

WASCO COUNTY

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KAREN
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January 12, 1993

The Honorable John Mabrey
Wasco County Judge
Wasco County Courthouse
The Dalles, Oregon 97058

RE: WASCO COUNTY RESOURCE USE PROTECTION ORDINANCE

Dear Judge Mabrey:

Your office brought to my attention that a typographic error appears on Page 3, Section 7(a) of the above referenced Ordinance. The word of was typed as or. For the purpose of editorial revision, I believe it appropriate that the Ordinance be corrected to reflect the actual word intended by the Court.

I would suggest that a corrected copy of the Ordinance be filed with a copy of this letter.

Yours very truly,

Bernard L. Smith
WASCO COUNTY DISTRICT ATTORNEY

BLS:kam

P93-0043 (7)

FILED WASCO CTY
THE DAUGHTER

OCT 7 2 27 PM '92
ORDINANCE

KAREN R. LEE
COUNTY CLERK

1 IN THE MATTER OF THE ADOPTION OF)
2 AN ORDINANCE PROTECTING ACCEPTED)
3 RESOURCE USES.)

4 THE WASCO COUNTY COURT ORDAINS AS FOLLOWS:

5 Section 1 SHORT TITLE. This Ordinance may be cited as the Wasco
6 County Resource Use Protection Ordinance.

7 Section 2. PURPOSE.

8 (1) It is the purpose of this Ordinance to protect resource
9 based economically productive activities of Wasco County in
10 order to assure the continued health, safety and prosperity of
11 its residents. Resource uses sometimes offend, annoy, interfere
12 with or otherwise affect others located on or near resource
13 lands. Wasco County has concluded that persons located on or
14 near resource lands must accept the conditions commonly
15 associated with accepted resource uses.

16 (2) This Ordinance is intended to limit the availability of
17 remedies based on nuisance or trespass, complaint procedures,
18 rights of action and claims for relief over which Wasco County
19 has jurisdiction, when they otherwise would either have an
20 adverse impact on resource uses which Wasco County seeks to
21 protect, or would impair full use of the resource base within
22 Wasco County.

23 Section 3 DEFINITIONS. As used in this Ordinance:

24 (1) "FACILITY" means any real or personal property, including
25 appurtenances thereto and fixtures thereon, associated with a
26 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) "FOREST PRACTICE" has the meaning given that term by ORS 527.620.

(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, ranching or forest practice or facility conducted in compliance with applicable Wasco County Land Use Ordinances.

(6) "GENERALLY ACCEPTED" means either:

(a) A practice or facility which is conducted or used in compliance with applicable federal and state laws; or

(b) If there is no applicable federal or state law, a practice or facility which an average person in Wasco County who is a grower or producer regularly involved in the same type of resource use would reasonably expect to occur or exist in a rural setting. The Wasco County Court may, as it deems necessary, establish resource user peer review boards consisting of five (5) persons who regularly are involved in

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2 - ORDINANCE

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1 a resource use within the County, three of whom regularly
2 are involved in the same type of resource use in question,
3 to advise the Court as to generally accepted practices or
4 facilities with respect to that resource use.

5 (7) "RESOURCE USE" does not include:

6 (a) The willful growing ^{of km} or unlawful, infested, infected or
7 diseased plants or animals.

8 (b) Trespass which involves actual physical intrusion onto
9 the property of another by a person or by a person's animals.

10 Section 4 PROTECTING RESOURCE USES OUTSIDE URBAN GROWTH BOUNDARY.

11 (1) No resource use occurring outside an urban growth boundary
12 (UGB) shall be declared to be a public or private nuisance or
13 trespass, or support any complaint procedure, or give rise to a
14 claim for relief in favor of, or to protect the interests of,
15 nonresource uses or any persons or property associated
16 therewith, to the extent that such right, proceeding or claim
17 would arise under an Ordinance or the inherent authority of
18 Wasco County.

19 (2) This section applies regardless of:

20 (a) The location of the purportedly affected nonresource
21 use.

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

24 (c) Whether the resource use or nonresource use has
25 undergone any change or interruption.

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(d) Whether the resource use or nonresource use is located inside or outside an area designated as secondary resource lands.

Section 5 PROTECTING RESOURCE USES WITHIN URBAN GROWTH BOUNDARY.

(1) No resource use occurring within an urban growth boundary (UGB) shall be declared to be a public or private nuisance or trespass, or support any complaint procedure, or give rise to a claim for relief in favor of, or to protect the interests of, nonresource uses or any persons or property associated therewith, to the extent that such right, proceeding or claim would arise under an Ordinance or the inherent authority of Wasco County.

(2) This section applies:

(a) Regardless of the location of the purportedly affected nonresource use.

(b) Only if the resource use predated the purportedly affected nonresource use.

(c) Only if the resource use has not significantly increased in size or intensity after (A) the effective date of this Ordinance, or (B) the date on which the applicable urban growth boundary is changed to include the subject resource use within its limits, whichever date is later. However, if the change is mandated by law, this section shall apply.

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1 Section 6 CHANGE IN URBAN GROWTH BOUNDARY. To the extent
2 permissible under state law, if an urban growth boundary (UGB) is
3 changed in such a way as to place a resource use either inside or
4 outside such boundary, Section 4 of this Ordinance applies with
5 respect to any conflict between a resource use and nonresource use.

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

11 Section 8 COMPLAINTS BY NONRESOURCE USERS. Any persons engaged
12 in a nonresource use are deemed on notice that Wasco County will not
13 act on complaints involving a resource use protected under this
14 Ordinance, wherever located, so long as such resource use complies
15 with applicable provisions of federal and state laws and this
16 Ordinance.

17 Section 9 SEVERABILITY CLAUSE. If any portion of this Ordinance
18 is held invalid by a court of competent jurisdiction, such decision
19 shall apply only with respect to the specific portion held invalid by
20 the decision. It is the intent of Wasco County that the remaining
21 portions of this Ordinance continue in full force and effect.

22 Section 10 EMERGENCY CLAUSE. This Ordinance being immediately
23 necessary for the preservation of the public well being, an emergency
24 is declared to exist and this Ordinance shall take effect immediately.

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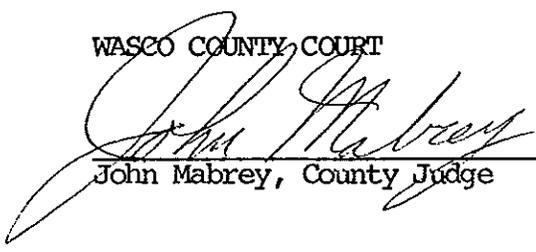
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Regularly passed and adopted by unanimous vote of all members of
the County Court of the County of Wasco, State of Oregon, present on
this day.

DONE AND DATED this 7th day of October, 1992.

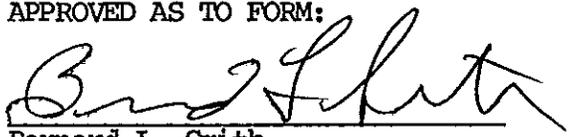
WASCO COUNTY COURT


John Mabrey, County Judge

Scott McKay, County Commissioner


C.E. Filbin, County Commissioner

APPROVED AS TO FORM:


Bernard L. Smith
Wasco County District Attorney

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