

January 24, 2024

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VIA E-MAIL

Crook County Planning Commission
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RE: Crook County File No. 217-23-001215-PLNG
Our File No.: 140521-277231

Dear Planning Commissioners:

This letter constitutes the Applicant's final legal argument, and is timely submitted by 4:00 p.m. on January 24, 2024.

I. INTRODUCTION

At the outset, is important to acknowledge the unique background leading to the Applicant seeking the present commercial event permit. The Applicant owns an approximately 824-acre ranch that is zoned Exclusive Farm Use Prineville Valley – Lone Pine Areas. Prior to the Applicant purchasing the ranch, one of its predecessors in interest, Peter King, applied for and received a conditional use permit in 1992 (the "1992 CUP") allowing the subject property to be used, in part, as a "private park for catered barbecues." Exhibit B to the application. The subject property was then sold a number of times, but consistently operated, at least in part, under the 1992 CUP as an event venue.

The Applicant then purchased the property in 2009, and, consistent with prior owners' use, continued to host events pursuant to the 1992 CUP in order to supplement the ranch's income. Starting in the Fall of 2021, Crook County (the "County") began receiving complaints regarding the events on the Applicant's property. Those complaints led to a code compliance case, wherein neighbors argued, "there is no land use permit" for the Applicants' events because the "1992 [CUP] no longer applies to this property due to non-use." Exhibit I to the application. Because of that code compliance case, on February 8, 2023, the Applicants entered into an Agreement to Abate with the County whereby the Applicants agreed to submit an application for a new land use permit or an application to modify the 1992 CUP. The Applicants specifically entered into the Agreement

to Abate to demonstrate their intention to resolve the dispute amicably with their neighbors and the County.

The Applicant thereafter chose to submit the present land use application in order to maintain the economic viability of its working ranch – the Ponderosa Ranch. As described in detail throughout the application, and below, the Applicant is primarily interested in supplementing the Ponderosa Ranch’s income to ensure its economic viability into the future. As with any ranching operation, there are good and bad years. The Applicant raises approximately 1,200 tons of hay crops each year, which it sells for a yearly gross revenue of approximately \$250,000 to \$300,000. The Applicant also runs approximately 80 to 200 head of cattle (depending on the year and the cattle and hay market) and sells cattle each year for a yearly gross revenue of approximately \$40,000 to \$160,000. In comparison, the Applicant expects to hold up to 18 events each year under the current commercial event permit application for yearly gross revenue of approximately \$35,000 to \$63,000. This additional revenue is essential to supplement revenue from the commercial farm use. Specifically, in years when hay and cattle sales are lower than average, the supplemental revenue is essential for the farm operation to reach a break-even point. On years when revenue is above break-even and the commercial farm operation is profitable, the supplemental revenue allows the Applicant to cover the cost of repairs and upgrades to its farm equipment and farm facilities. Differing from predecessors-in-interest, the Applicant is determined to stop the parcelization of the existing ranch as a means to raise money needed to address short-term financial challenges.

Importantly, the Applicant’s above-described motives are directly in-line with applicable provisions in the Crook County Code (“CCC”) and Oregon Revised Statutes, which are clearly designed to protect farmland by providing ranchers opportunities to generate additional revenue on their land. The policy developments in the State of Oregon and in the County since the original 1992 CUP was approved are specifically why the Applicant expended considerable resources pursuing a new land use permit instead of modifying the 1992 CUP.

II. APPLICANT’S RESPONSE TO SPECIFIC COMMENTS

The Applicant asserts that the central issue that must be addressed by the Planning Commission is compliance with Crook County Code (“CCC”) 18.16.055(3)(d) regarding “farm impacts.” Accordingly, that issue is addressed in detail below. Specifically, we demonstrate that two neighboring property owners inappropriately coopted CCC 18.16.055(3)(d) in a veiled attempt to encourage the Planning Commission to consider irrelevant arguments suggesting the Applicant’s proposed events are incompatible with their surrounding residential uses. As will be shown, those neighboring properties are not “devoted to farm use” such that the asserted impacts, be them real or imaginary, fall under CCC 18.16.055(3)(d).

The remaining issues raised by opponents are summarily addressed below because said issues either do not concern applicable code criterion or the evidence in the record overwhelmingly demonstrate compliance.

a. Farm Impacts

The Applicant seeks a land use permit pursuant to CCC 18.16.055(4) allowing up to 18 commercial events each year. CCC 18.16.055(4)(b) cross references and requires compliance with CCC 18.16.055(3)(d) addressing “farm impacts” (emphasis added):

“[Commercial events] [w]ill not force a significant change in accepted farm * * * practices on surrounding lands devoted to farm * * * use; and will not significantly increase the cost of accepted farm or forest practices on surrounding lands devoted to farm * * * use;”

A central issue in these proceedings is whether neighboring owners’ properties are in fact “devoted to farm use.” Notably, “farm use” is defined by CCC 18.08.060 in part as follows (emphasis added):¹

“Farm use’ means the current employment of land for the primary purpose of obtaining a profit in money by raising, harvesting and selling crops or the feeding, breeding, management and sale of, or the produce of, livestock, poultry, fur-bearing animals or honeybees or for dairying and the sale of dairy products or any other agricultural or horticultural use or animal husbandry or any combination thereof. * * *”

The evidence in the record is clear and uncontroverted. Despite the claims to the contrary, the properties owned by three disgruntled neighbors opposed to the subject application are not “devoted to farm use,” and neither will the proposed commercial events force a significant change in accepted farm practices on those properties. Each of the claims asserted by those neighbors are considered in turn below.

i. Fahlstroms

The Fahlstroms argued both prior to and during the December 13, 2023 public hearing that traffic from the proposed events entirely precludes their use of Campbell Ranch Road during “event periods and during preparations and take down.” See Exhibit 10 to Staff Report, affidavit of Connie Fahlstrom. The Fahlstroms’ attorney, Ms. Liz Dickson, further articulated the Fahlstroms’ argument during the hearing:

“* * * Mr Falstrom has been run off the road, he’s had – he’s had cattle trailers, he’s had hay trucks, he said all kinds of things coming up that road coming into conflict with these event people. And he can’t farm adequately in that kind of environment. So when then these events happen, they stay on their 7 and a half acres with their single-family dwelling and their barn and their mechanical

¹ Crook County’s definition is consistent with the statutory definition of “farm use” at ORS 215.203(2)(a).

building. They stay there. They don't come out of Spring Creek Road onto [Campbell] ranch Road, because frankly, it's dangerous."

See Exhibit 16 to Staff Report, Transcript of Liz Dickson. The veracity of Ms. Dickson's claims, however, were immediately undermined by Mr. John Fahlstrom's subsequent testimony during the same hearing. Specifically, Mr. Fahlstrom testified that in fact, he "wasn't getting run off the road" by the event traffic as directly claimed by his attorney. Mr. Fahlstrom also testified that most of the work occurring on his properties "takes place on the weekend[,] because he is otherwise employed. *See Exhibit 16 to Staff Report, Transcript of John Fahlstrom.* Again, that testimony undermines his own attorney's argument prior to the hearing that the Applicant's event traffic constitutes a farm impact because "[r]anchers and farmers are not 9-5, Monday-Friday workers. They travel between properties 7 days a week, traveling between sunrise and sunset, and sometimes will past dark to harvest hay or assist with livestock needs." *See Exhibit 10 to Staff Report.*

The Applicant acknowledges that these are small concessions on the part of Fahlstroms. But they are nevertheless notable because they demonstrate that the Fahlstroms' attorney is stretching the facts in this case to try and manufacture a "farm impact" to thereby invoke CCC 18.16.055(3)(d). Looking at Connie Fahlstrom's carefully-worded affidavit, all that the Fahlstroms' ever claimed in these proceedings is that they "run cattle on 425 acres including BLM property." To date, the Fahlstroms have yet to clarify how many head of cattle currently graze their property or their BLM allotment. Following the public hearing, Mr. Rand Campbell further investigated the Fahlstroms' claims and noted that "there are no livestock barns, hay barns, livestock corrals, [or] cattle handling equipment" on any of the Fahlstroms' properties indicating that an actual "farm use" is occurring on the property at such a scale suggestive that the Fahlstroms primary purpose is to obtain a profit in money as required by CCC 18.08.060. Mr. Campbell further observed only "one mule, one steer, and one water trough" on one of the Fahlstrom's properties, thereby suggesting nothing more than hobby farming activities. *See Exhibit 16 to Staff Report, Letter from Rand Campbell.*

The Fahlstroms did not participate during the open record period or otherwise add any evidence to the record disputing or otherwise clarifying Mr. Campbell's observations and conclusions. Instead, Mr. Campbell's observations are entirely consistent with Mr. Fahlstrom's testimony during the hearing directly stating that he has "big plans" for his property consisting of "put[ting] in cattle guards [and] holding pens," building fences, and clearing additional land. But despite the Fahlstroms' attorney's claims otherwise, "big plans" and farming aspirations are irrelevant to the present consideration because CCC 18.08.060 constrains "farm use" to mean only the "current employment of land for the primary purpose of obtaining a profit in money." Stated simply, future plans are not a "farm use" under the Crook County Code, and the Fahlstroms' property is thereby not "land devoted to farm use" such that their annoyance regarding increased traffic on Campbell Ranch Road invokes CCC 18.16.055(3)(d).

The Applicant is sympathetic that event traffic may be an annoyance to the Fahlstroms. That is precisely why the Applicant repeatedly reached out to the Fahlstroms to try and creatively

address their concerns. *See* Exhibit 16 to Staff Report, December 29, 2023 Email from A. Smith. But, the annoyance of occasional increased traffic on what is otherwise a sporadically-used country road does not amount to a “farm impact” justifying denial of the subject application. Even if the Planning Commission finds that the Fahlstroms grazing one mule and one steer is something more than hobby farming, the record still does not support the Fahlstroms’ exaggerated claim that the event traffic on Campbell Ranch Road is so bad that it forces “a significant change in accepted farm practices.” The record includes pictures of the road and two statements from a traffic engineer demonstrating that Campbell Ranch Road can accommodate both the Fahlstroms’ usage, actual farm usage, and event traffic without posing a safety concern to any of the aforementioned users. *See* Exhibit 22 to Staff Report, Photographs of Campbell Ranch Road, Exhibit 22 to Staff Report, Technical Letter #1 – Transportation Response to Public Comments, and September 25, 2023 Transportation Assessment Letter. Additionally, the record includes statement from two other ranchers clarifying that event traffic does not constitute a farm impact. First, Mr. Wes Kuenzi testified as follows:

“I use[s] Campbell Ranch Road every day and I have never had any conflicts with traffic going to or leaving the events held on the Huston’s property. I use the road to move equipment and cattle to and from my property. My farming and ranching activities have not been impacted by the commercial events or traffic generated from the events.”

See Exhibit 16 to Staff Report, *January 6, 2024 letter from W. Kuenzi*. Second, Mr. Josh Dennis, an area rancher and haying contractor familiar with the Applicant’s property, provided similar testimony as follows:

“In the past two years, during both 2022 and 2023, the Ponderosa ranch hired me to harvest grass seed from one of their fields. In order to harvest the grass seed on the Ponderosa Ranch, my and my employees used two combines and three semi-trucks, and swathers. We moved all our equipment to and from the Ponderosa Ranch on Campbell Ranch Road. We have never had any issues moving our farming equipment to and from the Ponderosa Ranch or sharing the road with traffic from the events that were taking place on the Ponderosa Ranch.

There have been events and weddings being held on the Ponderosa Ranch at the same time that me and my employees were working at the Ponderosa Ranch and moving our equipment to and from the ranch. Campbell Ranch Road is wide and safe for vehicles and heavy equipment, such as tractors and semi-trucks to pass each other with no issues.”

See Exhibit 22 to Staff Report, *January 15, 2024 letter from Jason Dennis (Attached to January 17, 2024 Statement from Rand Campbell)*.

As outlined above, the Planning Commission has two options when it comes to addressing the Fahlstroms’ opposition to the subject application. First, the Planning Commission should adopt findings demonstrating that the Fahlstroms’ property is not “devoted to farm use” because the

current employment of the Fahlstroms' land is not being utilized for the primary purpose of obtaining a profit in money as required by the definition of "farm use" set forth by CCC 18.08.060. Second, the Planning Commission should further adopt findings clarifying that the substantial evidence in the record does not support the Fahlstroms' argument that increased traffic on Campbell Ranch Road constitutes a significant change in accepted farm practices. Instead, the substantial evidence in the record demonstrates that Campbell Ranch Road can easily accommodate traffic stemming from the commercial events, residential uses, hobby farm uses, and actual farm uses.

ii. Orrs

During the December 13, 2023 hearing, the Orrs adopted the Fahlstroms' legal analysis and began arguing that traffic on Campbell Ranch Road constitutes a farm impact prohibited by CCC 18.16.055(3)(d). Like the Fahlstroms, however, the Orrs stretched the facts in this case in a transparent attempt to elevate what are otherwise irrelevant "compatibility" arguments into relevant "farm impacts."

Differing from the Fahlstroms' argument that event traffic entirely precludes their use of Campbell Ranch Road and thereby prevents them from undertaking necessary ranch activities, the Orrs' only asserted "farm impact" is notably more nuanced. Amidst their numerous irrelevant arguments, the Orrs' singular argument stemming from CCC 18.16.055(3)(d) is that they will "pay more for contract harvesting" because of traffic conflicts. *See* Exhibit 17 to Staff Report. Specifically, Mr. David Orr explained his difficult haying his property as follows:

"It is my intention to use third-party contractors to harvest and process the hay that is currently on the Orr Property during the 2024 harvest period. Hay was not harvested 2002 and 2023 (sic) because we were unable to find a third-party contractor after Blair Parsons was no longer interested in harvesting our hay. Since the summer of 2022, when there were thirteen (13) events on the Applicants' property, it has been difficult to schedule contractors to harvest hay, so that it does not conflict with commercial events or traffic.

Three documents were added to the record by the Applicant that demonstrate the Orrs' difficulty finding a haying contractor is a problem of their own making and not a "farm impact" invoking CCC 18.16.055(3)(d). First, Mr. Blair Parsons, the Applicant's ranch manager, explained that he harvested the hay on the Orrs' property from 2018 to 2021 along with harvesting hay on the Applicant's property. Mr. Parsons further explained that he stopped having the Orrs' property in 2021 at their specific direction, and that the Orrs instead mowed their pasture in the seasons since 2021 with their lawn mower. Last, Mr. Parsons noted that "had [he] not already been haying adjacent fields, I would not have hayed the Orr property since it is not financially feasible for me to have our haying equipment tied up at the Orr property only to harvest a few tons of hay." *See* Exhibit 22 to Staff Report, January 16, 2024 letter from Blair Parsons (attached to R. Campbell Letter).

Second, Mr. Dennis's January 15, 2024 letter discussed above supports Mr. Parson's letter by further confirming that it is not financially feasible for a third-party contractor to hay the Orrs' small field:

"It would not be feasible or profitable for a haying contractor to hay the Orr property because it is such a small amount that we would have to upcharge based on the inconvenience. We choose not to do small properties like the Orrs' property because from an efficiency standpoint, it is expensive to move equipment to these small properties just to harvest a few tons of hay. Also, because there is no storage on the Orr property, we would need to haul the hay somewhere else to store in a bar which increases our costs and the gates are too small for our equipment."

See Exhibit 22 to Staff Report, January 15, 2026 letter from Jason Dennis (Attached to January 17, 2024 Statement from Rand Campbell).

Third - and arguably most relevant - the Applicant recently offered to reinstate their previous agreement whereby Mr. Parson would resume haying the Orrs' property as was the practice prior to 2021. Specifically, our firm sent a correspondence to the Orrs' attorney proposing the following resolution:

"[The Applicant does] not agree that the event traffic is the cause of [the Orrs] struggling to find a hay contractor, especially because of the timing of when those events occur. Instead, [the Applicant] believe[s] that the difficulty is caused by the relatively small size of [the Orrs'] field. Nevertheless * * * [the Applicant is] interested in resolving the neighborhood dispute. To accordingly resolve this particularly issue and as a sign of our good faith to resolve the neighborhood dispute, [the Applicant is] willing to enter into a side agreement whereby they will commit to cutting [the Orrs'] hayfield each and every year that the event center operates. Further, [the Applicant is] generally willing to cut your clients' hayfield based on the same terms and conditions that both parties found agreeable in year's past."

See Exhibit 22 to Staff Report, Email from Tami MacLeod. In response, the Orrs summarily rejected the Applicant's offer.

The Applicant is not aware of any statute or case law that supports the notion that a rancher can manufacture a "farm impact" for the express purpose of defeating a neighboring land use project. But that is precisely what has occurred here. The Orrs in 2021 declined to allow the Applicant's ranch manager to continue haying their small field, then subsequently struggled to find any other third-party contractor to do the work, and now for a second time declined the Applicant's offer to hay their field as an expressed condition of the subject land use permit. The Orrs' conduct is a direct affront challenging the veracity of their claim that they cannot find a third-party haying contractor because of event traffic. And, the Orrs' conduct further challenges the veracity of their claim that actual "farm uses" are occurring on their property for the "primary purpose of obtaining a profit in money" as required by CCC 18.08.060. No reasonable farmer

would create a self-imposed hardship challenging their farm operations if such operation were truly undertaken to “obtain a profit in money.” Instead, the evidence in record demonstrates that the Orrs are willing sacrifice their hobby farming activities in an attempt sabotage the Applicants land use application.

The Planning Commission again has two options when it comes to addressing the Orrs’ opposition to the subject application. First, the Planning Commission should adopt findings demonstrating that the Orrs’ property is not “devoted to farm use” because the current employment of the Orrs’ land is not being utilized for the primary purpose of obtaining a profit in money as required by the definition of “farm use” set forth by CCC 18.08.060. Second, the Planning Commission should further adopt findings clarifying that the substantial evidence in the record does not support the Orrs’ argument that increased traffic on Campbell Ranch Road precludes the Orrs’ from hiring a third-party haying contractor, thereby forcing a significant change in accepted farm practices. Instead, the substantial evidence in the record demonstrates that the Orrs on their own accord are electing to forgo haying their small field.

b. Negative Impacts in General

Many public comments note general concerns regarding negative impacts of the subject application and its compatibility with surrounding properties. The subject application, however, is not for a conditional use permit but rather “subject to site plan review and any other listed criteria.” CCC 18.16.010. The applicable criteria listed in CCC 18.16.055 do not concern general negative impacts but rather focus specifically on any farm / forest impacts. As described in detail above, no public comments have noted relevant concerns with farm or forest impacts. To the extent the Planning Commission is concerned with other negative impacts, the Applicant submitted a letter from Tanya Parsons, its event manager, as Exhibit Z during the open record period. That letter details the management of events, the process of explaining rules to clients who rent the event venue, and the client selection process.

Further, while the above-described concerns are not relevant, and perhaps manufactured, the Applicant repeatedly attempted to work with neighboring property owners to reach an amicable solution. Specifically, the Applicant took the following steps to resolve what is best described as a neighborhood dispute:

1. Prior to the submission of its application, the Applicant tried to work with the Orrs’ attorney in order to propose reasonable conditions of approval that would allow the Orrs to feel comfortable with the application. In response to those conversations, and as shown by Exhibit M to the application, the Orrs stated that they “will likely oppose the permit application in general[.]”
2. After the public hearing, the Applicant reached out to the Orrs’ and Fahlstroms’ attorneys suggesting the following conditions of approval: 1) reduce the number of events from 18 to 10; 2) install reasonable privacy fencing or landscaping across from the Orrs’ home; 3) adding signage warning of farm traffic and reduced speeds; 4) adding those conditions to the event agreement; and 5) requiring a representative of the Applicant to check in-person

with each event to ensure all conditions are being met. Both the Orrs and Fahlstroms rejected the Applicant's proposal. Those emails are included as Exhibits V, W, and X to the Applicant's open record period submission. During the rebuttal period (and as noted above), the Applicant again reached out to the Orrs' attorney offering to enter a side agreement whereby the Applicant would commit to haying the Orrs' hayfield in order to alleviate their claimed "farm impacts." That offer was again rejected. The email exchange is included as Exhibit LL to the Applicant's rebuttal submission.

These rejected compromises tend to show that the compatibility concerns voiced by neighbors are not genuine. Rather than engage with the Applicant and suggest conditions that they would like to see, neighbors have consistently refused to engage and instead continue to oppose the application.

a. Concerns Regarding the Applicant's Farm Operations

i. Financials

Public comments questioned whether the subject property generates enough money from farm use each year. Under CCC 18.16.055(4)(a), all the Applicant is required to show is that the proposed commercial events "[a]re incidental and subordinate to existing commercial farm use of the tract and are necessary to support the commercial farm uses or the commercial agricultural enterprises in the area." To meet its burden, the Applicant provided: 1) a statement from its CPA (Exhibit U to the application), 2) testimony by the Applicant during the public hearing, and 3) additional financial information confirming the veracity of the CPA's testimony (Exhibit MM in the rebuttal period). Nothing more is required, and opponents do not point to any contrary evidence in the record. Therefore, substantial evidence in the record shows that the application complies with CCC 18.16.055(4)(a).

ii. Entity Information

Public comments noted that there is no current Oregon Secretary of State ("SOS") information for the Applicant's ranch. That is plainly inaccurate, and unsupported by any evidence in the record. The Applicant additionally submitted with Exhibit MM the current SOS page for the company that operates its ranch and event venue: Ponderosa Land and Livestock, LLC. As shown by Exhibit T to the application (sample event contract), that company is a party to the Applicant's event venue agreement.

iii. Amount of Hay Produced

Public comments questioned the amount of hay produced on the Applicant's ranch. As explained above, under CCC 18.16.055(4)(a), all the Applicant is required to show is that the proposed commercial events "[a]re incidental and subordinate to existing commercial farm use of the tract and are necessary to support the commercial farm uses or the commercial agricultural enterprises in the area." To establish its farm use, the Applicant submitted 1) a statement from its CPA (Exhibit U to the application), 2) a letter from the Applicant's ranch manager detailing farm operations, 3) testimony by the Applicant during the public hearing, and 4) additional financial

information confirming the veracity of the CPA’s testimony (Exhibit MM in the rebuttal period). Nothing more is required, and opponents do not point to any contrary evidence in the record. Therefore, substantial evidence in the record shows that the application complies with CCC 18.16.055(4)(a).

iv. Primary Use of the Subject Property

Public comments questioned the primary purpose of the subject property, and whether the proposed commercial events on site are truly “incidental,” to ranching operations. However, as described throughout the application, the commercial events are incidental and subordinate to the above-described primary farm use occurring on the Property. The Oregon Court of Appeals, in *Friends of Yamhill County v. Yamhill County*, 301 Or App 726, 739 458 P3d 1130 (Or App 2020) found that the phrase "incidental and subordinate to the existing commercial farm use of the tract" involves considering the nature, intensity, and economic value of the respective uses. The Applicant provided substantial evidence in the record, described above, detailing the respective economic value of its ranching operation and commercial event venue. That evidence shows that the commercial events on site are incidental and supportive of the ranch by providing supplemental income. Specifically, that evidence shows that the Applicant raises approximately 1,200 tons of hay crops each year, which it sells for a yearly gross revenue of approximately \$250,000 to \$300,000. The Applicant also runs approximately 80 to 200 head of cattle (depending on the year and the cattle and hay market) and sells cattle each year for a yearly gross revenue of approximately \$40,000 to \$160,000. In comparison, the Applicant expects to hold up to 18 events each year under the current commercial event permit application for yearly gross revenue of approximately \$35,000 to \$63,000.

Additionally, Exhibit DD to the Applicant’s open record period submittal is a print out of the Applicant’s previous webpage for its event venue that shows incidental benefits of the Applicant’s ranch.² On those pages, the Applicant describes its ranch as primarily “a self sustaining working cattle ranch, raising all natural beef, directly off the land itself.” It also offers to sell clients its ranch raised natural beef for events. As demonstrated, conducting commercial events at the Applicant’s ranch provides incidental benefits by exposing members of the public to the working ranch and further provides economic opportunities for the ranch to sell their beef. Nevertheless, the primary use of the Applicant’s ranch remains to obtain a profit in money through the raising and sale of natural beef, and haying (as described above). *See* ORS 215.203(2)(a). Together with its financial information, there is substantial evidence in the record that the proposed commercial events are incidental to / supportive of the farm use on the subject property.

b. Sufficiency of Applicant’s Transportation Assessment Letter

Public comments noted concerns with the Transportation Assessment Letter (“TAL”) prepared by the Applicant’s transportation engineer, Chris Clemow. The Applicant submitted a

² The Applicant took down its webpage until it is able to hold commercial events on the subject property again.

response from Mr. Clemow as Exhibit JJ in the rebuttal period. In addition to Mr. Clemow's responses, the applicant also sets forth a response below.

Specifically, public comments noted that portions of NW Campbell Ranch Road are private and subject to a private road agreement. Based on County's own GIS system, the Applicant and Mr. Clemow originally were under the reasonable assumption that NW Campbell Ranch Road is a Local Access Roadway at the time of application preparation and submission. In its rebuttal submittal, the Applicant also included a letter from County Surveyor Greg Kelso as Exhibit KK wherein Mr. Kelso confirms that portions of the road are private and subject to private road / easement agreements. Regardless, and as stated in Exhibit JJ to the application, the transportation assessment is not impacted by whether the roadway is private or not since the roadway is "operating significantly below capacity." "Roadway safety, on both the public and private portions, will not be significantly affected by the proposed conditional use, and the roadway is anticipated to continue to operate safely and efficiently." Exhibit JJ. Additionally, no party has raised to date any argument suggesting that the aforementioned easement agreements preclude the Applicant or the Applicant's invited guests and members of the public to utilize Campbell Ranch Road to attend commercial events on the property.

Lastly, the Applicant notes that no other party has hired a transportation engineer. Instead, Ms. Liz Dickson, the attorney representing the Fahlstroms, submitted a letter during prior to the public hearing that was critical of the TAL. However, when there is expert testimony in the record on a technical issue, something more than lay testimony is necessary to rebut that expert testimony in order to provide supporting evidence for a contrary conclusion. *See, e.g., Oregon Coast Alliance v. City of Brookings*, 72 Or LUBA 222 (2015). Therefore, the Applicant's TAL and Mr. Clemow's additional responses are the only expert testimony in the record and must be weighed accordingly.

c. Golden Eagles

Multiple public comments noted concerns regarding potential disturbance of golden eagle nests near the subject property. Exhibit 9 to the Staff Report contains an email from Emily Weidner, a fish and wildlife biologist with the U.S. Fish & Wildlife Service ("USFWS") speaking directly to these concerns. While Ms. Weidner notes that the Round Butte and Gerke and Woodward Roads territories are within 0.5 miles of the subject property, she goes on to state:

"As of 2020, the last year we received data from the Oregon Eagle foundation, the Round Butte territory was in an unknown status/possibly undetected for 5 consecutive years. In 2014 and 2015, their nest was occupied by breeding age eagles, a nest was observed, but there was no evidence of eggs. Similar story for the Gerke and Woodward Roads territory, which was unknown status/possibly undetected for 7 consecutive years."

Ms. Weidner additionally provides monitoring information, stating that someone can obtain updated data concerning a nest if they "monitor the nest to see if 1) eagles are present in the nest area starting in January/February and if present 2) whether they are exhibiting brooding behaviors during the egg laying season." While at least one public comment notes having seen eagles in the

nearby nests “this year,” that comment does not state in what month eagles were observed, and whether any brooding behaviors were exhibited in accordance with USFWS guidance. Regardless, even if the comment had noted such behaviors and timing, the Applicant is unable to locate any applicable approval criterion concerning impacts on wildlife. Therefore, these concerns are not relevant.

d. Notice Issues

In advance of the Planning Commission’s first scheduled public hearing on the subject application on November 8, 2023, County staff received complaints that interested parties did not receive 20-days’ advance written notice of the public hearing. In order to ensure that all parties were provided the same opportunity to participate in the public hearing, the Applicant requested a continuance of the public hearing in order to enable at least 20-days’ prior notice to all interested parties pursuant to CCC 18.172.081(16)(a)(i). The County then continued the public hearing to December 13, 2023 resolving any complaints regarding notice.

e. The Abatement Agreement

Public comments noted concerns that the Applicant has breached the abatement agreement as well as other general concerns regarding the abatement agreement. The abatement agreement, which is attached as Exhibit J to the application, explains:

“The NOV stems from a disagreement between Hustons and their neighbors concerning the scope of uses allowed on Hustons’ property pursuant to the CUP. The County encourages voluntary code compliance, and the Parties agree that rather than a code enforcement proceeding, a more efficient process to resolve the aforementioned disagreement will be effectuated by Hustons voluntarily submitting an application to modify the CUP or an application for a new land use permit . . . with the option between the two to be decided by Hustons in their sole discretion.”

In accordance with the abatement agreement the Applicant chose to submit the present application. It did so within the timeframe contemplated by the abatement agreement. Therefore, concerns regarding the abatement agreement are irrelevant to the present application and do not concern any applicable approval criterion.

f. CCC 18.16.055(3)

One opponent noted concerns that the present application, if approved, is “personal to the applicant” and cannot be transferred to a successor in interest to the property under CCC 18.16.055(3). The Applicant is inclined to note that it submitted its application under CCC 18.16.055(4), and there is no similar limitation on the permit. Additionally, this concern is not relevant to any approval criterion.

g. Administrative Concerns

a. Revised Site Plan

During the December 13, 2023 public hearing, and in the November 8, 2023 217-23-001215-PLNG Staff Report (the “Staff Report”), County staff requested a revised site plan showing: 1) the location of temporary structures, and 2) the flow of parking on site. The Applicant submitted an updated site plan as Exhibit AA to its open record period submittal. Therefore, these concerns have been addressed.

b. Building Permits

Public comments noted concerns with whether the event pavilion was permitted on the subject property. The Applicant submitted an email exchange with Terry Weitman, Assistant Building Official as Exhibit CC with its open record period submission. In that email, Mr. Weitman states:

“I have looked through all the building file for this property and I can’t find any building records for this pavilion. The property owner has obtained building permits for everything else on the property, so as you stated below this could have been missed place in the filing system some were along the way.

So, the building department is looking at this building as a permitted building. From this point forward if there are any changes to the building for structural, mechanical, plumbing, and electrical there will need to be permits pulled and inspected to current code.”

Therefore, the building department is treating the event pavilion as permitted, and these concerns are not relevant.

c. 1992 CUP

Public comments noted concerns with the Applicant’s reliance on the 1992 CUP, claiming that the present application is neither a vested right or a non-conforming use. However, and as stated by project opponents at the December 13, 2023 public hearing, the issue of whether the 1992 CUP is valid and existing need not be decided in order to approve the present application. As explained above, the Applicant chose to submit the present application *rather than* modifying the existing CUP. Therefore, these concerns are irrelevant to the present application and do not concern any applicable approval criterion.

Further, the Applicant has every intention and is self-interested in operating under the new land use permit rather than continuing to expend resources litigating the applicability of the 1992 CUP. Statements in the application imply confirmed that *submitting* the subject application did not nullify or surrender the 1992 CUP. The Applicant asserts that the only relevance of the 1992 CUP in these proceedings is clarifying that the 1992 CUP does not include the same limitations as the

requested permit, which limits the number of events each year, hours of operation, etc. Past events were not conducted pursuant to those limitations, thus minimizing the claim from opposing parties that we “know how the neighbors will be impacted” Based on past events. The Applicant only discussed the 1992 CUP in the initial application in the “background” section. The Applicant is not making any arguments as part of these proceedings that the application must be approved under a vested right or non-conforming use arguments. Instead, the Applicant voluntarily submitted an application for a new land use permit to specifically provide a forum to resolve an unfortunate neighborhood dispute.

Despite the Applicant’s best intentions (emails proposing conditions described above), our efforts to resolve the persistent neighborhood dispute have failed. And, it is now clear that the opposing neighbors will make any arguments, whether real or manufactured, to try and defeat the subject application despite the clear benefits to the long-term financial viability of the Applicant’s ranch. Nothing compels those neighbors to share the Applicant’s sincere motive to preserve the subject 824-acre ranch and to prevent the further parcelization of the property, but it is undeniable that the Applicant’s motives are directly in-line with applicable provisions in the Crook County Code and Oregon Revised Statutes. The policy developments in the State of Oregon and in Crook County since the original 1992 CUP was approved³ are specifically why the Applicant expended considerable resources pursuing a new land use permit rather than continuing to fight about the applicability of a CUP that was originally approved roughly 32 years ago.

III. CONCLUSION

For the foregoing reasons, as well as those discussed in the Applicant’s Burden of Proof and prior submittals during these proceedings, the Applicant respectfully requests the Planning Commission approve the subject application, consistent with the recommendation made by staff.

Sincerely,



D. Adam Smith

DASM

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³ Those policy developments lead to the adoption of the applicable provisions which are clearly designed to protect farm land by providing ranchers additional opportunities to generate additional revenue on their land.