

IN THE COUNTY COURT OF THE STATE OF OREGON

IN AND FOR THE COUNTY OF WASCO

FILED WASCO COUNTY

APR 22 2 24 PM '93
ORDINANCE
COUNTY CLERK

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IN THE MATTER OF THE ADOPTION OF AN ORDINANCE PROVIDING PROTECTION FOR GENERALLY ACCEPTED FARMING AND FORESTRY PRACTICES AND ESTABLISHING A COMPLAINT MEDIATION PROCESS.

THE WASCO COUNTY COURT ORDAINS AS FOLLOWS:

Section 1 SHORT TITLE. This Ordinance may be cited as the Wasco County Farming and Forestry Practices Protection and Complaint Mediation Ordinance.

Section 2 PURPOSE.

(1) Wasco County recognizes that complaints about farming and forestry practices will sometimes occur because these practices create odors, smoke, dust and noise and there is a close proximity of agricultural and forest lands to expanding urban and rural residential development.

(2) Wasco County recognizes that all resource use complaints have the potential of requiring immediate shutdowns or interruptions of farming and forestry practices which could result in significant economic consequences for resource users.

(3) The purpose of this Ordinance is therefore to provide a rapid complaint response and mediation process for resource use complaints by Wasco County residents in order to protect farming and forestry operations to the greatest extent possible from immediate shutdowns or interruptions.

Section 3 DEFINITIONS. As used in this Ordinance:

(1) "FACILITY" means any real or personal property, including appurtenances thereto and fixtures thereon, associated with a given use.

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(2) "FARMING PRACTICE" means the cultivation, growing, harvesting, processing or selling of plants or animals of any kind, which lawfully may be grown, possessed and sold, including but not limited to fish, livestock, poultry, grapes, cherries, apples, pears, wheat, barley, Christmas trees and nursery stock.

(3) "FORESTRY PRACTICE" means any operation conducted on or pertaining to forest land, including but not limited to:

- (a) Reforestation of forest land;
- (b) Road construction and maintenance;
- (c) Harvesting of forest tree species;
- (d) Application of chemicals; and
- (e) Disposal of slash.

(4) "NONRESOURCE USE" means any facility, activity or other use of land which does not constitute a resource use, including but not limited to residential use.

(5) "RESOURCE USE" means any current or future generally accepted farming or forestry practice or facility conducted in compliance with applicable Wasco County Ordinances and Federal and State laws.

(6) "RESOURCE USE NUISANCE" means any current or future generally accepted farming or forestry practice or facility conducted in compliance with applicable Wasco County Ordinances and Federal and State laws, which may be considered offensive, annoying, or interferes with or otherwise affects the urban and rural residents of Wasco County.

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- (7) "RESOURCE USE" does not include:
 - (a) Any unlawful act;
 - (b) The willful growing of infested, infected or diseased plants or animals;
 - (c) Trespass which involves actual physical intrusion onto the property of another by a person or by a person's animals;
- (8) "DESIGNEE" may include, but is not limited to: Wasco County Extension Agents, Field Consultants and Extension Agents from neighboring counties.
- (9) "COMPLAINT MEDIATION COMMITTEE":
 - (a) Is a standing committee established by the Wasco County Court to provide a forum for the mediation of Wasco County residents complaints regarding farming or forestry practices or facilities, including, but not limited to: odors from domestic livestock operations; blowing smoke from heaters, smokers and slash burning; noise from machines, including those devices producing sounds designed for agricultural purposes in order to frighten predacious birds or animals away from agricultural crops; drift or contamination from chemical and fertilizer applications; hours of operation; and littering of County roads.
 - (b) Shall consist of 4 to 10 Wasco County residents.
One-half of the Complaint Mediation Committee shall consist of residents who are regularly involved in a resource use within the County. The other one-half of the Complaint Mediation Committee shall consist of residents who are not

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regularly involved in a resource use within the County. The Wasco County Extension Agent or Designee shall serve as an ex-officio member of the Complaint Mediation Committee.

(c) Initial duty will be to work cooperatively with the Wasco County Extension Agent to screen, select and periodically update a list of persons to serve as Designees, and to provide this list of Designee names to the Wasco County Sheriff's Office and the Wasco County Court.

(d) Shall meet with the Wasco County Extension Agent at least once per year to discuss complaints handled by the Extension Office and the implementation of this Ordinance. These informational meetings shall be called by the Chair of the Complaint Mediation Committee.

(10) "PEER REVIEW BOARD" is a Board established by the Wasco County Court to advise the Complaint Mediation Committee on whether a disputed resource use activity is a generally accepted farming or forest practice or facility. The Board shall consist of 5 persons who regularly are involved in a resource use within the County, at least 3 of whom are regularly involved in the same type of disputed resource use being heard by the Complaint Mediation Committee.

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Section 4 PROTECTING RESOURCE USES.

(1) Wasco County shall not support a resource use nuisance complaint or claim for relief by nonresource uses or any persons or property associated therewith unless the resource use complaint response and mediation procedure of Section 5 of this Ordinance has been utilized.

(2) This Section applies regardless of:

(a) The location of the purportedly affected nonresource use;

(b) Whether the nonresource use purportedly affected existed before or after the occurrence of the resource use;

(c) Whether the resource use or nonresource use has undergone any change or interruption; and

(d) Whether the resource use is inside or outside an urban growth boundary to the extent permissible under State law.

Section 5 RESOURCE USE COMPLAINT RESPONSE AND MEDIATION PROCEDURE.

(1) Initial resource use complaints involving farming or forestry practices or facilities shall:

(a) Be referred to the Wasco County Extension Office during regular operating hours or the Wasco County Sheriff's Office after hours and on weekends; and

(b) Be responded to as soon as possible.

(2) The responding Wasco County Extension Agent or Designee shall:

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(a) Contact the complainant, discuss the complaint, and attempt to resolve it. If unable to resolve the complaint, encourage complainant to call or meet with the resource user that is the subject of their complaint and attempt a one-on-one resolution of the complaint;

(b) Recontact the complainant within a reasonable amount of time to determine if the complaint has been resolved. If it has, no further action is required. If not;

(c) Meet with the complainant and resource user as soon as possible and document the resource use complaint if it has not been resolved or if the complainant had already contacted the resource user with no results, or if the complainant is unwilling or unable to contact the resource user;

(d) Provide both complainant and resource user with written documentation of the complaint, including, but not limited to the name and address of complainant, the name and address of the resource user, and a description of the nature of the complaint. Continue to work with the complainant and resource user to resolve the complaint if progress toward resolution is occurring;

(e) Notify the Wasco County Court about the documented complaint as soon as possible and report on the effort and/or success in resolving the complaint. If resolved, no further action required. If unable to resolve;

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(f) Inform the complainant and resource user of further mediation assistance available through Wasco County. Describe the mediation process and encourage the complainant and resource user to seek assistance from the Wasco County Court.

(3) The responding Wasco County Sheriff's Officer shall:

(a) Contact the complainant and encourage them to call or meet with the resource user and attempt a one-on-one resolution of the complaint. If the complainant agrees to do this, inform the complainant that their complaint will be referred to the Wasco County Extension Office and that they will receive a call from the Extension Agent or Designee to determine if their complaint has been resolved. Refer the complaint to the Wasco County Extension Office and request follow-up per Section 5, 2(b). If the complainant has already contacted the resource user with no results, or if the complainant is unwilling or unable to contact the resource user;

(b) Document the resource use complaint;

(c) Provide both complainant and resource user with written documentation of the complaint, including, but not limited to the name and address of complainant, the name and address of the resource user, and a description of the nature of the complaint;

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(d) Advise both parties to the complaint that the Wasco County Extension Agent or a Designee shall be notified of the complaint and will make contact with both parties as soon as possible to discuss the complaint; and

(d) Deliver a copy of the complaint to the Wasco County Extension Agent or a Designee as soon as possible.

(4) For referrals of documented complaints from the Wasco County Sheriff's Office, the Wasco County Extension Agent or Designee shall:

(a) Meet with the complainant and resource user as soon as possible to discuss the complaint and attempt to resolve it. Continue to work with the complainant and resource user to resolve the complaint if progress toward resolution is occurring;

(b) Notify the Wasco County Court about the documented complaint as soon as possible and report on the effort and/or success in resolving the complaint. If resolved, no further action required. If unable to resolve;

(c) Inform the complainant and resource user of further mediation assistance available through Wasco County. Describe the mediation process and encourage the complainant and resource user to seek assistance from the Wasco County Court.

(d) Notify the Wasco County Court if unable to resolve the complaint.

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(5) If the complainant and resource user that are principles in a documented resource use complaint within Wasco County request mediation assistance beyond that provided by the Wasco County Extension Agent or Designee, the Wasco County Court shall request the Complaint Mediation Committee to act.

(6) The Complaint Mediation Committee shall:

(a) Set a date to hear the complaint from both complainant and resource user within one week of notification by the Wasco County Court; and

(b) Work with both complainant and resource user in an attempt to resolve the complaint.

(7) The Complaint Mediation Committee may:

(a) Ask the Wasco County Court to set up a Peer Review Board for assistance in determining whether an activity or facility is a generally accepted farming or forestry practice or facility;

(b) Suggest recommendations for Peer Review Board members to the Wasco County Court; and

(c) Meet with the complainant and resource user any number of times if the Complaint Mediation Committee determines that progress is being made toward a resolution of the complaint.

(8) If the Complaint Mediation Committee is unable to resolve the complaint, the complainant and resource user shall be advised by the Complaint Mediation Committee of their additional

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1 options including, but not limited to, seeking advice from
2 private counsel.

3 Section 6 LAND USE DECISIONS. The fact that Wasco County's
4 Comprehensive Plan, Zoning Ordinances and land use decisions allow
5 the siting, development or support of any particular use does not
6 negate the provisions of this Ordinance intended to protect a
7 resource use.

8 Section 7 EFFECT ON OTHER REMEDIES. The provisions of this
9 Ordinance shall not impair the right of any Wasco County resident to
10 pursue any remedy authorized by applicable Wasco County Ordinances or
11 Federal and State laws that:

- 12 (1) Concerns matters other than a resource use nuisance;
- 13 (2) Does not expressly purport to prohibit or regulate a farming
14 or forestry practice as a resource use nuisance; or
- 15 (3) Prohibits or regulates the use or physical condition of
16 resource use activities or facilities that adversely affect
17 public health or safety.

18 Section 7 SEVERABILITY CLAUSE. If any portion of this Ordinance
19 is held invalid by a Court of competent jurisdiction, such decision
20 shall apply only with respect to the specific portion held invalid by
21 the decision. It is the intent of Wasco County that the remaining
22 portions of this Ordinance continue in full force and effect.

23 Section 8 EMERGENCY CLAUSE. This Ordinance being immediately
24 necessary for the preservation of the public well being, an emergency
25 is declared to exist and this Ordinance shall take effect immediately
26 upon adoption.

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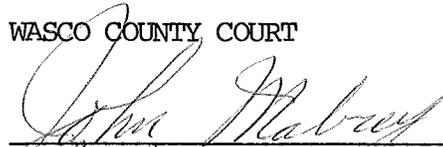
Regularly passed and adopted by the unanimous vote of all members of the County Court of the County of Wasco, State of Oregon, present on this day.

DONE AND DATED this 21st day of April, 1993.

WASCO COUNTY COURT

APPROVED AS TO FORM:


Bernard L. Smith
Wasco County District Attorney


John Mabrey, County Judge


Scott McKay, County Commissioner


C.E. Filbin, County Commissioner

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