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

01/28/2009

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

FROM: Mara Ulloa, Plan Amendment Program Specialist

SUBJECT: Wasco County Plan Amendment
DLCD File Number 003-08

The Department of Land Conservation and Development (DLCD) received the attached notice of adoption. A Copy of the adopted plan amendment is available for review at the DLCD office in Salem and the local government office. This amendment was submitted without a signed ordinance.

Appeal Procedures*

DLCD ACKNOWLEDGMENT or DEADLINE TO APPEAL: Tuesday, February 10, 2009

This amendment was submitted to DLCD 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 DLCD. AS A RESULT, YOUR APPEAL DEADLINE MAY BE EARLIER THAN THE ABOVE DATE SPECIFIED.

Cc: Gary Nychyk, Wasco County
Doug White, DLCD Community Services Specialist
Jon Jinings, DLCD Regional Representative
Katherine Daniels, DLCD Farm/Forest Specialist

<paa> YA

FORM 2 Notice of Adoption

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

DATE STAMP
DEPT OF
JAN 22 2009
LAND CONSERVATION AND DEVELOPMENT
For DLCD

Jurisdiction: **Wasco County** Local file number: **CPA-08-101, Et. al**

Date of Adoption: _____ Date Mailed: _____

Date original Notice of Proposed Amendment was mailed to DLCD: _____

- ☐ Comprehensive Plan Text Amendment
- ☐ Land Use Regulation Amendment
- ☐ New Land Use Regulation
- ☒ Comprehensive Plan Map Amendment
- ☒ Zoning Map Amendment
- ☒ Other: **Exception to Goal 4**

Summarize the adopted amendment. Do not use technical terms. Do not write "See Attached".

Applicant requested to rezone 7.8 acres from F-2 (80) to FF (10). Planning Staff recommended denial, Planning Commission hearing held on December 2, 2008 and recommended denial, County Court hearing held on January 7, 2009 and denied requested rezone, goal exception, and comp plan amendment.

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".

Proposed amendment requested to rezone 7.8 acres from F-2 (80) (ResourceZone Forest) to F-F (10) (non-resource Forest Farm zone). Adopted report denied request

Plan Map Changed from: **Forest** to: **Forest (No Change)**

Zone Map Changed from: **Forest (F-2 (80))** to: **Forest (No Change**

Location: **Mosier, Oregon** Acres Involved: **7.8**

Specify Density: Previous: **80 acres** New: **80 acres (No Change)**

Applicable Statewide Planning Goals: **Goal 4 - Forest**

Was and Exception Adopted? ☐ YES ☒ NO

DLCD File No.: 003-08 (17136)

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:

Wasco County SWCD, District 3 Watermaster, ODOF, Mosier Fire Department, ODFW

Local Contact: **Gary Nychyk** Phone: **(541) 506-2566** Extension:

Address: **2705 East 2nd Street** City: **The Dalles**

Zip Code + 4: **97058-** Email Address: **garyn@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

Wasco County Court Notice of Decision

CLERK'S RECORDING LABEL

File #: CPA-08-101, ZNC-08-101, and EXC-08-101

Date: January 14, 2009
Hearing Date: January 7, 2008

REQUESTS:
(1) Exception to Statewide Planning Goal 4 – Forest Lands;
(2) Comprehensive Plan Amendment from Forest Use to Farm-Forest;
(3) Zone Change from F-2 (80) Forest Use, to F-F (10), Forest-Farm Use for that portion of Lot 9, Fairview Orchard Tracts lying west of Dry Creek Road within Section 20, Township 2 north, Range 12 East.

Wasco County Court Decision:

On January 7, 2009, the Wasco County Court held the second evidentiary hearing for the request as reviewed and recommended by the Wasco County Planning Commission, and on a vote of 3 – 0, the Court made the following Decisions.

A. Deny the zone change from F-2 (80) to F-F (10) for that portion of Lot 9, Fairview Orchard Tracts lying west and south of Dry Creek Road.
B. Deny the exception to Statewide Planning Goal 4 – Forest Lands.
C. Deny the Comprehensive Plan Amendment from Forest Use to Farm-Forest Use.

Applicant(s): Steven Andersen for Cascade Planning Assoc.
Property Owner: Laura DesJardins

Mailing Address: 3315 Brookside Drive
Hood River, OR 97031

Contact: Steven Andersen, Cascade Planning Assoc.

Property Information:

Township	Range	Section	Tax Lot No.	Acres	Account #	Zoning
2N	12E	20	4300	7.8	620	F-2 (80) / EPD-8

Address: None assigned

Location: West side of Dry Creek Road, approximately 1.5 miles west of its intersection with Sevenmile Hill Road, approximately 3 miles southeast of Mosier, Oregon.

Attachments:
A. Maps & Site Plans
B. County Court Report
C. Count Court Order

Staff Reviewer: Gary Nychyk, Senior Planner

FINDINGS OF FACT:

Findings of fact for this request 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. These documents are also available online at: www.co.wasco.or.us/planning/planhome.html, click on Current Land Use Actions. There is a table for National Scenic Area applications and a table for regular County applications. Each table is sorted alphabetically by the name of the applicant. The information will be available until the end of the appeal period.

The Wasco County Court finds the requests by Steven Andersen of Cascade Planning, Associates, representing Ms. Laura DesJardins for (1) a Comprehensive Plan Amendment from Forest Use to Forest-Farm, and (2) an Exception to Statewide Goal 4 – Forest Lands, for property described as 2N 12E 20, tax lot 4300, and (3) a Zone Change from F-2(80), Forest Zone, to F-F (10) Forest-Farm on the previously stated tax lot, to be **inconsistent** with pertinent State Goals, policies, and law, the Wasco County Comprehensive Plan, and the Wasco County Land Use and Development Ordinance.

APPEAL PROCESS:

The decision of the Wasco County Court shall be final unless a timely appeal from an aggrieved party is made to the Oregon Land Use Board of Appeals (LUBA) within 21 days pursuant to ORS 197.830.

SIGNED THIS 20th of January, 2009, at The Dalles, Oregon.

_____

Todd Cornett, Planning Director
Wasco County Planning & Development Office

State of Oregon
County of Wasco

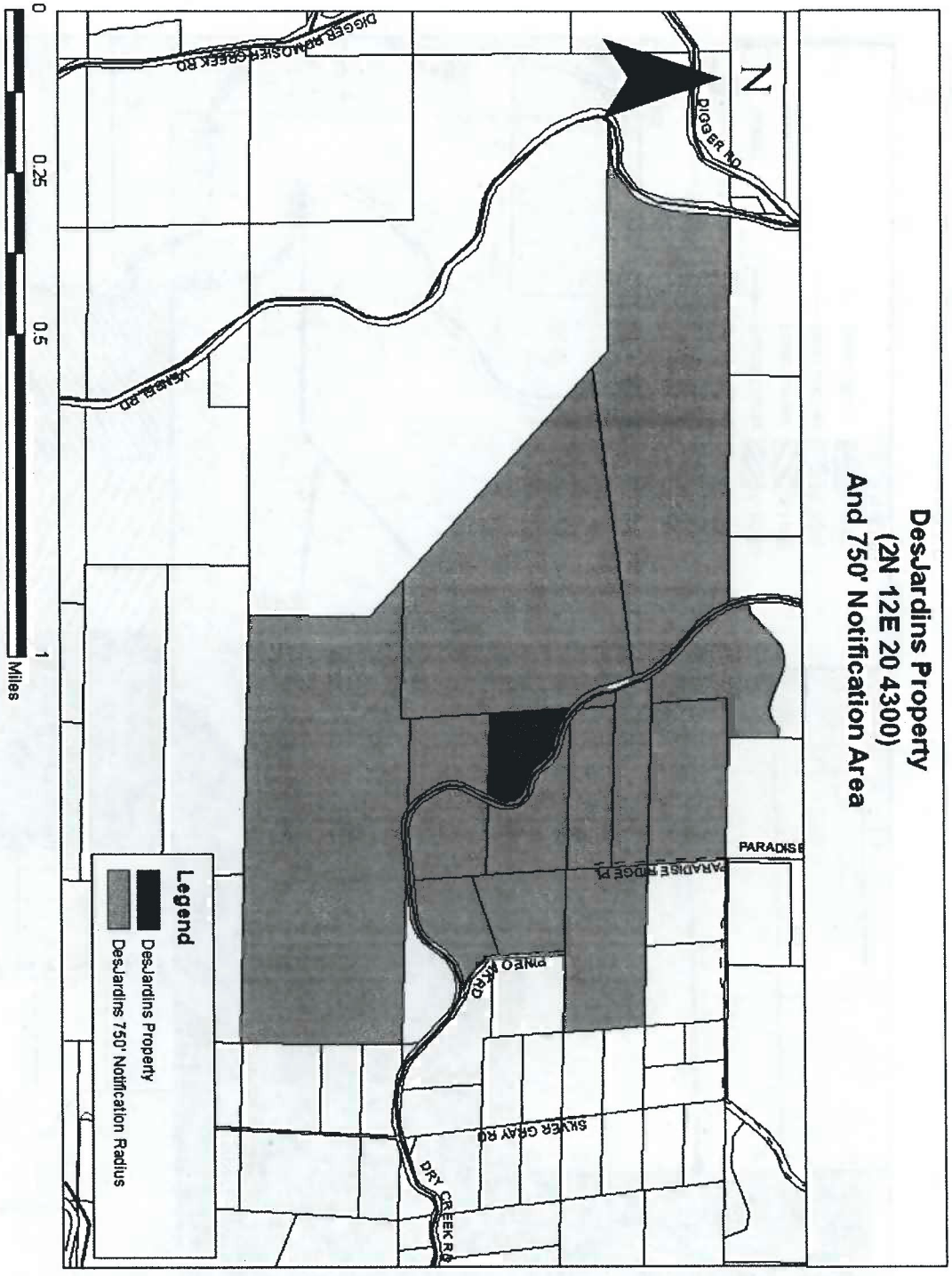
Signed or attested before me on January 20, 2009, by Todd Cornett

_____

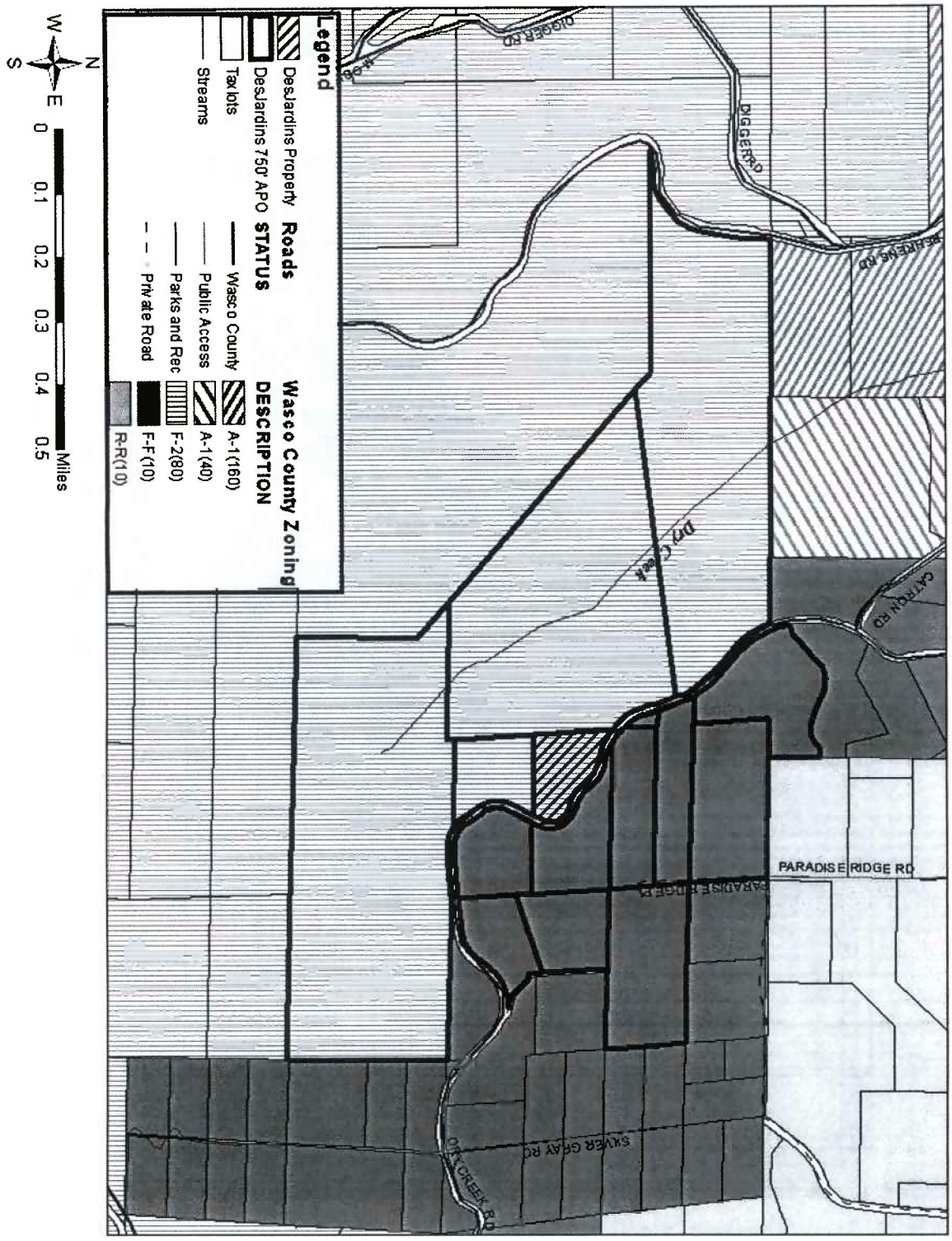
Notary Public – State of Oregon

ATTACHMENT A – MAPS

Location Map



Zoning Map


Legend
DesJardins Property
DesJardins 750' APO
Tax lots
Streams
Roads
STATUS
Wasco County
Public Access
Parks and Rec
Private Road
Wasco County Zoning
DESCRIPTION
A-1(160)
A-1(40)
F-2(80)
F-F(10)
R-R(10)
N
W
E
S
0
0.1
0.2
0.3
0.4
0.5
Miles
DIGGER RD
DIGGER RD
DRY Creek
CATTRON RD
PARADISE RIDGE RD
PARADISE RIDGE R
SKYLER GRAY RD
OLD CREEK RD

ATTACHMENT B – COUNTY COURT REPORT

File Numbers:	CPA-08-101, ZNC-08-101, EXC-08-101
Applicant:	Steven Andersen, Cascade Planning Associates.
Owners:	Laura DesJardins
Request:	(1) Exception to Statewide Planning Goal 4 – Forest Lands; (2) Comprehensive Plan Amendment from Forest Lands to Forest – Farm; (3) Zone Changes from F-2 (80) Forest Zone, to F-F (10), Forest – Farm Zone for that portion of Lot 9, Fairview Orchard Tracts lying west and south of Dry Creek Road.
Planning Commission Hearing Date:	December 2, 2008
Recommendations:	On a Vote of 3 – 0 with one recusal and one abstention, the Planning Commission voted to: (1) Recommend **denial** of the exception to Statewide Planning Goal 4 – Forest Lands. (2) Recommend **denial** of the Comprehensive Plan Amendment from Forest Zone to Forest Farm. (3) Recommend **denial** of the zone change from F-2 (80) to F-F (10) for a portion of the following tax lot: 2N 12E 20 4300
County Court Hearing Date:	January 7, 2009
Decision:	On a vote of 3 – 0, the County Court voted to (1) **Deny** the exception to Statewide Planning Goal 4 – Forest Lands subject to Findings in this report. (2) **Deny** the Comprehensive Plan Amendment from Forest Zone to Forest Farm subject to Findings in this report. (3) **Deny** the zone change from F-2 (80) to F-F (10) subject to Findings in this report for a portion of the following tax lot: 2N 12E 20 4300

Prepared by:	Gary Nychyk, Senior Planner
Procedure Type:	IV - Quasi-Judicial Plan Amendment decided by the Wasco County Court
Location:	West side of Dry Creek Road, approximately 1.5 miles west of its intersection with Sevenmile Hill Road, approximately 3 miles southeast of Mosier, Oregon.: Existing: 2N 12E 20 4300 Previous: 2N 12E 20 2103
Contiguous Ownership:	None
Zoning District:	West of Dry Creek Road: F-2 (80), Forest Zone This parcel is within the EPD-8, Sensitive Wildlife Overlay zone, in Wasco County.
Past Actions:	CUP-92-105 Non-Forest Dwelling and Garage 3661-94-102 Template Test for Single Family Dwelling

Legal Parcel Determination:

The Wasco County Planning Department conducted research into the legal status of property owned by Ms. Laura DesJardins as described above. During that research, staff discovered a Land Use Application for a Conditional Use Permit to construct a single family dwelling not in conjunction with a farm use (CUP-92-105-WAF24-A), which was approved on April 24, 1992.

Page 4 of 13 of the CUP-92-105 Staff Report includes the following criterion and finding:

C. Land Use and Development Ordinance Provisions and Analysis

1. The subject parcel is zoned "F-2(40)" Forest. Section 3.120.G allows as a conditional use on lots-of-record ten (10) acres or smaller, dwellings not in conjunction with a forest or farm use provided the following standards are met:

a. The lot or parcel was legally created prior to the effective date of this ordinance.

Finding: *The lot was legally created in 1981, see deed # 811849. At this point in time the Wasco County Zoning Ordinance allowed the segregation of land divided by a County Road. As the deed was filed prior to that provision being deleted, the parcel is considered a legal lot-of-record. As all of these events were prior to the effective date of the Wasco County Land Use and Development Ordinance, June 1985, the request is consistent with criterion C(1)(a).*

Although this finding cites a land division policy employed by the Wasco County Planning Department that was not legally adopted by either the Wasco County Court or the Oregon Department of Land Conservation and Development, it was included within a Staff Report and Notice of Decision as a legally defensible finding. An Affidavit of

Mailing signed by Dawn Baird, Planning Assistant, on April 24, 1992 indicates that this Notice of Decision was mailed to adjacent property owners as well as pertinent government agencies (including Oregon Department of Land Conservation and Development) on April 24, 1992. Furthermore, an appeal period of ten (10) days was included with the Notice of Decision, with no subsequent appeal rendering the Decision as written final. Therefore, the Wasco County Planning Department reasserts that the property as described above **IS** a legal parcel.

INTRODUCTION:

The DesJardin parcel is that portion of Lot 9, Fairview Orchard Tracts located on the west side of Dry Creek Road approximately 2.85 miles southeast of the city of Mosier, Oregon. The exception request consists of the necessary land use actions to allow the owner of a parcel described as 2N 12E 20 4300 to change the zoning designation from F-2 (80) (Forest Zone) to F-F (10) (Forest - Farm). The parcel includes approximately 7.56 acres.

REQUEST:

EXCEPTION TO STATEWIDE GOAL 4 – FOREST LANDS

A committed lands exception to Statewide Planning Goal No. 4 and rezone is required to rezone the subject parcel from F-2 (80) (Forest) to FF-10 (Forest – Farm). The applicant has submitted supporting documentation, including the related map amendments to the Comprehensive Plan and the Land Use and Development Ordinance.

COMPREHENSIVE PLAN AMENDMENTS:

The following amendments to the comprehensive plan are requested:

1. Adoption of the DesJardins Exception Statement – prepared in accordance with OAR 660 Division 4. The proposed exception statement describes the boundaries of the amended exception area, the nature and scope of the exception, and the characteristics of the site and surrounding lands. The exception statement also documents the applicant's specific rationale that the lands in question are committed to other uses.

2. Applying the FF-10, Forest Farm plan map designation over the exception area of the site in place of the current F-2 plan map designation. The applicant has submitted maps, information, and documentation that he believes sufficient to justify the requested map change as consistent with current FF-10 plan policy language.

LUDO AMENDMENTS:

1. Rezoning the subject property from F-2 (80), Forest Zone, to FF-10, Forest Farm.

2. No limited use overlay is required for a committed exception in this instance because the effects of the change do not require special limitation to mitigate anticipated impacts.

I. APPLICABLE STANDARDS

A. **Statewide Planning Goals** – The proposed rezone and comp plan amendment are being reviewed against all applicable Goals. The rezone, as requested, would authorize some non resource use on land currently zoned for resource use. The request requires a formal exception to the Forestry Goal (Goal 4) in order to allow the necessary non resource uses to occur on land currently designated for Forest Use and protected by Goal 4. A goal analysis is required to accompany an exception statement.

> ***660-004-0010, Application of the Goal 2 Exception Process to Certain Goals*** *(4) An exception to one goal or goal requirement does not assure compliance with any other applicable goals or goal requirements for the proposed uses at the exception site. Therefore, an exception to exclude certain lands from the requirements of one or more statewide goals or goal requirements does not exempt a local government from the requirements of any other goal(s) for which an exception was not taken.*

An analysis of applicable land use goals is discussed in this findings document. The goals analysis demonstrates that the application **does not** comply with all Goals. The requested exception is an exception only to Goal 4.

B. **State Law** – Statute and Rules set the standards for a committed lands exception in ORS 197.732, LCDC Goal 2, Part II, and Chapter 660, Division 4. All proposed uses will be rural in nature and will not require goal exceptions necessary to allow urban use of rural land.

C. **Comprehensive Plan Provisions** – Wasco County Comprehensive Plan provisions related to comprehensive plan amendments are stated in Section XI, (VIII). Findings are provided with this request to address these provisions.

D. **LUDO Provisions –**

1. **Chapter 2 – Development Approval Procedures**
   Section 2.060.B.1. (Recommendation to County Court on Quasi-Judicial Plan Amendment).
   Section 2.060.B.2. (Zone Change and Ordinance Amendment)

2. **Chapter 9 – Zone Change and Ordinance Amendment**
   Section 9.020 (Criteria for Decision)

II. AFFECTED AGENCIES

Oregon Department of Environmental Quality	(Environmental Concerns)
Oregon DLCD	(Forest Use)
Mosier Fire Department	(Structural Fire Protection)
Oregon Water Resources Department	(Water Rights)
Wasco/Sherman Public Health Department	(Septic System Approval)
Wasco County Public Works Department	(Approach Road Permit)
Wasco Electric Cooperative Inc.	(Electrical Service)
US Forestry Service	(Forest Use)
Oregon Department of Fish & Wildlife	(Wildlife Concerns)

III. COMMENTS

David J. Jacobs, Unit Forester, Department of Forestry, Central Forest District: Mr. Jacobs indicated in his letter dated September 25, 2008 that the tax lot in question may not fit the definition of commercial forest land as defined. However, the parcel does fit the description in Goal 4 as "adjacent or nearby lands which are necessary to permit forest operations or practices". Mr. Jacobs further states that this zone adjustment would reduce the amount of resource lands and could set a trend in motion to further limit the availability of those lands. Mr. Jacobs expressed further concern regarding Goal 7. Specifically, he notes that this tax lot is in an area classified as an Extreme Wildfire Hazard Zone through the SB-360 process, and expresses concern regarding human caused wildfires.

Mr. Jim Appleton, Chief, Mosier Fire District: Mr. Appleton expressed concerns regarding the existing funding for the Mosier Fire District, stating that responding to emergencies in the existing residential areas of the district.

Ms. Kate Merrick, Watershed Council Coordinator, Wasco County Soil and Water Conservation District: Ms. Merrick, stated in an email dated September 22, 2008 expressed her concerns regarding the proposal's potential impacts to groundwater resources, which are already strained and declining in the area.

Mr. Robert Wood, District 3 Watermaster, Oregon Department of Water Resources: Mr. Wood indicates in his email dated September 23, 2008 that he had reviewed the DesJardins application and found no records of appurtenant water rights. Mr. Wood further stated that ORS 537.545 would allow the owner to use a groundwater well for domestic use. Mr. Wood also expressed concern regarding continued declines in the aquiers in the Mosier area, and noted that while the impact on the water resource by any one domestic well is relatively small, the cumulative impact of new wells will further contribute to the declining aquifers.

Mr. Keith Kohl, District Wildlife Biologist, Oregon Department of Fish and Wildlife: Mr. Kohl indicated in his email dated October 2, 2008 that lands north of Dry Creek Road have the potential to be impacted by dwellings and their associated disturbances on wildlife. Mr. Kohl further states that allowing the change in zoning from F-2(80) to F-F (10) would also set the stage for the next parcel immediately to the south to be rezoned the same way.

Mr. Kenneth A. Thomas, property owner: Mr. Thomas indicates in his email dated December 2, 2008 that he is a long-time adjacent property owner, and that he sees no difference between this property and many other nearby properties. He further indicates that if this application were approved, then other nearby lands are potentially zoned incorrectly and should be rezoned.

Mr. Mark Cherniack, property owner: Mr. Cherniack indicates in his email dated December 2, 2008 that he supports the Planning Staff report recommendations to deny the request.

Mr. Russell and Mrs. Stephanie Hargrave, property owners: The Hargraves indicated in their letter dated January 6, 2009 that they support the proposed rezone of the DesJardins property.

Please note: Complete comments are on file at the Wasco County Planning and Development Office.

IV. FINDINGS

A. STATEWIDE PLANNING GOAL ANALYSIS

An analysis of statewide planning goals is required to establish the extent of the exception required to accommodate a specific request and to ensure compliance with all goals to which an exception is not granted.

Oregon Administrative Rule 660-004-0018: Planning and Zoning for Exception Areas (1) Purpose. This rule explains the requirements for adoption of plan and zone designations for exceptions. Exceptions to one goal or a portion of one goal do not relieve a jurisdiction from remaining goal requirements and do not authorize uses, densities, public facilities and services, or activities other than those recognized or justified by the applicable exception.

1. **Goal 1 – Citizen Involvement ensures "the opportunity for citizens to be involved in all phases of the planning process." Various opportunities for citizen involvement have been incorporated into the Plan and LUDO. Compliance with Goal 1 is achieved by compliance with the application review procedures and notice requirements applicable to this application.**

APPLICANT'S FINDING: The proposal will be scheduled for public hearing by the Wasco County Planning Commission. Required legal notice will be provided by Wasco County. The applicant will provide full information about the project prior to the hearing and will be in attendance at the hearing to address any concerns or answer any questions at that time.

The planning commission will review the matter and make a recommendation to the county court. The county court will schedule a hearing and provide all required public notice of the hearing. The applicant will continue to support the decision making process by providing any requested information prior to the hearing and attending the hearing to provide any additional input needed by the County Court to respond to public input. Once the County Court makes a decision, the decision will be noticed as required by LUDO and state law.

COUNTY COURT FINDING: Concur with applicant's finding. Additionally, the Planning Department will make use of its website to provide additional opportunities for citizen involvement. The application has been available on the Wasco County Planning Department web site since late January, 2008. The staff report and recommendation was available on the County Planning Department website one week prior to the December 2, 2008 hearing. The Planning Commission Report and recommendation was available on the County Planning Department Website one week prior to the January 7, 2009 hearing. As the process progresses through the County Court, all documentation will similarly be placed on the website.

2. **Goal 2 – Land Use Planning guarantees that processes will be followed which establish a land use planning process and policy framework as a basis for all decisions related to the use of land and assure an adequate factual base for its decisions and actions.**

APPLICANT'S FINDING: Wasco County has acknowledged comprehensive plan and implementing ordinances which established the planning, inventory, and factual basis for land use actions in Wasco County. These findings ensure a well reasoned and fully informed decision is

made. Compliance with the County's review process and provision of all necessary information to address applicable regulations and comprehensive plan policies ensures compliance with Goal 2.

COUNTY COURT FINDING: Concur with applicant's finding.

3. **Goal 3 – Agricultural Lands requires that agricultural lands be preserved and maintained for farm use consistent with the state's agricultural land use policies in ORS 215.**

APPLICANT'S FINDING: The proposed rezone is FF-10. This is the zoning designation used by the county to accommodate large lot residential use in a manner that is compatible with resource uses found not only in the FF-10 zone itself but also in resource zones that may abut the FF-10 zoning designation. Dwelling approval in this zone is subject to conditional use review and provisions protecting accepted farm practices are applied directly or via condition to ensure compatibility with uses permitted outright. Permitted uses include farm use and farm dwellings. The FF-10 zone is applied immediately adjacent to EFU and F2(80) zoning in many areas throughout the county. Approval of the requested exception will not remove lands depended on by the parcel planted in perennial crops ½ mile to the northwest. Applying the FF-10 zone will allow for conditional use review of any resulting development of the parcel on the areas excepted from resource land zoning to ensure that resulting development is compatible with resource use.

COUNTY COURT FINDING: The proposed rezone complies with Goal 3.

- Wasco County Planning Staff reviewed County zoning maps, aerial photographs, and Farm Service Agency maps to determine the nearest land being utilized for agricultural purposes. According to aerial photographs and Farm Service Agency maps, the nearest farm field is approximately ½ mile northwest of the proposed rezone along Dry Creek Road. Farm activities on this property are predominantly cherry orchard.

- Additional Dwellings: Any rezone could pose potentially deleterious effects to nearby farming operations. Currently, there are no provisions available to approve a new residential dwelling on this parcel in the F-2 (80) zone. However, the applicant has proposed to change the zoning designation to F-F (10). This could potentially result in the potential for one (1) new residential dwelling, which could directly access Dry Creek Road.

- Size of Rezone: The proposed rezone includes one tax lot (one legal parcel) described as Township 2 North, Range 12 East Section 20, Tax Lot 4300 comprised of approximately 7.56 acres.

- Soils: Wasco County GIS analysis indicates that approximately 99.99% of soils onsite are composed of Heslan – Skyline Complex (a Class VII soil). The remaining soil classification onsite is Bodel Very Cobley Loam (a Class VII soil).

- Conclusion: The poor soil quality of the proposed rezone area indicates that no productive agricultural lands will be removed from the resource protection zone. Additionally, the limited number of potential dwellings that could be constructed along with the distance between those potential dwellings and nearby farming operations will not result in deleterious effects to the existing agricultural operation located ½ mile to the northwest. Therefore, Planning Commission concludes the proposal complies with Goal 3.

4. **<u>Goal 4 – Forest Lands</u> conserves forest lands by maintaining the forest land base and to protect the state's forest economy by making possible economically efficient forest practices that assure the continuous growing and harvesting of forest tree species as the leading use on forest land consistent with the sound management of soil, air, water, and fish and wildlife resources and to provide for recreational opportunities and agriculture.**

<u>APPLICANT'S FINDING:</u> This submittal requests an exception to Goal 4 applicable to lands subject to the proposed exceptions statement. Full analysis of the Goal 4 exception can be found in Section B below.

<u>COUNTY COURT FINDING:</u> Goal 4 exception criteria are addressed in Section B.6 below.

5. **<u>Goal 5 – Open Spaces, Scenic and Historic Areas and Natural Resources</u> provides for the conservation and protection of natural and scenic resources. The Plan and LUDO have been acknowledged by LCDC as being in compliance with the statewide planning goals, so in this post acknowledgement process the county is entitled to rely on its acknowledged inventory of Goal 5 resources to determine if any Goal 5 resources are present at or near the proposed exception area.**

<u>APPLICANT'S FINDING:</u> EPD 8 protects Big Game. According to staff the portion of the Low Elevation Big Game Winter Range (LEBGWR) affecting the proposed exception area has been further determined to be impacted. The LEBGWR requires the applicant to be made aware of voluntary siting standards when the Oregon Dept of Fish & Wildlife (ODFW) deems resource values to be present. The impacted Areas in the Transition Lands Study Areas (this area) are listed by Section 3.920 C as exempt from Division 8 – Sensitive Wildlife Habitat Overlay (SWHO) provisions. Approval of the requested exception and rezone is therefore consistent with the Goal 5 protection afforded by Division 8—SWHO, more specifically, the portion of this overlay known as the Impacted Area of the LEBGWR.

<u>COUNTY COURT FINDING:</u>

- Wasco County GIS data indicates that the entire parcel is designated as Impacted Low Elevation Big Game Winter Range in the Transition Lands Study Area.

- An email from Keith Kohl, District Wildlife Biologist dated October 2, 2008 indicates that the Department of Fish and Wildlife has concerns regarding the proposed rezone. Specifically, Mr. Kohl indicated that currently, the lands north of Dry Creek Road already have the potential to be impacted by dwellings (due to existing zoning designations). Mr. Kohl states that this rezone could potentially set the stage for additional rezones on the south side of Dry Creek Road, which could further diminish the wildlife values in this area. Mr. Kohl stated that west and south facing slopes are important for Big Game Winter Range because the snow melts off of these slopes first.

- The Planning Guidelines of Goal 5 indicate that development should be planned and directed so as to conserve the needed amount of open space. Additionally, Fish and wildlife areas and habitats should be protected and managed in accordance with the Oregon Wildlife Commission's fish and wildlife management plans.

- The location of the subject parcel between large tract forestry land to the southwest and residential uses to the northeast places unique concerns on this property. Currently, this property provides a buffer between large-lot forestry lands and residential land that is important for the continued protection of Big Game Winter Range.

- These circumstances, along with concerns expressed by Department of Fish and Wildlife Staff must be weighed when evaluating the need for additional non-resource land.

- The Court finds that without clear documentation that the proposal will provide sufficient protection to the Sensitive Wildlife Habitat Overlay, it **cannot** find the request in compliance with Goal 5.

6. <u>Goal 6 – Air, Water, and Land Resources Quality</u> exists to maintain and improve the quality of these resources.

<u>APPLICANT'S FINDINGS:</u>

- Air – The proposal is in a rural area and uses will be limited to maintain the rural nature of the site. Nothing in the proposed project area will trigger the need for any air quality permitting by the state or federal government or result in the deterioration of air quality.

- Water – No streams, creeks, ponds, wetland, or lakes exist on land affected by this proposal. Approval will have no affect on water resources.

- Land – No land division or development is being requested, thus no change in land quality will occur. Future rural residential use will be required by law to be developed in accordance with all government environmental policy rules to assure protection.

<u>COUNTY COURT FINDING:</u>

- The applicant indicates that "Approval" (of the request) will have no adverse affect on water resources.

- Wasco County Planning Staff contacted Robert Wood, District 3 Watermaster for the Department of Water Resources and Kate Merrick, Watershed Council Coordinator for the Wasco County Soil and Water Conservation District to gain their expertise in water resources in the area.

- Both Mr. Wood and Ms. Merrick indicated that groundwater aquifers in the Mosier Area have shown noticeable declines in the past several years. Emails from Mr. Wood (dated September 23, 2008) and Ms. Merrick (dated September 22, 2008) advised that the US Geological Survey / Mosier Watershed Council is currently studying the cause of declining water resources as well as the potential effects of those declines on existing groundwater wells.

- Staff conducted a brief buildable lands analysis on property located to the north and east of the subject property. This analysis area included tax lots within two-miles of the DesJardins property that were zoned for non-resource uses (FF-10, RR-5, RR-10) and located outside of the Columbia Gorge National Scenic Area. The analysis area encompassed approximately 2,085 acres and included approximately 286 tax lots. Staff researched

Wasco County Assessor Records and Wasco County Address records to approximate the number of dwellings as well as the number of undeveloped lots within the analysis area. Research revealed that approximately 95 of the 286 total taxlots are currently undeveloped. A map showing this analysis area is included below:

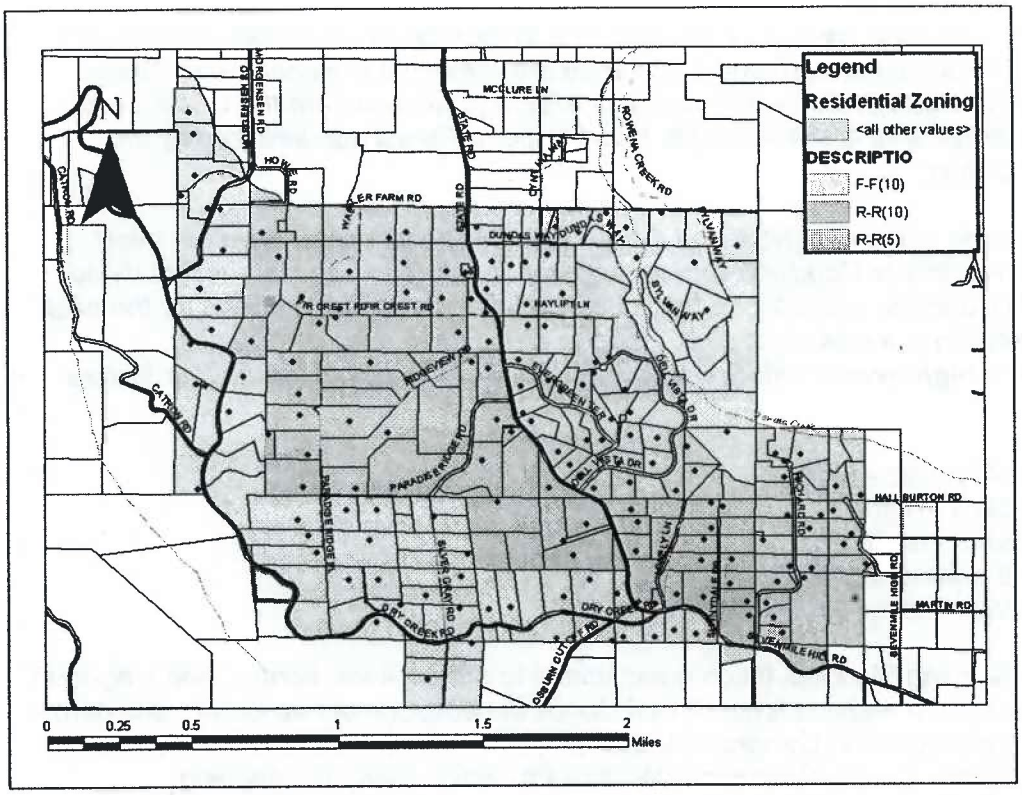
- The applicant provided testimony collected from Gay Jervey, Registered Geologist, refuting evidence presented by staff that the proposed rezone could potentially pose adverse impacts to groundwater resources in the area. The applicant cites that although declining water wells are being observed in the Mosier area, wells deepened sufficiently to tap into the pillow basalt at the base of the flow will remain fairly steady. Therefore, the addition of one residential well in the area would have no adverse impacts on the groundwater resource.

- Furthermore, the applicant provided groundwater recharge data provided by Mr. Dave Morgan, USGS as follows:

  - Parcel Size: 7.8 acres
  - Average Annual Rainfall 27"
  - Total Water Per Year 5,718,692 gallons per year
  - Estimated Recharge Rate 11.11%
  - Estimated Gallons of Recharge 635,410
  - Estimated Residential Water Usage 500 g per day (182,500 g per year)
  - Estimated Net Gain to Ground Water 452,910 g per year

- This data indicates that even with the maximum allotment of 500 gallons per day (total of 182,500 total gallons per year) being drawn from a residential well, the net groundwater recharge on the property of approximately 452,910 gallons per year shows that the single residential well as proposed will not adversely impact nearby groundwater resources

- The County Court finds that in light of the conflicting evidence proposed by staff and the applicant, there is not sufficient information to determine whether or not one new ground water well for a single family residence would pose an adverse impact to the groundwater resources in the area. Therefore, without additional data or analysis, it is inconclusive whether the request as proposed complies with Goal 6



7. **Goal 7 – Areas Subject to Natural Disasters and Hazards exists to "protect life and property from natural disasters and hazards."**

APPLICANT'S FINDING: The lot requested for change is not identified or inventoried as a natural hazard area and there is no development proposed in an identified natural disaster or hazard area. Compliance with Goal 7 will be maintained by the proposed exception and rezone.

COUNTY COURT FINDING:

- A letter submitted by David Jacobs, Unit Forester for the Oregon Department of Forestry on September 25, 2008 advised that this area is part of Wasco County's wildland urban interface and is identified as a critical concern area in the Community Wildfire Protection Plan and an Extreme Wildfire Hazard Zone through the SB-360 planning process. Mr. Jacobs expressed concerns that since most fires in this area are human caused, the applicant's intent to build a home on the property will amplify the problem of putting homes and landowners at risk from fire.

- Staff researched the Wasco County Community Wildfire Protection Plan and found that the subject property is within Zone 1 of the Plan. Below are excerpts from the Community Wildfire Protection Plan

  Zone 1 is located in the northwest portion of the county. It is bordered to the south by Zone 3, to the east by US Route 197, to the north by the Columbia River and the west by the county line. It is the smallest zone but represents some of the most complex wildfire hazards and risks. Two incorporated cities are within the zone, The Dalles and Mosier. The zone is protected by two fire districts, Mid Columbia Fire and Rescue and the Mosier Rural

Fire Department. The zone, except for the very eastern portion, is within the ODF protection boundary. Portions of the northern part of the zone are within the Columbia River Gorge National Scenic Area (CRGNSA) which receives wildfire protection from the USDA Forest Service. An additional area is within the Mt. Hood National Forest administered by the Barlow Ranger District.

Zone 1 lands outside of the CRGNSA and the Mt. Hood National Forest have not been mapped for Fire Regime or Condition Class. However, it is safe to say that most of these lands are also in Condition Class 2 or 3 because of wildfire suppression efforts for the past 100 years. Vegetation is a mixture of pine, Douglas fir, oak and open grasslands. Zone 1 received a ***high overall wildfire risk*** *with a total of 174 points for the four factors considered:*

Ignition Risk 40 points - High
Hazard 74 points - High
Values 50 points - High
Protection 10 points - Moderate
Total 174 – High Overall Risk Rating

- Wasco County Planning Staff has taken great strides to protect lives, homes, and long-term timber investments from wildland fires. This includes the adoption of Fire Safety Standards throughout the unincorporated portions of the County, involvement with the creation and adoption of the Wasco County Community Wildfire Protection Plan, and ongoing communication with the State Fire Marshall, Oregon Department of Forestry, and local responders. However, the Fire Safety Standards can only partially mitigate the potential for additional damage associated with new dwellings in or near areas that are sensitive to wildland fires.

- At this time, it is appropriate to determine if the County is willing to assume the added risk associated with a potential dwelling in such close proximity to existing forest lands.

- In light of the comment from Mr. Jacobs cited above, the high overall wildfire risk in this area according to the Wasco County Community Wildfire Protection Plan, and the buildable lands research above, where approximately 95 vacant taxlots within two miles of the subject property could potentially be developed for residential purposes, Planning Commission finds that the potential risks associated with the proposal outweigh the potential benefits. Therefore, Planning Planning Commission finds that the request as submitted **does not** comply with Goal 7.

8. **<u>Goal 8 – Recreation Needs</u> is designed to "satisfy the recreational needs of the citizens of the state and visitors and, where appropriate, to provide for the siting of necessary recreational facilities, including destination resorts."**

<u>APPLICANT'S FINDING:</u> Not applicable because the property includes no lands of broad recreational value.

<u>COUNTY COURT FINDING:</u> Concur with applicant's finding.

9. **Goal 9 – Economic Development is to "provide adequate opportunities throughout the state for a variety of economic activities vital to the health, welfare, and prosperity of Oregon citizens."**

APPLICANT'S FINDING: Current zoning precludes the possibility for residential development. The requested change in zoning will allow development in accordance with the FF(10) zone. Any structural development that occurs will increase the value of the land and directly improve the economy of the area correspondingly. A change in zone will allow the consideration of a non-farm dwelling as a conditional use.

COUNTY COURT FINDING:

- Goal 9 states that Comprehensive Plans and policies shall contribute to a stable and healthy economy in all regions of the state. Such plans shall be based on inventories of areas suitable for increased economic growth and activity after taking into consideration the health of the current economic base; materials and energy availability and cost; labor market factors; educational and technical training programs; availability of key public facilities; necessary support facilities; current market forces; location relative to markets; availability of renewable and non-renewable resources; availability of land; and pollution control requirements.

- The Court also finds that additional dwellings without consideration of the economic factors mentioned above does not in itself meet the intentions of Goal 9.

- With the conflicting information regarding the availability of groundwater resources in the area provided by Planning Staff and the applicant, the County Court finds that there is not sufficient information to determine the effects of one additional residential well in the area.

- The Court notes that commercial forestry is a substantial part of the economy in this area, requiring special consideration when proposing new economic development opportunities. Increase in fire danger could reduce economic viability of adjacent timber lands, which are on a 40 year investment cycle.

- With that said, the proposed rezone as requested could potentially comply with Goal 9. However other considerations regarding potential impacts to existing economic engines would need to be analyzed further. However, until this information is provided, The Court finds the request as submitted **does not** comply with Goal 9.

10. **Goal 10 – Housing provides for the housing needs of citizens of the state.**

APPLICANT'S FINDING: Current zoning precludes the possibility for a homesite. The requested change in zoning will allow development in accordance with the FF(10) zone, which allow the consideration of a non-farm dwelling as a conditional use. This could provide one additional single-family housing unit that is not provided now under the current zoning.

COUNTY COURT FINDING: The Court concurs with the applicant that the application as proposed could potentially increase the number of dwellings in the area by one. However, in light of information gleaned through the previously discussed buildable lands study, the number of vacant properties in the area that are currently zoned for non-resource use suggests that there is adequate housing existing in this portion of the County. Without additional information

proving there is an unmet need of vacant residential properties the Court finds the request as submitted **does not** comply with Goal 10.

11. <u>Goal 11 – Public Facilities and Services</u> requires the planning and development of an orderly and efficient arrangement of public facilities and services to serve as a framework for urban and rural development.

<u>APPLICANT'S FINDING:</u>

- **Transportation** – Transportation impacts are addressed as part of Goal 12 (below).

- **Police** – Police protection is provided by the Wasco County Sheriff or the Oregon State Police. The change in plan and zone classification will not significantly impact the current level of these services, if any.

- **Fire Protection** – The property is with the Mosier Rural Fire Department' service area. Mutual aid is available from other surrounding districts if necessary. The proposed change is not expected to generate any increase in demand for these services. No conditional use permit for a dwelling will be granted by the County without applying jurisdictional fire safety standards. This is currently the case and will be the case if the exception and rezone are approved. Any on-site water provision requirements beyond the need to locate within the fire district will be dealt with based on size of dwelling when and if a dwelling is permitted. Defensible space shall be provided for when siting any resulting home and will be required to be maintained by condition of approval under review by the fire district. (See Rezone application submitted herewith for further analysis.)

- **Health** – Emergency services exist and are requested through 911. The proposed change is not expected to significantly generate any increase in demand for these services.

- **Sewer** – No public sewer system is available. Any future service would be required to be on-site and abide by all rules for same.

- **Water** – No public water is available. Future service would be from a domestic well to be drilled, which will not impact existing water rights or significantly deplete ground water resources.

- **Power** – Public power is available. The proposed change is not expected to significantly generate any increase in demand for this service.

- **Schools** – The proposed change is not expected to significantly generate any increase in demand for this service.

<u>COUNTY COURT FINDING:</u>

- **Police:** The proposed exception and zone change would result in the potential for one additional dwelling. Past discussions with the Wasco County Sheriff's Department indicate that the development of one dwelling in this area would not generate excessive demand for law enforcement or police protection.

- **Fire:** The applicant accurately conveyed requirements of the Wasco County Fire Safety Standards. However, information gleaned from the Wasco County Community Wildfire Protection Plan indicates that most fires in this area are human caused. Therefore, the addition of a dwelling in this location does increase the risk of wildland fires that could affect adjacent 40-year cycle forest resources, nearby homes, and lives. The full Staff analysis of potential impacts to Fire Safety were previously addressed in Section IV.A.9 of this report.

- **Health:** The proposed exception and zone change would result in the potential for one additional dwelling. Past discussions with the Wasco County 911 system providers indicate that the development of one new dwelling in this area would not generate excessive demand for emergency services.

- **Sewer:** Any future division or development of the exception area for residential purposes will require approval from the Wasco Sherman Health Department prior to construction of any sub-surface septic system. This will ensure that no adverse affects to the area occur due to inadequate septic systems.

- **Schools:** The proposed exception and zone change would result in the potential for one additional dwelling in the area. Previous discussions with School District 21 indicate that the addition of one new dwelling in this area would not negatively affect the District 21 schools.,

12. Goal 12 – Transportation is to "provide and encourage a safe, convenient and economic transportation system." It is implemented by LCDC's Transportation Planning Rule (TPR), OAR 660-12.

APPLICANT'S FINDINGS: The proposed change is not expected to significantly generate any increase in demand for this service. Possible future addition of one single-family home is unlikely to cause any appreciable increase in traffic or road maintenance.

COUNTY COURT FINDING: The proposed rezone and exception would result in the potential for one additional dwelling. To ensure no adverse effects occur, any new residential development would require a Road Approach Permit from the Wasco County Road Department. This ensures no adverse effects on traffic are caused from additional residential development.

13. Goal 13 – Energy Conservation provides that land and land uses shall be managed to maximize the conservation of all forms of energy based on sound economic principles. It is implemented by local plans and regulations that control location, orientation, and density of development to minimize net energy consumption. Conservation measures are generally of two types: (1) development of energy resources, and (2) wise use of energy.

APPLICANT'S FINDING: The proposed change is not expected to significantly generate any increase in the consumption of energy. The possible future addition of one single-family home is unlikely to cause any appreciable increase in energy consumption.

COUNTY COURT FINDING: Concur with applicant's finding.

14. **Goal 14 – Urbanization requires that comprehensive plans provide for an orderly and efficient transition from rural to urban use. It requires that urban growth boundaries (UGBs) be established around incorporated cities through a cooperative process with surrounding counties to assure compact and efficient urban growth within the boundary while protecting and facilitating rural resource uses outside the boundary. It directs urban level of development to be located inside acknowledged UGBs. It also requires that development allowed out side UGBs be limited to rural uses and provides definitions of acceptable rural use.**

APPLICANT'S FINDING: The FF-10 plan and zone classification is an adopted non-resource zone found to comply with Goal 14. Uses proposed in this request comply with the limits on residential use listed in the FF(10) zone to assure uses are rural in nature. Goal 14 compliance is achieved in this manner.

COUNTY COURT FINDING: The County reviewed its rural zoning and amended its rural non resource zones to comply with Goal 14. The amended rural non-resource zones (including the F-F (10) zone) were reviewed and adopted through the Periodic Review Process with DLCD. The Court finds that the apparent availability of vacant tax lots in the area that are already designated for non-resource uses, along with concerns regarding fire safety and forestry resources indicate that this parcel is best suited to retain its Forestry Resource designation. Therefore, without further information showing that the proposal is necessary to provide adequate urbanized areas for the county, The Court finds that the request **does not** comply with Goal 14.

B. STATE RULES AND STATUTES: REQUEST FOR AN EXCEPTION TO GOAL 4

1. **A request for an exception to a Statewide Land Use Goal is a request for flexibility.**

   OAR 660-004-0000

   (2) An exception is a decision to exclude certain land from the requirements of one or more applicable statewide goals in accordance with the process specified in Goal 2, Part II, Exceptions. The documentation for an exception must be set forth in a local government's comprehensive plan. Such documentation must support a conclusion that the standards for an exception have been met. The conclusion shall be based on findings of fact supported by substantial evidence in the record of the local proceeding and by a statement of reasons which explain why the proposed use not allowed by the applicable goal should be provided for. The exceptions process is not to be used to indicate that a jurisdiction disagrees with a goal.

   (3) The intent of the exceptions process is to permit necessary flexibility in the application of the Statewide Planning Goals. The procedural and substantive objectives of the exceptions process are to:

(a) Assure that citizens and governmental units have an opportunity to participate in resolving plan conflicts while the exception is being developed and reviewed; and

(b) Assure that findings of fact and a statement of reasons supported by substantial evidence justify an exception to a statewide Goal.

APPLICANT'S FINDING: Subject property is part of a recorded subdivision that is currently in the FF(10) zone on the north and northwest side of Dry Creek Road and would otherwise be available for development in accordance with those neighboring properties in that subdivision except for the inclusion of the property in the F2(80) zoning on the south and southeast side of Dry Creek Road which currently serves as the common zone boundary. Keeping the 7.8-acre property in the F2(80) zone prohibits the owner from enjoying the same privileges of use as the neighboring property owners in the subdivision. Soils conditions and size of the property make it unsuitable for resource use, being a small 7.8-acre parcel characterized by 100% uncultivable Hession-Skyline complex 5-40% slopes, which is listed in the Wasco County Soil Survey as a non-irrigated Class 7 soil. The owner desires to utilize the property for recreational/residential activities in accordance with FF(10) zoning policy. At the present time in history according to the attached correspondence from Real Estate professionals, there is a need for small acreage vacant lots. Changing the zoning to FF(10) would not result in any new lot, as the size of the lot is less than the minimum allowed in the FF(10) zone. Being a "grandfathered" lot in the zone would allow the lot to be considered for a non-farm/forest dwelling. A dwelling in conjunction with farm or forest use would never be allowed due to the poor soils conditions and sizes of the parcel which would prevent viable farm or forest income to enable a dwelling approval. Attached hereto as Exhibit H are letters describing need from local Realtors which support this change.

NOTE: All referenced "Exhibits" provided by the applicant are included in the County Court Packet.

COUNTY COURT FINDING:

- As stated by the applicant, the subject property is a portion of Lot 9, Fairview Orchard Tracts Subdivision. When filed with the Wasco County Assessor's Office in April 6, 1910, Lot 9 included approximately 20.10 acres. Subsequently, Lot 9 was bisected by Dry Creek Road resulting in two properties comprised of 7.56 acres (2N 12E 20 4300 (subject property)) and 10.9 acres (2N 12E 20 4400). Both of these parcels were determined to be legally created in 1981 as described in a Notice of Decision issued by this office on April 24, 1992. Currently, tax lot 4400 is zoned F-F (10) while tax lot 4300 is zoned F-2 (80).

- The Court concurs with the applicant's findings regarding soils composition on the site.

- In light of the applicant's comments regarding the "need for small acreage vacant lots" in this area, Staff analyzed the surrounding area for vacant lands where one could apply for a dwelling. The study area, methodology, and results of this evaluation are detailed below.

Buildable Lands Analysis

1. Analysis Area:
   Wasco County utilized GIS zoning maps to select an appropriate analysis area. To that extent, Staff chose to include non-resource zones located within two (2) miles of the

subject property. Staff excluded any resource zoned lands (F-2, and A-1) and also excluded all areas within the Columbia Gorge National Scenic Area.

This analysis area resulted in a total of 286 tax lots that were zoned either Rural Residential (R-R (10) or R-R (5)) or Forest-Farm (F-F (10)).

It should be noted that this analysis is cursory in nature. Several factors could potentially increase or decrease the actual number of buildable lots within the analysis area. Some of these factors include:

- Legality: Staff made no analysis of whether or not the tax lots in this analysis were legally created parcels. If a tax lot within the analysis area was not legally created, then it may not be developable. This factor could potentially decrease the number of "buildable parcels" in the analysis area.

- Multiple Legal Parcels Under One Tax Lot: It is possible for a single tax lot to contain multiple legal parcels. This could occur if a parcel was partitioned or otherwise legally divided, but the deeds were not changed to reflect the new parcels. Staff made no analysis of whether or not there were multiple parcels within the existing tax lots. This factor could potentially increase the number of "buildable parcels" in the analysis area.

- Future Land Division: Staff made no attempt to analyze the potential for existing taxlots to be replatted or partitioned to the maximum allowable density. This factor would likely increase the number of "buildable parcels" in the analysis area.

A more complete and in depth buildable lands study would provide more accurate information on the existing buildable lands in the area. It should be noted that the Planning Department has included a Buildable Lands Study as one project within the Long Range Planning Projects reviewed by the Wasco County Court. Since the complete Buildable Lands Study has not been performed, the Planning Commission finds that the analysis as outlined in this report does provide enough detail and repeatability to be utilized as described.

2. Methodology:
Staff utilized Wasco County GIS data, Wasco County Assessor's records, and the Wasco County Address database to evaluate the analysis area described above. This was done by compiling the site (situs) address assigned to each taxlot by the Wasco County Assessor's Office and comparing those to the addresses issued by the Wasco County Planning Department.

For this test, Staff presumed that if a taxlot had an address that had been assigned by either the Assessor, **OR** the Planning Department, then it was already built-out.

This presumption likely decreased the number of vacant, "buildable parcels" in the study area because it is possible to have an address without having a dwelling on the property.

However, it is very unlikely to have a legally placed dwelling that lacks an address issued by either the Planning Department or the Assessor's Office.

Therefore, Staff believes that this test offers a conservative estimate on the number of vacant, buildable lots in the analysis area. Planning Commission members agree with this estimate.

3. Results:
Through the methodology described above, Staff found that there are approximately 95 taxlots in the analysis area that currently do not have an address. Those taxlots represent approximately 33% of the total (286) taxlots found within the analysis area.

2. It is possible to rezone resource land (Goal 4 Forest Land) to a nonresource zone if an exception to the goal is supported, approved, and documented. No exception is necessary to accommodate nonfarm uses that can be allowed on Goal 4 land.

660-004-0010

Application of the Goal 2 Exception Process to Certain Goals

(1) The exceptions process is not applicable to Statewide Goal 1 "Citizen Involvement" and Goal 2 "Land Use Planning." The exceptions process is generally applicable to all or part of those statewide goals which prescribe or restrict certain uses of resource land or limit the provision of certain public facilities and services. These statewide goals include but are not limited to:

(a) Goal 4 "Forest Lands"; however, an exception to Goal 4 "Forest Lands" is not required for any of the forest or nonforest uses permitted in a forest or mixed farm/forest zone under OAR chapter 660 division 006, "Forest Lands"

COUNTY COURT FINDING: The requested exception is not for Goal 1 "Citizen Involvement" or Goal 2 "Land Use Planning". As presented, the requested exception will allow for the conversion of Goal 4 protected lands to a non-resource zone, which would potentially allow for one additional residential dwelling. The requested exception is not for uses that are currently permitted in the forest zone.

C. Different kinds of exceptions are defined by state statute and rule. The three different types are:

- **Developed exceptions – which are justified by findings that the subject parcel is physically developed to the point where resource use is no longer practicable.**
- **Committed exceptions – which are justified by findings that the nature of nearby physical development makes resource use impracticable.**
- **Reasons exceptions – which are justified by findings that a need for development in the proposed location is sufficient to warrant the**

requested flexibility and where the proposed location compares favorably with other possible locations that would or would not require the same flexibility.

APPLICANT'S FINDING: This request is for an Irrevocably Committed Lands Exception to goal 4 (Forest Lands).

Commercial forest use of the proposed exception area is not practicable, primarily from the standpoint of its size, poor soil capability and isolated location from such lands that are currently in timber production. Leaving the parcel in the F2(80) zone will not change these circumstances. An earlier exception taken for Goal 4 for similarly sized property found that the local State Dept of Forestry (ODF)Stewardship Forester (Doug Thiesies) confirmed that such land does "*not meet ODF practice standards for productivity so would not be used for forestry in the future.*" In that instance, it was found that "*nearly 100 percent of the exception area consists of class seven (7) soils, unsuitable for forest production.*" The subject exception site is 100 percent class seven soil. Lands to the immediate west are of the same soil capability class, thus conversion from rangeland of such area to timber production is extremely unlikely. The rural residential uses emerging within the existing Fairview Orchard Tracts precludes the conversion of those lands to such use and would pose incompatibility problems should the immediate adjacent area be so converted, thus showing the impracticality of the use of the site for timber production even if the soils were suitable for such use. The ODF will have the opportunity to comment regarding this particular site when it will receive the planning departments request for comment prior to the public hearing.

COUNTY COURT FINDING:

- The applicant cited an earlier exception to Goal 4 for property located on the north side of Dry Creek Road (Wasco County Planning Department file numbers CPA-07-102, EXC-07-101, and ZNC-07-101). The applicant notes that "local State Dept of Forestry (ODF) Stewardship Forester (Doug Thiesies) confirmed that such land does '*not meet ODF practice standards for productivity so would not be used for forestry in the future.*'" Planning Staff noted that Doug Thiesies did not comment on this particular application. Additionally, it should be noted that the property that was rezoned via CPA-07-102, EXC-07-101, and ZNC-07-101 was located on the north side of Dry Creek Road. Thus it was separated from larger forestry operations by a public road, which has been known to serve as a topographical fire fuel break.

- The Court members agree that the subject parcel is poorly suited to sustain commercial forestry practices by itself. The parcel is small in size and is completely composed of soils that are classified as Class VII. However, correspondence with David Jacobs, Unit Forester, Oregon Department of Forestry indicated that this property is viewed as "adjacent lands or nearby lands which are necessary to permit forest operations or practices". Staff agrees with Mr. Jacobs and regards this property as "adjacent lands". In light of comments from the Department of Forestry, Staff finds that this property is not irrevocably committed. Rather, it serves as "adjacent or nearby lands which are necessary to permit forest operations or practices".

- The exception statement is attached as **Attachment C.**

D. Exception Statement Required - Documentation supporting the exception must be adopted as part of the county's comprehensive plan.

660-004-0015
Inclusion as Part of the Plan
(1) A local government approving a proposed exception shall adopt as part of its comprehensive plan findings of fact and a statement of reasons which demonstrate that the standards for an exception have been met. The applicable standards are those in Goal 2, Part II(c), OAR 660-004-0020(2), and 660-004-0022. The reasons and facts shall be supported by substantial evidence that the standard has been met.

COUNTY COURT FINDING: The applicant has submitted an Exception Statement that includes his statement of reasons demonstrating that the standards for an exception have been met. The Applicant's Exception Statement is included as **Attachment C**. However, The Court finds that the applicant has not submitted sufficient information to justify increased risks to fire safety, and forestry resources. Justifications for this finding are located throughout this report.

E. LIMITATIONS TO THE EXCEPTION AND REQUIRED JUSTIFICATION

660-004-0018 Planning and Zoning for Exception Areas

(2) For "physically developed" and "irrevocably committed" exceptions to goals, residential plan and zone designations shall authorize a single numeric minimum lot size and all plan and zone designations shall limit uses, density, and public facilities and services to those:

(a) that are the same as the existing land uses on the exception site;
(b) that meet the following requirements:
1. The rural uses, density, and public facilities and services will maintain the land as "Rural Land" as defined by the goals and are consistent with all other applicable Goal requirements; and
2. The rural uses, density, and public facilities and services will not commit adjacent or nearby resource land to non-resource use as defined in OAR 660-004-0028; and
3. The rural uses, density and public facilities and services are compatible with adjacent or nearby resource uses.

COUNTY COURT FINDING:

- The proposed exception and zone change will reclassify the subject parcel from F-2 (80) to F-F (10).

- As stated in Section XIV.A.4 of the Wasco County Comprehensive Plan, "The Forest-Farm zone is intended to protect existing forest and farm uses and to preserve open space. Important forest uses in this zone are those associated with wildlife, recreation, and open space as opposed to timber production. This zone would comply with criterion (2)(b)1.

- The Court finds that the small size of the subject parcel would not necessarily commit adjacent or nearby resource land to non-resource use, but it may increase the interest in

rezoning similar properties in the area from resource to non-resource zones. This has been demonstrated by the applicant indicating that he contacted an adjacent property owner to co-apply for the requested zone change and exception.

- Additionally, increased residential development on the subject site could potentially increase the risk of human caused fire impacting long-term (40-year cycle) forestry investments.

- As discussed in this report, The Court finds that the proposed density and services associated with the proposed exception are not compatible with adjacent resource uses. Planning Commission concurs with Mr. David Jacobs assessment that the subject property provides "adjacent or nearby lands which are necessary to permit forest operations or practices".

F. EXCEPTION REQUIREMENTS

660-004-0028

(1) A local government may adopt an exception to a goal when the land subject to the exception is irrevocably committed to uses not allowed by the applicable goal because existing adjacent uses and other relevant factors make uses allowed by the applicable goal impracticable.

APPLICANT'S FINDING: Commercial forest use of the proposed exception area is not practicable, primarily from the standpoint of its size, poor soil capability and isolated location from such lands that are currently in timber production. Leaving the parcel in the F-2(80) zone will not change these circumstances. An earlier exception taken for Goal 4 for similarly sized property found that the local State Dept of Forestry (ODF)Stewardship Forester (Doug Thiesies) confirmed that such land does "*not meet ODF practice standards for productivity so would not be used for forestry in the future.*" In that instance, it was found that "*nearly 100 percent of the exception area consists of class seven (7) soils, unsuitable for forest production.*" The subject exception site is 100 percent class seven soil. Lands to the immediate west are of the same soil capability class, thus conversion from rangeland of such area to timber production is extremely unlikely. The rural residential uses emerging within the existing Fairview Orchard Tracts precludes the conversion of those lands to such use and would pose incompatibility problems should the immediate adjacent area be so converted, thus showing the impracticality of the use of the site for timber production even if the soils were suitable for such use. The ODF will have the opportunity to comment regarding this particular site when it will receive the planning departments request for comment prior to the public hearing.

COUNTY COURT FINDING:

- The applicant cited an earlier exception to Goal 4 for property located on the north side of Dry Creek Road (Wasco County Planning Department file numbers CPA-07-102, EXC-07-101, and ZNC-07-101). The applicant notes that "local State Dept of Forestry (ODF) Stewardship Forester (Doug Thiesies) confirmed that such land does '*not meet ODF practice standards for productivity so would not be used for forestry in the future.*'" The Court notes that Doug Thiesies did not comment on this particular application. Additionally, it should be noted that the property that was rezoned via CPA-07-102, EXC-07-101, and ZNC-07-101 was located on the north side of Dry Creek Road. Thus it was separated from larger forestry operations by a public road, which has been known to serve as a topographical fire fuel break.

- Wasco County Planning Staff reviewed tax assessment records to identify nearby properties currently under forest deferral programs. A total of three parcels are currently under the forest deferral program.

- As previously stated, The Court finds that the location of this property between Dry Creek Road and large-scale forestry uses provides an important buffer between the forestry resource and potential human-induced wildfire ignition sources. This finding is supported by Mr. David Jacobs, Unit Forester for the Oregon Department of Forestry, who indicated in a letter dated September 25, 2008 that the subject property serves as "adjacent or nearby lands which are necessary to permit forest operations or practices".

(2) Whether land is irrevocably committed depends on the relationship between the exception area and the lands adjacent to it. The findings for a committed exception therefore must address the following:

(a) The characteristics of the exception area;

APPLICANT'S FINDING: The property is 7.8 acres of vacant grass land with scattered oak. No merchantable timber is associated with the site. The southeast corner of the property is traversed by a BPA power transmission line and access road. The site, which generally slopes down from the county road to the southwest, is characterized with soils that are unsuitable for commercial farm or forest purposes (all of which is characterized with the Capability Class 7 Hesslan-Skyline complex 5-40% slopes soil classification). The lot was created by deed when Lot 9 of Fairview Orchard Tracts was segregated in two using Dry Creek Road as a common boundary in 1981 prior to the adoption of the resource zoning which would prohibit such under current planning and zoning rules. The scrub oak and grass vegetation is typical of the vicinity.

COUNTY COURT FINDING: Concur with applicant's finding on the specific site itself. However, as previously discussed, The Court finds that the subject property does meet the standard of "adjacent lands or nearby lands which are necessary to permit forest operations or practices".

(b) The characteristics of the adjacent lands

APPLICANT'S FINDING: Lands adjacent to the north, west and south are virtually identical. The land to the west is similar in aspect and vegetation, but part of a larger ownership. This large ownership of 160 acres consists of two 80-acre tax lots. A separate ownership of 80 acres lies adjacent of the 160. Immediately south of the subject site is an 8.9 acre parcel which

was similarly created when Lot 10 of Fairview Orchard Tracts was segregated using the county road as a common boundary. These parcels of Lot 10 are similar in they are predominately rangeland with scattered oak (see aerial photos and soils maps attached, Exhibits C, D, E, J & K).

COUNTY COURT FINDING:

- The subject property is bound to the northeast by Dry Creek Road. This County maintained right of way is approximately 60 feet wide with a road surface between 20 feet and 35 feet wide.

- Current uses on the north side of Dry Creek Road are predominantly large lot residential and include three separate zoning districts including F-F (10), R-R (5), and R-R (10). Lots in this area range in size from approximately 2.5 acres to owner 20 acres in size. Staff conducted a cursory buildable lands analysis of this area by noting all addresses issued by either the Planning Department or Assessor's office on non-resource lands within two miles of the subject property that were outside of the National Scenic Area. This research indicates that of the approximately 286 taxlots in the analysis area, approximately 95 of them are undeveloped. This lead The Court to find that additional dwellings in this area could be located on properties that are already zoned for residential use without new exception areas south of Dry Creek Road.

- Current uses on properties lying to the south and west of the subject property are predominantly comprised of large-lot forestry uses. Few residences are located in this area, and any future development must be in compliance with the F-2 zoning designation.

- A letter from the Department of Forestry states that the subject property is classified as "adjacent or nearby lands which are necessary to permit forest operations or practices."

- According to correspondence with the Wasco County Soil and Water Conservation District and the District Three Watermaster, Planning Commission also notes that this area has experienced noticeable declines in the groundwater table in the area, which has impacted several existing groundwater wells. This information contradicts testimony provided by the applicant regarding groundwater recharge rates and groundwater aquifer stability. Therefore, The Court could not determine whether the request would pose an adverse impact to groundwater resources.

- The Court finds that in this location, the physical barrier to wildland fires provided by Dry Creek Road, along with the reduced access to and large parcel size of the areas lying south of Dry Creek Road dictate that continued protection of forestry resources must be heavily considered.

(c) The relationship between the exception area and the lands adjacent to it; and

APPLICANT'S FINDING: As stated above, the parcel was created as part of a rural residential subdivision for purposes of providing homesites on lots generally ranging in size from 10 to 20 acres where boundary lines followed fractions of section lines. Some of these lots were subsequently re-divided into smaller acreage sizes, as was the parcel from which the subject property was created, and the small acreage parcel to its immediate south. Thus, the intended

use of this property for rural residential activities was made prior to the zoning of the site for resource use. Should a subsequent conditional use permit be approved for a single-family home, fire prevention measures will be required that will provide a sufficient level of protection to the neighboring land. Conditioning the permit in like manner to the previously approved conditional use permit (see attached, Exhibit L) demonstrates this fact.

COUNTY COURT FINDING:

- Planning Staff advised that there are several subdivisions throughout the county, and even in the general vicinity of the proposed rezone, which may no longer be conducive to residential development based on the zoning and the goals of Wasco County as established in the Comprehensive Plan.

- As stated by the applicant, this parcel is a 7.56 acre portion of the originally platted 20.10 acre Lot 9. This could be construed to insinuate that the engineer of the original subdivision intended for there to be only one dwelling on Lot 9.

- The applicant did not address the relationship between the exception area and the lands that it will be "excepted" from. An analysis of the size of nearby properties to the southwest and the existing uses in those areas indicates that this property does in fact serve as "adjacent or nearby lands which are necessary to permit forest operations or practices" as indicated by Mr. Jacobs, Unit Forester for the Oregon Department of Forestry.

- With this in mind, The Court finds that due to existing conditions on the ground in this area, the subject property is more closely related to the Forestry land than it is the residential land to the north.

(d) The other relevant factors set forth in OAR 660-004-0028(6).

APPLICANT'S FINDING:

a. Existing land uses: Adjacent land uses on two sides of the property (north and east) are rural residential in nature and zoning, with density of one unit per 10 acres. Land use to the south and west is large acreage woodland/grazing-land tracts zoned for a density of one unit per 80 acres. The exception to this is the portion of Lot 10 lying west of Dry Creek Road that was also placed in the F2(80) zoning district.

b. Existing facilities and services: Public facilities and services are sufficient to serve the subject property. County road access and electrical power and telephone are available. No new public services would be required.

c. Ownership pattern: The 5 and 10 acre parcels east of Dry creek road adjacent to the site is separately owned and predominately developed as rural residential homesites. Although the subject parcel is separated from the FF10 zoning by the location of Dry Creek Road, it is consistent in character and size with these other zoned lands and is separately owned and desired by the owner for use as a homesite. Most importantly, the parcel is part of the subdivision that created the rural residential opportunities that are provided within it. The road providing access to this subdivided lot is a dedicated and maintained county road. So this is not a case where an ancient undeveloped plat was recorded with un-constructed accesses. This is a recorded subdivision with developed access to each lot. Soil and size

limitations of the parcel virtually preclude the possibility of any kind of successful commercial resource use of the property and it is not viable for inclusion in a commercial timber operation in the F2(80) zone of which it currently is a part, being adjacent to an 80 woodland/grassland tract. Inclusion of 7.8 acres of non-viable land to a larger ownership would not enhance the resource by making it viable due to its inclusion. The public would be better served by rezoning it to be consistent with the other lots in the subdivision of which it is a part.

d. Neighborhood characteristics: The proposed rezone of FF(10) would maintain consistency with the neighboring land uses and zoning. The lot cannot be further divided as it already is smaller than the 10-acre minimum required in the zone. It would also be perfectly consistent with the original intended use of the property for rural residential activities given its creation as part of the lot within the Fairview Orchard Tracts subdivision, which contains other lots that have developed homesites.

e. Natural or man made impediments and physical development: The county road borders the property to the east, providing immediate ingress and egress to a public road. A BPA transmission line traverses the property at its southwest. A limited access power line road traverses a portion of this area of the property paralleling the transmission line. The location of the easement and power lines at the southern extremity of the property leaves sufficient area for locating a home, well, and on-site septic drainfield system. The previously approved conditional use permit for the non-forest dwelling demonstrates this fact. A drawing (See Application Materials) is attached that shows the location of the easement and the acreage of the parcel that lies to its north, where the previous homesite approval was given, and where the current owner would utilize should a similar approval be granted in the future after this exception is allowed.

COUNTY COURT FINDING:

a. Concur with applicant's finding (a).

b. Concur with applicant's finding (b).

c. The subject property is a portion of Lot 9, Fairview Orchard Tracts. That subdivision shows that the original access point was from a north-south running access easement between Lot s 8 and 9 (approximately 520 feet east of the subject property.) Additionally, the remaining 10.9 acre portion of Lot 9 is already zoned F-F (10) and a Conditional Use Permit for a dwelling could currently be requested on that property. The Court does not necessarily agree that the original design of the Fairview Orchards Subdivision intended for there to be two dwellings on Lot 9. Finally, The Court previously found that the subject property serves as "adjacent or nearby lands which are necessary to permit forest operations or practices." It is agreed that the property, when considered by its self, is not conducive to sustain forestry practices. However, it does serve to protect the forestry resources it is a part of by limiting the potential for human caused fires in the area.

d. As previously stated, The Court finds that this portion of Lot 9 serves as "adjacent lands which are necessary to permit forest operations". The remaining portion of Lot 9 lying on the east side of Dry Creek Road is intended to be utilized as set forth in the Forest-Farm zone of the Wasco County Land Use and Development Ordinance.

e. The applicant mentioned the issuance of a Conditional Use Permit for a non-forest dwelling. That Conditional Use Permit (CUP-92-105) was approved subject to conditions by this office on April 24, 1992. When that application was submitted, the subject property was zoned F-2 (40). At that time, the Wasco County Land Use and Development Ordinance allowed Single-Family Dwellings subject to certain Conditional Use criteria. Planning Staff noted that if the dwelling were constructed as requested, then it would now be a legally established non-conforming use. However, no subsequent application for a building permit was requested for this dwelling. Therefore, the approval expired on October 24, 1993. Since that time, the zoning designation for this property was changed to F-2 (80) and the provisions for requesting non-forest dwellings have been changed to preclude a dwelling on this property. These changes in allowances for dwellings in the F-2 (80) zone indicate intent from the County to preclude residential development on parcels such as this. Additionally, other changes in the available data indicate that further residential development in this area may not be the best use of the land. These changes include:

1. Wasco County Community Wildfire Protection Plan: This protection plan identified and prioritized areas in the county with high levels of wildfire hazards developed strategies to reduce these hazards. The plan identified this area as being within Zone 1. Zone 1 is located in the northwest portion of the county. It is bordered to the south by Zone 3, to the east by US Route 197, to the north by the Columbia River and the west by the county line. It is the smallest zone but represents some of the most complex wildfire hazards and risks. Two incorporated cities are within the zone, The Dalles and Mosier. The zone is protected by two fire districts, Mid Columbia Fire and Rescue and the Mosier Rural Fire Department. The zone, except for the very eastern portion, is within the ODF protection boundary. Portions of the northern part of the zone are within the Columbia River Gorge National Scenic Area (CRGNSA) which receives wildfire protection from the USDA Forest Service. An additional area is within the Mt. Hood National Forest administered by the Barlow Ranger District. The Department of Forestry indicated in a September 25, 2008 letter that the area where this parcel is located is classified as Extreme Wildfire Hazard Zone. Department of Forestry Staff further indicates that most fires in this area are human caused and "adding more structures to this area will amplify the problem of putting homes and landowners at risk from fire".

2. Wasco County Fire Safety Standards: The Wasco County Planning Department adopted its Fire Safety Standards on February 5, 2007. The purpose of this ordinance, among other things is to reduce threats to life, safety, property, and resources by improving access to and defensibility of development in rural areas. Planning Staff can utilize the Fire Safety Standards Ordinance to implement these protection measures within areas that are currently suitable for residential development. However, the Planning Commission finds that it is sometimes necessary to limit development in certain zones to offer adequate protection to other uses existing within the zone. As stated in the Wasco County Community Wildfire Protection Plan, most wildland fires in this area are human caused. Additionally, the location and design of Dry Creek Road acts as a physical barrier to fire moving from the large-scale forestry uses into adjacent residential areas. Therefore, in this instance, Planning Commission finds that the most appropriate Fire Safety Measure we can incorporate is to reduce the potential for human caused fires.

With the abovementioned factors in mind, Planning Commission cannot justify the additional risks to surrounding homes and landowners associated with adding the potential for one new dwelling on the subject property.

(3) Whether uses or activities allowed by an applicable goal are impracticable as that term is used in ORS 197.732(1)(b), in Goal 2, Part II(b), and in this rule shall be determined through consideration of factors set forth in this rule. Compliance with this rule shall constitute compliance with the requirements of Goal 2, Part II. It is the purpose of this rule to permit irrevocably committed exceptions where justified so as to provide flexibility in the application of broad resource protection goals. It shall not be required that local governments demonstrate that every use allowed by the applicable goal is "impossible." For exceptions to Goals 3 or 4, local governments are required to demonstrate that only the following uses or activities are impracticable:

(a) Farm use as defined in ORS 215.203;

APPLICANT'S FINDING: The entire property is characterized by uncultivable soil, to wit: Hesslan-Skyline Complex, 5-40% slopes. These soils are described as not being capable of being tilled due to its rocky nature. The small size of the parcel makes it impractical for grazing without being aggregated with large holdings of adjoining rangeland. The adjoining lands are not planned or zoned for farm use. Additionally, the Oregon Dept of Agriculture does not have the property listed as a farm (see e-mail correspondence from Charlene Banta, ODA The Dalles office, Exhibit N).

COUNTY COURT FINDING: Concur with applicant's findings.

(b) Propagation or harvesting of a forest product as specified in OAR 660-033-0120; and

APPLICANT'S FINDING: The lack of merchantable tree species and the historical use of the site for uses other than commercial timber production and the parcel's small size all speak to the unlikelihood of any successful conversion of the property to such resource use. The USDA Soil Survey of Wasco County, Oregon, Northern Part does not describe the Hesslan-Skyline (Type 28E) soil in its chart of Woodland Management and Productivity, which shows its relative unimportance for such usage in the northern Wasco County area

COUNTY COURT FINDING: The Court concurs with the applicant's findings regarding the subject property itself. Poor soils and small parcel size severely limit the potential use of this property for the propagation or harvesting of a forest product. However, as indicated by a letter dated September 25, 2008 from Department of Forestry Staff, the subject property does provide "adjacent or nearby lands which are necessary to permit forest operations or practices."

(c) Forest operations or forest practices as specified in OAR 660-006-0025(2)(a).

APPLICANT'S FINDING: The only adjacent property in a forest tax deferral program is the 80-acre tract west of the subject property. Lands to the north, south and east are not in a forest deferral program (according to Darlene of the Wasco County Assessor's office in a telephone call of July 17, 2008), and do not appear from visual inspection and from aerial photography to

be managed for commercial timber production. That portion of the 80 acre property to the immediate west is similar in nature to the subject site, being scrub oak/grassland (see attached Google Earth aerial photo dated June 29, 2005). Rezoning the subject site will have no impact on the adjacent F2(80) land as that immediate portion of the tract is not timbered, and contains the same soils characteristics as the subject property (see attached soils map, Exhibit K).

COUNTY COURT FINDING: As previously stated, The Court concurs with the applicant's findings regarding the subject property itself. Poor soils and small parcel size severely limit the potential use of this property for the propagation or harvesting of a forest product. However, as indicated by a letter dated September 25, 2008 from Department of Forestry Staff, the subject property does provide "adjacent or nearby lands which are necessary to permit forest operations or practices.

> ***(4) A conclusion that an exception area is irrevocably committed shall be supported by findings of fact which address all applicable factors of section (6) of this rule and by a statement of reasons explaining why the facts support the conclusion that uses allowed by the applicable goal are impracticable in the exception area.***

APPLICANT'S FINDING: This document and the attached exhibits are intended to satisfy this requirement.

COUNTY COURT FINDING: The Court finds that the applicant's submittal, including the exception statement and associated exhibits, **do not** supply sufficient information to comply with criterion 6(4).

> ***(5) Findings of fact and a statement of reasons that land subject to an exception is irrevocably committed need not be prepared for each individual parcel in the exception area. Lands which are found to be irrevocably committed under this rule may include physically developed lands.***

APPLICANT'S FINDING: Zoning a vacant part of a rural residential subdivision for commercial forest use by placing the area west of Dry Creek Road in the F2(80) resource zone effectively prohibits the intended rural residential use of the site for a homesite, while the purpose of the zoning of the site for forest use will likely never be realized for reasons already enumerated above. It is obvious that the property and the other lands within the Fairview Orchard Tracts subdivision were intended for rural residential use at the time those lands were subdivided for such purpose. Subsequent zoning of the site for commercial timber production would appear to have been an error when the mapping of the F2(80) zone was adopted. Had a more detailed review of the soils conditions and ownership pattern been made at that time, it is likely the land would not have been included in the more restrictive district. The location of the road as a physical boundary line was likely used for the zone boundary due to its convenience. Although using roads for zoning boundaries are sometimes employed, in this instance, where roads are required for log haul purposes, using the road for a zoning boundary to separate timber production areas from rural homesites does not provide a buffer between such uses, and therefore does not necessarily provide a means for mitigating incompatible activities between timber practices and rural residential living.

COUNTY COURT FINDING:

- The Court agrees that the subject parcel alone is not well suited for commercial timber production. However, as previously discussed, The Court finds that the parcel does provide "adjacent or nearby lands which are necessary to permit forest operations or practices."

- The Court agrees that the majority of the Fairview Orchard Tracts subdivision is intended for rural residential use, and was therefore zoned either Forest-Farm or Rural Residential. In fact, Lot 9 of the subdivision could potentially be residentially developed to the density originally intended if the portion of Lot 9 on the east side of Dry Creek Road requested and was approved for a dwelling. However, conditions on the ground have changed since the Fairview Orchard Tracts subdivision was recorded that make development of the subdivision as shown in the initial plat map nearly impossible. This includes limited access, steep slopes, and the creation of Dry Creek Road. Specifically, when the subject property was created due to the location of Dry Creek Road, it created one 10.80 acre property on the east side of the road and one 7.56 acre property on the west side of the road. Planning Commission finds that although both parcels were legally created, they are not necessarily offered individual development rights. Finally, The Court finds that in its current, as constructed state, the property zoning boundary between Forest-Farm and Forest in this particular area is Dry Creek Road.

(6) Findings of fact for a committed exception shall address the following factors:

(a) Existing adjacent uses;

(b) Existing public facilities and services (water and sewer lines, etc.);

(c) Parcel size and ownership patterns of the exception area and adjacent lands:

(A) Consideration of parcel size and ownership patterns under subsection (6)(c) of this rule shall include an analysis of how the existing development pattern came about and whether findings against the Goals were made at the time of partitioning or subdivision. Past land divisions made without application of the Goals do not in themselves demonstrate irrevocable commitment of the exception area. Only if development (e.g., physical improvements such as roads and underground facilities) on the resulting parcels or other factors make unsuitable their resource use or the resource use of nearby lands can the parcels be considered to be irrevocably committed. Resource and nonresource parcels created pursuant to the applicable goals shall not be used to justify a committed exception. For example, the presence of several parcels created for nonfarm dwellings or an intensive commercial agricultural operation under the provisions of an exclusive farm use zone cannot be used to justify a committed exception for land adjoining those parcels;

(B) Existing parcel sizes and contiguous ownerships shall be considered together in relation to the land's actual use. For example, several contiguous undeveloped parcels (including parcels separated only by a road or highway) under one ownership shall be considered as one farm or forest operation.

The mere fact that small parcels exist does not in itself constitute irrevocable commitment. Small parcels in separate ownerships are more likely to be irrevocably committed if the parcels are developed, clustered in a large group or clustered around a road designed to serve these parcels. Small parcels in separate ownerships are not likely to be irrevocably committed if they stand alone amidst larger farm or forest operations, or are buffered from such operations.

(d) Neighborhood and regional characteristics;

(e) Natural or man-made features or other impediments separating the exception area from adjacent resource land. Such features or impediments include but are not limited to roads, watercourses, utility lines, easements, or rights-of-way that effectively impede practicable resource use of all or part of the exception area;

(f) Physical development according to OAR 660-004-0025; and

(g) Other relevant factors.

APPLICANT'S FINDING:

a) **Existing land uses** – The land to the north and east is rural residential in use and zoned FF(10). Although the land to the west and south is zoned F2(80), poor soils conditions and ownership size make the conversion of this range land unfeasible for such purpose. The parcel to the immediate south is a similarly sized vacant lot also within the Fairview Orchard Tracts subdivision. The property owner of this lot was contacted regarding her interest in joining in this rezone. As of the date of this application submittal, no reply has been made by her.

b) **Existing facilities and services** – No public water or sewer serves the site or vicinity. Electrical power and telephone can be brought to the site from existing providers.

c) **Ownership patterns** –

i. The development pattern preceded the resource zoning of the vicinity in the Fairview Orchard Tracts, which was developed and certain parcels re-divided before the zoning of this rangeland area was placed in the F2(80) classification. That portion of the subdivision lying west of Dry Creek Road was placed in the F2(80) zone. The purpose of this exception application is to document and justify why that zoning of this property should be changed.

ii. The subject parcel is not an isolated small-acreage island amid larger resource ownerships, but part of a dedicated rural residential subdivision filed with Wasco County—many lots of which have homesites developed at this time.

d) **Neighborhood characteristics** – The neighborhood is one that is not characterized by commercial timber holdings, but is one where homesites are developed on both large and small acreage parcels. In the region, a mix of rural farm, timber, grazing and residential uses are found.

e) **Natural or manmade features** – Dry Creek Road serves as the northern and eastern boundary of the site. It is not a physical barrier, but is a public access to vehicular traffic and serves the site and other adjacent lots of the subdivision with ingress and egress. A

BPA electrical power transmission line traverses the southwest corner of the property and precludes the use of the easement for structural development, but not of such an extent as to preclude the use of the balance of the property for a homesite (see drawing with acreage descriptions attached, Exhibit O).

f) **Other relevant factors** – The approval of a single-family home on the subject site in 1992 shows that the site has been found to be suitable for residential use (see attached conditional use approval, Exhibit L).

COUNTY COURT FINDINGS:

a. **Existing Land Uses:**

- As previously stated, The Court concurs with the applicant's findings regarding the subject property itself. Poor soils and small parcel size severely limit the potential use of this property for the propagation or harvesting of a forest product. However, as indicated by a letter dated September 25, 2008 from Department of Forestry Staff, the subject property does provide "adjacent or nearby lands which are necessary to permit forest operations or practices. The Court agrees with this evaluation and considers the subject property as "adjacent lands...".

- The Court also finds that the subject property is separated from nearby non-resource uses by Dry Creek Road. This could potentially lead to increased conflicts with the forestry operations, and lead to increased risk of wildland fires.

b. **Existing Utilities:** Email correspondence from the Wasco County Watermaster on September 23, 2008 indicates that there are currently no water rights appurtenant to this property. This correspondence further states that ORS 537.545 would allow them to use a well (ground water) for domestic use if a dwelling were constructed on the property. In light of conflicting information provided by Planning Staff and the Applicant, the County Court finds that insufficient information has been presented to determine whether one new residential well would adversely impact existing groundwater resources.

c. **Ownership Patterns:** As stated by the applicant, the subject property is adjacent to large-scale forestry uses. The property is separated from non-resource uses by Dry Creek Road. In light of forestry and fire safety concerns submitted by David Jacobs, The Court finds that the subject property is more closely related to those existing resource uses on the south side of Dry Creek Road.

d. **Neighborhood Characteristics:** County Court finds that the areas lying north and east of Dry Creek Road are generally comprised of non-resource uses. However, uses lying to the south and east of the subject property are generally comprised of forestry operations. In light of comments received from the Department of Forestry Staff finds that the subject property is more closely related to those resource uses than they are the non-resource uses located across the road.

e. **Natural or Man Made Impediments and Physical Development:** In this specific case, Dry Creek Road provides a constructed fire fuel break that can help separate any fire started on resource lands from affecting the residences to the north and east. For that

reason The Court finds that the road provides the most reasonable boundary between the Forest-Farm zone and the Forest zone.

f. **Other relevant factors:** The approval of a Conditional Use Permit for a dwelling on the subject property clearly indicates that the request could comply with regulations in effect at the time of application. However, the Court finds that changes in the zoning designation, fire safety concerns, and forestry concerns must be considered during this evaluation. In light of those concerns, the Court finds that the request to rezone the property from a forestry resource use to a non-resources use does not comply with current provisions of the Wasco County Land Use and Development Ordinance or the Wasco County Comprehensive Plan.

C. COMPREHENSIVE PLAN PROVISIONS

The request is to amend the County Comprehensive Plan map to change the zone designation in the exception area from Forest (F-2) to Forest – Farm (FF-10).

Section XI (II) of the County's Comprehensive Plan states that an amendment to the plan may take the following form: (5.) A combination plan change / zone change.

COUNTY COURT FINDING: The request is for a combination comp plan amendment and rezone with a Goal Exception. This complies with the provisions of Section XI (II).

Section XI (III) of the County's Comprehensive Plan indicates that a Property owner or his authorized representative may apply for a Quasi-Judicial Plan revision.

COUNTY COURT FINDING: The request for a Quasi-Judicial Plan Revision was submitted by Steven Andersen, Cascade Planning Associates. Mr. Andersen is an authorized representative for the owner. Therefore, the request complies with Section XI (III).

Section XI (V) of the County's Comprehensive Plan indicates that Quasi-Judicial revisions are those which do not have significant effect beyond the immediate area of the change.

COUNTY COURT FINDING: The request is to rezone a single parcel from F-2 (80) to F-F (10), which will not have significant effect beyond the immediate area of the change. Therefore, the request is Quasi-Judicial, and complies with Section XI (V).

Section XI (VIII) of the County's Comprehensive Plan identifies the general criteria that must be considered for approval of a plan amendment. These criteria are factors for consideration and not standards that must each be strictly met. Thus, the Planning Commission need consider these criteria and determine whether they are generally satisfied.

1. **(VIII) 1. The proposed amendment complies with the State of Oregon statewide Planning Goals. Each Goal must be addressed or if not applicable, explained why.**

APPLICANT'S FINDING: (See Applicant's findings in Section A above.)

COUNTY COURT FINDING: Statewide Planning Goals are addressed above in Section A.

2. ***(VIII) 2. There is substantial proof that the proposed change will not be detrimental to the spirit and intent of such goals.***

APPLICANT'S FINDING: (See Applicant's findings in Section A above.)

COUNTY COURT FINDING: As addressed throughout this report, the Court finds that the applicant has not submitted substantial proof that the proposed rezone will not be detrimental to the spirit and intent of the affected goals. Specifically, the Court finds that the combination of concerns including fire safety, and forestry protection, makes the potential impacts of the requested zone change outweigh the potential benefits of another residential dwelling in the area.

3. ***(VIII) 3. A mistake in the original Comprehensive Plan occurred or changes in the character of the neighborhood have occurred which warrant the proposed change.***

APPLICANT'S FINDING: At the time the comprehensive plan and zoning of the F2(80) district was delineated there was no development on the subject parcel or the similarly sized parcel to the south, despite the two lots being part of the Fairview Orchard Tracts subdivision. Although that subdivision created lots ranging from 9.89 to 20.12 acres to provide living opportunities for single-family dwellings in the rural area, which was at the time less restrictive than the FF-10 zone, which does allow a 10-acre minimum parcel size, but does not allow single-family residential as a use by right. When the EFU zoning designation was adopted for the vicinity, it used the centerline of the county road to for its western boundary with the FF-10 zone, rather than the boundary of the Fairview Orchard Tracts subdivision. Where the subdivision boundary crosses the county road and extends south, the land to the west was committed to single-family rural residential use, not large acreage resource use where dwellings are highly restricted. Had the framers of the zoning designations used the subdivision boundary where it entered the platted area, it would have protected the integrity of the committed land division, while still affording protection to the F2(80) resource lands that abutted it. Keeping the platted area out of the FF-10 zone merely because of the existence of a county road would appear to be prohibitively restrictive and of no public benefit than what would be afforded under the FF-10 zone, which requires a review of any residential use before being permitted.

COUNTY COURT FINDING:

- The Fairview Orchards subdivision was recorded with the Wasco County Clerk's Office on April 6, 1910. Since that time, physical conditions such as the topography of properties in the vicinity of the subject property (which limit access to this portion of Lot 9) and the construction of Dry Creek Road have altered the design and function of the subject property. Originally, Lot 9 was comprised of approximately 20.11 acres and accessed via a north-south access road easement. Currently, Dry Creek road separates a 10.9 acre parcel

(east side) from a 7.56 acre parcel (west side), and precludes the subject property from being accessed from the above mentioned access easement. Additionally, this request would, in effect, add a parcel to the original Fairview Orchard Tracts subdivision.

- Furthermore, in its current state, subdivision Lot 9 could potentially be developed to the original density intended if the owner of the property adjacently east of the subject property requested and received a Conditional Use Permit for a non- farm or forest dwelling.

- The Court finds that the surveyors of the original Fairview Orchard Tracts subdivision used the best information available at the time to establish a subdivision for residential purposes.

- The Court also finds that current agencies including the Wasco County Planning Department, the Wasco County Soil and Water Conservation Commission, the Oregon Department of Forestry, and the Oregon Department of Water Resources are using best available information to protect the existing resource uses at this time.

- The Court finds that the most suitable boundary between the F-2 (80) zone and the F-F (10) zone in this particular area is in fact Dry Creek Road.

- With this in mind, The Court finds that the existing zoning boundary is not the product of a mistake.

4. ***(VIII) 4. There are factors which relate to the public need for healthful, safe and aesthetic surroundings and conditions.***

APPLICANT'S FINDING: Although the recent approval of the Sacamano exception, comprehensive plan change and rezone from F2(80) to FF(10) can not be used as a precedent for approval of property that abuts it in similar circumstances, it does demonstrate that land with virtually identical physical characteristics and situation lying adjacent to the eastern border of the Fairview Orchard Tracts subdivision is deemed suitable and desirable for inclusion in the FF(10) zone of which it borders. The subject property is virtually the same with the exception it is within the boundary of Fairview Orchard Tracts and is separated from it by the county road. The FF-10 zone will provide a greater level of protection for the resource land to the east than existed when the subdivision was approved. Therefore, the need for healthful, safe and aesthetic surroundings and conditions will be protected at the very same level as the land to north that was recently approved for such zoning.

COUNTY COURT FINDING:

- As addressed throughout this report, The Court finds that Dry Creek Road provides the most suitable boundary between the F-2 (80) zone and the F-F (10) zone in this location. This position was also expressed during the above cited Sacamano request. Below is a finding taken out of the Planning Commission Report to the Wasco County Court regarding the Sacamano Comprehensive Plan Amendment (CPA-07-102, EXC-07-101, and ZNC-07-101)

  "Natural or Man Made Impediments and Physical Development: *In this specific case, Planning Commission concurs with the applicant's findings that the road provides the most reasonable boundary between the FF-10 zone and the F-2 (80) zone.*

However, this assumption can not be applied to other locations without specific analysis."

5. ***VIII. 5. There is proof of change in the inventories originally developed.***

APPLICANT'S FINDING: Maps are provided with the request that give a greater level of detail regarding resource values of land zoned for resource use than was considered when the existing zoning was adopted.

COUNTY COURT FINDING: Although the applicant submitted maps and other supportive documentation regarding the request, The Court finds that there is not sufficient proof of change in the inventories originally developed.

6. ***VIII. 6. Revisions shall be based on special studies or other information which will serve as the factual basis to support the change. The public need and justification for the particular change must be established.***

APPLICANT'S FINDING: See above findings to each enumerated criterion.

COUNTY COURT FINDING: The Court finds that the applicant did not submit sufficient study and / or other specific information necessary to support the requested change. Based on information gathered and submitted by the applicant and augmented by this and other agencies, The Court finds the request did not provide sufficient special studies or other information to support the change.

D. WASCO COUNTY LAND USE & DEVELOPMENT ORDINANCE

1. Chapter 2 – Development Approval Procedures

a. Sections 2.060B.1. (Recommendation to County Court on Quasi-Judicial Plan Amendment) and 2. (Zone Change and Ordinance Amendment (Chapter 9)). These LUDO sections provide that the Planning Commission will have the authority to review zone changes and ordinance amendments, and provide a recommendation to the County Court for a Quasi-Judicial Plan Amendment.

COUNTY COURT FINDING: The applicant has applied for a Quasi-Judicial Comprehensive Plan Amendment including an exception to Statewide Goal 4 – Forest Lands, a Zone Change and a LUDO amendment. Wasco County LUDO Section 9.050 requires all decisions regarding zone changes, ordinance amendments, Comprehensive Plan Amendments and exceptions to Goal 4 require approval of the County Court, therefore, the County Court made the decision for all requests under consideration in this matter.

b. Sections 2.080 & 2.140 - Notice
Section 2.080 states that at least twenty (20) days prior to the date of a quasi-judicial public hearing under Section 2.060 (B), notice shall be provided to specific individuals and agencies. Section 2.140 sets forth the hearing procedure for the Planning Commission.

COUNTY COURT FINDING: Public notice was given, as specified by Section 2.080 of the WCLUDO, twenty days prior to the hearing. Upon issuance of a decision, notice will again be given.

c. **Section 2.110.D, Conditions of Approval**
This section sets forth the parameters for imposing the recordation of conditions of approval on developments.

COUNTY COURT FINDING: The Court has recommended denial of the request to rezone approximately 7.56 acres from F-2 (80) to F-F (10) for reasons addressed above. Therefore, no conditions have been included.

2. **Chapter 3, Division 8 – Sensitive Wildlife Habitat Overlay**

Section 3.920.F, Siting Standards
In the area designated Big Game Winter Range the following siting standards shall be applied as a condition of approval for all new dwellings.

f. **New dwellings shall be located within three hundred feet (300') of public roads or easement or private roads or easements existing as of October 22, 1997, unless it can be found that:**
   1. **Habitat values (browse, forage, cover, access to water) are afforded equal or greater protection through a different development pattern; or,**
   2. **The siting within three hundred feet (300') of such roads or easements would force the dwelling to be located on irrigated land, in which case, the dwelling shall be located to provide the least impact on wildlife habitat possible considering browse, forage, cover, access to water, and minimizing length of new access roads.**

COUNTY COURT FINDING:

- The proposed exception area is located within the Impacted Low Elevation Big Game Winter Range portion of the Sensitive Wildlife Habitat Overlay. Section 3.920.C.2 indicates that areas designated as Impacted Areas in the Transition Lands Study Area are Exempt from these provisions.

- However, Oregon Department of Fish and Wildlife Staff have expressed concerns regarding rezoning new areas on the southwest side of Dry Creek Road from Forestry use to Residential use. This was addressed in Section IV.A.5 above.

3. **Chapter 9 – Zone Change and Ordinance Amendment**

a. **Application for Zone Change: Application for a zone change may be initiated by application filed with the Director of Planning upon forms prescribed by the Commission and signed by a property owner with the area of the proposed change, and containing such information as may be required by the Planning Commission or the Director to establish the criteria for the change.**

COUNTY COURT FINDING: The request was submitted by Mr. Steven Andersen, who is an authorized agent for the owner. Therefore, the request complies with criterion 3.a.

b. Criteria for Decision: The Approving Authority may grant a zone change only if the following circumstances are found to exist:

i. The original zoning was the product of a mistake;

APPLICANT'S FINDING: The purpose of the rezone is to enable the property owner to utilize the property under a set of zoning rules that more adequately reflect the intended use of the site by the developer of the Fairview Orchard Tracts subdivision of which it is a part.

It is purely speculative as to whether the two lots of Fairview Orchard Tracts that are separated from the county road was purposely intended to prevent residential activities or whether there was a mistake in the mapping. It would appear that given the soils characteristics of the lot and the similar size of the lot with the other lots in the subdivision, that placing the lot in an 80-acre minimum lot size resource zone was done in error. Given the insignificant size of the parcel compared to the extent of the county's zoning areas, it is not inconceivable that this was simply overlooked. It is normal practice when planning and zoning property to include small isolated parcels that are "islands" within large expanses of resource land to include such parcels with the zoning of the lands of which it is amidst. This would not seem to be applicable, given the fact that the parcel is adjacent to, not apart from, the other small acreage parcels of the emerging FF(10) planned and zoned area to the north and east. An error, therefore, could be concluded.

COUNTY COURT FINDING:

- As discussed throughout this report, the subject property is considered as "adjacent or nearby lands which are necessary to permit forest operations or practices".
- The Court finds that although the site itself is not capable of sustaining commercial timber operations, the location of this parcel adjacent to large commercial timber tracts provides a buffer from residential use. This buffer offers additional protection to long-term timber investments by reducing the potential for human caused fires in the area.
- Additionally, Dry Creek Road could potentially offer a fire fuel break for dwellings located on the north side of the road from a fire that was started on Forestry land.
- The Court also finds that there are several small subdivision lots in the vicinity of this request that are currently zoned F-2 (80). Some of these lots also contain poor soils. However, their location adjacent to large, long-term timber operations make their protection very important for the continued economic vitality of the nearby forestry market.
- Finally, The Court finds that Lot 9 as designed in the original subdivision could potentially be developed to the intended density if that portion of Lot 9 on the east side of Dry Creek Road requested and received a Conditional Use Permit for a non-farm or forest dwelling.
- With that in mind, The Court finds that in this particular instance, Dry Creek Road offers the most logical transition point between the Forest Zone and adjacent non-resource zones. Therefore, the boundary was not the product of a mistake.

ii. Or, it is established that:

1) The rezoning will conform with the Comprehensive Plan; and,

APPLICANT'S FINDING: See Comprehensive Plan Change Application submitted herewith for responses to each [Goal].

COUNTY COURT FINDING: The Court analysis of the Planning Goals can be found in Section IV.A of this document.

2) The site is suitable to the proposed zone;

APPLICANT'S FINDING: Slope (see topography map with contours attached), size, soils conditions (see USDA soils data attached), and existing public services, including electrical power (served by Wasco Electric Co-op, Inc.), telephone service (by Embarq, Inc.), and public road access via Dry Creek Road, (maintained by Wasco County), all demonstrate the suitability of the subject lot to be included within the FF(10) zone which it adjoins on the north and east. Water well log information taken from the Oregon Water Resources Dept web site are attached and demonstrate the likelihood of domestic ground water supply in the area (NW Qtr of Sec 20, T2N, R12E, W.M.) with an average static ground water level of 395 feet (deepest being 655 and shallowest being 195 feet (see attached). Should a dwelling be approved under authority of a conditional use permit, on-site waste water treatment suitability would be required. Because the FF10 zone allows activities by right that do not depend upon installation of waste-water treatment facilities, no soils analysis or testing has been done as of the date of this application. Assurance that public health will be protected should the rezone be granted will be guaranteed when the jurisdiction health department approves the method for same prior to the property being occupied. The existing residential uses in the vicinity with similar soils conditions provide evidence that the area can accommodate on-site waste water treatment systems. Attached to the Goal Exception Application is a drawing showing the area of the site outside the BPA easement is 5.2 acres of the 7.8 acre site (Exhibit O). This drawing also shows the area north of the easement outside the yard setbacks to be 4.37 acres. The northern portion of this area is the preferred area for structures and septic drainfield, with sufficient room for domestic water wellhead protection. It should be noted that a conditional use permit was approved for this site to place a non-forest dwelling in 1992 (see Exhibit L of Goal Exception Application). The only change since that time has been in the ownership of the property. Access to the site for emergency fire and life safety vehicles is available bordering the north and east sides of the property via Dry Creek Road. Additionally, the BPA Transmission line access road is available. Any future residential use of the site would be required to receive approval for a road approach on to Dry Creek Road from the Wasco County Road Department. The applicant met with the Road Dept Project Manager, Arthur Smith, and Surveyor Lyle Stevens at the site on July 15, 2008, and established that there appears to be an existing graveled entry at or near the northwest corner of the property which, with some improvement, could be utilized. The sight distance in this area also makes this the preferable approach location to that which received site plan acceptance in the 1992 conditional use permit issued as described above.

COUNTY COURT FINDING:

- When analyzed by itself, The Court agrees that the subject property is not well suited for large-scale forestry uses. However, Planning Commission must also consider the potential impacts of the proposal on nearby properties and uses. To do this, Staff requested

information from several agencies to evaluate the proposal for potential impacts on nearby forest, natural resource, and residential use.

- The Oregon Department of Forestry submitted information indicating they would have concerns supporting a zone boundary adjustment which would further the addition of structures in the interface areas that are at extreme risk from wildfire, and put resource lands at further risk from fire. To that end, DoF classified the subject property as "adjacent or nearby lands which are necessary to permit forest operations or practices." Additionally, DoF advised Planning Staff that this area is classified as an Extreme Wildfire Hazard Zone through the SB-360 planning process. The Court agrees with the information provided by DoF and find that the subject property is not best suited for the proposed F-F (10) zone.

- The Oregon Department of Water Resources and the Wasco County Soil and Water Conservation District submitted independent concerns regarding the proposed zone change. Specifically, both agencies expressed concerns regarding the Mosier area's declining groundwater supply, and suggested that there may not be sufficient water in the area to support dwellings that are already built, not to mention the approximately 95 vacant properties in the area that are already zoned for residential purposes and could perceivably drill residential wells at any time. However, the applicant provided documentation from the USGS and other analysts indicating that in consideration of groundwater recharge on the site, along with proper well drilling techniques, the proposed addition of one groundwater well would not adversely impact any groundwater resources. With this conflicting information in mind, The Court finds that insufficient information regarding the potential impacts of one additional residential well has been submitted to fully evaluate potential impacts.

3) There has been a conscious consideration of the public health, safety and welfare in applying the specific zoning regulations.

APPLICANT'S FINDING: This application and the other related submittals all provide a clear explanation of how the proposal complies with the public health, safety and welfare.

Land use within a 1,000-foot radius of the property boundary is scrub oak and vacant with the exception of one single family home about 1000 feet to the north/northeast (see aerial photographs accompanying the Goal Exception Application, Exhibits C & J. There would be no impact other than the impacts associated with the addition of one single-family home should a conditional use permit for a non-farm dwelling be approved subsequent to the adoption of this rezone. If the dwelling was occupied year round, it would likely generate an increase in traffic on the county road of approximately 10 trips per day. A home is a point source for wild-fire, however, the addition of the home would also provide a water source and an on-site occupant for fire protection that it currently does not have. The property currently has a small water tank on site that can be utilized when the property is occupied. Fire prevention methods could be incorporated as conditions of the conditional use permit for the non-farm dwelling, such as providing a 30' non-combustible area around the home, landscaping with fire-resistive varieties, use of non-combustible roofing materials, etc. Having the site occupied with such measures would have a positive impact on the area in this regard.

COUNTY COURT FINDING:
The Court finds that the potential impacts to public health, safety, and welfare such as the potential increase in fire danger discussed above outweigh the potential benefit of the rezone.

The applicant indicates that current land uses within 1,000 feet of the property is scrub-oak and vacant (to the south and west). However, The Court finds that this seemingly vacant land is occupied by large-scale forestry operations. Forestry operations in this part of the county offer diversified economic income, and are exposed to immense long-term investment protection against wildland fires. The long-term nature of the forestry investment (40-year cycle) means that any increase in potential fire danger could indeed cause significant impacts to the industry and economy in the area.

The applicant further indicates that having a house on the subject property would actually decrease the potential fire hazard. However, evidence gathered in the Wasco County Community Wildfire Protection Plan indicate that most fires in this area are human caused. Therefore, The Court finds that increasing the number of dwellings on this side of Dry Creek Road would increase potential fire danger to nearby forestry operations as well as other existing dwellings in the area.

c. **Recommendation on Zone Change or Amendment to the Land Use and Development Ordinance: After hearing, the Approving Authority shall recommend that the proposed zone change or amendment to the Zoning Ordinance be granted or denied. The Director of Planning or his assistants shall reduce to writing the 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.**

COUNTY COURT FINDING: The Planning Commission has recommended that the proposed zone change be denied. Wasco County Planning Staff has reduced to writing the Commission's Recommendations along with a summary of the facts and reasons for the recommendation. The Recommendation was recorded with the County Clerk on December 3, 2008.

d. **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.**

COUNTY COURT FINDING: Planning Commission has recommended that the proposed zone change be denied. Wasco County Planning Staff has reduced to writing the Commission's Recommendations along with a summary of the facts and reasons for the recommendation. The Recommendation was recorded with the County Clerk on December 3, 2008.

e. **Acton by County Court: Upon receipt of the 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 Commission report has been filed with the County Clerk.**

COUNTY COURT FINDING: The request was scheduled before the Wasco County Court on January 7, 2009. During that hearing, the County Court voted 3 – 0 to uphold the Planning Commission recommendation subject to revised findings regarding groundwater resources. Since the Planning Commission Recommendation was recorded on December 3, 2008, and the hearing

was scheduled on January 7, 2009, the 20-day waiting period was provided. Therefore, the request complies with criterion e.

V. CONCLUSIONS

A. The request is for:

1. Exception to Statewide Planning Goal 4 – Forest Lands;

2. Comprehensive Plan Amendment from Forest zone to Farm – Forest zone;

3. Zone Change from F-2 (80) Forest Use, to F-F(10), Farm - Forest for that portion of Lot 9, Fairview Orchard Tracts, located west of Dry Creek Road in the Southeast ¼ of the Northwest ¼ of Section 20, Township 2 North, Range 12 East.

B. The subject parcel is located within the F-2 (80) Forest Use zone in Wasco County.

C. The Court finds that the requests are **NOT** consistent with the Wasco County Land Use & Development Ordinance, the Wasco County Comprehensive Plan, and applicable State laws.

VI. COUNTY COURT DECISION: The Wasco County Court voted 3 – 0 to uphold the Planning Commission's recommendation has adopted the findings of fact and conclusions of law as found within this report, and:

A. **Deny** the requested Zone Change from F-2 (80) Forest Use, to F-F(10), Farm - Forest for that portion of Lot 9, Fairview Orchard Tracts, located west of Dry Creek Road in the Southeast ¼ of the Northwest ¼ of Section 20, Township 2 North, Range 12 East.

B. **Deny** the exception to Statewide Planning Goal 4 – Forest Lands.

C. **Deny** the Comprehensive Plan Amendment from Forest Use to Farm – Forest.

D. Recommend that if there is a documented need for additional housing in this area it will be done as a legislative review conducted by the County that evaluates a larger area for a change in zoning from resource to residential to better analyze the negative impacts related to fire, water and natural resources. Part of this documentation should include a detailed Buildable Lands Study as proposed within the Wasco County Planning Department's Long Range Planning Projects.

ATTACHMENT C – APPLICANT'S EXCEPTION STATEMENT

DesJardins Exception Statement

The DesJardins Exception is a committed lands exception for 7.8 acres. This exception includes a rezone of the subject area from F2(80) to FF(10). This exception area is approved by Ordinance No. _____ (incorporated herein by reference). In accordance with OAR 660-04-018 (3) the exception statement is made part of Wasco County's comprehensive plan. No special ordinances or comprehensive plan designations need to be adopted to limit the uses and activities to only those uses and activities justified by the exception. The exception is supported by reasons justifying a committed exception. The land within the exception area is committed to non-resource use and shall be regulated by the county as non-resource land. Applicable non-resource zoning at the time the exception was proposed and granted was FF(10). The FF(10) zone is the zone applied to the exception area.

Description of Exception Boundary and Development Area

The proposed exception area is shown on the exception area map included with the application. The land owner is Laura DesJardins. The Tax Lot is described as 2N 12E 17: 4300. Size of the exception area is 7.8 acres, which encompasses the entire area within the boundary of the tax lot.

The exception area is described as that portion of Lot 9 of Fairview Orchard Tracts subdivision lying west of Dry Creek Road. Lands adjoining the north and east are currently within the FF(10) zoning district. The exception area is currently vacant and committed to non-resource use by the following factors:

1. The lack of merchantable trees and lack of suitable soils to grow merchantable timber.

2. The limited size of the exception area which is 7.8 acres in extent.

3. The location of the exception area within the boundary of the Fairview Orchard Tracts subdivision and the current emerging homesite development within that area.

4. The location of the exception area adjacent to a publicly maintained county road serving direct access to existing rural residential lots within Fairview Orchard Tracts subdivision, including the subject property.

5. The location of the exception area within the service area of public electric power and telephone services serving the rural residences in the neighborhood.

Since the land in the exception area is limited in size and is and has been part of a recorded rural residential subdivision, no significant change in the general land use pattern of the area will result.

The Exception Statement describes the scope of the DesJardins requested exception and together with Ordinance No. _____, establishes the FF(10) zone as the non-resource zone to be applied when the exception is granted.

Scope of Exception

The approved committed lands exception for the DesJardins property:

The DesJardins exception allows rural residential use in the exception area in accordance with the new FF(10) zoning. As proposed and approved by Wasco County, the exception supports application of the FF(10) zone in place of the current F2(80) zone for the area over which the exception is granted.

Applying the FF(10) zone to the exception area is consistent with the predominant zoning in the vicinity and the predominant zoning of the parcels affected by the current resource zone.

No development currently exists in the exception area. Any future development will be permitted and approved by Wasco County under the normal permitting processes. Granting the exception results in bringing that portion of Lot 10 of Fairview Orchard Tracts subdivision into the same zoning district as the other lots of the subdivision which lie east of Dry Creek Road, thus enabling the owner to utilize the property under rules that are more reflective of the purpose for which the subdivision was intended, i.e., providing small acreage rural homesite opportunities.

Justification of the Exception

This exception and the accompanying referenced documents include the reasons a committed land exception is justified for the designated exception area and incorporates the Exception into the County's comprehensive plan. The following required elements are included by reference to an incorporation of Ordinance No. _____ and its exhibits:

- The reasons justifying the committed lands exception including the facts and assumptions used as the basis for determining that a state policy in a goal should not apply to the Exception Area,
- the amount of land for the proposed re-zone, and
- a rationale of why the re-zone makes sense on this particular plot of resource land.

ısco County Planning and Development
)5 East Second Street
e Dalles, Oregon 97058

ATTENTION: PLAN AMENDMENT SPECIALIST
DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT
635 CAPITOL STREET NE, SUITE 50
SALEM, OREGON 97301-2540