, assistants, and any other persons or family members participating in the operation of the business. Except in the EFU, TBR, and AG/F Districts, this definition does not apply to persons employed by contract to provide services for a single event, such as caterers, photographers, and florists.”

The applicant proposes to have no more than five (5) employees, which is within the permissible number of employees allowed for a home occupation in the EFU district. The three operators will be assisted by one or two employees. Within the EFU zoning district, people employed by contract to provide services for an event are considered “employees”, including caterers, photographers, and florists. Staff recommends a condition of approval that limits the total number of employees to five (5) during events. *The Hearings Officer concurs in the above analysis and finding, adopting the proposed condition of approval.*

- C. **806.02(C):** 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.

Finding: The subject property is within the EFU district. The events will not take place within the operator’s dwelling. The applicant proposes that the events will occur within a (proposed) building, on the lawn and the occasional use of a tent. No details regarding the use of the lawn was provided by the applicant and so staff cannot determine that the use will be substantially in a building.

The applicant’s narrative states that events will occur on the lawn and in a temporary tent prior to the construction of the proposed building. Staff recommends the hearings officer

not approved the use to occur prior to when the proposed building received a certificate of occupancy since this would not be compliant with Subsection 806.02(C) or 1203.03(D).

The applicant states that the proposed building will be used on non-event days to support the existing farm operations as a “canning kitchen and double as a prep space for [their] gardens and the vegetable stand as well as a staging area for the short time during berry harvest.” The uses described by the applicant are permitted in the EFU district; however, a farm stand requires the review and approval of a Type II land use permit and is subject to the standards of ZDO Section 401.05(D)(10). Pursuant to Section 401.05(D)(10) a farm stand does not include structures designed for occupancy as a residence or for activities other than the sale of farm crops and livestock and does not include structures for banquets, public gatherings or public entertainment. As such, the proposed event building cannot be used as a “farm stand” but could be used as a prep space for the produce.

The subject property includes 27 acres of marionberries, and so it is reasonable to conclude that building that a canning kitchen, crop preparation and storage space is necessary.

During event days, the building will be used to provide a changing area for the wedding party, a food storage and preparation area, and the main event space. Accessory buildings in the EFU zoning district are typically permitted to have bathrooms and changing rooms. The proposed building will be designed to match the same aesthetic of the existing shop, thereby keeping the same visual characteristics of the site.

The Hearings Officer concurs in the above analysis, finding that as modified, clarified, and conditioned, these criteria can be met. As discussed at the hearing, approval of this conditional use does not authorize Applicants to construct any structure that would not otherwise be allowed within the EFU zoning district the property lies within. I am persuaded that an accessory structure used to support the existing farm operations as a “canning kitchen” and a preparation and staging area for garden and farm produce and berry harvest is an accessory use to the primary farming use of the property. However, as also discussed at the hearing, I am not familiar with any such accessory structures within the EFU zone with exterior bathrooms. I find that such exterior bathrooms would give the structure the appearance of public use, such as a structure within a public park, making the structure appear “out of place” within the EFU zone. Likewise, I find it would be unusual for such a structure found within the EFU zone to contain more than two bathrooms. Therefore, a condition is warranted that the structure is limited to two restrooms that may not have entrances/exits leading directly to the outside of such structure. Rather, any such restrooms may be accessed only from other interior spaces within the structure.

D. **806.02(D):** Temporary tents are allowed as follows:

In the AG/F, EFU and TBR Districts, temporary tents are permitted to the extent consistent with subsection 806.02(C). Temporary tents may be placed on the subject property no more than 24 hours before the event and must be removed no more than 24 hours after the event.

Finding: The subject property is within the EFU district. The applicant states that they may use tents on a temporary basis for the events. The temporary tent will be erected no more than 24 hours before the event and will be removed no more than 24 hours after the event.

The applicant's narrative states that events will occur on the lawn and in a temporary tent prior to the construction of the proposed building. Staff recommends the hearings officer not approved the use to occur prior to when the proposed building received a certificate of occupancy.

Staff finds this criterion can be met with a condition of approval. *The Hearings Officer concurs, adopting the proposed condition of approval.*

- E. **806.02(E):** 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.

Finding: The subject property is within the EFU district. The evaluation of compliance with Subsection 1203.03(D) is provided earlier in this staff report. For the reasons provided earlier in this report, this criterion is met. *The Hearings Officer concurs.*

- F. **806.02(F):** 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 cleanup of the facilities.

Finding: The application materials state that the hours of operation for events will be between 9:00AM to 10:00PM. Staff recommends a condition of approval to ensure that during the months of November through March the hours of operation will be 9:00AM to 10:00PM, and during the months of April through October the hours of operation will be from 8:00AM to 10:00PM. *The Hearings Officer concurs, adopting the proposed condition of approval.*

- G. **806.02(G):** 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.

Finding: The applicant states that they will not host more than two events per day, and those events will not have overlapping times. They state that they will comply with the standards of Section 806.02. A condition of approval is warranted to ensure compliance with this criterion. *The Hearings Officer concurs, adopting the proposed condition of approval.*

- H. **806.02(H):** A 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.

Finding: The applicant is proposing to host events with a maximum of 150 guests, per event, with an average of 105 guests per event, which is less than the maximum number of guests allowed by this subsection. The potential impacts of the events such as noise and the traffic analysis were evaluated with the based on the applicant's proposal that

there will be up to 150 event attendees at a time. This criterion is met. If the application is approved, a condition of approval is recommended limiting the maximum number of event attendees to 150. ***The Hearings Officer concurs, adopting the proposed condition of approval.***

- I. **806.02(I):** All lighting used during events shall comply with Subsection 1005.04(A).

Finding: The lighting standards of Subsection 1005.04(A) are addressed earlier in this report. The submitted application materials show recessed lighting under the covered awning on the proposed building. This criterion is met. ***The Hearings Officer concurs.***

- J. **806.02(J):** 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, 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.
 - i. Noise generated by vehicles entering or exiting the subject property, but not by idling vehicles, shall be exempt from Subsection 806.02(J)(1).
 - ii. Subsection 806.02(J)(1) shall not apply to noise detectable on public rights-of-way and railroad rights-of-way.
- b. 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.

Finding: The applicant states that they will be compliant with this criteria. The application materials are unclear about the extent to which the outdoor lawn of the property will be used for the events, as described earlier in relation to Section 806.02(C) which would impact the potential noise generated from the events. The proposed event building would be located approximately 900 feet away from the nearest neighboring dwelling, with the exception of the event operator's dwelling on the subject property.

Additional discussion is warranted to ensure that compliance with this criterion is feasible. ***The proposal was modified at the hearing to clarify that amplified music would only be allowed within the proposed building, and not outside. With this restriction, together with the remote and sheltered location of the event venue, and the related condition of approval proposed by staff, the Hearings Officer finds that County requirements concerning noise can be met.***

- K. **806.02(K):** The home occupation shall comply with Section 1015, Parking and Loading, except as modified by Subsection 806.02(K):
- a. On-street parking shall be prohibited on the day of an event.
 - b. An alternative to the parking area surface required pursuant to Subsection 1015.01(B) may be approved based on the following criteria:
 - i. It is appropriate considering season, duration, and intensity of use.
 - ii. It shall be surfaced with hardy grasses, wood chips, or other similar organic materials sufficient to adequately stabilize the ground surface for parking.
 - iii. 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.

Finding: The applicant proposes to have a gravel parking area with 40 parking spaces, each 8.5 feet by 16 feet in size. Pursuant to Section 1015.01(B), outside the Urban Growth Boundary areas used for parking, loading, and maneuvering of vehicles shall be surfaced with screened gravel or better, and shall provide for suitable drainage. An alternative to Section 1015.01(B) was not requested. The applicant will be required to bring the existing approach up to current standards and pave the first 20 feet from the edge of S Farm Rd. at a minimum width of 20 feet, per Roadway Standards Drawing D500. The two northerly driveway approaches serving the event site on S Farm Road shall be paved, per Standard Drawing D500. The main entrance driveway shall be paved to a minimum width of 20 feet. The north exit driveway shall be paved to a minimum width of 12 feet. This will minimize the tracking of soil onto S Farm Rd. No parking on S Farm Rd is proposed with this application.

As discussed earlier in this staff report, pursuant to Section 1015 the minimum number of required parking spaces is one (1) space per three (3) guests based on the maximum number of guests permitted for any single event. An additional space shall be provided for each employee. The applicant proposes to have a maximum of 150 guests at an event, and up to five employees; therefore, a minimum of 55 parking spaces are required. As proposed, this standard is not met. Section 806.02(K) requires event site to provide parking in accordance with ZDO Section 1015. Based on this criterion, the applicant will be required to provide 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. The preliminary parking plans do not provide details on parking layout, but based on available land area, adequate parking should be feasible. If approved, staff recommends a condition of approval requiring the applicant to provide a detailed site plan with dimensions, identifying the parking spaces and circulation area and method of delineation for gravel parking spaces. With the recommended conditions, it appears that adequate circulation and parking can be provided. ***The proposal was modified at the hearing to include 55 vehicle parking***

spaces. The Hearings Officer concurs in the above analysis, finding that, as modified and with the recommended conditions of approval, these criteria can be met.

- L. **806.02(L):** Portable restroom facilities shall:
- a. Include hand-sanitizing or hand-washing facilities;
 - b. Comply with the standards of the service provider and the applicable regulations of the Oregon Department of Environmental Quality;
 - c. Be screened from adjacent lots and rights-of-way by sight-obscuring fences or plantings; and
 - d. Be located a minimum of 50 feet from all lot lines.

Finding: In addition to three permanent restrooms in the proposed structure, the applicant proposes to use portable restroom facilities on an as-needed basis. These restrooms will include hand-washing facilities. The site plan drawing provided in the application materials does not show portable restrooms, but staff finds that this criterion can reasonably be met with a condition of approval since the location of the events areas, including the proposed event building and the associated parking lot, are more than 50 feet from the property line. Staff recommends that a condition be imposed to ensure compliance with this standard. *The Hearings Officer concurs, adopting the proposed condition of approval.*

- M. **806.02(M):** 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.

Finding: Compliance with ZDO Section 1010 is addressed earlier in this report. The applicant does not propose to have any event signs. If approval, staff recommends that a condition of approval be imposed to authorize the placement of a temporary event sign pursuant to this section. *The Hearings Officer concurs, adopting the proposed condition of approval.*

- N. **806.02(N):** Equipment, furniture, goods, and other amenities used for events shall be stored indoors on non-event days.

Finding: The applicant states that all equipment and goods will be stored indoors on non-event days. This criterion can be met with a condition of approval. *The Hearings Officer concurs, adopting the proposed condition of approval.*

- O. **806.02(O):** 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.

Finding: The applicant states that any furniture, tents, temporary backdrops, etc. used for an event will be stored in the proposed building when events are not happening. These

items will not be seen on the property except on event days. It is reasonable for staff to determine that the applicants can comply with this criterion. This criterion can be met with a condition of approval. ***The Hearings Officer concurs, adopting the proposed condition of approval.***

4) **ZDO SECTION 401 EFU DISTRICT**

- A. **401.04 Uses Permitted.** Table 401-1 lists “Home Occupation to Host Events, subject to Section 806”.

Finding: As established in Table 401-1, a Home Occupation to Host Events is a Conditional Use and is subject to Subsection 401.05(A)(1) and 401.05(D)(1)

- B. **401.05(A)(1):** The use may be approved only where such uses: (A) Will not force a significant change in 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.

Finding: The applicant’s narrative one mile south of the property an event center has been operating which did not change cost of farming on the subject property. The narrative states that there are two other event venues within five miles away from the subject property that have not caused change in surrounding farm practices or cost, including theirs. There was no evidence provided to support this claim in the application materials.

The subject property is predominantly surrounded by farm uses and farm dwellings. The site is in the EFU zoning district and is surrounded by other properties in the same district. The subject property is 40 acres in area and is currently developed with a dwelling and accessory buildings. Approximately two-thirds of the property is planted with marionberries and the property also has a small orchard, a garden, and a small tree lot. The applicant is proposing to build a new 64-foot by 32-foot building with two covered patios on either side, one is 15 deep and the other is 19 feet deep. The applicant states that on non-event days the building will be used for a canning kitchen, a prep space for their gardens, and a staging area during berry harvest.

The materials submitted by the applicant state that the proposed use will not force a significant change in, or significantly increase the cost of the accepted farming or forest practices but lack supporting evidence. If the applicant is able to provide evidence supporting these claims, or provide another means of demonstrating compliance with this criterion, staff would recommend approval.

One neighbor, Mr. Jaeger, submitted written comments in opposition to the proposal. In these written comments, as amended by a second copy of the letter with additional statements, Mr. Jaeger describes existing farming practices at Fessler Farms’ hazelnut orchards across the street from the subject property. Mr. Jaeger points to their farming activities tending to make a lot of dust, from things such as dragging to level the orchard, harvesting the hazelnuts, driving through to spray, or mowing throughout the orchard. Mr. Jaeger points to efforts to be a “good neighbor” and minimize the impacts of these activities on neighboring property owners’ uses of their own property. However, Mr. Jaeger contends the farming activities must continue, are time sensitive, and they will not be able to accommodate event timing on the subject property.

At the hearing, as Hearings Officer I discussed Applicants' unsupported statements that the proposal will not force a significant change in farm or forest practices on surrounding lands devoted to farm or forest and will not significantly increase the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use at the hearing, and also discussed Mr. Jaeger's written letters. The Applicants described area farm uses as similar to their own activities, and the activities described by Mr. Jaeger. The Applicants stated that area farmers use trucks in their farming operations and orchards for a variety of purposes, just as they themselves do, including application of chemical sprays, harvesting, etc. The Applicants assert that these activities do not affect neighboring properties or uses, and approval of the event hosting proposal will not change or increase the cost of their farming practices, or those taking place on surrounding properties. Applicants point to the three other event hosting venues in the vicinity, contending these uses have not affected area farming practices or costs, and their own similar proposal will not either. The Applicants also contend that there is not much use of the roads by the trucks, and assert that use of the roads by individuals driving to and from their property for the proposed event hosting venue will not significantly affect farm use of the roads. I also note that Mr. Kent, Senior Planner with Clackamas County Development Engineering, found the existing area roads adequate to support the proposed event use. I found the above statements from Applicants persuasive, as supported by Mr. Kent, and conclude that the proposal meets these criteria. I found Mr. Jaeger's concerns genuine, noting that his concerns seem more a caution to the Applicants to remind them he will be farming his Property and generating significant dust, and cannot be expected to change his farming practices to accommodate weddings or other activities taking place on Applicants' property across the street. I agree with Mr. Jaeger's position: it is not the responsibility of farmers engaged in primary farm use within the EFU zone to accommodate conditional uses such as this proposal. The relevant inquiry, however, concerns the potential effects of the proposed home occupation on surrounding farm and forest uses within the EFU zone, not the potential negative effects of existing farming practices on the proposed event hosting home occupation.

- C. **401.05(D)(1):** The home occupation shall not unreasonably interfere with other uses permitted in the EFU zoning district and shall not be used as justification for a zone change.

Finding: The proposed home occupation is not anticipated to unreasonably interfere with other permitted uses in the EFU zone. Any potential impacts to surrounding properties (including concerns of traffic, noise and lights) are discussed at length throughout this staff report, and have either been met, or staff has recommended that further discussion occur to ensure that the standard can be met. The subject property is predominantly surrounded by farm uses and farm dwellings. While there will undoubtedly be impacts to surrounding properties, none of the potential impacts were found to be unreasonable or a barrier to conducting uses permitted in the EFU zone.

The subject property is largely in farm use, and will continue to remain in farm use following the approval of a home occupation land use permit. The applicant will continue to operate their farm business on site, without interference from the proposed events.

Arguably, the farm operation that would be most impacted by the proposed events would be on the subject property. The proposed building will be clustered near other buildings and will be located near the road, thereby maximizing the amount of available farm land that can be used.

The applicant is not requesting a zone change. And there are no zone change applications submitted to the Planning Division at this time that are using this home occupation as a justification for a zone change.

Provided compliance with all other relevant ZDO Sections are met, or can be met with conditions, this standard is met. ***The Hearings Officer concurs in this discussion and the related referenced discussion, as amended and commented upon, finding this standard is met.***

D. **401.07 Dimensional Standards.** New development is subject to the dimensional standards of Subsection 401.07.

Finding: The minimum setback standards in the EFU zone are applicable to the proposed accessory building. Buildings must be a minimum of:

- a. 30 feet from the front (west) property line which runs along S. Farm Road
- b. 10 feet from the side property lines (north and south)
- c. 30 feet from the rear property line (east) for primary structure, 10 feet for accessory structures

These dimensional standards for the proposed new accessory building are met as shown on the applicant's site plan. ***The Hearings Officer concurs.***

ADVISORY NOTES

Advisory notes are not a part of the decision on this land use permit. The items listed below are not conditions of land use approval and are not subject to appeal. They are advisory and informational only but may represent requirements of other agencies/departments. As such, they may be required by these other agencies/departments in order to complete your proposed development.

- A. The Oregon Statewide Wetlands Inventory shows there is a perennial stream on the property, and there are hydric soils on parts of the property as well. The Department of State Lands received a copy of the proposed application for review on August 17, 2023. The applicant will be advised when their review is complete and if the State requires any permits for the proposed work. It is the responsibility of the applicant/property owner to comply with all State regulations.

F. DECISION

Based on the findings, discussion, conclusions, and record in this matter, the Hearings Officer APPROVES application Z0169-23-C for a conditional use permit for a Home Occupation to Host Events on the subject property, subject to conditions of approval.

//
//

G. CONDITIONS OF APPROVAL

I reviewed and considered the proposed conditions of approval submitted by staff, and find these conditions designed to ensure that the requirements of this Conditional Use permit are met. I note that 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. Approval of this application does not authorize any building not normally associated with uses permitted in the EFU zone.

1. Approval of this land use permit is based on the submitted written narrative and plans filed with the County on April 17, 2023 and additional materials received on May 10 and June 23, 2023, **and as modified and clarified at the September 7, 2023 public hearing.** No work shall occur under this permit other than which is specified within these documents, unless otherwise required or specified in the conditions below. It shall be the responsibility of the property owner(s) to comply with this document(s) and the limitation of any approval resulting from the decision described herein.
2. The conditional use approval is valid for four (4) years from the date of the final written decision (ZDO 1203.05). 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.
3. Any outdoor lighting [ZDO 1005.04(A) and (B)] and 806.02(I) shall be located and designed so that it does not shine onto adjacent properties, upwards or right-of-ways.
4. Use of on-site sewage disposal facilities, if proposed, shall be subject to approval by the Clackamas County Septic & Onsite Wastewater System Programs.
5. The Operator of this home occupation shall reside full time in the dwelling on site, and be majority owner in the business and responsible for day-to-day operations. [ZDO 806.01(C) and 806.02(A)]
6. The home occupation shall have no more than five full-time or part-time employees on site. [ZDO 806.02(B)]
7. 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 cleanup of the facilities. [ZDO 806.02(F)]
8. 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. The Conditional Use approval authorizes a maximum of 150 people per event. [ZDO 806.02(G)]

9. Temporary tents may be allowed, though the events shall be operated substantially in the operator's dwelling or other buildings normally associated with uses permitted in the EFU District. Temporary tents may be placed on the subject property no more than 24 hours before the event and must be removed no more than 24 hours after the event. [ZDO 806.02(D)]
10. Noise shall be regulated as follows [ZDO 806.02(J)]:

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.

 - 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.
11. Restroom facilities shall be regulated as follows [ZDO 806.02(L)]:
 - a) Portable restroom facilities shall 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 (existing can satisfy) and
 - d) Shall be located a minimum of 50 feet from all lot lines.
12. 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. [806.02(M)]
13. 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 use identified as "allowed" by Table 401-1, Permitted Uses in the EFU District. [806.02(O)]
14. All frontage improvements in, or adjacent to Clackamas County right-of-way, and all on-site access improvements, shall be in compliance with *Clackamas County Roadway Standards*.
15. **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. The required access and parking improvements shall be completed prior to initiation of event hosting.

16. The two northerly driveway approaches serving the event site on S Farm Road shall be paved, per Standard Drawing D500. The main entrance driveway shall be paved to a minimum width of 20 feet. The north exit driveway shall be paved to a minimum width of 12 feet.
17. Minimum intersection sight distance of 405 feet shall be provided at the proposed driveways serving the event site on S Farm Road. 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.
18. 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.
 - 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. Where the road will serve one-way circulation, the minimum width is 12 feet. Access drives and parking areas shall be constructed per Standard Drawing R100.
 - c. 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.
 - d. Where one-way circulation is proposed, on-site signs shall be provided indicating “entrance” and “exit.”
 - 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.
19. **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 Monitor Fire District #58 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.
20. **Prior to operating the home occupation**, the applicant shall submit a plan to the Planning and Zoning Division showing satisfaction of requirements from Section 1021 of the Zoning and Development Ordinance regarding trash/recycling, or a plan suitable to meet the standard residential pick-up service provided by the trash hauler. Detailed information, including ZDO 1021, is available on the county web site www.clackamas.us under “Garbage & Recycling.”
21. A minimum of 55 parking spaces are required (50 for guests, 5 for employees), and must meet the parking area design standards of ZDO Section 1015.02. [ZDO 1015, Table 1015-1]
22. Prior to issuance of a building permit, a to-scale site plan must be submitted to the Planning & Zoning Division demonstrating compliance with the parking and circulation requirements of ZDO Section 1015 and the standards provided in Condition of Approval #18.
23. The applicant may not conduct events prior to obtaining a building permit, and a certificate of occupancy for that building. No events may occur exclusively on the lawn and in temporary tents.
- 24. Restroom facilities provided within the proposed accessory structure are limited to two that may not have entrances/exits leading directly to the outside of such structure. Rather, any such restrooms may be accessed only from other interior spaces within the structure.**
- 25. Amplified music for events is only allowed within the proposed building, and is not allowed outside. This restriction, together with the remote and sheltered location of the event venue, will ensure that County requirements concerning noise, and concerning operating the home occupation substantially in a building normally associated with uses permitted in the EFU zone, will be met.**

Dated: September 11, 2023



Carl D. Cox
Clackamas County Hearings Officer

APPEAL RIGHTS

ZDO 1307.10(F) provides that, with the exception of an application for an Interpretation, the Land Use Hearings Officer's decision constitutes the County's final decision for purposes of any appeal to the Land Use Board of Appeals (LUBA). State law and associated administrative rules promulgated by LUBA prescribe the period within which any appeal must be filed and the manner in which such appeal must be commenced. Presently, ORS 197.830(9) 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." This decision is "final" for purposes of a LUBA appeal as of the date of the decision appearing by my signature.