

1 BEFORE THE LAND USE BOARD OF APPEALS

2 OF THE STATE OF OREGON

3
4 LEI DURDAN, CROOKED PINE
5 RANCH, LLC, AND MALECO,
6 *Petitioners,*

7
8 vs.

9
10 DESCHUTES COUNTY,
11 *Respondent,*

12 and

13
14 DAVID M. HERMAN,
15 *Intervenor-Respondent.*

16
17 LUBA No. 2002-093

18
19 FINAL OPINION
20 AND ORDER

21
22
23 Appeal from Deschutes County.

24
25 Christopher Eck, Bend, filed the petition for review and argued on behalf of
26 petitioners. With him on the brief was Eck and Elliott, LLP.

27
28 No appearance by Deschutes County.

29
30 Liz Fancher, Bend, filed the response brief and argued on behalf of intervenor-
31 respondent.

32
33 BASSHAM, Board Member; HOLSTUN, Board Chair; BRIGGS, Board Member,
34 participated in the decision.

35
36 AFFIRMED

10/29/2002

37
38 You are entitled to judicial review of this Order. Judicial review is governed by the
39 provisions of ORS 197.850.

NATURE OF THE DECISION

Petitioners appeal a decision approving a guest ranch on land zoned for exclusive farm use (EFU).

MOTION TO INTERVENE

David M. Herman (intervenor), the applicant below, moves to intervene on the side of the county. There is no opposition to the motion, and it is allowed.

FACTS

The subject property is a tract totaling 155 acres, comprised of two adjoining parcels, tax lots 800/801 and tax lots 400/401. Intervenor acquired the first parcel in 1994, and used it thereafter for seasonal cattle and horse grazing. Intervenor acquired the second parcel in 2000, and has used both parcels together for seasonal cattle and horse grazing. In 2001, the tract was used for grazing approximately 42 cattle for several months. Portions of both parcels are subirrigated by a high water table during the spring, and one parcel has 34.5 acres of irrigation rights from Indian Ford Creek. Due to wet soil and winter conditions, grazing on the subject property is generally limited to April through October.

When acquired, tax lot 400 contained two dwellings, and tax lot 800 contained a manufactured dwelling. In 2000, intervenor obtained a county decision that all three dwellings were lawful dwellings, and a permit to remove and replace them. In 2001, the manufactured dwelling was removed and replaced, although it was not approved for occupancy at that time.

In 2001, intervenor obtained a county decision determining the subject property was a lawfully created parcel of at least 160 acres in size. That decision stated that any future conditional use approval for a guest ranch must be conditioned on the subject property being retained in single ownership. Subsequently, on January 9, 2002, intervenor filed an application with the county to site a guest ranch on the subject property, pursuant to

1 Deschutes County Code (DCC) 18.16.037, which implements an uncodified statute (the
2 guest ranch statute) enacted in 1997.¹ In relevant part, the code and statute allow a “guest
3 ranch” to be established as a conditional use in conjunction with an existing and continuing
4 livestock operation, subject to a number of limitations.²

¹ DCC 18.16.037 provides, in relevant part:

- “A. A guest ranch may be established in conjunction with an existing and continuing livestock operation, using accepted livestock practices that qualifies as a farm use under ORS 215.203, subject to the applicable provisions set forth in DCC 18.16.040(A)(1), (2) and (3), the applicable provisions of DCC 18.128, and the provisions of ORS 215.296(1) and (2).
- “B. ‘Guest ranch’ means a facility for overnight lodging incidental and accessory to an existing livestock operation that qualifies as a farm use under ORS 215.203. Guest ranch facilities may include a lodge, bunkhouse or cottage accommodations as well as passive recreational activities and food services as set forth in DCC 18.128.360[D] and [E].”

² DCC 18.128.360 provides, in relevant part:

“A guest ranch established under DCC 18.128.360 shall meet the following conditions:

- “A. Except as provided in DCC 18.128.360(C), the lodge, bunkhouses or cottages cumulatively shall:
 - “1. Include not less than four nor more than 10 overnight guest rooms exclusive of kitchen areas, rest rooms, storage and other shared indoor facilities, and;
 - “2. Not exceed a total of 12,000 square feet in floor area.
- “B. The guest ranch shall be located on a lawfully created parcel that is:
 - “1. At least 160 acres in size;
 - “2. The majority of the lot or parcel is not within 10 air miles of an urban growth boundary containing a population greater than 5000;
 - “3. The parcel containing the dwelling of the person conducting the livestock operation; and
 - “4. Not classified as high value farmland as defined in DCC 18.04.030.

“* * * * *

- “D. A guest ranch may provide recreational activities in conjunction with the livestock operation’s natural setting, including but not limited to hunting, fishing, hiking,

1 The proposed guest ranch includes 10 cabins, approximately 800 to 1,000 square feet
2 in size, and a lodge, located on tax lot 800 near the replacement manufactured dwelling. The
3 site plan proposed an ice skating rink, tennis courts and a swimming pool. Three to four
4 employees would operate the guest ranch, providing check-in, cleaning and food service.

5 A county hearings officer conducted a hearing, and approved the proposal after
6 concluding that the proposed guest ranch would be incidental and accessory to an existing
7 and continuing livestock operation. The hearings officer imposed conditions that prohibited
8 an ice rink, tennis courts or a swimming pool and that limited food services to individual
9 guests who visit or stay at the guest ranch.

10 This appeal followed.

11 **FIRST ASSIGNMENT OF ERROR**

12 Petitioners contend that the county erred in concluding that intervenor has an
13 “existing” livestock operation on the subject property. According to petitioners, the record
14 establishes that 42 cattle grazed on the property for approximately three months in 2001, and
15 that no livestock were grazing on the property on the date of application, January 9, 2002.
16 Petitioner argues that, while rotation of livestock is a common and prudent ranching practice,
17 the absence of *any* livestock operation on the subject property for most of the year, and
18 particularly on the date of application, does not support a finding that there is an “existing”
19 livestock operation on the subject property.

biking, horseback riding or swimming. Intensively developed recreational facilities such as a golf course or campground as defined in DCC Title 18, shall not be allowed in conjunction with a guest ranch, and a guest ranch shall not be allowed in conjunction with an existing golf course or with an existing campground.

“E. Food services shall be incidental to the operation of the guest ranch and shall be provided only for the guests of the guest ranch. The cost of meals provided to the guests shall be included as part of the fee to visit to stay at the guest ranch. The sale of individual meals to persons who are not guests of the guest ranch shall not be allowed.”

1 Intervenor responds that the record supports the hearings officer’s finding that the
2 livestock operation existed on the date of application. Further, intervenor argues that nothing
3 in the code or statute requires that livestock be grazed on the subject property at all times, or
4 that the livestock operation be conducted exclusively on the parcel that contains the guest
5 ranch. Intervenor argues that it is common for livestock operations, particularly in eastern
6 Oregon, to graze large tracts of land, consisting of a number of adjacent or nonadjacent
7 parcels, and that reading the code and statute to require exclusive use of the parcel that
8 contains the guest ranch would disqualify many legitimate livestock operations from
9 benefiting from the guest ranch provisions.

10 The hearings officer’s findings state, in relevant part:

11 “The primary issue before the Hearings Officer is whether the subject
12 property consists of an *existing livestock operation*. [DCC 18.04.390]
13 provides that the term ‘existing’ means existing at the time of application.
14 The subject application was made on January 9, 2002[.] * * * Thus, the
15 question is whether the applicant’s property supported a livestock operation as
16 of January 2002. Staff concluded in the Supplemental Staff Report that * * *
17 the property appears to include a livestock operation, but only during the
18 months of April through October. The remainder of the year the applicant
19 indicates that the property is being ‘rested.’ * * *

20 “* * * * *

21 “Based on the evidence submitted by the applicant, the Hearings Officer finds
22 that ‘resting’ the land with the purpose of developing better pasture land is
23 contemplated by state law as a continued farm use. *See, e.g.,*
24 ORS 215.203(2)(b)(B). Although the applicant’s choice to rest the land just
25 prior to submittal of the land use application was ill-timed and generated
26 additional opposition to the submittal, the applicant has shown he is currently
27 running an existing livestock operation on the subject property, in conjunction
28 with the larger operation run by [a corporation owned by intervenor on non-
29 contiguous lands]. The Hearings Officer finds based on evidence submitted
30 by the Applicant and proponents that Applicant currently grazes the subject
31 property with 40 head of cattle each year (2000 and 2001) and practices good
32 agricultural husbandry, which requires resting the pasture during the winter,
33 muddy months. * * *” Record 23, 28 (emphasis in original).

1 The hearings officer further concluded that nothing in the county’s code or state law requires
2 that the qualifying livestock operation be confined to the parcel that contains the guest ranch.
3 Record 29.

4 As the hearings officer found, substantial evidence in the record indicates that a
5 livestock operation conducted with good animal husbandry on the subject property and
6 similar properties requires resting the pasture during the wet winter months. Therefore, the
7 fact that no cattle were actually grazing on the subject property on the date of the application,
8 during the winter, is not inconsistent with finding that a “livestock operation” existed on the
9 property on that date. We also agree with intervenor and the hearings officer that rotation of
10 cattle from the subject property to other, non-contiguous properties as a matter of good
11 animal husbandry during the wet months does not preclude a finding that the subject property
12 contains an “existing” livestock operation. The hearing’s officer’s findings on these points
13 are supported by substantial evidence in the record, and do not misconstrue the applicable
14 law.

15 The first assignment of error is denied.

16 **SECOND ASSIGNMENT OF ERROR**

17 Petitioners contend that the hearings officer improperly construed the applicable law
18 in finding an existing “livestock operation” based on operations conducted by a corporation
19 partly owned by intervenor on non-contiguous property.

20 According to petitioners, the hearings officer relied on evidence that intervenor is part
21 owner of Equine Management, Inc., which is the operator of a livestock operation that raises
22 horses and cattle on nearby property in Deschutes County and on 120,000 acres of leased
23 land in Harney County. Petitioners assert that any cattle on the subject property are part of
24 that larger livestock operation. Petitioners argue that under the code and statute the focus of
25 inquiry into whether there is an existing livestock operation is on the subject property, not
26 operations on other, non-contiguous lands. Therefore, petitioners argue, the hearings officer

1 erred in considering any operations on other lands in determining whether there is an existing
2 livestock operation on the subject property.

3 Intervenor disputes that the hearings officer relied on any livestock operations on
4 other lands to determine whether the subject property qualified for a guest ranch. According
5 to intervenor, the hearings officer properly focused on whether a livestock operation existed
6 on the subject property.

7 We agree with intervenor that the hearings officer did not misconstrue the applicable
8 law. While petitioners are correct that the focus of guest ranch law is on the parcel of at least
9 160 acres on which the guest ranch and the dwelling of the livestock operator must be
10 located, nothing in the code or statute requires that the livestock operation exist exclusively
11 on that parcel, as discussed above. Similarly, nothing prohibits the livestock operation on the
12 subject parcel from being part of a larger livestock operation owned in whole or in part by
13 others, even on non-contiguous properties. The hearings officer properly focused the inquiry
14 on the subject property, and found that livestock operations on the subject property constitute
15 an existing livestock operation.³ That finding is supported by substantial evidence and does
16 not misconstrue the applicable law.

17 The second assignment of error is denied.

18 **THIRD ASSIGNMENT OF ERROR**

19 The hearings officer concluded that the proposed guest ranch would be “incidental
20 and accessory” to the livestock operation on the subject property. In so doing, the hearings

³ The bulk of the seven pages of findings on this point addresses the activities on the subject property. The hearings officer considers operations on other properties at two points. First, the hearings officer considers a log of cattle purchase and sales by Equine Management, Inc. in order to determine that intervenor’s purpose in conducting a livestock operation on the subject property is to obtain a “profit in money,” for purposes of the definition of “farm use” at ORS 215.203. Record 24. Second, in concluding that “resting” the pasture over the winter is consistent with an existing livestock operation on the property, the hearings officer notes that “the ranch operation on the subject property is part of an overall larger ranch operation that the applicant conducts through Equine Management, Inc.” Record 29. Neither of these considerations is inconsistent with finding that there is an existing livestock operation on the subject property.

1 officer rejected arguments that the terms “incidental and accessory” in the code and statutory
2 definition of “guest ranch” require a determination that the majority of income derived from
3 the parcel comes from the main ranching use. The hearings officer also did not agree that the
4 year-round nature of the guest ranch compared to the seasonal grazing necessarily indicated
5 that the former was not incidental and accessory to the latter. Instead, the hearings officer
6 focused on other factors, in particular the fact that the proposed guest ranch would occupy
7 only two percent of the subject tract, and would be located on the least productive part of the
8 tract.⁴

⁴ The hearings officer’s findings state, in relevant part:

“[DCC 18.16.037(B)] requires the guest ranch to be ‘incidental and accessory’ to an existing and continuing livestock operation. DCC 18.04.045 defines ‘accessory use’ to mean a use ‘incidental and subordinate to the main use of the property and located on the same lot as the main use.’ Applicant states the guest ranch would be incidental and accessory because [it is] small, located on an isolated part of the ranch, and will not interfere with ranch operations or other EFU-zoned property in the area. Applicant also contends the guest ranch would remain accessory to the livestock operation because the guest ranch facilities would be located on the least productive part of the property. Applicant [also contends] that the guest ranch will be incidental and accessory to the main use of the property for cattle ranching because, in part, guests and related facilities will occupy approximately two percent of the total land area, the land will support more cattle than overnight guests, humans will generate less waste than cattle waste generated, and cattle grazing is more visible than guest ranch use.

“[Petitioner] Crooked Pine Ranch, LLC alleges this criterion requires that the majority of income from the parcel come from uses other than the accessory use. The Hearings Officer is not convinced that the term ‘accessory use’ requires income from the use to be less than income from the main use. The Hearings Officer understands the intent of the guest ranch law is to allow livestock ranches to supplement their farm income and to prevent the loss of traditional ranch activities. The heart of the guest ranch law is to allow an operator to continue an existing livestock operation, even if that operation is losing money, because other income would be derived from a guest ranch. * * *

“The County received correspondence from Lynn Lundquist, a principal sponsor of HB 2014 [the guest ranch law] in the 1997 regular Oregon legislative session. Mr. Lundquist states that ‘the bill was designed to address the financial woes of existing ranchers while at the same time ensuring that it would not result in glorified motels or restaurants on EFU-zoned land.’ Mr. Lundquist further explains, ‘If the livestock operation is truly a legitimate one then the use of a guest ranch will always be a lesser factor in the financial condition of the owner. While the subordinate guest ranch use may make the difference between the overall ranch operation failing or succeeding, the bill is not designed to allow the guest ranch use to be or become the primary financial or motivating factor.’

1 Petitioners argue that the hearings officer’s findings on this point are not supported
2 by substantial evidence. To be “incidental and accessory,” petitioners argue, the guest ranch
3 must be subordinate to the primary ranching use of the property. According to petitioners,
4 no reasonable person could conclude that a year-round lodge with 10 cabins, food service
5 and recreational activities, staffed by three to four employees, is incidental or subordinate to
6 a ranching operation that consists of grazing 42 cows for a few months during the year, and
7 that requires only one employee.

8 As framed by the petition for review, the issue under this assignment of error is
9 whether the hearings officer’s finding that the proposed guest ranch is “incidental and
10 accessory” to the ranching use is supported by substantial evidence. Petitioners do not
11 dispute the facts the hearings officer relied upon. Instead, petitioners focus on different facts,
12 and argue that a reasonable person could not conclude, based on the whole record, that the
13 proposed guest ranch is incidental and accessory to the ranching use.

14 Underlying petitioners’ argument are unresolved questions regarding the meaning of
15 the terms “incidental and accessory” in the definition of “guest ranch” and the role those
16 terms play in approving or denying a guest ranch. If that language requires a finding that the
17 guest ranch be “subordinate” to the livestock operation, as petitioners presume, a further
18 question arises regarding how subordination is to be measured or determined. We
19 understand intervenor to take the position that the size and other limitations imposed on guest

“* * * [Petitioner] MaLeCo also asserts that the proposed guest ranch is * * * the
predominate activity because it would operate throughout the year whereas livestock would
be on the land only several months of each year. However, the Hearings Officer already
determined that the livestock operation is existing and continuing even when the land is being
rested during the winter.

“* * * * *

The Hearings Officer finds for the foregoing reasons that the proposed guest ranch would be
incidental and accessory to the livestock operation and because the applicant would continue
the existing livestock operation, the guest ranch would be located on approximately two
percent (2%) of the subject property and on land determined the least productive portion of
the subject property.” Record 29-31 (record citations omitted).

1 ranches by the statute and code are sufficient in themselves to ensure that a conforming guest
2 ranch will be “incidental and accessory” to the livestock operation, without more. To the
3 extent further inquiry is appropriate, intervenor argues, the hearings officer properly weighed
4 the evidence bearing on the issue and concluded that the proposed guest ranch was incidental
5 and accessory to the livestock operation. Intervenor argues that that finding is supported by
6 substantial evidence.

7 We decline to resolve the meaning of the “incidental and accessory” language in the
8 definition of “guest ranch,” and the role of that language, if any, in approving or denying a
9 proposed guest ranch. As noted, this assignment of error is framed as a substantial evidence
10 challenge. Petitioners do not argue that the hearings officer misconstrued the applicable law,
11 and do not provide us with a developed argument regarding the meaning of the law.
12 Accordingly, we resolve only petitioners’ substantial evidence challenge.

13 Substantial evidence is evidence a reasonable person would rely on in reaching a
14 decision. *Carsey v. Deschutes County*, 21 Or LUBA 118, *aff’d* 108 Or App 339, 815 P2d 233
15 (1991). In reviewing the evidence, however, we may not substitute our judgment for that of
16 the local decision maker. Rather, we must consider all the evidence in the record to which
17 we are directed, and determine whether, based on that evidence, the local decision maker’s
18 conclusion is supported by substantial evidence. *Younger v. City of Portland*, 305 Or 346,
19 358-60, 752 P2d 262 (1988); *1000 Friends of Oregon v. Marion County*, 116 Or App 584,
20 588, 842 P2d 441 (1992). Here, the hearings officer cited a number of considerations that led
21 her to conclude that the proposed guest ranch is incidental and accessory to the livestock
22 operation. We believe a reasonable person could, based on the whole record, reach that
23 conclusion.

24 The third assignment of error is denied.

1 **FOURTH ASSIGNMENT OF ERROR**

2 Petitioners challenge the hearings officer’s finding that the subject property contains
3 the dwelling of the person conducting the livestock operation, for purposes of
4 DCC 18.128.360(B)(3).

5 The hearings officer found that the person who conducts the livestock operation is
6 one of intervenor’s employees. The employee has resided on the subject property since the
7 summer of 2001 in a motor home, and it is contemplated that the employee will reside in one
8 of the replacement manufactured dwellings on the property, once septic approval is obtained.
9 The hearings officer imposed a condition requiring that the livestock operator dwelling be
10 complete prior to the date any building permit for the guest ranch is issued.

11 Petitioners argue that a motor home clearly cannot qualify as a qualifying dwelling
12 under DCC 18.128.360(B)(3), because it is not a “dwelling” as defined under the county’s
13 code. Because there was no “dwelling” that was the residence of the person conducting a
14 livestock operation on the subject property on the date of the application, petitioners argue,
15 the hearings officer erred in finding that the proposal complied with DCC 18.128.360(B)(3).

16 We do not understand the hearings officer to have found that the motor home
17 qualified as the requisite “dwelling” under DCC 18.128.360(B)(3). Instead, the hearings
18 officer determined that one of the replacement manufactured dwellings placed on the subject
19 property, but not yet occupied, will be the requisite “dwelling” for purposes of
20 DCC 18.128.360(B)(3). The hearings officer imposed a condition to ensure that the dwelling
21 is complete before construction of the guest ranch can commence. Petitioners do not explain
22 why they believe the dwelling must exist and be occupied on the date the application was
23 filed. Absent some requirement to that effect, we do not see that the hearings officer erred in
24 relying on the proposal for the livestock operator to reside in one of the replacement
25 dwellings, as conditioned, for purposes of satisfying DCC 18.128.360(B)(3).

26 The fourth assignment of error is denied.

1 **FIFTH ASSIGNMENT OF ERROR**

2 The guest ranch statute requires, in relevant part, that:

3 “Food services shall be incidental to the operation of the guest ranch and shall
4 be provided only for the guests of the guest ranch. The cost of meals provided
5 to the guests shall be included as part of the fee to visit or stay at the guest
6 ranch. The sale of individual meals to persons who are not guests of the
7 guest ranch shall not be allowed.” Or Laws 1997, ch 728, § 1(4).

8 DCC 18.128.360(E) implements this statutory provision. *See* n 2. The language of the code
9 provision differs slightly from the statute in stating that the “cost of meals provided to the
10 guests shall be included as part of the fee *to visit to stay*” at the guest ranch.” (Emphasis
11 added.)

12 In approving the proposed guest ranch, the hearings officer imposed condition 11,
13 which requires that the “cost of meals provided to the individual guests shall be included as
14 part of the fee to visit *or* stay at the guest ranch.” Record 50 (emphasis added). Petitioners
15 argue that, as written, condition 11 allows intervenor to serve food to persons who are merely
16 visiting the ranch, not limited to overnight guests. Petitioners contend that DCC
17 18.128.360(E) prohibits providing food service to persons who are not overnight guests, and
18 therefore condition 11 is inconsistent with the code.

19 Intervenor responds that under state law a guest ranch may provide food service both
20 to persons who are staying overnight at the ranch *and* to other visitors to a guest ranch as
21 long as the cost of meals is paid as part of a single fee to visit or stay. According to
22 intervenor, both sets of persons are “guests” of the ranch. To the extent the county’s code
23 differs from the statute on this point, intervenor argues, state law should control.

24 We disagree with intervenor’s view of the statute. The statute allows provision of
25 food services to “guests,” “incidental to the operation of the guest ranch,” and prohibits
26 selling individual meals to nonguests. A “guest ranch” is defined in relevant part as a
27 “facility for overnight lodging.” Or Laws 1997, ch 728, § 1(6)(b). The statutory requirement
28 that meal costs “shall be included in the fee to visit or stay at the guest ranch,” along with the

1 lack of a statutory definition of “guest” to limit guests to overnight guests, introduces some
2 ambiguity in the statute.⁵ Specifically, there is a question as to whether guests must be
3 overnight guests or whether “guests” may include persons who “visit” for only the day or
4 some part of the day and pay a fee to do so, which could entitle them to food services. Read
5 in context, it is reasonably clear that “guests” are those persons who have paid a fee to stay at
6 the lodge, bunkhouses or cottages authorized by the statute. Reading the scope of “guests”
7 more broadly undermines the evident legislative intent to allow only food services that are
8 “incidental to the operation of the guest ranch.”⁶ To the extent it is appropriate to examine
9 legislative history on this issue, the legislative history in the record suggests that the statutory
10 limitation on food services was intended to prevent a guest ranch from being operated as a
11 restaurant. *See, e.g.*, Record 458 (testimony of Ronald Eber on behalf of the Department of
12 Land Conservation and Development, proposing the limitation). We do not see any
13 meaningful difference between a restaurant and the type of facility intervenor argues is
14 allowed under his reading of the statute.

15 With the above understanding of the statute, the challenged condition merely repeats
16 the language of the statute. It does not authorize anything that the statute does not authorize.
17 Stated differently, the statute does not authorize food services to persons other than overnight
18 guests and neither does the condition that is the subject of the fifth assignment of error. For
19 that reason, the fifth assignment of error is denied.

⁵ We do not think the slightly different word choice in DCC 18.128.360(E) was intentional. Even if it was, we do not see that the meaning of the chosen words is different than the corresponding language in the statute.

⁶ With respect to the statutory reference to “visit or stay,” we do not believe the legislature intended that indirect reference to authorize food services for guests who stay only for part of the day and do not stay overnight. Rather, the legislature used the terms as synonyms and both refer to the overnight guests that visit (or stay) at the guest lodge.

1 **SIXTH ASSIGNMENT OF ERROR**

2 Petitioners argue that the hearings officer erred in failing to impose a condition of
3 approval that restricts intervenor from operating an “event center” and conducting such
4 events as weddings, corporate retreats and special occasions. According to petitioners,
5 intervenor described the proposed guest ranch in a newspaper article as consisting of a “guest
6 ranch/event center,” that would be used for “events such as weddings, corporate retreats and
7 special occasions.” Record 436. Petitioners contend that such activities are not permitted on
8 a guest ranch and, given intervenor’s stated intent, the hearings officer should have imposed
9 a condition prohibiting such activities.

10 Intervenor responds that the quoted newspaper article was written over a year before
11 he filed the guest ranch application, and that he has since disavowed the quote attributed to
12 him. Intervenor argues that nothing in the application proposes an “event center,” and that
13 the existing conditions are adequate to ensure that the guest ranch is operated within the
14 parameters of the guest ranch law.

15 We agree with intervenor that the application does not propose an “event center” and
16 that, other than the disavowed newspaper article, there is no evidence that intervenor
17 proposes any of the activities to which petitioners object. The hearings officer did not err in
18 failing to impose a condition of approval prohibiting such activities.

19 The sixth assignment of error is denied.

20 The county’s decision is affirmed.