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FILED
UMATILLA COUNTY CLERK

BEFORE THE BOARD OF COMMISSIONERS ^{93 APR 16 A 9 05}
FOR UMATILLA COUNTY, OREGON

In the matter of protecting)
Accepted resource uses)

ORDINANCE NO. 93-01

THE UMATILLA COUNTY BOARD OF COMMISSIONERS ORDAINS AS FOLLOWS:

Sec. 1 SHORT TITLE. This Ordinance may be cited as the Umatilla County Resource Use Protection Ordinance.

Sec. 2 PURPOSE. (1) It is the purpose of this Ordinance to protect resource-based economically productive activities of Umatilla County in order to assure the continued health, safety and prosperity of its residents. Resource uses sometimes offend, annoy, interfere with or otherwise affect others located on or near resource lands. Umatilla County has concluded that persons located on or near resource lands must accept the conditions commonly associated with accepted resource uses.

(2) This Ordinance is intended to limit the availability of remedies based on nuisance or trespass, complaint procedures, rights of action and claims for relief over which Umatilla County has jurisdiction, when they otherwise would either have an adverse impact on resource uses which Umatilla County seeks to protect, or would impair full use of the resource base within Umatilla County.

Sec. 3 DEFINITIONS. As used in this Ordinance:

(1) "Facility" means any real or personal property, including appurtenances thereto and fixtures thereon, associated with a given use.

(2) "Farming practices" means the cultivation, growing, harvesting, processing or selling of plants or animals of any kind, which lawfully may be grown, possessed and sold, including but not limited to livestock, sheep, nursery stock, potatoes, cereal grains, green peas, alfalfa, fruit, grapes, melons, canola, and vegetables.

(3) "Forest practice" has the meaning given that term by ORS 527.620.

(4) "Nonresource use" means any facility, activity or other use of land which does not constitute a resource use, including but not limited to residential use, and also including any aggregate mining use which is not conducted in accordance with a program complying with Goal 5.

(5) "Resource use" means any current or future generally accepted aggregate mining, farming, ranching or forest practice or facility conducted in compliance with applicable Umatilla County Land Use Ordinances.

(6) "Generally accepted" means either:

(a) A practice or facility which is conducted or used in compliance with applicable federal and state laws; or

(b) If there is no applicable federal or state law, a practice or facility which an average person in Umatilla County who is a grower or producer regularly involved in the same type of resource use would reasonably expect to occur or exist in a truly rural setting. The Umatilla County Board of Commissioner may, as it deems necessary, establish resource user peer review boards consisting of five persons who regularly are involved in the same type of resource use in question, to advise the Commission as to generally accepted practices or facilities with respect to that resource use.

(7) "Resource use" does not include;

(a) The willful growing or unlawful, infested, infected or diseased plants or animals.

(b) Trespass which involves actual physical intrusion onto the property of another by a person or by a person's animals.

Sec. 4 PROTECTING RESOURCE USES OUTSIDE UGB.

(1) No resource use occurring outside an urban growth boundary (UGB) shall be declared to be a public or private nuisance or trespass, or support any complaint procedure, or give rise to a claim for relief in favor of, or to protect the interests of, nonresource uses or any persons or property associated therewith, to the extent that such right, proceeding or claim would arise under an ordinance or the inherent authority of Umatilla County.

(2) This section applies regardless of:

(a) The location of the purportedly affected nonresource use.

(b) Whether the nonresource use purportedly affected existed before or after the occurrence of the resource use.

(c) Whether the resource use or nonresource use has undergone any change or interruption.

(d) Whether the resource use or nonresource use is located inside or outside an area designated as secondary resource lands.

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Sec. 5 PROTECTING RESOURCE USES WITHIN UGB.

(1) No resource use occurring within an urban growth boundary (UGB) shall be declared to be a public or private nuisance or trespass, or support any complaint procedure, or give rise to a claim for relief in favor of, or to protect the interests of, nonresource uses or any persons or property associated therewith, to the extent that such right, proceeding or claim would arise under an ordinance or the inherent authority of Umatilla County.

(2) This section applies:

(a) Regardless of the location of the purportedly affected nonresource use.

(b) Only if the resource use predated the purportedly affected nonresource use.

(c) Only if the resource use has not significantly increased in size or intensity after (A) the effective date of this Ordinance, or (B) the date on which the applicable urban growth boundary is changed to include the subject resource use within its limits, whichever date is later. However, if the change is mandated by law, this section shall apply.

Sec. 6 CHANGE IN UGB. To the extent permissible under State law, if an urban growth boundary (UGB) is changed in such a way as to place a resource use either inside or outside such boundary, Section 4 of this Ordinance applies with respect to any conflict between a resource use and nonresource use.

Sec. 7 LAND USE DECISIONS. The fact that Umatilla County's comprehensive plan, development ordinances and land use decisions may allow the siting, development or support of land use decisions may not negate the provisions of this Ordinance intended to protect a resource use.

Sec. 8 COMPLAINTS BY NONRESOURCE USERS. Any persons engaged in a nonresource use are deemed on notice that Umatilla County will not act on complaints involving a resource use protected under this Ordinance, wherever located, so long as such resource use complies with applicable provisions of federal and state laws and this Ordinance.

Sec. 9 SEVERABILITY CLAUSE. If any portion of this Ordinance is held invalid by a court of competent jurisdiction, such decision shall apply only with respect to the specific portion held invalid by the decision. It is the intent of Umatilla County that the remaining portions of this Ordinance continue in full force and effect.

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Sec. 10 EMERGENCY CLAUSE. This Ordinance being immediately necessary for the preservation of the public wellbeing, an emergency is declared to exist and this Ordinance takes effect upon its second reading and final adoption.

Pendleton, Oregon, this 7th day of April, 1993.

UMATILLA COUNTY BOARD OF COMMISSIONERS

Emile M. Holeman
Emile M. Holeman

William S. Hansell
William S. Hansell

Glenn Youngman
Glenn Youngman

Approved as to Form:

County Counsel

First Reading: March 17, 1993

Second Reading: April 7, 1993

Recording Secretary: *[Signature]*

