

ATTACHMENT 1

**Jeff and Laurie Mapes  
33973 SE Oakridge Dr.  
Scappoose OR 97056**



June 3, 2024

Columbia County Land Use Planning Commission  
Columbia County Land Development Services  
230 Strand St.  
St. Helens OR 97051

**Re: File # CU 23-12, Application by George Bartholomew Hafeman III for a Conditional Use Permit for a home occupation at 51600 SE 9th Street, Scappoose, Oregon**

To the Planning Commission:

We live next to the property that is the subject of the Conditional Use Permit application referenced above. We oppose the application because Applicant, Mr. Hafeman, has not demonstrated that the legal requirements for his proposed home occupation are met and because the proposed use will unreasonably interfere with our use of our property. Below, we explain where our property and home are and why we are affected by the proposed activity, why the proposal does not meet the legal requirements for a home occupation, and the minimum conditions that should be imposed on the home occupation if the county nevertheless grants the requested permit.

Applicant in his submission has not disclosed our home or the impacts on us of his proposed activities. Applicant states that “[a]gricultural fields buffer the property from the north, east, and south.” (Application Narrative, page 6.) This statement is incorrect. The property is bordered on the south by a narrow stretch of wetland, and then our home. Our home is clearly visible in Attachment 2 to the application; it is labeled 33973 SE Oakridge Drive, which is our address. Attachment 2 and Attachments 5 and 6 show that our property shares almost all of Applicant’s southern boundary, and all of his eastern boundary. Our home is roughly 200 feet from Applicant’s property and appears to be even closer to Applicant’s proposed event venue than the residences on SE 9th Street.

Our home is a lawful and permitted residence in the PA-80 zone. Our home is not an agricultural field; it is a private residence we have lived in since 2003. We therefore have experienced first-hand the many unlawful, unpermitted weddings and other events Applicant has been holding on his property for years. The events are conducted outdoors, with loud music and loud voice amplification that goes on for hours. It is impossible to be unaffected by Applicant’s events. Even with all doors and windows closed and television plus fans going, we hear the music, and the house reverberates with the bass. We sometimes hear every word of wedding toasts spoken over microphone. In the summer, when Applicant historically has held most of his

events, the prevailing winds come out of the north, which increases the noise level at our residence, directly to the south of Applicant's event venue.

Having our own guests over during one of Applicant's events is out of the question, especially if we want to be anywhere outdoors, including our back deck, which faces Applicant's property. We never have notice of his events, so we are caught off guard every time. Applicant's events have seriously diminished our use and enjoyment of our own home. Moreover, we are concerned that our property value will be diminished if the events continue. No one who would otherwise be attracted to the privacy and peace of our rural residence wants to live next to a loud event venue.

Our main complaint is noise: very loud music that goes on for hours, amplified voices, and crowd cheers. We have tried over the years to communicate with Applicant to address our concern about the noise. Our efforts to work with the Applicant and get him to reduce the volume have been unsuccessful. We are aware that Applicant's unlawful use of his property has been reported in The Oregonian, and we have been told that the county placed a cease-and-desist order on Applicant's property. We have hoped that our suffering through Applicant's events was over.

If the county grants the permit Applicant requests, we will continue to suffer in the future just as we have in the past. Applicant is asking the county for lawful authorization to conduct the type of events he has held unlawfully for years. Based on history, we know very well how we will be impacted by the activity Applicant proposes. We therefore are filing this response in order to demonstrate that:

1. Applicant's proposal does not meet the legal requirements for a home occupation.
2. The County's notice for the July 1 Planning Commission hearing does not meet the minimum requirements of state law.
3. If the Planning Commission approves the application, certain conditions for approval should be included.

**A. The legal requirements for a home occupation are not met.**

**1. The Applicant has not demonstrated that the home occupation will be operated "substantially in" the dwelling and other buildings.**

Columbia County Zoning Ordinance (CCZO) 1507.3A mirrors ORS 215.448(1)(c) and requires that the home occupation be operated "substantially in" the dwelling or other buildings normally associated with uses permitted in the zone in which the property is located. The application does not meet this requirement because Applicant admits that outdoor areas will be used for substantial activities and time periods and because nothing in the application commits Applicant to holding events or portions of events indoors.

We respectfully remind the Planning Commission that it must make legally sufficient findings that make the reasons for its decision clear. “Findings are statements of the relevant facts as understood by the decision-maker and a statement of how *each* approval criterion is *satisfied by the facts.*” Oregon Department of Land Conservation and Development, Oregon Planning Commissioner Handbook at 20 (April 2015) (emphasis added); see also ORS 215.416(9) (“Approval or denial of a permit or expedited land division shall be based upon and accompanied by a brief statement that explains the criteria and standards considered relevant to the decision, states the facts relied upon in rendering the decision and explains the justification for the decision based on the criteria, standards and facts set forth”).

Here, Applicant has not presented facts to support a finding that the home occupation will be operated “substantially in” buildings. To the contrary, Applicant has presented internally inconsistent statements, and none of them backed by clear facts. In one place, Applicant admits that “Outdoor Gardens” will be the location of “Reception, seating, music.” Application Narrative at 3. Applicant states that his field “is perfect for any outdoor activities the event guests may want to do.” Conditional Use Permit Fact Sheet. But when asked to explain how the criterion of “substantially in” buildings is met, the Applicant makes no mention of these outdoor activities. The applicant states merely: “The proposed home occupation will occur substantially in the existing barn on the property and to a lesser extent other accessory structures.” Application Narrative at 8. This is a mere assertion, not a presentation of facts that would allow the Planning Commission to make a legally sufficient finding that Applicant’s proposed home occupation will be “operated substantially in” the dwelling or other buildings, as required by state statute as well as the county code. This criterion is not met.

Applicant’s historical operation of unpermitted events on his property is instructive. The wedding arch and wedding seating typically are set up outdoors, on the lawn between Applicant’s dwelling and the “lake.” Dining tables are set up outside the barn. The dance floor is outdoors. Loudspeakers for voice and music are outdoors. Food and beverage service tables may be set up inside the barn, but consumption of drinks pre-ceremony, the actual wedding ceremony, the reception, dining, toasts and dancing all typically occur outdoors and go on for hours. Nothing in the application indicates Applicant’s proposed events will be operated any differently than they have been operated historically. To the contrary, Applicant admits he intends that “Reception, music, seating” and “any outdoor activities the event guests may want to do” will be conducted outdoors.

In short, Applicant’s proposed activities likely will occur substantially *outdoors*, not “substantially in” his home or other buildings. Any finding to the contrary could not be supported by “facts” presented to the Planning Commission to date. Anyone remotely familiar with weddings knows that the “reception, seating, music” portions are far more lengthy and loud components of a wedding than the actual ceremony. Applicant admits that these activities will take place outdoors and gives no indication that the actual ceremony will be indoors. Moreover, Applicant does not identify the proposed location for the many other activities he wants a permit

to conduct: birthday parties, showers, fundraisers, memorials, wine tasting, etc. He does not commit to holding *any* of these events indoors.

The Oregon Land Use Board of Appeals (LUBA) and the Oregon Court of Appeals have addressed the “substantially in” criterion in the context of facts strikingly similar to the facts presented here and concluded that the county should not have granted a home occupation permit. Green v. Douglas County, 63 Or LUBA 200 (2011). In Green, the county granted the applicant a home occupation permit, for property in an exclusive farm use zone, to conduct weddings and receptions, reunions, anniversaries, bridal showers, luncheons, teas, business meetings, birthday parties, and memorial services. The six-acre property contained a home, a grassy area and some outbuildings. The record before the county did not make clear which of the applicant’s proposed activities would take place outdoors rather than in buildings, but there was evidence that wedding ceremonies had been conducted outdoors. LUBA interpreted “substantially in” to mean that the home occupation “must be conducted in the dwelling or buildings ‘to a large degree,’ ‘in the main,’ or as the ‘main part,’ compared to the portion that is conducted outside the dwelling or buildings.” LUBA concluded that the record and the county’s decision did not demonstrate that the permitted activities would take place “substantially” in the dwelling or other buildings. To the contrary, there was “every reason to believe that during good weather such events will be conducted almost entirely outside buildings, with at most only food and drink preparation occurring in buildings.” LUBA added:

[A]s it stands, the authorized events could be carried out almost entirely outside buildings in the grassy area that is set aside for such events. For that reason alone the 2010 CUP Amendment authorizes a home occupation that does not comply with ORS 215.448(1)(c).

Green, 63 Or LUBA 200. Portions of LUBA’s decision in Green were appealed, and the Oregon Court of Appeals explicitly agreed with LUBA’s interpretation of the words “substantially in” buildings as well as LUBA’s reasoning. Green v. Douglas County, 245 Or App 430, 442 (2011).

Green is directly applicable here. Nothing in Applicant’s proposal precludes his many proposed types of events from being carried out entirely, or almost entirely, outside buildings. His proposal does not meet the fundamental requirement of ORS 215.448(1)(c) and CCZO 1507.3A that the home occupation be operated “substantially in” the dwelling or other buildings normally associated with uses permitted in PA-80 zone. As in Green, this reason alone requires the Planning Commission to deny the requested permit.

**2. The applicant proposes to use buildings that are not normally associated with uses permitted in the PA-80 zone, and those buildings apparently have not received proper permits.**

CCZO 1507.3A mirrors ORS 215.448(1)(c) and requires that the home occupation be operated substantially in “[t]he dwelling” or in “[o]ther buildings *normally associated with uses*

*permitted in the zone in which the property is located.*” (Emphasis added.) Applicant proposes to use three “Accessory Structures” for wedding party preparation and overnight lodging of guests. Application Narrative at 3. Those structures apparently are unpermitted, as evidenced by Attachment 7, which contains structural, electrical and plumbing permit applications filed in September 2023. Applicant’s post-construction building permit applications call the three “Accessory Structures” for the home occupation “short term rental” and “event dressing room.” Applicant has not established that short-term rentals and dressing rooms are buildings “normally associated” with uses permitted in the PA-80 agriculture zone. It seems common knowledge that short-term lodging rentals and dressing rooms for weddings are not buildings “normally associated with uses permitted” in a farm zone. The requirement that the home occupation be operated in buildings “normally associated” with agricultural uses is not met. For this reason, alone, the home occupation permit should not be granted.

Moreover, it is our understanding that the barn on Applicant’s property was constructed as an ag-exempt building and cannot legally be occupied by more than ten people at a time. It is unclear how the Planning Commission would have authority to grant Applicant permission to use the barn to hold 60-person events if the barn cannot legally be occupied by more than ten people.

An additional concern is that there is no evidence in the application materials that *any* of the buildings the Applicant proposes to use comply with the county’s Flood Hazard Overlay ordinances. Per FEMA flood insurance rate maps, nearly the entirety of Applicant’s property is in Zone A and expected to be under one foot or more of water in a 100-year flood event. In other words, Applicant’s property is in a floodplain. According to the FEMA map, all of the buildings on Applicant’s property are in Zone A and therefore governed by Section 1100 of the county ordinances because they fall within the Flood Hazard Overlay. Section 1103.41 defines “violation” of the flood hazard overlay ordinances as “the failure of a structure or other development to be fully compliant with the community’s floodplain management regulations.” The ordinance goes on: “A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in this ordinance is presumed to be in violation until such time as that documentation is provided.”

Applicant’s home occupation permit application relies on use of three structures Applicant admits have not received construction permits as shown by the structural, electrical and plumbing permit applications in Attachment 7. Applicant asserts that he need not comply with the Flood Hazard Overlay rules and that “[n]o floodplain development permit is required” because the “application does not propose any new development.” Application Narrative at 8. But the building permits Applicant now has applied for are part of the development process. None of those construction permit applications suggest that the Applicant has obtained valid elevation certificates to establish that the structures are sufficiently above the base flood level to comply with the flood hazard overlay ordinances.

Especially in view of the purposes of the county flood hazard regulations to protect human life and health, reduce property damage and minimize expenditure of public funds, the county should not be approving home occupation activities that rely on the use of buildings that not only were constructed without proper building permits but also lie in a floodplain and may be in violation of the floodplain ordinances.

But, aside from the permitting issues, the home occupation permit should be denied because Applicant proposes to use buildings that are not “normally associated” with agricultural uses.

**3. The Applicant has not established that the home occupation will employ on the site no more than five full-time or part-time persons.**

CCZO 1507.2B mirrors ORS 215.448(1)(b) and requires that the home occupation “shall employ on the site no more than five full-time or part-time persons.” Independent contractors and their staff count as “persons” for purposes of this home occupation rule. Green v. Douglas County, 245 Or App 430, 442 (2011) (agreeing with LUBA that “a necessary condition of approval is that the home occupation business use five or fewer persons to produce events on the site, without regard to whether those persons are employed by the property resident or someone else”). The application on its face does not meet the five-person limit. The Applicant states that he, personally, will be a full-time employee. Application materials, fifth page. The Applicant states that additional people “usually consist of a caterer, a DJ/Emcee, a photographer, and wedding planner.” The Applicant thus describes at least five persons per event. But the Applicant has omitted the shuttle bus driver who will transport guests from an off-site parking site and bring them onto the site and unload them, and then return them to the shuttle lot after the event. Application Narrative at 2; Attachment 4. Applicant therefore has indicated a minimum of six persons necessary to produce events, which exceeds the legal limit for a home occupation. And then there is the wedding officiant, which is a seventh person necessary to produce an event.

Moreover, the code, state statute and Green require that “persons” be counted. The Applicant is counting the caterer as a single person. It defies common knowledge to think that a single person will bring, set up, serve and replenish food and beverages for 60 people. Plus, if alcohol is served at an event, a licensed server typically is required by law. Even if it were possible for a single person to perform all on-site food catering services for sixty people, that person could not possibly also be on duty as bartender.

Included here with our submission, as Attachment 1, are staffing guidelines from a business called Party Waiters. Party Waiters provides an online “staffing calculator” for people to “estimate the number of staff you will need for your event,” available at <https://partywaiters.com/staffing-guidelines>. For a buffet or sit-down meal for 25 guests, a minimum of two staff persons are needed. For a buffet meal for 50 guests, three staff persons are needed. For a sit-down meal for 50 guests, the number rises to six. Adding bar service for 50 guests adds another two people, one to bartend and a second person as a “barback.”

In sum, the only finding supported by the evidence is that more than five persons will be employed on site to produce Applicant's proposed events, and likely quite a few more than five. Applicant has not established that his proposed home occupation meets the requirement that no more than five persons will be employed on site to produce his proposed events. For this reason alone, the home occupation permit must be denied.

**4. The proposed home occupation unreasonably interferes with residential uses existing and permitted in the PA-80 zone.**

CCZO 1507.3B mirrors ORS 215.448(1)(d) and requires that the home occupation "shall not unreasonably interfere with other uses permitted in the zone in which the property is located." Applicant's property is in the PA-80 zone. So is our property. Our residence – roughly 200 feet from Applicant's proposed event venue – was lawfully permitted under rules in effect when it was built in the early 1990s, and residential uses remain permitted uses in the PA-80 zone under certain conditions. See CCZO 303-305. Therefore, it is not just agricultural uses but also *residential* uses on PA-80-zoned property with which Applicant's home occupation may not unreasonably interfere.

It is not clear that Applicant understands this point. Applicant writes, "Applicant does not anticipate any unreasonable interference with uses in the PA-80 zone given the limited use of the surrounding lands for *such uses*." Application Narrative at 8 (emphasis added). It is not clear Applicant realizes that "such uses" includes *residential uses* in the PA-80 zone because Applicant continues, "Applicant addresses compatibility with *other uses*, including the adjacent neighborhood under criteria above." Application Narrative at 8 (emphasis added). In another place in Applicant's materials, he states, "There will be no event that should have any affect [sic] on the surrouding [sic] PA-80 zoned properties." Conditional Use Permit Fact Sheet. It appears that Applicant does not believe he needs to consider interference with residential uses on PA-80 zoned properties to his north and south. If so, he is wrong. The state statute and county code require Applicant to establish that his proposed home occupation will not unreasonably interfere with residential uses of PA-80-zoned property, including ours. The county must consider interference with our use and enjoyment of our residence.

Applicant does seem to recognize that noise is a concern for neighbors to the west of the property, in the residential zone. Despite having clearly stated that receptions, seating **and music** will be outdoors, Applicant contradicts himself by stating, "Given that the barn, where substantially all of the event would take place is enclosed is set back more than 200 feet from the residential neighboring properties any noise interference would be minimal." Conditional Use Permit Fact Sheet. The Planning Commission should reject this statement because it contradicts Applicant's specific admissions that he intends to conduct substantial, noise-producing activities *outdoors*, including receptions and music, just as he has done during his many unpermitted events over the past several years.

In short, Applicant must establish that his proposed home occupation will not unreasonably interfere with our lawful use and enjoyment of our home as a residence. And notably, even if we were the only people who would be unreasonably impacted by Applicant's home occupation, the county must deny it. Neither ORS 215.448(1)(d) nor CCZO 1507 define the unreasonableness of interference by the number of properties or persons affected. They describe interference with a *use*, not a number of people or number of properties.

Applicant seems to want the Planning Commission to evaluate the reasonableness of the noise his events will be allowed to create by using the county's definition of noise so egregious that the county is allowed to cite the perpetrator for a violation. Applicant refers to Ordinance 91-8, the "Columbia County Noise Control Ordinance" adopted by the Board of Commissioners in 1991. See Application Narrative at 2. The ordinance defines "excessive noise" as noise exceeding 60 decibels more than 10% of the time in any 20-minute period between 7 a.m. and 10 p.m., or exceeding 50 decibels between 10 p.m. and 7 a.m. Applicant asserts that "Noise will not exceed 60 dba between 7 am and 10 pm, and will not exceed 50 dba after 10 pm." Application Narrative at 2. Applicant appears to assert that noise from his events will not "unreasonably interfere with" neighboring residential uses as long as he keeps the noise just below the level that would allow the county to take enforcement action against him.

But nothing in the county or state home occupation rules directs the Planning Commission to judge the unreasonableness of noise imposed on neighbors by whether or not the noise reaches the level that triggers an enforcement action. Nothing in the rules suggests that a noise level is reasonable, for purposes of the home occupation rules, just because the noise would not be a violation of the county's excessive noise ordinance. The county's definition of "excessive" noise does not equate to a determination that lesser volume of noise is per se reasonable to impose on a residential neighborhood multiple times every year for hours on end.

Moreover, based on our experience of Applicant's many unpermitted events over the years, we believe the level of noise his events typically create has been "excessive" as defined in Ordinance 91-8. According to Yale Environmental Health & Safety's "Decibel Level Comparison Chart," included here as Attachment 2, the sound of a household refrigerator is 55 decibels. (The chart is available at <https://ehs.yale.edu/noise-hearing-conservation>.) Normal conversation is 60-70 decibels. The sound level we have suffered on our property during Applicant's past events has seemed to exceed the level of normal conversation. We are not talking about the level of sound at its source; we are talking about the level *we experience* on our property. Thus, even if the county noise ordinance could be considered to define "reasonable" daytime noise, for purposes of the home occupation rules, Applicant's events appear to us to have exceeded that level, repeatedly. Based on Applicant's apparent disregard for land use laws to date, by holding unpermitted events that led to a cease-and-desist order, we have little expectation that noise from future events would stay below "excessive." And, we remind the Planning Commission that Applicant repeatedly contradicts himself on the noise question, sometimes stating that his events will take place in the "enclosed" barn, elsewhere making clear



he intends receptions, music, seating and anything else guests want to do to be outdoors, and never committing to holding any particular activity indoors.

We ask the Planning Commission, in evaluating reasonableness, to consider whether it is reasonable to shift the burden and expense of noise monitoring to us. Because that's what Ordinance 91-8 does. To prove a violation, the noise measurement must be taken on *our* property, by a trained technician certified by the county's Sheriff, using specific equipment described in the ordinance. We have neither the equipment nor the training required. We suspect the same is true for our neighbors. We all would have to hire and pay for noise measurements on our properties and be able to get a technician to our property on a moment's notice. It is unreasonable to place this burden and cost on us.

We also ask the Planning Commission, in evaluating reasonableness, to consider the intent of the land use laws and zoning codes. One purpose is to give buyers notice of the allowable uses not just of their own property but also neighboring properties. Notably, the county makes special effort to make sure people understand the potential adverse impacts from neighboring agricultural land. In conjunction with either the purchase of our property or the permitting process for our barn, we recall having to sign a statement acknowledging and accepting that our property borders agricultural land and that noise, dust and odors from farming operations must be accepted; we recall that it included a release of claims for injury from agricultural practices, as well. If Applicant were using his property in accordance with its zoning and we were bothered by tractor engines and dust from farming activities or the sounds of chickens crowing or the smell of pigs, we could not complain that we were not warned. Instead, Applicant proposes to use his property in a manner for which the zoning rules have provided no adequate notice or warning. We not only will suffer directly in terms of our use and enjoyment of our property, we are also legitimately concerned that our property value will be diminished and it will be hard to find a buyer willing to live immediately next to a loud event venue. We would be surprised if the owners of nearby residences do not have the same concern. In evaluating the unreasonableness of the interference Applicant's proposed activities will cause, the Planning Commission should consider the lack of warning to neighbors that someone could turn Applicant's agricultural property into an event center and subject neighbors to loud music and voices for hours at a time until long after dark.

For all these reasons, Applicant's proposed home occupation unreasonably interferes with neighboring residential uses, including ours. The requirement that the home occupation not unreasonably interfere with other uses permitted in the zone in which Applicant's property is located is not met. The requested permit should not be granted.

**5. Applicant's property has inadequate road frontage.**

Applicant's proposal does not meet the requirements of CCZO 308.3, which provides:

All newly created lots or parcels *and those with permitted, reviewed or conditional uses*, shall have a minimum of 50 foot frontage on a public or private right-of-way and an approved access in accordance with this ordinance, the Columbia County Road Standards and the Rural Transportation System Plan.

CCZO 308.3 (emphasis added). Applicant states that this criterion is satisfied, but his explanation is inadequate. Applicant states only: “ The property is an existing legal parcel with frontage along SE 9th Street via a flag lot. No new parcel is proposed.” Application Narrative at 4.

The problem with Applicant’s reasoning is that the requirement for 50 feet of road frontage applies not only to the creation of new parcels but also to parcels for which conditional uses are granted. The italicized language makes this clear. Applicant is seeking a conditional use permit. CCZO 308.3 therefore applies, and 50 feet of road frontage is required.

Applicant has not provided evidence that the property’s frontage on SE 9th Street is the required minimum length of 50 feet. The Applicant’s “Site Plan for the Lake House” in Attachment 3 to the application suggests that the frontage is about half the required length, according to the scale beneath the site plan. County web maps and other mapping services indicate the property frontage on SE 9th Street is substantially less than 50 feet. This criterion is not met unless and until Applicant provides proof of adequate road frontage.

#### **6. Applicant’s proposed uses create a safety hazard.**

Applicant states that no hazardous conditions would be created by his proposed use. Conditional Use Permit Fact Sheet. We disagree. The eastern boundary of Applicant’s property, a boundary our property shares, is neither fenced nor marked. According to the aerial photo Applicant submitted as Attachment 2 and the site drawing included as Attachment 3, it appears that a portion of the grassy area Applicant has been mowing and including in his event venue extends onto our property. Aside from the issue of trespassing, we are concerned about injury and liability. Our concerns are heightened by two factors. One, “Accessory Building 1” where Applicant proposes to house two overnight guests . . . who may have been drinking . . . is very close to the property boundary. Two, on our property and adjacent to the grassy area is a wetland comprised of standing water and a tangle of vegetation. Just past this area, and also on our property, is a steep bank leading down to Santosh Slough. If the aerial photo accurately identifies the property boundary – and we recognize that it may not – then Applicant’s mowing onto our property invites people to wander off his property and onto ours, where they may be injured.

As addressed above, Applicant’s proposal does not meet the legal requirements for a home occupation, and a permit for a home occupation should not be granted. If, however, a home occupation permit is issued, this safety matter needs to be addressed, as we discuss below in section C.

## **7. Applicant raises legally irrelevant points and inaccuracies.**

Applicant's property perhaps makes a lovely event venue. Hundreds of other rural properties in the county would, as well. But the governing laws do not allow the county to grant Applicant a home occupation permit based on the attractiveness of the property for the proposed use. It does not matter how suitable the property is for an event venue, or how many people support Applicant's proposal, if the application does not meet each and every criterion required for approval of a home occupation. Applicant's proposal does not satisfy the criteria. Therefore, the county should not issue the requested permit.

And the county should give no weight to Applicant's statement that "[t]he property currently is not usable [sic] for agriculture" because that statement is legally irrelevant as well as false. See Conditional Use Permit Fact Sheet. The statement is irrelevant because nothing in the home occupation rules allows the county to take into account how suitable the property is for agricultural uses. The statement is also false, for two reasons. One, Applicant states that his current uses of the property include "lavender farming," which is an agricultural use. Application Narrative at 1. Two, the property's prior owner used the existing barn and adjacent grassland for stabling horses for profit, an outright permitted use in the PA-80 zone under ORS 215.203(2)(a). The property remains suitable for such use. Applicant appears to be trying to garner sympathy for his application by asserting that his property cannot be used in accordance with its zoning, agriculture. Because Applicant's assertion is neither legally relevant nor true, no credence or weight should be granted to Applicant's assertion that his property is not usable for agriculture. His proposed uses do not meet the requirements for a home occupation, and a home occupation permit should be denied.

### **B. The county's notice for the Planning Commission hearing was deficient.**

The Notice of Public Hearing we received for the Planning Commission's July 1, 2024 hearing on CU 23-12 does not meet the notice requirements of the governing state statute. The notice we received is included here as Attachment 3 for your reference.

The governing state statute is ORS 197.797. It requires that a notice, mailed at least twenty days before the hearing, be sent to the applicant and to owners of record of property within 500 feet of the property that is the subject of the notice. ORS 197.797(2)(a)(C). The notice must contain certain information. The Notice of Hearing in Attachment 3 falls short of the requirements in at least the following ways:

1. It does not explain "the nature of the application and the proposed use or uses which could be authorized," as required by ORS 197.797(3)(a). The notice merely states the application is for "a Conditional Use Permit for a home occupation." It does not explain the proposed uses which could be authorized. For all we knew, Applicant merely wanted to give piano lessons inside his house. Only because we called the county and requested

information about the application did we discover that the proposed uses amount to a large, noisy outdoor commercial operation.

2. It does not “[l]ist the applicable criteria from the ordinance and the plan that apply to the application at issue,” as required by ORS 197.797(3)(b). The notice does not list *any* of the applicable criteria.
3. It does not state the location of the hearing, as required by ORS 197.797(3)(d). In fact, the only address on the notice is the address of the county offices at 230 Strand Street in St Helens. The hearing location is elsewhere, according to the Planning Commission’s web page. According to the web page, the hearing will be held in Healy Hall in the Public Works Department, at 1054 Oregon Street, not in the county offices.
4. It does not state that “failure of an issue to be raised in a hearing, in person or by letter, or failure to provide statements or evidence sufficient to afford the decision maker an opportunity to respond to the issue precludes appeal to the board based on that issue,” as required by ORS 197.797(3)(e).
5. It does not [i]nclude the name of a local government representative to contact” for additional information, as required by ORS 197.797(3)(g). There is no name on the notice.
6. It does not state that “a copy of the application, all documents and evidence submitted by or on behalf of the applicant and applicable criteria are available for inspection at no cost and will be provided at reasonable cost,” as required by ORS 197.797(h).
7. It does not state that “a copy of the staff report will be available for inspection at no cost at least seven days prior to the hearing” as required by ORS 197.797(i)
8. It does not include “a general explanation of the requirements for submission of testimony and the procedure for conduct of hearings,” as required by ORS 197.797(j).

In short, the notice does not inform recipients what Applicant plans to do, what rules apply, who to contact for more information, that they have a right to attend the hearing in person, and that failure to raise an issue now will stop them from being able to raise it in an appeal. It does not tell them that they can speak up in testimony or in writing, or how to do so. It does not inform people that they have a right to inspect and/or get a copy of the staff report before the hearing. It does not give the address of the hearing. It does not even state that the hearing will be held in a specific location open to the public; to the contrary, it indicates that it will be virtual and that the only way to “join” is virtually or by telephone. By giving only the address of the county offices, anyone who tries to attend in person based on the notice will go to the wrong location. The notice not only falls short of giving people anywhere near adequate notice of Applicant’s intentions and their rights to have a voice, but it will also send them to the wrong location and thereby *prevent* them from participating.

For these reasons, the county should send another notice that meets all of the requirements of ORS 197.797. If the county cannot mail such notice timely for the July 1 hearing, the hearing should be postponed. The citizen participation component of land use decisions is a fundamental part of the process.

**C. If the county approves the home occupation permit, certain conditions should be included.**

As explained above, the county should not approve the application for a home occupation because Applicant has not demonstrated that the proposed use meets the applicable legal requirements. If the county nevertheless approves the application, the Planning Commission should use the power given it in ORS 215.448(2) to “establish additional reasonable conditions of approval.” The Commission’s authority is broad:

The Commission may attach conditions and restrictions to any conditional use approved. . . . Conditions and restrictions may include a specific limitation of uses, landscaping requirements, off-street parking, performance standards, performance bonds, and other reasonable conditions, restrictions, or safeguards that would uphold the intent of the Comprehensive Plan and mitigate any adverse effect upon the adjoining properties which may result by reason of the conditional use being allowed.

CCZO 1503.2

The conditions necessary and reasonable to mitigate adverse effects upon adjoining properties include, at a minimum:

1. Applicant must constrain all activities associated with events to the inside of existing, fully permitted buildings unless and until Applicant comes back to the Commission with a proposal that (1) clearly identifies what activities will be conducted outdoors and (2) allows the Commission to make findings supported by *substantial evidence* that the home occupation is operated “substantially in” the dwelling or other buildings normally associated with uses permitted in the PA-80 zone. We remind the Commission that it is required to make a finding that the “substantially in” requirement is met and to support that finding with legally sufficient evidence. Unlawful, unpermitted events the Applicant has held on his property over the past several years have been conducted substantially *outside* existing buildings. There is nothing in Applicant’s proposal to suggest that the events he plans will be any different. Nothing in the application as presented commits Applicant to hold any particular activity or portion of it indoors. Therefore, a condition that activities be conducted entirely indoors is necessary to ensure that Applicant’s proposed activities take place substantially in existing buildings.
2. No speakers, voice amplification, microphones, electronic musical instruments, or other electronic sound sources are allowed other than sources confined entirely within the interior of existing, enclosed, permitted buildings. Electronic sources of sound outside of buildings are prohibited, including sources attached to the exterior of buildings or coming from automobiles. This condition is necessary to ensure both that activities take place “substantially in” buildings and to prevent unreasonable interference with neighboring uses.

3. Applicant must clearly state in any advertising of his property for use to conduct events, and in all written and verbal explanations of his venue and contracts with his customers, the following: (A) The total numbers of persons attending any event may not exceed 60; (B) the event venue adjoins residential properties; (C) all persons attending events must behave in a manner respectful of neighboring residential uses, particularly with regard to noise levels; (D) no speakers, voice amplification, microphones, electronic musical instruments, or other electronic sound sources are allowed other than sources confined entirely within the interior of existing, enclosed, permitted buildings; (E) electronic or amplified sources of sound outside of buildings are prohibited, including sources attached to the exterior of buildings or coming from automobiles; (F) if Applicant, his employees or agents become aware of a violation of the terms or conditions of the home occupation permit, Applicant must take whatever steps are necessary to either bring the event immediately into compliance or immediately terminate it, and (G) if the customer's event violates any term or condition of the home occupation permit, the customer should anticipate that government officials may enter the property and may determine that they have authority to terminate the event. This condition is reasonable, for several reasons. One, nothing in Applicant's proposal requires him to be on site during events or to control attendees. Two, if noise or attendance levels are excessive, it seems doubtful that governing authorities have time or staff to police the events and ensure compliance with the constraints of the home occupation permit. Therefore, it is reasonable to shift some responsibility for permit compliance to Applicant's customers as well as Applicant. Three, Applicant's customers deserve to know the constraints of Applicant's home occupation permit so they do not unknowingly participate in an unlawful event. Four, if Applicant's customers are aware of the limitations on their events, it is more likely that events will comply with the limitations of the home occupation permit and less likely that neighbors will have to find a way to enforce the limitations of the permit. Five, customers will have clear notice before contracting with Applicant that Applicant has no discretion to allow customers to violate the terms and conditions of Applicant's home occupation and that their failure to abide by the terms and conditions will result in termination of the event. If Applicant intends to comply with the terms and conditions of his home occupation permit, then providing notice in his advertising and obtaining contracts signed by customers acknowledging those terms and conditions – including Applicant's responsibility to immediately terminate an event that violates any of those terms and conditions – should not be objectionable to Applicant because they simply memorialize what Applicant presumably will explain to his customers anyway.

4. The terms and conditions of the home occupation permit must be posted in a prominent location on Applicant's property where they are likely to be noticed by, and are printed in large enough font to be read easily by, event attendees.

5. No more than five persons required to produce an event, including without limitation Applicant, Applicant's employees and agents, independent contractors, and staff persons of independent contractors, may be on site at any one time,

6. The number of persons at an event, other than the (maximum five) persons involved in producing the event as described in Condition 5, may not exceed 60.

7. Applicant must provide written notice of each event and its date and time, mailed no less than twenty days before the date of each event, to owners of record of property on the most recent property tax assessment roll where such property is located within 500 feet of the property that is the location of Applicant's home occupation. These are the same properties who were entitled to notice of Applicant's conditional use application hearing. This condition is reasonable because it will give neighbors the opportunity to adjust their own plans to minimize adverse impacts from Applicant's events.

8. Before any event is conducted, Applicant must (1) hire, pay for and complete a professional survey, by a licensed surveyor, of property boundaries and clearly mark the boundaries with no trespassing signs to prevent guests from trespassing on neighboring property; (2) after completion of the professional survey and agreement by us that the survey is acceptable, build a fence, adequate to prevent crossing by a human, along the eastern boundary of Applicant's property to prevent guests, especially intoxicated guests, from injury or worse on our property. These conditions are reasonable not only to protect neighboring property owners from potential lawsuit but also to protect Applicant's guests. As discussed above, the eastern boundary of Applicant's property borders wetlands and Santosh Slough on our property. The proximity of Applicant's proposed events makes these features safety hazards. It is unreasonable for neighboring property owners to suffer threat of lawsuit or other economic loss as a result of Applicant's activities.

We thank the Planning Commission in advance for its consideration of this submission.

Sincerely,  
Jeff & Laurie Mapes

Attachments:

1. Party Waiters, "Staffing Guidelines," available at <https://partywaiters.com/staffing-guidelines>
2. Yale Environmental Health & Safety, "Decibel Level Comparison Chart," available at <https://ehs.yale.edu/noise-hearing-conservation>
3. Columbia County Land Development Services "Notice of Public Hearing" regarding File # CU 23-12, dated May 15, 2024

**Attachment 1 to Mapes Response to Columbia County File # CU 23-12**

**Party Waiters, "Staffing Guidelines," available at <https://partywaiters.com/staffing-guidelines>**





EVENTS

GALLERY

RATES

FAQ

BOOK STAFF

# STAFFING GUIDELINES

If you want to estimate the number of staff you will need for your event, then you can use our staffing calculator. You enter a few pieces of information, and it will tell you a rough number. Of course, it's not possible to know for sure how many staff people you will need without actually having a discussion, but the calculator lets you plan and budget.

## STAFFING CALCULATOR

### GUEST COUNT

25

### EVENT TYPE

Buffet

### SERVICE LEVEL

Standard  VIP

---

### TOTAL

**1 Buffet Attendant**

**1 Busser**



RENTALS

GALLERY

RATES

FAQ

BOOK STAFF

# STAFFING GUIDELINES

If you want to estimate the number of staff you will need for your event, then you can use our staffing calculator. You enter a few pieces of information, and it will tell you a rough number. Of course, it's not possible to know for sure how many staff people you will need without actually having a discussion, but the calculator lets you plan and budget.

## STAFFING CALCULATOR

### GUEST COUNT

25

### EVENT TYPE

Sit Down

### SERVICE LEVEL

Standard  VIP

---

### TOTAL

**2 Servers**



RENTALS

GALLERY

RATES

FAQ

BOOK STAFF

# STAFFING GUIDELINES

If you want to estimate the number of staff you will need for your event, then you can use our staffing calculator. You enter a few pieces of information, and it will tell you a rough number. Of course, it's not possible to know for sure how many staff people you will need without actually having a discussion, but the calculator lets you plan and budget.

## STAFFING CALCULATOR

### GUEST COUNT

50

### EVENT TYPE

Buffet

### SERVICE LEVEL

Standard  VIP

### TOTAL

**1 Buffet Attendant**  
**2 Bussers**



CONTACTS

GALLERY

RATES

FAQ

BOOK STAFF

# STAFFING GUIDELINES

If you want to estimate the number of staff you will need for your event, then you can use our staffing calculator. You enter a few pieces of information, and it will tell you a rough number. Of course, it's not possible to know for sure how many staff people you will need without actually having a discussion, but the calculator lets you plan and budget.

## STAFFING CALCULATOR

### GUEST COUNT

50

### EVENT TYPE

Sit Down

### SERVICE LEVEL

Standard  VIP

---

### TOTAL

**1 Captain**  
**5 Servers**



PRICING

GALLERY

RATES

FAQ

BOOK STAFF

# STAFFING GUIDELINES

If you want to estimate the number of staff you will need for your event, then you can use our staffing calculator. You enter a few pieces of information, and it will tell you a rough number. Of course, it's not possible to know for sure how many staff people you will need without actually having a discussion, but the calculator lets you plan and budget.

## STAFFING CALCULATOR

### GUEST COUNT

50

### EVENT TYPE

Bar Service

### SERVICE LEVEL

Standard  VIP

---

### TOTAL

**1 Bartender**  
**1 Barback**

**Attachment 2 to Mapes Response to Columbia County File # CU 23-12**  
**Yale Environmental Health & Safety, “Decibel Level Comparison Chart,” available at**  
**<https://ehs.yale.edu/noise-hearing-conservation>**

From Yale Environmental Health & Safety  
 available at <https://ehs.yale.edu/noise-hearing-conversation>

### Decibel Level Comparison Chart

Environmental Noise	dB(A)
Jet engine at 100'	140
<b>Pain Begins</b>	125
Pneumatic chipper at ear	120
Chain saw at 3'	110
Power mower	107
Subway train at 200'	95
Walkman on 5/10	94
<i>Level at which sustained exposure may result in hearing loss</i>	80-90
City Traffic	85
Telephone dial tone	80
Chamber music, in a small auditorium	75-85
Vacuum cleaner	75
Normal conversation	60-70
Business Office	60-65
Household refrigerator	55
Suburban area at night	40
Whisper	25
Quiet natural area with no wind	20
Threshold of hearing	0

Note: dB(A) = Decibels, A weighted

**Attachment 2 to Mapes Response to Columbia County File # CU 23-12**  
**Columbia County Land Development Services “Notice of Public Hearing” regarding File #**  
**CU 23-12, dated May 15, 2024**





**NOTICE OF PUBLIC HEARING**  
(Remote Access Available)

**Date: May 15, 2024**

**File # CU 23-12**

**Owner/Applicant: Davis Wright Tremaine, LLP on behalf of George Bartholomew Hafeman III**

**Map/Taxlot: 3118-BC-02800**

**Site Address: 51600 SE 9<sup>th</sup> St Scappoose, OR 97056**

**Zone: Primary Agriculture PA-80**

**Size: 4.27 Acres**

**NOTICE IS HEREBY GIVEN** that George Bartholomew Hafeman III and representatives from Davis, Wright, Tremaine, LLP have applied for a Conditional Use Permit for a home occupation. This property is zoned PA-80 (Primary Agriculture) and is 4.27 Acres, located at 51600 SE 9<sup>th</sup> St in Scappoose, OR.

**SAID PUBLIC HEARING** will be held before the Columbia County Planning Commission on **Monday, July 1, 2024**, starting at **6:30 p.m.**

**Columbia County Planning Commission Meeting**

**Please join my meeting from your computer, tablet or smartphone.**

<https://meet.goto.com/880602597>

**You can also dial in using your phone.**

United States (Toll Free): 1 866 899 4679

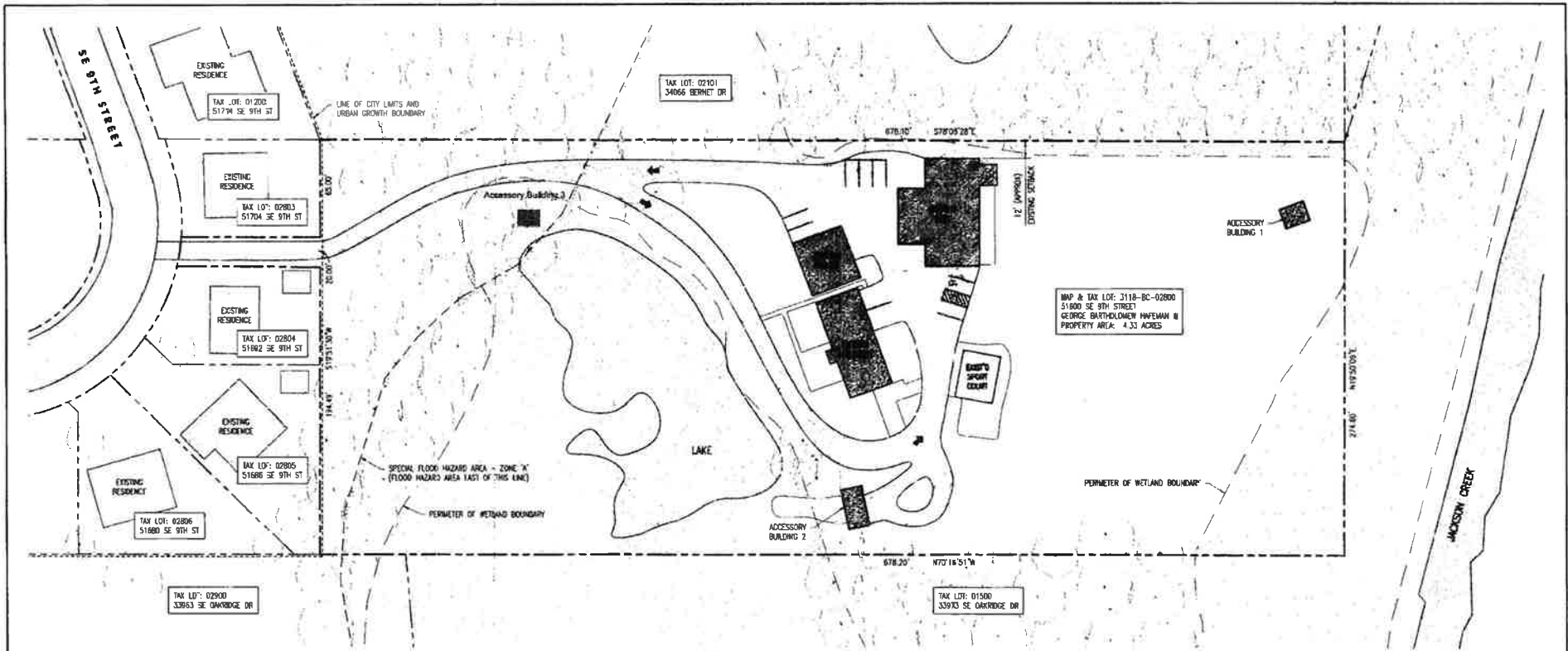
United States: +1 (571) 317-3116

**Access Code: 880-602-597**

If you have any questions or concerns regarding access to the meeting or need accommodation, please call the Land Development Services office at (503) 397-1501.

Thank you,

Columbia County Land Development Services



**SITE PLAN FOR THE LAKE HOUSE**  
SCALE: 1" = 30'



DATE: 01/25/2024  
REVISED PRINT  
VOID ALL PREVIOUS

DATE: 01/25/2024  
FOR REFERENCE ONLY

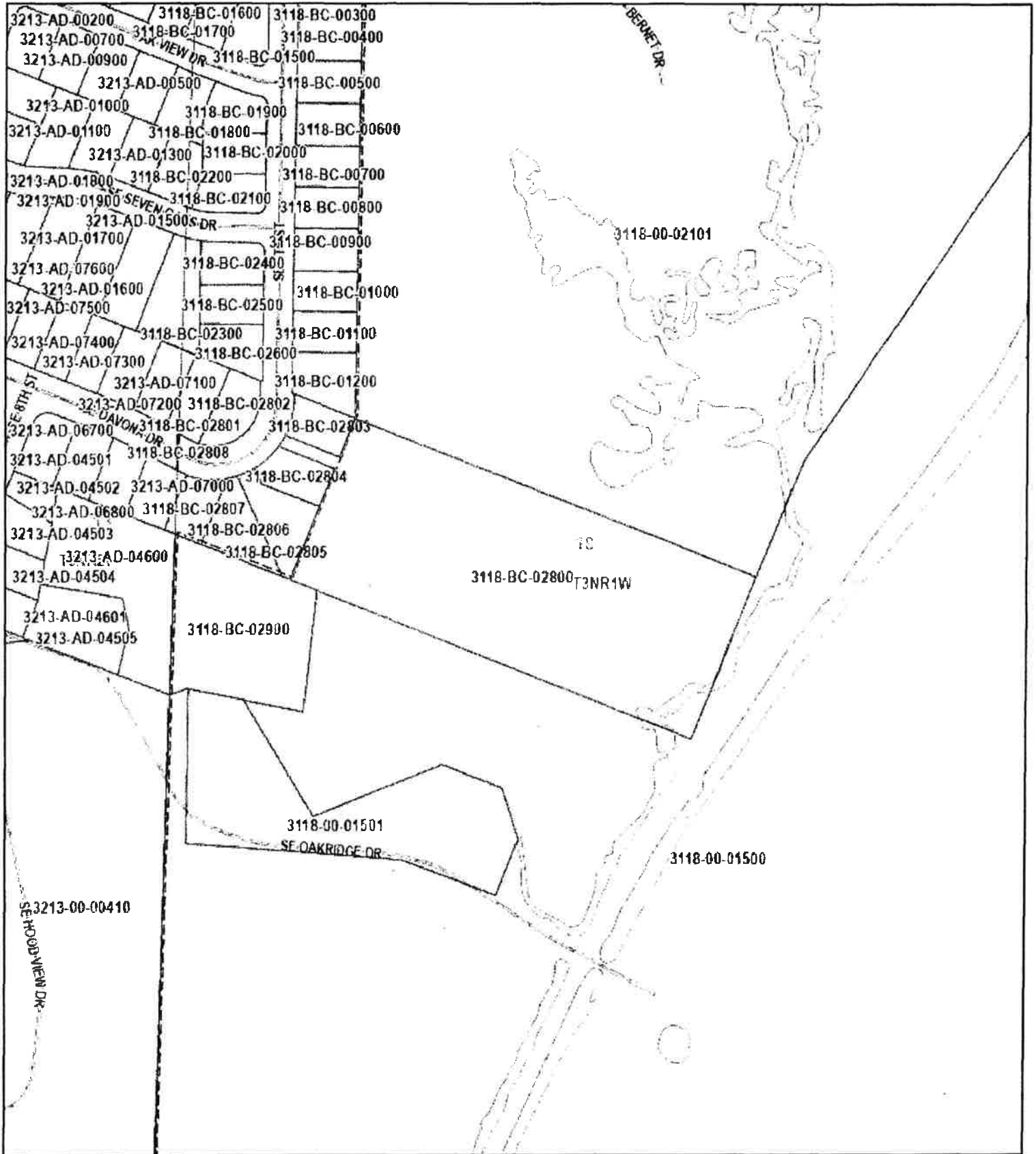
REV	REVISION NUMBER	DATE
A	ADDED B.M.A. COMMENTS	01/25/2024



PROJ. NO.	3566	THE LAKE HOUSE SITE PLAN
ENG. BY	BMK	THE LAKE HOUSE (HAFEMAN)
DATE BY	DAVIS WRIGHT TREMAINE LLP	DATE
TITLE	D-3566-C-1-A	DATE
		11/21/2023

**C-1**

# Columbia County Web Map



5/15/2024 11:23 AM

0

**Disclaimer:** This map was produced using Columbia County GIS data. The GIS data is maintained by the County to support its governmental activities and is subject to change without notice. This map should not be used for survey or engineering purposes. Columbia County assumes no responsibility with regard to the selection, performance or use of information on this map

## Deborah Jacob

---

**From:** Tracey Heimbuck <traceyheimbuck@gmail.com>  
**Sent:** Monday, June 17, 2024 6:58 AM  
**To:** Planning Department.UserGroup  
**Subject:** The Lake House Support

Some people who received this message don't often get email from traceyheimbuck@gmail.com. [Learn why this is important](#)

To whom it may concern,

I am emailing in support of Bart Hafeman and the Lake House. We have been direct neighbors of Bart and his family and have had nothing but great interactions. He has always been very respectful of our privacy and aware of noises that may accompany large gatherings. Therefore we are in full support of Bart Hafeman and The Lake House.

Tracey and David Heimbuck



*Tracey Heimbuck,*

Founding Epicure Senior Leader ~USA  
(503)396-1310

All Things Epicure with Tracey:

<https://linktr.ee/traceyheimbuck>

Learn more about becoming an ambassador:

<https://youtu.be/O7hpsdyI3SY>

RECEIVED

JUN 17 2024

Land Development Services





WAIVER OF REMONSTRANCE - FARM/FOREST PRACTICES

I/we hereby certify that under no circumstances, now or at any time in the future, will I/we remonstrate against or begin, maintain or cause to have begun or maintained on my/our behalf, any legal action, suit or proceeding, nor will I/we take any other action whatsoever, to cause or persuade the owner or operator of any farm or forest lands, adjacent or near to the subject tax lots, to cease or modify any legal and accepted practice regarding their current, past or future farm or forestry operations.

Dated and Signed this 19 day of Dec, 1996

Signed: [Signature] Name Printed: Wanda Wickson

Signed: \_\_\_\_\_ Name Printed: \_\_\_\_\_

Signed: \_\_\_\_\_ Name Printed: \_\_\_\_\_

Subject Tax Lots: 3118-000-02200 File Number: CU27-95

STATE OF OREGON )
) ss
County of Columbia )

This instrument was acknowledged before me on December 19, 1996

[Signature]
Notary Public for Oregon
My commission expires: Sept. 27, 1997



Accepted by County Planning Dept.
By: [Signature]

Date: 3-20-97, 1997

Note: Please return original to County Planning Office after recording. Thank you.

I hereby certify that the within instrument was received for record and recorded in the County of Columbia, State of Oregon.

2840 '97 MAR 20 AM 10:19
02840



ELIZABETH HUSER, County Clerk
By: [Signature] Deputy
Receipt # 5400 # of Pages 1
FEES \$ 5.00



COLUMBIA COUNTY, OREGON 2015-010058  
DEED-D  
Cnt=1 Pgs=3 HUSERB 12/03/2015 03:47:48 PM  
\$15.00 \$11.00 \$20.00 \$5.00 \$10.00 = \$61.00



I, Elizabeth E. Huser, County Clerk for Columbia County, Oregon  
certify that the instrument identified herein was recorded in the Clerk  
records.  
Elizabeth E. Huser - County Clerk

RECORDING REQUESTED BY:

GRANTOR:  
Brian S. Gorton and Marci L. Gorton  
114 N 17th  
St Helens, OR 97051

GRANTEE:  
George Bartholomew Hafeman III, as to an estate  
in fee simple  
51600 SE 9th Street  
Scappoose, OR 97056

SEND TAX STATEMENTS TO:  
George Bartholomew Hafeman III  
51600 SE 9th Street  
Scappoose, OR 97056

AFTER RECORDING RETURN TO:  
George Bartholomew Hafeman III  
51600 SE 9th Street  
Scappoose, OR 97056

Escrow No: 73815013190-TTCOL38

3118-BC-02800  
2922  
51600 SE 9th Street  
Scappoose, OR 97056

SPACE ABOVE THIS LINE FOR RECORDER'S USE

73815013190

TTCOR TITLE

### STATUTORY WARRANTY DEED

Brian S. Gorton and Marci L. Gorton, Grantor, conveys and warrants to

George Bartholomew Hafeman III, as to an estate in fee simple, Grantee, the following described real property, free and clear of encumbrances except as specifically set forth below, situated in the County of Columbia, State of Oregon:

Parcel 1: A tract of land in Section 18, Township 3 North, Range 1 West of the Willamette Meridian, Columbia County, Oregon, being a portion of Parcel 1 as conveyed to Warren Wickum in Clerk's Instrument No. 93-8957, Records of Columbia County, Oregon, said portion being more particularly described as follows:

Beginning at a 5/8 inch iron rod at the Southeast corner of Lot 90, Seven Oaks, Phase 2, said point being on the North line of the Wickum tract; thence South 19°51'30" West 274.49 feet to a 5/8 inch iron rod with a cap marked "KEENON LAND SERVICES INC." on the South line of said Wickum tract; thence South 70°10'51" East along said South line 676.85 feet to the Southeast corner of said Wickum tract; thence North 20°07'18" East along the East line of said Wickum tract 274.03 feet, more or less, to the Northeast corner of said tract; thence North 70°08'30" West 676.11 feet to the point of beginning.

Parcel 2: Tract A, Charlie's Acre, in the City of Scappoose, Columbia County, Oregon.

Subject to and excepting:

SEE ATTACHED

73815013190-TTCOL38  
Deed (Warranty-Statutory)



BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON'S RIGHTS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010. THIS INSTRUMENT DOES NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY THAT THE UNIT OF LAND BEING TRANSFERRED IS A LAWFULLY ESTABLISHED LOT OR PARCEL, AS DEFINED IN ORS 92.010 OR 215.010, TO VERIFY THE APPROVED USES OF THE LOT OR PARCEL, TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES, AS DEFINED IN ORS 30.930, AND TO INQUIRE ABOUT THE RIGHTS OF NEIGHBORING PROPERTY OWNERS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010.

DATED: 12/2/15

Brian S. Gorton  
Brian S. Gorton  
Marci L. Gorton  
Marci L. Gorton

State of OREGON

COUNTY of COLUMBIA

This instrument was acknowledged before me on Dec 2, 2015

by Brian S. Gorton and Marci L. Gorton

Debra Elisabeth Corsiglia  
Notary Public - State of Oregon  
My commission expires: 06/18/2019



**EXCEPTIONS:**

Regulations, including levies, liens, assessments, rights of way and easements of Scappoose Drainage Improvement Company.

Waiver of Remonstrance and Consent to Local Improvement District:

Purpose: farm or forest improvements

Recording Date: March 20, 1997

Recording No.: 97-02840

Easement(s) for the purpose(s) shown below and rights incidental thereto as delineated or as offered for dedication, on the map of said tract/plat;

Purpose: Utilities

Affects: Westerly 5 feet of Parcel 2

Easement(s) for the purpose(s) shown below and rights incidental thereto, as granted in a document:

Granted to: City of Scappoose

Purpose: access and utilities

Recording Date: August 26, 1999

Recording No: 99-11861

Affects: Exact location not disclosed



Wickum, Warren

# BUILDING PERMIT

Site Address: 51600 9TH ST., SCAPPOOSE, OR

Issued: 1/16/98

Expires:

Parcel No: 311802302800

Lot:

Block:

Project:

BLD1998-00290

CONTRACTOR/OWNER

Empty box for Contractor/Owner information.

OWNER

WICKUM WARREN  
53833 COLUMBIA RIVER  
HIGHWAY  
SCAPPOOSE, OR 97056

**PROJECT DESCRIPTION:**

Single Family Dwelling (1,122 sq. ft.)/garage (598 sq. ft.)

City Contact: GE Type of work: NEW Type of use: SF Census Category: 101 Estimated Value: \$85,634.44 Zoning: PA-38 SI Code:	<b>Construction Type/Occ Use/Occ Load</b>			
	Construction		Occupancy	
	Type 1:	5N	Group 1:	R3 Load 1:
	Type 2:		Group 2:	Load 2:
	Type 3:		Group 3:	Load 3:
	Type 4:		Group 4:	Load 4:

<b>General Building Info</b>			<b>Building Site</b>		
Area 1:	1,122 SQFT	No. of units:	Required Parking:	Required Setback:	
Area 2:	598 SQFT	No. of Stories:	Total:	Front:	30.00
Area 3:	SQFT	Height:	Handicapped:	Side 1:	30.00
Area 4:	SQFT	Type of Heat:	Compact:	Side 2:	30.00
Area 5:	SQFT			Rear:	30.00
Area 6:	SQFT				
Impervious Surface:	SQFT				

**Conditions of Approval:**

1. fire dept. approval - OK per letter from Scappoose RFD dated 12-19-97
2. septic permit #05-7219-STD
3. road access permit - N/A (City of Scappoose access approved)

~~EXPIRES~~ DEC 21 1998

*[Handwritten Signature]*

FEES	
Type	Amount
administration fee	\$20.00
Plan Check Fee - 65% BLD F	\$254.15
Building Permit Fee	\$391.00
Plumbing Permit Fee	\$251.00
Mechanical Permit Fee	\$50.50
State Surcharge - 5%	\$34.63
<b>Total</b>	<b>\$1,001.28</b>

*Paid in Full*

FINAL 1-12-98





## SCAPPOOSE RURAL FIRE PROTECTION DISTRICT

P.O. Box 625 • 52751 Columbia River Hwy. • Scappoose, Oregon 97056

Phone: (503) 543-5026 • FAX: (503) 543-2670

To: Columbia County Building Services

Date: December 19, 1996

In Reference To: Site Permit for Warren Wickum off of S.E. 9th Street.

The plot plan on the private drive way for Warren Wickum off of S.E. 9th Street is accepted as submitted. The owner will improve current driveway width, emergency apparatus turnaround of current roadway during excavation of home site. We are in support of a site permit for this location.

If you have any questions, please feel free to contact me.

Michael S. Greisen  
Fire Chief

12-19-96  
Date



## ATTACHMENT 3



### Fire Service Referral and Acknowledgement

**Site Address:** 51600 SE 9<sup>th</sup> Street Scappoose, OR 97056

**Map & Tax Lot:** 3118-BC-02800

**Description of Proposed Use:**

**Applicant Name(s):** Davis Wright Tremaine, LLP on behalf of George Bartholomew

This document serves as official comment for the permit application for Tax Map ID No. 3118-BC-02800 in Scappoose, Oregon.

The following requirements are required by Scappoose Fire District:

If new development creates a new roadway, the name of this roadway must be approved by the fire district and Columbia 911.

507.5.1 Where required. Where a portion of the facility or building hereafter constructed or moved into or within the jurisdiction is more than 400 feet (122 m) from a hydrant on a fire apparatus access road, as measured by an approved route around the exterior of the facility or building, on-site fire hydrants and mains shall be provided where required by the fire code official.

Exceptions:

1. For Group R-3 and Group U occupancies, the distance requirement shall be 600 feet (183 m).
2. For buildings equipped throughout with an approved automatic sprinkler system installed in accordance with Section 903.3.1.1 or 903.3.1.2, the distance requirement shall be 600 feet (183 m).

503.1.1 Buildings and facilities. Approved fire apparatus access roads shall be provided for every facility, building or portion of a building hereafter constructed or moved into or within the jurisdiction. The fire apparatus access road shall comply with the requirements of this section and shall extend to within 150 feet (45 720 mm) of all portions of the facility and all portions of the exterior walls of the first story of the building as measured by an approved route around the exterior of the building or facility.

503.2 Specifications. Fire apparatus access roads shall be installed and arranged in accordance with Sections 503.2.1 through 503.2.8.





503.2.1 Dimensions. Fire apparatus access roads shall have an unobstructed width of not less than 20 feet (6096 mm), exclusive of shoulders, except for approved security gates in accordance with Section 503.6, and an unobstructed vertical clearance of not less than 13 feet 6 inches (4115 mm).

503.2.2 Authority. The fire code official shall have the authority to modify the dimensions specified in Section 503.2.1.

503.2.3 Surface. Fire apparatus access roads shall be designed and maintained to support the imposed loads of fire apparatus and shall be surfaced so as to provide all-weather driving capabilities.

503.2.5 Dead ends. Dead-end fire apparatus access roads in excess of 150 feet (45 720 mm) in length shall be provided with an approved area for turning around fire apparatus.

503.3 Marking. Where required by the fire code official, approved signs or other approved notices or markings that include the words NO PARKING—FIRE LANE shall be provided for fire apparatus access roads to identify such roads or prohibit the obstruction thereof. The means by which fire lanes are designated shall be maintained in a clean and legible condition at all times and be replaced or repaired when necessary to provide adequate visibility.

903.2.1.2 Group A-2. An automatic sprinkler system shall be provided throughout stories containing Group A-2 occupancies and throughout all stories from the Group A-2 occupancy to and including the levels of exit discharge serving that occupancy where one of the following conditions exists:

The fire area exceeds 5,000 square feet (464 m<sup>2</sup>).

The fire area has an occupant load of 100 or more.

The fire area is located on a floor other than a level of exit discharge serving such occupancies.

907.2.1 Group A. A manual fire alarm system that activates the occupant notification system in accordance with Section 907.5 shall be installed in Group A occupancies where the occupant load due to the assembly occupancy is 300 or more, or where the Group A occupant load is more than 100 persons above or below the lowest level of exit discharge. Group A occupancies not separated from one another in accordance with Section 707.3.10 of the International Building Code shall be considered as a single occupancy for the purposes of applying this section. Portions of Group E occupancies occupied for assembly purposes shall be provided with a fire alarm system as required for the Group E occupancy.

Address numbers on commercial buildings shall be fixed to the building facing the street at a height that is not obstructed by passenger vehicles, delivery trucks or other obstructions (trees and bushes).

Address numbers shall not be affixed to glass windows or doors (ORD17-2.0).

If a commercial building is more than 100 feet away from the fire apparatus access road, the size of the address numbers shall be 18 inches tall by three inches wide (stroke).

If the address numbers are obscured, a monument sign shall be required at the end of the road. The size of the numbers shall be 12 inches tall by two inches wide (stroke) (ORD17-2.3).

Adhere to any applicable code requirements for occupancy as designated per the Oregon Fire Code and Oregon Structural Specialty Code.



If you have any questions, please let me know.

Thank you,

**Miguel Bautista, PhD**  
**Division Chief of Prevention & Training**  
**Scappoose Rural Fire Protection District**  
**52751 Columbia River Highway**  
**P.O. BOX 625**  
**Scappoose, Oregon 97056**  
**Phone: 503-543-5026**  
**FAX: 503-543-2670**



**SCAPPOOSE**  
*Oregon*

May 28, 2024



## Land Use Referral Comments

To: Deborah Jacob, Senior Planner, Columbia County

From: N.J. Johnson, MPA, Associate Planner  
Laurie Oliver Joseph, AICP, CFM, Community Development Director

Re: Referral comments in regard to Conditional Use Permit 23-12

---

## Comments

1. The applicant will be required to obtain a Minor Site Development Review Permit from the Scappoose Planning Department in order to use Hafeman Plaza as an off-site parking facility. The City has not received or approved the Hafeman Plaza Site Plan or Shared Parking Agreement included as **Attachment 4**. This could be altered by a recent shared parking agreement between Hafeman Commercial Properties LLC and CCPOD LLC.
2. Any sign in City limits will require a Sign Permit through the Scappoose Planning Department. The sign will be subject to Chapter 17.114 of the Scappoose Development Code.
3. The City would endorse a route where the shuttle bus exits the plaza parking southbound either to SW Old Portland Road or directly onto Columbia River Highway. The City does not endorse a northbound exit from the plaza parking lot because a heavy shuttle bus with several passengers would have to cross 5 lanes of highway traffic in ~250 feet.
4. The applicant will be responsible for maintaining the driveway and sidewalk from SE 9<sup>th</sup> Street as required by the Scappoose Municipal Code.
5. The draft staff report states that 41 (37 standard) parking spaces will be available on Hafeman Plaza. This is not correct as 9 of those 41 are reserved for uses with hours of operation on the weekends and possibly more due to the recent parking agreement with CCPOD LLC. Please correct this once the number of available parking spaces is known.



COLUMBIA COUNTY  
LAND DEVELOPMENT SERVICES  
Planning Division  
COURTHOUSE  
ST. HELENS, OREGON 97051  
Phone: (503) 397-1501 Fax: (503) 366-3902

**Referral and Acknowledgement**

**Responding Agency:**

**NOTICE IS HEREBY GIVEN** that George Bartholomew Hafeman III and representatives from Davis, Wright, Tremaine, LLP have applied for a Conditional Use Permit for a home occupation. Applicant seeks approval to host weddings and other events on the property. This property is zoned PA-80 (Primary Agriculture) and is 4.27 Acres, located at 51600 SE 9<sup>th</sup> St in Scappoose, OR. CU 23-12


**Planner: Deborah Jacob**

**Comment Due: 5/27/24**

The enclosed application is being referred to you for your information and comment. Your recommendation and suggestions will be used by the County Planning Department and/or the Columbia County Planning Commission in arriving at a decision. Your prompt reply will help us to process this application and will ensure the inclusion of your recommendations in the staff report. Please comment below.

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2.  Please see attached letter or notes below for our comments.
3.  We are considering the proposal further, and will have comments to you by \_\_\_\_\_.
4.  Our board must meet to consider this; we will return their comments to you by \_\_\_\_\_.
5.  Please contact our office so we may discuss this.
6.  We recommend denial of the application, for the reasons below:

COMMENTS: \_\_\_\_\_  
\_\_\_\_\_

Signed:  Printed Name: DAVE Sukon  
Title: Scappoose Public Works Director Date: 5/28/2024



May 28, 2024

Attn: Columbia County Planning Department

Re: CU 23-12

Dear Deborah,

The City of Scappoose Public Works Department maintains the city streets that will be used to access 51600 SE 9th St., St. Scappoose. We want to express our concerns over the additional use the streets will see during these events. This neighborhood is based on single family dwellings and the proposed use would comparably add more trips and subsequently, more wear. In reading through the findings in the report, the summary of event attendance does not appear to align with the parking assumptions. Scappoose Public Works would appreciate more clarity on trip expectations if possible.

Thank you,

A handwritten signature in blue ink, appearing to read "Dave Sukau".

Dave Sukau

Public Works Director





May 28, 2024

Attn: Columbia County Planning Department

Re: CU 23-12

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Dave Sukau

Public Works Director

ATTACHMENT 4

RECEIVED  
MAY 21 2024  
Land Development Services

Referral and Acknowledgement

Responding Agency: Columbia County Public Works

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Planner: Deborah Jacob

Comment Due: 5/27/24

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2.  Please see attached letter or notes below for our comments.
3.  We are considering the proposal further, and will have comments to you by \_\_\_\_\_.
4.  Our board must meet to consider this; we will return their comments to you by \_\_\_\_\_.
5.  Please contact our office so we may discuss this.
6.  We recommend denial of the application, for the reasons below:

COMMENTS: No County roads are involved.

Signed: Scott Toenjes Printed Name: Scott Toenjes  
 Title: Engineering Technician II Date: 5/21/2024

COLUMBIA COUNTY  
LAND DEVELOPMENT SERVICES  
Planning Division  
COURTHOUSE  
ST. HELENS, OREGON 97051  
Phone: (503) 397-1501 Fax: (503) 366-3902



**Referral and Acknowledgement**

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**Planner: Deborah Jacob**

**Comment Due: 5/27/24**

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6.  We recommend denial of the application, for the reasons below:

Exempt Uses of Ground Water include:

1. Stock watering.
2. Non-commercial irrigation of not more than one-half acre in area.
3. Single or group domestic purposes for no more than 15,000 gallons per day.
4. Single industrial or commercial purposes: not exceeding 5,000 gallons per day.
5. Down-hole heat exchange uses.

COMMENTS: \_\_\_\_\_

**The above exempt uses do NOT allow for commercial irrigation.**

Signed: Jake Constans

Digitally signed by Jake Constans  
Date: 2024.05.17 15:27:01 -07'00'

Printed Name: Jake Constans

Title: Watermaster District 18

Date: 5/17/24





**Referral and Acknowledgement**

**Responding Agency:**

**NOTICE IS HEREBY GIVEN** that George Bartholomew Hafeman III and representatives from Davis, Wright, Tremaine, LLP have applied for a Conditional Use Permit for a home occupation. Applicant seeks approval to host weddings and other events on the property. This property is zoned PA-80 (Primary Agriculture) and is 4.27 Acres, located at 51600 SE 9<sup>th</sup> St in Scappoose, OR. CU 23-12

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4.  Our board must meet to consider this; we will return their comments to you by \_\_\_\_\_.
5.  Please contact our office so we may discuss this.
6.  We recommend denial of the application, for the reasons below:

COMMENTS: All Buildings will need to meet current Building, Electrical, Plumbing and Mechanical Codes.

Signed: [Signature] Printed Name: Don VanDomele  
Title: Building Official Date: 5-21-2024



**NOTICE OF PUBLIC HEARING**  
(Remote Access Available)

**Date: May 15, 2024**

**File # CU 23-12**

**Owner/Applicant: Davis Wright Tremaine, LLP on behalf of George Bartholomew Hafeman III**

**Map/Taxlot: 3118-BC-02800**

**Site Address: 51600 SE 9<sup>th</sup> St Scappoose, OR 97056**

**Zone: Primary Agriculture PA-80**

**Size: 4.27 Acres**

**NOTICE IS HEREBY GIVEN** that George Bartholomew Hafeman III and representatives from Davis, Wright, Tremaine, LLP have applied for a Conditional Use Permit for a home occupation. This property is zoned PA-80 (Primary Agriculture) and is 4.27 Acres, located at 51600 SE 9<sup>th</sup> St in Scappoose, OR.

**SAID PUBLIC HEARING** will be held before the Columbia County Planning Commission on **Monday, July 1, 2024**, starting at **6:30 p.m.**

**Columbia County Planning Commission Meeting**

**Please join my meeting from your computer, tablet or smartphone.**

<https://meet.goto.com/880602597>

**You can also dial in using your phone.**

United States (Toll Free): [1 866 899 4679](tel:18668994679)

United States: [+1 \(571\) 317-3116](tel:+15713173116)

**Access Code:** 880-602-597

If you have any questions or concerns regarding access to the meeting or need accommodation, please call the Land Development Services office at (503) 397-1501.

Thank you,

Columbia County Land Development Services

**Referral and Acknowledgement**

Responding Agency: Sanitation

**NOTICE IS HEREBY GIVEN** that George Bartholomew Hafeman III and representatives from Davis, Wright, Tremaine, LLP have applied for a Conditional Use Permit for a home occupation. Applicant seeks approval to host weddings and other events on the property. This property is zoned PA-80 (Primary Agriculture) and is 4.27 Acres, located at 51600 SE 9<sup>th</sup> St in Scappoose, OR. CU 23-12

**Planner: Deborah Jacob**

**Comment Due: 5/27/24**

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- Our board must meet to consider this; we will return their comments to you by \_\_\_\_\_.
- Please contact our office so we may discuss this.
- We recommend denial of the application, for the reasons below:

COMMENTS: This proposal requires an Authorization (septic). For the change in use to the system - site visit is also required

Signed: [Signature]  
Title: EHS Trainee

Printed Name: Annamaria Pacheco  
Date: 5.29.24







COLUMBIA COUNTY  
LAND DEVELOPMENT SERVICES  
Planning Division  
COURTHOUSE  
ST. HELENS, OREGON 97051  
Phone: (503) 397-1501 Fax: (503) 366-3902

**Referral and Acknowledgement**

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4.  Our board must meet to consider this; we will return their comments to you by \_\_\_\_\_.
5.  Please contact our office so we may discuss this.
6.  We recommend denial of the application, for the reasons below:

COMMENTS: Business must file a Business Personal Property  
return with County Assessor once operations begin

Signed: Andrea Jurkiewicz Printed Name: Andrea Jurkiewicz  
Title: Assessor Date: 5/17/24

**Deborah Jacob**



**From:** Josh.Goldsmith@dsl.oregon.gov  
**Sent:** Wednesday, June 5, 2024 3:04 PM  
**To:** Deborah Jacob  
**Subject:** WN2024-0358 Response to Local Case File #CU 23-12  
**Attachments:** Wetland Land Use Notice.pdf; Wetland Land Use Notice Response.pdf

**CAUTION:** This email was NOT sent by the Columbia County email system. Do not click links or open attachments unless you are expecting this email and/or know the content is safe. Also, do NOT scan any 'QR' codes in this email.

Hi there,

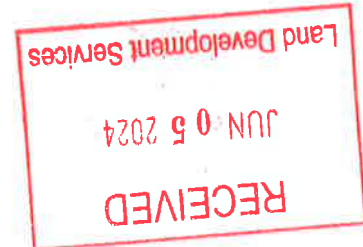
Cities and Counties are required by statute (ORS 215.418 & 227.350) to submit notice to DSL of any projects that may impact wetlands and waterways, according to the Statewide Wetlands Inventory. DSL has completed review of the Wetland Land Use Notification that was prepared for Caroline A. Cilek (WN2024-0358).

Please see attached for the results and conclusions of this review. To request paper copies please contact support.services@dsl.oregon.gov. Otherwise, please review the attachments carefully and if you have questions regarding this response, contact Josh Goldsmith, Josh.Goldsmith@dsl.oregon.gov. Questions regarding the local permit should be directed to your Planner: Deborah Jacob, deborah.jacob@columbiacountyor.gov.

[Planning for Local Governments Page](#)  
[Removing or Filling Material Page](#)

Thank you,

Aquatic Resource Management Program  
Oregon Department of State Lands  
775 Summer St. NE, Ste. 100  
Salem, OR 97301-1279  
www.oregon.gov/dsl



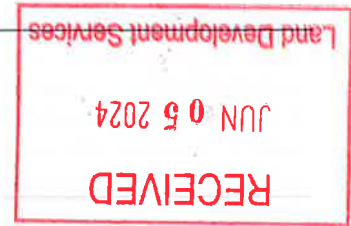




# Wetland Land Use Notice Response

## Response Page

Department of State Lands (DSL) WN# \*  
WN2024-0358



## Responsible Jurisdiction

<b>Staff Contact</b> Deborah Jacob	<b>Jurisdiction Type</b> County	<b>Municipality</b> Columbia County
<b>Local case file #</b> CU 23-12	<b>County</b> Columbia	

## Activity Location

<b>Township</b> 03N	<b>Range</b> 01W	<b>Section</b> 18	<b>QQ section</b> NW	<b>Tax Lot(s)</b> 2800
------------------------	---------------------	----------------------	-------------------------	---------------------------

Street Address  
51600 SE 9th Street  
Address Line 2  
City  
Scappoose  
Postal / Zip Code  
97056

State / Province / Region  
OR  
Country  
Columbia

<b>Latitude</b> 45.74379	<b>Longitude</b> -122.86553
-----------------------------	--------------------------------

## Wetland/Waterway/Other Water Features

- The National Wetlands Inventory shows wetland, waterway or other water features on the property
- Local Wetlands Inventory shows wetland, waterway or other water features on the property
- The county soil survey shows hydric (wet) soils on the property. Hydric soils indicate that there may be wetlands.

## Your Activity

- It appears that the proposed project **may** impact wetlands and **may** require a State permit.

## Applicable Oregon Removal-Fill Permit Requirement(s)

- 
- A state permit is required for 50 cubic yards or more of fill removal or other ground alteration in wetlands, below ordinary high water of waterways, within other waters of the state, or below highest measured tide.

## Closing Information

### Additional Comments

The entire site is on hydric soils. There are also mapped wetlands and a pond located onsite. Based on the available information, a jurisdictional wetland may be present on the property. To determine if a wetland removal-fill permit is required, a wetland delineation review is required to evaluate how much of the project area is wetlands. A wetland delineation provides the information needed to either avoid or minimize wetland impacts, or to complete a wetland removal-fill permit application if impacts cannot be avoided.

**This is a preliminary jurisdictional determination and is advisory only.**

This report is for the State Removal-Fill law only. City or County permits may be required for the proposed activity.

### Contact Information

- For information on permitting, use of a state-owned water, wetland determination or delineation report requirements please contact the respective DSL Aquatic Resource, Proprietary or Jurisdiction Coordinator for the site county. The current list is found at: <http://www.oregon.gov/dsl/ww/pages/wwstaff.aspx>
- The current Removal-Fill permit and/or Wetland Delineation report fee schedule is found at: <https://www.oregon.gov/dsl/WW/Documents/Removal-FillFees.pdf>

### Response Date

6/5/2024

### Response by:

Josh Goldsmith

### Response Phone:

971-375-1675

## Deborah Jacob

---

**From:** Amy Herzog  
**Sent:** Thursday, June 6, 2024 12:12 PM  
**To:** rosemary lohrke  
**Cc:** Deborah Jacob  
**Subject:** RE: CU 23-12 Hafemann Notice of Hearing July 1, 2024

Thanks for the update.

## Amy Herzog

Permit Technician  
Columbia County Land Development  
503-397-1501 ext 8483  
[Amy.Herzog@columbiacountyor.gov](mailto:Amy.Herzog@columbiacountyor.gov)  
[www.columbiacountyor.gov](http://www.columbiacountyor.gov)



Please note:

Land Development Services has moved to a temporary location at 445 Port Avenue, St. Helens. We're available to assist you in person, by phone 503-397-1501 and email: [building@columbiacountyor.gov](mailto:building@columbiacountyor.gov) or [planning@columbiacountyor.gov](mailto:planning@columbiacountyor.gov).

**From:** rosemary lohrke <rlohrke@gmail.com>  
**Sent:** Wednesday, June 5, 2024 5:03 PM  
**To:** Amy Herzog <Amy.Herzog@columbiacountyor.gov>  
**Subject:** Re: CU 23-12 Hafemann Notice of Hearing July 1, 2024

**CAUTION:** This email was NOT sent by the Columbia County email system. Do not click links or open attachments unless you are expecting this email and/or know the content is safe. Also, do NOT scan any 'QR' codes in this email.

Thank you, Amy. I did speak with one neighbor whose only concern was with parking which she thought had been already addressed

On Wed, Jun 5, 2024 at 4:23 PM Amy Herzog <[Amy.Herzog@columbiacountyor.gov](mailto:Amy.Herzog@columbiacountyor.gov)> wrote:

Good afternoon,

Our office has sent a "Re-Notice" to all parties with some updates to the notice itself. The hearing is still set for July 1, 2024, it was only verbiage changes that needed to be made. Please see the attached updated notice that was sent out.

If you have any questions, please reach out to [planning@columbiacountyor.gov](mailto:planning@columbiacountyor.gov).

Thank you

## Amy Herzog

Permit Technician

Columbia County Land Development

503-397-1501 ext 8483

[Amy.Herzog@columbiacountyor.gov](mailto:Amy.Herzog@columbiacountyor.gov)

[www.columbiacountyor.gov](http://www.columbiacountyor.gov)



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[building@columbiacountyor.gov](mailto:building@columbiacountyor.gov) or [planning@columbiacountyor.gov](mailto:planning@columbiacountyor.gov).

1 BEFORE THE LAND USE BOARD OF APPEALS  
2 OF THE STATE OF OREGON

3  
4 1000 FRIENDS OF OREGON  
5 and FRIENDS OF MARION COUNTY,  
6 *Petitioners,*

7  
8 vs.

9  
10 MARION COUNTY,  
11 *Respondent,*

12  
13 and

14  
15 KRISTINA MCNITT,  
16 *Intervenor-Respondent.*

17  
18 LUBA Nos. 2022-085/086

19  
20 FINAL OPINION  
21 AND ORDER

22  
23 Appeal from Marion County.

24  
25 Andrew Mulkey filed a petition for review and reply brief and argued on  
26 behalf of petitioner 1000 Friends of Oregon.

27  
28 Kelly Chang filed a petition for review and reply brief and argued on behalf  
29 of petitioner Friends of Marion County. Also on the briefs was Meriel Darzen  
30 and Crag Law Center.

31  
32 Cody W. Walterman, Assistant County Counsel, filed the respondent's  
33 brief and argued on behalf of respondent.

34  
35 T. Beau Ellis filed the intervenor-respondent's brief. Also on the brief was  
36 Vial Fotheringham LLP. Andrew Stamp argued on behalf of intervenor-  
37 respondent.



1           ZAMUDIO, Board Member; RYAN, Board Chair; RUDD, Board  
2 Member; participated in the decision.

3

4

REMANDED

02/16/2023

5

6

7

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

1 Opinion by Zamudio.

2 **NATURE OF THE DECISION**

3 Petitioners appeal amendments to the Marion County Code (MCC) to  
4 allow an event business as a conditional use home occupation in the Exclusive  
5 Farm Use, Special Agriculture, and Farm/Timber zones, which the county  
6 identifies as agricultural resource lands.

7 **MOTION TO INTERVENE**

8 Kristina McNitt moves to intervene on the side of respondent in these  
9 consolidated appeals. No party opposes the motions and they are allowed.

10 **FACTS**

11 The county adopted legislative changes to its land use regulations to allow  
12 event businesses capable of hosting up to 750 people as a conditional use home  
13 occupation on agricultural resource land pursuant to the authorization allowed in  
14 ORS 215.283(2)(i) for home occupations as provided in ORS 215.448. These  
15 appeals followed and we consolidated them for review.

16 **FIRST ASSIGNMENT OF ERROR**

17 Petitioner 1000 Friends of Oregon (1000 Friends) and Petitioner Friends  
18 of Marion County (FOMC) (together, petitioners) filed separate petitions for  
19 review. Petitioners' arguments under their first assignments of error present  
20 essentially the same legal questions and we address them together. Petitioners  
21 argue that the county's decision misconstrues the applicable law because an event  
22 business use does not qualify as a "home occupation" under state law. We review

1 the county's interpretation and implementation of state law for errors of law.  
2 *Gage v. City of Portland*, 319 Or 308, 316-17, 877 P2d 1187 (1994); *Kenagy v.*  
3 *Benton County*, 115 Or App 131 (1992), *rev den*, 315 Or 271 (1992); *City of*  
4 *Sandy v. Clackamas County*, 28 Or LUBA 316, 319-20 (1994). We will reverse  
5 or remand a decision that improperly construes applicable law. ORS  
6 197.835(9)(a)(D). We will remand a decision that "improperly construes the  
7 applicable law, but is not prohibited as a matter of law." OAR 661-010-  
8 0071(2)(d). We will reverse a decision that "violates a provision of applicable  
9 law and is prohibited as a matter of law." OAR 661-010-0071(1)(c).

10 Statewide Planning Goal 3 (Agricultural Lands) is "[t]o preserve and  
11 maintain agricultural lands." State law restricts the uses that are allowed on  
12 agricultural land to farm uses and specified nonfarm uses. *See* ORS 215.203(1)  
13 (generally requiring that land within EFU zones be used exclusively for "farm  
14 use"); ORS 215.203(2)(a) (defining "farm use"); ORS 215.283 (identifying  
15 permitted uses on EFU land). ORS 215.283(2)(i) provides:

16 "The following nonfarm uses may be established, subject to the  
17 approval of the governing body or its designee in any area zoned  
18 [EFU] subject to ORS 215.296:

19 "(i) Home occupations as provided in ORS 215.448."

20 ORS 215.448 provides, in part:

21 "(1) The governing body of a county or its designate may allow,  
22 subject to the approval of the governing body or its designate, the  
23 establishment of a home occupation and the parking of vehicles in  
24 any zone. However, in an exclusive farm-use zone, forest zone or a

1 mixed farm and forest zone that allows residential uses, the  
2 following standards apply to the home occupation:

3 “(a) It shall be operated by a resident or employee of a resident of  
4 the property on which the business is located;

5 “(b) It shall employ on the site no more than five full-time or part-  
6 time persons;

7 “(c) It shall be operated substantially in:

8 “(A) The dwelling; or

9 “(B) Other buildings normally associated with uses  
10 permitted in the zone in which the property is located;  
11 and

12 “(d) It shall not unreasonably interfere with other uses permitted  
13 in the zone in which the property is located.

14 “(2) The governing body of the county or its designate may establish  
15 additional reasonable conditions of approval for the establishment  
16 of a home occupation under subsection (1) of this section.”

17 OAR 660-033-0130 provides minimum standards applicable to the  
18 schedule of permitted and conditional uses on agricultural land. OAR 660-033-  
19 0130(14) provides:

20 “Home occupations and the parking of vehicles may be authorized.  
21 Home occupations shall be operated substantially in the dwelling or  
22 other buildings normally associated with uses permitted in the zone  
23 in which the property is located. A home occupation shall be  
24 operated by a resident or employee of a resident of the property on  
25 which the business is located, and shall employ on the site no more  
26 than five full-time or part-time persons.”

27 The challenged decision amends the MCC to allow as a conditional use  
28 home occupation in agricultural resource zones “an event business hosting

1 weddings, family reunions, class reunions, company picnics, memorials, and  
2 similar gatherings.”<sup>1</sup> Record 10. The property where the event business will  
3 operate must be subject to special assessment for farm use. The event business  
4 must be operated substantially in the dwelling or other buildings normally  
5 associated with uses in the zone. The event business operator must be the property  
6 owner and a full-time resident of a dwelling on the property. The property owner  
7 may not employ more than five full-time or part-time persons that work at the  
8 event business at any one time. A maximum of 18 events per calendar year may  
9 be held on the property and each event may not exceed three consecutive days.  
10 A maximum number of 750 guests may be permitted on the property at any one  
11 time.

12         Petitioners argue that the event business use that the county authorized is  
13 not a “home occupation” within the meaning of ORS 215.448 and ORS  
14 215.283(2)(i). In interpreting a statute we examine the statutory text, context, and  
15 legislative history with the goal of discerning the enacting legislature’s intent.  
16 *State v. Gaines*, 346 Or 160, 171-72, 206 P3d 1042 (2009); *PGE v. Bureau of*  
17 *Labor and Industries*, 317 Or 606, 610-12, 859 P2d 1143 (1993). We are  
18 independently responsible for correctly construing statutes. *See* ORS 197.805  
19 (providing the legislative directive that LUBA “decisions be made consistently

---

<sup>1</sup> The county modeled the amendments on the Clackamas County event code provisions. Record 4.

1 with sound principles governing judicial review”); *Gunderson, LLC v. City of*  
2 *Portland*, 352 Or 648, 662, 290 P3d 803 (2012) (“In construing statutes and  
3 administrative rules, we are obliged to determine the correct interpretation,  
4 regardless of the nature of the parties’ arguments or the quality of the information  
5 that they supply to the court.” (Citing *Dept. of Human Services v. J. R. F.*, 351  
6 Or 570, 579, 273 P3d 87 (2012); *Stull v. Hoke*, 326 Or 72, 77, 948 P2d 722  
7 (1997).)). We presume that the legislature enacts statutes “with full knowledge  
8 of the existing condition of the law and with reference to it,” and we construe  
9 statutes as “part of a general and uniform system of jurisprudence.” *Coates v.*  
10 *Marion County*, 96 Or 334, 339, 189 P 903 (1920). We look to the provisions of  
11 the relevant statute and other related statutes and seek to harmonize the statutes  
12 so that all “provisions or particulars” have effect. ORS 174.010; *Daly v. Horsefly*  
13 *Irr. Dist.*, 143 Or 441, 445, 21 P2d 787 (1933). We interpret the nonfarm uses  
14 allowed by ORS 215.283(2) narrowly as opposed to expansively. *Stop the Dump*  
15 *Coalition v. Yamhill County*, 364 Or 432, 454-55, 435 P3d 698 (2019); *Craven*  
16 *v. Jackson County*, 308 Or 281, 286-87, 779 P2d 1011 (1989); *1000 Friends of*  
17 *Oregon v. Clackamas County*, 320 Or App 444, 456, 514 P3d 553 (2022);  
18 *Warburton v. Harney County*, 174 Or App 322, 327-29, 25 P3d 987, *rev den*, 332  
19 Or 559 (2001).

20 We begin with the text, which is the primary indicator of the legislature’s  
21 intent. Petitioners argue that the activities that the county may allow under ORS  
22 215.283(2)(i) and ORS 215.448 are confined by the meaning of the terms “home”

1 and “occupation,” which are not defined by statute or administrative rule. Under  
2 its plain meaning, when used as an adjective, “home” means “of, relating to, or  
3 adjacent to a home.” *Webster’s Third New Int’l Dictionary* 1082 (unabridged ed  
4 2002). “Home” as a noun means “the house and grounds with their appurtenances  
5 habitually occupied by a family : one’s principle place of residence :  
6 DOMOCILE” and “a private dwelling : HOUSE.” *Id.* “Occupation” means “an  
7 activity in which one engages” and “a craft, trade, profession or other means of  
8 earning a living.” *Id.* at 1560. Therefore, petitioners conclude, and we agree, a  
9 “home occupation” is an activity that a person engages in at their principal place  
10 of residence to earn a living.

11 Petitioners argue that the term “home” includes an inherent limitation that  
12 the activity must be capable of being conducted or carried out within a residence  
13 or residential structures that are typically associated with a dwelling such as a  
14 garage or shop. 1000 Friends Petition for Review 9-10. 1000 Friends argues that

15 “Although, people can and do host weddings, family reunions,  
16 memorials, and gatherings at their home, they do not do so as part  
17 of a profession or occupation that invites the general public into their  
18 home for the purpose of earning an income on a regular basis. Nor  
19 do they do so on the scale that the county’s amendments would  
20 allow. As built for residential use, a home or a dwelling is not  
21 designed to accommodate or facilitate that kind of regular public use  
22 or occupancy.” *Id.* at 10 (citation omitted).

23 1000 Friends’ argument is not supported by the text. First, nothing in the  
24 terms “home” and “occupation” quantifiably limit the scale of an activity that  
25 might be considered a home occupation. Second, as 1000 Friends recognizes, the

1 legislature specifically provided that a home occupation must “be operated  
2 substantially in the dwelling; or other buildings normally associated with uses  
3 permitted in the zone in which the property is located.” ORS 215.448(1)(c)(A),  
4 (B). The legislature specified where the home occupation may take place and did  
5 not limit the activities to those that may take place in a dwelling. Instead, a home  
6 occupation may operate out of a nonresidential structure, such as a barn, so long  
7 as the structure is normally associated with uses permitted in the zone in which  
8 the property is located. Thus, the plain meaning of the word “home” does not  
9 narrow the physical scope of the activities that may constitute home occupations.  
10 We reject petitioners’ argument that a home occupation activity is limited to  
11 activities that are capable of being conducted in a dwelling.

12 1000 Friends argues that accepting the county’s interpretation would  
13 render the term “home” null because it would allow any occupation in any zone.  
14 That conclusion is inaccurate. The term “home” limits occupations to properties  
15 that contain a dwelling. ORS 215.448(1)(a) further limits those occupations by  
16 requiring that the operator either reside on the property or be employed by a  
17 resident of the property on which the business is located. Thus, the term “home”  
18 is not rendered meaningless by an interpretation that does not limit home  
19 occupation uses to activities that are capable of being conducted in a dwelling.

20 We conclude that nothing in the phrase “home occupation” prohibits the  
21 county from authorizing event businesses as home occupations. ORS 215.448  
22 authorizes a broad range of activities that a county may allow in resource zones,



1 limited by the standards set out in that statute. *See White v. Lane County*, 68 Or  
2 LUBA 423, 456-57 (2013) (Holstun, concurring) (“The home occupations  
3 authorized by ORS 215.448 are not really uses. Rather ORS 215.448 authorizes  
4 approval of *any* use, so long as that use [satisfies the standards set forth in the  
5 statute]. ORS 215.448 imposes no limits on the kinds of uses that may be  
6 approved in resource zones beyond these four limitations.” (Citing *Green v.*  
7 *Douglas County*, 63 Or LUBA 200, 208-09, *rev’d and rem’d on other grounds*,  
8 245 Or App 430, 263 P3d 355 (2011) (emphasis in *White*)).

9 We proceed to consider the context. “Context includes other related  
10 statutes.” *State v. Carr*, 319 Or 408, 411-12, 877 P2d 1192 (1994). Petitioners  
11 point out that the legislature provided for event uses on farmland in ORS  
12 215.283(4), which allows agritourism and other commercial events or activities.  
13 Commercial events allowed under ORS 215.283(4) must be “incidental and  
14 subordinate to existing farm use on the tract” and that provision includes limits  
15 on the number of events, duration of events, and number of attendees, among  
16 other things. ORS 215.283(4) does not include certain limitations applicable to  
17 home occupations. For example, ORS 215.284(4) does not limit the allowed  
18 number of employees or require that an owner or employee of the owner reside  
19 on the property.

20 In its amendments allowing an event business as a conditional use home  
21 occupation in agricultural resource zones, the county recognized and adopted  
22 some, but not all, of the limitations that appear in the agritourism statute. For

1 example, the county applied the same 18-event limit. Record 4; ORS  
2 215.283(4)(d)(D). Differently, ORS 215.283(4) allows between 100 and 500  
3 people, while the county's amendments allow up to 750 guests. Moreover, while  
4 the county's amendments require that the subject property be in farm use tax  
5 deferral status, the county amendments do not require that events be incidental  
6 and subordinate to farm use of the property or in any way related to and  
7 supportive of agriculture, which are requirements for events under ORS  
8 215.283(4).

9         Petitioners argue that ORS 215.283(4) provides statutory context that  
10 demonstrates that the more generic category of "home occupation" does not  
11 include a nonfarm event business that hosts large public gatherings or events. In  
12 other words, we understand petitioners to argue that, because the legislature  
13 expressly allows certain agritourism and other commercial events under ORS  
14 215.283(4), the legislature intended that counties may not authorize event  
15 businesses as home occupations on resource land.

16         Our inquiry is focused on whether the legislature intended to limit the types  
17 of businesses that counties may allow as home occupations in exclusive farm use  
18 zones. *See Holcomb v. Sunderland*, 321 Or 99, 105, 894 P2d 457 (1995) ("The  
19 proper inquiry focuses on what the legislature intended at the time of enactment  
20 and discounts later events."). The current language of ORS 215.283(2)(i) was  
21 adopted in 1985 and refers to ORS 215.448, which was adopted in 1983 and  
22 amended in 1995. ORS 215.283(4) was adopted many years later in 2011. We

1 may refer to later-enacted, related statutes “as indirect evidence of what the  
2 enacting legislature most likely intended.” *Halperin v. Pitts*, 352 Or 482, 490,  
3 287 P3d 1069 (2012); *see also Gaines*, 346 Or at 177 n 16 (later-enacted statutes  
4 “can be of some aid in interpreting an earlier one”); *Schaefer v. Marion County*,  
5 318 Or App 617, 624, 509 P3d 718 (2022) (referring to current statutes as  
6 context).

7 Petitioners’ context argument is contradicted by ORS 215.283(6)(c),  
8 which provides:

9 “The authorizations provided by subsection (4) of this section *are in*  
10 *addition to other authorizations that may be provided by law*, except  
11 that ‘outdoor mass gathering’ and ‘other gathering,’ as those terms  
12 are used in ORS 197.015(10)(d), do not include agri-tourism or  
13 other commercial events and activities.” (Emphasis added.)

14 We conclude that, in enacting ORS 215.283(4), the legislature did not  
15 intend to displace or preclude event businesses operating as home occupations in  
16 resource zones. In enacting ORS 215.283(4), the legislature could have, but did  
17 not, contemporaneously amend ORS 215.283(2)(i) to clarify that “home  
18 occupations” do not include event businesses and that ORS 215.283(4) is the only  
19 path to conducting such events. Instead, the legislature specified that ORS  
20 215.283(4) is “in addition to other authorizations that may be provided by law,”  
21 expressing the legislature’s intent that ORS 215.283(4) is not the *only* path to  
22 conducting lawful events on resource land. ORS 215.283(6)(c).

1           The legislative history of ORS 215.283(4) supports that interpretation. We  
2 summarized the legislative history of ORS 215.283(4) in *Friends of Yamhill*  
3 *County v. Yamhill County*, 80 Or LUBA 135 (2019), *rev'd and rem'd*, 301 Or  
4 App 726, 458 P3d 1130 (2020). We reiterate some of that history here.

5           The 2011 legislature recognized that unpermitted commercial event uses,  
6 such as weddings, concerts, and other facility rentals were occurring on farmland.  
7 The legislature sought to create a pathway for county review of such nonfarm  
8 commercial uses and allow orderly conflict in the land use process. Audio  
9 Recording, Senate Committee on Environment and Natural Resources, SB 829  
10 and SB 960, Apr 14, 2011, at 39:00 to 40:58 (statement of Governor's Natural  
11 Resources Policy Advisor Richard Whitman), <https://olis.leg.state.or.us>  
12 (accessed July 31, 2019). Counties took the lead in identifying the primary  
13 concerns and proposing legislative solutions. *Id.* at 16:00 (statement of  
14 Association of Oregon Counties representative Art Schlack). The Association of  
15 Oregon Counties (AOC) Board of Directors created the Farmland Activities Task  
16 Force (Task Force) in April 2010. The Task Force studied the issues and conflicts  
17 surrounding nonfarm events and activities on farmlands and generated a report  
18 and recommendations (Report). Exhibit 6, Senate Committee on Environment  
19 and Natural Resources, SB 960, Apr 14, 2011, Task Force Report and  
20 Recommendations (December 13, 2010). The Report explained:

21           “Based upon its review of the activities and events that are taking  
22 place on farmland and associated issues and concerns, the Task  
23 Force concluded that existing law does not clearly provide

1 opportunities to conduct activities and events on farmland. The  
2 Farmland Activities Task Force has developed a legislative concept  
3 to clarify how activities and events in conjunction with farm use may  
4 be permitted on farmland. The legislative concept provides  
5 additional opportunities for counties to permit activities and events  
6 on farmland.

7 “This proposed legislation is intended to provide county planners  
8 with additional tools for their tool boxes. The opportunities provided  
9 in the legislation would be used at the option of counties and are in  
10 no way meant to be mandatory. The Task Force realizes these  
11 recommendations may not provide an opportunity to conduct  
12 activities and events on farmland which do not promote farm use.  
13 However, we believe it is a good basis for providing balance  
14 between the conservation of farmland and the need of farmers to use  
15 their land in beneficial yet non-traditional ways.” Report  
16 Introduction (internal citation omitted).

17 The Report included a survey that described the counties’ responses  
18 regarding the types of activities and events being conducted on farmland and  
19 whether and how the counties reviewed those uses. Report Ex B. The counties’  
20 responses indicated that at least five counties reviewed event activities such as  
21 weddings on farmland as home occupations. (Clackamas, Lane, Polk, Union,  
22 Wasco). *Id.* Washington County suggested that the Land Conservation and  
23 Development Commission could adopt rules clarifying whether event businesses  
24 “fit within existing allowed non-farm uses, or whether it is a new non-farm uses[.]  
25 \* \* \* For example, the OARs could clarify whether weddings are allowed as  
26 private parks, home occupations, or accessory to a winery. Currently, every  
27 county treats them differently.” Report Ex B at 13. Yamhill County suggested  
28 that “[i]n most cases, activities should be allowed through the conditional use

1 process and should only be allowed when there is a clear link to the promotion of  
2 farm use.” Report Ex B at 14.

3 Even if the legislature in 1985 did not expressly intend to allow event  
4 businesses as home occupations on resource land, the context and legislative  
5 history of ORS 215.283(4) indicates that the legislature was aware in 2011 that  
6 event businesses were being approved and operated as home occupations on  
7 resource land in some counties. The legislature could have, but did not, amend  
8 ORS 215.283(2)(i) to clarify that “home occupations” do not include event  
9 businesses or could have otherwise provided in ORS 215.283 that ORS  
10 215.283(4) is the only path to conducting such events. We conclude that, in  
11 enacting ORS 215.283(4), the legislature did not intend to preclude counties from  
12 authorizing event businesses as home occupations in resource zones. That  
13 conclusion is supported by the text of ORS 215.283(6) and the legislative history  
14 of ORS 215.283(4).

15 Petitioners cite to the legislative history of ORS 215.448, which includes  
16 testimony indicating that the legislature contemplated that home occupations  
17 include “cottage industries” such as “candlemakers, stain glass works, carriage  
18 works, model builders, people making high tech component parts, people who  
19 are appraisers, [and] insurance people who have secretaries.” 1000 Friends’  
20 Petition for Review 15 and FOMC’s Petition for Review 11 (citing Audio  
21 Recording, House Committee on Environment and Energy, HB 2625, Apr 27,  
22 1983, Tape 174, Side A at 3:15 (statement of HB 2625’s sponsor Rep Andersen).

1 We agree that the cited legislative history indicates that the enacting legislature  
2 might have had a narrow view of what activities constitute “cottage industries.”  
3 However, the legislature did not adopt any specific limitations into ORS 215.448,  
4 for example by providing a list of characteristics or examples that could limit the  
5 types of activities that could constitute home occupations. Instead, ORS 215.448  
6 authorizes approval of any activity that satisfies the standards therein.  
7 “[W]hatever the legislative history might show about the legislature’s intentions,  
8 those intentions must be reflected in actual statutory wording that, when  
9 reasonably construed, is capable of carrying out such an intention.” *State v.*  
10 *Patton*, 237 Or App 46, 53, 238 P3d 439 (2010), *rev den*, 350 Or 131 (2011).

11 Even where the legislative history demonstrates that specific  
12 circumstances motivated a bill, that history does not necessarily mean that the  
13 legislature intended an enactment to address only those circumstances. Often, as  
14 with ORS 215.448, the legislature responds to specific issues by enacting a statute  
15 that is broader than the initial issue. *See, e.g., Hamilton v. Paynter*, 342 Or 48,  
16 55, 149 P3d 131 (2006) (“[T]he statutory text shows that, even if the legislature  
17 had a particular problem in mind, it chose to use a broader solution.”); *South*  
18 *Beach Marina, Inc. v. Dept. of Rev.*, 301 Or 524, 531, 724 P2d 788 (1986) (“The  
19 legislature may and often does choose broader language that applies to a wider  
20 range of circumstances than the precise problem that triggered legislative  
21 attention.”).

1           The policy preference that petitioners advocate for in this appeal is a matter  
2 that may be taken up with the legislature. It is not a limitation found in the  
3 statutory interpretation of ORS 215.283 and ORS 215.448.

4           The first assignment of error is denied.

5       **SECOND ASSIGNMENT OF ERROR (1000 Friends)**

6           In their second assignment of error, 1000 Friends argues that we have  
7 previously erred in interpreting ORS 215.448(1)(b), which provides that a home  
8 occupation “shall employ on the site no more than five full-time or part-time  
9 persons.” In *Green v. Douglas County (Green III)*, we concluded that the statute  
10 allows an applicant to count the number of persons who are employed on site at  
11 any given time rather than the total number of people employed to carry out the  
12 use. 67 Or LUBA 234, 244-246, *aff’d*, 258 Or App 534, 311 P3d 527 (2013).  
13 Under that interpretation, a business allowed as a home occupation could employ  
14 more than five persons, so long as no more than five employees are ever on site  
15 at the same time. We revisited and reaffirmed that interpretation in *1000 Friends*  
16 *of Oregon v. Clackamas County*, \_\_\_ Or LUBA \_\_\_ (LUBA No 2020-051, Oct  
17 30, 2020) (*Herkamp*) (slip op at 15-16). 1000 Friends appealed our decision in  
18 *Herkamp*. The Court of Appeals affirmed our decision. *1000 Friends of Oregon*  
19 *v. Clackamas County*, 309 Or App 499, 483 P3d 706, *rev den*, 368 or 347 (2021).  
20 1000 Friends argues that interpretation is inconsistent with the language of the  
21 statute. Even if we were persuaded to reconsider our prior decisions in *Green III*



1 and *Herkamp*, which we are not, we have no authority to disregard the Court of  
2 Appeals' decisions. Accordingly, 1000 Friends has stated no basis for remand.

3 1000 Friends' second assignment of error is denied.

4 **SECOND ASSIGNMENT OF ERROR (FOMC)**

5 The amendments allow the county to permit event businesses that can host  
6 events of up to 750 people. As explained above, ORS 215.448(1)(b) provides that  
7 a home occupation "shall employ on the site no more than five full-time or part-  
8 time persons." LUBA and the Court of Appeals have interpreted that provision  
9 to mean that a business allowed as a home occupation could employ more than  
10 five persons, so long as no more than five employees are ever on site at the same  
11 time. *Green*, 67 Or LUBA at 244-246; *Herkamp*, \_\_\_ Or LUBA at \_\_\_ (slip op  
12 at 15-16).

13 The county decided that the "maximum number of participants is 750;  
14 larger events must obtain a mass gathering permit." Record 4-5. The county did  
15 not explain how a home occupation event business hosting events of up to 750  
16 guests could comply with the five-employee limitation. FOMC observes that the  
17 county's reference to mass gatherings suggests that the county decided on 750-  
18 guest maximum because that number is the maximum number of guests  
19 allowable without constituting a mass gathering. *See* MC 9.25.030(A) (defining  
20 "small gathering," a type of "outdoor mass gathering" for which a permit is  
21 required, as "any assembly of persons whose actual number is, or reasonably can

1 be anticipated to be, less than or equal to 3,000 but more than 750 persons at any  
2 time”).

3 FOMC argues that the amendments are not supported by adequate findings  
4 or an adequate factual base because there is no explanation or evidence that five  
5 employees can feasibly support up to 750 event attendees. FOMC points out that  
6 an event for 750 guests with five employees on site means that only one employee  
7 would be available to serve up to 150 guests, even assuming that no other  
8 employees were required on site for other activities (*e.g.*, food preparation,  
9 parking, safety, security, sanitation, entertainment).

10 There is no generally applicable requirement that legislative land use  
11 decisions be supported by findings. However, the decision and record must be  
12 sufficient to demonstrate that applicable criteria were applied and “required  
13 considerations were indeed considered.” *Citizens Against Irresponsible Growth*  
14 *v. Metro*, 179 Or App 12, 16 n 6, 38 P3d 956 (2002). In addition, Statewide  
15 Planning Goal 2 (Land Use Planning) requires that a legislative land use decision  
16 be supported by “an adequate factual base,” which is an evidentiary standard that  
17 is equivalent to the requirement that a quasi-judicial decision be supported by  
18 substantial evidence in the whole record. *1000 Friends of Oregon v. City of North*  
19 *Plains*, 27 Or LUBA 372, 378, *aff’d*, 130 Or App 406, 882 P2d 1130 (1994).  
20 Substantial evidence exists to support a finding of fact when the record, viewed  
21 as a whole, would permit a reasonable person to make that finding. *Dodd v. Hood*

1 *River County*, 317 Or 172, 179, 855 P2d 608 (1993); *Younger v. City of Portland*,  
2 305 Or 346, 351-52, 752 P2d 262 (1988).

3 The county responds that the 750-person maximum allowed by the  
4 amendments is not allowed by right. Instead, to obtain approval for the 750-  
5 person maximum, an applicant would have to satisfy all the conditional use  
6 criteria, including the five-employee limit, and FOMC has not met its burden in  
7 a facial challenge that the challenged provisions are facially inconsistent with  
8 applicable law and are incapable of being applied consistently with controlling  
9 law. *Hatley v. Umatilla County*, 68 Or LUBA 264 (2013). Further, the county  
10 argues that FOMC has not established that the challenged conditional use home  
11 occupation regulations are not capable of being applied consistently with ORS  
12 215.448(1)(b). The county does not respond to FOMC's argument the  
13 amendments are not supported by an adequate factual base.

14 The county argues that ORS 215.448 sets no express limit on the number  
15 of guests. That is true. However, we agree with FOMC that the five-employee  
16 limit is an indirect limit on the size and scope of the home occupation activities.  
17 While we cannot say as a matter of law that five employees may not feasibly  
18 support and manage an event of up to 750 event attendees, we agree with FOMC  
19 that the decision and record do not demonstrate that the county considered the  
20 five-employee limit in ORS 215.448(1)(b) in adopting a 750-person maximum.  
21 We also agree with FOMC that the county's decision and the record do not  
22 demonstrate that five employees can support up to 750 event attendees. The

1 county's response that other conditional use criteria will likely limit the permitted  
2 event attendees in the future does not resolve this issue. Remand is appropriate  
3 for the county to consider the five-employee limit in ORS 215.448(1)(b) in  
4 adopting a 750-person maximum and explain how that maximum is consistent  
5 with the statute, with that explanation supported by an adequate factual base. We  
6 reach this conclusion under the standard of review for an adequate factual base.  
7 *See Naumes Properties, LLC v. City of Central Point*, 46 Or LUBA 304, 315 n  
8 16 (2004) (explaining that the Goal 2 requirement for an adequate factual base  
9 applies to all applicable law because LUBA "must have *something* from the  
10 decision or record to base our decision upon" (emphasis in original)).

11 FOMC's second assignment of error is sustained.

12 The county's decision is remanded.

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