

June 4, 2025

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RE: Final and Binding Determination Regarding the Proposed Uses of the Properties Collectively Known as "Union Grove Farm"

Mr. Hornik,

In a letter dated March 21, 2025, you requested a Final and Binding Determination on behalf of Bandit Farms II LLC, Bandit Farms III LLC, and Harper Grace, LLC/Eastwest Organics, LLC, regarding five (5) proposed uses and whether they may be considered bona fide farm and agritourism uses, and thereby exempt from Orange County zoning regulations, on four (4) properties with the following Parcel Identification Numbers (PINs): 9851-71-4716, 9851-81-3226, 9851-62-2001, and 9851-50-8662. The letter describes the current and proposed activities on Union Grove Farm and Inn, including regenerative farming and public engagement, and is supported by six (6) exhibits, including a Master Plan, accompanying illustrations, and a "Menu of Proposed Experiences at Union Grove Farm". A clarifying supplement to the "Exhibit C site plan" was sent by you on April 22, 2025, at my request.

The proposed uses subject to determination in this letter are described as follows:

- 1) A 3-acre culinary farm with a 2,000-square foot (s.f.) fruit and vegetable growing pavilion;
- 2) Overnight guest stay accommodations, including five (5) "Farm cottages", 5 "lake cottages", and a farm stay center ("25 Key Inn") featuring 40 rooms with overnight accommodations, a 70-seat restaurant, an outdoor pool and bar, and a 1,000-s.f. event space;
- 3) A regenerative distillery and associated parking;
- 4) A 2,500-seat amphitheater (aka "farm stage") near the distillery and working farm; and
- 5) A Center for Regenerative Agriculture at Union Grove Farm that will host education programming.

The Orange County Unified Development Ordinance (UDO) does not regulate uses for "bona fide farm purposes" or "agritourism" but defers to the North Carolina General Statutes, primarily 160D-903(a), on such uses and claims of use. This statute states that "[c]ounty zoning regulations may not affect property used for bona fide farm purposes." Accordingly, no zoning and use regulations found exclusively in the Orange County UDO can be applied to a bona fide farm, though State stormwater, stream buffer, and environmental health regulations do apply. The statute defines bona fide farm

purposes to “...include the production and activities relating or incidental to the production of crops, grains, fruits, vegetables, ornamental and flowering plants, dairy, livestock, poultry, and all other forms of agriculture”; and notes that, among other uses, “[a] building or structure that is used for agritourism is a bona fide farm purpose if the building or structure is located on a [farm] property.”

Agritourism is defined, as you note in your letter, with the following language: “...[A]ny activity carried out on a farm or ranch that allows members of the general public, for recreational, entertainment, or educational purposes, to view or enjoy rural activities, including farming, ranching, historic, cultural, harvest-your-own activities, hunting, fishing, equestrian activities, or natural activities and attractions. A building or structure used for agritourism includes any building or structure used for public or private events, including, but not limited to, weddings, receptions, meetings, demonstrations of farm activities, meals, and other events that are taking place on the farm because of its farm or rural setting.”

This determination takes no position on the established bona fide farm purposes on the properties for a vineyard and “regenerative farm”. As described in the materials, “regenerative farming is an agricultural approach that focuses on restoring and enhancing soil health, biodiversity, and ecosystem functions through sustainable practices like crop rotation, cover cropping, reduced tillage, and livestock integration.” This primary use is presumed throughout the interpretation and, per NCGS 160D-903(a), is uncontroverted as exempt from Orange County zoning. The County applies “Rural Buffer” zoning districts to all of the subject properties for all uses other than bona fide farm purposes. This zoning districts has a 87,120-s.f. minimum lot area and allows for 21 uses by right and 17 uses allowed with approval of a special use permit by the county’s Board of Adjustment.

In formulating this Final and Binding Determination, I refer to the precedents in North Carolina of bona fide farm purposes, including agritourism, that provide clarity and guidance on statutory interpretation and appropriate application of the UDO to land use. The precedent of reference is *Jeffries v. County of Harnett* (COA17-729), in which the NC Court of Appeals evaluated whether a gun range qualified as a form of agritourism under the legislative intent and framework established by the State. In interpreting and applying the statute, the Court determined that a gun range primarily features “shooting activities” and is not a qualifying form of agritourism. The Court established qualitative considerations of evaluation to determine whether an agritourism event/use is:

- A) “...purposefully performed on a farm for the aesthetic value of the farm or its rural setting”;
- B) consistent with the “...dangers or conditions that an integral part of an agritourism activity... and ordinary dangers of structures or equipment ordinarily used in farming and ranching operations;” and
- C) “...squarely within traditional notions of... a “rural” activity [or] the category of a ‘natural activity.’”

Furthermore, the Court’s ruling against the gun range use as statutory agritourism held that “...activities that require the construction and use of artificial structures and the alteration of natural land, such as clearing farm property... share little resemblance to the listed rural agritourism activity examples or the same spirit of preservation or traditionalism.” Though Union Grove Farm is not proposing a gun range

the proposed forms, structures, and uses of agritourism described and illustrated in the submitted materials will be primarily evaluated with the agritourism considerations established in *Jeffries*.

Each of the five proposed uses of the properties with PINs 9851-71-4716, 9851-81-3226, 9851-62-2001, and 9851-50-8662 are evaluated on the established considerations for agritourism established in *Jeffries*, and in reference to submitted materials and exhibits. Additionally, *Jeffries* was decided in 2018 prior to the recodification of land development authorities to NCGS Chapter 160D. In 160D agritourism is fully defined which puts into question whether the reliance upon NCGS § 99E–30(1) remains necessary. As such, I will apply both the *Jeffries* risk assessment test as the controlling case but also apply the statute as written and as you argue, namely that it is an activity carried out on a farm that allows members of the general public, for recreational, entertainment, or educational purposes, to view or enjoy rural activities. Since the requested determination is prospective for proposed uses not yet occurring, **I will assume all facts as proposed with no further assumptions**. Accordingly, as Orange County Planning Director, I hereby offer the following analysis for each of the following five proposed uses with the Final & Binding Determinations for each contained in a double-lined box and non-binding advisory opinions in separate dash-lined boxes:

- 1) The 3-acre culinary garden with a 2,000-square foot (s.f.) structure (“pavilion”) for year-round fruit and vegetable cultivation for educational and farm-to-table agricultural experiences. This use is identified by you as being solely on Parcel 9851-81-3226 and is shown on the “Union Grove Inn Master Plan” in Attachment A. It is established as a location where both a) fruits and vegetables will be grown year-round; and b) agritourism is provided in the forms of i) an educational experiences; ii) farm-to-table agricultural experiences; and iii) hosting “programmed events... revolving around the regenerative farming experience.”

As evaluated:

- A) Is this an event or use that is “...purposefully performed on a farm for the aesthetic value of the farm or its rural setting”?

Yes, both the culinary garden and associated structure uses, described being a location where fruits and vegetables are grown year-round and a place to host educational and harvesting events, fulfill the statutory definition of a bona fide farm use; these are bona fide farm purposes. The activities and structure directly support “...the production and activities relating or incidental to **the production of crops, fruits, vegetables,** ornamental and flowering plants, [etc.]”; and are an “activity carried out on a farm or ranch that allows members of the general public, for... educational purposes, to view or enjoy rural activities, including farming [*and*] harvest-your-own activities” (emphasis added).

- B) Is the use consistent with the “...dangers or conditions that are an integral part of an agritourism activity... and ordinary dangers of structures or equipment ordinarily used in farming and ranching operations”?

Yes, all proposed activities and inherent dangers or conditions associated with the garden and structure are “...ordinarily used in farming and ranching operations.” They are being used for production of vegetables and fruits and providing space to educate the public on cultivation.

- C) Is this use an activity that is “...squarely within traditional notions of... a “rural” activity [or] the category of a ‘natural activity’?”

Yes, the cultivation of fruits and vegetables is a traditional farming and rural activity, as is the invitation of the public to participate and learn about such activities.

- D) Is the use an activity carried out on a farm that allows members of the general public, for recreational, entertainment, or educational purposes, to view or enjoy rural activities, as provided for by NCGS 160D?

Yes, both the culinary garden and associated structure uses, as described, fulfill the statutory definition of a bona fide farm purpose. The uses and structures directly enable an “activity carried out on a farm or ranch that allows members of the general public, for... educational purposes, to view or enjoy rural activities, including farming [and] harvest-your-own activities.”

FINAL & BINDING DETERMINATION as to the culinary garden and pavilion:

As presented and described, this use is determined to be a bona fide farm purpose, as it directly involves the “production of crops, fruits, [and] vegetables... carried out on a farm or ranch” that creates a venue and activity to educate the public about farming. As such, it is not subject to Orange County zoning regulation.

- 2) Parcel 9851-81-3226 will feature ten cottages and a farm stay center (aka “25 Key Inn”) with 40 rooms with overnight accommodations, a 70-seat restaurant, an outdoor pool and bar, and a 1,000-s.f. event space. These proposed structures are shown on the “Union Grove Inn Master Plan” (Attachment A, where the five “Farm cottages” are labeled “Garden cottages”), displayed on the site plan (Attachment C), and illustrated in Attachment D with architectural renderings, including surrounding landscapes. The 25 Key Inn is described as being “...available for individuals and groups participating in the educational and cultural activities and programs conducted on site”. The inn is also stated to feature “...art and artifacts and furnishings connected with the history of the Farm and its surroundings”, and, “to the extent possible”, building materials will be “repurposed” from the farm or resourced from trees on the farm. The restaurant and bar also noted to “...feature food and beverages grown or processed from the surrounding community”. As described in the letter, these

structures will be sited "...adjacent to or among the vineyards" but the exhibits show them separated from the vineyards. In the case of the Farm/Garden Cottages, should they be built, their access to the vineyards would be deprived by the farm stay center "25 Key Inn".

As evaluated:

- A) Is this an event or use that is "...purposefully performed on a farm for the aesthetic value of the farm or its rural setting"?

Yes, the inn and cottages benefit from being located on Union Grove Farm due to its active farm operations and rural setting. As described in the letter, overnight guests will have opportunities to enjoy a "restaurant and bar [*that*] will feature food and beverages grown or processed on the Farm and the surrounding community." The inn will feature "art and artifacts and furnishings connected with the history of the Farm and its surroundings," and will feature materials repurposed from the Farm "as much as possible." Both the narrative description and the supporting exhibits provide evidence that the overnight guest stays are being placed at Union Grove Farm due to "...the aesthetic value of the farm or its rural setting."

- B) Is the use consistent with the "...dangers or conditions that an integral part of an agritourism activity... and ordinary dangers of structures or equipment ordinarily used in farming and ranching operations"?

No, there are substantial new dangers presented from the potentially 110 new guests and their vehicles using the property simultaneously for overnight stay and recreation purposes. There are no details on how the cottages and inn will accommodate these vehicles safely except for a basic driveway design and designated parking area. No detail was provided that the vehicles accessing the site have room to park and safely travel on the subject properties. Due to the distillery and bar uses on the properties, these guests may be intoxicated. There are likely dangers introduced, as well, from the combination of pedestrians who may be guests of the onsite overnight accommodations and the vehicles accessing the site solely for the events at the proposed Farm Stage. This is not a typical condition of farming or ranching operations.

The Orange County UDO provides standards for parking, circulation, and lighting that address safety concerns associated with the land use of a hotel/inn that ensure that there is adequate parking and circulation for all vehicles. The NC Department of Transportation also has safety measures to minimize dangers associated with site access, visibility, and congestion that can be addressed through a review of a sealed engineered Traffic Impact Analysis. In the absence of these regulatory reviews and the application of safety standards, the use of the site as described could create dangerous

conditions that are greater than those “ordinarily used in farming and ranching operations.”

The structures for the cottages and the inn present no new “dangers” that are unusual for a farm or ranch, as they will have to be permitted by the NC State Building Code since they are providing overnight accommodations.

- C) Is this use an activity that is “...squarely within traditional notions of... a “rural” activity [or] the category of a ‘natural activity’?”

No, the 25 Key Inn is described as having “...forty (40) rooms for overnight guests, a 70-seat restaurant, an outdoor pool and bar, and 1,000 square foot event space which will be used for exhibits, classes, seminars and other small gathering[sic].” The cottages are new structures that have no farm purpose, nor are they incidental to the farm purpose. The inn and cottages are hospitality structures and uses and not reflective of a rural or natural activity. There is not a direct relationship of the farm with these new structures, particularly the inn, which is not surrounded by the vineyards in either exhibit provided. These hospitality uses disrupt and degrade the rural setting with an intensive and transformative principal hospitality uses that are disruptive to the farm itself, consuming land for the structures and parking that could otherwise be used for a farm purpose, including agritourism that is integrative and compatible with the farm.

There is a recognition in the materials of the need to narratively connect the two primary uses of the farm and the overnight accommodations by integrating some of the farm's products into the construction of the cottages and inn and restaurant menus, as well as offering the inn as a venue partly for events related to the farm. However, no tangible, binding connection is established between the two principal uses, which remain separated both physically and in character from each other, with separate driveways, geographic orientations, and purposes. The “surrounding community” intended to be the resource for supplying restaurant, bar, and decorative materials is never identified. Without definition, this “community” could be broadly defined, including sourcing from locations out of the State of North Carolina. The inn’s 1,000 square feet “event space,” does not meet the statutory requirement that “building[s] or structure[s] used for public or private events... are taking place on the farm because of its farm or rural setting,” as there is no evidence that it will interact with the inn’s surroundings. The event space may have no windows and could conceivably be a generic conference room.

Both the site plan in Attachment C and the “Union Grove Inn Master Plan” shown in Attachment A display the Inn and cottages at locations separate from the rest of the farm and its operations, including a separate point of access. It therefore would be theoretically possible for a visitor to stay at the inn or a cottage and have no direct or

incidental interaction with” ...rural activities, including farming, ranching, historic, cultural, harvest-your-own activities, hunting, fishing, equestrian activities, or natural activities and attractions”.

The “educational and cultural activities and programs conducted on site” proposed for both are not tethered in any way to renting a room or cottage, nor is there any requirement for paying visitors to participate in farm activities. All proposed education materials in the inn and within the rooms require individual visitor behavior to compel interaction and can be ignored and disregarded.

Indeed, when assessed by the Court’s consideration that “...activities that require the construction and use of artificial structures and the alteration of natural land, such as clearing farm property... [and] share little resemblance to the listed rural agritourism activity examples or the same spirit of preservation or traditionalism,” the 25 Key Inn and cottages fail to qualify agritourism. The construction, land disturbance, and externalities associated with this hospitality use are likely to disrupt the farm and its operations as well as the surrounding rural area. They are a distinct principal use from the farm and do not resemble “traditional notions” of farming or rural activities.

- D) Is the use an activity carried out on a farm that allows members of the general public, for recreational, entertainment, or educational purposes, to view or enjoy rural activities, as provided for by NCGS 160D?

No, though both the cottages and inn are described as being sited on these properties intentionally for their ability to “allow members of the general public to view or enjoy rural activities,” they lack a connection that compels guests to interact with the farm or any rural activities. The uses are separated from the farm itself by a separate driveway access and there is no compulsion for a guest to actually interact with it or the rural landscape, should they choose not to. Effectively, the farm serves as an appealing bucolic backdrop to market these hospitality uses, and one that can effectively be ignored by an overnight guest who never leaves the inn’s rooms, except to perhaps enjoy the restaurant and bar.

ADVISORY OPINION (NON-BINDING, NO RIGHT ESTABLISHED, NO VIOLATION EXISTING)

If not a Bona Fide Farm Purpose, then the proposed use of the overnight guest accommodations (25 Key Inn and 10 cottages) would either be an Assembly Use “Retreat Center” (Use 80) or a Service Use “Short Term Rental – Non-Host Occupied” (Use 62(K)), as permitted in UDO Section 5.2 “Table of Permitted Uses”. The former is defined as “[a]n assembly land use operated as a commercial activity”, and the latter defined as “[a] building or group of buildings which provides guestrooms for rental or lease but is not occupied by a Host.” A “Retreat Center” use is permitted as a special use in “Rural Buffer” zoning districts by the Orange County UDO. The “Short Term Rental – Non-Host Occupied” use is not permitted in the RB zoning district and would require rezoning to either “Master Plan Development – Conditional Districts” and “Non-Residential – Conditional Districts,” and likely subdivision of the subject properties.

FINAL & BINDING DETERMINATION as to the cottages and farm stay center:

The use is not a bona fide farm purpose because, as presented, there is no compelling evidence that this proposed use fulfills the statutory definition of a bona fide farm purpose. It does not fulfill the statutory definition of “agritourism”, as there is no compulsion for guests to “view or enjoy rural activities.”

- 3) A regenerative distillery on Parcels 9851-71-4716 and 9851-62-2001 is proposed to feature products made from grapes, “...many or most of which will be grown on the Farm,” and that “[t]here will be regular tours and classes at the distillery where guests can learn the distilling process from the vine to the wine glass”. More specifically, there will be “...*exhibits and demonstrations of the distilling process, where guests may observe various aspects of the distilling process and sample the end products of the process,*” and demonstrations on “...*how the ‘spent’ fruits and grains to be re-processed as the organic materials can be used on site, eliminating transport costs for the ‘waste’ products and instead using those products for other purposes at the Farm.*” It is also noted that the distillery may process “...other fruits and grains... grown on the Farm and others from local or regional sources”.
- A) Is this an event or use that is “...purposefully performed on a farm for the aesthetic value of the farm or its rural setting”?

Yes, the distillery and associated parking, as described, fulfill the statutory definition of a bona fide farm use, as they are used for “...the production and **activities relating or incidental to the production of crops, fruits, vegetables, ornamental and flowering plants, [etc.]**”; and the statutory definition of “agritourism”, as they are an “activity carried out on a farm or ranch that allows members of the general public, for... educational purposes, to view or enjoy rural activities, including farming [*and*] harvest-your-own activities” (emphasis added). The distillery will be using fruits and grains grown on the farm to produce distilled products and providing a space to educate the public on this process and related processes like reuse of “waste” products.

- B) Is the use consistent with the “...dangers or conditions that an integral part of an agritourism activity... and ordinary dangers of structures or equipment ordinarily used in farming and ranching operations”?

Yes, all proposed activities and inherent dangers or conditions are associated with the production of vegetables and fruits into distilled products, including spirits and wine. While there are distinct and greater dangers associated with distillation than for most farm activities due to the use of highly pressured machinery, they are dangers associated with processing a farm product and will be a farm purpose regardless of public access to the site. The provision of space to educate the public on cultivation does not introduce any dangers, though, as farm structures, they will not be permitted by Orange County for compliance with NC State Building Codes.

- C) Is this use an activity that is “...squarely within traditional notions of... a “rural” activity [*or*] the category of a ‘natural activity’?”

Yes, the production of fruits and vegetables into distilled products like wine is a traditional farming and rural activity, as is the invitation of the public to participate and learn about such activities. This established bona fide farm use and form of agritourism throughout North Carolina is acknowledged as such here.

- D) Is the use an activity carried out on a farm that allows members of the general public, for recreational, entertainment, or educational purposes, to view or enjoy rural activities, as provided for by NCGS 160D?

Yes, the production of fruits and vegetables into distilled products like wine is a traditional farming and rural activity, as described, and fulfills the statutory definition of a bona fide farm use. The use and associated structures directly enable an “activity carried out on a farm or ranch that allows members of the general public, for... educational purposes, to view or enjoy rural activities, including farming [*and*] harvest-your-own activities.”

ADVISORY OPINION (NON-BINDING, NO RIGHT ESTABLISHED, NO VIOLATION EXISTING)

If the primary source of the materials for the distilling operation were to originate offsite, the County may re-evaluate any determination. Should it be determined that the distillery is not part of Union Grove Farm’s activities or otherwise not a Bona Fide Farm Purpose, this “Manufacturing, Assembly, Processing, and Distribution Uses – Food” use may be permitted as a “Winery” (Use 27(F), UDO Section 5.2) and further defined as a “Winery with Major Events: A facility utilized for making wines for consumption on- or off-site with tours of the facility, tastings of the products produced on-site, and periodic events that are expected to attract more than 150 people to the site. Food services may be permitted under the conditional district or special use permit approval.” This use is a permitted Special Use in the Rural Buffer zoning district of the subject properties. Alternatively, this use could be a featured element of a rezoning to any of the following conditional zoning districts: “Master Plan Development”, “Agricultural Support Enterprise”, or Non-Residential”.

FINAL & BINDING DETERMINATION as to the regenerative distillery:

As presented and described, this proposed use is considered a farm use and an explicit form of agritourism, as defined and described in NCGS 160D-903, and, as such, is not subject to Orange County zoning regulation.

- 4) A 2,500-seat “Farm Stage” (aka “amphitheater”) near the distillery and working farm, described and illustrated as an “open air venue” on Parcels 9851-71-4716 and 9851-62-2001, and situated in immediate proximity to “...barns, farm equipment, the vermicompost labs and other features of the working regenerative farm”. The letter states that “[e]very event scheduled at the amphitheater will include an educational component describing regenerative farming practices and the benefits derived from them” (emphasis in original text). Furthermore, Attachments C, E, and F shows structures, seating, and a stage integrated among the historic farm buildings and among the working farm operations.
- A) Is this an event or use that is “...purposefully performed on a farm for the aesthetic value of the farm or its rural setting”?

Yes, the Farm Stage appears to be intentionally located on the property. As presented, it will be “...amidst other structures on the working farm, and one would not be able to miss the rural, agricultural setting as they sit at the open-air venue.” The exhibits

consistently demonstrate this intent, as does the description, which makes commitments to include materials “originating onsite”, including stones, on the stage, and incorporate videos about the farm into every event held on that stage, whether that event is recreational, entertainment, or educational, as included in the statutory definition of “agritourism”.

- B) Is the use consistent with the “...dangers or conditions that an integral part of an agritourism activity... and ordinary dangers of structures or equipment ordinarily used in farming and ranching operations”?

No, there are substantial new dangers presented by the traffic access and parking needs for a 2,500-seat amphitheater. At least 1,000 vehicles will need to access and park on site. Otherwise, the farm owners will need to otherwise provide for the transport of up to 2,500 people to this site from an offsite parking location(s). Both scenarios present numerous dangers related to onsite congestion management, driveway access, and the potential for vehicle accidents. Due to the distillery and bar uses on the properties, these guests may be intoxicated. These are not ordinary dangers of farming or ranching operations.

Both Orange County and NCDOT have safety standards to address these concerns that are applicable to this Assembly use. The Orange County UDO provides standards for parking, circulation, and lighting to ensure that there is adequate and safe parking and circulation for all vehicles. The NC Department of Transportation also has safety measures to minimize dangers associated with site access, visibility, and congestion that can be addressed through a review of a sealed engineered Traffic Impact Analysis. In the absence of these regulatory reviews and the application of safety standards, the use of the site by 1,000 – 2,5000 vehicles will create dangerous conditions that are greater than those “ordinarily used in farming and ranching operations.”

- C) Is this use an activity that is “...squarely within traditional notions of... a ‘rural’ activity [or] the category of a ‘natural activity’”?

No, the use could be a rural activity, except that its scale removes it from being “squarely” within the traditional notions. Live music is a traditional type of “rural activity” and is a common form of recreation in many rural communities. A 2,500-seat concert venue, however, is not part of this tradition and not a form of agritourism. It introduces thousands of people, noise, traffic, and lighting that are consistent with an Assembly use and disruptive to both Union Grove Farm and the rural area.

A “2,500-seat Farm Stage” introduces noise, lighting, parking, stormwater runoff, and other concerns that are not identified with ‘rural’ or ‘natural activities’. The crowd attending these concerts can be disruptive in the noise and traffic they generate and

there is also the potential of the entertainers themselves to disrupt the natural and rural character of both the farm and the area. The Orange County UDO provides standards for lighting and landscaping that would minimize the impacts of this use to other areas of the farm and neighboring properties. That such externalities are of immediate concern for compromising the rural and natural character of the area in and of itself makes a case that this use is incompatible as a form of agritourism. They also exceed the concerns of the farm and the area, representing a substantial principal land use that is distinct from the farm and degradative to its operations and purpose, as well as the rural character of both the subject properties and the area.

Further, when assessed by the Court's metric that "*...activities that require the construction and use of artificial structures and the alteration of natural land, such as clearing farm property... [and] share little resemblance to the listed rural agritourism activity examples or the same spirit of preservation or traditionalism,*" the 2,500-seat Farm stage is not a qualifying form of agritourism. The construction, land disturbance, and externalities associated with this use are significant and are those of an entertainment venue or theater, and can be effectively regulated by the standards of the Orange County UDO. The theater is as a principal land use distinct from the farm and must be evaluated through zoning regulation.

- D) Is the use an activity carried out on a farm that allows members of the general public, for recreational, entertainment, or educational purposes, to view or enjoy rural activities, as provided for by NCGS 160D?

Yes, the Farm Stage appears to be intentionally located on the property. As presented, it will be "...amidst other structures on the working farm, and one would not be able to miss the rural, agricultural setting as they sit at the open-air venue." The exhibits consistently demonstrate this intent, as does the description, which makes commitments to include materials "originating onsite", including stones, on the stage, and incorporate videos about the farm into every event held on that stage, whether that event is recreational, entertainment, or educational, as included in the statutory definition of "agritourism". As an entertainment venue, it is within the statutory description of a use that "...allows members of the general public, for recreational, entertainment, or educational purposes, to view or enjoy rural activities". As stated above, however, while submitted and described as "an activity carried out on a farm", it is a principal use distinct from the farm and should be considered and regulated accordingly.

ADVISORY OPINION (NON-BINDING, NO RIGHT ESTABLISHED, NO VIOLATION EXISTING)

If not a Bona Fide Farm Purpose, the amphitheater described would be an Assembly Use (Theater, Use 84) in the Orange County UDO Section 5.2, and defined as “A building or outdoor area in which performances are performed or shown. The term does not include structures primarily constructed to support the holding and/or staging of sporting events where outdoor performances may be held as an accessory use”. It is not permitted in Rural Buffer zoning districts and would require rezoning and likely subdivision from the subject properties as a principal use.

FINAL & BINDING DETERMINATION as to the Farm Stage:

As presented and described, the amphitheater is not a form of agritourism as it is not “incidental” to the farm, but a principal use distinct from the farm and requires transformations of the property and creates potential dangers that are unrelated and possibly detrimental to the farm, contrary to a “traditional notion of a rural activity.”

- 5) The Center for Regenerative Agriculture (“Center”) at Union Grove Farm that will host education programming related to the farm and its products on Parcel 9851-50-8662. The programming that will be centered and focused upon at this structure is described in both the letter and in more detail in the “Menu of Proposed Experiences at Union Grove Farm”. The letter generally describes the Center as being a venue for “...regular ‘classes’ or demonstrations where staff or guest presenters will teach practices such as cheesemaking, beeswax candle rolling and regenerative winemaking. There will be ‘farms schools’ - single- or multi-day courses for guests of all ages - where guests can be immersed in regenerative farming life. There will be tours of the vineyards, the apiaries, and fields, the equipment, the composting facilities, and other features of the Farm. There will be classes offering instruction about the economics of regenerative farming.”

As evaluated:

- A) Is this an event or use that is “...purposefully performed on a farm for the aesthetic value of the farm or its rural setting”?

Yes, the Center, as described, fulfills the statutory language for both the definition of a bona fide farm purpose, as they are used for “...the production and activities relating or

incidental to the production of crops, fruits, vegetables, ornamental and flowering plants, [etc.];” and the following language defining “agritourism”, as they are an “activity carried out on a farm or ranch that allows members of the general public, for... **educational purposes,**” and that “[a] building or structure used for agritourism includes any building or structure used for public or private events, including, but not limited to, weddings, receptions, meetings, **demonstrations of farm activities,** meals, and other events that are taking place on the farm because of its farm or rural setting” (emphasis added).

- B) Is the use consistent with the “...dangers or conditions that an integral part of an agritourism activity... and ordinary dangers of structures or equipment ordinarily used in farming and ranching operations”?

Yes, all proposed activities and inherent dangers or conditions associated with the Center are “...ordinarily used in farming and ranching operations.” It is providing space to educate the public on farm production and activities already occurring elsewhere on the farm properties.

- C) Is this use an activity that is “...squarely within traditional notions of... a “rural” activity [or] the category of a ‘natural activity’?”

Yes, all classes detailed in the Menu focus on farming activities, including creation of farm products for materials generated at the farm, and, as such, are reflective and consistent with traditional farming and rural activity, as is the invitation of the public to participate and learn about such activities. As a venue limited in description to those detailed in the letter and exhibits, the Center is consistent with the farm activities occurring on Union Grove Farm.

- D) Is the use an activity carried out on a farm that allows members of the general public, for recreational, entertainment, or educational purposes, to view or enjoy rural activities, as provided for by NCGS 160D?

Yes, the Center, as described, fulfills the statutory definition of a bona fide farm, as it is used for “...the production and **activities relating or incidental** to the production of crops, fruits, vegetables, ornamental and flowering plants, [etc.]”; and the fo statutory definition of “agritourism”, as it is an “allows members of the general public, for... **educational purposes** to enjoy rural activities,” and that “[a] building or structure used for agritourism includes any building or **structure used for public or private events, including,** but not limited to, weddings, receptions, meetings, **demonstrations of farm activities,** meals, and other events that are taking place on the farm because of its farm or rural setting” (emphasis added).

FINAL & BINDING DETERMINATION as to the Center for Regenerative
Agriculture use:

As presented and described, this proposed use is considered a farm use and an explicit form of agritourism, as defined and described in NCGS 160D-903, and, as such, is not subject to Orange County zoning regulation.

Any additional uses or changes in use not discussed in this final and binding determination will require the appropriate review and permitting by Orange County, including those required by other departments. These determinations and advisory opinions apply to the letter and materials provided to staff as detailed herein and substantial changes from those materials will require additional review and would not be covered by this letter.

This letter does not replace the need to submit applications for applicable permits to Orange County or State agencies in the future but does reflect the Planning Department's Final and Binding Determination of the use of these subject properties as proposed and permitted by the Orange County UDO. As determined herein, eligible bona fide farm purposes do not require zoning approval, nor building permits unless otherwise noted. However, the activities represent a significant change in use of the farm in ways that are anticipated to affect the surrounding area, with potential changes in traffic volumes and patterns, and the number of individuals coming to the farm. I appreciate the courtesy of you and your client to share any information as the farm activities detailed in this determination proceed to be realized. Non-farm uses may be addressed with County staff as potential applications for a special use permit or zoning atlas amendment.

Please let me know if you have any further questions or concerns in this matter.

Sincerely,


Cy Stober
Planning and Inspections Director

CC: Robin L. Tatum, Fox Rothschild, LLP
LeAnn Nease Brown, Brown & Bunch, PLLC

Travis Myren, County Manager
Caitlin Fenhagen, Deputy County Manager
Patrick Mallett, Deputy Director, Development Services
Perdita Holtz, Deputy Director, Long-Range Planning and Administration
Michael Rettie, Chief Building Official
Taylor Perschau, Current Planning & Zoning Supervisor
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