



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

06/25/2009

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

FROM: Plan Amendment Program Specialist

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

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 DLCDC office in Salem and the local government office.

Appeal Procedures*

DLCD ACKNOWLEDGMENT or DEADLINE TO APPEAL: Wednesday, July 08, 2009

This amendment was submitted to DLCDC for review 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 THAT IT WAS MAILED TO DLCDC. AS A RESULT, YOUR APPEAL DEADLINE MAY BE EARLIER THAN THE ABOVE DATE SPECIFIED.

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

<paa> YA

PROF 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: 6/17/2009 Date Mailed: 6/17/2009

Date original Notice of Proposed Amendment was mailed to DLCD: 6/14/2008

- 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 critiera 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 critieria associated with alterations to residential vs. non-residential (commercial & industrial) nonconforming uses.

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 R (17013) [15568]

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 REMAND DECISION

FILE #: PLALEG-08-08-0001

HEARING DATE: 3 June 2009

DECISION DATE: 17 June 2009

EFFECTIVE DATE: 8 July 2009

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 17th day of June 2009



Todd R. Cornett, Planning Director

**COUNTY COURT REPORT
COUNTY COURT REMAND HEARING
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

Prepared for: Wasco County Court

Applicant: Wasco County Planning & Development Department

County Court Remand Decision: On a vote of 3 – 0 the Wasco County Court adopted the amendments recommended by staff.

County Court Remand Decision Date (Date of Mailing): 17 June 2009

County Court Remand Hearing Date: 3 June 2009

Appeal Deadline/Effective Date: 8 July 2009 (21 days from the decision date pursuant to ORS 197.625)

LUBA Appeal: The decision by the County Court was appealed. On 3 March 2009 in Order No. 2008-206 LUBA sustained in part the sole assignment of error and remanded the proposed ordinance back to Wasco County.

County Court Decision: On 15 October 2008 with a vote of 3 – 0 the Wasco County Court adopted the ordinances recommended by the Planning Commission with additional amendments. The notice date was 29 October 2009.

Planning Commission Recommendation: On 2 September 2008 with a vote of 5 – 0 the Wasco County Planning Commission recommended the Wasco County Court adopt the proposed amendments.

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
 - 3 March 2009: LUBA Hearing
 - 3 June 2009: County Court Remand Hearing

II. PUBLIC INVOLVEMENT

In addition to the hearings indicated above, all of which have allowed 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.

County Court Remand Hearing

On 13 May 2009 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, Planning Commission, or County Court hearing were sent notification by mail or email of the date (3 June 2009), 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 13 May 2009.

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.

County Court Remand Hearing:

The County Court hearing notice was published in The Dalles Chronicle on 13 May 2009 which is 21 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 (5 iterations, Workshop, PC, CC, CC Remand and final)
- Report describing the process and changes (5 iterations, Workshop, PC, CC, CC Remand 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)

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.
- This decision was appealed to LUBA who held a hearing on 5 February 2009. On 3 March 2009 in Order No. 2008-206 LUBA sustained in part the assignment of error and remanded the proposed ordinance back to Wasco County.
- The County Court Remand Hearing was scheduled for 3 June 2009. At this hearing the County Court will hear the staff's presentation, opened the hearing for testimony where no audience members elected to testify, deliberated and approved the amendments proposed by staff.

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 three 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).

The amendments adopted by the County Court on 15 October 2008 included language which consolidated properties created solely by deed for development purposes if they met certain requirements. This issue was appealed to LUBA. The Wasco County Court adopted Staff's recommendation and removed this language. See attachment C for a more detailed explanation.

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

A. **Adopted Language:** The following language was adopted by the County Court on 15 October 2008.

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

B. Purpose: The proposed language was included to codify a policy dating back to the early 1990's regarding legal parcel determination for properties created by deed prior to subdivision and partition ordinances. This policy had been consistently used by the Planning Department and had been acknowledged by both the Wasco County Court and the Department of Land Conservation and Development staff. The proposed language was also consistent with the adopted ordinance language of several other counties.

ORS and the Wasco County Ordinances (included below) are both vague with regards to determining the legal parcel status of properties created by deed prior to subdivision and partition ordinances. The basic question that was attempted to be resolved was at what point in time is a property created by deed fixed into place? Without this clarity property owners can attempt to resurrect and reestablish property boundaries described in old deeds in the chain of title, effectively circumventing minimum lot and parcel size requirements.

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. (Emphasis Added)***

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.*

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

C. LUBA Hearing:

Ken Thomas appealed this decision claiming it was inconsistent with ORS 92.017.

"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."

LUBA sustained this assignment of error in part. They stated a county had a legitimate public interest in consolidating for development purposes all substandard properties in common ownership. However, the language proposed above was determined to be arbitrary with no legal basis because it was an attempt to ascertain the intent of a property owner when there would have been no understanding of the consequences of consolidating two or more properties onto a single deed.

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

Nothing in this Ordinance shall be deemed to prohibit construction or reconstruction of conforming uses or structures on nonconforming legal parcels 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.

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 & Development
2705 E. 2nd Street
The Dalles, OR 97058

DEPT OF
JUN 18 2009
LAND CONSERVATION
AND DEVELOPMENT



Attention: Plan Amendment Specialist
Department of Land Conservation and
Development
635 Capitol Street NE, Suite 150
Salem, OR 97301-2540