

FILED WASCO CTY  
THE CLERK OF

IN THE COUNTY COURT OF THE STATE OF OREGON

AUG 7 9 45 AM '98

IN AND FOR THE COUNTY OF WASCO

WALTER W. LEBLANC  
COUNTY CLERK

IN THE MATTER OF OBTAINING FINAL	)	
LAND CONSERVATION AND DEVELOP-	)	
MENT DEPARTMENT APPROVAL OF	)	
WASCO COUNTY'S ADOPTION OF	)	ORDINANCE NO. 98-101B
AMENDMENTS TO THE A-1 EXCLUSIVE	)	CONSENT FOR CLARIFICATION
FARM USE ZONE AND COMPREHEN-	)	
SIVE PLAN POLICIES ALLOWING A 40	)	
ACRE MINIMUM PARCEL SIZE ON	)	
SPECIFIC HIGH VALUE LANDS WHILE	)	
MAINTAINING COMPLIANCE WITH	)	
STATEWIDE LAND USE GOAL NO. 3	)	

NOW, ON THIS DAY, the above-entitled matter having come on regularly for consideration, said day being one duly set in term for the transaction of public business and a majority of the Court being present; and

IT APPEARING TO THE COURT: That on March 18, 1998, following a legal public hearing, the County Court approved changes to the Wasco County Comprehensive Plan and Land Use and Development Ordinance for the express purpose of bringing these instruments into compliance with Oregon Administrative Rule OAR 660, Division 33 and to implement other changes requested by the Agricultural Resource Group, including provisions allowing an A-1(40) zone implementing a 40 acre minimum parcel size in selected areas of the Exclusive Farm Use Zone; and

IT APPEARING TO THE COURT: That the County Planning Office forwarded its request for a minimum parcel size less than 80 acres in the EFU zone to the Land

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Conservation and Development Commission for their concurrence as allowed for in ORS 215.780 (2), ORS 215.243, and OAR 660-33-100 (2); and

IT FURTHER APPEARING TO THE COURT: That the Land Conservation and Development Commission heard the request at their April 16-17, 1998 meeting, approving the request as submitted with one requested clarification. (p. 9 exhibit A, DLCD's notification of conditional approval); and

IT FURTHER APPEARING TO THE COURT: That the request that Wasco County include general reference to the need to comply with all applicable statutory and administrative rule requirements prior to implementing any further application of the 40 acre minimum parcel size (A-1(40) zone) does not in its self constitute a substantive amendment to the Comprehensive Plan Amendments approved on March 18, 1998.

NOW, THEREFORE, THE WASCO COUNTY COURT ORDAINS AS FOLLOWS:

1. The Court maintains the Ordinance passed on March 18, 1998 amending the Wasco County Comprehensive Plan and Land Use and Development Ordinance for the before listed purposes.
2. The Court accepts proposed clarification of the Comprehensive Plan Policies, including reference to the need for the County to comply with all applicable statutes and administrative rules prior to altering or expanding the A-1(40) land use designation.
3. Amended Comprehensive Plan language shall read as follows:  
*(Wasco County Comprehensive Plan, Goal #3 Agricultural Lands, Policy 1, Implementation Strategy B.2.) Additional text*  
Lands designated as Exclusive Farm use in the Comprehensive Plan shall have a minimum parcel size for purposes of land divisions of 40 acres if determined to be:

- Within two miles of and outside the Columbia River Gorge National Scenic Area boundary and
- Predominantly planted to perennial crops such as cherry orchards and
- Adjacent to land currently in perennial crops or
- Meet the 160 acre minimum land division and located within two miles of the Columbia River Gorge National Scenic Area boundary.

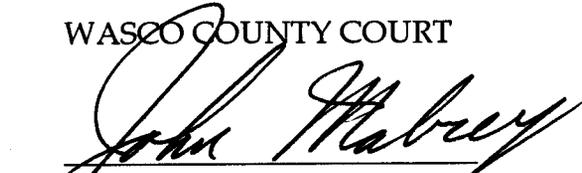
Such lands are mapped and designated A-1(40). The A-1(40) designation shall not be expanded or applied to additional EFU lands without the County having reviewed and complied with all statutory and administrative rule requirements applicable to the establishment of a minimum parcel size less than 80 acres in an EFU zone.

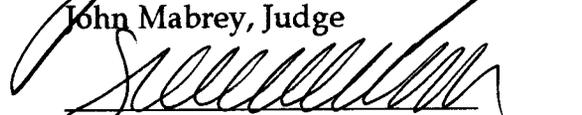
SIGNED this 5<sup>th</sup> day of August, 1998.

Approved as to Form:

  
Eric Nisley  
Wasco County  
Deputy District Attorney

WASCO COUNTY COURT

  
John Mabrey, Judge

  
Scott McKay, Commissioner

Absent  
Daniel W. Ericksen, Commissioner

DT <C:\WINDOWS\notices-orders\A-1(40) Consent for Clarification Ordinance.doc>

April 23, 1998

The Honorable John Mabrey, Judge  
Wasco County Court  
Wasco County Courthouse  
511 Washington St.  
The Dalles, Oregon 97058

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WASCO CO. PLAN. & ECON. DEV.

Dear Judge Mabrey:

On April 17, 1998, the Land Conservation and Development Commission approved with a delayed signing Wasco County's request to establish a 40-acre minimum parcel size within the North County Orchard Area in accordance with ORS 215.780(2) and OAR 660-033-0100. A copy of the departments analysis adopted by the commission is enclosed.

Pursuant to the commission's action the County is to adopt and submit to the DLCD Director an amendment to Wasco County Goal #3 Agricultural Lands, Policy #3(B) as described on page 9 of the adopted staff report. This amendment must be approved in writing by the DLCD director before application of the 40-acre parcel size to the North County Orchard Area is effective.

The commission expressed its appreciation to the county, your staff and members of your agricultural community who participated in developing this proposal. If you have any questions about the commission's action or enacting your amendment to Policy #3(B), you may contact me at (503) 373-0082.

Respectfully,

  
Jon Jinings  
Farm/Forest Coordinator

JJ

enclosure

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cc: Dottie DeVaney, Planning Director  
Ken Bailey, Agricultural Resources Group  
Richard P. Benner, DLCD Director (letter only)  
Brent Lake, DLCD Regional Representative

John A. Kitzhaber  
Governor



1175 Court Street NE  
Salem, OR 97310-0590  
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EXHIBIT

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April 2, 1998

**To: Land Conservation and Development Commission**

**From: Richard P. Benner, Director**

**Subject: Agenda Item 6.0, April 16-17, 1998 Meeting**

DEPARTMENT OF  
LAND  
CONSERVATION  
AND  
DEVELOPMENT

**REQUEST BY WASCO COUNTY TO ESTABLISH A  
MINIMUM PARCEL SIZE LESS THAN 80 ACRES IN  
AN EFU ZONE**

**SUMMARY OF RECOMMENDATION**

Approve Wasco County's request to establish a minimum parcel size less than 80 acres in an EFU zone (see page 9 for complete recommendation).

**REVIEW CRITERIA**

ORS 215.780(2) allows for the adoption of a minimum parcel size lower than 80 acres or 160 acres provided the county demonstrates to the commission that the proposed minimum lot size is consistent with the agricultural land use policy embodied in ORS 215.243, the state forest land policy included in ORS 527.630, and the land use planning goals adopted under ORS 197.230. OAR 660-33-100(2) provides further guidance for application of this statutory provision as it applies to agricultural land.

**WASCO COUNTY'S REQUEST**

Wasco County requests approval of a 40-acre minimum parcel size for areas of the county predominantly characterized by commercial cherry orchards and currently zoned exclusive farm use.

The 40-acre minimum parcel size is being proposed for two specific locations, totaling approximately 4200 acres. The first location is directly south of the city of The Dalles and includes about 2500 acres. The second location is directly south of the city of Mosier and includes about 1700 acres.

John A. Kitzhaber  
Governor



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Before HB 3661 became effective on November 3, 1993, the county had an acknowledged 20-acre EFU orchard zone. HB 3661 established an 80-acre minimum parcel size for lands not designated rangeland and a 160-acre minimum parcel size for lands designated rangeland.

### STATUTORY REQUIREMENTS

The lands which are the subject of this review are designated agricultural lands, not forest lands. Therefore, the requirement to address ORS 527.630, the state's forest land policy, is not applicable.

Pursuant to ORS 215.780(2), the county is required to address ORS 215.243 and Goal 3's requirements which are found in OAR 660-33-100.

ORS 215.243 is the state's "Agricultural land use policy." It is summarized as follows:

- (1) Open land use for agriculture is an efficient means of conserving natural resources important to everyone in the state;
- (2) Preservation of a maximum amount of the limited supply of agricultural land is necessary to conserve the states' economic resources and the preservation of such land in large blocks is necessary to maintain the agricultural economy of the state ... ;
- (3) Expansion of urban development into rural areas is a matter of public concern because of the unnecessary increases in costs of community services, conflicts between farm and urban activities and the loss of open space ... ;
- (4) Exclusive farm use zoning substantially limits alternatives to the use of rural land ....

OAR 660-33-100 allows for the adoption of a minimum parcel size lower than 80 or 160 acres if the county demonstrates to the commission that the proposed minimum parcel size meets the requirements of ORS 215.243 and is **appropriate to maintain the existing commercial agricultural enterprises within an area**. This standard is intended to prevent division of farmland into parcels that are too small to contribute to commercial agriculture in the area.

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### GOAL 3 RULE REQUIREMENTS

To establish a minimum parcel size less than 80 acres, OAR 660-33-100(3) requires the county to complete the following steps:

- (a) Identify different agricultural areas within the county, if any;
- (b) Determine the nature of the commercial agriculture in the county, or within areas of the county;
- (c) Identify the type(s) and size(s) of farms or ranches that comprise this commercial agricultural enterprise; and
- (d) Determine the minimum size that will maintain this commercial agricultural enterprise.

OAR 660-33-100(4) lists factors that a county should consider when determining whether there are distinct agricultural areas in a county. These include: soils, topography and landform, land use patterns, farm sizes, ranch sizes and field sizes, acreages devoted to principal crops, grazing areas and accepted farming practices for the principal crops and types of livestock.

To determine the nature of the existing commercial agricultural enterprises within an area, a county must identify the following characteristics of farms and ranches in the area: type and size of farms and ranches, size of fields or other parts, acreage devoted to principal crops, the relative contribution of the different types of farm and ranches to the county's gross farm sales, and their contribution to local processes and established farm markets. (OAR 660-33-100(5))

After the county has determined the nature of commercial agriculture in the county, or within areas of the county, it must identify the type(s) and size(s) of farms or ranches that comprise this commercial agricultural enterprise.

To determine the minimum parcel size, a county shall evaluate available data and choose a size that maintains the existing agricultural enterprises within the county or within each area of the county. In areas where the size of commercial farms and ranches are mixed, and the size needed to maintain these farms and ranches varies, the county shall not

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choose a minimum parcel size which allows the larger farms, lots or parcels to be divided to the size of the smallest farms, lots or parcels in the area. The activities of the larger, as well as smaller holdings, must be maintained. (OAR 660-33-100(6))

### WASCO COUNTY'S SUBMITTAL AND RESPONSE TO THE REQUIREMENTS

The department received the county's official go-below request on March 25, 1998. The request revises the county's comprehensive plan and land use ordinance to establish a new exclusive farm use subzone having a 40-acre minimum parcel size. The county's go-below request can not take effect until approved by the commission.

The county's comprehensive plan in Policy 3 (Goal #3 Agricultural Lands) describes the area examined by the county for application of a 40-acre minimum parcel size:

1. The original parcels are within two miles of and outside the Columbia River Gorge National Scenic Area boundary and are:
2. Predominantly planted to perennial crops such as cherry orchards and
3. Adjacent to land currently in perennial crops.

The 40-acre minimum parcel size is implemented through an A-1(40) subzone. However, no new zoning district will be included in the county's land development ordinance. Instead, the new subzone is to be implemented through the existing EFU Zone which also implements the existing A-1(160) designation with a 160-acre minimum parcel size. The text of the EFU zone identifies key differences between the two districts, primarily a difference in minimum parcel size (40 acres vs 160 acres). Also, nonfarm dwellings and new nonfarm parcels may not be established on high-value agricultural lands within the A-1(40) subzone.

In support of their request, Wasco County has submitted a report entitled "Wasco County, Determination of a 40 Acre Minimum Parcel Size". This report is supplemented by maps showing tax lot sizes, soil information, areas in perennial production and areas in field crop production, water rights information, and a delineation of lands within two miles of the Columbia River Gorge National Scenic Area.

The county's report identifies three different commodity areas described as the North County Orchard area, Central County Field Crop area and the South County Antelope

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area. Median parcel sizes and potential gross income information has been provided for all three areas. The information provided for the Central County Field Crop area depicts an area primarily in wheat or hay production with a 233 acre median parcel size. The South County Antelope area has been characterized as a less productive area where the predominant agricultural activities are large livestock grazing operations with a median parcel size of over 2600 acres.<sup>1</sup>

The North County Orchard area is the subject of this submittal. A brief evaluation of a sample test case for lands in orchard production has been included with the county's report as "Exhibit C." The sample test case has been conducted for an area south of The Dalles. Property which is currently utilized for cherry orchard production, as well as, other types of agriculture is included in the evaluation.

The North County Orchard area has been specifically identified using a three step methodology:

1. The Natural Resource Conservation Service (NRCS) soil maps have been consulted to identify the location of areas characterized by the presence of existing cherry orchards and soils (Cherryhill-Chenowith association) conducive to the establishment of cherry orchards. The irrigation district boundary was also drawn in and used to help delineate the area south of The Dalles. A boundary based on township and range was developed based on this information.
2. The boundary developed in step #1 was compared with the agricultural commodities map provided by the county to ensure consistency between the two primary sources (NRCS soil mapping data and the agricultural commodities map).
3. Finally, the boundary described in step #1 was transferred to county tax lot maps and adjusted to conform with tax lot boundaries. This step was completed to avoid having a single piece of property in two minimum parcel size classifications.

Wasco County provides two key reasons why a 40-acre minimum parcel size will maintain the commercial agricultural enterprises in the cherry orchard areas. First, the report identifies that the primary commercial orchard areas in the county are located directly south of the cities of The Dalles and Mosier. This information is substantiated by the agricultural commodities map provided to supplement the report. This map clearly shows the two areas described above as the locations of nearly all perennial orchard production in

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<sup>1</sup> Wasco County Determination of 40-Acre Minimum Parcel Size, Page 2

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the county. The report describes these orchard areas as being predominantly used for intensive farm operations which are characterized by 20 and 40-acre parcels.<sup>2</sup>

Second, the county has provided information based on discussion with OSU extension agents that a typical perennial cherry orchard in Oregon will gross \$10,000/acre average.<sup>3</sup> An analysis of the operations included in the three mile study area attached to the report as "Exhibit C" suggests that existing orchards in this area of Wasco County are capable of grossing about \$4,000 per acre (\$3,974/acre appears to be the ratio used by the county). Based on these figures, a 40 acre commercial cherry orchard situated in Wasco County's test area should be capable of producing \$159,000 (\$3,974 per acre) to \$400,000 (\$10,000 per acre) of gross income.

Other information provided by the county report demonstrates that cherries comprise a significant portion of the agricultural commodity sales for Wasco County. According to the report, in 1992 cherries sales generated \$29,727,000 and accounted for 51% of agricultural commodity sales. Cherry sales contributed 32% of agricultural commodity sales in 1995 by generating \$16,992,000.<sup>4</sup>

### **ANALYSIS OF THE AREAS PROPOSED FOR THE 40-ACRE MINIMUM PARCEL SIZE**

The county's report indicates that most of the high-value perennial agricultural lands are directly south of the cities of The Dalles and Mosier<sup>5</sup>. The report characterizes these areas as predominantly comprised of parcels between 20 and 40 acres in size.

Further analysis of these areas yields the following types of rough data (please note that the following figures regarding parcel size are estimates) :

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<sup>2</sup> Ibid

<sup>3</sup> Wasco County Determination of 40 Acre Minimum Parcel Size, Page 3

<sup>4</sup> Wasco County Determination of 40 Acre Minimum Parcel Size, Figures 2 & 3

<sup>5</sup> Wasco County Determination of 40 Acre Minimum Parcel Size, Page 2

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THE DALLES

96 total parcels (parcels under 3 acres were not included)

Average parcel size: 25 acres

Median parcel size: 21.12 acres

15 tracts of contiguous ownership

Average tract size: 92.70 acres

Median tract size: 63.55 acres

Approximately 53% of the land is comprised of parcels 40 acres and larger.

An estimated 5 parcels are large enough to be divided under a 40-acre minimum parcel size.

An opportunity to create an estimated five (5) additional parcels would exist under a 40-acre minimum parcel size.

MOSIER

60 total parcels

Average parcel size: 29 acres

Median parcel size: 18.79 acres

7 tracts of contiguous ownership

Average tract size: 140 acres

Median tract size: 112.26 acres

Approximately 60% of the land is comprised of parcels 40 acres and larger.

An estimated four (4) parcels are large enough to be divided under a 40-acre minimum parcel size.

An opportunity to create an estimated eleven (11) additional parcels would exist under a 40-acre minimum parcel size.

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## CONCLUSION

The county has demonstrated that there are portions of Wasco County where the existing commercial agricultural enterprises are predominantly cherry orchards. The county has also provided convincing evidence that a 40-acre minimum parcel size is suitable to maintain these types of commercial agricultural enterprises.

The department finds that the statutory requirements in ORS 215.243 have been satisfied because the proposal is limited to two distinct areas characterized by a specific type of commercial agricultural practice. The parcel size proposed for these areas is consistent with the existing land use pattern and will preserve blocks of land large enough to ensure their continued use for commercial agricultural production and their contribution to the economy of the county and the state.

The department has determined that the requirements of OAR 660-33-100(2) have been satisfied for the following reasons:

- (a) The county's report identifies three different agricultural areas within the county. The Central County Field Crop area characterized by wheat or hay production and a median parcel size of 233 acres. The South County Antelope area is characterized by large livestock grazing operations and a median parcel size of over 2600 acres. Finally, the North County Orchard area is characterized by cherry orchard production and Cherryhill-Chenowith association soils with a median parcel size of about 20 acres.
- (b) The nature of commercial agriculture has been depicted above. These descriptions are based on different parcel sizes reflecting different types of commercial agricultural practices, the area devoted specifically to cherry orchard production (approximately 4200 acres), and the total contribution made by cherry producers to the economy of Wasco County (51% of agricultural commodity sales in 1992 and 32% of agricultural commodity sales in 1995).
- (c) The type(s) and size(s) of farms comprising the commercial agricultural enterprise has been demonstrated by the area maps and ownership information provided by the county. This material indicates that the cherry orchard producing areas are characterized by a median parcel size of about twenty acres. Tracts of contiguous ownership are characterized by multiple parcels of forty acres and less.
- (d) The commercial agricultural enterprise will be maintained by a 40-acre minimum

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parcel size. Information provided by the county demonstrates that the intensive nature of cherry orchard production can yield up to \$10,000 in gross income per acre. The intensive, typically high yield nature of cherry orchard production ensures that 40 acre parcels will remain economically viable for commercial agricultural purposes. The two cherry orchard areas exhibit a pre-existing pattern of land division which leave a total of only nine (9) parcels large enough to be further divided and have the potential for an additional sixteen (16) new parcels. The proposed minimum parcel size will not allow the larger farms, lots, or parcels, to be divided to the size of the smallest farms, lots or parcels because the median and average parcel sizes of the two areas are well below 40 acres (The Dalles, 25 acre ave., 21.12 acre median; Mosier, 29 acre ave., 18.79 acre median).

However, the county's proposed comprehensive plan revisions do not reference the statutory and administrative rule criteria for establishment and application of a minimum parcel size below 80-acres. The department believes that such a comprehensive plan policy is needed to ensure that any new areas proposed for inclusion in the A-1(40) subzone will comply with the statutory and administrative rule requirements for approving "go-below" requests. This comprehensive plan policy will be consistent with measures required by the commission of the two counties (Douglas and Yamhill) whose "go-below" requests were approved previously.

### **RECOMMENDATION**

The department recommends commission approval, with a delayed signing by the director, of Wasco County's request to establish a 40-acre minimum parcel size within the North County Orchard area directly south of the cities of The Dalles and Mosier. The director is authorized to approve the county's request upon submittal to the department the following amendment to Goal #3 Agricultural Lands, Policy #3.(B), or alternative language that ensures compliance with state law as approved by the director:

- 4. The provisions of ORS 215.780(2)(a) and OAR 660-033-0100 have been satisfied.**

### **Attachments**

1. Report prepared by Wasco County
2. Agricultural commodities map for north Wasco County
3. Maps showing areas subject to this proposal

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