Wasco COUNTY PLANNING COMMISSION
January 6, 2015
Hearing begins at 3:00 p.m.
Columbia Gorge Discovery Center
Lower Level Classroom
5000 Discovery Drive
The Dalles, OR 97058

CALL TO ORDER

I. ROLL CALL

WASCO COUNTY PLANNING COMMISSIONERS PRESENT
Russ Hargrave
Kenneth McBain
Taner Elliott
Vicki Ashley
Jeff Handley
Andrew Myers
Mike Davis

WASCO COUNTY PLANNING COMMISSIONERS ABSENT
Brad DeHart

WASCO COUNTY PLANNING OFFICE STAFF PRESENT
Angie Brewer, Interim Planning Director
Brenda Jenkins, Planning Coordinator
Dawn Baird, Associate Planner

II. PUBLIC COMMENT: Maximum 15 minutes, *limited to items not being heard or discussed elsewhere on the agenda*.

None

III. APPROVAL OF PAST MINUTES:

October 7, 2014,

Staff informed the Commission of updates to the Minutes regarding Commissioner McBain's title inadvertently being listed as Vice Chair. Staff made updates and submitted the corrected Minutes document to Chair Hargrave.

Commissioner McBain moved to approve the minutes with amendments as noted.
Commissioner Elliott seconded

Chair Hargrave called for discussion
None.
Chair Hargrave called for the vote

The motion was unanimously approved 6 to 0, 1 abstain (Vice Chair Ashley), 1 absent (Commissioner DeHart), A listing of the vote, as required by Oregon Revised Statutes 192.650.c., is as follows:

Chair Hargrave – yes
Vice-Chair Ashley – abstained
Commissioner Myers – yes
Commissioner Handley - yes
Commissioner Elliott – yes
Commissioner DeHart - absent
Commissioner McBain – yes
Alternate Commissioner Davis – yes

Alternate Position #2 - Vacant

<u>QUASI JUDICIAL HEARING:</u> File PLAAPL-14-08-0002 WATSON APPEAL OF WILSON DECISION
Appeal by Gabriel Watson of Planning Director approval for a Conditional Use Permit to replace an existing manufactured home with a new manufactured home. The subject property is zoned A-1(160), Exclusive Farm Use Zone, and EPD 7 – Natural Areas Overlay Zone

Opening the Hearing: We will now open the public hearing on agenda item PLAAPL-14-11-0003, an appeal by Gabriel Watson, of the Planning Director's decision to approve PLACUP-14-09-0007, a Conditional Use Permit to replace an existing manufactured home with a new manufactured home.

The property is described as 7S 14E 8D, tax lot 500.

The criteria for approval of a land use decision are contained in the Wasco County Comprehensive Plan, Chapters 2 and 15; and the Wasco County Land Use and Development Ordinance (LUDO), Section 3.210, Exclusive Farm Use Zone, subsections D., F., H., and J., Section 3.910, Chapter 5 – Conditional Use Review, and Chapter 10 – Fire Safety Standards.

The specific criteria applicable to this request are contained in the Wasco County Comprehensive Plan Chapter 2 (Procedures); Chapter 3 (Basic Provisions),

The proposed development must comply with applicable provisions contained in the Wasco County Comprehensive Plan. Generally, unless otherwise noted, if a request is found to be consistent with the LUDO it is considered consistent with the Comprehensive

Chair Hargrave asked if any Commission member wished to disqualify themselves for any personal or financial interest in this matter?
None.
Chair Hargrave asked if any member of the audience wished to challenge the right of any Commission member to hear this matter?
None.
Chair Hargrave asked if any member of the audience wished to question the jurisdiction of this body to act on behalf of Wasco County in this matter?
None.
Chair Hargrave explained the Rules of Evidence which will be followed.

Chair Hargrave called for the staff report.

<u>Associate Planner Dawn Baird</u> presented the following staff report, referring to Powerpoint presentation slides as noted (see attachment A:

For the record my name is Dawn Baird and I am an Associate Planner for the Wasco County Planning Department. I am going to present the background information in this case.
(SLIDE 1)
Request: As the Chair indicated, today we will be discussing an appeal by Gabriel Watson, to the Planning Director's decision to approve a Conditional Use Permit for Met Wilson to replace an existing double-wide manufactured home with a new double-wide manufactured home, containing the same square footage.
(SLIDE 2)
Location: The subject parcel is located east of Deschutes River Access Road at its southern terminus, approximately 14 miles south of Maupin, Oregon, more specifically described as 7S 14E 8D 500.
(SLIDE 3)
Staff Recommendation: The full Staff Recommendation was mailed in the Planning Commission's agenda packets. It was available for review at the counter one week prior to this hearing, and it is considered a part of the record.

Why the Request is Before the Planning Commission:
(SLIDE 4)
On November 6, 2014, the Planning Director approved a Conditional Use Permit to approve the request of O. Meredith (Met) Wilson for a replacement dwelling in the Exclusive Farm Use/Natural Areas Overlay Zone. A "replacement dwelling" is an allowed use in the Exclusive Farm Use Zone. The original dwelling was

permitted in 1985. The proposed replacement dwelling is the same size as the original dwelling and will be placed in the same general location. Per Chapter 2, Section 2.060.A.1., this request was reviewed as a Conditional Use Permit. On November 18, 2014, this decision was appealed by Gabriel Watson, an owner within 750' of the subject parcel. Section 2.060.B.13. of the Wasco County Land Use & Development Ordinance requires the Planning Commission to hear appeals of the Planning Director.

Stage in the Process: The appeal was submitted to the Planning Department on November 18, 2014, and the request was found to be complete on December 1, 2014, and was scheduled for a public hearing on today's date. All required public notice has been given. The Staff Recommendation, with findings, conditions and conclusions, was issued on December 30, 2014. The Staff Recommendation and Summary were provided to the Planning Commission. If the Planning Commission feels they have all the necessary information to make a decision, they will vote to do so today.

Criteria: The criteria used to evaluate this request include:

LAND USE & DEVELOPMENT ORDINANCE (LUDO) - APPLICABLE STANDARDS

a. Chapter 2 – Development Approval Procedures
Section 2.060.B.13., Appeals of a Decision of Director

b. Chapter 3 – Basic Provisions

Section 3.210, A-1, Exclusive Farm Use zone
Section 3.210.D.10., Uses Permitted Subject to Standards/Type I Review
Section 3.210.F Property Development Standards
Section 3.210.H Agricultural Protection
Section 3.210.J.3., Additional Standards – Replacement Dwelling

Section 3.700, Environmental Protection Districts
Section 3.910, Division 7 - Natural Areas Overlay

c. Chapter 5 – Conditional Use Review
Section 5.020, Authorization to Grant or Deny Conditional Uses, and Standards and Criteria Used
Section 5.030, Conditions
Section 5.040, Revocation of Conditional Use Permit

d. Chapter 10 – Fire Safety Standards
Section 10.110 Siting Standards – Locating Structures
Section 10.120 Defensible Space – Clearing and Maintaining a Fire Fuel Break
Section 10.130 Construction Standards for Dwellings and Structures – Decreasing the Ignition Risks by Planning for a More Fire-Safe Structure
Section 10.140 Access Standards – Providing Safe Access to and Escape From Your Home
Section 10.150 Fire Protection or On-Site Water Required

Findings: The original appeal form did not include any detailed information. Staff requested the appellant provide grounds for the appeal, which he did on November 19, 2014. Staff addressed the grounds for appeal in a cover memorandum prepared for the Planning Commission. Please note that only the body of the appellant's grounds for appeal are provided in staff's summary. To view footnotes, please see Mr. Watson's original comments beginning on page 1-36. There are four grounds for appeal, which I will summarize and address.

a. Staff erred when it found the proposed development within the White River buffer.

Staff: The report incorrectly states that the proposed development is located within the buffer of the White River when in reality it is located in the buffer of the Deschutes River. This is a typographical mistake, not a procedural error because both rivers are protected under the same provision in the Wasco County Land Use and Development Ordinance (LUDO). The Conditional Review Use process applied by staff was correct. The typographical error regarding the name of the protected river was corrected immediately upon discovery.

(SLIDE 5)

b. Wasco County Land Use Development Ordinance Section 3.910, Environmental Protection District 7, Natural Areas Overlay (NAOD) does not apply to subject parcel because the parcel is neither a natural area identified by the Wasco County Comprehensive Plan nor adjacent to a “Wild” or “Scenic” portion of the Deschutes, White, or John Day Rivers.

Staff: In brief, the proposed development is located within an area identified by the Wasco County Comprehensive Plan as a Natural Area, and the Wasco County Land Use and Development Ordinance (WCLUDO) Environmental Protection District 7 (EPD-7), which was created in part to protect sensitive lands within the Deschutes River, an Oregon Scenic River.
(SLIDE 5)

Chapter 2, Section J., Natural Areas, of the Wasco County Comprehensive Plan states: “…All natural areas have been identified on the zoning map by placement of an environmental protection district overlay zone…”
(SLIDE 6)

c. National Wild and Scenic Rivers Act Congress created the National Wild and Scenic River in 1968 to complement the "established national policy of dam and other construction" by "preserving selected rivers or sections thereof in their free-flowing condition to protect the water quality of such rivers..." Today administration of the law cannot "abrogate any existing rights, privileges, or contracts. . . held by any private party", and is administered without limiting uses that do not substantially interfere with public use and enjoyment (emphasis added).

Staff: The portion of the Deschutes River near the proposed development is included in the National Wild and Scenic Rivers System, but is identified as “recreational” not “scenic”. The property is also within the area protected as state designated Oregon Scenic River. As explained above in the staff response for Ground for Appeal #2, the location of the proposed development is within a designated Natural Area identified by the Wasco County Comprehensive Plan and WCLUDO as EPD-7.

The Conditional Use Review process did not prevent or limit the replacement of the existing manufactured dwelling.

d. Similarly, the Oregon Scenic Waterways Act was created to preserve the "free-flowing" rivers of Oregon. The people of Oregon found that the `policy of permitting construction of dams... needs to be complemented by a policy that would preserve inter alia selected rivers and sections thereof in a free-flowing condition..." The Oregon Scenic Waterways act adopts much of its language from the National Wild and Scenic Waterways system.

Staff: The Wasco County Comprehensive Plan (Chapter 15) contains mandatory language for the protection of the Deschutes and John Day River Scenic Waterways, which is a state designation, not a federal designation. The Wasco County Comprehensive Plan was submitted to and acknowledged by the Department of Land Conservation & Development on August 25, 1993, for consistency with state law.

Previously stated findings explain why the Comprehensive Plan and LUDO require the application of the EPD-7, Natural Areas Overlay Zone. The Conditional Use Review process did not prevent or limit the replacement of the existing manufactured dwelling.
(SLIDE 7)

Review Process Summary:

1. Pursuant to LUDO Section 3.910.B., the proposed development was subject to the conditional use process.
2. Outcome of the review process is that the proposed development was approved with conditions.
3. Notice of appeal was received by Mr. Watson on November 18, 2014, and
4. The Planning Commission hearing was scheduled for today, Tuesday, January 6, 2015.

The options of the Planning Commission are to:

1. Uphold the decision of the Planning Director with the findings and conditions recommended by the Planning Department; or

2. Uphold the decision of the Planning Director with amended findings and conditions provided by the Planning Commission; or

3. Overturn the decision of the Planning Director; or

4. If additional information is needed, continue the hearing to a date and time certain to allow the submittal of additional information.

Staff sees no reason to continue this public hearing and believe that the Planning Commission has sufficient information to make a decision on this request. Staff recommends Option A, Uphold the decision of the Planning Director with the findings and conditions recommended by the Planning Department.

That concludes my presentation and I would be glad to answer any questions the Commission may have. Specific questions may best be left to the applicant and appellant.

Chair Hargrave called for questions from the Commission.
None.
Chair Hargrave called for comments from the applicant.
None.
Chair Hargrave Called for comments in support of the applicant
None
Chair Hargrave called for comments from the Appellant

<u>Gabriel Watson, Appellant:</u>
Mr. Watson stated that he believes the appeal would not prevent the applicant from being approved. He further explained that he was not appealing the use, simply the process and the criteria chosen to be applied to the review. He then gave a PowerPoint presentation as his testimony. (repeated attempts to receive the PowerPoint as an exhibit have been ignored by Mr. Watson.)

Mr. Watson stated that his grounds for appeal were:

#1 Staff erred when it found the proposed development within the White River buffer

#2 Wasco County Land Use Development Ordinance, Section 3.910 (Environmental Protection District 7, Natural Areas Overlay), does not apply to the subject parcel because the parcel is neither a natural area identified by the Wasco County Comprehensive Plan nor adjacent to a wild or scenic portion of the Deschutes, White or John Day Rivers.

#3 National Wild and Scenic Rivers Act Congress created the National Wild and Scenic River in 1968 to complement the "established national policy of dam and other construction" by "preserving selected rivers or sections thereof in their free-flowing condition to protect the water quality of such rivers..." Today administration of the law cannot "abrogate any existing rights, privileges, or contracts. . . held by any private party", and is administered without limiting uses that do not substantially interfere with public use and enjoyment.

#4 Oregon Scenic Waterways Act was created to preserve the "free-flowing" rivers of Oregon. The people of Oregon found that the `policy of permitting construction of dams... needs to be complemented by a policy that would preserve selected rivers and sections thereof in a free-flowing condition..." The Oregon Scenic Waterways act adopts much of its language from the National Wild and Scenic Waterways system.

He further stated that if grounds 2,3, and 4 are found to be accurate by the Commission, then grounds 1 becomes pertinent as the property would not be located on the White River because if it were on the White River it would be in a “natural or scenic” protected river as listed in the Wasco County Comprehensive Plan and would be subject to Division 7 EPD.
Mr. Watson stated that the Wild and Scenic statute applies to rivers that are classified as wild and scenic. He further stated that scenic river areas may not include long stretches of conspicuous or well traveled roads parallel to the river or in close proximity. He feels that the makes it clear that the State never intended for this area to be considered scenic, but rather a recreational river area.

Chair Hargrave called for additional questions from the Commission.
None.

Chair Hargrave called for additional testimony in support of the proposal.
None.

Chair Hargrave called for testimony in opposition to the proposal.
None.

Chair Hargrave called for Applicant rebuttal.
None.

Chair Hargrave closed hearing for deliberation
Vice Chair Ashley stated that she recognizes that the comprehensive plan is 30 years old, but the commission must follow what is law.
Commissioner Davis agrees.
Chair Hargrave stated that he thinks Mr. Watson raises some good points, but he recognizes the comprehensive plan is not a perfect document; there are tables which leave out items, it is not up to date, and at times not totally coherent. However he agrees with the staff's interpretation. He feels the area is in a natural area. He feels staff applied the criteria correctly and the action should have been a conditional use process.

Vice Chair Ashley moved to uphold the decision of the Planning Director, including the amendments as updated by Staff, and deny the appeal with the conditions and findings that have been presented.
Commissioner Elliott seconded.
Chair Hargrave called for discussion
None.
Chair Hargrave called for the vote

The motion was unanimously approved 7 to 0, 1 absent (Commissioner DeHart), A listing of the vote, as required by Oregon Revised Statutes 192.650.c., is as follows:

Chair Hargrave – yes
Vice-Chair Ashley – yes
Commissioner Myers – yes
Commissioner Handley - yes
Commissioner Elliott – yes
Commissioner DeHart - absent
Commissioner McBain – yes
Alternate Commissioner Davis – yes
Alternate Position #2 – Vacant
After a brief discussion regarding Appeal Criteria #1 (Staff erred when it found the proposed development within the White River buffer) it was acknowledged that it was a typo and that Staff intended it to read Deschutes River rather than White River. They also acknowledge that Staff updated the typo as soon as it was brought to their attention. However, it was not corrected prior to the applicant filing his appeal therefore they felt that he did indeed make an argument for criteria #1.

Commissioner Myers moved to amend the motion to grant the appeal, in part, with regards to the appeal claim that staff erred when they found the property within the White River buffer and to deny the appeal in all other aspects.
Commissioner Handley seconded
Chair Hargrave called for discussion
None.
Chair Hargrave called for the vote

The motion was denied 5 to 2, 1 absent (Commissioner DeHart), A listing of the vote, as required by Oregon Revised Statutes 192.650.c., is as follows:

Chair Hargrave – no
Vice-Chair Ashley – no

Commissioner Myers – yes
Commissioner Handley - yes
Commissioner Elliott – no
Commissioner DeHart - absent
Commissioner McBain – no
Alternate Commissioner Davis – no
Alternate Position #2 – Vacant

Chair Hargrave moved to amend the motion to partially uphold the appeal with regards to the misidentification of the property near the White River and deny all other aspects of appeal.
Commissioner Myers seconded.
Chair Hargrave called for discussion
None.
Chair Hargrave called for the vote

The motion was unanimously approved 7 to 0, 1 absent (Commissioner DeHart), A listing of the vote, as required by Oregon Revised Statutes 192.650.c., is as follows:

Chair Hargrave – yes
Vice-Chair Ashley – yes
Commissioner Myers – yes
Commissioner Handley - yes
Commissioner Elliott – yes
Commissioner DeHart - absent
Commissioner McBain – yes
Alternate Commissioner Davis – yes
Alternate Position #2 – Vacant

V. Director

Discussion on the process of updating the Comprehensive Plan and WC Land Use Development Ordinances. The Commission reached consensus to meet monthly, using months with no action agenda as training opportunities.
Set a work session for February 3 meeting to look at Comprehensive Plan Updates process and training.

VI. ADJOURNMENT

Adjourned at 5:18 pm

Respectfully submitted,

Russell Hargrave, Chair	Angie Brewer, Interim Planning Director
Wasco County Planning Commission	Wasco County Planning & Development

Wasco County Planning Commission

Date: January 6, 2015

Location: Discovery Center

Hearing: Appeal PLAAPL-14-11-0003 made by Gabriel A. Watson in response to Planning Director's Decision PLACUP-14-09-0007 for O. Meredith Wilson et. al.

GENERAL INFORMATION:

Property Owner:

O. Meredith Wilson Jr., et. al.

Legal Description:

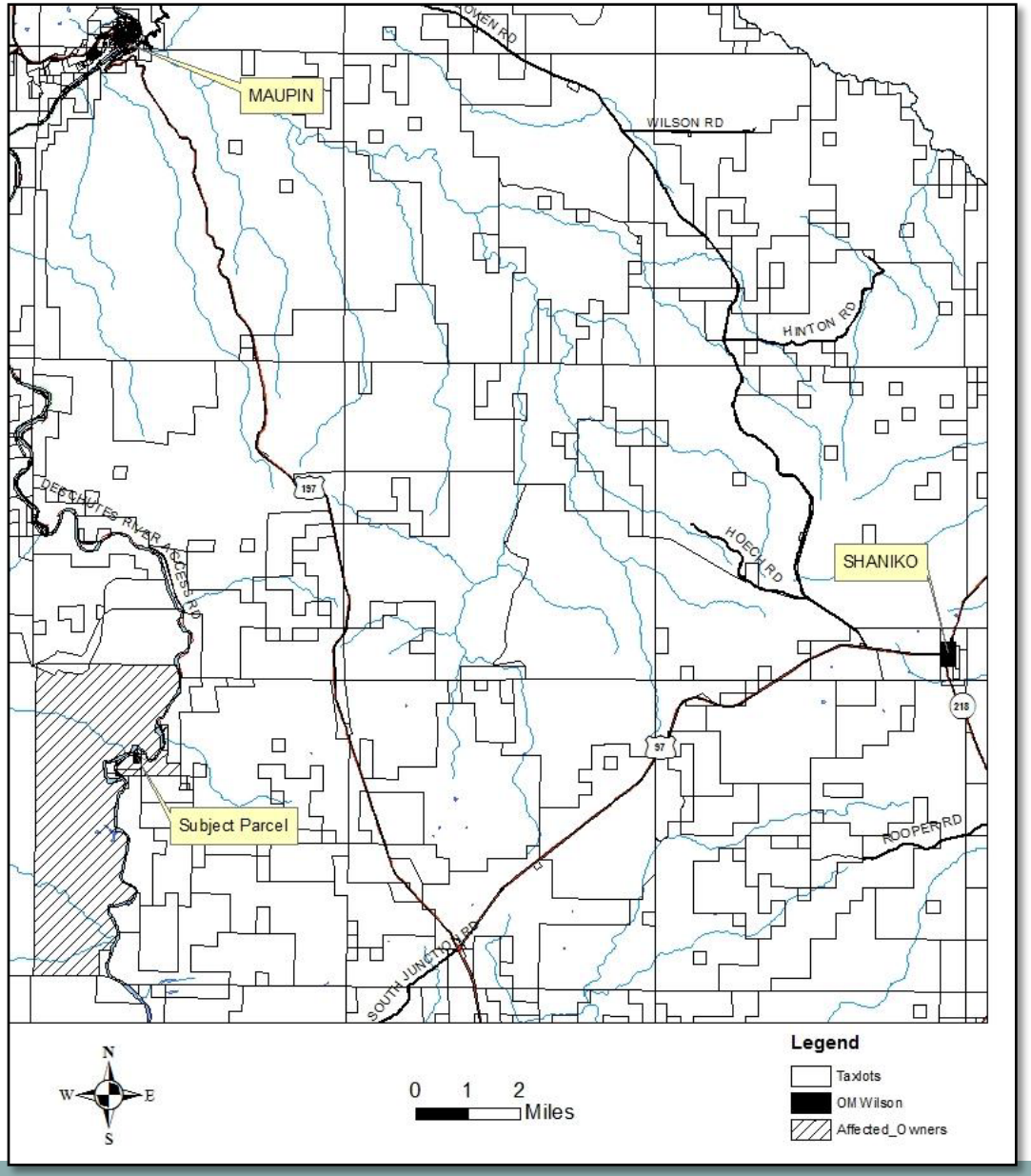
8S 14E 8D, Tax Lot 500

Zoning:

A-1 Exclusive Farm Use

Size:

14.01 acres

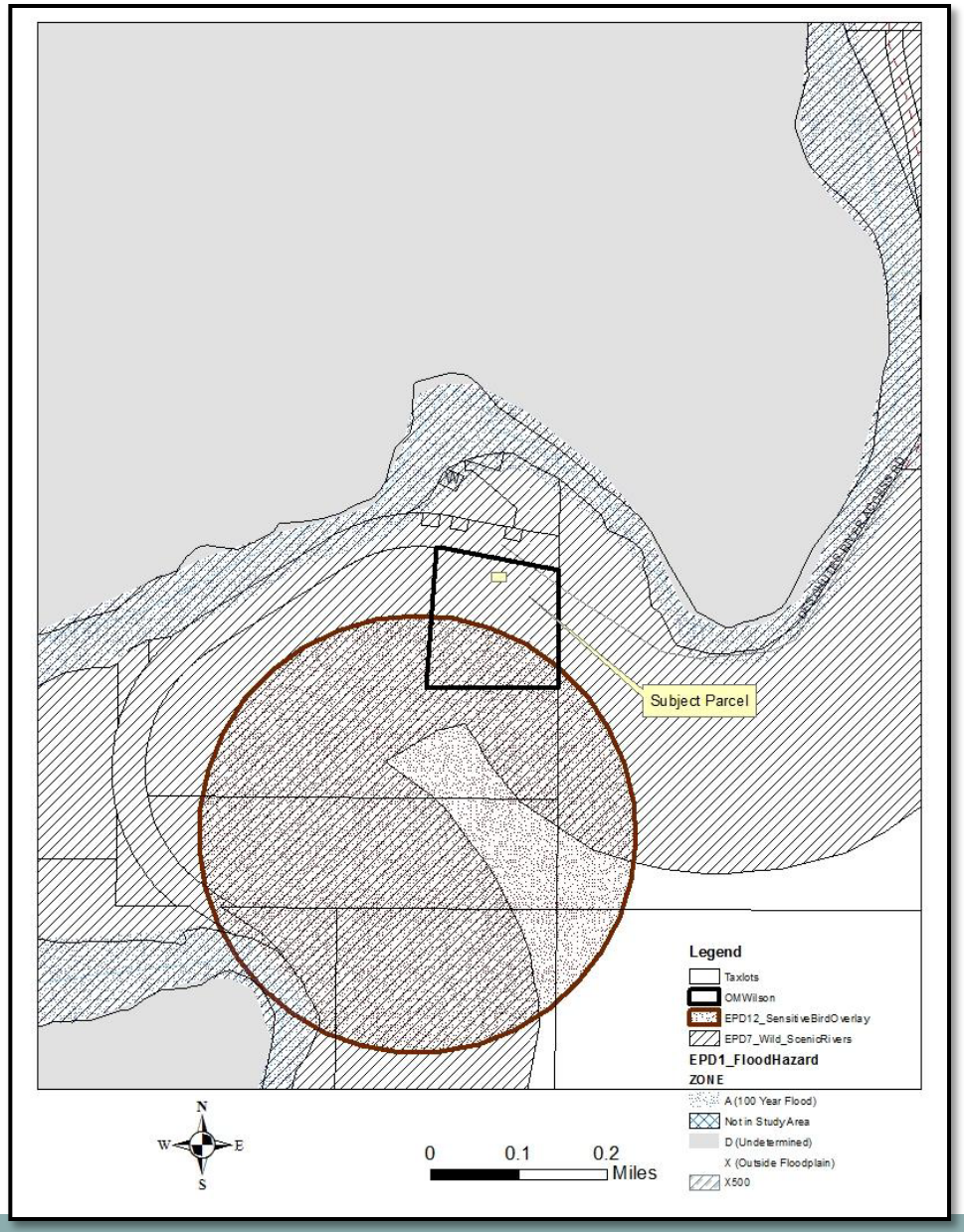


Environmental Protection Districts (EPD):

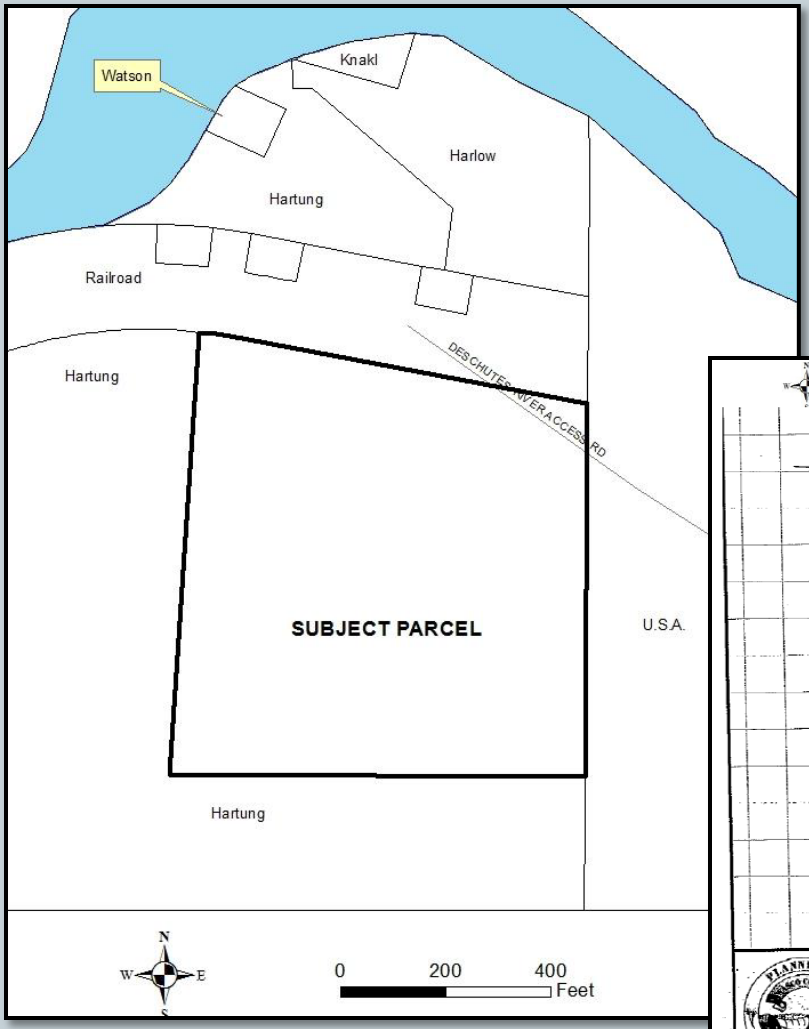
The property is located within EPD 7 and 12.

Development site is located within EPD 7, as shown here:

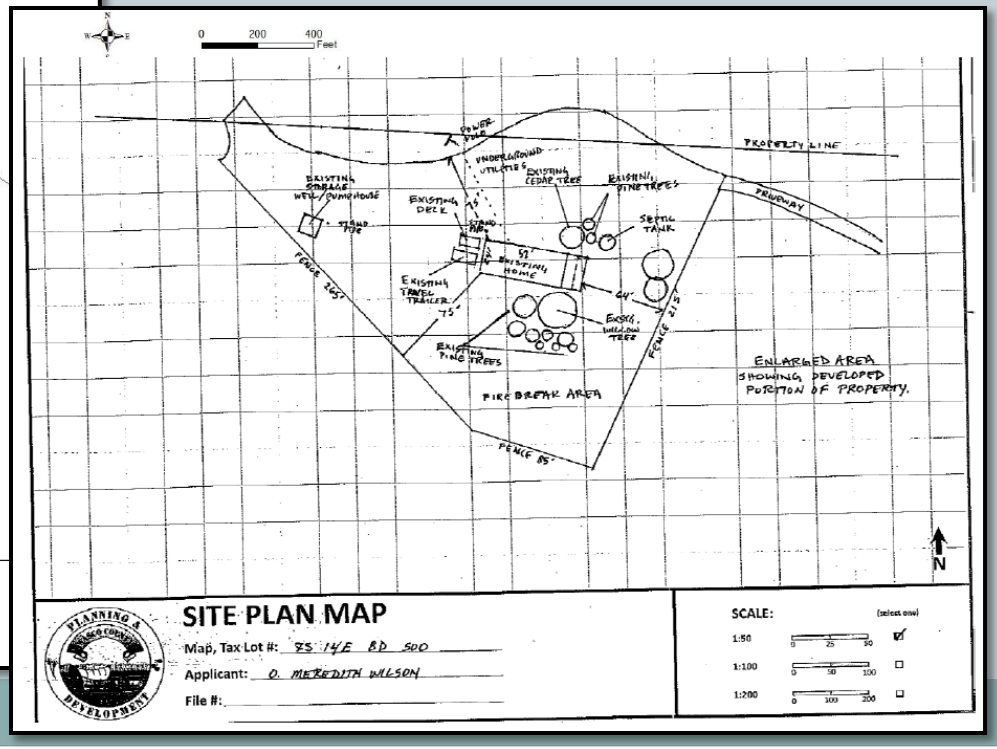
Environmental protection districts are created to protect resources, as directed in the Wasco County Comprehensive Plan and codified by the Wasco County LUDO.



Proposed Development: Replacement Dwelling



- "<u>Replacement</u> dwelling" is listed as an allowed use in underlying zone.
- Proposed replacement dwelling is the same size, and will be in the same general location.
- Original dwelling constructed legally in 1985



Wasco County Comprehensive Plan

CHAPTER 2 - SECTION J: NATURAL AREAS

"…All natural areas have been identified on the zoning map by placement of an environmental protection district overlay zone…"

Wasco County LUDO Natural Areas Overlay 7

SECTION 3.910 DIVISION 7 - NATURAL AREAS OVERLAY

A. *Purpose: This overlay district is intended to preempt conflicting use in areas identified in the Wasco County Comprehensive Plan as containing significant natural value. The overlay is designed to protect the identified natural value by allowing only uses which will not permanently destroy the natural value. This overlay applies to all natural areas identified in the Wasco County Comprehensive Plan and to the Wasco County portions of the Deschutes, John Day, and White Rivers designated as Wild & Scenic Rivers as defined and protected in ORS390.805 & 390.825 or USFC & CFR.*

B. ***Permitted Uses: Uses allowed in the underlying zone shall be subject to the conditional use review permit pursuant to Section 2.060(A) of this Ordinance.***

C. *Approval Standards: In the evaluation of any use subject to the Natural Area Overlay, finding shall be required demonstrating that the designated natural value will not be damaged by the use or activity. If a proposed use or activity would result in the permanent destruction of natural value, then the request shall be denied.*

Review Process Summary:

- Pursuant to LUDO Section 3.910 (B) the proposed development was subject to the conditional use process.
- Outcome of review process: the proposed development was approved with conditions.
- Notice of appeal provided by Mr. Watson 11-18-2014
- Planning Commission hearing 1-6-2015

Options of Planning Commission:

- Uphold the decision of the Planning Director;
- Uphold the decision of the Planning Director with amended findings and conditions of approval;
- Overturn the decision of the Planning Director; or
- Continue the hearing to allow for additional review.