

BEFORE THE LAND USE BOARD OF APPEALS
OF THE STATE OF OREGON

FRIENDS OF YAMHILL COUNTY and JOYCE DAMMAN,
Petitioners,

vs.

YAMHILL COUNTY,
Respondent,

and

CHRISTIAN DeBENEDETTI,
Intervenor-Respondent.

LUBA No. 2018-144

FINAL OPINION
AND ORDER

Appeal from Yamhill County.

Jeffrey L. Kleinman, Portland, filed the petition for review and argued on behalf of petitioners.

No appearance by Yamhill County.

Dean N. Alterman, Portland, filed the response brief and argued on behalf of intervenor-respondent.

ZAMUDIO, Board Member; RYAN, Board Chair; RUDD, Board Member, participated in the decision.

REMANDED

08/02/2019

You are entitled to judicial review of this Order. Judicial review is governed by the provisions of ORS 197.850.

NATURE OF THE DECISION

Petitioners appeal a decision by the board of county commissioners approving a permit for up to 18 commercial beer tasting events per year on property zoned for exclusive farm use.

FACTS

The subject property is comprised of approximately 21.5 acres and is zoned Exclusive Farm (EF-20). The primary agricultural use of the property is a 10-acre filbert orchard. The property is currently developed with a residence, guest house, and a historic barn from which intervenor-respondent Christian de Benedetti (intervenor) operates a brewery and tasting room with outside seating. The brewery and tasting room are permitted under a conditional use permit approved by the county in 2014. The property is accessed by a paved county road. Surrounding land uses include forest, orchards, vineyards, and rural residences. Property to the southwest of the subject property is within the City of Newberg and is zoned for commercial or residential uses.

In 2017, the county approved intervenor's application to hold up to 18 commercial events per year on the property in association with the brewery. That approval period was one year, and the approval decision provided that it could be renewed for an additional four-year period. In March 2018, intervenor applied for a renewal for up to 18, 72-hour events per year for beer tastings with food to be provided by an outside caterer or food cart. After a public hearing, the planning

1 commission approved the application. Petitioners appealed the approval to the
2 board of county commissioners, which also approved the permit with conditions
3 after a public hearing. This appeal followed.

4 **BACKGROUND**

5 Oregon land use law preserves land for agricultural uses by restricting uses
6 allowed in Exclusive Farm Use (EFU) zones to agricultural uses and certain non-
7 farm uses that are compatible with farming. ORS 215.203.¹ “[A]gri-tourism and

¹ ORS 215.203 provides, in part:

“(1) Zoning ordinances may be adopted to zone designated areas of land within the county as exclusive farm use zones. Land within such zones shall be used exclusively for farm use except as otherwise provided in ORS 215.213, 215.283 or 215.284. Farm use zones shall be established only when such zoning is consistent with the comprehensive plan.

“(2)(a) As used in this section, ‘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. ‘Farm use’ includes the preparation, storage and disposal by marketing or otherwise of the products or by-products raised on such land for human or animal use. ‘Farm use’ also includes the current employment of land for the primary purpose of obtaining a profit in money by stabling or training equines including but not limited to providing riding lessons, training clinics and schooling

1 other commercial events or activities that are related to and supportive of
2 agriculture may be established in any area zoned for exclusive farm use.” ORS
3 215.283(4). The county has implemented ORS 215.283(4) in Yamhill County
4 Zoning Ordinance (YCZO) Section 1013. In approving the commercial events in
5 this case, the county applied YCZO 1013.01(A)(4)(a), which provides, in part,
6 that “up to 18 events on a tract may be permitted in a calendar year” if, in addition
7 to other requirements, the applicant demonstrates that “[t]he events or activities
8 are incidental and subordinate to existing commercial farm use of the tract and
9 are necessary to support the commercial farm uses or the commercial agricultural
10 enterprises in the area.” YCZO 1013.01(A)(4)(a) implements ORS
11 215.283(4)(d), which provides:

12 “In addition to paragraphs (a) to (c) of this subsection, a county may
13 authorize agri-tourism or other commercial events or activities that
14 occur more frequently or for a longer period or that do not otherwise
15 comply with paragraphs (a) to (c) of this subsection if the agri-
16 tourism or other commercial events or activities comply with any
17 local standards that apply and the agri-tourism or other commercial

shows. ‘Farm use’ also includes the propagation, cultivation, maintenance and harvesting of aquatic, bird and animal species that are under the jurisdiction of the State Fish and Wildlife Commission, to the extent allowed by the rules adopted by the commission. ‘Farm use’ includes the on-site construction and maintenance of equipment and facilities used for the activities described in this subsection. ‘Farm use’ does not include the use of land subject to the provisions of ORS chapter 321, except land used exclusively for growing cultured Christmas trees as defined in subsection (3) of this section or land described in ORS 321.267(3) or 321.824(3).”

1 events or activities:

2 “(A) Are incidental and subordinate to existing commercial farm
3 use of the tract and are necessary to support the commercial
4 farm uses or the commercial agricultural enterprises in the
5 area;

6 “(B) Comply with the requirements of paragraph (c)(C), (D), (E)
7 and (F) of this subsection;

8 “(C) Occur on a lot or parcel that complies with the acknowledged
9 minimum lot or parcel size; and

10 “(D) Do not exceed 18 events or activities in a calendar year.”

11 The county found that “[t]he ‘commercial farm uses’ on the property
12 include the filbert orchard, along with other fruits and vegetables raised on the
13 property that are sold or used in the production of beer.” Record 12; Record 11
14 (“The property is currently employed for the primary purpose of obtaining a
15 profit in money by raising, harvesting and selling hazelnuts as well as a variety
16 of other farm products that can be, and are, used to make and flavor beer.”).² The
17 county found that “[t]he ‘commercial agricultural enterprises in the area’ include
18 the production of crops, including filberts and grapes.” Record 12. The brewery
19 and tasting room are not commercial farm uses. Instead, the brewery and tasting
20 room are uses that the county previously approved as commercial uses “in
21 conjunction with farm use.” ORS 215.283(2)(a).³

² Petitioners do not challenge those findings.

³ ORS 215.283(2)(a) provides:

1 The county found that intervenor’s proposed brewery events were “meant
2 to showcase an historic Yamhill County farm property and the beers that are
3 produced in an historic barn on the property.” Record 9. As explained in further
4 detail below, the county found that the proposed events are “incidental and
5 subordinate to existing commercial farm use of the tract and are necessary to
6 support the commercial farm uses or the commercial agricultural enterprises in
7 the area.” Petitioners challenge those conclusions.

8 **ASSIGNMENTS OF ERROR**

9 This appeal requires us to interpret the phrases in ORS 215.283(4)(d)(A)
10 “incidental and subordinate to existing commercial farm use of the tract” and
11 “necessary to support the commercial farm uses or the commercial agricultural
12 enterprises in the area.” We address the two assignments of error together
13 because they present similar legal questions that require statutory interpretation.

14 We review the county’s interpretation of state law and local law that
15 implements state law to determine whether the county’s interpretation is correct,
16 with no deference to the county’s interpretation. ORS 197.835(9)(a)(D); *Kenagy*

“The following nonfarm uses may be established, subject to the approval of the governing body or its designee in any area zoned for exclusive farm use subject to ORS 215.296:

“(a) Commercial activities that are in conjunction with farm use, including the processing of farm crops into biofuel not permitted under ORS 215.203(2)(b)(K) or subsection (1)(r) of this section.”

1 v. *Benton County*, 115 Or App 131, 838 P2d 1076, *rev den*, 315 Or 271 (1992).
2 In interpreting a statute, we examine text, context, and legislative history with the
3 goal of discerning the intent of the governing body that enacted the law. *State v.*
4 *Gaines*, 346 Or 160, 171–72, 206 P3d 1042 (2009); *PGE v. Bureau of Labor and*
5 *Industries*, 317 Or 606, 859 P2d 1143 (1993). We are required to correctly
6 interpret the legislature’s intent, independently of the parties’ arguments. *See*
7 ORS 197.805 (providing legislative directive that LUBA “decisions be made
8 consistently with sound principles governing judicial review”); *Weldon v. Bd. of*
9 *Lic. Pro. Counselors and Therapists*, 353 Or 85, 91, 293 P3d 1023 (2012) (court
10 has the obligation to correctly construe statutes, regardless of parties’ arguments);
11 *Stull v. Hoke*, 326 Or 72, 77, 948 P2d 722 (1997) (“In construing a statute, this
12 court is responsible for identifying the correct interpretation, whether or not
13 asserted by the parties.”).

14 **A. Incidental and Subordinate**

15 The county found:

16 “The statute and county ordinance allow ‘events’ or ‘activities’ that
17 are ‘incidental’ in relation to the ‘existing farm use on the tract.’
18 Like the dictionary, the county considers ‘incidental’ to mean
19 ‘subordinate, nonessential, or attendant in position or significance:
20 as * * * occurring as a minor concomitant’ (Webster’s Third New
21 [I]nternational Dictionary). Events or activities that are incidental
22 to existing farm uses would be those that are less important, and
23 subordinate to the existing farm uses on the tract.

24 “The county finds that the proposal to have a single food cart
25 operating on the site, for no more than 72 hours per ‘event,’ no more
26 than 18 times per year, is unquestionably incidental to the existing

1 farm uses taking place on the property. The hours of operation at the
2 brewery are Friday, 4-9 p.m., Saturday, 2-10 p.m. and Sunday 12-5
3 p.m. A condition of approval requires that the events end by 9:00
4 p.m., meaning that the food cart will operate fewer than the 72 hours
5 allowed under the statute and ordinance. Under the approval granted
6 by the county, the applicant can only operate the food cart over the
7 course of 54 days out of the 365 available. Farm uses take place on
8 the property 365 days per year. By infrequency alone, the operation
9 of the food cart as allowed under the approval is incidental to the
10 farm use of the property. The infrequency of operation also supports
11 the county's conclusion that operation of the food cart is a 'minor
12 concomitant' when compared to the continued predominant use of
13 the property to produce filberts and the other crops identified by the
14 applicant.

15 "As noted above, the dictionary definition of 'incidental' contains
16 the phrase 'subordinate to.' There are degrees of subordination,
17 ranging from 'extremely minor' in comparison to the main use, or
18 'just barely' less, or less important, than the main use. The county
19 interprets 'subordinate' as used in the statute and ordinance to mean
20 that the events or uses are clearly less important or less dominant
21 than the main use. The approval allows service by a caterer or food
22 cart at the site of an existing, approved brewery adjacent to a filbert
23 orchard, for up to eighteen-72 hour periods per year, during which
24 the events will take place for no more than 18 hours during the 72-
25 hour period. Both the previously approved brewery and the service
26 of food at the level approved by this Order are clearly subordinate
27 to the existing farm uses on the 21-acre site. * * *" Record 11-12.

28 Petitioners argue that the county erred by comparing only the number of
29 days of events per year, 54, to the number of days of farming activity on the
30 subject property, which the county found was 365. Petitioners argue that the
31 county should have also compared "the respective intensity *or* economic impact
32 of [the] two activities." Petition for Review 23 (emphasis added). Petitioners
33 argue that the filbert farm gross annual revenue would "at best" be \$24,000.

1 Petition for Review 21; Record 54. Petitioners estimate that the revenue from the
2 beer tasting events would be \$125,000, estimated by 25,000 visitors per year
3 purchasing one five-dollar glass of beer. *Id.*

4 Intervenor responds that the approval allows 18, three-day events with a
5 maximum of 250 visitors per event day, which is fewer than 25,000 visitors per
6 year for beer tasting events. Intervenor argues that comparing the number of days
7 of commercial events to the number of days of farming activity is a sufficient
8 basis for the county to conclude that the commercial events are “incidental and
9 subordinate to existing commercial farm use of the tract.” Intervenor argues that
10 the phrase “incidental and subordinate” is not intended to be interpreted as an
11 income, sales, or revenue limitation or test. Intervenor observes that the
12 applicable statutory language “does not require that the events be subordinate to
13 the commercial farm revenues, but to the commercial farm use.” Intervenor’s
14 Response Brief 8. Intervenor observes that if the legislature had intended to
15 measure “incidental and subordinate” by comparing income from the events to
16 the income from the commercial farm use, the legislature would have included a
17 financial component in the statute.

18 For the reasons explained below, we conclude that the county did not err
19 in finding that the beer tasting events are incidental and subordinate to the
20 existing farm use on the tract.

1 **1. Text**

2 The terms “incidental” and “subordinate” are not defined in ORS 215.283
3 or ORS 215.203, which provides other definitions for exclusive farm use
4 regulations, or by administrative rule. Accordingly, we resort to dictionary
5 definitions to determine the ordinary meaning of those terms. *Schnitzer Steel*
6 *Industries Inc. v. City of Eugene*, 68 Or LUBA 193, 202, *aff’d*, 260 Or App 562,
7 318 P3d 1146 (2013).

8 “[I]ncidental” and “subordinate” are used as adjectives in ORS
9 215.283(4)(d)(A) and describe “agri-tourism or other commercial events or
10 activities” in relation to “existing commercial farm use of the tract.” When used
11 as an adjective, “incidental” is defined as “**1** : subordinate, nonessential, or
12 attendant in position or significance.” *Webster’s Third New Int’l Dictionary* 1142
13 (unabridged ed 2002). When used as an adjective, “subordinate” is defined as “**1**
14 : placed in a lower order, class, or rank.” *Webster’s* at 2277. While those
15 definitions are not particularly helpful, they indicate that “agri-tourism or other
16 commercial events or activities” that can be authorized under ORS
17 215.283(4)(d)(A) must be activities that are less significant uses of the subject
18 property as compared to “the existing commercial farm use of the tract.”

19 Petitioners do not provide any argument that “incidental and subordinate”
20 provides a different standard than the terms “incidental” or “subordinate” alone.
21 The county applied the same standard to both terms. While we generally “assume
22 that the legislature did not intend any portion of its enactments to be meaningless

1 surplusage,” those two terms are synonymous. *State v. Stamper*, 197 Or App
2 413, 418, 106 P3d 172, *rev den*, 339 Or 230 (2005). In the absence of meaningful
3 argument that persuades us otherwise, we assume that “incidental” and
4 “subordinate” are synonymous terms for purposes of this decision.

5 **2. Context**

6 We turn next to the context to assist in construing the terms “incidental”
7 and “subordinate.” “[C]ontext’ includes, among other things, other parts of the
8 statute at issue.” *Force v. Department of Revenue*, 350 Or 179, 188, 252 P3d 306
9 (2011). “Ordinarily, only statutes enacted simultaneously with or before a statute
10 at issue are pertinent context for interpreting that statute.” *Gaines*, 346 Or at 177
11 n 16. The history of statutes governing commercial activities on farmland is
12 useful to our interpretive exercise in this case and we begin with it.

13 **a. Commercial Activities on Farmland**

14 As explained, Oregon land use law preserves land for agricultural uses by
15 restricting uses allowed in EFU zones to agricultural uses and certain non-farm
16 uses that are compatible with farming. Statewide Planning Goal 3 states:

17 “Agricultural lands shall be preserved and maintained for farm use,
18 consistent with existing and future needs for agricultural products,
19 forest and open space and with the state’s agricultural land use
20 policy expressed in ORS 215.243 and 215.700.”

21 The general policy for preserving agricultural land use is set forth in ORS
22 215.243, which provides:

23 “The Legislative Assembly finds and declares that:

1 “(1) Open land used for agricultural use is an efficient means of
2 conserving natural resources that constitute an important
3 physical, social, aesthetic and economic asset to all of the
4 people of this state, whether living in rural, urban or
5 metropolitan areas of the state.

6 “(2) The preservation of a maximum amount of the limited supply
7 of agricultural land is necessary to the conservation of the
8 state’s economic resources and the preservation of such land
9 in large blocks is necessary in maintaining the agricultural
10 economy of the state and for the assurance of adequate,
11 healthful and nutritious food for the people of this state and
12 nation.

13 “(3) Expansion of urban development into rural areas is a matter
14 of public concern because of the unnecessary increases in
15 costs of community services, conflicts between farm and
16 urban activities and the loss of open space and natural beauty
17 around urban centers occurring as the result of such
18 expansion.

19 “(4) Exclusive farm use zoning as provided by law, substantially
20 limits alternatives to the use of rural land and, with the
21 importance of rural lands to the public, justifies incentives
22 and privileges offered to encourage owners of rural lands to
23 hold such lands in exclusive farm use zones.”

24 ORS 215.243 was enacted in 1973. Or Laws 1973, ch 503, § 1. Goal 3 was
25 adopted in 1974 and effective in 1975. ORS 215.283, which sets out uses
26 permitted on farmland, was enacted in 1983.⁴ Or Laws 1983, ch 826, § 17.

⁴ Uses established under ORS 215.283(1) are generally described as “uses as of right,” that “may not be subjected to additional local criteria.” *Brentmar v. Jackson County*, 321 Or 481, 496, 900 P2d 1030 (1995) (internal quotation marks omitted). Differently, a local governing body may apply additional criteria that

1 ORS 215.283(1)(o)(A) provides that farm stands may be established in an
2 EFU zone if, among other restrictions:

3 “The structures are designed and used for the sale of farm crops or
4 livestock grown on the farm operation, or grown on the farm
5 operation and other farm operations in the local agricultural area,
6 including the sale of retail *incidental* items and fee-based activity to
7 promote the sale of farm crops or livestock sold at the farm stand if
8 the annual sale of *incidental* items and fees from promotional
9 activity do not make up more than 25 percent of the total annual
10 sales of the farm stand[.]” (Emphases added.)

11 ORS 215.283(1)(o)(A), was originally enacted in 1993 and later amended. Or
12 Laws 1993, ch 466, § 2. The term “incidental” has been retained in the provision.
13 The farm stand statute specifies that the primary sales at farm stands must be
14 agricultural items. The farm stand statute allows the sale of other items and fees
15 for activities so long as (1) those items and fees “promote the sale of farm crops
16 or livestock sold at the farm stand,” and (2) the annual sale of the items and fees
17 does not exceed 25 percent of the total annual farm stand sales. The legislature
18 specifically tied the term “incidental” to activities that “promote” the agricultural
19 enterprise and provided a specific, quantifiable economic measurement of what
20 amount of items and fees is “incidental”—25 percent. As discussed in further
21 detail below, ORS 215.452 allows wineries on farmland to market and sell
22 “incidental items or services.” ORS 215.452(4). However, “[t]he gross income
23 of the winery from the sale of incidental items or services * * * may not exceed

are more stringent than those established by state law to uses under ORS
215.283(2). *Id.*

1 25 percent of the gross income from the on-site retail sale of wine produced in
2 conjunction with the winery.” *Id.*

3 Disputes around non-farm commercial activities on farmland originated
4 with sales of wine and events at wineries. Originally, wineries were not listed as
5 permitted uses on farmland. In *Craven v. Jackson County*, 94 Or App 49, 764
6 P2d 931 (1988) (*Craven I*), *aff’d*, 308 Or 281, 779 P2d 1011 (1989) (*Craven II*),
7 the county approved a land use application for a winery on EFU-zoned land as a
8 commercial activity “in conjunction with farm use” under ORS 215.283(2)
9 (1987). The winery planned to process grapes grown on-site and at other
10 vineyards. Among other things, the conditions of approval limited “retail sales at
11 the winery to wine and other products produced or bottled on the premises with
12 the exception of cork screws, posters of the winery, wine books, postcards of the
13 winery, glasses and T-shirts bearing the winery name and logo.” *Craven I*, 94 Or
14 App at 51. An adjacent landowner appealed the county’s approval, we affirmed,
15 and the petitioner appealed to the Court of Appeals, arguing, among other things,
16 that the winery use was not in conjunction with farm use because it would serve
17 tourists rather than farmers. The court reasoned that “[a] commercial use which
18 assists farmers in processing and marketing crops can be as supportive of
19 agricultural operations as one which aids them in producing crops.” *Id.* at 54. The
20 court also rejected the petitioner’s argument that “the tasting rooms and sale
21 items, such as glasses and T-shirts, are not connected with farm use, whether or
22 not the winery operation itself is.” *Id.* The court concluded:

1 “[I]t is consistent with the statute for the county to determine that
2 incidental activities of those kinds can be permitted, to the extent
3 that they are secondary to and support the wine processing and
4 selling activities of the winery. *See Cook v. Yamhill County*, 13 Or
5 LUBA 137 (1985). There is, of course, a risk of the tail wagging the
6 dog in many situations where secondary activities are permitted
7 because they serve primary ones, but petitioner offers no reason for
8 concluding that that risk is present here.” *Id.*

9 The Supreme Court affirmed. *Craven II*, 308 Or 281. The court first
10 concluded that a winery is not a “farm use” under ORS 215.203. However, the
11 court concluded that the winery was a commercial use “in conjunction with farm
12 use” under ORS 215.283(2)(a). The court reasoned:

13 “The phrase upon which the validity of the [conditional use permit
14 (CUP)] turns is ‘in conjunction with farm use,’ which is not
15 statutorily defined. We believe that, to be ‘in conjunction with farm
16 use,’ the commercial activity must enhance the farming enterprises
17 of the local agricultural community to which the EFU land hosting
18 that commercial activity relates. The agricultural and commercial
19 activities must occur together in the local community to satisfy the
20 statute. Wine production will provide a local market outlet for
21 grapes of other growers in the area, assisting their agricultural
22 efforts. Hopefully, it will also make [the applicant’s] efforts to
23 transform a hayfield into a vineyard successful, thereby increasing
24 both the intensity and value of agricultural products coming from
25 the same acres. Both results fit into the policy of preserving
26 farmland for farm use.

27 “Sales of souvenirs which advertise the winery may cause others to
28 come to the area and buy the produce of the vineyards and farms
29 roundabout. Such sales may reinforce the profitability of operations
30 and the likelihood that agricultural use of the land will continue. At
31 least LUBA could reasonably so find, as it did, and interpret the
32 incidental sales of souvenirs with logos as being ‘in conjunction
33 with farm use.” *Craven II*, 308 Or at 289.

1 **b. ORS 215.452**

2 While *Craven II* was pending in the Supreme Court in 1989, the legislature
3 amended ORS 215.283(1) to authorize wineries as permitted uses on EFU-zoned
4 land. The legislature also enacted House Bill 2903, codified at ORS 215.452,
5 which allows certain, limited commercial activities at wineries. Or Laws 1989,
6 ch 525, § 4. As relevant here, ORS 215.452(2) (1989), provided that wineries on
7 farmland “shall allow only the sale of:

8 “(a) Wines produced in conjunction with the winery; and

9 “(b) Items directly related to wine, the sales of which are
10 incidental to retail sale of wine onsite. Such items include
11 those served by a limited service restaurant, as defined in
12 ORS 624.010.”

13 The 1989 legislature did not define the term “incidental” as used in ORS
14 215.452. As we discuss in more detail below, in 2010, in a special session, the
15 legislature enacted Senate Bill (SB) 1055, supported by the Oregon winegrowers,
16 which amended ORS 215.452 and clarified items and services that could be sold
17 at wineries on farmland:

18 “(2) A winery described in subsection (1) of this section may sell
19 only:

20 “(a) Wines produced in conjunction with the winery;

21 “(b) Items directly related to the sale and promotion of wine
22 produced in conjunction with the winery, the sale of
23 which is incidental to retail sale of wine on-site,
24 including food and beverages served by a limited
25 service restaurant, as defined in ORS 624.010, wine not
26 produced in conjunction with the winery and gifts; and

1 “(c) Services directly related to the sale and promotion of
2 wine produced in conjunction with the winery, the sale
3 and delivery of which are incidental to retail sale of
4 wine on-site, including private events hosted by the
5 winery or by patrons of the winery, at which wine
6 produced in conjunction with the winery is featured.”

7 SB 1055 provided an income limitation for “incidental” sales at wineries
8 on farmland, limiting the gross income from incidental sales to “25 percent of the
9 gross income from the on-site retail sale of wine produced in conjunction with
10 the winery.” Or Laws 2010, ch 97, § 1. The amendments to ORS 215.452 in SB
11 1055 were intended to be a placeholder and were scheduled to sunset on January
12 1, 2013. Or Laws 2010, ch 97, §§ 2, 3; Audio Recording, Senate Committee on
13 Environment and Natural Resources, SB 1055, Feb 9, 2010, at 1:46:32 (statement
14 of Sen Jackie Winters), <https://olis.leg.state.or.us> (accessed July 31, 2019)
15 (noting that the bill was a placeholder and there was not enough time in the
16 session to address all of the “problems that are out there” with wineries, fruit
17 stands, and other uses); *see also Friends of Yamhill County v. Yamhill County*,
18 255 Or App 636, 647, 298 P3d 586, 592 (2013) (explaining the judicial and
19 legislative history of winery sales and services).

20 **c. ORS 215.283(4) (Senate Bill 960 (2011))**

21 The 2011 Legislative Assembly sought to more broadly and permanently
22 address commercial non-farm uses on farmland, including but not limited to
23 winery uses. SB 829 (2011) proposed amendments to ORS 215.452 to allow
24 broader commercial uses at wineries on farmlands, including full-service

1 restaurants, weddings, and catered dinners. SB 960 (2011) was requested by the
2 Association of Oregon Counties (AOC) and the Oregon Farm Bureau (Farm
3 Bureau) and proposed amendments to ORS 215.283 to allow agri-tourism and
4 other events on farmlands. Those two bills were related and often discussed
5 together during the legislative session. SB 829 did not pass, but the legislature
6 enacted SB 960. Or Laws 2011, ch 567.

7 The legislature recognized that unpermitted commercial uses, such as
8 weddings, concerts, and other facility rentals were occurring on farmland. The
9 legislature sought to create a pathway for county review of such non-farm
10 commercial uses and allow orderly conflict in the land use process. Audio
11 Recording, Senate Committee on Environment and Natural Resources, SB 829
12 and SB 960, Apr 14, 2011, at 39:00 to 40:58 (statement of Richard Whitman,
13 Governor's Natural Resources Advisor (Whitman)), <https://olis.leg.state.or.us>
14 (accessed July 31, 2019).⁵ Counties took the lead in identifying the primary

⁵ Whitman was a member of the AOC Farmland Activities Task Force as a representative of the Department of Land Conservation and Development (DLCDD) in 2010. Exhibit 6, Senate Committee on Environment and Natural Resources, SB 960, Apr 14, 2011, AOC Farmland Activities Task Force Report and Recommendations (December 13, 2010) (Report) (accompanying statement of Art Schlack, AOC). Whitman was later the chair of a subsequently formed work group that included AOC, Oregon Winegrowers Association (OWA), the Farm Bureau, and 1000 Friends of Oregon. Exhibit 7, Senate Committee on Environment and Natural Resources, SB 960, Apr 19, 2011 (written testimony of Steve McCoy, 1000 Friends of Oregon, Farm and Forest Staff Attorney). At some point prior to April 2011, Whitman moved from DLCDD to become the

1 concerns and proposing legislative solutions. *Id.* at 16:00. The AOC Board of
2 Directors created the Farmland Activities Task Force (Task Force) in April 2010.
3 The Task Force studied the issues and conflicts surrounding non-farm uses
4 established on farmlands and events and activities at wineries and generated a
5 report and recommendations. Exhibit 6, Senate Committee on Environment and
6 Natural Resources, SB 960, Apr 14, 2011, Task Force Report and
7 Recommendations (December 13, 2010) (Report) (accompanying statement of
8 Art Schlack, AOC). The Report explained:

9 “Based upon its review of the activities and events that are taking
10 place on farmland and associated issues and concerns, the Task
11 Force concluded that existing law does not clearly provide
12 opportunities to conduct activities and events on farmland. The
13 Farmland Activities Task Force has developed a legislative concept
14 to clarify how activities and events in conjunction with farm use may
15 be permitted on farmland. * * *” Report Introduction.

16 The Task Force suggested amendments to ORS 215.283. SB 960
17 implements the Task Force’s recommendations. Audio Recording, Senate
18 Committee on Environment and Natural Resources, SB 829 and SB 960, Apr 14,
19 2011, at 19:00 (statement of Art Schlack, AOC), <https://olis.leg.state.or.us>
20 (accessed July 31, 2019).

Governor’s Natural Resources Advisor. It is not clear from the legislative history that we reviewed whether Whitman was a drafter of SB 960, but it is clear that Whitman was personally significantly involved in multiple work groups that proposed the statutory language in SB 960, and we find his testimony persuasive evidence of the intended meaning of the language of SB 960 and the legislature’s understanding and intention with respect to that language.

1 1000 Friends of Oregon opposed legislative concepts prepared by the
2 counties and state agencies without input from other affected interest groups, as
3 stated in written testimony in opposition to the introduced version of SB 960:

4 “This bill is the offshoot of work that began in 2010. In the interim,
5 there was to be an inclusive workgroup that would help define the
6 activities that can take place on farmland. Instead the Association of
7 Oregon Counties [(AOC)] convened a workgroup that only included
8 its membership as voting members and with only its membership
9 and state agencies at the table. At the same time, the Oregon
10 Winegrowers Association [(OWA)] made recommendations for
11 holding events at wineries. These two concepts simply loosened
12 protections in current law - to the detriment of agriculture.

13 “Once it was clear that there was opposition to these concepts, a
14 group was formed to work out differences between different parties’
15 positions. Included in the group were AOC, OWA, the farm bureau,
16 and 1000 Friends. Richard Whitman acted as chair of the group.”
17 Exhibit 7, Senate Committee on Environment and Natural
18 Resources, SB 960, Apr 19, 2011 (written testimony of Steve
19 McCoy, 1000 Friends of Oregon, Farm and Forest Staff Attorney).

20 SB 960 proposed three types of event approvals: (1) a single commercial
21 event or activity, such as a bike race, would be provided as an expedited process
22 with defined limits on duration and numbers of participants; (2) up to six events
23 per year, with defined limits on duration and numbers of participants; or (3) other
24 more extensive uses that occur more frequently or for a longer period, similar to
25 a conditional use permit process. Audio Recording, Senate Committee on
26 Environment and Natural Resources, SB 829 and SB 960, Apr 14, 2011, at 41:15
27 to 45:57 (statement of Whitman), <https://olis.leg.state.or.us> (accessed July 31,
28 2019). All three types of event approvals were required to be “incidental and

1 subordinate” to an existing farm use on the property. Those legislative concepts
2 in SB 960 were eventually enacted in ORS 215.283(4).

3 The farm stand and winery events statutes demonstrate that the legislature
4 knows how to limit the term “incidental” to require a specific economic
5 relationship to the existing farm use. In those statutes, the legislature limited sales
6 by restricting the character of the retail sale items to agricultural items and other
7 items that promote the sale of agricultural items and limiting the income from
8 sales of incidental items and fees to a quantified percent of overall sales. Those
9 limitations existed in related statutes when the legislature adopted ORS
10 215.283(4). Nevertheless, the legislature did not include similar limiting
11 language in ORS 215.283(4). Accordingly, we conclude that difference is
12 deliberate and that the legislature did not intend to impose the same types of limits
13 on agri-tourism and other commercial events and activities that are authorized
14 under ORS 215.283(4). *See State v. Bailey*, 346 Or 551, 562, 213 P3d 1240
15 (2009) (“Generally, when the legislature includes an express provision in one
16 statute and omits the provision from another related statute, we assume that the
17 omission was deliberate.”).

18 We conclude that statutory context demonstrates that the legislature did
19 not intend to place income or revenue sideboards on “incidental and subordinate”
20 in ORS 215.283(4), and accordingly, we reject petitioners’ argument that seeks
21 to require a comparison between revenue from farm uses and revenue from
22 commercial activities authorized under ORS 215.283(4).

1 Whether a proposed commercial event is “incidental and subordinate” to
2 an existing commercial farm use will depend largely on the circumstances
3 presented by each application, depending on the existing farm use and the number
4 and intensity of events proposed. We conclude that the legislature intended the
5 counties to exercise some discretion in allowing and limiting the types of
6 commercial activities that can be permitted on farmlands and determining
7 whether such activities are “incidental and subordinate” within the quantified
8 statutory limits on frequency and intensity of such events, and any other limits
9 imposed by the county.⁶ In this case, the county determined that the number of
10 days of commercial events compared to the number of days of commercial
11 farming activity on the property demonstrate that the commercial events are
12 “incidental and subordinate” to the commercial farming activities on the property
13 because the commercial activities are “less important or less dominant.” Record
14 11–12. That conclusion is consistent with the plain meanings of the phrase
15 “incidental and subordinate.”

16 Nothing in the text, context, or legislative history of ORS
17 215.283(4)(d)(A) suggests to us that the county may not rely on a comparison of
18 the number of days of activities to determine that commercial activities are less

⁶ Under ORS 215.283(4), counties may allow, but are not required to allow, “agri-tourism and other commercial events or activities that are related to and supportive of agriculture.” Counties may impose additional restrictive criteria beyond the limitations in ORS 215.283(4).

1 significant than the commercial farming activities on the property. Under the
2 circumstances presented in this appeal, we conclude that the county correctly
3 determined that the events are incidental and subordinate to the farm use.

4 The second assignment of error is denied.

5 **B. Necessary to Support**

6 ORS 215.283(4)(d), incorporated into the local code at YCZO
7 1013.01(A)(4)(a), also requires a determination that the agri-tourism or other
8 commercial events “are necessary to support the commercial farm uses or the
9 commercial agricultural enterprises in the area.” The county found:

10 “‘Necessary’ generally means ‘absolutely needed.’ The applicant
11 presented testimony that agri-tourism generally, and events
12 promoting agriculture at the proposed site specifically, are necessary
13 to support commercial farm uses taking place on the property,
14 and/or are necessary to support the commercial agricultural
15 enterprises in the area. The county interprets the term ‘necessary’ to
16 be more than merely ‘convenient.’ At the same time, a literal
17 interpretation of the requirement could very well result in the
18 inability of any agri-tourism or commercial use to qualify for
19 approval. The intent of the statute and of the ordinance is to provide
20 an opportunity for farm owners to make economic use of their farms
21 by sponsoring events of the kind that wineries can already sponsor
22 and conduct. Considering the especially limited, low-impact request
23 being made in this instance, there is no basis for interpreting
24 ‘necessary,’ as used in the statute and in the county’s ordinance, in
25 a manner that makes the standard impossible to meet. Extensive
26 testimony was received regarding the difficulty of maintaining and
27 profiting from a small filbert orchard like the one on the subject
28 property. In this case, revenue from the brewery supplements
29 revenue from the remainder of the farm operation and helps to
30 maintain the viability of the property as a farm. The events augment
31 the revenue from the brewery, further contributing to the overall

1 viability of the farm. The county finds that the 18 proposed events
2 are necessary for the applicant and landowner to continue to make a
3 profit in money from farm uses taking place on the property.”
4 Record 12–13.

5 We understand the county to have found both that the events “are necessary to
6 support the commercial farm uses” on the farm, and also that the events “are
7 necessary to support * * * the commercial agricultural enterprises in the area.”
8 Record 13.

9 **1. Definition of “Area”**

10 Petitioners argue that, when considering other “commercial agricultural
11 enterprises in the area,” the county failed to define the “area” and identify the
12 commercial agricultural enterprises in that area. Petition for Review 9. We view
13 that challenge as a findings challenge. We will remand a decision when the
14 findings are insufficient to support the decision. *Heiller v. Josephine County*, 23
15 Or LUBA 551 (1992).

16 In some places in the decision, the county described the “area” as the entire
17 county. For example, the county explained that the record in the 2017 approval
18 suggests “that the brewery is already benefitting the agri-tourism industry in the
19 county, and thus the agricultural industry in the county.” Record 12. The county
20 found:

21 “The ‘commercial agricultural enterprises in the area’ include the
22 production of crops, including filberts and grapes. Other
23 agriculturally related uses, including wineries, benefit from visitors
24 to the county, who might come to sample beer at the brewery, and
25 from their visit decide to return and visit other locations in Yamhill
26 County that make wine, or sell other farm products, or market direct

1 'farm to table' to 'farm to fork' dining." Record 12.

2 The county found that "agri-tourism is and will continue to be, an essential
3 component of commercial agricultural enterprises in most areas of the county"
4 and that this was particularly true at the location of the subject property, which is
5 located where "a major state highway enters the county from the Portland
6 metropolitan area." Record 13. The county opined that "[i]t is appropriate that
7 the county do what it can, under statutory and ordinance authority, to allow small
8 business/agricultural producers to promote the agricultural economy of the
9 county and the natural beauty and products of the county's farms, when it can be
10 done with minimal impact to surrounding uses." Record 12.

11 It is sufficiently clear to us that the county construed the relevant "area" as
12 the entire county and identified the primary agricultural enterprise as wineries,
13 with lesser agricultural enterprises such as filbert farms. Petitioners do not
14 challenge that construction of the term "area." The county's findings are adequate
15 for our review.⁷

16 **2. Interpretation of "Necessary" and "Support"**

17 Petitioners argue that the county's findings lack an interpretation of the
18 term "necessary" sufficient for LUBA review. Petition for Review 14. We reject
19 that argument. The county expressly interpreted "the term 'necessary' to be more

⁷ Petitioners do not argue in the alternative that the county may not define the relevant "area" as broadly as the entire county. We express no opinion on that issue.

1 than merely ‘convenient.’” Record 12. The county concluded that the purpose of
2 the agri-tourism statute is “to provide an opportunity for farm owners to make
3 economic use of their farms by sponsoring events of the kind that wineries can
4 already sponsor and conduct.” Based on the county’s understanding of the
5 underlying policy, the county decided that it would not interpret the term
6 “necessary” by its ordinary meaning of “absolutely needed.” Record 12–13. The
7 county’s understanding and interpretation of the term “necessary” is reasonably
8 clear in the express interpretation and in the manner in which it applied the term.
9 We review the county’s interpretation for legal correctness.

10 Before turning to the text, context, and legislative history of the “necessary
11 to support” standard, we clarify our threshold understanding of the criteria in
12 ORS 215.283(4)(d)(A). Intervenor argues and the county found that there are two
13 distinct ways to satisfy the “necessary to support” standard. An applicant can
14 either show that the commercial events are necessary to support the commercial
15 farm use on the property—*i.e.*, to make the farm economically viable (the first
16 prong), or that the events are necessary to support the “commercial agricultural
17 enterprises in the area” (the second prong). Intervenor’s Response Brief 3. We
18 do not understand petitioners to dispute that interpretation, and we accept it for
19 purposes of our analysis in this decision.⁸ For the reasons explained below, we

⁸ Intervenor points out that petitioners’ arguments sometimes conflate the two distinct ways to satisfy the standard. The county’s findings also sometimes

1 conclude that the county erred in concluding that the “necessary to support”
2 standard was satisfied, both with respect to the subject farm and with respect to
3 commercial agricultural enterprise in the area.

4 **a. Text**

5 The terms “necessary” and “support” are not defined in ORS 215.283 or
6 ORS 215.203, which provides other definitions for exclusive farm use
7 regulations. Accordingly, we refer to the plain meaning of these terms.
8 “Necessary” is used as an adjective in ORS 215.283(4)(d)(A) and describes “agri-
9 tourism or other commercial events or activities” in relation to “support” of
10 “commercial farm uses or the commercial agricultural enterprises in the area.”
11 When used as an adjective, “necessary” is most pertinently defined as “**2** : that
12 cannot be done without : that must be done or had : absolutely required :
13 ESSENTIAL, INDISPENSIBLE.” *Webster’s* at 1511. “Support” when used as
14 an infinitive verb is most pertinently defined as “**6**: to maintain in condition,
15 action, or existence.” *Webster’s* at 2297. The county’s findings quoted above
16 appear to concede that the proposed events cannot be deemed “necessary to

conflate the two distinct ways to satisfy the standard. *See, e.g.*, Record 12 (“The applicant presented testimony that agri-tourism generally, and events promoting agriculture at the proposed site specifically, are necessary to support commercial farm uses taking place on the property, and/or are necessary to support the commercial agricultural enterprises in the area.”).

1 support” commercial farm uses or the commercial agricultural enterprises in the
2 area, under the plain meaning of “necessary.”⁹

3 **b. Context**

4 Petitioners correctly observe that the three other types of event permits that
5 can be authorized under ORS 215.283(4)(a), (b), and (c) require that the events
6 “be incidental and subordinate to existing farm use on the tract;” however, only
7 subsection (d) requires, additionally, that the county determine that the events are
8 “necessary to support the commercial farm uses or the commercial agricultural
9 enterprises in the area.” Petitioners argue, and we agree, that context reveals that
10 the legislature intended applicants for up to 18 events per calendar year under
11 subsection (d) prove something in addition to proving that the events will be less
12 frequent or intense than the farming activities on the property. The applicant must
13 prove that the events are “necessary to support the commercial farm uses or the
14 commercial agricultural enterprises in the area.” The question is how to
15 determine whether the events are “necessary” within the meaning of that phrase
16 in ORS 215.283(4).

⁹ We observe inherent tension in a standard that requires the applicant to establish both that the events are “incidental and subordinate”—*i.e.*, “nonessential, or attendant in position or significance,” *and* “necessary to support”—*i.e.*, “essential.”

1 **c. Legislative History**

2 The legislative history reveals that the legislature intended the counties to
3 exercise some discretion in determining whether events are “necessary.” The
4 phrase “necessary to support the commercial farm uses or the commercial
5 agricultural enterprises in the area” was not initially included in SB 960, as
6 introduced. That phrase was added as a senate amendment. The audio record
7 reveals that a similar phrase was contemplated as part of SB 829, which was
8 proposed to allow certain commercial events at wineries as conditional uses if the
9 county found that the events would be “incidental and subordinate to the
10 production and sale of wine” and “necessary to support the winery or commercial
11 agricultural enterprises in the area.” Audio Recording, Senate Committee on
12 Environment and Natural Resources, SB 829 and SB 960, Apr 14, 2011, at 55:30
13 (statement of Whitman), <https://olis.leg.state.or.us> (accessed July 31, 2019). With
14 respect to such commercial events at wineries, Whitman explained:

15 “These are your outdoor concerts, your celebratory events, your
16 facility rentals * * *. Those may be allowed, but they have to go
17 through a review process by the county, and the county has to
18 determine that those events and the revenue that they generate are
19 incidental and subordinate to the production and sale of wine, *and*
20 *that the event is necessary to support the winery or commercial*
21 *agricultural enterprise in the area. We just heard testimony from*
22 *King Estate about how the events that they hold at the winery are*
23 *part of how they support the winery, or how they support*
24 *agricultural producers in the area; and that’s the contemplation*
25 *here also.”* Audio Recording, Senate Committee on Environment
26 and Natural Resources, SB 829 and SB 960, Apr 14, 2011, at 55:02
27 to 56:58 (statement of Whitman), <https://olis.leg.state.or.us>
28 (accessed July 31, 2019) (first emphasis in original; second

1 emphasis added).

2 Senator Hass observed that the term “necessary” is very subjective and difficult
3 to quantify:

4 SENATOR HASS: “My question is * * * the need to prove a need
5 to do this * * *, that these activities must be ‘necessary to support
6 the winery,’ how do you go about finding that? How do you
7 determine that? What is ‘necessary’? Is it that they are they not
8 making enough money? * * * Is there a better way to quantify that
9 or measure that?

10 RICHARD WHITMAN: “Senator Hass, I need to place this in
11 context first. We’re talking about a pretty narrow set of activities at
12 wineries, and not your normal day-to-day activities or events. Those
13 are all permitted, and permitted outright, without having to get any
14 paper from the county under this legislation. Here, what we’re
15 talking about is something like a concert, or a large facility rental,
16 or conceivably * * * weddings * * * where you’re charging a fee.
17 So, in terms of your specific question about ‘necessary to support
18 the winery,’ *you would have to show a need in terms of a need for*
19 *that revenue in order to make the operation economic.* It is a vague
20 standard, and, you know, we could try to create an objective,
21 numeric, one-size-fits-all standard. *But, frankly, part of the effort*
22 *here has been to leave quite a bit of discretion to individual counties*
23 *as to how this is applied, and give this a chance to work, recognizing*
24 *that policy calls in counties may differ from county to county.* This
25 may be, in at least in my personal view, a situation where it’s
26 appropriate to allow some variation between counties on that issue.

27 SENATOR HASS: “I appreciate that. I just think that it is too
28 subjective. How do you determine what is needed? If a guy wants to
29 make more money? If he wants to buy better clothes for his
30 winemaker? I don’t know. It’s just so subjective and maybe it is not
31 even relevant.

32 “Why not just say: ‘Here are the conditions if you want to do this,
33 you have got to do A, B, and C, whether or not you are making more

1 money or not. That, to me, I don't see how that is relevant to this
2 discussion, whether they need to or not. It is just so subjective. I
3 don't see how you could ever measure it." Audio Recording, Senate
4 Committee on Environment and Natural Resources, SB 829 and SB
5 960, Apr 14, 2011, at 1:05:00 to 1:07:57, <https://olis.leg.state.or.us>
6 (accessed July 31, 2019) (emphases added).

7 The legislative history reveals that the legislature was presented with an
8 understanding of the meaning of the word "necessary," that "you would have to
9 show a need in terms of a need for that revenue in order to make the operation
10 economic." *Id.* The legislature was also keenly aware of the subjective nature of
11 the term "necessary," and decided to adopt that proposed language into SB 960
12 anyway.

13 **d. Conclusion**

14 While the legislature may have intended counties exercise some discretion
15 in applying that criterion, we and the county must give meaning to the statutory
16 terms "necessary" and "to support" according to their plain meanings, taking into
17 account relevant context and any pertinent legislative history.

18 First, we observe that all agri-tourism and commercial events under ORS
19 215.283(4) must be "related to and supportive of agriculture."¹⁰ However, only
20 applicants for the highest number of events authorized by subsection (4)(d)(A)
21 are required to establish that the events are "necessary to support the commercial

¹⁰ Petitioners do not argue that the approved beer tasting events are not "related to and supportive of agriculture" and we express no opinion on that issue. ORS 215.283(4).

1 farm uses or the commercial agricultural enterprises in the area.” That indicates
2 that the legislature intended the highest number of events to clear a relatively high
3 hurdle in establishing that the events are “necessary to support.”

4 Second, we observe that the legislative history regarding the enactment of
5 the provision does not indicate that the legislature intended something other than
6 the ordinary meanings be attached to the words “necessary” and “support.”
7 Rather, the legislature realized the potential difficulty in establishing that events
8 are “necessary to support” either the commercial farm uses or commercial
9 agricultural enterprises in the area. Accordingly, we construe the statute to
10 require that in order to establish that proposed events are “necessary to support”
11 either the commercial farm uses on the farm or commercial agricultural
12 enterprises in the area within the meaning of the statute, the county must find that
13 the events are essential in order to maintain the existence of either the commercial
14 farm or the commercial agricultural enterprises in the area.

15 We conclude that the county erred in applying the term “necessary” with
16 respect to the first prong of the test—whether the events are necessary to support
17 the commercial farm use on the farm. The county found that the events are
18 “necessary” to maintain the commercial viability of the farm. However, the focus
19 of the county’s analysis was on revenue from the brewery, which the county
20 found “supplements” revenue from the commercial farm use, and helps the farm
21 maintain commercial viability. Record 13. We understand the county to have
22 concluded that such supplemental revenue from the brewery is “necessary” to

1 support the commercial farm use. However, the brewery, which is not a farm use,
2 is already approved as a commercial activity in conjunction with a farm use. The
3 non-farm brewery is not the focus of the analysis under the agri-tourism and
4 commercial events regulations.¹¹ The focus of the first prong of ORS
5 215.283(4)(d)(A) is on the commercial farm use—here, the growing of filberts
6 on the property. In addition, the county found that revenue from the proposed
7 events would “augment” income from *the brewery*, which again, is not the
8 commercial farm use and not the focus of the statute. Record 13.

9 What the county must determine under the first prong is whether the events
10 are “necessary to support” the commercial farm use, the filbert farm, not whether
11 the events are necessary to support, supplement, or augment revenue from the
12 brewery, which is not the commercial farm use but is an approved non-farm
13 commercial activity on the farm. The county erred in considering whether the
14 events will support, supplement, or augment revenue generated from the brewery
15 in determining whether the commercial events are necessary to support the
16 existing commercial farm use of the tract.

17 We also agree with petitioners that the county’s finding that “the 18
18 proposed events are necessary for the applicant and landowner to continue to
19 make a profit in money from farm uses taking place on the property” is not

¹¹ The connection or lack of connection between the farm use and the brewery is not the subject of our review in this appeal.

1 supported by any evidence in the record. Record 13. Intervenor argues in his
2 response brief that it is difficult to generate income to maintain the property as a
3 farm. However, intervenor does not identify any evidence in the record revealing
4 the income from the existing farm use or estimated event income, let alone how
5 the event income is “necessary” to support the commercial farm use of the tract.

6 Under the second prong, the county must determine whether the events
7 are “necessary to support,” that is, essential to maintain the existence of “the
8 commercial agricultural enterprises in the area.” As noted above, the county
9 considered the entire county to be “the area” for purposes of the statute, and
10 petitioners do not challenge that interpretation. The county found that the
11 proposed beer tasting events will bring more tourists to the county, and that those
12 tourists may patronize other agricultural institutions in the county. Petitioners
13 argue, and we agree, that the county’s finding that the events are necessary to
14 support the commercial agricultural enterprises in the area is not supported by
15 any evidence in the record. Intervenor does not identify any evidence supporting
16 a conclusion that the event is “necessary to support” the commercial agricultural
17 enterprises in the area.¹²

18 The first assignment of error is sustained.

19 The county’s decision is remanded.

¹² Such evidence might include documentation or other evidence that farm products from other commercial agricultural enterprises in the area will be sold or used at intervenor’s events.