

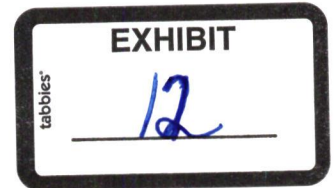


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Phone: (541) 647-2930
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RECEIVED

DEC 13 2023

Crook County
Community Development



Dec. 13, 2023

Crook County Planning Commission
Crook County Courthouse
300 NE 3rd St, Rm. 12
Prineville, OR 97754

via email and hand delivery

re: Crook County 217-21-001215-PLNG

Dear Commissioners,

On behalf of Central Oregon LandWatch, thank you for the opportunity to comment on this application. LandWatch respectfully urges the planning commission to deny the application. The applicants have not met their burden of proof to show the subject property qualifies for this nonfarm use in the county's EFU. The applicants have not demonstrated that the requested nonfarm use is necessary to support the commercial farm use of the property or the commercial agricultural enterprises in the area, nor that the requested nonfarm use would be incidental and subordinate to existing commercial farm use of the tract as required by law. Our specific arguments are below.

1. ***DCC 18.16.055(4); ORS 215.283(4)(d)(A): the agri-tourism or other commercial events or activities [must be] incidental and subordinate to existing commercial farm use of the tract and are necessary to support the commercial farm uses or the commercial agricultural enterprises in the area.***

The facts in the record do not support a finding of compliance with this standard.

- a. *The requested nonfarm use is not necessary to support the commercial farm uses or the commercial agricultural enterprises in the area.*

The evidence does not demonstrate the nonfarm use is essential to maintain the existence of either farm use of the subject property or commercial agricultural enterprises in the area. ORS 215.283(4)(d)(A); *Friends of Yamhill County v. Yamhill County*, 80 Or LUBA 135 (2019).



The application asserts that the property generates hundreds of thousands of dollars from farm use per year. Since there are no receipts showing what is either the gross or net income for this farm property, there is no evidentiary support for a claim that this or any nonfarm use is essential to maintain the existence of commercial farm use of the property.

There is equally no evidence that the requested nonfarm use is essential to maintain the existence of the commercial agricultural enterprises in the area. According to the staff report, the surrounding agricultural uses are hay farming and livestock operations. The attached aerial photographs show the commercial agricultural enterprises in the area have been unchanged for decades, since at least 1995. Fig. 1-4. Manifestly the existing commercial agricultural enterprises in the area have no need of any kind for the requested nonfarm use, but have been thriving without it for decades.

The requested nonfarm use, which causes traffic, noise, and conflicts with normal farm practices, would be detrimental to surrounding agricultural enterprises, and is in no way essential or even related to them.

An example of what might meet this demanding criterion would be a request for a cider production facility with retail sales in an area surrounded by apple orchards. Such a commercial use might be essential to maintaining the existence of the surrounding orchards. Here, the applicants are requesting a commercial nonfarm use that will provide a financial benefit to themselves alone. The nonfarm use requested is not even related to the surrounding agricultural enterprises, let alone essential for their existence. This criterion is not met.

- b. *Evidence in the record does not show the requested nonfarm use would be incidental and subordinate to the existing commercial farm use of the tract.*

The applicants have not provided facts the planning commission can rely upon to determine whether use of the property for the requested nonfarm use will be incidental and subordinate to existing farm use.

The applicants have provided no receipts for cattle or hay sales showing the amounts of money generated or linking the sales of farm products to the subject property. How many cattle did the subject property support last year, or the year before? How many cattle were purchased by the applicants? How many calves were produced? How many calves survived? How many cattle were



sold by the applicants, at what price? To whom did the income accrue? How much orchard grass was grown last year? How much was sold and how much was used on the farm? What price was it sold for? To whom did that income accrue? There are no receipts showing any such information.

The assertions and summary statements provided by the applicants do not provide the factual basis needed to support a decision about the income derived from commercial farm uses on the subject property that is required to determine whether the income from commercial nonfarm events at the level requested of 18 events per year will exceed the income from the farm itself.

The applicants did not provide the planning commission with the facts needed to make a decision. The spread of income provided by the applicants of "between \$40,000 to \$160,000" for cattle and "from \$250,000 to \$300,000" for hay is too great to allow the planning commission to decide whether income from weddings will be above or below that amount, especially given there is no indication of a commitment by the applicants to a fixed venue price. According to a local wedding planner, in 2023 wedding venues in Central Oregon charge up to \$40,000 per event.¹ At 18 weddings per year, this would generate \$720,000 per year for the subject property, swamping the inexact and undocumented ranges of commercial farm income provided by the applicants.

There is no factual basis for determining what the existing income from commercial farm use is or what the future income from the requested nonfarm use will be. The applicants have not met their burden of proof. The planning commission cannot determine whether the nonfarm use will be incidental or subordinate if the commission does not know what the relative income streams will be. Goal 2; ORS 215.416(9) (a decision must state the facts relied upon in rendering the decision). The planning commission does not have sufficient evidence before it to resolve the necessary issues of material fact.

2. *Applicants relinquished the 1992 conditional use upon the filing of this land use application.*

The applicants have advertised and conducted commercial weddings on their EFU property without the necessary land use permits. To prevent an enforcement action against them for conducting weddings on their EFU property without the necessary permits, the applicants signed an

¹ Fig. 5. Ponderosa Planning LLC, 2023, "What it costs to have a wedding in Central Oregon," Bend, Oregon. <https://ponderosaplanning.com>. Accessed Dec. 10, 2023.



Agreement to Abate with Crook County in February of this year. Fig. 6. The agreement remains binding on the applicants.

The applicants bound themselves by their signatures to:

"[V]oluntarily submitting an application to modify the CUP or an application for a new land use permit (collectively, 'Land Use Application'), with the option between the two to be decided by the Hustons in their sole discretion."

As explained in the Staff Report the applicants chose the latter course:

"In February 2023 the parties entered into an Agreement to Abate and within the timeline provided the Huston's have filed for a new land use permit through the current application for 18 commercial events through Crook County code Chapter 18.16.055."

The current proceeding was an opportunity for the applicants to pursue a new, modified application for the abandoned 1992 use, but the applicants declined and are instead pursuing a commercial nonfarm use permit.

The evidence shows the 1992 conditional use permit for barbecues for train riders walking from the dinner train was discontinued or abandoned after 2001 when the property was acquired by the Shanafelts. There is no evidence in the record that the 1992 use was continued by the Shanafelts. The application states:

"In 2001, the Campbells sold the Property to Raymond and Sandra Shanafelt. The extent of the Shanafelts' use of the pavilion is unknown."

The affidavit of neighbor John Fahlstrohm states:

"The Shanafelts purchased the ranch in the fall of 2001. They held no events to my knowledge."

Abandonment of a nonconforming use for even a single year requires a new application. The use is manifestly nonconforming since, for example, there is no dinner train (Fig. 3), the guests do not arrive on foot or by wagon, and the events are not catered barbecues for riders of a dinner train. Evidence in the record indicates the 1992 permitted use was discontinued or abandoned for multiple years. ORS 215.130(5),(7):

ORS 215.130

(5) The lawful use of any building, structure or land at the time of the enactment or amendment of any zoning ordinance or regulation may be continued;



(7)(a) Any use described in subsection (5) of this section may not be resumed after a period of interruption or abandonment unless the resumed use conforms with the requirements of zoning ordinances or regulations applicable at the time of the proposed resumption.

The 1992 nonconforming use rights have been lost by abandonment.

Earlier this year, David Orr, Joanne Orr, and LandWatch requested the County to enforce its land use laws by preventing the applicants from advertising and holding any more weddings on the subject property. As a precaution, the Orrs and LandWatch filed an appeal to LUBA. LUBA No. 2023-025.

The Orrs and LandWatch agreed to place the LUBA appeal on hold because the County and the applicants signed the attached Abatement Agreement, in which the applicants agreed to stop holding weddings and agreed to file a land use application within months to either modify the 1992 land use permit or obtain a new permit.

But the application states that "submitting this application indicates no intention or consent on the part of the Applicants to surrender or modify the aforementioned 1992 CUP." The applicants' statement indicates the applicants do not consider themselves bound by the Abatement Agreement, which was signed to prevent the applicants from conducting unlawful weddings under the guise of the 1992 permit.

These proceedings have no purpose if at their conclusion the applicants may continue to conduct unlawful weddings under the guise of the 1992 permit. The applicants willingly signed the Abatement Agreement and willingly bound themselves to choose one course of action or the other. The applicants chose to pursue this commercial use application rather than to pursue a new application for the 1992 use. The planning commission should determine whether the applicants' having held a wedding on May 20, 2023 as indicated in Fig. 8 (describing a wedding reception at Ponderosa Ranch in Prineville to be held on May 20, 2023) means the applicants violated the Abatement Agreement signed in February of 2023 in which the applicants bound themselves not to hold any more commercial weddings.

The planning commission should make clear in its decision that having chosen not to pursue a new application for the 1992 land use here, no rights remain to the applicants under that permit. In the alternative the planning commission should decline to hear this application and should direct



staff to proceed with enforcement action against the applicants for advertising and hosting commercial wedding events without a valid permit.

3. ***Request to hold record open for seven days.***

As a party to LUBA 2023-025, LandWatch was entitled to 20 days' written notice prior to the first evidentiary hearing in this matter. ORS 197.797(3)(f):

"(3) The notice provided by the jurisdiction shall:

(f) Be mailed at least:

(A) Twenty days before the evidentiary hearing; **or**

(B) If two or more evidentiary hearings are allowed, 10 days before the first evidentiary hearing;"

LandWatch requested in a Nov. 4th letter to the County that the hearing scheduled for Nov. 8th be cancelled, and that the initial evidentiary hearing be scheduled for a date 20 days after the statutorily required provision of written notice. The County did not cancel the hearing scheduled for Nov. 8th but rather held a hearing on that date and continued it until Dec. 13th.

These are not equivalent actions. Pursuant to ORS 197.797(6)(a), as LandWatch explained in its Nov. 8th letter, any participant in the initial evidentiary hearing, prior to the hearing's conclusion, may request the opportunity to present additional evidence and argument, and the local government shall grant such a request. ORS 197.797(6)(a):

(a) Prior to the conclusion of the initial evidentiary hearing, any participant may request an opportunity to present additional evidence, arguments or testimony regarding the application. The local hearings authority shall grant such request by continuing the public hearing pursuant to paragraph (b) of this subsection [at least seven days later] or leaving the record open for additional written evidence, arguments or testimony pursuant to paragraph (c) of this subsection [leaving the record open for at least seven days].

Together, ORS 197.797(3)(f) and ORS 197.797(6)(a) give parties the right to 20 days' notice before the first evidentiary hearing and, upon request at the first evidentiary hearing, the right to provide additional evidence for seven days following the first evidentiary hearing.

The County erred in concluding that opening and continuing a hearing on Nov. 8th would not impair the participatory rights created by ORS 197.797(3)(f) and ORS 197.797(6)(a). With this letter, LandWatch requests the record to be left open for new evidence and arguments for seven days, until Dec. 20th.



Sincerely,

/s/ Carol Macbeth

Staff Attorney
Central Oregon LandWatch



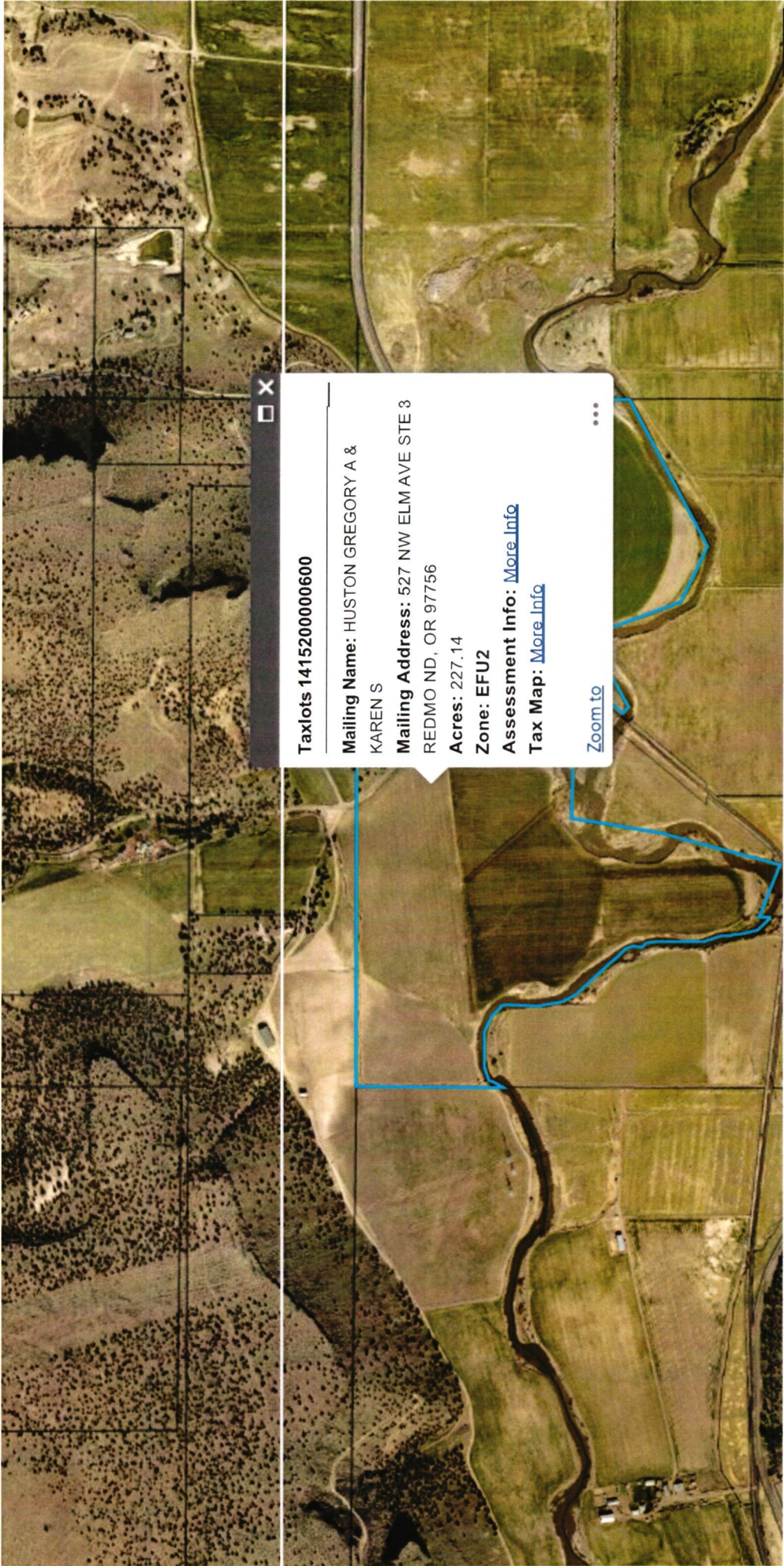


Fig. 1



Fig. 2
Oregon aerial image 1995

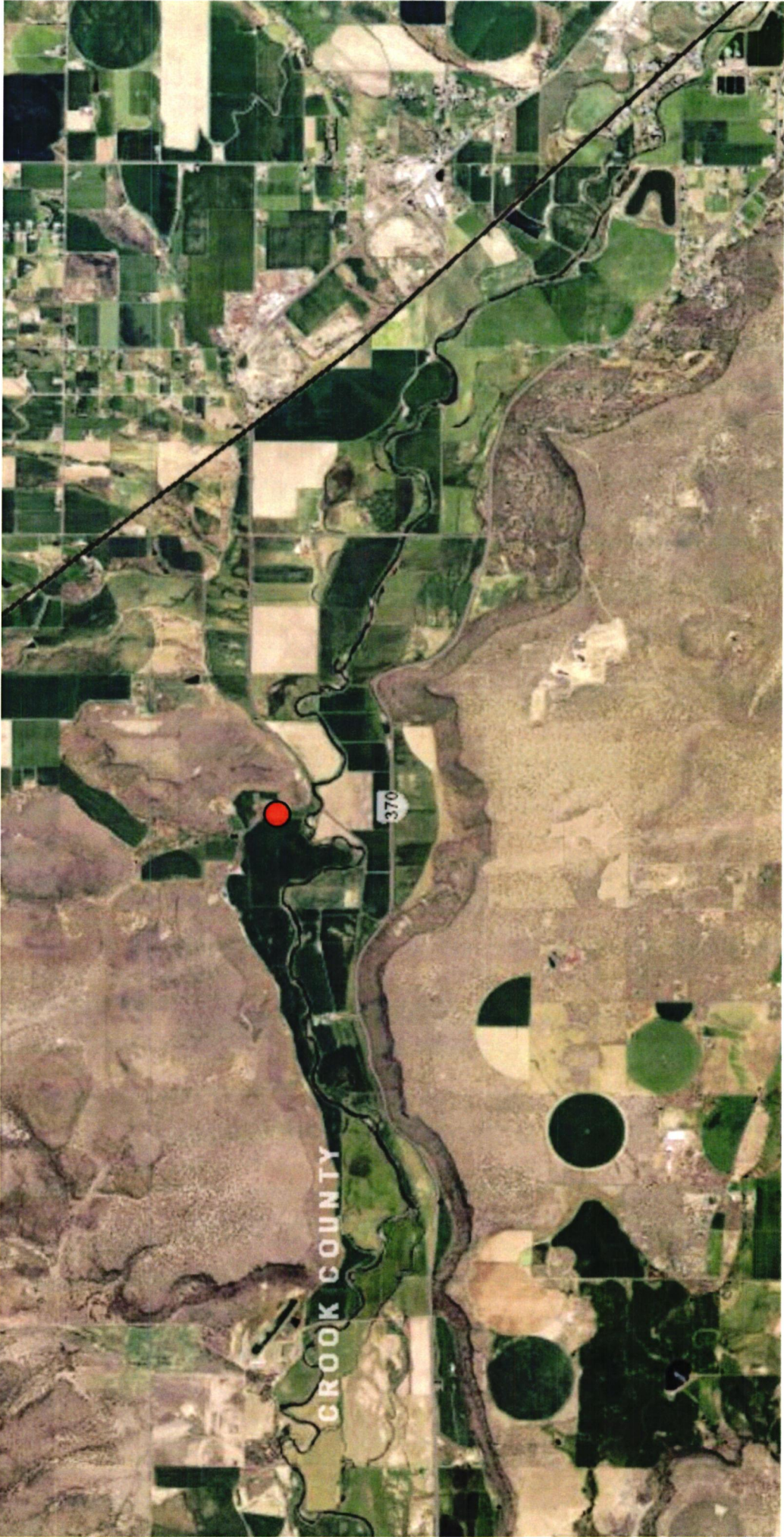


Fig. 3
Oregon aerial imagery 2012

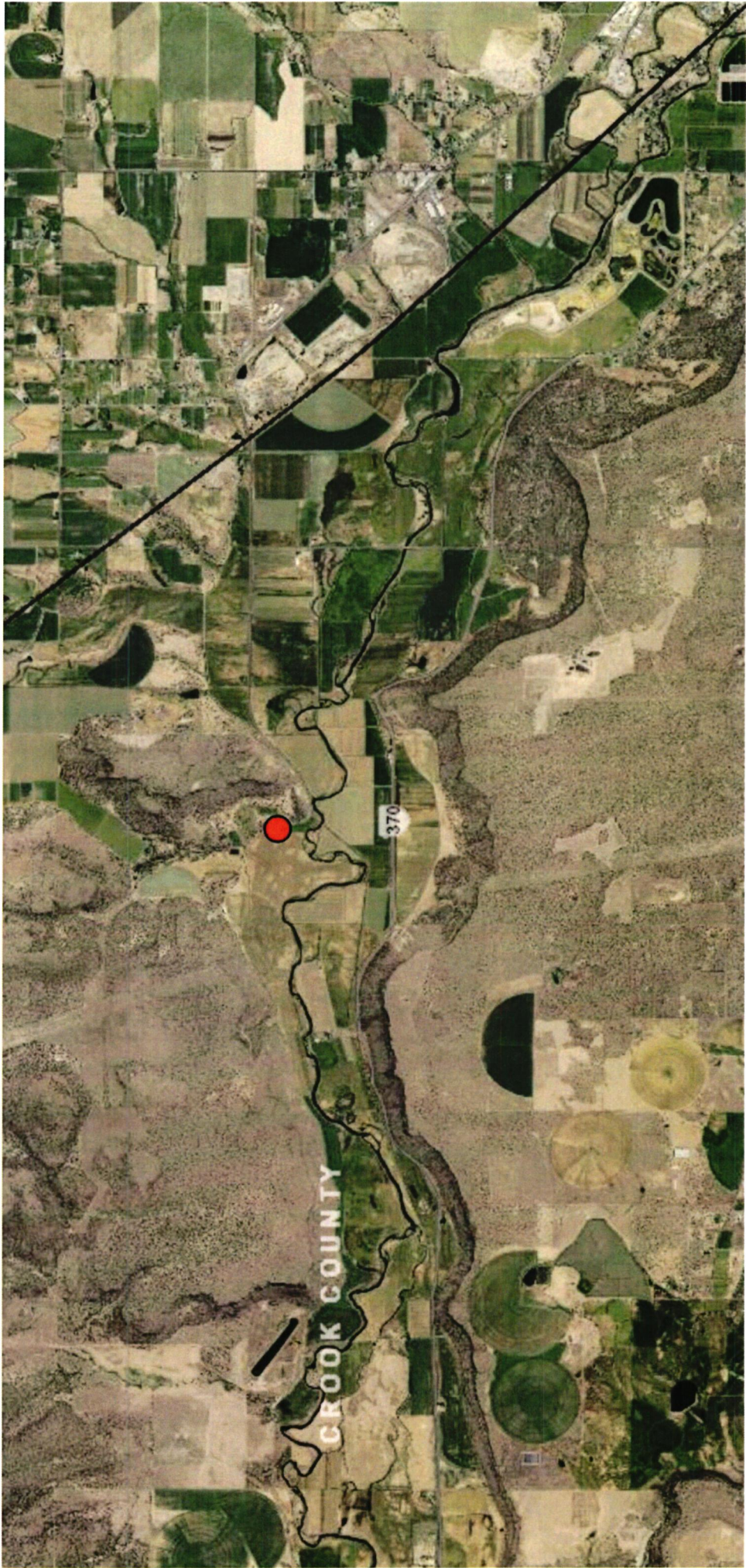


Fig. 4.
Oregon aerial imagery 2018

What it costs to have a wedding in Central Oregon

Planning Tips

IF MAKING A WEDDING BUDGET
FEELS DAUNTING, WE'RE HERE
TO DEMYSTIFY THE PROCESS +
HELP YOU INVEST WISELY IN
YOUR BIG DAY



Fig. 5



After celebrating your engagement, the first three steps in wedding planning are:

1. *Pick a date and location*
2. *Make a draft guestlist*
3. *Make a budget.*

When first making your budget, sit down with anyone contributing to the day (you two, parents, etc.) and discuss how much everyone is contributing and what expectations come with that. If your parents will pay for most of it but they expect to dictate the guestlist, that is important to know up front.

One of the most important factors in a wedding budget is the guest count. Some prices are static, meaning they don't change much based on the number of people. Here are a few examples of static costs:

- Planning services
- Photography & videography
- Attire & accessories
- Floral installations like arbors
- DJ/band
- Officiant

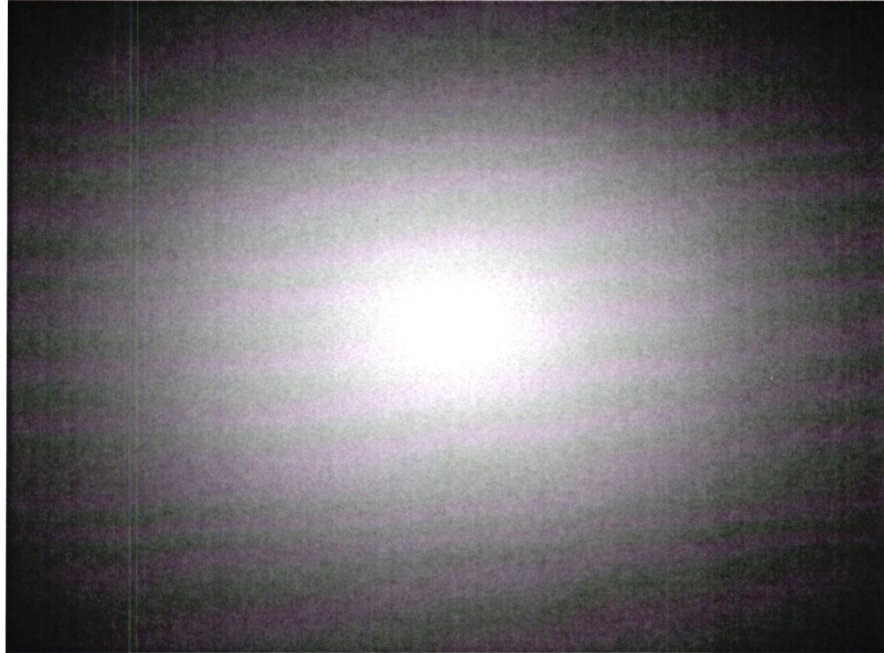
All of the other costs will fluctuate based on the number of guests, including:

- Venue
- Rentals (furniture)
- Rentals (tabletop items and decor)
- Catering
- Bar
- Dessert
- Paper goods & favors
- Hair/makeup
- Transportation
- Most florals, like personal flowers, centerpieces, etc.

**MOST* WEDDINGS IN CENTRAL
OREGON START AT \$300 PER
PERSON AND INCREASE FROM
THERE.**

**Most* weddings is of course a generalization. All weddings are unique, as they should be since each couple is unique! In

this post, we talk generally about the majority of couples we serve (and that our fellow vendors serve) in the Central Oregon area from April to November. We are also assuming that the budget includes most of the vendor categories listed above.

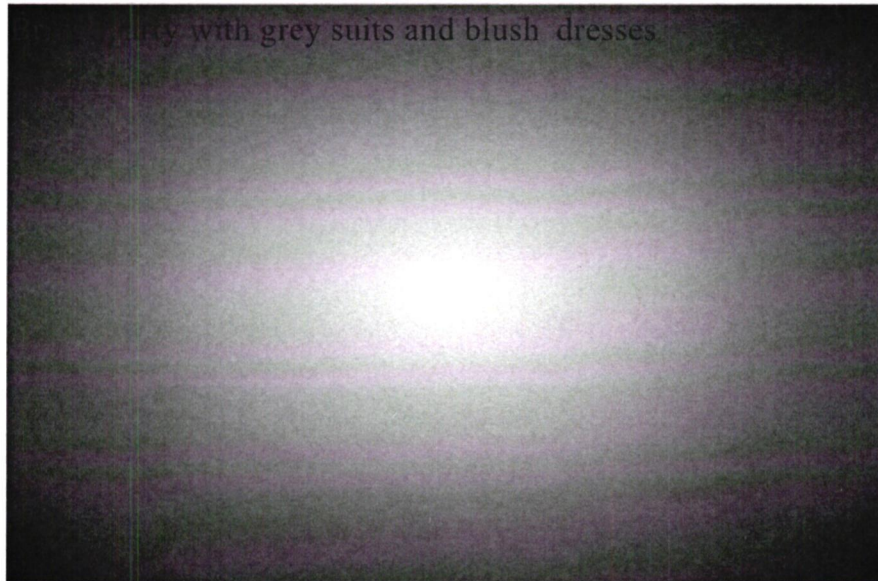


Danielle Gillette Photography

HOW MUCH WILL I SPEND ON _____?

How much you spend in each vendor category depends entirely on what your priorities are for the wedding and what's included with your venue. Don't let inexpensive venues fool you into thinking you're saving a lot of money! If you only spend \$1,000 on your venue, that means your budget needs to increase in the categories for catering, staff, and rentals, because you'll be building the event from scratch. If your venue is more all inclusive with food and beverage (F&B) required in house, you will save on rentals and staffing, but likely have a higher per person F&B cost. All of these factors are important to consider when building your budget.

Start by discussing your priorities and list your top 3-5 categories for vendors that are the most important to you as a couple. Having a DJ instead of a band is typically more affordable, or skipping a videographer can be a cost-savings. Also consider whether you want to have your wedding at a more traditional venue like a resort, ballroom, or lodge (that will have in-house F&B) or if you want an alternative venue like a museum, industrial space, backyard, park, or barn.



Kayla Cindy Photo

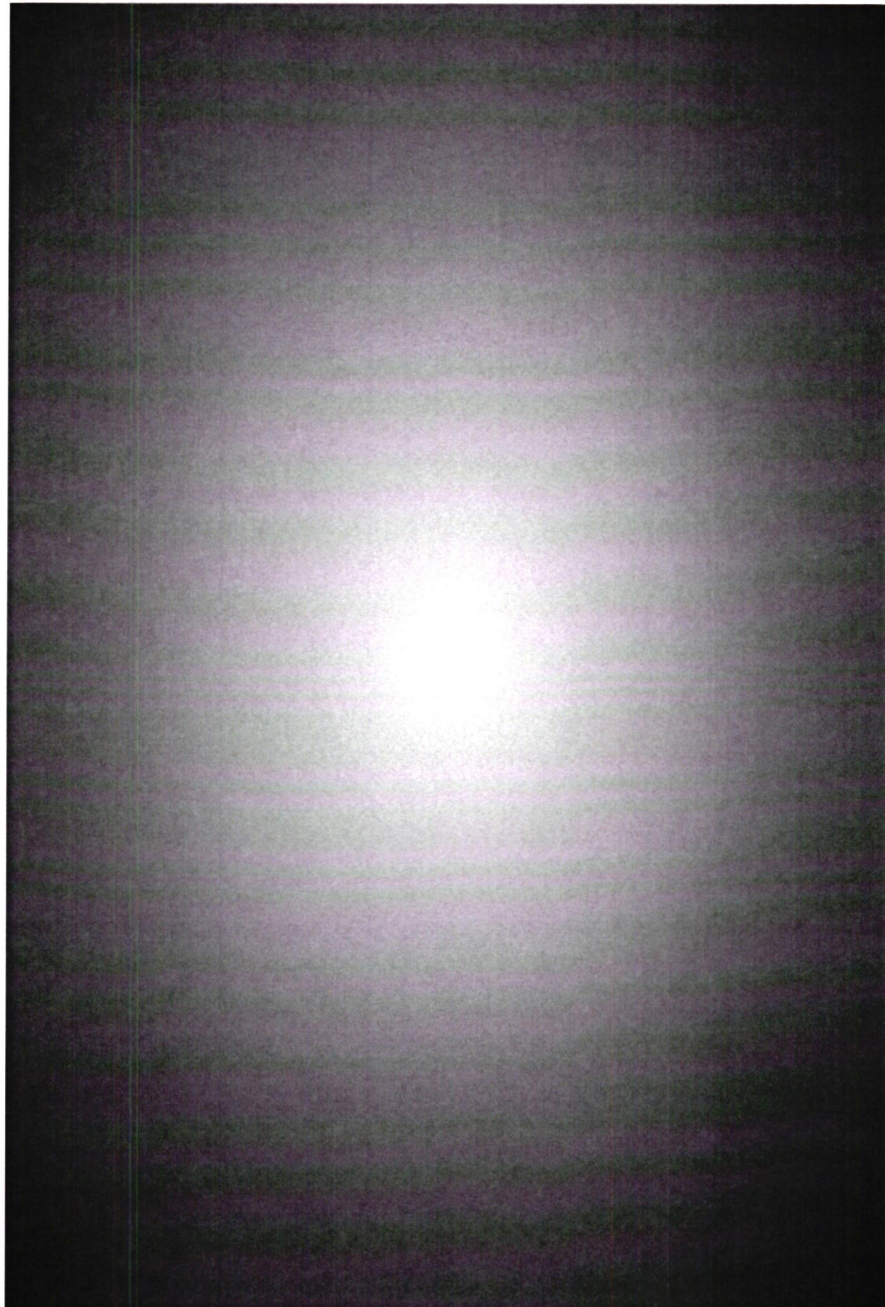
AVERAGE COSTS BY VENDOR CATEGORY:

- **Planning / Wedding Management:** ranges from \$3,000-\$8,000+ depending on amount of support
- **Venue:** varies widely from basic site fees (just for the use of the space) to \$40,000+ all inclusive food and beverage minimums. AKA the amount you need to spend on food and drink total, before service charges and gratuity.
- **Catering:** \$50-\$150+ per person, depending on style of catering, menus, etc.

- **Bar & Beverage:** Estimate 1 drink per person per hour of partying. Each drink would cost between \$8-\$15 each (including bartending) depending on if you source your own alcohol or pay for full price drinks through a resort.
- **Dessert:** \$12-\$25 per person
- **Photography:** \$3,000-\$6,000+ depending on experience and number of hours of coverage
- **Florist:** most florists have a minimum order of \$3,500-\$4,000+ in order for them to commit to the wedding and be on site. That cost would include arbor flowers, reception flowers, and personal flowers like bouquets. Larger installations, flower types, and increased quantities can quickly increase that total number. Some florists do a la carte flowers for elopements or smaller events, like just a few centerpieces or a bridal bouquet that you could pick up from them in advance.
- **DJ:** starts at \$2,200 for a basic package which includes ceremony sound, MC services, and reception music
- **Rentals and decor:** varies widely depending on type of furniture, table settings, lighting, etc. If you need a tent, you can estimate needing at least \$3,000 for that element alone. At a venue that does not supply any rentals (like silverware, linen, glassware, etc.) you can count on spending at least 15% of your budget on rentals.
- **Attire and accessories:** a wedding dress can cost between \$1,000-\$4,000+ if you purchase it new
- **Hair and makeup services:** for the bride only, both services will cost around \$500-\$700. Each additional maid or mom is typically \$200-300 per person. It's up to you whether the cost for everyone's hair and makeup is in the wedding budget, or if people pay for it

individually.

- **Paper goods:** set at least 2% of your budget aside for save-the-dates, invites, signage, menus, place cards, etc.
- **Favors and gifts:** even if you don't provide wedding favors, you'll likely still spend money on gifts or tokens of gratitude for your wedding VIPs and families. Consider 1-2% of the total budget for gifts.





CODE ENFORCEMENT

300 NE 3rd Street, RM. 12

Prineville, OR 97754

(541) 447-3211

AGREEMENT TO ABATE

THIS AGREEMENT TO ABATE (Agreement), made and entered into by and between Crook County, a political subdivision of the State of Oregon (County) and Gregory and Karen Huston (Hustons), owners of taxlot 14152000-00600-15820 (the "Property") concerning a use of their Property in alleged violation of CUP C-CU-648-92 (the "CUP"), specifically, advertising and hosting commercial wedding events. County and Hustons shall each be known as a "Party" and collectively "Parties." Hustons are currently scheduled to appear at a hearing for Crook County Code Enforcement Case No. 22-079 (the "NOV").

1. The NOV stems from a disagreement between Hustons and their neighbors concerning the scope of uses allowed on Hustons' property pursuant to the CUP. The County encourages voluntary code compliance, and the Parties agree that rather than a code enforcement proceeding, a more efficient process to resolve the aforementioned disagreement will be effectuated by Hustons voluntarily submitting an application to modify the CUP or an application for a new land use permit (collectively, "Land Use Application"), with the option between the two to be decided by Hustons in their sole discretion.
2. County and Hustons agree that the following use shall be abated and not re-occur pending the outcome of all land use proceedings and appeals concerning the Land Use Application: commercial weddings. For the purpose of this Agreement, "commercial" shall mean provided in exchange for financial compensation.
3. Hustons have four months from the effective date of this Agreement to submit the Land Use Application. If Hustons are not in breach of the terms of this Agreement during said four months, County hereby agrees to withdraw the NOV and cease any enforcement efforts concerning the allowed uses described in this Agreement. Upon the submission of the Land Use Application, this Agreement shall be extended automatically until the resolution of Huston's Land Use Application process, including any appeals. This Agreement shall terminate at the conclusion of the Huston's Land Use Application process, including any appeals.

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CROOK COUNTY COMMUNITY DEVELOPMENT

Fig 6

4. To mitigate concerns raised by their neighbors, the Hustons voluntarily agree that any uses allowed under the CUP while this Agreement is in force are subject to the following restrictions:
 - a. Uses will be limited to one event per week.
 - b. Events will conclude with all patrons off the Property by no later than 11 p.m.
 - c. Food will be catered by vendors and/or food trucks.
 - d. All parking shall take place on irrigated ground or gravel areas.
 - e. Fire suppression equipment and procedures shall be in place and available for review by the County upon request.
5. County retains the right to monitor the use of the Property for continued compliance with the CUP and this Agreement.
6. If the County determines that Hustons violated or failed to fulfill the requirements of this Agreement, County will provide written notice, via email, to Hustons and/or Hustons' attorney of record, with the grounds for which County believes Hustons are in breach. Hustons thereafter have five business days to respond with either (1) why the Hustons believe they are not in breach of this Agreement, with supporting documentation; (2) how the breach has been cured, with supporting documentation; (3) how the breach will be cured within 30 days; or (4) why the breach cannot be cured in 30 days with a plan to cure said breach in the most commercially reasonable expeditious manner. If, following either Hustons failure to respond or receipt of Hustons written response, County determines Hustons' breach was intentional or flagrant-i.e., hosting commercial weddings-or that the breach cannot be cured, the County reserves all rights to re-institute enforcement proceedings.
7. This Agreement is neither a modification of the CUP nor a land use decision. By entering into this Agreement, neither Party waives any rights under the CUP or arguments concerning the scope of uses allowed on Property pursuant to the CUP.
8. This Agreement contains the entire agreement between the parties. Any prior written or oral agreements between the parties, which are different from the terms, conditions, and provision of this Agreement shall be of no effect and shall not be binding on either Party.
9. If any provision of this Agreement is declared by a court to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular provision held to be invalid.
10. No amendment to or modification of this Agreement shall be valid, and no extensions of this Agreement will be permitted, unless such amendment or modification is reduced to writing and signed by the parties to this Agreement.

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CROOK COUNTY COMMUNITY DEVELOPMENT

11. This Agreement may be executed in one or more counterparts, including electronically transmitted counterparts, which when taken together shall constitute one in the same instrument and shall be binding as though they were an original of such signed document.

IN WITNESS WHEREOF, the parties have executed this Agreement to Abate to be effective the date last signed below.

Greg Huston

E:8011111n'882418..

Date: 2/17/2023

DocuSigned by:
Karen Huston

Date: 2/17/2023

Will Vandy for
Community Development Director

Date: 2/18/2023

CROOK COUNTY COMMUNITY DEVELOPMENT

Building • Planning • Code Enforcement • Addressing • On-Site Septic

It's the end of the line for Prineville dinner train

Lauren Dake / The Bulletin
Dec 25, 2008



Crooked River Dinner train staffers Pat Kmiec and Sam Hill serve meals in 2005 during the Western-themed train ride that takes guests along the Crooked River. After four years of operating and treating thousands of riders to a dinner-theater experience with murder mysteries and train robberies, the train service will end at the first of the year.

For four years, Prineville's Crooked River Dinner Train treated thousand of riders to a dinner-theater experience complete with a taste of the Wild West.

But now, according to city officials, the Western-themed dinner train is another victim of the slumping economy.

Last January, city officials decided to close the dinner train for the winter and re-open it in spring. This time — after the Prineville City Council's 5-0 vote Tuesday night — the train service is shutting down permanently at the end of this month.

City officials said ridership has been steadily decreasing since the fall, and the train was operating in the red.

Lae Nani 123

Check Availability

ae
Lae

Open

Since 2004, the city has owned and operated the dinner train. It was purchased to provide revenue to the city's railway. In its heyday, the train ran year-round, five days a week, and was profitable.

Fig. 7

In January, after the train was temporarily closed, city officials decided to pull out all the stops to get the train back on the rails. The city hired an experienced manager, improved the performances and built relationships with resorts throughout the region.

“The experience on that dinner train is one of the best you’ve ever had. Our comment cards raved about how good it was,” Railway Manager Dan Lovelady said.

But it wasn’t enough.

Wayne Van Matre, Prineville’s interim city manager, said the decision was a tough one. “Everyone realized that in these economic times, and that’s really what it is, people don’t have the disposable income,” Van Matre said.

During the train’s busiest months, July and August, it typically brought in about \$60,000 in profit. But in the winter, ridership drops. With the cost of food and fuel, and with one full-time and about 15 part-time workers, the profit hasn’t been enough to continue operating.

This month, the situation was exacerbated when two fully booked weekends had to be canceled because of icy weather.

“It’s unfortunate because it’s a great event, but it’s not a necessary service for the taxpayers,” said City Councilor Steve Uffelman. “We saw it as a means to sustain the streams of revenue for the railroad. And initially we did make money with it, but with increasing food costs and other expenses ...”

Lae Nani 123

Check Availability

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Open



Tickets for the train cost between \$20 for young children and \$70 for adults. The cost included a meal, an interactive performance by actors that simulated a train robbery or a murder mystery, and a scenic ride along the Crooked River, under jagged rimrock cliffs.

The dinner train is just one part of the city’s railway operations. There is also a freight depot and industrial rail services for businesses. Les Schwab Tire Centers is one of the railway’s most frequent customers. With the slowdown of the housing market and with businesses closing, the railway has also been hit hard.

Although city officials don’t see the dinner train operating under the city umbrella again, Lovelady hopes the train still has a future.

“The City Council and the railroad commission would really like to find a private party to lease the train and continue to operate it,” he said. “It would take someone that could see the up side that it has in the future, and someone able to withstand tough times. We have a great staff and a great product. It’s well-known throughout the entire Pacific Northwest. It’s a great opportunity for someone.”



LILLIAN & KYLE

May 20, 2023 • Redmond, OR

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May 20, 2023

Redmond
OR

WEDDING DAY

May 20, 2023

14:00–22:30

St. Thomas Catholic Church
1720 NW 19th St, Redmond, OR, 97756

Attire: Semi-Formal

Ceremony will be held at St. Thomas Catholic Church, followed by reception party at Ponderosa Ranch in Prineville!

14:00–14:45 Ceremony

St. Thomas Catholic Church
1720 NW 19th St, Redmond, Oregon, 97756

16:00–22:00 Reception

The Ponderosa Ranch
Prineville, Oregon, 97754

L&K

20.05.2023

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Fig. 8