

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

Regarding an application by Amy and Robert Drouhard for approval of a conditional use permit to operate a home occupation to host weddings and other events on a 13-acre parcel at 9850 S. Barnards Road in Clackamas County, Oregon ) **FINAL ORDER**  
 ) **Case No. Z0526-21-C**  
 ) **(Drouhard**  
 ) **Heritage Farms, LLC)**

**A. SUMMARY**

1. The applicants, Amy and Robert Drouhard, request approval of a Conditional Use Permit (“CUP”) to operate a home occupation to host weddings and other events. The applicants propose to locate the facility on a 13-acre site located at 9850 S. Barnards Road; also known as tax lots 500 and 590, Section 3, Township 5 South, Range 1 East, WM, Clackamas County (the “site”). The site and all abutting properties are zoned EFU (Exclusive Farm Use).

a. The site is currently developed with a single-family residence and detached garage near the south end of the site and a barn near the north end of the site. S. Barnards Road abuts the north boundary of the site. There is an existing gravel surfaced driveway on the west boundary of the site, connecting the barn and residence to S. Barnards Road and a dirt road that veers off from the gravel driveway at roughly the middle of the site. An east-west aligned seasonal stream crosses the north end of the site between the barn and S. Barnards Road. There are several oak trees south of the house and fruit trees in the west central portion of the site. The remaining roughly ten-acres of the site is developed as a Christmas tree farm. (See the site plans included in the application). The applicants proposed to conduct a maximum of 20 events per year with a maximum 150 guests per event. The applicants proposed to conduct events in a clearing south of the existing house. No buildings are proposed with this application; all events will occur outdoors on the site. The applicants will erect temporary tents if needed due to inclement weather. The applicants will create a gravel surfaced vehicle parking area in the north end of the site, near S. Barnards Road.

2. Clackamas County Hearings Officer Joe Turner (the "hearings officer") held a public hearing about this application. County staff recommended the hearings officer deny the application, because the use would not be operated substantially in the operator's dwelling or other buildings normally associated with uses permitted in the applicable zoning district (Section 806.02(C) of the Clackamas County Zoning and Development Ordinance, the “ZDO”), tents are not normally associated with permitted uses in the EFU Zone (ZDO 806.02(D)(1)), and the proposed use will 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 EFU zone due to impacts from traffic and noise (ZDO 1203.01(D)). See the Staff Report to the Hearings Officer dated January 13, 2022 (the "Staff Report"). The applicants testified in support of the application. Two persons testified orally regarding the application. Other persons testified in writing. The principal contested issues in the case include the following:

a. 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 whether the proposed use will:

- i. Generate noise in excess of the maximum limits of ZDO 806.02(J);
- ii. Allow traffic to enter and exit the site simultaneously;
- iii. Contribute to speeding issues on S. Barnards Road;
- iv. Exceed the traffic carrying capacity of S. Barnards Road;
- v. Create a hazard due to the location of the site access in a vertical curve (dip) in S. Barnards Road;
- vi. Increasing the potential for drivers to turn around in neighbors’ driveways;
- vii. Increasing the potential for drunk drivers on area roads; and
- viii. Increasing litter in the area.

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

c. Whether tents are “buildings normally associated with uses permitted in the [EFU] zoning district. ZDO 806.02(C); and

d. Whether temporary tents are “[c]onsistent with Subsection 806.02(C).” ZDO 806.02(C)(1).

3. Based on the findings and discussion provided or incorporated herein, the hearings officer concludes that Case No. Z0526-21-C (Drouhard Heritage Farms, LLC) should be denied, because the applicants failed to demonstrate compliance with all of the applicable standards of the Clackamas County ZDO, specifically ZDO 806.02(C) (“[T]he home occupation shall be operated substantially in the operator’s dwelling or other buildings normally associated with uses permitted in the [EFU] zoning district”) and ZDO 806.02(D)(1) (“In the AG/F, EFU, and TBR Districts, temporary tents are permitted to the extent consistent with Subsection 806.02(C)”).

## **B. HEARING AND RECORD HIGHLIGHTS**

1. The Hearings Officer received testimony at a public hearing about this application, on January 13, 2022. All exhibits and records of testimony are filed at Clackamas County Department of Transportation and Development. At the beginning of the initial 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 Clay Glasgow summarized the Staff Report.

a. He noted that the 13-acre site consists of two tax lots. The site is currently developed with a residence and barn. The applicants propose to host up to 20 weddings and similar events per year on the site, with a maximum 150 guests per event. Event facilities are allowed in the EFU zone as a home occupation, subject to conditional use approval.

b. He recommended the hearings officer deny the application, because the applicants failed to demonstrate that the application complies with all of the applicable approval criteria.

i. ZDO 806.02(C) requires that home occupations in the EFU zone must be operated substantially in the operator's dwelling or other buildings normally associated with uses permitted in the applicable zoning district. The applicants proposed to conduct all events outdoors.

ii. ZDO 806.02(D)(1) only allows the use of tents "[t]o the extent consistent with Subsection 806.02(C)" and there is no evidence that tents are "[b]uildings normally associated with uses permitted in the [EFU zone].

iii. ZDO 1203.01(D) requires a finding that, "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." In this case, neighbors expressed concerns with noise and visual impacts of the use. There is insufficient evidence in the record addressing these concerns to support a finding that it is feasible to comply with this criterion.

iv. Area residents also expressed concern with the safety of the existing driveway serving the site, as the site driveway intersects S. Barnards Road at a topographic low point (dip) in S. Barnards Road. County Transportation Engineering staff reviewed the driveway and determined that adequate sight distance is available at the intersection of the driveway and S. Barnards Road, based on the 55 mph speed limit on S. Barnards Road. (Exhibit 8). Therefore, traffic is no longer an issue.

c. The Petras event facility cited by the applicants, Case File No: Z0043-21-C (Petras Event Hosting), was approved in the RRFF-5 zone, which has different approval criteria than the EFU zone where this site is located. The RRFF-5 zone expressly allows tents and does not require that events occur substantially within buildings.

d. The applicants will be required to improve the portion of the site driveway that serves the event facility to a minimum 20-foot width, to accommodate two-way traffic and pave the northern 20 feet of the driveway to create a 20-foot long by 20-foot wide apron at the intersection with S. Barnards Road. This is shown on the applicants site plan and required by proposed conditions III.4.b and III.5.a.

3. The applicants, Amy and Robert Drouhard, summarized their PowerPoint presentation (Exhibit 9) and responded to the Staff Report and neighbor's comments.

a. The applicants currently lease roughly ten-acres of the site to a farmer who is raising Christmas trees on the site. They intend to take over the Christmas tree operation, planting new trees on the site as the current farmer harvests the existing trees. They raise goats and chickens on the remainder of the site.

b. They intend to hold weddings and other events in a ½-acre open meadow area south of the existing residence, an area they refer to as "the park." They will hold a maximum 20 events per year, mostly on summer weekends. They will put up temporary tents as needed to deal with inclement weather conditions. They will end music on the site at 9:00 p.m.

c. Properties to the east and west of "the park" are open grass fields with no residences. The majority of the immediately abutting property owners support the proposed use. There are four similar event facilities currently operating within a five mile radius of the site.

d. Although ZDO 806.02(C) requires that home occupations be "[o]perated substantially in the operator's dwelling or other buildings normally associated with uses permitted in the applicable zoning district", ZDO 806.01(B) defines "events" to include "company picnic" and picnics generally occur outside. ZDO 806.02(D) expressly allows the use of temporary tents to the extent consistent with ZDO 806.02(C). Staff did not mention these issues during the pre-application process.

e. Some neighbors raised unspecified concerns with potential impacts of the proposed use. However, the Code does not prohibit any impacts on surrounding properties. The Code only prohibits impacts that substantially limit, impair or preclude the use of surrounding properties.

i. The proposed use will not generate significant noise impacts. "The park" where they intend to hold events is located roughly 1,000 feet from S. Barnards Road and the nearest neighboring residences. Noise levels fall rapidly with distance; sound levels of 80 dB at the source fall to 40 to 50 dB 1,000 feet away from the source. They will comply with the county maximum noise limit of 60 dB, measured at the boundaries of the site. They intend to hold 20 events per year, primarily on Saturdays, which equates to five-percent of the year. They will not hold concerts on the site. They intend to plant a hedge along the site's frontage on S. Barnards Road to screen and buffer the site. Noise

levels that comply with the Code will not substantially limit, impair or preclude the use of surrounding properties.

(A) The site is not located in a “quiet” area. Existing noise generating activities include tractors, combines and other farm equipment operating into the night, helicopters harvesting Christmas trees, and air traffic - including skydiving and pilot training planes - operating from the airport located roughly four-miles west of the site.

ii. Drivers traveling to the site are unlikely to turn around in neighbor’s driveways. Most drivers use GPS applications that direct them to the site. The applicants will post temporary signs at the intersection of the site driveway and S. Barnards Road to clearly identify the site.

iii. Traffic from the proposed use will not have a significant impact on the area. S. Barnards Road currently carries 3,500 Average Daily Trips (“ADT”). A 150 guest event will generate roughly 50 vehicles, which represents a 1.4-percent increase in the total traffic volume on S. Barnards Road. In addition, they will hold most events on weekends, when background traffic volumes are lower.

iv. County transportation engineering staff determined that adequate sight distance is available at the intersection of the site driveway and S. Barnards Road. (Exhibit 8).

v. They will provide a commercial dumpster to collect solid waste generated by events on the site. They will pick up and properly dispose of any trash on the site after each event.

vi. They will have OLCC licensed bartenders serving beer and wine at events. No hard alcohol will be allowed. They will end alcohol service one hour before an event is scheduled to end.

vii. The county approved a similar event facility proposing ten to 15 events per year with up to 100 attendees on a 6.5-acre parcel, Case File No: Z0043-21-C (Petrus Event Hosting), despite significant opposition from surrounding residents; the county received 20 comments in opposition.

4. Jen Bell noted that her parents, John and Jeanne Eyman, farm property located near the site. She questioned whether the driveway serving the site can accommodate two-way traffic at the intersection with S. Barnards Road, to allow vehicles turning into the site to pass vehicles that are waiting to turn onto S. Barnards Road.

5. Jeanne Eyman noted that drivers frequently exceed the posted speed limit on S. Barnards Road, with many drivers traveling at 70 to 75 mph on weekends.

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

a. For two weeks, until 5:00 p.m. on January 27, 2022, for all parties to submit additional testimony and evidence

b. For a third week, until 5:00 p.m. on February 3, 2022, for all parties to respond to the whatever was submitted during the first two weeks; and

c. For a fourth week, until 5:00 p.m. on February 10, 2022, for the applicants to submit a final argument.

7. The following exhibits were submitted during the open record period:

a. A letter and photos from the applicants outlining sound measurements conducted on the site (Exhibit 10);

b. A letter from Rob “DJ Rob” Cummings summarizing his analysis of the noise impacts of music and activities occurring on the site (Exhibit 11); and

c. An email from Mr. Glasgow dated February 3, 2022, noting that the applicants waived their final argument.

8. Pursuant to the applicants request, the hearings officer closed the record in this case at 5:00 p.m. February 3, 2022.

### **C. DISCUSSION**

#### **1. Subsection 1203.02 – Submittal Requirements**

a. Subsection 1203.02 of the Zoning and Development Ordinance lists the information that must be included in a complete application for a conditional use permit.

b. This application includes a completed land use application form, site plan, application fee, and completed supplemental application addressing the 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 (Exhibit 2) was submitted, for surface water management. All of the submittal requirements under Subsection 1203.02 are included in the application. The application was originally submitted on November 16, 2021, and was deemed complete on November 30, 2021. The 150-day deadline for processing this application is April 29, 2022 (Exhibit 2).

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

## 2. Subsection 1203.03 – Conditional Use Permit Approval Criteria

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

i. **Subsection 1203.03(A):** *The use is listed as a conditional use in the zoning district in which the site is located.*

(A) 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, including “*Home occupation to host events, subject to Section 806.*” This proposal involves a home occupation to host events. Therefore, the proposed use is listed as a conditional use in the EFU zone. Section 806 is discussed further below.

The application complies with ZDO 1203.01(A).

ii. **Section 1203.03(B):** *The characteristics of the site are suitable for the proposed use considering size, shape, location, topography, existence of improvements and natural features.*

(A) Size: The site is approximately 13-acres in size (comprised of two tax lots). The submitted site plan details use areas on the site and demonstrates the site is of sufficient size to accommodate the proposed event area, along with parking and circulation, landscaping, etc.

(B) Shape: The shape of the site is generally rectangular and does not present any particular limitation to the proposed use of the site.

(C) Topography: There is a stream crossing the northern portion of the site from east to west. Otherwise the site is generally level. Therefore, the topography is not a limiting factor.

(1) The vertical curve along Barnards Road is not relevant to this criterion. The vertical curve occurs on the roadway; therefore, it is not a characteristics of the site itself.

(D) Location: The site is located approximately three-miles west of Molalla, north of Highway 211 and between Highways 213 and 170. There is no evidence of any particular location issues that would adversely affect the use.

(E) Improvements: The site is currently developed with a single-family residence and associated farm outbuildings.

(F) Natural Features:

(1) Floodplain: The site is not within a regulatory floodplain.

(2) Geologic Hazards: There are no mapped geologic hazards on the site.

(3) Streams: The stream on the northern portion of the site is a mapped River and Stream Conservation Area (“RSCA”) stream subject to ZDO 704. However, no development or activities are proposed in or near the stream.

(G) Summary: The shape, topographic and location characteristics of the site are suitable to accommodate the proposed use. There are no mapped natural features that would be impacted by the proposed use. The size of the site is adequate to accommodate the proposed event facility.

The application complies with ZDO 1203.03(B).

iii. **Section 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.*

(A) Subsection 1007.07: Transportation Facilities Concurrency. Pursuant to Section 1007.07(B)(5), conditional uses to host events are exempt from concurrency requirements. This criteria is inapplicable.

(B) Safety: The hearings officer finds, based on the expert testimony of County engineering staff, that traffic generated by the proposed event facility will not create a hazard. S. Barnards Road is classified as a minor arterial road, which is intended to carry higher traffic volumes. The proposed development will generate additional traffic on S. Barnards Road, but that traffic is consistent with the road’s classification as a minor arterial. In addition, the proposed event facility will primarily generate traffic during off-peak hours (weekends and evenings) when traffic volumes on area roads are lower. County engineering staff reviewed the site and determined that adequate sight distance is available at the intersection of the site driveway with S. Barnards Road. (Exhibit 8). Based on neighbors’ testimony there have been numerous vehicle crashes in the area. However, there is no evidence that the roads in this area are unusually hazardous or that the number of crashes is disproportionate compared to the volumes of traffic on those roads.

(C) If this application is approved, the applicants will be required to comply with the following prior to obtaining a certificate of occupancy for the proposed use:

(1) Provide a 20 feet wide by 20 feet long paved driveway approach at the intersection with S. Barnards Road;

(2) Widen the portion of the existing driveway serving the event facility as necessary to provide a minimum 20-foot wide road surfaced with screened gravel or better;

(3) Provide adequate on site circulation for the parking and maneuvering of all vehicles anticipated to use the site, including a minimum of 24 feet of back up maneuvering room for all 90-degree parking spaces. All parking and maneuvering areas shall be surfaced with screened gravel or better, except for parking spaces for the disabled and the adjacent accessible areas, which shall be paved. Wheel stops or other similar means of delineating gravel parking spaces is required; and

(4) Provide a turnaround on-site that can accommodate a fire truck (See Roadway Standards, Standard Drawing C350).

Compliance with these conditions will help ensure that traffic from generated by the proposed event facility does not create a hazard.

(D) The additional traffic generated by the proposed event facility may pose an increased risk for drivers, cyclists and pedestrians in the area. Higher vehicular traffic volume creates a marginally higher risk for all road users. It may well warrant a heightened degree of attentiveness to traffic when driving, cycling or walking in the neighborhood. However, reasonably prudent drivers will observe the posted speed limit and other applicable traffic regulations and if necessary, further reduce their speed to accommodate other road conditions, including the presence of farm equipment, livestock, and wildlife. 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. If necessary the County can address issues of speeding and other alleged traffic violations through increased traffic enforcement in the area.

As conditioned, the proposal meets ZDO 1203.03(C).

iv. **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.”*

(A) The site and surrounding properties are zoned EFU. Primary uses allowed in the EFU zoning district are listed in Table 401-01, and include farm and forest uses. Single-family dwellings are not listed as a primary use in the EFU zoning district. However, ZDO 806.02(E) requires that the hearings officer consider the impacts of the proposed event facility on dwellings in the EFU zone. Existing uses in the surrounding area include a mix of farm and forest uses as well as rural residential home-sites.

(B) This criterion does not prohibit the use from having any impacts. It only prohibits impacts that substantially limit, impair or preclude the use of surrounding properties for the allowed primary uses.

(C) The hearings officer finds that, as conditioned, noise from events on the site will not have a significant impact on surrounding properties. As discussed below, noise generated by the proposed use is limited to a maximum 60 dB(A) when measured offsite, i.e., at the boundary of adjacent properties. (See ZDO 806.02(J)). Although some activities on the site may be audible on adjacent properties, noise impacts in compliance

with the limitations of ZDO 806.02(J) will not substantially limit or preclude the use of surrounding properties for permitted uses, including residential uses in the EFU zone.

(D) Certain features of the use may be visible from surrounding roads and properties.

(1) The proposed parking area on the site may be visible from S. Barnard Road as well as from adjacent properties to the north, east, and west of the site. However, gravel surface parking areas are not uncommon in the EFU zone. Similar parking areas are frequently provided at farm stands, retail Christmas tree farms, and similar uses. In addition, the applicants proposed to plant a hedge along the site's S. Barnard Road frontage to screen views of the parking area to some extent.

(2) The applicants proposed to erect temporary tents on the site to provide protection from inclement weather. Such tents will be located in "the park" area of the site, roughly 1,000 feet from S. Barnard Road. Trees and structures on the site will screen views of this area from the road and abutting properties. In addition, temporary tents would only be visible when events are occurring on the site; ZDO 806.02(D)(3) requires that tents may be erected no more than 24 hours before the event and removed no more than 24 hours after the event.

(3) The hearings officer finds that the visual impacts of the use will not substantially 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 underlying zoning districts.

(E) The proposed development will attract additional people to the immediate area, which may increase the potential for trespass, litter, and other illegal activities. However the hearings officer finds that there is no substantial evidence in the record that the patrons of the proposed facility are any more or less likely to engage in such activities than other people.

(F) The applicants will regulate alcohol use on the site, requiring OLCC licensed bartenders, prohibiting hard alcohol, and stopping alcohol service one hour before events are scheduled to end. 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 appellants 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.

(G) This use is unlikely to significantly increase the potential for drivers turning around on neighboring properties. As the applicants note, many drivers use GPS apps that direct them directly to and from their destinations. In addition, the applicants will install temporary signs at the driveway intersection with S. Barnard Road to clearly identify the entrance to the site.

As conditioned, the proposal meets ZDO 1203.03(D).

v. **Section 1203.03(E):** *“The proposal satisfies the goals and policies of the Comprehensive Plan that apply to the proposed use.”*

(A) The site is designated Agriculture on the Comprehensive Plan map. The Agriculture Land Use Section in Chapter 4 of the Comprehensive Plan implements the Agriculture Plan Designation. The hearings officer finds that the following goals and policies are most relevant to this application:

Chapter 4, Land Use:

Agriculture Policies – 4.00

(1) The site is approximately 13-acres in size and zoned Exclusive Farm Use. The site has farmable soils and is generally used for agricultural purposes. The applicants proposed to primarily operate the event facility using the existing improvements on the site, which will help limit any impacts on agricultural production on the site and surrounding area. The proposed event facility is consistent with the agriculture goals and policies.

Chapter 5, Transportation:

5.Q Access Standard Policies:

5.Q.5 *“Access Standards shall be implemented through the Zoning and Development Ordinance and the County Roadway Standards. Where access management standards are adopted by the County in Special Transportation Plans, those standards shall apply.”*

(2) The hearings officer finds that the proposed event facility is consistent with the Transportation goals and policies, based on the Traffic Engineering findings in the Staff Report.

As conditioned, the proposal meets ZDO 1203.03(E).

vi. **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 (further below, under Part 3 of this report), and Section 1000.*

Sections: 1002, 1005, 1006, 1007, 1008, 1009, 1010, 1015, and 1021 were reviewed.

Section 1002, Protection of Natural Features:

*Subsection 1002.01(A), Development on slopes greater than or equal to 20 percent and less than or equal to 35 percent—except that for residential development in the RR, MRR, and HR Districts, the upper limit is 25 percent—shall require review of a Type I application pursuant to Section 1307, Procedures, and shall be subject to the following standards:*

(A) No development is proposed in areas with slopes greater than 20-percent.

This criterion is met.

*Subsection 1002.04(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...*

*Subsection 1002.04(B), Trees and wooded areas to be retained shall be protected during site preparation and construction*

(B) No tree removal is proposed with this application. Development is limited to widening the driveway as needed to meet county standards and creation of a gravel surfaced parking lot. There are no existing trees located where these improvements are proposed.

*Subsection 1002.04(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;*

This criterion is met.

(C) A mapped RSCA stream crosses the northern portion of the site, but the no development is proposed that may impact the stream. As shown in the applicant's site plan, required driveway widening and the proposed parking area are located north of the stream, outside of the required buffer.

The standards of Section 1002 are met.

Section 1005, Site and Building Design.

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.*

(D) No lighting is proposed with this application. A condition is warranted requiring any future outdoor lighting associated with the events be limited to wall mounted fixtures as required to illuminate building entrances, decks and accessible routes to ADA parking spaces. All fixtures shall be downward directed and shielded and will be compatible and appropriate for the use, location and overall style of the buildings and property. The applicants shall submit an outdoor lighting design plan for review and approval by the Planning and Zoning Division prior to installing any additional lighting.

The standards of Section 1005 can be met with conditions.

Section 1006, Utilities, Street Lights, Water Supply, Sewage Disposal, Surface Water Management, and Erosion Control:

Subsection 1006.03 Water Supply

- F. 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.*

(E) The applicants proposed to utilize an existing on-site well to provide water for the proposed use.

This criterion is met.

*Subsection 1006.05 - Subsurface Sewage Disposal Standards:*

- 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.*

(F) The subject property is not located in a public sanitary sewer district. Sewage disposal for existing development on the site is accommodated by an on-site septic system. The applicants propose to use portable restrooms for events on the site, as allowed by ZDO 806.

This criterion can be met with conditions.

*Subsection 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.*

1. *The surface water management regulatory authority may require a preliminary surface water management plan and report, natural resource assessment, and buffer analysis prior to signing the preliminary statement of feasibility.*
2. *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.*

(G) DTD Engineering is the surface water authority in the area and signed off on the Statement of Feasibility on October 25, 2021, indicating it is feasible the proposal can comply with the standards.

This criterion is met.

The standards of Section 1006 can be met with conditions.

Section 1007, Roads and Connectivity:

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

(H) Based on vehicular trips to the project site as well as on-site parking and circulation, engineering staff determined 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. Barnards Road is classified as a minor arterial with a 60-foot right-of-way along the site frontage. The existing right-of-way and roadway are adequate to support the proposed event use.

The standards of Section 1007 can be met as conditioned.

*Section 1010 Standards, Signs:*

(I) The applicants proposed to use a single temporary sign at the intersection of the site driveway and S. Barnards Road, as allowed by ZDO 806.02(M). Any future signs must comply with ZDO 1010.

The standards of Section 1010 can be met as conditioned.

*Section 1015, Parking and Loading:*

*Subsection 1015.01 General Standards*

*B. 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.*

(J) The applicants proposed to construct a gravel surfaced parking lot on the north end of the site. Handicapped ADA parking spaces require a paved surface, with a paved pedestrian surface connecting the parking area to the event site. As discussed above, the applicants will be required to demonstrate that the parking area drainage complies with County standards. Conditions of approval are warranted to that effect if this application is approved.

This criterion is met as proposed.

*Section 1015.02 Motor Vehicle Parking Area Standards*

*A. Off-street parking areas shall be designed to meet the following requirements:*

(K) Parking spaces shall meet minimum ZDO Section 1015 and Roadway Standards Drawing P100/P200 requirements. 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 applicants' site plan shows a main parking area for events, but it does not include details on the number of spaces or delineation of spaces and drive aisles.

(L) If this application is approved, the applicants should be required to provide a dimensioned site plan indicating each parking space and drive aisles. 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. ZDO 806.02(k)(2) allows the use of hardy grass or other soft surfaces for parking with consideration of season, duration and intensity of use.

This criterion can be met with conditions.

*B. Parking Minimums: The minimum number of parking spaces listed in Table 1015-1, Automobile Parking Space Requirements, applies unless modified in Subsection 1015.02(D).*

(M) ZDO Table 1015-1 requires one parking space per three guests based on the maximum number of guests permitted for any single event and an additional space for each employee. In this case the applicants proposed to limit events to a maximum 150 guests. ZDO 806.02(B) limits the use to a maximum five employees. Therefore, the applicants must provide 55 parking spaces (50 guest spaces and five employee spaces). In addition, the applicants must provide parking for other permitted uses on the site, the existing residence. The applicants should be required to demonstrate that all parking spaces comply with the requirements of ZDO 1015.

This criterion can be met with conditions.

*C. Parking Maximums:*

(N) The site is located outside the UGB. Therefore, there is no parking maximum.

The standards of Section 1015 can be met as conditioned.

Section 1021 Solid Waste And Recyclable Material Collection:

(O) This section outlines the standards for refuse and recycling for commercial developments. The applicants did not provide any detail relative to this criterion. Typically at events centers such as proposed here, either the property owner or the individual event planners deal with trash and recycling. The local trash/recycling purveyor often does not provide commercial service in an area not zoned for such use. Still, others with approved conditional use permits to Host Events have plans in place to deal with trash/recycling associated with the use. A condition should be added to ensure compliance with the applicable portions of Section 1021

The standards of Section 1021 can be met as conditioned.

As conditioned, the proposal meets ZDO 1203.03(F).

**The application complies with Subsection 1203.03.**

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**3. Other Development Standards**

**a. Section 401– EFU Zone.**

**Subsection 401.04 Uses Permitted:**

i. The applicants proposed to operate a home occupation to host events on the site, which is a use listed in ZDO Table 401-1, subject to the additional approval criteria in Sections 806 and Subsections 401.05(A)(1) and 401.05(D)(1). Based on the findings below, the application complies with the additional approval criteria.

**The application complies with Subsection 401.04.**

**Subsection 401.05(A)(1) General Approval Criteria For Specific Uses**

*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.*

ii. Neither the applicants nor the Staff Report addressed this issue. However, the event facility will utilize a relatively small portion of the site relative to the size of the site. With the exception of vehicle parking and maneuvering and temporary tents, no structures or development are proposed on the site. Conditions of approval limit the number, timing, and size of events on the site. The activity areas, the parking lot and “the park” where events will take place, are located near the east-west center of the site, away from abutting active farm fields. The location of the parking lot, abutting Barnards Road to the north and screened by the existing on-site barn to the south, the existing driveway to the west, and the existing residence on the adjacent property to the east, will further reduce its potential impact on adjacent properties. “The park” area is screened by existing mature trees and located near the existing residence. Given these considerations, the hearings officer finds that the planned home occupation to host events will not have a significant impact on abutting farm or forest uses.

**Subsection 401.05(A)(1) is met.**

**Subsection 401.05(D) Commercial Uses:**

- 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.*

iii. The hearings officer finds that, as conditioned, the proposed home occupation will not unreasonably interfere with other uses permitted in the EFU zoning district. Activities on the site must comply with the noise limits of ZDO 806.02(J). Proposed events will take place within a limited portion of the site that is largely screened from adjacent properties by existing structures and vegetation on the site. Conditions of approval limit the number and size of events allowed as well as minimizing potential noise.

As conditioned, Subsection 401.05(D)(1) is met.

*Subsection 401.07 Dimensional Standards:*

*A. Minimum Lot Size: 80 acres.*

*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.*

iv. The site is an existing lot of record and no further land division is proposed. Therefore, the lot size requirement of ZDO 401.07(A) is inapplicable. The remaining dimensional standards are met as shown on the applicants site plan.

Subsection 401.07 is met.

**The application complies with Section 401.**

**b. Section 806, Home Occupations to Host Events**

*Subsection 806.02 Standards: Home occupations to host events shall comply with the following standards:*

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

i. The site is a legal lot of record and is developed with an existing single-family dwelling. The applicants state that they will reside full-time in the existing residence on the site.

Subsection 806.02(A) is met.

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

*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.*

ii. The applicants state that they will employ a maximum of five persons in the home occupation on the site. Proposed condition 7 will ensure compliance with this criterion.

As conditioned, Subsection 806.02(B) is met.

*C. 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.*

iii. The site is currently developed with a residence, detached garage, and barn. However, the applicants do not propose to operate the use in those buildings. They propose to conduct all events outdoors on the site, with the use of tents as necessary for protection from inclement weather.

iv. The hearings officer finds that tents are "buildings" as defined by ZDO 202; "BUILDING: Any structure used or intended for supporting or sheltering any use or occupancy." However, there is no evidence in the record that temporary tents are "[n]ormally associated with uses permitted in the [EFU] zoning district." Therefore, the hearings officer cannot find that the application complies with ZDO 806.02(C).

(A) The fact that ZDO 806.01(B) includes "company picnic" as an example of the type of event allowed as a home occupation does not negate the requirement that such home occupation events must be operated substantially in a residence or other building normally associated with uses permitted in the zone. ZDO 806.01(B) is a definition. ZDO 806.02(C) is expressly an approval standard and the plain language of that section requires that home occupation events must be operated substantially in a residence or other building.

(B) The fact that this issue was not raised in the preapplication conference, while unfortunate, is irrelevant.

(C) The Petras event facility cited by the applicants, Case File No: Z0043-21-C (Petras Event Hosting), was approved in the RRFF-5 zone, which has different approval criteria than the EFU zone where this site is located. The RRFF-5 zone expressly allows tents and does not require that events occur substantially within buildings.

v. If the applicants were able to demonstrate that temporary tents are "[n]ormally associated with uses permitted in the [EFU] zoning district," they would

need to operate the use “substantially in” such tents in order to comply with ZDO 806.02(C).

Subsection 806.02(C) is NOT met.

*D. Tents: Temporary tents are allowed as follows:*

*1. In the AG/F, EFU, and TBR Districts, temporary tents are permitted to the extent consistent with Subsection 806.02(C).*

vi. The site is located in the EFU district. As discussed above, there is no evidence in the record that temporary tents are “[n]ormally associated with uses permitted in the [EFU] zoning district,” ZDO 806.02(C). Therefore, the hearings officer cannot find that the application complies with ZDO 806.02(D)(1).

*2. In a zoning district other than AG/F, EFU, and TBR, one temporary tent is permitted, and additional temporary tents may be permitted if consistent with Subsection 1203.03.*

vii. The site located in the EFU district. Therefore, this section is inapplicable.

*3. 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.*

viii. If tents are allowed on the site, a condition of approval would be warranted requiring that the tents be erected no more than 24 hours before an event and removed no more than 24 hours after the event.

Subsection 806.02(D) is NOT met.

*E. 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.*

ix. As discussed above, impacts to dwellings were considered in evaluating compliance with Subsection 1203.03(D)

As conditioned, Subsection 806.02(E) is met.

*F. 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.*

x. The applicants proposed to operate the facility in compliance with these limitations. The applicants proposed to turn off the music and end alcohol service at 9:00 p.m. and end all events by 10:00 p.m. The hearings officer finds that the applicants

should be required to take additional measures to ensure that all event guests actually leave the site prior to 10:00 p.m. Such measures could include ceasing food and beverage service prior to 10:00 p.m., making periodic announcements that the event is ending and guests are required to leave the site no later than 10:00 p.m., including information about the event end times in all facility advertisements and contracts, imposing monetary penalties (retaining a monetary deposit) if a particular event continues past 10:00 p.m., etc. The applicants are ultimately responsible for ensuring that all events end no later than 10:00 p.m. It is in the applicants best interest to do so in order to avoid revocation of this CUP approval for failure to comply with the conditions of approval.

Subsection 806.02(F) can be met with conditions.

*G. 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.*

xi. The applicants propose a maximum 20 events per year. Those 20 events per year are also subject to the limitations of this section.

Subsection 806.02(G) can be met with conditions.

*H. 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.*

xii. The applicants proposed to limit events on the site to a maximum 150 guests.

Subsection 806.02(H) can be met with conditions.

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

xiii. As discussed above, no lighting is proposed with this application. A condition is warranted requiring any future outdoor lighting associated with the events comply with ZDO 1005.05(A).

Subsection 806.02(I) can be met with conditions.

*J. 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.*

xiv. The applicants submitted the results of a noise analysis conducted on the site, Exhibits 10 and 11. Based on that analysis it is feasible to comply with the noise limitations of the Code, provided the applicants monitor noise during events and enforce compliance with the applicable noise limits. There is no substantial evidence to the contrary.

Subsection 806.02(J) can be met with conditions.

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

xv. ZDO Table 1015-1 requires one parking space per three guests based on the maximum number of guests permitted for any single event and an additional space for each employee. In this case the applicants proposed to limit events to a maximum 150 guests. Therefore, the applicants must provide 50 guest parking spaces plus five additional spaces for employees.<sup>1</sup> The applicants are also required to provide parking for any existing uses on the site, i.e., the existing residence. The hearings officer finds that it is feasible to construct a minimum 55 space parking area on the site. The existing garage and driveway provide parking for the residence on the site. There is no evidence of other uses occurring on the site that require additional parking.

Subsection 806.02(K) can be met with conditions.

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<sup>1</sup> ZDO 806.02(B) limits the use to a maximum five employees, including contractors.

*L. 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.*

xvi. The applicants proposed to utilize portable restrooms during events on the site. Such portable toilets shall comply with the requirements of this section.

Subsection 806.02(L) can be met with conditions.

*M. 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.*

Subsection 806.02(M) can be met with conditions.

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

Subsection 806.02(N) can be met with conditions.

*O. 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.*

Subsection 806.02(O) can be met with conditions.

**The applicants failed to demonstrate feasibility of compliance with all applicable provisions from Section 806. This criterion is not satisfied.**

## **D. CONCLUSION**

Based on the findings and discussion provided or incorporated herein, the hearings officer concludes that Case No. Z0526-21-C (Drouhard Heritage Farms, LLC) should be denied, because the applicants failed to demonstrate compliance with all of the applicable standards of the Clackamas County ZDO, specifically ZDO 806.02(C) and (D).

### **E. DECISION**

1. Based on the findings, discussion and conclusions provided or incorporated herein and the public record in this case, the hearings officer denies Z0526-21-C (Drouhard Heritage Farms, LLC).

DATED this 14th day of February 2022.



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 applicants 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 applicants, 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).