

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

Regarding an application by Devyn Petersen and Staci Dalton) **FINAL ORDER**
for approval of a conditional use permit to operate a home)
occupation to host weddings and events on a 19.6-acre parcel) **Case No. Z0123-23-C**
at 29335 S. Beaver Creek Road in Clackamas County, Oregon) **(Sage and Social)**

I. SUMMARY

1. The applicants, Devyn Petersen and Staci Dalton, request approval of a Conditional Use Permit (“CUP”) to operate a home occupation to host weddings and other events.

a. The applicants propose to operate the facility on a 19.6-acre parcel located at 29335 S. Beaver Creek Road; also known as tax lot 608, Section 27, Township 4 South, Range 3 East, of the Willamette Meridian, in Clackamas County (the “site”). The site and most abutting properties are zoned AG/F (Agriculture/Forest). The property abutting the northwest corner of the site is zoned TBR (Timber). S. Beaver Creek Road abuts the south boundary of the site. A private driveway provides access to the residence on site. The site is currently developed with a single-family residence and a 3,000 square foot ag-exempt barn with a covered patio on the west side (the “barn”). The barn and residence are located in the northern portion of the site. The remainder of the site is currently used for agriculture: nine-acres of Christmas trees¹ on the east side of the site and a one-acre flower farm south of the event venue.

b. The applicants propose to conduct up to 36 events per year with a maximum 150 guests per event, with an average of 100 guests per event. The applicants initially proposed to conduct events in the existing barn and a proposed 1,400 square foot building with two bathrooms with showers, a kitchen, and bride and groom changing rooms (the “dressing building”). The applicants proposed to locate the dressing building north of the barn with a 40- x 60-foot concrete surfaced outdoor gathering area in between. The applicants also propose an outdoor ceremony area southwest of the barn, two storage containers, a temporary food truck parking space, a 70 space parking lot, and roughly three-acres of landscaping. The applicants propose to plant a hedge between the outdoor ceremony area and the storage containers and parking lot. Additional overflow parking is proposed in an 80- x 40-foot gravel surfaced area north of the house and east of the dressing building. Applicants propose to conduct event management and business operations in the existing residence.

c. County staff initially recommended the hearings officer approve the original application subject to conditions. See the Staff Report to the Hearings Officer dated July 6, 2023 (Exhibit 1, the “Staff Report”). Staff subsequently changed their recommendation to denial, arguing that since the existing barn on the site was approved as an agricultural building that is exempt from building code compliance, ORS 215.760(2) prohibits the

¹ The majority of the Christmas trees have been removed from the site. (Exhibits 11, The applicants propose to plant pumpkins on the site in 2024. (Exhibit 34).

conversion of an agricultural building to another use. See the Addendum to the Staff Report to the Hearings Officer dated December 6, 2023 (Exhibit 12, the “Addendum”).

d. The applicants modified the application in response to the Addendum, proposing to construct a new 2,400 square foot accessory structure similar to the existing barn, located north of the proposed parking lot and southwest of the existing barn (the “reception building”). In addition, the applicants proposed to hold events in an 800 square foot temporary tent while the new barn is under construction. (Exhibit 34). Staff recommended the hearings officer approve the revised application subject to conditions. See the County’s “Response To New Evidence Following The Open-Record Period.” (Exhibit 47).

2. Clackamas County Hearings Officer Joe Turner (the "hearings officer") held two public hearings about this application. The applicants and their attorney testified in support of the application. Three persons testified orally in support of the application. Three other persons testified orally in opposition to the application. Other persons testified in writing, in opposition and in support of the proposal. The principal contested issues in the case include the following:

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

b. Whether the characteristics of the site are suitable for the proposed use, ZDO 1203.03(B), including:

i. Whether ORS 215.760(2) precludes the applicants from using the existing barn on the site events; and

ii. Whether a water right is needed to support the proposed use;

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

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

i. Noise;

ii. Increased traffic and speeding on S. Beaver Creek Road; and

iii. Hazards for pedestrians and cyclists on S. Beaver Creek Road;

iv. Increasing the potential for drunk drivers on area road; and

v. On-site lighting;

e. Whether the proposed use complies with applicable requirements of ZDO 1000. ZDO 806.02(F);

f. Whether the applicants will operate the home occupation “[s]ubstantially in the operator’s dwelling or other buildings normally associated with uses permitted in the buildings normally associated with uses permitted in the [AG/F] zoning district.” ZDO 806.02(C);

g. Whether the applicants will operate the facility in compliance with the noise level limits of ZDO 806.02(J).

3. The hearings officer concludes that the applicants sustained the burden of proof that the proposed use does or can comply with the relevant approval standards of the Clackamas County Zoning and Development Ordinance (the “ZDO”), provided the applicants comply with conditions of approval recommended by County staff or warranted by the facts and law to ensure the proposed use complies in fact with those standards. Therefore the hearings officer approves the application subject to the conditions at the end of this final order, based on the findings and conclusions in this final order.

II. HEARING AND RECORD HIGHLIGHTS

1. The Hearings Officer received testimony at a public hearing about this application on December 14, 2023.² All exhibits and records of testimony are filed at Clackamas County Department of Transportation and Development. At the beginning of the hearing, the Hearings Officer made the declaration required by ORS 197.763. The Hearings Officer disclaimed any *ex parte* contacts, bias or conflicts of interest. The following is a summary by the hearings officer of selected testimony at the public hearing.

2. County planner Melissa Lord summarized the Staff Report, the Addendum (Exhibit 12), and her PowerPoint presentation (Exhibit 35).

a. She noted that the applicants initially proposes to operate an event facility on the site utilizing the existing 3,000 square foot barn and a proposed 1,400 square foot accessory structure with a kitchen, changing rooms, and four restrooms (two with showers). However, the County concluded that because the existing barn was approved as an ag-exempt structure the applicants cannot change the barn to a non-agricultural use. Therefore, the applicants modified the proposal, proposing to construct and utilize a new 2, 400 square foot accessory building (the “reception building”) located southwest of the existing barn and the previously proposed 1,400 square foot accessory structure north of

² The application was originally scheduled for a hearing on July 13, 2023. No one testified at the initial hearing, other than the applicants requesting a continuance. The hearings officer orally continued the hearing to January 11, 2024. The County subsequently rescheduled the continued hearing to December 14, 2023.

the barn. The applicants proposed to provide 75 off-street parking spaces in a gravel surfaced parking lot south of the existing barn. Roughly nine acres of the site was planted in Christmas trees and one acre is planted with flowers. The applicants proposed to hold events inside an 800 square foot temporary tent on the site while the reception building is being constructed.

b. S. Beaver creek Road abuts the south boundary of the site. Under existing conditions this road carries roughly 2,315 Average Daily Trips (“ADT”). Although the use will generate higher traffic volumes on event days, the annual traffic generated by the proposed use is equivalent to that generated by one to two new single family dwellings. There is no posted speed limit on this section of S. Beaver creek Road. Therefore, this road is subject to the “basic rule” speed limit of 55 mph. There is a horizontal curve on S. Beaver creek Road southwest of the site driveway with a posted 40 mph advisory speed. County transportation engineering staff determined that the applicants must provide a minimum 555 feet of intersection sight distance to the southwest of the intersection of the site driveway and S. Beaver creek Road and 610 feet to the northeast of the intersection.

c. The applicants constructed the existing barn on the site as an agricultural building that is exempt from building permits. Therefore, this structure is subject to ORS 215.760(2), which prohibits conversion of the structure to another non-agricultural or forestry use. The applicants cannot use the existing barn to host events on the site, as that would change the use of the structure.

d. She requested the hearings officer modify proposed Condition 9 to allow a maximum seven events per week between April and October, five events per week between November and March, and a 52 events per year, as proposed in the application.

e. She argued that it is not unusual for the County approve multiple restrooms and showers in accessory structures.

3. County planning manager Lindsey Nesbitt testified that County legal counsel concluded that ORS 215.760(2) prohibits changing the use of an agricultural building that was constructed pursuant to ORS 215.760(1); once it is constructed as an agricultural building, it must remain an agricultural building.

4. Attorney Damien Hall and applicants Devyn Petersen and Staci Dalton appeared in support of the application.

a. Mr. Hall summarized his written testimony (Exhibit 34) and PowerPoint presentation (Exhibit 36).

i. He agreed with the majority of the findings and conditions in the Staff Report. However, he disagreed with the Addendum finding that ORS 215.760(2) prohibits use of the existing barn on the site for events.

(A) ORS 215.760 is not an approval criterion for this application and there is no precedent for denial of the application on this basis.

(B) The building will remain available for use as an agricultural building when events are not occurring on the site, which is the vast majority of the time. The majority of the acreage on the site is used for agriculture. The site was previously used to raise Christmas trees. The applicants intend to grow pumpkins on the site in 2024.

(C) Requiring the applicants to demolish the existing building and rebuild it on the site would result in an absurd outcome.

ii. In the event the hearings officer agrees with staff, the applicants are proposing to construct a new accessory building, the reception building, southwest of the existing barn, as an alternative design. The applicants also propose to conduct events in an 800 square foot temporary tent while the reception building is being constructed.

iii. He agreed with Ms. Lord that restrooms and showers are commonly allowed in accessory buildings in the County's AG/F zone.

iv. If necessary, the applicants can modify the lighting on the site to comply with ZDO 806.02.I and 1005.04(A). The nearest offsite residence is located 800 feet west of the barn and there is a dense grove of trees between the site and that residence. The photographs in Exhibit 11 were taken from a point south of the residence on the adjacent property, where there is a break in the tree buffer.

v. The applicants can comply with the noise limitations of ZDO 806.02.J. The DJ and dance floor will be located within the enclosed building, either the barn or reception building, and the speakers will be aimed inside the building, away from the doors.

vi. He requested the hearings officer adopt the following changes to recommended conditions of approval in the Staff Report:

(A) Condition 13 should be deleted, as it merely repeats condition 4.

(B) Condition 9 should be modified to allow up to 52 events per year. The applicants will accept limiting the use to a maximum five events per week year-round.

(C) Add a condition allowing use of a temporary tent while the reception building is being constructed.

vii. State law supports agri-tourism activities, including this type of event facility, on rural lands, as such uses provide additional income for farmers.

b. Ms. Dalton testified that they currently utilize portable restrooms on the site as an interim measure until the permanent restrooms in the proposed dressing building are completed.

c. Ms. Petersen testified that they utilize three portable restrooms - one ADA accessible unit and two standard units – which are located in the northeast corner of the parking lot, directly south of the barn.

i. The concrete surfaced outdoor gathering area located between the barn and the proposed dressing building can be used for ceremonies, dancing, gathering, or “whatever the client wants.”

ii. The storage containers on the north edge of the parking lot are intended to separate the parking area from the event space and provide some visual and noise screening. They also plan to plant a hedge north of the containers to further screen and buffer the event space.

iii. They inform DJs and wedding planners about the noise restrictions of the Code prior to events. They require that announcement of the “last dance” by 9:50 p.m. and turn off the music by 10:00 p.m.

5. Christina Menchinie testified that she lives south of the site, on the other side of S. Beaver Creek Road, where she runs Campfire Farms. She testified that it can be difficult to make a living from farming and she is interested in agri-tourism. She has never heard music or other noise when events are occurring on the site.

6. Julie Ann Harrison testified that she lives east of the site. The site was part of her property until four or five years ago. She agreed with Ms. Menchinie that the applicants’ facility enriches the local area. She has not observed any issues with traffic from events on the site and noise and lighting on the site has not interfered with her use of her property.

7. Malia Kupillas testified that she and her husband pasture their horses on the property west of the site during the summer. She took the photos of events on the site included in Exhibit 11. She uses a noise meter to measure sound levels at various locations around the site. The photo of the sound meter (photo 7 of Exhibit 11) shows sound levels measured at S. Beaver Creek Road abutting the site when there was no traffic on the roadway. They live 1,120 feet west of the site and can still hear noise from events on the site inside their home when the windows are open. Noise from the events tends to increase as the parties progress.

8. Lonnie Hester testified that music from the site is clearly audible from his residence on Valley Vista Road, southwest of the site. There are sharp curves on the section of S. Beaver Creek Road southwest of the site, near Valley Vista Road. He has seen 37 accidents on that section of road in the 12 years he has lived in the area.

Additional traffic from events on the site will increase the risk of accidents on this section of road.

9. Greg Kupillas noted that the applicants have been holding events on the site without required permits throughout the summer of 2023. They can hear music from the site inside their residence when the windows are open and the noise interferes with their quiet enjoyment of their property. Given the applicants' history of operating illegally, there is no guarantee that they will comply with any conditions of approval imposed by the County.

10. Mike Early testified that his residence is located 1/8th of a mile from the site and he can only hear noise from events on the site when the wind is blowing from the west. Event traffic has not created any issues on Beaver Creek Road.

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

a. For two weeks, until 4:00 p.m. on December 28, 2023, for all parties to submit additional testimony and evidence;

b. For a third week, until 4:00 p.m. on January 4, 2024, for all parties to respond to the whatever was submitted during the first weeks; and

c. For a fourth week, until 4:00 p.m. on January 11, 2024, for the applicants to submit a final argument.

12. Exhibits 38 through 48 were submitted during the open record period.

13. By order dated January 18, 2024, (Exhibit 49) the hearings officer reopened the record for the limited purpose of accepting additional testimony and evidence addressing whether the “[s]afety of the transportation system is adequate to serve the proposed use” (ZDO 1203.03(C)) is met, considering the historic crash rate on the section of S. Beaver Creek Road between mileposts 1.1 and 1.5, near the intersection of Beaver Creek Road and Valley Vista Road. Exhibits 50 through 56 were submitted during the reopened record period.

III. RECORD ISSUES

1. As stated in the Order Re-Opening the Record (Exhibit 49) the hearings officer reopened the record solely to address the crash rate on the section of S. Beaver Creek Road between mileposts 1.1 and 1.5, near the intersection of Beaver Creek Road and Valley Vista Road. Evidence regarding sight distance included in Exhibits 52 and 54 exceeds the limited scope of the open record period and those portions of these exhibits must be excluded from the record in this case.

2. In addition, the first open record period was for the submittal of new testimony and evidence. The second open record period was limited to responses to evidence submitted during the first period. The applicants submitted expert testimony and evidence from their traffic engineers (Exhibit 55) during the second open record period. That evidence should have been submitted during the first open record period to allow other parties to review and respond to it during the second open record period. Exhibit 55 was not in response to anything submitted during the first open record period. Therefore, Exhibit 55 must be excluded from the record in this case as it also exceeds the limited scope of the open record period.

IV. DISCUSSION

1. ZDO Section 1203.02 CONDITIONAL USES

1203.02: SUBMITTAL REQUIREMENTS

Finding: 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 March 28, 2023 and additional materials received were on April 20 and May 10, 2023. Following submission of additional requested information, the application was deemed complete on May 16, 2023.

The submittal requirements of Subsection 1203.02 are met.

1203.03 GENERAL APPROVAL CRITERIA: A conditional use requires review as a Type III application pursuant to Section 1307, Procedures, and shall be subject to the following standards and criteria:

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

Finding: The site is located in the AG/Forest (AG/F) district. ZDO Section 407, Table 407-1 of the ZDO controls land uses in the underlying AG/F district. “*Home occupation to host events, subject to Section 806*”, is listed as a conditional use. This criterion is met.

Some neighbors argued that this type of event facility should not be allowed in the AG/F zone. However, section 407 expressly allows such this type of use in the AG/F zone, provided the use complies with all of applicable approval criteria. State law expressly authorizes the county to allow such uses in the AG/F zone. *See* ORS 215.448. The decision to allow this type of use in the AG/F zone was a policy choice by the Board of County Commissioners, which the hearings officer has no authority to review or reconsider in this proceeding.

OAR 350-081-0108, cited in Exhibit 41, is inapplicable to this application. OAR 350-081 only applies to land uses in the Columbia River Gorge Scenic Area.

This criterion is met.

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

Finding: The site is approximately 19.6 acres in size and is gently sloped. At the southern tip of the property, near the intersection of S. Beaver Creek Road and S. Valley Vista Road, there are a number of large trees lining the street. There are additional smaller trees along the remainder of the south boundary, abutting S. Beaver Creek Road. The event facility is located more than 500 feet away from S. Beaver Creek Road. The trees function as a visual barrier which, combined with distance, prevents visible evidence of the home occupation from the street.

The nearest dwellings, on the properties immediately to the east and west of the site, are approximately 800 feet away from the proposed event area. To the north of the site is over 500 acres of land owned by a lumber company and harvested for timber. The large size of the property provides 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 are no mapped protected natural features on the property.

There is an existing barn on the site, which the applicants propose to utilize for the home occupation event facility. The barn was constructed without building permits as an exempt “agricultural building” as defined by ORS 455.315(2)(a)(A).³ There is a dispute as to whether the applicants can use of the existing barn for the proposed event facility.

³ ORS 455.315(2)(a)(A) provides:

As used in this section:

- (a)(A) “Agricultural building” means a structure located on a farm or forest operation and used for:
- (i) Storage, maintenance or repair of farm or forestry machinery and equipment;
 - (ii) The raising, harvesting and selling of crops or forest products;
 - (iii) The feeding, breeding, management and sale of, or the produce of, livestock, poultry, fur-bearing animals or honeybees;
 - (iv) Dairying and the sale of dairy products; or
 - (v) Any other agricultural, forestry or horticultural use or animal husbandry, or any combination thereof, including the preparation and storage of the produce raised on the farm for human use and animal use, the preparation and storage of forest products and the disposal, by marketing or otherwise, of farm produce or forest products.
- (B) “Agricultural building” does not mean:
- (i) A dwelling;
 - (ii) A structure used for a purpose other than growing plants in which 10 or more persons are present at any one time;
 - (iii) A structure regulated by the State Fire Marshal pursuant to ORS chapter 476;
 - (iv) A structure used by the public; or
 - (v) A structure subject to sections 4001 to 4127, title 42, United States Code (the National Flood Insurance Act of 1968) as amended, and regulations promulgated thereunder.

The County argues that the applicants cannot utilize the barn for events because it was approved as an exempt agricultural building in the AG/F zone pursuant to ORS 215.760(1). Therefore, the building is subject to ORS 215.760(2), which prohibits conversion of agricultural buildings authorized by ORS 215.760(1) to another use. (See Exhibits 12, 39, and 40).

The applicants argue that ORS 215.760(2) is not an applicable approval criterion, because they intend to upgrade the building to comply with the structural code for event use. Therefore, the building will no longer be “approved pursuant to this section” [ORS 215.760(2)]. The applicants further argue that the County’s interpretation of the statute will yield an absurd result, as the applicants could tear down the existing barn, rebuild it in the exact same location and configuration as a non-agricultural accessory building outside the scope of ORS 215.760(1), and then use the building as part of their proposed event facility. (Exhibits 34, 36, and 48).

In reviewing a statute the hearings officer must interpret the language of the statute to give effect to the intent of the legislature, using the step-by-step methodology established by the Oregon Supreme Court in *PGE v. Bureau of Labor and Industries*, 317 Or. 606, 859 P.2d 1143 (1993). The hearings officer must begin by reviewing the text of the statute itself and the context of the statute and related statutes without inserting what has been omitted or omitting what has been inserted. *Id.* at 610-611, 859 P.2d 1146. “If the legislature's intent is clear from the above-described inquiry into text and context, further inquiry is unnecessary.” Consideration of legislative history is permitted “If, but only if, the intent of the legislature is not clear from the text and context inquiry... *Id.* at 611, 859 P.2d 1146. The hearings officer may only resort to general maxims of statutory construction if the intent of the legislature remains unclear after consideration of text, context, and legislative history of the statute. *Id.* at 612, 859 P.2d 1146.

In this case the hearings officer finds that the text and context of the ORS 215.760(2) is ambiguous, as there is clear disagreement as to the meaning of the phrase “[a]gricultural building authorized by ORS 215.760(1)...” The County cites to legislative history, noting that “[t]he prohibition on conversion in ORS 215.760(2) was cited specifically to allay legislators’ concerns that the agricultural buildings allowed under ORS 215.760(1) would eventually become ‘condos.’” (p 3 of Exhibit 39). However, the hearings officer finds that the legislative history does not resolve the ambiguity. ORS 215.760(2) clearly prohibits conversion of “[a]n agricultural building authorized by this section to another use”, including “condos.” But it does not define what is meant by “[a]n agricultural building authorized by this section...” Therefore, the hearings officer may resort to general maxims of statutory construction because the statute remains ambiguous after review of the text, context, and legislative history of ORS 215.760. Such maxims include the “absurd result” maxim, “In construing a statute, courts must refuse to give literal application to language when to do so would produce an absurd or unreasonable result.” *McKean-Coffman v. Employment Div.*, 824 P.2d 410, 312 Or. 543 (Or. 1992).

The hearings officer would agree with the County's interpretation that ORS 215.760(2) clearly prohibits any non-agriculture or timber use of the existing barn if ORS 215.760(1) were the only way to legally construct the existing barn on the site. That would presumably be the case if the site did not contain and was not eligible for a residence pursuant to ZDO 407.04(C), i.e., if the predominant use of the site was forestry on January 1, 1993, and the site did not qualify for a dwelling pursuant to ZDO 406.05(D) or if the predominant use of the site was agriculture on January 1, 1993, and the site did not qualify for a dwelling pursuant to ZDO 401.05(C). In that case the applicants could only construct the existing barn as "[a]n agricultural building authorized by this section..." ORS 215.760(2).

However, that is not the case here. The site contains an existing residence and the applicants could have constructed the existing barn as an accessory structure subject to building permit approval. Such a building would not be "authorized by" ORS 215.760(1). If the existing barn had been constructed prior to the effective date of ORS 215.760 the applicants could convert the existing barn to a non-agricultural accessory structure by obtaining an after the fact building permit for the structure. See *Kaplowitz v. Lane County*, 74 Or LUBA 386 (2016), aff'd, 2854 Or App 764, 398 P3d 478 (2017). To construe ORS 215.760 to prohibit changing the use of the existing barn solely because it was constructed without a building permit after the effective date of ORS 215.760 is an absurd result as it would force the applicants to cease all non-agricultural use of the existing barn and construct a new building on the site. If the applicants obtain an after the fact building permit for the existing barn it will no longer constitute "[a]n agricultural building authorized by [ORS 215.760(1)]..." and ORS 215.760(2) would not apply to prohibit converting the building to another use.

The County argues that ORS 215.760 "[i]s tied only to the definition of "agricultural building" in ORS 455.315⁴ and not to whether an agricultural building is approved under an exemption from the Oregon Structural Specialty Code or under a building permit." (p. 1 of Exhibit 39). However, they failed to provide any support for this argument.

Based on the plain language of the statute, ORS 215.760(2) does not apply to all agricultural buildings as defined by ORS 455.315. It only applies to "[a]gricultural building *authorized by this section...*" The hearings officer must construe the statute to give meaning to the text of the statute, without inserting or omitting words. *PGE* at 610-611, 859 P.2d 1146. ORS 455.315(2)(a)(A) defines "agricultural building" based on the use of the building not how the building was "authorized." Therefore, under the County's interpretation, any accessory building located on land zoned for forest use or mixed farm and forest use that is used for agricultural purposes would be subject to ORS 215.760(2), regardless of whether the building were constructed pursuant to a building permit or as an exempt structure.

The County's interpretation is also inconsistent with the plain language of ORS 455.315(1), which exempts agricultural buildings from "[t]he application of a state structural specialty code..." If the applicants obtain an after the fact building permit for

⁴ Mistakenly cited as ORS 415.355 in Exhibit 39.

the existing barn it would be subject to the state structural specialty code and therefore, would no longer constitute an agricultural building.

The only interpretation that gives meaning to all the full text of ORS 215.760 is to limit ORS 215.760(2) to buildings constructed without a building permit and to allow such buildings to be converted to a non-agricultural use by obtaining an after the fact building permit, as such buildings would no longer constitute “[a]n agricultural building authorized by [ORS 215.760(1)]...” Therefore, the hearings officer finds that the applicants can use the existing barn on the site for the proposed event facility, provided they obtain an after the fact building permit for the structure and any additional approvals necessary to allow weddings and other events and public gatherings inside the building. A condition of approval is warranted to that effect.

In addition, the site is large enough to accommodate the applicants’ alternative proposal to construct a new 2,400 square foot reception building north of the proposed parking lot and southwest of the existing barn.

The fact that the site does not appear to include a water right is irrelevant. Neighbors argued that the applicants’ irrigated landscaping exceeds the scope of the water right exemption provided by ORS 537.545. Assuming that is accurate, the applicants can reduce the area of irrigated landscaping to comply with state law. Reducing the amount of landscaping on the site would not preclude the proposed use. Assertions that the applicants require a water right for their future pumpkin crop is also irrelevant, as raising pumpkins is not proposed as part of the event facility use. Regardless, this is an enforcement issue for the Oregon Water Resources Department. The hearings officer has no jurisdiction to interpret and apply ORS 537.545 in this proceeding.

This criterion is met.

C. The proposed use is consistent with Subsection 1007.07, and safety of the transportation system is adequate to serve the proposed use.

Finding: As discussed below, this application for a home occupation to host events is exempt from the concurrency requirements of ZDO 1007.07.

The hearings officer that the safety of the transportation system is adequate to serve the proposed use, based on the expert testimony of County transportation staff. (Exhibits 6 and 53). Neighbor’s concerns are not sufficient to overcome the expert testimony of County transportation staff.

Several crashes have been reported on the curved sections of S. Beaver Creek Road southwest of the site. (Exhibit 46). This development will increase the volume of traffic on that section of road, which will increase the risk of accidents. However, increased traffic alone does not make the road “unsafe;” any increase in traffic volume will increase the risk of accidents and roads with higher traffic volumes will generate more accidents within a given period of time. The issue is whether the crash rate, the number of crashes compared to the total traffic volume, is higher than would otherwise be expected for this road segment and if so, whether that is due to the design or physical condition of the

roadway or other engineering issues. The hearings officer acknowledges that the crash history may not reflect all of the crashes on this road segment. Some crashes are not reported. However the determination of whether further analysis is needed is based on reported crashes. There is no substantial evidence that this location experiences an unusually high number of unreported crashes. The hearings officer finds that the reported crash history is the best evidence available regarding the crash history for this area.

In this case, as transportation staff noted, the majority of crashes reported on this road segment were lane departure crashes where excessive speed is often a contributing factor. Neighbors noted that “[c]ar clubs and motorcycle groups... like to drive these curves fast...” Drivers speeding through these curves is an existing issue that the applicants cannot be required to remedy. However, there is no evidence that this use will generate a disproportionate share of speeding traffic. Guests of the facility are driving on this road segment to attend an event at the site, not for the pleasure of driving through this curving road segment.

In addition, the County plans to review this and other road segments in the County during the summer of 2024 and, if necessary, install additional signage, markings, and other safety measures to further reduce the crash rate on this road segment. (Exhibit 53). Opponents questioned the effectiveness of such additional measures, but they failed to provide any evidence to contradict the expert testimony of County transportation staff. In addition, based on staff’s testimony, such measures are not necessary to ensure that the transportation system can safely accommodate the additional traffic from this use. The County intends to analyze and possibly improve this road segment whether or not this use is approved. (Exhibit 53).

This use will increase the volume of traffic on roads in the area, primarily S. Beaver Creek Road. However, based on the expert testimony of County transportation staff, that additional traffic will not exceed the capacity of area roads or create, or exacerbate existing, hazards. The total increase in traffic volume generated by this use represents a small proportion of the existing traffic volumes on this road. As staff noted, total traffic from this use generate roughly the same traffic volume as one to two single family homes. (Exhibit 6). Event traffic will be concentrated into limited time periods, before and after events. But there is no evidence that such higher concentrations of traffic during these times will create a hazard. To the contrary, temporary higher traffic volumes may create congestion that will force all drivers to slow down.

Any increase in traffic will pose an increased risk for drivers, cyclists and pedestrians in the area. Higher vehicular traffic volume creates a marginally higher risk for pedestrians and bicyclists. It may well warrant a heightened degree of attentiveness to traffic when driving, cycling or walking in the neighborhood. But it will not substantially limit, impair or preclude the use of surrounding properties for permitted uses. Reasonably prudent drivers will observe the posted speed limit and further reduce their speed to accommodate road conditions such as narrow pavement, curves, or the presence of farm equipment, pedestrians and animals. Unfortunately, not all drivers are prudent. However, there is no evidence that the development proposed in this application will contribute a disproportionate share of imprudent drivers.

The applicants can regulate alcohol use on the site. Some attendees may bring their own alcohol or otherwise consume excessive amounts, which could create a hazard, especially if those attendees attempt to drive home. However, the applicants 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.

The applicant's analysis demonstrates that adequate sight distance can be provided at the site entrance onto S. Beaver Creek Road. The applicants should be required to demonstrate that adequate sight distance is actually provided prior to final approval of this application. A condition of approval is warranted to that effect. Opponents noted sight distance limitations at existing road and driveway intersections on S. Beaver Creek Road. However, based on the crash history data for this road (Exhibit 53), those intersections do not pose an unusual traffic hazard.

This criterion is met.

- 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 Ag/Forest (AG/F) districts and is surrounded by other properties in AG/F and Timber (TBR) zoning districts. Primary uses of the AG/F district are listed in ZDO Section 407, and primary uses of the TBR district are in ZDO Section 406.

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 these zoning districts.

Lands in the surrounding area are in farm and forest 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 five to 20+ acres).

This criterion does not require that the use have no impacts at all. Any new use or development will alter the character of the area to some extent by modifying existing views, generating additional traffic, installing new light sources, increasing noise, etc. The Code only prohibits impacts that *substantially* limit, impair or preclude the use of surrounding properties for the allowed primary uses, e.g. farm and forest activities. (Emphasis added). The Code does not define the word "substantially." Therefore, the hearings officer must look to the plain and ordinary meaning of that term. *Sarti v. City of Lake Oswego*, 106 Or. App. 594, 597, 809 P.2d 701 (1991). Random House Unabridged Dictionary defines "substantial" as "by an ample or considerable amount; quite a lot." "Substantial." In Dictionary.com, Retrieved March 12, 2023, from <https://www.dictionary.com/browse/substantially>.

The hearings officer finds that noise generated by the proposed use will not alter the character of the surrounding area in a manner that substantially limits, impairs or precludes the use of surrounding properties. The board adopted standards limiting noise from this type of use, ZDO 806.02.J. Although noise in compliance with this standard may be detectable on adjacent properties, the hearings officer finds that compliance with those adopted standards will ensure that the impacts will not substantially limit, impair or preclude the use of surrounding properties for permitted uses.

Head v. Lane Co., LUBA 2015-045 (2015) cited in Exhibit 42, is distinguishable from this case. The Lane County Code that was at issue in *Head*, did not include noise standards for this type of home occupation event facilities. In addition, the Lane County Code includes a different standard, requiring a finding that the use will not “unreasonably interfere” with permitted uses on nearby lands. The Lane County Hearings Officer concluded that noise in compliance with the County’s general noise regulations and DEQ standards could “unreasonably interfere” with permitted uses on nearby lands.

Section 806 of the Clackamas County Code includes specific noise limits for home occupation event facilities and requires a finding that the use will not “substantially limit, impair or preclude” the use of surrounding properties for permitted uses. The hearings officer finds that the inclusion of specific noise limits in the regulations for home occupation event facilities is evidence that the Board considered the issue of noise and concluded that noise that complies with the standard in the Code would not substantially limit, impair or precludes the use of surrounding properties for permitted uses.

The hearings officer finds that it is feasible to comply with the noise limits in ZDO 806.02.J, based on the findings below. The proposed events will take place primarily within two buildings onsite. The nearest dwellings are 800 feet or more away from the event area and screened by existing and proposed vegetation (i.e. the proposed hedge on the north edge of the parking lots, retained fir trees along the site’s S. Beaver Creek Road frontage, and natural growth trees on the west boundary of the site). The hearings officer finds that the size of the site (nearly 20 acres), the location of proposed events (primarily inside buildings located some distance from adjacent properties), combined with the dense trees will inhibit sounds traveling to adjoining properties making it feasible to comply with applicable noise standards.

The hearings officer finds that traffic generated by the proposed use will not alter the character of the surrounding area in a manner that substantially limits, impairs or precludes the use of surrounding properties. The proposed use will generate traffic immediately after events on the site. However, that additional traffic will not exceed the capacity of area roads or create or exacerbate existing hazards. In addition, most event traffic is likely to occur during off-peak hours, when background traffic volumes and congestion are lower.

S. Beaver Creek Road is a paved public road and the site is accessed by an existing driveway. A 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. The 20-foot paved section will limit impacts from dust or dirt generated by vehicles entering and

leaving the site. The proposed events will occur a maximum of 52 times per year and will host up to 150 guests per event. The property will include a gravel parking area, suitable to accommodate up to 73 vehicles.

As discussed below, the applicants can modify the existing lighting on the site to comply with the standards of ZDO 806.02(I) and 1005.04(A).

The fact that the applicants are currently holding events on the site without approval is relevant to the applicable approval criteria for this application, as those uses/activities are not proposed as part of this application. The applicants' past behavior does not show that they cannot or will not operate the use in a manner that complies with the ZDO. If the applicants sustain the burden of proof that the application complies with the approval standards, or if it can comply provided certain conditions are imposed, the hearings officer must as a matter of law approve the application subject to those conditions, ORS 197.522(4).

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

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

Several proposed conditions of approval require the applicants to comply "prior to initiation of event hosting." However, the applicants are currently conducting events on the site. Therefore, the hearings officer finds that the applicants should be required to comply with those conditions within six months from the effective date of this Final Order.

This criterion is met as conditioned.

E. The proposed use is consistent with the applicable goals and policies of the Comprehensive Plan.

Finding: The applicants do not directly address the Comprehensive Plan, although the submitted narrative touches on a few points. The subject properties are designated Forest on the Comprehensive Plan map. The AG/Forest (AG/F) zoning district implements the goals and policies of the Forest plan designation. Staff highlighted the following Comprehensive Plan provisions:

i. *Chapter 4, Land Use: Forest Polices – 4.OO*

4.OO.1: The following areas shall be designated Forest:

4.OO.1.1 Lands suitable for forest use;

4.OO.1.2 Lands predominantly capable of generating at least 85 cubic feet of timber per acre per year;

4.OO.1.3 Areas generally in forest use;

Finding: The site consists primarily of Jory silty clay loam soils, and is capable of producing 164 cubic feet of timber per acre per year. The property is approximately 20 acres in size. As discussed under ZDO 407 below, the siting of the proposed use will not interfere with agricultural practices on surrounding lands. The applicants propose to locate the event facility in a previously developed portion of the site, leaving the majority of the site undeveloped and available for the continued operation of farming practices on the site. However, neither the Comprehensive Plan nor the Code require the applicants' to farm the site.

This criterion is met.

ii. *Chapter 5, Transportation – Access Standard Policies – 5.Q*

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.

Finding: As specified under ZDO 1007, development applications are required to provide adequate access in compliance with current county standards, which may include right-of-way dedication, frontage improvements, on-site access, and parking. S. Beaver Creek Road is a rural minor arterial roadway, located within a 60-foot wide public right-of-way, with an improved width of approximately 24 feet in the vicinity of the project site. S. Beaver Creek Road currently carries approximately 2,315 average daily vehicle trips. Events such as weddings generate a larger number of vehicles on days when an event occurs. However, depending on how many attendees travel together, the average number of vehicle trips over the course of the entire year would be approximately 4,500, and is equivalent to the vehicle trips generated by approximately one to two single family homes. 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 existing driveway approach from S. Beaver Creek Road is constructed with a gravel surface. The applicants will be required to improve the existing approach to current standards, paving the first 20 feet from the edge of S. Beaver Creek Road to a minimum width of 20 feet, per Roadway Standards Drawing D500. Beyond the paved approach, the applicants will be required to provide a 20-foot wide gravel road to the event parking

area, consistent with Roadway Standards Drawing R100. A condition of approval is warranted to ensure compliance with this criterion.

This criterion is met as conditioned.

- F. *The proposed use complies with any applicable requirements of the zoning district and overlay zoning district(s) in which the site is located, and Section 1000 Development Standards.*

Finding: As noted above, the proposed home occupation event facility is allowed as a conditional use in the AG/F zone, subject to the criteria in ZDO 806, which are addressed below. Pursuant to ZDO 407.07, development in the AG/F District is subject to the development standards for the TBR District, ZDO 406.08. The development standards for the TBR District are limited to fire siting standards for new structures. The County will ensure compliance with those standards through the building permit review process. The site is not subject to an overlay zone. Compliance with applicable sections of ZDO Section 1000 Development Standards is addressed below.

This criterion is met.

2. ZDO SECTION 1000 DEVELOPMENT STANDARDS

ZDO 1203.03(F) requires compliance with “[a]ny applicable requirements of ... Section 1000 Development Standards.” The Hearings Officer finds that the applicable sections of Section 1000 are limited to ZDO 1005.04(A), 1007.07, and 1015, as these are the only criteria mentioned in ZDO 806 or 1203.03.

ZDO 806.02(I) provides:

Lighting: All lighting used during events shall comply with Subsection 1005.04(A).

ZDO 806.02(K) provides:

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

ZDO 1203.03(C) provides:

The proposed use complies with Subsection 1007.07, and safety of the transportation system is adequate to serve the proposed use.

a. 1005.04 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. The 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.*

Finding: Based on the photos and videos in the record (Exhibits 11 [Photos 6, 13, 14, 16, and 18-25], 43b, 43c, and 43g), the majority of the existing lighting on the site complies with these criteria, with most of the lights located inside buildings that prevent the lights from shining skyward or onto adjacent properties. The lights are compatible with the scale and intensity of the event facility use. The pole mounted lights are shorter than the tallest structure on the site and do not appear to exceed 25 feet. No entrance lighting is provided or proposed.

However, the existing outdoor lights do not appear to comply with the Code. The applicants have installed strings of bare light bulbs between poles around the perimeter of the event area. These lights are not aimed or shielded to direct light downwards or towards walls, landscape elements, or other similar features to prevent the light from being directed skyward. But it is feasible for the applicants to modify or replace these lights to comply with the requirements of the Code. A condition of approval is warranted to require that all lighting on the site comply with ZDO 1005.04(A).

The lighting standards of Section 1005.04(A) are met as conditioned.

b. **1007.07 TRANSPORTATION FACILITIES CONCURRENCY**

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

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

...

(5) *Home occupations to host events, which are approved pursuant to Section 806.*

...

Finding: The applicants are applying for a conditional use permit to operate a Home Occupation to Host Events which is a conditional use in the AG/F zoning district. Under ZDO Section 1007.07(B)(5) home occupations host events are exempt from the concurrency requirements.

This criterion is inapplicable, as the use is exempt from concurrency requirements.

c. **1010 SIGNS**

Finding: 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.

The applicants currently have one permanent sign installed near the intersection of the driveway and S. Beaver Creek Road. (Photos 1, 8, and 11 of Exhibit 11). This sign is subject to the permit requirement of ZDO 1010.02(A) and the specific requirements for commercial signs in natural resource districts set out in ZDO 1010.07(A). The applicants should be required to obtain a permit for this sign or remove the sign. A condition of approval is warranted to that effect.

The hearing officer finds that the specific requirements for temporary signs set out in ZDO 806.02(M) control over the general requirements of ZDO 1010.013. Therefore, ZDO 1010.13 is inapplicable in this case. Any temporary signs shall comply with ZDO 806.02(M) and applicable portions of ZDO 1010. A condition of approval is warranted to ensure compliance with this criterion.

This criterion is met as conditioned.

d. **1015 PARKING AND LOADING**

i. **1015.01 GENERAL STANDARDS**

Findings: The site is located outside the UGB. Therefore, ZDO 1015.01(A) is inapplicable and the proposed gravel surfaced parking is allowed by ZDO 1015.01(B).

ZDO 1015.01(C) sets out parking and loading requirements for uses and structures not specifically listed in Tables 1015-1 through 1015-4. The proposed use, a Home Occupation to Host Events, is listed in these Tables. Therefore, ZDO 1015.01(C) is inapplicable.

Bicycle parking and loading areas are not required for this use. Therefore, ZDO 1015.01(D) is inapplicable.

The applicants did not propose to rent, lease, or assign parking on the site, use parking for storage, or for conducting business activities. A condition of approval is warranted to that effect to ensure compliance with ZDO 1015.01(E).

This criterion is met as conditioned.

iii. 1015.02 MOTOR VEHICLE PARKING AREA STANDARDS

Findings: The applicants' existing parking areas appear to meet the standards of ZDO 1015.02(A). Vehicle parking is located in a clearly defined area of the site, south of the barn and event space (1015.02(A)(1)). Based on the applicants' site plan (Exhibit 2a at 5) all parking spaces measure nine feet wide and 18 feet long, exceeding the dimensional requirements of the Code (1015.02(A)(2)). No compact parking spaces are proposed (1015.02(A)(3)). All of the parking spaces are oriented at 90 degrees to the access aisles and the majority are double-loaded (1015.02(A)(4) and (5)). The County can confirm compliance with the dimensional standards and the remaining parking requirements through the future development permit process required by proposed condition of approval 18, subject to the requirements of conditions of approval 21 and 24 of the Staff Report.

ZDO Table 1015-1 requires a minimum one parking space per three guests and one additional parking space for each employee for the proposed Home Occupations to Host Events facility. There is no parking maximum for this type of use. The applicants propose to allow up to 150 guests per event and up to five employees. Therefore, a minimum 55 parking space are required. The applicants proposed to provide 82 parking spaces, including three ADA accessible parking spaces, which exceeds the requirements of the Code.

Bicycle parking and loading berths are not required for this use. ZDO Tables 1015-3 and 1015-4.

This criterion is met as conditioned.

iv. 1021 SOLID WASTE AND RECYCLABLE MATERIAL COLLECTION

Finding: This Code section is not listed as an applicable section of Section 1000 in ZDO 1203.03(F) or 806.

This criterion is inapplicable.

2. ZDO SECTION 806 HOME OCCUPATIONS TO HOST EVENTS

a. 806.02 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.*

Finding: The applicants state that the home occupation operators will be Devyn Petersen and Staci Dalton, both of whom reside full-time on the site. The existing dwelling on the site was established with building permit number B0001019 in early 2020 pursuant to a State Ballot Measure 49 Claim. A condition of approval is warranted to ensure compliance with this criterion.

This criterion is met as conditioned.

B. *Employees:* *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 applicants propose to have no more than five (5) employees, which is within the permissible number of employees allowed for a home occupation. The site is located within the AG/F zoning district. Therefore, persons employed by contract to provide services for an event are considered “employees”, including caterers, photographers, and florists. A condition of approval is warranted to ensure compliance with this criterion.

This criterion is met as conditioned.

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.*

Finding: The site is within the AG/F district. The events will not take place within the operator’s dwelling. The applicants propose that the events will occur within two buildings, the existing barn and the proposed dressing building.

The proposed dressing building will be used on non-event days to support the existing agricultural uses on the site by providing space for break rooms, storage rooms, bathrooms and a kitchen area for lunch breaks. During event days, the building will be used to provide changing areas for the wedding party and a food storage area. Accessory buildings in the AG/F zoning district are typically permitted to have bathrooms and changing rooms. The proposed building will be designed to match the same aesthetic as the existing barn, thereby keeping the same visual characteristics of the site. Both the existing barn and the proposed dressing building are designed to appear and function as agricultural buildings similar to those existing on surrounding properties in the area.

The applicants also proposed, as an alternative in the event use of the existing barn is prohibited, to construct a new accessory building - the proposed “reception building”

located southwest of the existing barn. However, there is no need to address the revised proposal, as the hearings officer approved use of the existing barn, based on the discussion above.

This criterion is met as conditioned.

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).*
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.*
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.*

Finding: The site is within the AG/F district. The applicants propose to use tents on a temporary basis for the events, and states that they will be compliant with this criterion. The temporary tent(s) will be erected no more than 24 hours before the event and will be removed no more than 24 hours after the event. A condition of approval is warranted to ensure compliance with this criterion.

This criterion is met as conditioned.

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 site is within the AG/F district. The evaluation of compliance with Subsection 1203.03(D) is provided earlier in this Final Order. For the reasons provided above, this criterion is met.

This criterion is met.

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 clean-up of the facilities.*

Finding: The application materials do not specify the hours of operation for events; however, this criterion can be met with a condition of approval requiring compliance with the hours of operation set out in the Code.

This criterion is met as conditioned.

- 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 applicants state that they will host no more than one event per day, no more than five events per week, and a maximum total of 52-events per year. A condition of approval is warranted to ensure compliance with this criterion.

This criterion is met as conditioned.

- 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 applicants are proposing to host events with a maximum of 150 guests, per event, with an average of 100 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 applicants' proposal that there will be up to 150 event attendees at a time. This criterion is met, but a condition of approval is warranted limiting the maximum number of event attendees to no more than 150.

This criterion is met as conditioned.

- 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 Final Order. As discussed above, it is feasible to modify the existing lighting on the site to comply with this criterion.

This criterion is met as conditioned.

- J.** *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 site, 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 site, 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 site, 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.*

Finding: The hearings officer finds that it is feasible to comply with these criteria. The proposed events will take place predominantly indoors, within the existing and proposed buildings, or in outdoor areas surrounding these buildings. Based on the applicants' sound level readings, the average peak sound pressure level at the property lines of the site did not exceed 60 dB with the sound system playing music at full volume within the existing barn with the doors open and on the outdoor patio north of the existing barn. (Attachments B through D of Exhibit 43, Exhibits 43 through 43h, and Exhibit 48). This is consistent with the Kupillas' noise measurements measured at the site's Beaver creek Road frontage. The applicants' and the Kupillas' measurements both showed noise spikes in excess of 60 dB and noise from events is audible on some surrounding properties, based on neighbors' testimony. However, the Code does not prohibit such impacts. Noise limits are based on the average noise level, do not include a maximum limit, and do not prohibit noise that is audible from offsite. Future activities on the site must comply with these noise limits and it is in the applicants' best interest to do so, as violations may result in enforcement action by the County, including potential revocation of this approval.

This criterion is met as conditioned.

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

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

Finding: The applicants' existing parking lot provides sufficient on-site parking to accommodate the largest events proposed (maximum 150 guests and five employees). Additional parking is available in the "80 x 40 gravel turnaround and venue parking" area shown on the site plan (p. 5 of Exhibit 20). There is no need for guests or employees to

park on the street. A condition of approval is warranted to ensure compliance with this criterion.

This criterion is met as conditioned.

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

The applicants did not request an alternative parking area surface. All parking areas on the site are gravel surfaced as allowed by Subsection 1015.01(B).

These criteria are inapplicable.

L. 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.*

Finding: The applicants propose to use portable restroom facilities in addition to four permanent restrooms in the proposed dressing building. The portable restrooms are located in the northeast corner of the parking lot, directly south of the barn (Petersen testimony and p. 5 of Exhibit 20). Based on the scale shown in the site plan, the portable restrooms are located more than 50 feet from all lot lines. However, the restrooms are

portable. Therefore, a condition of approval is warranted to ensure continued compliance with this criterion.

This criterion is met as conditioned.

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 applicants state that a temporary eight square foot event sign will be placed outside during the day of the event and will be removed no more than 24 hours after the event. The sign will be secured in order to comply with this standard. No information was provided in the application pertaining to the location of the sign and so a condition of approval is recommended to ensure the sign is located on private property and not within the right-of-way.

This criterion is met as conditioned.

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

Finding: The applicants state that all equipment and goods will be stored indoors on non-event days. This criterion can be met with a condition of approval.

This criterion is met as conditioned.

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 applicants state that they will comply with this criterion. The event area is not visible from the public rights of way or surrounding properties due to the location of the event area within the site and the presence of existing vegetation.

This criterion can be met with a condition of approval.

4. ZDO SECTION 407 AG/FOREST DISTRICT

- a. 407.04 Uses Permitted. Table 407-1 lists “Home Occupation to Host Events, subject to Section 806”.

Finding: As established in Table 407-1, a Home Occupation to Host Events is a Conditional Use and is subject to Subsection 406.05(A)(1), (2), (5) and 406.05(E)(1).

- b. 406.05(A)(1): The use may be allowed provided that: (1) The proposed use will not force a significant change in, or significantly increase the cost of, accepted farming or forest practices on agriculture or forest lands, and (2) the proposed use will not significantly increase the fire hazard or significantly increase fire suppression costs or significantly increase fire suppression personnel.

Finding: The applicants’ narrative does not specifically address this criterion, however the narrative does speak to how their proposal will limit potential impacts on surrounding neighbors by providing adequate parking and onsite circulation, by providing an indoor venue to limit noise from the events, and by locating the event area more than 800 feet away from the nearest adjacent dwelling and using distance and trees to help buffer any potential visual and audible impacts of the event area.

The site is predominantly surrounded by farm uses (including Christmas tree farms), timber uses, and dwellings. The site is in the AG/F zoning district and is surrounded by other properties in the same zone and in the Timber (TBR) district. The site is 19.63 acres and is currently developed with a dwelling and a barn. Approximately half of the property is used for farm use: nine acres of the property is currently used for a Christmas tree farm and one acre for a cut flower farm. The applicants are proposing to use an existing 60-foot by 48-foot barn to host events, and proposes to build a 70-foot by 36-foot accessory building to be used for the events and to support the commercial farm on non-event days. Both buildings that will be used on event days will also support the existing commercial farm operation on site.

The applicants have chosen to provide a gravel parking area, rather than a grass or wood-chipped parking area, in order to reduce risk of fire. Additionally, all of the structures on the property are clustered together which is another technique used to limit fire suppression cost and personnel.

The hearings officer finds that the materials submitted by the applicants demonstrate that the proposed use will not force a significant change in, or significantly increase the cost of the accepted farming or forest practices.

This criterion is met.

- c. **406.05(A)(2):** A written statement recorded with the deed or written contract with the County or its equivalent is obtained from the land owner that recognizes the rights of the adjacent and nearby land owners to conduct forest operations consistent with the Oregon Forest Practices Act and Rules.

Finding: There is no evidence that a statement recognizing this criterion has been recorded with the deed or written contract with the County. A condition of approval is warranted to ensure this compliance with this standard.

This criterion is met as conditioned.

- d. **406.05(A)(5):** If road access to the use is by a road owned and maintained by a private party or by the Oregon Department of Forestry, the United States Bureau of Land Management (BLM), or the United States Forest Service (USFS), then the applicants shall provide proof of a long-term road access use permit or agreement. The road use permit may require the applicants to agree to accept responsibility for road maintenance.

Finding: The site takes access directly from S. Beaver Creek Road, a County road. The road access is not a privately owned road. Therefore a long-term road access agreement is not necessary.

This criterion is not applicable.

- e. **406.05(E)(1):** The home occupation shall not unreasonably interfere with other uses permitted in the zoning district in which the site is located and shall not be used as justification for a zone change.

Finding: The applicants are not requesting a zone change. The proposed home occupation will not unreasonably interfere with other permitted uses in the AG/F zone. Any potential impacts to surrounding properties (including concerns of traffic, noise and lights) are discussed at length throughout this Final Order, and have either been met, or can be met with recommended conditions of approval. The site is predominantly surrounded by farm uses (including Christmas tree farms), timber uses, and 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 AG/F zone. The site is already in use as a commercial farm (Christmas trees) and the applicants can continue to operate their farm business on site without interference from the proposed events. This criterion is met.

- f. **407.06 Dimensional Standards.** Subsection 406.08, which establishes dimensional standards in the TBR District, shall apply in the AG/F District.

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

30 feet from the front (south) property line which runs along S. Beaver Creek Road

10 feet from the side property lines (east and west)

30 feet from the rear property line, 10 feet for accessory structures (north)

These dimensional standards for the proposed new accessory building are met as shown on the applicants' site plan.

This criterion is met.

- g. **407.07 Development Standards.** Subsection 406.08, which establishes development standards in the TBR District, shall apply in the AG/F District.
 - i. 406.08(A) Fuel-free break standards shall be provided surrounding any new structure approved after April 28, 1992, pursuant to a land use application. A primary fuel-free break area shall be maintained surrounding any new structure, including any new dwelling. The primary safety zone is a fire fuel break extending a minimum distance around structures. The minimum distance is established by Table 406-2, Minimum Primary Safety Zone and Figure 406-1, Example of Primary Safety Zone. The goal within the primary safety zone is to remove fuels that will produce flame lengths in excess of one foot.

Finding: Fuel-free break standards for fire-siting shall be provided surrounding the new 70-foot by 36-foot building. The applicants did not address these fire-siting standards in their application. However, the hearings officer finds it is feasible to do so. A condition of approval is warranted to ensure compliance with this standard.

This criterion is met as conditioned.

- ii. 406.08(C) Compatibility Siting Standards. The compatibility siting standards shall apply to any new structure, including any new dwelling, approved pursuant to a land use application based on standards in effect on or after April 28, 1994.

Finding: Currently, the property is a mix of treed area and cleared/open land. The accessory structure proposed on the applicants' plot plan is located within 800 feet (approximately) of S. Beaver Creek Road, in the north portion of the site, directly adjacent to an existing access driveway and clustered near the existing dwelling and existing barn. The access driveway is proposed to be widened to 20 feet and paved within the first 20 feet. The risks associated with wildfire can be minimized through the upkeep of fuel-free fire breaks and the access to S. Beaver Creek Road. The proposed event area would be located close to the existing access driveway and within approximately 100 feet of other structures on the site. Based on the soil type and topography of the land, the entire property is suitable for growing trees or producing farm crops. Siting the event area within 100 feet from the existing buildings on the property (dwelling and accessory building) as shown in the applicants' site plan, will cluster development and act to minimize the potential impacts on the remaining property. The event buildings and parking lot location will continue to allow the large majority of the property to be available for farm or forest use while minimizing the amount of land necessary to establish an access road to the event area. This criterion can be met with the upkeep of fuel-free fire breaks that are required in ZDO Section 406.08(A).

This criterion is met as conditioned.

V. CONCLUSION

Based on the findings and discussion provided or incorporated herein, the hearings officer approves the application, Case No. Z0123-23-C (Sage and Social), subject to conditions of approval.

VI. DECISION

Based on the findings, discussion and conclusions provided or incorporated herein and the public record in this case, the hearings officer hereby approves Case No. Z0123-23-C (Sage and Social) subject to the following conditions:

1. Approval of this land use permit is based on the submitted written narrative and plan(s) filed with the County on March 28, 2023 and additional materials received on April 20 and May 10, 2023. 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. Within six months from the effective date of this Final Order the applicants shall modify the existing outdoor lighting on the site so that it does not shine onto adjacent properties, upwards or in rights-of-way.
4. Within six months from the effective date of this Final Order the applicants shall obtain a building permit to convert the existing ag-exempt barn to a facility that is subject to public use and access for the proposed events or cease use of the barn for events and prohibit public access to the existing barn.
5. All signs shall comply with ZDO Section 1010.02, 1010.07, and 806.02(M). One temporary sign shall be allowed in addition to signs permitted pursuant to Section

1010. The temporary 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. The applicants shall obtain a sign permit for the existing permanent sign or remove this sign.

6. Use of on-site sewage disposal facilities, if proposed, shall be subject to approval by Septic & Onsite Wastewater System Programs.
7. 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)]
8. The home occupation shall have no more than five full-time or part-time employees on site, including persons employed by contract to provide services for a single event, such as caterers, photographers, and florists. [ZDO 806.02(B)]
9. During the months of November through March, no event shall take place outside the hours of 9:00 a.m. to 10:00 p.m. During the months of April through October, no event shall take place outside the hours of 8:00 a.m. to 10:00 p.m. These time restrictions do not apply to persons involved in the set-up or clean-up of the facilities [ZDO 806.02(F)]
10. There shall be no more than one event per day throughout the entire year and no more than 5 events per week. The Conditional Use approval authorizes a maximum total of 52-events per year, with a maximum of 100 people per event. [ZDO 806.02(G)]
11. 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 AG/F District. Temporary tents may be placed on the site no more than 24 hours before the event and must be removed no more than 24 hours after the event. [ZDO 806.02(D)]
12. 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 site. 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 site.

- a. Noise generated by vehicles entering or exiting the site, 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.

13. 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.
14. 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 407-1, Permitted Uses in the AG/F District. [806.02(O)]
15. Fuel-free break standards shall be provided surrounding the new 70-foot by 36-foot structure. A primary fuel-free break area shall be maintained surrounding any new structure. The primary safety zone is a fire fuel break extending a minimum distance around structures. The minimum distance is established by Table 406-2, Minimum Primary Safety Zone and Figure 406-1, Example of Primary Safety Zone. The goal within the primary safety zone is to remove fuels that will produce flame lengths in excess of one foot. The fuel-free break standards shall be completed and approved prior to issuance of any septic, building, or manufactured dwelling permits and within six months from the effective date of this Final Order. Maintenance of the fuel-free breaks shall be the continuing responsibility of the property owner. [406.08(A)]
- Within six months from the effective date of this Final Order the applicants shall, sign a notarized Fuel-Free Break Standards Compliance form and return a copy to the Planning and Zoning division.
16. Within six months from the effective date of this Final Order, the applicants shall record a written irrevocable statement in the deed records of the County binding upon the landowner, and the landowner's successors in interest, acknowledging the right of adjacent and nearby farm and forest operators to employ accepted farm and forest management practices and prohibiting them from pursuing a claim for relief or cause of action alleging injury from farming or forest practices for which no action or claim is allowed under Oregon Revised Statutes (ORS) 30.936 or 30.937. Impacts from farming and forest practices may include, but are not limited to: noise, dust, spray, smoke, vibrations, and visual impacts. [ZDO 406.05(A)(2)]
17. All frontage improvements in, or adjacent to Clackamas County right-of-way, and all on-site access improvements, shall be constructed in compliance with the Clackamas County Roadway Standards.
18. The applicants 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 within six months from the effective date of this Final Order.

19. The driveway approach serving the event site on S. Beaver Creek Road shall be paved to a minimum width of 20 feet and length of 20 feet, per Standard Drawing D500.
20. Minimum intersection sight distance of 555 feet to the southwest, and 610 feet to the northeast shall be provided at the proposed driveways serving the event site on S. Beaver Creek 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.
21. The applicants 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. Roads and parking areas shall be con-structed 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. The applicants shall provide a dimensioned site plan indicating each parking space and drive aisles.
 - e. 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.
 - f. 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.
22. Prior to the issuance of a building permit and/or site development and within six months from the effective date of this Final Order, the applicants shall submit to Clackamas County Engineering Office:
 - a. Written approval from the Clackamas Fire District #1 for the planned access, circulation, fire lanes and water source supply. The approval shall be in the form of site and utility plans stamped and signed by the Fire Marshal.
 - b. Written approval from the Clackamas County Engineering for surface water management facilities and erosion control measures.
 - c. A set of street and site improvement construction plans, in conformance with Clackamas County Roadway Standards Section 140, to Clackamas County's Engineering Office and obtain written approval, in the form of a Development Permit.

- i. The permit will be for driveway, drainage, parking and maneuvering areas, and other site improvements.
 - ii. The minimum fee deposit is required upon submission of plans for the Development Permit. The fee will be calculated based on 8.83% of the public improvements and 5% of the onsite transportation improvements, according to the current fee schedule.
 - iii. The applicants 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.
23. Within six months from the effective date of this Final Order, the applicants 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.”
24. 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]. Parking spaces on the site shall not be rented, leased, or assigned, or used for storage or for conducting business activities.

DATED this 4th day of March 2024.



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

APPEAL RIGHTS

ZDO 1307.14(D)(6) 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 an 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 will be “final” for purposes of a LUBA appeal as of the date of mailing (which date appears on the last page herein).