



MARION COUNTY BOARD OF COMMISSIONERS

Board Session Agenda Review Form

Meeting date: August 9, 2023

Department: Public Works Agenda Planning Date: July 27, 2023 Time required: 5 min.

Audio/Visual aids: None

Contact: Lindsey King Phone: 503-566-4162

Department Head Signature: [Signature]

TITLE: Public hearing to permit an event businesses as a home occupation for Legislative Amendment 22-003 and limit testimony to the 750 person limit identified in the remand.

Issue, Description & Background: On August 31, 2022 the board signed into ordinance the code amendment, Ordinance 1447. On September 20, 2022 the amendment was appealed to the Land Use Board of Appeals (LUBA), this appeal was then remanded back to the board on February 16, 2023. LUBA called out one item on the remand for the board to consider, limiting the number of people permitted at an even to 750 people. On July 11, 2023 staff met with the board at management update for direction on how to proceed with the LUBA remand. The board directed staff to amend the code related to items addressed and hold a public hearing on the matter. The board must now hold a public hearing on the remand and make a decision on items addressed within the remand. Staff recommends that the board limit testimony to the 750 person limit issue identified by LUBA.

Financial Impacts: None

Impacts to Department & External Agencies: None

Options for Consideration: 1. Continue the public hearing. 2. Close the public hearing and leave the record open. 3. Close the public hearing and approve, deny, or modify the proposed amendments.

Recommendation: Staff recommends that the board approve the modification to the home occupation code as written.

List of attachments: Amended Code LUBA Remand

Presenter: Lindsey King Cody Walterman

Copies of completed paperwork sent to the following: (Include names and e-mail addresses.)

Copies to: Lindsey King - lking@co.marion.or.us



MARION COUNTY BOARD OF COMMISSIONERS

Board Session Agenda Review Form

Brandon Reich - Breich@co.marion.or.us
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Chapter 17.136
EFU (EXCLUSIVE FARM USE) ZONE

17.136.060 Conditional use review criteria.

The uses identified in MCC 17.136.050 shall satisfy criteria in the applicable subsections below:

A. The following criteria apply to all conditional uses in the EFU zone:

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

B. Non-Farm Dwellings. The following additional criteria apply to non-farm dwelling requests:

1. The dwelling will be sited on a lot or parcel that is predominantly composed of Class IV through Class VIII soils that would not, when irrigated, be classified as prime, unique, Class I or Class II soils. Soils classifications shall be those of the Soil Conservation Service in its most recent publication, unless evidence is submitted as required in MCC 17.136.130.
2. The dwelling will be sited on a lot or parcel that does not currently contain a dwelling and was created before January 1, 1993. The boundary of the lot or parcel cannot be changed after November 4, 1993, in any way that enables the lot or parcel to meet the criteria for non-farm dwelling.
3. The dwelling will not materially alter the stability of the overall land use pattern of the area. In making this determination the cumulative impact of possible new non-farm dwellings on other lots or parcel in the area similarly situated shall be considered. To address this standard, the following information shall be provided:
 - a. Identify a study area for the cumulative impact analysis. The study area shall include at least 2,000 acres or a smaller area not less than 1,000 acres, if the smaller area is a

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distinct agricultural area based on topography, soil types, land use pattern, or the type of farm or ranch operations or practices that distinguish it from other, adjacent agricultural areas. Findings shall describe the study area, its boundaries, the location of the subject parcel within this area, why the selected area is representative of the land use pattern surrounding the subject parcel and is adequate to conduct the analysis required by this standard. Lands zoned for rural residential or other urban or nonresource uses shall not be included in the study area;

b. Identify within the study area the broad types of farm uses (irrigated or nonirrigated crops, pasture or grazing lands), the number, location and type of existing dwellings (farm, non-farm, hardship, etc.), and the dwelling development trends since 1993. Determine the potential number of non-farm dwellings that could be approved under MCC 17.136.050(A), including identification of predominant soil classifications and parcels created prior to January 1, 1993. The findings shall describe the existing land use pattern of the study area including the distribution and arrangement of existing uses and the land use pattern that could result from approval of the possible non-farm dwellings under this provision;

c. Determine whether approval of the proposed non-farm dwellings together with existing non-farm dwellings will materially alter the stability of the land use pattern. The stability of the land use pattern will be materially altered if the cumulative effect of existing and potential non-farm dwellings will make it more difficult for the existing types of farms in the area to continue operation due to diminished opportunities to expand, purchase, or lease farmland, or acquire waste rights or diminish the number of tracts or acreage in farm use in a manner that will destabilize the overall character of the study area.

C. Home Occupations. ~~Notwithstanding MCC 17.110.270 and 17.120.075, home occupations, including the parking of vehicles in conjunction with the home occupation and bed and breakfast inns, are subject to the following criteria:~~

1. Notwithstanding MCC 17.110.270 and 17.120.075, home occupations, including the parking of vehicles in conjunction with the home occupation and bed and breakfast inns, are subject to the following criteria:

~~1~~**A.** A home occupation or bed and breakfast inn shall be operated by a resident of the dwelling on the property on which the business is located. Including residents, no more than five full-time or part-time persons shall work in the home occupation (“person” includes volunteer, nonresident employee, partner, or any other person).

~~2~~**B.** It shall be operated substantially in:

- a. The dwelling; or
- b. Other buildings normally associated with uses permitted in the zone in which the property is located.

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~~3C.~~ It shall not unreasonably interfere with other uses permitted in the zone in which the property is located.

~~4D.~~ A home occupation shall not be authorized in structures accessory to resource use on high-value farmland.

~~5E.~~ A sign shall meet the standards in Chapter 17.191 MCC.

~~6F.~~ The property, dwelling, or other buildings shall not be used for assembly or dispatch of employees to other locations.

~~7G.~~ Retail and wholesale sales that do not involve customers coming to the property, such as Internet, telephone, or mail order off-site sales, and incidental sales related to the home occupation services being provided are allowed. No other sales are permitted as, or in conjunction with, a home occupation.

2. Notwithstanding MCC 17.110.270 and 17.120.075, an event business hosting weddings, family reunions, class reunions, company picnics, memorials, and similar gatherings, may be established as a home occupation subject to the following criteria:

A. Farm Assessment: All or a portion of the subject property where the event business will operate shall be subject to special assessment for farm use.

B. Owner: The property owner of the property upon which the event business is located shall be the operator of the event business and shall reside full-time in the dwelling on the property.

~~C. Employees: The property owner shall employ no more than five full-time or part-time persons that work at the event business at any one time.~~

C. Employees: The property owner shall employ on the site no more than five full-time or part-time persons.

D. Number of events: A maximum of 18 events per calendar year may be held on the property.

E. Frequency: No more than three events a week shall occur from May 1 to September 30 and one event a week from October 1 to April 30.

F. Duration: No event shall exceed three consecutive days including setup and take down.

G. Hours of operation: No event shall take place before the hour of 7:00 a.m. or after the hour of 10:00 p.m. Setup and takedown shall occur as well between the hours of 7:00 a.m. and 10:00 p.m.

~~H. Number of guests: A maximum of 750 guests shall be permitted on the property at any one time. All events shall be conducted in such a way as to comply with conditions of~~

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approval placed on the event business operation. The property owner shall ensure that the maximum occupancy approved by the Marion County Building Official and local fire district is not exceeded in structures on the property at any time.

H. Guests: The property owner shall ensure that the maximum occupancy approved by the Marion County Building Official and local fire district is not exceeded in structures on the property at any time. A lower limit may be imposed based on the number of employees able to provide services to the guests. The applicant shall demonstrate how the employees of the business are able to provide services to all the guests at the event. All events shall be conducted in such a way as to comply with conditions of approval placed on the event business operation.

I. Structures: The event business shall be operated substantially in the dwelling, or other buildings normally associated with uses permitted in the zone in which the property is located. New structures shall obtain a building permit for the use. Existing structures shall obtain a change of use from Building Inspection. In either case, System Development Charges applied for the additional traffic impacts anticipated shall be paid prior to building permit issuance. Any changes to a structure shall not render the structure a building not normally associated with uses permitted in the zone

J. Tents: Tents may be used in conjunction with the event business. Tents shall be considered outdoor areas for the purposes of this code.

K. Outdoor area: For events which take place both indoors and outdoors, at least 80 percent of the area of the property dedicated to the event business shall be indoors and at most 20 percent of the area of the property dedicated to the event business may be outdoors, exclusive of parking.

L. Parking: A parking and traffic circulation plan shall be provided demonstrating adequate parking being provided on-site to accommodate all traffic associated with the event business subject to the following:

- 1. No parking in rights-of-way or roadway easements shall be permitted.**
- 2. Parking may be provided on a different parcel subject to evidence of an agreement with that property for the use.**
- 3. Adequate internal circulation shall be provided to ensure that traffic does not cause a significant adverse impact to local roadways.**
- 4. The parking and traffic circulation plan shall also provide for fire and emergency ingress and egress.**
- 5. Events that take place between October 1 and April 30 shall have parking provided with an all-weather surface consisting of gravel, asphalt, or concrete.**

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6. Events that take place between May 1 and September 30 shall either have parking provided with an all-weather surface consisting of gravel, asphalt, or concrete or provided by an earthen or organic surface maintained to minimize fire hazards.
7. The property owner shall obtain all necessary permits for access and egress, as well as provide a traffic control plan if required by Marion County Public Works.
8. The use will not require new driveway access to the street unless approved by Public Works Director. The property owner shall obtain all necessary driveway access permits from the roadway authority to bring the new or existing access into conformance with county standards.

M. Minimum setbacks: New structures and outdoor areas associated with the event business, including generators and other ancillary uses, but not including parking, shall be setback a minimum of 50 feet from public rights-of-way and adjoining parcels with an existing residence within 50 feet of the site of the event business or approved for a residence within 50 feet of the site of the event business, or zoned Acreage Residential.

N. Fencing: Property lines adjacent to a property with an existing residence within 50 feet of the site of the event business or approved for a residence within 50 feet of the site of the event business, or zoned Acreage Residential shall be provided with a solid fence, wall, or hedge. A 15-foot-wide vegetative buffer consisting of trees, which will attain at least eight feet in height within five years, and shrubs, which will provide a complete visual sight buffer within five years may be substituted for the fence, wall, or hedge.

O. Lighting: Parking lots shall have lighting capable of providing adequate illumination for security and safety. All light sources shall be constructed, down shielded and used so as not to illuminate directly on or create glare visible from adjacent properties or public rights of way.

P. Noise: The event business shall comply with Marion County Code Chapter 8.45 related to noise except that no amplified sound or use of a generator shall occur outside of a building before the hour of 7:00 a.m. or after the hour of 10:00 p.m.

Q. Signs: In addition to the signs permitted in Chapter 17.191 of this code:

1. One unlighted sign not exceeding 32 square feet related to the event business may be placed on a fence or structure subject to the height, setback, and illumination standards in Chapter 17.191.
2. Three unlighted temporary signs not exceeding 32 square feet each may be placed on the property or nearby properties subject to the height, setback, and illumination standards in Chapter 17.191.

3. Any temporary sign shall be removed no more than 24 hours after an event.

R. Water source: If a well is used in conjunction with the business, the property owner shall consult with Marion County Health and Human Services to determine if compliance with a state public water system is required. Any identified public water systems must comply with drinking water quality standards as administered by the Oregon Health Authority Drinking Water Services. The property owner also shall obtain any necessary permits from the Oregon Department of Water Resources. Evidence that required permits were obtained shall be provided to Marion County Planning.

S. On-Site Wastewater: The property owner shall obtain all necessary permits for on-site wastewater disposal. In the event that portable restroom facilities, including hand-sanitizing or hand-washing stations, are used, these shall be screened from adjacent lots and rights-of-way by sight-obscuring fences or plantings and be located a minimum of 50 feet from the property lines of all adjoining properties.

T. Kitchen: Any kitchen shall obtain necessary permits from Marion County Building Inspection and from Marion County Health and Human Services. Evidence that required permits were obtained shall be provided to Marion County Planning.

U. Alcohol: If alcohol is served, the property owner shall obtain all necessary permits, or ensure that all necessary permits have been obtained from the Oregon Liquor and Cannabis Commission.

V. Other uses: The event business shall not unreasonably interfere with other uses permitted in the zone in which the property is located. The property owner shall provide evidence that all contracts include the requirement that the customer has signed and agreed to the following statement:

This event business is situated in or near a farm or forest zone or area in Marion County, Oregon, where the intent is to encourage, and minimize conflicts with, farm and forest use. Specifically, residents, property owners, and visitors may be subjected to common, customary and accepted farm or forest management practices conducted in accordance with federal and state laws that ordinarily and necessarily produce noise, dust, smoke and other impacts. I do hereby accept the potential impacts from farm and forest practices as normal and necessary and part of the risk of using this venue. I acknowledge the need to avoid activities that conflict with nearby farm and forest uses and practices, signatories will not pursue a claim for relief or course of action alleging injury from farming or forest practice for which no action is allowed under ORS 30.936 or 30.937.

W. Dispatch of employees: The property, dwelling, or other buildings shall not be used for assembly or dispatch of employees to other locations.

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X. Sales: Retail and wholesale sales that do not involve customers coming to the property, such as Internet, telephone, or mail order off-site sales, and incidental sales related to the home occupation services being provided are allowed. No other sales are permitted as, or in conjunction with, a home occupation.

Y. Alteration of property: No other alteration of land shall occur other than that approved in conjunction with an approval for an event business subject to the following:

- 1. On days when events are not occurring, the property shall not take on characteristics of an event business, aside from structures and parking areas approved as part of this permit.**
- 2. When events are not taking place, any equipment, furniture, or other items related to the event business shall be stored indoors.**

Z. Transfer of property: Any approval is only for the property owner at the time of application. If the property is subsequently sold or transferred to another person or entity, the new property owner must indicate review and acceptance of the conditions of the land use approval prior to operating the business.

AA. Annual submittal: Event business approvals must be renewed every year subject to the property owner providing the following information:

- 1. Evidence of the annual renewal of permits required by other agencies and departments.**
- 2. A log of events held the prior calendar year.**
- 3. Any revisions to the site plan or parking and traffic circulation plan or both. Such revisions may be subject to review and approval by the Planning Director and Public Works Director for consistency with the home occupation event business approval.**
- 4. Evidence that the property continues to be subject to special assessment for farm use.**

Creates standards for operating an events business as a kind of a home occupation.

D. Commercial Activities in Conjunction with Farm Use.

1. The commercial activity must be primarily a customer or supplier of farm uses.
2. The commercial activity must enhance the farming enterprises of the local agricultural community to which the land hosting that commercial activity relates.
3. The agricultural and commercial activities must occur together in the local community.

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4. The products and services provided must be essential to the practice of agriculture.

E. Forest Products Processing Facility. A portable or temporary facility for the primary processing of forest products is subject to the following criteria and limitations:

1. The use shall not seriously interfere with accepted farming practices.
2. The use shall be compatible with farm uses described in ORS 215.203(2).
3. The use may be approved for a maximum one-year period, which is renewable.
4. The primary processing of forest products, as used in this section, means the use of a chipper, stud mill, or other similar facility for initial treatment of a forest product in order to enable its shipment to market. "Forest products," as used in this section, means timber grown upon a tract where the primary processing facility is located.

F. Power Generation Facility. A power generation facility shall not preclude more than:

1. Twelve acres from use as a commercial agricultural enterprise on high-value farmland unless an exception is taken pursuant to OAR Chapter 660, Division 004.
2. Twenty acres from use as a commercial agricultural enterprise on farmland that is not high-value unless an exception is taken pursuant to ORS 197.732 and OAR Chapter 660, Division 004.

G. Private Parks and Campgrounds. Private parks, playgrounds, hunting and fishing preserves, and campground expansions shall meet the following criteria:

1. Except on a lot or parcel contiguous to a lake or reservoir, private campgrounds shall not be allowed within three miles of an urban growth boundary unless an exception is approved pursuant to ORS 197.732 and OAR Chapter 660, Division 004.
2. It shall be devoted to overnight temporary use for vacation, recreational or emergency purposes, but not for residential purposes, and is established on a site or is contiguous to lands with park or other outdoor natural amenity that is accessible for recreational use by the occupants of the campground.
3. A campground shall be designed and integrated into the rural agricultural and forest environment in a manner that protects the natural amenities of the site and provides buffers of existing native trees and vegetation or other natural features between campsites.
4. A camping site shall only be occupied by a tent, travel trailer or recreational vehicle. Private campgrounds may provide yurts for overnight camping subject to the following:
 - a. No more than one-third or a maximum of 10 campsites, whichever is smaller, may include yurts;

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b. The yurt shall be located on the ground or on a wood floor with no permanent foundation.

5. Separate sewer, water or electric service hook-ups shall not be provided to individual campsites.

6. It shall not include intensively developed recreational uses such as swimming pools, tennis courts, retail stores or gas stations.

7. Overnight temporary use in the same campground by a camper or camper's vehicle shall not exceed a total of 30 days during any consecutive six-month period.

H. Other Uses.

1. New uses that batch and blend mineral and aggregate into asphalt cement may not be authorized within two miles of a planted vineyard. "Planted vineyard" means one or more vineyards totaling 40 acres or more that are planted as of the date the application for batching and blending is filed.

2. Living history museum related to resource-based activities owned and operated by a governmental agency or a local historical society, together with limited commercial activities and facilities that are directly related to the use and enjoyment of the museum and located within authentic buildings of the depicted historic period or the museum administration building, if areas other than an exclusive farm use zone cannot accommodate the museum and related activities or if the museum administration buildings and parking lot are located within one-quarter mile of an urban growth boundary.

As used in this subsection:

a. "Living history museum" means a facility designed to depict and interpret the everyday life and culture of some specific historic period using authentic buildings, tools, equipment and people to simulate past activities and events; and

b. "Local historical society" means the local historical society recognized by the county board of commissioners and organized under ORS Chapter 65.

I. The following criteria apply to those uses identified in MCC 17.136.050:

1. No enclosed structure with a design capacity greater than 100 people, or group of structures with a total design capacity of greater than 100 people, shall be approved within three miles of an urban growth boundary unless an exception is approved pursuant to OAR Chapter 660, Division 004.

2. Any new enclosed structure or group of enclosed structures subject to this section shall be situated no less than one-half mile from other enclosed structures approved under OAR 660-33-130(2) on the same tract. For the purposes of this subsection, "tract" means a tract as defined in MCC 17.136.140(F) in existence on May 5, 2010.

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3. Existing facilities wholly within a farm use zone may be maintained, enhanced or expanded on the same tract, but existing enclosed structures within three miles of an urban growth boundary may not be expanded beyond the limits of this subsection. [Ord. 1330 § 4 (Exh. A), 2013; Ord. 1313 § 4 (Exh. A), 2011; Ord. 1271 § 5, 2008; Ord. 1204 § 4, 2004; Ord. 1180 § 4, 2003; Ord. 1168 § 5, 2002; Ord. 1125 § 8, 2000. RZ Ord. § 136.060.]

Chapter 17.137
SA (SPECIAL AGRICULTURE) ZONE

17.137.060 Conditional use review criteria.

The uses identified in MCC 17.137.050 shall satisfy the criteria in the applicable subsections below.

A. The following criteria apply to all conditional uses in the SA zone:

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

B. Non-Farm Dwellings. The following additional criteria apply to non-farm dwelling requests:

1. The dwelling will be sited on a lot or parcel that is predominantly composed of Class IV through Class VIII soils that would not, when irrigated, be classified as prime, unique, Class I or Class II soils. Soils classifications shall be those of the Soil Conservation Service in its most recent publication, unless evidence is submitted as required in MCC 17.137.120(B).
2. The dwelling will be sited on a lot or parcel that does not currently contain a dwelling and was created before January 1, 1993. The boundary of the lot or parcel cannot be changed after November 4, 1993, in a way that enables the lot or parcel to qualify for a non-farm dwelling.
3. The dwelling will not materially alter the stability of the overall land use pattern of the area. In making this determination the cumulative impact of possible new non-farm dwellings and parcels on other lots or parcels in the area similarly situated shall be considered. To address this standard, information outlined in MCC 17.137.030(D)(11)(a)(iii) shall be provided.

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C. Home Occupations. Notwithstanding MCC 17.110.270 and 17.120.075, home occupations, including the parking of vehicles in conjunction with the home occupation and bed and breakfast inns, are subject to the following criteria:

1. **Notwithstanding MCC 17.110.270 and 17.120.075, home occupations, including the parking of vehicles in conjunction with the home occupation and bed and breakfast inns, are subject to the following criteria:**

~~1~~**A.** A home occupation or bed and breakfast inn shall be operated by a resident of the dwelling on the property on which the business is located. Including residents, no more than five full-time or part-time persons shall work in the home occupation (“person” includes volunteer, nonresident employee, partner, or any other person).

~~2~~**B.** It shall be operated substantially in:

- a. The dwelling; or
- b. Other buildings normally associated with uses permitted in the zone in which the property is located.

~~3~~**C.** It shall not unreasonably interfere with other uses permitted in the zone in which the property is located.

~~4~~**D.** A home occupation shall not be authorized in structures accessory to resource use on high-value farmland.

~~5~~**E.** A sign shall meet the standards in Chapter 17.191 MCC.

~~6~~**F.** The property, dwelling, or other buildings shall not be used for assembly or dispatch of employees to other locations.

~~7~~**G.** Retail and wholesale sales that do not involve customers coming to the property, such as Internet, telephone, or mail order off-site sales, and incidental sales related to the home occupation services being provided are allowed. No other sales are permitted as, or in conjunction with, a home occupation.

2. **Notwithstanding MCC 17.110.270 and 17.120.075, an event business hosting weddings, family reunions, class reunions, company picnics, memorials, and similar gatherings, may be established as a home occupation subject to the following criteria:**

A. Farm Assessment: All or a portion of the subject property where the event business will operate shall be subject to special assessment for farm use.

B. Owner: The property owner of the property upon which the event business is located shall be the operator of the event business and shall reside full-time in the dwelling on the property.

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C. Employees: The property owner shall employ no more than five full-time or part-time persons that work at the event business at any one time.

C. Employees: The property owner shall employ on the site no more than five full-time or part-time persons.

D. Number of events: A maximum of 18 events per calendar year may be held on the property.

E. Frequency: No more than three events a week shall occur from May 1 to September 30 and one event a week from October 1 to April 30.

F. Duration: No event shall exceed three consecutive days including setup and take down.

G. Hours of operation: No event shall take place before the hour of 7:00 a.m. or after the hour of 10:00 p.m. Setup and takedown shall occur as well between the hours of 7:00 a.m. and 10:00 p.m.

H. Number of guests: A maximum of 750 guests shall be permitted on the property at any one time. All events shall be conducted in such a way as to comply with conditions of approval placed on the event business operation. The property owner shall ensure that the maximum occupancy approved by the Marion County Building Official and local fire district is not exceeded in structures on the property at any time.

H. Guests: The property owner shall ensure that the maximum occupancy approved by the Marion County Building Official and local fire district is not exceeded in structures on the property at any time. A lower limit may be imposed based on the number of employees able to provide services to the guests. The applicant shall demonstrate how the employees of the business are able to provide services to all the guests at the event. All events shall be conducted in such a way as to comply with conditions of approval placed on the event business operation.

I. Structures: The event business shall be operated substantially in the dwelling, or other buildings normally associated with uses permitted in the zone in which the property is located. New structures shall obtain a building permit for the use. Existing structures shall obtain a change of use from Building Inspection. In either case, System Development Charges applied for the additional traffic impacts anticipated shall be paid prior to building permit issuance. Any changes to a structure shall not render the structure a building not normally associated with uses permitted in the zone

J. Tents: Tents may be used in conjunction with the event business. Tents shall be considered outdoor areas for the purposes of this code.

K. Outdoor area: For events which take place both indoors and outdoors, at least 80 percent of the area of the property dedicated to the event business shall be indoors

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and at most 20 percent of the area of the property dedicated to the event business may be outdoors, exclusive of parking.

L. Parking: A parking and traffic circulation plan shall be provided demonstrating adequate parking being provided on-site to accommodate all traffic associated with the event business subject to the following:

1. No parking in rights-of-way or roadway easements shall be permitted.
2. Parking may be provided on a different parcel subject to evidence of an agreement with that property for the use.
3. Adequate internal circulation shall be provided to ensure that traffic does not cause a significant adverse impact to local roadways.
4. The parking and traffic circulation plan shall also provide for fire and emergency ingress and egress.
5. Events that take place between October 1 and April 30 shall have parking provided with an all-weather surface consisting of gravel, asphalt, or concrete.
6. Events that take place between May 1 and September 30 shall either have parking provided with an all-weather surface consisting of gravel, asphalt, or concrete or provided by an earthen or organic surface maintained to minimize fire hazards.
7. The property owner shall obtain all necessary permits for access and egress, as well as provide a traffic control plan if required by Marion County Public Works.
8. The use will not require new driveway access to the street unless approved by Public Works Director. The property owner shall obtain all necessary driveway access permits from the roadway authority to bring the new or existing access into conformance with county standards.

M. Minimum setbacks: New structures and outdoor areas associated with the event business, including generators and other ancillary uses, but not including parking, shall be setback a minimum of 50 feet from public rights-of-way and adjoining parcels with an existing residence within 50 feet of the site of the event business or approved for a residence within 50 feet of the site of the event business, or zoned Acreage Residential.

N. Fencing: Property lines adjacent to a property with an existing residence within 50 feet of the site of the event business or approved for a residence within 50 feet of the site of the event business, or zoned Acreage Residential shall be provided with a solid fence, wall, or hedge. A 15-foot-wide vegetative buffer consisting of trees, which

will attain at least eight feet in height within five years, and shrubs, which will provide a complete visual sight buffer within five years may be substituted for the fence, wall, or hedge.

O. Lighting: Parking lots shall have lighting capable of providing adequate illumination for security and safety. All light sources shall be constructed, down shielded and used so as not to illuminate directly on or create glare visible from adjacent properties or public rights of way.

P. Noise: The event business shall comply with Marion County Code Chapter 8.45 related to noise except that no amplified sound or use of a generator shall occur outside of a building before the hour of 7:00 a.m. or after the hour of 10:00 p.m.

Q. Signs: In addition to the signs permitted in Chapter 17.191 of this code:

1. One unlighted sign not exceeding 32 square feet related to the event business may be placed on a fence or structure subject to the height, setback, and illumination standards in Chapter 17.191.
2. Three unlighted temporary signs not exceeding 32 square feet each may be placed on the property or nearby properties subject to the height, setback, and illumination standards in Chapter 17.191.
3. Any temporary sign shall be removed no more than 24 hours after an event.

R. Water source: If a well is used in conjunction with the business, the property owner shall consult with Marion County Health and Human Services to determine if compliance with a state public water system is required. Any identified public water systems must comply with drinking water quality standards as administered by the Oregon Health Authority Drinking Water Services. The property owner also shall obtain any necessary permits from the Oregon Department of Water Resources. Evidence that required permits were obtained shall be provided to Marion County Planning.

S. On-Site Wastewater: The property owner shall obtain all necessary permits for on-site wastewater disposal. In the event that portable restroom facilities, including hand-sanitizing or hand-washing stations, are used, these shall be screened from adjacent lots and rights-of-way by sight-obscuring fences or plantings and be located a minimum of 50 feet from the property lines of all adjoining properties.

T. Kitchen: Any kitchen shall obtain necessary permits from Marion County Building Inspection and from Marion County Health and Human Services. Evidence that required permits were obtained shall be provided to Marion County Planning.

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U. Alcohol: If alcohol is served, the property owner shall obtain all necessary permits, or ensure that all necessary permits have been obtained from the Oregon Liquor and Cannabis Commission.

V. Other uses: The event business shall not unreasonably interfere with other uses permitted in the zone in which the property is located. The property owner shall provide evidence that all contracts include the requirement that the customer has signed and agreed to the following statement:

This event business is situated in or near a farm or forest zone or area in Marion County, Oregon, where the intent is to encourage, and minimize conflicts with, farm and forest use. Specifically, residents, property owners, and visitors may be subjected to common, customary and accepted farm or forest management practices conducted in accordance with federal and state laws that ordinarily and necessarily produce noise, dust, smoke and other impacts. I do hereby accept the potential impacts from farm and forest practices as normal and necessary and part of the risk of using this venue. I acknowledge the need to avoid activities that conflict with nearby farm and forest uses and practices, signatories will not pursue a claim for relief or course of action alleging injury from farming or forest practice for which no action is allowed under ORS 30.936 or 30.937.

W. Dispatch of employees: The property, dwelling, or other buildings shall not be used for assembly or dispatch of employees to other locations.

X. Sales: Retail and wholesale sales that do not involve customers coming to the property, such as Internet, telephone, or mail order off-site sales, and incidental sales related to the home occupation services being provided are allowed. No other sales are permitted as, or in conjunction with, a home occupation.

Y. Alteration of property: No other alteration of land shall occur other than that approved in conjunction with an approval for an event business subject to the following:

1. On days when events are not occurring, the property shall not take on characteristics of an event business, aside from structures and parking areas approved as part of this permit.
2. When events are not taking place, any equipment, furniture, or other items related to the event business shall be stored indoors.

Z. Transfer of property: Any approval is only for the property owner at the time of application. If the property is subsequently sold or transferred to another person or entity, the new property owner must indicate review and acceptance of the conditions of the land use approval prior to operating the business.

AA. Annual submittal: Event business approvals must be renewed every year subject to the property owner providing the following information:

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1. Evidence of the annual renewal of permits required by other agencies and departments.
2. A log of events held the prior calendar year.
3. Any revisions to the site plan or parking and traffic circulation plan or both. Such revisions may be subject to review and approval by the Planning Director and Public Works Director for consistency with the home occupation event business approval.
4. Evidence that the property continues to be subject to special assessment for farm use.

Creates standards for operating an events business as a kind of a home occupation.

D. Forest Products Processing Facility. A portable or temporary facility for the primary processing of forest products is subject to the following criteria and limitations:

1. The use shall not seriously interfere with accepted farming practices.
2. The use shall be compatible with farm uses described in ORS 215.203(2).
3. The use may be approved for a maximum one-year period, which is renewable.
4. The primary processing of a forest product, as used in this section, means the use of a chipper, stud mill, or other similar facility for initial treatment of a forest product in order to enable its shipment to market. "Forest products," as used in this section, means timber grown upon a tract where the primary processing facility is located.

E. Power Generation Facility. A power generation facility shall not preclude more than:

1. Twelve acres from use as a commercial agricultural enterprise on high-value farmland unless an exception is taken pursuant to OAR Chapter 660, Division 004.
2. Twenty acres from use as a commercial agricultural enterprise on farmland that is not high-value unless an exception is taken pursuant to ORS 197.732 and OAR Chapter 660, Division 004.

F. Private Parks and Campgrounds. Private parks, playgrounds, hunting and fishing preserves, and campgrounds shall meet the following criteria:

1. Except on a lot or parcel contiguous to a lake or reservoir, private campgrounds shall not be allowed within three miles of an urban growth boundary unless an exception is approved pursuant to ORS 197.732 and OAR Chapter 660, Division 004.
2. It shall be devoted to overnight temporary use for vacation, recreational or emergency purposes, but not for residential purposes, and is established on a site or is contiguous to

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lands with a park or other outdoor natural amenity that is accessible for recreational use by the occupants of the campground.

3. A campground shall be designed and integrated into the rural agricultural and forest environment in a manner that protects the natural amenities of the site and provides buffers of existing native trees and vegetation or other natural features between campsites.

4. A camping site shall only be occupied by a tent, travel trailer or recreational vehicle. Private campgrounds may provide yurts for overnight camping subject to the following:

a. No more than one-third or a maximum of 10 campsites, whichever is smaller, may include yurts;

b. The yurt shall be located on the ground or on a wood floor with no permanent foundation.

5. Separate sewer, water or electric service hook-ups shall not be provided to individual campsites.

6. It shall not include intensively developed recreational uses such as swimming pools, tennis courts, retail stores or gas stations.

7. Overnight temporary use in the same campground by a camper or camper's vehicle shall not exceed a total of 30 days during any consecutive six-month period.

G. Golf Course. A golf course is subject to the following limitations:

1. New golf courses shall not be permitted on high-value farmland, as defined in MCC 17.137.130(D).

2. An existing legally established golf course on high-value farmland may be expanded on the same tract consistent with the provisions of MCC 17.137.130(C).

H. Other Uses.

1. New uses that batch and blend mineral and aggregate into asphalt cement may not be authorized within two miles of a planted vineyard. "Planted vineyard" means one or more vineyards totaling 40 acres or more that are planted as of the date the application for batching and blending is filed.

2. For uses listed in MCC 17.137.050(D)(3), (H)(1) and (I), new facilities on high-value farmland shall not be authorized. Existing legally established facilities on high-value farmland may be maintained, enhanced, or expanded on the same tract.

3. A living history museum related to resource-based activities owned and operated by a governmental agency or a local historical society, together with limited commercial activities and facilities that are directly related to the use and enjoyment of the museum and located within authentic buildings of the depicted historic period or the museum administration

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building, if areas other than a special agriculture zone cannot accommodate the museum and related activities or if the museum administration buildings and parking lot are located within one-quarter mile of an urban growth boundary.

As used in this subsection:

a. “Living history museum” means a facility designed to depict and interpret everyday life and culture of some specific historic period using authentic buildings, tools, equipment and people to simulate past activities and event; and

b. “Local historical society” means the local historical society recognized by the county board of commissioners and organized under ORS Chapter 65.

I. Commercial Activities in Conjunction with Farm Use.

1. The commercial activity must be primarily a customer or supplier of farm uses.
2. The commercial activity must enhance the farming enterprises of the local agricultural community to which the land hosting that commercial activity relates.
3. The agricultural and commercial activities must occur together in the local community.
4. The products and services provided must be essential to the practice of agriculture.

J. The following criteria apply to those uses identified in MCC 17.137.050:

1. No enclosed structure with a design capacity greater than 100 people, or group of structures with a total design capacity of greater than 100 people, shall be approved within three miles of an urban growth boundary unless an exception is approved pursuant to OAR Chapter 660, Division 004.
2. Any new enclosed structure or group of enclosed structures subject to this section shall be situated no less than one-half mile from other enclosed structures approved under OAR 660-33-130(2) on the same tract. For the purposes of this subsection “tract” means a tract as defined in MCC 17.137.130(F) in existence on May 5, 2010.
3. Existing facilities wholly within a farm use zone may be maintained, enhanced or expanded on the same tract, but existing enclosed structures within three miles of an urban growth boundary may not be expanded beyond the limits of this subsection. [Ord. 1330 § 4 (Exh. A), 2013; Ord. 1313 § 4 (Exh. A), 2011; Ord. 1271 § 5, 2008; Ord. 1204 § 4, 2004; Ord. 1180 § 4, 2003; Ord. 1168 § 5, 2002; Ord. 1125 § 9, 2000. RZ Ord. § 137.060.]

Chapter 17.139
FT (FARM/TIMBER) ZONE

17.139.060 Conditional use review criteria.

The uses identified in MCC 17.139.050 shall satisfy the criteria in the applicable subsections below.

A. The following criteria apply to all uses in MCC 17.139.050 and other uses where referenced:

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

B. Non-Farm Dwellings. The following additional criteria apply to non-farm dwellings:

1. The dwelling will be sited on a lot or parcel that is predominantly composed of Class IV through Class VIII soils that would not, when irrigated, be classified as prime, unique, Class I or Class II soils. Soils classifications shall be those of the Soil Conservation Service in its most recent publication, unless evidence is submitted as required in MCC 17.139.120(B).
2. The dwelling will be sited on a lot or parcel that does not currently contain a dwelling and was created before January 1, 1993. The boundary of the lot or parcel cannot be changed after November 4, 1993, in any way that enables the lot or parcel to meet the criteria for a non-farm dwelling.
3. The dwelling will not materially alter the stability of the overall land use pattern of the area. In making this determination the cumulative impact of possible new non-farm dwellings and parcels on other lots or parcels in the area similarly situated shall be

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considered. To address this standard, information outlined in MCC 17.139.030(H)(11)(a)(iii) shall be provided.

4. Disqualification. Prior to issuance of any residential building permit for an approved non-farm dwelling under MCC 17.139.050(A), the applicant shall provide evidence that the county assessor has disqualified the lot or parcel for valuation at true cash value for farm or forest use; and that the additional tax or penalty has been imposed, if any is applicable, as provided by ORS 308A.113 or 308A.724 or 321.359(1)(b), 321.842(1)(A) and 321.716. A parcel that has been disqualified under this section shall not requalify for special assessment unless, when combined with another contiguous parcel, it constitutes a qualifying parcel.

C. Home Occupations. ~~Notwithstanding MCC 17.110.270 and 17.120.075, home occupations, including the parking of vehicles in conjunction with the home occupation and bed and breakfast inns, are subject to the following criteria:~~

1. Notwithstanding MCC 17.110.270 and 17.120.075, home occupations, including the parking of vehicles in conjunction with the home occupation and bed and breakfast inns, are subject to the following criteria:

~~1~~**A.** A home occupation or bed and breakfast inn shall be operated by a resident of the dwelling on the property on which the business is located. Including residents, no more than five full-time or part-time persons shall work in the home occupation (“person” includes volunteer, nonresident employee, partner, or any other person).

~~2~~**B.** It shall be operated substantially in:

a. The dwelling; or

b. Other buildings normally associated with uses permitted in the zone in which the property is located.

~~3~~**C.** It shall not unreasonably interfere with other uses permitted in the zone in which the property is located.

~~4~~**D.** A home occupation shall not be authorized in structures accessory to resource use on high-value farmland.

~~5~~**E.** A sign shall meet the standards in Chapter 17.191 MCC.

~~6~~**F.** The property, dwelling, or other buildings shall not be used for assembly or dispatch of employees to other locations.

~~7~~**G.** Retail and wholesale sales that do not involve customers coming to the property, such as Internet, telephone, or mail order off-site sales, and incidental sales related to the home occupation services being provided are allowed. No other sales are permitted as, or in conjunction with, a home occupation.

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2. Notwithstanding MCC 17.110.270 and 17.120.075, an event business hosting weddings, family reunions, class reunions, company picnics, memorials, and similar gatherings, may be established as a home occupation subject to the following criteria:

A. Farm Assessment: All or a portion of the subject property where the event business will operate shall be subject to special assessment for farm use.

B. Owner: The property owner of the property upon which the event business is located shall be the operator of the event business and shall reside full-time in the dwelling on the property.

~~C. Employees: The property owner shall employ no more than five full-time or part-time persons that work at the event business at any one time.~~

C. Employees: The property owner shall employ on the site no more than five full-time or part-time persons.

D. Number of events: A maximum of 18 events per calendar year may be held on the property.

E. Frequency: No more than three events a week shall occur from May 1 to September 30 and one event a week from October 1 to April 30.

F. Duration: No event shall exceed three consecutive days including setup and take down.

G. Hours of operation: No event shall take place before the hour of 7:00 a.m. or after the hour of 10:00 p.m. Setup and takedown shall occur as well between the hours of 7:00 a.m. and 10:00 p.m.

~~H. Number of guests: A maximum of 750 guests shall be permitted on the property at any one time. All events shall be conducted in such a way as to comply with conditions of approval placed on the event business operation. The property owner shall ensure that the maximum occupancy approved by the Marion County Building Official and local fire district is not exceeded in structures on the property at any time.~~

H. Guests: The property owner shall ensure that the maximum occupancy approved by the Marion County Building Official and local fire district is not exceeded in structures on the property at any time. A lower limit may be imposed based on the number of employees able to provide services to the guests. The applicant shall demonstrate how the employees of the business are able to provide services to all the guests at the event. All events shall be conducted in such a way as to comply with conditions of approval placed on the event business operation.

I. Structures: The event business shall be operated substantially in the dwelling, or other buildings normally associated with uses permitted in the zone in which the property is located. New structures shall obtain a building permit for the use.

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Existing structures shall obtain a change of use from Building Inspection. In either case, System Development Charges applied for the additional traffic impacts anticipated shall be paid prior to building permit issuance. Any changes to a structure shall not render the structure a building not normally associated with uses permitted in the zone

J. Tents: Tents may be used in conjunction with the event business. Tents shall be considered outdoor areas for the purposes of this code.

K. Outdoor area: For events which take place both indoors and outdoors, at least 80 percent of the area of the property dedicated to the event business shall be indoors and at most 20 percent of the area of the property dedicated to the event business may be outdoors, exclusive of parking.

L. Parking: A parking and traffic circulation plan shall be provided demonstrating adequate parking being provided on-site to accommodate all traffic associated with the event business subject to the following:

1. No parking in rights-of-way or roadway easements shall be permitted.
2. Parking may be provided on a different parcel subject to evidence of an agreement with that property for the use.
3. Adequate internal circulation shall be provided to ensure that traffic does not cause a significant adverse impact to local roadways.
4. The parking and traffic circulation plan shall also provide for fire and emergency ingress and egress.
5. Events that take place between October 1 and April 30 shall have parking provided with an all-weather surface consisting of gravel, asphalt, or concrete.
6. Events that take place between May 1 and September 30 shall either have parking provided with an all-weather surface consisting of gravel, asphalt, or concrete or provided by an earthen or organic surface maintained to minimize fire hazards.
7. The property owner shall obtain all necessary permits for access and egress, as well as provide a traffic control plan if required by Marion County Public Works.
8. The use will not require new driveway access to the street unless approved by Public Works Director. The property owner shall obtain all necessary driveway access permits from the roadway authority to bring the new or existing access into conformance with county standards.

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M. Minimum setbacks: New structures and outdoor areas associated with the event business, including generators and other ancillary uses, but not including parking, shall be setback a minimum of 50 feet from public rights-of-way and adjoining parcels with an existing residence within 50 feet of the site of the event business or approved for a residence within 50 feet of the site of the event business, or zoned Acreage Residential.

N. Fencing: Property lines adjacent to a property with an existing residence within 50 feet of the site of the event business or approved for a residence within 50 feet of the site of the event business, or zoned Acreage Residential shall be provided with a solid fence, wall, or hedge. A 15-foot-wide vegetative buffer consisting of trees, which will attain at least eight feet in height within five years, and shrubs, which will provide a complete visual sight buffer within five years may be substituted for the fence, wall, or hedge.

O. Lighting: Parking lots shall have lighting capable of providing adequate illumination for security and safety. All light sources shall be constructed, down shielded and used so as not to illuminate directly on or create glare visible from adjacent properties or public rights of way.

P. Noise: The event business shall comply with Marion County Code Chapter 8.45 related to noise except that no amplified sound or use of a generator shall occur outside of a building before the hour of 7:00 a.m. or after the hour of 10:00 p.m.

Q. Signs: In addition to the signs permitted in Chapter 17.191 of this code:

1. One unlighted sign not exceeding 32 square feet related to the event business may be placed on a fence or structure subject to the height, setback, and illumination standards in Chapter 17.191.
2. Three unlighted temporary signs not exceeding 32 square feet each may be placed on the property or nearby properties subject to the height, setback, and illumination standards in Chapter 17.191.
3. Any temporary sign shall be removed no more than 24 hours after an event.

R. Water source: If a well is used in conjunction with the business, the property owner shall consult with Marion County Health and Human Services to determine if compliance with a state public water system is required. Any identified public water systems must comply with drinking water quality standards as administered by the Oregon Health Authority Drinking Water Services. The property owner also shall obtain any necessary permits from the Oregon Department of Water Resources. Evidence that required permits were obtained shall be provided to Marion County Planning.

S. On-Site Wastewater: The property owner shall obtain all necessary permits for on-site wastewater disposal. In the event that portable restroom facilities, including

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hand-sanitizing or hand-washing stations, are used, these shall be screened from adjacent lots and rights-of-way by sight-obscuring fences or plantings and be located a minimum of 50 feet from the property lines of all adjoining properties.

T. Kitchen: Any kitchen shall obtain necessary permits from Marion County Building Inspection and from Marion County Health and Human Services. Evidence that required permits were obtained shall be provided to Marion County Planning.

U. Alcohol: If alcohol is served, the property owner shall obtain all necessary permits, or ensure that all necessary permits have been obtained from the Oregon Liquor and Cannabis Commission.

V. Other uses: The event business shall not unreasonably interfere with other uses permitted in the zone in which the property is located. The property owner shall provide evidence that all contracts include the requirement that the customer has signed and agreed to the following statement:

This event business is situated in or near a farm or forest zone or area in Marion County, Oregon, where the intent is to encourage, and minimize conflicts with, farm and forest use. Specifically, residents, property owners, and visitors may be subjected to common, customary and accepted farm or forest management practices conducted in accordance with federal and state laws that ordinarily and necessarily produce noise, dust, smoke and other impacts. I do hereby accept the potential impacts from farm and forest practices as normal and necessary and part of the risk of using this venue. I acknowledge the need to avoid activities that conflict with nearby farm and forest uses and practices, signatories will not pursue a claim for relief or course of action alleging injury from farming or forest practice for which no action is allowed under ORS 30.936 or 30.937.

W. Dispatch of employees: The property, dwelling, or other buildings shall not be used for assembly or dispatch of employees to other locations.

X. Sales: Retail and wholesale sales that do not involve customers coming to the property, such as Internet, telephone, or mail order off-site sales, and incidental sales related to the home occupation services being provided are allowed. No other sales are permitted as, or in conjunction with, a home occupation.

Y. Alteration of property: No other alteration of land shall occur other than that approved in conjunction with an approval for an event business subject to the following:

1. On days when events are not occurring, the property shall not take on characteristics of an event business, aside from structures and parking areas approved as part of this permit.

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2. When events are not taking place, any equipment, furniture, or other items related to the event business shall be stored indoors.

Z. Transfer of property: Any approval is only for the property owner at the time of application. If the property is subsequently sold or transferred to another person or entity, the new property owner must indicate review and acceptance of the conditions of the land use approval prior to operating the business.

AA. Annual submittal: Event business approvals must be renewed every year subject to the property owner providing the following information:

1. Evidence of the annual renewal of permits required by other agencies and departments.
2. A log of events held the prior calendar year.
3. Any revisions to the site plan or parking and traffic circulation plan or both. Such revisions may be subject to review and approval by the Planning Director and Public Works Director for consistency with the home occupation event business approval.
4. Evidence that the property continues to be subject to special assessment for farm use.

Creates standards for operating an events business as a kind of a home occupation.

D. New uses that batch and blend mineral and aggregate into asphalt cement may not be authorized within two miles of a planted vineyard. "Planted vineyard" means one or more vineyards totaling 40 acres or more that are planted as of the date the application for batching and blending is filed.

E. For uses listed in MCC 17.139.050(D)(3), (H)(1), (2) and (3), and (I), new facilities on high-value farmland shall not be authorized. Existing legally established facilities on high-value farmland may be maintained, enhanced, or expanded on the same tract where the current use is located.

F. Private parks, playgrounds and campgrounds shall meet the following criteria:

1. Except on a lot or parcel contiguous to a lake or reservoir, private campgrounds shall not be allowed within three miles of an urban growth boundary unless an exception is approved pursuant to ORS 197.732 and OAR Chapter 660, Division 004.
2. It shall be devoted to overnight temporary use for vacation, recreational or emergency purposes, but not for residential purposes and is established on a site or is contiguous to lands with a park or other outdoor natural amenity that is accessible for recreational use by the occupants of the campground.

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3. A campground shall be designed and integrated into the rural agricultural and forest environment in a manner that protects the natural amenities of the site and provides buffers of existing native trees and vegetation or other natural features between campsites.

4. A camping site shall only be occupied by a tent, travel trailer or recreational vehicle. Private campgrounds may provide yurts for overnight camping subject to the following:

a. No more than one-third or a maximum of 10 campsites, whichever is smaller, may include yurts;

b. The yurt shall be located on the ground or on a wood floor with no permanent foundation.

5. Separate sewer, water or electric service hook-ups shall not be provided to individual campsites.

6. It shall not include intensively developed recreational uses such as swimming pools, tennis courts, retail stores or gas stations.

7. Overnight temporary use in the same campground by a camper or camper's vehicle shall not exceed a total of 30 days during any consecutive six-month period.

G. Temporary Accommodations for Hunting or Fishing. The following criteria apply to private seasonal accommodations for fee hunting and private accommodations for fishing:

1. Accommodations are limited to no more than 15 guest rooms as that term is defined in the Oregon Structural Specialty Code.

2. Only minor incidental and accessory retail sales are permitted.

3. Accommodations are occupied temporarily for the purpose of:

a. Hunting during either game bird and big game hunting seasons or both bird and big game hunting seasons authorized by the Oregon Fish and Wildlife Commission; or

b. Fishing during fishing seasons authorized by the Oregon Fish and Wildlife Commission, and are located within one-quarter mile of fish-bearing Class I waters.

4. Accommodations shall comply with the special use and siting requirements in MCC 17.139.070, except subsection (E).

H. Golf Course. A golf course is subject to the following limitations:

1. New golf courses shall not be permitted on high-value farmland, as defined in MCC 17.139.130(E).

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2. A legally established existing golf course on high-value farmland may be expanded on the subject tract where the current use is located, consistent with the provisions of MCC 17.139.130(D).

I. A portable or temporary facility for the primary processing of forest products is subject to the following criteria and limitations:

1. The use shall not seriously interfere with accepted farming practices.
2. The use shall be compatible with farm uses described in ORS 215.203(2).
3. The use may be approved for a maximum one-year period, which is renewable.
4. The primary processing of a forest product, as used in this section, means the use of a portable chipper, stud mill, or other similar facility for initial treatment of a forest product in order to enable its shipment to market. "Forest products" as used in this section means timber grown upon a tract where the primary processing facility is located.

J. Youth camps on a lot or parcel predominantly in forest use on January 1, 1993:

1. Youth camps shall be owned and leased and operated by a state or local government or a nonprofit corporation as defined under ORS 65.001, to provide an outdoor recreational and educational experience for persons 21 years of age or younger. Youth camps do not include any manner of juvenile detention center or facility.
2. The number of overnight camp participants that may be accommodated shall be determined by the board, or its designee, based on the size, topography, geographic features and any other characteristics of the proposed site for the youth camp. A youth camp shall not provide overnight accommodations for more than 350 youth camp participants, including staff, except the board, or its designee, may allow up to eight nights during the calendar year when the number of overnight participants may exceed the total number of overnight participants.

Overnight stays for adult programs primarily for individuals over 21 years of age, not including staff, shall not exceed 10 percent of the total camper nights offered by the youth camp.

3. A campground as described in MCC 17.139.050(H)(1) through (5) shall not be established in conjunction with a youth camp.
4. A youth camp shall not be allowed in conjunction with an existing golf course and a youth camp shall not interfere with the exercise of legally established water rights on adjacent properties.
5. The youth camp shall be located on a lawful parcel that provides a forested setting to ensure outdoor experience without depending upon the use of adjacent public and private land. This determination shall be based on the size, topography, geographic features and any

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other characteristics of the proposed site for the youth camp, as well as the number of overnight participants and type and number of proposed facilities. The parcel shall be a minimum of 40 acres with suitable protective buffers to separate the visual and audible aspects of youth camp activities from other nearby and adjacent lands. The buffers shall consist of forest vegetation, topographic or other natural features as well as structural setbacks from adjacent public and private lands, roads, and riparian areas. The structural setback from roads and adjacent public and private property shall be 250 feet unless the board, or its designee, sets a different setback based upon the following criteria that may be applied on a case-by-case basis:

- a. The proposed setback will prevent conflicts with commercial resource management practices; and
- b. Will prevent a significant increase in safety hazards associated with vehicular traffic; and
- c. Will provide an appropriate buffer from visual and audible aspects of youth camp activities from other nearby and adjacent resource lands.

6. The parcel shall be suitable to provide for the establishment of sewage disposal facilities without requiring a sewer system as defined in OAR 660-011-0060(1)(f). Prior to granting final approval, the board or its designee shall verify that a proposed youth camp will not result in the need for a sewer system.

7. A youth camp may provide for the following facilities:

- a. Recreational facilities limited to passive improvements, such as open areas suitable for ball fields, volleyball courts, soccer fields, archery or shooting ranges, hiking and biking trails, horseback riding or swimming that can be provided in conjunction with the site's natural environment. Intensively developed facilities such as tennis courts, gymnasiums, and golf courses shall not be allowed. One swimming pool may be allowed if no lake or other water feature suitable for aquatic recreation is located on the subject property or immediately available for youth camp use.
- b. Primary cooking and eating facilities shall be included in a single building. Except in sleeping quarters, the board or its designee may allow secondary cooking and eating facilities in one or more buildings designed to accommodate other youth camp activities. Food services shall be limited to the operation of the youth camp and shall be provided only for youth camp participants. The sale of individual meals may be offered only to family members or guardians of youth camp participants.
- c. Bathing and laundry facilities, except that they shall not be provided in the same building as sleeping quarters and up to three camp activity buildings, not including primary cooking and eating facilities.
- d. Sleeping quarters including cabins, tents or other structures. Sleeping quarters may include toilets, but, except for the caretaker's dwelling, shall not include kitchen

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facilities. Sleeping quarters shall be provided only for youth camp participants and shall not be offered as overnight accommodations for persons not participating in youth camp activities or as individual rentals.

e. Administrative, maintenance and storage buildings; permanent structures for administrative services, first aid, equipment and supply storage, and for use as an infirmary if necessary or requested by the applicant, and covered areas that are not fully enclosed.

f. An infirmary may provide sleeping quarters for the medical care provider (e.g., doctor, registered nurse, emergency medical technician, etc.).

g. A caretaker's residence may be established in conjunction with a youth camp prior to or after the effective date of the ordinance codified in this chapter, if no other dwelling exists on the subject property.

8. A proposed youth camp shall comply with the following safety requirements in OAR 660-006-0035 and shall have a fire safety protection plan developed for each youth camp that includes fire prevention measures; on-site pre-suppression and suppression measures; and the establishment and maintenance of fire safe area(s) in which camp participants can gather in the event of a fire.

a. Except as determined under subsections (J)(8)(b) and (c) of this section, a youth camp's on-site fire suppression capability shall at least include a 1,000-gallon mobile water supply that can access all areas of the camp; and a 30-gallon-per-minute water pump and an adequate amount of hose and nozzles; and a sufficient number of firefighting hand tools; and trained personnel capable of operating all fire suppression equipment at the camp during designated periods of fire danger.

b. An equivalent level of fire suppression facilities may be determined by the board or its designee. The equivalent capability shall be based on the Oregon Department of Forestry's (ODF) Wildfire Hazard Zone rating system, the response time of the effective wildfire suppression agencies, and consultation with ODF personnel if the camp is within an area protected by the Oregon Department of Forestry and not served by a local structural fire protection provider.

c. The provisions for on-site fire suppression may be waived by the board or its designee if the youth camp is located in an area served by a structural fire protection provider and that provider informs the board in writing that on-site fire suppression at the camp is not needed.

K. Living history museum (only on a tract predominantly in farm use on January 1, 1993). A living history museum related to resource-based activities owned and operated by a governmental agency or a local historical society, together with limited commercial activities and facilities that are directly related to the use and enjoyment of the museum and located within authentic buildings of the depicted historic period or the museum administration building, if areas other than a farm/timber zone cannot accommodate the museum and related activities or if

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the museum administration buildings and parking lot are located within one-quarter mile of an urban growth boundary.

1. As used in this subsection:

a. “Living history museum” means a facility designed to depict and interpret the everyday life and culture of some specific historic period using authentic buildings, tools, equipment and people to simulate past activities and events; and

b. “Local historical society” means the local historical society recognized by the county board of commissioners and organized under ORS Chapter 65.

L. Commercial Activities in Conjunction with Farm Use.

1. The commercial activity must be primarily a customer or supplier of farm uses.

2. The commercial activity must enhance the farming enterprises of the local agricultural community to which the land hosting that commercial activity relates.

3. The agricultural and commercial activities must occur together in the local community.

4. The products and services provided must be essential to the practice of agriculture.

M. The following criteria apply to those uses identified in MCC 17.139.050:

1. No enclosed structure with a design capacity greater than 100 people, or group of structures with a total design capacity of greater than 100 people, shall be approved within three miles of an urban growth boundary unless an exception is approved pursuant to OAR Chapter 660, Division 004.

2. Any new enclosed structure or group of enclosed structures subject to this section shall be situated no less than one-half mile from other enclosed structures approved under OAR 660-33-130(2) on the same tract. For the purposes of this subsection “tract” means a tract as defined in MCC 17.139.130(F) in existence on May 5, 2010.

3. Existing facilities wholly within a farm use zone may be maintained, enhanced or expanded on the same tract, but existing enclosed structures within three miles of an urban growth boundary may not be expanded beyond the limits of this subsection. [Ord. 1369 § 4 (Exh. B), 2016; Ord. 1313 § 4 (Exh. A), 2011; Ord. 1271 § 5, 2008; Ord. 1204 § 4, 2004; Ord. 1180 § 4, 2003; Ord. 1168 § 5, 2002; Ord. 1125 § 11, 2000. RZ Ord. § 139.060.]

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 You are entitled to judicial review of this Order. Judicial review is
7 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.”¹ 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

¹ 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.