

BEFORE THE LAND USE HEARINGS OFFICER
CLACKAMAS COUNTY, OREGON

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

Case File No: Z0256-22-C
(Warriner Event Hosting)
Reissued Final Order¹

A. SUMMARY

1. The Applicants are Chelsey and Dale Warriner, referred to as the “Applicants” or as the “Warriners.” The Applicants own an approximately 40 acre square-shaped parcel located at 20188 S Butte Rd., Beavercreek, OR 97004, in Clackamas County, also known as T4S R3E Section 09 Tax Lot 1501. The Property is within the Agricultural/Forest (AG/F) zoning district, with a Comprehensive Plan designation of Farm/Forest, and is in a remote location between the small town of Beavercreek and Colton. The Property is improved with a single-family residential structure (dwelling), and an existing barn and shop.
2. The Applicants seek approval of a Conditional Use Permit for a Home Occupation to Host Events in the Agricultural/Forest (AG/F) zoning district. Applicants anticipate a maximum of 24 events per calendar year and a maximum of 100 guests per event, with a maximum of one event per day and a maximum of five events per week. The events are proposed to take place in an area of the Property near Cedar Creek (which crosses the Property) and a man-made lake located on the Property, previously used by the Oregon Fishing Club. The Applicants describe their Property as being “located in rural Clackamas County in a remote setting surrounded by Christmas tree properties and timber property and a few home sites.”
3. The proposed events will not take place within the existing barn and shop structures on the Property. Rather, the Applicants propose to build two new structures: a partially enclosed barn with a gravel floor that is not currently built, and a garden shed (“potting shed”) that is also not currently built. The potting shed will contain two bathrooms that open to interior common areas within the structure. A gravel parking area to accommodate 39 vehicles is also proposed.
4. County staff reviewed the applicant and initially submitted a staff report to the Hearings Officer recommending denial, largely due to a lack of supporting information in the application. The Applicants responded to the staff report by submitting additional materials supplementing their application and by requesting a continuance of the hearing in the matter to allow time for staff to review these additional materials. County staff reviewed the supplemental materials and submitted a memo to the Hearings Officer recommending approval of the application, with a number of conditions of approval. The Applicants do not dispute these proposed conditions of approval.
5. On October 12, 2022, Hearings Officer Carl Cox (the “Hearings Officer”) conducted a public hearing to receive testimony and evidence in support and in opposition to the Applicants’ proposal.

¹ This Final Order is reissued due to a clerical error in mailing notice of this decision as required by ZDO 1307.11(E).

B. APPLICATION

1. The Applicants originally submitted their application on May 23, 2022. On June 10, 2022 this application was deemed incomplete by County staff for several reasons, including a lack of details concerning the “barn area” shown on the site plan, and a lack of responses to ZDO Section 806 required criteria and standards. On July 13, 2022 and July 25, 2022 the Applicants submitted additional materials to clarify their application, and the application was deemed complete by County staff on July 27, 2022. On August 17, 2022, the County mailed notice of a scheduled September 22, 2022 public hearing on the application, providing the notice to interested agencies, Community Planning Organization(s) and owners of property within 2,640 feet of the subject Property.
2. In their completed application (as supplemented in July), the Applicants provided additional responses to the ZDO Section 806 required criteria and standards, providing responsive statements to the listed criteria, and this statement concerning their proposal’s impact on surrounding properties, noise and traffic and buildings:
“The characteristics of the property with its large size, remote location and hidden topography with heavy wooded separation make it ideal for an event area with little if any impact on the surrounding properties. The proposed use will not impair any surrounding properties’ primary zoning use.”
3. With respect to noise, Applicants point to the location of their proposed event area sitting lower in elevation and surrounded by heavy groves of thick trees that act as a noise buffer to surrounding properties. Applicants also point to the relatively small size (maximum of 100 guests) of their events, asserting that such smaller events will have less noise. With respect to traffic and roads, Applicants reference their pre-application meeting with County staff, with County staff indicating that the transportation system is more than adequate. Applicants also reference discussion of improving the driveway entrance to their Property by straightening and paving the entrance and maintaining a safe vision clearance, pointing to their proposal including these improvements.
4. The Applicants provided a site plan and rough sketches of their proposed new “barn” and proposed new garden shed or “Potting Shed” depicting a 28 foot by 20 foot two-story structure with a second story open loft, showing a storage room for Peonie and Dahlia tubers, providing for a changing room area for events, and showing four separate bathroom areas on the ground floor opening to the outside, with no explanation concerning how such a structure is normally associated with properties within the AG/F zoning district. Applicants also included a sketch of their proposed partially enclosed barn that depicted a 72 foot by 38 foot rectangle, with no details. In the supplemental materials submitted July 13, 2022, Applicants described their newly proposed “barn” as a 60 foot by 72 foot structure orf which less than 33% maximum would be enclosed, stating that: “The purpose of the building will be a ‘gathering area’ for food and shelter and general gathering with an enclosed area for bathrooms and changing rooms.” The Applicants assert that the proposed building would or could also serve as an AG/F building during non-events or for the future.
5. Kenneth Kent, Senior Planner with Clackamas County Development Engineering, reviewed the application and submitted a September 8, 2022 memorandum with comments, an analysis

of the current transportation infrastructure, and analysis of the impact of the proposal to the existing infrastructure. In this memorandum, Mr. Kent reported that S. Butte Road is a rural collector roadway with an improved width of approximately 20 feet, located within a 40-50 foot wide public right-of-way. Mr. Kent stated: "It is recognized that events such as weddings generate a larger number of vehicles on the day of an event, but over the course of an entire year, the total number of vehicle trips is approximately equal to vehicle trips generated by two single family homes. Based on this, the existing right-of-way and roadway are adequate to support the proposed event use."

6. In his September 8, 2022 memorandum, Mr. Kent noted that the proposed event site is served by a gravel driveway that extends approximately 500 feet from S Butte Road to the proposed barn and event area. Mr. Kent also noted that the Property has a driveway approximately 300 feet to the east that provides access to the existing single family residence on the Property. Mr. Kent described the existing driveway approach as not meeting minimum driveway access standards, referencing requirements for a paved driveway approach and a 90 degree intersection angle. Mr. Kent further noted, however, that the Applicants' preliminary plans propose realignment of the driveway with a paved approach consistent with County standards. Mr. Kent concluded that sight distances appear feasible at the proposed driveway with vegetation clearing within the right-of-way. Mr. Kent concluded that the proposed development is served by a transportation system that has adequate capacity to handle the anticipated increased vehicle trips. Mr. Kent further concluded that, with several recommended conditions of approval, adequate circulation and parking can be provided. These recommended conditions of approval were included in Ms. Lord's September 14, 2022 staff report. Exhibit 5
7. The County submitted a staff report of its review of this proposal and initially recommended denial of the application, asserting that the Applicants failed to demonstrate compliance with the requirements of several Zoning and Development Ordinances (ZDO), including: Section 1005.04(A) – Outdoor Lighting; Section 1021 – Solid Waste and Recyclable Material Collection; Section 406.05(A)(1) – (requirements that: "(1) the proposed use will not force a significant change in, or significantly increase the cost of, accepted farming or forest practices on agriculture or forest lands, and (2) the proposed use will not significantly increase the fire hazard or significantly increase fire suppression costs or significantly increase fire suppression personnel."); and, Sections 406.08(A)/407.07 Development standards and fuel free break standards. The County provided a copy of this staff report to the Applicants and posted it to the County's website of exhibits and related materials publicly available concerning this application.
8. In their initial review of this proposal and staff report recommending denial, staff further asserted that the submitted application materials had only limited information demonstrating compliance with many subsections of Section 806. Staff point to ZDO 806.02(C) requirements that the proposed home occupation be operated substantially in the operator's dwelling or other buildings normally associated with uses in the permitted in the applicable zoning district.

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C. PRE-HEARING PUBLIC COMMENTS

1. The County received several written comments in advance of the public hearing in this matter, from various agencies, neighbors of the Applicants, and members of the public, including from the Clarkes-Highland CPO (Community Planning Organization).
2. Pam Pollock sent a September 12, 2022 email to Ms. Lord that stated a file with written comments was attached. However, Ms. Lord was unable to access the file and sent a September 19, 2022 email to Ms. Pollock asking for her to resend the comments in a different file type. (Exhibit 6)
3. The County received written comments from Tenille Beseda, Sustainability Analyst with ClackCo Sustainability, neither supporting nor opposing the application. In her comments, Ms. Beseda noted that her agency does not normally comment on home occupations, and weren't requiring Applicants provide a trash enclosure unless they intend to have regular container service for garbage/recycling, but encouraged Applicants to consider how they would handle their garbage before/after events. (Exhibit 7)
4. On September 15, 2022, Sandi Peloguin, a resident of the Beaver Creek Community, submitted written comments in opposition to the Applicants' proposal. Sandi Peloguin stated they have lived in this community for 30 years, describing it as a quiet rural AG/Forest/Farm section in the Beaver Creek Hamlet. They assert this is not an area to host events, pointing to a lack of verification concerning limiting the exact guest numbers for events, and contend that parties on the Applicants' Property would not be ideal. Further, they point to families with children who play in the area, pedestrians and bicyclists, and animals using these rural roads and assert that the extra traffic will bring unpleasant congestion and other issues. In addition, they reference the need to protect against fires in the area, pointing to a recent almost two day period when their power was turned off to help protect against fires. They further assert that given that water is a precious commodity in the area, people who are not local residents should not share their water. (Exhibit 8)
5. On September 19, 2022, the County received a letter from Gary Blackburn in opposition to the proposal. Mr. Blackburn provided several reasons for opposing the Applicants' event hosting proposal, including pointing to the "barn" in the proposal as having nothing to do with (AG/F) properties. Mr. Blackburn further points to the Applicants' proposal for a grass and wood chip parking lot as "a recipe for a fire" pointing to hot catalytic converters in cars parked on these materials causing fires, as well as cigarettes on such materials. Mr. Blackburn also contends that the Applicants' event hosting proposal should be denied for the potential to cause obnoxious noise, such as from loud speakers, and should further be denied due to potential for causing congestion and trash on the public road. Mr. Blackburn describes the majority of people in the area as not in support of the proposal. (Exhibit 9)
6. The County received a September 19, 2022 letter from the Clarkes-Highland Community Planning Organization, which is also the CPO for the community of Beaver Creek where the subject Property is located. In this letter, the Clarkes-Highland CPO expresses concerns over the potential impact on the neighbors and surrounding area of the proposed condition use permit to host events on the Applicants' Property. Specifically, the letter reports that the CPO

help a meeting on September 7, 2022 at which residents of the area brought their concerns, and members of the CPO voted overwhelmingly to ask that the County address these concerns before approving this application. Those concerns include: the level of noise, referencing music provided for events and the general revelry that happens at weddings; traffic generated by the events, particularly if involving alcohol; the size of the parking area, the potential need for overflow parking, and the proposal's description of the use of grass and bark chips, particularly with fire hazards. The CPO noted it would be prudent to use gravel to minimize fire risk. The CPO's letter also referenced other concerns of residents, including: potential impacts on water quality in Cedar Creek, which flows through the Property; emergency ingress/egress to the Property, describing S Butte Road as relatively narrow with a sharp, 90-degree curve just west of the Property. (Exhibit 11)

7. Rachel Gehrett is a neighbor of the Applicants (the Applicants describe Ms. Gehrett's property as the closest to their site). On September 21, 2022, the County received a letter of support for the Applicants' proposal from Ms. Gehrett stating that, in her opinion, the proposed events would have no negative impact on the community. Ms. Gehrett noted that the proposed event location "is in a low spot, so noise won't travel. It's in a spot that's so far away from anyone's house that I can't imagine anyone even noticing it." (Exhibit 12)

D. PUBLIC HEARING, ADDITIONAL SUBMISSIONS, AND RECORD HIGHLIGHTS

1. On September 19, 2022, the Applicants submitted Additional and Amended Application Materials (dated September 18, 2022).
2. On September 19, 2022, the Applicants supplemented their application with an Addendum that included a "Narrative for Home Occupation to host events" that provided additional responses concerning proposed lighting (lighting in proposed barn, solar powered walkway lights, all ambient down lighting with warm hue). The additional narrative described 2 -4 plumbed toilets (if permitted by County) or portable toilets meeting requirements. The September 19, 2022 supplemental narrative asserted that the proposed "Partially enclosed Barn" is permissible in the AG/F zone as a roughly 4300 square foot covered structure for farm equipment "normally associated with uses permitted in the AG/F zone" per ZDO 806.02.C *Type of Buildings*, with the below photograph as an example of their intended new building:



3. The Applicants' September 19, 2022 supplemental narrative provided additional statements concerning how the proposed use will not significantly affect area farming or forest practices on agricultural or forest lands, stating that the Applicants will not hold events on their Property during the months of November and December due to unfavorable weather for such events, and thus would not expect to conflict with Christmas tree harvesting traffic and activities that occur in the area primarily during those months. This narrative also included further description of proposed use of portable restrooms, and described signage for the event hosting home occupation (a sign less than eight square feet posted only for the day of the event). The narrative also described how the Applicants proposed to meet fire siting standards, describing a primary fuel-free break safety zone surrounding the building envelope and extending a minimum of 30 feet, with vegetation in this safety zone limited to green grass and shrubs less than 24 inches (no trees), keeping the area free of any flammable materials. Applicants stated that their own newly built dwelling is subject to these same Fire Siting Standards, and they are familiar with the requirements set forth in Section 806.08(A).
4. The evening before the September 22, 2022 hearing, the Applicants submitted a number of Additional Submitted Application Materials, including a Revised Site Plan and Site Photos, making further changes to their application (Exhibits 13, 14). At the hearing, the Applicants requested that the hearing be continued to October 12, 2022 to provide County staff an opportunity to review the additional submitted materials and supplement the September 14, 2022 Staff Report, and also requested that the timeline in this matter be tolled for an additional 20 day period. The Hearings Officer continued the hearing to October 12, 2022 at 1:00 pm as requested. (Exhibits 10, 13, 14)
5. The Applicants further supplemented their application on September 22, 2022 with a Revised Site Plan and site photos. Among other things, these materials provided additional "Potting Shed Details" showing a basic sketch of an approximately 600 square foot structure with a loft, and a row of four bathrooms along the back of the structure opening only to the outside. The Applicants also submitted photos showing the proposal site showing the pond or man-made lake, and the groves of trees they referenced. (Exhibits 13, 14)
6. On October 5, 2022, the Applicants submitted Revised Application Materials that included a new Narrative and Site Plan. These materials provided additional descriptions of signs proposed for use (day of event, less than eight square feet, physically attached and removable from location at event entrance driveway on Property, but visible from S Butte road). These materials also provided additional descriptions of solid waste handling, stating that all solid waste and recycling will be picked up by the local waste management company, from approved containers stored in a screened location, with additional details. The October 5, 2022 materials included further elaboration of the Applicants' assertions that their proposal will not significantly impact primary uses in the zone, nor increase fire suppression cost or create increased risks of fire, noting in particular that the parking areas will be improved with gravel (not hardy grass and wood chips as originally described), and the entrance ingress/egress will be widened to 20 feet with a paved entrance. Applicants also point to the existence of the lake on their Property, noting it will become more accessible and available for pumping water into tenders for use in fighting fires in the community. A site plan submitted by the Applicants shows locations for portable restrooms, parking, "open barn" and event

area, safety zones and access road, the proposed signage location, parking area, potting shed, and the locations of a pond, man-made lake, existing dwelling, shop, and barn, and other things on their Property.

7. With respect to other impacts, the Applicants' October 5, 2022 Revised Application Materials referred to the review by County Engineering finding the proposal's anticipated traffic impact acceptable, while also asserting that the bulk of their proposed events will take place in the summer, with the area having light traffic and light farming activity, and no events in November or December when there is a local increase in traffic associated with Christmas tree harvesting. The Applicants' October 5, 2022 Revised Application Materials also referenced a preliminary noise level study (dB test) that was performed on September 1, 2022. The Applicants refer to their earlier description of the location and topography, as well as the stands of trees, reporting that the noise study verified that the location greatly reduced noise pollution as they predicted. The Applicants reported that the sample test had a source noise level of 85 decibels (very loud) and a total of nine testing locations, with 6 of them outside the perimeter of the Property, resulting in 4 of 6 locations reporting no audible sound. The Applicants reported that only the 2 locations near the driveway measured any audible sound, in the 43-47 dB range, pointing out this is well below the 60 dB County threshold standard. They provided a schematic or site plan showing their testing locations and results.
8. The Applicants' October 5, 2022 Revised Application Materials also provided detail concerning outdoor lighting for the proposed events, noted that the proposed parking lot will have a paved ADA accessible parking space (providing detail), and additional description of the proposed new buildings. The Applicants' again assert their proposed "open barn building" will be of a type normally associated with uses permitted in the AG/F zone, noting that during non-events the structure will be used for sheltering farm equipment, storage of hay and/or other such uses. During events the open barn will have tables, chairs, food, and beverages, creating a gathering place. Applicants state that the NE portion of the barn will be enclosed to create a more defined space, and the proposed potting shed will also serve as a guest changing room during events.
9. County staff reviewed the additional materials submitted by the Applications with respect to their proposal, and submitted an October 6, 2022 Staff Memo to the Hearings Officer with revisions to their initial staff report and recommendations. Of note, the Memo amends the original recommendation of denial of the Conditional Use Home Occupation to Host Events permit to a recommendation of approval with conditions based upon additional recommended findings amending the original staff report in areas originally found deficient or lacking information.
10. On October 10, 2022, Kathy and John Gates, on behalf of various concerned neighbors, submitted a written public comment (dated October 7, 2022) in opposition to the Applicants' proposal. In their letter, the Gates describe themselves as the residents most directly impacted by the land use proposal to host up to 24 events per year with up to 100 guests per event. The Gates express concerns with safety, fire danger, pollution, and road maintenance. With respect to safety, the Gates point to lack of access to local responders, reporting that the average response time for local responders is about thirty minutes, often requiring the use of Life Flight for emergencies. Further, the Gates contend that approving an event hosting venue

for up to 100 non-residents will increase the potential for property crimes within their small, rural community.

11. In their October 2022 letter, Kathy and John Gates referenced the increase in fire dangers their community has experienced in the past couple years, expressing their concerns about having so many non-residents unfamiliar with or not appreciative of the precautions necessary to prevent wildfires in their area. With respect to pollution, the Gates point to both potential noise and environmental issues. The Gates state that they chose their rural community for the peace and quiet it affords, contending that with 24 such events and assuming most will occur over the summer months, their weekends will be disrupted by increased traffic sounds and noise pollution, essentially asserting approval of the proposal would result in noise from traffic and events that would unreasonably infringe on the enjoyment of their own property, and would increase traffic, changing the low traffic levels they currently enjoy.
12. In their October 2022 letter, Kathy and John Gates assert that bringing non-residents to their community will increase the potential for litter, a significant concern, questioning whether there is a plan to mitigate such potential environmental pollution. The Gates further report that Butte Road is minimally maintained by the County, describing it as a narrow two-lane road with poor visibility and no streetlights. They contend that the increased traffic resulting from approval of the application will cause more damage to the road and increase the potential for car accidents and, potentially, property damage, asking whether there are associated plans by the County to improve the road. Lastly, the Gates in urging that the proposal not be granted approval request the opportunity to voice their concerns and objections in a forum that would enable them to be heard and fully considered prior to making a decision.
13. The Hearings Officer received testimony and evidence at the October 12, 2022 public hearing about this application. All exhibits and records of testimony are filed with the Planning Division, Clackamas County Department of Transportation and Development. The public hearing was conducted virtually over the Zoom platform due to the coronavirus. At the beginning of the hearing, the Hearings Officer made the declaration required by ORS 197.763. The Hearings Officer disclaimed any *ex parte* contacts, bias, or conflicts of interest. The Hearings Officer stated that the only relevant criteria were those identified in the County's staff report, that participants should direct their comments to those criteria, and failure to raise all arguments may result in waiver of arguments at subsequent appeal forums.
14. At the hearing, County Planner Melissa Lord described the application and supplemental materials submitted by the Applicants in support of their proposal to host outdoors events, and discussed the staff report and related exhibits, including a memorandum to the staff report incorporating the additional supplemental materials provided by Applicants. Ms. Lord noted that, based upon these additional materials from the Applicants, County staff were able to find the proposal consistent with County requirements and recommended approving it.
15. Ms. Lord shared a PowerPoint presentation that included the changes and updated materials submitted by the Applicants. She pointed to the location of the subject Property at 20188 S Butte Road, generally located between S Ridge Road and S Jewell Road, showing a vicinity map. Ms. Lord pointed to the Applicants' proposal to host up to 24 events per year, with a maximum of 100 guests per event, within an approximately 2,000 square foot open-sided

enclosure and approximately 600 square foot accessory structure. Ms. Lord noted that the Applicants' updated description of their proposal changed their prior plans for a grass and wood-chip parking area to a gravel parking area to accommodate 39 parking spaces, and also updated their description of their proposed new buildings to include 30-foot fire fuel break buffers where vegetation cannot be taller than 24 inches. Further, Ms. Lord pointed to updated descriptions of the proposed buildings, noting that the 600 square foot potting shed includes permanent restrooms, and the open-sided covered structure may include restrooms but otherwise would have no rooms. Ms. Lord's presentation included sharing the updated site plan the Applicants submitted.

16. Ms. Lord reviewed approval criteria in ZDO Section 806 *Home Occupations to Host Events* and in ZDO Section 406 *Timber District (TBR)*. In particular, Ms. Lord pointed to Section 806.02(C) *Type of Buildings*, Section 806.02(L) *Portable Restrooms*, Section 806.02(M) *Signs*, Section 806.02(J) *Noise*, the impacts test contained in Section 406.05 *Approval Criteria for Specific Uses*, and Section 406.08 (A) *Fire Standards for New Structures*. Ms. Lord pointed to changes and clarifications made by the Applicants in their additional submitted materials, including the larger gravel parking area and the delineated 30-foot fire fuel break buffers supporting the finding that the proposal meets requirements.
17. The Hearings Officer asked a number of questions about the two proposed buildings described in the Applicants' proposal. First, with respect to the Applicants' proposed "open barn" the Hearings Officer pointed to the photograph the Applicants submitted with their September 19, 2022 supplemental narrative as an example of their intended structure, and asked whether there was evidence to support finding that such a structure was a "building normally associated with uses permitted in the applicable zoning district" (AG/F). The Hearings Officer explained that the picture was of a structure that he was familiar with in public parks or campgrounds or similar locations, but he was not familiar with any normal use of such a structure in the AG/F zone. With respect to the proposed "potting shed" structure, the Hearings Officer pointed to the provided sketch showing a row of four individual bathrooms opening to the outside and again asked whether there was evidence to support finding that such a structure was a "building normally associated with uses permitted in the applicable zoning district" (AG/F). The Hearings Officer stated he was familiar with such structures being commonly associated with public parks, fairgrounds, or similar locations providing multiple bathrooms available to the public in these public spaces, together with a storage area often related to bathroom cleaning and maintenance, but he was not familiar with any normal use of such a structure in the AG/F zone.
18. Ms. Lord pointed out that the relevant ZDO sections do not provide for design standards or design review of these accessory structures. Jamie Powers, the Applicants' Consultant, noted that the Applicants could use portable restrooms with their proposal (as noted in their application materials), but were hoping to include at least two bathrooms in their proposed potting shed. Mr. Powers stated that the Applicants would modify their shed to have the bathrooms open to the inside rather than the outside of the structure, in a manner discussed as commonly found in shops and barns found in the buildings normally associated with AG/F zone uses. Mr. Powers also described the proposed pole barn building as a large metal structure with a metal roof, a back wall and concrete floor, open to the front in the manner of an open carport or open-covered storage.

19. Mr. John Gates, a neighbor describing his property as across the street from the Applicants' property, provided testimony on behalf of the Moore and Gates families in opposition to the proposal. Mr. Gates described the tranquility of his neighborhood – a rural farming community. He asserts that his family and his neighbors families view the proposed event hosting activities as having a negative impact on their community, and approval of the proposal will be at the expense of his own enjoyment of the peace and quiet of the area. Mr. Gates describes how dark the area is at night, with no street lights, and questions the safety of the proposed events with respect to providing alcohol and putting impaired drivers on the road. Mr. Gates points to the seriousness of the fire hazard in the area and the difficulty in getting emergency services.
20. With respect to the fire hazard, the Applicants assert they take the danger seriously, pointing out that they too were forced to evacuate during recent fire events.
21. Prior to ending the public hearing and closing the record, the Hearings Officer asked whether any of the parties or members of the audience wanted an opportunity to provide additional evidence, arguments, or testimony. As no one requested such opportunity, the Hearings Officer stated that the record would close at 4:00 pm that day to provide the County time to enter additional exhibits shared at the hearing into the record. Shortly after the conclusion of the hearing, the Applicants requested that the record be re-opened to allow them to provide additional information in support of their application. At the request of the Applicants, the Hearings Officer agreed to hold the record open for all parties until 4:00 pm October 19, 2022 for any party to submit additional written evidence, argument, or testimony, and until 4:00 pm on October 26, 2022 as a rebuttal period for any participant to respond to new evidence submitted during the prior open record period. The Hearings Officer understood that the Applicants were agreeing to toll the clock for two weeks to allow time for this exchange, with the County contacting the participants to inform them of the open-record period. The Hearings Officer considered the request as fair, noting also that the Applicants had the right to a third one-week open-record period to have a "last word" following a public hearing, understanding that the Applicants were waiving this third one-week open-record period.

E. POST-HEARING SUBMISSIONS

1. On October 17, 2022, the Applicants submitted additional materials in support of their application. These materials address the questions posed by the Hearings Officer concerning the two proposed structures, describing some changes to the proposed structures in response to those questions, providing additional clarification, and several photographs. The Applicants submitted the below photographs as a "better picture" of the open barn, describing it as just a simple open pole barn with a gravel floor and one exterior wall that is "perfect for storing farm equipment." The Applicants provided photographs of some of the equipment they intend to store within the structure, including such things as tractors, several trailers, and miscellaneous farming implements/tractor attachments. The Applicants also provided a revised description of the bathrooms in their proposed potting shed, noting they intend to have two bathrooms within the structure (instead of four) with restroom access only from the interior. (Exhibit 20)



2. Dennis Cody and Rae Anne Lunde are neighbors of the Applicants. They submitted an October 18, 2022 email in opposition to the application for a conditional use permit for a home occupation to host events in their AG/F zoned neighborhood. First, Mr. Cody and Ms. Lunde point to transportation safety, describing S Butte Road as a small, rural county road that is dark and not well lit, and not designed for the heavy traffic flows they assert the proposed home occupation would create. Mr. Cody and Ms. Lunde report that, due to topography, visibility onto their own driveway is limited and they describe it as potentially dangerous. Mr. Cody and Ms. Lunde report that they run a horse boarding business and host 4H, and therefore there are frequently trailers entering and exiting their own property, asserting further increase in traffic on the road will create further traffic safety issues and deteriorate road conditions. Mr. Cody and Ms. Lunde further question the adequacy of the proposal's 34 parking spaces to host events of up to 100 people. Lastly, Mr. Cody and Ms. Lunde question the appropriateness of allowing an event hosting home occupation business in their AG/F zoned area, asserting such use will impair the character of the intended zoning of the surrounding properties and contending such tourism and event hosting are not the intended use of such properties (Exhibit 21)

F. DISCUSSION

The evidence presented is reliable, probative and substantial evidence upon which to base a determination in these matters.

This application is subject to the standards and criteria of Clackamas County Zoning and Development Ordinance (ZDO) Section 1203. This application is being processed as a Type III Permit, pursuant to Section 1307. A Type III Permit is quasi-judicial in nature, and involves land use actions governed by standards and approval criteria that require the use of discretion and judgment. The issues associated with the land use action may be complex and the impacts significant, and conditions of approval may be imposed to mitigate the impacts and ensure compliance with this Ordinance and the Comprehensive Plan. The Type III procedure is a quasi-judicial review process

where the review authority receives testimony, reviews the application for conformance with the applicable standards and approval criteria, and issues a decision.

PART 1. SUBMITTAL REQUIREMENTS – CONDITIONAL USE PERMIT

This application is subject to Clackamas County Zoning and Development Ordinance (ZDO) Sections 202, 407, 806, 1005, 1006, 1007, 1010, 1015, 1021, 1203 and 1307; and the Comprehensive Plan. The Clackamas County Planning and Zoning Staff have reviewed these Sections of the ZDO and Comprehensive Plan in conjunction with this proposal and make the following findings and conclusions, adopted and/or modified or replaced by the Hearings Officer, as denoted by boldface type in italics:

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.

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. All the submittal requirements under Subsection 1203.04 are included in the application. The application was originally submitted on 5/23/22. After sending additional information the application was deemed complete on 6/10/22. The subject property is not located inside an urban growth boundary. The 150-day deadline for processing this application was December 26, 2022, but was waived by the Applicants and this deadline was extended by 34 additional days to January 29, 2023.

The submittal requirements of Subsection 1203.04 are met.

PART 2. CONDITIONAL USE PERMIT

The September 14, 2022 Staff Report to the Hearings Officer initially issued by County Planner Melissa Lord recommended denial of the application for several reasons as noted in the following narrative:

Staff recommends denial of the Conditional Use Home Occupation to Host Events permit upon finding the applicant failed to demonstrate compliance with ZDO Subsections:

- *1005.04(A)- Outdoor lighting*
- *1021- Solid Waste and Recyclable Material Collection*
- *406.05(A)(1)- Demonstration that the proposed use will not force a significant change in or significantly increase the cost of farming or forest practices and will not significantly increase the fire hazard or fire suppression costs or fire suppression personnel.*
- *406.08(A)/407.07 Development standards and fuel free break standards.*

The submitted application materials also have limited information demonstrating compliance with many subsections of Section 806. For example, ZDO 806.02(C) requires the applicant demonstrate that the home occupation will be operated substantially in the operator's dwelling or other buildings normally associated with uses permitted in the applicable zoning district. The applicant's site plan proposes outdoor use of the site for weddings and events. However, the narrative does not explain

how the events will substantially take place inside a proposed new accessory structure. The narrative also does not explain how the proposed new structure is a building that would normally be associated with uses permitted in the AG/F zone.

Recommended findings are provided in detail in throughout this report. On September 1, 2022 staff reached out to the applicant by email notifying them of the deficiencies of their application materials. It is possible that the applicant may provide updated information for consideration prior to the hearing that could change the staff recommendation.

The Applicants made several revisions amending their application and providing clarification of their proposal subsequent to Ms. Lord issuing her September 14 Staff report to the Hearings Officer. Ms. Lord reviewed these additional submissions and submitted an October 6, 2022 Staff Memo to the Hearings Officer with updated analysis, new proposed findings, and a recommendation of approval with conditions that is incorporated and discussed below within the framework of the original staff report. Specifically, Ms. Lord's memo states:

Based upon the application materials submitted to the County for review on September 19 and 22, and October 5, 2022, and added to the record as Exhibits 10, 13 and 16, staff amends the original recommendation of denial of the Conditional Use Home Occupation to Host Events permit to a recommendation of approval with conditions based upon the following:

Recommended findings are provided in detail in throughout the previous staff report unless amended by the comments provided below:

1) PROJECT OVERVIEW:

Background: *The applicant is requesting the review and approval of a conditional use permit to operate a home occupation to host events. A pre-application conference was held with the applicant on May 10, 2022 to discuss the preliminary proposal (reference file ZPAC0053-22).*

The applicant's narrative describes the property as being "located in rural Clackamas County in a remote setting surrounded by Christmas tree properties and timber property and a few home sites". The applicant proposes to host up to 24 events per calendar year, with a maximum of 100 guests per event. The application materials state that only 1 event will be held per day and no more than 5 events will be held per week.

Site Description: *The subject property is approximately 40 acres in size and is currently developed with a single-family detached dwelling and a couple accessory buildings (barn and shop). The property is heavily treed on the northern portion of the property, towards the street, and is bare land on the southern portion of the site. There is an existing pond that Clear Creek feeds into and flows out of.*

Natural Features: *Clear Creek is not recognized as a fish-bearing stream on Water Protection Rule Classification Maps compiled pursuant to OAR 629-635-000 and adopted as part of the Comprehensive Plan. Therefore, ZDO Section 704 is not applicable. The applicants state that the pond on site is man-made.*

2) ZDO SECTION 1203.02 CONDITIONAL USES

A. 1203.02: Submittal Requirements

This application includes a completed land use application form, site plan, application fee and completed supplemental application addressing the criteria in ZDO Section 1203.

The application also includes a description of the proposed use and vicinity map. All the submittal requirements under Subsection 1203.02 are included in the application with the exception of a preliminary statement of feasibility from various agencies which was missed by staff during the completeness review process. If the application is approved, staff has provided a recommended condition requiring the applicant to submit the omitted feasibility statements prior to issuance of any building permits. The application was submitted on May 23, 2022 and additional information submitted July 13, 2022 and July 25, 2022. Following submission of additional requested information, the application was deemed complete on July 25, 2022.

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

Finding: *The subject property is zoned AG/F, AG/Forest. Section 407 of the ZDO controls land uses in the underlying AG/F zoning district; Table 407-1 lists the conditional uses which are allowed. Table 407-1 specifies that “home occupation to host events, subject to section 806” is a conditional use. The applicants proposed to operate a home occupation to host events, therefore a conditional use permit is necessary. Section 806 is discussed further in this staff report. **The Hearings Officer concurs in the staff finding that this criterion is met. I received several comments from neighbors and members of the public opposed to this application concerning whether a home occupation to host events is or should be an allowed conditional use within the AG/F zone at all. The zoning for the property, however, does in fact allow for home occupations, including home occupations to host events, within the underlying AG/F zoning district.***

- C. **1203.03(B):** The characteristics of the subject property are suitable for the proposed use considering size, shape, location, topography, existence of improvements and natural features.

Finding:

Size: The subject property is approximately 40-acres in size. The submitted site plans and narrative demonstrate the property is of sufficient size to accommodate the proposed event area, along with necessary parking and circulation.

Shape: The property is regular in shape; it is 1137 feet wide and 1324 feet deep. Combined with size, the shape does not present any significant limitation to the proposed use of the site. The nearest adjacent residence to the proposed event site is located approximately 600 feet away. The nearest property line to the event site is located approximately 500 feet away from the site.

Topography: The subject property has modest slopes of less than 20 percent. The property slopes down into the low point at the man-made pond near where the events are proposed. The slope is not an impediment to the proposed use.

Location: The subject property has direct vehicular access onto S Butte Rd, between S Ridge Rd and S Jewell Rd. Butte Rd is a public access, county-maintained collector road. The subject property is accessible to guests of the proposed events because it is connected to the established transportation network, making the location of the property suitable for the proposed conditional use. The proposed event parking area is accessible

through an existing drive access, directly onto Butte Rd. The onsite event area is in close proximity to the parking area and the proposed partially enclosed barn. The location that the events will take place within the property is suitable for the proposed events.

Improvements: The subject property contains a dwelling, and a couple accessory buildings (barn and shop). The current dwelling was built in 2019 as a replacement dwelling (building permit reference number B0377719). The applicant proposes to construct a partially enclosed barn, 60 feet by 72 feet to be used for food and shelter, bathrooms and changing rooms.

Natural Features: The subject property is partially treed and partially cleared for pasture lands. Cedar Creek is not a fish-bearing stream and is not subject to regulations of ZDO Section 704, and a man-made pond on the property.

*Summary: The location, size, shape, topographic, natural and developed characteristics of the property are suitable to accommodate the proposed use. **The Hearings Officer concurs in the staff findings that, when considering the characteristics of the subject property, these criteria are met.***

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

Finding: *Staff reviewed the proposal for compliance with 1007.07. The findings are included in the staff report below. **The Hearings Officer concurs in the related staff analysis and findings that the criteria of Subsection 1007.07 are met, and the safety of the transportation system is adequate to serve the proposed use. I received several comments from neighbors and members of the public opposed to this application concerning whether the transportation system is adequate. These comments are addressed in the section discussing the analysis of the transportation system for compliance with Subsection 1007.07 below.***

- E. **1203.03(D):** The proposed use will not alter the character of the surrounding area in a manner that substantially limits, impairs or precludes the use of surrounding properties for the primary uses allowed in the zoning district(s) in which surrounding properties are located.

Finding: *The site is in the AG/F zoning district and is surrounded by other properties in the same zone. The Exclusive Farm Use (EFU) zoning district is also within approximately 50 feet of the subject property. Primary uses of the AF/G and EFU zoning districts are included in ZDO Section 407 and 401, respectively, and generally include farm and forest uses. Pursuant to Subsection 806.02(E), the evaluation of compliance with Subsection 1203.03(D) shall include consideration of impacts on dwellings even though dwellings are not primary uses in these zoning districts. This criterion does not require the proposed use to not have any impacts, but instead the impacts must not substantially limit, impair or preclude the use of surrounding properties for the allowed primary uses.*

Lands in the surrounding area are in farm and forest use along with rural residential home-sites. Properties in the surrounding area are primarily developed with a dwelling and associated accessory buildings; including, but not limited to, all but one (43E16 00801 to the south) tracts of land contiguous with the subject property.

S Butte Rd is a paved public road and the property is accessed by an existing driveway. The applicants propose to pave the driveway and on-site access to a width of 20 feet for event guests. Therefore, there will be no impacts of dust or dirt due to any traffic from event attendees. The proposed events will occur a maximum of 24 times per year and will host up to 100 guests per event. The property will include a hardy grass and wood-chipped parking area, suitable to accommodate up to 33 or 34 vehicles (the applicant's written narrative says 33 vehicles but the site plan shows a 34-space parking area).

The proposed events will take place topographically at a low point on the property. Dwellings on properties within the area are uphill at an approximately 7% slope and at least 600 feet away from the event area. Between the event area and the nearest dwelling (excluding the one on the subject property that the event operator resides in) there is thick tree cover. The event area is located approximately 500 feet away from the nearest property. The applicant states that the low point of the property combined with the trees will inhibit sounds traveling to adjoining properties. Therefore, staff finds this criterion can be met with a condition of approval. The size of the subject property, approximately 40 acres, is likely to provide some buffering with respect to noise and other impacts.

Compliance with site lighting standards is addressed later in this staff report. The location of the event area within the subject property is approximately 500 feet away from property lines, at a lower elevation than the surrounding properties, and shielded by trees. As such, it is unlikely that lights associated with the events would project onto surrounding properties or cause any impacts on the surrounding properties. However, as discussed in Subsection 1005.04(A), there is insufficient information provided by the applicant to verify that the lighting standards will be met.

Due to the existing transportation network, the size of the property and the location of the proposed events on the site will not preclude, limit or impair the uses of surrounding properties. Additional information from the applicant would be necessary to ensure that any proposed lighting would not substantially limit, impair or preclude the uses of surrounding properties.

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

Finding: *The applicant does not directly address the Comprehensive Plan, though through the submitted narrative touches on a few points. The subject properties are designated Forest on the Comprehensive Plan map. AG/Forest (AG/F) zoning district implements the goals and policies of the Forest plan designation. Staff highlights the following:*

- a. Chapter 4, Land Use: Forest Policies – 4.OO

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

4.OO.1.1 Lands suitable for forest use;

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

4.OO.1.3 Areas generally in forest use;

*The subject property consists of Jory silty clay loam soils, and is capable of producing 164 cubic feet of timber per acre per year. The property is approximately 40 acres in size. As discussed previously, the siting of the proposed use will not interfere with agricultural practices on surrounding lands. **The Hearings Officer concurs in the staff finding that this criterion is met.***

b. Chapter 5, Transportation – Access Standard Policies – 5.Q

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

As specified under ZDO section 1007, development applications are required to provide adequate access to current county standards, which may include right-of-way dedication, frontage improvements, on-site access and parking. South Butte road is a rural collector roadway, with an improved width of approximately 20 feet, located within a 40-50 foot wide public right-of-way. It is recognized that events such as weddings generate a larger number of vehicles on the day of an event, but over the course of the entire year, the total number of vehicle trips is approximately equivalent to vehicle trips generated by two single family homes. Based on this the Engineering Department has determined that the existing right-of-way and roadway are adequate to support the proposed event use.

The driveway approach serving the event site has a gravel surface and intersects S Butte road at an angle in “y” configuration and does not meet the minimum driveway access standard. Per Roadway Standards drawing d500, a paved driveway approach is required. In addition, driveways are required to intersect the roadway at a 90 degree angle, per Roadway Standards Section 250.8.2. The applicant’s plans propose realignment of the driveway, with a paved 20-foot wide by 20-foot long approach, consistent with county standards. In order to ensure compliance with access standards, if approved, the following conditions have been suggested:

- *The applicant shall obtain a development permit from Clackamas County department of transportation and development prior to the initiation of any construction activities associated with the project.*
- *All frontage improvements in, or adjacent to Clackamas County right-of-way, or on site, shall be in compliance with Clackamas County roadway standards.*

G. **1203.03(F):** The proposed use complies with any applicable requirements of the zoning district and overlay zoning district(s) in which the subject property is located, Section 800, Special Use Requirements, and Section 1000, Development Standards.

Finding: *Staff reviewed compliance with ZDO Sections 800 and 1000, as applicable. The findings are included in the staff report below.*

3) **ZDO SECTION 1000 DEVELOPMENT STANDARDS**

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

A. **1005.04(A) Outdoor Lighting.** Outdoor lighting devices shall:

- a. Shall be architecturally integrated with the character of the associated structures, site design and landscape.
- b. Shall not direct light skyward
- c. 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;
- d. Shall be suitable for the use they serve, e.g. bollard lights along walkways, pole mounted lights for parking lots;
- e. 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
- f. At entrances, shall be glare-free. Entrance lighting may not exceed a height of 12 feet and must be directed downward

Updated Finding: *The applicant's narrative says that there will be lighting inside the two structures used for the events. Ambient, warm-hue down lighting will be used which complies with the standard of this criterion. Ingress/egress lighting will comply with the standards of the Building Code, as applicable. Solar powered walkway lights will be used; the site plan shows the location of walkways on the subject property. Walkways are at least 180 feet from the surrounding property line; this distance will naturally restrict light pollution onto neighboring properties. A condition of approval is warranted to ensure compliance with this standard. Staff recommends a condition of approval requiring the applicant to submit an outdoor lighting design plan to the Planning and Zoning Division prior to submission of a building permit for the proposed accessory structure. The Hearings Officer concurs in this analysis, finding that, as conditioned, these standards can be met.*

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

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

Finding: *The property is not within a public or private water district, and is not within a groundwater limited area. Applicants for any development permit shall specify a lawful water source for the proposed development, such as a public or community water system, certificated water right or exempt-use well. This criterion can be met with a condition of approval. The Hearings Officer concurs in this finding.*

C. **1006.05 Onsite Wastewater Treatment.** All development proposing onsite wastewater treatment shall receive approval for the system from the County prior to submittal of a land use application for development. Said systems shall be installed pursuant to Oregon Revised Statutes 454.605 through 454.745 and Chapters 171, 523, and 828; Oregon Administrative Rules Chapter 340, Divisions 71 and 73; and the policies of the County.

Finding: *The subject property is not located in a public sanitary sewer district. Sewage disposal for existing development on site is accommodated by an on-site septic system. The applicant proposes to construct a new building with bathrooms connected to an existing septic system, if permitted by the Clackamas County Onsite Wastewater Program. This criterion can be met with conditions. **The Hearings Officer concurs in this finding.***

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

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

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

*Clackamas County is the surface water management authority for the area including the subject site. Drainage facilities shall be designed and constructed in conformance with Clackamas County Roadway Standards Chapter 4, providing water quality treatment and conveyance to a suitable outfall. Surface water issues will be dealt with through the Development Permit required from Traffic Engineering. Applicant has not submitted a Preliminary Statement of Feasibility signed by Traffic Engineering indicating it is feasible for the site to handle additional surface water from this use. If the application is approved, staff has recommended a condition of approval requiring the applicant to submit the above mentioned signed statement of feasibility prior to submission of a building permit for the proposed accessory structure to be used for the hosting of events. **The Hearings Officer finds that, as conditioned, this requirement can be met.***

E. 1007.01(A and B) Roads and Connectivity – General Provisions. The location, alignment, design, grade, width, and capacity of all roads shall be planned, coordinated,

and controlled by the Department of Transportation and Development and shall conform to Section 1007, Chapters 5 and 10 of the Comprehensive Plan, and the Clackamas County Roadway Standards. Where conflicts occur between Section 1007, the Comprehensive Plan, and the Clackamas County Roadway Standards, the Comprehensive Plan shall control.

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

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

- *S Butte Road is a rural collector roadway, with an improved width of approximately 20 feet, located within a 40-50 foot wide public right-of-way. It is recognized that events such as weddings generate a larger number of vehicles on the day of an event, but over the course of the entire year, the total number of vehicle trips is approximately equivalent to vehicle trips generated by two single family homes. Based on this, the existing right-of-way and roadway are adequate to support the proposed event use.*
- *The proposed event site is currently served by a gravel driveway that extends approximately 500 from S Butte Road to the barn and event area. The subject property also includes a driveway approximately 300 to the east that serves as access to an existing single family residence on the property.*
- *The driveway approach serving the event site has a gravel surface and intersects S Butte Road at an angle in "Y" configuration and does not meet the minimum driveway access standard. Per Roadway Standards Drawing D500, a paved driveway approach is required. In addition, driveway are required to intersect the roadway at a 90 degree angle, per Roadway Standards Section 250.8.2. The applicant's preliminary plans propose realignment of the driveway, with a paved 20-foot wide by 20-foot long approach, consistent with county standards.*
- *To serve the number of vehicles on the site during events, the access road will require a 20-foot wide travel surface. For uses outside the UGB, parking and maneuvering areas require a surface of screened gravel or better. Widening of the existing driveway will be required with a minimum gravel, Clackamas County Roadway Standards Drawing R100.*
- *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. Handicapped ADA parking spaces require a paved surface, with a paved pedestrian surface to the event site. The applicant is proposing a parking area that has a grass surface. Alternate surfaces for parking areas are acceptable for event sites in the dry months, per ZDO Section 806.02(K). To limit potential tracking of soil onto the*

public roadway, such parking will need to be at least 200 feet from the S Butte Road. The applicant proposes to operate year-round and will need to demonstrate that the alternate surface of grass or wood chips is adequately stabilized during the wet season. At a minimum, it is recommended that 5 gravel parking spaces are provided for event staff. With the recommended conditions, it appears that adequate circulation and parking can be provided.

- *ZDO section 1007.09 requires that development is served by a transportation system that has adequate capacity to handle any increased vehicle trips generated by new development. Under ZDO Section 1007.07(B)(5) conditional uses to host events are exempt from the concurrency requirements.*

The Hearings Officer notes that the Applicants have amended their proposal to provide for a gravel parking surface. The Hearings Officer agrees with the above staff analysis that, as conditioned, these standards can be met. I received several comments from neighbors and members of the public opposed to this application concerning whether the local transportation system was adequate or could safely accommodate the increased traffic associated with the proposal. I was persuaded by the analysis provided by the Clackamas County Development Engineering division, finding particularly insightful their estimate that the additional overall traffic impact generated by the proposal is equivalent to adding two new homes to the public roadway serving this area.

- F. **1007.02(D):** Developments shall comply with the intersection sight distance and roadside clear zone standards of the Clackamas County Roadway Standards. In addition:
- a. No planting, signing, or fencing shall be permitted which restricts motorists' vision; and
 - b. 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.

Finding: S Butte Road does not have a posted speed and is subject to the "Basic Rule" speed of 55 MPH. A minimum of 610 feet of sight distance is required based on the speed of S Butte Road. Sight distance appears feasible at the proposed driveway with vegetation clearing within the right-of-way and will be verified as part of the Development Permit. The applicant will be required to maintain adequate intersection sight distance at the driveway serving the event site.

Minimum intersection sight distance of 610 feet shall be provided and maintained at the proposed driveway serving the event site. Intersection sight distance can be measured 14.5 feet back from the edge of pavement at a height of 3.5 feet to an object height of 3.5 feet in the center of the oncoming travel lane. *The Hearings Officer concurs with the staff finding that, as conditioned, this criterion can be met.*

- G. **1007.07 Transportation Facilities Concurrency.** Shall apply to the following development applications: design review, subdivisions, partitions, and conditional uses.

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: *Compliance with 1007.07 is required pursuant to Section 1203.03(C). The applicant is applying for a conditional use permit to operate a Home Occupation to Host Events which is a conditional use in the AG/F zoning district. Under ZDO Section 1007.07(B)(5) home occupations host events are exempt from the concurrency requirements. **The Hearings Officer concurs in these staff findings.***

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

Updated Finding: *There is no permanent signage proposed with the conditional use permit. The applicant indicated that a temporary sign will be used, subject to the standards of Subsection 806.02(M) which is discussed further, below. Staff recommends that a condition of approval be imposed to ensure future compliance with this criterion. **The Hearings Officer concurs that, as conditioned, this criterion can be met.***

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

Updated Finding: *Applicant plans to use driveway access from S. Butte Road to access proposed parking and event areas, as shown on submitted site plans.*

The applicant proposes a parking area to be suitable to accommodate 34 guest parking spaces, one parking space will be paved for ADA compliance, and five (5) employee parking spaces. With the exception of one paved ADA parking space, the proposed parking area will consist of gravel.

*The applicant is requesting a conditional use permit to allow for up to 100 guests per event, which would necessitate there being a minimum of 34 vehicle parking spaces for guests. Additionally, the applicant states that there will be three employees (up to five permitted) and one parking space must be provided for each employee. Considering the definition of “employee” provided in Subsection 806.01(A), provided in staff’s original staff report, staff is recommending that, if approved, the Hearings Officer grants up to five employees on site. One vehicle parking space must be added for every employee that is allowed on site at a time. If the number of employees allowed is five, then this criterion can only be met by providing a total of 39 parking spaces (34 for guests, 5 for employees). Staff finds that this criterion is met by providing 39 parking spaces. **The Hearings Officer concurs in this analysis and in these staff findings.***

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

Updated Finding: *The applicant proposes that waste generated from the events will be picked up by the local waste collection service. The applicant is advised to work directly with the Clackamas County Sustainability division to ensure that the garbage and recycling handling is efficient and effective. This criterion can be met with the proposed application. Staff recommends that a condition of approval should be included regarding specific plan for this issue that adequately address Section 1021 and coordination with the Sustainability division should be advised. **The Hearings Officer concurs in this staff finding that, as conditioned, these standards can be met.***

4) ZDO SECTION 806 HOME OCCUPATIONS TO HOST EVENTS

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

Finding: *The applicant states that the home occupation operator will be Chelsey Warriner who resides full-time on the subject property in the dwelling. The dwelling was established with building permit number B0377719 in early 2020 as a replacement dwelling for a previous manufactured dwelling. Staff finds that this criterion can be met with a condition of approval.*

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

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

The applicant proposes to have three (3) employees, which is less than the number of employees allowed for a home occupation. Within the AG/F zoning district, people employed by contract to provide services for an event are considered “employees”, including caterers, photographers, and florists. Staff recommends a condition of approval that limits the total number of employees to five (5) during events.

- C. **806.02(C):** Notwithstanding the definition of home occupation in Section 202, Definitions, in the AG/F, EFU, and TBR Districts, the home occupation shall be operated substantially in the operator’s dwelling or other buildings normally associated with uses permitted in the applicable zoning district.

Updated Finding: *The subject property is within the AG/F district. The events will not take place within the operator’s dwelling. The applicant proposes two structures to be used for the events. A 38 foot by 72 foot, open-air accessory structure is proposed to accommodate food service and eating, and a covered gathering space for guests. In addition, the 20 foot by 30 foot potting shed will be used for a guest changing area and will have permanent bathrooms.*

Both of these structures are normally associated with uses permitted in the AG/F zone. The open-air building is a typical structure that can be used to provide covered storage to farm equipment or hay. The potting shed can be used to store farm equipment, garden tools, and the applicant’s dahlia and peony bulbs. Bathrooms and changing rooms are

typical uses in accessory structures in the AG/F zone; farmers and farm workers uses these facilities without going inside of the dwelling on site.

The updated application materials adequately describe how the proposed events will utilize each of the structures, and how the organization of the activity and site will ensure that the events occur substantially in the accessory buildings. Staff finds that this criterion is met.

At the hearing, I discussed the requirement that the home occupation be operated substantially in “buildings normally associated with uses permitted” in the subject property’s AG/F zone. Ms. Lord correctly pointed out that the relevant ZDO sections do not contain actual design standards or require design review. However, the Applicants must still show that their proposal meets the requirements of Section 806.02(C). If they do not propose to operate their home occupation substantially within their home, then their application must demonstrate how their home occupation will be operated substantially in other buildings normally associated with the underlying zoning district.

In particular, I pointed out that the photograph of the proposed building looks like a picnic shelter found in a public park, and I am not familiar with the use of such structures in the AG/F zone. I also pointed to the drawing of the proposed potting shed showing a row of four individual bathrooms along the outside wall, which looks like a public bathroom facility found at a public park rather than the type of accessory structure normally found on private property in the AG/F zone. Applicants did not dispute this; rather, they responded stating they were trying to meet the requirements and would make necessary changes.

Applicants requested that the record be reopened to allow for submission of additional materials, submitting a photograph of an open-sided pole barn of a type I am familiar with, a type of structure normally used for covered storage of hay, farm equipment, etc. The Applicants also described their proposed potting shed as including two bathrooms, each with doors open only to the interior of the structure. Again, this is a type of building I am familiar with as normally associated with activities in the AG/F zone. Given the confusion with these requirements, I restate here that approval of this application does not authorize any building not normally associated with uses permitted in the AG/F zone. A Conditional Use Home Occupation to Host Events is an allowed use on the subject property, anticipating that the proposed activity will be operated substantially either within the applicants’ home or within buildings normally within the underlying zone. In other words, within buildings that are not “out of place” in the AG/F zone. As conditioned, the Hearings Officer finds that this criterion can be met.

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

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

Finding: *The subject property is within the AG/F district. The applicant proposes to use tents on a temporary basis for the events, and states that they will be compliant with this criterion. No additional information pertaining to the tents was provided by the*

*applicant, but staff finds this criterion could be met with a condition of approval. **The Hearings Officer concurs in this finding.***

- E. **806.02(E):** In the AG/F, EFU and TBR Districts, the evaluation of compliance with Subsection 1203.03(D) shall include consideration of impacts on dwellings even though dwellings are not primary uses in these zoning districts.

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

- F. **806.02(F):** During the months of November through March, no event shall take place outside the hours of 9:00 A.M. to 10:00 P.M. During the months of April through October, no event shall take place outside the hours of 8:00 A.M. To 10:00 P.M. These time restrictions do not apply to persons involved in the set-up or clean-up of the facilities.

Finding: *The applicant states that during the months of November through March the hours of operation will be 9:00AM to 10:00PM, and during the months of April through October the hours of operation will be from 8:00AM to 10:00PM. The proposed hours of operation comply with the criterion. **The Hearings Officer concurs in this finding.***

- G. **806.02(G):** A maximum of two events shall be allowed per day, and no more than one event shall occur at any one time. During the months of November through March, no more than five events shall be allowed per week. During the months of April through October, no more than seven events shall be allowed per week.

Finding: *The applicant states that there will be no more than one event per day throughout the entire year, and there will be a maximum of five events per week. The proposed frequency of events is within the allowances of this subsection.*

- H. **806.02(H):** A maximum number of guests for any single event is 300. However, to the extent necessary to comply with Subsection 1203.03, a lower limit may be imposed based on site capacity constraints.

Finding: *The applicant is proposing to host events with a maximum of 100 guests, per event, which is less than the maximum number of guests allowed by this subsection. The potential impacts of the events such as noise and the traffic analysis were evaluated with the based on the applicant's proposal that there will be up to 100 event attendees at a time. This criterion is met. If the application is approved, a condition of approval is recommended limiting the maximum number of event attendees to 100. **The Hearings Officer concurs in this finding that, as conditioned, this criterion can be met.***

- I. **806.02(I):** All lighting used during events shall comply with Subsection 1005.05(A).

Updated Finding: *The lighting standards of Subsection 1005.05(A) are addressed earlier in this memo. The applicant has demonstrated compliance with the lighting standards can be met. **The Hearings Officer concurs.***

- J. **806.02(J):** Noise shall be regulated as follows:

- a. From 7:00 a.m. until 10:00 p.m. on Friday and Saturday and until 9:00 p.m. on all other days of the week, the average peak sound pressure level, when measured off

the subject property, of noise created by the home occupation shall not exceed the greater of 60 dB(A) or the ambient noise level. During all other hours, the average peak sound pressure level, when measured off the subject property, of noise created by the home occupation shall not exceed the greater of 50 dB(A) or the ambient noise level.

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

Updated Finding: *The additional application materials provided on October 5, 2022 further demonstrate compliance with this criterion. The audio tests completed on or around the property clearly demonstrate that it is feasible for this criterion to be met. Staff continues to recommend a condition of approval ensuring long-term compliance.*

Original finding: *The proposed events will take place topographically at a low point on the property. Dwellings on surrounding properties are uphill at an approximately 7% slope and at least 600 feet away from the event area. Between the event area and the nearest dwelling on an adjoining property there is thick tree cover. The event area is located approximately 500 feet away from the nearest property, and the event parking area is approximately 180 feet from the nearest property and S Butte Rd. The applicant states that the location of the events on the property, the low topographical point of the property, combined with the surrounding trees will inhibit sounds traveling to adjoining properties. In addition, limiting the number of guests to 100, rather than the 300 that may be allowed with a conditional use permit, will inherently generate less noise than a larger group of people. The size of the subject property, approximately 40 acres, is likely to provide some sound buffering.*

Pursuant to Subsection 806.02(C), the events must be operated substantially in the operator's dwelling or other buildings normally associated with uses permitted in the AG/F zoning district. Events that occur substantially indoors would generate less noise than outdoor events. If the Hearings Officer finds that Subsection 806.02(C) is met, those findings would complement the findings staff has made here as they relate to noise. Therefore, staff finds this criterion can be met with a condition of approval.

The Hearings Officer concurs in this analysis, finding that Subsection 806.02(C) requirements are met and as conditioned this criterion can also be met. Several

neighbors expressed concerns with potential noise from the proposed event hosting activities. I was persuaded, however, by the staff analysis with well-supported findings, including also supporting audio tests submitted by the applicants, that the proposal will meet these requirements.

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

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

Updated Finding: *The applicant proposes to have a gravel parking area; alternatives to the standards of Section 1015.01(B) are permissible. The event area will include a paved, 20 foot by 20 foot, two-way access pad onto the property from S Butte Rd, and there is a more than 200 foot gravel access drive that will lead to the event parking area. This will minimize the tracking of soil onto S Butte Rd. No parking on S Butte Rd is proposed with this application. This criterion is met. **The Hearings Officer concurs in this finding, also noting that this change in the proposal from the original description of a hardy grass and wood chipped parking area to gravel surfacing reduces the fire risks identified by neighbors as a concern with the original proposed parking surface.***

L. **806.02(L):** Portable restroom facilities shall:

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

Updated Finding: *The application materials demonstrate that portable restroom facilities will be located over 100 feet from the nearest property line and will be screened from adjacent lots and rights of way from the treed, existing landscape of the site. Staff recommends that a condition of approval be imposed to ensure compliance with this criterion. **The Hearings Officer finds that, as conditioned, these standards can be met.***

- M. **806.02(M):** One temporary sign shall be allowed in addition to signs permitted pursuant to Section 1010, Signs. The sign shall not exceed eight square feet in area; shall be placed on private property on the day of the event; shall be removed no more than 24 hours after the event; and shall be physically attached to the premises in a manner which both prevents the sign from being moved or blown from its location, and allows the prompt removal of the sign.

***Updated Finding:** Temporary event sign information was provided by the applicant and demonstrates that the even sign will meet the standards of this Subsection. The temporary sign will be located on private property, outside of the public right of way. This criterion is met. Staff recommends a condition of approval to ensure compliance with this criterion. The Hearings Officer finds that, as conditioned, these standards can be met.*

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

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

- O. **806.02(O):** On non-event days, the use shall not take an outward appearance nor manifest any characteristics of a business or operation of a service commercial nature, except for those characteristics normally associated with or allowed for a primary use in the subject zoning district, or, in the AG/F, EFU, and TBR Districts, for a use identified as “allowed” by Table 407-1, Permitted Uses in the AG/F District, 401-1, Permitted Uses in the EFU District, or 406-1, Permitted Uses in the TBR District, respectively.

***Finding:** The applicant states that they will comply with this criterion. The event area is not visible from the public rights of way or surrounding properties due to the location of the event within the subject property, the topography of the property and the existing vegetation. This criterion can be met with a condition of approval. The Hearings Officer finds that, as conditioned, this criterion can be met.*

5) ZDO SECTION 407 AG/FOREST DISTRICT

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

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

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

***Updated Finding:** The proposed conditional use permit to host events is for the purpose of hosting events such as weddings, company gatherings, picnics, and other events allowed in Section 806. The events will not be in competition with nearby farming or forest practices, and therefore will not force a significant change in, or significantly increase the cost of accepted farming or forestry practices. Fire-siting standards for*

fuel-free zones are intended to aid in the reduction of the need for firefighting personnel. As demonstrated in the applicant's updated application materials, these fuel-free break standards will be met. Additionally, the updated application materials show that the parking area will be consist of gravel, rather than the originally proposed grass and woodchips, which will decrease the fire risks associated with a grass or wood chipped parking area.

*The applicant has demonstrated compliance with this criterion. **The Hearings Officer concurs in these staff findings. As also noted in the discussion concerning parking and loading above, this change in the proposal from the original description of a hardy grass and wood chipped parking area to gravel surfacing reduces the fire risks identified by neighbors as a concern with the original proposed parking surface.***

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

Finding: *There is no evidence that a statement recognizing this criterion has been recorded with the deed or written contract with the County. A condition of approval is warranted to ensure this compliance with this standard. **The Hearings Officer concurs with staff that, as conditioned, this criterion can be met.***

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

Finding: *The subject property takes access directly from S. Butte Rd, a County road. The road access is not a privately owned road, therefore a long-term road access agreement is not necessary. **The Hearings Officer concurs with staff that this criterion is met.***

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

Finding: *The applicant is not requesting a zone change. The proposed home occupation will not unreasonably interfere with other permitted uses in the AG/F zone. Any potential impacts to surrounding properties (including concerns of traffic, noise and lights) are discussed at length throughout this staff report, and have either been met, or can be met with recommended conditions of approval. The subject property is predominantly surrounded by farm uses (including Christmas tree farms), timber uses, and dwellings. While there will undoubtedly be impacts to surrounding properties, none of the potential impacts were found to be unreasonable or a barrier to conducting uses permitted in the AG/F zone. **The Hearings Officer concurs in the staff finding that this criterion is met.***

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

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

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

*These dimensional standards for the both proposed new accessory buildings are met as shown on the applicant's site plan. **The Hearings Officer concurs in this staff finding.***

G. 407.07 Development Standards. Subsection 406.08, which establishes development standards in the TBR District, shall apply in the AG/F District.

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

Updated Finding:** The applicant addresses these fire-siting standards in their application and clearly demonstrates that the primary safety zone around both proposed buildings can be complied with. A condition of approval is warranted to ensure compliance with this standard. **The Hearings Officer concurs with staff that, as conditioned, these standards can be met.

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

Updated Finding:** Staff finds that with the new proposal (two accessory buildings rather than one) this standard can continue to be met with the upkeep of fuel-free breaks that are required in ZDO Section 406.08(A). The two proposed buildings will be clustered, in close proximity to one another, and will remain near the access drive. **The Hearings Officer concurs with staff that this standard is met.

***Original Finding:** Currently, the property is a mix of forested area and cleared/open land. The accessory structure proposed on the applicant's plot plan is located within 500 feet (approximately) of S Butte Road, in the northwestern portion of the property, directly adjacent to an existing access driveway. The access driveway is proposed to be widened to 20 feet and paved with this application. The risks associated with wildfire can be minimized through the upkeep of fuel-free fire breaks, and the paved access to S Butte Road. The proposed event area would be located close to the existing access driveway and within approximately 500 feet of other structures on the subject property. Based on the soil type and topography of the land, the entire property is suitable for growing trees or producing farm crops. Siting the event area within 500 feet from the existing buildings on the property (dwelling and residential accessory buildings) as shown in the applicant's site plan, will effectively cluster development and act to minimize the potential impacts on the remaining three-*

quarters of the property. The event and accessory building location will continue to allow the large majority of the property to be available for farm or forest use while minimizing the amount of land necessary to establish an access road to the event area. Staff finds this criterion can be met with the upkeep of fuel-free fire breaks that are required in ZDO Section 406.08(A)

ADVISORY NOTES

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

1. Prior to issuance of a building permit the applicant shall submit a statement of use to the Clackamas County Engineering Division. The statement of use is used to calculate the Transportation System Development charge. A Transportation System Development Charge (TSDC) is included in the final calculation of the building permit fees for new instructional projects; this includes additions and tenant improvements that increase the number of daily trips to the site.
2. Prior to commencement of use the applicant shall obtain:
 - Necessary County Health Department Licenses and comply with County Health Department regulations.
 - Applicable OLCC Licenses and comply with OLCC regulations.

The Hearings Officer concurs in the finding by staff that the applicable provisions from Section 806 can be met as described or can be conditioned.

A. DECISION

Based on the findings, discussion, conclusions, and record in this matter, the Hearings Officer APPROVES application Z0256-22-C for a conditional use permit for a Home Occupation to Host Events on the subject property, subject to conditions of approval.

B. CONDITIONS OF APPROVAL

I reviewed and considered the proposed conditions of approval submitted by staff, and find these conditions designed to ensure that the requirements of this Conditional Use permit are met. I note that failure to comply with any of the conditions of approval constitutes a violation of this permit and may be cause for revocation of this approval. Approval of this application does not authorize any building not normally associated with uses permitted in the AG/F zone.

1. Approval of this land use permit is based on the submitted written narrative and plan(s) filed with the County on May 23, 2022, additional materials received on July 13 and July 25, 2022, additional and amended application materials submitted by the Applicants on September 19, 2022, additional submitted application materials that include a revised site plan submitted by the Applicants September 22, 2022, and site photos submitted by the Applicants September 22, 2022. No work shall occur under this permit other than which is specified within these documents, unless otherwise required or specified in the conditions

below. It shall be the responsibility of the property owner(s) to comply with this document(s) and the limitation of any approval resulting from the decision described herein.

2. The conditional use home occupation approval is valid for four (4) years from the date of the final written decision (ZDO 1203.05). During this four year period, the approval shall be implemented, or the approval will become void. "Implemented" means all major development permits shall be obtained and maintained for the approved conditional use, or if no major development permits are required to complete the development contemplated by the approved conditional use, "implemented" means all other necessary County development permits (e.g. grading permit, building permit for an accessory structure) shall be obtained and maintained. A "major development permit" is:
 - a) A building permit for a new primary structure that was part of the conditional use approval, or
 - b) A permit issued by the County Engineering Division for parking lot or road improvements required by the conditional use approval
3. Any outdoor lighting [ZDO 1005.04(A) and (B)] and 806.02(I) shall be located and designed so that it does not shine onto adjacent properties, upwards or right-of-ways. If additional lighting will be installed, the applicant will submit an outdoor lighting system design plan prior to installation of the outdoor lighting system for review and approval by Planning and Zoning Division.
4. All signs shall be in compliance with ZDO Section 1010.07, 1010.13 and 806.02(M). One temporary sign shall be allowed in addition to signs permitted pursuant to Section 1010. 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.
5. Use of on-site sewage disposal facilities, if proposed, shall be subject to approval by Septic & Onsite Wastewater System Programs.
6. **Prior to commencement of use:** The applicant shall submit a plan showing satisfaction of requirements from Section 1021 of the Zoning and Development Ordinance, regarding trash/recycling. Detailed information, including ZDO 1021, is available on the county web site www.clackamas.us under "Garbage & Recycling."
7. The Operator of this home occupation shall reside full time in the dwelling on site, and be majority owner in the business and responsible for day-to-day operations [ZDO 806.01(C) and 806.02(A)]
8. The home occupation shall have no more than five full-time or part-time employees on site. [ZDO 806.02(B)]
9. During the months of November through March, no event shall take place outside the hours of 9:00 a.m. to 10:00 p.m. During the months of April through October, no event shall take place outside the hours of 8:00 a.m. to 10:00 p.m. These time restrictions do not apply to persons involved in the set-up or clean-up of the facilities [ZDO 806.02(F)]
10. There shall be no more than one event per day throughout the entire year and no more than 5 events per week. During the months of November through March, no more than five events

shall be allowed per week. The Conditional Use approval authorizes a maximum total of 24-events per year, with a maximum of 100 people per event. [ZDO 806.02(G)]

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

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

 - a) Noise generated by vehicles entering or exiting the subject property, but not by idling vehicles, shall be exempt from Subsection 806.02(J)(1)
 - b) Subsection 806.02(J)(1) shall not apply to noise detectable on public rights-of-way and railroad rights-of-way.
13. Restroom facilities shall be regulated as follows [ZDO 806.02(L)]:
 - a) Portable restroom facilities shall include hand-sanitizing or hand-washing facilities.
 - b) Portable restroom facilities shall be subject to the standards of the service provider and the County Septic & Onsite Wastewater System Programs.
 - c) Portable restroom facilities shall be screened from adjacent properties and rights-of-way by sight-obscuring fences or plantings (existing can satisfy) and shall be located a minimum of 50 feet from all lot lines.
14. Prior to operating the home occupation, the applicant shall record a written irrevocable statement in the deed records of the County binding upon the landowner, and the landowner's successors in interest, acknowledging the right of adjacent and nearby farm and forest operators to employ accepted farm and forest management practices and prohibiting them from pursuing a claim for relief or cause of action alleging injury from farming or forest practices for which no action or claim is allowed under Oregon Revised Statutes (ORS) 30.936 or 30.937. Impacts from farming and forest practices may include, but are not limited to: noise, dust, spray, smoke, vibrations, and visual impacts. [ZDO 406.05(A)(2)]
15. A total of 39 parking spaces are required (34 for guests, 5 for employees), and must meet the parking area design standards of ZDO Section 1015.02. [ZDO 1015, Table 1015-1]
16. The applicant shall obtain a Development Permit from Clackamas County Department of Transportation and Development prior to the initiation of any construction activities associated with the project.
17. Minimum intersection sight distance of 610 feet shall be provided and maintained at the proposed driveway serving the event site. Intersection sight distance can be measured 14.5 feet back from the edge of pavement at a height of 3.5 feet to an object height of 3.5 feet in the center of the oncoming travel lane.

18. The driveway approach onto S Butte Road shall be paved to a minimum width of 20 feet and length of 20 feet, constructed per Standard Drawing D500. The driveway shall intersect S Butte Road at a 90 degree angle. The existing split gravel approach shall be removed and either the ditch shall be re-established or berm or similar physical feature provided so vehicular access is limited to a single approach.
19. All roads used to access the event facility site shall be surfaced with screened gravel or better and no less than 20 feet in width, constructed per Roadway Standards Drawing R100. Beyond the paved approach onto S Butte Road, the minimum centerline radius shall be no less than 40 feet.
20. The applicant shall provide adequate on site circulation for the parking and maneuvering of all vehicles anticipated to use site, as follows:
 - a. Parking spaces shall meet minimum *ZDO* Section 1015 and Roadway Standards Drawing P100/P200 requirements.
 - b. One driveway approach on S Butte Road is approved for the event site use.
 - c. Roads and parking areas shall be constructed per Standard Drawing R100.
 - d. 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 shall construct a minimum of 5 gravel parking spaces to accommodate event staff. The parking plan shall identify the area that will be hardy grass or wood chips and it shall be demonstrated that the area can be adequately stabilized for parking. Delineation of drive aisles and parking spaces shall be provided during events. Parking areas located on hardy grass or wood chips shall take access to the on-site gravel access road no closer than 200 feet from S Butte Road.
 - e. The applicant shall provide a dimensioned site plan indicating the proposed parking space and drive aisles.
 - f. Handicapped (ADA) parking spaces and adjacent accessible areas shall be paved with asphalt concrete or an equivalent approved by Clackamas County Engineering staff, as required by the Building Department.
 - g. Drainage facilities shall be designed and constructed in conformance with *Clackamas County Roadway Standards* Chapter 4, providing water quality treatment and conveyance to a suitable outfall.
21. Prior to the issuance of a building permit and/or site development, the applicant shall submit to Clackamas County Engineering Office:
 - a. Written approval from Clackamas Fire District #1 for the planned access, circulation, fire lanes and water source supply. The approval shall be in the form of site and utility plans stamped and signed by the Fire Marshal.
 - b. Written approval from the Clackamas County Engineering for surface water management facilities and erosion control measures.

- c. A set of street and site improvement construction plans, in conformance with *Clackamas County Roadway Standards* Section 140, to Clackamas County's Engineering Office and obtain written approval, in the form of a Development Permit.
 - i. The permit will be for driveway, drainage, parking and maneuvering areas, and other site improvements.
 - ii. The minimum fee deposit is required upon submission of plans for the Development Permit. The fee will be calculated based on 8.83% of the public improvements and 5% of the onsite transportation improvements, according to the current fee schedule.
 - iii. The applicant shall have an Engineer, registered in the state of Oregon, design and stamp construction plans for all required improvements, or provide alternative plans acceptable to the Engineering Division.

22. Restroom facilities provided within any accessory structures are limited to two per structure and may not have entrances/exits leading directly to the outside of such structure. Rather, any such restrooms may be accessed only from other interior spaces within such structures.

Dated: **December 13, 2022**



Carl D. Cox
Clackamas County Hearings Officer

APPEAL RIGHTS

ZDO 1307.10(F) provides that, with the exception of an application for an Interpretation, the Land Use Hearings Officer's decision constitutes the County's final decision for purposes of any appeal to the Land Use Board of Appeals (LUBA). State law and associated administrative rules promulgated by LUBA prescribe the period within which any appeal must be filed and the manner in which such appeal must be commenced. Presently, ORS 197.830(9) requires that any appeal to LUBA "shall be filed not later than 21 days after the date the decision sought to be reviewed becomes final." This decision is "final" for purposes of a LUBA appeal as of the date of the decision appearing by my signature.