



Save Helvetia
www.SaveHelvetia.org

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*Protecting Helvetia's farmland, forestland,
cultural heritage and natural resources*

January 27, 2014

Ms. Michelle Pimentel
Department of Land Use and Transportation
Washington County
155 N. First Street, Suite 350
Hillsboro, OR 97124-3972

Re Agri-tourism Advisory Committee - Comments

Dear Ms. Pimentel,

Thank you for giving Save Helvetia representatives the opportunity to participate in the Agri-tourism Citizens Advisory Committee. The meetings held in December 2013 and January 2014 were informative and useful in formulating a basis for evaluating the implementation of SB 960 in Washington County. Below are comments from Save Helvetia which outline our concerns and recommendations for any proposed ordinance.

Agri-Tourism Position Paper

Save Helvetia is a 501(c) 4 advocacy organization that advances policies, leaders, and actions that protect Helvetia's treasured agricultural, natural, and cultural resources for our and the region's present and future generations. We have been invited by Washington County to be represented among a "technical advisory committee" for the possible implementation of SB 960 in Washington County. SB 960 is the 2011 bill that

allows counties to implement “agri-tourism” within certain parameters set by the legislature.

We recognize the mutual benefit and relationship between the surrounding rural farmlands and our neighboring urban centers and suburban neighborhoods. We recognize the economic benefit of bringing buyers to farms as well as facilitating produce to markets. We recognize that Washington County’s services delivery to the rural, unincorporated areas is based on the anticipation that rural areas do not require an urban level of service. Subsequent property taxes and county service delivery have been structured accordingly. The rural unincorporated areas are likewise outside of the enhanced sheriff patrol districts and this is reflected in lower taxation and service delivery.

SB 960 of 2011

There are many details but in essence, this is “permissive” legislation that counties may or may not take up, depending on their determination and local context. Washington County has begun their determination phase and the technical advisory group is a step in collecting perspectives in anticipation of the commissioners taking this up during the ordinance season of 2014.

Upon approval of all or parts, counties could create a permit process for public events in the Exclusive Farm Use (EFU). It is required that permitted events be subordinate to agriculture and not harm farm soils through compaction, grading, paving, or building of permanent structures. The legislation offers limits on quantity, duration, hours, attendance, and construction of structures. A minimum parcel size of 10 acres is required, and applicants must plan for traffic, parking, sanitation, and solid waste in permit applications. Periodic review of permits occurs at different frequencies. Regulations increase with intensity and frequency of events.

Historic Context

In the late 1800s, Portland built a road to the fertile Tualatin Valley to help bring farm goods to market, supplying that center’s developing population. Later, people occasionally/seasonally came out to farms for u- pick and u-cut opportunities. Later still and with the advent of automobile travel, farms created “farm stands”, marketing their seasonally harvested produce/products on site to the traveling public: berries, corn, nuts, and honey. More recently, Community Supported Agriculture (CSA) farms offer subscription produce that may include coming to the farms for pick- up, collaboration with the farm/farmer, and/or coming to the farm for related events. Some farm enterprises offer participatory experiences: lavender, wine grapes, corn, among others.

Rural roads were built for “farm to market” connectivity, less for “market to farm” connectivity. Roads are single lane in either direction and come with drainage ditches

and gravel shoulders. The movement of agricultural machinery and equipment in the EFU is critical to the success of farm operations as with the passage of time, farmers are more apt to lease tracts that are disconnected from one another. The practice of agriculture can include spraying, plowing, and other activities that might come into conflict with events: noise; dust; herbicides; insecticides. Recreational users of farm areas can bring obstacles to the practice of farming: importation of noxious weeds, threats of fire, possible driving under the influence, trespassing, traffic obstacles, among others.

Newer Developments

In the past 15 to 20 years, we have witnessed a spike in demand by urban and suburban residents seeking rural settings for a range of non-agricultural event activities: weddings; corporate picnics, concerts. Public event venues in the metro area are limited. Private event venues are costly, limited, and competitive. Some events are also limiting by urban ordinances for noise, for example.

Outdoor and/or rural settings can be preferable during summer months. We have witnessed an increase in event offerings by area farmers on farm land: Christmas tree related events, Halloween related pumpkin events, lavender festivals and tours, winery events and tours, garlic harvest events, corn festivals, among others. The interaction between grower and purchaser provides recreational outlets on the one hand and supports the agricultural economy on the other. Urban meets rural, in the rural.

We have also observed some trying to build event parks and wedding mills, whose operations are substantially income related to business plans but whose ties to active agricultural operation is thin or suspect. We have experienced farm land being taken out of production, compacted and paved, with permanent structures built. We have observed some event venues bringing substantial negative impacts to the surrounding rural communities: traffic, noise, dust, importation of noxious weeds, traffic obstacles to farm equipment, obstacles to emergency vehicle access and egress, threats of fire, trespassing onto private lands, alcohol use at events with impaired driving, and health and safety dangers at the venue awaiting an unwitting public.

We have observed some who are in persistent non-compliance to permitting conditions. We have learned that county staff are understaffed and underfunded to provide periodic monitoring. It seems to take a lot of non-compliance before enforcement ensues. The county calls its system “complaint driven”, relying on citizen complaints to initiate their activity. On some occasions neighbors have sensed the need to hire attorneys to

promote compliance and/or enforcement. County commissioners have spoken about “bad apples in the barrel” with regard to those that seek to exceed the farm stand traditions. Some commissioners pride themselves on keeping county staffing low and on not creating excessive regulation.

During several iterations of other incidents involving non-compliance, the “soil fill” debates, citizens typically argued for increased county staffing, increased county monitoring, and increased county enforcement. The majority will of the county commissioners instead relied on the subjective judgment of the applicant landowners, and monitoring was through applicant self report, notwithstanding the huge financial temptations of receiving development soils.

Living in a major metropolitan area with a rapidly growing population, we understand the increasing demand for rural venues. One farmer put up a website several years ago in anticipation of Washington County passing this implementation at an earlier time. The website was immediately booked up with weddings for a solid year. Those events could not be fulfilled however, given the timeline of implementation.

The tri-county area is of special concern given its population base and penchant for the out-of-doors during summer months, the demand for events during this summer window is expected, if allowed, to cause a crush of events all summer long. How is this to be balanced with the repose of those living and working in the EFU rural areas?

Considerations and Context

- **Seasonal:** The warm weather months of the year are typically May through September. The demand for some types of events also coincides with summer months: weddings for example. The **desire** to be at an out-of-door event in the country is substantially a warmer weather pursuit although not always. Farmers are typically quite busy during the spring, summer, and fall. This is parallel to those times of year when outdoor events adjacent to a large urban area during the summer months are predicted to be incessant. It will be a rare farmer who has time to host agri-tourism. Rural residents expect some privacy and outdoor repose for themselves, during this timeframe.
- **Economic Impacts of Agri-tourism:** Some property owners might recognize that the income to be made from events could be more lucrative than from agriculture itself. This might create a distraction to farming. As with the ongoing “soil fill conflict”, some property owners found that they could make more money covering their soils with development fill than by bringing a crop to market. Land speculators might purchase farm land as “venue land” and structure their event

center operations, camouflaged as farms with farm stands. Property owners might hire event coordinators and wedding planners to manage the event operations. What Washington County allows will structure the financial temptation.

- **Taxes and Services:** From a tax base point of view, those residing in EFU rural areas pay a rate based on an anticipated level of county service: lower tax, decreased services. If the demand on service (monitoring, enforcement) goes up, will this generate demand for an increase in taxes to those living in the EFU? Not all EFU rural residents will be beneficiaries of agri-tourism, in fact likely only a select few. Should permit fees then cover the cost of any increased service demand? It is also likely that the county may permit agri-tourism, elect not to charge higher permit fees, and not deliver any added service levels for monitoring or enforcement. The past decade leads us to be most concerned about this approach, one we would term “strategic neglect”. Without any change in service levels, agri-tourism events would place a higher burden on neighbors to either tolerate nuisances and dangers or become complainants against neighbors, possibly straining community relations in the rural areas. In Helvetia, sheriff deputy FTE is shared with the large expanse of Western Washington County. The response to “nuisance” complaints is understandably low in the 4 tiered response matrices. While much of the demand for events will come from urban, incorporated residents, there is no ready way to have them pay for the service demand change. Maybe Washington County might create an event tax. On Sauvie Island, Multnomah County requires parking permits to offset the cost of parking enforcement. The Oregon Snow Park Permit offsets the cost of road enforcement.
- **Event-Related Service Requirements?** Some events (Helvetia Half Marathon) require the purchase of a level of sheriff FTE to help monitor roads and junctions during the event. Perhaps event promoters will be expected to pay for enhanced weekend patrol in the EFU. In Oregon, traffic fatalities are greater in rural areas due to a number of variables: response time is longer; no dividers on rural roadways; urban traffic tends to be “velocityized” compared to the requirements of rural roads.
- **Are We Ordinance Ready?** Some county ordinances were designed for rural dwellers and have not been updated to meet the growing population and growth demands of today’s circumstances, much less for agri-tourism. The urban unincorporated population has grown significantly, yet our county noise ordinance is an historic and largely unenforceable ordinance that requires the

physical presence of a deputy to personally witness any violation. Outside of enhanced sheriff patrol districts, there are not personnel to respond to type 4 complaints.

Noise carries longer distances in rural areas without urban structures to absorb it or break it up. We are concerned that any use of amplification in rural areas outside of structures has been and will continue to be a primary conflict. The current noise ordinance also treats Sunday and national holidays as days of quiet. Will the implementation of SB 960 and the possible use of county “variances” take these days of quiet away? Without 100% good neighbor agreements within one mile radius, we don’t think so.

We have communicated noise concerns to the City of Hillsboro from hearing bands play at the Hillsboro Stadium on Sunday mornings up to 2 miles away. The current county noise ordinance requires that noise be witnessed (by the deputy) from inside of a “noise sensitive unit”, meaning residence, hospital or school. Yet in the EFU, many have outdoor areas where they relax. Will they be evicted from their outdoor “living room”?

Washington County’s Noise Ordinance is 8.24.030. Certain noises are exempt from it with farming being one exemption. If the event is supposedly subordinate to agriculture, will that then make wedding event noise exempt? We do not think so.

The Washington County Noise Control Task Force, a subcommittee of the Committee for Citizen Involvement, made up of volunteers from across the CPOs, authored an assessment of our noise management in 2004. Recommendations for change were presented to the then Board of County Commissioners. That report and its recommendations are available at www.wcnctf.org. Subsequently, Sheriff deputies began encountering amplified Rave gatherings in the rural areas and sought an intervention tool. The Sheriff sought authority to confiscate amplification equipment. The Board of County Commissioners amended the noise ordinance for this but would not open the remainder of the ordinance for further amendment. At one point, Commissioner Brian had an ordinance revision drafted by the Office of County Counsel. It offered the highest decibel level of any jurisdiction in the county, made noise a citizen-based complaint process, created a higher fine for an unsubstantiated complaint than for a noise infraction, among other items. The task force objected. Nothing has followed since.

- **Rural Relations:** In some rural areas, families have lived for generations and have close relations with rural neighbors. Violating a neighbor's trust or privacy or repose is often self correcting and does not require government intervention. However, we have experienced some residents who would maximize profit at the expense of neighbor relations. As agri-tourism is implemented, unfortunately, you must consider a system that does not rely on the event sponsors' empathy, trust, or ingrained good neighborliness. You might also require a system that does not rely on the self control of neighbors in the face of persistent violations.
- **Permit Conditions:** Will there be general permit requirements that the county DLUT would attach to any issued permit? What conditions would be included in those, if any? Recently the DLUT required a permit for those not wanting their frontage sprayed with herbicide but instead to maintain the frontage along their property themselves. It came with multiple pages of regulations. What generic regulations will be passed along to agri-tourism permit applicants?
- **Liability Protection:** Shouldn't attendees expect that they will have liability protection for themselves while attending an agri-tourism event? Neighbors might require liability protection from event goers in the event of damage or loss. Washington County should require permit holders to hold the county harmless in the event of a tragedy, unless the county is somehow negligent.
- **Advertising:** Events in the rural area typically use signage along the roadways or utility poles to advertise and/or provide directions to an event, however there are only so many poles and frontage. This can become unsightly and detract from the ambiance sought by all. Some might not remove signage in a timely way, the right of way might be impacted, and utility poles compromised.

Recommendations

1. We recommend the required use of written **good neighbor agreements** to assure a feedback loop between event operators and surrounding neighbors, and Washington County. Compliance to agreements should become part of any permit review.
2. **Permit review should be annual** for all level of permit holders, allowing for prompt feedback and adjustment of conditions. Only after an operator has a clear record of compliance and absence of neighbor complaint should a multi-year permit be considered.

3. **Limitations** should be placed on events, May through September. Recognize that the summer months are limited and that it is reasonable to expect that neighbors should not be subjected to a full summer of weekend events. Once per month but not as long as 72 hours each: day events only. Sunday should remain a day of silence. On Saturdays, as per most noise ordinances across the nation, noise stops at 7:00 pm.

4. **Amend the county noise ordinance.** Without the availability of a deputy or code enforcement officer and without the high priority of a noise complaint, these nuisances will likely go without response. Citizens should be empowered to take an objective measure through a reliable noise instrument, measured at the property line of the event venue. Noise carries in the rural areas and a reasonable decibel should be arrived at for agri-tourism events. Amplification outside of structures should not be allowed. The county should purchase noise monitoring equipment that event facilitators might use to monitor their noise levels and self regulate. Neighbors might also check one out for monitoring of events. Periodic training might be required and offered.

5. Besides deputies, the county has few code enforcement officers and they typically work weekdays, day hours. Yet these events will cluster on weekend evenings. If these events are permitted, we recommend that a **citizen complaint line** be established or arrangements made with the 911 system? An **on call or standby code enforcement personnel** should be on duty. Coordination with the sheriff's office should occur, recognizing that many of the event attendees are from cities and/or enhanced patrol districts.

6. Dust is known to be detrimental to certain crops, seed crops among them. Dust abatement is protective of crops. Privately maintained road beds need consideration for agri-tourism impacts. Permit applicants should be made responsible for **dust abatement** during events utilizing gravel roads.

7. Noxious weeds can contaminate seed crops. Continual traffic from outside the area can become a conduit for the importation of noxious weeds, creating damage and loss to farm operations. The county should consult with the Oregon Department of Agriculture and the state Farm Bureau for solutions about how operators should **mitigate for weeds.**

8. The county should **not create any "event overlay district"** that creates a protective bubble around event venues that takes rights away from neighbors. Adjacent farm activity should not be hindered and the movement of farm equipment should not be slowed. The repose of neighbors should not be diminished by hours or days or decibels.

9. The County Sheriff and the Washington County Alcohol and Drug Program should provide a **written impact assessment** of the risks of increased alcohol use at events in the rural area. Our non-shouldered roads are without dividers and are treacherous to unwary outsiders. Accidents in the rural areas can be more predictive of poor medical outcomes as they are further from emergency access and triage, more likely to be metal on metal accidents, and/or rollover into the rural ditches.

10. As taxpayers, we are concerned that our county government not create taxpayer liability for event mishaps. We recommend that permit applicants be required to agree to hold the county harmless, unless the acts or omissions are clearly those of the county. We recommend that permit holders be required to show **proof of liability insurance** to protect attendees from harm during the event. The insurance should also protect the neighboring area of the event venue from damage and loss.

11. If the county does not anticipate monitoring or enforcing the permit conditions, neighbors should be given a **clear idea of what the conditions are** and where they can turn, what they can expect, and how to seek reasonable and timely relief. Will there be access to a hearings officer, for example? Will the county have a website for agri-tourism permits, conditions, and processes?

12. A **code enforcement officer should be made available** to randomly arrive at an event like OLCC does to enforce and assure compliance with the serving of alcohol. This might also hold for the health department responsible to check on food management.

13. We recommend that any applicant that already has **an established history of non-compliance** to county permitting (X 2), **not be permitted to facilitate events** under this county's implementation of SB 960.

14. We recommend that **event permits be allowed under 2 categories**, have separate fees, limit to a maximum of one individual event that lasts no more than 3 days or 72 hours. Then for shorter events, limit the total number of event days per year.

15. Even 10 acres tracts can produce noise in the rural area. We recommend that event **venues less than 1 mile from neighboring parcels be required to submit written good neighbor agreement** that includes all adjacent neighbors.

16. We recommend some testing for the subordination of the agri-tourism event to the existing farm operation: the county might devise a matrix of **events that are reasonably subordinate to certain agricultural practices** to help define to the event public what might grow out of this.

17. **Signage standards should be addressed in permits.** The rural utility poles are only so many and the rural serenity can become blighted by signage never removed or excessively placed. Signage pick-up should not become the domain of county volunteers picking up debris along the rural roads.

18. **Plan to revisit the ordinance** within a time certain: 2 years. This will allow for evolution from what is learned. In this way, it will not be a burden to residents already suffering from impacts to seek improvements.

Thank you for this opportunity to contribute perspectives. We know from the past decade in Helvetia that this will remain an active item of concern for some time to come.

Respectfully,

Robert Bailey
Save Helvetia Board of Directors