

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

Regarding an application by Russ Bartels for approval) **FINAL ORDER**
of a conditional use permit to operate a home occupation)
to host weddings and events on a five-acre parcel at 34881) **Case No. Z0148-23-C**
SE Gunderson Road in Clackamas County, Oregon) **(Pina/Maldonado)**

I. SUMMARY

1. Russ Bartels submitted an application on behalf of the applicants, Cristino Pina and Mayra Maldonado (the “applicants”), requesting approval of a Conditional Use Permit (“CUP”) to operate a home occupation to host weddings and other events.¹

a. The applicants propose to locate the facility on a five-acre parcel located at 34881 SE Gunderson Road; also known as tax lot 700, Section 22, Township 2 South, Range 4 East, of the Willamette Meridian, in Clackamas County (the “site”). The site and abutting properties to the east, west, and north are zoned RRFF-5 (Rural Residential Farm Forest, five-acre minimum lot size). Properties to the south, across SE Gunderson Road, are zoned EFU (Exclusive Farm Use).

i. The site is currently developed with a single-family residence located in the southeastern portion of the site with a “U” shaped loop driveway accessing SE Gunderson Road. There is a second 15-foot wide gravel surfaced shared driveway on the west boundary of the site which provides access to the rear of the site and the abutting property to the north.

ii. There is a row of mature trees near the west boundary of the site, east of the shared access drive. There are additional mature trees in the northern portion of the site. (See the revised site plan, p 3 of Exhibit 27, and the aerial photo, p 3 of Exhibit 1).

b. The applicants propose to construct the following improvements on the site for the event facility:

i. A new 90- x 50-foot wood sided “barn” in the north central portion of the site. The barn includes an enclosed “event staff area” and two restrooms in the northeast corner of the building. The remainder of the building will be open, with three sets of double doors on the south wall opening onto a proposed “lawn and landscaped area” south of the barn;²

¹ Mr. Bartells submitted the application and is listed as the “applicants” in the Staff Report. However, Mr. Bartells is a consultant for the applicants who will actually operate the facility and they are the ones who would be responsible for compliance with any conditions of approval. Therefore, for the sake of clarity, the hearings officer uses the term “the applicants” to refer to the operators of the proposed facility rather than Mr. Bartells, the property owners’ consultant.

² The applicants initially proposed a second “75x45-foot “barn/garage/storage” building on the north end of the site. However, the applicants are no longer proposing this structure.

ii. A 9- by 19-foot trash and recycling area near the northeast corner of the barn;

iii. A 48-space gravel surfaced parking lot north of the barn;

iv. Widening and paving the existing shared driveway on the west boundary of the site to 20 feet to provide access to the event facility;

v. A 3,000 gallon water tank east of the barn, to provide water for events and landscape irrigation;

vi. A hedge of Leland Cypress trees on the north, east, and a portion of the south boundaries of the parking lot;

vii. A six-foot tall cedar fence enclosing much of the event facility, parking lot, and hedge. A section of continuous fencing is proposed to begin on the east edge of the shared driveway and extend to the east boundary of the site, located north of the parking lot and cypress hedge. The fence will then extend south along the east boundary to the south edge of the "lawn and landscaped area," then west to the eastern edge of the shared driveway. A second fence is proposed on the west boundary of the site, west of the shared driveway. The northern terminus of this fence aligns with the section of fence north of the parking lot and the south end will connect to the existing fence on the boundary between the site and the abutting property to the west.

c. The applicants propose to host a maximum of 24 events per calendar year with a maximum of 125 guests per event. The events will take place exclusively inside the proposed barn. The applicants state that the proposed "lawn and landscaped area" is for aesthetic purposes only and will not be used as an event area. (Exhibit 2d at 1).

d. County staff recommended the hearings officer deny the application, arguing that the characteristics of the site are not suitable for the proposed use due to the size and shape of the property and the proximity to neighbors (ZDO 1203.03(B)), the proposed use will alter the character 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 (ZDO 1203.03(D)), and noise from events would exceed the limitations of ZDO 806.02(J). See the Staff Report to the Hearings Officer dated October 5, 2023 (Exhibit 1, the "Staff Report") and the Addendum to the Staff Report to the Hearings Officer dated December 6, 2023 (Exhibit 28).

2. Clackamas County Hearings Officer Joe Turner (the "hearings officer") held two public hearings about this application. The applicants testified in support of the application. 16 persons testified orally in in opposition to the application. Other persons testified in writing. The principal contested issues in the case include the following:

a. Whether the proposed use is allowed as a conditional use in the RRF-5 zone, ZDO 1203.03(A);

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

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

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

i. Noise

ii. Stormwater runoff;

iii. Traffic;

iv. On-site lighting;

v. Trespass and litter;

vi. Drugs and alcohol;

vii. Soil and water contamination;

viii. Impacts to property values;

ix. Residential uses;

x. Open burning;

xi. Prior violations and whether the County can ensure compliance with the conditions of approval;

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

f. Whether the operator will reside full-time on the site. ZDO 806.01(A);

g. Whether the proposed “barn” structure is a building normally associated with uses permitted in the RRF-5 zoning district. ZDO 806.01(C);

h. Whether the applicants demonstrated that it is feasible to operate the facility in compliance with the noise level limits of ZDO 806.02(J); and

i. Whether event guests or employees will park on SE Gunderson Road. ZDO 806.01(k)(1).

3. Based on the findings and discussion provided or incorporated herein, the hearings officer finds that the applicants failed to bear the burden of proof that the proposed use can comply with the applicable approval criteria of the Clackamas County Zoning and Development Ordinance (the “ZDO”). Therefore, the hearings officer must deny the application, Case No. Z0148-23-C (Pina/Maldonado).

II. HEARING AND RECORD HIGHLIGHTS

1. The hearings officer received testimony at public hearings about this application on October 12 and December 14, 2023. All exhibits and records of testimony are filed at Clackamas County Department of Transportation and Development. At the beginning of the hearing, the hearings officer made the declaration required by ORS 197.763. The hearings officer disclaimed any *ex parte* contacts, bias or conflicts of interest. The following is a summary by the hearings officer of selected testimony at the public hearings.

2. At the October 12, 2023, hearing the applicants, Russ Bartells, requested the hearings officer continue the hearing to allow the opportunity to provide additional evidence in response to the issues raised in the Staff Report.

3. Lisa Haynes expressed concerns with traffic and noise impacts of the proposed use, which will conflict with the quiet rural character of the area.

4. Debra Renfro testified that the applicants held an event on the site in September 2023, which included an MC on a loudspeaker from 7:00 to 10:00 p.m. The noise was so loud she had to close the windows of her residence. She argued that 24 events per year on the site will have a significant impact on the surrounding area.

5. Brooklyn Morgan expressed concerns with increased traffic, the ability to evacuate the site and surrounding area, including livestock, in the case of a wildfire or similar emergency, increased fire risk from guests smoking or lighting fireworks, and the applicants’ ability to control event attendees. Prior events on the site generated noise well in excess of the noise limits of the Code. There is limited sight distance at the intersection of the site driveway and SE Gunderson Road. Drivers in this area frequently exceed the posted speed limit. Guests may overconsume alcohol, which will exacerbate these risks. Traffic from events may delay emergency access to the area. She has required ambulance service five times during a six-month period. Other neighbors also required ambulance services. Many area residents work from home and are disturbed by loud music playing during the days before and after events as the facilities are set up or taken down.

6. John Zimmerman noted that SE Gunderson Road is a dead-end road with no shoulders. Noise from prior events on the site caused significant impacts to the surrounding neighborhood. Noise from the events was audible on his property located 1.4 mile from the site. The applicants are unlikely to comply with the conditions of approval, based on their prior behavior and events. Attendees at prior events were seen trespassing onto neighboring properties.

7. Suzi Cloutier testified that noise from the event in September forced her to shut the windows of her residence and upset her livestock. The volume of noise increased as the event continued. Conducting events inside the proposed barn may reduce noise to some extent, but guests will still be outside talking, laughing, etc. SE Gunderson Road is very narrow and there is a blind hill at the intersection with 362nd Avenue.

8. Jimmie Newton testified that the applicants have no regard for their neighbors. He spoke with them about the noise impact during a prior event but they refused to turn down the volume of the music. Noise from the event exceeded 60 dB on adjacent properties, based on his sound meter measurements. Guests were entering neighbors' properties to relieve themselves. Water for the site is provided by a shared well that may lack capacity to serve the proposed events.

9. Michelle Way agreed with prior witnesses' concerns regarding traffic and noise. Her property abuts the west boundary of, and shares a well with, the site. Event traffic on the shared driveway on the west side of the site will generate noise and dust impacts on her property. Litter from events on the site blows onto her property and guests have trespassed onto her property in the past. Guests often mistake her driveway for the site access, turning into her driveway and shining headlights into her residence. Drivers sometimes block the road at events as they wait to turn into the site. The applicants do not live on the site, they rent the site to their niece. Some prior events took place over three or four days, with guests living in recreational vehicles parked on the site.

10. Bob DeVere testified that the shared driveway on the west boundary of the site also provides access to his residence north of the site. In the past guests of the facility parked on the side of the driveway, blocking access to his property. The hill on SE Gunderson Road west of the site encourages speeding and many drivers travel down the center of the narrow road.

11. Shad Rowe noted that children must walk on SE Gunderson Road to reach the school bus stop.

12. Chris Dukart argued that the applicants' proposal to locate the events in the rear of the site will increase impacts on his property north of the site, as noise and activities will occur closer to his property.

13. Jennifer Dukart questioned how the applicants are disposing of sewer discharges from the RVs on the site.

14. Melinda Rusaw expressed concerns that the applicants, guests, or emergency vehicles may use her driveway on the east side of the site for access. She questioned who will monitor the site and ensure that the applicants comply with any conditions of approval.

15. At the conclusion of the October 12, 2023, hearing the hearings officer continued the hearing to 9:30 a.m. on January 6, 2024. Pursuant to the applicants' request, the County subsequently rescheduled the hearing to December 14, 2023.

16. At the December 14, 2023, hearing Ms. Lord summarized the Staff Report, the Addendum, and her PowerPoint presentation (Exhibit 29).

a. She noted that the applicants propose to conduct events on the site for up to 125 guests. The applicants will conduct the events inside a proposed 4,000 square foot "barn" with an office space and two restrooms. The applicants will construct a 48 space gravel surfaced parking area north of the barn. The applicants propose to enclose the event area ("lawn and landscape area", barn, and parking lot) with a six-foot high fence and a cypress hedge along the north, east, and a portion of the south boundaries of the parking lot and a second fence on the west side of the shared access road. The applicants will use the existing shared driveway on the west boundary of the site to access the event facility and parking lot.

b. She opined that the proposed use does not comply with ZDO 1203.03(B) and (D). The site is not suitable for the proposed use; it is too small to accommodate the proposed event facility and it will cause significant impact to neighboring properties from noise, traffic, lights, and headlights. Those impacts will alter the character of the surrounding area in a manner that substantially limits, impairs or precludes the use of surrounding properties for permitted uses.

i. The five-acre site is a long narrow rectangular shape. As proposed, the access road, parking lot, and outdoor event area will abut adjacent properties. The nearest residence is roughly 200 feet from the proposed barn but only 30 feet from the access road located on the west boundary of the site. The proposed fence and hedge will screen headlights, but noise from the events will impact neighbors.

ii. Traffic from events will increase wear and tear and the need for maintenance of the shared driveway. Both of the properties served by the driveway are responsible for those costs.

iii. The applicants failed to provide any evidence about the existing character of the surrounding area and how the use will impact that character.

c. The applicants do not currently live on the site. Therefore, the application cannot comply with ZDO 806.02(A). The applicants propose to move onto the site if the application is approved.

d. SE Gunderson Road is designated a “rural local” road that is subject to a 35 mph speed limit, which requires 205 feet of intersection sight distance. County development engineering staff reviewed the intersection of the shared driveway and SE Gunderson Road and determined that adequate sight distance is available. A condition of approval is warranted requiring the applicants to confirm adequate sight distance if the hearings officer approves the application.

e. The applicants will be required to collect stormwater runoff from all new impervious areas on the site, treat it as necessary, and discharge it at a rate and location that is consistent with existing conditions and will not impact surrounding properties. The County will review stormwater runoff through its development permit review process to ensure that it complies with the Code.

f. The applicants will need to obtain a permit for the new restrooms and demonstrate that all effluent will be adequately treated.

17. Mr. Bartels responded to the testimony from staff and opponents. He requested the hearings officer hold the record open after the hearing to allow an opportunity to submit additional testimony and evidence.

a. He testified that the applicants will widen the shared driveway to 20 feet to in order accommodate two-way traffic. They will pave the existing gravel surface to reduce dust and the need for maintenance. The applicants are willing to be responsible for all costs of maintaining the driveway.

b. He argued that the proposed use will enhance the character of the neighborhood which is currently characterized by an auto mechanic and a distillery operating on adjacent properties. Noise from the site will not have a significant impact. Existing activities in the area generate considerable noise including lawnmowers, chainsaws, and other landscaping equipment. Events will only occur for three to five hours in the evenings.

c. The applicants will provide two restrooms in the proposed barn building. They will also provide portable restrooms if needed for larger events.

18. Ms. Way noted that a water line from the shared well serving the site crosses the shared driveway. She questioned whether she would be responsible for the cost of repair if maintenance of the water line damages the paved driveway. The adjacent distillery has minimal impacts on the neighborhood, as the business has no employees and it is not open to the public.

19. Kevin Way noted that he submitted a video (exhibit 26a) showing how the hill to the west limits sight distance at the intersection of the shared driveway and SE Gunderson Road. He took the video while standing on the east side of the shared driveway, looking west. There is no posted speed limit on this section of SE Gunderson Road. Therefore, it is subject to the basic rule of 55 mph. According the National

Highway Transportation Safety Administration (“NHTSA”) a vehicle traveling at 55 mph will travel an additional 120 feet between the time the driver sees something and is able to react. The crest of the hill is 120 feet from the driveway, so oncoming vehicles would have no time to react and stop upon seeing vehicles exiting this driveway. He questioned what will prevent the applicants from using water from the existing well for events on the site.

20. Monty Stinson expressed concern that stormwater runoff from the proposed parking lot, paved driveway, and barn building will impact adjacent properties and groundwater wells. Increased effluent discharges from events with 150 guests may exceed the capacity of the septic system, leading to groundwater contamination.

21. Mr. DeVere testified that water from a spring on the site flows across the shared driveway when it rains. Additional traffic through this wet section will damage the shared road. Noise from events on the site will be very disruptive to the neighborhood. During past events the bass notes of music was “painfully loud.” Recently logging in the area removed trees that previously buffered the site, increasing the distance that sound can travel. Tractors, chainsaws, and similar equipment are not as noisy at events on the site.

22. Chuck Schmidt expressed concern with “the quality of people” who will attend events on the site.

23. Deborah Becker questioned how water delivery trucks will access and fill the proposed water storage tank without using her driveway on the east boundary of the site.

24. At the end of the public hearing, the hearings officer held the record open for seven weeks, subject to the following schedule:

a. For five weeks, until 4:00 p.m. on January 28, 2024, for all parties to submit additional testimony and evidence;

b. For a sixth week, until 4:00 p.m. on February 1, 2024, for all parties to respond to the whatever was submitted during the first weeks; and

c. For a seventh week, until 4:00 p.m. on February 8, 2024, for the applicants to submit a final argument.

25. Exhibits 30 through 33 were submitted during the open record period.

III. DISCUSSION

1. ZDO Section 1203.02 CONDITIONAL USES

1203.02: SUBMITTAL REQUIREMENTS

Finding: This application includes a completed land use application form, site plan, application fee, and completed supplemental application addressing the criteria in ZDO

Section 1203. The application also includes a description of the proposed use and a vicinity map. All the submittal requirements under Subsection 1203.02 are included in the application. The application was submitted on April 5, 2023 and additional information was submitted June 7, August 9, August 22 and September 20, 2023. Following the submission of additional requested information, the application was deemed complete on August 9, 2023.

The submittal requirements of Subsection 1203.02 are met.

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

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

Finding: The site is zoned Rural Residential Farm Forest 5-Acre (RRFF-5). ZDO 316 controls land uses in the underlying RRFF-5 zoning district; Table 316-1 lists the conditional uses which are allowed. Table 316-1 specifies that “home occupation to host events, subject to section 806” are allowed as a conditional use. The applicants propose to operate a home occupation to host events; therefore, a conditional use permit is necessary. The standards of section 806 are discussed below.

Several persons argued that this type of event facility should not be allowed in the rural area. However, Section 316 expressly allows this type of use in the RRFF-5 zone, provided the use complies with all of applicable approval criteria. State law expressly authorizes the county to allow such uses in any zone. *See* ORS 215.448. The decision to allow this type of use in the RRFF-5 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.

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 meet the applicable approval criteria. Approval or denial of this application would 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.

This criterion is met.

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

Finding: Size: The subject property is approximately five-acres in size. The submitted site plans and narrative demonstrate the property is of sufficient size to physically accommodate the proposed improvements: the proposed barn, landscaping, and parking and circulation. However, the size of the site is a limitation to the proposed event venue due to the proximity of adjacent properties and the resulting impacts the venue would have on the adjacent properties. As discussed below, the hearings officer finds that the size of the site is a limiting factor when considering the suitability of the proposed event venue.

Shape: The property is regular in shape, a long narrow rectangle measuring 246 feet wide and 881 feet deep. Combined with size, the shape does not present any significant limitation to the proposed use of the site when considering site circulation or the placement of a building to hold the events. However, the narrow width of the property poses a challenge when considering potential impacts to surrounding properties. The proposed lawn and landscape area, access drive, and parking areas occupy the entire width of the property and abut adjacent properties to the east and west. The proposed barn is located roughly 70 feet from the west boundary and 80 feet from the east boundary. As discussed below, the hearings officer finds that the narrow width of the site is a limiting factor when considering the suitability of the proposed event venue.

Location: The subject property has direct vehicular access onto SE Gunderson Road, a dead-end street classified as a rural local roadway. SE Gunderson Road intersects SE 362nd Drive to the east of the site. SE 362nd Drive provides access to Highway 26 to the north and Highway 211 to the south. Opponents expressed concerns with the sight distance at the intersection of the site access with SE Gunderson Road and at SE Gunderson Road and SE 362nd Avenue. However, County engineering staff reviewed these intersections and determined that adequate sight distance can be provided. There is existing vegetation on each side of the intersections may that grow and periodically limit visibility. The county does regular brush clearing along roadways. As an alternative, visibility issues due to vegetation can be addressed by contacting the County Road Maintenance Division. The hearings officer finds that the roads serving the site are not a limiting factor.

However, the site is surrounded by rural residential development on smaller lots, most of which are developed with single-family residences. The homes on the properties to the east and west are located 200 feet or less from the boundaries of the site. As discussed below, the hearings officer finds that the location of the site is a limiting factor when considering the suitability of the proposed event venue.

Topography: The subject property has very modest slopes. The properties immediately adjacent are also modestly sloped. Topography is not an impediment to the proposed use.

Improvements: The subject property contains a dwelling that was built on the property in 1950. The applicants propose to reside in the residence and construct a new 90-foot by 50-foot or smaller building to be used for events.

The site is served by a shared well with limited capacity. (Exhibits 11 and 15). Based on the comments from the Oregon Water Resources Department (Exhibit 18) the applicants cannot use the well for commercial purposes, including irrigation of commercial landscaping, the proposed lawn area and Cypress trees. Therefore, the applicants propose to import water from a municipal provider, storing it in a proposed 3,000 gallon water tank east of the barn, to provide water for events and landscape irrigation. The applicants will not use well water for events and the proposed use will not impact groundwater levels in the area. If this application were approved a condition would be warranted prohibiting any new plumbing connections to the existing groundwater well. Water delivery trucks can access the site via the shared access drive and parking lot. The applicants have no right to utilize the offsite driveway east of the site.

The hearings officer has no jurisdiction to address assertions that the applicants current water use for irrigation and livestock exceeds scope of the private well agreement and/or state law limitations of for exempt wells. If necessary, the private well agreement can be enforced by the courts and the State Water Resources Department can enforce its regulations limiting use of exempt wells.

There is an existing single-lane gravel surfaced driveway on the west boundary of the site. This driveway also provides access to the property north of the site. The applicants propose to widen the driveway to accommodate two-way traffic and pave the portion of the road between SE Gunderson Road and the parking lot, which will eliminate dust and congestion issues. Vehicles maneuvering in the proposed gravel surfaced parking lot are unlikely to generate significant dust impacts as they will be traveling at much lower speeds. In addition, the proposed fencing and hedge will help keep any dust that is generated on the site, preventing it from reaching adjacent properties. The applicants propose to undertake all costs of maintaining the paved access drive.

The Fire District appears to assume that the applicants will rely on the existing driveway on the property east of the site for emergency access. (Exhibit 2 at 15). There is no evidence in the record that the applicants have any right to use the adjacent driveway. However, as the Fire District noted, the fire code official may modify access and other requirements for fully sprinklered buildings. In addition, the Fire District may approve use of the improved access drive on the west boundary of the site, which the applicants own and control. The hearings officer finds that it is feasible to comply with emergency access requirements.

The existing improvements on the site are not an impediment to the proposed use.

Natural Features: The subject property is partially treed and there are no mapped environmental features on the property (such as streams, steep slopes, landslide hazard areas, etc.). The applicants argue that the existing trees on the site will help screen and buffer events from surrounding properties. However, as shown in Exhibits 15a and 15c – 15f, the trees on the site have been trimmed to create an open area on the site, which limits the screening effect of these existing trees. However, the hearings officer finds that natural features are not an impediment to the proposed use.

Summary: The topographic, natural and developed characteristics of the property are suitable to accommodate the proposed use. The size, shape, and location of the site pose challenges to the suitability of the subject property for hosting events due to the impacts the event will have on the surrounding properties. As noted above, due to the size and shape of the site the event facilities will be located very close to abutting properties with little or no separation, which will increase the impact of event noise and activity on adjacent properties. The location of the site, in an area of smaller rural residential properties, further limits its suitability, as numerous homes are located in relatively close proximity to the site and will be affected by noise and other impacts.

This site is not comparable to the property at issue in casefile Z0444-21-C. (Exhibits 30a and 30d). Although that application involved a proposed event facility on a five-acre parcel, the applicants in that case also owned an abutting 46-acre parcel and they were in the process of acquiring additional property that would increase their contiguous ownership to 100 acres. (Exhibit 30d at 1). In addition, the property at issue in that case was located in the AG/F zone. Although there were two five-acre parcels to the north of the property at issue, the majority of the surrounding area was developed with vineyards, farms, forestland, and large lot residential uses. Buildings and topography buffered the event area on that property from the smaller abutting properties. Sound from the events was “[d]irected away from neighboring residences towards an area of timber and vineyard.” (Exhibit 30d at 22). In this case, the site is surrounded all sides by homes on smaller rural lots with event facilities proposed at or near the property lines where noise and activities are likely to impact adjacent properties.

When considering all of the characteristics of the subject property, the hearings officer finds that this criterion is not met due to the size, shape, and location of the property and the proximity of neighboring residences and yards.

This criterion is not met.

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

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

The hearings officer that the safety of the transportation system is adequate to serve the proposed use, based on the expert testimony of County transportation staff. Section 250.1.2(a) of the Clackamas County Roadway Standards (the “Roadway Standards”) provides “The design speed for all roads shall be determined by Engineering.” In this case Engineering determined that the design speed for the section SE Gunderson Road is 35 mph. (Exhibit 1 at 17). SE Gunderson Road is a very low volume local road. Therefore, based on the design speed and designation of this roadway, Table 2-9 of the Roadway Standards requires a minimum of 205 feet of sight distance at the intersection of the site access and SE Gunderson Road. Engineering staff also determined that adequate sight distance is available at the intersection of SE Gunderson Road and SE 362nd Avenue. (Exhibit 1 at 10 and 18). Neighbors testimony and video (Exhibit 26a) to

the contrary is not sufficient to overcome the expert testimony of County engineering staff.

There is no dispute that SE Gunderson Road is not improved to current county standards. The pavement is narrow with no shoulders or striping. However, this is not an unusual situation for local roads in the rural areas of the county. There is no evidence that these conditions create a hazard. The fact that SE Gunderson Road is a dead end road does not make it inherently hazardous. Dead end streets are common in the region. This use will increase the number of people that will need to access this single exit in the event of a wildfire or similar emergency. However, emergency personnel will be able to direct traffic as necessary to facilitate evacuation if such an emergency occurred.

Neighbors testified that vehicles parked on SE Gunderson Road during past events on the site, narrowing the roadway and blocking traffic and delaying emergency vehicles during prior events on the site. With this application the applicants propose to provide sufficient parking on the site to accommodate the maximum number of guests and employees allowed. In addition, ZDO 806.02(K)(1) prohibits on-street parking on event days. The applicants propose to widen the access drive to accommodate two-way traffic and create a one-way loop through the parking lot. These improvements will allow guest vehicles to quickly enter the site and park, eliminating bottlenecks that caused traffic backups on SE Gunderson Road.

Neighbors expressed concerns with speeding traffic on SE Gunderson Road. However, this is an existing problem which the applicants 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.

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. Traffic generated by this use will not create a significant hazard for children walking to the bus stop as most events on the site will occur on weekends and during the summer months when school is not in session.

This criterion is met.

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

Finding: The applicants are correct that this criterion does not require that the use have no impacts at all. Any new use or development will alter the character of the area to some

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

Noise

The hearings officer finds that noise levels that exceed the limits in ZDO 806.02(J) will substantially limit, impair or preclude the use of surrounding properties allowed uses. This section prohibits average peak sound pressure levels in excess of 60 dBA measured off the subject property.

The applicants’ “acoustical study report” (Exhibit 30b) cited to the standard of section 6.05 of the Clackamas County Code (“CCC”) which limits noise to 60 dBA, measured “inside of a noise sensitive unit ... at, or within, three (3) feet of a closed window or closed door.” (CCC 6.05.050(C)). However, the hearings officer finds that this standard does not apply to the proposed event facility use. If the Board had intended to apply this Code standard they could have cited to it. Instead the Board chose to impose a different standard for event facilities, ZDO 806.02(J), which limits noise to 60 dBA “measured off the subject property.” The hearings officer interprets the phrase “measured off the subject property” as the boundary of adjacent properties.

The hearings officer finds that the applicants’ acoustical study is insufficient to demonstrate the feasibility of compliance with ZDO 806.02(J). The applicants’ acoustical engineer predicted noise levels at a location three feet outside of the dwellings on adjacent properties, a considerable distance away from property lines. In addition, the applicants’ analysis only considered noise from amplified music playing inside the proposed barn with all doors and windows closed. The proposed barn includes three sets of double doors opening onto the proposed “lawn/landscape area.” The analysis failed to consider noise impacts when the doors to the barn are opened to allow guests to enter and exit.

In addition, the analysis did not consider noise generated outside of the barn, including sounds of guests or employees talking loudly while organizing and directing members of the wedding party for photos, vocally celebrating, arguing, car radios playing, slamming car doors, etc. Neighbors noted that during prior events on the site, voices of guests on the site are clearly audible after the music ended. (Exhibit 17 at 2). As noted above, the proposed parking lot and “lawn and landscape” area abut the property to the east and are located within 20 feet of the property to the west. Sounds generated in these areas are likely to be audible on adjacent properties and loud sounds may exceed the maximum noise levels allowed by ZDO 806.02(J).

The applicants propose to install a six-foot solid board fence around the perimeter of the event facility and plant a hedge of Leland Cypress trees around the north and east perimeters of the parking lot. While these improvements may buffer noise to some extent, there is no evidence that

these measures are sufficient to ensure compliance with the Code. Therefore, the hearings officer finds that the applicants failed to demonstrate that the 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 RRF-5 zoning district.

Noise generated by vehicles entering or exiting the site is exempt from the noise standards of ZDO 806.02(J)(1). ZDO 806.02(J)(1)(a).

The fact that other commercial uses exist on SE Gunderson Road does not establish a commercial character for this area. As Staff noted, the auto repair/wrecking yard use located east of the site was not legally established and is currently subject to enforcement. The existing distillery is not open to the public and there is no evidence that it generates significant noise or other impacts beyond weekly deliveries.

Stormwater

The proposed use will not increase the rate or volume of stormwater runoff onto adjacent properties. The applicants will be required to collect stormwater runoff from all new impervious areas on the site, treat it as necessary, and discharge it at a rate and location that is consistent with existing conditions. The County will review stormwater runoff through its development permit review process to ensure that it complies with the Code.

Traffic

The hearings officer finds that traffic generated by the proposed use will not alter the character of the surrounding area in a manner that substantially limits, impairs or precludes the use of surrounding properties. As discussed above, adequate sight distance can be provided at the site access onto SE Gunderson Road and at the SE Gunderson Road/SE 362nd Drive intersection and traffic generated by the proposed use will not create a hazard.

Lighting

It is feasible to alter the existing outdoor lighting on the site to comply with ZDO 806.02(K) and ZDO 1005.04(A) and the proposed fencing will shield adjacent properties from the headlights of vehicles parking and maneuvering on the site.

Trespass and litter

The proposed facility will attract additional people to the area, which will increase the risk of trespass, litter, and similar impacts. However, there is no evidence that this will substantially impact the area. The proposed fencing will clearly identify the boundaries of the site and limit guests ability to access adjacent properties. If this application were approved the applicants would be required to provide sufficient restroom facilities (permanent or portable) to accommodate the maximum attendance allowed at individual events, eliminating the need for guests to access adjacent properties to relieve themselves. The fence will also prevent litter generated on the site from blowing onto adjacent properties. The applicants can be required to pick up litter on the site immediately after events to ensure compliance with the “appearance” standard of ZDO 806.02(O). The proposed use is unlikely to substantially increase the risk of trespass due to drivers turning around in neighbor’s driveways. Most drivers use GPS applications that direct them to the site. In addition, the applicants will post signs at the site access to clearly

identify the site, which will limit the potential for drivers getting lost and needing to turn around in other driveways.

Fire Hazard

The hearings officer finds that smoking on the site will not substantially increase the risk of fire in the area. Most activities will take place within the proposed barn structure, on the irrigated lawn area, or in the gravel surfaced parking lot. Smoking may increase the risk of fire due to the potential for improperly discarded cigarettes and matches. However, this risk already exists, as residents of this site and surrounding properties may choose to smoke. Although the proposed use will increase the number of potential smokers it will not otherwise substantially increase the risk of fire. In addition, it is in the applicants' best interest to prohibit smoking outside of designated areas on the site in order to prevent damage to the site.

Drugs and alcohol

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

Soil and water contamination

Compliance with the County's septic regulations will ensure that the use will not result in soil or groundwater contamination. There is an existing septic system and drainfield on the site and the County's Onsite Wastewater Program recently approved a Site Evaluation for a "future home addition" on the site, which could potentially be used to serve the proposed event facility. (See Exhibit 2 at 13). It is feasible for the applicants to apply for approval of a new septic system to serve the event facility and a condition of approval would be warranted if this application were approved.

Property values

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.

Residential uses

Neighbors testified that guests and/or employees reside in recreational vehicles on the site before, during, and after events. However, the applicants did not propose overnight lodging on the site and such uses are not permitted by the applicable approval criteria for home occupations to host events. If this application were approved, a condition of approval would be warranted prohibiting advertising or allowing overnight lodging associated with this use.

Open Burning

The County's open burning regulations, cited in Exhibit 33, are inapplicable as open burning is not proposed as part of this use. If this application were approved a condition of approval would be warranted prohibiting burning and requiring proper disposal of waste material generated by the use.

Prior violations

Allegations of past violations by the applicants (conducting unpermitted events) are not relevant to the applicable approval criteria for this application. The applicants' past behavior does not show that they cannot or will not operate the use in a manner that complies with the ZDO. If the applicants sustain the burden of proof that the application complies with the approval standards, or if it can comply provided certain conditions are imposed, the hearings officer must as a matter of law approve the application subject to those conditions, ORS 197.522(4).

If the application is approved, the hearings officer would impose conditions of approval requiring ongoing compliance with all applicable approval criteria. It would be in the applicants' best interest to comply with those conditions as failure to do so can be a basis for enforcement, including 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 applicants fail to comply with the conditions of approval, i.e., by exceeding the hours of operation, guest limits, maximum noise levels, or otherwise expanding or changing the use, the planning director may initiate proceedings to revoke the permit. But the hearings officer cannot assume that the applicants will not comply and deny the application on that basis.

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

This criterion is not met.

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

Finding: The applicants did not directly address the Comprehensive Plan in a detailed manner, though through the submitted narrative touches on a few points. The subject property is designated Rural on the Comprehensive Plan map. The Rural Section in Chapter 4 of the Comprehensive Plan implements this designation. The RRFF-5 zoning district implements the goals and policies of the Rural plan designation. The applicants briefly touched indirectly on these and other potentially applicable portions of the Plan. The hearings officer finds that there is sufficient information in the record to find that applicable Plan policies are met with this proposal.

This criterion is met.

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

Finding: As noted above, the proposed home occupation event facility is allowed as a conditional use in the RRF-5 zone, subject to the criteria in ZDO 806, which are addressed below. Applicable section 1000 Development Standards are also addressed below.

This criterion is met.

2. ZDO SECTION 1000 DEVELOPMENT STANDARDS

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

ZDO 806.02(I) provides:

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

ZDO 806.02(K) provides:

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

ZDO 1203.03(C) provides:

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

a. 1005.04 OUTDOOR LIGHTING

A. *Outdoor lighting devices:*

1. *Shall be architecturally integrated with the character of the associated structures, site design, and landscape.*
2. *Shall not direct light skyward.*
3. *Shall direct downward and shield light; or direct light specifically toward walls, landscape elements, or other similar features, so that light is directed within the boundaries of the subject property;*

4. *Shall be suitable for the use they serve (e.g. bollard lights along walkways, pole mounted lights for parking lots);*
5. *Shall be compatible with the scale and intensity of uses they are serving. The height of pole-mounted fixtures shall not exceed 25 feet or the height of the tallest structure onsite, whichever is less; and*
6. *At entrances, shall be glare-free. Entrance lighting may not exceed a height of 12 feet and must be directed downward.*

Finding: Based on the photos and videos in the record (Exhibits 15b and 15e) the existing lighting on the site may not comply with these criteria. The applicants have installed strings of bare light bulbs between poles around the perimeter of the event area. These lights are not aimed or shielded to direct light downwards or towards walls, landscape elements, or other similar features and to prevent the light from being directed skyward. The “laser lights” visible in Exhibit 15b do not comply with the Code. However, the hearings officer finds that it is feasible to modify the existing lighting to comply. Much of the existing outdoor lighting can be moved inside the proposed barn where it will be shielded from offsite view. Outdoor lighting can be directed and shielded as necessary to meet applicable Code requirements/

The lighting standards of Section 1005.04(A) can be met with conditions.

b. **1007.07 TRANSPORTATION FACILITIES CONCURRENCY**

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

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

...

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

...

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

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

c. 1010 SIGNS

Finding: Pursuant to Section 806.02(M), any signage associated with the Home Occupation to Host Events is subject to the applicable standards of Section 1010. The hearings officer finds that it is feasible to comply with these requirements.

This criterion can be met with conditions.

d. 1015 PARKING AND LOADING

i. 1015.01 GENERAL STANDARDS

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

Table 1015-1 does not impose maximum parking limits on Home Occupation to Host Events. Therefore, ZDO 1015.01(C) is inapplicable.

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

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

This criterion can be met with conditions.

iii. 1015.02 MOTOR VEHICLE PARKING AREA STANDARDS

Findings: Based on the applicants' site plan (Exhibit 27 at 3) the proposed existing parking areas appear to meet the standards of ZDO 1015.02(A). Vehicle parking is located in a clearly defined area of the site, north of the barn and event space. ZDO 1015.02(A)(1). All parking spaces meet or exceed the dimensional requirements of the Code. ZDO 1015.02(A)(2). More than 25% of the parking spaces no larger than 8.5 feet wide and 16 feet long. ZDO 1015.02(A)(3). It is feasible to comply with the minimum dimensions for curb length, stall depth, and aisle width established by the Clackamas County Roadway Standards. ZDO 1015.02(A)(4). The central parking spaces are double loaded. If this application were approved the applicants would be required to demonstrate that it is not possible to utilize 90-degree angle parking bays or modify the parking lot design to provide 90-degree angle parking. ZDO 1015.02(A)(b).

ZDO Table 1015-1 requires a minimum one parking space per three guests and one additional parking space for each employee for the proposed Home Occupation to Host Events facility. There is no parking maximum for this type of use. The applicants propose to allow up to 125 guests per event and up to five employees. Therefore, a minimum 47 parking space are required. The applicants propose to provide 48 parking spaces. (Exhibit 27 at 3).

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

This criterion can be met with conditions.

iv. 1021 SOLID WASTE AND RECYCLABLE MATERIAL COLLECTION

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

This criterion is inapplicable.

3. ZDO SECTION 806 HOME OCCUPATIONS TO HOST EVENTS

a. 806.02 STANDARDS

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

Finding: A dwelling was lawfully established on the property in 1991, with permit number MH036891. This dwelling includes three bedrooms and is slightly less than 1,150 square feet in area. The Mayra Maldonado, the proposed home occupation operator, does not currently reside on the site. Her niece, Sandra, lives on the site with her husband and three children. (Exhibit 1 at 21). However, the applicants propose to move in to the dwelling on the site if this application is approved. A condition of approval would be warranted if the application were approved.

This criterion can be met with conditions.

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

Finding: The definition of “Employee” under Section 806.01(A) is “Any on-site person, whether they work full-time or part-time in the home occupation business, including, but not limited to, the operator, partners, assistants, and any other persons or family members participating in the operation of the business. Except in the EFU, TBR, and AG/F Districts, this definition does not apply to persons employed by contract to provide services for a single event, such as caterers, photographers, and florists.” The applicants propose to have no more than five (5) employees, which is within the permissible number of employees allowed for a home occupation. A condition would be warranted to ensure ongoing compliance with this standard.

This criterion can be met with conditions.

C. *Type of Buildings: Notwithstanding the definition of home occupation in Section 202, Definitions, in the AG/F, EFU, and TBR Districts, the home occupation shall be operated substantially*

in the operator's dwelling or other buildings normally associated with uses permitted in the applicable zoning district.

Finding: The site is within the RRFF-5 district. The events will not take place within the operator's dwelling. Events will occur within a proposed 3,000- to 4,500-square foot barn. (Exhibit 27 at 3). As noted in the Staff Report, farm uses are a primary use in the RRFF-5 district. On a property that is in farm use, an accessory building built to store farm equipment and farm crops, for example, is typical. It is normal to see these farm-related accessory buildings built with permanent restrooms as well. However, a 4,500 square foot building may be much larger than necessary to house equipment needed to farm a five acre parcel of land. Shops, storage buildings, and similar accessory residential structures are also permitted in the RRFF-5 zone. The applicants submitted evidence of existing barns, shops, and similar accessory buildings on properties surrounding the site. (See Exhibit 30c). However, there is no evidence demonstrating that a 4,500 square foot building is "normally associated with" uses common on five-acre parcels in the RRFF-5 zone. The applicants submitted an aerial photo showing several accessory structures in the area ranging between 2,500-4,000 square feet in size. (Exhibits 30 and 30c). However, it appears that the largest accessory structure is located in the EFU zone south of SE Gunderson Road. (Exhibit 30c). There is no evidence specifying the size of existing accessory structures in the surrounding RRFF-5 zone beyond the range of sizes noted in (Exhibit 30).

The applicants offered to reduce the size of the proposed barn to 3,000 square feet to be consistent with existing accessory structures in the area. (Exhibit 27). The hearings officer finds that a 3,000 square feet structure may be consistent with the size of existing accessory structures in the area. The design of the proposed building is also similar to other buildings normally associated with uses permitted in the RRFF-5 zoning district. The interior will have two restrooms and a small, enclosed office, with the remainder of the floor area open and available for event uses or for storage of farm equipment and materials or other accessory residential uses. (Exhibit 2b at 5). The exterior of the building, with vertical siding, a pitched roof, windows and barn-style doors, is also consistent with existing barns and accessory buildings in the area. (Exhibit 2b at 6).

If this application were approved, the applicants would be required to demonstrate that a 3,000 square foot accessory structure is consistent with other buildings normally associated with uses permitted in the RRFF-5 zone, obtain a building permit for the proposed barn, and demonstrate compliance with applicable criteria for public occupancy, including fire code requirements. (See Exhibit 2 at 14-16).

This criterion is met.

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

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

2. *In a zoning district other than AG/F, EFU, and TBR, one temporary tent is permitted, and additional temporary tents may be permitted if consistent with Subsection 1203.03.*
3. *Temporary tents may be placed on the subject property no more than 24 hours before the event and must be removed no more than 24 hours after the event.*

Finding: No tents are proposed with this application.

This criterion is inapplicable.

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

Finding: The site is within the RRF-5 district where dwellings are allowed as a primary use. Compliance with ZDO 1203.03(D) is addressed in the findings above.

This criterion is inapplicable.

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

Finding: The applicants propose to comply with these hours of operation. A condition of approval would be warranted if the application were approved.

This criterion can be met with conditions.

- G. *A maximum of two events shall be allowed per day, and no more than one event shall occur at any one time. During the months of November through March, no more than five events shall be allowed per week. During the months of April through October, no more than seven events shall be allowed per week.*

Finding: The applicants propose to host no more than one event per day, no more than five events per week, and a maximum total of 52-events per year. A condition of approval would be warranted if the application were approved.

This criterion can be met with conditions.

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

Finding: The applicants are proposing to host events with a maximum of 125 guests, per event, which is less than the maximum number of guests allowed by this subsection. The potential impacts of the events such as noise, parking, and the traffic were evaluated based on the applicants' proposal that there will be up to 125 event attendees at one time. This criterion is met as proposed and a condition would be warranted to limit the size of events.

This criterion can be met with conditions.

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

Finding: The lighting standards of Subsection 1005.04(A) are addressed above. As discussed above, it is feasible to modify the existing lighting on the site to comply with this criterion.

This criterion can be met with conditions.

- J. *Noise shall be regulated as follows:*

1. *From 7:00 a.m. until 10:00 p.m. on Friday and Saturday and until 9:00 p.m. on all other days of the week, the average peak sound pressure level, when measured off the site, of noise created by the home occupation shall not exceed the greater of 60 dBA or the ambient noise level. During all other hours, the average peak sound pressure level, when measured off the site, of noise created by the home occupation shall not exceed the greater of 50 dBA or the ambient noise level.*
 - a. *Noise generated by vehicles entering or exiting the site, but not by idling vehicles, shall be exempt from Subsection 806.02(J)(1).*
 - b. *Subsection 806.02(J)(1) shall not apply to noise detectable on public rights-of-way and railroad rights-of-way.*
2. *A noise study may be required to demonstrate compliance with Subsection 806.02(J)(1). If a noise study is required, measurements shall be made with a sound level meter. The sound level meter shall be an instrument in good operating condition, meeting the requirements of a Type I or Type II meter, as specified in ANSI Standard 1.4-1971. The sound level meter shall contain at least an A-weighted scale, and both fast and slow meter response capability. Personnel making measurements shall have completed training in the use of the sound level meter, and measurement procedures consistent with that training shall be followed.*

Finding: As discussed above, the applicants failed demonstrate that it is feasible to comply with the noise limits of the Code. The applicants' acoustical analysis did not review noise impacts at the boundaries of adjacent properties, increased noise levels when the doors of the barn are opened to allow persons to enter and exit, and noise generated outside of the proposed barn structure.

This criterion is not met.

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

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

Finding: Neighbors testified about vehicles parked on SE Gunderson Road during prior events on the site. However, the proposed parking lot can provide sufficient on-site parking to accommodate the largest events proposed (maximum 125 guests and five employees). There is no need for guests or employees to park on the street. The proposed parking lot, with clearly marked parking stalls, will ensure adequate parking is available on the site. A condition of approval would be warranted to prohibit on-street parking.

This criterion can be met with conditions.

2. *An alternative to the parking area surface required pursuant to Subsection 1015.01(B) may be approved based on the following criteria:*

a. *It is appropriate considering season, duration, and intensity of use.*

b. *It shall be surfaced with hardy grasses, wood chips, or other similar organic materials sufficient to adequately stabilize the ground surface for parking.*

c. *In order to minimize tracking of soil onto the roadway, a driveway surfaced with screened gravel or better must extend a minimum of 200 feet in length from the interior edge of the roadway that provides access to the site. A traffic management plan must direct all vehicular traffic along the required driveway prior to such traffic entering the roadway.*

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

These criteria are inapplicable.

L. *Portable restroom facilities shall:*

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

Finding: The applicants propose to use portable restroom facilities in addition to two permanent restrooms in the proposed barn. The applicants did not propose a location for portable restrooms. However, there is room on the site to place portable restrooms in compliance with the screening and setback requirements of ZDO 806.02(L)(3) and (4). In addition, a condition of approval would be warranted requiring the applicants to provide sufficient restroom facilities (permanent or portable) to accommodate the maximum attendance allowed at individual events as determined by the County or ODEQ. Conditions of approval would be warranted to ensure compliance with the requirements of this section.

This criterion can be met with conditions.

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

Finding: The applicants propose a single 30- x 30-inch temporary sign located at the site entrance to SE Gunderson Road on event days. The proposed temporary sign complies with this criterion. The applicants also propose three 12-inch by 36-inch on-site “wayfinding signs” to direct traffic to and through the parking area. These incidental signs comply with Subsection 1010.02. No permanent signs are proposed. As proposed this criterion is met, but conditions would be warranted to ensure ongoing compliance.

This criterion can be met with conditions.

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

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

This criterion can be met with conditions.

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

Finding: The applicants state that they will comply with this criterion. With the proposed fence and hedge the event area will not be visible from public rights of way or surrounding properties. The proposed barn will be visible, but the design and style of the building does not give the appearance of a commercial use. The building is similar to other accessory structures in the area. The applicants would be required to collect litter and debris from events to ensure compliance this standard. This criterion can be met with a condition of approval.

4. **ZDO SECTION 316 RRF-5 DISTRICT**

- a. **316.02 Uses Permitted.** Table 316-1 lists “Home Occupation to Host Events, subject to Section 806” as a conditional use.

Finding: As established in Table 316-1, a Home Occupation to Host Events is a Conditional Use and is subject to Section 806. The applicants have applied for a conditional use permit. Shops, storage buildings, and similar accessory structures are also permitted subject to building permit approval.

This criterion is met.

- b. **316.03 Dimensional Standards.** Table 316-2 establishes dimensional standards in the RRF-5 district. Buildings must be a minimum of:
 - i. 30 feet from the front (south) property line which runs along S. Gunderson Road
 - ii. Ten feet from the side property lines (east and west)
 - iii. Ten feet from the rear property line (north) for accessory structures

Finding: The proposed accessory building is subject to the minimum setback standards in the RRF-5 district. The applicants’ site plan demonstrates that it is feasible to comply with these standards. The County can ensure such compliance through the building permit review process.

This criterion can be met with conditions.

D. CONCLUSION

Based on the findings and discussion provided or incorporated herein, the hearings officer finds that the applicants failed to bear the burden of proof that the proposed use can comply with the applicable approval criteria. Therefore, the hearings officer must deny the application, Case No. Z0148-23-C (Pina/Maldonado).

E. DECISION

Based on the findings, discussion and conclusions provided or incorporated herein and the public record in this case, the hearings officer hereby denies Case No. Z0148-23-C (Pina/Maldonado).

DATED this 15th day of February 2024.



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

APPEAL RIGHTS

ZDO 1307.14(D)(6) provides that, with the exception of an application for an Interpretation, the Land Use Hearings Officer's decision constitutes the County's final decision for purposes of any appeal to the Land Use Board of Appeals (LUBA). State law and associated administrative rules promulgated by LUBA prescribe the period within which any appeal must be filed and the manner in which such an appeal must be commenced. Presently, ORS 197.830(9) requires that any appeal to LUBA "shall be filed not later than 21 days after the date the decision sought to be reviewed becomes final." This decision will be "final" for purposes of a LUBA appeal as of the date of mailing (which date appears on the last page herein).