

ATTACHMENT D – STAFF REPORT

File Number: 921-18-000120-PLNG

Applicant: Terry Moore

Owner: Cheryl Moore Trust

Request: Subject to Standards Review to allow the replacement of an existing single family dwelling with a new single family dwelling.

Decision: Approved, with Conditions

Decision Date: August 23, 2018

Appeal Deadline: September 4, 2018

Location: The subject property lies on the west side of Carroll Road approximately 0.3 mile south of Dry Creek Road, approximately 0.8 mile southeast of Mosier, Oregon; more specifically described as:

<u>Existing Tax Lot</u>	<u>Acct#</u>	<u>Acres</u>
2N 11E 12 1900	341, 1481	22.96

Zoning: A-1 (40), Exclusive Farm Use Zone

Environmental Protection Districts: EPD-8, Sensitive Wildlife Overlay Zone (Impacted)

Past Actions: PLAMNS-13-03-0012, residential expansion, carport, wood shed, greenhouse; PLAQJR-10-02-0001/ PLAVAR-10-02-0001, Planning Commission variance; and PLAMNN-09-07-0013, Water Resources permit

Procedure Type: Administrative Action

Prepared By: Dawn Baird, Associate Planner

I. APPLICABLE STANDARDS

A. Oregon Revised Statute (ORS)

1. Chapter 215, County Planning; Zoning; Housing Codes ORS 215.283(1)(p), Uses Permitted in exclusive farm use zones in nonmarginal lands counties; rules.
2. Chapter 462, Oregon Laws 2013, an Act relating to dwellings on tract of land zoned for exclusive farm use; creating new provisions

B. Wasco County Land Use & Development Ordinance

1. Chapter 3 – Basic Provisions

Section 3.210, A-1, Exclusive Farm Use Zone

Section 3.214.J., Uses Permitted Subject to Standards, Replacement of a lawfully established dwelling

Section 3.216, Property Development Standards

Section 3.218, Agricultural Protection

Section 3.219.C., Additional Standards, Replacement of a lawfully established dwelling

Section 3.920, Sensitive Wildlife Habitat Overlay (EPD-8)

Section 3.923, Exempt Area

2. Chapter 10 – Fire Safety Standards

Section 10.110, Siting Standards – Locating Structures for Good Defensibility

Section 10.120, Defensible Space – Clearing and Maintaining a Fire Fuel Break

Section 10.130, Construction Standards for Dwellings and Structures - Decreasing the Ignition Risks by Planning for a more Fire-Safe Structure

Section 10.140, Access Standards – Providing Safe Access to and Escape From Your Home

Section 10.150, Fire Protection or On-Site Water Required – Ensuring Dwellings Have Some Fire Protection Available Through Manned or Unmanned Response

II. BACKGROUND

A. Legal Parcel: The subject parcel was created by Minor Partition, MIP-91-103-WAA12-A, recorded with the Wasco County Clerk on November 22, 1991 (Partition Plat 91-0026). It is consistent with the definition of legal parcel because it was created by a recorded partition plat.

B. Site Description: The subject parcel contains east-facing slopes averaging 20%. According to Wasco County Assessor records the subject parcel contains two single family dwellings, three sheds, a general purpose building, a loft barn, detached garage and residential sauna. Approximately half of the property contains heavy tree growth (Ponderosa pine and Oregon white oak), with a few grassy areas or areas with scattered tree cover composing the other half. Irrigated lawn and natural grass covers the ground.

Surrounding Land Use: All surrounding properties are zoned A-1 (40), Exclusive Farm Use. The surrounding area is generally planted in cherry orchard. Properties located to the northeast, east, and southeast, adjacent to the subject parcel, are planted in orchard. A small portion of

land located to the west, near the southern property line of the subject parcel, also contains orchard. All other adjacent properties are vacant or used for residential use. Surrounding properties not containing orchards contain a variety of vegetation including Ponderosa pine and Oregon white oak trees with natural grass ground cover or irrigated lawn around the residence.

III. FINDINGS:

A. Oregon Revised Statute (ORS)

- 1. ORS Chapter 215, County Planning; Zoning; Housing Codes ORS 215.283(1)(p), Uses Permitted in exclusive farm use zones in nonmarginal lands counties; rules – Subject to section 2, chapter 462, Oregon Laws 2013, alteration, restoration or replacement of a lawfully established dwelling.**

FINDING: ORS 215.283(1)(p) was amended by the 2013 Legislature through House Bill 2746 and became effective on January 1, 2014. These amendments are addressed in ORS Chapter 462, Oregon Laws 2013. Staff finds that the request complies with ORS 215.283(1)(p).

- 2. Chapter 462, Oregon Laws 2013, an Act relating to dwellings on tract of land zoned for exclusive farm use; creating new provisions**

Section 2. (1) A lawfully established dwelling may be altered, restored or replaced under ORS 215.213 (1)(q) or 215.283 (1)(p) in the manner provided by either subsection (2) or (3) of this section.

- (2) The dwelling may be altered, restored or replaced if, when an application for a permit is submitted, the permitting authority:*
 - (a) Finds to the satisfaction of the permitting authority that the dwelling to be altered, restored or replaced has, or formerly had:*
 - (A) Intact exterior walls and roof structure;*
 - (B) Indoor plumbing consisting of a kitchen sink, toilet and bathing facilities connected to a sanitary waste disposal system;*
 - (C) Interior wiring for interior lights; and*
 - (D) A heating system; and*

FINDING: According to Wasco County Assessor records the subject parcel contains two single family dwellings constructed in the 1900s. One dwelling has been renovated through the years, but the other has not been maintained and is in poor condition. It is the unrenovated home that is proposed to be replaced. Staff visited the subject parcel on July 26, 2018, and confirmed that the existing dwelling had intact exterior walls and roof structure, had indoor plumbing consisting of a kitchen sink and bathing facilities, interior wiring for interior lights, and a heating system. According to the owner, the home was originally constructed by the Shogren sisters, popular Portland seamstresses as their summer house. The small house was designed as a duplex with each sister having a self-contained “suite” complete with kitchen. The house was never attached to a sanitary waste disposal system, but used an outhouse for septic needs. Gray water was either thrown outside on the ground or drained onto the ground. Due to

the age of the dwelling staff finds that the second dwelling complies with Criterion (p) with the exception of a septic system, but sanitary waste was provided for through the existence of an outhouse. Staff finds that the request complies with the intent of Criteria (A)-(D).

- (b) Finds that the dwelling was assessed as a dwelling for purposes of ad valorem taxation for the lesser of:
 - (A) The previous five property tax years unless the value of the dwelling was eliminated as a result of the destruction, or demolition in the case of restoration, of the dwelling; or
 - (B) From the time when the dwelling was erected upon or affixed to the land and became subject to assessment as described in ORS 307.010 unless the value of the dwelling was eliminated as a result of the destruction, or demolition in the case of restoration, of the dwelling.

FINDING: According to Wasco County Assessor records the existing dwelling structure has been taxed since least the early 1900s as a single family dwelling, which exceeds the previous five property tax years. Staff finds that the request complies with Criterion (b)(A).

B. Chapter 3 – Basic Provisions

Section 3.210, A-1, Exclusive Farm Use Zone

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

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

- J. *Alteration, restoration relocation, or replacement of a lawfully established dwelling (discretionary) and/or accessory residential or non-residential building or structure on any part of the legal parcel subject to Section 3.216 A1c - Addition, Modification or Relocation Setbacks and 3.219C - Replacement Dwellings (Dwellings only).*

FINDING: House Bill 2746, passed by the 2013 Oregon Legislature, and effective on January 1, 2014, allows property owners to replace a dwelling that has or formerly had structural integrity, where certain requirements are met. These standards were addressed in III.A. where staff found the request complies with the applicable criteria.

Section 3.216 - Property Development Standards

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

A. Setbacks

1. *Property Line*

- a. *All dwellings (farm and non-farm) and accessory structures not in conjunction with farm use, shall comply with the following property line setback requirements:*
- (1) *If adjacent land is being used for perennial or annual crops, the setback shall be a minimum of 200 feet from the property line.*
- (2) *If adjacent land is being used for grazing, is zoned Exclusive Farm Use and has never been cultivated or is zoned F-1 or F-2, the setback shall be a minimum of 100 feet from the property line.*

FINDING: The request is to replace an existing single family dwelling with a new residence. The majority of property located north, west and south of the subject parcel are not in resource use. Properties located northeast, east, southeast and southwest are used for cherry production. The property owner proposes setbacks as follows:

Required Setback	Proposed Setback	Consistent?
North – 100'	275'	Yes
East – 200'	200'	Yes
South – 100'	1,800'	Yes
West – 100'	300'	Yes

Staff finds that the proposed setbacks meet or exceed the setback requirements of the Exclusive Farm Use Zone.

2. *Waterways*

- a. *Resource Buffers: All bottoms of foundations of permanent structures, or similar permanent fixtures shall be setback from the high water line or mark, along all streams, lakes, rivers, or wetlands.*
- (1) *A minimum distance of one hundred (100) feet when measured horizontally at a right angle for all water bodies designated as fish bearing by any federal, state or local inventory.*

FINDING: Mosier Creek flows south to north through the subject parcel. This creek is identified as a wetland and contains a year-round fish population (Coastal cutthroat trout). The new structure must be located a minimum of 100' from Mosier Creek. The owner proposes a setback of 300' from the creek.

On August 1, 2018, staff sent a notice to the Oregon Department of State Lands regarding the replacement dwelling. On August 16, 2018, a response was submitted to the Planning Department from Christine Stevenson, Jurisdictional Coordinator, Oregon Department of State Lands. Ms. Stevenson stated that construction of the replacement dwelling in the same footprint will not impact jurisdictional wetlands or waters.

Staff finds that the request complies with Criterion (1).

3. *Irrigation Ditches: All dwellings and structures shall be located outside of the easement of any irrigation or water district. In the absence of an easement, all dwellings and structures shall be located a minimum of 50 feet from the centerline of irrigation ditches and pipelines which continue past the subject parcel to provide water to other property owners. Substandard setbacks must receive prior approval from the affected irrigation district. These setbacks do not apply to fences and signs.*

FINDING: There are no irrigation ditches on the subject parcel and it is not located inside a water district. Staff finds that Criterion 3. is not applicable to this request.

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

FINDING: The application does not specify the height of the new dwelling. A **condition** of approval is included in the Notice of Decision requiring the owner to submit an elevation drawing to the Planning Department prior to issuance of zoning approval on a building permit application. With the proposed condition of approval the request complies with Criterion B.

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

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

D. *Signs*

1. *Permanent signs shall not project beyond the property line.*
2. *Signs shall not be illuminated or capable of movement.*
3. *Permanent signs shall describe only uses permitted and conducted on the property on which the sign is located.*
4. *Size and Height of Permanent Signs:*

FINDING: No signs are proposed as part of this request. Staff finds that Criterion D. is not applicable to this request.

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

FINDING: The application does not indicate the placement of any new outdoor lighting. A **condition** of approval is included in the Notice of Decision advising the owner that outdoor lighting must be sited, limited in intensity, shielded and hooded in a manner that prevents the lighting from projecting onto adjacent properties, roadways, and waterways. Shielding and hooding materials shall be composed of nonreflective, opaque materials. Staff finds that the request complies with Criterion E.

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

FINDING: Chapter 20, Section 20.050, Off-Street Parking requires one parking space for a single family dwelling. The subject parcel contains approximately 23 acres. During staff's visit to the subject parcel on July 26, 2018, staff confirmed that there is adequate space for each single family dwelling on the property to have one parking space. Staff finds that the request complies with Criterion F.

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

FINDING: There is no Road Approach Permit (Permit #2504) on file with the Wasco County Public Works Department for the existing driveway approach onto Carroll Road. A **condition** of approval is included in the Notice of Decision requiring the owners to obtain a Road Approach Permit from the Wasco County Public Works Department prior to issuance of zoning approval on a building permit application. With the proposed condition of approval staff finds that the request complies with Criterion G.

Section 3.218 - Agricultural Protection

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

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

FINDING: The proposed replacement dwelling is located on land that is generally not in commercial agricultural production however lands located to the east have a history of being planted in cherry orchard therefore the owner must sign a Farm-Forest Management Easement as described in Criterion A. A **condition** of approval is included in the Notice of Decision requiring the property owner to sign and record a Farm-Forest Management Easement (see Attachment F) with the Wasco County Clerk prior to obtaining a Planning Department signature on the building permit. With the proposed **condition**, the request complies with Criterion A.

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

FINDING: The Farm Mediation Ordinance is being provided to the property owner as Attachment G. The request complies with Criterion B.

Section 3.219.C., Additional Standards, Replacement of a lawfully established dwelling

A. Alteration, restoration, relocation or replacement of a lawfully established dwelling:

- 1. Has intact interior walls and roof structure;*
- 2. Has indoor plumbing consisting of a kitchen sink, toilet, and bathing facilities connected to a sanitary waste disposal system;*
- 3. Has interior wiring or interior lights;*

4. *Has a heating system;*
5. *In the case of replacement...*

FINDING: These criteria were addressed in Section III.A. where the request was found to comply with all requirements. Staff finds that the request complies with Criterion A.

Section 3.920, Sensitive Wildlife Habitat Overlay (EPD-8)

Section 3.923 - Exempt Areas

The following areas are exempt from these provisions:

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

FINDING: The subject parcel is designated as “Impacted Area” in the Transition Lands Study Area (TLSA). Staff finds that Section 3.923 is not applicable to this request.

B. Chapter 10 – Fire Safety Standards

Section 10.110, Siting Standards – Locating Structures for Good Defensibility

Section 10.120, Defensible Space – Clearing and Maintaining a Fire Fuel Break

Section 10.130, Construction Standards for Dwellings and Structures - Decreasing the Ignition Risks by Planning for a more Fire-Safe Structure

Section 10.140, Access Standards – Providing Safe Access to and Escape From Your Home

Section 10.150, Fire Protection or On-Site Water Required – Ensuring Dwellings Have Some Fire Protection Available Through Manned or Unmanned Response

FINDING: The request is for a Subject to Standards Review to replace an existing dwelling on a 22.96 acre parcel.

The subject parcel is located within Mosier Fire District, a structural fire protection district, and has wild land fire protection from the Oregon Department of Forestry.

The Oregon Department of Forestry (ODF) should be informed of dates when heavy equipment is being used on the property so they can be aware of the potential increase in fire danger. To ensure ODF is aware of construction dates, the applicant or owner shall submit a copy of an approved Oregon Department of Forestry “Permit to Operate Power Driven Machinery,” prior to issuance of zoning approval on a building permit application. A **condition** of approval stating this is included in the Notice of Decision.

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

As part of a complete application, the property owners completed a Fire Safety Standard Self-Certification Form. By signing the self-certification form, the owners have acknowledged that they understand these standards and commit to achieve compliance with them within one year of the date of approval and maintain them through the life of the development. This certification further commits all

future property owners to this same requirement. A copy of this self-certification form is available for inspection at the Wasco County Planning Department under File 921-18-01-000120-PLNG. A **condition** of approval stating this is included in the Notice of Decision.

Though not specifically addressed in Chapter 10, it is essential that each new dwelling in Wasco County have a valid address so that emergency responders can quickly find the property. The subject parcel currently has one address for two homes. In accordance with the Wasco County Uniform Addressing Ordinance adopted on June 9, 1982, prior to Building Permit Authorization, the applicant or future owner(s) shall clearly post the address of the subject lot on both sides of a post or mailbox, or other similar post, support, stake or pedestal which cannot be easily removed or destroyed which is within 30' of the driveway which accesses the dwelling. The address numbers shall be legible, reflective, and at least 2 ½ inches high. A **condition** of approval is included in the Notice of Decision requiring the owner to apply for a new address for the new dwelling after expiration of the appeal period but at least 2 weeks prior to issuance of zoning approval on a building permit application, and submit the filing fee (\$75) for an address application to the Planning Department prior to issuance of zoning approval on a building permit application.

The owners plan to replace the house in the same location. There is a 20% slope to the west so it will be important to maintain a defensible space on this slope. The owner states that he will keep the grass trimmed and the house set back slightly from the top of the slope.

The building will be constructed with fire resistant materials and the graveled driveway is 12' in width, providing adequate access to the site. At the bottom of the driveway there is room for an emergency vehicle to turn around. The eastern part of the driveway is approximately 500' in length. Due to the topography of the property there is no room for a turnout in the first 500' of the driveway but the remainder of the driveway provides space for turnouts. Since the property is located in the Mosier Fire District no on-site water is required to be stored.

With the proposed **conditions** of approval in the Notice of Decision staff finds that the request complies with Chapter 10 – Fire Safety Standards.

ATTACHMENT E – LIGHTING STANDARDS

Good Neighbor OUTDOOR LIGHTING

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

What is good lighting?

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

Why should we be concerned?

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

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

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

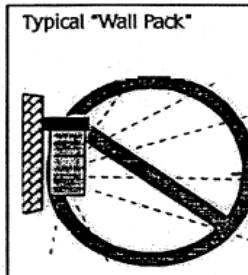
Energy Waste Many outdoor lights waste energy by spilling much of their light where it is not needed, such as up into the sky. This waste results in high operating costs. We waste over a billion dollars a year in the United States needlessly lighting the night sky.

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

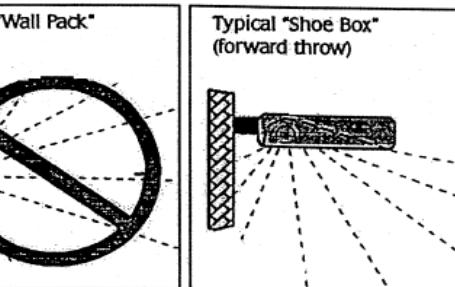
How do I switch to good lighting?

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

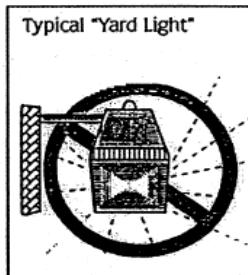
Some Good and Bad Light Fixtures



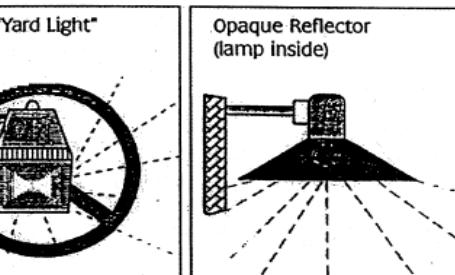
BAD



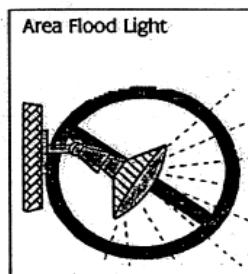
GOOD



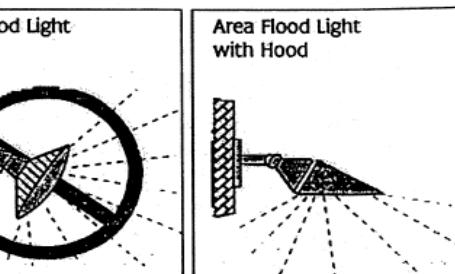
BAD



GOOD



BAD



GOOD

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

2 Aim lights down. Choose "full-cutoff shielded" fixtures that keep light from going uselessly up or sideways. Such fixtures produce minimum glare. They create a pleasant-looking environment. They increase safety because you see illuminated people, cars, and terrain, not dazzling bulbs.

3 Install fixtures carefully to maximize their effectiveness on the targeted area and minimize their impact elsewhere. Proper aiming of fixtures is crucial. Most are aimed too high. Try to install them at night, when you can see where all the rays actually go.

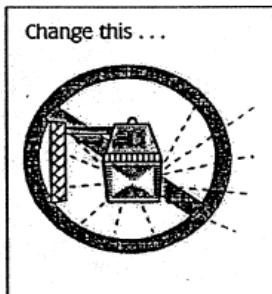
Properly aimed and shielded lights may cost more initially, but they save you far more in the long run. They can illuminate your target with a low-wattage bulb just as brightly as a wasteful light does with a high-wattage bulb.

4 Choose energy-efficient low-pressure sodium (LPS) or high-pressure sodium (HPS) lamps wherever yellowish light will do the job. Use less efficient white lights only where ideal color rendition is important.

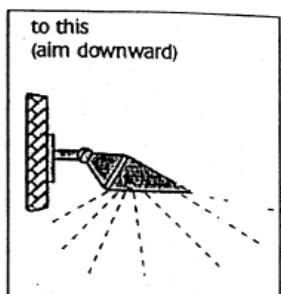
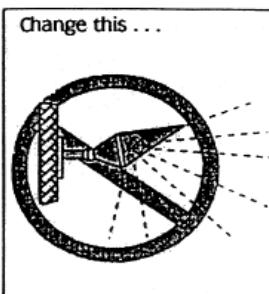
5 Where feasible, put lights on timers to turn them off each night after they are no longer needed. Put home security lights on a motion-detector switch, which turns them on only when someone enters the area; this provides a great deterrent effect!

Replace bad lights with good lights.

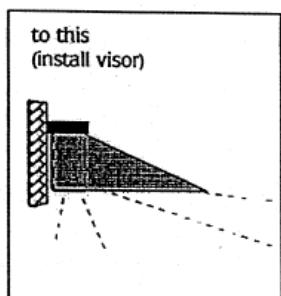
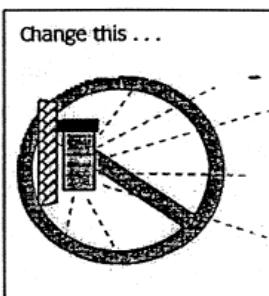
You'll save energy and money. You'll be a good neighbor. And you'll help preserve our view of the stars.



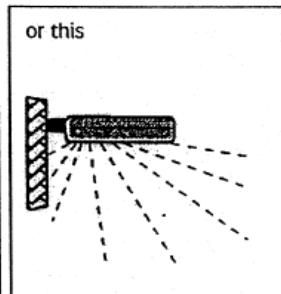
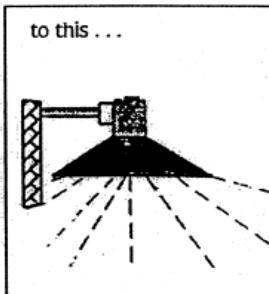
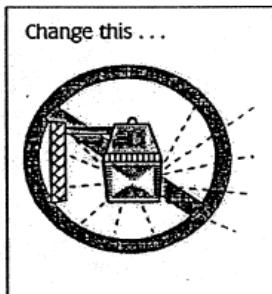
What You Can Do To Modify Existing Fixtures



FLOOD LIGHT



WALL PACK



YARD LIGHT

OPAQUE REFLECTOR

SHOE BOX

Presented by the

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

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

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



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

ATTACHMENT F – FARM-FOREST MANAGEMENT EASEMENT

Owner Name: _____

Mailing Address: _____

Cheryl Moore Trust, Owner, herein called the Grantor(s), is/are the owner(s)s of real property described as follows:

Township 2 North, Range 11 East W.M., Section 12, Tax Lot 1900; Accounts 341 & 1481

In accordance with the conditions set forth in the decision of Wasco County Planning Staff, dated August 2, 2018, approving a Subject to Standards Review (File #921-18-000120-PLNG) to replace an existing dwelling with a new single family dwelling on a 22.96 acre parcel, Grantor hereby grants to the Owners of all property adjacent to the above described property, a perpetual nonexclusive easement as follows:

1. The Grantors, their heirs, successors, and assigns hereby acknowledge by granting of this easement that the above described property is situated in an Exclusive Farm Use/Forest/Forest-Farm zone in Wasco County, Oregon, and may be subjected to conditions resulting from farm or forest operations on adjacent lands. Farm operations include, but are not limited to, the raising, harvesting and selling of crops or the feeding, breeding, management and sale of livestock or poultry, application of chemicals, road construction and maintenance, and other accepted and customary farm management activities conducted in accordance with Federal and State laws. Forest operations include, but are not limited to reforestation of forest land, road construction and

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



maintenance, harvesting of forest tree species, application of chemicals and disposal of slash, and other accepted and customary forest management activities conducted in accordance with Federal and State laws. Said farm or forest management activities ordinarily and necessarily produce noise, dust, odor, and other conditions, which may conflict with Grantors' use of Grantors' property for residential purposes. Grantors hereby waive all common law rights to object to normal and necessary farm or forest management activities legally conducted on adjacent lands which may conflict with grantors' use of grantors' property for residential purposes and grantors hereby give an easement to adjacent property owners for such activities.

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

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

IN WITNESS WHEREOF, the Grantors have executed this easement on

_____, 201___.

Titleholder Signature

STATE OF OREGON)
COUNTY OF WASCO)

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

Notary Public for Oregon

ATTACHMENT G – MEDIATION ORDINANCE

IN THE COUNTY COURT OF THE STATE OF OREGON FILED
WASCO COUNTY

IN AND FOR THE COUNTY OF WASCO

2003 SEP 12 P 3:15

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

MARION LEBRETON COATS
COUNTY CLERK

A M E N D E D
O R D I N A N C E



THE WASCO COUNTY COURT ORDAINS AS FOLLOWS:

Section 1. SHORT TITLE. This Ordinance may be cited as the Wasco

County Farming and Forestry Practices Protection and Complaint Mediation
Ordinance.

Section 2. PURPOSE.

(1) Wasco County recognizes that complaints about farming and forestry practices will sometimes occur because these practices create odors, smoke, dust and noise and there is a close proximity of agricultural and forest lands to expanding urban and rural residential development.

(2) Wasco County recognizes that all resource use complaints have the potential of requiring immediate shutdowns or interruptions of farming and forestry practices which could result in significant economic consequences for resource users.

(3) The purpose of this Ordinance is therefore to provide a rapid complaint response and mediation process for resource use complaints by Wasco County residents in order to protect farming and forestry operations to the greatest extent possible from immediate shutdowns or interruptions.

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Section 3. _ DEFINITIONS. As used in this Ordinance:

- (1) "FACILITY" means any real or personal property, including appurtenances thereto and fixtures thereon, associated with a given use.
- (2) "FARMING PRACTICE" means the cultivation, growing, harvesting, processing or selling of plants or animals of any kind, which lawfully may be grown, possessed and sold, including but not limited to fish, livestock, poultry, grapes, cherries, apples, pears, wheat, barley, Christmas trees and nursery stock.
- (3) "FORESTRY PRACTICE" means any operation conducted on or pertaining to forest land, including but not limited to:
- (a) Reforestation of forest land;
 - (b) Road construction and maintenance;
 - (c) Harvesting of forest tree species;
 - (d) Application of chemicals; and
 - (e) Disposal of slash.
- (4) "NONRESOURCE USE" means any facility, activity or other use of land which does not constitute a resource use, including but not limited to residential use.
- (5) "RESOURCE USE" means any current or future generally accepted farming or forestry practice or facility conducted in compliance with applicable Wasco County Ordinances and Federal and State laws.
- (6) "RESOURCE USE NUISANCE" means any current or future generally accepted farming or forestry practice or facility conducted in

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compliance with applicable Wasco County Ordinances and Federal and State laws, which may be considered offensive, annoying, or interferes with or otherwise affects the urban and rural residents of Wasco County.

(7) "RESOURCE USE" does not include:

- (a) Any unlawful act;
- (b) The willful growing of infested, infected or diseased plants or animals;
- (c) Trespass which involves actual physical intrusion onto the property of another by a person or by a person's animals;

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

(9) "COMPLAINT MEDIATION PROCESS"

- (a) Means a procedure established by the Wasco County Court to provide a forum for the mediation of Wasco County residents complaints regarding farming or forestry practices or facilities, including, but not limited to: odors from domestic livestock operations; blowing smoke from heaters, smokers and slash burning; noise from machines, including those devices producing sounds designed for agricultural purposes in order to frighten predacious birds or animals away from agricultural crops; drift or contamination from chemical and fertilizer applications; hours of operation; and littering of County roads; and

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

(10) "PEER REVIEW BOARD" is a Board appointed, as needed, by the Wasco County Court to advise the Six Rivers Community Mediation Services on whether a disputed resource use activity is a generally accepted farming or forest practice or facility. The Board shall consist of 5 persons who regularly are involved in a resource use within the County, at least 3 of whom are regularly involved in the same type of disputed resource use being heard through the Complaint Mediation Process.

Section 4. PROTECTING RESOURCE USES.

- (1) Wasco County shall not support a resource use nuisance complaint or claim for relief by nonresource uses or any persons or property associated therewith unless the resource use complaint response and mediation procedure of Section 5 of this Ordinance has been utilized.
- (2) This Section applies regardless of:
 - (a) The location of the purportedly affected nonresource use;
 - (b) Whether the nonresource use purportedly affected existed before or after the occurrence of the resource use;

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- (c) Whether the resource use or nonresource use has undergone any change or interruption; and
- (d) Whether the resource use is inside or outside an urban growth boundary to the extent permissible under State law.

Section 5. RESOURCE USE COMPLAINT RESPONSE AND MEDIATION PROCEDURE.

- (1) Initial resource use complaints involving farming or forestry practices or facilities shall:
 - (a) Be referred to the Six Rivers Community Mediation Services during regular operating hours or the Wasco County Sheriff's Office after hours and on weekends; and
 - (b) Be responded to as soon as possible.
- (2) The responding Six Rivers Community Mediation Services Agent or Designee shall:
 - (a) Use Six Rivers Community Mediation Services' procedures to respond to a complaint;
 - (b) Notify the Wasco County Court about the documented complaint as soon as possible and report on the effort and/or success in resolving the complaint.
- (3) If the initial contact is through the Wasco County Sheriff's Department, or any other law enforcement agency, the responding officer should:

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- (a) Contact the complainant and document the complaint; and
 - (b) Encourage the complainant to call or meet with the resource user and attempt a one-on-one resolution of the complaint; and
 - (c) Provide both complainant and resource user with written documentation of the complaint, including, but not limited to the name and address of complainant, the name and address of the resource user, and a description of the nature of the complaint; and
 - (d) Inform both parties that the complaint will be referred to Six Rivers Community Mediation Services and that they will be contacted by that agency; and
- (e) Deliver a copy of the complaint to the Six Rivers Community Mediation Services as soon as possible.
- (4) If the complainant and resource user that are principles in a documented resource use complaint within Wasco County request assistance beyond that provided by the Case Developer, the Case Developer shall implement the Complaint Mediation Process.
 - (5) The Complaint Mediation Process shall:
- (a) Set a date to hear the complaint from both complainant and resource user within a reasonable amount of time; and

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

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- (6) The Complaint Mediation Process may:
- (a) Request the Wasco County Court to set up a Peer Review Board for assistance in determining whether an activity or facility is a generally accepted farming or forestry practice or facility;
 - (b) Suggest recommendations for Peer Review Board members to the Wasco County Court; and
 - (c) Meet with the complainant and resource user any number of times if the Mediators determine that progress is being made toward a resolution of the complaint.
- (7) If the Complaint Mediation Process is unable to resolve the complaint, the complainant and resource user shall be advised by the Six Rivers Community Mediation Services of their additional options including, but not limited to, seeking advice from private counsel.

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

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

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

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

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

Regularly passed and adopted by the unanimous vote of all members of the County Court of the County of Wasco, State of Oregon, present on this day.

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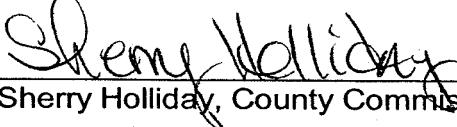
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DONE AND DATED this 3rd day of September, 2003

WASCO COUNTY COURT


Dan Erickson
Dan Erickson, County Judge


Scott McKay, County Commissioner


Sherry Holliday
Sherry Holliday, County Commissioner

APPROVED AS TO FORM:


Erie J. Nisley
Wasco County District Attorney

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