

FILED WASCO CTY
THE DALLES OR.

IN THE COUNTY COURT OF THE STATE OF OREGON

Nov 13 3 34 PM '96

IN AND FOR THE COUNTY OF WASCO

KAREN R. LEDBETON
COUNTY CLERK

IN THE MATTER OF AN AMENDMENT TO THE)
MINERAL AND AGGREGATE OVERLAY ZONE OF)
THE LAND USE AND DEVELOPMENT ORDINANCE,)
CHAPTER 3, SECTION 3.815.A. "PROCEDURE FOR)
APPLYING THE OVERLAY ZONE" IN ORDER TO)
ADDRESS THE SIGNIFICANCE CRITERIA AS)
DIRECTED BY DLCD REMAND/APPROVAL (ORDER)
#00600) UNDER PERIODIC REVIEW.)

ORDINANCE
AMENDMENT

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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 September 15, 1993, the Wasco County Court amended the Wasco County Land Use and Development Ordinance, Chapter 3, Section 3.815(A) to revise the review process and procedure for applying the Mineral and Aggregate Overlay Zone; and

IT FURTHER APPEARING TO THE COURT: That on September 15, 1994, Mark Mazeski filed a petition for review in the State of Oregon Land Use Board of Appeals (LUBA 94-147) regarding the above-mentioned amendments to Chapter 3, Section 3.815(A) of the Wasco County Land Use and Development Ordinance "Procedure for Applying the Overlay Zone", alleging that the County did not make any findings for the: "250,000 cubic yard significant quantity"; the network language; and public controlled resource site exemption, were done in violation of the Statewide Planning Goal 5 and OAR 660-16-00 (2) and (3); and

1960479 (v)

1 IT FURTHER APPEARING TO THE COURT: That on October 6, 1994, the Land Use
2 Board of Appeals granted Wasco County's motion for a voluntary remand to review the issues of
3 Mark Mazeski's appeal; and
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5 IT FURTHER APPEARING TO THE COURT: The Court directed staff to prepare and
6 submit a written amendment deleting the "network" language of Chapter 3, Section 3.815.A.
7 "Procedure for Applying the Mineral and Aggregate Overlay Zone", and to document in a concise
8 manner the findings of fact that substantiate the necessity of a determination of "significance" for city,
9 county and state jurisdictions, and establishment of 250,000 cubic yards as a significant quantity as
10 previously approved and recognized by this Court and documented in the transcript in LUBA No. 94-
11 001; and
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13 IT FURTHER APPEARING TO THE COURT: That on January 4, 1995, the Wasco County
14 Court unanimously approved an Ordinance Amendment providing findings of fact: (1) That to ensure
15 a safe, economical and efficient road system in Wasco County, property owned by or under long term
16 lease to a city, county, or state jurisdiction for the purpose of excavating or processing of aggregate or
17 stone materials for road maintenance or road construction in proximity to the road system in Wasco
18 County is important to maintenance and improvement of roads in Wasco County and must be
19 preserved and given significant status to obtain their protection, and (2) That 250,000 cubic yards of
20 reserve continues to be a significant quantity of aggregate resource in Wasco County and because the
21 shortage of mineral resources in Wasco County must be preserved; and
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23 IT FURTHER APPEARING TO THE COURT: That on January 27, 1995, Mark Mazeski
24 filed a petition for review with the State of Oregon Land Use Board of Appeals (LUBA No. 95-021)
25 regarding the above-mentioned Ordinance Amendment to Chapter 3, Section 3.815(A) of the Wasco
26 County Land Use and Development Ordinance; and

P960479 (6)

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IT FURTHER APPEARING TO THE COURT: That on April 29, 1996, the Oregon Land Use Board of Appeals (LUBA) dismissed the appeal by Mark Mazeski (LUBA No. 95-021) on the grounds stated by Wasco County in their Response, that LUBA lacks subject matter jurisdiction, because the amendment appealed by petitioner is part of Periodic Review, for which the Department of Land Conservation and Development has exclusive jurisdiction; and

IT FURTHER APPEARING TO THE COURT: That on June 14, 1995, and again on January 4, 1996, to correct an omission, Wasco County submitted Periodic Review Work Task #6, "Mineral and Aggregate" to the Oregon Department of Land Conservation and Development for approval as part of its Periodic Review requirement; and

IT FURTHER APPEARING TO THE COURT: That on January 12, 1996, Mark Mazeski filed with the Department of Land Conservation and Development a formal objection to two issues of Wasco County's decision in the matter of an amendment to the Mineral and Aggregate Overlay Zone, Chapter 3, Section 3.815(A) under Periodic Review Work Task #6. The two issues were: (1) regarding the lack of justification for the 250,000 cubic yard figure used to establish the significance threshold for quantity, and (2) regarding exemptions from the reserve significance criterion given to city, county, and state aggregate sites; and

IT FURTHER APPEARING TO THE COURT: That on June 19, 1996, the Oregon Department of Land Conservation and Development notified Wasco County that the Department concurs with Mark Mazeski's first objection regarding the lack of justification for the 250,000 cubic yard figure used to establish the significance threshold for quantity, but disagrees with Mark Mazeski's second objection regarding exemptions from the reserve significance criterion given to

1960479 (6)

1 city, county, and state aggregate sites. The Department therefore remanded the county's
2 submittal to address Mark Mazeski's first objection; and

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4 IT FURTHER APPEARING TO THE COURT: That on June 14, 1996, the Land
5 Conservation and Development Commission adopted amendments to Statewide Planning Goal 5 and
6 also adopted a new administrative rule (OAR 660, Division 23) to carry out the requirements of Goal
7 5. The new goal and rules take effect on September 1, 1996, or under Periodic Review; and

8
9 IT FURTHER APPEARING TO THE COURT: That Wasco County is currently under
10 Periodic Review, so the Wasco County Court may adopt these amendments and administrative rule;
11 and

12
13 NOW, THEREFORE, THE WASCO COUNTY COURT ORDAINS AS FOLLOWS: In
14 response to the Land Conservation and Development Commission Remand (Order #00600) and the
15 Oregon Administrative Rule OAR 660 Division 23, the Wasco County Land Use and Development
16 Ordinance is hereby amended to change the review process and procedure for applying the Mineral and
17 Aggregate Overlay Zone, Chapter 3, Section 3.815.A "Procedure for Applying the Overlay Zone", §
18 3.a) by adopting the State's Administrative Rule wording as listed below, and maintaining § 3.b), the
19 exemption for city, state, and county aggregate sites:

20 Excerpt from "Statewide Planning Goal 5 Amended Administrative Rules, OAR 660, Division
21 23, Sections 660-23-180 (3)(a) and (3)(d):

22
23 (3)(a): "..., or 100,000 tons outside the Willamette Valley;";

24
25 (3)(d): "Notwithstanding subsections (a) through (c) of this section, an aggregate site is
26 not significant if the criteria in either paragraphs (A) or (B) of this subsection apply,
27 except for an expansion area of an existing site if the operator of the existing site on
28 March 1, 1996, had an enforceable property interest in the expansion area on that date.;"

29 (A) "The site is not significant if more than 35 percent of the proposed mining
30 area consists of soil classified as Class I on Natural Resource and Conservation Service
31 (NRCS) maps on the date of this rule; or

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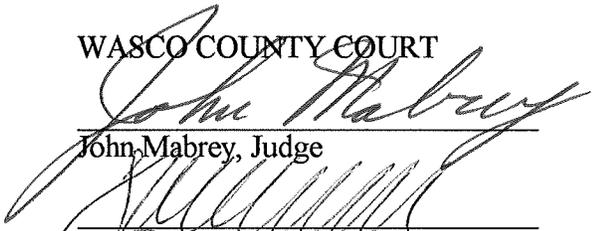
1 (B) "The site is not significant if more than 35 percent of the proposed mining
2 area consists of soil classified as Class II, or of a combination of Class II and Class I or
3 Unique soil on NRCS maps available on the date of this rule, ..."
4

5 The revised Wasco County Land Use and Development Ordinance wording adopted by this ordinance
6 amendment is shown on Exhibit A.
7

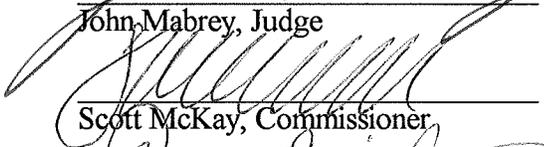
8 In so much as this ordinance amendment is necessary for the immediate preservation of health,
9 safety and welfare, an emergency is hereby declared to exist and this ordinance amendment shall be in
10 full force and effect immediately upon adoption by the Wasco County Court.

11 SIGNED this 13th day of November, 1996.

12 WASCO COUNTY COURT

13 
14 John Mabrey, Judge
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16 Approved as to Form:

17 
18 Scott McKay, Commissioner
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21 Bernard L. Smith
22 Wasco County District Attorney
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25 Daniel W. Ericksen, Commissioner
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27 <6C:\windows\notices-orders\Min&Agg. Ordinance Amendment>

Exhibit A

Amendment to Wasco County Land Use and Development Ordinance, Chapter 3, Section 3.815.A.: Procedure for Applying the Overlay Zone (~~deleted text~~/added text):

3. Information that the site meets at least one of the following two criteria (Amended 7-94):

a) Is located within an ownership or long-term lease containing reserves in excess of ~~250,000 cubic yards; or (Amended 7-94 and 1-95) 100,000 tons (69,000 cubic yards);~~ however, an aggregate site is not significant if the criteria in either paragraphs (1) or (2) of this subsection apply, except for an expansion area of an existing site if the operator of the existing site on March 1, 1996, had an enforceable property interest in the expansion area on that date:

1. The site is not significant if more than 35 percent of the proposed mining area consists of soil classified as Class I on Natural Resource and Conservation Service (NRCS) maps on the date of this rule; or

2. The site is not significant if more than 35 percent of the proposed mining area consists of soil classified as Class II, or of a combination of Class II and Class I or Unique soil on NRCS maps available on the date of this rule. (Amended 11-96)

b. Is located on property owned by, or under long-term lease to a city, county, or state jurisdiction for the primary purpose of excavating, or processing of aggregate or stone materials for road maintenance or road construction. (Amended 7-94)