



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

May 29, 2007

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

FROM: Mara Ulloa, Plan Amendment Program Specialist

SUBJECT: Malheur County Plan Amendment
DLCD File Number 001-07



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.

Appeal Procedures*

DLCD ACKNOWLEDGMENT or DEADLINE TO APPEAL: June 12, 2007

This amendment was submitted to DLCD for review 45 days 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 THAN IT WAS MAILED TO DLCD. AS A RESULT YOUR APPEAL DEADLINE MAY BE EARLIER THAN THE ABOVE DATE SPECIFIED.**

Cc: Doug White, DLCD Community Services Specialist
Amanda Punton, DLCD Natural Resource Specialist
Bill Lawrence, Malheur County

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FORM 2

DLCD NOTICE OF ADOPTION

DEPT OF

This form **must be mailed** to DLCD **within 5 working days after the final decision**
per ORS 197.610, OAR Chapter 660 - Division 18

(See reverse side for submittal requirements)

MAY 24 2007

**LAND CONSERVATION
AND DEVELOPMENT**

Jurisdiction: Malheur County Local File No.: 2006-11-002
(If no number, use none)

Date of Adoption: 5-9-2007 Date Mailed: 5-22-07
(Must be filled in) (Date mailed or sent to DLCD)

Date the Notice of Proposed Amendment was mailed to DLCD: 1-25-07

- Comprehensive Plan Text Amendment
- Comprehensive Plan Map Amendment
- Land Use Regulation Amendment
- Zoning Map Amendment
- New Land Use Regulation
- Other: _____
(Please Specify Type of Action)

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

Amendment to G-5, Mineral and Aggregate Inventory
Tax lot 6700, Sec 29, 32, T.18S, R43E., W.M.
ref 14330/20087

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."

SAME

Plan Map Changed from : _____ to _____

Zone Map Changed from: _____ to _____

Location: _____ Acres Involved: 8

Specify Density: Previous: _____ New: _____

Applicable Statewide Planning Goals: Goals 3/5

Was an Exception Adopted? Yes: _____ No: *

DLCD File No.: 001-07 (15827)

Did the Department of Land Conservation and Development receive a notice of Proposed Amendment **FORTY FIVE (45) days prior to the first evidentiary hearing**. Yes: No:
If no, do the Statewide Planning Goals apply. Yes: No:
If no, did The Emergency Circumstances Require immediate adoption. Yes: No:
Affected State or Federal Agencies, Local Governments or Special Districts: _____

Local Contact: Bill Lawrence Area Code + Phone Number: _____
Address: 251 B. ST. W. #12 City: Vale, OR
Zip Code+4: 97918 Email Address: blawrence@malheur.co.org

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.

INSTRUMENT NO. 2007 - 3537
Page 1 of 3 Pages

FILED
10:31 a.m.

MAY 09 2007

DEBORAH R. DE LONG County Clerk
By *Sherril Childs* Deputy

ORDINANCE 165

AN ORDINANCE FOR A POST ACKNOWLEDGEMENT PLAN AMENDMENT TO INCLUDE A PORTION OF TAX LOT 6700 MAP 19S43 OF THE MALHEUR COUNTY ASSESSOR'S OFFICE AS A SIGNIFIGANT AGGREGATE SITE TO MALHEUR COUNTY'S COMPREHENSIVE PLAN, GOAL 5, MINERAL AND AGGREGATE INVENTORY, AND DECLARING AN EMERGENCY

WHEREAS, the Malheur County Court held duly published hearings on April 25, 2007 and May 9, 2007 for an area to be added to the Malheur County Comprehensive Plan Goal Five, Mineral and Aggregate Resources Inventory, a significant site; and

WHEREAS, the proposed area is approximately 8 acres of tax lot 6700 on Map 19S43 maintained by the Malheur County Assessor's Office located in Section 29, T.19 S., R43 E., W.M. with reference number 14330 (site). The legal description of the aggregate site is set forth in Exhibit 1, which is attached hereto and incorporated herein by reference; and

WHEREAS, the request to add the site to the Comprehensive Plan Goal 5 Mineral and Aggregate Inventory is made by Dave and Linda Woolfolk; and

WHEAREAS, the quantity of aggregate for the site is 292,800 tons (approximately 178,000 cubic yards); and

WHEREAS, the soils of the site and not mapped on the NRSC inventory. Private testing indicates the soils as basalt overlain by silty gravel. Basalt is the aggregate material proposed to be mined; and

WHEREAS, the quality of aggregate material at the site was tested and the lab test results indicate that all of the material submitted meets or exceeds the minimum quality specifications for highway construction as set forth by the Oregon Department of Transportation - ODOT Specifications: Section 02630; and

WHEREAS, the Malheur County Planning Commission approved the site and recommended that the Malheur County Court add the site to the Comprehensive Plan Goal 5, Mineral and Aggregate Inventory.

NOW THEREFORE, THE MALHEUR COUNTY COURT, STATE OF OREGON, ORDAINS
AS FOLLOWS:

**SECTION 1: ADDITION OF SITE TO MALHEUR COUNTY COMPREHENSIVE PLAN
GOAL FIVE MINERAL AND AGGREGATE RESOURCES INVENTORY**

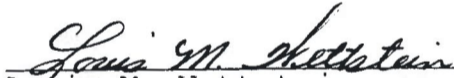
8 acres of tax lot 6700 on Map 19S43 maintained by the Malheur County Assessor's Office in Section 29 with a reference number of 14330 shall be included on the Malheur County Comprehensive Plan Goal Five Mineral and Aggregate Resources Inventory as a significant site. The site acres are more particularly described on Exhibit 1 attached hereto and incorporated herein by reference.

SECTION 2: EMERGENCY. An additional aggregate resource site is immediately necessary for the safety, maintenance and construction of roads, bypasses and interchanges in Malheur County. Therefore, an emergency is declared to exist and this ordinance shall take effect on the day of its adoption.

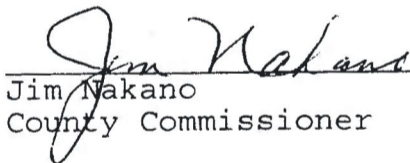
PASSED AND ADOPTED this 9th day of May 2007.



Dan P. Joyce
County Judge



Louis M. Wettstein
County Commissioner



Jim Nakano
County Commissioner

EXHIBIT 1

Land in Malheur County, Oregon:

SW $\frac{1}{4}$, SE $\frac{1}{4}$, SE $\frac{1}{4}$, and
W $\frac{1}{2}$ of SE $\frac{1}{4}$, SE $\frac{1}{4}$, SE 1/4
Sec. 29, T. 19S., R43E., W.M.

Approximately 8 acres
Tax Lot 6700
Reference No. 14330

Before the Planning Commission of Malheur County

Conditional Use Approval Mine Aggregate

Planning Department File No. 2006-11-002

Planning Commission Meeting Date: March 22, 2007

1. **OWNER:** Dave and Linda Woolfolk
2865 Highway 20
Harper OR 97906
2. **APPLICANT:** Same
3. **ACTION:** Conditional use approval for an aggregate site.
4. **PROPERTY IDENTIFICATION:** The proposed aggregate site is located approximately 12 miles west and one mile south of Vale.
5. **PROPERTY LOCATION AND DIRECTIONS:** Tax Lot 6700, Sections 29 and 32, T. 19S., R43E., W.M. Malheur County Reference Nos. 14330 and 20087.
6. **ZONING:** Exclusive Range Use
7. **PARCEL SIZE:** 390 acres
8. **PARCEL USE:** Range Use
9. **SURROUNDING USE:** Range Use
10. **ACCESS:** Private access off of US Highway 20
11. **SANITATION REQUIREMENTS:** Not Applicable
12. **FIRE PROTECTION:** Not in a fire protection district.
13. **NATURAL HAZARDS:** Wildfire
14. **WATER RIGHTS:** None
14. **ZONING HISTORY:** A Post Acknowledgement Plan Amendment (PAPA) to include the subject site in the Malheur County Comprehensive Plan Goal Five Resource Inventory was granted by Malheur County on May 9, 2007, in accordance with Oregon Administrative Rules 660-023-180(4), (5)(f) and (6). (Malheur County Ordinance No. 165)

Malheur County complied with Oregon Revised Statutes 215.213(2) or 215.283(2), and the requirements of ORS 215.296 and 215.402 through 215.416 by determining the quantity of material at the site is less than 500,000 tons and is not more than 35% of the proposed mining area consists of Class I or Class II soils on NRCS maps.

The PAPA was processed as a legislative action pursuant to Malheur County Code, Title 6, Chapter 10, Legislative Amendments, to include the subject site in the Malheur County Comprehensive Plan Goal Five Resource Inventory. Malheur County Ordinance 165 includes the SW1/4, SE1/4, SE1/4 and W1/2 of SE1/4, SE1/4, SE 1/4, Tax Lot 6700, Section 29, T. 19S., R43 E., W.M., reference no. 14330., (an approximate eight acre site) as a significant resource site to the Malheur County Comprehensive Plan.

THE MALHEUR COUNTY PLANNING COMMISSION BASED ITS DECISION ON:

- 1. General Criteria To Evaluate Suitability, Malheur County Code 6-6-7**
- 2. Specific Conditional Use Criteria, 6-6-8-4: Mineral Aggregate or Geothermal Resource Exploration, Mining and Processing**

- A. Comprehensive Plan goals and policies, as applicable.
- B. Specific plan recommendations.

FINDING: The Malheur County Comprehensive Plan at Goal 5, Open Space, Scenic and Historic Areas, and Natural Resources, Mineral and Aggregate Resources specifies the county will study aggregate sites to determine location, quality and quantity of the resources. The Applicant has submitted an independent analysis of the site as identifying 292,800 tons of aggregate material available. A post acknowledgement plan amendment adding this site to the Malheur County's resource inventory will, subject to compliance with other conditional use criteria, allow issuance of a conditional use permit.

- C. Existing development and viewpoints of property owners in the surrounding area.

FINDING: The owners of surrounding parcels within 750 feet of the border of the parcel were notified by mailed notice and notice was published in the newspaper at least 20 days prior to the public hearing. The Malheur County Planning Commission and the Malheur County Court will conduct public hearings on the post acknowledgement plan amendment and the conditional use permit application. The complete application will be available to public for review in the Malheur County Planning Department Office at least seven days prior to the first public hearing. After the public hearing and a decision is made and published, there will be a period during which the public with standing in the decision is afforded the opportunity to appeal the decision.

D. Availability of services and utilities.

FINDING: The Applicant's conditional use application indicates the availability services and utilities

E. The effect of the proposed use on the stability of the community's social and economic characteristics.

FINDING: The Applicant's conditional use application has no information on the effect of the aggregate mining on the stability of the community's social and economic characteristics. Based on past experience the planning department understands there is a general continuing need for aggregate material in Malheur County. The economics of distance to any given proposed use areas (haul distances) will be a major factor in determining whether producing and hauling aggregate from the proposed site is economical. Public review will provide additional opportunity to evaluate the effects of the proposed use.

F. It does not interfere with traditional fish and wildlife use of habitats determined critical or sensitive in the Fish and Wildlife Habitat Protection Plan for Malheur County.

FINDING: The Applicant's conditional use application does not address fish and wildlife habitat. The proposed site is not listed as critical or sensitive habitat by Malheur County.

G. General Criteria

1. Increasing setbacks of structures to reduce possibilities of overshadowing adjoining property, noise, odor or night lighting nuisances.
2. Landscaping improvements for the visual benefits of the subject site and for the improved appearance of the neighborhood and County.
3. Location and size of driveway access points and right-of-way widening and improvement for present and future traffic circulation and safety.
4. Visual screening of outdoor waste and storage areas.
5. Control and focusing of outdoor lighting to avoid glare being directed beyond property limits.
6. Special criteria listed below, as applicable.

FINDING: The Applicant conditional use application includes information generally addressing items 1-5 above.

8. Allowance of Certain Uses: A use allowed under Section 6-3A-3 of this Title shall be approved only where it is found that the use will not:

1. Force a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest use; or
2. Significantly increase cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use. (Ord. 86, 12-7-1993)

FINDING: Whether the proposed use will force a significant change in accepted farm practices on surrounding lands; or significantly increase cost of accepted farm

practices on surrounding lands devoted to farm use is not likely to be determined until the surrounding land owners have been notified of the proposal and have had the opportunity to comment. The owners of surrounding parcels within 750 feet of the border of the parcel were notified by mailed notice and notice was published in the newspaper at least 20 days prior to the public hearing. The Malheur County Planning Commission and the Malheur County Court will conduct public hearings on the post acknowledgement plan amendment and the conditional use permit application. The complete application will be available to public for review in the Malheur County Planning Department Office at least seven days prior to the first public hearing. After the public hearing and a decision is made and published, there will be a period during which the surrounding landowners will be afforded the opportunity to appeal the decision.

A. Submitted plans and specifications shall contain sufficient information to allow the Planning Commission to set standards pertaining to:

1. Noise, dust, traffic and visual screening.
2. Setbacks from property lines.
3. Location of vehicular access points.
4. Fencing needs.
5. Prevention of the collection and stagnation of water at all stages of the operation.
6. Rehabilitation of the land upon termination of the operation.

B. In zones where processing is permitted, it shall be located no closer than two hundred feet (200') from residential or commercial uses.

C. Equipment and access roads shall be constructed, maintained and operated in such a manner as to eliminate, as far as is practicable, noise, vibration or dust that is injurious or substantially annoying to livestock being raised in the vicinity.

D. Asphalt plants, concrete products manufacturing, cement plants and similar uses often associated with extraction of earth products (except geothermal activities) shall not be permitted in conjunction with extraction operations except in an M-2 Zone. (Ord. 86, 12-7-1993)

FINDING: The Applicant has submitted proposed findings of fact as part of the conditional use application on.

CONDITIONS OF APPROVAL

1. Mining at the proposed site will not exceed 500,000 tons of aggregate

APPEALS

The appellate body for appeals from the final decision of the Planning Commission is the County Court. To file an appeal an appellant must file a completed notice of appeal on a form prescribed by the Planning Department with a \$200.00 appeal fee with the Planning Department no later than 5:00 p.m. on the tenth day following the mailing of written notice of the decision. Notice of appeals may not be received by facsimile machine. The notice must include a statement raising any issue relied upon for the appeal with sufficient specificity to afford the County Court, acting as the appellate body, an adequate opportunity to respond to and resolve each issue. All appeals from the Planning Commission's final decision shall be based on the record

of the hearing made before the Commission. Therefore no additional information or testimony not included in the record of the hearing before the Planning Commission may be brought before the appellate body. The appellant must pay for the transcription of the hearing appealed from and submit the transcript to the Planning Department within ten days after the date of notice of appeal is filed or ten days after the hearing tape is mailed or given to the appellant, whichever is later.

CONCLUSIONS OF LAW

All applicable criteria for a Conditional Use Permit to mine aggregate on Tax Lot 6700, sections 29 and 32, T.19S., R.43E, Assessor's Map 19S43, reference no3. 14330 and 20087 have been addressed and met in accordance with Malheur County Code Title 6. Subject to Condition No. 1, above, the conditional use permit is approved.

Gary Wilson
Chair, Malheur County Planning Commission

5/9/07
Date