



UNION COUNTY Planning Department

Inga Williams
Planning Director

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FILE NO: 2025-0004

STAFF REPORT CONDITIONAL USE APPLICATION – HOME OCCUPATION

Purpose of the Application	Gain approval of a home occupation to provide short term rental use within a portion of the dwelling.
Relevant Ordinance Criteria	Union County Zoning, Partition, and Subdivision Ordinance (UCZPSO) Articles 2 and 21; Oregon Administrative Rules (OAR) 660-033-0130(5), and OAR 660-033-130(14) as revised and implemented January 1, 2025.
Property Location	Property at T01S R38E Section 15, designated Tax Lot 900. The subject property assigned address is 66967 Hunter Road.
Property Owner & Applicant	Tracy L. Reed
Applicant's Agent	Roger Huffman
Zone Designation	Exclusive Farm Use (UC-A1)
Comprehensive Plan Designation	Exclusive Agriculture

I. PLANNING COMMISSION AUTHORITY AND ACTION

UCZPSO 21.01 Authorization To Grant Or Deny Conditional Uses

Uses designated in this Ordinance as permitted conditional uses shall be permitted or enlarged or altered upon approval by the Planning Commission in accordance with the standards and procedures specified in this article. Changes in use, expansion or contraction of site, or alterations of structures or uses classified as conditional existing prior to the effective date of this Ordinance, shall conform to all regulations pertaining to conditional uses.

UCZPSO 21.03 Commission Action

In addition to the general requirements of this Ordinance, in granting a conditional use the Commission may attach conditions which it finds are necessary to carry out the purposes of this Ordinance. These conditions may increase the required lot or yard, control the location and number of vehicular access points to the property, increase the street width, limit the number of signs, limit coverage of height of buildings because of obstruction of view and reduction of light and air to adjacent property, and require sight obscuring fencing and landscaping where necessary to reduce noise and glare and maintain the property in a character in keeping with the surrounding area.

UCZPSO 24.12 Decision On Quasi-Judicial Land Use Application

The decision of the hearings body shall be based upon and accompanied by a brief statement that explains:

- A. The criteria and standards considered relevant to the decision;
- B. Statement of basic facts relied upon in rendering the decision; and
- C. Ultimate facts which explain and justify the reason for the decision based on the criteria, standards and basic facts set forth.

II. QUASI-JUDICIAL LAND USE DECISION

A motion to approve or deny includes findings that justify the approval or denial of the application as presented during the public hearing, which may include the application, exhibits, staff report, and testimony. Only findings which support the Planning Commission's motion should be read into the record.

Motion to Approve

"I move that the Planning Commission approve this Conditional Use application for a home occupation to allow short term rental use within a portion of a dwelling based on the analysis and findings in the staff report, information in the application, written testimony from the public, and verbal testimony at the public hearing. This motion includes the requirement for the applicant to complete all conditions of preliminary approval prior to starting the use and compliance with all conditions of operating approval throughout the existence of the use, as listed in Section III of the staff report."

Motion to Deny

"I move that the Planning Commission deny this Conditional Use application for a home occupation to allow short term rental uses within a portion of a dwelling based on analysis and findings in the staff report, written testimony from the public, verbal testimony at the public hearing, and ..., specifically these items..."

III. PROPOSED CONDITIONS OF APPROVAL

Preliminary Approval

- 1) This preliminary approval is valid for one year from the date of decision. One year time extensions may be granted by the Planning Director if the applicable regulations and circumstances of the application are unchanged. If all conditions of preliminary approval are not completed within the specified time frames, this approval shall be null and void. Final approval, which allows the applicant to begin the home occupation use, shall be granted when all preliminary conditions are completed.
- 2) The applicant shall immediately cease promoting and operating any short-term rental uses on the property until final approval is granted.
- 3) The applicant shall identify the location of the "guesthouse" identified as an Airbnb on the property. The applicant shall remove all cooking appliances, including microwaves, and any ability to reinstall such appliances.

If this use is located in a detached accessory structure, the applicant shall provide proof that all required building permits for electrical, mechanical, plumbing, structural, and septic were obtained by the property owner for renovations to the building. If such were not obtained, then the applicant shall remove the renovations or apply for the permits.

The applicant shall provide the Planning Director an opportunity to inspect to ensure compliance.

This condition shall be completed within 60 days of the preliminary approval becoming final.

- 4) The applicant shall provide a map showing at least two designated parking spaces for short term rental guests near the dwelling and shall place signage at these locations stating they are for short term rental guests only. The applicant shall provide the Planning Director with a photo of these signs to show compliance.

Operating Approval

- 1) The short-term rental use is restricted to housing overnight guests only and only in the dwelling's area as identified in the sketch provided by the applicant on page 2 of the application, dated 1/7/25.
- 2) The applicant shall restrict the short-term rental users to the number of guests on the rental agreement.
- 3) The applicant shall ensure that guests do not create noise disturbances that can be heard on adjacent properties.
- 4) The applicant shall employ on the site no more than one full-time or part-time person at any given time to help with the short-term rental use.
- 5) The applicant is allowed to place one (1) sign identifying the home occupation, not to exceed a total of 32 square feet in area and located outside of the public right of way.
- 6) The applicant shall pay the county's transient tax.
- 7) This use is approved for the applicant only and does not carry over with any land transfers.
- 8) If the applicant exceeds the Planning Commission's approved limitations of the use or applicable UCZSPO regulations at any time, this approval is null and void.

IV. BACKGROUND AND PROPERTY INFORMATION

The subject property is approximately 39.39 acres. It is zoned A-1, Exclusive Farm Use.

The property is developed. There is a dwelling, a horse barn & indoor arena, and some accessory structures. There is also a large parking lot and horse trailer storage area, horse trainings arenas, pens, and fields. The property owner runs a horse training and boarding facility call Summerville Stables. The services provided by the applicant include boarding, lessons, training, leasing of horses, sales of horses, haul-in, and facility booking.



The soils on the property are identified as forest soils. They are #13C Emily Silt Loam and #14C Emily Cobbly Silt Loam. There are no flood zones or wetlands on the property.

The subject property is outlined in blue in the following image. Property to the north, east and south is also zoned A-1. The subject property is adjacent to Hunter Road, in the area of Summerville. The property to the west of the subject property, across Hunter Road, is zoned A-4, Timber Grazing. Current uses of land to the north, east and south mostly consist of farming, with some small forest areas. Uses to the west are a mix of farm and forestry. Residential uses occur on adjacent properties.



The applicant currently advertises the entire residence as available for Airbnb booking.



Summerville, OR

Any week

Add guests

Airbnb your home



Summerville Stables Farmhouse

[Share](#) [Save](#)

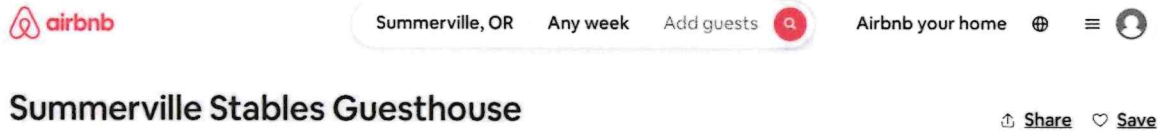


Entire home in Summerville, Oregon

10 guests · 3 bedrooms · 7 beds · 2 baths

Add dates for prices

In addition, the applicant advertises a “guesthouse” with three bedrooms and one bath. Per the pictures there is also a full kitchen. It is unclear whether this is a separate structure or attached to the dwelling.



Entire guesthouse in Summerville, Oregon
8 guests · 3 bedrooms · 4 beds · 1 bath

Add dates for prices

V. WRITTEN TESTIMONY

- 1) Julia Richard submitted testimony in opposition to the application. Ms. Richard cites traffic and safety as major concerns with existing uses. She also states that she can hear loud speakers and music during events at her dwelling. There is no specific testimony regarding the proposed home occupation.
- 2) Wes Faulk submitted testimony in opposition to the application. Mr. Faulk identifies the number of uses that are listed on the stable’s website. He states that traffic has increased. He has had vehicles park on his property because there is no parking near the stables. He indicates that he can hear music and loudspeakers during events and clinics. There is no specific testimony regarding the proposed home occupation.
- 3) Kristi Johnson submitted testimony in opposition to the application. Ms. Johnson provides specific testimony for the proposed home occupation. Ms. Johnson states that short term rental are not permitted on EFU land to ensure that they don’t interfere with farm operations. She outlines impacts that can and could occur to adjacent farming operations from the proposed use.
- 4) Stacy Warren submitted testimony in support of the application. She does not believe the use will force a significant change to or increase the cost of the farm or forest uses on her property.
- 5) Jeff and Lisa Bushman submitted testimony in opposition to the application. They identify traffic, noise, dust and smells as concerns from existing use of the property. There is no specific testimony regarding the proposed home occupation.

VI. FINDINGS APPLYING CODE CRITERIA

All applications are subject to the requirements of the Union County Zoning, Partition and Subdivision Ordinance. Sections in boldface type below denote relevant Ordinance, Oregon Administrative Rule, or State Statute sections. Sections in regular type denote staff analysis of the application.

UCZPSO Article 1 Introductory Provisions And Definitions

Subsection 1.08 DEFINITIONS

DWELLING UNIT: One or more rooms designed for occupancy by one family and not having more than one cooking facility.

DWELLING, SINGLE-FAMILY: A detached building containing one dwelling unit.

UCZPSO Article 2.00 A-1 Exclusive Farm Use

Subsection 2.04 Conditional Uses With General Review Criteria

In the A-1 Zone, the following uses and their accessory buildings and uses are permitted subject to county review under Article 24.03 Quasi-Judicial land use decision and the specific standards for the use set forth in Section 2.05, as well as the general standards for the zone and the applicable standards in Article 21.00 (Conditional Uses).

25. Home occupations as provided in Subsection 2.05.7.

Findings: The applicant has applied for a Conditional Use to conduct a home occupation to allow short term rental of a portion of her dwelling.

Subsection 2.05 Use Standards

7. Home occupations:

A. A home occupation shall:

- (1) Be operated by a resident or employee of a resident of the property on which the business is located;

Findings: Tracy Reed, the owner of the subject property will be operating the home occupation.

- (2) Employ on the site no more than one full-time or part-time person at any given time;

Findings: The applicant indicates that a part time stable worker also helps with the Airbnb when needed.

- (3) Be operated substantially in:

- (a) No more than 49% of the dwelling; or

Findings: The Property Assessor's information shows that there is a Class 5 Residence on the property with 3,682 livable square feet. The information also states that there is a Class 5 Attached Garage containing 0 livable square feet.

Further review of the Assessor’s structural sketch (see copy of sketch on next page) and area calculations for all parts of the residence indicates the following net sizes:

Main floor of dwelling: 2,718.05 square feet

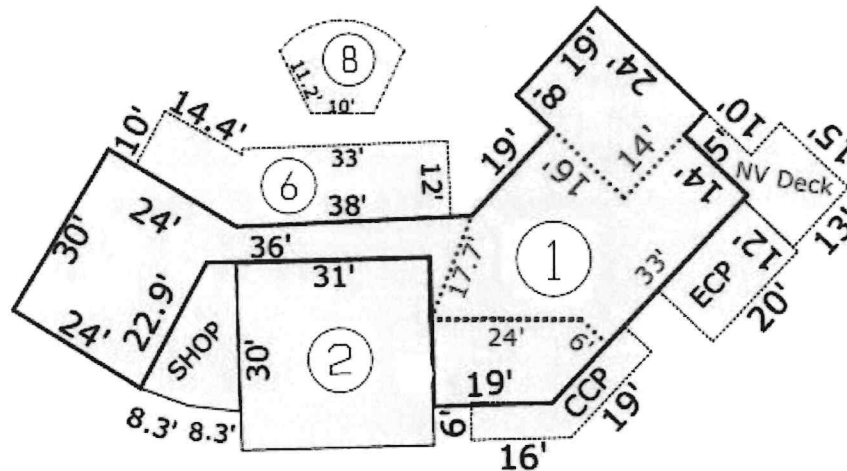
2nd floor of dwelling: 963.61 square feet

Garage: 930 square feet

Shop: 246.68 square feet

The area of the main floor and 2nd floor of the dwelling equals the livable square feet.

The garage and shop are not counted as livable by the County Assessor. However, supportive documentation from the applicant states that the shop has never been used as a shop but is incorporated into the living area of the dwelling and that the garage has been converted to a space that is also used for daily living, specifically recreation and physical fitness purposes.



If both floors of the dwelling, the garage and the shop are added together, the total square footage of the dwelling is 4,858.34 square feet. The applicant is then allowed to utilize 2,381 square feet of the dwelling for the home occupation.

The applicant indicates that the guests will be able to use 721 square feet of the top floor and 1,421 square feet of the bottom floor, for a total of 2,142 square feet. This complies with the requirement to use 49% or less of the dwelling.

(b) Other buildings where no more than 1,200 square feet is used for the home occupation and the building is normally associated with uses permitted in the zone where the property is located, except that such other buildings may not be utilized as bed and breakfast facilities or rental units unless they are legal residences.

Findings: The proposed use is for short-term rental for overnight guests. There are no other legal residences on the property so other buildings cannot be used for this home occupation.

(4) Not unreasonably interfere with other uses permitted in the zone in which the property is located.

Findings: See Subsection 2.06 below regarding farm and forest uses. It is anticipated that the proposed use will not unreasonably interfere with residential uses on adjacent

properties if the use is restricted to housing only registered guests and is restricted from being used for other than residential purposes. These shall be made conditions of approval.

- (5) When a bed and breakfast facility is sited as a home occupation on the same tract as a winery ...**

Note: Not Applicable

- (6) The home occupation shall be accessory to an existing, permanent dwelling on the same parcel.**

Findings: The applicant will continue to live in dwelling so the home occupation will be accessory to the residential use.

- (7) No materials or mechanical equipment shall be used which will be detrimental to the residential use of the property or adjoining residences because of vibration, noise, dust, smoke, odor, interference with radio or television reception, or other factors.**

Findings: There is no indication that the home occupation will utilize any materials or mechanical equipment that would be detrimental to the residential use on the property or on adjoining properties.

- (8) All off-street parking must be provided on the subject parcel where the home occupation is operated.**

(a) Employees must use an approved off-street parking area.

(b) Customers visiting the home occupation must use an approved off-street parking area.

Findings: A condition of approval requires the applicant to provide at least two parking spaces next to the residence with signage indicating that they are for rental guests' use only.

- (9) One (1) sign identifying the home and occupation is permitted, not to exceed a total of 32 square feet in area and located outside of the public right of way.**

Findings: The applicant indicates she has no plans to add a sign to the property, however, the ability to place a sign will be made a Condition of Operating Approval.

- (10) Retail sales shall be limited or accessory to a service.**

Findings: The proposed home occupation does not involve any retail sales.

Oregon Administrative Rules 660-033-0130(14), revised and effective January 1, 2025

(c) A governing body may only approve a use provided in OAR 660-033-0120 as a home occupation if:

(A) The scale and intensity of the use is no more intensive than the limitations and conditions otherwise specified for the use in OAR 660-033-0120, and

Findings: There is no short-term rental use allowed through ministerial, administrative, or quasi-judicial review in the Exclusive Farm Use zone. The only manner that this use

can be allowed in the Exclusive Farm Use zone is through a home occupation and the only intensity limits that apply to this use are those listed in UCZPSO Article 2.05.

(B) The use is accessory, incidental and subordinate to the primary residential use of a dwelling on the property.

Findings: UCZPSO Article 2.05 applies limits to the home occupation to ensure that it remains accessory, incidental and subordinate to the residential use of the dwelling.

Subsection 2.06 Conditional Use Review Criteria

- 1. An applicant for a use permitted in Section 2.04 must demonstrate compliance with the following criteria in addition to the applicable standards in Article 21.00 and subject to the review process identified in Section 24.03.**

Findings: Article 21 outlines the Conditional Uses processes and procedures and standards for specific uses. The application is complying with the processes and procedures of Article 21. Subsection 21.06.1 states, "A conditional use shall ordinarily comply with the standards of the zone concerned for uses permitted outright except as specifically modified by the Planning Commission in granting the conditional use." This returns the requirements back to the #2 and #3 of this section. Section 24.03 is the application review procedures that are also being followed.

- 2. The use will not force a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest use; and**
- 3. The use will not significantly increase the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use.**

OAR 660-033-0130 (5), revised and effective January 1, 2025

(c) For purposes of subsection 2 and 3, a determination of forcing a significant change in accepted farm or forest practices on surrounding lands devoted to farm and forest use or a determination of whether the use will significantly increase the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use requires:

- (A) Identification and description of the surrounding lands, the farm and forest operations on those lands, and the accepted farm practices on each farm operation and the accepted forest practices on each forest operation:**
- (B) An assessment of the individual impacts to each farm and forest practice, and whether the proposed use is likely to have an important influence or effect on any of those practices. This assessment applies practice by practice and farm by farm; and**
- (C) An assessment of whether all identified impacts of the proposed use when considered together could have a significant impact to any farm or forest operation in the surrounding area in a manner that is likely to have an important influence or effect on that operation.**
- (D) For purposes of this subsection, examples of potential impacts for consideration may include but are not limited to traffic, water availability and delivery, introduction of weeds or pests, damage to crips or livestock, litter, trespass, reduction in crop yields, or flooding.**
- (E) For purposes of subsection 2 and 3, potential impacts to farm and forest practices or the cost of farm and forest practices, impacts relating to the**

construction or installation of the proposed use shall be deemed part of the use itself for the purpose of conducting a review under subsection 2 and 3.
(F) In the consideration of potentially mitigating conditions of approval under ORS 215.296(2), the governing body may not impose such a condition upon the owner of the affected farm or forest land or on such land itself, nor compel said owner to accept payment to compensate for the significant changes or significant increases in costs described in subsection 2 and 3.

Findings related to #2 & 3: Please review the attached public comments regarding this application.

The properties surrounding the subject property are being used for farm and forestry purposes, along with residential uses.

The property to the north belongs to East Valley Farms LLC and contains assessment 559 – farm land improved with mobile home. It contains a residence.

The property to the rear belongs to Swallowtail LLC and contains an assessment 551 – farm land improved. It contains a residence.

The property to the south belongs to Swallowtail LLC and contains an assessment 551 – farm land improved. It contains a residence.

The property to the northwest belongs to Jeffery and Lisa Bushman and is assessed as 641 – forest land improved. It contains a residence.

The property to the southwest belongs to Wesley Faulk and is assessed as 559 – farm land improved with mobile home. It contains a residence.

Four items of written testimony are in opposition to the application along with one item of written testimony in support of the application. All five items of testimony reference existing uses of the subject property and impacts of those uses on adjacent properties. One testimony indicates uncertainty over the proposed use based on the rental of the entire house, causing the testifiers to question who is overseeing the rental. Another testifier states that she lives next to a short-term rental on EFU land and that the “intrusion is immense.” The testifier in support of the use states that she does not believe the use will force a significant change in or increase the cost of her farm or forest uses.

Adjacent property owners and others within the farm and forest zones are experts in the operations on their property and their ability to enjoy the use of their property without interference from uses by other property owners. Testimony indicates that the uses on the applicant’s property creates many impacts to adjacent property owners. Little testimony was given in how the requested use could or could not impact adjacent property farm or forestry.

Planning staff offers that the use of less than 49% of the dwelling for short term rental use may be indistinguishable from permanent residential use of the dwelling were the dwelling inhabited by a large family. The typical trips per day for a residential use is 8 trips, coming and going. It could be assumed that the short-term rental users may increase that amount of trips. However, it appears that the stable uses create the majority of the traffic impacts.

Ms. Reed, through her continued presence in the dwelling and on the property, should ensure that noise impacts to adjacent properties from guests do not occur.

UCZPSO Article 21 Conditional Uses

Subsection 21.06 General Standards Governing Conditional Uses

The following standards and criteria shall govern conditional uses, except as provided in subsection 21.07:

- 1. A conditional use shall ordinarily comply with the standards of the zone concerned for uses permitted outright except as specifically modified by the Planning Commission in granting the conditional use.**

Findings: Subsection 21.06.1 refers review back to specific conditions for A-1 Conditional Uses.

Subsection 21.07 Specific Standards Governing Conditional Uses

2. Home Occupation

The purpose of this section is to permit the operation of certain small-scale business activities, hereafter described as "home occupations", which are conducted as an accessory use to a dwelling in zones which allow such activities as conditional uses. Home occupations are not recognized as any full-scale commercial or professional activity ordinarily required to be conducted in a commercial or industrial zone. A home occupation shall conform to the following:

- A. The home occupation shall be secondary to the main use of the property as a residence.**
- B. The home occupation shall be limited to either an accessory structure or a dwelling in which more than 50% of the dwelling is devoted to residential use.**
- C. If located within an accessory structure, the home occupation shall not utilize over 1200 square feet of floor area.**
- D. Structural alteration shall not detract from the outward appearance of the property as a residential use.**
- E. No more than one person other than members of the immediate family may be engaged in the home occupation.**
- F. No lighted window display and no sample commodities displayed outside the building shall be allowed. Signs and displays shall not be located in the street right-of-way. The sign shall identify only the home and occupation of the resident.**
- G. No materials or mechanical equipment shall be used which is detrimental to the residential use of the dwelling or adjoining dwellings because of vibration, noise, smoke, odor, interference with radio or television reception, or other factors.**
- H. No materials or commodities shall be delivered to or from the residence which are of such bulk or quantity as to create undesirable traffic or congestion. No parking of customer's vehicles in a manner or frequency so as to cause disturbance or inconvenience.**

Findings regarding A, B, C, E, F, and G have already been made. In regard to D, no structural alterations are proposed by the applicant for the requested use. In regard to H,

no material and commodities are proposed to be delivered to the dwelling for the requested us.

VII. NOTIFICATION

The applicant's agent submitted the Conditional Use application to the Planning Department (department) on November 19, 2024. On December 3rd, the applicant was requested to provide further details about the proposed use. The Planning Director met with the applicant and her agent on January 2, 2025. Further information was submitted on January 9, 2025 and the application was deemed complete on that day. The department reviews this application type using the quasi-judicial process pursuant to Union County Zoning, Partition, and Subdivision Ordinance (UCZPSO) Article 24.03, and 24.09 through 24.12. In compliance with the UCZPSO, the department sent a Notice of Hearing to property owners within 500 feet of the property subject to this application (subject property) and placed a legal ad in the East Oregonian on February 12, 2025.

Once a decision is made, the department will send a Notice of Planning Commission Decision to the same property owners. The Notice of Planning Commission Decision will inform adjacent property owners that they have 30 calendar days from the date of the decision to appeal the Planning Commission's decision to the Board of County Commissioners.

Jeff and Lisa Bushman
67016 Hunter Road
Summerville, OR 97876
02-10-2025

Inga Williams, Planning Director
Union County
Planning Department
1001 4th Street, Suite C
La Grande, OR 97850

RECEIVED

FEB 12 2025

To Inga Williams and the Planning Committee;

In Regards to: Application # 20250004
Tracy Reed
66967 Hunter Road
Summerville, OR 97876

PLANNING DEPARTMENT

Jeff and I have lived directly next to Tracy Reed's home and property and have been living at this address since 1988. We have been personal friends to both the previous owners of said property and know it and the house well. We have interacted with Tracy Reed as neighbors on a number of occasions since they moved here around 11 years ago. She and her family are very nice people.

They board horses and have a crew that takes very good care of them. We noticed that contractors were driving in and out of their property for a few years and heard as well as saw that she was building and growing her boarding facilities. We also were aware that traffic had increased onto their property from boarders, averaging over 30 vehicles going in and out a day as well as all hours of the night causing noise and dust. We didn't pay too much attention to her changes because there was a row of giant gorgeous Blue Spruce trees that the original owner planted that blocked the view and filtered the noise, dust and smells. That is no longer the case because the tree branches of all the spruce trees were cut off from the ground up so that now we see, smell and hear what is happening on her property. The alfalfa fields are gone as well as many trees and bushes that had existed on the property for decades. It is now all overgrazed from too many horses and has become bare lots, parking lots, and arenas. Multiple times a day the overgrazed land is covered in manure, with the manure spreaders that clunk, clunk, clunk from dawn to dusk. I wonder what has happened to all the ponds, springs and creeks that were behind the house?



Tracy has begun to host "Events" (weddings, parties, festivals, clinics, camps...) as seen on her website: <https://www.summervillestables.com/> Events are advertised on her website. Many are weekly while others are monthly or happen just once. Festivals in the Fall go on for 5 weeks with hundreds and hundreds of vehicles going in and out daily. The "Events" all have a loud speaker that makes announcements and plays live and piped music for hours and hours. It is so loud that we can hear every word of every song and announcement inside our house as well as at the back of our property as we walk. Example: "Last call for free ice cream." Many of the "Events" last into the night and some have lasted until 2:00 in the morning. It is like living next to the Fair Grounds, but it's year-round, not just one week of the year.

The traffic causes lots of noise and dust, but the bigger issue is the danger of excess traffic on Hunter Road which doesn't have any shoulders because it is too narrow. Hunter Road is not in great shape with holes, bumps from heaves and weak edges that at times break off. Traffic tends to drive too fast on Hunter Road and there are many deer, elk, turkeys and other wildlife hit and killed all the time. We have witnessed semi trucks getting stuck in ditches as they are pulling into Tracy's driveway because it is so narrow. It then blocked Hunter Road for hours as they waited for help to get pulled out of the ditch. Many of the trucks and trailers that pull into her driveway are huge so they have to make big corners, going into the opposite lane in order to pull into her driveway. The vehicles behind them usually are driving too fast, see the turn signals and try to pass the trucks and trailers as they turn only to find that the trucks and trailers are taking up the passing lane too. There have been some close calls that almost caused accidents.

With all the traffic comes people. Strangers that normally have no business out here, but now they are coming to "Events." Hundreds and hundreds of strangers. Tri Co Farms property adjoining Tracy's to the South has experienced an increase in thefts lately of trailers, gas/diesel, motorcycles and other items. The Pleasant Grove Grange had all the propane stolen from their just filled propane tank to the sum of about \$1,000. It makes all the residents around Tracy's property nervous.

Now, we learn that she has been renting out her house(s) for over two years on [airbnb.com](https://www.airbnb.com). She calls the main house the "Farm House" and the sleeping quarters at the end of her laundry hall is the "Guest House." Where does Tracy live? Is there a new residence on the property built by the contractors? We've heard some guests say that they stay in her "Bunk House." What's that? Another residence? In the [airbnb.com](https://www.airbnb.com) ads, she encourages her guests to rent the "Arena" too and bring in their own "Events." Some renters come to party and have bachelorette, wedding and birthday parties. She also states in the adds that the "Resort Access" is included in her rentals. So, if Tracy is not living on the property, who is overseeing the "Events" that strangers bring in? Who is managing the property at night when all those strange vehicles are going in and out? Even the Union County Fair Grounds has an employee living on the property to make sure it's taken care of and not vandalized.

With her rentals attached to "Events" and not knowing if Tracy is even living on the property to manage the boarding facilities, "Resort" and "Events", we are against the request for a home occupation to provide short term rental used within portions of the dwelling. We are not living next to a regular family farm anymore, but an "Event" Center or Fair Grounds that has increased the traffic, noise, smells, dust and strange people visiting our neighborhood. We are worried that the traffic will cause accidents along with creating traffic jams and more degradation to Hunter Road, making it even more dangerous. I don't think Tracy Reed is aware of the impact that her business is causing to her neighbors and our peaceful quiet neighborhood and hope that she will decrease her "Events", noise and traffic. There needs to be more communication with her neighbors, a closer look at what is legally allowed to happen on her property and signs on Hunter Road warning traffic of the congestion at her driveway.

Respectfully,



Jeff and Lisa Bushman
We are AGAINST short term rentals
within portions of the dwelling.



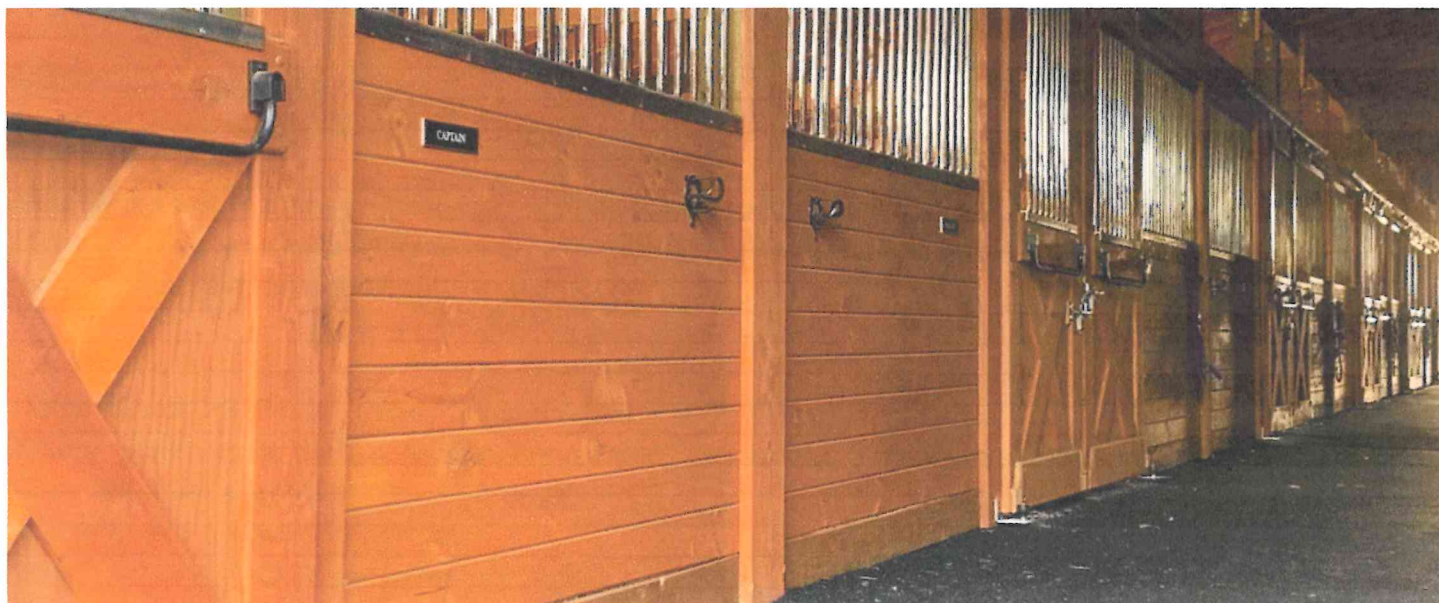
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Clinics, Camps, and Programs

Summerville Stables Offers an array of events!

We have events for occasions like weddings, clinics, birthday parties, and even camps. All of which can be found below.

-Mark Shaffer - Mechanics in Motion Clinic

Mark will be holding a 3-day clinic at Summerville Stables.

His clinic is unique because he meets you and your horse where you are. Mark meets you where you are, whether you are a beginner, advanced, or any stage in between. His unique approach helps better connect you and your horse. The focus is on linking you to the physical communication needs of your horse, timing, and consistency of signals.

For more information on Mark Shaffer:

<https://mechanicsnmotion.com/>

Clinic format:

Classroom theory 9:00 to 10:00

Practical application 10:00 to 1:00

Become a better horseperson by learning with Tracy from her vast equestrian knowledge!

- Arena Booking

Having an equestrian party, celebration, or event? The arena and pastures are available for booking!

Summerville Stables is also the perfect place to hold a clinic with large pastures, an outdoor cross-country jumping course, trails, and more.

Click the button below to set a time in an available slot!

- Trailer Parking

We have plenty of space available to the right of the driveway (as you come into the ranch) for trailer parking! Easy parking and ample space to hook up once you're ready to leave. Parking at Summerville Stables is very affordable too!

*prices are subject to change

Haul-In ~\$10/rider

If you're looking for a great space to ride your horse for the day then consider hauling them into Summerville Stables! You'll have access to pastures, trails, and more on our gorgeous 40-acre ranch.

Book Now

Clinton Anderson *Training*

Join the prestigious 8-week-long Method program! You'll never feel more confident riding your horse than after this program.

Book Now

BOOK NOW

BOOK NOW

Facility Booking *~Contact for Pricing*

Having an equestrian party, celebration, or event? The arena and pastures are available for booking!

Book Now

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Book Now

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- [Boarding](#)
- [Lessons](#)
- [Leasing](#)
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- [And More!](#)

Address:

66967 Hunter Rd,
Summerville, OR 97876



Socials:



Contact:

[541-910-8383](tel:541-910-8383)
[Temporary email:](mailto:reedtracy145@gmail.com)
reedtracy145@gmail.com

RECEIVED

February 10, 2025

FFR 1 0 2025

Union County Planning Commission Members
Inga Williams, Planning Director

UNION COUNTY
PLANNING DEPARTMENT

RE: Reed Home Occupation Application #20250004

Because I am a neighbor affected by this application, I will not be participating as a Planning Commission member at the hearing on February 25th. I offer testimony as a neighboring property owner.

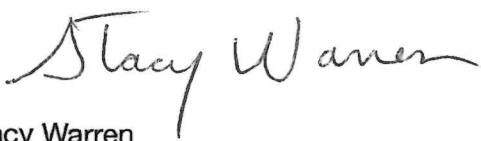
Tracy Reed has been operating Summerville Stables for a number of years and I have heard nothing but positive comments about her stable operation. Equine activities (stabling & training equine, providing riding lessons, training clinics & schooling shows) are considered a farm use which is an outright use. Sometime last summer Tracy must have acquired a new sound system because we started hearing loud music coming from her property (all day long on Saturdays and Sundays and also on some week days). We also heard at least two weddings being held. The music and announcements carried all the way to our house, which is almost a half mile north of the stables. I can only imagine how loud it is for her adjacent neighbors. There is also a lot of traffic congestion on Hunter Road from people going in and out of the property, usually with horse trailers for equine events. After hearing similar concerns from another neighbor, my husband called the Planning Department in October to voice his concerns about the loud music, traffic and non equine related events being held. This led to an enforcement letter from the Planning Department and ultimately to this application. The applicant was told there was no opportunity to establish a wedding/event venue and that the ag tourism events and short-term rentals advertised on her web site required review by the Planning Commission.

I support approval of this application for a home occupation to provide short term rental uses in a portion of the existing dwelling. I feel the applicant has shown that she meets the criteria in UCZPSO Section 2.05(7) and the use will not force a significant change in or increase the cost of the farm and forest uses of our property. I do not support allowing use of over 49% of the dwelling for up to 20 times annually without approval of a Variance application. I would also suggest a condition of approval requiring adherence to the County's transient tax requirements.

Because equine activities are considered an outright farm use, I know there isn't an opportunity for the Planning Commission to deal with the loud music and traffic issues associated with them. We and our neighbors are hoping that Tracy will be considerate to the neighborhood and turn the music volume down on her own and maybe shorten the amount of time it is played. I'm sure she had no idea how far the sound travelled. As far as traffic safety goes, possibly she could place TRUCKS ENTERING ROADWAY or CONGESTION signs to the north and south of her property entrance to warn drivers on Hunter Road to slow down and prevent an accident.

Thank you for the opportunity to comment on this application.

Sincerely,



Stacy Warren
63080 McKenzie Lane
Summerville, OR 97876

RECEIVED

FEB 10 2025

UNION COUNTY
PLANNING DEPARTMENT

DATE: February 10, 2025

TO: Union County Planning Department
Inga Williams, Planning Director

FROM: Swallowtail Farm, LLC (designated addresses: 66911 and 66849 Hunter Road)
By Kristi D. Johnson, Manager
3920 Endow Drive
Hood River, OR 97031

By Kristi D. Johnson, Manager

RE: Short-term rentals on Exclusive Farm Use zoned property

APPLICATION #: 202500004

As manager of Swallowtail Farm, LLC, we are against permitting short-term rentals (STRs) on Tracy Reed's property. Our property abuts Ms. Reed's property on the south at the designated address of 66911 Hunter Road, Summerville, Oregon. Our Century Farm borders the property on the east with the designated address of 66849 Hunter Road. My father farmed all properties, leasing what is now Ms. Reed's property for about 35 years until the owner passed and it was sold to an out-of-state recreationist. Our property is currently farmed by relatives under Trico Farms. For years, most of the acreage east of Hunter Road has been designated as Exclusive Farm Use (EFU) for the initial purpose of avoiding scenarios such as this current appeal.

For more than four decades, Oregon has had a strong policy to protect farmland. The state legislature adopted the policy in 1973 to preserve and maintain land for farm use, which included raising, harvesting, and selling crops and feeding, breeding, management and sale of livestock. In 1973 only 12 uses were allowed in EFU zones. Today the list has grown to more than 60, which now includes agritourism, boarding and training stables, guest ranches, and destination resorts, all under certain conditions. We feel that this growth in allowed activities undermines the original intent of Oregon's farmland protection policy.

When residential development encroaches on farmland, a downward cycle of conversion begins and farms experience conflicts with neighbors, such as trespass, littering, pets chasing livestock, complaints about dust, spray, noise, manure applications, hours of operation, liability issues and other normal farming practices (<https://www.oregon.gov/lcd/ff/pages/farmland-protection>). It can lead to farmers selling their land for development. This can drive up land prices, making it difficult for new farmers to enter the market.

STRs are generally not permitted on EFU land. This is to protect farmers from being overrun by STRs and to ensure they don't interfere with farm operations. STRs can cause issues with increased traffic, late-night noise, and trespassers as well as the above complaints. Houses that are used by "groups of strangers who occupy a building in a transitory way" exceed the ordinary use of a dwelling and thus cannot be allowed outright in farm and forest zones as the Clackamas County appellate court determined in 2020 (Mateusz Perkowski, Capital Press). Even though not allowed, some EFUs still operate STRs "under the radar." A survey by the US Farm Stay Association found that 55 percent of farmers don't obtain permits, which underscores that EFU restrictions are often overlooked.

Case in point is that Ms. Reed has been using her EFU property for short-term rentals as shown under "Services" at her website, summervillestables.com. She currently has two Airbnb's, one a guesthouse and the other a farmhouse, both housing up to 18 people per night – a hotel on a farm, taxed at the lower farm tax rate. The website says Ms. Reed has been a host for two years. The website also says that qualified on-site staff live on the premises to ensure constant care. Perhaps this leads us to why Ms. Reed filed the current application #20250004. In the next paragraph, I will present my chief argument against it.

I am referencing a LUBA case in my argument against STRs. The nonfarm short-term rental use of a dwelling unit on EFU land is not allowed pursuant to either ORS 215.283 (1) or (2). LUBA reached this conclusion in case 2021-003. The Court of Appeals agreed with LUBA in the attached decision, writing:

"...regardless of whether the question is whether the short-term rental use of dwellings is implicitly included in the allowance of "dwellings" or "residences" on that land or, instead, whether state law expressly allows the short-term rental use of dwellings on land zoned for resource uses, the answer is the same: It does not."

While home occupations are an allowable use of EFU land, when the proposed home occupation is for a use which is itself not permitted, the home occupation should not be approved.

On a personal note, I feel Ms. Reed's property has not been maintained as an EFU since it was sold and my father no longer leased it. I feel each of the three owners have taken liberties with the designation, especially Ms. Reed. When my father leased it, he tiled water springs from Swallowtail Farm to the property for irrigation purposes. He established water rights on the water, but was unable to use them when the new owners took possession. Once there was one pond but now there are six, with most of the water lost to evaporation, leaving little for irrigation, which has affected crop production on Swallowtail Farm. My father was forced to avoid certain crops which required burning or spraying because of liability issues. Not being able to rotate crops for maximum production limits profit. I cannot speak for Trico Farms how this residential area affects their crops currently, but certainly all the complaints I listed above under agritourism and STRs are there. While I don't live in the immediate vicinity to speak about the daily impact from Reed's property, I do live next door to an Airbnb, also operated under the radar on EFU farmland, and the intrusion is immense.

"Agriculture is the greatest and fundamentally the most important of our industries [] We all flourish or decline with the farmer," as quoted by Bernard Baruch.

Attachment: Land Use Board of Appeals 2021-003; A177973

IN THE COURT OF APPEALS OF THE
STATE OF OREGON

1000 FRIENDS OF OREGON,

Respondent,

and

Dennis TYLKA,

Respondent

Cross-Petitioner,

v.

CLACKAMAS COUNTY,

Petitioner

Cross-Respondent.

Land Use Board of Appeals

2021003; A177973

Submitted April 1, 2022.

Nathan K. Boderman and Stephen L. Madkour and Clackamas County Counsel, filed the briefs for petitioner-cross-respondent.

Dennis Tylka filed the brief, *pro se*.

Andrew Mulkey filed the brief for respondent 1000 Friends of Oregon.

Before Shorr, Presiding Judge, and Mooney, Judge, and Pagán, Judge.

SHORR, P. J.

Affirmed on petition and cross-petition.

SHORR, P. J.

This case involves a dispute related to the use of homes as short-term rentals on farm and forest land in Clackamas County. The county adopted Ordinance ZDO-273, which amended the county's Zoning and Development Ordinance (ZDO) to authorize the short-term rental use of dwelling units and guest houses for up to 30 consecutive nights throughout the county, including on farm and forest land. Petitioner 1000 Friends of Oregon (1000 Friends) and intervenor-petitioner Dennis Tylka (Tylka) sought review of the county's decision by the Land Use Board of Appeals (LUBA). LUBA agreed, in substantial part, and, accordingly, remanded the county's decision. The county and Tylka each seek judicial review of LUBA's decision. We affirm on Tylka's cross-petition without discussion, and we write to address the assignment of error raised in the county's petition. We review the LUBA order to determine if it is "unlawful in substance," ORS 197.850(9)(a), and conclude that it is not. We therefore affirm on the petition and cross-petition.

BACKGROUND

We take the pertinent background facts from LUBA's final order and from undisputed evidence in the record. In 2019, the Clackamas County Board of County Commissioners (BCC) instructed county staff to look into ways to allow and regulate short-term occupancies of homes throughout Clackamas County, including homes that are often advertised on websites such as Airbnb, HomeAway, VRBO, VacationRentals.com, or Booking.com. At that time, short-term rentals were not specifically addressed in the county's ZDO. The county thereafter began a two-part project to authorize and regulate the short-term rental use of dwelling units and guest houses. In November 2020, the county completed one part of the project with the adoption of Ordinance No. 09-2020, which created a new chapter in Clackamas County Code (CCC), title 8, Business Regulations. The new chapter establishes a registration program for short-term rentals in the county. It further sets out standards addressing elements such as maximum occupancy and minimum parking requirements, and compliance with the county's garbage requirements, noise

control, parking, and towing ordinances. The chapter also includes enforcement mechanisms such as penalties and fines for noncompliance with the terms of the registration program.

In December 2020, the county completed the second part of the project with the adoption of Ordinance ZDO-273, which makes amendments to the county's ZDO in chapter 202 (Definitions) and chapter 833 (Special Use Requirements - Guest Houses) to modify the definition of "dwelling unit" and expand the allowed use of guest houses. The amendment to ZDO 202 expanded the definition of "dwelling unit," which had, prior to the amendment, provided that it was "designed for residential occupancy by one family."¹ The amendment added the following italicized language:

"A building, or portion thereof, with one or more rooms designed for residential occupancy by one family. A dwelling unit may be occupied by one family or, except as otherwise provided in this Ordinance, may be used for residential occupancy by no more than 15 persons for a period that does not exceed 30 consecutive nights by any one person."

In ZDO 833.01, regarding guest houses, the amendments removed a requirement that the "[o]ccupants of the guest house and the primary dwelling shall live together as one housekeeping unit" and removed a prohibition on a guest house being a source of rental income. The following italicized language was added and the language with the strike-through was deleted:

"A. Use: A guest house shall be used only by members of the family residing in the primary dwelling, their non-paying guests, or their nonpaying employees who work on the premises, ~~A guest house shall not be a source of rental income, or for residential occupancy by one or more paying guests for a period that does not exceed 30 consecutive nights by any one person.~~ Residential occupancy by paying guests

¹ ZDO 202 defines a "family" as "[a]ny individual or group of persons, regardless of relationship but not exceeding 15 persons, living together as a single housekeeping unit within a dwelling unit"; a "housekeeping unit" is defined in relevant part as "a living arrangement within a dwelling unit in which the kitchen, living and dining rooms, and other general living areas of the dwelling unit are shared in common, and the duties, rights, and obligations associated with the performance of domestic tasks and management of household affairs, are shared by residents by virtue of legal relationship or mutual agreement."

plus occupants of the primary dwelling shall not exceed 15 persons.

~~“E. Facilities: Occupants of the guest house and the primary dwelling shall live together as one housekeeping unit, sharing the kitchen and laundry facilities in the primary dwelling. The guest house may *contain* include one bathroom plus one additional sink, but shall not include *laundry facilities*, a stove, oven, or other cooking appliances.”~~

1000 Friends petitioned for review to LUBA,² raising two assignments of error: 1) that the county’s expansion of the allowed use of a dwelling unit *on farm and forest land* conflicted with the statutory meaning of “dwelling” in ORS 215.283 and that the amendment of the ZDO also conflicted with the provisions of its own zoning ordinance, and 2) that the county’s decision to amend the definition of dwelling unit and the scope of the allowed use of a guest house did not comply with the agriculture and forest policies of the county’s comprehensive plan or statewide planning Goal 3 (Agricultural Lands)³ and Goal 4 (Forest Lands).⁴ 1000 Friends asserted that the county’s decision to allow the use on farmland of a dwelling and accessory structures as temporary accommodations for paying overnight guests violates state law and the county’s zoning ordinance and that the county’s decision misconstrued the uses allowed pursuant to a dwelling approval on forest land. In sum, 1000 Friends’ argument was that the county’s decision improperly construes applicable portions of ORS chapter 215 and OAR 660-006-0025.

² Tylka also sought review by LUBA, raising five assignments of error that included assertions that the county’s ZDO amendments violated statewide planning Goal 2 and certain Clackamas County Comprehensive Plan policies; Tylka’s assignments were not focused solely on resource lands, but rather challenged the county’s decision more broadly. Neither party challenged the county’s CCC title 8 amendments.

³ Goal 3 is “[t]o preserve and maintain agricultural lands.”

⁴ Goal 4 is

“[t]o conserve forest lands by maintaining the forest land base and to protect the state’s forest economy by making possible economically efficient forest practices that assure the continuous growing and harvesting of forest tree species as the leading use on forest land consistent with sound management of soil, air, water, and fish and wildlife resources and to provide for recreational opportunities and agriculture.”

As we understand the county's position before LUBA, it disputed 1000 Friends' premise that the changes to the ordinances expanded the allowed use of dwelling units on farm and forest land. The county argued that, for purposes of the ZDO, "a dwelling remains a dwelling regardless of whether occupancy is on a short-term or long-term basis" and that, under the amended provisions, the "use of dwellings and guest houses [remains] limited to 'residential occupancy.'" The county essentially argued that, if a dwelling was originally approved for residential use on resource land, the fact that it could be used as a short-term rental under the amendments to the ZDO did not change the nature of its use and it remained a permissible use under the applicable statutes and rules.⁵

LUBA described the parties' central dispute as "whether a short-term rental is a permitted use of a dwelling unit or guest house on farm or forest land where the dwelling unit or guest house is otherwise allowed under applicable law." LUBA set out the pertinent statutory scheme for its consideration:

"The ZDO amendments allow the short-term rental use of dwelling units and guest houses throughout the county, including in the county's Exclusive Farm Use (EFU) zone, governed by ZDO 401; Timber (TBR) zone, governed by ZDO 406; and Ag/Forest (AG/F) zone, governed by ZDO 407. ORS 215.203(1) provides in part, 'Zoning ordinances may be adopted to zone designated areas of land within the county as [EFU] zones. *Land within such zones shall be used exclusively for farm use except as otherwise provided in ORS 215.213, 215.283 or 215.284.*' (Emphasis added.) Certain dwellings are allowed on land zoned EFU under ORS 215.283(1) and others under ORS 215.283(2). ORS 215.284 restricts the establishment of single-family dwellings not provided in conjunction with farm use on land zoned EFU. ORS 215.283(1)(e) allows accessory structures

⁵ LUBA explained that, in the county's view, "the ZDO amendments cannot and do not authorize the short-term rental use of an existing dwelling unit if that use would be prohibited by the decision that initially approved the dwelling unit." LUBA pointed to findings by the county in the record that asserted that "[d]wellings that are approved with specific restrictions on occupancy and/or usage would remain ineligible for use as [a short-term rental]. Examples of such dwellings include temporary dwellings for care ('hardship dwellings'), accessory farmworker dwellings, or caretaker dwellings."

associated with farm and forest use. The uses that are allowed on forest land are set out in OAR 660-006-0025 and include the dwellings authorized by ORS 215.705 to 215.757 as well as other dwellings under prescribed conditions. OAR 660-006-0025(1)(d), (e).”

(Footnotes omitted.)

LUBA further explained that

“ORS 215.283 lists the uses that are allowed on EFU land, and a county cannot allow uses that are not listed under the statute in an EFU zone. OAR chapter 660, division 6, similarly identifies the limited uses that are allowed on forest land. We discuss each below.

“The uses listed in ORS 215.283(1) are authorized as of right, and counties may not restrict those uses through additional local standards. *Brentmar v. Jackson County*, 321 Or 481, 496, 900 P2d 1030 (1995). ORS 215.283(2) lists nonfarm uses and structures that are conditionally authorized and that must satisfy ORS 215.296(1), which we refer to as the farm impacts test. The farm impacts test requires the local governing body or its designee to find that the use will not:

“(a) Force a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest use; or

“(b) Significantly increase the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use.” ORS 215.296(1).

“The nonfarm uses listed under ORS 215.283(2) may also be subject to any local standards enacted pursuant to ORS 215.296(10).

“ORS 215.283 regulates the use of EFU land. Accordingly, if the county wants to allow the nonfarm short-term rental use of a dwelling unit on EFU land, that use must be allowed pursuant to either ORS 215.283(1) or (2). *** [W]e agree with [1000 Friends and Tylka] that, absent any identification by the county of the authority in ORS 215.283, or the Land Conservation and Development Commission’s [(LCDC’s)] rules implementing that statute, for allowing the short-term rental use of dwelling units or guest houses on EFU land, that use is not allowed under ORS 215.283. The uses that are allowed on forest land are similarly

restricted by OAR 660-006-0025 and, absent any identification of authority under OAR 660-006-0025 for allowing the short-term rental use of dwelling units or guest houses on forest land, that use is not allowed.”

(Emphasis in original; footnote omitted.)

In reaching its decision to remand the county’s decision, LUBA applied the statutory construction analysis set out in *PGE v. Bureau of Labor and Industries*, 317 Or 606, 610-11, 859 P2d 1143 (1993) and *State v. Gaines*, 346 Or 160, 171-72, 206 P3d 1042 (2009) to determine the intent of the legislature. LUBA began with the text:

“ORS Chapter 215 provides no generally applicable definition of ‘dwelling’ or ‘residence,’ and we therefore look to the plain, ordinary meaning of those words. ‘Dwelling’ means ‘a building or construction *used for a residence*’ and ‘residence’ means ‘a building *used as a home* : DWELLING.’ *Webster’s Third New Int’l Dictionary* 706, 1931 (unabridged ed 2002) (boldface in original; emphases added). As the county points out, the term ‘dwelling,’ considered alone, does not necessarily require owner occupancy or occupancy of a given duration. However, the term ‘residence’ refers to ‘a building used as a home,’ and ‘home’ is defined not only as ‘a private dwelling : HOUSE’ but also as ‘the house and grounds with their appurtenances habitually occupied by a family : one’s principal place of residence : DOMICILE.’ *Webster’s* at 1082 (boldface in original). The various terms connote a distinction between a building used as a ‘home’ and a building used as something other than a ‘home,’ for example, a hotel.”

LUBA concluded that the text alone did not resolve the question of whether a short-term rental was an allowed use of a dwelling or residence in a resource zone, and it continued on with a contextual analysis. Ultimately, LUBA determined that the county was approaching the issue from the wrong direction. It stated,

“ORS 215.283 and related statutes demonstrate that state law strictly regulates transient lodging on resource land with consideration of its effects on accepted farm and forest practices. The question is not whether the short-term rental use of dwellings is expressly *prohibited* on land zoned for resource uses. Instead, the question is whether state law

expressly *allows* the short-term rental use of dwellings on land zoned for resource uses. The county has not demonstrated that it does.”

(Emphases in original.)

ISSUE ON REVIEW

On review before us, the county raises a single assignment of error in which it contends that LUBA erred in concluding that state law must explicitly provide for the short-term rental of a dwelling in order for dwellings otherwise legally authorized in resource zones to be used as such. As we understand the county’s argument, it reiterates the position that it took before LUBA: In its view, the approval or existence of a lawful “dwelling” on farm or forest land carries with it a right to use that dwelling for ordinary residential purposes, and short-term rental is indistinguishable from ordinary residential use of a dwelling. Thus, the county asserts that “the authorization to maintain and occupy a dwelling includes the right to occupy that dwelling on a short-term basis unless otherwise prohibited by state or local regulation, and that no explicit provision in state law is necessary to authorize the use of existing dwellings for short-term occupancies.”

1000 Friends defends LUBA’s analysis and conclusion. It argues in part that “[t]he use contemplated by the county would allow a dwelling to function as a business operated out of a dwelling to provide customers or paying guests overnight lodging,” and that “ORS chapter 215 and its implementing regulations limit the use of non-farm and non-forest businesses on farm and forest land.” According to 1000 Friends, the county’s amendments do not impose any of the relevant approval criteria in the statutes or regulations that would be required to permit a dwelling on farm or forest land to operate as an overnight lodging business. For that reason, it contends, LUBA was correct to conclude that the county’s amendments violated the provisions of ORS chapter 215 and its implementing regulations.

As noted, we review LUBA’s order to determine if it is “unlawful in substance.” ORS 197.850(9)(a). “A LUBA order is unlawful in substance if it represented a mistaken

interpretation of the applicable law.” *Nicita v. City of Oregon City*, 317 Or App 709, 716, 507 P3d 804 (2022) (internal quotation marks omitted). At the outset, we agree with LUBA’s textual analysis, as recounted above, of the terms “dwelling” and “residence,” and with its conclusion that the “various terms connote a distinction between a building used as a ‘home’ and a building used as something other than a ‘home,’” such as a hotel.

LUBA stated that its textual analysis “does not, however, resolve the question of whether a short-term rental is an allowed use of a dwelling or residence in a resource zone.” We understand the county to take issue with that reasoning. That is, the county contends that a dwelling or residence may always be used for residential purposes, and short-term rental is indistinguishable from ordinary residential use of a dwelling. Accordingly, in the county’s view, short-term rental is always allowed regardless of whether it is explicitly allowed by the statutes and rules addressing land uses in resource zones.

For purposes of considering the county’s argument, we assume, without deciding, that the county is correct that ORS chapter 215 and OAR chapter 660, division 6 contemplate that a lawfully established dwelling or residence may always be used for residential purposes. As explained below, the county’s argument nevertheless fails, because we disagree with its contention that short-term rental is indistinguishable from ordinary residential use of a dwelling.

As LUBA explained, a “dwelling” or “residence” requires use as a home. A home is occupied by a group of people sharing a household—not by individuals and groups who share no social or legal relationship—on a long-term or permanent basis—not in a transitory way. *See Webster’s* at 1082 (defining “home” as “the house and grounds with their appurtenances habitually occupied by a family : one’s principal place of residence : DOMICILE”). *Cf.* ORS 90.110(6) (excluding “[v]acation occupancy” from application of the Residential Landlord Tenant Act); ORS 90.100(51) (defining “[v]acation occupancy” as “occupancy in a dwelling unit, not including transient occupancy in a hotel or motel, that has all of the following characteristics: (a) The occupant rents

the unit for vacation purposes only, not as a principal residence; (b) The occupant has a principal residence other than at the unit; and (c) The period of authorized occupancy does not exceed 45 days.”).

By defining “dwelling unit” to include buildings or portions thereof that “may be used for residential occupancy by no more than 15 persons for a period that does not exceed 30 consecutive nights by any one person,” the county has expanded its definition of “dwelling unit” beyond buildings used as homes. ZDO 202 (as amended). The same is true of its omission of the previous requirement that “[o]ccupants of the guest house and the primary dwelling shall live together as one housekeeping unit.” ZDO 833.01. Short-term rentals, as addressed by the ordinances, are different from ordinary residential uses because they include groups of strangers who occupy a building in a transitory way—“for a period that does not exceed 30 consecutive nights.” Thus, assuming, without deciding, that the existence of a lawful dwelling or residence carries with it the right to ordinary residential use, ordinary residential use does not include short-term rentals as addressed in the county’s ordinances.

We further observe that the county’s newly adopted amendment to its county code regarding short-term rentals, the aforementioned requirements in CCC title 8, includes the definition of “short-term rental” as “a dwelling unit, or portion of a dwelling unit, that is rented to any person or entity for *lodging* or residential purposes, for a period of up to 30 consecutive nights.” Ordinance No. 09-2020 (emphasis added). The county’s ZDO defines “commercial use” as “[t]he use of land and/or structures for the conduct of retail, service, office, artisan, restaurant, *lodging*, child care, adult daycare, entertainment, private recreational, professional, and similar uses.” ZDO 202 (emphasis added). The county recognizes that short-term rentals are often advertised on various websites such as Airbnb and VRBO. The nature of such advertisement and resulting use of the dwelling, or parts thereof, is that the dwelling is to be used for short-term lodging for compensation. The county’s proposed use of dwellings as short-term rentals would qualify as a “commercial use” under the county’s ZDO. Although it is true that the occupancy itself may be of a residential nature—temporarily

living in the dwelling—the use of the dwelling as a short-term rental for compensation is not the same as the use of a dwelling as a home. We are not persuaded by the county’s contention that the nature of the use of a dwelling remains as a residential one, and as originally approved or established in the resource zone, when it is used as a short-term rental.

We turn to the relevant statutes in ORS chapter 215. ORS 215.203(1) provides, in part:

“Zoning ordinances may be adopted to zone designated areas of land within the county as exclusive farm use zones. Land within such zones shall be used exclusively for farm use except as otherwise provided in ORS 215.213, 215.283 or 215.284.”⁶

“Farm use” is defined, in part, as

“the current employment of land for the primary purpose of obtaining a profit in money by raising, harvesting and selling crops or the feeding, breeding, management and sale of, or the produce of, livestock, poultry, fur-bearing animals or honeybees or for dairying and the sale of dairy products or any other agricultural or horticultural use or animal husbandry or any combination thereof. ‘Farm use’ includes the preparation, storage and disposal by marketing or otherwise of the products or by-products raised on such land for human or animal use. ‘Farm use’ also includes the current employment of land for the primary purpose of obtaining a profit in money by stabling or training equines including but not limited to providing riding lessons, training clinics and schooling shows. ‘Farm use’ also includes the propagation, cultivation, maintenance and harvesting of aquatic, bird and animal species that are under the jurisdiction of the State Fish and Wildlife Commission, to the extent allowed by the rules adopted by the commission. ‘Farm use’ includes the on-site construction and maintenance of equipment and facilities used for the activities described in this subsection. ***”

ORS 215.203(2)(a).

⁶ ORS 215.213 applies in counties that adopted a marginal lands system prior to 1993, and ORS 215.283 applies in nonmarginal lands counties. ORS 215.283 applies in Clackamas County. ORS 215.284 restricts the establishment of single-family dwellings not provided in conjunction with farm use on land zoned EFU; the meaning of that statute is not implicated by the parties’ arguments on review before us.

We have previously explained that “[t]he ‘exclusively’ and ‘except as otherwise provided’ language [in ORS 215.203(1)] evidences a legislative intent to encourage the use of EFU-zoned land solely for farm use and to treat the permitted nonfarm uses in the listed statutes as exceptions to the use of that land for farming activities.” *Warburton v. Harney County*, 174 Or App 322, 328, 25 P3d 978, *rev den*, 332 Or 559 (2001). ORS 215.283(1) contains a list of uses that “may be established in any area zoned for exclusive farm use.”⁷ ORS 215.283(2) contains a list of nonfarm conditional uses that a county may allow in an EFU zone if the county determines that the use will not significantly affect surrounding lands devoted to farm use under ORS 215.296—the “farm impacts test.” That is, the uses permitted in ORS 215.283(2) are conditionally allowed if they meet the farm impacts test. In *Warburton*, we stated that “subsection (1) of ORS 215.283 delineates *exceptions* to what normally would be allowed in EFU zones” and that “[i]n keeping with [the legislature’s intent], the listed nonfarm uses in ORS 215.283(1) should not be expansively interpreted to encompass uses that would subvert the goal of preserving land for agriculture use.” 174 Or App at 328 (emphasis in original); *see also Central Oregon LandWatch v. Deschutes County*, 276 Or App 282, 289, 367 P3d 560 (2016) (applying same legislative intent to subsection (2) of ORS 215.283). Our prior explanation that the uses delineated in ORS 215.283 are meant to be read as *exceptions* to use of EFU land supports LUBA’s conclusion that the correct question here is whether state law expressly allows the short-term rental use of dwellings on land zoned for resource uses.

The conditional uses outlined in ORS 215.283(2) provide contextual support for the conclusion that the legislature specifically provides for vacation use or transient lodging, subject to the farm impacts test, when it intends to

⁷ For example, ORS 215.283(1)(d) provides, in part, that “a dwelling” may be established “on real property used for farm use if the dwelling is occupied by a relative of the farm operator or the farm operator’s spouse *** if the farm operator does or will require the assistance of the relative in the management of the farm use and the dwelling is located on the same lot or parcel as the dwelling of the farm operator,” and ORS 215.283(1)(e) provides, in part, that “primary or accessory dwellings and other buildings customarily provided in conjunction with farm use” may be established.

allow such uses in a resource zone. ORS 215.283(2)(c) permits campgrounds; ORS 215.283(2)(t) allows a “destination resort that is approved consistent with the requirements of any statewide planning goal relating to the siting of a destination resort”; and ORS 215.283(2)(cc) allows “[g]uest ranches in eastern Oregon, as described in ORS 215.461.” ORS 215.283(2) also specifies certain uses of existing dwellings that are conditionally allowed, subject to the farm impacts test in ORS 215.296, on EFU land: ORS 215.283(2)(u) permits “[r]oom and board arrangements for a maximum of five unrelated persons in existing residences”; ORS 215.283(2)(o) provides for “[r]esidential homes as defined in ORS 197.660,⁸ in existing dwellings”; and ORS 215.283(2)(i) authorizes “home occupations as provided in ORS 215.448.”⁹ We agree with LUBA’s assessment that those express regulations of uses and living arrangements within existing dwellings “undermines the county’s broad contention that *any* residential use of an existing dwelling is allowed, subject only to existing statutory restrictions.” (Emphasis in original.)

There is similar contextual support in regard to uses that are authorized in forest zones. OAR 660-006-0025 provides, in part,

“(1) Goal 4 requires that forest land be conserved. Forest lands are conserved by adopting and applying comprehensive plan provisions and zoning regulations consistent with the goals and this rule. In addition to forest practices and operations and uses auxiliary to forest practices, as set forth in ORS 527.722, the Commission has determined that five general types of uses, as set forth in the

⁸ ORS 197.660(2) defines “residential home” as “a residential treatment or training home, as defined in ORS 443.400, a residential facility registered under ORS 443.480 to 443.500 or an adult foster home licensed under ORS 443.705 to 443.825 that provides residential care alone or in conjunction with treatment or training or a combination thereof for five or fewer individuals who need not be related. Staff persons required to meet licensing requirements shall not be counted in the number of facility residents, and need not be related to each other or to any resident of the residential home.”

⁹ We note that 1000 Friends suggests that ORS 215.448 provides a pathway to permit overnight lodging businesses and vacation rentals on resource land. LUBA did not address whether a short-term rental could be conditionally permitted as an accessory use through a home occupation approval. We do not address it either.

goal, may be allowed in the forest environment, subject to the standards in the goal and in this rule. These general types of uses are:

“(d) Dwellings authorized by ORS 215.705 to 215.757 (ORS 215.757); and

“(e) Other dwellings under prescribed conditions.”

As an example of the kind of dwelling authorized by the rule, ORS 215.705 permits a single-family dwelling to be established under certain circumstances if the “lot or parcel on which the dwelling will be sited was lawfully created and was acquired by the present owner *** prior to January 1, 1985” or “[b]y devise or by intestate succession from a person who acquired the lot or parcel prior to January 1, 1985.” ORS 215.705(1)(a). ORS 215.755 allows replacement dwellings, “hardship” dwellings where a hardship is suffered by the existing resident or a relative of the resident, and “[c]aretaker residences for public parks and public fish hatcheries.”

ORS 215.757, which was adopted in 2019, allows a county to approve, subject to certain restrictions noted in the statute, an accessory dwelling to be constructed that is occupied by the owner or a relative “to allow the relative to assist in the harvesting, processing or replanting of forest products or in the management, operation, planning, acquisition or supervision of forest lots or parcels of the owner.”

Notably, ORS 215.757(3) states that “[i]f a new single-family dwelling unit is constructed under this section, a county may not allow the new or existing dwelling unit to be used for vacation occupancy as defined in ORS 90.100.” The county argues that “[i]f, as LUBA concludes, any use of land whatsoever must be explicitly set out in [a] statute otherwise it is prohibited, then the restriction in [subsection (3)] is entirely unnecessary.” We understand the county to argue by extension that the legislature knows how to explicitly prohibit vacation uses of dwellings, and therefore that it would have done so throughout the land use laws it if had intended to prohibit them.

In ORS 215.757, the legislature allowed an accessory dwelling to be built so that family could assist with

certain forest uses; by specifically prohibiting the accessory dwelling to be used for vacation occupancy, it prevents the particular accessory dwelling to be built for one purpose and then later turned into a vacation rental. That is, even if short-term rentals are at some point allowed, this particular accessory dwelling will be excluded from that use. We are not persuaded that this specific prohibition as to a particular type of approved unit for family members undermines our conclusion, which is based on the text and context of all of the relevant statutes, that the intent of the legislature is to prohibit the types of uses of land in resource zones that are addressed by the county's amendments.

In addition, OAR 660-006-0025(4) lists certain uses that "may be allowed on forest lands" subject to review standards in OAR 660-006-0025(5)—similar to the conditional uses in ORS 215.283(2). For example, OAR 660-006-0025(4)(e) allows "[p]rivate parks and campgrounds," where a campground is "an area devoted to overnight temporary use for vacation, recreational or emergency purposes, but not for residential purposes." OAR 660-006-0025(4)(p) provides that "[p]rivate seasonal accommodations for fee hunting operations may be allowed" subject to other rule provisions and a restriction that accommodations "are limited to no more than 15 guest rooms." OAR 660-006-0025(4)(w) similarly allows for "[p]rivate accommodations for fishing occupied on a temporary basis" subject to certain conditions. Those conditional uses are all temporary or seasonal and evidence an intent to restrict vacation and recreation activities on resource land except as specified.

Having reviewed the statutory scheme as it relates to the use of resource land, we conclude that regardless of whether the question is whether the short-term rental use of dwellings is implicitly included in the allowance of "dwellings" or "residences" on that land or, instead, whether state law expressly allows the short-term rental use of dwellings on land zoned for resource uses, the answer is the same: It does not. Accordingly, the county's ordinances conflict with state law, and LUBA correctly remanded the decision to the county.

Affirmed on petition and cross-petition.

February 5, 2025

Dear Planning Commissioner,

I oppose the application #20250004 for the reasons I will express in this letter. My property is adjacent to Summerville Stables.

According to their Facebook page and web site (summervillestables.com) they advertise commercial boarding, paid long term trailer parking, resort, parties, clinics, wedding venue, camps, live music, food trucks, alcohol bar and multiple Air BnBs. There are many pictures on these sites documenting that these activities have taken place and the event schedule indicates there are more activities scheduled in the future.

The amount of traffic in our area has increased with 40-50 vehicles, including cars, trucks pulling trailers and buses, coming and going daily. The traffic to this stable also includes large semis which have blocked the road while trying to turn into the stable. This is a narrow road with high speed traffic.

I have had vehicles park on my lawn, parked blocking my mailbox and parked in my driveway during events. Last summer I had to call the Sheriff Department to have them remove a vehicle from my property. The owner of the vehicle commented that there wasn't any parking available closer to the stable.

During events, live bands and clinics when the loudspeakers are in use they can be easily heard over a mile away. Sometimes this happens into the night.

Several years ago I went to the Planning Commission and was refused permission to make changes to my property as it is considered a big game migratory route and birthing area. Again, I want to note that my property is adjacent to the stables.

I respectfully request that a cease and desist order be put on this property for these illegal and unauthorized activities according to the Zone Designation: Exclusive Farm Use UC-A1.



Wes Faulk
67004 Hunter Rd.
Summerville, OR 97876

RECEIVED

FEB - 5 2025

UNION COUNTY
PLANNING DEPARTMENT

February 3, 2025

Dear Planning Commissioners:

I am writing to express opposition to application #20250004.

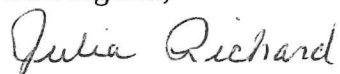
Traffic and safety are a major concern. Our area of Hunter Road is already unsafe as drivers approach the stable coming out of curves and can be met with cars, pickups pulling horse trailers, semis, delivery vehicles, and dump trucks slowing down to turn into the stables. Often the vehicles increase speed and proceed to pass the vehicles turning into the stable, increasing the danger. Daily, there is a fairly steady flow of vehicles into and out of the stable's driveway from early morning to late night. Occasionally a semi has blocked the road while negotiating the turn into the driveway. When there are planned events, the traffic increases exponentially.

My home is across the street from the stable and about ¼ mile back from the road. During events the loud speakers can clearly be heard, and the bands who have played there can be heard late into the night. This takes away from the peace and quiet of nights on the farm. I have tolerated the growth of the stable thus far, but a request to expand further is disrespectful of the neighboring farms. I was never included or notified of the variety of events beyond being a stable were to happen until this notification.

I have included copies of pictures from Summerville Stable Facebook page to share a glimpse of what has been tolerated without notification. Again, approval of this request would be disrespectful to this farm area. I know many neighbors share my opinion.

Thank you for reading my opposition.

Best regards,



Julia Richard
66945 Hunter Rd.
Summerville, OR 97876

RECEIVED

FEB - 5 2025

UNION COUNTY
PLANNING DEPARTMENT

8:06

📶 100%

< Summerville Stables's Events

Upcoming



Sat, Feb 15 at 10 AM

WORKING COWHORSE WORKSHOP

1 responded · 66967 Hunter Rd, Summerville,...

★ Interested



Sun, Feb 16 at 10 AM

CATTLE SORTING PRACTICE!!!

19 responded · 66967 Hunter Rd, Summerville,...

★ Interested



Fri, Apr 25 - Apr 27

**Ben Longwell True West Horsemanship,
Advanced Horsemanship Clinic with Cattle**

44 responded · 66967 Hunter Rd, Summerville,...

★ Interested



Mon, Jun 23 - Jun 27

KIDS SUMMER HORSE CAMP!!! #1

1 responded · 66967 Hunter Rd, Summerville,...

★ Interested



Mon, Jul 14 - Jul 18

KIDS SUMMER HORSE CAMP!!! #2

1 responded · 66967 Hunter Rd, Summerville,...

★ Interested



Sat, Oct 4 at 11 AM



Home



Friends



Marketplace



Profile



Notifications



Menu



Some of the parking - traffic



Field trips - traffic

8:15

100

Band more
loudspeakers

Summerville Stables

Posts About Photos Videos More

Like Comment Send Share

Summerville Stables
Oct 13, 2024



17 1 comment 567 views

Like Comment Send Share

Summerville Stables
Oct 13, 2024

Fabulously fun day yesterday...let's do it all again today!
Come see us...we are open 11:00-4:00!!!



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Music with loudspeakers



Bar



Field trips – increased traffic



Wedding – increased traffic



Pumpkin patch event – increased traffic