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NATURE OF THE DECISION

Petitioners appeal a special use permit for a private park and campground in a forest zone.

FACTS

The subject property is sometimes referred to as Prindel Creek Farms. We begin with a portion of the statement of facts in the county’s brief:

“This was an application for a special use permit for a private park and campground on F-1 land – Non-impacted Forest Land Zone.^[1] The subject property is about 136 acres in size and is long and narrow in a north/south direction. Adjacent to the west, east and south of the property is the Siuslaw National Forest. To the north is private forest land zoned F-2 – Impacted Forest Land Zone. * * * The closest residence is about 0.4 miles to the north. There are no intensive agricultural practices in the immediate area.

“The proposal is to conduct events in the park with associated camping. The types of events include: outdoor music events, social events such as weddings and reunions, performance arts events, and environmental education programs. The associated camping would accommodate up to about 2,000 persons at 250 campsites. Existing related structures include a stage, two picnic shelters, and a pergola structure. * * *^[2]

¹ The F-1 zone was adopted to comply with Statewide Planning Goal 4 (Forest Lands).

² The disputed decision provides the following more detailed description of the proposal:

- “a. Outdoor Music Events: These events will occur from June through September and will range in size from small one-night events serving about 300 participants to up to four annual large, three-night events that may have up to 2,500 participants. Two smaller events with attendance less than

1 Access to the property is via Five Rivers Road, a paved Lane
2 County Road. * * * Five Rivers Road runs through the property
3 from north to south. There are driveways into the property at Mile
4 Post 5.5 and 5.64 * * *. At about MP 5.64 county jurisdiction

800 participants will also occur in the summer. The music will occur in an area with a 1,043 square foot permanent stage that faces south/southwest and may play from 11:00 a.m. until 2:00 a.m. the following day. Temporary food booths will provide food to the participants.

- “b. Social Events: Social events will consist primarily of weddings but also may include reunions and memorials. The weddings will consist of less than 150 participants and will occur on weekends. Music will happen in the stage area and there will be a picnic shelter in the central area for gathering, food preparation and barbequing, and food consumption. Reunions and memorials will be conducted in a manner similar to that of weddings except that participants may be on site for up to three days and the events will not be limited to weekends.
- “c. Performance Arts: These events will consist of plays and vaudeville type acts and will typically occur during a four-hour period. Attendance will be less than 300 participants and camping would be limited to the performers and staff.
- “d. Environmental Education Programs: Educational seminars and programs would be offered for small groups of 20 to 50 participants and would range from a single-day to up to a two-week period. Programs would include forestry seminars, Forest Service Woodlands Seminars, Salmon habitat restoration, outdoor school, and wildlife walks.

“The applicant proposes to provide 250 campsites to accommodate approximately 2,000 persons (4 tents per space and 2 persons per tent). There is an activity center that contains the stage, two picnic shelters, and a pergola structure. The latter is proposed for removal from its location near the river. * * *” Record 6-7.

1 over the road ends, and it becomes a Forest Service road – NF 32.
2 [3] * * *
3 “* * * * *
4 “The property has a history of holding events without land use
5 approvals.[4] Beginning in 2004 Lane County directed the owner

³ Alsea Highway connects Philomath with Waldport. Several miles east of Waldport, in Lincoln County, Five Rivers Road intersects with Alsea Highway and travels south toward Lane County. The first 10 miles of Five Rivers Road are in Lincoln County. At the Lane County Line the Mile Posts (MPs) start over and the subject privately owned property is located between MPs 5.56 and 5.64 in Lane County, approximately in the middle of the Siuslaw National Forest. Five Rivers Road does not meet county standards because it lacks sufficient width in places, portions are too steep and it “lacks a 10-foot clear zone.” Record 8.

⁴ According to petitioners:

“Events have been ongoing at Prindel Creek Farms for at least nine years. * * * (Indigenous Festival is in its ‘ninth year’). In recent years, larger and larger festivals have been held on the subject property. *See* Rec. 1059 (‘the property has been home to many other great events including Earthdance Northwest 2011, Mountain Stomp, Indigenous, SOAK and others’). As a result of the unpermitted events at Prindel Creek Farms, the record contains many accounts of neighbors from years of disturbance[.]

“During the pendency of the application, Prindel Creek Farms continued to hold events during the summer of 2013. Rec. 1095 (listing events from June through September 2013); Rec 1127 (listing events scheduled for 2013); Rec. 1055 (list of events throughout summer 2013); Rec. 1060 (‘Boombox in da boondox’); Rec. 1062 (Human Nature Festival); Rec. 1066 (Mountain Stop Festival at Prindel Creek)* * *. The most controversial event that occurred in the summer of 2013, before the application was granted and after assurances were made that there would be no fires, was a large-scale effigy burn with ‘[e]mbers [that] reached

1 to obtain land use approvals. * * * This application followed the
2 county enforcement initiative.

3 “The initial decision by the County was by the Hearings Official,
4 following a public hearing on June 20, 2013. * * * The approval
5 came with 23 conditions. The approval was appealed to the
6 County Board * * *. The County Board declined to hear the
7 appeal and the decision of the Hearings Official was ‘affirmed and
8 adopted by the Board of Commissioners as the final decision on
9 this application.’ However, the County Board explicitly decided
10 to ‘remain silent as to the Hearings Official’s interpretation of the
11 implementing ordinances.’” Response Brief of Lane County 3-4
12 (citations omitted).

13 As noted, the special use permit is subject to 23 conditions. One of the
14 conditions states “[n]o ceremonial burns, fireworks, or fire dancers are allowed
15 at any events on the property. Any individual discharging a firework will be
16 ejected from the property immediately.” Record 16. Other conditions address
17 water, wastewater, traffic, first aid, noise and parking concerns.

18 INTRODUCTION

19 OAR Chapter 660, Division 6 is the Land Conservation and
20 Development Commission’s (LCDC’s) Goal 4 administrative rule. Among the
21 types of uses authorized by that rule are “uses to conserve soil, water and air
22 quality, and to provide for fish and wildlife resources, agriculture and
23 *recreational opportunities appropriate in a forest environment[.]*” OAR 660-
24 006-0025(1)(b) (emphasis added). OAR 660-006-0025(4)(e)(A) specifically
25 authorizes “Private parks and campgrounds.”⁵ The proposal was approved as a

heights of more than 4 times the height of the adjacent 120-foot fir
tree.’ Rec. 670; Rec. 669-73, 360-61 (photographs of effigy
burn).” Petition for Review 5-6.

⁵ OAR 660-006-0025(4)(e)(A) provides:

1 “private park and campground.” The private parks and campgrounds
2 authorized by OAR 660-006-0025(4)(e)(A) must comply with the requirements
3 set out at OAR 660-006-0025(5).⁶

“Private parks and campgrounds. Campgrounds in private parks shall only be those allowed by this subsection. Except on a lot or parcel contiguous to a lake or reservoir, campgrounds shall not be allowed within three miles of an urban growth boundary unless an exception is approved pursuant to ORS 197.732 and OAR chapter 660, division 4. A campground is an area devoted to overnight temporary use for vacation, recreational or emergency purposes, but not for residential purposes and is established on a site or is contiguous to lands with a park or other outdoor natural amenity that is accessible for recreational use by the occupants of the campground. A campground shall be designed and integrated into the rural agricultural and forest environment in a manner that protects the natural amenities of the site and provides buffers of existing native trees and vegetation or other natural features between campsites. Campsites may be occupied by a tent, travel trailer or recreational vehicle. Separate sewer, water or electric service hook-ups shall not be provided to individual camp sites. *Campgrounds authorized by this rule shall not include intensively developed recreational uses such as swimming pools, tennis courts, retail stores or gas stations.* Overnight temporary use in the same campground by a camper or camper’s vehicle shall not exceed a total of 30 days during any consecutive six-month period.” (Emphasis added.)

⁶ OAR 660-006-0025(5) imposes the following requirements on the uses authorized by OAR 660-006-0025(4):

- “(a) The proposed use will not force a significant change in, or significantly increase the cost of, accepted farming or forest practices on agriculture or forest lands;
- “(b) The proposed use will not significantly increase fire hazard or significantly increase fire suppression costs or

1 Lane Code (LC) 16.210(3)(c) and (d) and 16.210(5) substantially
2 duplicate OAR 660-006-0025(4)(e)(A) and 660-006-0025(5). LC 16.210(3)(c)
3 and (d) separately authorize “parks” and “campgrounds” and include the same
4 prohibition against “intensively developed recreational uses.” *See* n 5. LC
5 16.210(5) sets out the same requirements as OAR 660-006-0025(5). *See* n 6.
6 OAR 660-006-0025(4)(e)(A) and 660-006-0025(5) (and LC 16.210(3)(c) and
7 (d) and 16.210(5)) were adopted to implement the part of Goal 4 itself that
8 authorizes on forest land “recreational opportunities appropriate in a forest
9 environment.”

10 In their first assignment of error, petitioners challenge the county’s
11 findings regarding noise impacts. In their second assignment of error,
12 petitioners contend the approved use is not a recreational opportunity that is
13 appropriate in a forest environment. In their third assignment of error,
14 petitioners challenge the county’s findings regarding the OAR 660-006-
15 0025(5)(a) and LC 16.210(5)(a) requirements that the use must not “force a
16 significant change in, or significantly increase the cost of, accepted * * * forest
17 practices on * * * forest lands. *See* n 6. In their fourth assignment of error,
18 petitioners challenge the county’s findings regarding the OAR 660-006-
19 0025(5)(b) and LC 16.210(5)(b) requirements that the use “will not

significantly increase risks to fire suppression personnel;
and

“(c) A written statement recorded with the deed or written contract with the county or its equivalent is obtained from the land owner that recognizes the rights of adjacent and nearby land owners to conduct forest operations consistent with the Forest Practices Act and Rules for uses authorized in subsections (4)(e), (m), (s), (t) and (w) of this rule.”

1 significantly increase fire hazard or significantly increase fire suppression costs
2 or significantly increase risks to fire suppression personnel.” *Id.* Finally, in
3 their fifth assignment of error, petitioners dispute the enforceability of the
4 2,500 person limit on the large events.

5 Because petitioners’ second assignment of error is dispositive and
6 requires that we reverse the county’s decision, we turn directly to the second
7 assignment of error.

8 **SECOND ASSIGNMENT OF ERROR**

9 As an initial point, while the proposed use includes a campground
10 component, it also includes what appears to be an event venue component. We
11 do not think that component of the proposal is accurately characterized as a
12 “recreational opportunit[y]” or a “[p]rivate park and campground[.]” as those
13 terms are used in Goal 4 and the Goal 4 administrative rule. Stated differently,
14 the event venue component of the proposal renders the proposed use something
15 other than a “recreational opportunit[y]” or “[p]rivate park and campground[.]”

16 As noted earlier, Goal 4 and OAR 660-006-0025(1)(b) authorize
17 “recreational opportunities appropriate in a forest environment.” Even if it was
18 possible to characterize the proposal as a “recreational opportunit[y]” or
19 “[p]rivate park and campground[.]” there can be no question that the use
20 authorized by the challenged special use permit, even if carried out in
21 accordance with all the permit conditions, is not a recreational opportunity that
22 is “appropriate in a forest environment,” for the reasons we explain below. It is
23 a use that is clearly inappropriate in a forest environment as a result of the
24 activities on the site themselves and the comings and goings of the many
25 participants as they travel 15 miles into and out of the forest to attend the
26 authorized events and activities. The clearest and most obvious examples are

1 the six annual music events—four of which may draw as many as 2,500
2 participants and last for up to three days, and two of which may draw as many
3 as 800 participants—with amplified music starting late in the morning and
4 continuing until the early hours of the morning of the following day. But the
5 other smaller events apparently are not limited in number and have the
6 potential to allow the site to be operated as a continuous event venue. Even
7 with all of the conditions that were applied to address noise, water, wastewater,
8 traffic and fire concerns, a concert and event venue of the nature approved here
9 simply cannot be characterized as a park or campground that provides
10 “recreational opportunities that are appropriate in a forest environment.” OAR
11 660-006-0025(4)(e)(A) specifically prohibits “intensively developed
12 recreational uses such as swimming pools, tennis courts, retail stores or gas
13 stations.” *See* n 5. By any reasonable measure, the event venue component of
14 the proposal is an intensively developed use. Whatever the outer limits of
15 “recreational opportunities appropriate in a forest environment,” those limits
16 are easily exceeded by the event venue authorized by the challenged decision.

17 Our cases considering this issue are consistent with our conclusion here.
18 In *Tice v. Josephine County*, 21 Or LUBA 371 (1991), the applicable version of
19 Goal 4 authorized “outdoor recreational activities and related support services
20 * * *.” One of the issues in *Tice* was whether that language was broad enough
21 to include an outdoor motorcycle race track. In reaching the decision that it
22 was not, we noted that the Goal 4 language authorizing outdoor recreational
23 activities had been found not to be broad enough to authorize “tennis courts, a
24 swimming pool and a skiing rope tow.” 21 Or LUBA at 378 (citing *Teamsters*
25 *v. Hood River Cty.*, 2 LCDC 83 (1979)). LUBA went on to find that the

1 authorization for recreational uses in Goal 4 was not so broad as to authorize
2 any activity that can be broadly characterized as “outdoor recreation:”

3 “* * * The limitation on ‘outdoor recreational activities’ under
4 Goal 4 stems from the very purpose that lands designated as forest
5 lands are designed to serve. Proposed recreational uses which
6 dominate and change the character of the forest environment are
7 not considered ‘outdoor recreational activities’ even though such
8 proposed uses do provide, in a broad sense, ‘outdoor recreation.’”
9 *Id.* at 379.

10 The proposed event venue will dominate and change the character of the forest
11 environment, and there is simply nothing in the record that would support a
12 contrary conclusion.

13 We also noted in *Tice* that the current Goal 4 and OAR 660-006-
14 0025(1)(b) language that authorizes “recreational uses appropriate in a forest
15 environment” first took effect on February 5, 1990, and we observed that those
16 amendments “strongly support an interpretation that in a forest zone only those
17 recreational uses with a relatively low impact on the forest environment are
18 contemplated.” *Id.* at 378 n 7.

19 In *Utsey v. Coos County*, 38 Or LUBA 516 (2000), even though the
20 proposed motocross track in that case did not allow head-to-head competition
21 and did not include any permanent structures, as was the case in *Tice*, we
22 concluded that the motocross track was not appropriate in a forest environment.
23 However, in *Utsey*, LUBA did find that a related proposal for an off-highway
24 vehicle trail system, “which the county describe[d] as a ‘low intensity, single-
25 file OHV trail system,’ dispersed over more than 200 acres of a 531-acre site”
26 qualified as a recreational activity appropriate in a forest environment. 38 Or
27 LUBA at 531. In *Utsey* LUBA was influenced by OAR 660-034-0035(2)
28 which authorizes off-road vehicles in public parks and testimony by a former

1 county forester that off road vehicles were commonly allowed on public forest
2 lands. *Id.* at 531. In *Tennant v. Polk County*, 56 Or LUBA 455, 463 (2008) we
3 concluded that a proposed 17-acre paintball park where contestants would
4 shoot paintball guns from trails in the woods was sufficiently similar to the
5 OHV trail system in *Utsey* to qualify a recreational activity that is appropriate
6 for a forest environment.

7 We are not aware of any history of allowing large event venues like the
8 one proposed in this case on public forest lands, as was the case with off road
9 vehicle use on public forest land in *Utsey*. And if we compare the proposed
10 event venue with the motorcycle race track in *Tice* and the motocross track in
11 *Utsey*, the proposed event venue is even less appropriate in a forest
12 environment.

13 Finally, we note that *White v. Lane County*, ___ Or LUBA ___ (LUBA
14 No. 2013-063, December, 10, 2013) concerned an event venue on F-2 Forest-
15 zoned land, which had some characteristics of the event venue in this case,
16 although it would not have included a large scale outdoor events venue such as
17 the one authorized in this case and would not have included a campground
18 component.⁷ In *White* the county approved the proposed event venue as a

⁷ The *White* decision includes the following description of the proposed event venue in *White*:

“The application proposes events between May 15 and September 30 each year. The application proposes two types of events: (1) ‘main’ events, which occur Fridays, Saturdays and up to five Sundays per season, and (2) ‘floating’ events, which occur on two days during the week. Main events may start by 10:00 a.m., and last until 10:00 p.m., at which time any music must cease. All guests, caterers, and music providers must be off the property by

1 “temporary use.” The county’s regulations authorizing approval of temporary
2 uses required that the use not be allowed in the underlying zone. It seems
3 inconsistent to us for the county to conclude in *White* that the much smaller
4 scale event venue at issue in that appeal was not permissible in the F-2 zone,
5 which also authorizes private parks and campgrounds, whereas the much larger
6 scale event venue at issue in this case is permissible in the F-1 zone as a private
7 park and campground.

8 For the reasons explained above, even if it is possible to characterize the
9 approved event venue as a park and campground, it is simply not possible to
10 characterize the approved event venue as a park and campground that is
11 “appropriate in a forest environment,” and is not an “intensively developed
12 recreational use[,]” as required by Goal 4, OAR 660-006-0025(1)(b) and 660-
13 006-0025(4)(e)(A).

14 The second assignment of error is sustained.

11:00 p.m., with clean-up and lights out no later than 11:30 p.m. Main events may include up to 250 guests and 100 automobiles arriving or leaving during the peak hour. Floating events are limited to two events per day, twice per week. Afternoon events, limited to 25 guests, occur between 11:00 a.m. and 2:30 p.m., while evening events start at 6:00 p.m., with music ending at 10:00 p.m., and clean-up and lights out completed by 11:30 p.m. The maximum potential number of evening events during the four and one-half month annual season is 123 events. Parking will occur on a four-acre cleared area, accessed by a gravel driveway. The application proposes to use the gazebo, the tent structure and surrounding grounds for the events, and also use rooms in the two dwellings for bridal and groom preparation.” *White*, slip op at 3.

1 The county's decision is reversed.⁸ OAR 661-010-0071(1)(c).

⁸ Because our resolution of the second assignment of error requires that the county's decision be reversed, we need not and do not consider petitioners' remaining assignments of error.