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February 7, 2020

Oregon Board of Agriculture
635 Capitol St NE
Salem, Oregon 97301

RE: Support For Resolution 310

Dear Chair Boyer and Board Members:

Friends of Marion County is an independent 501(c)(3) farmland protection organization founded in 1998. Our mission is to protect farm and forestland, parks, and open space.

We support clarifying language to protect farmland. I've attached a permit we opposed in 2012 in Woodburn. The application was for a proposed horse racing event, supposedly in conjunction with farm use. I've attached a copy of the MC BOC decision¹ along with our testimony³ and that of a neighbor, Paulette Alexandria².

There was significant testimony in opposition to the permit. However the MC BOC decided to approve the event. Unfortunately the farm owner violated the conditions numerous times. Eventually Marion County withdrew its approval after a number of complaints and Marion County Sheriff inspections. The farm owner was no longer permitted to apply.

Hopefully, the clarifying language in Resolution 310 will discourage inappropriate events on farmland.

Thanks for listening.

Roger Kaye, President
Friends of Marion County
P.O. Box 3274
Salem, OR 97302
rkaye2@gmail.com
503-743-4567

Attachments:

1. CU12-028(Sonnen), MC BOC Decision
2. Testimony in opposition, Alexandria 8/8/2012
3. Testimony in opposition, FoMC, 12/26/2012

**BEFORE THE BOARD OF COMMISSIONERS
FOR MARION COUNTY, OREGON**

In the Matter of the
Application of
Rudy and Paulette Sonnen

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Case No. CU12-028
Clerk's File No: 5673
Conditional Use

ORDER 13-39

This matter came before the Marion County Board of Commissioners at its regularly scheduled public meeting on January 2, 2013, to consider the appeal of the application of Rudy and Paulette Sonnen for a conditional use to hold up to six agri-tourism events on a 70 acre parcel in an EFU (Exclusive Farm Use) zone located at 13206 Kiliam Loop NE, Woodburn (T5S; R1W; Section 15; tax lots 300, 400, 500).

On August 8, 2012, a hearings officer conducted a hearing on this application. On October 11, 2012, the hearings officer issued a decision finding that the applicant failed to meet the burden of proving compliance with the applicable criteria and **DENIED** the conditional use application. On October 25, 2012, the applicant appealed the hearings officer's decision. The Board accepted the appeal and on December 5, 2012, the Board held a duly noticed public hearing.

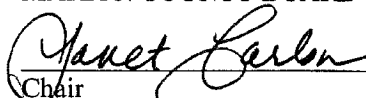
The Board, after having considered the Planning Division's and Clerk's files, hearings officer's decision and the testimony and evidence in the record, makes the following Orders:

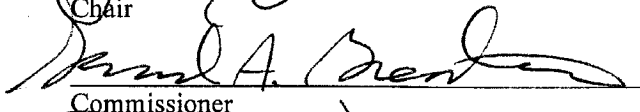
IT IS HEREBY ORDERED that the Board adopts the Findings of Fact and Conclusions of Law contained in Exhibit A attached hereto.

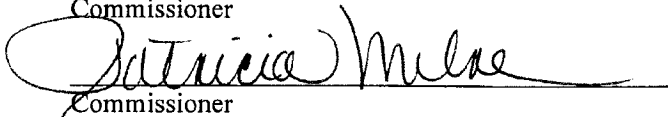
IT IS FUTURE ORDERED that the decision of the hearings officer denying the Conditional Use is hereby **REVERSED** and the Conditional Use is **GRANTED**, subject to the conditions contained in Exhibit B, attached.

DATED at Salem, Oregon this 13th day of March 2013.

MARION COUNTY BOARD OF COMMISSIONERS


Chair


Commissioner


Commissioner

JUDICIAL NOTICE

Oregon Revised Statutes, Chapter 197.830, provides that land use decisions may be reviewed by the Land Use Board of Appeals by filing a notice of intent to appeal within 21 days from the date this Order becomes final.

EXHIBIT A

Findings of Fact and Conclusions of Law

1. The subject property is designated Primary Agriculture in the Marion County Comprehensive Plan and zoned EFU (Exclusive Farm Use).
2. The subject property is on the south side of Kiliam Loop NE, approximately 2,500 feet east of its intersection with Union School Road. The property contains a homesite, horse boarding facility and other structures. The subject property was described in a May 1967 deed and is lawfully created for land use purposes.
3. The subject property is surrounded by EFU zoned parcels in farm use.
4. According to the Soil Survey of Marion County Area Oregon, 96% of the subject property is composed of high-value farm soils.
5. Applicants propose conducting up to six agri-tourism events on the subject property. Applicants describe the events as match horse racing with live music.
6. The Marion County Planning Division requested comments on the proposal from various governmental agencies:

Marion County Department of Public Works (DPW) Land Development Engineering and Permits (LDEP) commented on recommended conditions of approval and DPW engineering requirements it believes are not a part of the land use process.

Recommended conditions of approval:

Condition A - No event vehicle parking within the public right of way is allowed. All event parking must be accommodated for on private property.

Condition B - At least 7 calendar days prior to the first scheduled event, obtain Public Works Engineering approval of a detailed vehicle parking and internal traffic circulation plan for the anticipated volume and types of traffic.

The parking and circulation plan must account for all entrances and exits, standard parking space dimensions, allowances for oversized vehicle (truck + horse trailer, bus) parking spaces, and isle widths. The plan must be dimensioned, and referenced to approximate property boundaries.

Condition C - Perform dust abatement measures on Kiliam Loop NE from Union School Road to Kiliam Loop NE for the duration of the event(s), a distance of approximately 2/3-mile. Dust abatement treatment is considered to be twice-daily watering applications.

Engineering requirements:

D. Driveways must meet sight distance, design, spacing, and safety standards.

- 1) *In accordance with Marion County Driveway Ordinance #651, the applicant is required to apply for a driveway "Access Permit" for the change in use within 45 calendar days of an approved Notice of Decision, and prior to any proposed agri-tourism event being held.*

- 2) *There is some grassy vegetation on the west leg of the inside curve/north side of Kiliam Loop NE impeding adequate site distance that needs to be trimmed. Complete any other access-related requirements stipulated under the access permit, as determined by the Public Works Access Inspector.*
- E. *It appears that a wooden fence along the property frontage on Kiliam Loop Road is located within the 30-foot public right-of-way half-width. A condition of land use case CU 05-045 was to remove the fencing, which was not accomplished for unknown reasons. As a modified requirement of the current conditional use proposal, the applicant is required to record a removal agreement as described in Marion County Code Section 17.112.020(c), as a practical alternative to removal given the fact that the current state of Kiliam Loop NE is a limited width gravel road.*

Marion County Building Inspection stated that no permanent structures are proposed and that temporary structures are regulated by the Fire Marshall.

Woodburn Fire District provided two sets of comments for the record.

July 17, 2012. Applicants shall provide more detailed information regarding events – Examples are but not limited to: Crowd size, emergency vehicle access. Applicant shall demonstrate how all applicable fire and life safety codes will be met for each event. Recommend providing written plan with details of each event to be reviewed by Woodburn Fire District – Fire District officials will determine if a site visit will be required prior to each event.

July 27, 2012. The Woodburn Fire District performed a site visit at 13206 Kiliam Loop Road. The District reviewed the emergency access plan and verified the plan on the site visit. The proposed emergency access meets the requirements of the Woodburn Fire District for the proposed special events.

Marion County Code Enforcement (MCCE) commented:

Marion County Code Enforcement received their first information regarding a horse racing and rodeo event scheduled for July 1, 2012, 13206 Kiliam Loop, Woodburn on June 19, 2012. The property is zoned as Exclusive Farm Use property and is owned by Rudy and Paulette Sonnen. The event was advertised and promoted by El Forastero Promotions in Woodburn, Oregon.

This was the second horse racing and mariachi band event scheduled and held at the property. Both events were reported as identical in size, activities (other than advertised bull riding for 2011) and timing, the first was held in August 2011 and the most recent on July 1, 2012. Both events were held without zoning permits; however, there were no applicable zoning permits for a one day event this size, under 500 people. The property owner did obtain the necessary Oregon Liquor Control Commission temporary sales license as alcohol (beer) was sold and served at both events.

According to Mr. Sonnen, the music and events begin at 11:30 am and are concluded by 8:30 pm. This meets the requirements listed in the Marion County Noise Ordinance 1273 found in the Marion County Code in Chapter 8.45:

Sound producing device means, musical instruments that are amplified or unamplified. In Section 8.45.050 under Prohibitions the code states: It shall be unlawful for any person to produce or permit to be produced with a sound-producing device, a sound that when measured at a place on the complainant's property line that is closest to the noise source, or within the complainant's dwelling unit if it is on the same property as the noise source but is not the source of the sound exceeds fifty-five dBA at any time between 10:00 pm and 7:00 am to following day or 65 dBA at any time between 7:00 am and 10:00 pm. Based on my noise metering experience and the distance from any property and the location and direction of the music source

this type of music it is unlikely that Code Enforcement would get a reading over the allowed decibel level. Because the music and events are concluded before 10:00 pm the plainly audible portion of the code is not relevant in this case.

There was one noise complaint made to the Marion County Sheriff's Office on July 1, 2012 and that complaint was made at 9:13 pm and the complainant was advised by the responding deputy that if the music ran past 10:00 pm to call the nonemergency dispatch. No further contact was made by the complainant.

No prior action was taken concerning the August 2011 and the July 1, 2012 event by either Marion County Code Enforcement or Marion County Planning Division. The Marion County Mass Gathering Ordinance 1230 regulates events by size and time and is not restrictive to any zone. When analyzing both events, neither met the size or time thresholds listed in the code neither did the property owner register himself or his property as an event business/location. Because these were both singular events, the property could not be held to land use standard as a home occupation. These facts fell squarely under the event language and as such were not regulated by Marion County.

After the July 26, 2012 event Code Enforcement Officer Laura Pekarek and Marion County Planning Division's Principal Planner Joe Fennimore contacted Mr. Sonnen to talk about the recent event and to discuss Mr. Sonnen's OLCC permit for two future events currently planned for August 26, 2012 and September 16, 2012. The addition of future events in the same year and the continued concerns of the neighboring properties did warrant action by Marion County. In our conversation it was determined that the past and future events may meet the intent of the language found in the new agri-tourism event language. The property owner has completed and submitted his application for a conditional permit for his agri-tourism events.

On July 24, 2012, Joe Fennimore, Eric Anderson (Engineering/Driveways) and I met with property owner at the event location on his property to complete an inspection. The inspection confirmed what had been reported in the site plan as to the location, configuration and access (ingress/egress). Also, our conversation with the property owner confirmed his commitment to mitigate the dust issues as Kiliam Loop Road is graveled. During our meeting we encouraged the property owner to contact the local fire district to get their input on ingress/egress issues for emergency fire, life and safety services and to set up a fire protection plan. I also encouraged the property owner to contact the Marion County Health Department to determine their requirements regarding public health and sanitation services.

All other contacted agencies either failed to comment or stated no objection to the proposal.

7. Applicants have the burden of proving all applicable standards and criteria are met.
8. According to MCC 17.119.010, a conditional use is an activity that is basically similar to other uses permitted in the zone, but due to some of its characteristics that are not entirely compatible with the zone, the use could not otherwise be permitted. Review of the proposed conditional use ensures the use will be in consonance with the purpose and intent of the zone.
9. Under MCC 17.119.070(B) the conditional use, as described by the applicant, must be in harmony with the purpose and intent of the zone. MCC 17.136.010 contains the EFU zone purpose statement. Chapter 17.136 MCC provisions are intended to carry out the purpose and intent of the EFU zone. If applicable Chapter 17.136 MCC and related criteria are met, the proposed use will be in harmony with the purpose and intent of the zone. The criteria are discussed below and the Marion Board of Commissioners (the Board) finds that the criteria are satisfied and that the request meets the purpose and intent of the EFU zone. MCC 17.119.070(B) is met.

10. Under MCC 17.119.070(C) any condition imposed is necessary for the public health, safety or welfare, or to protect the health or safety of persons working or residing in the area, or for the protection of property or improvements in the neighborhood. As discussed below, the Board finds that the approval criteria are met, subject to meeting certain conditions. These conditions are necessary for the public health, safety or welfare, or to protect the health or safety of persons working or residing in the area, or for the protection of property or improvements in the neighborhood

11. The county's agri-tourism provisions are codified at MCC 17.120.090:

Agri-tourism and other commercial events or activities in conjunction with a farming operation shall meet the following use criteria and development standards. An applicant may be approved under subsection (A) or (B) and subsection (C) of this section:

A. *A farming operation may conduct a single event on a tract in a calendar year subject to the following:*

1. *The event or activity shall be incidental and subordinate to the existing farm use on the tract; and*
2. *The duration of the event or activity shall not exceed 72 hours; and*
3. *The maximum attendance at the event or activity shall not exceed 500 people; and*
4. *The maximum number of motor vehicles parked at the site for the event or activity shall not exceed 250; and*
5. *The event or activity shall occur outdoors, in temporary structures, or existing permitted structures subject to fire life safety requirements. Temporary structures shall be removed at end of the event; and*
6. *The event or activity shall cause no alteration to land including, but not limited to, grading, filling or paving.*

B. *A farming operation may conduct up to six events or activities in a calendar year subject to the following:*

1. *The events or activities shall be incidental and subordinate to the existing farm use on the tract; and*
2. *The duration of each event or activity shall not exceed 72 hours; and*
3. *The events or activities shall not involve the construction or use of new permanent structures; and*
4. *The events or activities shall not, in combination with other agri-tourism or other commercial events or activities authorized in the area, materially alter the stability of the land use pattern of the area; and*
5. *The event or activity shall cause no alteration to land including, but not limited to, grading, filling or paving;*
6. *Any approval shall be valid for two years and may be renewed subject to a review that the use continues to meet all applicable criteria and standards.*

C. *A farming operation may conduct events more frequently or for a longer duration than provided for in subsections (A) and (B) of this section subject to the following:*

1. *The events or activities shall be incidental and subordinate to existing commercial farm use of the tract and are necessary to support the commercial farm uses or the commercial agricultural enterprises in the area; and*
2. *The events or activities shall not involve the construction or use of new permanent structure; and*

3. *The events or activities shall not, in combination with other agri-tourism or other commercial events or activities authorized in the area, materially alter the stability of the land use pattern of the area; and*
4. *The event or activity shall cause no alteration to land including, but not limited to, grading, filling or paving; and*
5. *The lot or parcel that the event or activity takes place on shall comply with the minimum lot size of that zone; and*
6. *The events or activities do not exceed 18 events in a calendar year; and*
7. *Any approval shall be valid for two years and may be renewed for an additional two years subject to a review that the use continues to meet all applicable criteria and standards. After four years, the applicant must reapply for a permit and the county shall provide public notice and opportunity for public comment and limit review to approved activities and events, conformance with conditions and approval criteria and standards.*

D. *The events or activities in subsection (A), (B), or (C) of this section shall comply with conditions established for:*

1. *The types of events and activities authorized including the number of events or activities, duration of events or activities, attendance of events or activities, and hours of operation of events or activities; and*
2. *The location of existing and proposed temporary structures used in conjunction with the events or activities. Temporary structures must be removed at end of the event or activity; and*
3. *Location of access, egress, and parking facilities; and*
4. *Traffic management including project number of anticipated vehicles; and*
5. *Sanitation and solid waste;*
6. *Notice of public hearing or any decision approving events under the provisions of this section shall be mailed to all owners of property, any portion of which is within 1,500 feet of the subject property.*

E. *Any approval for events or activities under subsection (A) or (B) of this section is for the applicant only and does not apply to the land.*

F. *The term "farm operation" means all lots or parcels of land in the same ownership that are used by the farm operator for farm use.*

G. *Wineries approved for uses under this section are prohibited from qualifying for uses under MCC 17.125.030.*

12. Applicants ask for up to six non-winery related events or activities in a calendar year. MCC 17.120.090(B), and (D) through (F) apply.

MCC 17.120.090(B)

13. **The events or activities shall be incidental and subordinate to the existing farm use on the tract.** To fully examine this criterion, we need to know the existing farm uses on the tract, the events or activities proposed for the tract, and the meaning of the terms incidental and subordinate.

Existing farm use on the tract. MCC 17.110.223 defines farm use as:

[T]he current employment of land for the primary purpose of obtaining a profit in money by raising, harvesting and selling crops or the feeding, breeding, management and sale of, or the

produce of, livestock, poultry, furbearing animals or honeybees or for dairying and the sale of dairy products or any other agricultural or horticultural use or animal husbandry or any combination thereof. "Farm use" includes the preparation, storage and disposal by marketing or otherwise of the products or by-products raised on such land for human or animal use. "Farm use" also includes the current employment of land for the primary purpose of obtaining a profit in money by stabling or training equines including but not limited to providing riding lessons, training clinics and schooling shows. "Farm use" also includes the propagation, cultivation, maintenance and harvesting of aquatic species and bird and animal species that are under the jurisdiction of the State Fish and Wildlife Commission to the extent allowed by the rules adopted by the State Fish and Wildlife Commission. "Farm use" includes the on-site construction and maintenance of equipment and facilities used for the activities described in this section. "Farm use" does not include the use of land subject to the provisions of ORS Chapter 321, except land used exclusively for growing cultured Christmas trees as defined in ORS 215.203(3) or land described in ORS 321.267(3) or 321.824(3).

The applicant testified that farm use on the property consists of raising and training race horses, a horse boarding operation that is based on self-care, either pasture or stall, and the production and sale of hay grown on the property.

Proposed events. The supplemental application form asks applicants to explain what will happen at events, asks applicants to be specific about times and activities, and asks applicants to describe the nature of proposed events. Applicants responded: *Event will feature match horse races, music will be live for entertainment. Start times 11:30 am to 8:30 pm.* The form also asks whether amplified sound will be used. Applicants responded: *Speaker will be set up for race announcements and band and singer amplification.* Applicants provided additional information at hearing and in supplemental submissions.

Mr. Sonnen testified that match races involve two horses running against each other. He has about five match horse races, involving ten horses at an event so few horse trailers come to the property. The match races are an incentive to people who board horses, and some of his horses also participate in the match races. Mr. Sonnen testified that events are used as a platform to advertise his boarding operation.

Incidental and subordinate. Incidental and subordinate are not defined in ORS 215.283(4) through (6) or in the MCC. Ordinary dictionary definitions apply:

- Webster's Dictionary offers the following definitions of incidental: 1a: being likely to ensue as a chance or minor consequence; 1b: minor.
- Webster's Dictionary offers the following definition of subordinate: 1: placed in or occupying a lower class, rank, or position: inferior.

The MCC (and ORS) do not address how to evaluate farm use versus events to determine whether an event is incidental and subordinate to farm use. Applicants' response makes a non-interference or land based comparison – acreage devoted to events is unused or minor compared to total acreage. However, from applicants' aerial photo site plan, the portion of the property devoted to parking, spectators and the race track appears to be a significant portion of the property. The applicant testified that the area on the property where the event takes places, including the parking area, is available as pasture or use as a riding area when not being used for events.

Incidental and subordinate could be measured on a monetary basis; the percentage of income attributable to farm use versus the percentage of income from event use. This is the type of test devised by the state for winery and farm stand uses. The agri-tourism bill was moving through the legislature during the same session as the latest winery bill, and the legislature could have implemented a percentage test for agri-

tourism events but did not. This indicates that the legislature was not limiting the evaluation of incidental and secondary uses to solely a monetary measurement, though it may be part of an evaluation. Applicants did not provide information on income from farm use versus income from events.

The applicant submitted information and testimony to address the farm income versus income generated from events. The applicant testified that the boarding operation currently consists of 44 owners, paying \$75 per month for a yearly total of approximately \$40,000. In addition, the hay grown on the property generates revenue of \$15,000 to \$22,500 per year. Based on this information, the Board concludes that the farm operation generates between \$55,000 and \$62,500 per year. The applicant submitted a spreadsheet outlining expenses and revenues for an event held in August, 2012. The spreadsheet demonstrates that the income generated by the event was approximately \$13,000. Opponents question some of the receipts and speculate that receipts from the July event may have been included, however, based on the information and testimony the Board concludes that the income generated from each event is approximately \$13,000. If the applicant conducts six events generating \$13,000 each, the events would generate revenue of \$78,000 which would exceed the top of the range of expected farm income on the property. If the applicant was limited to three events, the income generated would be \$39,000 which is less than the lower end of the expected farm income. The Board finds that income generated from allowing three events is incidental and subordinate to the income generated from the farm operation. MCC 17.120.090(B)(1) is satisfied.

14. The duration of each event or activity shall not exceed 72 hours. Applicants propose one-day events lasting from 11:30 a.m. to 8:30 p.m. Any approval will be conditioned to reflect no more than the number and duration of events and activities requested by applicants. As conditioned, MCC 17.120.090(B)(2) is satisfied.
15. The events or activities shall not involve the construction or use of new permanent structures. Applicants do not propose permanent structures as a part of the application, and none will be allowed. A condition of any approval shall prohibit permanent structures associated with proposed events. As conditioned, MCC 17.120.090(B)(3) is met.
16. The events or activities shall not, in combination with other agri-tourism or other commercial events or activities authorized in the area, materially alter the stability of the land use pattern of the area. The Planning Division staff report notes that no other properties in Marion County are approved to host agri-tourism events and no other properties in the area are approved for commercial events. The only event specifically mentioned by participants is the Woodburn Tulip Festival, an annual event that takes place roughly four and a half miles from the subject property. The person mentioning the tulip festival said it materially altered the land use pattern of the area because it causes long traffic back-ups on Highway 211. It is not apparent how the once-a-year traffic back-up on the state highway alters the land use pattern in the area any more than the existence of the highway itself.

Theoretically, with a six event maximum per year, an event would take place once every two months, and farm uses could likely tolerate that schedule. But as the applicant pointed out at the public hearing, events will be concentrated in a three-to-four month period to avoid the rainy season. This puts the events occurring about every other week during what is, according to witnesses, the busy farming season. One participant pointed out that aerial and other spraying occurs in the area and that large farm equipment move up and down the roadways. The frequency of events during the most active farming seasons may make it more difficult to conduct normal farm practices and could, over time, if other events are approved in the area, alter the land use pattern in the area by discouraging traditional farm uses. However, since the Sonnens submitted the first agri-tourism application and there are currently no other event-related happenings in the area, there are no cumulative affects on the stability of the land use pattern to consider. In addition, the Board finds that any potential affects will be further reduced by allowing only three events to occur, MCC 17.120.090(B)(4) is met.

17. The event or activity shall cause no alteration to land including, but not limited to, grading, filling or paving. Neighbors point out that the horse racing track was graded and berm work was done on the property prior to the public hearing. At the hearing before the Board, the applicant explained that the track was not graded, it was rotovated before each event and that the berm in question existed on the property at the time the applicant purchased the property. The Board finds that MCC 17.120.090(B)(5) is met.
18. Any approval shall be valid for two years and may be renewed subject to a review that the use continues to meet all applicable criteria and standards. As noted above, this application was filed as a result of an enforcement action. The applicant conducted an event in July, 2012, without Planning Division approval, after being contacted by Code Enforcement this application was filed. While the application was under review the applicant held another event in August, 2012. Since the application was filed in 2012 for events to be held in the 2012 – 2013 calendar years, the Board finds that this approval shall be valid for conducting three events during the calendar year 2013. It may be renewed subject to a review that the use continues to meet all applicable criteria. This provision will be made a condition of approval. MCC 17.120.090(B)(6) is satisfied.

MCC 17.120.090(D)

19. Under MCC 17.120.090(D) and MCC 17.120.090(B), events or activities shall comply with certain established conditions.
20. **The types of events and activities authorized including the number of events or activities, duration of events or activities, attendance of events or activities, and hours of operation of events or activities.** The Board finds that, although the event is described as a match horse race with live music, their purpose is to provide advertising for the horse boarding, stabling, and training operation being conducted on the property. As such, conditions of approval will require each of the three events to be conducted as proposed by the applicant with a maximum attendance of 600 persons, hours of operation shall not commence before 11:30 a.m. or extend beyond 8:30 p.m.
21. **The location of existing and proposed temporary structures used in conjunction with the events or activities.** Temporary structures must be removed at the end of the event or activity. The only temporary structures proposed are a ticket booth and a band stand. These structures are fairly innocuous and could be allowed with a removal provision as a condition of any approval.
22. **Location of access, egress, and parking facilities.** Applicants received approval for the access, egress and parking plan from Marion County DPW and the Woodburn Fire District. Any approval of this application will be conditioned on providing access, egress and parking as shown on the approved plans.
23. **Traffic management including project number of anticipated vehicles.** Applicants did not submit a traffic management plan and DPW did not request any road care conditions except twice a day watering during events. The Board finds that the traffic impacts on Kiliam Loop were fully evaluated by DPW and that, based on this evaluation, a traffic management plan is not warranted in this instance.
24. **Sanitation and solid waste.** At the hearing before the Board, the applicant testified that the Marion County Environmental Health Department (EHD) did not require a sanitation plan. The department was sent a request for comments on the case and did not respond. At the request of the Board, staff contacted EHD to verify what, if any, requirements it would have this case. The department responded that:

"We require any food vendors to obtain a temporary restaurant license for each event or operate from a licensed mobile food unit. If drinking water is provided onsite from a non-public source, it will need to be tested for microbiological and chemical contaminants prior to being used. We would expect there to be an

adequate number of restroom facilities with associated hand washing stations for the anticipated number of attendees and vendors."

The applicant submitted a letter from the provider of the restrooms outlining the recommended number of units based on expected attendance. In addition, the applicant states that no onsite drinking water is provided and that all solid waste generated by the event is removed and properly disposed.

Any approval will be conditioned to require all food vendors obtain the appropriate license required by Marion County Environmental Health Department, portable toilets and hand washing stations as recommended by the provider. Drinking water shall not be provided by the on-site well and all solid waste generated by the events shall be removed and properly disposed.

25. Notice of public hearing or any decision approving events under the provisions of this section shall be mailed to all owners of property, any portion of which is within 1,500 feet of the subject property. Comparing the notification map in the file with the distance figures on Marion County Assessor's map 51W15, the MCC 17.120.090(D)(6), the 1,500 foot notification requirement is met.

MCC 17.120.090(E)

26. Any approval for events or activities under subsection (A) or (B) of this section is for the applicant only and does not apply to the land. A condition of any approval will state that the approval is valid only for applicants Rudy and Paulette Sonnen and is not transferable to subsequent property owners. As conditioned, MCC 17.120.090(E) is satisfied.

MCC 17.120.090(F)

27. The term "farm operation" means all lots or parcels of land in the same ownership that are used by the farm operator for farm use. This is a definition and not a criterion.

MCC 17.136.060(A)

28. Under MCC 17.136.060(A), the following criteria apply to all conditional uses in the AR zone:
1. *The use will not force a significant change in, or significantly increase the cost of, accepted farm or forest practices on surrounding lands devoted to farm or forest use. Land devoted to farm or forest use does not include farm or forest use on lots or parcels upon which a non-farm or non-forest dwelling has been approved and established, in exception areas approved under ORS 197.732, or in an acknowledged urban growth boundary.*
 2. *Adequate fire protection and other rural services are or will be available when the use is established.*
 3. *The use will not have a significant adverse impact on watersheds, groundwater, fish and wildlife habitat, soil and slope stability, air and water quality.*
 4. *Any noise associated with the use will not have a significant adverse impact on nearby land uses.*
 5. *The use will not have a significant adverse impact on potential water impoundments identified in the Comprehensive Plan, and not create significant conflicts with operations included in the Comprehensive Plan inventory of significant mineral and aggregate sites.*

29. According to *Schellenberg v. Polk County*, 21 Or LUBA 425, 440 (1991), a three-part analysis is required to determine whether a use will force a significant change in or significantly increase the cost of farm or forest practices on surrounding lands devoted to farm use. First, the county must identify the accepted farm and forest practices occurring on surrounding farmland and forestland. The second and third parts of the analysis require the county to consider whether the proposed use will force a significant change in the identified accepted farm and forest practices, or significantly increase the cost of those practices.

Surrounding lands are not defined in the ORS or MCC, and applicants suggest no definition, but the 1,500 foot notice area for agri-tourism cases suggests the county will consider the area within 1,500 feet of the subject property as surrounding lands. The farm uses in the area generally consist of berry fields, nursery, grain fields, pasture land and rearing of livestock. Farm practices related to these uses include aerial spraying, cultivation, harvesting both by hand and machine. Opponents identified potential event related conflicts with aerial and other spraying, field access, machinery movement, and breeding stock disturbance. The primary conflict appears to be related to traffic using Kiliam Loop Road for access to the events. Opponents contend that traffic from the events generates dust, requires keeping some livestock indoors instead of pasture and could interfere with the movement of large farm machinery on the road. The dust abatement condition required by DPW is adequate to address that issue. The condition to limit the number of events to no more than three will reduce the number of potential conflicts with nearby farm operations. In order to further reduce the potential for conflict, the applicant will be required to notify the Planning Division at least 45 prior to the first event of the year so that notice can be mailed to property owners in the notice area and to require the property owner to record a Declaratory Statement with the property deed because the subject property is near a resource zone. This serves to notify the applicant and subsequent owners that there are farm or timber operations nearby and that a compatible relationship is necessary to promote the continuation of commercial farm and timber operations.

The Board finds that, subject to meeting the conditions outlined above the proposed events will not force a significant change in, or significantly increase the cost of, accepted farm or forest practices on surrounding lands devoted to farm or forest use. MCC 17.136.060(A)(1) is satisfied.

30. The subject property is already served by utilities. Applicant provided a letter from the Woodburn Fire District approving applicants' access, egress and parking plan. DPW engineering commented that driveway permitting will be required for the proposed use. A driveway permit will help ensure adequate access and egress to the public right-of-way. Subsequently, the applicant obtained the required access permit. The Marion County Sheriff's Office provides police services and, as shown in the record, responds to the area. The Board finds that adequate fire protection and other rural services are or will be available when the use is established, and MCC 17.136.060(A)(2) is satisfied.
31. Butte Creek is adjacent to the east boundary of the subject property, and a portion of the property is in the Butte Creek flood plain. No event related activities are proposed for the floodplain area. A condition of any approval would forbid event related activities in the floodplain area. Butte Creek is an MCCP identified sensitive intermittent stream, and Marion County DPW identifies Butte Creek as an essential salmon habitat and winter steelhead rearing habitat. Event related activities are not proposed in the property's riparian frontage. No sensitive stream or fish habitat issues are likely to arise. No new construction is requested or allowed that might disturb soil stability, although applicants graded a portion of the subject property prior to hearing. The subject property appears fairly flat, and with event related grading prohibited as a condition of any approval, no adverse impact on soil and slope stability will likely occur.

Dust generated by traffic has the potential for minor adverse affect air quality. DPW requested a condition requiring the roadway to be watered twice daily during events to help abate traffic related dust. A condition of any approval requiring watering at least twice daily is needed. The subject property is not in a Sensitive Groundwater Overlay (SGO) zone. No MCCP identified major or peripheral big game habitat or watershed areas are on or near the subject parcel. The Board finds that MCC 136.060(A)(3) is satisfied.

32. Noise is a major issue in this case. Amplified music and commentary will be the primary noise source at proposed events. MCCE Officer Pekarek commented that in her experience, if the music ends prior to 10 p.m., noise levels should not exceed MCC 8.45.050 standards. MCC Chapter 8.45 is the county's noise control regulation. Under MCC 8.45.050(A), it shall be unlawful for any person to produce or permit to be produced, with a sound-producing device, a sound that:

1. *When measured at a place on the complainant's property line that is closest to the noise source, or within the complainant's dwelling unit if it is on the same property as the noise source but is not the source of the sound, exceeds:*
 - a. *Fifty-five dBA at any time between 10:00 p.m. and 7:00 a.m. the following day; or*
 - b. *Sixty-five dBA at any time between 7:00 a.m. and 10:00 p.m. the same day, except that if the sound-producing device is an off-road vehicle operating in a nonroad area, the sound level may not exceed 80 dBA; or*
2. *Is plainly audible at any time between 10:00 p.m. and 7:00 a.m. the following day within a dwelling unit that is not the source of the sound.*

Under MCC 8.45.020, sound-producing device means:

1. *Loudspeakers and public address systems;*
2. *Radios, tape recorders or tape players, phonographs, compact disc players, television sets and stereo systems, including those installed in a vehicle;*
3. *Musical instruments that are amplified or unamplified;*
4. *Sirens and bells;*
5. *Motor vehicle engines or exhausts;*
6. *Domestic power tools and equipment used for home or building repair, maintenance, alteration or similar construction projects, including but not limited to powered hand tools, lawn mowers, garden equipment and snow removal equipment, but only between 10:00 p.m. and 7:00 a.m. of the following day;*
7. *Heat pumps, air-conditioning units, and refrigeration units, including those mounted on vehicles; and*
8. *Other similar sound-producing devices.*

Activities must conclude by 8:30 p.m. MCC 8.45.050(A)(2) will not apply. An exemption to MCC 8.45.050(A) is found in MCC 8.45.080. Under MCC 8.45.080(A), notwithstanding MCC 8.45.050, sounds generated by activities for which a mass gathering permit or conditional use permit has been granted are permitted if the activities are conducted in accordance with the terms and conditions of the permit. To prevent excess noise from activities being allowed under the exemption provision, a condition of any approval shall impose the following standards. Noise from the subject property shall not exceed:

- a. *Fifty-five dBA at any time between 10:00 p.m. and 7:00 a.m. the following day; or*
- b. *Sixty-five dBA at any time between 7:00 a.m. and 10:00 p.m. the same day, except that if the sound-producing device is an off-road vehicle operating in a nonroad area, the sound level may not exceed 80 dBA.*

The Board finds that with this condition, there will likely be no significant adverse impact from noise on nearby land uses, and MCC 17.136.060(A)(4) is satisfied.

33. No MCCC identified mineral and aggregate sites or potential water impounds are on or near the subject property. MCC 17.136.060(A)(5) is satisfied.

MCC 17.110.680

34. Under MCC 17.110.680, no permit for the use of land or structures or for the alteration or construction of any structure shall be issued and no land use approval shall be granted if the land for which the permit or approval is sought is being used in violation of any condition of approval of any land use action, is in violation of local, state or federal law, or is being used or has been divided in violation of the provisions of this title, unless issuance of the permit would correct the violation.

DPW commented:

It appears that a wooden fence along the property frontage on Kiliam Loop Road is located within the 30-foot public right-of-way half-width. A condition of land use case CU 05-045 was to remove the fencing, which was not accomplished for unknown reason. As a modified requirement of the current conditional use proposal, the applicant is required to record a removal agreement as described in Marion County Code Section 17.112.020(c), as a practical alternative to removal given the fact that the current state of Kiliam Loop NE is a limited width gravel road.

No land use applications, including this one, may be approved on the subject property as long as there is an active permit violation on the tract if the application will not resolve the violation. The fence was not removed as a result of CU 05-045 because that case was denied. The recommendation by DPW to attach a condition of approval requiring the property owner(s) to file a removal agreement for the fence will resolve the violation. The Board finds, with the condition of approval, MCC 17.110.680 is met.

MCCP IDENTIFIED SCENIC DRIVE

35. Highway 211 in the area of the subject property (and the portion within the 1,500 foot notification area) is an Marion County Comprehensive Plan (MCCP) identified scenic drive. There are no MCCP policies specific to scenic drives and no evidence that the proposal will interfere with the Highway 211 scenic drive designation.
36. The Board finds that the applicant has met the burden of proving compliance with the applicable standards and criteria for conducting three agri-tourism events on the property, subject to meeting certain conditions.

EXHIBIT B

The Marion County Board of Commissioners adopts the following conditions in Conditional Use Case 12-028/Sonnen.

1. All events must be conducted as described by the applicant, incidental to the horse boarding, training, breeding and production of hay.
2. This approval is valid only for Rudy and Paulette Sonnen and is not transferable.
3. This approval is valid only for the calendar year 2013. The approval may be extended on a yearly basis subject to a review by the Planning Director or Hearings Officer that the use continues to meet all applicable criteria and standards.
4. The approval will allow up to three events between January 1, 2013 and December 31, 2013.
5. Prior to conducting any events, the current property owner(s) shall sign and submit a Farm/Forest Declaratory Statement (enclosed) to the Planning Division. The applicants shall record this statement with the Marion County Clerk after it has been reviewed and signed by the Planning Director.
6. The applicant shall satisfy the following conditions proposed by the Marion County Department of Public Works Land Development Engineering and Permits Division:
 - **Condition A** - No event vehicle parking within the public right-of-way is allowed. All event parking must be accommodated for on private property.
 - **Condition B** - The event parking shall adhere to the detailed parking and internal circulation plan approved by Public Works Engineering.
 - **Condition C** - Perform dust abatement measures on Kiliam Loop NE from Union School Road to Kiliam Loop NE for the duration of the event(s), a distance of approximately two-thirds of a mile.
 - **Condition D** - A wooden fence is located within the 30-foot public right-of-way half-width along the Kiliam Loop property frontage. The fence must either be removed from the 30-foot public right-of-way half-width, or the property owner shall record a removal agreement as described in MCC 17.112.020(c).
7. All events must be consistent with the applicants' proposal which includes:
 - A) Maximum attendance of 600 persons.
 - B) Hours of operation shall not commence before 11:30 a.m. or extend beyond 8:30 p.m.
 - C) No permanent structures shall be constructed to accommodate the events.
 - D) Compliance with the site plan submitted with the application.
 - E) Security from a licensed security firm.
 - F) Portable toilets and hand washing stations as recommended by provider.
 - G) Drinking water shall not be provided by the on-site well.
 - H) Removal and proper disposal of all solid waste generated by the events.
 - I) Compliance with Chapter 8.45 of the Marion County Code regarding noise control.
8. All food vendors shall obtain the appropriate license required by Marion County Environmental Health (contact at 503-588-5407).

9. The sale and consumption of intoxicating liquor from a facility located on the premises for any of these events must receive approval from the Oregon Liquor Control Commission and obtain a temporary license or letter of authority.
10. The applicant shall notify the County Planning Division of the event dates as least 45 days in advance of the first scheduled event and pay for mailed notice to property owners in the notice area. If event dates are changed after the notice, the notice shall be resent at the expense of the applicant.
11. The approved use shall operate in continual compliance with conditions set forth in this order. Failure to comply with conditions of approval may result in this approval being revoked. Any revocation could be appealed to a County hearings officer for a public hearing.
12. This approval is valid only when exercised within one year of the decision becoming final.

Re: Final Testimony for Land Use Hearing: CU12-028 (Sonnen)

12/25/2012

Paulette Alexandria and Greg Thorsgard

We are asking you to deny the permit based upon all we and our neighbors have submitted to planning, the hearing officer and now you, our Marion County Commissioners.

We wish to say that no one enjoys fighting their neighbors. We wish our neighbors prosperity and joy. That said, when the actions of others infringes on the rights of neighbors and negatively changes the nature of the area something must be done to stop it. That is what is happening here and that is why we are speaking up. Just know, it is not pleasant, nor a way to build a civil county.

We would hope that the County Commissioners would read carefully all testimony that was submitted up to this point (submitted on August 8, 2012 and December 5, 2012) as we have poured our hearts out defending our property values and our ability to make a living and peacefully coexist on our own property.

Incidental and Subordinate

The legislative intent of SB 960 was to help farmers sell what they produce not to allow farmers to start a concert venue or an amusement center. Our legislators wanted to help farmers, by allowing them to hold events suitable for marketing what they produced. That is not what is happening at 13206 Kiliam Lp NE, Woodburn, OR.

We contend that the Sonnen's have been trying to run a pasture for hire concert venue (home concert business) as long as they have owned the property at 13206 Kiliam Loop. They did that with the Plkathon and Reggae Festival. The receipts turned in by Mr. Sonnen corroborate that theory as all receipts but one (Fencing) was for Manuel Villanueva, a Woodburn shop owner and prove that Sonnen was not even involved in orchestrating these all day concerts with drinking.

We contend that Mr. Sonnen is simply hiring out his pasture to Manuel Villanueva (either for a fee or a percentage of the take) and the concert and horse race are all a way to market Mr. Villanueva's western wear business, not Mr. Sonnen's farm business. The posters all mention El Forastero (Villanueva's business), as do the signs. There is no mention of Mr. Sonnen's farm business in the marketing of this event and now that we have receipts it is obvious that Mr. Villanueva is the one putting on the event for HIS own marketing purpose.

You can see from the attached event spreadsheet that Mr. Sonnen submitted a completely different set of numbers in his rebuttal to the hearing officer and when asked for actual receipts everything changed dramatically. What was originally submitted was apparently guesses (since he was not coordinating nor paying for the event), but when asked for actual receipts, the vendors and amounts changed because he had to go to the person who actually contracted and paid for the event – Manuel Villanueva. Many receipts were not submitted at all.

We are horse people and know that there is NO horse entity which markets horse activities in this manner. This event is an all day concert with drinking and it is obvious now that we have some receipts that this is Mr. Villanueva's event and designed to market his western wear business. It is NOT incidental nor subordinate to an existing farm use on the tract because it is marketing Manuel Villanueva's western wear business, El Forastero in Woodburn. There is no intent to market horse boarding. This is not how you market horse boarding. Horses and an all-day drinking concert do not go together.

**Footing –all weather substance (hog fuel, sand, shredded rubber) added to the riding surface to create a slip/mud/water free environment for horse training purposes.*

Re: Final Testimony for Land Use Hearing: CU12-028 (Sonnen)

12/25/2012

Paulette Alexandria and Greg Thorsgard

Revenue Calculation

No matter how you look at this event financially, it does not make sense. Mr. Sonnen submits all types of expenses and very little in the way of revenue, but there is no doubt that Mr. Sonnen is making money from these events. We contend that he is making a flat fee per event or is getting a percentage of the take no matter how much the event actually makes to the promoter. No one does all the work involved in this type of all-day concert with drinking without making money. But let's look closely at the revenue.

If just one event was held and as stated \$12,250 were made, plus parking (\$5 a car, although \$18 a car was suggested as well) the revenue for one event would be \$13,050.

If you look closely at the Western Beverage invoice submitted by Mr. Sonnen, you will see the event purchased 15 large kegs contained a total of 232.5 gallons. The event is selling 16 ounce glasses of beer at the event and would surely try to buy the amount of beer anticipated consumed? After all, this would be the 4th event of this type presented and the amount of beer consumed could be well estimated. Given the amount of beer the event purchased, the event would sell 1860 beers. At \$5 each, the event would gross \$9,300 from beer sales alone. Why is the amount of revenue submitted by Mr. Sonnen so different from the amount of beer purchased by the event promoter? Based upon this trend, what other areas of revenue could be missing?

We contend that Mr. Villanueva is gaining a profit from this event, and or absorbing a loss from this event as a cost of doing business as El Forestero, a western wear business in Woodburn. It is a part of his marketing budget and the advertising receipts submitted are a part of Mr. Villanueva's marketing budget for the store.

Sonnen submits farm revenue from 4 horse owners (10 horses)? Once again, there is no dollar amount mentioned in this testimony? How can you accept this to prove that Sonnen actually makes the amount of revenue from his horse boarding facility? 10 horses is \$9,000 a year. He claims to have 45 paid horses. Where is the proof he actually collects the alleged \$40,500 in boarding fees?

An aside -- (In the written notes, the boarders are testifying to the fact that the farm has a covered riding arena, tack room, round pen, starting gate, track, pasture and fishing pond. As was stated in our testimony at the Dec. 5th hearing, if there is no footing* in the covered arena, round pen, starting gate, track they cannot be used for training a horse humanely. They cannot be used at all in the winter. The covered riding arena is much smaller and more narrow than conventional horse arenas as this was a converted chicken barn. It is very hard to train a horse in this environment. It is unknown if the covered arena has footing*.)

Sonnen does not offer proof of revenue from growing hay. After reading the next section you will see It is unlikely that the property produces more than \$13,398.40 per year of grass hay (27.16 x 3.5 tons per acre x \$140 a ton), if the hay is salable at all. There are only 27.16 acres available for farming and horses are grazing that area throughout the summer. No one, but the cheapest hay buyers want to buy hay from a pasture that was grazed by 50 horses since the hay would be full of manure and of poor quality. You cannot feed/graze 50 head of horses and cut and bale hay from the same field, Based upon the above, it is doubtful that there is farm income from hay sales.

**Footing –all weather substance (hog fuel, sand, shredded rubber) added to the riding surface to create a slip/mud/water free environment for horse training purposes.*

Re: Final Testimony for Land Use Hearing: CU12-028 (Sonnen)

12/25/2012

Paulette Alexandria and Greg Thorsgard

All of this makes it unlikely that the revenue from these events is incidental nor subordinate, but actually \$13,050 from one event versus \$9,000 from horse boarding and/or a potential \$13,400 from hay sales? Having two events would quickly eclipse the alleged farm revenue and even if we say that Sonnen makes \$40,000 a year from horse boarding and \$13,400 from hay sales, \$53,400 a year, a few events will quickly become the dominate source of income for the farm. As we stated, none of this makes financial sense to anyone but Manuel Villanueva and as a flat fee and/or percentage of take to Mr. Sonnen.

Acres Calculation

Sonnen keeps testifying that they have 70 acres, which does not seem to be true. They have 62.83 acres. After looking at the Marion County Tax Assessor's maps it appears they have 4 parcels. (see attached map)

1. Tax lot 500 - A 9.88 acre parcel which has their home and many barns and outbuildings as well as a large pond take up this portion of the property. There may be another dwelling unit.
2. Tax lot 200 - A .79 acre piece has a rented mobile home on it.
3. Tax lot 400 - Another 7.83 acre tax lot that is located where the event is held
4. Tax lot 300 - Another 44.33 parcel which has a large barn on one end (near the entrance to the event) surrounded by machinery and horse trailers. This parcel abuts Butte Creek. About 20 acres of this parcel is in the Floodway/plain of Butte Creek and cannot be farmed as it is flooded most of the winter and very wet into June/July. (see attached map) We know this because we have similar ground. You cannot get machinery onto this ground until late June or July as it is water logged with standing water.

The amount of acreage which is available for events or farming (is pasture and not barns or homes) is the 7.83 parcel plus the 44.33 acre parcel minus the 20 acres of floodplain/way and 5 acres of barns and machinery. That leaves 27.16 acres for farming activities such as grazing horses or raising ha(see map).

The events are held on the open pasture portion of the property. If you look at the maps I have included herein and then look on Google Maps at the satellite view of the Sonnen property you can see the straight track and starting gate and estimate the amount of acreage these events use. Use this track as a guide and you will see that the event uses at least double the amount of area that Mr. Sonnen states in his sworn testimony. We estimate that more than half of the usable pasture or 15 acres is used for events. Therefore these events fail the incidental and subordinate test for acreage as the events are held on more than 50% of the available ground. Therefore, these events fail the acreage test.

Time Calculation

We are hoping the County Commissioners realize that very few events are held in the winter. When asked by the hearing officers, Mr. Sonnen acknowledged he would hold events in July, August or Sept. (with June and Oct. being difficult for weather.) There would be no events in Fall, Winter or Spring.

Therefore, if you granted Mr. Sonnen up to 6 events you would be giving him ½ of the summer Sundays.

**Footing –all weather substance (hog fuel, sand, shredded rubber) added to the riding surface to create a slip/mud/water free environment for horse training purposes.*

Re: Final Testimony for Land Use Hearing: CU12-028 (Sonnen)

12/25/2012

Paulette Alexandria and Greg Thorsgard

That means half of our lovely times with our families would be used with these noisy intoxicated concerts. In Oregon we look forward to enjoying those few and fleeting summer Sundays. During these events we could not spend time out enjoying our summer weekends and would be driven into our homes or away from our homes on these days. This will negatively impact our lifestyle and the peace and comfort of our homes.

We could not have buyers of our livestock come out for half of the summer Sundays? This will negatively impact our ability to market our farm livestock production as many people shop for animals on the weekend.

We do not think that this passes the time calculation test. In addition, we do not think it passes the test for living in a civil society.

If Mr. Sonnen was willing to have events spaced all year round, maybe that would be incidental and subordinate in regard to time, BUT this is not the case. These events will all be held in July, August and September. It is not fair to take away our summer weekends and 6 of them is 50% of our Sundays!!

Based upon the facts presented herein, we ask for a denial of this permit on the property at 13206 Kiliam Lp NE, Woodburn, OR - Case CU12-028

Thank you,

Paulette Alexandria and Greg Thorsgard

Date

Physical Address - 13125 Kiliam Lp NE Woodburn, OR 97071

Mailing address – 29030 SW Towne Center Lp E, #202-204 Wilsonville, OR 97070

**Footing –all weather substance (hog fuel, sand, shredded rubber) added to the riding surface to create a slip/mud/water free environment for horse training purposes.*



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December 26, 2012

Marion County Planning Division
P.O. Box 14500
Salem, OR 97309

RE: CU12-028 (Sonnen) - Rebuttal

To Marion County Board of Commissioners:

We continue to oppose the conditional use for up to 6 agri-tourism events and also oppose even one of these events. Therefore we ask for a denial of the application.

We are submitting this testimony in addition to the testimony we presented to the Marion County Hearings Officer on August 8, 2012, the testimony we submitted to the Board of Commissioners for the December 5, 2012 hearing and in rebuttal to testimony of the applicant and comments at the hearing by others including the Marion County Board of Commissioners.

The legislature stipulated that the events held on EFU must be related to and supportive of agriculture and the agri-tourism or other commercial event or activity must be "incidental and subordinate" to existing farm use on the tract. We continue to argue that the events planned by the applicant exceed the intent by the legislature to promote economic development on EFU and at the same time protect farming operations on the applicant's land and protect other neighboring operations by limiting the negative impact. This is the reason that the legislature limited the number of events to a maximum of six per year. We argue that even allowing one event such as this in a calendar year has a negative impact to the farming operations of the surrounding EFU property owners.

Revenue Calculation

The applicant submitted as evidence a ledger of income and expenses of the August 26, 2012 event. During the December 5, 2012 hearing the Board of Commissioners asked about parking receipts as an additional revenue stream to be added to the total. The applicant answered that \$800 was collected. This addition of \$800 for parking added to that shown on the ledger of \$12,250 brings the total revenue to \$13,050 for the event.

The applicant failed to provide adequate proof of farm income for the farming operation. He stated at the hearing that he boarded approximately 50 horses with owners paying \$75/month per horse. However his documentation only provided for 10 boarded horses.

We question the fact of 50 boarded horses if the applicant could only provide receipts for 10. The applicant had a period of two weeks to provide that information and failed to do so. The boarding of 10 horses provide only \$9,000 annual income to the farm operation.

The applicant failed to provide any documented information regarding hay sales. If, as is claimed, there are 35 acres of valley grass hay (not Orchard or Alfalfa hays) that yield 3.5 ton/acre and that usually provide revenue of about \$140/ton, then we can estimate that would provide \$17,150 annual income to the farm operation.

The applicant acknowledged that other sources of income such as manure sales were incidental and not to be counted. We calculate that his annual revenue from the farming operation total \$9,000 (10 horses) + \$17,170 (hay) = \$26,150.

Applicant's revenue from the one agri-tourism event held on August 26, 2012 is stated in his ledger entry as \$12,250 + \$800 (parking) = \$13,050. When we calculate the portion of revenue for just one agri-tourism event divided by the **annual revenue from the farming operation, \$13,050/\$26,150, the value obtained is 49.9%**. The revenue from just one agri-tourism event must be considered **too high** to fall into the definition of "incidental and subordinate" that is described in SB960. **Therefore we ask for a denial of the application.**

Acres Calculation

The applicant in testimony stated that the horse racing track was 330 yards in length. If we assume that the race track is 24 ft. in width (horse and rider safety would call for at least that width), then the race track alone takes about 23,760 sq. ft. or approx. ½ acre. If we add the parking required for 375 cars and the amount of the property needed to accommodate the vendors, stages for the bands, and room for 400 attendees we should assume at least 20 acres. If the property contains the residence, barn and other farm buildings, it's hard to imagine that most of the property would not be allocated for these purposes. In other words, we question the feasibility of farming 35 acres for hay and providing pasture and boarding for 50 horses. We calculate the approximate impact of the land needed for the event as **20 acres/70acres = 28.5%**. The amount of land needed for the event exceeds the amount that can be considered "incidental and subordinate." **Therefore we ask for a denial of the application.**

Time Calculation

The Board of Commissioners and staff mentioned that the amount of time taken for the agri-tourism event should be used as one of the three factors to determine whether or not the events were "incidental and subordinate" to the farming operation. Of course,

the legislature has determined this for the county by limiting the number of events to a total of six in a calendar year. So, when the Board of Commissioners uses this time factor as a justification for granting a permit basing its decision on whether or not one event in a 365 day year or six events in a 365 day year is "incidental and subordinate" is not the intent of the law. The legislature has already defined this factor for the counties. We oppose the use of this variable as a factor for consideration as being "incidental and subordinate" in the county's weighing of factors for permitting agri-tourism events.

Therefore we ask for a denial of the application.

As we stated at the hearing on August 8, 2012 and at the December 5, 2012 hearing a review of the practices of the farming operation would reveal that these events are a major contributor and not an "incidental and subordinate" contributor to the farming operation.

In total, the applicant fails to provide evidence that substantiates the claim that these agri-tourism events are "incidental and subordinate" to the farming operation. The three tests of revenue, acreage, and time are failed.

Therefore, Friends of Marion County does not view the events as incidental and subordinate to the farming operation and we therefore request denial of the application.

Sincerely,

Roger Kaye, President
rkaye2@gmail.com
(503)743-4567

c: Katherine Daniels, DLCD