

WALLOWA COUNTY PLANNING DEPARTMENT
WALLOWA COUNTY COURTHOUSE
101 S. RIVER STREET, ROOM B-1
ENTERPRISE, OR 97828

IN THE MATTER OF THE REQUEST)
FOR A DETERMINATION OF)
DISCRETE PARCELS IN THE) **NOTICE OF STAFF DECISION**
EXCLUSIVE FARM USE AND TIMBER) **OF THE WALLOWA COUNTY**
GRAZING ZONES WITHIN THE GOAL) **PLANNING DEPARTMENT**
5 MORaine PROTECTION AREA)

RE: Yanke Discrete Parcel Determination for ZP#13-62, 63 and 64 per Measure 49 Final Order, Election # E133008 and Circuit Court Judgement, Case # 10-07-13380.

The applications were deemed complete enough to consider parcel determinations on December 11, 2013. Property owners within 750 feet and other interested parties were noticed on January 15, 2014. These Findings are for a discrete parcel determination in the Exclusive Farm Use (EFU) and Timber Grazing (T/G) zones and the Goal 5 Moraine Protection Area per Circuit Court Judgement, Case # 10-07-13380. The Planning Department Staff having reviewed the record and having considered the comments received, makes the following findings of fact and decision.

01. **APPLICANT:** Linda Yanke, Trustee
02. **OWNER:** Ronald C. Yankee Family Trust
03. **REPRESENTATIVE:** D. Rahn Hostetter
04. **REQUEST:** Discrete Parcel Determination re ZP#13-62, 63 and 64 per Measure 49 Final Order, Election # E133008 and Circuit Court Judgement, Case # 10-07-13380.
05. **LOCATION:** 03S 45E tax lot 1500 (The M49 claim also addresses tax lots 6000 and 5900)
06. **PARCEL CHARACTERISTICS:** Property is 1386 acres, zoned EFU and T/G, and straddles the crest of the east moraine of Wallowa Lake. There is currently an active zone permit for a dwelling on tax lot 6000. Access is via Turner Lane, a County road.
07. **REVIEW CRITERIA:** Article 4, Administrative Review, Sections 4.010, 4.015 and 4.035; Measure 49 Final Order, Election # E133008; Circuit Court Judgement, Case # 10-07-13380;

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Wallowa County Comprehensive Land Use Plan (WCCLUP), Goal 5 Moraine Protection Area; and any other applicable zoning ordinances or goals of the Wallowa County Land Development Ordinance and/or laws of the State of Oregon.

SECTION 4.010, PURPOSE: The purpose of this article is to provide the procedural guidelines for reviewing applications for uses and developments which may impact neighboring properties and developments but not to the extent of requiring a public hearing review. The Administrative Review authority has some discretion regarding the applicant's compliance by applicable review standards and criteria, setting forth conditions of approval, and requiring performance guarantees.

FINDING 7.01: The Circuit Court Order directs the governing body of Wallowa County, or its authorized designee, to determine the number and locations of existing discrete parcels on the Measure 37 claim property after receipt of the applications. Whereas, the County recognizes that in the past, it has addressed parcel determination via ministerial review as there has been little or no discretion required. However, in this complex case, involving a measure 49 final judgement, a circuit court order, and county land use rules, including Goal 5 protections, the County has decided to use an administrative review process to evaluate the proposed discrete and possibly buildable parcels. The County contends that determining which parcels are buildable, per the Court Order, must precede the evaluations of the proposed home sites. Note that the Yanke Family Trust disagrees with this approach. See Hostetter letter dated January 17, 2014.

SECTION 4.015, RESPONSIBLE REVIEW AUTHORITY: Unless specified otherwise, the Planning Director is the review authority for all applications requiring Administrative Review.

FINDING 7.02: For the purpose of this parcel determination, the Planning Director has been designated as the County's representative.

SECTION 4.035, APPLICABLE REVIEW CRITERIA:

01. SALMON HABITAT RESTORATION: Applications must satisfy any applicable criteria of Article 36, Salmon Habitat Restoration.
02. SCENIC WATERWAYS, WILDLIFE HABITAT, WETLANDS AND RIPARIAN CORRIDORS: Applications must satisfy any applicable criteria of Article 28, Goal 5 and 6 Resource Overlay Zone.

FINDING 7.03: The proposed parcels are not near any streams or lakes or other possible endangered anadromous salmonid habitat, including riparian areas or Special Flood Hazard Areas.

Although the version of Article 28, Goal 5 Resource Overlay, in effect in 1991, does not directly address moraine protection, the County has an obligation via WCCLUP, Goal 5 Natural Resource Guidelines, to protect the Goal 5 Resource through Public Hearing Review for development which may be in conflict with resource protection standards. The County also recognizes that the Moraines must be preserved as a scientific natural area, which are significant to the county, state and nation.

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GOAL 5 MORaine PROTECTION AREA

FINDING 7.04: Goal 5 Moraine Protection Area predates the Yanke family ownership. The County's adopted and acknowledged WCCLUP and Ordinance Articles (WCOA) from 1978 and 1987 predate the Yanke's 1991 ownership. See Finding 7.03.

The County has an obligation via WCCLUP, Goal 5 Natural Resource Guidelines, to protect the Goal 5 Resource through Public Hearing Review of development which may be in conflict with resource protection standards.

The County was also given the task of completing its Goal 5 rule process. Part of this process identified four resources in the Moraine protection area which deserved protection. Those resources are; Geological, Historical (and Cultural), Scenic, and Wildlife. As part of its Public Hearing Review, the County would have needed to evaluate the impact of any proposed parcel configuration and ultimate development on these Goal 5 resources.

Regarding the scenic resource, the Wallowa Lake Moraines are the most significant scenic resource in all of Wallowa County and among the most significant in all of Oregon. The undeveloped crest and exposed lake side aspect of the east moraine is the iconic visual image of Wallowa County. This scenic resource is an underpinning of the present economic and community life of the County, or, in other words the "customs, culture and community stability" of the County. This scenic resource is addressed in the County's 1978 and 1988 WCCLUP as a Goal 5 Resource. The determination of discrete parcels and resultant development may have an impact on this resource. Applications for development which could impact this resource require Public Hearing Review.

Regarding the geological resource, the east moraine, and the Wallowa Lake Moraines in their entirety, constitute a unique geological resource of extraordinary significance not merely on a county level, but on a national and international level. The WCCLUP recognizes that the lake moraines are a U. S. Geological Service designated national geological landmark. The determination of discrete parcels and resultant development may have an impact on this resource. This resource is also a Goal 5 resource and is subject to the same protections and review process as the scenic resource.

Regarding the historical (and cultural) resource, Wallowa Lake and its surrounding area are considered sacred by the Nez Perce people. A parcel determination which would allow dwellings on or near the crest and exposed west face of the east moraine would alter the aesthetic character of the lake and its moraines, which are intertwined with its cultural and religious significance. Additionally, numerous letters from interested parties attest to the importance of the scenic and geological resource to the current residents of the County. The determination of discrete parcels and resultant development may have an impact on this resource. This resource is also a Goal 5 resource and is subject to the same protections and review process as the scenic resource.

Please see letters from The Nez Perce Tribal Executive Committee and 1000 Friends of Oregon.

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Regarding the wildlife resource, the Oregon Department of Fish and Wildlife (See ODF&W letter dated January 28, 2014) states that the east moraine has provided habitat for several hundred wintering mule deer. These deer, while spending summer and fall months at higher elevations, depend on habitat available on the east moraine during winter and spring months. Maintaining traditional winter ranges, such as the east moraine, is a critical aspect to managing deer populations for future recreational and aesthetic benefits. The determination of discrete parcels and resultant development may have an impact on this resource. This resource is also a Goal 5 resource and is subject to the same protections and review process as the scenic resource.

The Yanke Family Trust has chosen to not respond to issues raised by interested parties. See Hostetter letter dated February 14, 2014.

The WCCLUP, in place in 1991, clearly required at least a public hearing review to review the proposed development for compatibility. It is not clear that the dwellings, in their proposed locations, would have been found to be compatible with the resource and allowed on or near the crest of the moraine as proposed in the applicant's Zone Permit applications. These Goal 5 issues should have been addressed in DLCD's Final Order.

MEASURE 49 FINAL ORDER

FINDING 7.05: The DLCD's Final Order dated May 24, 2010 allows the applicant the right to three dwellings and no new parcels on tax lot 5000 of the original Measure 37 claim property. (The total Measure 37 claim property contained enough separate parcels to make this possible with a reconfiguration of the parcels.) Although there is currently a dwelling permitted on tax lot 6000, it has not been built and in DLCD's opinion, does not count against the total of three allowed dwellings.

In section IV, Home Site Authorization, paragraph 1 states that the homesite authorization must comply with all applicable standards [.....] however, those standards may not be applied in a manner which prohibits [.....] the dwelling. Paragraph 7 states that if the number of parcels exceed the number that the claimant is eligible for, then the claimant gets to select which parcels to convert to homesites. However, paragraph 2 states that this authorization will not authorize the establishment of a [.....] dwelling in violation of a land use regulation described in ORS 195.305(3) [.....]. This description includes land use regulations that were enacted prior to the claimant's acquisition date. In other words, the description includes the WCCLUP and Goal 5 protections in place in 1991. See Finding 7.03 above.

CIRCUIT COURT JUDGEMENT

FINDING 7.06: The Court Order in paragraph 1 states that the County or its designate shall determine the number and location of existing or discrete parcels on the Measure 37 property. And, that this determination shall be made upon future application by the petitioner. The County has received three Zone Permit applications pursuant to the claimants Measure 49 Final Order. The County's process, first determining the number and location of discrete parcels and then evaluating the proposed dwellings, is the County's best attempt to follow the Court Order. It also gives the applicant an opportunity to revise their Zone Permit applications once the discrete parcel determination is made

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as once the public hearing for the proposed dwellings is noticed, the applications may not be significantly changed.

FINDING 7.07: Under Oregon parcel law, ORS 92, and the WCOA, the parcels proposed as indicated on the maps supplied with the applicants Zone Permit applications, are lawfully created and can be legally transferable. However, the creation of a parcel lawful for transfer does not mean that the parcel is a discrete parcel for purposes of a zone permit or Homesite authorization for a dwelling. To qualify as a discrete parcel for the Homesite authorization, that parcel must comply with the WCCLUP and Goal 5 protections in place in 1991. The Court Order specifically supports this process as it recognizes the County's obligation to make the discrete parcel determination distinct from the Homesite authorization.

The County is obligated to protect the moraines as a Goal 5 resource. There are three proposed parcels, E105, J356, and Q612, which would allow development only on or near the crest of the east moraine, or on the exposed west face of the east moraine. Acknowledging all the proposed parcels as discrete and buildable would place the County in the position of allowing degradation of the Goal 5 resource through the resultant proposed development. Therefore the County recognizes as discrete all the proposed parcels with the exception of E105, J356, and Q612.

With regard to parcels E105, J356, and Q612, the County finds these parcels do not meet WCCLUP and Goal 5 protections in place in 1991 because they contain no developable area for a Homesite authorization which would not degrade the moraines.

Specifically, parcel E105 would allow development only on or near the crest or exposed west face of the east moraine. Such development would require a long and exposed access road. This development would severely degrade the scenic and geological resources and would impact the historic (cultural) and wildlife resources. The County recognizes that development on this parcel is not part of the applicants proposal, however, if this parcel were recognized as discrete, it would become available for possible development.

Specifically, parcels J356 and Q612 would allow development only on or near the crest or exposed west face of the east moraine. The proposed development of two homesites calls for a long and exposed access road along the crest of the moraine. This development would severely degrade the scenic and geological resources and would impact the historic (cultural) and wildlife resources.

At 1386 acres, there is ample area within tax lot 1500 from which the applicant could choose for discrete parcels that could meet WCCLUP and Goal 5 standards and thereby obtain Homesite authorization.

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08. DECISION:

Based upon the record, and having considered the comments received, the review authority finds, in compliance with the court order, that all the parcels on the Measure 37 claim property are discrete parcels with the exception of parcels E105, J356, and Q612. These three parcels would allow development only on or near the crest or the exposed west face of the east moraine and cause degradation of the Goal 5 resource.

February 19th, 2014
DATE OF ACTION


HAROLD M. BLACK, PLANNING DIRECTOR
WALLOWA COUNTY PLANNING DEPARTMENT

The decision on the Discrete Parcel Determination may be appealed to the Wallowa County Planning Commission pursuant to Article 7, Appeals. The provisions of Notice of Intent to Appeal accompanied by the appeal fee must be received by the Wallowa County Planning Department by 5:00 p.m. March 5th, 2014. Appeals, if any, will be heard in a public hearing held by the Wallowa County Planning Commission.

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