

ATTACHMENT D –STAFF REPORT

File Number: PLASTS-16-10-0007

Applicants/Owners: Red Hen Ind./Hoffman

Request: Subject to standards request to allow the primary production and secondary processing of marijuana, the construction of three new agricultural buildings, and one processing building for chemical extraction of cannabis oil produced onsite.

Decision: Approval, with conditions

Decision Date: August 31st, 2017

Appeal Deadline: September 12th, 2017

Location: The subject parcel is located south of Mill Creek Road, approximately 4 miles southwest of the City of The Dalles, Oregon; more specifically described as:

<u>Existing Tax Lot</u>	<u>Previous Tax Lot</u>	<u>Acct#</u>	<u>Acres</u>
1N 12E 23 100	1N 12E 14 600	7075	33.24

Zoning: A-1(160) Exclusive Farm Use

The subject parcel is also located in the EPD-1, Flood Hazard Overlay Zone, and the EPD-8, Sensitive Wildlife Overlay Zone (Low Elevation Winter Range).

Past Actions: PWAPPR-16-11-0032 New Road Approach

Procedure Type: Administrative Action

Prepared By: Brent Bybee, Assistant Planner

I. APPLICABLE STANDARDS

Wasco County Land Use & Development Ordinance (LUDO)

A. Chapter 3 – Basic Provisions

Section 3.210, A-1(160) Exclusive Farm Use

Section 3.213.A, Uses Permitted Subject to Type I Review, Agricultural Structure

Section 3.214.D.1,2,3 Uses Permitted Subject to Standards/Type II Review – Resource Uses, A facility For The Processing of Farm Crops or The Production of Biofuel.

Section 3.216.G, Property Development Standards

Section 3.218 Agricultural Protection

Section 3.740, EPD-1, Flood Hazard Overlay Zone

Section 3.742 Development Permit

Section 3.920, EPD-8, Sensitive Wildlife Habitat Overlay Zone

Section 3.922 Application of Provisions

Section 3.923 Exempt Areas

Section 3.924 Permitted Uses

Section 3.926 Siting Standards

Section 3.927 Fencing Standards

Section 3.928 Other Provisions

B. 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

C. Chapter 11 – Marijuana Production, Processing, Wholesaling, and Retailing

Section 11.020, Applicability

Section 11.030, Procedures

Section 11.040, Marijuana Production and Marijuana Processing

Section 11.060, Approval Period

D. Chapter 20

Section 20.050, Off Street Parking

Section 20.070, Off Street Loading

Section 20.080, General Provisions – Off Street Parking and Loading

II. BACKGROUND

- A. Legal Parcel:** The subject parcel is identified by a 1946 deed, book & page 104-425, recorded with the Wasco County Clerk on March 9th, 1946. It is consistent with the definition of Legal Parcel in LUDO Section 1.090 – Definitions, because it was created by deed or land sales contract prior to September 4th, 1974.
- B. Site & Project Description:** Located to the south of Mill Creek Road, the northern portion of the property between the road and Mill Creek is devoted to a residential use and lavender farming. In the northeastern portion of the site there is one 25’ x 40’ home, a concrete slab for a play court, two 25’ x 50’ shop buildings, one 40’ x 40’ agricultural building, and one 10’ x 20’ wood shed, all proposed to remain on the property. The remaining land to the north of Mill Creek is dedicated to the production of lavender. The rest of the property to the south of Mill Creek consists of mixed forest not in use on a hillside with a slope of approximately 56%.
- C. Surrounding Land Use:** Surrounding properties contain similar slopes in a variety of directions with perennial crops. Neighboring parcel sizes range from 1 acre to 90 acres, and are predominantly used for perennial farm uses and farm dwellings.

III. FINDINGS:

A. Chapter 3 – Basic Provisions Section 3.210 A-1(160) Exclusive Farm Use Zone

Section 3.213 – Uses Permitted Subject to Type I Review

The following uses are allowed on a legal parcel on lands designated Exclusive Farm Use (A-1) Zone subject to section 3.216 – Property Development Standards, Chapter 10 – Fire Safety Standards and any other listed, referenced or applicable standards:

- A. Agricultural Structure: Buildings and structures other than dwelling customarily provided in conjunction with farm use subject to meeting the definition in Section 1.090, Definitions. This also includes buildings less than 200 square feet in area, buildings less than 10 feet in height, and decks including those less than 30” from the ground.*

FINDING: With a **condition** of approval, the request complies with criterion A. A farm management plan was provided with the application and reviewed by the planning department. The lot that the farm operation is taking place on is currently enrolled in a farm deferral program with the County Assessor. The owner has provided floor plans to demonstrate that only farm related uses will occupy the building space. A **condition** of approval is included that prior to signatures of building permits by Wasco County Planning, the owner will file restrictive covenants in the deed records of Wasco County agreeing that the three (3) agricultural buildings will be used solely as agricultural buildings as defined by ORS 455.315(2). The proposed buildings comply with all siting standards related to the A-1 Exclusive Farm Use Zoning, as demonstrated in findings below for Section 3.216 property development standards.

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:

(***)

Commercial Uses Related to Farm Use

D. A facility for the processing of farm crops or the production of biofuels as defined in ORS 315.141 subject to the following:

- 1. The farm on which the processing facility is located must provide at least one-quarter of the farm crops processed at the facility.*
- 2. The building established for the processing facility shall not exceed 10,000 square feet of floor area exclusive of the floor area designated for the preparation, storage or other farm use or devote more than 10,000 square feet to the processing activities within another building supporting farm use*
- 3. A processing facility shall comply with all applicable siting standards but the standards shall not be applied in a manner that prohibits the siting of the processing facility. No division of a lot or parcel shall be approved to separate a processing facility from the farm operation on which it is located.*

FINDING: With a **condition** of approval, the request complies with Criterion D, 1-3. In supplemental information submitted by the applicant, the project description states that Red Hen will grow 12,000 pounds of cannabis flowers and trimmings per year and will process 100% of this product into 1,200 pounds of medical grade cannabis oil per year. The proposed secondary processing building has a floor area of 1,500 square feet. This will be the only building on the farm dedicated to secondary processing. The proposed building complies with all siting standards related to the A-1 Exclusive Farm Use Zoning, as demonstrated in findings below for Section 3.216 property development standards. There will be no lot or parcel divisions taking place for this application. In reference to subsection 1, a **condition** of approval will be included in the Notice of Decision that the farm on which the secondary processing facility is located must provide at least one-quarter (25%) of the farm crops grown onsite, to be processed at the facility onsite.

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 Lines

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

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

*(***)*

- b. *Farm structures shall be set back a minimum of 25 feet from the property line.*

FINDING: The request complies with criterion (a)1, and (b). As illustrated in the site plan, the proposed secondary processing structure is setback approximately 320 feet and meets the 200 foot setback requirement stated in criterion (a)1. Likewise, the three proposed primary production and processing buildings will be setback 200 feet, 280 feet, & 290 feet, well over the required 25' ft farm structure setback requirement, meeting criterion (b).

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.*

1. *A minimum distance of one hundred (100) feet when measured horizontally at a right angle for all water bodies designated as fish bearing by any federal, state or local inventory.*

FINDING: The request complies with criterion 1. Mill Creek is a fish bearing stream, and all proposed construction shall be located over 100' feet away at the closest point of any development, making it in compliance with the required 100' foot setback requirement.

(***)

5. *The following uses are not required to meet the waterway setbacks, however they must be sited, designed and constructed to minimize intrusion into the riparian area to the greatest extent possible:*
- (a) Fences;*
 - (b) Streets, roads, and paths;*
 - (c) Drainage facilities, utilities, and irrigation pumps;*
 - (d) Water-related and water-dependent uses such as docks and bridges;*
 - (e) Forest practices regulated by the Oregon Forest Practices Act;*
 - (f) Agricultural activities and farming practices, not including the construction of buildings, structures or impervious surfaces; and*
 - (g) Replacement of existing structures with structures in the same location that do not disturb additional riparian surface area.*

FINDING: The request complies with Criterion 5, (b) and (f). As illustrated in the site plan provided by the applicant, all streets, roads, and paths; agricultural activities near Mill Creek will meet the waterway setback standards, which will minimize intrusion into the riparian area.

(***)

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: With a **condition** of approval, the request complies with Criterion E. In supplemental materials provided by the applicant, it states there will be exterior lighting on all sides with shading to prevent casting on neighboring properties and controlled via photocell. Fixtures specify as e-conolight E-WP11,

150W PSMH LED Wall Pac. A **condition** of approval is included in the Notice of Decision that all 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 will be composed of non-reflective, opaque materials.

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

FINDING: The request complies with Criterion F. Chapter 20, Section 20.050, Off-Street Parking, which requires (1) parking space per employee. In the farm management plan, a number of (7) workers are anticipated at any one time. As illustrated in the Site Plan and addressed in the Fire Safety Standards Self Certification, parking has been provided within the new development area. The proposed parking area will allow up to (9) spaces for parking.

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 request complies with Criterion G. The owner has applied and been approved for a road approach permit with the Wasco County Public Works Department. The permit number is PWAPPR-16-11-0032.

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. *Farm-Forest 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: With a **condition** of approval, the request complies with Criterion A. A **condition** of approval is included that the owner of the subject parcel shall sign and record a Farm Management Easement (see Attachment F) with the Wasco County Clerk prior to obtaining a Planning Department signature on the building permit/manufactured home placement permit.

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

FINDING: The request complies with Criterion B. A copy of this document is attached to the Notice of Decision as Attachment G, and shall be provided to the owner.

Section 3.740 – Flood Hazard Overlay (EPD-1)

(***)

- B. Applicability

- 1. Lands to which this Chapter applies:

- a. This chapter shall apply to all Areas of Special Flood Hazards within the jurisdiction of Wasco County.

(***)

FINDING: The request complies with criterion B,1(a). Portions of the subject parcel are located within the EPD-1 Flood Hazard Overlay Zone. However, as illustrated in the site plan, all new development will be taking place outside of the EPD-1 Flood Hazard Overlay Zone (Area of Special Flood Hazards), and will not require an engineer's report illustrating the Base Flood Elevation.

Section 3.290 - Sensitive Wildlife Habitat Overlay (EPD-8)

In any zone which is in the Wildlife Overlay (EPD-8), the requirements and standards of this Chapter shall apply in addition to those specified in this Section for the underlying zone. If a conflict in regulation or standards occurs, the provisions of this Section shall govern except that the larger minimum lot size shall always apply.

FINDING: The request complies with Section 3.920. The subject parcel is located within the Sensitive Wildlife Habitat Overlay Zone and is identified as "Low Elevation Winter Range." Since new building construction is taking place within 300' feet of the road, and is clustered within existing structures, siting standards do not need to be taken into consideration. In an Email correspondence with Oregon Department of Fish and Wildlife dated 10/12/2016, Jeremy Thompson stated that "The application is acceptable under the rules for Big Game Winter Range, as the structures are within 300' of the road, and are clustered with existing structures in the currently disturbed footprint."

(***)

Section 3.922 - Application of Provisions

Except as provided in Section 3.923 below, this overlay district shall be applied to all areas identified in the Comprehensive Plan as Big Game Winter Range Habitat and Area of Voluntary Siting Standards.

FINDING: The subject parcel is located within the Sensitive Wildlife Habitat Overlay Zone and is identified as "Low Elevation Winter Range."

Section 3.923 – Exempt Areas

The following areas are exempt from these provisions:

- A. Rural Service Centers.
- B. Areas designated as Impacted Areas in the Transition Lands Study Area.

FINDING: The subject parcel is not located within a Rural Service Center, or in an area designated as Impacted Areas in the Transition Lands Study Area, and is therefore subject to the provisions of Section 3.290 - Sensitive Wildlife Habitat Overlay (EPD-8).

Section 3.924 – Permitted Uses

All uses allowed in the overlay zone shall be those farm and forest uses permitted outright by the underlying zone.

FINDING: The request complies with Section 3.924. The use is allowed as a Ministerial/Type I Review within Section 3.213(A) Agricultural Structure, and Subject to Standards/Type II Review within Section 3.214(D) Commercial Uses Related to Farm Use.

(***)

Section 3.926 – Siting Standards

A. *For lands within the Area of Voluntary Siting Standards a meeting between the applicant and Oregon Department of Fish and Wildlife shall be required if Oregon Department of Fish and Wildlife determines that habitat values exist which may be important to discuss with the applicant. The result of the meeting shall be included as information in the county review of a land use application.*

(***)

FINDING: The request complies with criterion 3.926. In an email dated October 12th, 2016, Jeremy Thompson of Oregon Department of Fish and Wildlife stated the application is “acceptable under the rules for Big Game Winter Range, as the structures are within 300’ of the road, and are clustered with existing structures in the currently distributed footprint.” Oregon Department of Fish and Wildlife did not express interest in meeting with the applicant.

Section 3.927 – Fencing Standards

The following fencing standards could apply to new fences constructed as a part of development of a property in conjunction with conditional use permit. These standards shall be a voluntary agreement by the applicant.

New fences in the Big Game overlay zone are designed to permit wildlife passage. The following standards are guidelines approved by the County after consultation with the Oregon Department of Fish and Wildlife:

- A. *To make it easier for deer to jump over the fence, the top wire shall not be more than 42 inches high.*
- B. *A 3-wire or 4-wire fence with the bottom wire at least 18 inches above the ground to allow fawns to crawl under the fence. It should consist of smooth wire to avoid injury to animals.*
- C. *A gap of at least 10 inches shall be maintained between the top two wires to make it easier for deer to free themselves if they become entangled.*

FINDING: The request complies with Section 3.927. As illustrated in the site plan provided, the applicant will not be constructing fencing, so these standards will not apply.

Section 3.928 – Other Provisions

A. *The County shall notify the Oregon Division of State Lands and the Oregon Department of Fish and Wildlife of any development application for land within a wetland identified on the National Wetlands Inventory maps.*

- B. *An application for a destination resort, or any portion thereof, in a recognized Big Game Habitat overlay zone shall not be accepted pending completion of the County's Goal 8 destination resort mapping process.*
- C. *The county shall provide ODFW an annual record of development approvals within the areas designated as "Area of Voluntary Siting Standards" on the plan map to allow ODFW to monitor and evaluate*

FINDING: The request complies with Section 3.928. The development is not located in the National Wetlands Inventory, is not a destination resort, and the development has been recorded to share with ODFW in the Wasco County annual record of approvals.

B. 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: With **conditions** of approval, the request complies with Chapter 10 – Fire Safety Standards. The Fire Safety Standards, adopted by the Wasco County Court and effective February 5, 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 owner completed a Fire Safety Standard Self-Certification Form. By signing the self-certification form, the owner has 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 files **PLASTS-16-10-0007**.

The subject property is located within the boundaries of Mid-Columbia Fire and Rescue and the Oregon Department of Forestry.

A letter from Kristin Dodd, Oregon Department of Forestry - Unit Forester for the Central Oregon District, dated 8/25/2017, states that the standards that ODF are most concerned with include paying particular attention to structures having the least impact on adjoining forest lands, appropriate buffer requirements, and that the risks associated with wildfire are minimized. Emphasis should be put upon the importance of defensible space standards around the building site that contribute to higher likelihood of a structure being saved while reducing risk to firefighting personnel in the event of a wildfire moving through the area, regardless of how the fire started. A **condition** of approval is included in the Notice of Decision that a 50 foot fuel fire break will be continually maintained year round for all proposed buildings and operations.

The owner currently has a driveway that provides access off of Mill Creek Road. They did not have a road approach permit on file, but filed for one after submitting their application and have been approved. The file number is **PWAPPR-16-11-0032**.

A **condition** of approval is included in the notice of decision that any new points of access or new driveways approved for the proposed development will have a new road approach permit applied for and approved prior to zoning approval.

C. Chapter 11 – Marijuana Production, Processing, Wholesaling, and Retailing

(*)**

Section 11.020 – Applicability

A. *Marijuana production, processing, wholesaling and retailing uses are only allowed if they are specifically listed as an allowed use in Chapter 3 under the zoning section that directly applies to the subject (legally created) property(ies).*

(*)**

D. *Marijuana production in the Exclusive Farm Use zone (A-1) must comply with all provisions of Chapter 11.*

FINDING: With a **condition** of approval, the request complies with criterion A. As described in Section 3.213(A) Agricultural Structures Permitted Subject to Type I Review, and Section 3.214(D) above, the processing of farm crops within the A-1 Exclusive Farm Use zoning would be a Subject to Standards/Type II Review.

A **condition** of approval is included in the Notice of Decision that the applicant must comply with all provisions and standards of Chapter 11, specifically Section 11.040 – Marijuana Production and Marijuana Processing.

Section 11.040 – Marijuana Production and Marijuana Processing

A. *Minimum Yard Depth. No land area or structure used for marijuana production or marijuana processing shall be located closer than 200 feet from any lot line.*

FINDING: The request complies with criterion A. As illustrated in the site plan, the proposed buildings will be located 260' feet from the northern property line, 205' feet from the western property line, 350' feet from the eastern property line, and 1,500' feet from the southern property line.

B. *Access. The subject property shall have frontage on, and direct access from, a constructed public, county, or state road, or take access on an exclusive road or easement serving only the subject property. If property takes access via a private road or easement which also serves other properties, evidence must be provided by the applicant, in the form of a petition that all other property owners who have access rights to the private road or easement agree to allow the specific marijuana production or marijuana processing described in the application. Such evidence shall include any conditions stipulated in the agreement.*

FINDING: The request complies with criterion B. The property has frontage on and direct access from Mill Creek Rd, which is a dedicated county road. The Proposed access follows these parameters as well.

- C. *Security Cameras. If security cameras are used, they shall be directed to record only the subject property and public rights-of-way, except as required to comply with licensing requirements of the Oregon Liquor Control Commission or registration requirements of the Oregon Health Authority.*

FINDING: With a **condition** of approval, the request complies with criterion C. A **condition** of approval is included in the Notice of Decision that all security cameras located at the grow site will record only the subject property and public rights-of-way, unless otherwise directed by OLCC.

- D. *Odor. A building used for marijuana production or marijuana processing shall be equipped with a carbon filtration system for odor control.*
1. *The system shall consist of one or more fans and filters.*
 2. *At a minimum, the fan(s) shall be sized for cubic feet per minute (CFM) equivalent to the square footage of the building floor space (i.e., one CFM per square foot of building floor space).*
 3. *The filter(s) shall be rated for the applicable CFM*
 4. *The filtration system shall be maintained in working order and shall be in use.*
 5. *An alternative odor control system is permitted if the applicant submits a report by a mechanical engineer licensed in the State of Oregon demonstrating that the alternative system will control odor as well or better than the carbon filtration system otherwise required.*

FINDING: With a **condition** of approval, the request complies with criterion D, 1-5. Within supplemental information provided by the applicant, the two indoor grow buildings will be fitted with two 2,000cfm exhaust fans incorporating state of the art odor control carbon filtration, and a high end commercial HVAC system designed for a 4,000sq/ft indoor grow building. The secondary processing building will be equipped with a 1,500cfm exhaust fan incorporating a state of the art odor control carbon filtration system, and a high efficiency ductless HVAC system designed for a 1,500sq/ft building. The grow/shop building will be designed in a similar fashion to the two indoor grow buildings utilizing the same carbon filtered exhaust fans and the same HVAC system. A **condition** stating that the applicant must comply with the odor control standards of Chapter 11 Marijuana Production, Processing, Wholesaling, and Retailing, will be stated within the notice of decision.

- E. *Lighting. Lighting shall be regulated as follows:*

1. *Light cast by light fixtures inside any building used for marijuana production or marijuana processing shall not be visible outside the building from 7:00 p.m. to 7:00 a.m. the following day.*
2. *Outdoor marijuana grow lights shall not be illuminated from 7:00 p.m. to 7:00 a.m. the following day.*

3. *Light cast by exterior light fixtures other than marijuana grow lights (e.g., security lights, driveway lights) shall not spill onto adjacent lots.)*

FINDING: With a **condition** of approval, the request complies with criterion E, 1-3. As stated in the project description, all windows will be facing away from neighboring properties with shades to prevent light exposure from inside the buildings. The proposal does not include an outdoor grow area for marijuana, so criterion (2) does not apply. Exterior lighting will be on all sides of the proposed buildings, but will be shielded to prevent light from casting onto neighboring properties via photocell. Fixture specs are E-WP11, 150W PSMH LED Wall Pac. Interior grow lighting will be 500W – 1000W LED style on 24/7 and shall not be visible outside the building from 7:00pm – 7:00am. Light cast by light fixtures inside any building used for marijuana production or marijuana processing shall not be visible outside the building from 7:00 p.m. to 7:00 a.m. the following day. Additionally, a **condition** is included that light cast by exterior light fixtures other than marijuana grow lights (e.g., security lights, driveway lights) shall not spill onto adjacent lots.

- F. *Water. The applicant shall submit proof of a legal water source for the proposed marijuana production or marijuana processing. Proof could include, but is not limited to, a copy of a water right that serves the proposed use or a letter from the irrigation district, municipal water provider or the Watermaster.*

FINDING: With a **condition** of approval, the request complies with criterion F. The applicant provided the necessary documentation and certificates to show proof of irrigation water rights. Since irrigation water rights are seasonal in nature, the applicant will use municipal water from The City of The Dalles when those water rights are not in affect.

On March 30th, 2017, staff spoke over the phone with Dave Anderson, Director of The City of The Dalles Public Works Department. Since the applicant will be intensifying water use for the proposed primary and secondary processing operation, the applicant will need to be approved for commercial water rights through The City of The Dalles.

On July 24th, 2017, The City of The Dalles held a city council meeting. The Agenda included the authorization to provide water service outside city limits to 6140 Mill Creek Road for irrigation of a commercial marijuana growing operation (see The City of The Dalles, City Council meeting minutes and agenda staff report within file PLASTS-16-10-0007). A motion was seconded and approved to authorize the provision of commercial water service outside city limits to the property located at 6140 Mill Creek Road.

A **condition** of approval is included in the Notice of Decision that prior to signatures of building permits by Wasco County Planning, approval of water service from The City of The Dalles to the processing facility shall be provided to the county, which provides sufficient capacity to handle the anticipated demand.

- G. *Waste Management. Marijuana waste shall be stored in a secured waste receptacle in the possession of and under the control of the licensee.*

FINDING: With a **condition** of approval, the request complies with criterion G. A **condition** is included in the Notice of Decision that there shall be a secured onsite waste receptacle in possession and under the control of the licensee before primary and secondary processing operations are to commence.

D. Chapter 20 – Site Plan Review

Section 20.050 – Off Street Parking

At the time of erection of a new structure or at the time of enlargement or change in use of an existing structure, off street parking spaces shall be provided in accordance with this Section. In an existing use, the parking space shall not be eliminated if elimination would result in less space than is required by this Section. Where square feet are specified the area measured shall be the gross floor area necessary to the functioning of the particular use of the property but shall exclude space devoted to off street parking or loading. Where employees are specified, persons counted shall be those working on the premises during the largest shift at peak season, including proprietors.

G. Industrial

- 1. Storage warehouse, manufacturing establishment, rail or trucking freight terminal: One (1) space per employee*

FINDING: With a **condition** of approval, the request complies with criterion G(1). In the Farm Management Plan, seven (7) workers max are anticipated at any one time. As illustrated in the Site Plan and addressed in the Fire Safety Standards Self Certification, parking has been provided within the new development area. A **condition** of approval is included in the Notice of Decision that the proposed parking area will allow up to (9) parking spaces for the proposed primary and secondary processing use.

Section 20.070 Off Street Loading

- A. Merchandise, materials or supplies: Buildings or structures to be built or substantially altered to receive and distribute materials or merchandise by truck shall provide and maintain off street loading berths in sufficient numbers and size to adequately handle the needs of the particular use. If loading space has been provided in connection with an existing use or is added to an existing use, the loading space shall not be eliminated if elimination would result in less space than is required to adequately handle the needs of the particular use. Off street parking areas used to fulfill the requirements of this Ordinance shall not be used for loading and unloading operations except during periods of the day when not required to take care of parking needs.*

FINDING: With a **condition** of approval, the request complies with criterion B. The existing development shall be altered to receive and distribute materials or merchandise by truck while providing and maintaining off street loading berths in sufficient numbers and size to adequately handle the needs of the particular use. Off street parking areas used to fulfill the (9) required spaces shall not be used for loading and unloading operations except during periods of the day when not required to take care of parking needs. A **condition** stating (1) off-street parking space shall be provided for off-street parking and loading is included in the notice of decision. It shall meet the same requirements as all other off-street parking areas, and shall be identified on the off-street parking plan.

Section 20.080, General Provisions – Off-Street Parking & Loading

- A. The provisions and maintenance of off-street parking and loading spaces are continuing obligations of the property owner. No building permit shall be issued until plans are presented that show property that is and will remain available for exclusive use of off-street parking and*

loading space. The subsequent use of property for which the building permit is issued shall be conditional upon the unqualified continuance and availability of the amount of parking and loading space required by this Ordinance. Should the owner or occupant of a lot or building change the use to which the lot or building is put, thereby increasing off-street parking or loading requirements, it shall be unlawful and a violation of this Ordinance to begin or maintain such altered use until the required increase in off-street parking or loading is provided.

FINDING: There will be multiple deliveries, and loading/unloading taking place. (1) Off-street parking space shall be provided for off-street parking and loading. A **condition** stating (1) off-street parking space shall be provided for off-street parking and loading is included in the notice of decision. It shall meet the same requirements as all other off-street parking areas, and shall be identified on the off-street parking plan.

(***)

E. Off-street parking spaces shall be located on the same or abutting lot with the building or use they are intended to serve.

FINDING: With a **condition** of approval, the request complies with criterion E. A **condition** is included in the Notice of Decision requiring all off-street parking serving the proposed buildings to be located on the same parcel as the four new buildings.

F. Required parking spaces shall be available for the parking of operable passenger automobiles of residents, customers, patrons and employees only, and shall not be used for storage of vehicles or materials or for the parking of trucks used in conducting the business or use.

FINDING: With a **condition** of approval, the request complies with criterion F. A **condition** is included in the Notice of Decision prohibiting the storage of vehicles or materials, or the parking of trucks used in the primary production and secondary processing use.

(***)

H. Design requirements for parking lots:

- 1. Areas used for standing and maneuvering of vehicles shall have a durable and dustless, but not necessarily paved, surface maintained adequately for all weather use.*
- 2. Except for parking to serve residential uses, parking and loading areas adjacent to or within residential zones or adjacent to residential uses shall be designed to minimize disturbance of residents.*
- 3. Access aisles shall be of sufficient width for all vehicles turning and maneuvering.*
- 4. Groups of more than four (4) parking spaces shall be served by a driveway so that no backing movement or other maneuvering will be required within a street.*
- 5. Lighting of the parking area shall be deflected from a residential zone.*

FINDING: With a **condition** of approval, the request complies with criterion H. The required (9) parking spaces shall be a minimum of 8' wide x 18' long, with 24' required between rows. (This is only applicable if the owner proposes a parking lot with rows). As demonstrated in the site plan, there is sufficient area on

site to accommodate the necessary parking and loading/unloading areas. A **condition** stating (9) parking spaces shall be a minimum of 8' wide x 18' long, with 24' required between rows, and that lighting of the parking area shall be deflected from a residential zone is included in the Notice of Decision.

- I. Required parking spaces shall be improved and available for use by the time the use to be served by the parking space is ready for occupancy.*

FINDING: With a **condition** of approval, the request complies with criterion I. A **condition** is included in the Notice of Decision requiring parking spaces to be improved and available for use prior to operation of the primary processing and secondary processing use.

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 distracting glare. 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.

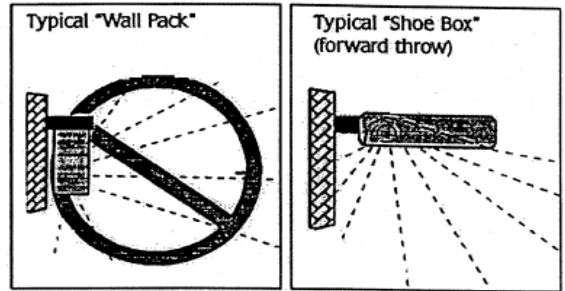
Energy Waste Many outdoor lights waste energy by spilling much of their light where it is not needed, such as up into the sky. This waste results in high operating costs. We waste over a billion dollars a year in the United States needlessly lighting the night sky.

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?

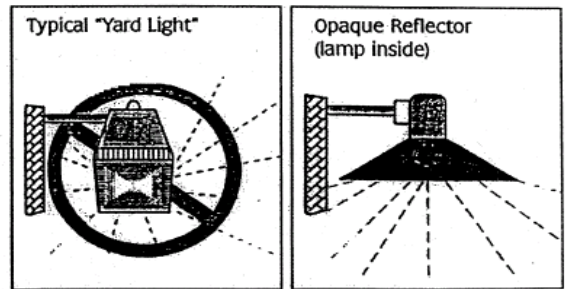
- 1 Provide only enough light for the task at hand; don't over-light, and don't spill light off your property. Specifying enough light for a job is sometimes hard to do on paper. Remember that a full Moon can make an area quite bright. Some lighting systems illuminate areas 100 times more brightly than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

Some Good and Bad Light Fixtures



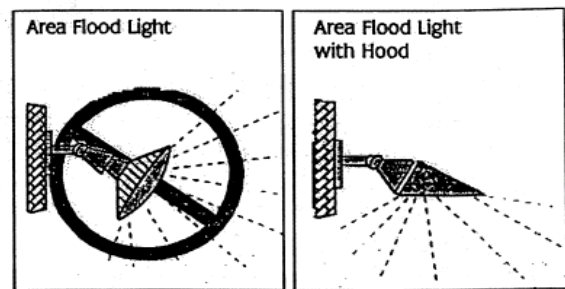
BAD

GOOD



BAD

GOOD



BAD

GOOD

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)

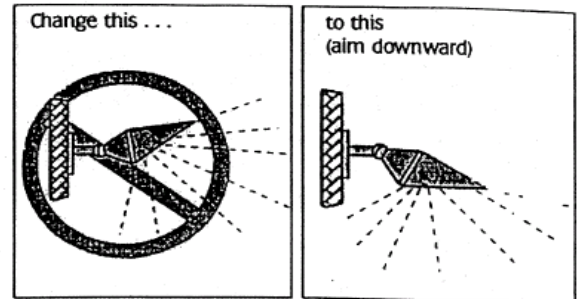
(<http://cfa-www.harvard.edu/cfa/ps/nelpag.html>) and

Sky Publishing Corp. (<http://www.skypub.com/>).

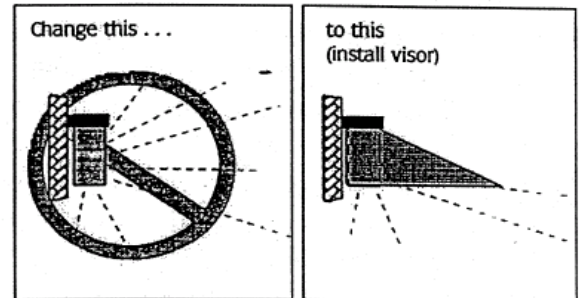
NELPAG and Sky Publishing Corp. support the **International Dark-Sky Association (IDA)** (<http://www.darksky.org/>).

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.

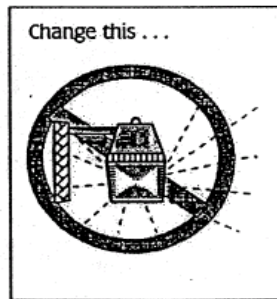
What You Can Do To Modify Existing Fixtures



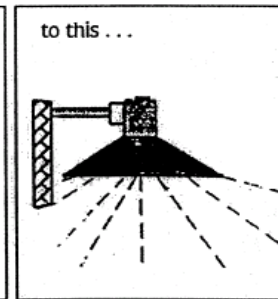
FLOOD LIGHT



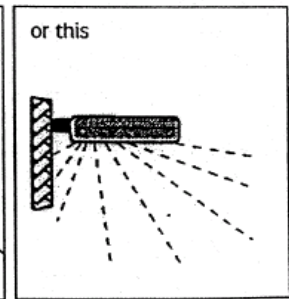
WALL PACK



YARD LIGHT



OPAQUE REFLECTOR



SHOE BOX



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

ATTACHMENT F - FOREST-FARM MANAGEMENT EASEMENT

Owner Name: _____
Mailing Address: _____

_____, herein called the Grantors, are the owners of real property described as follows:

Township _____, Range _____ East W.M., Section(s) _____,
Tax Lot(s) _____; Assessor Account(s) _____.

In accordance with the conditions set forth in the decision of Wasco County Planning Staff, dated _____, approving a _____ (File # _____) to _____

In consideration of such approval, Grantors hereby grant to the Owners of all property adjacent to the above described property, a perpetual nonexclusive 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/Forest-Farm zone in Wasco County, Oregon, and may be subjected to conditions resulting from farm or forest operations on adjacent lands. Farm operations include, but are not limited to, 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

After recording, please return original to: Wasco County Planning Department.



ATTACHMENT F - FOREST-FARM MANAGEMENT EASEMENT

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. Grantors hereby waive all common law rights to object to normal and necessary farm or forest management activities legally conducted on adjacent lands which may conflict with grantors' use of grantors' property for residential purposes and grantors hereby give an easement to adjacent property owners for such activities.

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

This easement is appurtenant to all property adjacent to the above described property and shall bind to the heirs, successors and assigns of Grantors and shall endure for the benefit of the adjoining landowners, their heirs, successors and assigns.

IN WITNESS WHEREOF, the Grantors have executed this easement on _____, 201____.

Titleholders Signature

Titleholders Signature

STATE OF OREGON)
COUNTY OF WASCO)

Personally appeared the above named _____ and _____, and acknowledged the above easement to be their voluntary act and deed.

Notary Public for Oregon

ATTACHMENT G – FARM MEDIATION ORDINANCE

IN THE COUNTY COURT OF THE STATE OF OREGON

IN AND FOR THE COUNTY OF WASCO

FILED
WASCO COUNTY
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.)

MARSH 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.

////

//// // ////

////

8 - AMENDED ORDINANCE

DONE AND DATED this 3rd day of September, 2003

WASCO COUNTY COURT



Dan Ericksen, County Judge

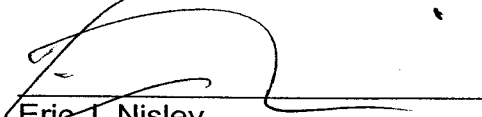


Scott McKay, County Commissioner



Sherry Holliday, County Commissioner

APPROVED AS TO FORM:



Eric J. Nisley
Wasco County District Attorney

9 – AMENDED ORDINANCE