Jeff and Laurie Mapes

June 3, 2024

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

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

To the Planning Commission:

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

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

Our home is a lawful and permitted residence in the PA-80 zone. Our home is not an agricultural field; it is a private residence we have lived in since 2003. We therefore have experienced first-hand the many unlawful, unpermitted weddings and other events Applicant has been holding on his property for years. The events are conducted outdoors, with loud music and loud voice amplification that goes on for hours. It is impossible to be unaffected by Applicant's

events. Even with all doors and windows closed and television plus fans going, we hear the music, and the house reverberates with the bass. We sometimes hear every word of wedding toasts spoken over microphone. In the summer, when Applicant historically has held most of his events, the prevailing winds come out of the north, which increases the noise level at our residence, directly to the south of Applicant's event venue.

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

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

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

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

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

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

Columbia County Zoning Ordinance (CCZO) 1507.3A mirrors ORS 215.448(1)(c) and requires that the home occupation be operated "substantially in" the dwelling or other buildings

normally associated with uses permitted in the zone in which the property is located. The application does not meet this requirement because Applicant admits that outdoor areas will be used for substantial activities and time periods and because nothing in the application commits Applicant to holding events or portions of events indoors.

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

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

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

In short, Applicant's proposed activities likely will occur substantially *outdoors*, not "substantially in" his home or other buildings. Any finding to the contrary could not be supported by "facts" presented to the Planning Commission to date. Anyone remotely familiar with weddings knows that the "reception, seating, music" portions are far more lengthy and loud components of a wedding than the actual ceremony. Applicant admits that these activities will take place outdoors and gives no indication that the actual ceremony will be indoors. Moreover, Applicant does not identify the proposed location for the many other activities he wants a permit to conduct: birthday parties, showers, fundraisers, memorials, wine tasting, etc. He does not commit to holding *any* of these events indoors.

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

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

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

<u>Green</u> is directly applicable here. Nothing in Applicant's proposal precludes his many proposed types of events from being carried out entirely, or almost entirely, outside buildings. His proposal does not meet the fundamental requirement of ORS 215.448(1)(c) and CCZO 1507.3A that the home occupation be operated "substantially in" the dwelling or other buildings

normally associated with uses permitted in PA-80 zone. As in Green, this reason alone requires the Planning Commission to deny the requested permit.

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

CCZO 1507.3A mirrors ORS 215.448(1)(c) and requires that the home occupation be operated substantially in "[t]he dwelling" or in "[o]ther buildings *normally associated with uses permitted in the zone in which the property is located.*" (Emphasis added.) Applicant proposes to use three "Accessory Structures" for wedding party preparation and overnight lodging of guests. Application Narrative at 3. Those structures apparently are unpermitted, as evidenced by Attachment 7, which contains structural, electrical and plumbing permit applications filed in September 2023. Applicant's post-construction building permit applications call the three "Accessory Structures" for the home occupation "short term rental" and "event dressing room." Applicant has not established that short-term rentals and dressing rooms are buildings "normally associated" with uses permitted in the PA-80 agriculture zone. It seems common knowledge that short-term lodging rentals and dressing rooms for weddings are not buildings "normally associated with uses permitted" in a farm zone. The requirement that the home occupation be operated in buildings "normally associated" with agricultural uses is not met. For this reason, alone, the home occupation permit should not be granted.

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

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

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

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

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

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

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

Moreover, the code, state statute and Green require that "persons" be counted. The Applicant is counting the caterer as a single person. It defies common knowledge to think that a

single person will bring, set up, serve and replenish food and beverages for 60 people. Plus, if alcohol is served at an event, a licensed server typically is required by law. Even if it were possible for a single person to perform all on-site food catering services for sixty people, that person could not possibly also be on duty as bartender.

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

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

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

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

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

require Applicant to establish that his proposed home occupation will not unreasonably interfere with residential uses of PA-80-zoned property, including ours. The county must consider interference with our use and enjoyment of our residence.

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

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

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

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

Moreover, based on our experience of Applicant's many unpermitted events over the years, we believe the level of noise his events typically create has been "excessive" as defined in Ordinance 91-8. According to Yale Environmental Health & Safety's "Decibel Level Comparison Chart," included here as Attachment 2, the sound of a household refrigerator is 55 decibels. (The chart is available at https://ehs.yale.edu/noise-hearing-conservation.) Normal conversation is 60-70 decibels. The sound level we have suffered on our property during Applicant's past events has seemed to exceed the level of normal conversation. We are not talking about the level of sound at its source; we are talking about the level *we experience* on our property. Thus, even if the county noise ordinance could be considered to define "reasonable" daytime noise, for purposes of the home occupation rules, Applicant's events appear to us to have exceeded that level, repeatedly. Based on Applicant's apparent disregard for land use laws to date, by holding unpermitted events that led to a cease-and-desist order, we have little expectation that noise from future events would stay below "excessive." And, we remind the Planning Commission that Applicant repeatedly contradicts himself on the noise question, sometimes stating that his events will take place in the "enclosed" barn, elsewhere making clear he intends receptions, music, seating and anything else guests want to do to be outdoors, and never committing to holding any particular activity indoors.

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

We also ask the Planning Commission, in evaluating reasonableness, to consider the intent of the land use laws and zoning codes. One purpose is to give buyers notice of the allowable uses not just of their own property but also neighboring properties. Notably, the county makes special effort to make sure people understand the potential adverse impacts from neighboring agricultural land. In conjunction with either the purchase of our property or the permitting process for our barn, we recall having to sign a statement acknowledging and accepting that our property borders agricultural land and that noise, dust and odors from farming operations must be accepted; we recall that it included a release of claims for injury from agricultural practices, as well. If Applicant were using his property in accordance with its zoning and we were bothered by tractor engines and dust from farming activities or the sounds of chickens crowing or the smell of pigs, we could not complain that we were not warned. Instead, Applicant proposes to use his property in a manner for which the zoning rules have provided no adequate notice or warning. We not only will suffer directly in terms of our use and enjoyment of our property, we are also legitimately concerned that our property value will be diminished

and it will be hard to find a buyer willing to live immediately next to a loud event venue. We would be surprised if the owners of nearby residences do not have the same concern. In evaluating the unreasonableness of the interference Applicant's proposed activities will cause, the Planning Commission should consider the lack of warning to neighbors that someone could turn Applicant's agricultural property into an event center and subject neighbors to loud music and voices for hours at a time until long after dark.

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

5. Applicant's property has inadequate road frontage.

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

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

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

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

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

6. Applicant's proposed uses create a safety hazard.

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

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

7. Applicant raises legally irrelevant points and inaccuracies.

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

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

credence or weight should be granted to Applicant's assertion that his property is not usable for agriculture. His proposed uses do not meet the requirements for a home occupation, and a home occupation permit should be denied.

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

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

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

1. It does not explain "the nature of the application and the proposed use or uses which could be authorized," as required by ORS 197.797(3)(a). The notice merely states the application is for "a Conditional Use Permit for a home occupation." It does not explain the proposed uses which could be authorized. For all we knew, Applicant merely wanted to give piano lessons inside his house. Only because we called the county and requested information about the application did we discover that the proposed uses amount to a large, noisy outdoor commercial operation.
2. It does not "[l]ist the applicable criteria from the ordinance and the plan that apply to the application at issue," as required by ORS 197.797(3)(b). The notice does not list *any* of the applicable criteria.
3. It does not state the location of the hearing, as required by ORS 197.797(3)(d). In fact, the only address on the notice is the address of the county offices at 230 Strand Street in St Helens. The hearing location is elsewhere, according to the Planning Commission's web page. According to the web page, the hearing will be held in Healy Hall in the Public Works Department, at 1054 Oregon Street, not in the county offices.
4. It does not state that "failure of an issue to be raised in a hearing, in person or by letter, or failure to provide statements or evidence sufficient to afford the decision maker an opportunity to respond to the issue precludes appeal to the board based on that issue," as required by ORS 197.797(3)(e).
5. It does not [i]nclude the name of a local government representative to contact" for additional information, as required by ORS 197.797(3)(g). There is no name on the notice.

6. It does not state that "a copy of the application, all documents and evidence submitted by or on behalf of the applicant and applicable criteria are available for inspection at no cost and will be provided at reasonable cost," as required by ORS 197.797(h).
7. It does not state that "a copy of the staff report will be available for inspection at no cost at least seven days prior to the hearing" as required by ORS 197.797(i)
8. It does not include "a general explanation of the requirements for submission of testimony and the procedure for conduct of hearings," as required by ORS 197.797(j).

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

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

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

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

> The Commission may attach conditions and restrictions to any conditional use approved. . . . Conditions and restrictions may include a specific limitation of uses, landscaping requirements, off-street parking, performance standards, performance bonds, and other reasonable conditions, restrictions, or safeguards that would uphold the intent of the Comprehensive Plan and mitigate any adverse

effect upon the adjoining properties which may result by reason of the conditional use being allowed.

CCZO 1503.2

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

1. Applicant must constrain all activities associated with events to the inside of existing, fully permitted buildings unless and until Applicant comes back to the Commission with a proposal that (1) clearly identifies what activities will be conducted outdoors and (2) allows the Commission to make findings supported by ***substantial evidence*** that the home occupation is operated "substantially in" the dwelling or other buildings normally associated with uses permitted in the PA-80 zone. We remind the Commission that it is required to make a finding that the "substantially in" requirement is met and to support that finding with legally sufficient evidence. Unlawful, unpermitted events the Applicant has held on his property over the past several years have been conducted substantially *outside* existing buildings. There is nothing in Applicant's proposal to suggest that the events he plans will be any different. Nothing in the application as presented commits Applicant to hold any particular activity or portion of it indoors. Therefore, a condition that activities be conducted entirely indoors is necessary to ensure that Applicant's proposed activities take place substantially in existing buildings.

2. No speakers, voice amplification, microphones, electronic musical instruments, or other electronic sound sources are allowed other than sources confined entirely within the interior of existing, enclosed, permitted buildings. Electronic sources of sound outside of buildings are prohibited, including sources attached to the exterior of buildings or coming from automobiles. This condition is necessary to ensure both that activities take place "substantially in" buildings and to prevent unreasonable interference with neighboring uses.

3. Applicant must clearly state in any advertising of his property for use to conduct events, and in all written and verbal explanations of his venue and contracts with his customers, the following: (A) The total numbers of persons attending any event may not exceed 60; (B) the event venue adjoins residential properties; (C) all persons attending events must behave in a manner respectful of neighboring residential uses, particularly with regard to noise levels; (D) no speakers, voice amplification, microphones, electronic musical instruments, or other electronic sound sources are allowed other than sources confined entirely within the interior of existing, enclosed, permitted buildings; (E) electronic or amplified sources of sound outside of buildings are prohibited, including sources attached to the exterior of buildings or coming from automobiles; (F) if Applicant, his employees or agents become aware of a violation of the terms or conditions of the home occupation permit, Applicant must take whatever steps are necessary to either bring the event immediately into compliance or immediately terminate it, and (G) if the

customer's event violates any term or condition of the home occupation permit, the customer should anticipate that government officials may enter the property and may determine that they have authority to terminate the event. This condition is reasonable, for several reasons. One, nothing in Applicant's proposal requires him to be on site during events or to control attendees. Two, if noise or attendance levels are excessive, it seems doubtful that governing authorities have time or staff to police the events and ensure compliance with the constraints of the home occupation permit. Therefore, it is reasonable to shift some responsibility for permit compliance to Applicant's customers as well as Applicant. Three, Applicant's customers deserve to know the constraints of Applicant's home occupation permit so they do not unknowingly participate in an unlawful event. Four, if Applicant's customers are aware of the limitations on their events, it is more likely that events will comply with the limitations of the home occupation permit and less likely that neighbors will have to find a way to enforce the limitations of the permit. Five, customers will have clear notice before contracting with Applicant that Applicant has no discretion to allow customers to violate the terms and conditions of Applicant's home occupation and that their failure to abide by the terms and conditions will result in termination of the event. If Applicant intends to comply with the terms and conditions of his home occupation permit, then providing notice in his advertising and obtaining contracts signed by customers acknowledging those terms and conditions – including Applicant's responsibility to immediately terminate an event that violates any of those terms and conditions – should not be objectionable to Applicant because they simply memorialize what Applicant presumably will explain to his customers anyway.

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

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

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

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

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

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

Sincerely,
Jeff & Laurie Mapes

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

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

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

PARTY WAITERS
EST 2009

STAFFING GUIDELINES

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

STAFFING CALCULATOR

GUEST COUNT

25

EVENT TYPE

Buffet

SERVICE LEVEL

(•) Standard ( ) VIP

TOTAL

1 Buffet Attendant
1 Busser

STAFFING GUIDELINES

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

STAFFING CALCULATOR

GUEST COUNT

25

EVENT TYPE

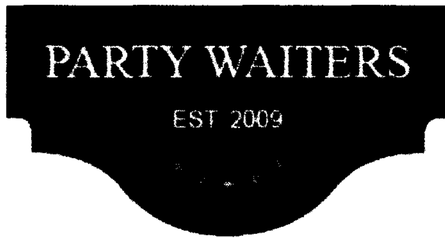
Sit Down

SERVICE LEVEL

(•) Standard ( ) VIP

TOTAL

2 Servers



STAFFING GUIDELINES

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STAFFING CALCULATOR

GUEST COUNT

50

EVENT TYPE

Buffet

SERVICE LEVEL

◉ Standard ○ VIP

TOTAL

1 Buffet Attendant
2 Bussers

STAFFING GUIDELINES

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

STAFFING CALCULATOR

GUEST COUNT

50

EVENT TYPE

Sit Down

SERVICE LEVEL

(◉) Standard ( ) VIP

TOTAL

1 Captain
5 Servers

STAFFING GUIDELINES

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

STAFFING CALCULATOR

GUEST COUNT

50

EVENT TYPE

Bar Service

SERVICE LEVEL

(●) Standard ( ) VIP

TOTAL

1 Bartender
1 Barback

Attachment 2 to Mapes Response to Columbia County File # CU 23-12

Yale Environmental Health & Safety, "Decibel Level Comparison Chart," available at
https://ehs.yale.edu/noise-hearing-conservation

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

Decibel Level Comparison Chart

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

Note: dBA = Decibels, A weighted

Attachment 2 to Mapes Response to Columbia County File # CU 23-12

Columbia County Land Development Services "Notice of Public Hearing" regarding File # CU 23-12, dated May 15, 2024

COLUMBIA COUNTY
Land Development Services

ST. HELENS, OR 97051
230 Strand St.
Direct (503) 397-1501
www.co.columbia.or.us

NOTICE OF PUBLIC HEARING

(Remote Access Available)

Date: May 15, 2024
File # CU 23-12
Owner/Applicant: Davis Wright Tremaine, LLP on behalf of George Bartholomew Hafeman III
Map/Taxlot: 3118-BC-02800
Site Address: 51600 SE 9th St Scappoose, OR 97056
Zone: Primary Agriculture PA-80
Size: 4.27 Acres

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

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

Columbia County Planning Commission Meeting
Please join my meeting from your computer, tablet or smartphone.
https://meet.goto.com/880602597

You can also dial in using your phone.
United States (Toll Free): 1 866 899 4679
United States: +1 (571) 317-3116
Access Code: 880-602-597

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

Thank you,

Columbia County Land Development Services

SE 9TH STREET

EXISTING RESIDENCE
TAX LOT: 01200
51714 SE 9TH ST

LINE OF CITY LIMITS AND URBAN GROWTH BOUNDARY

TAX LOT: 02101
34066 BERNET DR

678.10' S78°08'28"E

EXISTING RESIDENCE
TAX LOT: 02803
51704 SE 9TH ST

65.00'

Accessory Building 3

12' (APPROX) EXISTING SETBACK

ACCESSORY BUILDING 1

20.00'

EXISTING RESIDENCE
TAX LOT: 02804
51692 SE 9TH ST

S19°51'30"W

194.49'

MAP & TAX LOT: 3118-BC-02800
51600 SE 9TH STREET
GEORGE BARTHOLOMEW HAFEMAN III
PROPERTY AREA: 4.33 ACRES

EXIST'G SPORT COURT

N19°50'06"E

274.60'

EXISTING RESIDENCE
TAX LOT: 02805
51686 SE 9TH ST

LAKE

SPECIAL FLOOD HAZARD AREA – ZONE 'A'
(FLOOD HAZARD AREA EAST OF THIS LINE)

PERIMETER OF WETLAND BOUNDARY

EXISTING RESIDENCE
TAX LOT: 02806
51680 SE 9TH ST

PERIMETER OF WETLAND BOUNDARY

ACCESSORY BUILDING 2

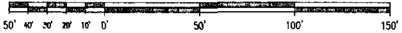
JACKSON CREEK

678.20' N70°16'51"W

TAX LOT: 02900
33963 SE OAKRIDGE DR

TAX LOT: 01500
33973 SE OAKRIDGE DR

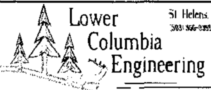
SITE PLAN FOR THE LAKE HOUSE
SCALE: 1" = 30'



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

DATE: 01/23/2023
FOR REFERENCE ONLY

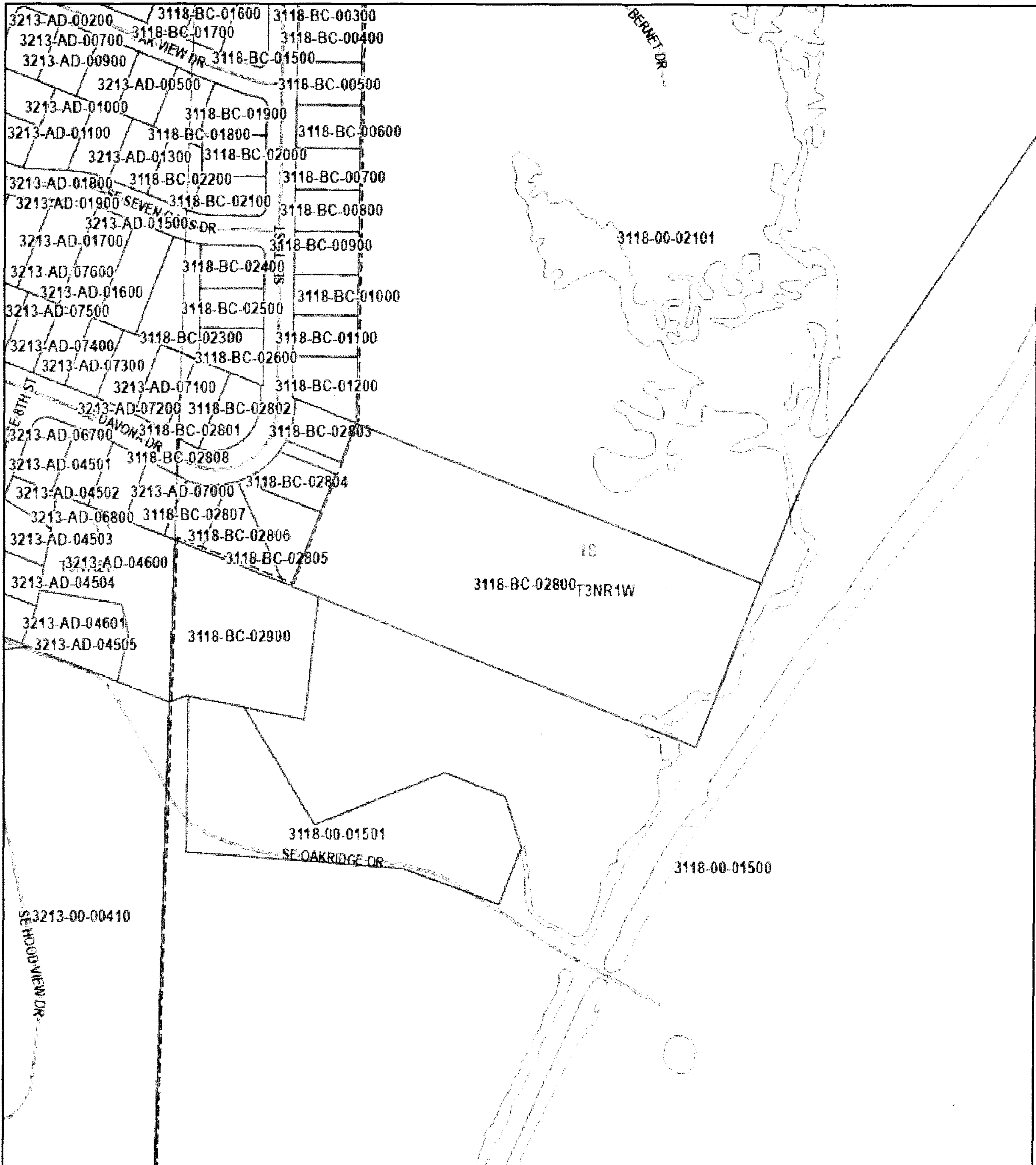
REV.	REVISION RECORD	DATE
A	ADDRESSED D.W.T. COMMENTS	01/25/2024



St Helens, Oregon

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

Columbia County Web Map



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