1	BEFORE THE LAND USE BOARD OF APPEALS
2	OF THE STATE OF OREGON
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4	RICHARD GREEN and EMILY GREEN,
5	Petitioners,
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7	
8	VS.
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10	DOUGLAS COUNTY,
11	Respondent,
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13	and
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15	CHUCK HESTER and SANDY HESTER,
16	Intervenors-Respondents.
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18	LUBA No. 2010-106
19	
20	FINAL OPINION
21	AND ORDER
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23	Appeal on remand from the Court of Appeals.
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25	Bill Kloos, Eugene, represented petitioners.
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27	Paul E. Meyer, County Counsel, Roseburg, represented respondent.
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29	Stephen Mountainspring, Roseburg, represented intervenors-respondents.
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31	BASSHAM, Board Member; RYAN, Board Chair; HOLSTUN, Board Member,
32	participated in the decision.
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34	REMANDED 11/23/2011
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36	You are entitled to judicial review of this Order. Judicial review is governed by the
37	provisions of ORS 197.850.

Opinion by Bassham.

This matter is before us on remand from the Court of Appeals. *Green v. Douglas County*, __ Or LUBA ___ (LUBA No. 2010-106, April 4, 2011) (*Green I*), *rev'd and remanded* 245 Or App 430, __ P3d __ (2011) (*Green II*). The challenged decision involves a conditional use permit to host weddings and other events on the weekends, on a six-acre parcel zoned for exclusive farm use. The 2010 decision amends a 2003 conditional use permit (CUP) to allow additional events on additional weekdays. All or nearly all activities associated with the approved events occur either (1) outdoors on a large lawn or (2) under an open-sided gazebo and an open-sided pavilion.

In *Green I*, LUBA sustained the first and second assignments of error, denied the third and fourth assignments of error, and remanded the decision. In *Green II*, the Court of Appeals held that LUBA erred in sustaining one sub-assignment of error under the first assignment of error, and further that LUBA erred in denying the fourth assignment of error. The Court did not disturb our dispositions of the second and third assignments of error. As we understand the Court's decision, the county's decision is remanded to LUBA to (1) modify our disposition of the first assignment of error, and (2) sustain and remand under the fourth assignment of error.

FIRST ASSIGNMENT OF ERROR

The first assignment of error concerns ORS 215.448(1)(c), which provides in relevant part that a home occupation on land zoned exclusive farm use shall be operated "substantially" in the dwelling or "[o]ther buildings normally associated with uses permitted in the zone[.]" Petitioners raised two distinct issues or sub-assignments of error under the first assignment of error, arguing that (1) the unenclosed gazebo and pavilion did not qualify as "buildings" for purposes of ORS 215.448(1)(c), and (2) even if the gazebo and pavilion qualified as "buildings," the county misinterpreted the qualifier "substantially" to allow authorized home occupation activities to occur primarily outdoors on the lawn.

1	We agreed with both arguments. We first interpreted ORS 215.448(1)(c) to limit the
2	"buildings" that qualifying home occupation activities can be operated "in" to structures that
3	are enclosed by walls. However, the Court of Appeals interpreted ORS 215.448(1)(c) not to
4	include that limitation, and held that "buildings" for purposes of ORS 215.448(1)(c) need not
5	be enclosed structures. The only express limiting factor in ORS 215.448(1)(c) with respect to
6	buildings, the Court held, is whether the building is "normally associated with uses permitted
7	in the zone in which the property is located[.]"
8	With respect to the meaning of "operated substantially" in the dwelling or building,
9	we held that to satisfy that statutory requirement
10 11 12 13 14 15 16 17 18 19 20	"the events must be carried out in 'large part,' 'in the main,' or as the 'main part' in the dwelling or buildings, compared to the portion that is conducted outside the dwelling or buildings. It is possible that the events authorized by the 2010 CUP could meet that standard, assuming the gazebo and pavilion qualify as buildings for purposes of ORS 215.445(1)(c), but only if conditioned to limit the extent of uses that occur outside qualifying buildings. The 2010 CUP decision does not include any such conditions and, as 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)." <i>Green I</i> , slip op 25.
21	The Court of Appeals did not disturb the above-quoted ruling.
22	Accordingly, we modify our disposition of the first assignment of error to reject the
23	first sub-assignment of error and to sustain only the second sub-assignment of error. The
24	first assignment of error is sustained, in part.
25	FOURTH ASSIGNMENT OF ERROR
26	The fourth assignment of error concerns Douglas County Land Use Development
27	Ordinance (LUDO) 1.040.2, which provides, in relevant part:
28 29 30 31	"* * The Director shall not approve a development or use of land that has been previously divided or otherwise developed in violation of this ordinance, regardless of whether the applicant created the violation, unless the violation can be rectified as part of a development proposal."

- 1 Petitioners argued below to the county that their allegations of violations of the original 2003
- 2 CUP required the county to apply LUDO 1.040.2. The county adopted findings rejecting that
- 3 argument, but those findings did not include an explicit explanation of the meaning of LUDO
- 4 1.040.2. In Green I, LUBA concluded that the county had implicitly interpreted LUDO
- 5 1.040.2 to apply only when there is evidence of a completed county enforcement action
- 6 against the property owner, and to determine that LUDO 1.040.2 was not triggered by mere
- 7 allegations of code violations. Accordingly, we denied the fourth assignment of error.
- 8 On appeal, the Court concluded that the county had not in fact provided a reviewable
- 9 interpretation of the meaning of LUDO 1.040.2. Rather than interpret LUDO 1.040.2 in the
- 10 first instance, or remand to LUBA to do so, the Court concluded that it is appropriate to
- 11 remand the issue to the county "for an interpretation and potential application of LUDO
- 12 1.040.2." *Green II*, 245 Or App at 441.
- The fourth assignment of error is sustained.
- 14 The county's decision is remanded.