

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

Regarding an application by John Childs for approval)	<u>FINAL ORDER</u>
of a conditional use permit to operate a home occupation)	
to host weddings and other events on a 120.01-acre parcel)	Case No. Z0424-21-C
at 15201 S. Kirk Road in Clackamas County, Oregon)	(Chateau De Lis)

I. SUMMARY

1. The applicant, John Childs, requests approval of a Conditional Use Permit (“CUP”) to operate a home occupation to host weddings and other events. The applicant proposes to locate the facility on a 120.01-acre parcel located at 15201, 15211, and 15245 S. Kirk Road; also known as tax lots 803, 804, 900, and 990, Section 27, Township 3 South, Range 2 East, of the Willamette Meridian, in Clackamas County (the “site”).¹ The site and abutting properties to the east, west, and south are zoned EFU (Exclusive Farm Use). Abutting properties to the northwest and southeast are zoned RRFF-5 (Rural Residential Farm Forest, five acre minimum lot size). Abutting properties to the northeast are zoned FF-10 (Farm Forest, ten acre minimum lot size).

a. The site is currently developed with two single-family residences; the large residence currently under construction near the center of the site, 15201 S. Kirk Road, and an existing residence in the southern portion of the site, 15211 S. Kirk Road, as well as associated agricultural buildings. The remainder of the site is planted with grapes and “crop/pasture land.”

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

c. With the exception of the western, ingress, driveway, a portion of which is located on tax lot 804, the applicant proposes to conduct all event related activities on tax lots 803 and 900. Existing improvements on those parcels include a single-family residence and covered swimming pool (under construction), located near the center of the site, a large patio/“outdoor living area” east of the residence, and a garage to the northeast of the residence. There are two large “water feature” ponds west of the residence. In addition, the applicant proposes to construct a 4,400 square foot “arboretum”² with an

¹ The applicant testified that he owns own 133 contiguous acres, developed with four homes. (Exhibit 43). However, based on the application and site plan, the event facility is proposed on tax lots 803, 804, 900, and 990, which, according to county assessor’s data, total 120.01-acres.

² For clarity, the proposed building the applicant refers to as an “arboretum” is a structure with glass roof and walls, commonly referred to as a conservatory or greenhouse. An arboretum is defined as “a place

ADA accessible restroom immediately east of the swimming pool and south of the patio/“outdoor living area,” and a 1,456 square foot “meditation center” roughly 400 feet east of the residence.³ The applicant proposes to provide vehicle parking in two “motor courts” located to the north (the north motor court”) and northwest (the “front motor court”) of the residence. Additional parking lots are proposed on either side of the access drive north of the residence (the north parking lot) and a parking area southeast of the residence (the south parking lot). (See the site plans included in the application).

d. The applicant proposes to conduct a maximum of 60 events per year; 55 events with a maximum 75 guests per event and up to five events with a maximum 210 guests per event. The applicant proposes to conduct events within the existing residence, the proposed arboretum and the proposed meditation center as well as outdoors on the patio/“outdoor living area.” In addition, guests will be allowed to utilize a walking path around the perimeter of the site.

2. Clackamas County Hearings Officer Joe Turner (the "hearings officer") held a public hearing about this application. County staff recommended the hearings officer deny the application, because the proposed use will alter the character of the surrounding area in a manner that substantially limits, impairs or precludes the use of surrounding properties for the primary uses allowed in the zoning districts, including residential uses in the EFU zone (ZDO 1203.01(D)) and because the proposed meditation center and arboretum are not “[b]uildings normally associated with uses permitted in [the EFU zone].” (ZDO 806). *See* the Staff Report to the Hearings Officer dated January 5, 2022 (the “Staff Report”). The applicant and the applicant’s farm operator testified in support of the application. Ten 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 state law, OAR 660-033-0130, prohibits the proposed use on the site, due to its location within three miles of an urban growth boundary;

where trees, shrubs, and herbaceous plants are cultivated for scientific and educational purposes.” “Arboretum.” *Merriam-Webster.com Dictionary*, Merriam-Webster, <https://www.merriam-webster.com/dictionary/arboretum>. Accessed 17 Mar. 2022. A “conservatory” is defined as “a greenhouse for growing or displaying plants.” “Conservatory.” *Merriam-Webster.com Dictionary*, Merriam-Webster, <https://www.merriam-webster.com/dictionary/conservatory>. Accessed 17 Mar. 2022. A “greenhouse” is defined as “a structure enclosed (as by glass) and used for the cultivation or protection of tender plants.” “Greenhouse.” *Merriam-Webster.com Dictionary*, Merriam-Webster, <https://www.merriam-webster.com/dictionary/>. Accessed 17 Mar. 2022. (Underlines added).

³ Exhibit 46 states “The Meditation Center is being replaced by an agricultural-use building to be used for processing herbs and flowers and for general agricultural storage.” The examiner addresses that change in the findings below.

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

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

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

- i. Traffic backups and congestion;
- ii. Vehicle exhaust fumes;
- iii. Impacts to horses in Ms. Mayo-Sorensen’s arena;
- iv. On-site lighting;
- v. Noise;
- vi. Attracting additional people to the area;
- viii. Vehicle headlights shining into neighboring homes;
- viii. Speeding on S. Kirk Road and Highway 213;
- ix. Hazards for pedestrians and cyclists on S. Kirk Road;
- x. Increasing the potential for drivers to turn around in neighbors’ driveways;
- xi. Increasing the potential for drunk drivers on area roads; and
- xii. Impacts to property values;

f. Whether the proposal satisfies the goals and policies of the Comprehensive Plan that apply to the proposed use. ZDO 806.02(E);

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

h. Whether the applicant will reside full-time on the site and be responsible for strategic decisions and day-to-day operations of the home occupation. ZDO 806.01(A);

i. Whether the applicant can operate the facility with no more than five employees. ZDO 806.01(B);

j. Whether the proposed arboretum and the meditation center are “buildings normally associated with uses permitted in the [EFU] zoning district.” ZDO 806.02(C);

k. Whether it is feasible to operate the facility in compliance with the noise level limits of ZDO 806.02(J);

l. Whether the proposed use will force a significant change in, or significantly increase the cost of, accepted farm or forest practices on surrounding lands devoted to farm or forest. ZDO 401.05(A);

m. Whether the hearings officer can consider alleged prior violations on the site in review of this application; and

n. Whether the County can ensure compliance with the conditions of approval.

3. Based on the findings and discussion provided or incorporated herein, the hearings officer concludes that Case No. Z0424-24-C (Chateau De Lis) should be denied, because the applicant failed to demonstrate compliance with all of the applicable standards of the Clackamas County ZDO, specifically because:

a. OAR 660-033-0130 prohibits the proposed use on the site, which involves enclosed structures with a design capacity greater than 100 people located within three miles of an urban growth boundary. Therefore the use does not comply with ZDO 1203.03(A) and (B);

b. Traffic and resulting congestion generated by the proposed use will alter the character of the surrounding area in a manner that substantially limits, impairs or precludes the use of surrounding properties for the primary uses allowed in the EFU zone, ZDO 1203.03(D);

c. The applicant failed to demonstrate that noise created by the home occupation will not exceed ambient noise level, ZDO 806.02(J)(1); and

d. Traffic and resulting congestion generated by the proposed use will force a significant change in, or significantly increase the cost of, accepted farm or forest practices on surrounding lands devoted to farm or forest. ZDO 401.05(A).

II. HEARING AND RECORD HIGHLIGHTS

1. The Hearings Officer received testimony at a public hearing about this application on January 13, 2022. All exhibits and records of testimony are filed at Clackamas County Department of Transportation and Development. At the beginning of the initial hearing, the Hearings Officer made the declaration required by ORS 197.763. The Hearings Officer disclaimed any *ex parte* contacts, bias or conflicts of interest. The following is a summary by the hearings officer of selected testimony at the public hearing.

2. County planner Clay Glasgow summarized the Staff Report.

a. He noted that the site includes more than 100 acres and consists of four tax lots.⁴ The applicant proposes to construct a meditation center and an arboretum on the site, in addition to the existing residence, access drives, and parking areas; all of which will be utilized as part of the proposed event facility. The applicant proposes to host a maximum of 60 events per year; 55 events with a maximum 75 guests per event and up to five events with a maximum 210 guests per event. Event facilities are allowed in the EFU zone as a home occupation, subject to conditional use approval.

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

i. ZDO 1203.01(D) requires a finding that, “The proposed use will not alter the character of the surrounding area in a manner that substantially limits, impairs or precludes the use of surrounding properties for the primary uses allowed in the zoning district(s) in which surrounding properties are located.” In this case, neighbors expressed concerns with increased traffic, noise, light, and activity in the area. Events on the site will generate traffic in “clumps,” with vehicles arriving shortly before the start of an event and departing afterwards, which could have significant impacts on the area. In addition:

(1) ZDO 806.02(C) requires that home occupations in the EFU zone “[s]hall be operated substantially in the operator’s dwelling or other buildings normally associated with uses permitted in the applicable zoning district;” and

(2) The proposed arboretum and meditation center buildings are not “[b]uildings normally associated with uses permitted in the [EFU] zoning district.”

c. The applicant did not submit a traffic impact analysis or a traffic management plan for events on the site.

d. The Code does not require that the applicant fence the site.

e. The conditions of approval require the applicant to submit a lighting plan for the site, demonstrating compliance with the requirements of ZDO 1005.05(A) and (B) and 806.03(M). The applicant is also required to submit a trash/recycling plan demonstrating compliance with ZDO 1021.

3. The applicant, John Childs, summarized the proposed development and responded to the Staff Report and neighbors’ comments.

⁴ Mr. Glasgow did not identify which five tax lots he was referring to. The application lists a single tax lot. The Staff Report identifies three tax lots. As discussed below, the hearings officer finds that the site consists of four tax lots, Tax lots 803, 804, 900, and 990.

a. He testified that the proposed event facility will allow him to share the beauty of the site with the public and generate income to support the small dairy farm on the site. He does not want to change the peaceful, serene character of the area.

b. He argued that the proposed “arboretum” is just a heated greenhouse, a place to grow less hardy tropical plants and citrus trees. He will move the plants aside when events are occurring within this building. The residence on the site was designed to look like it is 300 years old. The “meditation center” will be designed to look like a ruined church, consistent with that “theme.”

c. Lighting on the site will not impact adjacent residents. Outdoor lighting on the site is designed to resemble torches, reflecting the historic character of the residence with limited landscape lighting. No tall security lights are proposed.

d. Events on the site will comply with the noise limitations of the Code.

i. Ongoing construction activities on the site currently generate higher noise levels. However, construction is nearly complete and that noise impact will cease. Landscaping remains to be installed on the site, but the interior construction of the residence is mostly finished.

ii. During events on the site, noise and activity will occur near the center of the site, in and around the residence, arboretum, and meditation center. The arboretum and patio are at a lower elevation than the residence, which will reduce noise transmission. In addition, existing and proposed vegetation surrounding the residence will absorb sound. These activity areas are located 600 feet from the west boundary of the site, 780 feet from the north boundary, and more than 1,000 feet from the east boundary. Noise decreases exponentially with distance, making it feasible to comply with the 60 dBA limit of the Code.

iii. Although sound from the site may be audible on adjacent properties, it will comply with the noise limits of the Code. All events on the site will end by 10:00 p.m. during the summer and 9:00 p.m. during the winter.

e. He will collect trash from events on the site in a three to six yard dumpster located in the parking lot. He spoke with the solid waste collection provider for the area and they can accommodate that size of dumpster.

f. The main driveways on the site are currently surfaced with gravel, but they will be surfaced with stone pavers before events occur on the site. All other vehicle parking and maneuvering areas will be surfaced with asphalt or stone.

g. Traffic from this use will not cause significant congestion or other impacts. Event guests do not all arrive and depart at once; event traffic will be spread out over a one to two hour period before and after events. S. Kirk Road currently serves 12 to 14

homes and a roofing business that generates significant truck traffic. Although the proposed use will generate some additional traffic, it will not cause a significant increase in the annual traffic volume on Kirk Road.

h. The Code allows up to 300 guests per event, which is what he originally proposed. However, he modified the proposal to limit events to a maximum 210 guests for five events per year. All other events will allow 75 or fewer guests with an overall maximum of 60 events per year. Many events generate fewer guests, such as family reunions and company picnics.

h. The western driveway on the site is located roughly 75 feet from the Sorensens' residence, which is not an unusual situation in this area. The driveway will be paved, which will reduce traffic noise.

i. The rifle range on the site is for private use; it is not proposed as part of the event facility.

j. He supported reducing the speed limit on S. Kirk Road to 25 mph.

k. The paths on the perimeter of the site are primarily to monitor fences. He plans to repair and extend the fencing on the site.

l. He will attempt to coordinate events on the site with events at the cemetery in order to limit or avoid traffic conflicts.

m. He will submit a lighting plan for the site. The landscaping on the site will mature over time and help to screen and buffer the site, reducing the amount of light visible on adjacent properties.

n. Ms. Mayo-Sorensen and Ms. Morgan's concerns about trailers are not relevant to this application. Guests of the event facility will not be hauling trailers.

o. The Dutra residence was constructed after the eastern driveway on the site was built as a farm road. Therefore, impacts from headlights of vehicles operating on this road were foreseeable. He will place signs on the egress road prohibiting high beam headlights in order to minimize the impact of headlights.

p. The perimeter path on the site is 2.25 miles long and most event guests will not utilize the paths.

q. He will not rent the lake area on the site for events. That area is for private use by his family and friends.

4. Gene Freeman testified in support of the application.

a. He leases a home and has been operating the farm on the site for the past five years. He is involved in all operations on the site. He and the applicant care about the neighbors and want to address their concerns. His residence, located south of the site, will be the most impacted by events on the site.

b. He testified that the cemetery on S. Kirk Road east of the site has prohibited on-street parking beyond the cemetery frontage on S. Kirk Road. Cemetery traffic and parking have not caused any congestion problems for the past three years.

c. The intersection of Highway 213 and S. Kirk Road is “not ideal,” but it is not an unusual situation in the county.

5. Mark Hillyard appeared on behalf of the Hamlet of Beavercreek and on his own behalf; he also owns property on S. Kirk Road. He lived on S. Kirk Road from 1967 until “the late 90s.”

a. The Hamlet considered this application at a meeting in November 2021 and voted to oppose the application due to concerns with the safety of the S. Kirk Road/Highway 213 intersection. There have been several major accidents at this intersection and all of the traffic from the event facility will utilize that intersection. In addition, S. Kirk Road was not constructed to support the large volumes of traffic generated by the proposed event facility. The road is narrow with a thin chip sealed surface. Additional traffic generated by the proposed use will cause additional damage to the road surface.

b. His personal concerns include the safety of the S. Kirk Road/Highway 213 intersection; sight distance to the north of the intersection is “horrendous.” Most drivers on Highway 213 exceed the 55 mph speed limit. Traffic leaving events at the cemetery can cause backups extending from the highway to the western driveway on the site. Similar backups will occur with traffic from this use. The applicant should be required to improve the surface of S. Kirk Road and the S. Kirk Road/Highway 213 intersection to accommodate additional traffic from the site. Lights on the site may affect neighboring residents. The frequency/wavelength of the light can increase the impact, as blue light can disturb sleep. Noise from activities on the site can be heard more than 1,450 feet from the site. Events on the site will increase the frequency and impact of such noise, which will alter the “feel” of the area.

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

a. She testified that the western driveway on the site, the proposed ingress road, is located 17 to 18 feet away from the east boundary of her property. Noise from traffic on that road will have a significant impact on her residence and horse arena. The applicant claims most events will be limited to 75 people, with a few events for up to 210 people. However, the applicant proposes to provide 185 parking spaces, many more than are needed to serve events of this size. The Staff Report notes that the use will generate up to

7,700 vehicle trips per year, which is well beyond the volume of traffic generated by residential development.

b. The residence and associated facilities are located on a hill, at a higher elevation than most of the surrounding properties. There is very little existing landscaping on the site to screen views of the site. Light and activity on the site will be clearly visible from surrounding properties.

c. She has a riding arena on her property and noise from activities on the site – construction noise, leaf blowers, traffic, etc. - frightens her horses, creating a safety hazard when she is training them. Noise from events on the site, including traffic noise on the driveway near her property line, will exacerbate this problem. She questioned whether the site driveways will remain gravel surfaced and whether parking will occur on the ingress drive.

d. Traffic from funeral services at the cemetery east of the site may conflict with traffic generated by events on the site. The Sunday prior to the hearing a funeral service ended at 11:00 a.m. She questioned how the applicant will schedule events on the site to avoid such conflicts.

e. She questioned how the proposed meditation center complies with ZDO 806, as it is not a building normally associated with uses permitted in the EFU zone.

f. The proposed event facility will significantly alter the existing character and lifestyle of the neighborhood due to increased noise, traffic, lights, and activity. The applicant may expand the use over time and the county has no way to monitor the size of events or the volume of noise generated. The proposed use does not fit with the neighborhood or the existing lifestyle and cannot comply with ZDO 806.

g. Many residents walk on S. Kirk Road under existing conditions. However, the road is very narrow with no shoulder. Pedestrians must walk in the travel lane. The additional traffic generated by this facility will create a hazard for those pedestrians.

h. She testified that Jason Dutra lives across the street from the site, but was unable to attend the hearing. He is concerned that headlights from vehicles exiting the site will shine into the windows of his residence, which is located directly across S. Kirk Road from the eastern driveway, the proposed egress drive.

7. Laurie Kimmel summarized her PowerPoint presentation, Exhibit 26.

a. She noted that there are several open space/greenbelt areas abutting the north boundary of the site that are certified wildlife habitats. These greenbelts provide habitat for sensitive bird species, including pileated woodpeckers and white headed woodpeckers, which are sensitive and possibly endangered species. Noise, light, and activity generated by events on the site may impact these birds and their habitat. She questioned whether the applicant submitted a noise study.

b. She questioned whether the applicant submitted a traffic analysis or a traffic management plan for events on the site. S. Kirk Road is inadequate to accommodate the volume of traffic generated by the proposed facility. The pavement is narrow, with little room for oncoming vehicles to pass each other. The volume of traffic generated by this use will increase wear and tear on the roadway. She questioned whether the applicant will be required to pay for increased maintenance of the road surface. The roofing company on S. Kirk Road generates relatively little traffic.

c. The proposed swimming pool and meditation retreat are not normally associated with uses in the EFU zone.

d. She argued that state law prohibits facilities serving more than 100 people located within three miles of a the UGB, citing *Young v. Jackson County*, LUBA No. 2005-001, *DLCD v. Yamhill County*, 183 Or App 556, 53 P3d 462 (2002), and "*Corporation Presiding Bishop v. City of West Linn*, 45 Or LUBA 77, rev'd 192 Or App 567, 86 P3d 1140, rev allowed 337 Or 282, 96 P3d 347 (2004).

e. She testified that noise from the site is a problem under existing conditions. The applicant has a firing range on the site and the sound of gunfire is clearly audible throughout the surrounding area. If the applicant will not comply with the 60 dBA noise limit now he is unlikely to comply in the future if this application is approved.

8. Jim Sorensen testified that the western driveway on the site extends the entire length of his property line and is located only 20 feet from his bedroom window. This use is projected to generate 7,000 vehicle trips per year on this driveway, which will have a significant impact on his property. Events are likely to occur every weekend. Construction has been occurring on the site for the past ten years, generating noise that impacts his horses.

9. Carol Morgan testified that she trains her horses in Ms. Mayo-Sorensen's arena. She will not use the arena during events on the site as the noise and activity may frighten the horses she is training, interfering with a farm use. She uses a truck and trailer to haul her horses to and from the arena. The volume of traffic on Highway 213 makes it difficult to turn left onto S. Kirk Road from southbound Highway 213 under existing conditions. S. Kirk Road is too narrow to readily accommodate two-way traffic. Cars traveling westbound on S. Kirk Road frequently stop in the middle of S. Kirk Road at the Highway 213 intersection, which precludes her from turning left onto S. Kirk Road from southbound Highway 213. Traffic from events at the cemetery can cause large backups extending east from the highway. She must "edge past" ten to 20 vehicles waiting to exit S. Kirk Road onto the highway. The additional traffic from events on the site will exacerbate this problem. Traffic backups will also interfere with emergency vehicle access to the area.

a. She noted that the applicant proposes to allow guests of the facility to utilize the trails on the site, citing to page 10 of the application. The trails will bring guests of the facility into close proximity with adjacent properties.

10. Richard and Linda Powers own tax lot 900. The east boundary of their property abuts the northern 1,100 feet of the west boundary of the site. The applicant constructed gravel paths along the site boundaries. They questioned whether the paths are part of the proposed event venue and intended for use by guests of the facility. Pedestrian traffic on the path abutting their property will interfere with the privacy of their residence, in violation of ZDO 806.02(E). The applicant told them that he intends to install a fence on the common boundary between their property and the site. They requested a condition of approval to that effect to ensure that guests of the site do not trespass onto their property.

11. Dennis Hoffman testified that he walks on S. Kirk Road. Although the road is narrow with no shoulders or striping, drivers frequently travel at speeds in excess of 40 mph, creating a hazard. The proposed facility will attract more people to the area and drivers who do not live in the area are more likely to speed than residents who live on the road. The county should lower the speed limit on S. Kirk Road and the applicant should be required to install speed bumps to force drivers to slow down. Additional traffic generated by this facility will damage the existing chip seal surface of the roadway. Guests of the facility may drink and drive, creating a safety hazard. Sight distance is limited at the Highway 213/S. Kirk Road intersection. Westbound traffic on S. Kirk Road frequently backs up at this intersection as drivers wait to turn onto the highway.

12. Phyllis Hoffman expressed concerns with traffic speed and pedestrian safety on S. Kirk Road.

13. Steve Rosenthal testified that visitors to the site frequently get lost, miss the site driveway, and turn around in his driveway east of the site. He questioned how the county will enforce the conditions of approval limiting the number of guests on the site, noise, and other issues. He questioned how the county and neighbors can distinguish commercial events that are subject to the conditions of approval from the applicant's personal gatherings, which are not subject to those conditions. He questioned whether event guests will be allowed to use the paths along the perimeter of the site; guests on the paths may discard trash onto his property. How will the applicant ensure that guests are not consuming alcohol. The applicant has allowed events near the ponds on the site which generated considerable noise. The applicant was not present on the site during those events.

14. Mike Rafael appeared at the hearing but did not raise any additional issues.

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

a. For five weeks, until 5:00 p.m. on February 17, 2022, for all parties to submit additional testimony and evidence

b. For a sixth week, until 5:00 p.m. on February 24, 2022, for all parties to respond to the whatever was submitted during the first five weeks; and

c. For a seventh week, until 5:00 p.m. on March 3, 2022, for the applicant to submit a final argument.

16. Exhibits 29 through 77 were submitted during the open record period.

a. Several persons submitted letters in support of the application during the second open record period, between February 18 and 24 , 2022. The hearings officer reviewed all of the exhibits in the written record. However, general comments of support are not relevant to the applicable approval criteria. The only issue before the hearings officer is whether or not the application complies with the applicable approval criteria. In addition, the majority of those letters did not respond to issues raised during the prior open record period and therefore, exceed the scope of the open record order. However, given the lack of relevance of the letters in support, the hearings officer finds that it is not necessary to identify and exclude specific exhibits from the record.

III. DISCUSSION

PART I. SUBMITTAL REQUIREMENTS – CONDITIONAL USE PERMIT

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

a. This application includes a completed land use application form, site plan, application fee and completed supplemental application addressing the criteria in Section 1203 of the ZDO. The application also includes a description of the proposed use and vicinity map. One Preliminary Statement of Feasibility (Exhibit 2) was submitted, for surface water management. Staff determined that all of the submittal requirements under Subsection 1203.04 are included in the application and accepted the application as complete. The hearings officer has no authority reconsider that completeness determination at this stage. Application submittal requirements are not approval criteria. Failure to include all required application materials could potentially preclude a finding of compliance with the applicable approval criteria. However, absent a relevant approval criteria, failure to submit a particular document does not warrant denial of the application. *Caster v. City of Silverton*, LUBA No. 2007-033, 54 Or LUBA 441, 451 (2007).

b. The application was originally submitted on September 9, 2021. After receiving additional information as requested the application was deemed complete on October 16, 2021. The 150-day deadline for processing this application is March 15, 2022 (Exhibit 2).

The submittal requirements of Subsection 1203.04 are met.

PART II. CONDITIONAL USE PERMIT

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

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

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

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

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

iii. Approval of this application will not create a precedent for future applicants. There may be other properties that could accommodate similar event facilities. Other land owners are entitled to request approval of event facilities on those properties. Such future applications would be subject to the applicable zoning and approval criteria in effect when an application is submitted. Such applications must be approved if the applicants demonstrate that the proposed facilities also meet the applicable approval criteria. Approval of this application does not make it any more or less likely that such applications will be submitted or approved. Each property and applicant is unique and must be reviewed on its own merits. In any case, the potential precedential effect of this development is not relevant to the applicable approval criteria.

ZDO 1203.03(A) is met.

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

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

i. Size: There is conflicting evidence in the record regarding the size of the site:

(1) The “Site Information” section of the application form only lists tax lot 0900, Section 27, Township 3 South, Range 2 East, of the Willamette Meridian, which consists of 69.78-acres. (Page 3 of exhibit 1).

(2) The Staff Report states that the use is proposed on tax lots 803, 900, and 990, Section 27, Township 3 South, Range 2 East, of the Willamette Meridian. Based on online county records these tax lots total 110.94 acres (22.53-acre TL 803 + 69.78-acre TL 900 + 18.63-acre TL 990 = 110.94-acres).

(3) Based on the site plan submitted with the application, the proposed ingress road (the western driveway) is located on tax lot 804, Section 27, Township 3 South, Range 2 East, of the Willamette Meridian, which contains 9.07-acres. Tax lots 803, 804, 900, and 990 total 120.01-acres.

(4) The applicant testified that he owns 133 contiguous acres (Page 1 of Exhibit 43). However, he did not identify any specific parcels beyond the three listed in the Staff Report.

(5) The hearings officer finds, based on the proposed site plan and the Staff Report, that the applicant is proposing to operate the facility on the 120.01-acre tract consisting of tax lots 803, 804, 900, and 990, Section 27, Township 3 South, Range 2 East, of the Willamette Meridian. The hearings officer finds, based on the submitted site plan, that this tract is of sufficient size to accommodate all of the proposed event related uses on the site - the proposed event area, along with parking and circulation area, landscaping, etc.

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

iii Topography: Based on neighbors’ testimony, the event facility is located on top of a hill, a topographic high point in the area. However, the area proposed for use, near the existing home, is generally flat, with minor slopes generally west to east. The topography of the site is not a limiting factor.

iv. Location, area: The site is located between the community of Beavercreek to the east and Highway 213 to the west, south of Oregon City. Based on Google Maps, the site and the structures are located within three miles of the Oregon City Urban Growth Boundary (“UGB”). Land use here is mixed, including commercial farms, rural

residential use on acreage properties, commercial businesses, and a cemetery. The hearings officer finds that state law, OAR 660-033-0130, prohibits the proposed use on this site located within three miles of a UGB.

(1) OAR 660-033-0130 provides, in relevant part:

The following requirements apply to uses specified, and as listed in the table adopted by OAR 660-033-0120. For each section of this rule, the corresponding section number is shown in the table. Where no numerical reference is indicated on the table, this rule does not specify any minimum review or approval criteria. Counties may include procedures and conditions in addition to those listed in the table, as authorized by law.

...

- (2) (a) No enclosed structure with a design capacity greater than 100 people, or group of structures with a total design capacity of greater than 100 people, shall be approved in connection with the use within three miles of an urban growth boundary, unless an exception is approved pursuant to ORS 197.732 and OAR chapter 660, division 4, or unless the structure is described in a master plan adopted under the provisions of OAR chapter 660, division 34.*
- (b) Any enclosed structures or group of enclosed structures described in subsection (a) within a tract must be separated by at least one-half mile. For purposes of this section, "tract" means a tract as defined by ORS 215.010(2) that is in existence as of June 17, 2010.*
- (c) Existing facilities wholly within a farm use zone may be maintained, enhanced or expanded on the same tract, subject to other requirements of law, but enclosed existing structures within a farm use zone within three miles of an urban growth boundary may not be expanded beyond the requirements of this rule.*

(2) The proposed facility has a design capacity greater than 100 people; the applicant proposes to allow events for up to 210 guests. The applicant proposes to conduct the events within "enclosed structures" on the site: the proposed residence, the arboretum, and meditation center. Although events are also proposed to occur on

unenclosed patio areas, ZDO 806.02(C) requires that the events occur substantially within buildings. The buildings are located on a single tract and they are not separated by at least one-half mile.

(3) The existing facilities exception in OAR 660-033-0130(2)(c) is inapplicable, as the arboretum and meditation center are not existing structures; the applicant proposes those structures with this application. The residence is an existing structure. However, use of the residence is limited to a "pass through" area to allow guests to access the event areas on the patios and in the arboretum, and meditation center. See Site Plan Drawing A. The applicant did not propose to conduct events entirely within the existing residence. The site and the structures are located within three miles of the Oregon City Urban Growth Boundary ("UGB").

(4) Therefore, because the proposed home occupation will occur in an "[e]nclosed structure with a design capacity greater than 100 people, or group of structures with a total design capacity greater than 100 people,... within three miles of an urban growth boundary..." it is prohibited by OAR 660-033-0130(2)(b). This use can only be authorized through an exception approved pursuant to ORS 197.732 and OAR chapter 660, division 4, or through a master plan adopted under the provisions of OAR chapter 660, division 34.

(5) The county may have approved similar event facilities within three miles of a UGB. However, this issue was not raised and considered by the county in the review of those applications. Ms. Kimmel clearly raised this issue in her testimony.

v. Improvements: The site is currently developed with two single-family residences - the large residence currently under construction near the center of the site, 15201 S. Kirk Road, and the residence in the southern portion of the site, 15211 S. Kirk Road – as well as residential and agricultural accessory structures. The site is also developed with access drives and vehicle parking areas. The existing improvements on the site do not limit the proposed use.

vi. Natural Features: Based on county maps, the site is not located within a regulatory floodplain or a geologic hazard area. There are mapped RSCA streams on and near the site, tributaries of Beaver Creek. However, no new development is proposed within the buffers for these streams. The natural features on and near the site do not limit the proposed use.

vii. Summary: The hearings officer finds that the shape, topographic and location characteristics of the property are suitable to accommodate the proposed use. There are no mapped natural features near the proposed location of the proposed use. The size of the site is adequate to accommodate the proposed event facility. However, the proposed use is prohibited on this site, due to the location of the site within three miles of a UGB.

ZDO 1203.03(B) is not met.

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

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

i. ZDO 1007.07 and concurrency:

(1) ZDO 1007.07 provides:

TRANSPORTATION FACILITIES CONCURRENCY

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

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

...

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

...

(2) Although ZDO 1203.03(C) lists “concurrency,” home occupations to host events are exempt from concurrency requirements pursuant to ZDO 1007.07(B)(5). The applicant is proposing a home occupation to host events. Therefore, the proposed use is not subject to concurrency requirements.

ii. Safety and adequacy of the transportation system:

(1) ZDO 1007.02(D) provides:

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

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

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

(2) The hearings officer finds that it is feasible to comply with applicable sight distance requirements. S. Kirk Road is not posted for speed and is therefore governed by the Basic Rule which allows speeds up to 55 miles per hour. Based on Roadway Standards Section 240, this very low volume local road requires a minimum of 405 feet of intersection sight distance at the proposed access points. County engineering staff concluded that adequate sight distance can be provided with a modification to the width of the easterly driveway approach. There is no evidence to the contrary. A condition of approval is warranted to that effect. As conditioned, the use can comply with ZDO 1007.02(D).

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

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

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

(3) The hearings officer finds that traffic generated by the proposed use will not create a safety hazard.

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

(I) ODOT was notified of the proposed event site and requested a condition of approval requiring that the applicant implement an ODOT approved Traffic Control Plan (TCP) to mitigate impacts to this intersection during events. ODOT did not raise any concerns with sight distance or other hazards at this intersection.

(II) The crash rate at this intersection is well below the accepted "action level" of one crash per million entering vehicles ("mev").⁵ This intersection carries an average of 5,386,590 annual trips.⁶ Based on ODOT crash data, two crashes

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

⁶ Based on the ODOT traffic data in Exhibit 47, Highway 213 carried an average of 5,240,590 trips per year between 2010 and 2019. Based on County engineering staff testimony in Exhibit 16, S. Kirk Road carries "fewer than 400 average daily vehicle trips," which equates to a maximum 146,000 trips per year

were reported at this intersection during the ten year period between January 1, 2010, and December 1, 2019 (Exhibits 44 and 47). This equates to a crash rate of 0.004 crashes per mev, well below the intersection crash rate action level. This low crash level indicates that the intersection is operating within acceptable safety limits. Additional traffic generated by the proposed use may result in a proportionate increase in the number accidents in the area. But the crash data demonstrates that this intersection is not inherently hazardous.

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

(B) The hearings officer finds that the condition of S. Kirk Road will not pose a hazard. S. Kirk Road is a rural local roadway with an improved width of approximately 18 feet, located within a 40-foot wide public right-of-way in the vicinity of the project site. S. Kirk Road qualifies as a very low volume road, with fewer than 400 average daily vehicle trips. 18 feet of roadway width is the minimum necessary to accommodate two-way vehicle traffic.

(I) There is no dispute that S. Kirk Road is not improved to current county standards. It has a narrow chip seal surface and lacks shoulders and striping. However, this is not an unusual situation for local roads in the rural areas of the county. Traffic generated by this development will cause additional wear and tear on this road, increasing the need for repair. However, traffic generated by existing development on this road also damages the road and contributes to the need for repair. Given the limited increase in annual traffic volume caused by the proposed use, the hearings officer finds that the proposed use will not significantly increase the need for repair or improvements to S. Kirk Road. It would be inequitable to require the applicant to bear the full burden of improvements where the proposed development is only responsible for a portion of the problem.

(II) Events such as weddings generate a larger number of vehicles per day than are typically on the roadway. However, as proposed, this use will generate roughly 7,500 vehicle trips over the course of the entire year, based on the assumed carpool rate of 1.5 persons per vehicle used in the "Transportation System Development Charge Assessment - Traffic Impact Calculator" included with the application.⁷ Based on

(400 ADT x 365 days = 146,000). 5,240,590 + 146,000 = 5,386,590 annual vehicle trips through the intersection.

⁷ Each 75 person event will generate 100 guest vehicle trips (75 guests/1.5 guests per vehicle = 50 vehicles. Two trips per vehicle, inbound and outbound, equals 100 guest vehicle trips). The applicant proposed to conduct up to 55 such events per year, resulting in 5,500 annual guest vehicle trips.

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

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

(I) Neighbors argued that these driveways were approved for one-way traffic, with the western driveway limited to inbound trips and the eastern driveway limited to outbound trips. (Exhibit 5). However, there is no substantial evidence in the record to support those assertions. These driveways were approved to serve the single-family residence on the site. Absent sight distance or other limitations, there is no reason to limit the driveways to one-way traffic when events are not occurring on the site. A condition of approval is warranted to limit the driveways to one-way access as proposed when events are occurring on the site.

(5) ZDO section 1007.07 requires a finding that a development is served by a transportation system that has adequate capacity to handle any increased vehicle trips generated by new development. However, as noted above, under ZDO Section

Each 210 person event will generate 280 guest vehicle trips (210 guests/1.5 guests per vehicle x two trips per vehicle equals 280 guest trips). The applicant proposed to conduct up to five such events per year, resulting in 1,400 annual guest vehicle trips.

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

Therefore, the proposed event facility will generate 7,500 vehicle trips per year ($5,500 + 1,400 + 600 = 7,500$ annual trips).

1007.07(B)(5) conditional uses to host events are exempt from the concurrency requirements. Therefore, this section is inapplicable.

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

d. Section 1203.03(D):

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

i. The property is located in the EFU zoning district south of Oregon City. The land use pattern in the area can be described as a mixture of rural residential, agriculture, and commercial uses, on acreage properties of various sizes. The primary uses allowed in the EFU zoning district are listed in Table 401-1 and these listed uses are generally farm and forest activities. However, ZDO 806.02(E) requires consideration of impacts on residential uses as well.

ii. This criterion does not require that the use have no impacts at all. 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, 2022, from <https://www.dictionary.com/browse/substantially>

iii. The hearings officer finds that traffic generated by the proposed use will substantially alter the character of the surrounding area in a manner that substantially limits, impairs or precludes the use of surrounding properties.

(1) The proposed use will generate relatively large volumes of traffic immediately after events on the site. That traffic is likely to backup at the S. Kirk Road/Highway 213 intersection, causing congestion on S. Kirk Road and blocking access to driveways intersecting S. Kirk Road. This condition already occurs when burials are occurring at the cemetery. (See Exhibits 14, 28, 30, 34, 35, 41, and 42). Larger events on the site are likely to generate similar traffic volumes and delays.

(2) The applicant argued that funerals generate different traffic patterns than events proposed on the site. Funeral attendees leave all at once, after the service ends, while event guests depart at a variety of times. (Exhibit 47). However, the applicant failed to provide any support for this assertion. In addition, given the size of the traffic queues and resulting delays noted in the above exhibits, event traffic leaving the site over the course of a half-hour or more may still cause significant delays.

(3) The applicant proposed to post a sign on the egress drive intersection with S. Kirk Road requiring that drivers wait 30 seconds before entering the roadway. (Exhibit 47). However, there is no evidence that drivers will obey such a restriction or that it will mitigate congestion at the S. Kirk Road/Highway 213 intersection. Based on neighbors' testimony and photos, the congestion issues at the intersection clearly last longer than 30 seconds.

(4) An event and a funeral occurring near the same time would result in cumulative traffic that would significantly increase congestion and delays. The applicant proposed to coordinate with the cemetery operator in order to avoid such conflicts. (Exhibit 47). However, he failed to demonstrate how such coordination could be accomplished or that the cemetery operator is willing to work with the applicant to achieve such coordination. Presumably events at the site will be scheduled several months in advance, whereas funerals are scheduled soon after someone dies.

(5) The cemetery is an existing use that is not subject to this restriction. Cemetery traffic and resulting delays are part of the existing character of the area. However, the applicant is proposing a new use that will increase the frequency of such delays and, if an event occurs at the same time as a funeral, significantly increase the impact of the existing traffic, which will alter the character of the surrounding area in a manner that substantially limits, impairs or precludes the use of surrounding properties for the primary uses.

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

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

(2) Ms. Mayo-Sorensen argued that noise from traffic operating on the ingress driveway will disturb her horses that she is training in her arena west of the site. However, the hearings officer cannot find that traffic noise will be significant enough to substantially limit, impair or preclude Ms. Mayo-Sorensen's use of her arena. As noted in Exhibit 29, the arena is surrounded by roads; the applicant's ingress driveway to the east and a driveway serving "the large hunter jumper facility" north of Ms. Mayo-Sorensen's property located to the west and north of Ms. Mayo-Sorensen's arena. The driveways are existing. The proposed use will increase the volume of traffic on the ingress road. But there is no evidence that event traffic will generate significantly more noise than other types of traffic on the existing driveways. The hearings officer accepts that construction activity on the driveway has a substantial impact on Ms. Mayo-Sorensen's horses. However, vehicle traffic on a paved driveway will generate significantly less noise than construction activity. Noise from guests on the site is unlikely to impact the arena. The majority of event activities will occur in and around the residence and associated structures that are located near the center of the site, well away from the arena and other abutting

properties. As discussed below, parking is prohibited on the driveways. All parking will occur in the parking lots near the residence, well away from the arena.

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

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

(5) Headlights from vehicles exiting the site on the eastern driveway will shine into Mr. Dutra’s residence. That is an existing condition. The proposed use will increase the number of vehicles using the driveway and therefore the frequency of such impacts. But the increase will not substantially limit, impair or preclude the use of the Dutra residence.

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

(7) 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.

(8) Drivers turning around in neighbor’s driveways will not substantially limit the use of those properties. Most drivers use GPS applications that direct them to the site. The applicant will post signs at the intersection of the ingress driveway and S. Kirk Road to clearly identify the site, which will limit the potential for drivers getting lost and needing to turn around in other driveways

(9) The applicant can regulate or prohibit alcohol use on the site. Some attendees may bring their own alcohol or otherwise consume excessive amounts, which could create a hazard, especially if those attendees attempt to drive home. However, the applicant will have a strong interest in monitoring and enforcing limits on alcohol consumption and stopping intoxicated patrons from driving, in order to avoid legal

liability. There is no evidence that this use will generate a significantly higher risk of drunk drivers than any other business that serves alcohol.

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

(11) Allegations of past violations by the applicant (operating a shooting range, enlarging the ponds and diverting a creek on the site, building a bridge over the creek, installing a zip line near the ponds) are not relevant to the applicable approval criteria for this application, as those uses/activities are not proposed as part of this application.

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

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

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

ZDO 1203.03(D) is not met.

e. Section 1203.03(E):

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

i. Chapter 4, Land Use: The site is designated Agriculture on the Comprehensive Plan map. The Agriculture Land Use Section in Chapter 4 of the Comprehensive Plan

implements this Designation. Chapter 4 of the Comprehensive Plan sets out the following Goals and Policies:

(1) Agriculture Goals

- *Preserve agricultural use of agricultural land.*
- *Protect agricultural land from conflicting uses, high taxation and the cost of public facilities unnecessary for agriculture.*
- *Maintain the agricultural economic base of the County and increase the County's share of the agricultural market.*
- *Increase agricultural income and employment by creating conditions that further the growth and expansion of agriculture and attract agriculturally related industries.*
- *Maintain and improve the quality of air, water, and land resources.*
- *Conserve scenic and open space.*
- *Protect wildlife habitats.*

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

(3) Agriculture Policies

- 4.NN.1 The following areas shall be designated Agriculture:
...
- 4.NN.2 Agriculturally related industries shall be encouraged.
- 4.NN.3 Land uses that conflict with agricultural uses shall not be allowed.
- 4.NN.4 New sewer facilities shall not be allowed in Agricultural areas, except when consistent with Policy 7.A.11 of Chapter 7, *Public Facilities and Services*.
- 4.NN.5 Roads shall be developed in a manner and to a level compatible with maintaining Agricultural areas.
- 4.NN.6 Education and dissemination of information on agricultural crops, methods, and technology; special tax assessment programs; and new land-use techniques should be encouraged.
- 4.NN.7 Lawfully established nonconforming structures and uses that are destroyed by fire, other casualty, or natural disaster shall

be allowed to reconstruct, as provided by the Zoning and Development Ordinance.

- 4.NN.8 The Exclusive Farm Use (EFU) zoning district implements the goals and policies of the Agriculture plan designation and should be applied in Agriculture areas.
- 4.NN.9 Forest zoning districts which require a minimum lot size of 80 acres or larger may be applied in Agriculture areas provided the primary uses are forest and forest- related and that permitted uses will not conflict with agricultural uses.
- 4.NN.10 Except on lands within urban growth boundaries or as provided by the Oregon Revised Statutes for abandoned or diminished mill sites, exceptions to Statewide Planning Goals 3 and 4 shall be required for a plan amendment from the Agriculture designation to any designation other than Forest.

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

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

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

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

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

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

(F) The proposed use will not preclude the county from providing education and information regarding the listed agricultural issues, Policy 4.NN.6.

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

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

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

ii. Chapter 5, Transportation:

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

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

ZDO 1203.03(E) can be met with conditions.

f. Section 1203.03(F):

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

i. EFU Zoning Requirements: The hearings officer finds that the proposed use does not comply with the applicable requirements of the EFU zone, ZDO 401.

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

(B) ZDO 401.05 provides, in relevant part:

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

A. General Criteria:

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

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

...

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

[T]he current employment of land for the primary purpose of obtaining a profit in money by raising, harvesting and selling crops or the feeding, breeding, management and sale of, or the produce of, livestock, poultry, fur-bearing animals or honeybees or for dairying and the sale of dairy products or any other agricultural or horticultural use or animal husbandry or any combination thereof.

(2) Based on the applicant’s un rebutted testimony, farm uses in the area are limited to a horse training arena on the parcel abutting the west boundary of the site (the “hunter jumper facility” noted in Exhibit 29), a hazelnut grow operation on a 19 acre parcel southeast of the site, and a Christmas tree farm on a 20-acre parcel. (Page 10 of Exhibit 20). The applicant did not specify the location of the Christmas tree farm. All other properties in the area are in residential or commercial use. There are no forest operations in the area. Ms. Mayo-Sorenson’s horse training arena is not a “farm use” as defined by ORS 215.203(2)(a). Based on Ms. Mayo-Sorenson’s testimony, she does not operate her arena “[f]or the primary purpose of obtaining a profit in money...” She testified that “My equine barn is a private facility for my own use, with occasional visits from trusted friends.” (Exhibit 69). Therefore, this use is not a “farm use” that is subject to ZDO 401.05(A).

(3) The hearings officer finds that the proposed use will force a significant change in or significantly increase the cost of accepted farm or forest practices in the area or unreasonably interfere with other uses permitted in the EFU zoning district due to the traffic and congestion issues noted above. Traffic generated by the proposed use will impact farm operations in the area in the same way it impacts residential and commercial operations; significantly increasing travel times and potentially obstructing access to driveways serving farm properties. Therefore, the use does not comply with ZDO 401.05(A).

(4) The hearings officer finds that the use will not otherwise force a significant change in or significantly increase the cost of accepted farm or forest practices in the area or unreasonably interfere with other uses permitted in the EFU zoning district. The proposed event facility is located near the center of the 120.01-acre site, well away

from all surrounding farm operations. Light and noise generated on the site in compliance with applicable standards will not interfere with existing farm practices. Guests may walk on the proposed perimeter path. However, they are unlikely to trespass onto or otherwise impact abutting properties provided the boundaries of the site are clearly identified.

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

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

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

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

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

(A) ZDO 806.02(A) provides:

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

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

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

(2) The applicant testified that he “[a]ssumed full-time residency on site [the residence on tax lot 900] in September 2021, and is in the process of selling his former residence in Boring.” (Exhibit 43). There is no substantial evidence to the contrary. The residence on tax lot 900 is legally established; the county approved building permits for the structure. Tax lot 900 is part of the tract on which the home occupation is proposed to be located. The fact that the applicant did not reside on the site previously is irrelevant. This occupancy requirement only applies once the facility is approved and begins operation.

(3) Neighbors testified that the applicant intends to utilize a “venue coordinator” to operate the facility. (Exhibit 38). However, that would violate the requirement that the applicant, the proposed “operator,” be “responsible for strategic decisions and day-to-day operations of the home occupation.” If this application is approved a condition of approval is warranted requiring that the applicant be responsible for strategic decisions and day-to-day operations of the home occupation.

(4) This criterion can be met with conditions.

(B) ZDO 806.02(B) provides:

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

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

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

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

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

(4) This criterion can be met.

(C) ZDO 806.02(C) provides:

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

(1) In this case, the applicant proposes to operate the home occupation in the proposed arboretum and the meditation center as well as on the existing unenclosed patio/"outdoor living area." Use of the existing residence is limited to a "pass through" area to allow guests to access the event areas on the patios and in the arboretum and meditation center. See Site Plan Drawing A.

(2) The hearings officer finds that the proposed "arboretum" is essentially an ornate greenhouse, which *Webster's Dictionary* defines as "a structure enclosed (as by glass) and used for the cultivation or protection of tender plants." "Greenhouse." *Merriam-Webster.com Dictionary*, Merriam-Webster, <https://www.merriam-webster.com/dictionary/greenhouse>. Accessed 10 Mar. 2022. The hearings officer finds that greenhouses are buildings normally associated with uses permitted in the EFU zone. Therefore, the "arboretum" is consistent with this provision.

(3) However, the hearings officer cannot find that the proposed 1,456 square foot "meditation center" is a building normally associated with uses permitted in the EFU zone. The applicant failed to demonstrate that a meditation center is similar to any agricultural or other buildings normally associated with uses permitted in the EFU zone. The hearings officer cannot find that the building constitutes a structure that is accessory to the existing residence; there is no evidence that a 1,456 size square foot meditation center, larger than many homes, is needed to serve the meditation needs of the residents of the home on the site. Therefore, the hearings officer finds that the meditation center building cannot be approved as part of the proposed event facility.

(I) During the open record period the applicant proposed to replace the meditation center with "[a]n agricultural-use building to be used for processing herbs and flowers and for general agricultural storage." (Exhibit 46). However, the applicant failed to provide any details about the proposed "agricultural-use building" from which the hearings officer can conclude that the building would be a type normally associated with uses permitted in the EFU zone. Therefore, the proposed "agricultural-use building to be used for processing herbs and flowers and for general agricultural storage" cannot be approved as part of the proposed event facility. If the applicant wants to construct a building that will actually be used for processing herbs and flowers and for general agricultural storage, the county could approve the building as an agricultural building through its building permit review process, rather than through this conditional use process.

(5) This criterion is met for the "arboretum." This criterion is not met for the "meditation center."

(D) ZDO 806.02(D) provides:

Tents: *Temporary tents are allowed as follows:*

...

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

(2) This criterion can be met.

(E) ZDO 806.02(E) provides:

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

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

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

(F) ZDO 806.02(F) provides:

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

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

(2) This criterion can be met.

(G) ZDO 806.02(G) provides:

Frequency of Events: *A maximum of two events shall be allowed per day, and no more than one event shall occur at*

any one time. During the months of November through March, no more than five events shall be allowed per week. During the months of April through October, no more than seven events shall be allowed per week.

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

(2) This criterion can be met.

(H) ZDO 806.02(H) provides:

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

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

(2) This criterion can be met.

(I) ZDO 806.02(I) provides:

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

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

(2) This criterion can be met.

(J) ZDO 806.02(J) provides:

Noise: Noise shall be regulated as follows:

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

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

(1) The hearings officer finds that it is feasible to comply with the 60 dB(A) noise limit of this section. As discussed in Exhibit 49, noise levels decline exponentially with distance. The event facility is proposed near the center of the site, 620 feet or more from the nearest property boundary. As discussed in Exhibit 49, limiting noise levels at the event facility to 95 dBA would likely ensure compliance with the 65 dBA standard at the boundaries of the site. The applicant could be conditioned to provide a noise study demonstrating actual compliance with this standard.

(2) However, this section requires the applicant to demonstrate that noise generated by the proposed use will not exceed the greater of 60 dB(A) or the ambient noise level. There is no evidence regarding the ambient noise level in the area. Given the location of the event facility near the center of a large parcel it may be feasible to limit noise levels at the boundaries of the site to not exceed the ambient noise level. But the hearings officer cannot make that finding absent some evidence about the ambient noise levels in the area.

(3) Noise from construction activities or past personal parties and gatherings on the site cited in neighbor's testimony is not relevant to this criterion. This section only regulates noise generated by the proposed event facility use. Testimony about noise impacts from activities occurring near the ponds on the site are not relevant, as no event activities are proposed near the ponds. Noise from the applicant's gun range is also not relevant, as use of the gun range is not proposed during events.

(4) This criterion is not met.

(K) ZDO 806.02(K) provides:

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

- 1. On-street parking shall be prohibited on the day of an event.*
- 2. An alternative to the parking area surface required pursuant to Subsection 1015.01(B) may be approved based on the following criteria:*
- ...*

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

(2) This criterion is met.

(L) ZDO 806.02(B) provides:

Portable Restrooms: Portable restroom facilities shall:

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

(1) This criterion can be met.

(M) ZDO 806.02(M) provides:

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

(1) This criterion can be met, based on the findings above.

(N) ZDO 806.02(N) provides:

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

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

(2) This criterion is met.

(O) ZDO 806.02(O) provides:

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

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

(2) This criterion is met.

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

(A) Section 1002, Protection of Natural Features:

(1) Subsection 1002.01 - Hillsides:

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

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

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

(3) Subsection 1002.03 - Trees And Wooded Areas:

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

...

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

...

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

(4) Subsection 1002.04 - River and Stream Corridors:

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

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

1. River and stream corridors are preserved to the maximum extent feasible and water quality is

- protected through adequate drainage and erosion control practices; and*
2. *Buffers or filter strips of natural vegetation are retained along all river and stream banks.*

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

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

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

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

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

The application complies with Section 1002.

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

Section 1003 is inapplicable.

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

Section 1004 is inapplicable.

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

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

(2) Subsection 1005.02 Applicability, provides:

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

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

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

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

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

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

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

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

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

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

(4) Subsection 1005.04 - Building Design:

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

(I) The hearings officer finds that the proposed arboretum complies with the standards of this section. The residence on the site is an existing structure that is not proposed as part of this development that is not subject to these standards. As discussed above, the meditation building cannot be approved through this application. Otherwise the application complies with ZDO 1005.04.

(5) Subsection 1005.05 - Outdoor Lighting:

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

(I) The hearings officer finds that it is feasible to comply with these criteria. However, the “outdoor lighting plan” (Exhibit 45) and “lighting plan narrative” (Exhibit 48) submitted by the applicant do not provide sufficient detail to demonstrate such compliance. The plans show the location and heights of proposed outdoor lights. However, there is no evidence regarding the design and shielding of the lights. A statement that the lights will be “old world, dim lighting levels” is not sufficient to demonstrate that the lights will “[b]e architecturally integrated with the character of the associated structures, site design and landscape.” Additional detail is needed to confirm that the lights are properly located, shielded, and directed to comply with these requirements. However, the applicant could be conditioned to provide a more detailed lighting plan that meets these requirements. Therefore, the hearings officer finds that this standard can be met with a condition.

(II) Neighboring residents argued that the existing lights on the site exceed the requirements of this section, citing Exhibit 69. However, this section only regulates outdoor lights. The majority of the lights visible in Exhibit 69 appear to be located inside the residence and are not relevant to this criterion.

The standards of Section 1005 can be satisfied as conditioned.

(E) Section 1006 Utilities, Street Lights, Water Supply, Sewage Disposal, Surface Water Management, and Erosion Control

(1) Subsection 1006.01 - General Standards:

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

(I) The application can be conditioned to comply with ZDO 1006.01.

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

(3) Subsection 1006.03 - Water Supply

- A. All development which has a need for, or will be provided with, public or community water service shall install water service facilities and grant necessary*

easements pursuant to the requirements of the district or company serving the development.

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

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

...

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

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

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

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

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

F.⁸ The following standards apply outside the Portland Metropolitan Urban Growth Boundary, Government Camp, Rhododendron, Wemme/Welches, Wildwood/Timberline, and Zigzag Village:

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

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

⁸ There is no subsection "E" in ZDO 1006.03.

(4) Subsection 1006.04 - Sanitary Sewer Service

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

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

(5) Subsection 1006.05 - Subsurface Sewage Disposal Standards:

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

(I) Sewage disposal for existing development on the site is accommodated by an on-site septic system. The applicant proposes to utilize portable restroom facilities for the majority of guests on the site, which is allowed by ZDO 806.02(L), subject to certain standards. The applicant also proposes an ADA restroom in the arboretum building. This facility will require review and approval from the County Septic & Onsite Wastewater System Programs. The application can be conditioned to ensure compliance with these standards.

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

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

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

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

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

The standards of Section 1006 can be satisfied as conditioned.

(F) Section 1007, Roads and Connectivity:

(1) Subsection 1007.01 – General Provisions:

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

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

B. Right-of-way dedications and improvements shall be required of all new developments, including partitions, subdivisions, multifamily dwellings, two- and three-family dwellings, condominiums, single-family dwellings, and commercial, industrial, and institutional uses, as deemed necessary by the Department of Transportation and Development and consistent with Section 1007, Chapters 5 and 10 of the Comprehensive Plan, and the Clackamas County Roadway Standards.

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

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

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

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

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

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

(V) S. Kirk Road is not improved to current county standards. However, the condition of the existing roadway does not pose a significant safety hazard. The road is relatively flat and straight. Vehicles, pedestrians, and bicycles are clearly visible to oncoming drivers. The road does not have a high accident rate and there is no other evidence that the condition of this roadway poses a hazard. As noted above, the applicant cannot be required to improve the roadway, as the cost of the improvements would exceed the roughly proportional impact of the development on the need for such improvements. This criterion is met.

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

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

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

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

The standards of Section 1007 can be satisfied as conditioned.

(G) Section 1009, Landscaping: Table 1009-01 does not provide a minimum landscape requirement for development in the EFU zone. The applicant proposed to install landscaping throughout the developed portion of the site. Conditions of approval can be imposed to ensure that such landscaping complies with the requirements of this section. In addition, ZDO 1006.01(C) requires that the applicant remove all existing invasive non-native or noxious vegetation on the site.

The standards of Section 1009 can be satisfied with conditions.

(H) Section 1010, Signs:

(1) The applicant proposes to provide one permanent sign located at the main entrance on S. Kirk Road indicating the street address and “Chateau de Lis.” On the day of events the applicant also proposes to place a temporary sign at the main entrance indicating the specific event being held. The proposed freestanding commercial sign is permitted in the EFU zone subject to the size, design, and location limitations of ZDO 1010.07(A)(2), subject to the applicant obtaining approval of a sign permit. The proposed temporary sign is exempt from permit requirements but subject to the limitations of ZDO 1010.13(A) and 806.02(M).

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

(I) Section 1011, Open Space And Parks:

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

Section 1011 is inapplicable.

(J) Section 1012 - Lot Size and Density:

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

Section 1012 is inapplicable.

(K) Section 1013, Planned Unit Developments

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

Section 1013 is inapplicable.

(L) Section 1015,⁹ Parking and Loading:

⁹ There is no Section 1014 in the Code.

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

(2) ZDO Table 1015-1 requires a minimum of one parking space per three guests and one space for each employee for the proposed home occupation to host events. There is no parking maximum for this use. The applicant proposes to accommodate a maximum 210 guests and five employees, which requires a minimum 75 parking spaces.¹⁰ The applicant proposes to provide 185 parking spaces on the site, which is more than adequate to meet the requirements of the Code.

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

(4) The applicant stated that additional parking may be allowed along the 20-foot wide access road. However, this additional parking is not needed to support the maximum 210 guests proposed on the site. Therefore, parking should be prohibited along the access road. Guests should be required to park in delineated parking spaces within one of the proposed parking lots or “motor courts.” A condition of approval to this effect is warranted if this application is approved.

Section 1015 is met as conditioned.

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

Section 1017 is inapplicable.

(N) Section 1021,¹¹ Solid Waste and Recyclable Material Collection: outlines the standards for refuse and recycling for commercial developments.

¹⁰ 210 guest/1 space per guest = 210 parking spaces. Plus one space per five employees = 75 parking spaces.

¹¹ There are no Sections 1018-1020 in the Code.

(1) The applicant did not address this standard in detail, beyond a proposal to provide a dumpster on the site for the collection of solid waste. He testified that the solid waste collection provider for the area indicated that they can provide dumpster collection service to the site. The applicant did not address recycling service. The hearings officer finds that it is feasible to provide for solid waste and recycling service for the proposed use. If approved, a condition should be added requiring that the applicant demonstrate actual compliance with the applicable portions of Section 1021.

Section 1021 is met as conditioned.

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

IV. CONCLUSION

Based on the findings and discussion provided or incorporated herein, the hearings officer concludes that Case No. Z0424-24-C (Chateau De Lis) should be denied, because the applicant failed to demonstrate compliance with all of the applicable standards of the Clackamas County ZDO; specifically because:

a. OAR 660-033-0130 prohibits the proposed use on the site, which involves enclosed structures with a design capacity greater than 100 people located within three miles of an urban growth boundary. Therefore the use does not comply with ZDO 1203.03(A) and (B);

b. Traffic and resulting congestion generated by the proposed use will alter the character of the surrounding area in a manner that substantially limits, impairs or precludes the use of surrounding properties for the primary uses allowed in the EFU zone, ZDO 1203.03(D);

c. The applicant failed to demonstrate that noise created by the home occupation will not exceed ambient noise level, ZDO 806.02(J)(1); and

d. Traffic and resulting congestion generated by the proposed use will force a significant change in, or significantly increase the cost of, accepted farm or forest practices on surrounding lands devoted to farm or forest. ZDO 401.05(A).

E. DECISION

Based on the findings, discussion and conclusions provided or incorporated herein and the public record in this case, the hearings officer denies Z0424-21-C (Chateau De Lis).

DATED this 22 day of March 2022.



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

ENDANGERED SPECIES ACT NOTICE

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

APPEAL RIGHTS

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