



Deschutes County Board of Commissioners  
1300 NW Wall St., Suite 200, Bend, OR 97701-1960  
(541) 388-6570 - Fax (541) 385-3202 - [www.deschutes.org](http://www.deschutes.org)

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## **AGENDA REQUEST & STAFF REPORT**

### **For Board Business Meeting of October 26, 2015**

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*Please see directions for completing this document on the next page.*

**DATE:** October 9, 2015

**FROM:** Paul Blikstad                      Department CDD                      Phone # 6554

**TITLE OF AGENDA ITEM:**

Public hearing on an appeal of the Hearings Officer's decision on File No. 247-15-000001-LUP, a Limited Use Permit for a commercial events (wedding) facility in the Exclusive Farm Use Zone. The hearing is de novo.

**PUBLIC HEARING ON THIS DATE?** Yes

**BACKGROUND AND POLICY IMPLICATIONS:**

The Hearings Officer denied the applicant's request for a Type 2 Limited Use Permit to allow up to 6 events (weddings) on a 54-acre property in the EFU Zone. The applicants appealed the Hearings Officer's decision to the Board. The Board determined they would hear the appeal under Order No. 2015-033. Staff has scheduled a hearing before the Board for Monday, October 26, 2015. Notice of the public hearing was sent to all parties to the proceedings.

**FISCAL IMPLICATIONS:**

The Board's hearing costs are factored into the appeal fee.

**RECOMMENDATION & ACTION REQUESTED:**

The Board will take any written and/or oral testimony at the hearing, and will likely deliberate at a future meeting.

**ATTENDANCE:** Paul Blikstad, Nick Lelack

**DISTRIBUTION OF DOCUMENTS:**

Planning Division staff will distribute the Board's written decision on these applications..

## INSTRUCTIONS FOR COMPLETING THE AGENDA REQUEST FORM

Use “tab” to move between fields. You can use as much space as necessary within each field.

Do not leave any fields incomplete. Don’t forget the “preferred meeting date” section. Incomplete documents will be returned to the Department Director. This could cause your agenda item to miss the deadline for submission.

Monday Board business meetings typically address land use issues, and Wednesday business meetings are for other County business. (If there is only one meeting scheduled for the week, all agenda items are addressed at that time.) Agenda requests & backup for land use items are to be submitted by noon on Tuesday prior to the meeting date. Agenda requests & backup for the Wednesday meeting must be submitted to the Board Secretary no later than noon of the Wednesday prior to the meeting.

If you are submitting a contract or other document where more than one original is needed (for instance, one original for the County and one for the contractor), please submit the correct number of original documents. In addition to submitting the agenda request form with your documents, submit this form electronically to the Board Secretary.

Please e-mail the agenda request form and the document summary form to the Board Secretary and to David Inbody, Assistant to the Administrator, so that minor changes can be done if needed.

Unless your agenda item is an Order, Ordinance, Resolution or letter, a Document Summary Form is required as well.

Please see the “Board Agenda Procedures and Document Checklist” document for further directions, or contact Board staff at 388-6572.



## Community Development Department

Planning Division Building Safety Division Environmental Soils Division

P.O. Box 6005 117 NW Lafayette Avenue Bend, Oregon 97708-6005  
(541)388-6575 FAX (541)385-1764  
<http://www.co.deschutes.or.us/cdd/>

### MEMORANDUM

**DATE:** June 15, 2015 (For the Board's June 22<sup>nd</sup> work session)  
**TO:** Deschutes County Board of Commissioners  
**FROM:** Paul Blikstad, Senior Planner  
**RE:** File No. 247-15-000001-LUP (247-15-000298-A)

#### Summary

The purpose of this work session agenda item is for the Board to decide whether to accept an appeal of File No. 247-15-000001-LUP (247-15-000298-A) or to decline review. If the Board accepts the appeal, the Board will then decide how to hear the appeal – on the record, or de novo. And if de novo, whether it will limit the appeal only to specified issues. Based on this decision, staff will prepare an order for Board approval at a future regular business meeting.

#### **1. Background**

The applicants, Paul and Hana Cooper submitted an application for a Limited Use Permit for a commercial events facility in the Exclusive Farm Use Zone. The applicants submitted the Limited Use Permit application to allow up to 6 commercial events annually (weddings) to be held on the subject property, identified on County Assessor's Map 16-12-32, as tax lots 314 and 301. Tax lot 314 would be the location of the wedding events. This tax lot has a dwelling, but no one resides in it. Tax lot 301 also has a dwelling and it is where the applicant Hana Cooper lives. The applicants have farm use on both tax lots as established by the growing, cutting and sales of hay. Based on their application, Hana Cooper will be the person responsible for monitoring the events.

The record shows that the house on tax lot 314 has been advertised for rental and rented out by the applicants since 2011 for use for corporate retreats, family reunions and other vacation rentals years as "Cooper Ranch," and "Cooper Ranch Weddings." The subject property is advertised online on eight websites including Vacation Rental By Owner ("VRBO") as a "spacious rustic ranch home," with 4 bedrooms and 2.5 baths, that sleeps up to 15. There is no evidence the County has permitted this commercial use and/or related uses of the subject property advertised on-line, including but not limited to swimming, fishing, golf and trap shooting.<sup>1</sup>

<sup>1</sup> The applicant intends to continue overnight rental of the residence on the subject property in association with the wedding events for the bride and groom, wedding party and/or guests. However, DCC 18.16.042(7) directs that no

This application went before the County Hearings Officer on March 31, 2015. The Hearings Officer's decision was mailed to the parties on May 27, 2015, denying it based on:

- Failing to meet its burden of proving that the primary use of the property over the last three years is a "farm use." Evidence in the record shows it has been used for wedding venues and vacation rentals. The record also shows that income from these wedding venues in 2014 is more than that received from farming, even if a portion of the 2014 tree sales are considered to be farming revenue.<sup>2</sup>
- Not demonstrating that all trees on the property were planted and grown on the subject property. No income from the sale of trees was part of the IRS Schedule F in the applicant's 2013 tax return. The applicant did not produce any evidence that shows reported income from the sale of trees grown on the property to the IRS.
- Even if the farm could be interpreted to include growing and harvesting of trees on-site, there is no connection between such use and the wedding events, because the trees are not proposed to be used in any way, other than as display adjacent to advertisements.
- The proposed commercial operations comprise 49.8% of the total projected revenue from the property, combining established farm sales and commercial revenue of \$45,115.<sup>3</sup> The calculations are based on limited income evidence and there is no credible or reliable evidence in the record showing income trends. The County has established a limit on the percentage of revenue from commercial activities in conjunction with farm use, which must be "incidental and subordinate," at 40%.

## 2. Appeal

The applicants appealed the Hearings Officer's denial of the Limited Use Permit application. The notice of appeal lists six alleged errors in the Hearings Officer's decision. They are listed as items a thru f on pages 1-3 of the notice of appeal.

The appeal of the Hearings Officer's decision on file no. 247-15-000001-LUP must now be processed. The 150-day review period under ORS 215.427 and Deschutes County Code 22.20.040 for this application ends on July 18, 2015. The applicant has submitted an email into the record indicating they will toll the clock for 120 days in order for the Board to hear the appeal.

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agri-tourism or other commercial event or activity may begin before 7:00 a.m. or end after 10:00 p.m. This provision prohibits the continued use of the property after 10:00 p.m. for overnight accommodations proposed as part of the application. Therefore, commercial activities in conjunction with farm use preclude overnight rentals.

<sup>2</sup> With respect to farm use revenue, the applicant submitted four pieces of documentary evidence and testimony. The applicant filed a 2013 IRS Schedule F schedule reporting hay profits for grain grown on all properties it owns, without a break-down of hay sales from the subject property. No other IRS tax filings were submitted for 2011, 2012 or 2014. The applicant did not submit any documentation from a CPA or accountant. The Hearings Officer noted that prior approvals of commercial uses on EFU-zoned properties have been supported by at least two years of income tax returns and/or other competent proof from licensed CPAs or accountants.

<sup>3</sup> To date, substantial evidence in the record can only support a finding that a total of \$22,615 (\$16,310 in hay sales and \$6,305 in tree sales) was made by the applicant in 2014 from farm use sales. With a prohibition on overnight rentals, commercial revenue is projected to be \$22,500 annually.

### **3. Board Decision/Direction**

The Board must decide whether it will hear this appeal. The applicant has requested a *de novo* review of the application. If the Board decides to hear it, the Board will need to determine whether it will review the appeal on the record, or *de novo*. And if *de novo*, whether it will limit the appeal to only specified issues.

Per DCC 22.32.035(D), the Board may consider only the following when determining whether to hear an appeal:

1. The record developed before the lower Hearings Body;
2. The notice of appeal; and
3. Recommendations of Staff.

### **4. Attachments**

Attached with this memorandum are the following:

- Applicant's Notice of Appeal
- Hearings Officer's decision
- Map showing the location of the subject property relative to the surrounding area

The file contains a number of letters in opposition to the application, mainly from the Winston Ranch property owners, located generally west and northwest of the applicant's property. These letters can be viewed on-line in DIAL.



15-298-A

RECEIVED

JUN 08 2015

# Community Development Department

Planning Division Building Safety Division Environmental Services Division

P.O. Box 6005 117 NW Lafayette Avenue Bend, Oregon 97708-6005  
(541)388-6575 FAX (541)385-1764  
<http://www.co.deschutes.or.us/cdd/>

## APPEAL APPLICATION

FEE: 2814<sup>00</sup>

### EVERY NOTICE OF APPEAL SHALL INCLUDE:

1. A statement describing the specific reasons for the appeal.
2. If the Board of County Commissioners is the Hearings Body, a request for review by the Board stating the reasons the Board should review the lower decision.
3. If the Board of County Commissioners is the Hearings Body and *de novo* review is desired, a request for *de novo* review by the Board, stating the reasons the Board should provide the *de novo* review as provided in Section 22.32.027 of Title 22.
4. If color exhibits are submitted, black and white copies with captions or shading delineating the color areas shall also be provided.

It is the responsibility of the appellant to complete a Notice of Appeal as set forth in Chapter 22.32 of the County Code. The Notice of Appeal on the reverse side of this form must include the items listed above. Failure to complete all of the above may render an appeal invalid. Any additional comments should be included on the Notice of Appeal.

Staff cannot advise a potential appellant as to whether the appellant is eligible to file an appeal (DCC Section 22.32.010) or whether an appeal is valid. Appellants should seek their own legal advice concerning those issues.

Appellant's Name (print): Paul Cooper & Hana Cooper Phone: (541) 934-2123

Mailing Address: PO Box 365 Monument OR City/State/Zip: 97864

Land Use Application Being Appealed: #247-15-000001-LUP

Property Description: Township 16 Range 12 Section 32 Tax Lot #314 & 301

Appellant's Signature: Paul Cooper Hana Cooper

**EXCEPT AS PROVIDED IN SECTION 22.32.024, APPELLANT SHALL PROVIDE A COMPLETE TRANSCRIPT OF ANY HEARING APPEALED, FROM RECORDED MAGNETIC TAPES PROVIDED BY THE PLANNING DIVISION UPON REQUEST (THERE IS A \$5.00 FEE FOR EACH MAGNETIC TAPE RECORD). APPELLANT SHALL SUBMIT THE TRANSCRIPT TO THE PLANNING DIVISION NO LATER THAN THE CLOSE OF THE DAY FIVE (5) DAYS PRIOR TO THE DATE SET FOR THE DE NOVO HEARING OR, FOR ON-THE-RECORD APPEALS, THE DATE SET FOR RECEIPT OF WRITTEN RECORDS.**

SCANNED  
JUN 9 2015

(over)

**IN THE MATTER BEFORE THE DESCHUTES COUNTY BOARD OF  
COUNTY COMMISSIONERS**

In re

Paul Cooper and Hana Cooper,

**Applicants-Appellants**

File No. 247-15-000001-LUP

**NOTICE OF APPEAL**

**NOTICE OF APPEAL OF DECISION OF DESCHUTES COUNTY  
HEARINGS OFFICER DATED MAY 27, 2015**

**1. DCC 22.32.010 Who May Appeal.**

Paul Cooper and Hana Cooper are the Applicants below, parties to the proceedings, and are entitled to appeal under DCC 22.32.010(A)(1).

**2. DCC 22.32.051 Filing Appeals.**

Paul and Hana Cooper submit the attached Notice of Appeal form and the appeal fee and the following statement of issues on appeal.

**3. DCC 22.32.020 Notice of Appeal.**

This Notice includes the following statement of issues, a request for a *de novo* review by the Board of County Commissioners and reasons why the Board should review the Hearings Officer Decision and why it should do so *de novo*.

**4. Issues on Appeal.**

The Hearings Officer Decision is in error in the followings ways:

- a. The Hearings Officer erred in finding that the Applicants had not met their burden of proof to show that the trees that are for sale and have been sold on the subject property were raised and harvested on the property so as to constitute a farm use.

For example, the Hearings Officer incorrectly interpreted ORS 215.203 to require trees to have been "*planted* and grown on the subject property" in order to qualify as farm use. There is abundant evidence that the trees have been nurtured on the property "for years," for example as shown in the photographs in the record of half-buried tree stock, and in the staff report's observation of trees growing in containers in the ground. The nurturing and maturation of those trees on the subject property before their sale constitutes being "raised" and "harvested" on the property in order to qualify as farm use under ORS 215.203. There is no requirement that the trees be "planted" on the subject property to qualify as farm use, as the hearings officer decision incorrectly found.

- b. The Hearings Officer Decision erred in disqualifying income from tree sales as inadequate, and in disregarding or discrediting the testimony of the Applicants about that tree income.
- c. The Hearings Officer Decision erred in disqualifying all or part of the income from tree sales in the equation for whether the proposed wedding activity was "incidental and subordinate" to the farm use on the property on the grounds that the Coopers did not show a connection between the tree sales and the weddings. There is no requirement in the County Code or in state law that every aspect of a property's farm use has to be separately "connected" to the proposed commercial events. In this case, the Applicants demonstrated a sufficient connection between the hay grown and sold on the property and the weddings to meet the qualification for such a connection between the property's farm use and the incidental events. There was no requirement that the tree sales had to be incorporated into the weddings too, other than the signs advertising the tree sales.
- d. The Hearings Officer Decision erred in finding that the overnight use of the property by members of the wedding party constituted agritourism or a commercial event occurring after 10:00 pm. The event in question is the wedding itself, which in every case will be finished by 10:00 pm. The guests' overnight stay on the property does not constitute an unlawful after-hours agritourism or commercial event.
- e. The Hearings Officer Decision erred in finding and/ or concluding that applicant would realize additional income from the rental of the property in addition to the \$3500 wedding event fee plus \$250 cleaning fee.

- f. The Hearings Officer Decision erred generally in concluding that the proposed commercial use will not be incidental and subordinate to the existing farm use on the property, including her finding that the applicant failed to meet its burden of proving that the primary use of the property over the past three years has been farm use.

**5. Request for *De Novo* Review.**

Appellants request review by the Board of County Commissioners *de novo*. This application represents a significant question of interpretation of the County Code and further development of the County policies on wedding events, following the *Downs* decision and other opinions. *De novo* review is required because it is necessary to fully and properly evaluate the credibility of the evidence submitted in the record, as faulted by the Hearings Officer, and fully consider the Hearings Officer's conclusions.

Dated this \_\_\_\_ day of June 2015.

  
\_\_\_\_\_  
Paul Cooper

  
\_\_\_\_\_  
Hana Cooper



## Community Development Department

Planning Division Building Safety Division Environmental Soils Division

P.O. Box 6005 117 NW Lafayette Avenue Bend, Oregon 97708-6005  
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### DECISION OF THE DESCHUTES COUNTY HEARING OFFICER

**FILE NUMBER:** 247-15-000001-LUP

**HEARING DATE:** March 31, 2015  
6:30 p.m.  
Barnes and Sawyer Rooms of the Deschutes Services Building  
1300 N.W. Wall  
Bend, OR 97701

**APPLICANT:** Paul Cooper and Hana Cooper  
P.O. Box 365  
Monument, OR 97864

**OWNER:** Paul and Loreen Cooper

**APPLICANT'S REPRESENTATIVE:** Francis Hansen & Martin LLP  
Michael H. McGean  
1148 NW Hill Street  
Bend, OR 97701-1914

**REQUEST:** The applicant is requesting a Type 2 Limited Use Permit for a commercial events/activities facility on a 54-acre property in the Exclusive Farm Use Zone.

**STAFF CONTACT:** Paul Blikstad, Senior Planner

**RECORD CLOSED:** April 29, 2015

- I. **APPLICABLE STANDARDS AND CRITERIA:**
- A. Title 18, Deschutes County Zoning Ordinance
1. Chapter 18.04, Title, Purpose and Definitions
- \* Section 18.04.030, Definitions
2. Chapter 18.16, Exclusive Farm Use (EFU) Zone

\* Section 18.16.025, Uses Permitted Subject to the Special Provisions Under DCC Section 18.16.038

\* Section 18.16.042, Agri-Tourism and other Commercial Events or Activities Limited Use Permit

\* Section 18.16.043, Single Permit

\* Section 18.16.060, Dimensional Standards

\* Section 18.16.070, Yards

3. Chapter 18.80, Airport Safety Combining (AS) Zone

\* Section 18.80.020, Application of Provisions

\* Section 18.80.028, Height Limitations

\* Section 18.80.044, Land Use Compatibility Requirements

\* Section 18.80.054, Conditional Uses

B. Title 22, Deschutes County Development Procedures Ordinance

C. Oregon Revised Statutes (ORS) Chapter 215, County Planning, Zoning, Housing Codes

1. ORS 215.296, Standards for Approval of Certain Uses in Exclusive Farm Use Zones

2. ORS 215.427, Final Action on Permit or Zone Change Application

II. FINDINGS OF FACT:

A. **LOCATION:** The subject property consists of two tax lots: tax lot 314 has an assigned address of 64655 Old Bend-Redmond Highway, and tax lot 301 has an assigned address of 64800 Simon Road. It is identified on the Deschutes County Assessor's Map, located in Township 16, Range 12 East, Tax Lot 00314.

B. **LOT OF RECORD:** Tax lots 314 and 301 are both legal lots of record pursuant to being Parcels 1 and 2 of Plat No. MP-87-18, respectively.

C. **ZONING AND PLAN DESIGNATION:** The subject property is zoned Exclusive Farm Use – Tumalo/Redmond/Bend subzone (EFU-TRB). The property is also located within the Conventional Housing (CHC) Combining Zone. A very small portion of the property is located within the Airport Safety (AS) Combining Zone<sup>1</sup>. The property is designated Agriculture on the Deschutes County Comprehensive Plan.

D. **SITE DESCRIPTION:** The two tax lots combined constitute approximately 54 acres. Tax lot 314 is 34.14 acres and includes an existing dwelling, and several agricultural or storage buildings. The Assessor's records indicate it has 8 acres of water rights. Tax lot 301 is 19.67 acres and has an existing dwelling and two agricultural structures. The Assessor's records indicate it has 17 acres of water rights. The burden of proof submitted by the applicant states that the farm use on tax lot 314 consists of hay production and horses. The applicant later submitted documentation and testified that

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<sup>1</sup> The subject property is approximately 10 miles from the Redmond Airport.

the farm use on tax lot 314 includes growing trees and on-site tree sales. The farm use on tax lot 301 is hay production. The undisturbed portions of the property have a vegetative cover of juniper trees and scrub brush. Both tax lots have irrigated fields with wheel lines. Tax lot 314 is accessed from an existing driveway off of the Old Bend-Redmond Highway. Tax lot 301 is accessed from Simon Road. The topography of the site is level to rolling, with some level areas, such as the hayfields, and higher rock outcrop. The tax lots are served by existing domestic wells, and on-site septic systems.

- E. SURROUNDING ZONING AND LAND USES:** The properties surrounding the subject property consist of residences with some farming occurring, which are zoned both EFU-TRB, and also Multiple Use Agricultural (MUA-10). To the west/northwest across Simon Road is the Winston Ranch subdivision zoned MUA-10. To the north, south and east is land zoned EFU-TRB, some of which is in farm use. There is also much dry land.
- F. PROPOSAL:** The applicant proposes to establish a commercial events or activities facility on the subject property, with up to six commercial events/weddings each year from May through September. The events or activities are proposed to take place solely on Tax Lot 314. A maximum of 150 people will be in attendance at each event.<sup>2</sup> According to the burden of proof, the events will typically take place on Saturdays, with a time frame of 8:00 a.m. to 10:00 p.m. Music will be terminated by 9:00 p.m. (as testified by the applicant at the hearing) and all people in attendance will vacate the site by 10:00 p.m. Set-up and wedding rehearsals will take place the day prior to the event, and clean-up will take place the day following the event. The applicant intends to continue overnight rental of the residence on the subject property in association with the wedding events for the bride and groom, wedding party and/or guests.

The burden of proof states, "All wedding activities and events will take place in open areas, and around the pond, and lawn areas surrounding the house, in approximately a 4 acre space." Access to the site is via a ¼ mile gravel driveway with egress from the Old Bend Redmond Highway.

- G. PUBLIC AGENCY COMMENTS:** The Planning Division mailed notice to several agencies and received comments from the Deschutes County Transportation Planner, Deschutes County Road Department, Deschutes County Building Division, Bend Fire Department, Swalley Irrigation District, and the Deschutes County Environmental Health Department. These public agency comments are set forth in the findings below.

The following agencies did not respond to the notice: Deschutes County Environmental Soils, Central Electric Cooperative, Pacific Power and Light, Centurylink, Deschutes County Assessor.

- H. PUBLIC COMMENTS:** The Planning Division sent notice of this proposal to all property owners within 750 feet of the subject property. Prior to the public hearing, several letters expressed opposition to the application, and two letters in support were submitted. The concerns expressed in the letters of opposition deal with the following:

- Noise emanating from the wedding receptions to be held at the site.

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<sup>2</sup> Originally, the burden of proof stated that the maximum number of guests would be limited to 250. Since then, the applicant has submitted evidence that he will restrict the events to a maximum of 150 guests.

- Effectiveness of noise monitoring
- Increased traffic on the Old Bend-Redmond Highway and the possibility of event attendees having alcohol impairment.
- The use of Simon Road for any portion of the events facility, and it being a private road maintained by the Winston Ranch homeowners.
- Fire access road requirements and existing access road width
- Safety of access to the property
- The possibility of the use setting a precedent for more events facilities in Tumalo.
- Fire danger from hay being used for seats/tables (i.e. cigarette smoking and candles).
- The ranch being available for other activities (not just weddings).
- The stated hay sales figures (gross farm income) include the applicant's farm outside of Deschutes County.
- Whether tree sales on the property are of trees actually grown on-site
- Whether a previously-approved commercial nursery is in operation
- If the commercial nursery is in operation, whether both uses may co-exist
- Questions concerning the actual amount of event fees and projected revenue from operation of wedding events
- Safety of well water consumed at the house at 64655 Old Bend Redmond Highway by the wedding party and guests
- The possibility of guest parking in an existing parking lot that is located within a 100' yard setback
- The potential of fire hazards resulting from parking in dry grass areas
- Adequacy of parking on-site
- The lack of supervision of events on the subject property
- Use of the subject property for overnight rentals

**I. NOTICE REQUIREMENTS:** The applicant complied with the posted notice requirements of Section 22.24.030(B) of Deschutes County Code (DCC) Title 22. The applicant submitted a Land Use Action Sign Affidavit, dated January 5, 2015, indicating the applicant posted notice of the land use action on that same date.

**J. REVIEW PERIOD:** This application was submitted on January 5, 2015. The Planning Division sent the applicant an incomplete application letter dated January 29, 2015, indicating that a Hearings Officer Deposit fee is required for the review process. The applicant submitted the deposit fee on February 18, 2015. Therefore the application was deemed complete and accepted for review on February 18, 2015. The 150<sup>th</sup> day upon which the decision on this application is required is July 18, 2015.

**K. LAND USE HISTORY:** The subject property includes the following prior land use applications:

MP-87-18, Partition to divide a 53.81-acre (net acres) parcel into two parcels in the EFU zone. The partition was filed with the County Clerk in December of 1987.

CU-06-107/SP-07-21, Conditional Use Permit and Site Plan approval for a commercial activity in conjunction with farm use, specifically, "The commercial activity is to include the sale of nursery stock produced off-site. The applicant, in the submitted burden of proof states that the farm use on the property consists of the growing and selling of trees

and shrubs. The applicant proposes to sell plant materials that are shipped in from outside the county as part of the commercial activity operation.”

The conditional use permit received final approval on February 1, 2007. The site plan received final approval on April 16, 2007. The applicant testified that this use is not currently occurring on the property.

The record shows that the applicants have previously hosted as many as eighteen (18) prior wedding events on the property over the past 3-4 years. There is no evidence any such events were conducted pursuant to a limited use permit, or any other permit or license from the County. On July 2, 2014, Deschutes County Code Enforcement Technician John Griley sent a notice of Code Violation, No. 247-14-00101-CE to Paul and Loreen Cooper concerning the use of a wedding event venue without required permits. There is no evidence of any further code enforcement action.

The record also shows that the house on the subject property has been advertised for rental and rented out by the applicants since 2011 for use for corporate retreats, family reunions and other vacation rentals years as “Cooper Ranch,” and “Cooper Ranch Weddings.” The subject property is advertised online on eight websites including Vacation Rental By Owner (“VRBO”) as a “spacious rustic ranch home,” with 4 bedrooms and 2.5 baths, that sleeps up to 15. There is no evidence the County has permitted this commercial use and/or related uses of the subject property advertised online, including but not limited to swimming, fishing, golf and trap shooting.

- L. **ADJACENT PARCELS:** The EFU-zoned properties in the area that are adjacent to the subject property are as follows:

| Tax Lot No.    | Owner     | Size (Acres) | Dwelling | Farm Use   | Tax Deferred |
|----------------|-----------|--------------|----------|------------|--------------|
| 16-12-29, 1103 | Leshaw    | 19.72        | 1998     | Pasture    | Yes          |
| 16-12-29, 1202 | Francis   | 6.1          | No       | Pasture    | Yes          |
| 16-12-32, 302  | Lynch     | 13.27        | 1996     | Pasture    | Yes          |
| 16-12-32, 400  | Farmer    | 17.39        | 1964     | None       | No           |
| 16-12-32, 201  | Sale      | 6.75         | 1993     | Pasture    | Yes          |
| 16-12-32, 306  | Alcala    | 5.4          | 1980     | None       | No           |
| 16-12-32, 308  | Schilling | 8.45         | 1980     | None       | No           |
| 16-12-32, 300  | Palen     | 7.16         | 1979     | None       | No           |
| 16-12-32, 313  | Foster    | 1.97         | No       | None       | No           |
| 16-12-32, 310  | Foster    | 17.78        | No       | Dry ground | Yes          |
| 16-12-32, 309  | Foster    | 5            | 1975     | Dry ground | Yes          |
| 16-12-32, 305  | Hollis    | 5            | No       | Dry ground | Yes          |
| 16-12-32, 316  | Kuhn      | 10.02        | No       | Pasture    | Yes          |

### III. CONCLUSIONS OF LAW:

#### Title 22, Deschutes County Zoning Ordinance.

#### A. Chapter 22.24. LAND USE ACTION HEARINGS

##### 1. Section 22.24.040. Notice of Hearing or Administrative Action

##### A. Individual Mailed Notice.

1. Except as otherwise provided herein, notice of a land use application shall be mailed at least 20 days prior to the hearing for those matters set for a hearing, or within 10 days after receipt of an application for those matters to be processed administratively with notice. Written notice shall be sent by mail to the following persons:

- a. The applicant.
- b. Owners of record of property as shown on the most recent property tax assessment roll of property located:

\* \*\*

3. Within 750 feet of the property that is the subject of the notice where the subject property is within a farm or forest zone, except where greater notice is required under DCC 22.24.030(A)(4) for structures proposed to exceed 30 feet in height.

**FINDING:** The Hearings Officer finds notice of the land use hearing on this application was provided to parties within 750 feet of the subject property, as evidenced by the Certificate of Mailing, dated January 13, 2015. Greater notice is not required under DCC 22.24.030(A)(4) because no new structures proposed to exceed 30 feet in height are proposed. The public hearing was conducted pursuant to Chapter 22.24 of the procedures ordinance.

##### B. Posted Notice.

1. Notice of a land use application for which prior notice procedures are chosen shall be posted on the subject property for at least 10 continuous days prior to any date set for receipt of public comment. Such notice shall, where practicable, be visible from an adjacent public way.

**FINDING:** The Hearings Officer finds that proper posted notice of the land use application was posted on the subject property for at least 10 continuous days prior to the public hearing. This is evidenced by the Land Use Action Sign Affidavit, dated January 5, 2015, indicating the applicant posted notice of the land use action on that same date.

**C. Published Notice.** In addition to notice by mail and posting, notice of an initial hearing shall be published in a newspaper of general circulation in the County at least 20 days prior to the hearing.

**FINDING:** The Hearings Officer finds that legal notice of the public hearing was published in the Bend Bulletin newspaper on March 3, 2015, more than 20 days prior to the public hearing.

#### **Title 18, Deschutes County Zoning Ordinance.**

#### **B. CHAPTER 18.16. EXCLUSIVE FARM ZONE**

1. **Section 18.16.025. Uses Permitted Subject to the Special Provisions Under DCC Section 18.16.038 or DCC Section 18.16.042 and a Review Under DCC Chapter 18.124 where applicable.**

\*\*\*

**J. *Agri-tourism and other commercial events and activities subject to DCC 18.16.042.***

**FINDING:** Deschutes County Code 18.04.030 defines commercial event or activity as follows:

*"Commercial event or activity means any meeting, celebratory gathering, wedding, party, or similar uses consisting of any assembly of persons and the sale of goods or services. It does not include agri-tourism. In DCC 18.16.042, a commercial event or activity shall be related and supportive of agriculture."*

The applicant is proposing a commercial events and activities facility on the subject property to host up to six weddings/events annually, with the option of including overnight rental of the on-site residence for an additional fee. Therefore, the Hearings Officer finds the applicant proposes a use that may be permitted in the EFU-TRB zone with certain restrictions.

Staff states, and the Hearings Officer agrees that there are no criteria under DCC 18.16.038 for the proposed use,<sup>3</sup> and it is not subject to site plan review under DCC Chapter 18.124. Compliance with the criteria under DCC 18.16.042 is addressed in the findings below.

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<sup>3</sup> Section 18.16.038 establishes special conditions for uses not included in the applicant's proposal.

**2. Section 18.16.042 Agri-Tourism and other Commercial Events or Activities Limited Use Permit**

- A. *Agri-tourism and other commercial events or activities related to and supportive of agriculture may be approved in an area zoned for exclusive farm use only if the standards and criteria in this section are met.***

**FINDING:** Compliance with the requirement that the proposed commercial events or activities facility in the Exclusive Farm Use Zone be "relate to and supportive of agriculture" is discussed in detail in the findings below.

- B. *Application. The application shall include the following.***  
**1. *The General Provisions information required in DCC 22.08.010.***

**FINDING:** County Assessor's records indicate the applicant, Paul Cooper, is an owner of the subject property. Loreen Cooper is also an owner of the subject property. Hearings Officer Karen Green has held in previous decisions that it is not necessary for all owners of the property to sign a land use application. Accordingly, the land use application was properly submitted by a property owner.

The applicant submitted the Limited Use Permit application form, a burden of proof statement addressing the criteria in DCC 18.16.042, the correct filing fee, and an the affidavit attesting to the fact that the land use action sign was posted on the property on January 5, 2015. The applicant and its representative provided oral argument and testimony at the public hearing on March 31, 2015. Several corrections and revisions to the applicant's burden of proof statement were made prior to the hearing. The applicant filed post-hearing submissions during the period in which the record remained open.

**2. *A written description of:***

**a. *The proposal.***

**FINDING:** The Hearings Officer finds the applicant's application, original and supplemental burden of proof statements, other record submissions from the applicant and his attorney, and the applicant's testimony provide detailed written descriptions of appellant's proposal to establish a commercial event facility and to conduct up to six weddings/events per year. The burden of proof states in relevant part:

*"We are proposing to have six (6) commercial events/weddings on the property per year, from May thru September, on the non-farming portion of the property. The events will allow a maximum of 250 people in attendance and most events will take place on Saturdays. The time frame for these events will be from 8:00 a.m. to 10:00 p.m. All music during such events will be monitored by a meter required for this purpose and music will be terminated by 9:30 p.m. and all people/participants/attendants will vacate the site by 10:00 p.m."*

The applicant corrected and clarified the proposal on pages 1-2 and 4-5 of its April 14, 2015 letter to the Hearings Officer, respectively, as follows:

*"The Coopers do not provide any domestic water for the events. The guests are required to furnish bottled drinking water for all guests at the events. A copy of the Coopers' standard wedding venue agreement is attached hereto as Exhibit 1. The agreement demonstrates that the wedding party is required to provide and [sic] adequate supply of bottled water for the events."*

*"The wedding venue agreement also provides that the wedding party is responsible for all catering, food, drink, and food and drink service, if alcohol is serviced, for providing OLCC-licensed servers (Those OLCC-licensed servers are commonly provided by local caterers and suppliers). The Coopers do not provide any of those services. Further, the per-event charge of \$3500 is all-inclusive, covering rental of the facility and all tables and chairs. The only other incidental charge is a \$250 per-event cleaning fees. There are no other facilities charges, or the like. The annual gross commercial income from the property, even including that fee, should not exceed \$22,500 (\$3500 per event with a maximum of six events per year, plus \$250 cleaning fees."*

*"As noted at the hearing, applicant is discontinuing any other vacation rental use of the property apart from the six proposed wedding events. Applicant's listing of the property on VRBO for a wedding venue, however, is a primary source of advertising for those events. The Coopers receive approximately 60% of their wedding inquiries from VRBO, with a smaller amount coming from other web sites and through word of mouth."*

A sample Wedding Venue Rental Agreement for Cooper Ranch shows that, in addition to the \$3500 flat-rate rental for the wedding venue (plus cleaning fee and pet fees), "lodging tax of .09% x \$\_\_\_\_\_," may be added to the total due. The Rental Agreement also specifies check-in and check-out times to be filled in. Accordingly, I find that the use of the property as a commercial events/wedding facility is also proposed to include rental use of the residence on the property associated with wedding events.

- b. *The types of agri-tourism and other commercial events or activities that are proposed to be conducted, including the number and duration of the agri-tourism and other commercial events and activities, the anticipated maximum daily attendance and the hours of operation, and how the agri-tourism and other commercial events or activities will be related to and supportive of agriculture and incidental and subordinate to the existing farm use on the tract.***

**FINDING:** The Hearings Officer finds this subsection requires me to address three issues: (1) the types and operating characteristics of the proposed commercial events/activities; (2) whether and how such events/activities will be "related to and supportive of agriculture;" and (3) whether and how such events/activities will be "incidental and subordinate to the existing farm use" on the property. Each of these issues is addressed in the findings below.

### **1. Types and Operating Characteristics of Proposed Commercial Events and Activities.**

As discussed above, the applicant proposes to conduct up to six weddings/commercial events per year. The weddings/events would take place on an approximately four-acre portion of the subject property in open areas, including grassy areas near the irrigation pond and the existing dwelling used as a vacation rental. Each wedding/event would not exceed 72 hours in duration,

including set-up, the event itself, and cleanup. The weddings/events could occur on any day of the week but typically on Saturday. Weddings/events would take place between 8 a.m. and 10 p.m. The maximum number of attendees would be 150. The proposed use would include the option of the wedding party and/or guests to rent the existing ranch house on site for overnight accommodations.

## **2. How the Proposed Commercial Events and Activities Will Be Related To and Supportive of Agriculture.**

Hearings Officer Karen Green recently interpreted the phrase "related to and supportive of agriculture" in the context of "commercial events and activities" under Section 18.16.042 in her May 5, 2015 decision in the *Brown* administrative appeal (File Nos. 247-15-000061-A, 247-14-000202-LUP). In that decision, Hearings Officer Green relied on the decision in *Crescent Moon* (CU-14-7, LM-14-28) and other decisions cited therein, to rule that a commercial event or activity could be considered "related to and supportive of" farm use on the subject property solely because it provides supplementary income to the farmer.

In the decision in *Crescent Moon* (CU-14-7, LM-14-28), the phrase "related to agriculture" was interpreted and applied in the context of a commercial use in conjunction with farm use consisting of an "alpaca boutique" on property on which alpacas are bred, raised and sold. The following relevant findings were made:

*"As discussed above, the Hearings Officer has found both the production of hay and the breeding, raising, marketing and selling of alpacas on the subject property constitute 'farm use.' I further find the farm use occurring on the subject property as of the date the record in this matter closed finally consists of hay production and the breeding, raising and sale of alpacas. Although the applicants had not yet moved all 84 of their alpacas onto the subject property due to lack of adequate fenced pasture, I find the presence of approximately one-quarter of their herd on the subject property is sufficient to demonstrate the existence of farm use consisting of the breeding, raising and sale of alpacas on the property.*

*The applicants' proposed commercial use consists of the following:*

- a. the sale of fleece from alpacas raised on the subject property;*
- b. the sale of products made from such fleece, such as yarn created by spinners from fleece purchased from the applicants;*
- c. the sale of blankets, socks, gloves and mittens made by weavers from fiber from alpacas raised on the subject property;*
- d. the sale of farm products not produced on the subject property, such as garments and other items made from fleece from alpacas not owned by the applicants; and*
- e. the sale of 'incidental items' consisting of jewelry not made from alpaca products. .*

*The Hearings Officer finds the sale of fleece from the applicants' alpacas and the sale of products made from their alpacas' fleece clearly constitutes a commercial*

*activity related to the farm use occurring on the subject property – i.e., the breeding, raising and sale of alpacas. The staff report states, and I agree, that the sale of farm products not produced on the subject property – i.e., garments and other products made from fleece of alpacas not owned by the applicants or raised on the subject property – reasonably can be considered a commercial activity related to the farm use occurring on the property provided such items are limited to alpaca fleece and alpaca fleece products.”*

The Hearings Officer noted in the *Crescent Moon* decision that former Hearings Officer Ken Helm also had addressed the “related to” language in his decision in *Newell/Allied Show Services* (CU-13-31, SP-13-18). In that case, Hearings Officer Helm considered a commercial use in conjunction with farm use consisting of horse shows, and made the following relevant findings:

*“While growing hay to feed horses is a farm use, if the only farm use of the property were for growing hay, the proposed horse events would be so marginally related, if related at all, to the actual farm use that they would not constitute a commercial activity in conjunction with farm use under the statute.”*

Hearings Officer Helm found that because the applicants also raised and trained horses on their property, the proposed horse shows were sufficiently “related to” that farm use to qualify as a commercial use in conjunction with farm use.

Interpretation of the phrase “related to and supportive of” agriculture in Section 18.16.042, is aided by several documents discussed below, including the legislative history of that section, dictionary definitions, and written guidelines and comments from the Department of Land Conservation and Development (DLCD). The administrative decision noted Section 18.16.042 was adopted under the authority of 2011 Senate Bill (SB) 960 which established, but did not define, the “related to and supportive of agriculture” standard for agri-tourism and commercial events/activities. The administrative decision examined the 2012 DLCD guidelines for wineries and events in EFU Zones which include the following relevant language:

*“Q: What does ‘related to’ and ‘supportive of’ agriculture mean in SB 960? \* \* \**

*A: We interpret ‘related to’ and ‘supportive of’ to mean that the proposed agri-tourism or other commercial event or activity is physically and/or economically logically connected to, and supports, an existing on-site farm operation. For example, ‘related to’ could mean that the proposed event involves a product that is produced on site that has a meaningful and significant relationship to the proposed event. ‘Supportive of’ could involve the generation of supplemental income to help support a farm.” (Emphasis added.)*

The administrative decision in *Brown* noted that *Webster’s New World Dictionary* includes the following definitions:

- Related: “connected or associated, as by origin or kind.”
- Supportive: “that gives support, help or approval.”

Finally, the administrative decision in *Brown* also quoted the following comments submitted by DLCD’s Policy Analyst Michael Morrissey and Farm/Forest Specialist Katherine Daniels during

the county's consideration of the adoption of Ordinance 2012-004 authorizing "agri-tourism" uses:

*"We aren't sure a wedding meets a definition of agri-tourism, but it isn't hard to see it as an 'other commercial event.' The department believes that 'related to and supportive of agriculture' (together with 'incidental and subordinate') is specific to the site. That means there needs to be on-site farming taking place, and that any wedding activities must either provide supplementary income to a farm operation that earns a larger income, so that they financially 'support' the onsite farming. It could also mean that wedding activities must use products grown on the farm as part of the wedding activities (e.g., flowers from a flower farm, etc.). However, as an example, a free standing 15-acre 'wedding mill,' on an EFU zoned site, with a dwelling and a personal backyard vegetable garden would not meet the standards, in our opinion."* (Emphasis added.)

The Hearings Officer notes that in the *Downs* decision (LUP 12-2), the Deschutes County Board of Commissioners (hereafter "board") approved the applicants' request for a Type 2 LUP to conduct weddings on their EFU-zoned parcel based in part on the following findings:

*"The Board finds the proposed commercial weddings are related to and supportive of agriculture for this application for the following reasons:*

- *People choosing to have weddings in a pastoral setting with its green fields, irrigation sprinklers, tractors, hay balers, and associated sounds.*
- *Hay sales by the applicant from contacts made with potential customers from attendees at the weddings (networking).*
- *The applicant's proposal to have each wedding or commercial event include a dish prepared by a caterer which is made with grass hay (seasoned like with [sic] mesquite wood).*
- *The weddings provide supplemental income for the farm use on the property."*

Considering all of the above sources, the Hearings Officer finds that to demonstrate the proposed weddings/events are "related to and supportive of" the farm use on the subject property, the applicant must show: (a) the existence of farm use on the subject property; (b) that there is more than a marginal connection between the farm use – hay production and sales of trees grown on-site – and the weddings/events; and (c) participants at the weddings/events support that farm use through payment of fees, purchase of farm products and services from the applicant, etc.

Each of these criteria are addressed as follows:

**a. Farm use of the subject property.**

**Is there a farm use, as defined in ORS 215.203(2), on the property?**

Oregon Revised Statute (ORS) defines a farm use under ORS 215.203(2) as:

*"(2)(a) As used in this section, "farm use" means the current employment of land for the primary purpose of obtaining a profit in money **by raising, harvesting***

***and selling crops or the feeding, breeding, management and sale of, or the produce of, livestock, poultry, fur-bearing animals or honeybees or for dairying and the sale of dairy products or any other agricultural or horticultural use or animal husbandry or any combination thereof. "Farm use" includes the preparation, storage and disposal by marketing or otherwise of the products or by-products raised on such land for human or animal use. "Farm use" also includes the current employment of land for the primary purpose of obtaining a profit in money by stabling or training equines including but not limited to providing riding lessons, training clinics and schooling shows. "Farm use" also includes the propagation, cultivation, maintenance and harvesting of aquatic, bird and animal species that are under the jurisdiction of the State Fish and Wildlife Commission to the extent allowed by the rules adopted by the commission. "Farm use" includes the on-site construction and maintenance of equipment and facilities used for the activities described in this subsection. "Farm use" does not include the use of land subject to the provisions of ORS chapter 321, except land used exclusively for growing cultured Christmas trees as defined in subsection (3) of this section or land described in ORS 321.267(3) or 321.824(3).***

(emphasis added). ORS chapter 321 deals with timberland and forest taxation, and is not applicable to the applicant's property.

I find that there is a farm use, as defined in ORS 215.203(2) on the property, as established by the growing, cutting and sales of hay. The applicant revised his burden of proof in which he initially estimated sales of 1000 tons of hay annually, with approximately \$45,000 income,<sup>4</sup> down to a figure of 65.25 tons from the property annually, from three cuttings with total 2014 income from hay sales of \$16,312.50. The applicant also presented evidence that there is storage on the property for an additional 120 tons of hay, however, such use is not "farm use," because that hay is not "raised" or "harvested" on the subject property. On March 31, 2015, the applicant submitted a brochure from Cooper Custom Hay, explaining their services. This document offers services to other farmers and property owners with respect to haying, stacking, landscaping, general construction, land clearing, irrigation and excavation. The Hearings Officer finds that such services do not constitute "farm use" on the subject property under the statutory definition of the term.

The applicant has stated that they intend to grow annual and perennial flowers and decorative plants on the property for use in flower baskets and arrangements which will be incorporated into the weddings on the property, and be advertised for sale to wedding guests on site. Because this use is not currently occurring on the subject property, it is not considered in the determination of whether the primary income from the property is from this potential, future farm use.

There is conflicting evidence in the record as to whether all trees for sale on the subject property are "raised" and "harvested" on the property, so as to constitute a "farm use," under the statutory definition, or whether some or all of the trees are nursery stock grown elsewhere, as

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<sup>4</sup> The applicant submitted an IRS schedule F form from the year 2013 with his burden of proof, with an amount of gross income listed on the schedule F of \$154,400. The submitted schedule does not specify the properties from which farm income was derived. No proof, other than testimony by the applicant and assertions in his attorney's submissions was provided concerning the farm income on tax lots 314 and 301. Farm use income from the subject property for the year 2013 was not separately provided by the applicant. The applicant did not submit a schedule F form for the year 2014, or for any prior years (2011 or 2012) during which both farming and events/vacation rentals were taking place.

contemplated by the applicant when he obtained a conditional use permit and site plan approval in CU-06-107/SP-07-21. The burden of proof characterizes the property as a "horse and hay farm ranch." The burden of proof also states that "trees are grown/raised on the property and the farm as a fully functioning hay growing business." The applicant stated through his attorney that all tree sales come from trees grown and present on-site. Staff confirmed the existence of trees growing in pots on the property. The 2007 application for a conditional use permit and site plan approval states that some trees are grown on-site, but that stock grown elsewhere also would be transferred to the property for nursery sales. The applicant did not present any evidence regarding the nursery operations on site, other than to say that he is not currently operating the nursery. The applicant described tax lot 314 as including 6 acres of irrigated hay, 8.5 acres of horse pasture and "two acres dedicated to nursery tree stock," in a March 31, 2015 submittal.

A supplemental burden of proof statement dated March 6, 2015 was submitted to "provide further explanation of how the proposed events will be related to and supportive of agriculture and incidental and subordinate to the existing farm use on the tract." This submittal focuses on use of hay bales during the wedding and advertisement of hay and tree products produced on the property to wedding participants. The applicant describes plans for growing annual and perennial flowers and decorative plants on the property for use in flower baskets and arrangements, as well.

Several neighbors testified that the trees currently on-site on the property have been there for years. All of these trees are mature, in pots or burlap sacks, many of which are root-bound. Photographic evidence and an aerial image from Google Earth dated 2007 show the location of the trees on the property, which appears to have remained consistent over the years since the approval of the conditional use permit and site plan for a commercial nursery, as evidenced by a comparison to the July 6, 2014 Google Earth image submitted by the applicants on March 31, 2015. The neighbors testified that they have witnessed "little" activity concerning the trees. There are no signs or advertisements for the sale of trees on Cooper Ranch. The neighbors have not seen any traffic or customers associated with the two Spring 2014 tree sales referenced in a document submitted by the applicant.

The applicant did not produce any testimony or evidence of current tree-growing operations (e.g., nursery/greenhouses for nurturing new starts, trees in various states of maturity, testimony of employees that grow the trees, receipts for tools, machinery, supplies, fertilizer, etc. for growing the trees). The applicant did not produce any tax returns evidencing the growing of trees on-site as a farm use. The only evidence submitted by the applicant in this regard, an IRS Schedule F form for 2013, states that the principal crop or activity is hay. The Code from Part IV of Schedule F is entered as 111100 on the applicant's tax return, which refers to oilseed and grain. Per IRS Schedule F, part IV, code 111400 refers to greenhouse, nursery and floriculture production. This code was not used on the applicant's 2013 tax return, nor does it appear that sales of any trees grown on-site were reported to the IRS in 2013. The applicant has not produced any evidence that shows reported income from the sales of trees grown on the property to the IRS.

The Hearings Officer finds that the applicant has not met its burden of proving, by a preponderance of the evidence, that all trees on-site were planted and grown on the subject property. The applicant's submitted "inventory" of trees available for sale on the property does not show that the trees were, in fact, grown on site. I find the applicant's bald statements, without more, not to be credible, particularly in light of evidence to the contrary. There is

evidence some trees may have been grown on-site, but the record as a whole demonstrates that the "farm use," of the subject property is growing hay, with incidental sales of trees.

As detailed in the findings concerning "incidental or subordinate" below, the applicant has failed to meet its burden of proving that the primary use of the property over the past three years since the property has been used for wedding venues and vacation rentals is "farm use." The record shows that income received from these commercial activities in 2014 is more than that received from farming, even if a portion of the 2014 tree sales are considered to be farming revenue.

The Staff Report stated that the applicant has not substantiated the actual farm income from the property. Since issuance of the Staff Report, the limited evidence submitted by the applicant on this requirement is not enough to meet his burden of proof.

**b. Weddings and other events may be physically and/or economically logically connected to a farm use, and specifically to the existing operation.**

The applicant's burden of proof statement includes the following analysis on page 3:

*"We would like to provide access to quiet farm/agricultural land as a secluded setting for weddings. ... The events will be related to and supportive of agriculture and incidental and subordinate to the existing farm use of the track (sic) based upon the income differential between the farming activity and the events, the length of time devoted to farming versus the events, and the gross income differential when comparing the farm use income and the event income.*

*People choose to have their weddings at the Cooper Ranch because of the secluded and beautiful setting, and an outdoor experience, including horses in the fields, sprinklers in the hay fields, lush green fields and lawns with a mountain view.*

*A majority of the groups prefer to have their weddings catered and either in open areas or possibly under tents. Because the events/weddings will be conducted from June through September, we don't anticipate weather requiring the use of tents, but tent usage is a possibility. The hay can be used as seats and tables for guest and as portrait backdrops. We harvest approximately 1000 tons of hay and it is all for sale.<sup>5</sup> Any use of the property for such events presents a marketing tool for the sale of hay. The sale of hay is an important part of the family farming operation."*

In addition, the applicant's burden of proof statement on pages 5-6 states the following:

*"As noted above, these events are directly related to and support the ranch. The people that want and choose to have their wedding on the Cooper Ranch want to be exposed to and be among wildlife, the horses, the hay fields and hay, farming and ponds and irrigation fields. The simple beauty of this farm together with its fully functioning hay farm and mountain views make for a perfect blend with marriage.*

*The weddings on the Cooper Ranch and the agricultural practices conducted on the property are connected, insubordinate (sic) and incidental to the farm. People who*

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<sup>5</sup> The 1000 tons of hay estimate in the applicant's burden of proof was subsequently reduced to 65 tons of hay from the subject property.

*choose this venue have chosen it over other traditional options such as hotels, resorts, golf courses, churches because they like to feel a part of a working ranch. The environment on this property includes all the beauty, sites, sounds, and smells you can't get at a church. Trees are grown/raised on the property, and the farm has a fully functioning hay growing business.*

*The time invested for the weddings will be 6 days (excluding set up and take down) out of the approximately 225 days spent conducting the farm use on the property (less than 5% of the overall time for farm use activities).*

*The area occupied for the weddings is approximately 4 acres of non-farm use land. The ground used for hay and nursery farming is approximately 38 acres. Approximately 36 acres is hay field and tree growing areas. The wedding use area occupies none of the irrigated productive farm ground.*

*The gross income from the farm use (grass hay and trees) is between \$40,000 and \$45,000 per year and the applicant's charge for each event (\$3,000) times the 6 events (\$24,000)<sup>6</sup> is less than 50% of the overall gross farm income.<sup>7</sup>*

*The weddings on the ranch are a part of the marketing for the hay and tree sales business. The hay that is grown and harvested on the property is sometimes sold to attendees of these events, but at a minimum all attendants take away with them the knowledge of where to buy hay and trees. The farm operation doesn't consist of just a hay business, but the growing of trees on the property and caring for the animals is a year round job. These events expose people to farming in a ranch setting, with lots of hay, horses, mountain views, and the serenity of acres and acres of quiet land.*

*My daughter and I have a custom farming and hay business. Most wedding parties want to use our hay in their weddings as tables and/or chairs, props and even as background for photos. Having the weddings on the farm exposes 100 to 250 people per wedding weekend to our farming and hay business. Further, attendees have purchased hay from our business. Some folks who have purchased hay include Keith Marchington (541-760-0152), Mark Houser (541-419-0267), Roger Hiskey (541-390-4475), Duane Hirstenow (541-390-8867), Aaron Cricket (541-410-8286), Jeff Moore (541-419-7419), and Sally Currey (503-807-1171).*

*These proposed events are related to and support the primary business on the property which is the selling of hay and trees, and the raising of horses. A portion of the proceeds comes from sales to attendees at these events. The weddings expose hundreds of people from all around the country to the business and farm life and the weddings help generate supplemental income to help support the ranch."*

There is a hay farming operation on the site. Hay bales consisting of hay grown and harvested on the subject property will be used as tables and chairs for wedding guests and/or back-drops for wedding photography. Hay and trees will be prominently advertised for sale during wedding events. Hana Cooper submitted a supplemental burden of proof on March 9, 2015 stating, "[r]oughly half of past events have in fact led to hay sales."

<sup>6</sup> Six events times \$3,000 per event is \$18,000.

<sup>7</sup> The applicant subsequently corrected the estimated revenue from the wedding events, which the Hearings Officer notes does not include rental fees for the residence on site. The applicant also corrected the estimated revenue from sales of farm products grown on site.

The applicant presented evidence showing a connection between wedding attendees, and hay sales. Tygh J. Campbell, a hay broker from Athena, Oregon submitted a letter on March 24, 2015, stating that he became aware of the hay for sale from the property when attending a wedding in July 2012. Photographic evidence in the record shows a large sign posted on top of hay bales and next to evergreen trees stating, "Hay & Trees for Sale," with contact information for Hanna Cooper and Paul Cooper. Additional photographic evidence shows hay bales set up for display, seating and as a location for guests to leave wedding gifts.

As the Board of County Commissioners determined in the *Downs* decision (LUP-12-2), "requiring the use of a farm product(s) from the subject property at each event is necessary to ensure that commercial events or activities are related to and supportive of agriculture."

The Hearings Officer determines there is a connection between the proposed wedding events and the farm use of growing and harvesting hay for sale. However, even if the farm use could be interpreted to include growing and harvesting trees on-site, there is no proposed connection between such use and the wedding events, because the trees are not proposed to be used in any way in the wedding events, other than as display adjacent to advertisements.

**c. Participants at the weddings/events support the farm use through payment of fees, purchase of farm products and services from the applicant**

I find that the proposed wedding events will bring people to the property who otherwise would not or do not know about the farm use on the property, and allow for the sale of farm products grown on the site. Use of hay bales for seating and dining, as well as for photographic backdrops will additionally showcase the existing farm use of the property. Contact information for guests interested in purchasing hay will be available and advertised. The commercial events will allow a supplemental income for the farming operation. For all these reasons, the commercial events may be considered physically and economically connected to the existing farm use.

Considering the above evidence and analyses, and in particular the Board's decision in the *Downs* LUP application, the Hearings Officer finds the applicant's proposed weddings/events are "related to and supportive of" the farm use on the subject property.

**3. How the Proposed Commercial Events and Activities Will Be Incidental and Subordinate to the Existing Farm Use on the Property.**

As discussed in Hearings Officer Green's recent decision in *Brown*, discussed above, the phrase "incidental and subordinate to" is not defined in Title 18 or SB 960, or elsewhere in state law or Land Use Board of Appeals (LUBA) decisions. Staff recommends and the Hearings Officer agrees that, to apply the meaning and intent of these terms and phrases, the following sources should be considered:

1. The Oregon Department of Land Conservation and Development's "Guide to Wineries and Events in EFU Zones" dated, March 1, 2012;
2. The Webster's New World Dictionary; and
3. The Association of Oregon Counties (AOC) Farmland Activities Task Force Final Report and Recommendations, dated December 13, 2010. This report was the basis for SB 960 and is included in the State Legislative record for SB 960 and Deschutes County's record for the ordinance adopting DCC 18.16.042.

Each of these sources is summarized in order:

1. DLCD's "Guide to Wineries and Events in EFU Zones" states:

**“Q:** *What does 'related to' and 'supportive of' agriculture mean in SB 960? What about 'incidental and subordinate?’*

**A:** *We interpret 'related to' and 'supportive of' to mean that the proposed agri-tourism or other commercial event or activity is physically and/or economically logically connected to, and supports, an existing on-site farm operation. For example, 'related to' could mean that the proposed event involves a product that is produced on site that has a meaningful and significant relationship to the proposed event. 'Supportive of' could involve the generation of supplemental income to support a farm. 'Incidental and subordinate' means that the event or activity is strictly secondary and ancillary to on-site farming in terms of income generated, area occupied, and off-site impacts.”*

2. Webster's New World Dictionary defines:

**Related:** *“connected or associated, as by origin or kind”*

**Supportive:** *“that gives support, help or approval”*

**Incidental:** *“happening as a result of in connection with something more important; secondary or minor”*

**Subordinate:** *“inferior to or placed below another in rank, power, importance, etc.; secondary”*

3. AOC Farmland Activities Task Force Final Report and Recommendations

*Page 4. “The Task Force realizes these recommendations may not provide an opportunity to conduct activities and events on farmland which do not promote farm use. However, we believe it is a good basis for providing balance between the conservation of farmland and the need of farmers to use their land in beneficial yet non-traditional ways.”*

*Page 6. “The Farmland Activities Task Force developed a set of principles with the assistance of state agencies and other interested parties to guide its work. A list of issues was also compiled based upon the responses to the statewide survey referenced above and the comments and discussion of the Task Force.*

*“Principles*

*The FATF developed and approved the following principles:*

- 1. Give preference to 'farm use' as defined in ORS 215.203(2) (a) on farmland.*
- 2. Support economic activities that compliment farm use.*

3. *Seek opportunities for better communication between those wishing to establish nontraditional farm uses and those who may be impacted by such activities.*
4. *Ensure compliance with public health, environmental health and safety requirement when establishing other uses on farm land.*
5. *Ensure activities associated with 'farm use' (i.e. efficient operation of equipment and transport of products to market in a timely manner) are not impaired.*
6. *Assist counties with establishment of clear, transparent, and to the extent possible, consistent processes for consideration of traditional and nontraditional farm activities.*
7. *Identify 'best practices' in the public process for consideration of nonfarm issues on farm land."*

In applying the "incidental and subordinate" standard in the aforementioned *Brown and Crescent Moon* decisions, Hearings Officer Green examined both the physical space for and income from the proposed commercial use. These decisions provide guidance for addressing this standard. There are three components to be addressed in determining whether the proposed weddings/events facility will be "lower in rank or importance or secondary to the farm use": (1) relative timing and duration of operation of the facility vis-à-vis farm use operations; (2) intensity of the facility use in terms of physical space; and (3) income from the proposed facility relative to gross income from the existing farm use on the subject property.

#### **a. Timing and Duration of Wedding Events**

The applicant states that the farm use on the property is conducted approximately 225 days per year. The total amount of time for the wedding or other events, including the day before and after for set up and take down, is 8% (18 days divided by 225) of the overall total amount of time for farm production each year.

I find that because the weddings/events would occur only six times per year and for only 72 hours per wedding/event – i.e., 18 days per year – the weddings/events would be incidental and subordinate to the primary farm use on the property in terms of timing and duration.

#### **b. Physical Space Required for Wedding Events**

The proposed wedding/event facility would include only approximately 4 acres of the 54-acre subject property, all of which is on non-farm use land. The applicant's burden of proof states that the area used for hay and nursery farming is 36-38 acres. Using the smaller estimate of 36 acres, the wedding event facility comprises only 11% (36 acres divided by 4) of the total acreage used for farming.

The Hearings Officer finds that the wedding event time periods and land area from a temporal and spatial standpoint are incidental and subordinate to the farm use on the property.

#### **c. Income from Wedding Events/Commercial Uses Compared to Farm Use Income**

Since the original burden of proof was submitted to support the application in January, 2015, the applicant has revised its calculations concerning both farm use income and projected wedding/event facility income several times. The day of the public hearing, the applicant submitted an amended application that included information concerning 2014 tree sales, current

inventory of trees for sale, 2014 hay sales, a brochure from Cooper Custom Hay and a Google Earth map of the subject property.

The Hearings Officer notes that the wedding events have been taking place since at least 2012 and vacation rental of the house have been taking place since 2011. There have been between 16-18 weddings for which the applicant has rented its property. There are 12 customer recommendations on 8 websites advertising the vacation rental use of the home on the subject property. The applicant did not present any evidence of prior revenue from these commercial events, but testified that rental income did not exceed "more than a few thousand dollars."

The applicant stated he plans to charge \$3500 per event for weddings, plus \$250 cleaning fees, for a total of \$22,500 annually. This is a flat-fee charge, notwithstanding the size of the wedding event. As set forth in an April 14, 2015 submittal, the wedding venue agreement requires the wedding party to be responsible for all catering, food, drink and food and drink service, and if alcohol is served, for providing OLCC-licensed servers. The Coopers do not provide any of those services. The wedding party is also required to provide an adequate supply of bottled water for the events.

The Winston Ranch Property Owners Association questioned whether \$3,500 per event is representative of the market for such events. The Hearings Officer reviewed Exhibit F attached to a letter submitted by the WRPOA on March 31, 2015 concerning the operations and facilities charges for two other Central Oregon weddings events businesses. Considering the applicant's testimony and evidence in the record that the \$3,500 is a flat fee that covers set up for 150 guests and use of the ranch, with no additional food, beverage or employee costs, the Hearings Officer finds that \$3,500 is in line with "Package One," offered by Rock Springs Weddings at a cost of \$4,000. I also note that the Rock Springs Weddings business offers overnight accommodations for an additional cost, similar to that proposed by the applicant here.

The applicant did not present evidence concerning the rental rate for the home that will be charged. Online advertisements show that the nightly fee is at least \$400, with a minimum three-night stay, and that wedding parties may be subject to additional fees/rates. If such use could be approved as part of the proposed weddings/events facility, it would produce an additional \$7,200 in income annually.<sup>8</sup> As discussed in the findings below, DCC 18.16.042(7) directs that no agri-tourism or other commercial event or activity may begin before 7:00 a.m. or end after 10:00 p.m. This provision prohibits the continued use of the property after 10:00 p.m. for overnight accommodations proposed as part of the application. A condition of approval would be required to require operations to cease at 10:00 p.m., precluding overnight rentals.

With respect to farm use revenue, the applicant submitted four pieces of documentary evidence and testimony. As noted, the applicant filed a 2013 IRS Schedule F schedule reporting hay profits for grain grown on all properties it owns, without a break-down of hay sales from the subject property. No other IRS tax filings were submitted for 2011, 2012 or 2014. The applicant did not submit any documentation from a CPA or accountant. The Hearings Officer notes that prior approvals of commercial uses on EFU-zoned properties have been supported by at least two years of income tax returns and/or other competent proof from licensed CPAs or accountants.

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<sup>8</sup> If overnight rental use of the property could be permitted, Hearings Officer finds that the applicant underestimated the potential total commercial use income from the property, which may be up to \$29,700.

Although the original burden of proof stated the applicant made between \$40,000 and \$45,000 in farm sales of 1,000 tons of hay from the subject property, this figure was reduced to \$16,310 from the sale of approximately 65 tons of hay in 2014. The WRPOA questioned whether the soils on the property and recent economic conditions would support the estimated revenue from hay sales.

The applicant submitted a typewritten and handwritten list of 2014 hay sales from their Central Oregon operation (354 tons total). The lists show names of customers (where available), amount, price and barn from which the sales were made (e.g. main barn, my barn, Scott's barn, Peg's barn). The list is not broken out to identify the properties on which the hay was grown. None of the totals of hay sales from the four individually identified barns matches the \$16,310 the applicant alleges to have earned in 2014 from hay sales on the property. Adding the figures set forth on the list submitted by the applicant results in the following:

Main barn – \$24,509  
My barn – \$18,893  
Peg's barn – \$29,317  
Scott's barn – \$13,882

The applicant did not submit purchase orders, billings, receipts, bank deposits or tax returns to support its calculation of hay sales in 2014. Nonetheless, I find that the record supports a finding that \$16,310 for sales of 65.25 tons of hay at a market rate of \$250 per ton could have been made from the property in 2014.

With respect to tree sales, the only evidence presented by the applicant is a handwritten ledger of Craigslist sales in 2014 and sales from two 2014 Spring Sale events, totaling \$40,310. The ledger does not include any information regarding customers, purchase orders, dates of sales, or billing information. The applicant presented no evidence of bank deposits from the tree sales, and no tax returns filed with the IRS. The "Craigslist" sales are broken down on the ledger to identify the stock sold, number and pricing. However, the entries for "Spring Tree Sale 1<sup>st</sup>" and "Spring Sale 2<sup>nd</sup>" are identified merely with a single line entry of the revenue allegedly made (\$21,775 and \$12,230, respectively), without any identification of the number and types of trees sold, the prices for such trees, or the customers to whom the trees were allegedly sold. Together, these two sales are alleged to have brought in \$34,005. Without more, the Hearings Officer finds the applicant's evidence of the Spring Sales not to be credible in light of all the evidence in the record. Moreover, the applicant did not present any evidence of tree sales in 2015, or tree sales in 2011, 2012 or 2013. As discussed in the findings above, substantial evidence in the record shows that sales of trees is incidental to the primary farm use, which is growing and harvesting hay.

I find that substantial evidence in the record can only support a finding that a total of \$22,615 (\$16,310 in hay sales and \$6,305 in tree sales) was made by the applicant in 2014 from farm use sales. With a prohibition on overnight rentals, commercial revenue is projected to be \$22,500 annually.<sup>9</sup> The Hearings Officer determines the applicant has not carried its burden of proving: (1) all trees are grown on site; or (2) all trees sold in 2014 were of trees grown on site. The proposed commercial operations comprise 49.8% of the total projected revenue from the property, combining established farm sales and commercial revenue, of \$45,115.

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<sup>9</sup> If overnight rental is allowed, commercial revenue will be even higher. In such case, the proposed commercial operations (\$29,700) will comprise 56% of the total projected revenue from the property of \$52,215.

The above calculations are based on limited income evidence, and there is no credible or reliable evidence in the record showing income trends.<sup>10</sup> Therefore, as was the case in *Crescent Moon*, the Hearings Officer must determine the appropriate maximum percentage of gross farm income represented by wedding/event income in order to assure the latter remains "incidental and subordinate" to the former and does not become the primary source of appellant's income. The County Hearings Officer, in the decision on Application No. CU-14-7, a commercial activity in conjunction with farm use, determined that the sales of items not directly tied to the farm use on the property (in this case the alpaca boutique items) could not exceed 40 percent of the overall farm income on the property. In the aforementioned *Downs* Limited Use Permit (LUP-12) decision, the board found the *Downs*' proposed weddings and commercial events would be incidental and subordinate to their existing farm use in part because:

*"The gross income of the farm use (grass hay) is \$18,000 to \$22,500 per year and the applicant's charge for each event (\$2,000) times the 6 events (\$12,000) is less than 50% (35 to 40%) of the overall gross farm income."*  
(Bold emphasis added.)

In *Brown*, Hearings Officer Green stated:

*"Although appellant's evidence shows his projected wedding/event income would not exceed 34 percent of his previous gross farm income, I find that in light of the board's Downs decision, a maximum of 40 percent for wedding/event income likely would be approved by the board. Therefore, I find appellant will be required as a condition of approval to assure gross income from the six annual weddings/events does not exceed 40 percent of appellant's gross farm income, including the boarding, training and sale of horses and the sale of hay raised on the subject property. In addition, I find appellant will be required as a condition of approval to provide to the Planning Division written documentation of compliance with the 40-percent income limitation by submitting by January 31<sup>st</sup> of each year annual income records for the previous year showing appellant's gross annual income for weddings/events and from horse boarding, training and sale and hay sales"*

Based on the Hearing Officer Green's decision in *Brown*, and the Board's decision in *Downs*, the calculation that the proposed commercial use will comprise 49.8% of the subject property's annual revenue is not sufficiently low to support a conclusion that the proposed weddings and commercial events would be incidental and subordinate to the primary farm use on the subject property. I find that the primary use of the property over at least the past three years since the property has been used for wedding venues and vacation rentals is not "farm use." The record shows that income received and projected from these commercial activities is more than that received from farming, and that which can be projected to be earned in the future.<sup>11</sup>

**c. The types and locations of all permanent and temporary structures, access and egress, parking facilities, and**

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<sup>10</sup> Wedding and commercial rental operations have been going on since at least 2012, and farming operations have been ongoing for years. The applicant could have but chose not to set forth competent proof comparing revenue from farming operations vs. commercial operations.

<sup>11</sup> The Hearings Officer also notes that, to support applications for commercial uses in an EFU zone, three years of financial records are recommended so that findings may be made concerning income trends and establishment of parameters.

**sanitation and solid waste to be used in connection with the agri-tourism or other commercial events or activities.**

**FINDINGS:**

**1. Permanent and Temporary Structures.** As discussed above, the applicant proposes to develop a commercial event/activity facility on approximately four acres on Tax Lot 314. All wedding activities and events will take place in open areas, and around the pond, and lawn areas surrounding the existing dwelling, in approximately a 4 acre space. Access to the site is via a ¼ mile gravel driveway with egress from the Old Bend Redmond Highway. The only permanent structure proposed to be included in the commercial event/activity facility is the dwelling. Applicant acknowledges that he will be required to provide temporary structures including tents and portable toilets for weddings and other events.

The Deschutes County Building Division provided comments on the applicant's proposal on January 13, 2015:

*The Deschutes County Building Safety Division's code required access, egress, setbacks, fire and life safety, firefighting water supplies, etc. will be specifically addressed during the plan review process for any proposed structures and occupancies. All Building Code required items will be addressed when a specific structure, occupancy, and type of construction is proposed and submitted for plan review.*

No new permanent structures are proposed by the applicant. All Building Safety Division Code requirements could be satisfied by conditions of approval.

The Bend Fire Department provided comments on the applicant's proposal on January 28, 2015, including, among other things:

1) *New and existing buildings shall have approved address numbers, building numbers or approved building identification placed in a position that is plainly legible and visible from the street or road fronting the property. These numbers shall be Arabic numbers or alphabetical letters. Numbers shall be a minimum 4 inches high with a minimum stroke width of 0.5 inch.*

2) *Where access is by means of a private road and the building cannot be viewed from the public way, a monument, pole or other sign or means shall be used to identify the structure. Address numbers shall be visible under low light conditions and evening hours. Provide illumination to address numbers to provide visibility under all conditions. Address signs are available through the Deschutes Rural Fire Protection District #2. An address sign application can be obtained from the City of Bend Fire Department website or by calling 541-388-6309 during normal business hours*

3) *Tents and Other Membrane Structures shall comply with Chapter 31 of the 2014 Oregon Fire Code. Approval is required for tents in excess of 400 square feet. Tents shall not be erected for a period of more than 180 days within a 12-month period on a single premises. Provide a site plan to the Bend Fire Department illustrating the location of all tents, structures and facilities for the*

*special event(s). Contact the Bend Fire Department at 541-322-309 to schedule an inspection prior to the event opening to the public.*

*4) An approved water supply capable of supplying the required fire flow for fire protection shall be provided to premises upon which facilities, buildings or portions of buildings are hereafter constructed or moved into or within the jurisdiction.*

The Hearings Officer finds that the proposed site for the event facility is large enough to accommodate such temporary structures. All of the above-listed structural requirements could be satisfied by conditions of approval, specifically including the requirement to obtain Bend Fire Department site plan approval for placement of all tents, structures and facilities prior to each event.

**2. Sanitation and Solid Waste.** The applicant proposes to provide two portable chemical toilets per 150 people and 1 stand-alone hand wash station. Solid waste will be disposed of at the County landfill. Conditions of approval could be required to ensure compliance.

The Deschutes County Environmental Health Department commented on the applicant's proposal on January 28, 2015, stating that the following should be required:

- 1) If food service is provided at events, applicant must provide our dept with a detailed narrative of who is making the food, where it will be prepared, where is the food from, menu, etc. A Deschutes County EH Licensed Foodservice operator must provide the food or the property owners must have a Deschutes County EH licensed facility on-site.*
- 2) If property is served by a private water well, the owners shall be required to have the well tested and inspected per Oregon Drinking Water Program requirements.*
- 3) If the events are very large and for a long duration, an Outdoor Mass Gathering permit may be required*

All of the above-listed health and sanitation requirements could be satisfied by conditions of approval. The Winston Ranch POA expressed concerns regarding the potential of the wedding party or guests consuming water from the domestic well on the property, particularly given the kitchen and bathroom in the existing residence on-site that could be used. Such concerns could be addressed via a condition of approval as set forth in requirement (2) above concerning well testing and inspection.

**3. Access and Egress.** Traffic generated by the proposed weddings/events will enter the subject property via an existing driveway off the Old Bend Redmond Highway directly onto Tax Lot 314. The Bend Redmond Highway is a County Road (urban arterial classification with an ADT of 2621), with a paved width of 32 feet. The applicant stated that the proposed wedding events will generate approximately 50 to 120 vehicles for all participants/guests, including vehicles for wedding professionals (e.g. photographers, catering, bartending, etc.). The original proposal anticipated a maximum of 250 people in attendance at each event. Subsequently, the applicant agreed to a cap of 150 people, not including service staff.

The record indicates there are three access points to the property from the Old Bend Redmond Highway-- two driveways that could serve the commercial event parking area on Tax Lot 314, and a private road, Simon Road, that serves as access to Tax Lot 301. Simon Road is owned and maintained by the Winston Ranch POA.

Access to Tax Lot 314, which is the location of the proposed wedding/events facility is solely via the existing driveway shown in photographs attached as Exhibit 2 to the applicant's April 14, 2015 submittal. The second access driveway to the property, farther west on Old Bend Redmond Highway, was approved by the County in the CUP application. Exhibit 3 to the applicant's April 14, 2015 letter is a photo of the old driveway approved. The applicant does not intend to use this driveway access.

Vehicles will enter the subject property from the North and South on the Old Bend Redmond Highway. The applicant stated, and will be required as a condition of approval, to post signs during events notifying "Event in Progress." A licensed traffic control person will be on site at all times. I find that wedding/event related traffic will utilize paved public roads, a gravel driveway, and grass surfaces to access the wedding/event facility, none of which would produce significant dust.

The Winston Ranch POA and several individual property owners expressed concern regarding potential use of the private Simon Road as an access to the subject property based on safety, wear and tear, and road maintenance costs. The applicant stated that they will not allow use of Simon Road for property access for the events. The Hearings Officer finds that these concerns could be addressed with a condition of approval prohibiting use of Simon Road and requiring the installation of a locking gate on all Simon Road points of access, to be locked during the duration of any wedding or special event.

George Kolb, County Engineer with the Deschutes County Road Department commented on the applicant's proposal on January 15, 2015, stating:

- 1) *There will be no right-of-way dedications or road improvements required on this application.*
- 2) *The applicant's approach onto Old Bend-Redmond Highway is gravel and a paved apron extending 25 feet from the edge of Old Bend-Redmond Highway is recommended to allow the event participants to access the road without tearing up the edge of pavement or the surface of the gravel driveway.*
- 3) *An access permit for this parcel onto Old Bend-Redmond Highway was granted per Permit No. A-87133 in 1987. The site (sic) distance at the driveway is minimal in both directions so the applicant will want to have a traffic control plan in place for traffic entering and exiting an event.*

The County Road Department concerns could be satisfied by requiring conditions of approval requiring installation of a properly permitted 25-foot long apron extending from the edge of the Old Bend-Redmond Highway onto the access driveway, and requiring the applicant to provide one traffic control person to direct traffic entering and exiting the Old Bend-Redmond Highway, due to sight distance at the driveway entrance. Such conditions of approval will also address the Winston Ranch POA's concerns regarding safety of access. The Hearing Examiner takes note of Exhibits 6 and 7 to the applicant's April 21, 2015 letter showing visibility to the northwest and southeast, respectively, along Old Bend-Redmond Highway.

The Deschutes County Transportation Planner, Peter Russell provided comments on the application, stating:

*I have reviewed the transmittal materials for 247-15-000001-LUP to develop Type 2 commercial events on approximately 35 acres in the Exclusive Farm Use (EFU) zone at 64655 Old Bend-Redmond Highway, aka 16-12-32, Tax Lot 314.*

*Deschutes County Code (DCC) 18.16.310(C)(3)(a) states no traffic analysis is required for any use that will generate less than 50 new weekday trips. The applicant states the proposed use will only occur six times between May and September and most likely on weekends; therefore the use does not meet the minimum trip threshold and no further traffic analysis is needed.*

*Board Resolution 2013-020 sets Transportation System Development charges (SDC) for the County; the Type 2 commercial events are not a use subject to the County's SDC.*

The Hearings Officer concurs with these determinations. No traffic analysis is required and the use is not subject to the County's SDC.

The Bend Fire Department further commented on the proposal concerning Fire Apparatus Access Roads:

- Approved fire apparatus access roads shall be provided for every facility, building or portion of building hereafter constructed or moved into or within the jurisdiction. The fire apparatus access road shall comply with the requirements of this section and shall extend to within 150 feet of all portions of the facility and all portions of the exterior walls of the first story of the building as measured by an approved route around the exterior of the building or facility. 2014 OFC 503.1.1*
- Fire apparatus access roads shall have an unobstructed width of not less than 20 feet, exclusive of shoulders, except for approved security gates in accordance with Section 503.6, and an unobstructed vertical clearance of not less than 13 feet 6 inches. Where a fire hydrant is located on a fire apparatus road, the minimum width shall be 26 feet, exclusive of shoulders. Traffic calming along a fire apparatus road shall be approved by the fire code official. Approved signs or other approved notices or markings that include the words NO PARKING-FIRE LANE shall be provided for fire apparatus roads to prohibit parking on both sides of fire lanes 20 to 26 feet wide and on one side of fire lanes more than 26 feet to 32 feet wide. 2014 OFC 503.2.1, D103.1, 503.4.1, 503.3*
- Fire apparatus access roads shall be designed and maintained to support the imposed loads of fire apparatus (60,000 pounds GVW) and shall be surfaced (asphalt, concrete or other approved driving surface) as to provide all weather driving capabilities. Inside and outside turning radius shall be approved by the fire department. All dead-end turnarounds shall be of an approved design. Bridges and elevated surfaces shall be constructed in accordance with AASHTO HB-17. The maximum fire grade of fire apparatus access roads shall not exceed 10 percent. Fire apparatus access road gates with electric gate operators shall be listed in accordance with UL 325. Gates intended for automatic operation shall be designed, constructed and installed to comply with the requirements of ASTM F 2200. A Knox Key Switch shall be installed at all electronic gates. 2014 OFC D102.1, 503.2.4*

In an April 14, 2015 submittal, the applicant confirmed that they will prohibit any roadside parking at any portion of either the main access road or the alternative fire access route.

Opponents' concerns may be addressed by a condition of approval prohibiting parking on both sides of the driveway and requiring the posting of signs imposing the restriction.

Under DCC 18.16.042(C)(11), the driveway must comply with fire code requirements, as correctly stated by the Bend Fire Department. The fire apparatus access road requirements are to protect the health, safety and welfare of occupants and guests of the subject property in the event of a fire or other emergency. Without a minimum width requirement, emergency vehicles may have difficulty accessing the property, putting lives in potential danger.

There is competing evidence in the record concerning the width of the driveway. The applicant submitted evidence that the driveway is approximately 30 feet wide (recently widened by Paul Cooper) and is graded and surfaced with compacted gravel to accommodate loads of at least 60,000 pounds GVW. See Exhibits 1 and 2 to the applicant's April 21, 2015 letter, which are photographs of the Coopers' driveway facing west (toward the event site, away from the Old Bend-Redmond Highway), showing a graded width of more than twenty feet. The applicant stated that the driveway currently supports traffic for heavy farm equipment and hay trucks and is "more than adequate for the limited wedding events." There is no "finding" in the record by the County that the access road meets all County standards.

The Winston Ranch POA correctly points out that a condition of approval requiring improvement of the driveway is not permissible under ORS 215.283(6)(a) ("county may not approve an alteration to the land in connection with agri-tourism or other commercial event or activity authorized under subsection (4) of this section, including, but not limited to, grading, filling or paving"). The Winston Ranch POA submitted evidence that the existing driveway is 16 feet wide at each of two entry gates (Exhibits A and B to WRPOA April 21, 2015 letter) and argued that Exhibit 2, page 2 of 2, to the applicant's April 21, 2015 letter shows the access road is not 20-foot wide where it divides and loops around the proposed grass parking area. This photograph is taken at an angle where the actual width of the road cannot be ascertained. The POA did not submit evidence of its actual measurement, so I cannot find on this record that such assertion is supported. Moreover, the width of access gates does not establish the width of the road. The photographs submitted by the POA show a road wider than the gates themselves, although no measurements were provided. Approved security gates are an allowable exception to the 20-foot road width, provided they include a Knox key system. 2014 OFC 503.2.1, D103.1, D102.1, 503.2.

The POA also submitted evidence that the access road is only 12 feet wide as shown in Exhibit C to its April 21, 2015 submittal, a GoogleEarth image. I agree with the POA's assertion that the entire length of the driveway must be at least 20 feet wide, with a prohibition on parking on both sides. 2014 OFC 503.2.1, D103.1, 503.4.1, 503.3.

However, no actual measurements of the width of the driveway at the canal crossing are included in the record. Although it is apparent the road narrows in this location, the applicant submitted evidence that shows the width of the driveway to be at least 30 feet. Accordingly, the narrower part of the driveway over the canal could be 20 feet. I find that a condition of approval could be imposed, requiring independent confirmation that the driveway is 20 feet wide at all locations extending from the Old Bend Redmond Highway to the wedding/events facility site prior to any scheduled wedding/events and prohibiting use of any driveway that fails to meet such standard.

**4. Parking.** The applicant originally proposed to provide parking for wedding/events attendees in an existing gravel parking lot, as shown on an aerial photograph submitted with his burden of

proof. Staff determined, and I agree, that the proposed parking area is within a required 100-foot side yard setback and thus cannot be permitted.

On March 31, 2015, the applicant amended his application and proposed to confine parking to an area farther west from the property line on Tax Lot 314, northwest of and on the other side of the barn, outside the 100-foot setback from the property line. An updated parking map of the parking areas being proposed for the events is Exhibit 4 to the applicant's April 14, 2015 letter. Parking will be available on either mowed green lawn or bare dirt areas along the internal side of the driveway. Photos of the entries to the overflow parking areas from the driveway indicated on Exhibit 4 are shown on Exhibit 5 to the April 14, 2015 letter. Photos of the primary parking areas between the barn and other outbuildings are included as Exhibit 6 to such letter. For reference a photograph facing west from the Coopers' driveway area onto one of their hayfields is attached as Exhibit 7 to the April 14, 2015 letter.

The applicant also submitted Exhibit 3 to its April 21, 2015 letter showing the proposed parking area on the lawn area directly west of the Coopers' driveway that is kept mowed and irrigated. This area is not part of the Coopers' hay pasture, which lies to the west, as evidenced by Exhibits 4 and 5 to the April 21, 2015 letter. The Hearing Examiner finds that no irrigated farm land is being used for parking and that no land will be taken out of hay production as a result.

The Winston Ranch POA argues that the amendment of the application with respect to the parking areas is a "modification of application" as defined by DCC 22.04.020 that requires the submission of a new land use application to modify the application under DCC 22.20.055(B). I disagree with this contention because the change in the proposed parking areas is not a "modification of application" because it does not require the application of new criteria or require findings of fact to be changed, particularly given my finding that no irrigated farm land will be used for parking and no land will be taken out of hay production as a result.

The applicant's burden of proof stated an estimate of 50-120 vehicles for an event of up to 250 persons. The number of guests has been capped at a reduced 150, which would result in a maximum of 72 vehicles per event, using the same calculations as in the original proposal. The applicant did not state whether the number of vehicles also includes those associated with wedding personnel, which are estimated to be no more than 20 vehicles. Accordingly, I am including an additional 20 vehicles in the calculations, with 140 total vehicles for events with 250 guests and 92 vehicles for events with 150 guests.

The Hearings Officer finds that the new proposed parking areas appear to provide room for parking of more vehicles than would have been accommodated in the original parking lot, at the original estimate of up to 120 vehicles. Based on a review of photographic evidence and aerial photographs provided by the applicant, the Hearings Officer finds these areas are large enough to accommodate at least 100 vehicles expected to come to the wedding/event facility. No improvements are required for the parking areas to be made suitable for parking. No parking will occur on irrigated farm land, which could be confirmed with imposition of a condition of approval.

The Winston Ranch POA believes it is "highly likely" patrons will park in the lot that is located within 100 feet of the Farmer property. The POA further has concerns that parking will occur on the access road, impeding fire and emergency vehicles. The Hearings Officer finds that these concerns may be addressed by the inclusion of conditions of approval prohibiting the same.

Finally, the POA is concerned about the potential of fire combustion, potentially resulting from a combination of engine sparks, dry conditions and tall grass in the parking areas. The evidence shows that parking will either be on bare dirt, or watered grass. Accordingly, this concern is without merit.

**3. A traffic management plan that:**

- a. Identifies the projected number of vehicles and any anticipated use of public roads;**
- b. Provides an assurance that one traffic control person shall be provided for each 250 persons expected or reasonably expected to be in attendance at any time during the agri-tourism and other commercial event or activity. The traffic control personnel shall be certified by the State of Oregon and shall comply with the current edition of the Manual of Uniform Traffic Control Devices.**

**FINDING:** The applicant addressed these criteria on page 3 of the burden of proof as follows:

*"The proposed wedding events under this limited use permit will generate approximately 50 to 120 vehicle usage for all participants/guests at an average sized wedding or event. Vehicles will enter the subject property from the North and South on Old Bend Redmond Highway with good visibility from both directions. When we have an event with 25 or more vehicles we will post signs that say an event is in progress. We will have a licensed traffic control person on sight (sic) at all times.*

The applicant has adequately described the anticipated number of vehicles for the event site. Although the applicant originally estimated up to 250 persons in attendance at each wedding event, he has now agreed to a 150 guest limit, that does not include persons working at the event that also drive vehicles. Consistent with Hearing Officer Green's decision in the *Brown* application, a licensed traffic control person is not required for events with less than 250 persons total on site, however, the applicant has stated he will require at least one traffic control person to be on-site during the wedding or other event, and will post "event in progress" signage at the entrance to the site.

- c. Demonstrates that the parcel, lot or tract has direct access such that the lot, parcel or tract on which commercial events will occur:**
  - i. Fronts on a public road; or**
  - ii. Is accessed by an access easement or private road, and all underlying property owners and property owners taking access between the subject property and the public road consent in writing to the use of the road for agri-tourism and other commercial events or activities at the time of initial application.**

**FINDING:** The subject property has direct frontage on the Old Bend-Redmond Highway, which is a public road. The Hearings Officer determines that this criterion is met because the property has frontage and direct access to this road.

4. **Inspection of Event Premises Authorization.** *The applicant shall provide in writing a consent to allow law enforcement, public health, and fire control officers and code enforcement staff to come upon the premises for which the Limited Use Permit has been granted for the purposes of inspection and enforcement of the terms and conditions of the permit and DCC Chapter 18.16 Exclusive Farm Use Zone and DCC Chapter 8.08 Noise Control, and any other applicable laws or ordinances.*

**FINDING:** The applicant states the following to address this criterion:

*"We hereby give the County consent to enter the property during all events for the above stated purposes. Further, if required, the applicants are willing to sign any County consent document for the limited use permit."*

The Hearings Officer finds this criterion may be met with a condition of approval to execute and provide to the county a consent document acceptable to the county as required by this subsection.

**C. Approval Criteria.**

2. **Type 2.** *Up to six (6) agri-tourism and other commercial events or activities in a calendar year on a tract may be approved by a limited use permit that is personal to the applicant and is not transferred by, or transferred with, a conveyance of the tract, if in compliance with:*

- a. **Minimum lot or parcel size: 10 acres.**

**FINDING:** The applicant is proposing up to six commercial events or activities in a calendar year on a tract (tax lots 314/301 form a tract). Any approval granted is personal to the applicant is not transferred by, or transferred with, any sale of the property. As indicated in foregoing findings, the subject property is approximately 54 acres. This criterion is met.

- b. **Agri-tourism event may not, individually, exceed a duration of 72 consecutive hours, excluding set-up and take down of all temporary structures and facilities. The limitation on the hours of operations is included within the duration of 72 consecutive hours.**

**FINDING:** The Hearings Officer determines this criterion does not apply, as the applicant has applied for commercial events, rather than agri-tourism events.

- c. **Commercial events or activities may not, individually, exceed a duration of 30 consecutive hours, excluding set-up and take down of all temporary structures and facilities. The limitation on the hours of operations is included within the duration of 30 consecutive hours.**

**FINDING:** The applicant states in the burden of proof that: "No event will exceed 30 consecutive hours, excluding set up and take down." The Hearings Officer finds that this criterion could be met with the imposition of a condition of approval.

- d. Must be incidental and subordinate to existing farm use of the tract, and shall be related to and supportive of agriculture.**

**FINDING:** The findings for this criterion are addressed above. The applicant has not met its burden of proving that the actual farm income from the subject property is sufficiently incidental or subordinate to existing farm use of the tract. Use of hay bales as seating and tables, and photographic backdrop is related to and supportive of agriculture as I have found in the findings above.

- e. Set-up and take down of all temporary structures and facilities shall occur up to one business day prior to the agri-tourism and other commercial events or activities and one business day after the agri-tourism and other commercial events between 7:00 a.m. and 10:00 p.m.**

**FINDING:** The applicant states in the burden of proof that: "Set up and take down for the events will occur one day before and one day after the weddings within the required time restrictions." The Hearings Officer finds that this criterion is met by the applicant's proposal.

- f. May not require that a new permanent structure be built, used or occupied in connection with the agri-tourism or other commercial events or activities.**

**FINDING:** The applicant is not proposing any new permanent structures and the Planning Division is not requiring that any new permanent structure be built, used or occupied in connection with the commercial events. This criterion is met.

- g. May not, in combination with other agri-tourism or other commercial events or activities authorized in the area, materially alter the stability of the land use pattern of the area.**

**FINDING:** The record indicates there are no other authorized agri-tourism or commercial events or activities proposed or occurring in the area. The proposed event site is for up to six events or weddings conducted over the calendar year. The wedding events will be temporary in nature and practice. The existing land use pattern in the surrounding area consists primarily of single-family dwellings with some farm use occurring, as well as some dry land. The Staff Report states, and the Hearings Officer agrees, that in light of the temporary nature of the proposed weddings/events and the relatively low intensity of the farm use in the surrounding area, applicant's proposal will have little if any effect on the stability of the land use pattern in the area, and certainly will not "materially alter" it. The farm use in the area will continue as currently conducted, which is mainly grass hay and livestock raising and grazing (pasture). Therefore, I find the applicant's proposal satisfies this criterion.

- h. Must comply with ORS 215.296.**

**FINDING:** Oregon Revised Statutes 215.296, Standards for approval of certain uses in exclusive farm use zones, has two criteria which apply to the proposed use. They are:

- (1) **A use allowed under ORS 215.213(2) or 215.283(2) may be approved only where the local governing body or its designee finds that the use will not:**
- b. Force a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest use: or**
  - c. Significantly increase the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use.**

**FINDING:** The record indicates there are no forest practices in the area surrounding the subject property, and none of the properties in the area surrounding the subject property are in forest use. There are several properties in farm use, including properties adjacent to the subject property to the north and west. The properties to the west are smaller acreage hobby farms (i.e., farm operations subsidized by off-farm income). The property to the south has a small irrigated area. The main farm use in the surrounding area appears to be grass hay, with livestock raising and grazing occurring on lands devoted to pasture.

The POA alleges that the study area is not sufficiently defined and that there is not specific information about farm practices occurring on surrounding lands. I find that, under *Hood River Valley Parks and Recreation District, \_\_\_ Or LUBA \_\_\_* (LUBA No. 2012-073, 5/14/13) no specific definition of the study area is required in this case:

The local government is not required to define the precise extent or outer boundaries of the study area, if the surrounding agricultural area is homogenous, and the record reflects that there are no significant impacts to farm practices on adjacent or more proximate parcels.

(citing *Sisters Forest Planning Committee v. Deschutes County*, 48 Or LUBA 78, 84 (2004)). These circumstances are present here; accordingly neither the County nor the applicant was required to define the limits of a study area. In addition, compared to the description of farm practices at issue in *Brown v. Union County*, 32 Or LUBA 168, 174 (1996) and *Oregon Natural Desert Association v. Grant County*, 42 Or LUBA 9, 2002), the Staff Report adequately described the existing farm uses in the surrounding areas and considered whether and to what extent they could be impacted by six commercial weddings/events annually.

The Staff Report states, and I agree that conducting up to six (6) events/weddings on six (6) calendar days for up to 12 hours per event on the applicant's property in a year will not force a significant change in these farm practices, or significantly increase the cost of accepted farm practices. Existing farm uses will not be impacted by the events/wedding and the events will not have any adverse impact on the hay operations, livestock or grazing activities. This criterion is met.

- i. Limited Use Permits approved under this section expire two years from the date of approval.**
- j. Limited Permits may be renewed for an additional two years subject to:**
  - i. An application for renewal; and**
  - ii. Demonstration of compliance with conditions that apply to the limited use permit and applicable provisions in this section, DCC Chapter 18.16.042.**

**FINDING:** If the Limited Use Permit was approved, these criteria could be met with a condition of approval stating: (1) the approval would be valid for two years from the date of approval; (2) the date of approval would be after the review process is completed, including all appeals; and

(3) the possibility for renewal exists, based on submittal of an application, and findings made demonstrating compliance with the conditions of approval as well as the then-current Deschutes County Code and State law.

4. ***The area in which the agri-tourism or other commercial events or activities are located shall be set back at least 100 feet from the property line.***

**FINDING:** For the reasons discussed in findings above, the proposed new parking areas are outside the 100-foot property line setback. This criterion is met.

5. ***Notification of agri-tourism and other commercial events or activities.***

- a. ***The property owner shall submit in writing the list of calendar days scheduled for all agri-tourism and other commercial events or activities by April 1 of the subject calendar year or within 30 days of new or renewed limited use permits, if after April 1, to Deschutes County's Community Development Department and Sheriff's Office, and all property owners within 500 feet of the subject property.***
- b. ***The list of calendar dates for all agri-tourism, commercial events activities may be amended by submitting the amended list to the same entities at least 72 hours prior to any date change.***
- c. ***If such notice is not provided, the property owner shall provide notice by Registered Mail to the same list above at least 10 days prior to each agri-tourism and other commercial event or activity.***
- d. ***The notification shall include a contact person or persons for each agri-tourism and other commercial event or activity who shall easily be accessible and who shall remain on site at all times, including the person(s) contact information.***

**FINDING:** These criteria could be met with conditions of approval requiring compliance with each of these requirements.

6. ***Sanitation facilities shall include, at a minimum, portable restroom facilities and stand-alone hand washing stations.***

**FINDING:** The applicant is proposing to utilize temporary portable restroom facilities for the property, with two restrooms and one hand washing station per 150 people. This criterion could be met with a condition of approval requiring such facilities be maintained for the approved use and be subject to inspection upgrading if required by the Environmental Soils Division.

7. ***Hours of Operation. No agri-tourism and other commercial event or activity may begin before 7:00 a.m. or end after 10:00 p.m.***

**FINDING:** The applicant states that all events will occur and end within the specified hours. Use of the existing house on-site for overnight accommodations by the wedding party or guests

may not be approved as part of the proposal, given this restriction on hours of operation. This criterion could be met with a condition of approval requiring compliance.

**8. Overnight camping is not allowed.**

**FINDING:** This criterion could be met with a condition of approval that no overnight camping will be allowed.

**9. Noise Control**

- a. *All noise, including the use of a sound producing device such as but not limited to, loud speakers and public address systems, musical instruments that are amplified or unamplified, shall be in compliance with applicable state regulations.*
- b. *A standard sound level meter or equivalent, in good condition, that provides a weighted sound pressure level measured by the use of a metering characteristic with an "A" frequency weighting network and reported as dBA shall be available on-site at all times during agri-tourism and other commercial events or activities.*

**FINDING:** The applicant states that all noise and sound associated with these events will be monitored with a required meter and music turned off by 9:00 p.m. Given the concern with noise emanating from the site, a 9:00 p.m. cut off for music is included as a condition of approval. The Hearings Officer finds this subsection imposes two requirements for the applicant's proposed weddings/commercial events:

- all noise, whether or not amplified, must be in compliance with applicable state regulations – presumably regulations of the Department of Environmental Quality (DEQ); and
- a sound level meter with the described capabilities must be available on the wedding/event site at all times during weddings/events in order to assure compliance with state regulations.

However, this subsection does not establish an acceptable noise level for commercial events and activities, in contrast to the standards for outdoor mass gatherings in Section 8.16.290(C) of the County Code which prohibits noise that "interferes" with dwellings and other nearby human habitations, and provides in relevant part:

**A sound level in excess of 70 decibels prior to 10:00 p.m. and in excess of 50 decibels prior to 10:00 p.m. (as measured upon the A scale of a standard sound level meter on affected property) shall constitute interference.**

The POA and several individual property owners in the vicinity expressed concern regarding noise levels associated with weddings/events, and in particular objected to loud amplified sound. The applicant's burden of proof states he intends to monitor all noise and sound associated with weddings/events with a sound level meter, and will use such monitoring to assure that noise from weddings/events will not exceed applicable decibel levels established by DEQ.

The Hearings Officer notes that under DEQ's administrative rules – i.e., Oregon Administrative Rules (OAR) 340-035-0035 – sounds that are not electronically amplified generally are exempt from DEQ's noise regulations. However, amplified sound must satisfy DEQ's regulations and must not exceed maximum allowed decibel levels above ambient noise levels. I am aware DEQ's noise regulations are detailed and complex, and that measuring and determining compliance therewith requires a level of expertise generally beyond the capability of property owners. For that reason, the following requirements would have to be required as a condition of approval the applicant could have amplified sound for the weddings/events:

- retain a licensed, professional acoustic engineer to develop a maximum allowable A-weighted sound levels in decibels (dBA) at all property lines of the subject property that will comply with applicable DEQ noise regulations as measured at the property lines;
- provide to the Planning Division before commencing any wedding/event on the subject property a written report from the acoustic engineer that establishes baseline "ambient statistical noise levels" and maximum allowable increases in noise levels; and
- assure that all applicable noise limitations are maintained during weddings/events by a qualified and trained technician, the monitoring of which must be conducted as specified by the Sound Measurement Procedures Manual, NPC-1

These conditions of approval would address the stated concerns of the Opponents concerning noise. However, I disagree with the Winston Ranch POA that a noise study and monitoring plan is subject to the County's land use approval process. On the other hand, I agree that the vague "reasonable level" of noise referenced in the sample rental agreement is insufficient. The Hearings Officer finds that with imposition of this condition of approval appellant's proposal could satisfy this criterion.

**10. Transportation Management.**

- a. Roadways, driveway aprons, driveways and parking surfaces shall be surfaces that prevent dust, and may include paving, gravel, cinders, or bark/wood chips.**
- b. Driveways extending from paved roads shall have a paved apron, requiring review and approval by the County Road Department.**
- c. The parcel, lot or tract has direct access as defined in DCC Chapter 18.16.042(B)(3)(c).**
- d. Adequate traffic control must be provided by the property owner to address the following:**
  - i. There shall be one traffic control person for each 250 persons expected or reasonably expected to be in attendance at any time.**
  - ii. All traffic control personnel shall be certified by the State of Oregon and shall comply with the current edition of the Manual of Uniform Traffic Control Devices.**

**FINDING:** The subject property has direct access to the Old Bend-Redmond Highway, which is a paved County road. This will require a paved driveway apron under "b" above. The driveway into the site is a gravel surface, and the parking area near the hay barn and storage building is also gravel. The gravel surfaces will prevent dust from becoming a problem. The requirements for adequate traffic control under d above could be met with conditions of approval.

**11. Health and Safety Compliance**

- e. All permanent and temporary structures and facilities are subject to fire, health and life safety requirements, and shall comply with all requirements of the Deschutes County Building Safety Division and the Environmental Soils Division and any other applicable federal, state and local laws.**
- f. Compliance with the requirements of the Deschutes County Building Safety Division shall include meeting all building occupancy classification requirements of the State of Oregon adopted building code.**

**FINDING:** The structures on the site, including any proposed tent(s), if used for the anticipated events, must meet all fire, health and life safety requirements.

This criterion is met with a condition of approval that all permanent and temporary structures and facilities comply with all State of Oregon adopted building code requirements and all Environmental Soils Division requirements, as well as any Bend Fire Department standards.

Opponents expressed fire safety concerns with the use of hay bales for seating or tables and the danger resulting from smoking. These concerns could be addressed with a condition of approval prohibiting smoking at all events, in all areas, including parking, with signs posted to notify guests and any other persons in attendance of such restrictions.

Opponents also stated concern with the safety of the use of hay bales for seating and/or tables. Absent evidence showing a basis for the alleged concerns, I cannot condition or prohibit such use on the basis of speculation. Allegations concerning pollution resulting from cars are similarly vague and unsupported, and thus are not a basis for denial or imposition of a condition of approval.

The question of whether there would be adequate supervision during events was raised at the hearing and in post-hearing submittals with respect to safety concerns. The opponents' concerns in this regard could be addressed with a condition of approval that requires an owner or representative to be on-site at all times during each of the weddings/events.

Although not specifically a health and safety issue, several neighbors alleged potential impacts to property values should be considered as a basis for denying the application. Such allegations have not been established with competent proof, nor are such impacts a basis for me to deny or condition the application under the County Code standards.

Finally, some neighbors expressed concern that approval of the application will "set a precedent" for further applications that will erode away farm use in EFU zones. The Hearings Officer notes that each individual land use application is evaluated on its own merits under applicable state law and County Code provisions. Approval of one application does not "open the door" to approval of a different application. Only those applications that met each of the specified legal requirements may be approved.

**12. The maximum number of people shall not exceed 500 per calendar day.**

**FINDING:** The applicant states that the maximum number of guests in attendance will be 150, plus approximately 20 service persons. This criterion could be met with a condition of approval

that limits the total people on site for any particular wedding or event to no more than 200 people, including any catering and other professional services (e.g. photography, florists, D.J., etc.).

13. ***Agri-Tourism and other Commercial Events or Activities shall not be allowed:***
- g. ***Within the County adopted big game winter ranges during the months of December through March.***
  - h. ***Within the County adopted big game migration corridors during the month of April and during the months of October and November.***
  - i. ***Within the County adopted sensitive bird and mammal habitat areas as defined in DCC 18.90.020, unless a site has had no nesting attempt or the nest has failed, as determined by a professional wildlife biologist in May of the calendar year in which the application is approved, unless a site has had no nesting attempt or the nest has failed which could be determined in May by a professional wildlife biologist.***

**FINDING:** The Hearings Officer finds appellant's proposal satisfies this criterion because the subject property is not located within any big game winter range, big game migration corridor, or sensitive bird and mammal habitat area. This criterion is met.

3. **Section 18.16.043, Single Permit**

- A. ***The maximum number of agri-tourism and other commercial events or activities on a lot, parcel or tract may not exceed the total number of commercial events allowed by any individual land use approval, including a winery authorized under DCC 18.16.038(B), and events, outdoor mass gatherings or extended outdoor mass gatherings authorized under DCC Chapter 8.16.***
- B. ***The following permits may not be combined:***
- 1. ***Agri-tourism and other commercial events or activities under DCC 18.16.042.***
  - 2. ***Winery under DCC 18.16.038(B),***
  - 3. ***Events, outdoor mass gatherings, extended outdoor mass gatherings, parades or funeral processions authorized under DCC Chapter 8.16,***
  - 4. ***Home occupation for commercial events or activities.***

**FINDING:** The applicant is proposing up to 6 events/weddings on the site. The applicant has stated he will cease renting out of the property for other uses beyond weddings (corporate retreats or family reunions), which prior use was not permitted by the County. Therefore, the Hearings Officer finds the applicant's proposal satisfies this criterion.

4. **Section 18.16.060. Dimensional Standards.**

- E. **Building height.** *No building or structure shall be erected or enlarged to exceed 30 feet in height, except as allowed under DCC 18.120.040.*

**FINDING:** The applicant is not proposing any new structures, or any additions to existing structures. Therefore, this standard is not applicable to the limited use permit.

5. Section 18.16.070. Yards.

- A. *The front yard shall be a minimum of: 40 feet from a property line fronting on a local street, 60 feet from a property line fronting on a collector street, and 100 feet from a property line fronting on an arterial street.*
- B. *Each side yard shall be a minimum of 25 feet, except that for a nonfarm dwelling proposed on property with side yards adjacent to property currently employed in farm use, and receiving special assessment for farm use, the side yard shall be a minimum of 100 feet.*
- C. *Rear yards shall be a minimum of 25 feet, except that for a nonfarm dwelling proposed on property with a rear yard adjacent to property currently employed in farm use, and receiving special assessment for farm use, the rear yard shall be a minimum of 100 feet.*
- D. *In addition to the setbacks set forth herein, any greater setbacks required by applicable building or structural codes adopted by the State of Oregon and/or the County under DCC 15.04 shall be met.*

**FINDING:** The applicant is not proposing any new structures or additions to existing structures. These setbacks are not applicable to the limited use permit.

**AS ZONE STANDARDS**

3. **Chapter 18.80, Airport Safety Combining Zone (AS)**

a. **Section 18.80.020, Application of Provisions**

The provisions of DCC 18.80.020 shall only apply to unincorporated areas located under airport imaginary surfaces and zones, including approach surfaces, transitional surfaces, horizontal surfaces, conical surfaces and runway protection zones. While DCC 18.80 identifies dimensions for the entire imaginary surface and zone, parts of the surfaces and/or zones do not apply within the Redmond, Bend or Sisters Urban Growth Boundaries. The Redmond Airport is owned and operated by the City of Redmond, and located wholly within the Redmond City Limits.

Imaginary surface dimensions vary for each airport covered by DCC 18.80.020. Based on the classification of each individual airport, only those portions (of the AS Zone) that overlay existing County zones are relevant.

Public use airports covered by DCC 18.80.020 include Redmond Municipal, Bend Municipal, Sunriver and Sisters Eagle Air. Although it is a public-use airport, due to its size and other factors, the County treats land uses surrounding the Sisters Eagle Air Airport based on the ORS 836.608 requirements for private-use airports. The Oregon Department of Aviation is still studying what land use requirements will ultimately be applied to Sisters. However, contrary to the requirements of ORS 836.608, as will all public-use airports, federal law requires that the FAA Part 77 surfaces must be applied. The private-use airports covered by DCC 18.80.020 include Cline Falls Airpark and Juniper Airpark.

**FINDINGS:** The record indicates the subject property lies within the transitional surface of the Redmond Airport. Therefore, the Hearings Officer finds AS Zone applies to the applicant's proposal.

**b. Section 18.80.028, Height Limitations**

All uses permitted by the underlying zone shall comply with the height limitations in DCC 18.80.028. When height limitations of the underlying zone are more restrictive than those of this overlay zone, the underlying zone height limitations shall control. [ORS 836.619; OAR 660-013-0070]

- A. Except as provided in DCC 18.80.028(B) and (C), no structure or tree, plant or other object of natural growth shall penetrate an airport imaginary surface.
- B. For areas within airport imaginary surfaces but outside the approach and transition surfaces, where the terrain is at higher elevations than the airport runway surfaces such that existing structures and permitted development penetrate or would penetrate the airport imaginary surfaces, a local government may authorize structures up to 35 feet in height.
- C. Other height exceptions or variances may be permitted when supported in writing by the airport sponsor, the Department of Aviation and the FAA. Applications for height variances shall follow the procedures for other variances and shall be subject to such conditions and terms as recommended by the Department of Aviation and the FAA (for Redmond, Bend and Sunriver.)

**FINDINGS:** The Hearings Officer finds these criteria do not apply because the applicant does not propose to build or enlarge any structures that would penetrate the imaginary surfaces, and no height exceptions are included in the applicant's proposal.

**c. Section 18.80.044, Land Use Compatibility Requirements**

Applications for land use or building permits for properties within the boundaries of this overlay zone shall comply with the requirements of DCC 18.80 as provided herein....

- A. **Noise.** Within airport noise impact boundaries, land uses shall be established consistent with the levels identified in OAR 660, Division 13, Exhibit 5 (Table 2 of DCC 18.80)....

**FINDINGS:** The record indicates the subject property is not located within the noise impact boundary of the Redmond Airport and therefore this criterion is not applicable.

- B. **Outdoor lighting.** No new or expanded industrial, commercial or recreational use shall project lighting directly onto an existing runway or taxiway or into existing airport approach surfaces except where necessary for safe and convenient air travel. Lighting for these uses shall incorporate shielding in their designs to reflect light away from airport approach surfaces. No use shall imitate airport lighting or impede the ability of pilots to distinguish between airport lighting and other lighting.

**FINDINGS:** The applicant's proposed LUP is for commercial events and therefore is a new commercial use. Therefore, the Hearings Officer finds the outdoor lighting requirements in this criterion are applicable. This criterion could be met with a condition of approval to assure that any outdoor lighting does not project directly onto a runway or taxiway, and shall be shielded to reflect light away from airport approach surfaces.

- C. **Glare.** No glare producing material, including but not limited to unpainted metal or reflective glass, shall be used on the exterior of structures located within an approach surface or on nearby lands where glare could impede a pilot's vision.

**FINDINGS:** This criterion could be met with a condition of approval to assure that any materials utilized in weddings/events on the subject property do not produce glare.

- D. **Industrial emissions.** No new industrial, mining or similar use, or expansion of an existing industrial, mining or similar use, shall, as part of its regular operations, cause emissions of smoke, dust or steam that could obscure visibility within airport approach surfaces, except upon demonstration, supported by substantial evidence, that mitigation measures imposed as approval conditions will reduce the potential for safety risk or incompatibility with airport operations to an insignificant level. The review authority shall impose such conditions as necessary to ensure that the use does not obscure visibility.

**FINDINGS:** The Hearings Officer finds this criterion is not applicable because the applicant's proposal is not a new industrial, mining or similar use.

- E. Communications Facilities and Electrical Interference. No use shall cause or create electrical interference with navigational signals or radio communications between an airport and aircraft....**

**FINDINGS:** The Hearings Officer finds this criterion is not applicable because the applicant's proposal does not include a communications facility or a facility that would create electrical interference.

- F. Limitations and Restrictions on Allowed Uses in the RPZ, Approach Surface, and Airport Direct and Secondary Impact Areas. For the Redmond, Bend, Sunriver, and Sisters airports, the land uses identified in DCC 18.80 Table 1, and their accessory uses, are permitted, permitted under limited circumstances, or prohibited in the manner therein described.**

**FINDINGS:** The Hearings Officer finds this criterion is not applicable because the applicant's proposal is within the transitional surface of the Redmond Airport and not within the RPZ, approach surface, or airport direct or secondary impact areas.

**d. Section 18.80.054, Conditional Uses**

**Uses permitted conditionally shall be those identified as conditional uses in the underlying zone with which the AS Zone is combined, and shall be subject to all conditions of the underlying zone except as provided in DCC 18.80.044.**

**FINDINGS:** The applicant requests an LUP to conduct up to six weddings/events each year, a use permitted in the EFU Zone subject to special provisions set forth in Section 18.16.042, discussed in the findings above. For this reason, the applicant's proposal is permitted in the AS Zone.

**IV. DECISION:**

Based on the foregoing Findings of Fact and Conclusions of Law, the Hearings Officer hereby **DENIES** the applicant's request for a limited use permit for up to six weddings/commercial events per year on the subject property because the applicant failed to meet its burden of proving the proposed commercial use is "incidental and subordinate to" existing farm use on the property.



Stephanie Marshall Hicks, Hearings Officer

Dated this 26<sup>th</sup> day of May, 2015

Mailed this 27<sup>th</sup> day of May, 2015

**THIS DECISION BECOMES FINAL IF NOT APPEALED WITHIN 12 DAYS OF THE DATE OF THE DECISION.**