

ATTACHMENT D – STAFF REPORT

File Number: 921-19-000084-PLNG

Request: Conditional Use Permit to construct an approximately 12,043 square foot, 117’6”L x 102’6”W x 45’H substation for the North Wasco County PUD. Total fenced in area will be approximately 220’L x 220’W (48,400 Square Feet).

Applicant: North Wasco County PUD – Paul Titus

Owner: KW Ranch LLC – Guy & Jo Harvey

Decision: Approval, with **conditions**

Decision Date: October 31, 2019

Appeal Deadline: November 12, 2019

Location: The subject property is located north of and along Highway 216, approximately 3.3 miles east of its intersection with Highway 197, and approximately 4.4 miles north of the City of Maupin, Oregon; more specifically described as:

<u>Map/Tax Lot</u>	<u>Acct#</u>	<u>Acres</u>
4S 14E 0 700	10495	842.47

Zoning: A-1 (160), Exclusive Farm Use

Environmental Protection

Districts: EPD-1 -Flood Hazard Overlay Zone,
EPD-7 - Natural Areas Overlay Zone

Past Actions: 921-PLAMNN-13-04-0013 Removal of Highline Diversion
921-PLAMNS-12-03-0006 Ag Structure and Pergola

I. APPLICABLE STANDARDS

Wasco County Land Use & Development Ordinance (LUDO)

A. Chapter 2 – Development Approval Procedures

- Section 2.060.A.1. (Application Completeness)
- Section 2.080 (Notice)

B. Chapter 3 – Basic Provisions

Section 3.210, Exclusive Farm Use (A-1) Zone

- Section 3.213.L. (Uses Permitted Subject to Standards/ Type II Review – Utility Facility Necessary for Public Service)
- Section 3.216 (Property Development Standards)
- Section 3.218 (Agricultural Protection)
- Section 3.219.H. (Utility Facility)

Section 3.910, EPD-7, Natural Areas Overlay Zone

- Section 3.911 Permitted Uses
- Section 3.912 Approval Standards

C. Chapter 4 – Supplemental Provisions

- Section 4.070 General Exceptions to Building Height Requirements

D. 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

E. Chapter 10 – Fire Safety Standards

- Section 10.110 (Siting Standards – Locating Structures for Good Defensibility)
- Section 10.120 (Defensible Space – Clearing and Maintaining a Fire Fuel Break)
- Section 10.130 (Construction Standards for Dwellings and Structures)
- Section 10.140 (Access Standards)
- Section 10.150 (Fire Protection or On-Site Water Required)

F. Chapter 20 – Site Plan Review

- Section 20.030 Contents of the Site Plan

II. BACKGROUND

- A. **Legal Parcel:** The subject parcel was created by Deed 1965-0380, recorded with the Wasco County Clerk on February 25, 1965. It is consistent with the definition of (Legal) Parcel in Section 1.090 of the WCLUDO because it was created by deed prior to September 4, 1974.

(Legal) Parcel - A unit of land created as follows:

- a. *A lot in an existing, duly recorded subdivision; or*
- b. *A parcel in an existing, duly recorded major or minor land partition; or*
- c. *By deed or land sales contract prior to September 4, 1974.*

B. Site Description: The subject parcel lies north of and along Highway 216, just north of White River Falls State Park. Slopes on the affected portions of the property are predominantly 5-10% and south facing. Land north of the development site has south facing slopes in excess of 60%. Development on the property consists of one dwelling, two agricultural structures, a cattle yard, and a portion of the John Day-Marion No 1 transmission line. Vegetation on the property is generally composed of grasses, and scattered shrubs, with a few trees near the residential development.

C. Surrounding Land Use: Surrounding properties are all zoned A-1 (160), Exclusive Farm Use, and contain a mixture of private and public lands. The surrounding land use is primarily composed of agricultural uses with scattered dwelling and agricultural structures. The privately developed properties generally contain 5-10% south facing slopes, though portions exceed 60%. Trees and vegetation are common around existing buildings, with the remainder in a natural state with native grasses and shrubs.

D. Public Comment: Notice of Administrative Action was mailed on August 8, 2019, to all owners of property within 750' of the subject parcel and affected agencies. This notice provided a 12-day pre-notice for public comment. This comment period ended at 4 p.m. on August 20, 2019. The following comments were received prior to the expiration of the comment period:

Scott Williams, Chief Deputy with the Wasco County Sheriff's Office: Email correspondence on September 4, 2019, "Nothing that would affect us".

Staff Response: Findings in relation to Deputy Williams's comments can be found in Chapter 5 of this report.

David Colburn, Fire Chief with the Tygh Valley Rural Fire Protection District: Email correspondence dated September 11, 2019, "I don't see any issues with approving it. We would like to see the area around it maintained for wildfire hazard and be able to gain access to the facility in case of fire."

Staff Response: Mr. Colburn's comments are addressed in Chapter 5 and Chapter 10 of this report.

Donald Morehouse, Senior Transportation Planner with ODOT Region 4: In email correspondence dated September 16, 2019, Mr. Morehouse submitted a letter stating the need for an approach permit, a miscellaneous construction permit, and a drainage study.

Staff Response: Staff addressed the letters concerns in Chapter 5, and conditions of approval were included to ensure compliance.

Jeffrey Kitchens, Deschutes Field Office Manager with the Prineville District BLM: Email correspondence dated March 7, 2018, “We have had a chance to review and did not see anything that would have a direct or indirect impact on BLM Managed Public Lands.”

Staff Response: Mr. Kitchen’s comments are addressed in findings for Chapter 5 of this report.

III. FINDINGS:

Wasco County Land Use & Development Ordinance (LUDO)

A. Chapter 2 – Development Approval Procedures

Section 2.060 - Application/Completeness (Amended 4/12)

A. *The Director shall have the authority to review the following applications for Administrative Action, and shall follow the procedure provided by this Ordinance to accomplish such review. Matters required by this Ordinance that are not subject to other provisions of this Ordinance include, but are not limited to:*

1. *Conditional Use Review (Chapter 5)*

FINDING: This conditional use is being reviewed by the Wasco County Planning Department in accordance with Chapter 5, and the conditional use review criteria outlined in the Big Muddy Limited Use Overlay Zone. All relevant criteria are addressed throughout this report. Staff finds the request complies with Criterion A.

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Section 2.080 - Notice

Citizen and Agency Involvement - The County shall provide opportunities for public and agency input in the planning process. To ensure that there is a coordinated effort to permit land use projects, notice of applications for development approval shall be sent to interested agencies and departments such as County departments, sheriff and fire departments, school districts, utility companies, and the applicable city departments for those municipalities within Wasco County. Affected jurisdictions and agencies could include the Department of Environmental Quality, the Oregon Department of Transportation, Wasco County Transportation Network, and other applicable local, state or federal agencies.

If the subject property is being considered for a comprehensive plan or zone change, notice of receipt of the application shall be provided to the Oregon Department of Transportation.

A. *Notice of Administrative Action for the use listed in Sections 2.060 A 1 and A 9, shall be given as prescribed by subsection (A) (1) – (6) of this Section, with the exception that notice be given at least ten (10) days prior to a decision. (Revised 1-92, 5-93, 9-99)*

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E. *An affidavit of all mailing notices shall be made part of the record.*

FINDING: On August 8, 2019, a public notice of administrative action was sent to all affected landowners within 750' and interested public agencies, notifying them of the proposed development with a 10 day comment period that followed. On October 31, 2019, a Notice of Decision was sent to the same affected landowners within 750' and interested public agencies, notifying them of the proposed development with a final decision date of November 12, 2019. Staff finds the request complies with Section 20.080.

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B. Chapter 3 – Basic Provisions

Section 3.210, Exclusive Farm Use (A-1) Zone

Section 3.214 - Uses Permitted Subject to Standards/Type II Review

The following uses may be permitted on a legal parcel on lands designated Exclusive Farm Use (A-1) Zone subject to the Section 3.216 - Property Development Standards, Section 3.218 - Agricultural Protection, Chapter 10 - Fire Safety Standards, Chapter 20 - Site Plan Review only if the request includes off-street parking, off-street loading or bicycle parking, as well as any other listed, referenced or applicable standards:

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UTILITY/ENERGY FACILITIES

Pursuant to Chapter 4 – Supplemental Provisions - Section 4.070, these uses do not require a variance if they exceed 35 feet in height.

- L. *Utility facilities "necessary" for public service, including wetland waste treatment systems and Electrical Transmission Facilities under 200 feet in height, but not including commercial utility facilities for the purpose of generating electrical power for public use by sale, or Electrical Transmission Facilities over 200 feet in height, subject to Section 3.219 H below.*

FINDING: The request is to construct a substation for North Wasco PUD. The Wasco County LUDO, Chapter 1, Section 1.090, Definitions, defines Utility Facilities Necessary for Public Service as:

“Utility Facilities Necessary for Public Service (EFU & Forest Zones Only) - Unless otherwise specified, any facility owned or operated by a public, private or cooperative company for the transmission, distribution or processing of its products or for the disposal of cooling water, waste or by-products, and including, major trunk pipelines, reservoirs (may require a Goal 3 or Goal 4 exception), dams & other hydroelectric facilities, water towers, sewage lagoons, cell towers, electrical transmission facilities (except transmission towers over 200' in height) including substations not associated with a commercial power generating facilities and other similar facilities. (Amended 4/12)”

Since the proposed facility is an electrical transmission facility, it is classified as a utility facility necessary for public service. The height of the proposed facility will be approximately 45', which is less than the

200' maximum height limitation. Section 3.216 – Property Development Standards, Section 3.218 – Agricultural Protection, Chapter 10 – Fire Safety Standards, Chapter 20 – Site Plan Review, and Section 3.219.H. – Utility Facilities, are addressed further on in this report. Staff finds the request complies with Criterion L.

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Section 3.216, Property Development Standards

Property development standards are designed to preserve and protect the character and integrity of agricultural lands, and minimize potential conflicts between agricultural operations and adjoining property owners. A variance subject to WCLUDO Chapter 6 or Chapter 7 may be utilized to alleviate an exceptional or extraordinary circumstance that would otherwise preclude the parcel from being utilized. A variance to these standards is not to be used to achieve a preferential siting that could otherwise be achieved by adherence to these prescribed standards.

A. Setbacks

1. Property Line

- a. All dwellings (farm and non-farm) and accessory structures not in conjunction with farm use, shall comply with the following property line setback requirements:

(1) If adjacent land is being used for perennial or annual crops, the setback shall be a minimum of 200 feet from the property line.

(2) If adjacent land is being used for grazing, is zoned Exclusive Farm Use and has never been cultivated or is zoned F-1 or F-2, the setback shall be a minimum of 100 feet from the property line.

FINDING: This criterion requires a 200 foot minimum setback if the adjacent land is being used for perennial or annual crops. A 100 foot setback minimum is required from adjacent properties that are being used for grazing, is zoned Exclusive Farm Use and has never been cultivated, or is zoned F-1 or F-2. Property to the west is currently being used for annual crops which will require a 200 foot setback. Property to the north, east, and south are used for grazing and are zoned Exclusive Farm Use which will require a 100 foot setback. See the following table for proposed setbacks and whether they meet the required minimums.

Property Line/Required Setback	Proposed Setback	Meets the Minimum?
North (100')	3,160' +/-	Yes
East (100')	1,920' +/-	Yes
South (100')	100'	Yes
West (200')	3,900' +/-	Yes

Staff finds the request complies with Criterion A.

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2. Waterways

- a. *Resource Buffers: All bottoms of foundations of permanent structures, or similar permanent fixtures shall be setback from the high water line or mark, along all streams, lakes, rivers, or wetlands.*

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- (2) *A minimum distance of fifty (50) feet when measured horizontally at a right angle for all water bodies designated as non-fish bearing by any federal, state or local inventory.*

FINDING: The subject property that the proposed substation will be located on contains multiple wetlands. The closest wetland is a freshwater emergent wetland that is non-fish bearing, and is located in the Oregon Department of State Lands statewide wetland inventory. The wetland is located approximately 280' east of the proposed development site, and runs from north to south, eventually feeding into the White River. Since the required setback distance is a minimum of 50', and the proposed development will be located further away than 50', staff finds that the request complies with Criterion a.(2).

- b. *Floodplain: Any development including but not limited to buildings, structures or excavation, proposed within a FEMA designated flood zone, or sited in an area where the Planning Director cannot deem the development reasonably safe from flooding shall be subject to Section 3.740 - Flood Hazard Overlay (EPD 1).*

FINDING: The subject property contains a portion of the floodplain that encompasses the White River. However, the floodplain is located along the southern boundary, and no development is proposed in the floodplain. Staff finds criterion b is not applicable to the request.

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- B. *Height: Except for those uses allowed by Section 4.070 - General Exception to Building Height Requirements, no building or structure shall exceed a height of 35 feet. Height is measured from average grade.*

FINDING: Although the building height limitation is 35', Section 4.070 – General Exceptions to Building Height Requirements – lists “towers” as a use that may be erected above the height limits of the zone. One of the powerline towers will be approximately 45' tall, with all other aspects of the substation only reaching 23' tall. See Section 4.070 below for further detail. Staff finds the request complies with Criterion B.

- C. *Vision Clearance: Vision clearance on corner properties shall be a minimum of thirty (30) feet.*

FINDING: The subject is not located on a corner property. Staff finds that Criterion C is not applicable to this request.

- D. *Signs*

1. *Permanent signs shall not project beyond the property line.*
2. *Signs shall not be illuminated or capable of movement.*
3. *Permanent signs shall describe only uses permitted and conducted on the property on which the sign is located.*
4. *Size and Height of Permanent Signs:*
 - a. *Freestanding signs shall be limited to twelve square feet in area and 8 feet in height measured from natural grade.*
 - b. *Signs on buildings are permitted in a ratio of one square foot of sign area to each linear foot of building frontage but in no event shall exceed 32 square feet and shall not project above the building.*
5. *Number of permanent signs:*
 - a. *Freestanding signs shall be limited to one at the entrance of the property. Up to one additional sign may be placed in each direction of vehicular traffic running parallel to the property if they are more than 750 feet from the entrance of the property.*
 - b. *Signs on buildings shall be limited to one per building and only allowed on buildings conducting the use being advertised.*
6. *Temporary signs such as signs advertising the sale or rental of the premise are permitted provided the sign is erected no closer than ten feet from the public road right-of-way.*

FINDING: The proposed development does not include the placement of signs. Staff finds that Criterion D does not apply.

- E. *Lighting: Outdoor lighting shall be sited, limited in intensity, shielded and hooded in a manner that prevents the lighting from projecting onto adjacent properties, roadways and waterways. Shielding and hooding materials shall be composed of non-reflective, opaque materials.*

FINDING: Although no new lighting is proposed, a **condition** of approval is included in the Notice of Decision requiring new outdoor lighting to be sited, limited in intensity, shielded and hooded in a manner that prevents the lighting from projecting onto adjacent properties, roadways, and waterways. Shielding and hooding materials shall be composed of nonreflective, opaque materials. With that condition of approval, staff finds that the request complies with Criterion E.

- F. *Parking: Off street parking shall be provided in accordance with Chapter 20.*

FINDING: Off street parking is addressed in Chapter 20 of this report, where it is found to not apply to the request, since off street parking requirements do not apply to utility facilities. Staff finds Criterion F is not applicable to the request.

- G. *New Driveways: All new driveways and increases or changes of use for existing driveways which access a public road shall obtain a Road Approach Permit from the appropriate jurisdiction, either the Wasco County Public Works Department or the Oregon Dept. of Transportation.*

FINDING: The new utility facility will be accessed from a new driveway with frontage onto Oregon Highway 216. ODOT contacted the Planning Department by letter on August 20, 2019, stating that the applicant would be required to receive a road approach permit through their department. To ensure compliance, a **condition** of approval is included in the Notice of Decision stating that prior to zoning approval, a Road Approach Permit shall be obtained from the Oregon Department of Transportation, and a copy of the permit shall be supplied to the Wasco County Planning Department. With the condition of approval, staff finds the request complies with Criterion G.

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Section 3.218 - Agricultural Protection

The uses listed in Section [3.214 - Uses Allowed Subject to Standards](#) and Section [3.215 - Conditional Uses](#) must meet the following standards:

- A. *Forest Farm Management Easement: The landowner is required to sign and record in the deed records for the county a document binding the landowner, and the landowner's successors in interest, prohibiting them from pursuing a claim for relief or case of action alleging injury from farming or forest practices for which no action or claim is allowed under ORS [30.936](#) or [30.937](#).*

FINDING: A Forest Farm Management Easement is not on file for the subject property. A **condition** is included in the Notice of Decision stating that the owner shall sign and record a Forest Farm Management Easement with the Wasco County Clerk prior to the Wasco County Planning Department providing zoning approval towards building permits. With that condition, staff finds the request complies with Criterion A.

- B. *Protection for Generally Accepted Farming and Forestry Practices - Complaint and Mediation Process: The landowner will receive a copy of this document.*

FINDING: Criterion B requires that the owner be provided with a copy of the above-mentioned document. It is included as Attachment F to this report. Staff finds that this complies with Criterion B.

Section 3.219 – Additional Standards

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- H. *Utility Facility:*

1. *A utility facility is necessary for public service if the facility must be sited in an exclusive farm use zone in order to provide the service. To demonstrate that a utility facility is necessary, an applicant must show that reasonable alternatives have been considered and that the facility must be sited in an exclusive farm use zone due to one or more of the following factors:*
 - a. *Technical and engineering feasibility;*
 - b. *The proposed facility is locationally dependent. A utility facility is locationally dependent if it must cross land in one or more areas zoned for exclusive farm use in order to achieve a reasonably direct route or to meet unique geographical needs that cannot be satisfied on other lands;*
 - c. *Lack of available urban and non-resource lands;*
 - d. *Availability of existing rights of way;*
 - e. *Public health and safety; and*
 - f. *Other requirements of state and federal agencies.*

FINDING: The proposed utility facility is a replacement of the existing substation located on tax lot 4S 14E 0 1300, just south of Highway 216. The new proposed location is on the north side of Highway 216 on tax lot 4S 14E 0 700. A portion of the John Day-Marion No 1 BPA Transmission Line runs through the northwest portion of tax lot 4S 14E 0 700, meaning the proposed location for the substation would be closer to the transmission line. The closest urban or non-resource lands from the transmission line in that service area are approximately 2.15 miles to the west. If the substation were located on the urban or non-resource lands, more farmland would end up being disturbed due to transmission lines needing to travel across more land. With the substation being located on private land, and in a part of the county that does not support large amounts of civilian traffic, public safety will be supported by these factors, as well as the limitation of public access through fencing. Since the proposed development meets one or more of the factors listed above, staff finds the request complies with Criterion 1.

2. *Costs associated with any of the factors listed in a. may be considered, but cost alone may not be the only consideration in determining that a utility facility is necessary for public service. Land costs shall not be included when considering alternative locations for substantially similar utility facilities and the siting of utility facilities that are not substantially similar.*

FINDING: This criterion states that cost alone may not be the only consideration in determining that a utility facility is necessary for public service. The application states:

“The Applicant is proposing to relocate the existing substation that is currently located south of Highway 216 near the top of the White River canyon. This facility is located on land that is owned by the Oregon State Parks and Recreation Department and lies within a remote area of White River Falls State Park.

Given the necessity to be near the major transmission line and have adequate vehicular site access, there are very few suitable alternative locations in the immediate vicinity. Through a selection process, the most suitable locations for a new substation appeared to be either on the north or south side of Highway 216, adjacent to the transmission line. The northern location was the preferred located due to availability of land and the fact is was further from the environmental resource.

One benefit to relocating this facility to the proposed location would be the opportunity to reclaim the property for park and recreation uses. With the decommissioning and removal of the electrical substation, it could provide an opportunity for restoration and enhancement of this area (i.e. view point, trails, etc.).” (Pg.8-8, North Wasco County PUD – Tygh Valley Substation Relocation application)

Given the nature of the relocation, in that it is based off location and proximity to transmission lines, the applicant has demonstrated that cost alone is not the determining factor for the utility facility. Staff finds the request complies with Criterion 2.

3. *The owner of a utility facility approved under this section shall be responsible for restoring, as nearly as possible, to its former condition any agricultural land and associated improvements that are damaged or otherwise disturbed by the siting, maintenance, repair or reconstruction of the facility. Nothing in this subsection shall prevent the owner of the utility facility from requiring a bond or other security from a contractor or otherwise imposing on a contractor the responsibility for restoration.*

FINDING: The above criterion requires the owner of the utility facility, in this case the applicant, North Wasco County PUD, shall be responsible for restoring, as nearly as possible, to its former condition any agricultural land and associated improvements that are damaged or otherwise disturbed by the siting, maintenance, repair or reconstruction of the facility. The application states,

“The applicant acknowledges that they would assume the responsibility of restoring any agricultural lands that are damaged or otherwise disturbed by the siting, maintenance, repair or reconstruction of the facility.” (Pg.8-9, North Wasco County PUD – Tygh Valley Substation Relocation)

Not only will there be potential damage or disturbance at the proposed substation site, but once the original substation site is deconstructed, that land will need reclamation as well. To ensure the criterion is met, a **condition** of approval is included in the Notice of Decision stating that North Wasco County PUD is responsible for restoring, as nearly as possible, to its former condition any agricultural land and associated improvements that are damaged or otherwise disturbed by the siting, maintenance, repair or reconstruction of the facility. This includes the original substation site located on tax lot 4S 14E 0 1300, and the proposed site on tax lot 4S 14E 0 700. With that condition, staff finds the request complies with Criterion 3.

4. *The governing body of the County or its designee shall impose clear and objective conditions on an application for utility facility siting to mitigate and minimize the impacts of the proposed facility, if any, on surrounding lands devoted to farm use in order to prevent a significant change in accepted farm practices or a significant increase in the cost of farm practices on surrounding farm lands.*

FINDING: The above criterion requires the county to impose clear and objective conditions on an application for utility facility siting to mitigate and minimize the impacts of the proposed facility, if any, on surrounding lands devoted to farm use in order to prevent a significant change in accepted farm practices or a significant increase in the cost of farm practices on surrounding farm lands. Sections of this report that include conditions preventing a significant change or significant increase in the cost of farm practices in the area include Section 3.912, Section 3.218, Section 3.219.H.3, and Section 5.020.F. With those conditions included in this report, staff finds the request complies with Criterion 4.

5. *In addition to a. through d. of this section, the establishment or extension of a sewer system as defined by OAR 660-011-0060(1)(f) in an exclusive farm use zone shall be subject to the provisions of OAR 660-011-0060.*

FINDING: The above criterion relates to the establishment or the extension of a sewer system. The applicant has requested the replacement of an electrical substation on a different parcel than the original substation. Since the request does not involve the establishment or extension of a sewer system, staff finds Criterion 5 and OAR 660-011-0060 are not applicable to the request.

6. *The provisions of 1– 4 do not apply to interstate natural gas pipelines and associated facilities authorized by a subject to regulation by the Federal Energy Regulatory Commission.*

FINDING: The above criterion relates to interstate natural gas pipelines and associated facilities authorized by a subject to regulation by the Federal Energy Regulatory Commission. The applicant has requested the replacement of an electrical substation on a different parcel than the original substation. Since the request does not involve interstate natural gas pipelines and associated facilities authorized by a subject to regulation by the Federal Energy Regulatory Commission, staff finds Criterion 6 is not applicable to the request.

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Section 3.910, EPD-7, Natural Area Overlay Zone

The purpose of this overlay district is 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 ORS 390.805 & 390.825 or USFC & CFR.

Section 3.911 - 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.

FINDING: The request is for a utility facility in the Exclusive Farm Use (A-1) Zone. Normally this review would be a Subject to Standards/Type II Review in the underlying zone. However, due to its location in the EPD-7, Natural Areas Overlay Zone, the request must go through a Conditional Use Review pursuant to Section 2.060(A) of this ordinance.

Section 3.912 - 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.

FINDING: The southern border of the subject parcel contains sections of the White River Wild and Scenic River Overlay. One of the purposes of the overlay zone is to protect the identified natural value by allowing only uses which will not permanently destroy the natural value. The White River is fish-bearing. The river contains Redband Trout (Fluvial/Adfluvial and Year-round resident). To retain this natural resource, it is important that the riverbank and adjacent land not be disturbed. The proposed utility facility will be located approximately 1,150' from the bank of the White River and will not disturb the natural habitat and vegetation along the river.

The current location of the existing utility facility is within White River Falls State Park, which is visible east of the public parking area within the park. The proposed location is north of Highway 216, which will be outside of the park. The land across the Highway is privately owned and is currently engaged in farm use. With this land already disturbed by farm use, and the removal of the facility within the park, the natural value will be improved. To ensure the project further improves the natural value of the area, a **condition** of approval is included in the Notice of Decision stating that within one year of the date the new facility goes into service or becomes operational, the facility within the White River Falls State Park shall be removed. In addition, any lands dedicated to the old facility including the facility site, parking areas, and access road shall undergo reclamation and be seeded with native plant species by the next planting season (April-June).

As part of staff's review, Jeff Kitchens, Deschutes Field Office Manager with the Prineville District BLM Office, was contacted regarding the proposed development. On October 9, 2019, he responded by email stating that, "We have had a chance to review and did not see anything that would have a direct or indirect impact on BLM Managed Public Lands".

Staff finds the request complies with Section 3.912 because the proposed utility facility will not have an impact on sensitive wildlife species or their habitat, nor will it have an impact on vegetation along the river due to its distance from the river, and its location on private land.

C. Chapter 4 – Supplemental Provisions

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Section 4.070 - General Exceptions to Building Height Requirements (Amended 4-12)

Necessary roof structures, housing elevators, stairways, tanks, fans and ventilators and towers, steeples, flagpoles, smokestacks, silos, grain elevators, uses specified in Chapter 19 - Energy Facilities (meteorological towers, transmission towers and lines, and commercial, net-metering, and non-commercial/stand-alone power generating facilities), communication towers, water tanks and skylights and fire or parapet walls may be erected above the height limits of the zone in which they are located provided no usable floor space is provided in such structures above the required height limits. All structures over 200 feet in height require a Conditional Use Permit for aviation safety.

FINDING: Section 4.070 relates to general exceptions to building height requirements, which is cited in Section.B., of this report. The tallest part of the facility will be an electrical line collector tower that is 45' tall. Since "towers" are not specified in Chapter 19, and are included in the list that may be erected above the height limits of the Exclusive Farm Use (A-1) Zone, and it will be under 200' in height, staff finds the request complies with Section 4.070.

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D. Chapter 5 – Conditional Use Review

Section 5.020, Authorization to Grant or Deny Conditional Uses, and Standards and Criteria Used

Conditional uses listed in this Ordinance shall be permitted, enlarged or otherwise altered or denied upon authorization by Administrative Action in accordance with the procedures set forth in Chapter 2 of this Ordinance. In judging whether or not a conditional use proposal shall be approved or denied, the Administrative Authority shall weigh the proposal's appropriateness and desirability or the public convenience or necessity to be served against any adverse conditions that would result from authorizing the particular development at the location proposed, and to approve such use, shall find that the following criteria are either met, can be met by observance of conditions, or are not applicable.

- A. The proposal is consistent with the goals and objectives of the Comprehensive Plan and implementing Ordinances of the County.*

FINDING: The goals and objectives of the Comprehensive Plan are implemented through the Wasco County Land Use & Development Ordinance, which are addressed throughout this report. The Comprehensive Plan addresses Utility Facilities within Energy Resources of Goal 5. The Comprehensive Plan encourages wind energy as the potential new source of energy for Wasco County. It states that utility facilities would be essential to distribute that power. Although the proposed utility facility is not intended for wind energy, it is still necessary for the distribution of other commercial power in the vicinity. With those findings, staff finds the request complies with Criterion A.

- B. Taking into account location, size, design and operational characteristics of the proposed use, the proposal is compatible with the surrounding area and development of abutting properties by outright permitted uses.*

FINDING: This criterion addresses the requirement for the use to be compatible with the outright permitted uses on abutting properties with regard to its location, size, and design.

(Location) The location of the existing utility facility is south of Highway 216, on map/tax lot 4S 14E 0 1300. The subject parcel is located on the north side of Highway 216, just east of Tygh Valley. The location of the proposed utility facility will be on this property approximately 550' east of an existing dwelling. Abutting properties to the north and west contain the John Day-Marion No 1 transmission line.

(Size and Design) In considering this criterion, staff interprets the ordinance to place emphasis on the nature of the use, more than on the particular architectural characteristics of a proposed structure. In this

instance, the proposal is for the removal of a utility facility that is currently located on state parks land, and its replacement is to be built new on private land to the north. The utility facility will be compatible with abutting properties since they also contain electrical transmission structures/lines. The facility itself will be a 220' x 220' fenced in area with substation components contained within it.

(Operational Characteristics) The proposed replacement utility facility will be used by the North Wasco County PUD, and public access will be restricted. The only time workers will be on site will be during construction of the facility, and for intermittent maintenance. While the facility is in operation it will be unoccupied. It will not create any significant increase in the amount of additional vehicular trips to or from the property.

Permitted uses in the A-1 Exclusive Farm Use Zone include resource, natural resource, transportation, and utility facility uses. Many of the surrounding properties contain utility facility components. The existing utility facility on the state park land will be decommissioned once the new facility is complete, and the land will be reclaimed to its original condition, which will fit in better with the characteristics of the land surrounding the park. The location, size and design, and operational characteristics of the proposed facility will be compatible with the surrounding uses of abutting properties. Staff finds the request complies with Criterion B.

- C. *The proposed use will not exceed or significantly burden public facilities and services available to the area, including, but not limited to: roads, fire and police protection, sewer and water facilities, telephone and electrical service, or solid waste disposal facilities.*

FINDING: The above criterion requires that the proposed use must not exceed or significantly burden public facilities and services to the area.

(Roads) The road that the Utility Facility will be accessed from is OR Highway 216. A new access road will be required to access the site. As part of the application, the applicant submitted a State Highway Approach permit for the Wasco County Planning Department to approve. The approach permit was signed on September 4, 2019, indicating that the application was still being reviewed, and had not yet received final approval. Since the approach has been addressed, and no concerns have been raised by the Oregon Department of Transportation, staff does not foresee an effect to this service.

(Police) The Wasco County Sheriff's Office primarily patrols the area of the county that the facility is proposed to be located in. Staff contacted Scott Williams, Chief Deputy with the Wasco County Sheriff's Office for comment on the application. On September 4, 2019, he responded by email stating, "Nothing that would affect us."

(Fire) The subject property is within the Tygh Valley Rural Fire Protection District. Staff contacted this department for comment on this proposal. David Colburn, Fire Chief for the Tygh Valley Rural Fire Protection District, replied by email on September 11, 2019, stating that he would like the fire department to have access to the site in case of a fire. Staff replied to Mr. Colburn stating that the facility would be primarily composed of metal, and the immediate area would be composed of gravel with no flammable materials. Mr. Colburn replied stating that, "We're good on our side with the plan".

(Water/Sanitation) No water or sanitation is proposed as part of the request. Only employees of North Wasco County PUD will be able to access the site once it is complete, and this will be to perform maintenance when needed. However, during construction of the facility, workers will be on the property

for long periods of time. To ensure proper sanitation is provided during construction of the facility, a **condition** of approval is included in the Notice of Decision stating that the applicant shall coordinate with the North Central Public Health District to determine the number of portable toilets needed for the number of construction workers on the property. The condition requires that the number of portable toilets prescribed shall be provided during all phases of construction.

(Telephone) No telephone service is proposed for the request, allowing staff to conclude that existing service levels will not be impacted.

(Electrical) The project is being requested by the North Wasco County PUD which provides electrical service to the area. The relocation and update of this facility will ensure electrical service continues to be provided to the area. Possible service interruptions could occur during construction of the facility. To ensure customers are aware of the possible interruptions, a **condition** of approval is included in the Notice of Decision stating that if possible interruptions to electrical service are identified during construction, the customers shall be notified before they occur.

(Solid Waste) Solid waste during operation of the facility will be minimal since employees are not continually onsite and will only visit the site for maintenance and repairs. However, during construction of the new facility and decommissioning of the old facility, waste will be generated which will need to be properly disposed of. In an email sent by the applicant Paul Titus, with North Wasco County PUD on September 11, 2019, he stated,

“With most of the material from construction or decommissioning will be disposed locally, i.e. The Dalles Disposal. Other items in the decommissioning that have recycling or disposal requirements will be with appropriate parties that handle those materials. Example, existing oil filled equipment will be with licensed recycler and will supply documentation these items were disposed within applicable rules and regulations. If there are items that are still value to the District, they will be brought into PUD for proper storage.”

Since waste generated from construction and decommissioning of the facility will be dealt with through waste management facilities, and most of the materials will be recycled or stored for future use, staff concludes that the request will not exceed or significantly burden this service.

With those conditions, staff finds that the request complies with Criterion C.

D. The proposed use will not unduly impair traffic flow or safety in the area.

FINDING: Highway 216 is the road which will provide access to the subject property, and is under the jurisdiction of the Oregon Department of Transportation (ODOT). Staff received comment from Don Morehouse, the Senior Transportation Planner with ODOT on August 20, 2019. The letter addressed the need for a State Highway Approach Permit for the driveway which must be locked and gated 24 hours a day, seven days a week when not in use. It also addressed permits for road right of way work, and a drainage study if the development has the potential to impact ODOT Highway drainage, to assure life, safety and that Oregon Drainage Law is being upheld. To ensure ODOT’s requirements are met, a **condition** of approval is included in the Notice of Decision stating that prior to the commencement of construction, all permits required through the Oregon Department of Transportation shall be approved to ensure traffic flow or safety in the area is not unduly impaired. With that condition, staff finds the request complies with Criterion D.

E. The effects of noise, dust and odor will be minimized during all phases of development and operation for the protection of adjoining properties.

FINDING: The above criterion requires that the effects of noise, dust and odor be minimized during all phases of development and operation for the protection of adjoining properties. In the Conditional Use Permit application materials submitted by the applicant, it states,

“...the proposed substation will have negligible impacts from noise, dust and odor once it is [in] operation. During construction, any potential impact will be minimized through the utilization of best management construction management practices (i.e. limiting hours of operation, dust and erosion control, etc.).” Pg. 3, Conditional Use Permit Application.

To ensure compliance with the criterion, a **condition** of approval is included in the Notice of Decision stating that construction of the facility shall only occur between the hours of 7 a.m. – 7 p.m. Until the area is graveled, the development area shall be watered down daily to reduce the effects of dust on neighboring properties. With that condition, staff finds that the request complies with Criterion E.

F. The proposed use will not significantly reduce or impair sensitive wildlife habitat, riparian vegetation along streambanks and will not subject areas to excessive soil erosion.

FINDING: The above criterion requires that the use not significantly reduce or impair sensitive wildlife habitat, riparian vegetation along stream banks, and will not subject areas to excessive soil erosion. The proposed utility facility will be located approximate 1,150’ north of the White River, which is the closest streambank to the development site. No sensitive wildlife areas are within the vicinity of the proposed location according to GIS data on file with Wasco County. To ensure excessive soil erosion does not occur, a **condition** of approval is included in the Notice of Decision stating that once the facility is complete, any disturbed areas shall be reseeded with native vegetation by the next planting season (April-June). With the condition of approval, the request complies with Criterion G.

G. The proposed use will not adversely affect the air, water, or land resource quality of the area.

FINDING: The above criterion requires that the use will not adversely affect air, water, or land resource quality of the area.

(Air) The proposed utility facility will not adversely affect air quality because no air pollution will be generated during operation of the facility. The only form of air pollution that could occur would be during construction of the facility with the use of heavy equipment. A condition in Section 5.020.E. of this report addresses the need to water down these areas daily to reduce the effects of dust on neighboring properties. Construction however will only occur for a short duration of time, and will have little to no effects on air quality.

(Water) The proposed replacement accessory structure will not adversely affect water quality because it will not be connected to, or create any waste water that could leach into, nearby wetlands or waterways.

(Land) The proposed facility will be a replacement of an existing facility located within the White River Falls State Park. The new facility will be located on privately owned land outside of the park, on the North Side of

Highway 216. A condition is included in Section 5.020.F., requiring that once the facility is complete, any disturbed areas shall be reseeded with native vegetation by the next planting season (April-June). A condition is also included in Section 3.912 above requiring that within one year of the date the new facility goes into service or becomes operational, the facility within the White River Falls State Park shall be removed. In addition, any lands dedicated towards the old facility including the facility site, parking areas, and access road shall undergo reclamation and be seeded with native plant species by the next planting season (April-June).

With those findings, and conditions throughout this report, staff finds the request complies with Criterion G.

- H. The location and design of the site and structures for the proposed use will not significantly detract from the visual character of the area.*

FINDING: The standard does not require that there be no visual impact cause by the utility facility, but that any impact not be significant. The request is for the replacement and relocation of an existing utility facility, to a different location.

The subject parcel is located along Highway 216, just north of the White River Falls State Park. Surrounding properties contain agricultural uses, dwellings, accessory/agricultural structures, and utility facility components. The White River Falls State Park was historically a hydro power site, and still contains remnants of the use within the park. The existing substation on the parks property was used to divert power from that use. The replacement facility to be located on private land is also in the vicinity of the John Day-Marion No 1 BPA transmission line. The proposed facility will also be utilizing a block wall type fencing that looks like natural stone, and will help the use to blend into its surroundings. Since the use will not significantly detract from the visual character of the area, staff finds the request complies with Criterion H.

- I. The proposal will preserve areas of historic value, natural or cultural significance, including archaeological sites, or assets of particular interest to the community.*

FINDING: According to the Wasco County Comprehensive Plan, there are no historic, natural, cultural, or archaeological sites on the subject parcel, nor are there any assets of particular interest to the community. Scenic resources were discussed in Criterion H above. Staff finds the request complies with Criterion I.

- J. The proposed use will not significantly increase the cost of accepted farm or forest practices on surrounding lands devoted to or available for farm and forest use. (Revised 1-92)*
- K. The proposed use will not force a significant change in accepted farm or forest practices on surrounding lands devoted to or available for farm or forest use. (Revised 1-92)*

FINDING: Staff has identified farm uses on the subject parcel and surrounding properties. According to historical data from Farm Services Agency these properties have been used for grazing. These lands are primarily privately owned, however some are in public ownership.

During an update to the LUDO, the Agricultural Resource Group (ARG) determined that nonfarm buildings should be located a minimum of 200' from all adjacent properties that contain planted fields, and 100' from grazing operations. The ARG was composed of County residents in all occupations, but

focuses on residents who operate lands in agricultural production (orchard, wheat, cattle). The group determined that the identified setbacks maintain an adequate distance from planted cropland and grazing operations that will eliminate the need for a farmer to change his farming practices or increase his cost of operation.

Due to a distance of at least 100' from surrounding properties, the proposed utility facility will not change or increase the cost of accepted farm or forest practices on surrounding properties. Staff finds the request complies with Criteria J and K.

Section 5.030, Conditions

Such reasonable conditions as are necessary to ensure the compatibility of a conditional use to surrounding permitted uses as are necessary to fulfill the general and specific purposes of this Ordinance may be imposed in approving an application, pursuant to Section 2.110(D).

FINDING: Conditions of approval are implemented throughout this report to ensure the use is compatible with surrounding permitted uses. Staff finds that the request complies with Section 5.030.

Section 5.040, Revocation of Conditional Use Permit

Noncompliance with any condition placed on a conditional use permit shall be grounds for revocation of the permit. Revocation of a conditional use permit shall be considered a land use action and reviewed by the Planning Commission. The following procedures shall be completed at least twenty (20) days prior to the date of the revocation hearing: (Revised 1-92)

- A. *A notice of violation pursuant to Section 15.090 shall be sent to the owner of the property on which the conditional use takes place.*

- B. *Notice of public hearing pursuant to Section 2.080 shall be sent.*

The opportunity for review of the Planning Commission decision, pursuant to Section 2.170 shall be available.

FINDING: Compliance with all Conditional Use criteria is required throughout the life of this permit. A **condition** of approval is included in the Notice of Decision advising the owner that noncompliance with any condition of approval shall be grounds for revocation of the permit. Revocation of the Conditional Use Permit shall be considered to be a land use action and shall be reviewed by the Planning Commission according to the requirements in Section 5.040. With that condition of approval, staff finds the request complies with Section 5.040.

E. Chapter 10 – Fire Safety Standards

- Section 10.110 (Siting Standards – Locating Structures for Good Defensibility)*
- 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 – Ensuring Dwellings Have*

Some Fire Protection Available Through Manned or Unmanned Response)

FINDING: The Fire Safety Standards, adopted by the Wasco County Court in 2007, require property owners to be made aware of potential fire risks in areas outside of urban areas of Wasco County, and requires compliance with siting standards, fuel break requirements, construction standards, access standards, and on-site water storage requirements.

As part of a complete application, the property owners completed a Fire Safety Standard Self-Certification Form. By signing the self-certification form, the owners have acknowledged that they understand these standards and commit to achieve compliance with them within one year of the date of approval and maintain them through the life of the development. This certification further commits all future property owners to this same requirement. A copy of this self-certification form is available for inspection at the Wasco County Planning Department under File 921-19-000084-PLNG and a **condition** of approval is included requiring the applicant to adhere to these standards.

(Siting) The criterion requires all structures to be set back from the top of slopes greater than 30% by at least 50'. The proposed utility facility is located in an area where the slopes generally consist of 2-6% at the bottom of a hillside.

(Defensible Space) The criterion requires a 50' fire fuel break surrounding all structures. The site plan submitted demonstrates a 50' fire fuel break surrounding the structure, with the area mainly composed of gravel.

(Construction Standards) These standards relate mainly to dwellings and accessory structures and are not applicable to utility facilities. The structure is primarily composed of metal which is fire resistant, and the immediate area surrounding the facility is composed of rock which will not allow fires that could potentially start at the facility to spread.

(Access) The facility will not allow access to the public. Access to the site will be off Highway 216, with a 100' long access road to the site. No width were included for the road, but to ensure compliance, a **condition** of approval is included in the Notice of Decision stating that the access road to the facility will be at least 12' wide, and provide an adequate turnaround outside the fenced area of the facility for emergency personnel to maneuver as prescribed by Section 10.140.

(Fire Protection) The subject property falls under the jurisdiction of the Tygh Valley Rural Fire Protection District. David Colburn, Fire Chief for TVRFPD contacted staff on September 11, 2019, by email and stated, "I don't see any issues with approving it".

With those conditions, staff finds the request complies with Chapter 10.

F. Chapter 20 – Site Plan Review

(*)**

Section 20.030 - Contents of the Site Plan

The Site Plan shall clearly indicate the following information:

- A. *Lot dimensions.*
- B. *Location, size, height, of all existing or proposed buildings and structures, and illustrating the buildings and parking facilities on abutting properties.*
- C. *Location, size and dimension of all yards and setbacks and all spaces between buildings.*
- D. *Walls and fences: Location, height and materials.*
- E. *Off street parking:*
 - 1. *Location, dimensions and method of improvement of all driveways and parking areas consistent with Sections 20.050 & 20.080.*
 - 2. *Number of spaces consistent with Section 20.050 & 20.080 and internal circulation pattern.*
 - 3. *Size and location of existing and proposed curb openings.*
- F. *Access: Pedestrian, vehicular, service; and definitions of all points of ingress and egress.*
- G. *Signs: Location, size, height, material and method of illumination.*
- H. *Loading: Location, dimensions, number of spaces, internal circulation and access from public right of way consistent with 20.070 & 20.080.*
- I. *Lighting: General nature, location and hooding devices (not including interior building lighting).*
- J. *The location, dimensions and methods of improvement for all property to be dedicated to general public purposes or to public utilities.*
- K. *A detailed plan for landscaping, if determined necessary by the Planning Director which shall clearly illustrate:*
 - 1. *Plants and tree species, their initial sizes and other proposed landscaping materials.*
 - 2. *The location and dimensions of all areas to be devoted to landscaping, and location of automatic sprinkler systems.*
- L. *Outdoor storage and activities, if permitted in the zone, showing type, location and height of screening devices.*
- M. *Drainage and grading plan.*
- N. *Identification of proposed trash storage locations, including proposed enclosure design construction and access for pick up purposes.*

O. Location of existing utility poles.

P. Such data as may be required by the Planning Director to act on the application.

FINDING: A site plan was submitted with the application illustrating the relevant criteria in Section 20.030. Staff finds the request complies with Section 20.030.

ATTACHMENT E – LIGHTING STANDARDS

Good Neighbor OUTDOOR LIGHTING

PRESENTED BY THE NEW ENGLAND LIGHT POLLUTION ADVISORY GROUP (NELPAG) AND SKY PUBLISHING CORP.

What is good lighting?

Good outdoor lights improve visibility, safety, and a sense of security, while minimizing energy use, operating costs, and ugly, dazzling glare.

Why should we be concerned?

Many outdoor lights are poorly designed or improperly aimed. Such lights are costly, wasteful, and distractingly glary. They harm the nighttime environment and neighbors' property values.

Glare Here's the basic rule of thumb: If you can see the bright bulb from a distance, it's a bad light. With a good light, you see lit ground instead of the dazzling bulb. "Glare" is light that beams directly from a bulb into your eye. It hampers the vision of pedestrians, cyclists, and drivers.

Light Trespass Poor outdoor lighting shines onto neighbors' properties and into bedroom windows, reducing privacy, hindering sleep, and giving the area an unattractive, trashy look.

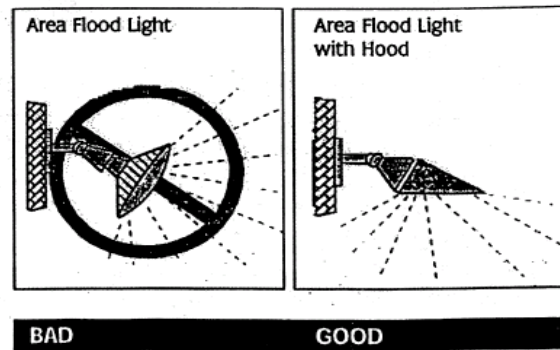
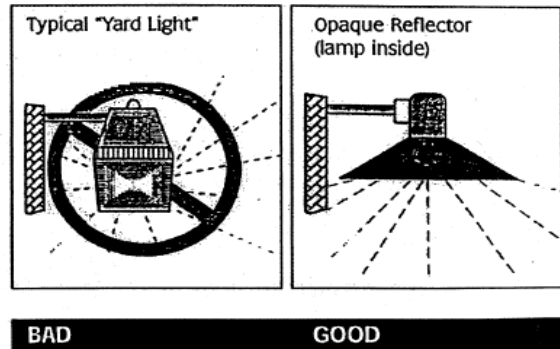
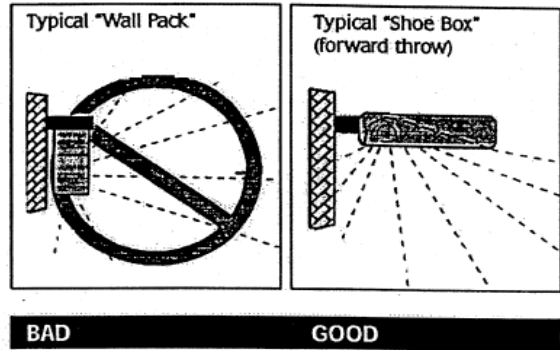
Energy Waste Many outdoor lights waste energy by spilling much of their light where it is not needed, such as up into the sky. This waste results in high operating costs. We waste over a billion dollars a year in the United States needlessly lighting the night sky.

Sky Glow Rays that beam uselessly above the horizon create murky skyglow – the "light pollution" that washes out our view of the stars.

How do I switch to good lighting?

- 1 Provide only enough light for the task at hand; don't over-light, and don't spill light off your property. Specifying enough light for a job is sometimes hard to do on paper. Remember that a full Moon can make an area quite bright. Some lighting systems illuminate areas 100 times more brightly than the

Some Good and Bad Light Fixtures



full Moon! More importantly, by choosing properly shielded lights, you can meet your needs without bothering neighbors or polluting the sky.

- 2 Aim lights down. Choose "full-cutoff shielded" fixtures that keep light from going uselessly up or sideways. Such fixtures produce minimum glare. They create a pleasant-looking environment. They increase safety because you see illuminated people, cars, and terrain, not dazzling bulbs.
- 3 Install fixtures carefully to maximize their effectiveness on the targeted area and minimize their impact elsewhere. Proper aiming of fixtures is crucial. Most are aimed too high. Try to install them at night, when you can see where all the rays actually go.

Properly aimed and shielded lights may cost more initially, but they save you far more in the long run. They can illuminate your target with a low-wattage bulb just as brightly as a wasteful light does with a high-wattage bulb.

- 4 Choose energy-efficient low-pressure sodium (LPS) or high-pressure sodium (HPS) lamps wherever yellowish light will do the job. Use less efficient white lights only where ideal color rendition is important.
- 5 Where feasible, put lights on timers to turn them off each night after they are no longer needed. Put home security lights on a motion-detector switch, which turns them on only when someone enters the area; this provides a great deterrent effect!

Replace bad lights with good lights.

You'll save energy and money. You'll be a good neighbor. And you'll help preserve our view of the stars.

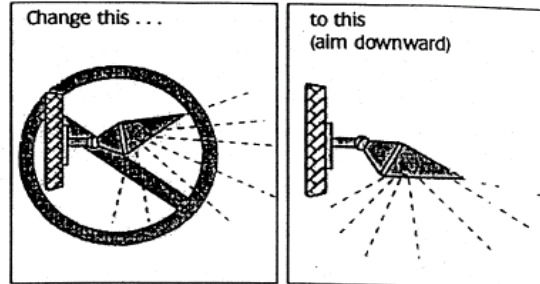
Presented by the

New England Light Pollution Advisory Group (NELPAG)
<http://cfa-www.harvard.edu/cfa/ps/nelpag.html> and
Sky Publishing Corp. (<http://www.skypub.com/>).

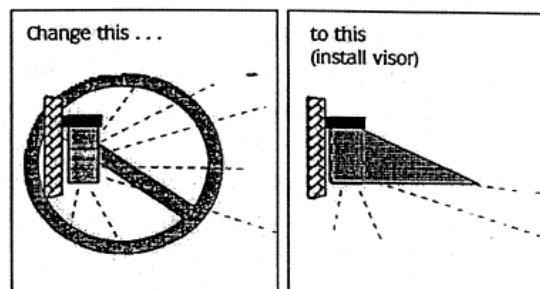
NELPAG and Sky Publishing Corp. support the
International Dark-Sky Association (IDA) (<http://www.darksky.org/>).

We urge all individuals and groups interested in the problems of light pollution and obtrusive lighting to support the IDA and subscribe to its newsletter. IDA membership costs \$30 per year; send your check to IDA, 3225 N. First Avenue, Tucson, AZ 85719, U.S.A.

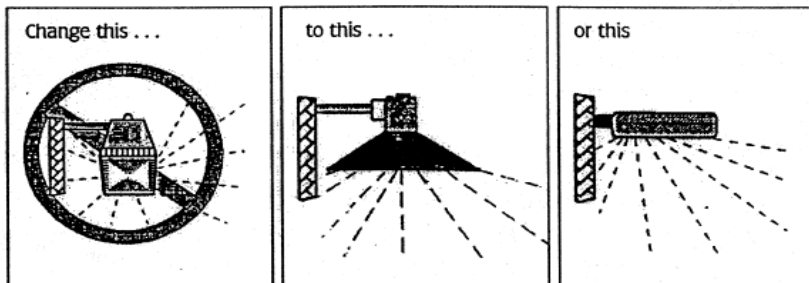
What You Can Do To Modify Existing Fixtures



FLOOD LIGHT



WALL PACK



YARD LIGHT

OPAQUE REFLECTOR

SHOE BOX



Sky Publishing Corp.
 49 Bay State Road
 Cambridge, MA 02138

ATTACHMENT F – FARM MEDIATION ORDINANCE

IN THE COUNTY COURT OF THE STATE OF OREGON

FILED
WASCO COUNTY

IN AND FOR THE COUNTY OF WASCO

2003 SEP 12 P 3:15

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

MARGIE LEBRETON COATS
COUNTY CLERK
AMENDED
ORDINANCE

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.

1 – AMENDED ORDINANCE

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.

(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

2 - AMENDED ORDINANCE

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.

(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" means a Case Developer, appointed by the Six Rivers Community Mediation Services Director.

(9) "COMPLAINT MEDIATION PROCESS"

(a) Means a procedure 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; and

3 – AMENDED ORDINANCE

(b) Shall consist of at least two (2) mediators, working cooperatively in a co-mediation role. Both mediators shall maintain a neutrality and confidentiality throughout and beyond the process. The Six Rivers Community Mediation Services Director or Designee shall serve as a consultant to the Complaint Mediation Process. Consultation may come prior to, during or after the actual mediation, as appropriate.

(10) "PEER REVIEW BOARD" is a Board appointed, as needed, by the Wasco County Court to advise the Six Rivers Community Mediation Services 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 through the Complaint Mediation Process.

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;

4 - AMENDED ORDINANCE

- (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 Six Rivers Community Mediation Services 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 Six Rivers Community Mediation Services Agent or Designee shall:
 - (a) Use Six Rivers Community Mediation Services' procedures to respond to a complaint;
 - (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.

- (3) If the initial contact is through the Wasco County Sheriff's Department, or any other law enforcement agency, the responding officer should:

5 - AMENDED ORDINANCE

- (a) Contact the complainant and document the complaint; and
- (b) Encourage the complainant to call or meet with the resource user and attempt a one-on-one resolution of the complaint; and
- (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; and
- (d) Inform both parties that the complaint will be referred to Six Rivers Community Mediation Services and that they will be contacted by that agency; and
- (e) Deliver a copy of the complaint to the Six Rivers Community Mediation Services as soon as possible.
 - (4) If the complainant and resource user that are principles in a documented resource use complaint within Wasco County request assistance beyond that provided by the Case Developer, the Case Developer shall implement the Complaint Mediation Process.
 - (5) The Complaint Mediation Process shall:
 - (a) Set a date to hear the complaint from both complainant and resource user within a reasonable amount of time; and

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

6 - AMENDED ORDINANCE

- (6) The Complaint Mediation Process may:
- (a) Request 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 Mediators determine that progress is being made toward a resolution of the complaint.
- (7) If the Complaint Mediation Process is unable to resolve the complaint, the complainant and resource user shall be advised by the Six Rivers Community Mediation Services of their additional options including, but not limited to, seeking advice from private counsel.

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

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

7 - AMENDED ORDINANCE

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

Section 8. SEVERABILITY CLAUSE. If any portion of this Ordinance is held invalid by a Court of competent jurisdiction, such decision shall apply only with respect to the specific portion held invalid by the decision. It is the intent of Wasco County that the remaining portions of this Ordinance continue in full force and effect.

Section 9. EMERGENCY CLAUSE. This Ordinance being immediately necessary for the preservation of the public well being, an emergency is declared to exist and this Ordinance shall take effect immediately upon adoption.

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.

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8 - AMENDED ORDINANCE

DONE AND DATED this 3rd day of September, 2003

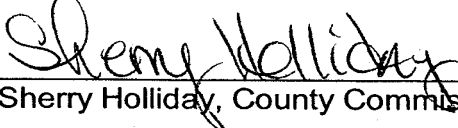
WASCO COUNTY COURT



Dan Ericksen, County Judge

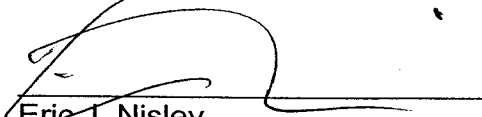


Scott McKay, County Commissioner



Sherry Holliday, County Commissioner

APPROVED AS TO FORM:



Eric J. Nisley
Wasco County District Attorney

9 – AMENDED ORDINANCE



PLANNING DEPARTMENT

2705 East Second Street • The Dalles, OR 97058
p: [541] 506-2560 • f: [541] 506-2561

AFTER RECORDING, RETURN TO:
Wasco County Planning Department
2705 E Second Street, The Dalles OR 97058

FOREST FARM MANAGEMENT EASEMENT
Prohibiting Pursuit of a Claim for Relief or Case of Action Alleging Injury From Farming or Forest Practices for Which no Action or Claim is Allowed Under ORS 30.936 or 30.937

Grantor(s) _____
Print name(s)

is/are the owner(s) of real property described as: _____

(as found in deed #: _____) and in accordance with the conditions set forth in the decision of Wasco County Planning Staff, as required by ORS 215.293, approving a(n):

(Planning Department File #: _____ Date: _____)

for Assessor's Map and Tax Lot # _____,

Grantor(s) hereby grant(s) to the public, (Grantees), of all property zoned for farm or forest use, a perpetual nonexclusive farm use and forest practices management easement as follows:

1. The Grantors, their heirs, successors, and assigns hereby acknowledge by granting of this easement that the above described property is situated in an Exclusive Farm Use, Forest, or Forest-Farm zone in Wasco County, Oregon, and may be subjected to conditions resulting from farm use or commercial forest operations on lands zoned for farm or forest use. Such operations may include farm use as defined in ORS 215.203 such as the raising, harvesting and selling of crops or the feeding, breeding, management and sale of livestock or poultry, application of chemicals, road construction and maintenance, and other accepted and customary farm management activities conducted in accordance with Federal and State laws. Forest operations include, but are not limited to reforestation of forest land, road construction and maintenance, harvesting of forest tree species, application of chemicals and disposal of slash, and other accepted and customary forest management activities conducted in accordance with Federal and State laws. Said farm or forest management activities ordinarily and necessarily produce noise, dust, odor, and other conditions, which may conflict with Grantors' use of Grantors' property for residential purposes. Grantor(s) hereby give(s) an easement to the property owners of lands zoned for farm or forest use for the resultant impact on Grantors property caused by the farm use or forest management activities on such lands.

2. Grantors shall comply with all restrictions and conditions for maintaining residences in the Exclusive Farm Use, Forest, or Forest-Farm zone that may be required by Federal, State, and local land use laws and regulations.

This easement is appurtenant to all property zoned for farm or forest use, and shall bind the heirs, successors, and assignees of Grantor(s), and shall endure for the benefit of the owners of lands zoned for farm or forest use, their heirs, successors and assignees.

IN WITNESS WHEREOF, the Grantor(s) has/have executed this easement on ____ ____, 20____ (date).

Grantor (Owner) Name Grantor (Owner) Signature Date

Grantor (Owner) Name Grantor (Owner) Signature Date

(STATE OF OREGON)
(COUNTY OF WASCO)

Signed or attested before me on _____, 20____ (date)

By _____
(Name(s) of Grantor(s))

Signature of Notary

My Commission expires: _____