

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

1000 FRIENDS OF OREGON
and FRIENDS OF MARION COUNTY,
Petitioners,

vs.

MARION COUNTY,
Respondent,

and

KRISTINA MCNITT,
Intervenor-Respondent.

LUBA Nos. 2022-085/086

FINAL OPINION
AND ORDER

Appeal from Marion County.

Andrew Mulkey filed a petition for review and reply brief and argued on behalf of petitioner 1000 Friends of Oregon.

Kelly Chang filed a petition for review and reply brief and argued on behalf of petitioner Friends of Marion County. Also on the briefs was Meriel Darzen and Crag Law Center.

Cody W. Waltermann, Assistant County Counsel, filed the respondent's brief and argued on behalf of respondent.

T. Beau Ellis filed the intervenor-respondent's brief. Also on the brief was Vial Fotheringham LLP. Andrew Stamp argued on behalf of intervenor-respondent.

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

3
4 REMANDED 02/16/2023

5
6 You are entitled to judicial review of this Order. Judicial review is
7 governed by the provisions of ORS 197.850.

NATURE OF THE DECISION

Petitioners appeal amendments to the Marion County Code (MCC) to allow an event business as a conditional use home occupation in the Exclusive Farm Use, Special Agriculture, and Farm/Timber zones, which the county identifies as agricultural resource lands.

MOTION TO INTERVENE

Kristina McNitt moves to intervene on the side of respondent in these consolidated appeals. No party opposes the motions and they are allowed.

FACTS

The county adopted legislative changes to its land use regulations to allow event businesses capable of hosting up to 750 people as a conditional use home occupation on agricultural resource land pursuant to the authorization allowed in ORS 215.283(2)(i) for home occupations as provided in ORS 215.448. These appeals followed and we consolidated them for review.

FIRST ASSIGNMENT OF ERROR

Petitioner 1000 Friends of Oregon (1000 Friends) and Petitioner Friends of Marion County (FOMC) (together, petitioners) filed separate petitions for review. Petitioners' arguments under their first assignments of error present essentially the same legal questions and we address them together. Petitioners argue that the county's decision misconstrues the applicable law because an event business use does not qualify as a "home occupation" under state law. We review

1 the county's interpretation and implementation of state law for errors of law.
2 *Gage v. City of Portland*, 319 Or 308, 316-17, 877 P2d 1187 (1994); *Kenagy v.*
3 *Benton County*, 115 Or App 131 (1992), *rev den*, 315 Or 271 (1992); *City of*
4 *Sandy v. Clackamas County*, 28 Or LUBA 316, 319-20 (1994). We will reverse
5 or remand a decision that improperly construes applicable law. ORS
6 197.835(9)(a)(D). We will remand a decision that "improperly construes the
7 applicable law, but is not prohibited as a matter of law." OAR 661-010-
8 0071(2)(d). We will reverse a decision that "violates a provision of applicable
9 law and is prohibited as a matter of law." OAR 661-010-0071(1)(c).

10 Statewide Planning Goal 3 (Agricultural Lands) is "[t]o preserve and
11 maintain agricultural lands." State law restricts the uses that are allowed on
12 agricultural land to farm uses and specified nonfarm uses. *See* ORS 215.203(1)
13 (generally requiring that land within EFU zones be used exclusively for "farm
14 use"); ORS 215.203(2)(a) (defining "farm use"); ORS 215.283 (identifying
15 permitted uses on EFU land). ORS 215.283(2)(i) provides:

16 "The following nonfarm uses may be established, subject to the
17 approval of the governing body or its designee in any area zoned
18 [EFU] subject to ORS 215.296:

19 "(i) Home occupations as provided in ORS 215.448."

20 ORS 215.448 provides, in part:

21 "(1) The governing body of a county or its designate may allow,
22 subject to the approval of the governing body or its designate, the
23 establishment of a home occupation and the parking of vehicles in
24 any zone. However, in an exclusive farm use zone, forest zone or a

1 mixed farm and forest zone that allows residential uses, the
2 following standards apply to the home occupation:

3 “(a) It shall be operated by a resident or employee of a resident of
4 the property on which the business is located;

5 “(b) It shall employ on the site no more than five full-time or part-
6 time persons;

7 “(c) It shall be operated substantially in:

8 “(A) The dwelling; or

9 “(B) Other buildings normally associated with uses
10 permitted in the zone in which the property is located;
11 and

12 “(d) It shall not unreasonably interfere with other uses permitted
13 in the zone in which the property is located.

14 “(2) The governing body of the county or its designate may establish
15 additional reasonable conditions of approval for the establishment
16 of a home occupation under subsection (1) of this section.”

17 OAR 660-033-0130 provides minimum standards applicable to the
18 schedule of permitted and conditional uses on agricultural land. OAR 660-033-
19 0130(14) provides:

20 “Home occupations and the parking of vehicles may be authorized.
21 Home occupations shall be operated substantially in the dwelling or
22 other buildings normally associated with uses permitted in the zone
23 in which the property is located. A home occupation shall be
24 operated by a resident or employee of a resident of the property on
25 which the business is located, and shall employ on the site no more
26 than five full-time or part-time persons.”

27 The challenged decision amends the MCC to allow as a conditional use
28 home occupation in agricultural resource zones “an event business hosting

1 weddings, family reunions, class reunions, company picnics, memorials, and
2 similar gatherings.”¹ Record 10. The property where the event business will
3 operate must be subject to special assessment for farm use. The event business
4 must be operated substantially in the dwelling or other buildings normally
5 associated with uses in the zone. The event business operator must be the property
6 owner and a full-time resident of a dwelling on the property. The property owner
7 may not employ more than five full-time or part-time persons that work at the
8 event business at any one time. A maximum of 18 events per calendar year may
9 be held on the property and each event may not exceed three consecutive days.
10 A maximum number of 750 guests may be permitted on the property at any one
11 time.

12 Petitioners argue that the event business use that the county authorized is
13 not a “home occupation” within the meaning of ORS 215.448 and ORS
14 215.283(2)(i). In interpreting a statute we examine the statutory text, context, and
15 legislative history with the goal of discerning the enacting legislature’s intent.
16 *State v. Gaines*, 346 Or 160, 171-72, 206 P3d 1042 (2009); *PGE v. Bureau of*
17 *Labor and Industries*, 317 Or 606, 610-12, 859 P2d 1143 (1993). We are
18 independently responsible for correctly construing statutes. *See* ORS 197.805
19 (providing the legislative directive that LUBA “decisions be made consistently

¹ The county modeled the amendments on the Clackamas County event code provisions. Record 4.

1 with sound principles governing judicial review”); *Gunderson, LLC v. City of*
2 *Portland*, 352 Or 648, 662, 290 P3d 803 (2012) (“In construing statutes and
3 administrative rules, we are obliged to determine the correct interpretation,
4 regardless of the nature of the parties’ arguments or the quality of the information
5 that they supply to the court.” (Citing *Dept. of Human Services v. J. R. F.*, 351
6 Or 570, 579, 273 P3d 87 (2012); *Stull v. Hoke*, 326 Or 72, 77, 948 P2d 722
7 (1997).)). We presume that the legislature enacts statutes “with full knowledge
8 of the existing condition of the law and with reference to it,” and we construe
9 statutes as “part of a general and uniform system of jurisprudence.” *Coates v.*
10 *Marion County*, 96 Or 334, 339, 189 P 903 (1920). We look to the provisions of
11 the relevant statute and other related statutes and seek to harmonize the statutes
12 so that all “provisions or particulars” have effect. ORS 174.010; *Daly v. Horsefly*
13 *Irr. Dist.*, 143 Or 441, 445, 21 P2d 787 (1933). We interpret the nonfarm uses
14 allowed by ORS 215.283(2) narrowly as opposed to expansively. *Stop the Dump*
15 *Coalition v. Yamhill County*, 364 Or 432, 454-55, 435 P3d 698 (2019); *Craven*
16 *v. Jackson County*, 308 Or 281, 286-87, 779 P2d 1011 (1989); *1000 Friends of*
17 *Oregon v. Clackamas County*, 320 Or App 444, 456, 514 P3d 553 (2022);
18 *Warburton v. Harney County*, 174 Or App 322, 327-29, 25 P3d 987, *rev den*, 332
19 Or 559 (2001).

20 We begin with the text, which is the primary indicator of the legislature’s
21 intent. Petitioners argue that the activities that the county may allow under ORS
22 215.283(2)(i) and ORS 215.448 are confined by the meaning of the terms “home”

1 and “occupation,” which are not defined by statute or administrative rule. Under
2 its plain meaning, when used as an adjective, “home” means “of, relating to, or
3 adjacent to a home.” *Webster’s Third New Int’l Dictionary* 1082 (unabridged ed
4 2002). “Home” as a noun means “the house and grounds with their appurtenances
5 habitually occupied by a family : one’s principle place of residence :
6 DOMOCILE” and “a private dwelling : HOUSE.” *Id.* “Occupation” means “an
7 activity in which one engages” and “a craft, trade, profession or other means of
8 earning a living.” *Id.* at 1560. Therefore, petitioners conclude, and we agree, a
9 “home occupation” is an activity that a person engages in at their principal place
10 of residence to earn a living.

11 Petitioners argue that the term “home” includes an inherent limitation that
12 the activity must be capable of being conducted or carried out within a residence
13 or residential structures that are typically associated with a dwelling such as a
14 garage or shop. 1000 Friends Petition for Review 9-10. 1000 Friends argues that

15 “Although, people can and do host weddings, family reunions,
16 memorials, and gatherings at their home, they do not do so as part
17 of a profession or occupation that invites the general public into their
18 home for the purpose of earning an income on a regular basis. Nor
19 do they do so on the scale that the county’s amendments would
20 allow. As built for residential use, a home or a dwelling is not
21 designed to accommodate or facilitate that kind of regular public use
22 or occupancy.” *Id.* at 10 (citation omitted).

23 1000 Friends’ argument is not supported by the text. First, nothing in the
24 terms “home” and “occupation” quantifiably limit the scale of an activity that
25 might be considered a home occupation. Second, as 1000 Friends recognizes, the

1 legislature specifically provided that a home occupation must “be operated
2 substantially in the dwelling; or other buildings normally associated with uses
3 permitted in the zone in which the property is located.” ORS 215.448(1)(c)(A),
4 (B). The legislature specified where the home occupation may take place and did
5 not limit the activities to those that may take place in a dwelling. Instead, a home
6 occupation may operate out of a nonresidential structure, such as a barn, so long
7 as the structure is normally associated with uses permitted in the zone in which
8 the property is located. Thus, the plain meaning of the word “home” does not
9 narrow the physical scope of the activities that may constitute home occupations.
10 We reject petitioners’ argument that a home occupation activity is limited to
11 activities that are capable of being conducted in a dwelling.

12 1000 Friends argues that accepting the county’s interpretation would
13 render the term “home” null because it would allow any occupation in any zone.
14 That conclusion is inaccurate. The term “home” limits occupations to properties
15 that contain a dwelling. ORS 215.448(1)(a) further limits those occupations by
16 requiring that the operator either reside on the property or be employed by a
17 resident of the property on which the business is located. Thus, the term “home”
18 is not rendered meaningless by an interpretation that does not limit home
19 occupation uses to activities that are capable of being conducted in a dwelling.

20 We conclude that nothing in the phrase “home occupation” prohibits the
21 county from authorizing event businesses as home occupations. ORS 215.448
22 authorizes a broad range of activities that a county may allow in resource zones,

1 limited by the standards set out in that statute. *See White v. Lane County*, 68 Or
2 LUBA 423, 456-57 (2013) (Holstun, concurring) (“The home occupations
3 authorized by ORS 215.448 are not really uses. Rather ORS 215.448 authorizes
4 approval of *any* use, so long as that use [satisfies the standards set forth in the
5 statute]. ORS 215.448 imposes no limits on the kinds of uses that may be
6 approved in resource zones beyond these four limitations.” (Citing *Green v.*
7 *Douglas County*, 63 Or LUBA 200, 208-09, *rev’d and rem’d on other grounds*,
8 245 Or App 430, 263 P3d 355 (2011) (emphasis in *White*)).

9 We proceed to consider the context. “Context includes other related
10 statutes.” *State v. Carr*, 319 Or 408, 411-12, 877 P2d 1192 (1994). Petitioners
11 point out that the legislature provided for event uses on farmland in ORS
12 215.283(4), which allows agritourism and other commercial events or activities.
13 Commercial events allowed under ORS 215.283(4) must be “incidental and
14 subordinate to existing farm use on the tract” and that provision includes limits
15 on the number of events, duration of events, and number of attendees, among
16 other things. ORS 215.283(4) does not include certain limitations applicable to
17 home occupations. For example, ORS 215.284(4) does not limit the allowed
18 number of employees or require that an owner or employee of the owner reside
19 on the property.

20 In its amendments allowing an event business as a conditional use home
21 occupation in agricultural resource zones, the county recognized and adopted
22 some, but not all, of the limitations that appear in the agritourism statute. For

1 example, the county applied the same 18-event limit. Record 4; ORS
2 215.283(4)(d)(D). Differently, ORS 215.283(4) allows between 100 and 500
3 people, while the county's amendments allow up to 750 guests. Moreover, while
4 the county's amendments require that the subject property be in farm use tax
5 deferral status, the county amendments do not require that events be incidental
6 and subordinate to farm use of the property or in any way related to and
7 supportive of agriculture, which are requirements for events under ORS
8 215.283(4).

9 Petitioners argue that ORS 215.283(4) provides statutory context that
10 demonstrates that the more generic category of "home occupation" does not
11 include a nonfarm event business that hosts large public gatherings or events. In
12 other words, we understand petitioners to argue that, because the legislature
13 expressly allows certain agritourism and other commercial events under ORS
14 215.283(4), the legislature intended that counties may not authorize event
15 businesses as home occupations on resource land.

16 Our inquiry is focused on whether the legislature intended to limit the types
17 of businesses that counties may allow as home occupations in exclusive farm use
18 zones. *See Holcomb v. Sunderland*, 321 Or 99, 105, 894 P2d 457 (1995) ("The
19 proper inquiry focuses on what the legislature intended at the time of enactment
20 and discounts later events."). The current language of ORS 215.283(2)(i) was
21 adopted in 1985 and refers to ORS 215.448, which was adopted in 1983 and
22 amended in 1995. ORS 215.283(4) was adopted many years later in 2011. We

1 may refer to later-enacted, related statutes “as indirect evidence of what the
2 enacting legislature most likely intended.” *Halperin v. Pitts*, 352 Or 482, 490,
3 287 P3d 1069 (2012); *see also Gaines*, 346 Or at 177 n 16 (later-enacted statutes
4 “can be of some aid in interpreting an earlier one”); *Schaefer v. Marion County*,
5 318 Or App 617, 624, 509 P3d 718 (2022) (referring to current statutes as
6 context).

7 Petitioners’ context argument is contradicted by ORS 215.283(6)(c),
8 which provides:

9 “The authorizations provided by subsection (4) of this section *are in*
10 *addition to other authorizations that may be provided by law*, except
11 that ‘outdoor mass gathering’ and ‘other gathering,’ as those terms
12 are used in ORS 197.015(10)(d), do not include agri-tourism or
13 other commercial events and activities.” (Emphasis added.)

14 We conclude that, in enacting ORS 215.283(4), the legislature did not
15 intend to displace or preclude event businesses operating as home occupations in
16 resource zones. In enacting ORS 215.283(4), the legislature could have, but did
17 not, contemporaneously amend ORS 215.283(2)(i) to clarify that “home
18 occupations” do not include event businesses and that ORS 215.283(4) is the only
19 path to conducting such events. Instead, the legislature specified that ORS
20 215.283(4) is “in addition to other authorizations that may be provided by law,”
21 expressing the legislature’s intent that ORS 215.283(4) is not the *only* path to
22 conducting lawful events on resource land. ORS 215.283(6)(c).

1 The legislative history of ORS 215.283(4) supports that interpretation. We
2 summarized the legislative history of ORS 215.283(4) in *Friends of Yamhill*
3 *County v. Yamhill County*, 80 Or LUBA 135 (2019), *rev'd and rem'd*, 301 Or
4 App 726, 458 P3d 1130 (2020). We reiterate some of that history here.

5 The 2011 legislature recognized that unpermitted commercial event uses,
6 such as weddings, concerts, and other facility rentals were occurring on farmland.
7 The legislature sought to create a pathway for county review of such nonfarm
8 commercial uses and allow orderly conflict in the land use process. Audio
9 Recording, Senate Committee on Environment and Natural Resources, SB 829
10 and SB 960, Apr 14, 2011, at 39:00 to 40:58 (statement of Governor's Natural
11 Resources Policy Advisor Richard Whitman), <https://olis.leg.state.or.us>
12 (accessed July 31, 2019). Counties took the lead in identifying the primary
13 concerns and proposing legislative solutions. *Id.* at 16:00 (statement of
14 Association of Oregon Counties representative Art Schlack). The Association of
15 Oregon Counties (AOC) Board of Directors created the Farmland Activities Task
16 Force (Task Force) in April 2010. The Task Force studied the issues and conflicts
17 surrounding nonfarm events and activities on farmlands and generated a report
18 and recommendations (Report). Exhibit 6, Senate Committee on Environment
19 and Natural Resources, SB 960, Apr 14, 2011, Task Force Report and
20 Recommendations (December 13, 2010). The Report explained:

21 “Based upon its review of the activities and events that are taking
22 place on farmland and associated issues and concerns, the Task
23 Force concluded that existing law does not clearly provide

1 opportunities to conduct activities and events on farmland. The
2 Farmland Activities Task Force has developed a legislative concept
3 to clarify how activities and events in conjunction with farm use may
4 be permitted on farmland. The legislative concept provides
5 additional opportunities for counties to permit activities and events
6 on farmland.

7 “This proposed legislation is intended to provide county planners
8 with additional tools for their tool boxes. The opportunities provided
9 in the legislation would be used at the option of counties and are in
10 no way meant to be mandatory. The Task Force realizes these
11 recommendations may not provide an opportunity to conduct
12 activities and events on farmland which do not promote farm use.
13 However, we believe it is a good basis for providing balance
14 between the conservation of farmland and the need of farmers to use
15 their land in beneficial yet non-traditional ways.” Report
16 Introduction (internal citation omitted).

17 The Report included a survey that described the counties’ responses
18 regarding the types of activities and events being conducted on farmland and
19 whether and how the counties reviewed those uses. Report Ex B. The counties’
20 responses indicated that at least five counties reviewed event activities such as
21 weddings on farmland as home occupations. (Clackamas, Lane, Polk, Union,
22 Wasco). *Id.* Washington County suggested that the Land Conservation and
23 Development Commission could adopt rules clarifying whether event businesses
24 “fit within existing allowed non-farm uses, or whether it is a new non-farm uses[.]
25 * * * For example, the OARs could clarify whether weddings are allowed as
26 private parks, home occupations, or accessory to a winery. Currently, every
27 county treats them differently.” Report Ex B at 13. Yamhill County suggested
28 that “[i]n most cases, activities should be allowed through the conditional use

1 process and should only be allowed when there is a clear link to the promotion of
2 farm use.” Report Ex B at 14.

3 Even if the legislature in 1985 did not expressly intend to allow event
4 businesses as home occupations on resource land, the context and legislative
5 history of ORS 215.283(4) indicates that the legislature was aware in 2011 that
6 event businesses were being approved and operated as home occupations on
7 resource land in some counties. The legislature could have, but did not, amend
8 ORS 215.283(2)(i) to clarify that “home occupations” do not include event
9 businesses or could have otherwise provided in ORS 215.283 that ORS
10 215.283(4) is the only path to conducting such events. We conclude that, in
11 enacting ORS 215.283(4), the legislature did not intend to preclude counties from
12 authorizing event businesses as home occupations in resource zones. That
13 conclusion is supported by the text of ORS 215.283(6) and the legislative history
14 of ORS 215.283(4).

15 Petitioners cite to the legislative history of ORS 215.448, which includes
16 testimony indicating that the legislature contemplated that home occupations
17 include “cottage industries” such as “candlemakers, stain glass works, carriage
18 works, model builders, people making high tech component parts, people who
19 are appraisers, [and] insurance people who have secretaries.” 1000 Friends’
20 Petition for Review 15 and FOMC’s Petition for Review 11 (citing Audio
21 Recording, House Committee on Environment and Energy, HB 2625, Apr 27,
22 1983, Tape 174, Side A at 3:15 (statement of HB 2625’s sponsor Rep Andersen).

1 We agree that the cited legislative history indicates that the enacting legislature
2 might have had a narrow view of what activities constitute “cottage industries.”
3 However, the legislature did not adopt any specific limitations into ORS 215.448,
4 for example by providing a list of characteristics or examples that could limit the
5 types of activities that could constitute home occupations. Instead, ORS 215.448
6 authorizes approval of any activity that satisfies the standards therein.
7 “[W]hatever the legislative history might show about the legislature’s intentions,
8 those intentions must be reflected in actual statutory wording that, when
9 reasonably construed, is capable of carrying out such an intention.” *State v.*
10 *Patton*, 237 Or App 46, 53, 238 P3d 439 (2010), *rev den*, 350 Or 131 (2011).

11 Even where the legislative history demonstrates that specific
12 circumstances motivated a bill, that history does not necessarily mean that the
13 legislature intended an enactment to address only those circumstances. Often, as
14 with ORS 215.448, the legislature responds to specific issues by enacting a statute
15 that is broader than the initial issue. *See, e.g., Hamilton v. Paynter*, 342 Or 48,
16 55, 149 P3d 131 (2006) (“[T]he statutory text shows that, even if the legislature
17 had a particular problem in mind, it chose to use a broader solution.”); *South*
18 *Beach Marina, Inc. v. Dept. of Rev.*, 301 Or 524, 531, 724 P2d 788 (1986) (“The
19 legislature may and often does choose broader language that applies to a wider
20 range of circumstances than the precise problem that triggered legislative
21 attention.”).

1 The policy preference that petitioners advocate for in this appeal is a matter
2 that may be taken up with the legislature. It is not a limitation found in the
3 statutory interpretation of ORS 215.283 and ORS 215.448.

4 The first assignment of error is denied.

5 **SECOND ASSIGNMENT OF ERROR (1000 Friends)**

6 In their second assignment of error, 1000 Friends argues that we have
7 previously erred in interpreting ORS 215.448(1)(b), which provides that a home
8 occupation “shall employ on the site no more than five full-time or part-time
9 persons.” In *Green v. Douglas County (Green III)*, we concluded that the statute
10 allows an applicant to count the number of persons who are employed on site at
11 any given time rather than the total number of people employed to carry out the
12 use. 67 Or LUBA 234, 244-246, *aff’d*, 258 Or App 534, 311 P3d 527 (2013).
13 Under that interpretation, a business allowed as a home occupation could employ
14 more than five persons, so long as no more than five employees are ever on site
15 at the same time. We revisited and reaffirmed that interpretation in *1000 Friends*
16 *of Oregon v. Clackamas County*, ___ Or LUBA ___ (LUBA No 2020-051, Oct
17 30, 2020) (*Herkamp*) (slip op at 15-16). 1000 Friends appealed our decision in
18 *Herkamp*. The Court of Appeals affirmed our decision. *1000 Friends of Oregon*
19 *v. Clackamas County*, 309 Or App 499, 483 P3d 706, *rev den*, 368 or 347 (2021).
20 1000 Friends argues that interpretation is inconsistent with the language of the
21 statute. Even if we were persuaded to reconsider our prior decisions in *Green III*

1 and *Herkamp*, which we are not, we have no authority to disregard the Court of
2 Appeals' decisions. Accordingly, 1000 Friends has stated no basis for remand.

3 1000 Friends' second assignment of error is denied.

4 **SECOND ASSIGNMENT OF ERROR (FOMC)**

5 The amendments allow the county to permit event businesses that can host
6 events of up to 750 people. As explained above, ORS 215.448(1)(b) provides that
7 a home occupation "shall employ on the site no more than five full-time or part-
8 time persons." LUBA and the Court of Appeals have interpreted that provision
9 to mean that a business allowed as a home occupation could employ more than
10 five persons, so long as no more than five employees are ever on site at the same
11 time. *Green*, 67 Or LUBA at 244-246; *Herkamp*, ____ Or LUBA at ____ (slip op
12 at 15-16).

13 The county decided that the "maximum number of participants is 750;
14 larger events must obtain a mass gathering permit." Record 4-5. The county did
15 not explain how a home occupation event business hosting events of up to 750
16 guests could comply with the five-employee limitation. FOMC observes that the
17 county's reference to mass gatherings suggests that the county decided on 750-
18 guest maximum because that number is the maximum number of guests
19 allowable without constituting a mass gathering. *See* MC 9.25.030(A) (defining
20 "small gathering," a type of "outdoor mass gathering" for which a permit is
21 required, as "any assembly of persons whose actual number is, or reasonably can

1 be anticipated to be, less than or equal to 3,000 but more than 750 persons at any
2 time”).

3 FOMC argues that the amendments are not supported by adequate findings
4 or an adequate factual base because there is no explanation or evidence that five
5 employees can feasibly support up to 750 event attendees. FOMC points out that
6 an event for 750 guests with five employees on site means that only one employee
7 would be available to serve up to 150 guests, even assuming that no other
8 employees were required on site for other activities (e.g., food preparation,
9 parking, safety, security, sanitation, entertainment).

10 There is no generally applicable requirement that legislative land use
11 decisions be supported by findings. However, the decision and record must be
12 sufficient to demonstrate that applicable criteria were applied and “required
13 considerations were indeed considered.” *Citizens Against Irresponsible Growth*
14 *v. Metro*, 179 Or App 12, 16 n 6, 38 P3d 956 (2002). In addition, Statewide
15 Planning Goal 2 (Land Use Planning) requires that a legislative land use decision
16 be supported by “an adequate factual base,” which is an evidentiary standard that
17 is equivalent to the requirement that a quasi-judicial decision be supported by
18 substantial evidence in the whole record. *1000 Friends of Oregon v. City of North*
19 *Plains*, 27 Or LUBA 372, 378, *aff’d*, 130 Or App 406, 882 P2d 1130 (1994).
20 Substantial evidence exists to support a finding of fact when the record, viewed
21 as a whole, would permit a reasonable person to make that finding. *Dodd v. Hood*

1 *River County*, 317 Or 172, 179, 855 P2d 608 (1993); *Younger v. City of Portland*,
2 305 Or 346, 351-52, 752 P2d 262 (1988).

3 The county responds that the 750-person maximum allowed by the
4 amendments is not allowed by right. Instead, to obtain approval for the 750-
5 person maximum, an applicant would have to satisfy all the conditional use
6 criteria, including the five-employee limit, and FOMC has not met its burden in
7 a facial challenge that the challenged provisions are facially inconsistent with
8 applicable law and are incapable of being applied consistently with controlling
9 law. *Hatley v. Umatilla County*, 68 Or LUBA 264 (2013). Further, the county
10 argues that FOMC has not established that the challenged conditional use home
11 occupation regulations are not capable of being applied consistently with ORS
12 215.448(1)(b). The county does not respond to FOMC's argument the
13 amendments are not supported by an adequate factual base.

14 The county argues that ORS 215.448 sets no express limit on the number
15 of guests. That is true. However, we agree with FOMC that the five-employee
16 limit is an indirect limit on the size and scope of the home occupation activities.
17 While we cannot say as a matter of law that five employees may not feasibly
18 support and manage an event of up to 750 event attendees, we agree with FOMC
19 that the decision and record do not demonstrate that the county considered the
20 five-employee limit in ORS 215.448(1)(b) in adopting a 750-person maximum.
21 We also agree with FOMC that the county's decision and the record do not
22 demonstrate that five employees can support up to 750 event attendees. The

1 county's response that other conditional use criteria will likely limit the permitted
2 event attendees in the future does not resolve this issue. Remand is appropriate
3 for the county to consider the five-employee limit in ORS 215.448(1)(b) in
4 adopting a 750-person maximum and explain how that maximum is consistent
5 with the statute, with that explanation supported by an adequate factual base. We
6 reach this conclusion under the standard of review for an adequate factual base.
7 *See Naumes Properties, LLC v. City of Central Point*, 46 Or LUBA 304, 315 n
8 16 (2004) (explaining that the Goal 2 requirement for an adequate factual base
9 applies to all applicable law because LUBA "must have *something* from the
10 decision or record to base our decision upon" (emphasis in original)).

11 FOMC's second assignment of error is sustained.

12 The county's decision is remanded.