Washington County
Department of Land Use and Transportation
Land Development Services
155 N First Ave, Suite 350
Hillsboro, OR 97124

NOTICE OF DECISION OF THE HEARINGS OFFICER

PROCEDURE TYPE: III (II)

CPO: 8
RURAL/NATURAL RESOURCE PLAN

PROPERTY DESCRIPTION:
ASSESSOR MAP NO.: 2N2 35
TAX LOT NO.: 00900 and 01000
SITE ADDRESS: 12960 NW Dick Road
SITE SIZE: 68.11 acres

LAND USE DISTRICT(S):
Exclusive Farm Use (EFU)
Exclusive Forest & Conservation (EFC)

CASE FILE: 12-383-SU/D/M

APPLICANT:
Garden Vineyards, LLC
12960 NW Dick Road
Hillsboro, OR 97124

APPLICANT'S REPRESENTATIVE:
NW Engineers, Matt Newman
19075 NW Tanasbourne Drive, Suite 160
Hillsboro, OR 97124

OWNER TAX LOT 900:
Stuart Wilson
570 NE 53RD Street, Suite 200
Hillsboro, OR 97124

OWNER TAX LOT 1000:
Molly Wilson c/o Stuart Wilson
By American Brokers Conduit
520 Broadhollow Road
Melville, NY 11747

PROPERTY LOCATION:
North of the northern terminus of NW Dick Road.

PROPOSED DEVELOPMENT ACTION: Special Use and Development Review for a Private Day-Use Park (Garden Vineyards) in the EFU and EFC Districts and Miscellaneous Review of an Accessory Building for Use as a Farm Stand.

DATE OF DECISION:
April 10, 2013

A summary of the decision of the Hearings Officer and supplemental findings are attached.

This decision may be appealed to the Land Use Board of Appeals (LUBA) by filing a notice of Intent to Appeal with LUBA within 21 days of the date of this decision. Contact your attorney if you have any questions in this regard.

For further information contact the Land Use Board of Appeals at 503-373-1265.

The complete case, including Notice of Decision, Application, Staff Report, Findings and Conclusions, and Conditions of Approval,if any, are available for review at no cost at the Department of Land Use and Transportation. Copies of this material will be provided at reasonable cost.

Notice to Mortgagee, Lien Holder, Vendor or Seller: ORS Chapter 215 requires that if you receive this notice it must promptly be forwarded to the purchaser.

Notice of Decision of Hearings Officer
April 10, 2013
Page 2

CASEFILE NUMBER: 12-383-SU/D/M

SUMMARY OF DECISION:

On April 10, 2013, the Washington County Hearings Officer issued a written decision (Attachment "C") on the applicant's request for Special Use and Development Review for a Private Day-Use Park (Garden Vineyards) in the EFU and EFC Districts and Miscellaneous Review of an Accessory Building for Use as a Farm Stand. Located at the north of the northern terminus of NW Dick Road in CPO # 8, and described as tax lots 900, and 1000 on assessor map 2N2 35, W.M., Washington County, Oregon. Her decision follows:

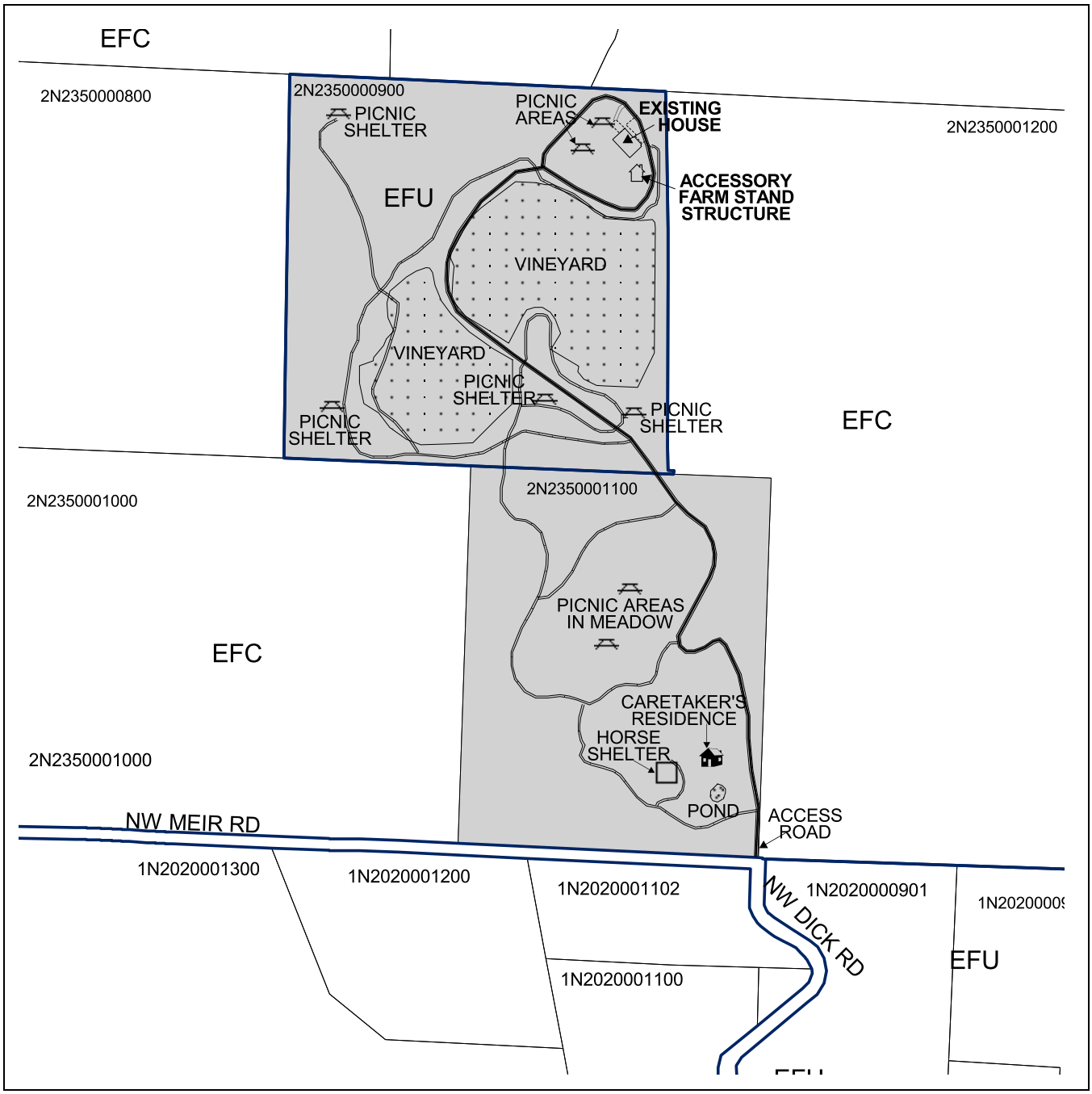
ORDER:
The Application is Denied.

Attachments:

A Vicinity Map
B. Hearings Officer's Findings, Conclusion and Order

ATTACHMENT A VICINITY MAP

TAX MAP/LOT NO. 2N2 35 00 00900 & 01100 CASE FILE NO. 12-383-SU/D/M



NORTH **AREA OF CONSIDERATION**

SCALE: 1" = 500'

SITE & SURROUNDING LAND USE DISTRICTS:

EFU District (Exclusive Farm Use)
EFC District (Exclusive Forest and Conservation)

REVIEW STANDARDS FROM CURRENT OR APPLICABLE ORDINANCE OR PLAN

A. Washington County Comprehensive Plan
B. Applicable Community Plan (See Front of Notice)
C. Transportation Plan
D. Washington County Community Development Code:
   - ARTICLE I, Introduction & General Provisions
   - ARTICLE II, Procedures
   - ARTICLE III, Land Use Districts
   - ARTICLE IV, Development Standards
   - ARTICLE V, Public Facilities and Services
   - ARTICLE VI, Land Divisions & Lot Line Adjustments
   - ARTICLE VII, Public Transportation Facilities
E. R & O 86-95 Traffic Safety Improvements
F. ORD. NO. 738, Design and Construction Standards
G. ORD. NO. 691-A & 729, Transportation and Development Tax

BEFORE THE LAND USE HEARINGS OFFICER
OF WASHINGTON COUNTY, OREGON

In the Matter of an Application for Special Use and Development Review for a Private Day-Use Park (Garden Vineyards) in the EFU and EFC Districts and for Miscellaneous Review of an Accessory Building for Use as a Farm Stand **Applicant:** Garden Vineyards, LLC **Applicant's Representative:** Robert Ireland, Esq.	**FINAL ORDER** **Casefile No. 12-383-SU/D/M** **APPLICATIONS DENIED**

I. APPLICATION SUMMARY and BACKGROUND INFORMATION

A. BACKGROUND AND HISTORY

The applicant is requesting Special Use and Development Review approval for a Private Park, known as "Garden Vineyards" in the EFU and EFC Districts, and Miscellaneous Review approval for an accessory structure for use as a farm stand. According to the applicant, the private park will "include outdoor leisure recreation for the public during public hours and private gatherings on designated dates and times for events ranging from small business team building to non-profit fundraisers to family reunions." More detail regarding proposed events and activities to be conducted on the site is contained later in this Final Order.

1. Application Background

The property in question consists of two parcels, one of which is zoned EFU (exclusive farm use) and the other of which is zoned EFC (exclusive forest conservation). Tax lot 900 supports several accessory structures and approximately 15 acres of grapes that the applicant uses to produce wine at a winery that is located offsite. This larger northern EFU parcel is where an existing residence was constructed in 1994 pursuant to a 1992 approval; access to this northerly parcel is over an approximately 12-foot wide driveway across the southerly EFC-zoned parcel.

Tax lot 1100 is the smaller southerly EFC-zoned parcel. It supports an existing dwelling (12155 NW Dick Road) that according to County Assessment and Taxation records was established on the property in 1933, as well as a barn. Approximately half of tax lot 1100 is forested and the rest of the parcel consists of a large meadow located on the northern half of the property. Holcomb Creek crosses the southwestern corner of tax lot 1100. Holcomb Creek is designated as a Drainage Hazard Area on the County Flood Plain Maps and as a Significant Natural Resource (Water Areas and Wetlands/Fish and Wildlife Habitat) on the

Rural/Natural Resource Plan. Sections 421 and 422 of the Washington County Community Development Code (CDC) regulate development within Floodplains/Drainage Hazard Areas and Significant Natural Resource Areas and are addressed later in this Final Order. The applicant has not proposed any uses or alterations to the site within 250 feet of the creek with this application.

This decision represents the County's response to the third in a series of applications designed to obtain approval that would allow events to be held on the applicant's rural acreage in Washington County. The first application, for a winery, was denied by the County Hearings Officer in 2010 based on a complete application dated June 8, 2010. The applicant appealed the denial to LUBA, and LUBA affirmed the denial on May 17, 2011. *Wilson v. Washington County*, 63 Or LUBA 314 (2011).

Although wineries are allowed under applicable state and county regulations in the EFU zone, they are not allowed in the EFC zone; the Hearings Officer in 2010 determined that the winery must be considered as a whole comprising both parcels of land, and LUBA agreed. Additionally, some of the events proposed to be conducted at the proposed winery would not be allowable, and LUBA determined that the Hearings Officer was not required to either break the application apart or to condition it as a means of achieving compliance with applicable standards. The Board based its decision affirming the Hearings Officer's denial on this second issue as well.

Having met with disapproval of the proposal for approval of a winery, the applicant next sought approval for a "farm stand." On July 8, 2011, the applicant submitted an application to the County for conversion of the existing dwelling to a non-residential use to allow the farm stand. Farm stands can be allowed in EFU zones pursuant to ORS 215.213(1)(r)[1]. The county approved the farm stand application on the day it was submitted, without notice to any party. A nearby property owner appealed to LUBA; the Board held that the determination of whether a farm stand could be allowed on the property required the exercise of discretion and legal judgment, and as such the farm stand approval constituted a land use decision which should have been reviewed by the County consistent with the processes required under ORS 215.416. LUBA remanded the application to the County. *Keith v. Washington County*, __ Or LUBA ___ (LUBA No. 2011-104, 2012 WL 3804438), August 8, 2012.

The present application dated June 12, 2012 had been filed with the County by the time LUBA's final opinion and order on the farm stand appeal had been issued, and this application was subsequently accepted by the County on September 17, 2012 after some additional interim steps not relevant to this decision were completed by the applicant. The application form indicated the request was for a "special use and development review to allow a private park" on the subject two parcels. A "private park" is another in a long list of uses allowed in farm zones under state law and pursuant to county zoning implementing state law, but requires an analysis of impacts to farm and forest activities on surrounding lands. Following LUBA's

[1] Washington County is a marginal lands county.

decision remanding the farm stand approval to the County, the applicant amended the pending private park application on October 10, 2012 to include a request for the farm stand approval that LUBA had indicated must be processed as a land use application, and both requests proceeded to hearing in this proceeding.

On November 21, 2012 the applicant provided an additional addendum to the application (Exhibit PH2). The November 21 addendum included a revised Traffic Analysis by the applicant's traffic engineer, a proposal to use a portion of the existing dwelling on tax lot 900 as indoor picnic areas, and "clarifications" to four portions of the application: (1) park use and fire siting standards on the EFC portion of the property (tax lot 1100); (2) use of the farm stand and park for sales of agricultural products; (3) public use of the converted portion of the residence; and (4) the applicability of OAR 660-034-0035. These items are addressed later in the applicable sections of this Final Order.

For further context it should be noted that Washington County has not yet implemented the option to allow "agri-tourism" activities on farmland, that opportunity having been provided by SB 960 (2011), codified at ORS 215.213(11)-(13). As such, statutory "agri-tourism" provisions are not applicable to these applications.

These applications present four essential questions:

1. Is the application consistent with the definition of a "farm stand" as that term is defined in ORS 215.213(1)(r) and in the County Development Code?

2. Can a private park be allowed on the property given the soils present on the two parcels, in light of the limitation that private parks cannot be approved on tracts predominantly comprised of "high value farmland"?

3. If the answer to Question 2 is yes, then (a) is the application consistent with the meaning of the term "private park" in ORS 215.213(2)(e) as that term has been defined in LUBA case law; and (b) would the proposal result in impermissible impacts on surrounding farm practices under ORS 215.296, or be appropriate in a forest environment under OAR Chapter 660, Division 006?

4. Assuming any component of the application is determined to meet the requirements for either a farm stand or a private park or both, could conditions of approval effectively limit the activities on the site so as to make compliance with the applicable standards feasible?

As discussed in detail below the Hearings Officer concludes herein that both the application for the farm stand and the application for a private park must be denied. In both cases, the applications fail to meet critical threshold criteria. For clarity, and because it seems likely that this decision will be appealed, this Final Order includes findings not only with respect to those criteria that are not met, but also with respect to the other relevant approval criteria for these applications.

2. History of County land use and code enforcement actions

In 1992, the land use designation of tax lot 900 was changed from EFC to EFU via a Plan Amendment (Casefile 92-109-PA). The existing dwelling on the property was then approved on the property via Casefile 92-633-AD as a dwelling in conjunction with farm use. The proposed crop was a five-acre grape vineyard. The application materials indicate that the vineyard has since been expanded to approximately 15 acres.

On January 12. 2005, County Staff received a request for an Oregon Liquor Control Commission (OLCC) "Grower Sales Privilege" for Garden Vineyards located at 12960 NW Dick Road. In response to OLCC's request, Staff reviewed County records and determined that there was no record of land use approval for a winery on the property and recommended to OLCC that it should deny the requested "Grower Sales Privilege". On February 7, 2005, OLCC sent the County a letter indicating that land use or zoning issues are not valid reasons to deny a liquor license to an applicant under the applicable state laws. On April 13, 2005, County code enforcement staff responded to OLCC with a memorandum regarding the uses occurring on the property and recommending denial of the liquor license. The memorandum noted that the site did not have land use approval for a winery or any other commercial activity, including its use for banquets, weddings, and other events as identified on Garden Vineyards' website. In response to OLCC's subsequent approval of the liquor license the County initiated use violation number Case UV05-004.

In response to UV05-004 the applicant submitted a request for Special Use Approval and Development Review for a winery and event facility on the site, the first application discussed above in the "Introduction" section of this Final Order. As noted earlier, the applicant appealed the decision of the County denying the winery application to the Land Use Board of Appeals (LUBA), which affirmed the Hearings Officer's decision on May 17, 2011 (Exhibit PH4).

Upon receipt of the LUBA decision, County Staff sent the applicant a letter (Exhibit PH5) reiterating the application's denied status and the ramifications of holding unpermitted events on the subject property as a violation of the Community Development Code. The letter referenced both the Hearings Officer's denial and LUBA's decision to affirm the denial. During the summer and fall of 2011, Code Enforcement Staff received numerous complaints regarding weddings and other events held on the subject property. In response to these complaints, the County issued a total of eleven Notices of Civil Violation (NCV) for weddings held on the property, which were heard at two separate hearings. In all eleven cases, the Hearings Officer found that the applicant had held weddings on the property in violation of Sections 201-1.1 (Development without a Permit), 215-1 Code Compliance, and 340-6.1 Prohibited Uses in the EFU District. The total fine for these violations was $55,000. (Exhibits PH6 and PH7, August 12 and November 21, 2011 respectively.) The applicant is currently in a payment program with the County for payment of the fines assessed by the Hearings Officer.

On July 8, 2011 the applicant submitted a building permit application to convert an existing 182 square foot structure on tax lot 900 to a commercial structure for use as a farm stand.

Pursuant to CDC Section 201-2.20, farm stands on EFU, AF-20, and EFC designated lands are exempt from land use permit requirements. Based on this authority, County staff approved the building permit application on the same day it was filed, after determining the structure met the setback requirements of the District, was outside of any designated 100-year flood plain or drainage hazard areas, and was for a use that was permitted on the site. Section 201-2.20 and ORS 215.213(1)(r) permit, in addition to the sale of farm crops, sales of incidental items and fees for promotional activities as long as the income from those sales does not exceed 25 percent of the total annual sales of the farm stand. Since Section 201-2.20 exempts farm stands in Washington County from permit requirements, the County had not previously required an applicant for a building permit for a farm stand to demonstrate that they complied with the statutory income requirement. The County has relied on a farm stand operator to comply, and has enforced compliance through the County's Code Compliance process.

During the time that the property owner had a valid permit for a farm stand – from the date of the County's approval on July 8, 2011 until the LUBA decision in the *Keith* appeal of that approval (described above) on August 12, 2012 - the property owner held a number of "promotional activities" that the County determined to be permitted in conjunction with a farm stand. The activities included "movie nights", "music nights", corporate picnics, family reunions, and similar events. Some of these events, which the applicant stated were held as promotional events for the farm stand, included entertainment (movie, music, etc.), which staff determined were not prohibited in a farm stand. CDC 201-2.20 B. prohibits structures for "banquets, public gatherings, or public entertainment" and according to the applicant, these activities did not occur in a structure and they did not charge for attendance at the events.

Meanwhile, before the LUBA decision remanding the farm stand approval was issued, and continuing thereafter, the neighbors continued to submit complaints to the County about the activities that were occurring on the property. For various reasons associated with the timing of the complaints and the dates of the events in question, no notices of violation were issued as a result of several of these activities occurring on the site. Because the Hearings Officer finds that the history of these activities is relevant to the determination of the feasibility of imposing conditions to maintain compliance with applicable approval standards, a description of that series of complaints and their resolution is included in the next section of this Final Order.

Continuing, then, with the history of land use approvals affecting the site, the record demonstrates that upon receipt of the LUBA decision in August, 2012 remanding the farm stand approval, County Staff sought to determine what activities were permitted on the property as "farm use" and what activities were only permitted in conjunction with a farm stand. Staff believed that it was possible that some of the uses that were occurring on the property might be permitted under the statutory definition of "farm use". Staff believed that this was ultimately a legal question; therefore, after receiving the LUBA decision Staff requested direction from County Legal Counsel. On September 13, 2012 Staff received direction from County Counsel indicating that based on a preliminary review of case law, promotional activities were only permitted in conjunction with the farm stand and were not permitted as a part of the marketing of a farm crop under the definition of "farm use".

On September 13, 2012, the Building Official sent the property owner a letter (Exhibit PH11) revoking the building permit for the farm stand structure based on the LUBA decision and direction from County Counsel. The letter noted that if the applicant wished to further pursue having a farm stand on the property, the applicant first had to obtain land use approval for a farm stand on the property.

On September 17, 2012 the applicant's representative submitted a letter requesting the application be accepted as submitted and noting that they would be providing additional findings and evidence within two weeks. As a result, the application was accepted as complete and labeled as Casefile 12-320-SU/D as a request for Special Use Approval and Development Review for a Private Park.

Revised findings and site plans were submitted for Casefile 12-320-SU/D on October 10, 2012, which included the addition of a request for miscellaneous review for an accessory building for use as a farm stand.[2] As discussed in Section I.A.1 above, further supplemental materials in support of the application were filed on November 21, 2012. Based on the complete final application, this review constitutes review of requests for both approval of a private park and approval for use of a structure as a farm stand.

It should be noted here that staff received complaints from neighbors prior to the hearing in this review, indicating that they believed that the subject application should not be processed until all previous fines have been paid. County Counsel reviewed the issue and determined that neither the Community Development Code nor the County Code prohibit the processing and approval of a development application while a site is subject to unpaid fines. In previous cases where a site was subject to unpaid fines, Staff required the property owner to either pay the unpaid fine or set up a payment agreement with the County prior to review of a development application. In this case, the applicant has entered into a payment agreement with the County for payment of the fines and as of November 30, 2012 the applicant was current with that payment plan. No testimony to the contrary was received during these proceedings, and no party requested that the hearing not be conducted on this basis.

3. Summary of additional code enforcement complaints not pursued by the County

The procedure for administering Code Compliance activities for the Building Code and the Community Development Code in Washington County is outlined in Chapter 1.14 of the Washington County Code. Under Section 1.14.010 the first preference for all Code Compliance activities in the County is to "encourage voluntary compliance." To implement this philosophy, the County's stated goal is "to develop solutions based on individual situations".

[2] The original documents that were part of the accepted application were replaced by the revised findings and plans, and are not included as a part of the record for the present Casefile 12-383-SU/D/M.

The County also strives to "provide broad based public education" regarding Code related issues. This Chapter calls on Code Compliance Staff to proceed "on the assumption that education of citizens will solve most issues and our initial contacts with affected citizens will be to take an understanding and helpful approach to resolving potential enforcement issues."

The process for acting on complaints is outlined in CDC Section 1.14.030. This Section outlines who is eligible to file a complaint and the type of evidence that is necessary to demonstrate that a violation exists. This Section also authorizes staff with assistance from County Counsel to determine whether there is sufficient evidence to conclude that a violation exists. This Section authorizes staff to then determine whether or not to act on an individual complaint.

Based on the County's philosophy of encouraging voluntary compliance and developing solutions based on individual situations, Code Compliance staff evaluates complaints with the goal of encouraging people to get the appropriate permits when a use or activity can be permitted in the applicable land use district. Once an activity or use has been determined to be a violation, it is County practice to give the person responsible for that violation a minimum of 7 to 14 days' notice to cease the activity and/or file for the appropriate permits. When there is an active violation on a parcel, staff suspends enforcement actions once an application for the appropriate permit has been accepted as complete, if that violation can be corrected by that permit.

As documented in exhibit PH9, several complaints were received by the County concerning events held on the subject property both while the various applications and appeals were pending, and subsequent to LUBA's August, 2012 remand decision. These complaints are summarized below:

- On June 14, 2012 a neighbor submitted a complaint alleging that the property owner had held a wedding on the property on June 9, 2012. To support these allegations the neighbor provided pictures of buses on the property and testimony indicating that they talked to people who said they were there for a wedding. The property owner submitted a letter indicating that a group of 30 people from Japan came to the site on June 9th indicating that they had come to the United States for a wedding. The property owner indicated that they were then told that they were not permitted to have a wedding on the property and they also could not have a reception on the property. The property owner indicated that the interpreter for the group told him that they were just there for lunch and were not planning on holding a wedding on the property. Staff was advised by a third party that the wedding and reception was on Friday night June 8th at the "The Old Church" in downtown Portland. The Japanese wedding party had indicated to this third party that they were going to spend the next week touring Oregon and Washington and that they planned to start with wineries and vineyards in Washington County. Staff concluded that absent specific evidence of a wedding occurring on the property, they would not pursue this complaint through enforcement.

- On June 20, 2012 a neighbor submitted a complaint alleging that the property owner had hosted a corporate event on the property on June 13, 2012. Staff had determined that corporate events are considered a "promotional activity" that is permitted at a farm stand as long as the purpose of the event is to promote the crops grown on the farm or crops grown on farm property in the local agricultural area. Since there was no evidence that the purpose of the corporate event was for anything other than promoting the property's farm crops, staff did not pursue this complaint.

- Two complaints were received regarding an alleged wedding rehearsal dinner held on the property on July 20, 2012. Upon receipt of these complaints, staff attempted to determine whether a dinner associated with a wedding rehearsal where the wedding itself would not be held on the property was considered a "celebratory" event, which is not permitted at a farm stand. Staff concluded that there was sufficient ambiguity over whether the dinner was a celebratory event or a promotional activity, and as such staff chose not to pursue these two complaints.

- Three complaints were received in August, 2012 regarding "Movie Nights", "Music Nights", and a corporate event held in August, 2012. Staff determined that these activities were not a farm use and because at this point the County had revoked the farm stand permit, staff began preparing a letter to notify the property owner that farm stand related activities could no longer occur on the site. Before staff could issue a compliance letter outlining the activities that could no longer take place on the site because they were only permitted in conjunction with a farm stand the present application was accepted as complete and enforcement activities were suspended.

- There were several complaints regarding activities that occurred on the property in September and October of 2012. These complaints included general complaints about the "Movie Nights" and "Music Nights" that are discussed above, and complaints were received regarding four specific events. All of the complaints contained argument that the activities were no longer permitted on the site as a result of the revocation of the building permit for the farm stand structure. The first was a "Music Night" held on September 14 with a band called Hit Machine. According to the person who complained, the music was loud and there was a large number of people and associated vehicles. The person who complained included a traffic count taken on NW Dick Road near the entrance to the property. According to the traffic count there were a total of 590 trips to the site on September 14, 2012 and the maximum peak volume in any hour was 118 trips total. According to the person who complained, there were also parking problems at this event, which may have blocked emergency access to the developed portion of tax lot 900 for at least a portion of the evening.

- An additional complaint arose out of a Portland Trailblazer Charity fund raising event held on the property on September 15, 2012. The person who complained about this event also complained about traffic to this event and provided a traffic count taken on NW Dick Road near the entrance of the property. According to the traffic count there were a total

of 181 trips to the site on September 15, 2012 and the maximum peak volume in any hour was 33 trips total.

- The third complaint in this series related to what the person who complained identified as a "Corporate Event" on September 21, 2012. The person who complained about this event was concerned about traffic at the site. A traffic count was also provided with this complaint which indicated a total of 226 trips for the site on September 21st with a maximum peak volume in any one hour of 58 trips.

- The fourth event in this series was a wine tasting event October 6, 2012 called the Grand Tasting held at the site. The primary complaint regarding this event was also traffic and a traffic count was also provided with the complaint. The traffic count indicated that the total traffic count for the site on this day was 324 vehicles with a maximum peak hour trip count of 62 trips.

Staff believed, and the Hearings Officer concurs, that once the LUBA decision was issued and the building permit for the farm stand building was revoked, the site was no longer approved for a farm stand and the uses were no longer permitted on the site. Staff was apparently prepared to notify the property owner in writing on September 17, 2012 that these activities were no longer permitted on the property and that they were to cease holding these activities within 7 days of that letter (September 24, 2012). However, the present application for a private park was accepted on September 17, 2012; therefore, the only event that the property owner would have been cited for had this application not been accepted was the October 6th Grand Tasting event. No Notice of Civil Violation was issued for this event because this application had been accepted for review, and based on staff's belief that the activities in question would be permitted in a private park.

This review of the request for a private park and farm stand on land zoned EFU and EFC ensued.

II. ORDER

The Hearings Officer DENIES the request for Special Use and Development Review for a Private Day-Use Park (Garden Vineyards) in the EFU and EFC Districts and Miscellaneous Review of an Accessory Building for Use as a Farm Stand.

III. PROCEDURAL SUMMARY

A duly-noticed public hearing was conducted on December 13, 2012. The Hearings Officer read the statements required by ORS 197.763 and 197.796 and offered hearing participants the opportunity to object to the Hearings Officer's jurisdiction to hear the application or to any procedural matter. There were no objections. Staff summarized the applicable criteria and the application. The applicant described the proposed development.

Multiple letters, photographs, documents and power point presentations were received at the hearing from neighbors and members of the community. Public testimony was received following the applicant's presentation. Issues presented in public testimony can be summarized as safety concerns related to increased traffic and parking, impacts on farm and forest practices on surrounding properties, noise, trespassing, and fire safety. These issues are more fully addressed below in the Findings section of this Final Order. Exhibit numbers referenced throughout the Order are identified in a complete list of the Exhibits received during this review, and appended hereto as Exhibit 1.

At the request of both parties, the record was held open for five weeks, until January 17, 2013, for new evidence and argument. Argument concerning any new evidence submitted was allowed by all parties until January 31, 2013. The applicant was then required to provide final argument by February 14, 2013. A written decision was originally scheduled to be provided by the Hearings Officer on April 4, 2013, but due to extenuating circumstances, the applicant granted a waiver and extension of the 150 days, and this Final Order was provided on April 10, 2013.

During both the new evidence period and final argument period, various parties objected to evidence submitted. The Hearings Officer made decisions on those objections and issued Interim Orders, which are found in the original record of these proceedings.

IV. APPLICABLE STANDARDS and AFFECTED JURISDICTIONS

APPLICABLE STANDARDS

A. Washington County Comprehensive Framework Plan (Rural/Natural Resource Plan Element)

B. Washington County Community Development Code

1. Article II, Procedures:
   - Section 201-2 Exclusions from Permit Requirement
   - Section 202-2 Type II Procedure
   - Section 202-3 Type III Procedure
   - Section 207-5 Conditions of Approval
   - Section 215 Enforcement

2. Article III, Land Use Districts:
   - Section 340 Exclusive Farm Use District Standards
   - Section 342 Exclusive Forest Conservation District Standards

3. Article IV, Development Standards:
   - Section 403 Applicability
   - Section 406 Building, Siting and Architectural Design
   - Section 409 Private Streets

Section 410	Grading and Drainage
Section 413	Parking and Loading
Section 422	Significant Natural Resources
Section 423	Environmental Performance Standards
Section 426	Erosion Control
Section 428	Forest Structure Siting and Fire Safety Standards
Section 430-97	Special Use Standards, Private Park

4. Article V, Public Facilities and Services:
Section 501-9 Limited Application of Public Facilities & Service Standards Outside the UGB

C. Washington County Transportation Plan

D. Ordinance No. 379 Traffic Impact Fee

AFFECTED JURISDICTIONS

Washington County Department of Health & Human Services
Washington County Fire District #2

V. FINDINGS

A. Background Findings

As noted earlier in this Final Order, the applicant requested Special Use and Development Review for a Private Park, known as "Garden Vineyards" in the EFU and EFC Districts and Miscellaneous Review for an accessory structure for use as a farm stand. According to the applicant the private park will "include outdoor leisure recreation for the public during public hours and private gatherings on designated dates and times for events ranging from small business team building to non-profit fundraisers to family reunions." Historically most activities on the property have occurred on the northerly EFU-zoned Tax Lot 900 in the area around the existing dwelling and accessory structures. The applicant also indicated in the application narrative that the following activities would occur on the site:

> *"Activities facilitated at the park will be supported by on-site services to include concessions, refreshments, and catering for private events. Other activities will include exhibitions for small groups demonstrating low impact farming, organic growing techniques, complete composting, sustainable animal husbandry, sustainable vineyard practices, and animal vegetation management. Picnic baskets featuring fruit and vegetables grown in the park's organic gardens and orchards, meats raised on the farm and wine grown from grapes on the property will be available for purchase at the farm stand. Raw wool and other refined wool products from the sheep will be introduced in the near future. It is expected that the park will be generally be in use during the warmer, drier months from May 1 through October 31st, however it is possible that*

limited activities might be permitted during other times, weather permitting. The park will close at 10 pm.

It is expected that on a typically busy day during the summer season, 25-50 cars will visit the park. The park will comply will [sic] all local noise ordinances. Additionally, park patrons will be reminded to be respectful of the neighbors as they leave the park, and all patrons will be encouraged to drive slowly and quietly. A 15mph speed limit will be suggested by posting. No ATV, motorcycle, or other motorized sport activities will be allowed at the park".

Private parks are permitted in both the EFU District (Section 340-4.2(K)) and EFC District (Section 342-3.2(I)) via a Type II procedure. Pursuant to Section 202-2.1 Type II land use actions are presumed to be appropriate to the District. Because of the history of prior land use decisions and land use violations on the property, in order to provide the opportunity for additional public involvement, the County Planning Director chose to process the application via a Type III procedure. As a use that is permitted in both the EFU and EFC Districts via a Type II procedure, the use is presumed to be appropriate to the District and subject to the Type II review criteria rather than the Type III criteria.

During the preparation of the Staff Report for the November 15, 2012 hearing, staff determined that the applicant had failed to provide the affidavit of posting within 28 days of acceptance of the application as complete as required by Section 204-1.4. Since failure to submit the posting affidavit within the specified timeframe is an automatic denial criterion, the applicant elected to withdraw and resubmit the application. The Director concurred with this request. The application materials as modified by the October 11, 2012 addendum (Exhibit PH1) were transferred to a new Casefile and given a new number on November 5, 2012 (Casefile 12-383-SU/D/M) and rescheduled for a Hearing on December 13, 2012. On November 7, 2012, a public notice was mailed to all parties on the original mailing list for Casefile 12-320-SU/D/M indicating the November 15th hearing for Casefile 12-320-SU/D/M had been cancelled and was rescheduled for December 13, 2012 with a new Casefile number (12-383-SU/D/M).

B. Comprehensive Framework Plan (Rural/Natural Resource Plan Element)

The goals and policies, which relate to the development of land, are implemented by the Code. The applicant is not required to address, consider, or implement any goal, policy or strategy of the Plan except where required by the Code.

Holcomb Creek crosses the southwest corner of tax lot 1100. The creek is designated as a drainage hazard area on the County's Flood Plain Maps. This area is designated as a Water Areas and Wetlands/Fish and Wildlife Habitat on the Rural/Natural Resources Plan. Development requests on land with these resources are subject to Code Section 422, which requires the application of Plan Policy 10, Implementing Strategy E. The applicable Plan Policy is discussed under Section 422 below.

C. Washington County Community Development Code

1. Article II: Procedure

Section 201-2 addresses Exclusion From Permit Requirements and states, "The following activities are permitted in each district but are excluded from the requirement of obtaining a Development Permit. Exclusion from the permit requirement does not exempt the activity from otherwise complying with all applicable standards, conditions and other provisions of this Code."

As noted above, the farm stand application was originally approved by the County but appealed to LUBA and remanded on the basis that notice and a hearing should have been provided in review of the application. This review provided the requisite notice and hearing. The applicant has combined the request for farm stand approval with the pending application for a private park. For clarity, this Final Order will first address the farm stand, and will then address the private park.

The following section of the Final Order will address the application for a farm stand, as the procedure type applied initially was the basis for LUBA's remand of the previous farm stand decision.

For the two reasons articulated below, the Hearings Officer concludes that the farm stand application cannot be approved. First, there was no evidence presented to document that the proposed farm stand could meet the applicable requirements that income be attributable in large measure to sale of farm crops or livestock grown on the farm operation or in the local agricultural area. Second, an analysis of applicable state and local regulations reveals that a farm stand cannot be allowed on forest land.

a. Income test

Section 201-2.20 permits farm stands in the AF-5, AF-10, EFU, AF-20, and EFC Districts if:

> "A. The structures are designed and used for the sale of farm crops or livestock grown on the farm operation, or grown on the farm operation and other farm operations in the local agricultural area, including the sale of retail incidental items and fee-based activity to promote the sale of farm crops or livestock sold at the farm stand if the annual sales of the incidental items and fees from promotional activity do not make up more than twenty-five (25) percent of the total annual sales of the farm stand; and
>
> B. The farm stand does not include structures designed for occupancy as a residence or for activity other than the sale of farm crops and livestock and does not include structures for banquets, public gatherings or public entertainment."

Pursuant to Section 201-2.20 farm stands have historically been exempt from land use permit requirements in Washington County; therefore, the method for establishing a farm stand on a parcel was the issuance of a building permit. As noted above, on July 8, 2011 the County issued a change of occupancy permit building permit for conversion of an existing 182 square

foot structure thereby establishing a farm stand on the property. This building permit was appealed to LUBA in the case of *Keith vs. Washington County* (LUBA No. 2011-104 discussed above) on the grounds that the establishment of a farm stand on the subject parcel was a land use decision and that the County did not follow the proper procedures in issuing that decision. LUBA concurred with the appellant and found that in making that decision, the County had failed to provide notice and the opportunity for a hearing and that the County had failed to adopt a decision supported with findings as required by ORS 215.416(9).

The County has interpreted this decision to mean that farm stands as defined in CDC Section 201-2.20 are discretionary decisions pursuant to ORS 215.213 (1)(r) and OAR 660-033-0130 (23), and are not exempt from permit requirements. Therefore, farm stands must be reviewed through a Type II procedure at a minimum prior to being established on a parcel. The applicant has included in this application a request for miscellaneous review for an accessory structure for use as a farm stand with the intent of obtaining approval for a farm stand on the property. The applicant provided findings for the farm stand portion of this application on pages 5-7 of Exhibit PH1.

The Hearings Officer finds that CDC Section 201-2.20 A. and ORS 215.213 (1)(r)(A) limit the amount of income generated by the sale of incidental items and fees for activities at the farm stand to a maximum of 25 percent of gross annual sales. In the case of a new farm stand, in order to meet the burden of proving that the use can be allowed, an applicant must necessarily outline the items to be sold at the farm stand and provide an estimate of the percentage of gross annual income that will be generated from sales of farm crops, and from incidental items and fees from promotional activities at the farm stand.

In this case, the applicant's findings and evidence did not address the 25 percent limitation at all, aside from brief mention during the hearing that the Applicant would abide by a condition of approval relating to a 25 percent limitation. Because evidence was not provided, and despite the earlier-described history of a farm stand operation at the site, the Hearings Officer concludes that there is no way to determine whether the proposed operation will or even could meet this requirement.

b. Farm stands cannot be allowed on forest lands

The application proposes the farm stand to be sited on tax lot 900 (EFU) but access to the farm stand is via tax lot 1100 (EFC). Section 201-2.20 of the Community Development Code indicates that farm stands are permitted in the EFC District. However, a review of OAR 660-006-0025 (which lists the uses permitted on forest land) does not identify farm stands as a permitted use. OAR 660-006-0025 (3) permits farm *uses* as defined by ORS 215.203; however farm *stands* are not listed and therefore they are not specifically contemplated on forest land (EFC) under the applicable administrative rule.

The applicant has argued that since farm uses are permitted in the EFC District and a farm stand is a farm use, a farm stand is permitted in the EFC District. The applicant further argues

that the specific mention in CDC Section 201-2.20 must be given effect. Staff determined, and the Hearings Officer concurs, that by separating farm stands from the definition of farm use in ORS Chapter 215, the legislature considered a farm stand as one of a specific list of authorized non-farm uses allowed on farm land, which include uses such as churches and golf courses not otherwise allowed in the forest zone (EFC). Similarly, the EFC District authorizes uses such as a forest product processing facility or a firearms training facility which are not authorized in farm districts. ORS 215.203(2)(a) generally identifies "farm use" as the raising, harvesting and selling of crops; and it goes on to identify additional activities such as the stabling or training (including riding lessons, training clinics and schooling shows) of equines as a farm use. Because the legislature chose to separately regulate activities or uses such as wineries and farm stands outside the definition of "farm use", it seems clear that the legislature did not intend that the more specifically identified uses be subsumed within the definition of "farm use". The corresponding administrative rules of the Department of Land Conservation and Development follow suit.

As noted earlier in this Final Order, the prior winery application for this property was denied, and that denial was appealed to LUBA. In *Wilson vs. Washington County*, *supra*, LUBA held that if the use is not permitted in the EFC District and the private road providing access to an EFU-designated parcel is across an EFC-designated parcel, then the use is not permitted on the EFU parcel. In this case, the only access to tax lot 900 is via a private road or driveway across land that is designated EFC, and as such a farm stand cannot be permitted on tax lot 900.

LUBA case law makes it clear that the distinctions in regulations applicable to EFU and EFC lands are to be given effect. In *Tennant v. Polk County*, 56 Or LUBA 455 (2008), LUBA analyzed an appeal related to a private park on land zoned in part as EFC, and described that activities on farm land must be analyzed under Goal 3 while activities on forest land implicate Goal 4, as those goals are implemented through administrative rules of the Department of Land Conservation and Development. The *Tennant* case is discussed more fully below in the discussion of the portion of the application related to a private park.

Because the administrative rule implementing Goal 4 does not permit the siting of farm stands without an exception to the Goal, the County may not give effect to CDC 201-2.20 as it relates to the allowance of farm stands within EFC zones. In a legal memorandum submitted to the Hearings Officer during the open record period in these proceedings, Washington County Counsel described the legislative history of the provision allowing farm stands as follows: "Oregon's statutory scheme closely regulates farm stands in the form of two restrictions: an activities restriction and an income limitation directly tied to the income derived from those activities." (Attachment A, Exhibit AH3, January 17, 2013). The Hearings Officer concurs with the analysis of County Counsel and determines that a "farm stand" is not the equivalent of a "farm use".

Moreover, a later more specific provision in the CDC governing EFC Districts does not list farm stands as an allowed use in the EFC District. CDC Section 342 specifically regulates the EFC

District, and because it does not mention farm stands it must be given effect over the more general provision in CDC 201-2 (a procedure section) that "lumps" the EFC District together with agricultural zoning designations.

The Hearings Officer concludes that because applicable law does not authorize a farm stand in forest zones under Goal 4, and the only access to the farm stand would be over land that is zoned EFC, the farm stand cannot be an allowed use in this case regardless of any demonstration of compliance with the otherwise applicable income limitations.

The remaining findings in this Final Order will address the application for a **private park**.

Section 202-2 relates to Type II actions. Specifically, Section 202-2.1 addresses Type II land use actions which are presumed to be appropriate in the District. Type II uses generally involve uses or development for which review criteria are reasonably objective, requiring only limited discretion. Impacts on nearby properties may be associated with these uses which may necessitate imposition of specific conditions of approval to minimize those impacts or ensure compliance with the Code.

As noted above, this application is being processed through the Type III procedure rather than the Type II procedure of the Community Development Code in order to provide additional opportunity for public involvement. The Type II criteria continue to apply to the application.

Section 202-5 addresses Determination of Proper Procedure Type. Specifically, Section 202-5.4 states, "Notwithstanding any other provision, and, at no additional cost to the applicant, the Director may choose to process a Type II application under the Type III procedure in order to provide greater notice and opportunity to participate than would otherwise be required, or in order to comply with the time requirements for reviewing development applications in ORS 215.428.

This application is being processed through the Type III procedure rather than the Type II procedure of the Community Development Code. Public notice was sent to surrounding property owners and a public notice sign was posted on the site.

Section 207-5 addresses Conditions of Approval. Section 207-5.1 states that the Review Authority may impose conditions on any Type II or Type III development approval. Such conditions are designed to protect the public from potential adverse impacts of the proposed use or development or to fulfill an identified need for public services within the impact area of the proposed development.

Along with Section 207-5, the requirements of ORS 215.296(2) are instructive with regard to compliance with Conditions of Approval, stating that "an applicant for a use allowed under ORS 215.213 (2) or (11) or 215.283 (2) or (4) may demonstrate that the standards for approval set forth in subsection (1) of this section will be satisfied through the imposition of conditions. Any conditions so imposed shall be clear and objective."

An applicant must demonstrate that compliance with the applicable standards is feasible; conditions can then be applied to assure that compliance will in fact be achieved. The Oregon Court of Appeals established the test for "feasibility" in *Meyer v. City of Portland*, 67 Or App 274 (1984), holding that "feasibility" means that the solutions embodied in conditions of approval must be "possible, likely, and reasonably certain to succeed." [3]

The Hearings Officer finds that based on the record in this case and the testimony of witnesses, the history of violations in this case provides evidence of the infeasibility of achieving compliance with approval criteria by imposing conditions of approval. The record contains unrefuted documentation of multiple violations of applicable regulations even after thousands of dollars of fines and non-compliance fees have been assessed.

In addition, enforcement of conditions would be rendered almost impossible due to the location of the primary "park" area at the end of an approximately 900-foot winding, uphill private drive which is not open to the public. Activity at the main park site will not be visible from a public road.

The legal standard applicable to the imposition of conditions of approval is that they must be feasible and capable of performance by the applicant, and suitable to ensure compliance with the applicable review criteria. As will be demonstrated below, the impacts of the proposed private park include noise, traffic, and similar impacts that are not suitable given the location of the applicant's property. Based on the history of violations and on the inaccessible location of the subject property, it seems clear that conditions of approval would be a tenuous solution not consistent with applicable law. As LUBA has noted:

> "When an issue is raised regarding the feasibility of conditions of approval to ensure compliance with approval criteria, the local government cannot simply ignore the issue. Nor can the local government simply impose the disputed condition as a performance standard and rely on a later staff review that does not provide notice and opportunity for hearing to ensure compliance with approval criteria. * * *"
> *Culligan v. Washington County, 57* Or LUBA 395, 399 (2008)."

Enforcement of applicable law has not, to date, achieved compliance with applicable standards. The applicant's description of proposed activities on the site is virtually the same as past events, with no means of enforcing an upper limit on attendees or sound until after an event has already taken place, and then only based on complaints from nearby property owners. As a result, the Hearings Officer finds that it will not be feasible to achieve compliance with approval criteria, including criteria regarding impacts upon farm and forest practices and the costs thereof, by means of conditions of approval.

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[3] 67 Or App at 280.

Finally, there is no obligation to impose conditions of approval in lieu of denying an application, as LUBA has held in *Reeder v. Multnomah County*, 59 Or LUBA 240, 254-55 (2009) (there is no requirement that a local government impose reasonable conditions to make a permit application approvable where the local government has not declared a moratorium on development under ORS 197.520, or a *de facto* moratorium has not been found under ORS 197.524).

Section 215 addresses Code Compliance. Section 215-2 states that no building or Development Permit shall be issued unless it has first been determined whether there are existing violations on the property. Where there is an existing violation, the building or Development Permit may be denied or approved with conditions addressing any existing violation on the property. In addition to any other materials required by law, applications for building permits shall be accompanied by a valid Development Permit or a statement specifying the applicable exemption.

As discussed previously in this Order, there were multiple complaints submitted regarding activities occurring on the property over the last year. County Counsel reviewed the issue of whether the applicant could proceed with this review, and determined that neither the Community Development Code nor the County Code prohibit the processing and approval of a development application while a site is subject to unpaid fines. In previous cases where a site was subject to unpaid fines, staff required the property owner to either pay the unpaid fine or to set up a payment agreement with the County prior to review of a development application. In this case, the applicant has entered into a payment agreement with the County for payment of the fines and as of November 30, 2012 the staff reported that the applicant was current with that payment plan.

The Hearings Officer concludes that the County was obligated to process this application which it has deemed complete as required by ORS 215.427 and does not find that this code section requires any different result.

2. Article III: Land Use Districts

Section 340 addresses uses and practices within Exclusive Farm Use Districts (EFU).

Section 340-4.2 outlines permitted uses which are subject to Section 340-4.3, and includes:

> "K. Parks - Section 430-97. Private parks are not permitted on high-value farmland. Public parks include only the uses specified under OAR 660-034-0035 or OAR 660-034-0040, if applicable."

A. High Value Farmland limitation - private parks

The starting point in the analysis of whether a private park can be allowed on the subject property is CDC 340-4.2K, which provides that private parks are not permitted on high-value

farmland. As staff correctly noted in the initial December 13, 2012 staff report concerning this application, the term "high-value farmland" is defined at OAR 660-033-0020(8)(a) based on the classification of soils present on the site. If a site is "predominantly" high-value soils, it is deemed "predominantly" high value farmland, regardless of how the property is zoned. LUBA has defined "predominantly" to mean that the site is comprised of greater than 50% high-value soils in *Tallman v. Clatsop County*, 47 Or LUBA 240 (2004).

The administrative rule goes on to indicate that for purposes of evaluating a site's soil quality, the entirety of a "tract" must be considered, defined to mean "one or more contiguous lots or parcels under the same ownership." OAR 660-033-0020(13). DLCD (Department) staff weighed in with their interpretation in a December 12, 2012 hearing submittal, confirming their interpretation of the term "tract" would require consideration of both parcels together. Since the administrative rule in question is the Department's rule, some deference is owed to this interpretation, and the Hearings Officer agrees the entirety of both parcels must be considered in order to complete the analysis required by the rule.

Although the applicant contends throughout this proceeding that it is not permissible to consider the EFC-zoned portion of the site for purposes of the calculation, it seems very clear that both parcels must be considered together when soils are analyzed. The administrative rule clearly defines the term "tract" as requiring consideration of both Tax Lots 900 and 1100. This is particularly true in this case, where prior history includes a LUBA ruling in which LUBA upheld the hearings officer's conclusion that both parcels must be considered together for purposes of determining whether a winery is allowable, since one parcel provides the only access to a public road for the other parcel on which the principle winery activities were to be sited. *Wilson v. Washington County*, 63 Or LUBA 314, 318-19 (2011). Although as discussed more fully below Tax Lot 900 standing on its own likely falls below the 50% high-value farmland threshold, Tax Lot 1100 clearly contains high-value soils exceeding that standard. Considering the "tract" as a whole, the record contains contradictory evidence of the existence of "predominantly" high value farmland on the site.

To determine whether a tract or parcel is considered "high-value farmland" (referenced herein for convenience as "HVF") the County requires an applicant to provide an accurate legal description of the subject property. The County staff then indicates that they use the legal description in combination with the County soils maps that are digitized and part of the County's Geographic Information System (GIS) to determine what portion of the site is made up of high-value soils. According to staff, in this case, there were several discrepancies with the applicant's legal description that had to be corrected before an accurate map could be produced due at least in part to the age of the descriptions. Once the applicant provided an accurate survey of tax lot 900, a map identifying the amount and location of high-value soils on the site was created, which resulted in the map that can be found in the applicant's Exhibit 14 of Exhibit PH1.[4]

[4] Exhibit PH1 is a County GIS map of TL 900 only. The soils are mapped by colored swaths and accompanying text states the total acreage of the lot, the high value acres, and calculates a percentage of HVF from those stated acreages.

Based on County GIS mapping, then, staff concluded that the two tax lots, when combined, fell just very slightly below the 50% threshold of high value farmland (48.9%), and that as such this criterion was met. It should be noted here that no party contends that there is any dispute over the quality of the soils themselves, as was the case in *Gottman v. Clackamas County*.[5] As such here we must simply evaluate whether the high value farmland soils occupy 50% or more of the applicant's two tax lots.

The record on this question is, however, muddy. Because it is the applicant's burden to demonstrate that the site is not comprised "predominantly" of high value farmland, the Hearings Officer concludes that this standard is not met, and that a private park cannot be approved on the subject property.

There are at least six varying calculations of the amount of high-value farmland on the two combined tax lots. Below is a summary, by date and exhibit number:

	Record Item	**Date**	**TL 900 HVF/total**	**TL 1100 HVF/total**	**Total HVF (%)**	**Notes**
1	Application, Exhibit PH1 (map)	10/9/12	17.46/38.58	Not submitted[6]	NA	Narrative addresses only TL 900 (EFU); relies on County GIS map
2	Staff – AH3	1/7/13	17.46/38.58	15.98/29.76	48.9%	Staff report during first open record period[7]
3	Opponents – H7, Ex. A	12/13/12	/39.77	/30.16	NA	Notes certain missing soil types, errors in County GIS map making acreages incorrect, no data on which soils are HVF
4	County Counsel – Att. E (AH3)	1/17/13	20.9/42.2	15.98/29.76	51.2%	Acreage totals appear in text on map

[5] 64 Or LUBA 358 (2011), affirmed without opinion, 249 Or App 697 (2012).
[6] Exhibit 8 is a soils map of both parcels, but notes it is an estimate and refers the reader to Exhibit 14. Exhibit 14 is a copy of the County GIS map for TL 900 only, showing soils quality by a color overlay and including text with the above acreage numbers.
[7] Staff's final open record submittal on 1/31/13 did not respond to the opponents' interim evidence concerning the area of Tax Lot 900, but maintained the same calculation of HVF throughout these proceedings.

5	Opponents – AH6, Applicant Ex. 8	1/17/13	19.90/40.99	15.98/29.76	50.6%	Deed and map, Exhibit to memorandum, dated 8/16/12[8]
6	Applicant AH10, Ex. 9	1/17/13	18.49/39.76	15.56/30.16	48.6%	Exhibit is a 2011 soil analysis[9]

The applicant's original submittal did not address high value farmland (HVF) on the combined "tract" of both parcels. Staff performed a calculation in their first open record submittal, as shown above, based on County GIS maps. During that same open record period, County Counsel attached a map to the County staff submittal showing a different acreage total for tax lot 900. At the same time, the opponents submitted an analysis of the applicant's submittal by Jim Johnson, the Land Use and Water Planning Coordinator for the Oregon Department of Agriculture. That analysis demonstrated concerns with the applicant's initial analysis in terms of how the acreages of HVF were calculated in reliance on a faulty, too-general map. The applicants submitted their 2011 soil analysis for both parcels but did not submit any evidence in rebuttal; their legal counsel presented extensive argument about the need to consider the two lots separately, and argued for reliance on the applicants' 2011 analysis, but did not refute the evidence submitted by the opponents.

The applicants did not retain a soil analysis expert; they did retain a consultant to prepare their application and a surveyor to prepare correct legal descriptions for both parcels. Although it is not clear from the opponents' submittal exactly how many acres of land are in play based on the asserted mapping errors and the late-arriving deed for additional HVF land to be combined with TL 900, it is clear that even based on the staff's original analysis this property is within 1.2 percentage points of being classified as "predominantly" HVF. Two different calculations resulting from the evidence submitted during the open record period as shown above put the property over the 50% HVF limit and the applicant did not explain the discrepancies or retain expert assistance to fully evaluate the soils on the tract.

Given this evidentiary record, the Hearings Officer concludes that the applicant failed to meet the burden of establishing by substantial evidence that the property is not predominantly HVF. Even if we rely on the one 2011 chart submitted by the applicant, there is no evidence to indicate who prepared the chart, how the calculations were made, or whether they include the additional 1.22 acres deeded to the applicant in 2012 (presumably based on the dates, such inclusion would be impossible). The Hearings Officer thus concludes that this evidence does not constitute substantial evidence of compliance with this crucial criterion; even if it were substantial evidence to begin with, it has been undermined by the evidence presented by the opponents.

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[8] Applicant's Exhibit 8, soil map, shows the soils on both the subject property and on property to the west of TL 900 that was acquired by the applicant in August of 2012 based on the deed and map submitted by opponents shown in the table.

[9] This analysis from the applicant predates the deed submitted during the open record period. It is unclear whether it is intended to include the additional 1.22 acres or not.

Because the applicant has not demonstrated that the site is not predominantly HVF, a private park cannot be approved on the site.

B. *Activities consistent with a "private park" must constitute recreation*

As noted earlier in this Final Order, a "private park" is one of a long list of uses that can be allowed in exclusive farm use zones pursuant to ORS 215.213(2)(e), which statute is mirrored in CDC 340-4.2K. In the EFU zones, a private park is limited to serving recreational purposes and is subject to a determination that it will not result in certain identified impacts to farm and forest uses, as discussed at length in the next section of this Final Order. For the reasons discussed below, the Hearings Officer finds that the proposed use is not primarily recreational in nature and as such cannot be approved as a private park on the subject EFU and EFC-zoned parcels.

The question of what constitutes a "private park" for purposes of determining whether a use can be allowed under ORS 215.213(2)(e) has been considered by the Land Use Board of Appeals in at least three cases over the past twenty years. The three cases are *Spiering v. Yamhill County*, 25 Or LUBA 695 (1993); *Utsey, et al v. Coos County*, 38 Or LUBA 516 (2000); and *Tennant v. Polk County*, 56 Or LUBA 455 (2008).[10] Several principles emerge from these three cases.

The use proposed in the *Spiering* case was a paintball park. LUBA first analyzed the activities associated with the paintball park and held that ORS 215.213(2)(e) does not exclude a privately owned and managed park from its purview, and then concluded that the proposed paintball game park is consistent with the county's definition of the term "park" as contained in the County's ordinance. LUBA further determined that the term "principal use of the property" could be interpreted consistent with the County's decision to allow consideration of only a portion of a property as contrasted with the entire parcel. However, LUBA remanded the decision to the County based on its determination that the County's decision approving the paintball park was not supported by substantial evidence on the question of noise that emanated from the activities conducted on the property.

The CDC defines "Parks" at CDC 430-97 as an area that "includes the use of an area set aside for recreation of the public to promote its health, enjoyment, and the environment." This definition is very similar to the dictionary definition relied upon by LUBA in the *Spiering* case.

In *Tennant*, the Board again considered a proposed private paintball park, and also addressed the issue of split farm and forest zoning, which is the zoning present on the subject property. The Board referenced its decisions in both *Utsey* and *Spiering*:

[10] The applicant cited to the additional authority of *Stallkamp v. King City*, 43 Or LUBA 333 (2002); this case appears distinguishable as it addressed a public park designation by the City in a legislatively adopted concept plan.

> "In *Utsey,* the subject property was split zoned for both farm use and forest use, so both Goal 3 and Goal 4 were applicable to the proposed use. The proposed use in *Utsey* included both a motorcycle track and off-road vehicle trails. We addressed the apparent contradiction between *Tice*[11], which appears to require not only a recreational activity but also that the use be in accord with the character of forest uses, and *Spiering,* which appears only to require that a use be of a public recreational nature to constitute a park. We explained that the difference was because Goal 3 does not contain any explicit restrictions on the intensity of uses allowed in parks, while Goal 4 requires that `recreational uses' must be 'appropriate in a forest environment.' [footnote omitted] Thus, under *Utsey,* a proposed use might be permitted as a private park on farmland and not be permitted as a park on forestland. [footnote omitted] In sum, it is clear that as least as far as forestlands are concerned, in order to constitute a private park a proposed use must not only be a public recreational use as the county concluded here, but also 'appropriate in a forest environment,' a consideration the county did not address. * * *" 56 Or LUBA at 462.

The applicant attempts to draw a distinction between the intended scope of activities on the EFC parcel from those to be conducted on the EFU parcel, in much the same way the applicant argued for separating the site in terms of the calculation of high value farmland soils across the site. However, as found above, the Hearings Officer has determined this is not a permissible distinction. No private park can be approved for the subject tract if such approval would violate the approval standards governing either parcel. *Wilson v. Washington County, supra,* slip op 6; *Roth v. Jackson County,* 38 Or LUBA 894, 905 (2000); *Bowman Park v. City of Albany,* 11 Or LUBA 197, 203 (1984). In this case, both the EFC and EFU parcels must comply with the applicable requirements. Few if any of the activities proposed by the applicant are both (a) recreational uses, and (b) appropriate in a forest environment. This is most true of the proposed celebratory and corporate events, which the Hearings Officer also notes are inherently private in nature and clearly not intended for "public recreation."

C. *Impacts to surrounding farm and forest uses*

Section 340-4.3 sets forth Required Findings, particularly:

"The proposed use will not:

A. Force a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest use; nor

B. Significantly increase the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use.

An applicant may demonstrate that these standards for approval will be satisfied through the imposition of conditions. Any conditions so imposed shall be clear and objective."

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[11] The reference here is to *Tice v. Josephine County*, 21 Or LUBA 371 (1991).

If a private park can be allowed on a site that meets the initial threshold with respect to its content of high value farmland, pursuant to Section 340-4.2 K., this use is also subject to the requirements of Sections 340-4.3 A and B. The requirements of Section 340-4.3 are very similar to the requirements of Section 342-3.3 A in that both sections require the applicant to demonstrate that a proposed use will not force a significant change in, or significantly increase the cost of accepted farming and forest practices on agriculture or forest lands on surrounding lands.

Section 342-3.3 sets forth the following criteria, which implement the state administrative rules governing approval of private parks on forest land (OAR 660-006-0025(4)(e) and (5):

> "The proposed use will not:
> A. Force a significant change in, or significantly increase the cost of, accepted farming and forest practices on agriculture or forest lands; nor
> B. Significantly increase fire hazard or significantly increase fire suppression costs, or significantly increase risks to fire suppression personnel. "

Pursuant to Section 342-3.2 (I), this use is subject to the requirements of both Sections 342-3.3 A and B. As noted earlier in this Final Order, it is appropriate as recommended by Staff that these standards be evaluated with respect to the site as a whole, and to address them together.

1. Impacts to surrounding farm practices

These standards effectively implement ORS 215.296 and OAR 660-006-0025(4)(e) and (5). With respect to the required showing as to ORS 215.296, the case law is clear. LUBA has held that, in order to approve a use under ORS 215.296(1), the applicant must identify the area that is considered "surrounding lands," describe the farm and forest practices on those surrounding lands, explain why the proposed use will not force a significant change in those uses and explain why the proposed use will not significantly increase the costs of those practices. If the record does not identify the farm practices employed on surrounding lands, the county cannot approve the use. *Berg v. Linn County,* 22 Or LUBA 507, 511 (1992). In *Berg*, LUBA held:

> "In this case, the findings state only that `[s]urrounding farm uses include cattle pasture, a horse stable and grass seed production.' Record 8. The findings fail to identify the farm practices employed on the surrounding properties devoted to these farm uses. Furthermore, without an adequate identification of the accepted farm practices on surrounding lands, the findings cannot explain why the proposed use will not cause a significant change in or increase the cost of such practices. *Schellenberg v. Polk County, supra,* 21 Or LUBA at 442. We, therefore, agree with petitioner that the findings are inadequate to demonstrate compliance with ORS 215.296(1)." *Id.*

The applicant has designated "surrounding lands" in this case in a generally reasonable manner, but has excluded a nearby major dairy farm (Nussbaumer Dairy) and beef cattle ranch (Urbanski Ranch L.L.C.) which appear to be within the impact area for the proposed use. These businesses are located at 22747 NW Phillips Rd. and 11107 NW 195th Ave., respectively, and must be deemed part of the surrounding lands for the purpose of the required analysis herein. Letters from the owners addressing the relevant impacts were filed as part of the record in this proceeding. The letters submitted into the record by both operations (Exhibits H9 and H8, respectively) show that these businesses use roads *within* the designated areas for movement of essential agricultural vehicles and equipment as part of their accepted farm practices. These letters also show that the traffic impacts of the proposed private park would force a significant change in those accepted farm practices, or significantly increase the cost of those practices. While the applicant has discussed farming in the impact area generally, it has not done so with sufficient specificity to adequately identify the specific farming practices carried out upon the subject farms, or the impacts described in the statute.

Witnesses who presented testimony or whose testimony was read into the record at the hearing also provided ample evidence of their own accepted farm practices and documented the extent of rural farm activity occurring in the surrounding area. These activities include raising sheep, a commercial walnut orchard adjoining the subject property to the north, a commercial pheasant farming operation, raising rabbits, and commercial stabling and training of horses. Testimony described the effect of noise on animals, the difficulty of moving livestock on the area roads where traffic conflicts will increase, and in the case of the walnut orchard, debris affecting mechanical harvesting of walnuts due to metallic (mylar) helium balloons floating into the orchard from events at the subject sites. The fence described by the applicant at the hearing does not appear to be designed to lessen the number of balloons landing in the Middleton/Anderson/Bierman walnut orchards.

Based on the testimony from opponents, and on the lack of demonstration by the applicant as to how their operation would avoid forcing significant impacts on those operations, the Hearings Officer finds that the applicant has not met the burden of establishing the required findings and that the evidence submitted was undermined by the opponents such that it would no longer be reasonable to rely upon it.

2. Impacts to surrounding forest practices

The Yurkovich Forest Stewardship Plan prepared for the owner by certified forester Tom Nygren (White Oak Natural Resource Service), sets forth in detail the ways in which the proposed park would significantly impact the established forestry practices currently in existence on that property. Ms. Yurkovich owns a total of 45.8 acres, a small part of which lies southwest of the subject site, but most of which in fact lies directly west of the applicant's Tax Lot 1100 and south of the applicant's Tax Lot 900. All of this property is subject to the Forestry Plan, and the goals set forth therein. Reaching those goals, according to Nygren's study, depends on many factors, especially protection from the risk of wildfire, vandalism and theft. According to the study,

> "The event activities proposed in the Garden Vineyards application carry significant risk of discarded cigarettes and butts, matches, and barbecue ashes and coals, as well as the possible campfires of trespassers - all of which could lead to wildfire on or spreading on to the Yurkovich property.
>
> The entire eastern boundary of the Yurkovich property is also susceptible to potential vandalism and theft which is at least possible could originate from the Garden Vineyards property. Forestland, with heavy vegetation and rough terrain, provides a challenge for casual visitors. Past experience in these situations points out the potential for trespass, vandalism (such as littering), and theft (such as Christmas trees).
>
> Normally this would not be a strong concern when adjacent properties are practicing compatible land management activities, such as forestry or agriculture. However, the types of activities being proposed in the Garden Vineyards application (large dispersed crowds engaging in various types of events) have a high potential for deliberate or inadvertent trespass.
>
> Based on the analysis and conclusions documented in the Forest Stewardship Plan I prepared for Mrs. Yurkovich last fall, I conclude that the potential increased fire risk and trespass (leading to vandalism or theft) pose a definite management problem and economic cost for Mrs. Yurkovich."

The applicant did not complete the required analysis as to forest practices. The proposed events, which include food serving and consumption, even if prepared offsite, will continue to attract a high volume of guests, several of whom will necessarily be smokers and as to whom any no-smoking rules would not be feasible enforcement on such a large, sprawling site with woodland trails. (Guests will have to travel through the EFC parcel to reach the main event area. These events have at least a reasonable probability to "significantly increase fire hazard or significantly increase fire suppression costs or significantly increase risks to fire suppression personnel." OAR 660-006-0025(5); CDC 342-3.3.

A neighbor submitted a photograph showing the fence which the applicant offers to protect the Virginia Yurkovich property from the site (Exhibit AH1). Moreover, no fence could protect the Yurkovich property and the attendant forestry plan from the fire hazards described in the forester's letter of January 14, 2013 (Exhibit AH7).

Based upon the evidence in the record, the Hearings Officer finds that the applicant failed to meet the burden of establishing compliance with the state administrative rules governing parks on forest land, and that evidence submitted by the opponents is sufficient to determine this standard is not met.

As indicated above, because this application has been contentious and there is a reasonable probability that this decision will be appealed, this Final Order continues with a response to the remaining approval criteria.

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Section 340-8 addresses Dimensional Requirements. The Hearings Officer finds, upon study of the applicant's plans, that all existing and proposed structures on tax lot 900 meet the setback requirements of Section 340-8.2.

Section 340-9 is concerned with Access, and management of access to the site. This Section requires a parcel to either have frontage on a public road, or a 30-foot wide easement, or approval from the appropriate fire marshal. Tax lot 1100 has frontage on NW Meier Road and NW Dick Road. Access to tax lot 900 is via a private access across tax lot 1100. The applicant did not provide evidence of an existing 30-foot wide easement across tax lot 1100 providing access to tax lot 900 as required by this code section. The applicant did provide a preliminary approval from the fire marshal for access to both tax lots indicating that the final access would be required to meet fire district standards including turns-out, road surface, and related requirements to allow access by firefighting equipment.

The opponents contend that Fire District #2 no longer has jurisdiction of the area in question and that as such the applicant's submitted documentation from that entity is insufficient to meet this code standard. Although the opponents made this contention, no documentation supporting the claim was submitted, and as such, the Hearings Officer finds that reliance upon the service provider letter from Fire District #2 is reasonable as it is the only evidence submitted on this question.

The Hearings Officer finds that since the applicant controls both tax lots subject to this application, it is possible to condition an approval to require a recorded easement of sufficient width to assure code-compliant access over TL 1100 in favor of TL 900. Such easement and access could also be conditioned to require review and approval by the applicable fire authority serving the area. Such conditions would be clear and enforceable by the County. However, because this application is being denied, such conditions are not implemented in this Final Order.

Section 342 addresses Exclusive Forest and Conservation District Standards (EFC).

Section 342-3 addresses Uses Permitted Through a Type II Procedure. The uses listed in Section 342-3.1 and 342-3.2 are permitted subject to the specific standards for the use set forth below and in applicable Special Use Sections of Section 430, as well as the general standards for the District, the Development Standards of Article IV and all other applicable standards of the Code. The Review Authority, pursuant to Section 207-5, may further condition approval. Unless the use is specifically exempted, the Review Authority must make specific findings with respect to the standards in Section 342-3.3.

The uses listed below are subject to the applicable siting and fire safety criteria of Section 428.

Section 342-3.2 lists Permitted Uses which are subject to Section 342-3.3:

I. Parks – Section 430-97. Public parks include only the uses specified under OAR 660-034-0035 or 660-034-0040, if applicable.

The applicant requested approval to operate a private use park (Garden Vineyards) on tax lot 1100 as permitted in the EFC District through a Type II procedure in conjunction with tax lot 900, which has a land use designation of EFU. Tax lot 1100 currently supports a single family dwelling and a barn in the southeast corner of the property, approximately 10 acres of open meadow, and the rest of the property is forested. As discussed previously in this Final Order, a majority of the improvements and activities associated with the proposed use would be located on tax lot 900 and include parking areas, picnic shelters, and hiking trails. The applicant has not proposed any new structures on tax lot 1100. The only improvements proposed for tax lot 1100 at this time are hiking and horse riding trails.

Section 428 contains Forest Structure Siting and Fire Safety Standards. Since the dwelling and barn were established on the property in 1933, which was prior to the adoption of Section 428 they are not subject to the requirements of that Section. The applicant has provided fire breaks around both of the existing structures in an effort to minimize the potential of fire hazards from those structures, which will not be used by the public.

As discussed extensively above, the Hearings Officer finds that a significant portion of the proposed activities on the site associated with the private park are not compatible with the definitions in the state administrative rules as incorporated in the CDC, in findings under Section 340-4.2 and 340-4.3.

Section 342-7 sets forth conditions relating to Dimensional Requirements.

The existing dwelling and barn on the site are over 30 feet from the nearest property line, exceeding the minimum setbacks for the District. The applicant has not proposed any new structures on the tax lot 900 in this application, and as such, the Hearings Officer finds this requirement to be met.

Section 342-8 relates to Access, and states that, "All lots in this district shall either:

342-8.1 Abut a public street, or

342-8.2 Have an easement of record at least thirty (30) feet wide at the street or as approved by the appropriate fire marshal."

This Section requires a parcel to either have frontage on a public road, or a 30-foot wide easement, or approval from the appropriate fire marshal. As noted earlier in this Final Order, although adopting a condition of approval for this application to meet this requirement would be feasible, such a condition is not relevant in light of the denial of the applications.

3. Article IV: Development Standards

Section 403 relates to Applicability. Specifically, Section 403-2 sets forth Master Plan - Minimum Requirements for all Development. A master plan meeting the requirements of this section was submitted, and as such, the Hearings Officer finds this requirement to be met.

Section 403-4 sets forth Additional Standards Outside the UGB. This proposal is subject to the applicable standards itemized in this section, and analyzed below.

Section 406 relates to Building, Siting and Architectural Design.

Conditions of Approval could be imposed to provide a handicapped parking space with direct access to the indoor picnic areas and toilet facilities (Section 406-2.2), and to produce a revised site plan prior to final approval that shows how the proposal meets Section 406-6.1 B(2) regarding solid waste and recyclable storage facilities.

A Condition of Approval could also be imposed to require the applicant to submit a written statement from the Washington County Health and Human Services Solid Waste and Recycling Division as required by Section 406-7.6.

Section 409 relates to Private Streets. Specifically, Section 409-5 addresses Private Streets Outside an Urban Growth Boundary.

Access to the proposed private use park is via an existing road/driveway that is an extension of NW Dick Road through the site. The applicant did provide a service provider letter indicating that the private use park is in the Washington County Fire District #2 service boundary and that they can provide service to the site. The applicant provided a letter from the Fire Marshal indicating that he has reviewed the driveway and that there may be improvements that need to be done to the road, such as turn-outs and culvert and bridge improvements, to meet the Fire District standards. If this application were approved, it would be feasible to require the applicant to submit grading plans for the required improvements approved by the appropriate Fire Marshal demonstrating compliance with Fire District standards. These improvements could be conditioned to be constructed prior to final approval. The Fire Marshal has also indicated that the road must remain open at all times so that access is not impeded. The site currently has a gate, limiting access to the site to the hours of operation. A condition of approval could be included requiring the applicant to obtain Fire Marshal approval for the gate if it is to be retained.

Section 410 relates to Slopes and Grading.

As noted previously in this Order, the applicant has proposed the construction of new trails on the property, parking area and a new restroom structure. Additionally, the Fire Marshal may require improvements to the private driveway to meet Fire District standards for access to the

site. No unusual grading problems are anticipated; however, any grading on the subject property is subject to the approval criteria of Section 410-3 and the standards of 409-5.2 D and H. Although certain grading activities may be exempt from permit requirements, any grading, exempt or not, must be for a use permitted in the EFU District and must be preceded by approved grading, drainage, and erosion control plans. Pursuant to Section 410-1.2, the applicant or owner is required to submit the necessary plans for review (by the County Building Engineer and the County Current Planning Division) prior to any grading/construction activities. The Building Department has reviewed the applicant's submittal and determined that a grading permit is required for the site. Grading/drainage requirements are reviewed via the building permit process and must conform to Chapter 14.12 of the Washington County Code. Conditions of Approval to implement these requirements would be feasible.

With regard to water quality, OAR Chapter 340, Division 41 (concerning phosphorus removal), applies to all development outside of Clean Water Services jurisdictional boundaries. A condition of approval could be imposed to require the applicant to submit engineering calculations, stamped by a registered professional engineer, verifying the proposed development complies with the applicable standards for permanent storm water quality control facilities adopted by the Oregon State Department of Environmental Quality, as set forth in OAR 340-41, prior to final approval.

Section 413 addresses Parking and Loading standards and requirements.

The applicant's original written findings did not address parking for the proposed private park; however the application did show the location of the existing and proposed parking areas. Subsequent submittals addressed parking. The parking layout has been revised to include 58 "primary" spaces and 91 "secondary" or "overflow" spaces. The primary spaces at the park residence loop total 58 spaces. These will be graveled with a wheel-stop, along with 10 secondary spaces on tax lot 1100, as shown in detail on the revised plans presented by the applicant. The secondary grass overflow spaces will be used only for large events (except the 10 graveled spaces noted above). These spaces will be mowed and monitored during events for fire and access safety. The plan also indicates a bus staging area to be used for larger events. As noted in the plans, only small busses and vans will be permitted onsite.

According to the applicant's plan the ADA parking spaces will be paved as required by Chapter 31 of the Uniform Building Code (see CDC Section 413-7). The primary parking spaces will be graveled and constructed consistent with the requirements of Sections 413-4 and 413-5.3. The Hearings Officer has reviewed the applicant's plans for the primary and ADA parking spaces and finds that they meet the requirements of Section 413. The applicant has proposed that the 91 secondary parking spaces be on grass in lieu of providing graveled parking spaces that will rarely be used. These spaces will include wheel stops to provide for delineation of the spaces and will be regularly mowed and maintained. The applicant has indicated verbally that they would like to have grassed spaces for the secondary parking in order to minimize the impact of parking spaces on the site in order to maintain the feeling of the property as a working vineyard and minimize run-off from the parking areas.

The use of grassed parking spaces for secondary parking for park facilities is permissible because these spaces will rarely be used. The grass space can provide some unique challenges that graveled or paved spaces do not typically present. The most notable is possible fire hazard if the spaces are not mowed and maintained regularly. Additionally, due to the rainy climate of Oregon, the spaces can typically only be used between mid-June and October. In previous cases where grassed parking areas were used, the property owner was required to keep the parking area mowed, and the Hearings Officer finds that is appropriate in this case. Additionally, it would be appropriate to require the applicant to request an annual inspection by the fire marshal to assure that the secondary parking spaces meet fire marshal requirements prior to the first event each year when the applicant anticipates the secondary parking areas will be used or prior to July 1st. During this inspection the fire marshal could also inspect all access roads to assure emergency access to the property meets fire marshal requirements.

Based on the above findings and the evidence in the record, the Hearings Officer finds that the applicant has met the parking requirements of Section 413 assuming that conditions of approval could be imposed to assure continuing compliance with emergency access requirements for the property.

Section 421 addresses Flood Plain and Drainage Hazard Area Development.

Holcomb Creek crosses the southwest corner of tax lot 1100. The creek is designated as a drainage hazard area on the County's Flood Plain Maps. The applicant has not proposed any activities within 250 feet of the Holcomb Creek. Staff indicated that there are three intermittent unnamed creeks that cross the site and feed into Holcomb Creek. These creeks are not identified on the County Flood Plain maps as flood plain or drainage hazard areas and are therefore not regulated by Section 421. As noted earlier in this Order, the applicant may be required to upgrade the private road crossings of these creeks and those crossings will be regulated by the Section 409, (private Streets), Section 410 (Slopes and Grading), and Section 426 (Erosion Control) via the grading permit process. Since the applicant's site plan clearly shows that all proposed park-related activities will be located more than 250 feet from the designated drainage hazard area, the Hearings Officer finds that this proposal complies with the requirements of Section 421.

Section 422 addresses Significant Natural Resources and Criteria for Development of same. Section 422-3.1 states, "The required master plan and site analysis for a site which includes an identified natural resource shall:

A. Identify the location of the natural resource(s);

Holcomb Creek crosses the southwest corner of tax lot 1100. The creek is designated as a Water Areas and Wetlands/Fish and Wildlife Habitat on the Rural/Natural Resources Plan and is therefore subject to Section 422. The applicant has not proposed any activities within 250

feet of Holcomb Creek. There are three intermittent unnamed creeks that cross the site and feed into Holcomb Creek. These creeks are not identified on the Rural/Natural Resources Plan as a Significant Natural Resource and are therefore not subject to Section 422. As noted earlier in this Final Order, the applicant may be required to upgrade the private road crossings of these unnamed creeks and those crossings will be regulated by the Section 409, (private Streets), Section 410 (Slopes and Grading), and Section 426 (Erosion Control) via the grading permit process.

B. Describe the treatment or proposed alteration, if any;

No alteration is proposed with this application. The applicant is proposing to locate a private park on the property and no activity is proposed within 250 feet of the designated resource.

C. Apply the design elements of the applicable Community Plan; or the applicable implementing strategies of the Rural/Natural Resource Plan Element, Policy 10, Implementing Strategy E which states: "Implement the recommendations of the Oregon Department of Fish and Wildlife Habitat Protection Plan for Washington County to mitigate the effects of development in the Big Game Range within the EFU, EFC and AF-20 land use designations."

Plan Policy 10, Implementing Strategy E, applies to both fish and wildlife resources. Implementing Strategy E requires the County to implement the recommendations of the Oregon Department of Fish and Wildlife's (ODFW) "Habitat Protection Plan for Washington County".

The Water Area/Wetlands & Fish/Wildlife Habitat and Water Areas/Wetlands designation applies to the area within, and near, Holcomb Creek. The Habitat Protection Plan policies concerning protection of Water Area/Wetlands classify these areas as lakes and reservoirs, rivers and streams or headwater areas.

Neither the Code nor the Habitat Protection Plan define "headwater areas". County Staff consider headwater areas to be streams or minor drainages that are used by only a few, if any, fish for spawning or rearing purposes. Headwaters have principal value in influencing water quality and stream flow in downstream waters. Flow in headwater areas may be either perennial or intermittent.

For the purposes of applying the Habitat Protection Plan, the Hearings Officer considers the areas within the flood plains/drainage hazard areas to be "Headwater Areas", due to their relatively low flow characteristics. The Habitat Protection Plan includes recommendations for development adjacent to headwaters and adjacent to Rivers and Streams. Since "Headwater" recommendations are more restrictive than "Rivers/Streams" recommendations, the Hearings Officer will only address the "Headwater" recommendations, which are as follows:

"Headwater Areas

1. Residential, commercial or industrial development in unstable headwater areas should be minimal, identified as conditional uses, and subject to restrictions which maintain soil.

2. The County should identify unstable areas and geological hazards.

3. New roads should be located to avoid unstable headwater areas.

4. Forest Practices Act rules and Fish Habitat Management Policies established by State and Federal agencies should be utilized by the County as guidelines."

The Hearings Officer finds that the first recommendation is not applicable to this application because no development is proposed within the unstable headwater areas. In implementing Recommendation #2, the County requires a geologic study when private development is proposed on slopes greater than 20%. Section 410 implements these requirements.

Because no new roads are proposed in this request (only parking areas and other facilities well over 1000 feet from the designated resource area), the Hearings Officer finds that Recommendation #3 is not applicable.

Forestry activities must be conducted in accordance with any applicable provisions of the Forest Practices Act. The State Forestry Department administers the Forest Practices Act. Implementation of Recommendation #4 is therefore implemented by the State Forestry Department, when forest operations or practices occur.

Based on the application of the Habitat Protection Plan's recommendations for headwater protection, the Hearings Officer finds that there are no conflicts between that Plan and this request.

The "Habitat Protection Plan" recommendations for protection of Wildlife Habitat identify the following types of wildlife habitats: Big Game, Upland Game, Waterfowl, Furbearers, and Nongame Wildlife.

The "Habitat Protection Plan" also identifies seven geographic areas as Sensitive Habitat Areas. The site is not located within one of the seven Sensitive Habitat Areas, therefore, the Hearings Officer finds that the Big Game recommendations are not applicable.

The "Habitat Protection Plan" recommendations for the other four wildlife habitat recommendations can be summarized as follows:

"Maintain vegetation along stream banks (Upland Game, Waterfowl, Furbearers, Nongame) have strong leash laws (Upland Game), and setbacks or buffer zones should be incorporated into the development plan (Waterfowl)."

In order to protect wildlife resources, no disturbances to stream bank vegetation may be permitted. The County has leash laws for dogs, and the applicant could be required to maintain an on-leash distinction for any park guest with a dog in attendance.

Wildlife and fishery biologists recommend locating developments away from riparian areas. In Oregon, jurisdictions elsewhere have required buffers as much as 200 feet from streams ("Protecting the Riparian Area: A Handbook for Planners", Barbara Taylor, June, 1984). By requiring setbacks for structures, riparian vegetation is maintained and there is no adverse effect on the fish and wildlife habitat. The ODFW has orally recommended to the County a minimum setback of 125 feet from riparian areas.

Based on the above analysis, Staff concluded and the Hearings Officer concurs, that the applicant's proposal is in compliance with the requirements of Plan Policy 10, Implementing Strategy E.

Section 422-3.3 addresses Riparian Zone and Significant Water Areas and Wetlands:

This request would result in a private park on the site. No alteration of the Riparian Zone or Significant Water Areas and Wetlands is proposed, and as such the Hearings Officer finds the conditions of this section inapplicable.

Section 422-3.6 states that for any proposed use in a Significant Natural Resource Area, there shall be a finding that the proposed use will not seriously interfere with the preservation of fish and wildlife areas and habitat identified in the Washington County Comprehensive Plan, or how the interference can be mitigated.

This request would result in a private park on the site. No alteration of the Riparian Zone or Significant Water Areas and Wetlands is proposed, and as such, the Hearings Officer finds this section to be inapplicable.

Section 423 sets forth Environmental Performance Standards, and states that all uses and activities shall observe these standards in order to achieve the purpose and objectives of this Code. Continued compliance is required and may be required to be demonstrated by the owner, if the Director has reason to believe incidence of noncompliance has occurred.

Section 423-1 specifies conditions for Existing Uses, and states that: "Activities, uses, equipment and processes existing as of the effective date of this Code that do not meet the standards set forth in this Section are subject to the following requirements. As applicable here, the applicant is required to comply with Department of Environmental Quality noise standards at all times. Because as noted earlier and below in this Final Order the Hearings

officer finds that conditioning compliance with this requirement is not feasible to assure the standard will be met, this application is denied.

Section 423-2 details New Uses, and states that development after the effective date of the CDC must meet any applicable federal or state requirements and obtain all associated permits.

The applicant is required to obtain all necessary federal and state permits including State Department of Environmental Quality Water Quality Standards (1200-C permit) or provide evidence that the project is exempt. A condition of approval could be applied if this application was to be approved.

Section 423-4 and 423-5 relate to Air Quality and Odor. The Hearings Officer concurs with the applicant's findings that air quality will not be impacted, and that, the proposed park will not generate any noticeable odors.

Section 423-6 addresses Noise, and states in relevant part that all development shall comply with the State Department of Environmental Quality Standards relating to noise. Demonstration of compliance may be required by the Review Authority.

As noted previously in this Order, the applicant is subject to DEQ noise requirements. The applicant provided the following findings regarding noise:

> *"Noise generated from the site is from limited outdoor uses during the summer months. Loud, amplified music concerts will not be permitted. Lower decibel activities – primarily near the main residence will be allowed. Traffic noise from NW Dick Road from vehicles entering and leaving the site is managed by "slow" signage."*

Staff noted in its submission that there were two key complaints about the weddings that were conducted on the property in the summer of 2011 and they were traffic and noise from amplified sound. Specifically, neighbors identified amplified sound as a result of announcements and toasts occurring during the reception following the weddings. Opponents noted in their submittals that amplified sound coming from under covered patios was actually as bad or worse than the amplified sound broadcast from other places, because of the acoustics of the enclosure and the shape of the property, which acts as a conduit for sound transmission.

Additionally, during the summer of 2012 the applicant had a number of "music nights" that included amplified sound. One of those complaints was for a "music night" held on September 14th from 6-10 PM which featured a band called "Hit Machine", which according to neighbors was audible beyond the boundaries of the property. The applicant has also proposed continuing the "movie nights" that have been held on the property over the last few years. The movies are shown in a sheltered terrace area on the property next to the house and Staff does not have record of any complaints regarding noise from the movie nights.

While it is clear from the testimony that neighboring property owners find the noise emanating from the site during certain activities to be objectionable, the only applicable standard here is the DEQ noise limit. No party provided a sound study or analysis of noise on the site during events. As discussed above, the Hearings Officer has concluded that at least some of the proposed activities are not consistent with the definition of "recreation." A condition of approval could be imposed to require that the applicant comply with applicable DEQ noise limits at all times. The CDC does not contain additional compatibility standards that would allow the Hearings Officer to require any further mitigation of noise from the site.

Because no additional vibrations or site lighting is proposed, the Hearings Officer finds that Sections 423-7 (Vibrations) and 423-8 (Heat and Glare) are inapplicable.

Section 423-9 relates to Storage on the site. According to the applicant "farm related exterior bulk storage on-site is proposed with the park use" and "storage will be in and around the existing out buildings near the main residence on Tax Lot 900." As such, the Hearings Officer finds the requirements of this section to be met.

Section 423-10 addresses practices relating to Drainage and Waste Water, and states that all development shall comply with the State Department of Environmental Quality Water Quality Standards for all runoff, drainage and waste water.

Prior to any ground-disturbing activities, the applicant must first obtain a Grading Permit. Runoff and drainage must be addressed in the grading permit applications, shall comply with the State Department of Environmental Quality Water Quality Standards (1200-C permit). This could be made a Condition of Approval if the application were approved.

Section 423-11 sets forth criteria relating to Adequate Water Supply to the subject property. The applicant provided the following findings regarding water for the proposed uses on the site:

> *"Water for the two existing private residences is provided by wells. Park guests will be offered well water to drink as well as be provided restroom facilities both utilizing the properties well. It is not anticipated that this use will be in excess of the amount that would normally be used if the property was developed for rural homesites as applicant practices extreme water conservation and any new bathroom facility will utilize innovative, ecological friendly and sustainable facilities to ensure water conservation. Applicant will monitor the water usage quarterly, and report to the Watermaster as required. Applicant will comply with all requirements of the Watermaster."*

The Hearings Officer finds that pursuant to Policy 22 Strategy M the applicant is required to form a private water supply system for providing water to the subject property. Usage of the private water system is limited to water usage on the subject property and shall include a restrictive covenant prohibiting the extension of that system to other parcels. This could be made a condition of approval if the application was approved.

Section 426 relates to Erosion Control procedures.

Any grading on the subject parcel must be appropriate for the intended use, in this case driveway and parking area improvements. Although certain grading activities may be exempt from permit requirements, any grading, exempt or not, must be for a use permitted in the EFC District. A building permit is required; all grading/drainage requirements will be reviewed via the building permit process and must conform to Chapter 14.12 of the Washington County Code.

Any driveway and parking area alterations would be reviewed for compliance with Sections 410 and 426 prior to issuance of a Building Permit. If the applicant acquired the necessary permits, the Hearings Officer finds the requirements of this section could be met through that process.

Section 428 addresses Forest Structure Siting and Fire Safety Standards. Section 428-1 specifically sets forth Intent and Purpose, and states, "The following siting standards apply to all new dwellings and structures in the EFC District. The purpose of the following standards is to ensure that structures are sited in a manner compatible with forest operations and agriculture, to minimize wildfire hazards and risks, and to conserve values found on forest lands."

As noted in Section 428-1, the requirements of Section 428 are limited to the siting of new dwellings and structures in the EFC District. The proposed park consists of two parcels, tax lots 900 and 1100. Tax lot 1100 has a land use designation of EFC, however the applicant has not proposed any new structures on tax lot 1100, therefore Section 428 does not apply to the proposed development. However, in an effort to minimize the impact of the proposed use on adjacent EFC-designated land the applicant addressed Section 428. The Hearings Officer finds that is appropriate to address Section 428 to demonstrate that the impact on adjacent EFC designated parcels could be minimized.

Section 428-4.1 addresses Forest Structure Siting Standards.

In accordance with Section 202-2.2, Type II uses are presumed to be appropriate, and detached dwellings and accessory structures on qualified lots or parcels are Type II uses in the EFC District.

Section 428 also includes siting standards to guide applicants in locating a dwelling or accessory structure on a parcel so it causes the least impact on surrounding lands devoted to forest or agricultural uses, and so wildfire hazards can be minimized.

The applicant noted that the existing dwelling on tax lot 1100 was established on the property in 1933, which was prior to zoning in the area.

Section 428-4.2 details Domestic Water Supply Standards for Dwellings.

The building on tax lot 900 is not proposed as a dwelling, and as such this standard applies only to the existing dwelling on tax lot 1100. According to the applicant, the existing dwelling is served by an existing private well on the property. Because the applicant has not proposed any new activities (such as restroom facilities) on tax lot 1100 that involve the use of water, the Hearings Officer finds the requirements of this section to be met.

Section 428-4.4 sets forth Fire Siting Standards for Dwellings and Structures.

As noted on maps, the parcel is located within the jurisdiction of the Washington County Fire District #2. The applicant has indicated that there is an existing pond on tax lot 1100 (shown on the site plan), which is accessible as a water supply for onsite fire protection. According to the applicant the existing dwelling on tax lot 1100 has a spark arrester on the existing chimney. Testimony from a neighboring property owner indicated that the pond is not an adequate source of water for purposes of fighting fire, as it goes dry especially during the summer months when the property would see its highest activity if this application was approved. The Hearings Officer finds that deference to the appropriate Fire Marshall on the question of fire standards is appropriate. If this application was to be approved, a condition of approval could be imposed to require approval from the appropriate fire marshal with jurisdiction over the subject area to assure compliance with this Section. The Hearings Officer finds the requirements of this section could be met.

Subsection 428-4.4 D. details Fire Break Area Requirements.

The subject lot is within the jurisdiction of the Washington County Fire District #2. The Fire Marshal did not indicate any concerns regarding the use of the site as a recreational area and did not indicate that the use would pose a significant risk to fire suppression personnel or pose a significant fire hazard. The applicant has proposed to maintain a 30-foot primary and 100-foot secondary fire break around the existing dwelling and barn, which is not required since the structures are existing. A Condition of Approval could be imposed requiring the applicant to maintain the primary and secondary firebreaks, and to maintain the site's access in adequate fashion to allow the passage of fire-fighting equipment vehicles.

The applicant has also indicated that fires will not be permitted on tax lot 1100 and smoking will be prohibited on the entire property. The applicant has indicated that they will post signs around the property reminding people that the park is a no smoking facility. The only activities or uses proposed on tax lot 1100 are trails. Again, a Condition of Approval to improve the existing driveway to Washington County Fire District #2 standards, could be required, together with a condition providing that no parking is permitted on tax lot 1100.

Section 428-4.5 relates to Fire Safety Design Standards for Roads and Driveways.

Access to the property is via a private road extension from the northern terminus of NW Dick Road. The driveway is required to be improved to Fire Marshal standards and in compliance with County standards for erosion control and soil stability. If this request were to be approved, the applicant could be required to obtain Fire Marshal approval for the constructed driveway prior to final approval and operation of the park.

Section 430-97 addresses requirements for Parks, and in relevant part states, "A Park, which includes a playground, includes the use of an area set apart for recreation of the public to promote its health, enjoyment and the environment. A Playground is a park with playground equipment." Section 430-97.2 defines Type II park uses more specifically:
"Where a building permit or parking facilities are required, except as specified in Section 430-97.1, or if the chief activity of the park is carried on as a business, the following standards shall apply:

A. All side and rear setbacks to any building or swimming pool shall be no less than forty-five (45) feet;

B. The front yard setback shall be the same as the primary district; and

C. Facilities and structures, except as permitted as a Special Recreation Use (Section 430-131), that are incidental and subordinate to the park may be permitted, including but not limited to service yards, maintenance equipment storage and repair, indoor picnic facilities, and except in the EFU, AF-20 and EFC Districts, caretaker residences. In the EFC District only caretaker residences for public parks may be permitted.

D. Park approvals shall be conditioned to provide for maintenance."

The applicant provided a detailed description of the proposed use on page 21 of the written findings in Exhibit PH1 as discussed earlier in this Final Order.

In addition to the description in the application, the applicant has proposed to use a portion of the dwelling on tax lot 900 as indoor picnic facilities. The indoor picnic facilities include restrooms for users of these areas, and neither of the indoor picnic areas includes cooking facilities.

The applicant has proposed to permit the public in these structures; therefore, building permits are required to change the occupancy ratings of those structures. Additionally, a building permit is required for the proposed restroom that is located outside the dwelling and any other structures that will be used by the public. A condition of approval could be imposed requiring the applicant to obtain all applicable permits. Because the applicant has not proposed allowing the public to use any portion of the buildings located on tax lot 1100, a Condition of Approval could be imposed prohibiting the use of the structures on tax lot 1100 by the public.

The Hearings Officer notes that the applicant first proposed these activities in conjunction with the proposed farm stand. As determined previously herein, the Hearings Officer finds that a farm stand is not permitted on tax lot 900 because a farm stand is not permitted in the EFC District.

State law and the County Code focus on the impact of the proposed park on farm and forest uses in the area (Sections 340-4.3 and 342-3.3). Staff proposed that since parks are permitted via a Type II procedure in those Districts, it is appropriate to minimize the impact of the private park on neighboring residents. Staff believed that the most appropriate way to manage these impacts would be through the implementation of operational conditions of approval. As discussed previously in this Final Order, the Hearings Officer does not find that imposition of such conditions is feasible to assure compliance with the applicable standards.

4. Article V: Public Facilities and Services

Section 501 relates to Public Facility and Service Requirements. Section 501-9 specifically addresses Limited Application of the Public Facility and Service Standards Outside the UGB.

In the rural area (outside the UGB), the County applies the Public Facilities and Services Standards in a limited way. The impact on schools, fire and police protection, and public roads are considered.

Outside the Urban Growth Boundary (UGB), the Code does not require the applicant to assure that adequate levels of public services exist. The County is required only to consider the impact of the proposed development on public facility and service levels. While the land use review process does consider the impact of development on public services, it does not assure their adequacy. Service provider letters for this application were provided from the Fire Marshal (Washington County Fire District #2), and the Sheriff's office.

Type II special use applications outside the UGB are subject to the sight-distance requirements of Section 501-8.4. The subject site receives access via an extension of NW Dick Road, which is located at its intersection with NW Meier Road (unimproved), both of which are County rural local roads. Pursuant to Section 501-8.5 F.(2) the minimum intersection sight distance requirements are based on the posted speed of the road. In this case, the speed limit for NW Dick Road is unposted near the vicinity of the driveway's intersection with NW Dick Road. The Basic Rule for unposted roads is 55 m.p.h. In Exhibit 15 of Exhibit PH1 the applicant provided a preliminary sight distance certification from a registered engineer. The engineer certified that "due to the unique nature of the site's access, typical intersection sight distance standards are not directly applicable because traffic exiting the site has the right-of-way as they travel along the roadway and go between the public portion of NW Dick Road and the private extension of the road, which is the subject property's access." The Hearings Officer has reviewed the proposed park access location and concurs with the applicant's engineer that the access point complies with the sight distance requirements of Section 501-8.5 F(2). A condition of approval could be included requiring the applicant to obtain a Right-of-Way permit from the Operations

Division for the existing access point prior to final approval and operation of the park, if the application were to be approved.

One of the key concerns raised by the neighbors in the complaints submitted to the County over the last few months regarded the traffic generated by the activities that have been occurring on the property. The applicant's traffic engineer estimates that the Average Daily Trip (ADT) for the site will range on weekdays from 140 to 205 trips per day and the peak ADT will be 258 on the weekends. The people who submitted complaints during August, September, and October 2012 included trip counts for the specific dates. Included in the complaints were trip counts for the site of between 160 and 590 trips. Based on the trip generation information in the complaints, it appears that on the heavy usage days, the average trip rate is approximately 375 trips per day. The County Traffic Engineer reviewed the Traffic Analysis provided by the applicant (see Attachment 3 of Exhibit PH2) that was prepared by a registered traffic engineer. The County Engineer (Exhibit PH10) found that the ADT for the site was below 500 trips and therefore a traffic analysis was not required pursuant to Section 501-9.3.

The applicant's traffic engineer noted that there are two horizontal curves where sight distance is limited on NW Dick Road located between the site's access point and NW Mullerleile Road. The northernmost of these curves is located approximately 180 feet south of the site's access point to NW Dick Road. At the curves in question, the road surface is narrow and sight distance is blocked by a bank and vegetation that is located both in the right-of-way and outside the right-of-way. The applicant has proposed improvements to these two curves to increase sight distance that involve the removal of vegetation and the cutting back of the bank adjacent to the road in a report from Charbonneau Engineering dated January 17, 2013. However, the evidence submitted by opponents indicates that vehicle trips – by count – have far exceeded the applicant's asserted vehicular traffic. Moreover, there is no documentation that there is adequate right of way width on Dick Road to accommodate the identified safety improvements, and the applicant would not be able to access private property to make the identified safety improvements.

The maximum right-of-way of NW Meier Road, as a rural local, is 50-feet. Existing right-of-way is 20 feet from centerline, therefore additional right-of-way is required. However, the right-of-way of NW Meier Road crosses Holcomb Creek approximately 700 feet west of its intersection with NW Dick Road. County Staff testified at the hearing that they believe that due to the steep slope down Holcomb Creek, it is unlikely that NW Meier Road will ever be built; therefore, the Hearings Officer does not find that it is currently necessary in this case to require any dedication of right-of-way for NW Meier Road.

The condition of NW Dick Road does not lend itself to commercial heavy truck or bus traffic. Type II special use applications outside the UGB are also subject to an LID waiver. In accordance with Sections 501-9.8 and 508-9.9, a Condition of Approval could require the property owner to sign and record a waiver not to remonstrate against the formation of a local

improvement district (LID) or other mechanism to improve the base facility of NW Dick Road between its intersection with NW Meier Road and NW Phillips Road.

Based upon the findings above, the Hearings Officer finds that the proposed private use park will not be able to comply with the applicable provisions of Article V as they relate to transportation safety and adequacy of the roadway to handle the anticipated traffic.

E. Washington County Transportation Plan

With regard to this request, the policies of the Washington County Transportation Plan are limited to the classification of NW Dick Road, as a rural local road.

F. Ordinance No. 379 Traffic Impact Fee

Ordinance 379, which was approved by the voters on September 18, 1990, established a Traffic Impact Fee (TIF) to fund needed extra-capacity for arterial and major collector streets. Payment of this fee, required of all new development, constitutes an assurance of this extra-capacity for these roadways. This satisfies a development's requirement to provide additional capacity to major collectors and arterial streets needed for development. This fee is based on the number of daily trips a site generates and is due at issuance of a building permit or final approval when a building permit is not required.

IV. SUMMARY AND CONCLUSION

The applicant's request for Miscellaneous Review of an Accessory Building for Use as a Farm Stand cannot be approved on tax lot 900 because Farm Stands are not permitted in the EFC District; therefore the Hearings Officer denies that portion of this application.

The applicant failed to carry the burden of proof with respect to the limited quantity of high value farmland that must be present on the site in order to allow a private park. Additionally, opponents have demonstrated that the proposed use would have a significant effect on accepted farm and forest practices already demonstrated to be in existence within the surrounding area. Such impacts are not feasible to mitigate with conditions of approval.

For the foregoing reasons, the applications do not meet the applicable approval criteria and must be denied.

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V. DECISION

Based on the foregoing findings and conclusions, the Hearings Officer DENIES the Applications.

DATED this 10th day of April, 2013

Pamela J. Beery
Washington County Land Use Hearings Officer

Exhibit 1
List of Exhibits Received During Review of Casefile
Final Order for Casefile No. 12-383-SU/D/M – Garden Vineyards

List of Exhibits
Casefile 12-383-SU/D/M

Exhibits Submitted Prior to the Hearing

PH1	Applicant's Development Application as modified by the October 10, 2012 submittal, which included 20 Exhibits. (Note: This is the application packet as it existed on November 5, 2012 when it was transferred from Casefile 12-320-SU/D/M)
PH2	The Applicant's November 21, 2012 Addendum
PH3	Hearings Officer decision for Casefile 10-196-SU/D dated January 3, 2011
PH4	LUBA Decision in Wilson *vs.* Washington County (LUBA No. 2011-007) affirming the Hearings Officer's decision in Casefile 10-196-SU/D dated May 17, 2011
PH5	Code Enforcement Letter regarding the activities that were permitted to occurring on the property dated March 10, 2011
PH6	Hearings Officer's Notice of Decision for NCV numbers NCV00068, NCV00069, and NCV00070 dated August 12, 2011
PH7	Hearings Officer's Notice of Decision for NCV numbers NCV00085 through NCV00092 dated November 21, 2011
PH8	LUBA decision in Catherine Keith *vs.* Washington County (LUBA No. 2011-104) dated August 8, 2012
PH9	Complaints Received by the County Regarding Garden Vineyards during the Summer of 2012
PH10	An e-mail (dated November 27, 2012) from the County Traffic Engineer regarding the Traffic Analysis provided by the applicant in Attachment 3 of Exhibit PH2
PH11	The Building Official's letter to the property owner revoking the building permit for the farm stand structure dated September 13, 2012
PH12	Comments on the Development Application by the Building Division Dated 10/26/2012
PH13	Garden Vineyards invitation to Neighbors for a November 8, 2012 meeting to discuss the

proposed development application received on

PH14 Withdrawal Resubmittal Memo from Tom Harry to Virginia Gamble dated 11/5/2012

PH15 E-mail from Virginia Gamble to Matt Newman outlining the Posting Requirements for Casefile 12-383-SU/D/M dated November 7, 2012

PH16 Miscellaneous Correspondence

Exhibits Submitted at the December 13, 2012 Hearing

H1 Staff PowerPoint Presentation (7 pages)

H2 Letter of Comment (3 pages) from DLCD (Katherine Daniels) dated Dec. 13, 2012

H3 Applicant's revised Section 413 findings and parking plan dated Dec. 12, 2012 (4 pages)

H4 Applicant's Memorandum of Law (5 pages) in Support of the Farm Stand Allowance in EFC Districts Dec. 13, 2012

H5 Letter from Robert Ellinwood and Family dated Dec. 13, 2012 (2 pages)

H6 PowerPoint Testimony From Heather Rode dated Dec. 13, 2012 (9 pages)

H7 Letter from Jeff Klienman dated Dec. 13, 2012 (31 pages)

H8 Letter from Urbanski Ranch dated Dec. 3, 2012 (1 page)

H9 Letter from Agnes Nussbaumer dated Dec. 3, 2012 (2 pages)

H10 Letter from 1000 Friends of Oregon (Steven McCoy) dated Dec. 13, 2012 (3 pages)

H11 Letter from Anna Middleton and Gary & Lorena Anderson dated Dec. 13, 2012 (1 page)

H12 Letter from Jill Bierman dated Dec. 13, 2012 and including exhibits (1 page)

H13 CD with a PowerPoint presentation of testimony for Nancy & David Pung dated Dec. 13, 2012 (6 pages)

H14 Letter from Nancy and David Pung dated Dec. 13, 2012 (4 pages)

H15 PowerPoint testimony from Tony Ackerman and Leslie Morgan dated Dec. 13, 2012 (9 pages)

H16 PowerPoint testimony and CD from Robert Elliott dated Dec. 13, 2012 (30 pages)

H17 PowerPoint Testimony and CD from Catherine Keith dated Dec. 13, 2012 (22 pages)

H18	Letter from Rosanna Braccioforte dated Dec. 13, 2012 (1 page)
H19	Letter from Brenda Earnes dated Dec. 10, 2012 (1 page)
H20	Letter from Anka Brandstater dated Dec. 13, 2012 (3 pages)
H21	Letter from Deborah Lockwood dated Dec. 13, 2012 (12 pages)
H22	Letter from Linda deBoer dated Dec. 13, 2012 (1 page) and the following documents (total of 264 pages for H22): - Garden Vineyards Patterns of Behavior, for the Nov. 15, 2012 Hearing for Casefile 10-196-SU/D (23 pages) - Garden Vineyards Complaints 2011 submitted by Linda deBoer and Bob Elliot (63 pages)- Garden Vineyards History of Violations (83 pages) - The Pattern of Garden Vineyards' Events letter from Linda deBoer dated Dec. 13, 2012 (4 pages + 19 attachments for a total of 94 pages)
H23	Letter from Marilyn Fuller dated Dec. 13, 2012 (1 page)
H24	Letter from Randy Thurman dated Dec. 12, 2012 (2 pages)
H25	PowerPoint presentation from Tera Casper (9 pages)
H26	Letter from Randy Thurman dated Dec. 12, 2012 (2 pages)
H27	Letter from Virginia Yurkovich dated Dec. 12, 2012 (4 pages)
H28	Yurkovich Forest Stewardship Plan by Tom Nygren date July, 2012 (91 pages)

Exhibits Submitted after the December 13, 2012 Hearing Through January 17, 2013

AH1	Letter from Robert Elliott dated January 7, 2013
AH2	Letter from Deborah Lockwood dated January 7, 2013
AH3	County Staff's Response to the Issues Raised at the December 13, 2012 Hearing for Casefile 12-383-SU/D (Garden Vineyards Private Park) dated January 17, 2013
AH4	Cover Letter from Jeff Kleinman dated January 17, 2013
AH5	Oversized Map of Garden Vineyards area submitted by Jeff Kleinman dated January 11, 2013
AH6	Legal Memorandum from Jeff Kleinman dated January 17, 2013

AH7 Letter from Tom Nygren and White Oak Natural Resources dated January 14, 2013

AH8 Letter from Jill Bierman dated January 13, 2013

AH9 Three letters from Linda de Boer each dated January 13, 2013

AH10 Letter from NW Engineers (Matt Newman) dated January 17, 2013, including 12 exhibits

AH11 Letter from Eileen Riggs dated January 17, 2013 (Staff notes that the County time stamp on this letter shows 4:01 PM, however the party delivering the letter was in the County Offices with the letter in hand prior to 4:00 PM on January 17, 2013.)

Exhibits Submitted between January 18, 2013 And Final Decision

F1 County Staff's Final Analysis of Casefile 12-383-SU/D/M (Garden Vineyards Private Park) dated January 31, 2013

F2 Applicant's Response for Casefile 12-383-SU/D/M (Garden Vineyards Private Park) dated January 31, 2013.

F3 Opposition Response from Jeff Kleinman and Letter from Catherine Keith for Casefile 12-383-SU/D/M (Garden Vineyards Private Park dated January 31, 2013.

F4 Letter Submitted by Deborah Lockwood regarding Casefile 12-383-SU/D/M (Garden Vineyards Private Park) dated January 30, 2013 and received January 31, 2013.

F5 Record Objection from Jeff Kleinman dated February 7, 2013

F6 Interim Order Granting Record Objections for Casefile 12-383-SU/D/M issued on February 14, 2013

F7 Applicant's Rebuttal Brief (Final Argument) for Casefile 12-383-SU/D/M submitted on February 14, 2013

F8 Second Record Objection from Jeff Kleinman dated February 20, 2013

F9 Applicant's (Robert Ireland) response to Jeff Kleinman's February 20, 2013 record objection dated February 22, 2013 but received via e-mail on February 25, 2013

F10 Second Interim Order Denying Record Objections Dated February 26, 2013

F11 Third Interim Order Denying Record Objections Dated February 26, 2013

F12 Letter From Linda de Boer dated March 26, 2013