



Oregon

Theodore R. Kulongoski, Governor

Department of Land Conservation and Development

635 Capitol Street, Suite 150

Salem, OR 97301-2540

(503) 373-0050

Fax (503) 378-5518

www.lcd.state.or.us

NOTICE OF ADOPTED AMENDMENT

November 3, 2008

TO: Subscribers to Notice of Adopted Plan
or Land Use Regulation Amendments

FROM: Mara Ulloa, Plan Amendment Program Specialist

SUBJECT: Wasco County Plan Amendment
DLCD File Number 002-08



The Department of Land Conservation and Development (DLCD) received the attached notice of adoption. A copy of the adopted plan amendment is available for review at the DLCD office in Salem and the local government office.

Appeal Procedures*

DLCD ACKNOWLEDGMENT or DEADLINE TO APPEAL: November 19, 2008

This amendment was submitted to DLCD for review 45 days prior to adoption. Pursuant to ORS 197.830 (2)(b) only persons who participated in the local government proceedings leading to adoption of the amendment are eligible to appeal this decision to the Land Use Board of Appeals (LUBA).

If you wish to appeal, you must file a notice of intent to appeal with the Land Use Board of Appeals (LUBA) no later than 21 days from the date the decision was mailed to you by the local government. If you have questions, check with the local government to determine the appeal deadline. Copies of the notice of intent to appeal must be served upon the local government and others who received written notice of the final decision from the local government. The notice of intent to appeal must be served and filed in the form and manner prescribed by LUBA, (OAR Chapter 661, Division 10). Please call LUBA at 503-373-1265, if you have questions about appeal procedures.

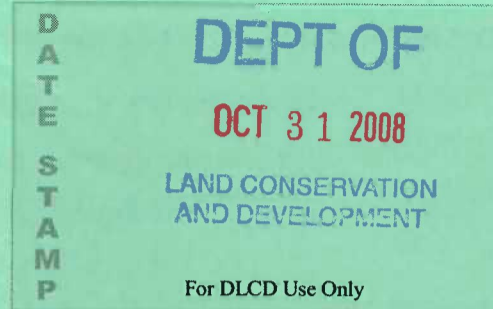
***NOTE: THE APPEAL DEADLINE IS BASED UPON THE DATE THE DECISION WAS MAILED BY LOCAL GOVERNMENT. A DECISION MAY HAVE BEEN MAILED TO YOU ON A DIFFERENT DATE THAN IT WAS MAILED TO DLCD. AS A RESULT YOUR APPEAL DEADLINE MAY BE EARLIER THAN THE ABOVE DATE SPECIFIED.**

Cc: Doug White, DLCD Community Services Specialist
Jon Jinings, DLCD Regional Representative
Todd Cornett, Wasco County

<paa> ya

FORM 2 Notice of Adoption

THIS FORM MUST BE MAILED TO DLCD
WITHIN 5 WORKING DAYS AFTER THE FINAL DECISION
PER ORS 197.610, OAR CHAPTER 660 - DIVISION 18



Jurisdiction: Wasco County Local file number: PLALEG-08-08-0001
Date of Adoption: 10/29/2008 Date Mailed: 10/29/2008
Date original Notice of Proposed Amendment was mailed to DLCD: 06/14/2008

- Comprehensive Plan Text Amendment
- Land Use Regulation Amendment
- New Land Use Regulation
- Comprehensive Plan Map Amendment
- Zoning Map Amendment
- Other: _____

Summarize the adopted amendment. Do not use technical terms. Do not write "See Attached".
Amend Chapter 13, Nonconforming Uses, Buildings & Lots and related chapters. The primary purpose is to include language in ORS 215.130 that is not currently included. The secondary purpose is to clarify review criteria and streamline Chapter.
Please note - original Local File Number was PLALUA-08-06-0001. This was replaced by the current file number listed above.

Describe how the adopted amendment differs from the proposed amendment. If it is the same, write "SAME". If you did not give Notice for the Proposed Amendment, write "N/A".
Changes were made to distinguish the review criteria associated with alterations to residential vs. non-residential (commercial & industrial) nonconforming uses. Changes were also made to properties consolidated by deed. To ensure consistency with ORS 92.017 this now clarifies properties are considered consolidated by deed for development purposes only.

Plan Map Changed from: N/A to: N/A
Zone Map Changed from: N/A to: N/A
Location: Unincorporated Wasco County Acres Involved: N/A
Specify Density: Previous: N/A New: N/A
Applicable Statewide Planning Goals: 1 & 2
Was and Exception Adopted? YES NO

DLCD File No.: 002-08 (17013)

Did the Department of Land Conservation and Development receive a Notice of Proposed Amendment.....

Forty-five (45) days prior to first evidentiary hearing? Yes No

If no, do the statewide planning goals apply? Yes No

If no, did Emergency Circumstances require immediate adoption? Yes No

Affected State or Federal Agencies, Local Governments or Special Districts:

N/A

Local Contact: Todd R. Cornett Phone: (541) 506-2560 Extension: _____

Address: 2705 E. 2nd St. City: The Dalles

Zip Code + 4: 97058- Email Address: toddc@co.wasco.or.us

ADOPTION SUBMITTAL REQUIREMENTS

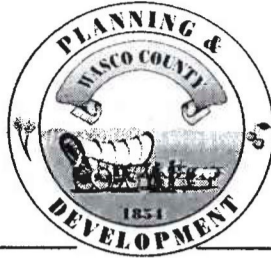
This form **must be mailed** to DLCD **within 5 working days after the final decision**
per ORS 197.610, OAR Chapter 660 - Division 18.

1. Send this Form and TWO (2) Copies of the Adopted Amendment to:

**ATTENTION: PLAN AMENDMENT SPECIALIST
DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT
635 CAPITOL STREET NE, SUITE 150
SALEM, OREGON 97301-2540**

2. Submit **TWO (2) copies** the adopted material, if copies are bounded please submit **TWO (2) complete copies** of documents and maps.
3. Please Note: Adopted materials must be sent to DLCD not later than **FIVE (5) working days** following the date of the final decision on the amendment.
4. Submittal of this Notice of Adoption must include the text of the amendment plus adopted findings and supplementary information.
5. The deadline to appeal will not be extended if you submit this notice of adoption within five working days of the final decision. Appeals to LUBA may be filed within **TWENTY-ONE (21) days** of the date, the Notice of Adoption is sent to DLCD.
6. In addition to sending the Notice of Adoption to DLCD, you must notify persons who participated in the local hearing and requested notice of the final decision.
7. **Need More Copies?** You can copy this form on to 8-1/2x11 green paper only; or call the DLCD Office at (503) 373-0050; or Fax your request to:(503) 378-5518; or Email your request to **mara.ulloa@state.or.us** - ATTENTION: PLAN AMENDMENT SPECIALIST.

WASCO COUNTY PLANNING
AND DEVELOPMENT
Todd R. Cornett, Director
2705 East Second Street
The Dalles, Oregon 97058



Phone: (541) 506-2560
Fax: (541) 506-2561
Web Address: co.wasco.or.us

NOTICE OF COUNTY COURT DECISION

FILE #: PLALEG-08-08-0001

HEARING DATE: 15 October 2008
DECISION DATE: 29 October 2008
EFFECTIVE DATE: 19 November 2008

REQUEST: Amend Chapter 13, Nonconforming Uses Building and Lots and related sections and chapters of the Wasco County Land Use and Development Ordinance.

DECISION: On a vote of 3 – 0 the Wasco County Court unanimously voted to approve the recommendation by the Wasco County Court Planning Commission with amendments.

AFFECTED PROPERTIES: All properties within Wasco County's land use jurisdiction outside of urban growth areas and not affected by the National Scenic Area Act, Management Plan, and Ordinances.

FINDINGS OF FACT:

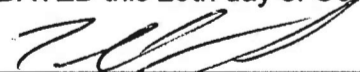
- A. Proper notice was given and the hearing was held in accordance with procedural rules for legislative hearings and in conformity with said requirements as set forth in the Wasco County LUDO.
- B. Three members of the County Court were present and qualified to sit as decision-makers after full disclosure was made and the matter of qualifications was discussed by the County Court.
- C. In making its decision, the County Court recognized the procedural and legal requirements of the Wasco County LUDO, and weighed fully each requirement in arriving at its decision.

All reports and documents related to this decision may be reviewed at the Wasco County Planning & Development Office, 2705 East Second Street, The Dalles, Oregon, 97058, or are available for purchase at the cost of \$0.25 per page. Most of these documents are also available online at:
www.co.wasco.or.us/planning/planhome.html.

APPEAL PROCESS: Appeals of a legislative amendment to the Land Use Board of Appeals are governed by ORS 197.620.

SIGNATURE

DATED this 29th day of October 2008



Todd R. Cornett, Planning Director

IN THE COUNTY COURT OF THE STATE OF OREGON
IN AND FOR THE COUNTY OF WASCO

IN THE MATTER OF THE WASCO COUNTY PLANNING)
AND DEVELOPMENT DEPARTMENT'S REQUEST TO)
APPROVE THE PROPOSED POST-)
ACKNOWLEDGEMENT LEGISLATIVE AMENDMENTS)
TO CHAPTER 13, NONCONFORMING USES) ORDINANCE
BUILDINGS AND LOTS AND RELATED SECTIONS AND)
CHAPTERS OF THE WASCO COUNTY LAND USE AND)
DEVELOPMENT ORDINANCE. (FILE NUMBER)
PLALEG-08-08-0001)

1

2 NOW ON THIS DAY, the above-entitled matter having come on regularly for
3 consideration, said day being one duly set in term for the transaction of public business
4 and a majority of the Court being present; and

5 IT APPEARING TO THE COURT: That the Wasco County Planning Department
6 has requested a Post-Acknowledgement Plan Amendment for legislative amendments
7 to Chapter 13, Nonconforming Uses Building and Lots and related sections and
8 chapters of the Wasco County Land Use and Development Ordinance; and pursuant to
9 Measure 56, Wasco County sent notification to all affected landowners on September 2,
10 2008; and

11 IT APPEARING TO THE COURT: That on August 5, 2008, the Wasco County
12 Planning Department held a legally notified public workshop with the Wasco County
13 Planning Commission and the Wasco County Court, at the Gorge Discovery Center, to
14 review back ground information and options for staff recommendations for the purpose
15 of identifying preferred options and any potential needs for additional information prior to
16 hearing; and

1 IT FURTHER APPEARING TO THE COURT: That on September 2, 2008, the
2 Wasco County Planning Commission met to conduct a legally notified public hearing on
3 the above matter. Following receipt and review of evidence, the Commission
4 deliberated and, on a vote of 5 to 0 (2 Commissioners Absent) voted to elevate the
5 request for a Post-Acknowledgement Plan Amendment for legislative amendments to
6 Chapter 13, Nonconforming Uses Building and Lots and related sections and chapters
7 of the Wasco County Land Use and Development Ordinance with a recommendation of
8 approval; and

9 IT FURTHER APPEARING TO THE COURT: That the Wasco County Court met
10 at the hour of 10:00 a.m. on Wednesday, October 15, 2008, in the Wasco County
11 Courtroom, Room 202, of the Wasco County Courthouse, in The Dalles, Oregon, for a
12 legally notified review of the Wasco County Planning Department's request for a Post-
13 Acknowledgement Plan Amendment for legislative amendments to the Chapter 13,
14 Nonconforming Uses Building and Lots and related sections and chapters of the Wasco
15 County Land Use and Development Ordinance. The Court reviewed the record, heard
16 the Staff recommendation and all relevant testimony from the parties, then voted 3 - 0 to
17 approve the recommendation by the Wasco County Planning Commission to amend
18 Chapter 13, Nonconforming Uses Building and Lots and related sections and chapters
19 of the Wasco County Land Use and Development Ordinance with additional
20 amendments recommended by staff and made by the County Court, as laid out in
21 **Attachment A.**

22 NOW THEREFORE IT IS HEREBY ORDERED: That the request by the Wasco
23 County Planning Department for a Post-Acknowledgement Plan Amendment for

1 legislative amendments to Chapter 13, Nonconforming Uses Building and Lots and
2 related sections and chapters of the Wasco County Land Use and Development
3 Ordinance is approved.


4

5

6

7 SIGNED this 29th day of October, 2008

Approved as to Form:

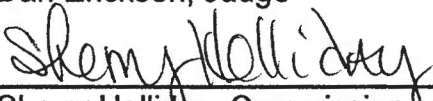


Eric J. Nisley
Wasco County District Attorney

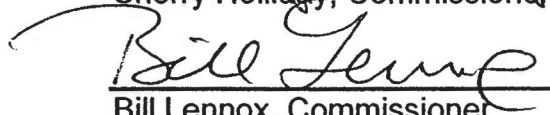
WASCO COUNTY COURT

Absent

Dan Ericksen, Judge



Sherry Holliday, Commissioner



Bill Lennox, Commissioner

P:\Long Range\Non Conforming Use Updates PLALEG-08-08-0001\06 County Court Hearing\CC Order.doc

**ATTACHMENT A
PLALEG-08-08-0001**

**Final Updated Versions of the Following Chapters of the
Land Use and Development Ordinance**

Title Page: This has been updated to reflect a new amendment date for the ordinance.

Chapter 1: This is a summary version which includes only the proposed amendments.

Chapter 2: This is a summary version which includes only the proposed amendments.

Chapter 13: This includes all of the Chapter 13 amendments.

WASCO COUNTY

LAND USE AND DEVELOPMENT ORDINANCE

ADOPTED
June, 1985

AMENDED
July, 1989
January, 1992
May, 1993
September, 1993
January, 1995
April, 1995
December, 1996
September, 1997
June, 1998
September, 1999
November 16, 1999
January 19, 2000
February 1, 2000
February 2, 2004
January 17, 2006
November 22, 2006
February 5, 2007
November 19, 2008

PREPARED BY THE
Wasco County Planning and Development Office

STAFF

Todd R. Cornett	Director of Planning
Gary Nychyk	Senior Planner
Brenda Jenkins	Planning Coordinator
Dawn M. Baird	Associate Planner
Eric Jones	Associate Planner
Benjamin Hoey	Planning Assistant

CHAPTER 1 INTRODUCTORY PROVISIONS

SECTION 1.090 Definitions

For the purpose of this Ordinance, certain words and terms are defined as follows: Words used in the present tense include the future; words in the singular number include the plural, and words in the plural include the singular; the word "Building" includes the word "Structure"; the word "Shall" is mandatory and not directory.

Floor Area - The sum of the horizontal areas of each floor of a building, measured from the interior faces of the exterior walls.

Neighborhood - In relation to Nonconforming Uses a neighborhood shall include the surrounding areas whose use and enjoyment of their property would be materially impacted as a result of the proposed alteration.

CHAPTER 2 DEVELOPMENT APPROVAL PROCEDURES

SECTION 2.060 Application

Application for development approval shall be made pursuant to applicable sections of this Ordinance on forms provided by the Planning Director.

...

9. Nonconforming Use Verification, Restoration, or Alteration (Chapter 13)

SECTION 2.080 Notice

...

- B. Notice of Administrative Action for the use listed in Sections 2.060(A) (1) and (9), shall be given as prescribed by subsection (A) (1) – (7) 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))

SECTION 2.100 Administrative Action Procedure of the Director

- A. After accepting an application for Administrative Action pursuant to Section 2.060(A) (1) - (9) of this Ordinance, the Director shall act on or cause a hearing to be held on the application within the time requirements of O.R.S. 215.428(1). (Revised 2-89, 5-93)

SECTION 2.120 Notice of a Decision by the Director

- A. Notice of a decision by the Director pursuant to Section 2.060 (A) (1) - (9) shall be filed in the records of the Director and also mailed to the applicant, the owner(s) or contract purchasers of the subject property, and all parties within the required notification areas, as described by Section 2.080. (Revised 1-92)

...

- C. The decision of the Director pursuant to Section 2.060 (A)(1) - (9) shall be final unless an appeal from an aggrieved person is received by the Director within ten (10) days after the filing of a decision on an Administrative Action or unless the Commission or County Court on its own motion, orders review within ten (10) days after the filing of the proposed decision. (revised 2-89, 5-93, 9-99)

DETAILED TABLE OF CONTENTS
CHAPTER 13 NONCONFORMING USES, BUILDINGS AND LOTS

<u>SECTION</u>	<u>TITLE</u>	<u>PAGE</u>
13.010	PURPOSE	13-1
13.020	CONTINUATION OF NONCONFORMING USE	13-1
13.030	CONVEYANCE OF NONCONFORMING USE	13-1
13.040	CONSTRUCTION ON AND CONVEYANCE OF NONCONFORMING LEGAL PARCELS	13-1
13.050	VERIFICATION OF NONCONFORMING USE OR STRUCTURE	13-2
13.060	RESTORATION OR ALTERATION OF NONCONFORMING USE	13-4
13.070	VESTED RIGHTS	13-8
13.080	CONSOLIDATION OF UNDEVELOPED SUBDIVISIONS	13-8

CHAPTER 13 NONCONFORMING USES, BUILDINGS AND LOTS

SECTION 13.010 Purpose

It is necessary and consistent with the establishment of this Ordinance that all uses and structures incompatible with permitted uses or structures in each zone be strictly regulated and permitted to exist only under rigid controls. The purpose of such regulation and control is to discontinue a nonconforming use or structure, change a nonconforming use or structure to a conforming status, or allow alterations to a nonconforming use or structure that do not increase the level of adverse impact on the neighborhood, or are required for the use or structure to comply with state or local health or safety requirements.

SECTION 13.020 Continuation of Nonconforming Use

Except as is hereinafter provided in this Ordinance, the lawful use of a building or structure or of any land or premises lawfully existing at the time of the effective date of this Ordinance or at the time of a change in the official zoning maps may be continued, although such use does not conform with the provisions of this Ordinance. Alterations to nonconforming structures may only be made consistent with Section 13.060.

SECTION 13.030 Conveyance of Nonconforming Use

Nothing in this Ordinance shall be construed to limit the sale, transfer, or conveyance of property on which exists a nonconforming building, structure or use, so long as such sale, transfer, or other conveyance does not otherwise violate the provisions of this Ordinance.

SECTION 13.040 Construction on and Conveyance of Nonconforming Legal Parcels

- A. Nothing in this Ordinance shall be deemed to prohibit construction or reconstruction of conforming uses or structures on nonconforming legal parcels unless otherwise limited by subsection B below, or limit the sale, transfer or conveyance of said legal parcels, so long as the construction, reconstruction, sale, transfer or conveyance is consistent with all applicable provisions of this ordinance.
- B. Properties Consolidated for Development Purposes
 - 1. Unless they meet the criteria in subsection 2 below, contiguous properties created solely by deed prior to 4 September 1974 consolidated onto a single deed at any time shall be considered one (1) property for development purposes.

Any properties sold and in separate ownership after being consolidated onto a single deed shall still meet the definition of a legal parcel but shall not be separately developable unless they meet the criteria in subsection 2 below.

Any properties in an agricultural or forest zone that are considered consolidated for development purposes shall retain the date of creation when the earliest deed was filed to allow for lot of record or non-farm dwelling application.

2. Contiguous properties created solely by deed prior to 4 September 1974 consolidated onto a single deed at any time shall be considered separate for development purposes if they meet either a, b, or c below.
 - a. Each property meets the current minimum lot size of the zone or a combination of properties meet the minimum lot size of the zone.
 - b. All of the deeds listing the properties included separate metes and bounds descriptions with a separate heading e.g., parcel 1, parcel 2. A separate metes and bounds description without a separate heading shall result in the properties being considered consolidated for development purposes.
 - c. More than one of the properties has been legally, residentially developed. However any properties not residentially developed less than the minimum lot size will still be considered to be consolidated for development purposes with one of the properties residentially developed.

Properties residentially developed shall not include the following:

- Accessory Farm Dwellings
- Relative Help Dwelling
- Farm labor Housing
- Medical Hardship Dwelling

SECTION 13.050 Verification of Nonconforming Use

Must meet lawfully established and discontinuance or abandonment criteria below.

- A. Lawfully Established: For a nonconforming use to be verified as lawfully established it shall be consistent with all of the following:
 1. The nonconforming use has not been expanded in size or area or changed in purpose or use beyond what was lawfully established;
 2. The property on which the nonconforming use is located meets the definition of legal parcel in Chapter 1 of this ordinance;

3. The nonconforming use was lawfully established on or before the effective date of the provisions of this ordinance prohibiting the use verified by either a or b below. No unlawful use of property existing at the time of the effective date of the provisions of this ordinance shall be deemed a nonconforming use.
 - a. Type I Verification: Lawfully established is verified by non-discretionary evidence including but not limited to zoning approval or County Assessor records verifying the date of establishment. This type of verification is not subject to any review process because it does not involve the exercise of any discretion or judgment. If the applicant wishes documentation of this it shall be done as a Land Use Verification Letter.
 - b. Type II Verification: Lacking non-discretionary evidence, lawfully established is verified by a discretionary process consistent with Section 2.060(A)(9).

It is the burden of the applicant to provide a preponderance of evidence which will allow the Planning Director to conclude the nonconforming use was lawfully established. Such evidence includes but is not limited to:

- Utility Bills and Records (phone, power, sewer, water)
- Aerial Photographs
- Dated Photos
- Notarized Letters or Affidavits affirming the date of establishment

- B. Discontinuance or Abandonment: For a nonconforming use to be verified as lawfully established it must not have been discontinued or abandoned according to the following criteria. Based on the circumstances, the Director shall determine whether discontinuance or abandonment shall be reviewed as a Type I or Type II process as described in A above.
 1. The reference period for determining whether an abandonment or interruption of a nonconforming use or an aspect thereof has occurred shall be twelve (12) consecutive months in any of the ten (10) years preceding the date of the application. Proof of intent to abandon is not required to determine that a nonconforming use has been discontinued or abandoned.
 2. An abandonment or interruption of a use may arise from the complete cessation of the actual use for a twelve (12) month period even if improvements to support the use remain in place.
 3. An interruption or abandonment for a twelve (12) month period that constitutes less than full cessation of the use or a portion thereof may result in a declaration of a continuing use, but of a lesser intensity or scope than what would have been allowable if the nature and extent of the use as of the date it became

nonconforming had continued, even if improvements to support the full use remain in place.

4. A change in the nature of the use may result in a determination that the use has been abandoned or has ceased for a twelve (12) month period if there are no common elements between the activities of the previous use and the current use.

Factors to be considered in determining whether there has been a change in the nature of a use shall include, but are not limited to, consideration of the type of activities being conducted, the operating characteristics of the activities associated with the use (including off-site impacts of those activities), changes in structures associated with the use and changes in the degree to which the activities associated with the use occupy the site.

5. A surface mining use shall not be deemed to be interrupted or abandoned for any period after July 1, 1972, provided:
 - a. The owner or operator was issued and continuously renewed a state or local surface mining permit, or received and maintained a state or local exemption from surface mining regulation; and
 - b. The surface mining use was not inactive for a period of 12 consecutive years or more. For purposes of this subsection, "inactive" means no aggregate materials were excavated, crushed, removed, stockpiled or sold by the owner or operator of the surface mine.

SECTION 13.060 Restoration or Alteration of Nonconforming Use

Restoration or alteration of a nonconforming use or structure shall be reviewed according to Section 2.060(A)(9) and limited to the applicable criteria below and Verification of Nonconforming Use in Section 13.050 above. Any other restorations or alterations shall conform to all of the criteria of this ordinance.

Maintenance, repair, alteration, restoration or replacement of a lawfully implemented or established dwelling in the Exclusive Farm Use or Forest Zone shall be governed by those zones and not be subject to the alteration language in Chapter 13. However, these dwellings will be subject to a Chapter 6 or 7 Variance Review if they cannot meet all of the provisions of the Wasco County Land Use and Development Ordinance, and must comply with all current health and safety ordinances including but not limited to Geologic Hazard Overlay (Section 3.750) Fire Safety Standards (Chapter 10) and Flood Damage Prevention (Chapter 22).

- A. Restoration or Replacement of a Nonconforming Structure Destroyed by Fire, Other Casualty or Disaster: If a nonconforming structure or a structure containing a

nonconforming use is destroyed by fire, other casualty or natural disaster, restoration or replacement shall be permitted subject to the following criteria:

1. Time Limitation: An application is received within twelve (12) months from the occurrence of the fire, casualty or natural disaster. The application shall include official documentation establishing the date of the fire, casualty, or natural disaster. If an application is not received within twelve (12) months from the occurrence, the nonconforming use shall be considered discontinued.
 2. Size: The restoration of a nonconforming building or structure may not increase the floor area or create a greater nonconformance than existed at the time of damage or destruction. Any changes in height, additions of attics basements, decks or elements that were not part of the original structure beyond what is necessary to comply with current building code or building industry standards shall be considered an alteration.
 3. Location: The restoration shall be sited on the same footprint as the original structure. However, if the applicant wishes to change the location to better comply with current setback, buffer or health and safety standards, the restoration will be allowed to be relocated the minimum distance necessary to achieve this goal. Any relocation beyond the minimum distance necessary shall be considered an alteration.
 4. Health & Safety: The restoration shall comply with all current health and safety ordinances including but not limited to Geologic Hazard Overlay (Section 3.750) Fire Safety Standards (Chapter 10) and Flood Damage Prevention (Chapter 22).
- B. Alteration of a nonconforming use to Comply with State or Local Health or Safety Requirements:** No conditions shall be placed upon the continuation or alteration of a nonconforming use when necessary to comply with state or local health or safety requirements, or to maintain in good repair the existing structures associated with the use.

Proof of compliance with health or safety requirements or the necessity to maintain in good repair existing structures associated with the use shall be submitted with the application.

- C. Alteration of a nonconforming use including but not limited to any combination of the following:**
- Replacing a structure not damaged or destroyed by fire, other casualty or disaster;
 - Expanding a structure beyond its current size;

-Relocating a structure to a different location on the same legal parcel;

1. Alteration will result in no greater adverse impact on the neighborhood or shall result in less of an adverse impact on the neighborhood considering the criteria listed below.

a. Residential Uses Only

- (1) The nonconforming use is in compliance with all conditions or limitations associated with its creation or approval;
- (2) The comparative visual appearance between the existing nonconforming use and the proposed alteration;
- (3) The alteration shall not change the manner or purpose of the use;
- (4) The proposed alteration shall not result in greater nonconformity to property line setbacks or resource buffer requirements unless the alteration will extend a structure further away from and perpendicular to the property line or resource. Any proposal that would extend an existing structure further toward the property line or resource, or expand an existing structure parallel into a setback or buffer shall also be subject to Chapters 6 & 7, Variances and any other applicable review criteria;
- (5) Relocation shall result in conformity with all property line setbacks and resource buffer requirements unless there is no other location on the property that could comply with all setback and buffer requirements and the relocation would remove the structure from an undesirable location according to the Wasco County Land Use and Development Ordinance such as a water buffer or floodplain. If the relocation cannot conform to all setback and buffer requirements the application shall also be subject to Chapters 6 & 7, Variances and any other applicable review criteria;
- (6) The alteration must be consistent with Health and Safety Regulations including but not limited to Geologic Hazard Overlay (Section 3.750) Fire Safety Standards (Chapter 10) and Flood Damage Prevention (Chapter 22);
- (7) Other factors which impact the character or needs of the neighborhood;

b. Non-Residential Nonconforming Uses Only

- (1) Criteria (1) – (7) in subsection a. above;
- (2) The alteration will result in an overall reduction in adverse impacts to the

neighborhood. Each application for alteration will include an analysis of the current adverse impacts to the neighborhood utilizing a – b below, and how the alteration reduces the total of the adverse impacts. An increase in one individual adverse impact may be offset by reductions in others as to effect a total reduction in adverse impacts;

- (a) An evaluation of the character and history of the use, its relationship to development in the neighborhood and how the alteration would affect this;
 - (b) The comparable degree of noise, light, vibration, dust, odor, fumes, glare or smoke detectable within the neighborhood between the existing nonconforming use and the proposed alteration;
 - (c) The comparative impact to public facilities and services including but not limited to: roads, fire and police protection, sewer and water facilities, telephone and electrical service, or solid waste disposal facilities between the existing nonconforming use and the proposed alteration;
 - (d) The comparative amount and nature of outside storage, loading and parking between the existing nonconforming use and the proposed alteration;
 - (e) The comparative hours of operation between the existing nonconforming use and the proposed alteration;
 - (f) The comparative effect on identified natural resources between the existing nonconforming use and the proposed alteration; and
 - (g) The comparative effect on water quality, quantity or drainage in the neighborhood between the existing nonconforming use and the proposed alteration.
2. The Planning Director may impose conditions of approval on any alteration of a nonconforming use, structure(s) or other physical improvements permitted under this section when deemed necessary to ensure the mitigation of any adverse impacts. Such conditions could include but are not limited to:
- a. Special yards and spaces.
 - b. Fences and walls.
 - c. Special parking and/or loading provisions.

- d. Street dedication and improvements.
- e. Control of points of vehicular ingress and egress.
- f. Special provisions for signs.
- g. Landscaping and maintenance of grounds.
- h. Control of noise, light, vibration, dust, odor, fumes, glare, smoke, or other similar nuisances.
- i. Limitation of time for certain activities.
- j. A time period in which a proposed use shall be developed.
- k. A limit of total duration of use.

SECTION 13.070 Vested Right

Pursuant to ORS 215.427, if an application was complete when first submitted or the applicant submits additional information, as described in ORS 215.427(2), within 180 days of the date the application was first submitted, approval or denial of the application shall be based upon the standards and criteria that were applicable at the time the application was first submitted.

SECTION 13.080 Consolidation of Undeveloped Subdivisions

- A. A unit of land shall be consolidated with adjacent lands in the same ownership if the subdivision within which the unit of land is located is undeveloped pursuant to ORS chapter 92, Undeveloped Subdivisions.
- B. No portion of a consolidated plat shall be considered a separate parcel solely because an existing property overlays, and possibly fragments, that consolidated subdivision.
- C. Criterion A shall not be applied to consolidate two or more units of land where each unit of land is developed with a dwelling that qualifies as an existing use. One or more undeveloped units of land shall be consolidated with one or more developed units of land.
- D. Lots shall be consolidated through the process outlined in ORS Chapter 92, Undeveloped Subdivisions, or through a Replat process as outlined in Chapter 21.

**COUNTY COURT REPORT
PLALEG-08-08-0001**

**Amendments to the
Land Use and Development Ordinance**

Request: Amend Chapter 13, Nonconforming Uses Building and Lots and related sections and chapters of the Wasco County Land Use and Development Ordinance

Prepared by: Todd R. Cornett, Planning Director
Ellie Fiore, Cogan Owens Cogan

Prepared for: Wasco County Court

Applicant: Wasco County Planning & Development Department

County Court Decision: On a vote of 3 – 0 the Wasco County Court adopted the ordinances recommended by the Planning Commission with additional amendments.

County Court Hearing Date: 15 October 2008

County Court Decision Date (Date of Mailing): 29 October 2008

Appeal Deadline/Effective Date: 19 November 2008 (21 days from the decision date pursuant to ORS 197.625)

Planning Commission Recommendation: On a vote of 5 – 0 the Wasco County Planning Commission recommended the Wasco County Court adopt the proposed amendments.

Planning Commission Hearing Date: 2 September 2008

Applicability: All properties within Wasco County's land use jurisdiction outside of urban growth areas and not affected by the National Scenic Area Act, Management Plan, and Ordinances.

Procedure Type: Legislative

I. BACKGROUND INFORMATION

- A.** Chapter 13, Nonconforming Uses Buildings and Lots, of the Wasco County Land Use and Development Ordinance has not been meaningfully evaluated and updated since it was first adopted. Since then, Oregon Revised Statutes and Case Law related to nonconforming uses have evolved.
- B.** The owners of the Mosier RV Park, Aventura Resorts, located at 2N 12E 19 100, have an existing nonconforming use they wish to alter to make their use more economically viable. The nonconforming use ordinances are currently more restrictive than Oregon Revised Statutes and do not allow for any alterations. Aventura Resorts desires to have alterations of nonconforming uses as a review process in the Wasco County Nonconforming Use Chapter so they may apply for an alteration.
- C.** The adopted Wasco County Long Range Planning List consists of 25 projects listed in order of priority. The Nonconforming Use Project was determined to be a low priority. However, in the past few years very few of these projects have been completed due to limited staff resources. Aventura Resorts requested the Nonconforming Use project be moved to a high priority project if they funded the process.
- D.** Based on the limited ability of resources to conduct any long range planning projects and the opportunity to have one of the projects paid for, the County Court determined that Chapter 13, Nonconforming Uses, Buildings and Lots, of the Wasco County Land Use and Development Ordinance should be evaluated to create consistency with current Oregon Revised Statutes and Case Law as well as determine if greater flexibility would better serve the citizens of Wasco County.
- E.** On 19 March 2008 Wasco County entered into an agreement with Aventura Resorts. Based on this agreement Aventura Resorts paid for a consultant to help Wasco County staff initiate the process as well as the County Staff time and notification costs to conduct the process. Wasco County agreed to conduct the process with all reasonable speed but gave no specific outcome guarantee and is not bound by the report generated by the consultant.
- F.** The Wasco County Court, in a resolution dated 27 March 2008, authorized the County Planning and Development Department to initiate a Land Use and Development Ordinance Text Amendment to evaluate Chapter 13, Nonconforming Uses Buildings and Lots, of the Wasco County Land Use and Development Ordinance.

G. On 17 April 2008 Wasco County entered into an agreement with Cogan Owens Cogan to conduct the initial research and create draft ordinances and a draft staff report.

H. The following schedule was established and the following meetings have been held to review materials and develop the standards:

5 August 2008: Planning Commission/County Court Workshop

2 September 2008: Planning Commission Hearing

15 October 2008: County Court Hearing

29 October 2008: County Court Decision Date

II. PUBLIC INVOLVEMENT

In addition to the hearings indicated above, all of which have allowed public testimony and the ability to provide prior written comments, Wasco County has included the following measures to ensure the process is open to the public.

A. Direct Mail Notification

DLCD Pre-Notice:

Pursuant to ORS 197.610, a pre-notice was sent to DLCD on 14 July 2008 which was more than 45 days prior to the Planning Commission Hearing.

Workshop:

Every property owner within Wasco County except inside urban growth boundaries and inside the National Scenic Area boundaries, any person or agency having a subscription to receive Administrative decisions, and any other local, state and federal agency that may be interested in the proposed changes was sent direct notification by mail/email of the date, location and time of the workshop on 5 August 2008 at least 20 days prior to the workshop.

Planning Commission Hearing:

Every property owner within Wasco County except inside urban growth boundaries and inside the National Scenic Area boundaries, any person or agency having a subscription to receive Administrative decisions, and any other local, state and federal agency that may be interested in the proposed changes was sent direct notification by mail/email of the date, location and time of the hearing on 2 September 2008 (Measure 56 Notice) at least 20 days prior to the hearing.

All persons or agencies, or their representatives who submitted written testimony or provided oral testimony at the workshop or Planning Commission hearing or

have requested to receive notification of the action of the Planning Commission were sent a notice of the recommendation of the Planning Commission on 15 September 2008.

County Court Hearing

On 15 September 2008 any person or group or their representative who submitted written comments, requested in writing to receive notification of the hearing, or signed in and testified at the Workshop or Planning Commission hearing were sent notification by mail or email of the date (15 October 2008), location and time of the County Court hearing. This is more than 20 days prior to the hearing.

All persons or agencies, or their representatives who submitted written testimony or provided oral testimony at the workshop, Planning Commission hearing, County Court hearing or have requested to receive notification of the action of the County Court were sent a notice of the decision of the County Court on 29 October 2008.

DLCD Post-Notice:

Pursuant to ORS 197.615, Wasco County will provide notice to DLCD and any other who has requested notification within 5 days of the final decision by the County Court.

B. Newspaper Notification

Workshop:

The workshop notice was published in The Dalles Chronicle on 16 July 2008 which was 20 days prior to the workshop date.

Planning Commission Hearing:

The Planning Commission hearing notice was published in The Dalles Chronicle on 14 August 2008 which was 20 days prior to the hearing date.

County Court Hearing:

The County Court hearing notice was published in The Dalles Chronicle on 30 September 2008 which is 15 days prior to the hearing date.

C. Information Available on Website

The information regarding the proposed amendments began to be placed on the Wasco County Planning & Development Department Website (<http://co.wasco.or.us/planning/planhome.html>) starting 3 July 2008. At the date of this document, there have been 560 hits registered to the main page of this project and Planning Staff has spent 177 hours talking to citizens about the proposal. As updates were made following each workshop or hearing, the

information on the website was updated. At the time of this document, the following information was available:

- A listing of the hearing dates, times and locations
- The Planning Commission Packet
- The County Court Packet
- The Chapters with their proposed changes (4 iterations, Workshop, PC, CC, and final)
- Report describing the process and changes (4 iterations, Workshop, PC, CC and final)
- A way to submit comments via email

III. APPLICABLE STANDARDS

A. Wasco County Land Use & Development Ordinance (LUDO)

Chapter 9 – Ordinance Amendments

- Section 9.040(D) (Amendments to the Zoning Ordinance)
- Section 9.050 (Recommendation on Amendments to the Land Use and Development Ordinance)
- Section 9.060 (Notice of Filing Report)
- Section 9.070 (Action by County Court)
- Section 9.080 (Action by Gorge Commission)

B. Oregon State Land Use Planning Goals

- Goal 1 (Citizen Involvement)
- Goal 2 (Land Use Planning)

IV. SUBMITTED COMMENTS

The following comments were submitted in writing and made part of the record.

Workshop: Comments from the following were read into the record at the workshop

- Dan VanVactor & Jane Lilley (read into record at workshop by staff)
- Frank and Mary Veenker (read into record at workshop by staff)
- Kathleen Fitzpatrick (read into record at workshop by self)

Planning Commission Hearing:

The following comments were submitted at least 7 days prior to the Planning Commission Hearing and were included in the Planning Commission Packet

- Wes Kangas
- Vickie Ellett
- Friends of Wasco County
- Support for letter submitted by Friends of Wasco County
 - Daniel Dancer
 - Ron Carroll

- Wayne Haythorn
- Ronnie Milne & David Bridges
- Jill & Charles Barker
- Mike & Colleen Ballinger
- Phil Swaim & Sheila Dooley
- James Cameron
- Matt and Mary Bowen
- Susan Conklin
- Nigel Longland
- Mosier City Council
- Mary Soden
- Mary Kurz
- Brent Foster
- John Maher

The following comments were submitted either less than 7 days prior to the Planning Commission hearing or at the hearing:

- Sheila Dooley
- Support for letter submitted by Friends of Wasco County
 - David Bullock
 - Sandy's Stitch Niche
 - Linda Brentano
- Friends of the Gorge
- Liz Turner
- Mike Lilley on behalf of Ken Thomas
- Karen Bailey

County Court Hearing

The following comments were submitted at least 7 days prior to the Planning Commission Hearing and were included in the Planning Commission Packet:

- Jack Thomas
- Loretta Ellett

The following comments were submitted either less than 7 days prior to the Planning Commission hearing or at the hearing:

- Friends of the Gorge
- Mark Cherniack & Susan Conklin
- Mike Lilly for Ken Thomas
- Kathy Fitzpatrick
- Susan Gabay

V. FINDINGS

A. LUDO CRITERIA

1. Chapter 9 – Ordinance Amendments

a. Section 9.040(A) Amendments to the Zoning Ordinance

Amendments to this Ordinance may be initiated by Resolution of the County Court referring a proposed amendment to the Commission for its consideration, report and recommendation.

FINDING: The Wasco County Court, in a resolution dated 27 March 2008, authorized the County Planning and Development department to initiate a Land Use and Development Ordinance Text Amendment to evaluate Chapter 13, Nonconforming Uses buildings and lots, of the Wasco County Land Use and Development Ordinance. A copy of this resolution is located in the file.

b. Sections 9.050 Recommendation on Amendments to the Land Use and Development Ordinance.

After hearing, the Approving Authority shall recommend that the proposed amendment to the Zoning Ordinance be granted or denied. The Director of Planning or his/her assistants shall reduce to writing the Planning Commission's recommendations together with a brief statement of the facts and reasons upon which such recommendation is based. The Director of Planning shall forthwith file the same with the County Clerk.

FINDING: The request is consistent with criterion b.

- The Planning Commission conducted a legally notified hearing on 2 September 2008 at 3:00 PM in the lower level classroom of the Discovery Center at 5000 Discovery Drive, The Dalles, Oregon. Staff presented their report and those in the audience had the opportunity to provide testimony.
- Following the hearing, the recommendation was reduced to writing which included a brief statement of the facts and reasons upon which the Planning Commission based their vote. This document was filed with the County Clerk on 5 September 2008.

c. Section 9.060 Notice of Filing Report.

Within ten (10) days after filing the report provided in Section 9.050, the Director of Planning or his assistants shall give notice thereof to the applicant or petitioner, if any, and to such other persons as may have requested the same in writing.

FINDING: The request is consistent with Criterion c.

- The Wasco County is the petitioner; therefore no notification is required to the County.
- All persons or agencies, or their representatives who submitted written testimony or provided oral testimony at the workshop or Planning Commission hearing or have requested to receive notification of the action of the Planning Commission were sent a notice of the recommendation of the Planning Commission on 15 September 2008 which was within 10 days after the date the report was filed (5 September 2008).

d. Section 9.070, Action by County Court

Upon receipt of the Planning Commission report, the County Court shall take such action as may appear appropriate to that body, or as it feels the public interest requires, provided that in no event shall the County Court act until at least twenty (20) days after the Planning Commission report has been filed with the County Clerk.

FINDING: Criterion d will be met.

- The report was filed on 5 September 2008. The County Court hearing was scheduled on 15 October 2008 which was no sooner than twenty (20) days. The County Court was mailed the report 7 days prior to the hearing. At this hearing the County Court heard the staff's presentation, listened to testimony and on a vote of 3 – 0 adopted the Planning Commission recommendation with amendments.

B. STATEWIDE PLANNING GOALS

Staff concludes the Nonconforming Use chapter and the other sections that are being amended in conjunction with it are procedural in nature and therefore no Oregon Land Use Goals other than Goal 1 and Goal 2 are applicable.

- 1. Goal 1: Citizen Involvement – To develop and maintain a citizen involvement program that insures the opportunity for citizens to be involved in all phases of the planning process.**

FINDING: This goal is met by compliance with the requirement that at least two public hearings be held concerning proposed text amendments. Section I of this report (Background Information) summarizes the outreach measures by staff and opportunities for public and agency input to these proposed amendments. Staff concludes this process is in compliance with Goal 1.

2. **Goal 2: Land Use Planning – To establish a land use planning process and policy framework as a basis for all decisions and actions related to use of land and to assure an adequate factual basis for such decisions and actions.**

FINDING: This process is being conducted pursuant to all applicable procedural requirements established in Chapter 2 (Development Approval Procedures) & Chapter 9 (Zone Change and Ordinance Amendment) , including notification requirements, hearing procedures, written findings of fact, and appeal rights. These requirements establish a planning process and policy framework which will be the basis of the final decision made by the Wasco County Court. Staff concludes the process is in compliance with Goal 2.

VI. SUMMARY OF RECOMMENDED LUDO TEXT AMENDMENTS

A. Title Page: The title page was amended to reflect the anticipated date the amendments go into effect following approval by the County Court and the current Planning Department staff.

B. Chapter 1

The definition of “Floor Area” was added. This is a term utilized in Section 13.090(A)(2), Restoration or Alteration of Nonconforming Use. A lack of definition has created some confusion in the past.

“The sum of the horizontal areas of each floor of a building, measured from the interior faces of the exterior walls.”

The definition of “Neighborhood” was added because this word is not defined in statute.

“In relation to Nonconforming Uses a neighborhood shall include the surrounding areas whose use and enjoyment of their property would be materially impacted as a result of the proposed alteration.”

C. Chapter 2

1. **Section 2.060(A) Application:** This section provides review authority for each listed use. Nonconforming uses are currently not listed. This is being added as sub (9). This is consistent with ORS 215.130(8) (See Attachment A) which states the review process for verification, restoration or alteration of a nonconforming use shall be conducted through an administrative review without public hearing consistent with ORS 215.416.
2. **Section 2080(B) Notice of Administrative Action:** ORS 215.130 does not specify whether a pre-notice is required. Currently, Wasco County is only required to provide pre-notices for Conditional Use Reviews. This allows

agencies and surrounding property owners the ability to comment on a request prior to a decision being made. All other reviews only require a notice of the decision. This limits agencies and surrounding property owners to appealing a decision they feel will negatively impact them. To ensure landowners and agencies are given adequate notice, a pre-notice is being recommended for administrative nonconforming use reviews.

D. Chapter 13

1. Section 13.010 Purpose: This section was amended to reflect the alteration amendments being proposed in Section 13.090.
2. Section 13.020 Continuation of Nonconforming Use: This section was amended to reflect the alteration amendments being proposed in Section 13.090.
3. Section 13.030: This is currently the Vested Right Section. Since vested rights are used very infrequently this was moved to the end of the chapter. This is discussed in more detail later.

The Vested Right section was replaced by Conveyance of Nonconforming Use. This was previously located in Section 13.100. It was determined this is an issue people are more likely to be interested in so it was relocated to this location which is closer to the beginning of the chapter. No language is proposed to be changed.

4. Section 13.040: This is currently the Discontinuance of Nonconforming Use Section. Verification of Nonconforming Use is in Section 13.050(B). This section includes an enhanced version of what currently exists in this section.

The Discontinuance Section was replaced by the Construction on and Conveyance of Nonconforming Legal Parcels. This is a consolidated version of many of the elements currently in 13.110 (Restoration of Conforming Use on Nonconforming Lot), 13.120 (General Exceptions To Lot Size Requirements) and 13.130 (General Exception for Approved Subdivisions). This section also includes the language which clarifies development rights on certain properties created by deed prior to September 4 1974. The research and justification for this language is included in attachment C.

5. Section 13.050: This is currently the Unlawful Use, Not a Nonconforming Use Section. This was moved to the second sentence of 13.050(A)(3), Verification of Nonconforming Use. It was determined this did not need a full section but could be incorporated into another section.

The new Verification of Nonconforming Use Section provides a process to verify the lawful creation and continuance of a nonconforming use that

doesn't currently exist in Chapter 13. This has been created to be consistent with Oregon Revised Statute 215.130 (Attachment A). This section is divided into verification and discontinuance or abandonment.

The verification portion was broken into Type I non-discretionary and Type II discretionary. This is because many nonconforming use verifications can be done with limited research which results in absolute proof of its legal establishment. Staff feels it would be overly burdensome to require the non-discretionary verifications to go through a time consuming and costly process that doesn't require any discretion. If an applicant did require written documentation of a Type I verification, it could be done through the Land Use Verification process.

The discontinuance or abandonment portion is proposed to be done either as a Type I or Type II review process based on the individual circumstances and determined by the Director. In many cases the documentation is clear that there has been no abandonment or discontinuance and it would be time consuming and costly to require an applicant to go through this process. For those times where it is not absolutely clear a Type II review would be required.

6. Section 13.060 Continuation of Nonconforming Use, Structure or Land: This repeated Section 13.020, Change of Nonconforming Use and Section 13.090 Restoration or Alteration of Nonconforming Use. The rights allowed in this section are included the previously mentioned sections.
7. Section 13.070 Restoration of Nonconforming Building or Structure: Section 13.090, Restoration or Alteration of Nonconforming Use was enhanced with a more detailed process that includes all of the rights allowed in this section.
8. Section 13.080 Nonconforming Use by Reason of Change in this Ordinance: This repeated Section 13.020, Change of Nonconforming Use and Section 13.090 Restoration or Alteration of Nonconforming Use. The rights allowed in this section are included in the previously mentioned sections.
9. Section 13.090 Change of Nonconforming Use: The section was changed to Restoration or Alteration of Nonconforming Use and includes information from the sections previously mentioned.

Based on HB 3661 legally placed dwellings in the EFU and Forest zone do not constitute nonconforming uses even though many would not be allowed under current ordinances. However, they are allowed to be expanded or replaced based on the language in these zones which is derived from statute. This is not a problem when the dwellings meet all of the current property development standards. For those that don't meet property development standards and wish to expand or relocate to an area where they cannot meet

property development standards, staff is recommending including language in the nonconforming use chapter which requires these dwellings to be reviewed according to Variance and applicable health and safety criteria.

This section is consistent with all of the allowable uses in ORS 215.130 (See Attachment A).

Subsection A, Restoration or Replacement of a Nonconforming Use Damaged or Destroyed by Disaster, is similar to what exists in the current ordinances. However, the process and details have been further clarified.

Subsection B, Alteration of a nonconforming use to Comply with State or Local Health or Safety Requirements, is not in the current Nonconforming Use Ordinance but is statutorily mandated.

Subsection C allows for an alteration of a nonconforming use. This is permissible by statute but not mandatory. This is being proposed for several reasons.

- It allows structures to be replaced even though they are not damaged or destroyed by fire, other casualty or disaster. This is not allowed unless the alteration language is adopted according to McKay Creek Valley v. Washington County (A79900), 122 Or App 28, 857 P2d 184 (1993).

- It allows a structure to be expanded beyond its current size. This is beneficial to landowners who have very small dwellings or structures.

- It allows nonconforming structures to be relocated to another location on the property. This could reduce impact to setbacks and natural resource buffers.

- It creates greater flexibility in the ordinances.

Section C is divided between residential and nonresidential uses. It was generally agreed during the workshop and the Planning Commission hearing that residential nonconforming uses should be allowed more flexibility than the current ordinance allows. The first section (1(a)) allows residential alterations with review criteria. A lot of testimony was received regarding non-residential nonconforming uses. The general reaction by those participating in the process was that they not be allowed. The second section (1(b)) does include the ability to alter a nonresidential nonconforming use subject to review criteria. Among other things, the review criteria requires an overall reduction in the adverse impacts to the neighborhood.

10. Section 13.100 Conveyance of Nonconforming Use: This is now in Section 13.030 because it was determined this is an issue people are more likely to

be interested in so it was relocated to the beginning of the chapter. No language is proposed to be changed.

11. Section 13.110 Restoration of Conforming Use on Nonconforming Lot: The rights in the section were combined with other rights in Section 13.040 Construction on and Conveyance of Nonconforming Legal Parcels.
 12. Section 13.120 General Exceptions to Lot Size Requirements: Part of the rights in this section was consolidated into Section 13.040 Construction on and Conveyance of Nonconforming Legal Parcels. The other rights were replaced by Section 11.010 Consolidation of Undeveloped Subdivisions.
 13. Section 13.130 General Exception for Approved Subdivison: The rights in this section was consolidated into Section 13.040 Construction on and Conveyance of Nonconforming Legal Parcels.
 14. Section 13.140 Vested Right: This was moved from Section 13.030 because it is infrequently used. It was also replaced with the latest language from ORS 215.427(3).
 15. Section 13.150 Consolidation of Undeveloped Subdivisions: This is consistent with ORS 92.225 which is included in Attachment B.
- E. Final editorial revisions. If approved a final editorial revision will be required. This will not change the substance of what is approved by the Wasco County Court. It will be limited to editorial changes including but not limited section numbers, references to section numbers and headers and footers.

ATTACHMENT A
Oregon Revised Statute
215.130
Application of Ordinances and
Comprehensive Plan; Alteration of Nonconforming Use

Sections (1) – (4) were omitted because they are not applicable to nonconforming uses.

- (5) The lawful use of any building, structure or land at the time of the enactment or amendment of any zoning ordinance or regulation may be continued. Alteration of any such use may be permitted subject to subsection (9) of this section. Alteration of any such use shall be permitted when necessary to comply with any lawful requirement for alteration in the use. Except as provided in ORS 215.215, a county shall not place conditions upon the continuation or alteration of a use described under this subsection when necessary to comply with state or local health or safety requirements, or to maintain in good repair the existing structures associated with the use. A change of ownership or occupancy shall be permitted.
- (6) Restoration or replacement of any use described in subsection (5) of this section may be permitted when the restoration is made necessary by fire, other casualty or natural disaster. Restoration or replacement shall be commenced within one year from the occurrence of the fire, casualty or natural disaster. If restoration or replacement is necessary under this subsection, restoration or replacement shall be done in compliance with ORS 195.260 (1)(c).
- (7)
- (a) Any use described in subsection (5) of this section may not be resumed after a period of interruption or abandonment unless the resumed use conforms with the requirements of zoning ordinances or regulations applicable at the time of the proposed resumption.
 - (b) Notwithstanding any local ordinance, a surface mining use continued under subsection (5) of this section shall not be deemed to be interrupted or abandoned for any period after July 1, 1972, provided:
 - (A) The owner or operator was issued and continuously renewed a state or local surface mining permit, or received and maintained a state or local exemption from surface mining regulation; and
 - (B) The surface mining use was not inactive for a period of 12 consecutive years or more.
 - (C) For purposes of this subsection, “inactive” means no aggregate materials were excavated, crushed, removed, stockpiled or sold by the owner or operator of the surface mine.
- (8) Any proposal for the verification or alteration of a use under subsection (5) of this section, except an alteration necessary to comply with a lawful requirement, for the restoration or replacement of a use under subsection (6) of this section or for the resumption of a use under subsection (7) of this section shall be subject to the

provisions of ORS 215.416. An initial decision by the county or its designate on a proposal for the alteration of a use described in subsection (5) of this section shall be made as an administrative decision without public hearing in the manner provided in ORS 215.416 (11).

- (9)** As used in this section, "alteration" of a nonconforming use includes:
- (a)** A change in the use of no greater adverse impact to the neighborhood; and
 - (b)** A change in the structure or physical improvements of no greater adverse impact to the neighborhood.
- (10)** A local government may adopt standards and procedures to implement the provisions of this section. The standards and procedures may include but are not limited to the following:
- (a)** For purposes of verifying a use under subsection (5) of this section, a county may adopt procedures that allow an applicant for verification to prove the existence, continuity, nature and extent of the use only for the 10-year period immediately preceding the date of application. Evidence proving the existence, continuity, nature and extent of the use for the 10-year period preceding application creates a rebuttable presumption that the use, as proven, lawfully existed at the time the applicable zoning ordinance or regulation was adopted and has continued uninterrupted until the date of application;
 - (b)** Establishing criteria to determine when a use has been interrupted or abandoned under subsection (7) of this section; or
 - (c)** Conditioning approval of the alteration of a use in a manner calculated to ensure mitigation of adverse impacts as described in subsection (9) of this section.
- (11)** For purposes of verifying a use under subsection (5) of this section, a county may not require an applicant for verification to prove the existence, continuity, nature and extent of the use for a period exceeding 20 years immediately preceding the date of application. [Amended by 1961 c.607 §2; 1963 c.577 §4; 1963 c.619 §9; 1969 c.460 §1; 1973 c.503 §2; 1977 c.766 §5; 1979 c.190 §406; 1979 c.610 §1; 1993 c.792 §52; 1997 c.394 §1; 1999 c.353 §1; 1999 c.458 §1; 1999 c.1103 §10]

ATTACHMENT B
Consolidation of Undeveloped Subdivisions Research

Oregon Revised Statute 92.225 - Review of undeveloped or developed subdivision plat lands.

- (1) The agency or body required to conduct the review under ORS 92.215 shall investigate the status of the lands included within a subdivision to determine whether the subdivision is undeveloped.*
- (2) For the purposes of this section, the lands described in the plat of any subdivision under review shall be considered to be developed if any of the following conditions are found by the agency or body conducting the review to exist on such lands:
 - (a) Roadways providing access into and travel within the subdivision have been or are being constructed to meet the specifications prescribed therefore by the agency or body that approved the plat of the subdivision;*
 - (b) Facilities for the supply of domestic or industrial water to lots created by the subdivision have been or are being constructed;*
 - (c) Sanitary sewerage disposal facilities have been or are being constructed for lots created by the subdivision, or septic tanks have been or are being installed on the land or permits have been issued for their installation on the land;*
 - (d) Buildings have been or are being constructed upon the land or permits have been issued for the construction of buildings upon the land; and*
 - (e) One or more lots described in the plat of the subdivision have been sold or otherwise transferred prior to the date of the initiation of such review.**
- (3) If the agency or body determines that a subdivision is undeveloped after its investigation of the subdivision under subsection (1) of this section, it shall also determine:
 - (a) If the undeveloped subdivision complies with the comprehensive plan, zoning regulations and ordinances and subdivision ordinances and regulations then in effect with respect to lands in the subdivision; and*
 - (b) If the undeveloped subdivision does not comply with such plan and ordinances and regulations, whether the subdivision may be revised to comply with such plan and ordinances and regulations.**
- (4) If the agency or body determines that a subdivision is undeveloped after its investigation of the subdivision under subsection (1) of this section, it shall hold a hearing to determine whether the undeveloped subdivision should be revised and the subdivision replatted or vacated and all lands within the subdivision that have been dedicated for public use vacated. Not later than 30 days before the date of a hearing held by an agency or body under this section, the agency or body shall notify, in writing, each owner of record of land described in the plat of the subdivision under review of the date, place, time and purpose of such hearing. [1973 c.569 §3]*

ATTACHMENT C
Properties Consolidated by Deed for Development Purposes
Research

A. County Court Justification for Amending Section 13.040 to Include Consolidation of Properties for Development Purposes Language.

This adopted language is similar to the current policy with a few expectations which will reduce the number of properties considered consolidated for development purposes.

-To ensure people are not confused and believe the language vacates legal parcel lines and therefore contradicts ORS 92.017(see below), the term "consolidated for development purposes" was added. Also language was included saying all legal properties could be sold but not necessarily developed which is consistent with the Kispagh case (see below) and its determination of the meaning and intent of ORS 92.017.

-It treats properties that are less than the minimum lot size for the zone and not residentially developed as consolidated for development purposes if they are listed on the same deed without headings. The existing policy considers all properties consolidated onto the same deed as consolidated for development purposes.

-It clarifies that if properties are considered consolidated for development purposes the date of creation of the earliest deed will be used for a lot of record or nonfarm dwelling application.

-This will function almost identically to pre-existing subdivision lots such as the Apple Orchard Subdivisions and the Ortleby Subdivision. These lots are legal parcels and can be lawfully sold but not necessarily individually developed.

-Because this language does not allow development on each legal parcel, it appears to conflict with reviewable uses within zones such as a single family dwelling on any legal parcel. This is not the case due to Section 1.060 (Interpretation and Scope) of the LUDO which in part states the following:

Interpretation: The provisions of this Ordinance shall be liberally construed to effect the purpose. These provisions are declared to be the minimum requirements to fulfill objectives. When conditions herein imposed are less restrictive than comparative provisions imposed by any other provision of this Ordinance by resolution of State Law or State Administration regulations, then the more restrictive shall govern.

B. Planning Department History of Using this Policy

1. 6 June 1994 – Letter sent by Associate Planner Karen Mirande to Jeanette Brantner stating that the two properties they owned constituted one legal parcel because they were transferred together on one deed in 1981. The description in the deed listed two separate metes and bounds descriptions with no titles or headings. This is the first documented use of this policy that was found.

A written note in the file (3 April 1996) indicated the Brantners went before County Court to complain about staff's interpretation that their properties were consolidated via the deed. Nothing in the note indicates the County Court questioned the determination that the two properties had been consolidated by the 1981 deed.

2. 5 December 1996 – Fax from DLCD Field representative Brent Lake to Senior Planner Dotty DeVaney. The fax was the Oregon Attorney General's brief on the meaning of ORS 92.017 in regards to a case in Polk County.

The nature of the case involved a determination by Polk County that the property consisted of five separate parcels. DLCD contended that four of the five properties were combined into a single parcel by operation of a single perimeter description.

Staff consulted with Dan Boldt, the Wasco County Surveyor about what constitutes a single perimeter description. Dan stated that it could mean one continuous metes and bounds description or individual metes and bounds descriptions strung together. Dan indicated that if the original metes and bounds descriptions for each property was accurate it is typical, at least locally, to retain these individual descriptions and string them together rather than creating a whole new description.

The main issue of the case is whether ORS 92.017 prevents properties conveyed on the same deed from being combined. Initially, Polk County determined the properties were combined consistent with their policy at the time. After the determination was appealed Polk County changed their policy which resulted in a determination that each property was a separate legal parcel. The appeal was subsequently withdrawn. DLCD then attempted to appeal the new decision to LUBA even though the appeal period had expired because they were not notified of the decision.

In their Petition for Review the Oregon Attorney General on behalf of DLCD made the following points.

"If the challenged decision is allowed to stand, it will establish a precedent by which property owners can resurrect and reestablish old lot or parcel lines

described in old deeds in the chain of title, effectively circumventing minimum lot and parcel size requirements.”

“This Board reviewed these statements and others in the legislative record of ORS 92.017, and concluded that the statute “requires recognition of [lawfully create] parcels as separate until some action is taken to erase the lawfully established property lines.” *Kishpaugh v. Clackamas County*, 24 Or LUBA 164 172 (1992). The question then is, what sort of actions will “erase the lawfully established property lines?” DLCD maintains that, because there was no process in state or local law at the time intervenors acquire the subject property, and because parcels 1, 3, 4, and 5 were created by deed, they could be and were recombined by deed. Where a deed is recorded that includes a new metes and bounds description for the combined perimeter of two or more parcels, the parcel lines are “vacated,” and the parcels are consolidated into a single unit of land.

Ultimately DLCD appealed this to LUBA but the case was dismissed because LUBA determined they had not filed an appeal in a timely manner.

3. 29 March 2002 – Email to DLCD Field Representative Jon Jinings from Associate Planner Dawn Baird. In this email Dawn reiterated the determination made by Associate Planner Karen Mirande above. Jon responded that the interpretation sounded correct to him.
4. January 2006 - The Wasco County Court adopted language in the NSA Land Use and Development Ordinance that is nearly identical to the language that is being proposed for the Wasco County Land Use and Development Ordinance.
5. 16 July 2008 - PLALUV-08-06-0001 – 2 & 3: Following this established policy Senior Planner Gary Nychyk determined in a land use verification letter that 3 properties constitute one legal parcel because they were combined on the same deed.

C. Applicable Case Law

1. 26 August 2008 – Referenced in letter from Brad Timmons regarding PLALUV-08-06-0001

-*Jackson v. City of Portland*, 54 Or LUBA 138, 145 (2007).

LUBA: “Absent some expression of intent that separately listed lots or parcels are to be merged into a single unit of land, the listing of multiple lots or parcels in a single paragraph or sentence does not operate to merge those lots or parcels into a single unit of land.”

LUBA: "...it is within the city's discretion to interpret the word "created" in the definition of "lot of record" in PCC 33.190 to require that lots that are created by deed must be described in separate sentences. We do not agree. If the city wishes to assign such novel legal significance to the choice of syntax in a deed, it must amend the PCC 33.190 definition of "lot of record" to state that principle."

-Testa v. Clackamas County, 44 Or LUBA 402; 2003)

It verified that according to ORS 215.010 a property created by deed or land sale contract prior to the requirements of a partition plat are also considered a parcel.

"Petitioners have not demonstrated that the act of conveying two discrete parcels in one deed has the legal effect of vacating the parcel line between them to make those two parcels a single parcel."

2. 2 September 2008 – Fax comment from Michael Lilly Representing Ken Thomas regarding Nonconforming Use Updates

-LUBA No 97-036

"We agree with the county that two separate parcels, tax lots 1600 and 400, were created when patents were filed for record in 1900 and 1907. Although both parcels belonged to Oregon Eastern Timber Company (from 1942 to 1944) and then to George Zellner (from 1944 to 1979, when he conveyed tax lot 1600 to Penn Timber), the two parcels were never merged into a single parcel by vacating the parcel lines. Under ORS 92.017, the two parcels remained discrete. Kispough v. Clackamas County, 24 Or LUBA 164, 172 (1992)."

3. Kispough v. Clackamas County, 24 Or LUBA 164, 172 (1992)

In this case, Clackamas County's Hearing Officer determined that two different tax lots constituted one parcel for the purpose of residential development in a 10 acre minimum zone. In this case, both tax lots were legally created by contract as 4.85 acre parcels and were conveyed at separate times to the same owner. After the owner purchased both tax lots, the county imposed a 10 acre minimum parcel size. The challenged decision states that the county exceeded its jurisdiction, misconstrued the applicable law, and violated a provision of applicable law, when it found that ORS 92.017 does not regulate the application of Clackamas County's ordinance to the two tax lots, and does not preclude the county from treating those two lots as one parcel for zoning purposes.

The challenged decision determines that the two lots are not separate developable parcels based on Clackamas County's definition of Lot of Record, which states: Contiguous lots under the same ownership when initially zoned shall be combined, for the purposes of this ordinance, when any of these lots do not satisfy the lot size

requirement of the initial district. A lot or parcel which is a separate lot or parcel prior to the adoption of this provision shall remain a separate legal lot regardless of ownership. "Lot" is defined as: "A unit of land created by a subdivision of land. For the purposes of this ordinance, lot includes parcel..." "Parcel" is defined as: "A unit of land created by a partition of land. For the purposes of this ordinance, parcel includes lot and lot of record..."

Page 6 states that the critical issue of the appeal is whether ORS 92.017 requires the county to recognize the two tax lots as separately developable parcels. In Clackamas County's brief, the County strongly suggests "it need not recognize lawfully created lots or parcels as separate lots or parcels, where the lots or parcels were held in a single ownership at the time more restrictive zoning was imposed. While it is not entirely clear, we (LUBA) do not read the challenged decision to determine that the two tax lots are not lawful divisions of land. Rather, we (LUBA) read the challenged decision to simply determine that, due to their size and history, the (two) tax lots do not constitute separately developable parcels".

Pages 7-8: ORS 92.017 was enacted into law by Oregon Laws 1985, chapter 717, section 3. House Bill 2381 was intended to clarify that units of land created under current partition and subdivision regulations remain recognized units of land until their description is lawfully changed by vacation, replatting or other means. It also recognized units of land legally created prior to the existence of subdivision and partition statutes. Current statutes recognize "lots" and "parcels," however, they are silent on their definition, and rely for definition on local subdivision and partition processes.

Pages 9-10 provide background on ORS 92.017. This Opinion quotes Representative Al Young, Senate Energy and Natural Resources Commission (June 10, 1985; tape 146A at 213), who stated:

[HB 2381] replaces reference to specific statutes with language which essentially says that if a lot or parcel was created in a lawful manner, meaning according to laws in existence at the time it was created, [it] is still recognized as a legitimate lot or parcel, and does not need to be reevaluated under current law to be recognized as such. * * *

“* * * * *

“An important point I need to make about this bill is that **it in no way gives new development rights to anyone**. So, to get it on the record, we're not trying to legitimize lots of record for any kind of development. People shouldn't look at this as having a piece of property and going in for a building permit. **Development of property affected by [HB 2381] remains subject to current state and local land use and zoning laws, ordinances and regulations.**” (Emphasis Added)

Page 11 (A.) states that the text of ORS 92.017, and its legislative history, make it clear that the functions of ORS 92.017 were (1) to prevent local governments from refusing to recognize lawful divisions of land such that lots and parcels could not be sold to third parties, and (2) to establish that the property lines established by such divisions remain inviolate, absent the employment of a specific process to eliminate such property lines.

Page 12 (B.) questions whether ORS 92.017 requires the two tax lots to be treated as separately developable parcels, then answers that nothing in either the text of ORS 92.017 or its legislative history suggests that all lawfully created lots and parcels must be recognized by local government as being separately developable. In fact, the legislative history quoted in this case makes it reasonably clear that the developability of such lots and parcels is to be determined with reference to planning and zoning standards. It further states that the Clackamas County's determination that the two tax lots are not separately developable because they were not in separate ownerships at the time of the imposition of restrictive zoning, does not offend ORS 92.017.

Page 14 of the Kishpaugh Opinion points out that LUBA will defer to a local government's interpretation of its code so long as the proffered interpretation is not "clearly contrary to the enacted language," or "inconsistent with express language of the ordinance or its apparent purpose or policy." (Clark v. Jackson County, 313, Or 508, 514-15, ___ P2d ___ (1992).

D. Other County Ordinances: The following County ordinances were obtained by Associate Planner Dawn Baird in 2005 during a prior review.

1. Deschutes County defines Lot of Record as: *(Note: only the pertinent section is shown)*

"Lot of Record" means:

3. *By deed or contract, dated and signed by the parties to the transaction, containing a separate legal description of the lot or parcel, and recorded in Deschutes County if recording of the instrument was required on the date of the conveyance. **If such instrument contains more than one legal description, only one lot of record shall be recognized unless the legal descriptions describe lots subject to a recorded subdivision or town plat;** (Emphasis Added)*

Staff spoke with Kathy White, Associate Planner, Deschutes County, on December 7, 2005, regarding the meaning of this definition. Ms. White confirmed that this definition means that if multiple properties, legally created by deed or contract, are listed on one deed, they are considered one lot of record.

2. Linn County Development Code defines an “Authorized unit of land” as

*“a unit-of-record created through a metes and bounds description recorded on a deed prior to 1972. Each unit of land is an authorized unit of land if each unit is contiguous to another unit of land that is described on the same instrument and **each unit has been kept as a separate tax lot and described as a separate entry on the instrument (i.e., either as Tract 1 and Tract 2, etc., or as Parcel 1 and Parcel 2, etc.)”** (Emphasis Added)*

Staff spoke by telephone with Deborah Pinkerton, Associate Planner, Linn County Planning Dept., on December 14, 2005, regarding the consolidation language in their definition of “authorized unit of land.” According to Ms. Pinkerton, once multiple tax lots that were legally created by deed are consolidated into one description on one deed, they consider it one “authorized unit of land,” regardless of the number of tax lots involved in the request. The Linn County definition also indicates that an authorized unit of land may or may not be a developable unit of land (29e, page 920-5, Linn County – Development Code; General Provisions; 2/25/04).

3. Multnomah County’s National Scenic Area Ordinance defines Parcel as

*(a) Any unit of land, satisfying all applicable land division and zoning regulations in effect on the date of creation, created **and separately described by a lawful sales contract, deed (Emphasis Added)**, partition map or plat, or subdivision plat;*

Staff spoke by telephone with Derrick Tokos, Senior Planner, Multnomah County Planning Dept., on Monday, December 12, 2005, regarding their interpretation of their NSA Ordinance language. According to Mr. Tokos, lots or parcels not created by partition or subdivision must be separately described on a deed or land sales contract in order to remain separate parcels. If multiple properties are described in one metes and bounds description, they constitute one parcel.

E. Retroactive Ordinances

ORS 92.285 or 215.110 do not allow for the creation of retroactive ordinances. Because this ordinance continues to recognize the properties as legal parcels and does not require the tax lot lines to be vacated or revoke anything previously approved, staff concludes the proposed language is not retroactive.

F. Applicable Rules:

1. Wasco County Land Use and Development Ordinance.

Section 1.090 of the Definition of 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.

A unit of land shall not be considered a separate parcel simply because the subject tract of land;

- a. Is a unit of land created solely to establish a separate tax account;
- b. Lies in different counties;
- c. Lies in different sections or government lots;
- d. Lies in different land use or zoning designations; or
- e. Is dissected by a public or private road.

2. Oregon Revised Statutes

ORS 92.010(3)

(a) "Lawfully established unit of land" means:

- (A) A lot or parcel created pursuant to ORS 92.010 to 92.190; or
- (B) Another unit of land created:

- (i) In compliance with all applicable planning, zoning and subdivision or partition ordinances and regulations; or
- (ii) By deed or land sales contract, if there were no applicable planning, zoning or subdivision or partition ordinances or regulations.

(b) "Lawfully established unit of land" does not mean a unit of land created solely to establish a separate tax account.

ORS 92.010(4)

"Lot" means a single unit of land that is created by a subdivision of land.

ORS 92.010(6)

"Parcel" means a single unit of land that is created by a partition of land.

ORS 92.010(13)

"Replat" means the act of platting the lots, parcels and easements in a recorded subdivision or partition plat to achieve a reconfiguration of the existing subdivision or partition plat or to increase or decrease the number of lots in the subdivision.

ORS 92.017 When lawfully created lot or parcel remains discrete lot or parcel. A lot or parcel lawfully created shall remain a discrete lot or parcel, unless the lot or parcel lines are vacated or the lot or parcel is further divided, as provided by law.

ORS 92.285 Retroactive ordinances prohibited. No retroactive ordinances shall be adopted under ORS 92.010 to 92.048, 92.060 to 92.095, 92.120, 93.640, 93.710 and 215.110.

ORS 215.010(1) *The terms defined in ORS 92.010 shall have the meanings given therein, except that "parcel":*

(a) Includes a unit of land created

(A) By partitioning land as defined in ORS 92.010;

(B) In compliance with all applicable planning, zoning and partitioning ordinances and regulations; or

(C) By deed or land sales contract, if there were no applicable planning, zoning or partitioning ordinances or regulations.

(b) Does not include a unit of land created solely to establish a separate tax account.

ORS 215.110(6) *No retroactive ordinance shall be enacted under the provisions of this section.*

WASCO COUNTY

LAND USE AND DEVELOPMENT ORDINANCE

ADOPTED
June, 1985

AMENDED
July, 1989
January, 1992
May, 1993
September, 1993
January, 1995
April, 1995
December, 1996
September, 1997
June, 1998
September, 1999
November 16, 1999
January 19, 2000
February 1, 2000
February 2, 2004
January 17, 2006
November 22, 2006
February 5, 2007
November 19, 2008

PREPARED BY THE
Wasco County Planning and Development Office

STAFF

Todd R. Cornett	Director of Planning
Gary Nychyk	Senior Planner
Brenda Jenkins	Planning Coordinator
Dawn M. Baird	Associate Planner
Eric Jones	Associate Planner
Benjamin Hoey	Planning Assistant

CHAPTER 1 INTRODUCTORY PROVISIONS

(Summary Version)

SECTION 1.090 Definitions

For the purpose of this Ordinance, certain words and terms are defined as follows: Words used in the present tense include the future; words in the singular number include the plural, and words in the plural include the singular; the word "Building" includes the word "Structure"; the word "Shall" is mandatory and not directory.

Floor Area - The sum of the horizontal areas of each floor of a building, measured from the interior faces of the exterior walls.

Neighborhood - In relation to Nonconforming Uses a neighborhood shall include the surrounding areas whose use and enjoyment of their property would be materially impacted as a result of the proposed alteration.

CHAPTER 2 DEVELOPMENT APPROVAL PROCEDURES

(Summary Version)

SECTION 2.060 Application

Application for development approval shall be made pursuant to applicable sections of this Ordinance on forms provided by the Planning Director.

...

9. Nonconforming Use Verification, Restoration, or Alteration (Chapter 13)

SECTION 2.080 Notice

...

- B. Notice of Administrative Action for the use listed in Sections 2.060(A) (1) and (9), shall be given as prescribed by subsection (A) (1) – (7) 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))

SECTION 2.100 Administrative Action Procedure of the Director

- A. After accepting an application for Administrative Action pursuant to Section 2.060(A) (1) - (9) of this Ordinance, the Director shall act on or cause a hearing to be held on the application within the time requirements of O.R.S. 215.428(1). (Revised 2-89, 5-93)

SECTION 2.120 Notice of a Decision by the Director

- A. Notice of a decision by the Director pursuant to Section 2.060 (A) (1) - (9) shall be filed in the records of the Director and also mailed to the applicant, the owner(s) or contract purchasers of the subject property, and all parties within the required notification areas, as described by Section 2.080. (Revised 1-92)

...

- C. The decision of the Director pursuant to Section 2.060 (A)(1) - (9) shall be final unless an appeal from an aggrieved person is received by the Director within ten (10) days after the filing of a decision on an Administrative Action or unless the Commission or County Court on its own motion, orders review within ten (10) days after the filing of the proposed decision. (revised 2-89, 5-93, 9-99)

DETAILED TABLE OF CONTENTS
CHAPTER 13 NONCONFORMING USES, BUILDINGS AND LOTS

<u>SECTION</u>	<u>TITLE</u>	<u>PAGE</u>
13.010	PURPOSE	13-1
13.020	CONTINUATION OF NONCONFORMING USE	13-1
13.030	CONVEYANCE OF NONCONFORMING USE	13-1
13.040	CONSTRUCTION ON AND CONVEYANCE OF NONCONFORMING LEGAL PARCELS	13-1
13.050	VERIFICATION OF NONCONFORMING USE OR STRUCTURE	13-2
13.060	RESTORATION OR ALTERATION OF NONCONFORMING USE	13-4
13.070	VESTED RIGHTS	13-8
13.080	CONSOLIDATION OF UNDEVELOPED SUBDIVISIONS	13-8

CHAPTER 13 NONCONFORMING USES, BUILDINGS AND LOTS

SECTION 13.010 Purpose

It is necessary and consistent with the establishment of this Ordinance that all uses and structures incompatible with permitted uses or structures in each zone be strictly regulated and permitted to exist only under rigid controls. The purpose of such regulation and control is to discontinue a nonconforming use or structure, change a nonconforming use or structure to a conforming status, or allow alterations to a nonconforming use or structure that do not increase the level of adverse impact on the neighborhood, or are required for the use or structure to comply with state or local health or safety requirements.

SECTION 13.020 Continuation of Nonconforming Use

Except as is hereinafter provided in this Ordinance, the lawful use of a building or structure or of any land or premises lawfully existing at the time of the effective date of this Ordinance or at the time of a change in the official zoning maps may be continued, although such use does not conform with the provisions of this Ordinance. Alterations to nonconforming structures may only be made consistent with Section 13.060.

SECTION 13.030 Conveyance of Nonconforming Use

Nothing in this Ordinance shall be construed to limit the sale, transfer, or conveyance of property on which exists a nonconforming building, structure or use, so long as such sale, transfer, or other conveyance does not otherwise violate the provisions of this Ordinance.

SECTION 13.040 Construction on and Conveyance of Nonconforming Legal Parcels

- A. Nothing in this Ordinance shall be deemed to prohibit construction or reconstruction of conforming uses or structures on nonconforming legal parcels unless otherwise limited by subsection B below, or limit the sale, transfer or conveyance of said legal parcels, so long as the construction, reconstruction, sale, transfer or conveyance is consistent with all applicable provisions of this ordinance.
- B. Properties Consolidated for Development Purposes
 - 1. Unless they meet the criteria in subsection 2 below, contiguous properties created solely by deed prior to 4 September 1974 consolidated onto a single deed at any time shall be considered one (1) property for development purposes.

Any properties sold and in separate ownership after being consolidated onto a single deed shall still meet the definition of a legal parcel but shall not be separately developable unless they meet the criteria in subsection 2 below.

Any properties in an agricultural or forest zone that are considered consolidated for development purposes shall retain the date of creation when the earliest deed was filed to allow for lot of record or non-farm dwelling application.

2. Contiguous properties created solely by deed prior to 4 September 1974 consolidated onto a single deed at any time shall be considered separate for development purposes if they meet either a, b, or c below.
 - a. Each property meets the current minimum lot size of the zone or a combination of properties meet the minimum lot size of the zone.
 - b. All of the deeds listing the properties included separate metes and bounds descriptions with a separate heading e.g., parcel 1, parcel 2. A separate metes and bounds description without a separate heading shall result in the properties being considered consolidated for development purposes.
 - c. More than one of the properties has been legally, residentially developed. However any properties not residentially developed less than the minimum lot size will still be considered to be consolidated for development purposes with one of the properties residentially developed.

Properties residentially developed shall not include the following:

- Accessory Farm Dwellings
- Relative Help Dwelling
- Farm labor Housing
- Medical Hardship Dwelling

SECTION 13.050 Verification of Nonconforming Use

Must meet lawfully established and discontinuance or abandonment criteria below.

- A. Lawfully Established: For a nonconforming use to be verified as lawfully established it shall be consistent with all of the following:
 1. The nonconforming use has not been expanded in size or area or changed in purpose or use beyond what was lawfully established;
 2. The property on which the nonconforming use is located meets the definition of legal parcel in Chapter 1 of this ordinance;

3. The nonconforming use was lawfully established on or before the effective date of the provisions of this ordinance prohibiting the use verified by either a or b below. No unlawful use of property existing at the time of the effective date of the provisions of this ordinance shall be deemed a nonconforming use.
 - a. Type I Verification: Lawfully established is verified by non-discretionary evidence including but not limited to zoning approval or County Assessor records verifying the date of establishment. This type of verification is not subject to any review process because it does not involve the exercise of any discretion or judgment. If the applicant wishes documentation of this it shall be done as a Land Use Verification Letter.
 - b. Type II Verification: Lacking non-discretionary evidence, lawfully established is verified by a discretionary process consistent with Section 2.060(A)(9).

It is the burden of the applicant to provide a preponderance of evidence which will allow the Planning Director to conclude the nonconforming use was lawfully established. Such evidence includes but is not limited to:

- Utility Bills and Records (phone, power, sewer, water)
- Aerial Photographs
- Dated Photos
- Notarized Letters or Affidavits affirming the date of establishment

B. Discontinuance or Abandonment: For a nonconforming use to be verified as lawfully established it must not have been discontinued or abandoned according to the following criteria. Based on the circumstances, the Director shall determine whether discontinuance or abandonment shall be reviewed as a Type I or Type II process as described in A above.

1. The reference period for determining whether an abandonment or interruption of a nonconforming use or an aspect thereof has occurred shall be twelve (12) consecutive months in any of the ten (10) years preceding the date of the application. Proof of intent to abandon is not required to determine that a nonconforming use has been discontinued or abandoned.
2. An abandonment or interruption of a use may arise from the complete cessation of the actual use for a twelve (12) month period even if improvements to support the use remain in place.
3. An interruption or abandonment for a twelve (12) month period that constitutes less than full cessation of the use or a portion thereof may result in a declaration of a continuing use, but of a lesser intensity or scope than what would have been allowable if the nature and extent of the use as of the date it became

nonconforming had continued, even if improvements to support the full use remain in place.

4. A change in the nature of the use may result in a determination that the use has been abandoned or has ceased for a twelve (12) month period if there are no common elements between the activities of the previous use and the current use.

Factors to be considered in determining whether there has been a change in the nature of a use shall include, but are not limited to, consideration of the type of activities being conducted, the operating characteristics of the activities associated with the use (including off-site impacts of those activities), changes in structures associated with the use and changes in the degree to which the activities associated with the use occupy the site.

5. A surface mining use shall not be deemed to be interrupted or abandoned for any period after July 1, 1972, provided:
 - a. The owner or operator was issued and continuously renewed a state or local surface mining permit, or received and maintained a state or local exemption from surface mining regulation; and
 - b. The surface mining use was not inactive for a period of 12 consecutive years or more. For purposes of this subsection, "inactive" means no aggregate materials were excavated, crushed, removed, stockpiled or sold by the owner or operator of the surface mine.

SECTION 13.060 Restoration or Alteration of Nonconforming Use

Restoration or alteration of a nonconforming use or structure shall be reviewed according to Section 2.060(A)(9) and limited to the applicable criteria below and Verification of Nonconforming Use in Section 13.050 above. Any other restorations or alterations shall conform to all of the criteria of this ordinance.

Maintenance, repair, alteration, restoration or replacement of a lawfully implemented or established dwelling in the Exclusive Farm Use or Forest Zone shall be governed by those zones and not be subject to the alteration language in Chapter 13. However, these dwellings will be subject to a Chapter 6 or 7 Variance Review if they cannot meet all of the provisions of the Wasco County Land Use and Development Ordinance, and must comply with all current health and safety ordinances including but not limited to Geologic Hazard Overlay (Section 3.750) Fire Safety Standards (Chapter 10) and Flood Damage Prevention (Chapter 22).

- A. Restoration or Replacement of a Nonconforming Structure Destroyed by Fire, Other Casualty or Disaster: If a nonconforming structure or a structure containing a

nonconforming use is destroyed by fire, other casualty or natural disaster, restoration or replacement shall be permitted subject to the following criteria:

1. Time Limitation: An application is received within twelve (12) months from the occurrence of the fire, casualty or natural disaster. The application shall include official documentation establishing the date of the fire, casualty, or natural disaster. If an application is not received within twelve (12) months from the occurrence, the nonconforming use shall be considered discontinued.
 2. Size: The restoration of a nonconforming building or structure may not increase the floor area or create a greater nonconformance than existed at the time of damage or destruction. Any changes in height, additions of attics basements, decks or elements that were not part of the original structure beyond what is necessary to comply with current building code or building industry standards shall be considered an alteration.
 3. Location: The restoration shall be sited on the same footprint as the original structure. However, if the applicant wishes to change the location to better comply with current setback, buffer or health and safety standards, the restoration will be allowed to be relocated the minimum distance necessary to achieve this goal. Any relocation beyond the minimum distance necessary shall be considered an alteration.
 4. Health & Safety: The restoration shall comply with all current health and safety ordinances including but not limited to Geologic Hazard Overlay (Section 3.750) Fire Safety Standards (Chapter 10) and Flood Damage Prevention (Chapter 22).
- B. Alteration of a nonconforming use to Comply with State or Local Health or Safety Requirements:** No conditions shall be placed upon the continuation or alteration of a nonconforming use when necessary to comply with state or local health or safety requirements, or to maintain in good repair the existing structures associated with the use.

Proof of compliance with health or safety requirements or the necessity to maintain in good repair existing structures associated with the use shall be submitted with the application.

- C. Alteration of a nonconforming use including but not limited to any combination of the following:**
- Replacing a structure not damaged or destroyed by fire, other casualty or disaster;
 - Expanding a structure beyond its current size;

-Relocating a structure to a different location on the same legal parcel;

1. Alteration will result in no greater adverse impact on the neighborhood or shall result in less of an adverse impact on the neighborhood considering the criteria listed below.

a. Residential Uses Only

- (1) The nonconforming use is in compliance with all conditions or limitations associated with its creation or approval;
- (2) The comparative visual appearance between the existing nonconforming use and the proposed alteration;
- (3) The alteration shall not change the manner or purpose of the use;
- (4) The proposed alteration shall not result in greater nonconformity to property line setbacks or resource buffer requirements unless the alteration will extend a structure further away from and perpendicular to the property line or resource. Any proposal that would extend an existing structure further toward the property line or resource, or expand an existing structure parallel into a setback or buffer shall also be subject to Chapters 6 & 7, Variances and any other applicable review criteria;
- (5) Relocation shall result in conformity with all property line setbacks and resource buffer requirements unless there is no other location on the property that could comply with all setback and buffer requirements and the relocation would remove the structure from an undesirable location according to the Wasco County Land Use and Development Ordinance such as a water buffer or floodplain. If the relocation cannot conform to all setback and buffer requirements the application shall also be subject to Chapters 6 & 7, Variances and any other applicable review criteria;
- (6) The alteration must be consistent with Health and Safety Regulations including but not limited to Geologic Hazard Overlay (Section 3.750) Fire Safety Standards (Chapter 10) and Flood Damage Prevention (Chapter 22);
- (7) Other factors which impact the character or needs of the neighborhood;

b. Non-Residential Nonconforming Uses Only

- (1) Criteria (1) – (7) in subsection a. above;
- (2) The alteration will result in an overall reduction in adverse impacts to the

neighborhood. Each application for alteration will include an analysis of the current adverse impacts to the neighborhood utilizing a – b below, and how the alteration reduces the total of the adverse impacts. An increase in one individual adverse impact may be offset by reductions in others as to effect a total reduction in adverse impacts;

- (a) An evaluation of the character and history of the use, its relationship to development in the neighborhood and how the alteration would affect this;
 - (b) The comparable degree of noise, light, vibration, dust, odor, fumes, glare or smoke detectable within the neighborhood between the existing nonconforming use and the proposed alteration;
 - (c) The comparative impact to public facilities and services including but not limited to: roads, fire and police protection, sewer and water facilities, telephone and electrical service, or solid waste disposal facilities between the existing nonconforming use and the proposed alteration;
 - (d) The comparative amount and nature of outside storage, loading and parking between the existing nonconforming use and the proposed alteration;
 - (e) The comparative hours of operation between the existing nonconforming use and the proposed alteration;
 - (f) The comparative effect on identified natural resources between the existing nonconforming use and the proposed alteration; and
 - (g) The comparative effect on water quality, quantity or drainage in the neighborhood between the existing nonconforming use and the proposed alteration.
2. The Planning Director may impose conditions of approval on any alteration of a nonconforming use, structure(s) or other physical improvements permitted under this section when deemed necessary to ensure the mitigation of any adverse impacts. Such conditions could include but are not limited to:
- a. Special yards and spaces.
 - b. Fences and walls.
 - c. Special parking and/or loading provisions.

- d. Street dedication and improvements.
- e. Control of points of vehicular ingress and egress.
- f. Special provisions for signs.
- g. Landscaping and maintenance of grounds.
- h. Control of noise, light, vibration, dust, odor, fumes, glare, smoke, or other similar nuisances.
- i. Limitation of time for certain activities.
- j. A time period in which a proposed use shall be developed.
- k. A limit of total duration of use.

SECTION 13.070 Vested Right

Pursuant to ORS 215.427, if an application was complete when first submitted or the applicant submits additional information, as described in ORS 215.427(2), within 180 days of the date the application was first submitted, approval or denial of the application shall be based upon the standards and criteria that were applicable at the time the application was first submitted.

SECTION 13.080 Consolidation of Undeveloped Subdivisions

- A. A unit of land shall be consolidated with adjacent lands in the same ownership if the subdivision within which the unit of land is located is undeveloped pursuant to ORS chapter 92, Undeveloped Subdivisions.
- B. No portion of a consolidated plat shall be considered a separate parcel solely because an existing property overlays, and possibly fragments, that consolidated subdivision.
- C. Criterion A shall not be applied to consolidate two or more units of land where each unit of land is developed with a dwelling that qualifies as an existing use. One or more undeveloped units of land shall be consolidated with one or more developed units of land.
- D. Lots shall be consolidated through the process outlined in ORS Chapter 92, Undeveloped Subdivisions, or through a Replat process as outlined in Chapter 21.

WASCO COUNTY PLANNING AND DEVELOPMENT
2705 EAST 2ND STREET
THE DALLES OR 97058



ATTENTION: PLAN AMENDMENT SPECIALIST
DEPT. OF LAND CONSERV. & DEVELOP.
635 CAPITOL STREETNE, SUITE 150
SALEM, OR