

DICKSON | HATFIELD LLP

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Bend, OR 97702



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DEC 13 2023

Crook County
Community Development

December 12, 2023

Crook County Planning Commission
Attn: Katie McDonald, Senior Planner
Via email only to plan@crookcountyor.gov

Re: Applicant/Property Owner: Gregory A. and Karen S. Huston
Subject Properties: 141520 TL 600 (2.4 acre activity site)
141519 TL 100
141500 TL 600
141424 TL 100
141424 TL 200
141520 TL 601
141500 TL 603
Total Acreage: 824 acres
File Number: 217-23-001215-PLNG (Agri-tourism, Comm'l Events)
Opponent Record Submittal: Fahlstrom, John and Connie
5665 NW Spring Creek Road, Prineville, OR 97754

Dear Commissioners and Planning Staff:

Our offices represent John and Connie Fahlstrom, holders of 440 acres of agricultural land **between the O'Neil and Madras highways along Campbell Ranch Road**. The Fahlstroms have received notices of this action as it has progressed as parties owning property adjoining the Subject Properties and potentially impacted by the proposal.

The Fahlstroms have witnessed first-hand the impacts of the prior events held on the Huston property. John Fahlstrom has shared their concerns with the owner, Greg Huston, but the intensity of the conflicts between the crowded event and ranching uses has increased over time. This request to hold even more events, 18 events per year, including days of preparation and breakdown, during the most active seasons for ranching, is not compatible with the primary and protected agricultural use of Campbell Ranch Road properties, and we ask this Commission to deny the request to permit the events.

The challenges of ranching and farming at a profit are well known to the Fahlstroms. They purchased their property as partitioned off the King Ranch in 2001, and divided it in 2007, building a new home on 7.5 acres in 2021. Their present home is 250 feet from the Huston property and visible from their home. They own 280 acres and lease an additional 160 from the BLM, grazing livestock on all but 15 acres on Spring Creek Road, which is set aside for their

home, shop, and farm buildings. See Affidavits of John Fahlstrom and Connie Fahlstrom, attached and incorporated by this reference.

Campbell Ranch Road is the only access west into the ranch area from Elliott Road. It is dedicated to and maintained by the County for a short distance past Elliott Road, then is privately maintained by Road Agreement between the Hustons, the Fahlstroms, the Mortons and the Kenzies, as originally agreed by the predecessors. A copy of the Road Agreement is attached to John Fahlstrom's Affidavit. It is important to note that no provisions are made for any of the parties to change the road from a narrow, lightly graded, gravel and dirt road for a few ranching and farming families to a facility that could safely accommodate hundreds of vehicles per day, including trailers and container vehicles. See the Fahlstroms' affidavits for descriptions of conflicts they have had with event vehicles in the past.

The Transportation Assessment Letter is Inaccurate and Unreliable

We have reviewed Chris Clemow's Transportation Assessment Letter closely, hoping to find suggestions for ways to make the event traffic compatible with existing farm and ranch uses on the private road. Regrettably, the foundation of his assessment is wrong, where he notes on page 3 that the property "has historically (since 1992) been used to host events. . . ." As noted in the Fahlstroms' Affidavits, the property has not been used continuously for any event purpose, and particularly not for events of the size and impacts proposed. The attendee count used to estimate trips is also ambiguous, where the Letter notes "100-150 attendees (averaging 150)." If the average is 150, the attendee count will exceed 150 for at least half of the events. His Page 5 conclusion that 300 daily trips will be generated is not a maximum number of trips as is customary when assessing system loads. It is an average. Furthermore, the event impacts are not limited to attendees. Each event will require a minimum of one day to set up and break down events, extending the traffic generating impacts even further. These trips are not even estimated.

Mr. Clemow goes on to reference NW Campbell Ranch Road as a Local Roadway under the Crook County TSP. That is true for the first few hundred feet after it intersects with Elliott Road. However, it then becomes a private road, subject to a private Road Agreement and private maintenance costs. It is this section of the road that would serve the 100-200 event attendees and heavy-duty vehicles transporting event structures, furniture, equipment, food preparation and service supplies, and personnel.

The Letter also bases the impact analysis on urban traffic patterns, noting that "these events typically occur on weekend days and evenings when background transportation system volumes are typically low." Ranchers and farmers are not 9-5, Monday-Friday workers. They travel between properties 7 days a week, traveling between sunrise and sunset, and sometimes well past dark to harvest hay or assist with livestock needs. Mr. Clemow's base assumptions are erroneous, so his conclusions are not reliable. Because the Letter is not reliable evidence, the Applicant has not met its burden to prove compatibility with the protected uses along Campbell Ranch Road.

Event Use is not preserved as either a Vested Right or a Non-Conforming Use

As an alternative to compliance with ORS 215.283 (4), (5), (6)(Agri-tourism and other commercial events), the application relies heavily on the argument that this use is merely a continuation of practices that have occurred continuously since 1992. Applicant's legal counsel is ambiguous as to whether they are arguing that the right to hold events is a Vested Right or a right preserved as a Non-Conforming Use. Actual occurrences witnessed by the Fahlstroms since 2001 prove neither legal rationale fits here. We will address each briefly and separately below.

Vested rights arise when a use is not fully established before a zone change makes it illegal. It is found where a substantial commitment to that use has been made. See Fountain Village Development Co. v. Multnomah County, 176 Or.App. 213 (2001). This case held that vested rights, once established, must be proven by the applicant to be continuous and not abandoned or discontinued, or the vested right is lost.

Non-conforming uses are similar, but must be fully developed at the time of a prior zone change that would have made them illegal. See Clackamas County v. Holmes, 265 Or 193, 198 (1973). Both protect uses not currently permitted, distinguished by the degree of completeness at the time of the zone change making them illegal.

Non-conforming uses are only allowed if an applicant can prove all four factors:

- 1) Use lawfully existed at the time of the restricting zone change
- 2) The nature and extent of the use at time of the zone change is proven and unchanged
- 3) The use has not been discontinued or abandoned, and
- 4) If altered since the zone change, the alteration comply with currently applicable standards.

See ORS 215.130, 215.135 as interpreted by caselaw.

We have placed evidence in the Record, by Affidavits, that the event use claimed to be continuous was clearly not continuous. Furthermore, the scale of the events and the impacts they cause has increased significantly. If a use has altered, it must comply with currently applicable standards. See Spurgin v. Josephine County, LUBA No. 94-087, 28 Or LUBA 383, 38-387 (1994). The subject application acknowledges there have been some gaps in use, but downplays them as insignificant. Oregon caselaw holds otherwise.

Vested rights and non-conforming use claims are heavily disfavored. They are attempts to make something permissible even though it is not legal. See Parks v. Board of County Commissioners, 11 Or. App. 177, 196-197 (1972). They detract from the effectiveness of comprehensive land use regulation. See Fraleigh v. Deschutes County, 32 Or LUBA 27, 31 Aff'd 145 Or. App. 484 (1996).

Here, the 1992 use did not continue through the ownerships since that time, as proved by first-hand witnesses. Furthermore, the uses that did occur thirty years ago were different and less

impactful on surrounding uses. The facts of this case prove that this use does not fit the narrow exception of either a Vested Right or a Non-Conforming Use.

It must be assessed on its ability to conform with the current law. This application does not meet those criteria. See ORS 215.283 (4)(c) and (4)(d). In particular, it does not satisfy the following requirement of (d)(up to 18 events annually), which refers back to (c)(D), which requires compliance with ORS 215.296, the portion of the Oregon Revised Statutes which rigorously protects farm uses in farm zones:

215.296 Standards for approval of certain uses in exclusive farm use zones. (1)

A use allowed. . . may be approved only where the local governing body or its designee finds that the use will not:

- (a) Force a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest use; or
- (b) Significantly increase the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use.

The subject application is not a new use. It is a request to legalize previously illegal events, and further to allow more attendees, more days, and so more disruption of farm uses in the Campbell Ranch Road corridor. Because it is not a new use, neighbors like the Fahlstroms know what changes they will be forced to make. As stated in their Affidavits, they already have not been able to drive safely between their home, barns, and fields down Campbell Ranch Road. They have had to avoid travel during event days, changing the feeding and maintenance times for their fields. These are significant changes, and because of prior illegal events, are known to occur. This application does not comply with ORS 215.296(a), so does not satisfy the applicable criteria. In compliance with applicable law, it should be denied.

Thank you, in advance, for your consideration of these concerns, and for your service to your community.

Very truly yours,



Elizabeth A. Dickson
eadickson@dicksonhatfield.com
541-585-2229

EAD/hoh
Encs. Affidavits of John and Connie Fahlstrom

BEFORE THE PLANNING COMMISSION
FOR CROOK COUNTY, OREGON

HUSTON, GREGORY A. AND KAREN)
S.) Record No. 217-23-1215
) PLNG
Applicants for a Commercial Event Permit)
in the EFU-2 Zone,) AFFIDAVIT
) OF CONNIE FAHLSTROM
"Applicant"

STATE OF OREGON)
) ss.
County of)
Deschutes _____)

I, Connie Fahlstrom, being first duly sworn, depose and say:

- (1) My husband, John Fahlstrom, and I own real property next to the Huston property that is the subject of this application. We run cattle on 425 acres including BLM property.
- (2) We have lived here since 2001. We purchased our property from Don Campbell.
- (3) We were friends with the Campbells for approximately 2 years before they sold. We had dinners and went horseback riding together.
- (4) They ran a ranch, making 3 cuttings of hay per year and keeping 50-100 cattle and horses on the property.
- (5) Two events were held on their property one year, a Les Schwab party for employees and a Wagon Train camp out, and they also held the Les Schwab party the second year before they sold.
- (6) The Shanafelts bought the ranch around 2003. They were from the North Plains area and were inexperienced with running a ranch on the east side of the mountains and had trouble. They tried to book events, but the ranch was rundown and did not attract events.
- (7) Mr. Shanafelt died and the Hustons bought the ranch around 2010. They don't live on the ranch. It is my understanding that they live in Alaska.
- (8) In approximately 2021, the Hustons began hosting large commercial events.
- (9) Campbell Ranch Road is a private road for our use and our neighbors. We use it to haul cattle, farm equipment, and tend to our farms along the road.
- (10) These events attract new people to the road and our neighborhood. I have seen up to 50 vehicles in a short period of time driving on Campbell Ranch road. They drive unsafely,

even at times passing each other on the road. We do not use the road during these events if we can help it.

(11) We drive a Polaris Ranger to the 425 acres. We travel 10-15 miles per hour. Event drivers will tailgate us in the vehicle, and we will not feel safe.

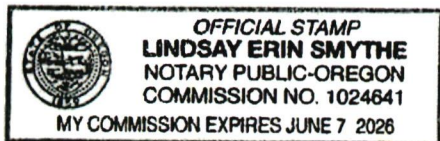
(12) We also have a stock trailer to transport livestock on the road. If an event is going on at this time the traffic can upset the livestock.

(13) Since the Hustons started hosting events, I have had to avoid use of Campbell Ranch Road in event periods and during preparations and take down.

(14) I am against allowing commercial events on the Huston property, and ask this Commission to deny the application.

Connie Fahlstrom
Connie Fahlstrom

SUBSCRIBED AND SWORN TO before me November 7, 2023.



/s/ Lindsay Erin Smythe
Notary Public for Oregon

BEFORE THE PLANNING COMMISSION
FOR CROOK COUNTY, OREGON

HUSTON, GREGORY A. AND KAREN)
S.) Record No. 217-23-1215
) PLNG
Applicants for a Commercial Event Permit)
in the EFU-2 Zone,) AFFIDAVIT
) OF JOHN FAHLSTROM
"Applicant"

STATE OF OREGON)
) ss.
County of)
Deschutes _____

I, John Fahlstrom, being first duly sworn, depose and say:

- (1) My wife, Connie Fahlstrom and I own real property adjacent to the Huston property that is the subject of this application, including 265 acres of farm land with water rights, an additional 160 acres leased from the BLM and 15 acres for a home, shop and farm buildings.
- (2) We discovered the property in 2000 and have lived here since 2001. The ranch now owned by Hustons is adjacent to our property.
- (3) I was friends with the Campbells for approximately 2 years before they sold. We had dinners together and socialized with them.
- (4) They ran what appeared to be a profitable ranch, making 3 cuttings of hay per year and keeping 50-250 cattle and horses on the property at times.
- (5) They held two events one year, a Les Schwab party for employees, a Wagon Train camp out and breakfast. They hosted the Les Schwab party again the second year as well as an agricultural group breakfast before they sold.
- (6) My shop and barn for farm equipment and supplies is located on a parcel accessed by Spring Creek Road, then the private segment of Campbell Ranch Road. I travel this route with trucks, tractors, excavators, and livestock trailers to reach the 425 acres I farm as part of my ranching operation. This part of Campbell Ranch Road is private, not paved, and not maintained by the County. It is managed by a Road Maintenance Agreement, attached, for the use of the owners on the road.
- (7) In approximately 2021, the Hustons began hosting large commercial events.

(8) These events attract long strings of cars on the private part of Campbell Ranch Road anxious to reach Huston commercial events. The gravel and dust does not slow the traffic, these events draw people in who apparently have no experience of travel on country roads. Perhaps six or seven separate times these event attendees have run me to the side into the boulders or nearly over the edge of the opposite side of the road while traveling to and from my farm parcel. I suspect that the alcohol served at the events is a contributing factor in the driving behavior. Considerations for wildlife is also a factor. This year alone I have seen both mature and immature Golden Eagles resting at the base of Round butte which overlooks the event site.

(9) Aggressive drivers tailgate me on the private road as I drive slow farm vehicles, attempting to pass on the narrow road with a blind corner. These are frequently unsafe driving conditions. I have been forced to stay off my road during these events, unable to tend to the animals and the fields on which they graze.

(10) Previous owners have not held such events like those I have seen in the past 3 years. The number of guests, driving behavior of those guests, length of events (events start Friday and end on Sunday), and frequency of events are new since 2021.

(11) The Campbells owned the ranch in 2001 when I first moved to the adjoining property. I believe that the Dinner Train occasionally stopped, but there were no additional vehicles sharing the road. Les Schwab held an employee picnic in 2000 and 2001. An Oregon Trail wagon train group camped over night and held a breakfast there one summer as well.

(12) The Shanafelts purchased the ranch in the Fall of 2001. They held no events to my knowledge. During their ownership, the ranch operations were unsuccessful and became run down.

(13) The Hustons purchased the ranch in approximately 2009.

(14) They hired a foreman to oversee the ranch, since they are absentee owners.

(15) Since the Hustons started hosting events, I have had to avoid use of Campbell Ranch Road in event periods for safety reasons.

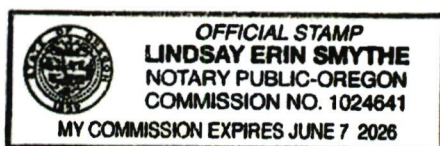
(16) I am opposed to allowing commercial events on the Huston property, and ask this Commission to deny the application.



John Fahlstrom

SUBSCRIBED AND SWORN TO before me November 7, 2023.

/s/ 
Notary Public for Oregon



Road Improvement & Maintenance Agreement

For the operation, maintenance, repair, and replacement of a shared access road to wit: The entire NW Campbell Ranch Road.

The purpose of this agreement is to fairly distribute the costs of maintenance of Campbell Ranch Road by any owner of property serviced by Campbell Ranch Road. **SEE ATTACHED EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF.

This agreement shall constitute a covenant between the owners of the described properties together with their heirs and assigns and may not be amended or revised except by unanimous agreement of the fee title holders and holders of encumbrances relating to all the parcels. It is the intention of the parties that the terms of this agreement shall run with the land above described and be binding on their heirs and successors.

At such time as all parties agree that repair, maintenance, or replacement is necessary, one party (we will refer to as operator 1) shall be responsible to acquire bids for the other parties' approval. Once agreement has been reached to terms and conditions, operator 1 shall be responsible for overseeing the work and, when completed, shall, upon acceptance of all parties, disperse any amounts owed.

In the event that the parties are unable to agree as to the disposition of any matter relating to the improvement and operation of the access road that is the subject of this agreement, or the interpretation of any of the provisions of this agreement, then the parties agree to appoint an arbitrator acceptable to all parties to arbitrate such matters. The parties shall present their case to the arbitrator and the decision of the arbitrator shall be final and binding on all parties. Costs of such arbitration shall be borne equally by all parties.

In construing this agreement, interpretation of the provision of the agreement shall be made in such a manner that actual uses and benefits relate as closely as possible to the cost and obligations of the parties to this agreement. This agreement shall constitute a covenant running with the land and shall continue for periods of five years and shall be renewed automatically for periods of five years unless unanimously amended or revoked by all the parties of interest.

DATED this 25 day of MAY 20 00

Donald E. Campbell
Theresa G. Campbell

Richard C. Morton

State of Oregon

County of CROOK

MAY 25 2000

Personally appeared the above named DONALD E. CAMPBELL AND THERESA G. CAMPBELL and acknowledged the foregoing instrument to be THEY voluntary act and deed.

WITNESS My hand and official seal.

(seal)

April F. Hensley
Notary Public for Oregon
My Commission expires: 9/5/02



State of Oregon

County of CROOK

MAY 25 2000

Personally appeared the above named RICHARD C. MORTON and acknowledged the foregoing instrument to be HE voluntary act and deed.

WITNESS My hand and official seal.

(seal)

April F. Hensley
Notary Public for Oregon
My Commission expires: 9/5/02



CTS 6/14/00 AH

AMERITITLE

STATE OF OREGON } ss 155655
COUNTY OF CROOK }

I CERTIFY THAT THE WITHIN INSTRUMENT WAS
RECEIVED FOR RECORD ON THE 26th DAY OF
May 2000 AT 3:30 P. M.

AND RECORDED IN Deeds
RECORDS OF SAID COUNTY MF NO. 155655

DEANNAE BERMAN, CROOK COUNTY CLERK
BY Virginia M. Wilkey DEPUTY

31.00

KEY PUNCHED
MAY 30 2000

MICROFILM



EXHIBIT "A"

Parcels One (1) and Two (2) of Partition Plat No. 2000-11, Recorded May 10,
2000 in Partitions MF No. 155360, Records of Crook County, Oregon, Located in
Section 17, Township 14 South, Range 15 East of the Willamette Meridian, Crook
County, Oregon.

STATE OF OREGON } ss 155835
COUNTY OF CROOK }

I CERTIFY THAT THE WITHIN INSTRUMENT WAS
RECEIVED FOR RECORD ON THE 7th DAY OF
June 2000 AT 3:35 P. M.

AND RECORDED IN Deeds
RECORDS OF SAID COUNTY MF NO. 155835

DEANNAE BERMAN, CROOK COUNTY CLERK
BY Virginia M. Wilkey DEPUTY

31.00

MICROFILM

KEY PUNCHED
JUN 08 2000

