

October 23, 2025

VIA EMAIL

The Honorable Ms. Rivera
Hearing Examiner
Office of the Lee County Hearing Examiner
1500 Monroe Street
Fort Myers, Florida 33902-0298
Email: hex@leegov.com

Re.: SEZ2025-00001 (East Fork Creek Farm)

Madam Hearing Examiner:

Hahn Loeser & Parks, LLP represents the Applicant for SEZ2025-00001, East Fork Creek Farm, which is owned and operated by David and Alise Bartley (the “Bartleys”). This memorandum is submitted contemporaneously with the revised conditions of approval for the above-referenced application for a special exception to permit consumption on premises through 13CT, 2COP, and 4COP, at the Bartleys’ event venue, which operates as an accessory use to the property’s ongoing agritourism activities.

The Bartleys’ event venue qualifies as an agritourism activity because it is directly related to and incidental to the property’s agricultural use, and it attracts visitors to participate in and enjoy that agricultural setting. *See Fla. Stat. § 570.86(1)* (defining “Agritourism activity”). Accordingly, any attempt by the County to impose conditions—such as restrictions on hours of operation—that would regulate or limit that agritourism activity is preempted by Florida state law. *See Fla. Stat. § 570.85; Griffis v. Bridle Oaks Estate, LLC*, 347 So. 3d 392, 393 (Fla. 5th DCA 2021) (“[Section 570.85, Florida Statutes] exempts agritourism from regulation by local governments”).

The revised conditions submitted with this memorandum are mutually agreed upon by the Bartleys and County staff. Additional conditions, if considered, are not permitted and preempted by Florida state law. For these reasons, the Bartleys respectfully request that the Hearing Examiner recommend approval of the special exception subject only to those conditions mutually agreed upon by the Bartleys and County staff.

Thank you for your consideration.

Sincerely,



Gabriel Arbois, Esq.

Cc:
Lee County Staff
Alexis Crespo
Patrick Murray
Client

CONDITIONS

The requested special exception is consistent with Florida Agritourism laws (Section 570.85 – 570.89, Florida Statutes), the Lee Plan and Land Development Code. The requested special exception is consistent with the allowable consumption on premises in conjunction with limited food and beverage service offered as an agritourism activity within the Suburban future land use category. Staff has concluded that approval of the special exception, as conditioned, will not adversely affect environmentally critical or sensitive areas and natural resources, will be compatible with existing and planned uses, and will not be injurious to the neighborhood or detrimental to public welfare. Therefore, staff recommends **APPROVAL** of the applicant's request subject to the following conditions:

1. Development of the site must be substantially consistent with the site plan revised April 14, 2025, attached as Attachment "G". COP is limited to the areas depicted on the site plan.
2. Special exception approval does not establish a right to obtain permits from state or federal agencies. Further, approval does not establish county liability if Applicant: (a) does not obtain requisite approvals or fulfill obligations imposed by state or federal agencies; or (b) undertakes actions that result in a violation of state or federal laws.

3. COP License

Consumption on premises is limited to a 13CT, 2COP or 4COP (SFS) license in conjunction with limited food and beverage service as an accessory to the agritourism activity. Any change in use or license types will require separate approval in accordance with the LDC.

4. Development Order/Permitting Requirements

- a. Prior to sign-off of State alcoholic beverage licensing documents by Lee County, the applicant must amend or pursue a minor change to LDO2024-00187 (See Attachment "M") to demonstrate compliance with the following conditions:

1. A calculation of the total amount of impervious surfaces.
2. A 5-foot-wide enhanced Type A buffer to include a 6-foot-tall opaque wall landscaped on the exterior side of the wall, with 4 trees planted per 100 linear feet, must be depicted along the western property boundary abutting the COP area and along the northern property line abutting Hendry Creek Drive.

- b. ~~Fence permit (FNC2024-03232) must be revised to relocate the 6-foot wall off of the western and northern property lines to allow for the planting of the required Type A buffer trees along the western boundary abutting the COP area and northern property line along Hendry Creek Drive.~~

~~STAFF NOTE: The site plan will need to be revised as it does not depict the
aforementioned buffer along Hendry Creek Drive.~~

5. COP Hours of Operation

~~Events are limited to Sunday through Thursday 12 p.m. to 9 p.m. and Friday through Saturday
12 p.m. to 10 p.m.~~

Agritourism events (including without limitation, weddings, reunions, adoption and corporate
events, farm-to-table dining experience, etc.) with COP are limited to the following hours:

- i. Monday through Saturday from 12:00 PM until 10:00 PM.
- ii. Sunday 12:00 PM until 9:00 PM.

6. Live Entertainment

Music and live entertainment are subject to the Lee County Noise Ordinance. Amplified music is prohibited in the open-air pole barn and is permitted only within the fully enclosed building labeled “Event Space” on the special exception site plan. All windows must be shut during events with amplified noise. Speakers within the enclosed event building must be oriented to the north and east.

7. Maximum Attendees

In compliance with COMM2023-02220, the event center is limited to a maximum of 178
occupants.

8. Parking

All parking must be on-site.