



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

February 26, 2008

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 005-07



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: March 11, 2008

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
Jon Jinings, DLCD Regional Representative
Jon Beal, Malheur County

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FORM 2

D L C D 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

FEB 21 2008

(See reverse side for submittal requirements)

LAND CONSERVATION
AND DEVELOPMENT

Jurisdiction: Malheur County Local File No.: 2007-08-013
(If no number, use none)

Date of Adoption: 2-13-08 Date Mailed: 2-18-08
(Must be filled in) (Date mailed or sent to DLCD)

Date the Notice of Proposed Amendment was mailed to DLCD: 8-21-07

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."

Zone change of 2.7 acres from R-1, Rural Residential to M-1, Light Industrial

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: R-1 to M-1

Zone Map Changed from: R-1 to M-1

Location: Sec 17, T18S, R47E, WM Acres Involved: 2.7

Specify Density: Previous: 2ac New: 22,500 sq ft.

Applicable Statewide Planning Goals: _____

Was an Exception Adopted? Yes: _____ No:

DLCD File No.: 005-07 (16327)

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: _____

DLCD, Malheur Co, City of Ontario

Local Contact: Jon D Beal Area Code + Phone Number: 541-473-5185

Address: 251 B St W #12 City: Udale, OR 97913

Zip Code+4: 97913 Email Address: jbeal@malheurco.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.**

FILED
2:51 PM

ORDINANCE 174

FEB 13 2008

In the matter of:
Ordinance Amending Malheur County's Comprehensive Plan
And Zoning Maps to Rezone Tax Lot 400, Assessor's Map 18S4717A,
Section 17, T. 18 S., R. 47 E., W.M. (Property) from Rural Residential
(R-1) to Light Industrial (M-1)

DEBORAH R. DE LONG County Clerk
By) Sheri Childs Deputy
)
)
)

This matter came before the Malheur County Court sitting in regular session for the reading of this ordinance on January 30, 2008 and February 13, 2008.

WHEREAS, Dale Luther, owner of Precision Auto Machine Inc., submitted an application to the Malheur County Planning Commission requesting an amendment to Malheur County's Comprehensive Plan and Zoning Maps to rezone Tax Lot 400, Assessor's Map 18S4717A, Section 17, T. 18 S., R. 47 E., W.M. (Property) from Rural Residential (R-1) to Light Industrial (M-1); and

WHEREAS, tax lot 400, Assessor's Map 18S4717A consists of a total of 2.73 acres. The Property has been used as an auto and truck repair and machine shop, which was established in the mid 1960's prior to the beginning of land use planning and regulatory zoning of property in Malheur County. The business, Precision Auto Machine Inc., has operated as a non-conforming use since the property came under county zoning in 1973; and

WHEREAS, the Property is legally described on Exhibit "1" attached hereto and incorporated herein by reference; and

WHEREAS, following a quasi-judicial land use hearing, the Malheur County Planning Commission made a recommendation to the Malheur County Court, which was supported by findings of fact and conclusions of law, to approve the application of Dale Luther; and

WHEREAS, attached hereto as Exhibit "2" and incorporated herein by reference are findings of fact and conclusions of law in support of this ordinance and approving Dale Luther's application to amend Malheur County's Comprehensive Plan and Zoning Maps to rezone the Property from R-1 to M1; and

WHEREAS, the Malheur County Court adopts the Findings of Facts and Conclusions of Law and finds that they set forth compelling facts and reasons to justify an amendment to the County's Comprehensive Plan and to rezone the Property from R-1 to M-1.

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

Section 1: Amend Comprehensive Plan

The Malheur County Comprehensive Plan shall be amended to rezone 2.73 acres from R-1 to M-1, tax lot 400, Malheur County Assessor's Map 18S4717A, which property is more particularly described in Exhibit "1" attached hereto and incorporated herein by reference (The Property).

Section 2: Rezone and Amend Zoning Maps

The Malheur County Zoning Map shall be amended as shown on Exhibit "3", attached hereto and incorporated herein by reference, and the Property shall be rezoned from Exclusive Farm Use (EFU) to M-1, Industrial Zone.

Section 3. Effective Date:

This ordinance shall take effect on the day of its adoption.

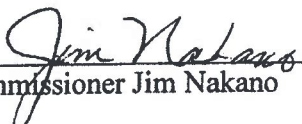
ADOPTED this 13th day of February 2008.



Judge Dan P. Joyce

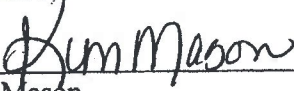


Commissioner Louis M. Wettstein



Commissioner Jim Nakano

ATTEST:



Kim Mason

EXHIBIT 1

Section 17, T. 18 S., R. 47 E., W.M., Malheur County, Oregon:

Lot 2, PAM Subdivision, Recorded in Malheur County, Oregon on February 6, 2002 as
Instrument No. 02-990

Tax Lot 400, Assessor's Map 18S4717A
Reference Number 8491

Exhibit 2

Before the Planning Commission of Malheur County

**Zone Change From Rural Residential (R-1) to Light Industrial (M-1)
Planning Department file #2007-08-013**

Applicant: Dale Luther
Precision Auto Machine, Inc.
1890 S.W. 18th Ave,
Ontario, Oregon 97914

Property Identification: Tax lot 400, Assessor's map 18S4717A
Section 17, T. 18 S., R. 47 E., W.M.
Located at 1890 S.W. 18 Avenue, Ontario, Oregon

I. NATURE OF APPLICATION

The application is submitted to change the zoning designation of a 2.7 acre parcel from Rural Residential to Light Industrial. The primary use of the parcel is an auto and truck repair and machine shop which was established in the mid 1960's prior to the beginning of land use planning and the regulatory zoning of property in rural Malheur County. The business has operated as a pre-existing non-conforming use since the property came under county zoning in 1973.

II. PROPERTY HISTORY

The subject property was originally three lots and a portion of a fourth lot in a residential subdivision that was platted prior to 1973, when zoning and subdivision regulations were established in rural Malheur County. These lots were consolidated into one lot by a property line adjustment, a road vacation and a re-plat of a portion of the subdivision. The newly created lot is the location for an auto and truck repair business and associated storage. The Malheur County Comprehensive Plan states in the section addressing county commercial and industrial areas that these areas were generally designated where the commercial and industrial uses were already established. Based on this policy it appears at least that portion of the subject property that was in commercial/light industrial use at the time the property was originally zoned, should have been zoned commercial. This point is stated by the Applicant in the zone change application and the Planning Department agrees that the property was incorrectly zoned at the inception of zoning in rural Malheur County. Planning staff assumes the property was zoned rural residential instead of commercial because it was part of a platted residential subdivision, even though it was in commercial use at the time of zoning. The commercial use has continued to exist on the subject property as a non-conforming use, which can have the effect of restricting the operation or expansion of the commercial use of the property to the detriment of the business.

III. APPLICABLE APPROVAL CRITERIA

A zone change requires an amendment to the Malheur County Comprehensive plan Planning and Zoning Map which must be handled as a legislative action. The Planning Commission holds a quasi-

judicial hearing to review the zone change application, adopts findings of fact addressing the appropriate approval criteria and make a recommendation to the Malheur County Court to approve or disapprove the application. The County Court then holds two public hearings and either approves or disapproves the zone change application. The subject property is not zoned Exclusive Farm Use, therefore an exception to Statewide Planning Goal 3, Agricultural Lands, is not a required approval criteria for the proposed zoned change from Rural Residential, R-1, to Light Industrial, M-1. The approval criteria set forth in Malheur County Code Section 6-10-7: **Legislative Amendments** are as follows:

Section 6-10-7: Compliance with the Comprehensive Plan in considering an amendment to the text or zoning maps, the planning commission shall determine the following:

Section 6-10-7:A. The proposed change is consistent with the comprehensive plan.

Section 6-10-7:B. The level of development in other locations has reached the point where additional land is needed for the proposed use and the proposed zone change can best meet such need.

Section 6-10-7:C. That adequate services are available to the property.

Section 6-10-7:D. That amendments to the text or zoning map which significantly affect the transportation facility, shall assure that the allowed uses are consistent with the function, capacity and level of service of the facility identified in the Transportation Plan.

IV. FINDINGS OF FACT

1. General Information and History Regarding the Property

The subject property was originally composed of lots 3, 4, 5 & and a portion of lots 6 and 7 of the Butte View Subdivision that was platted years ago. In 1965, Jack Eckman opened an auto repair shop on lot 6. The business and property were bought by the applicant in 1976. The business became Precision Auto Machine, Inc. and a new addition to the building was constructed in 1982 on what was then lot 5 of the Butte View Subdivision. A platted road (Howard Place) that accessed lots 2, 3 and 4 of the Butte View Subdivision was vacated in 2000. Lots 1, 2, 3, 4, 5 and portions of lots 6 and 7 of the Butte View Subdivision were reconfigured by a re-plat into the PAM Subdivision. Prior to the re-plat a property line adjustment was made between lots 6 and 7 to correct a setback issue. Although the property was being used for a commercial/industrial use it was zoned Rural Residential in 1973 when zoning was originally established in the county.

2. The Malheur County Comprehensive Plan Land Use Element, Section 5, Commercial and Industrial Areas, states:

In compliance with the Statewide Planning Goals and guidelines very few commercial and industrial areas have been designated outside the urban growth boundaries. In general,

these areas have been designated only where commercial or industrial activity already exists, or where lands are reserved for development that will utilize site-specific resources such as geothermal resources.

The property was zoned Rural Residential, other than a commercial or industrial designation, because the lots were originally part of a rural subdivision, even though it had been in commercial/industrial use for several years and was an established business in the community. The property was incorrectly zoned residential other than a commercial or industrial designation when the County's Comprehensive Plan and Zoning Ordinance was adopted. Zoning the property Rural Residential made the established auto repair business a non-conforming use which can make any expansion or use of the property difficult if not impossible.

Analysis of the Malheur County Comprehensive Plan Goals and Policies

3. **Goal 1-Citizen Involvement:** To develop a citizen involvement program that ensures the opportunity for citizens to be involved in all phases of the planning process.

This goal is met through the public participation provisions of Malheur County's acknowledged Zoning Ordinance and Comprehensive Plan.

4. **Goal 2-Land Use Planning:** To establish a comprehensive planning process and framework as a basis for all decisions and actions related to land use, and to assure an adequate factual base for those decisions and actions.

This Goal is met through the procedures in Malheur County's Comprehensive Plan and Zoning Ordinance.

5. **Goal 3- Agricultural Lands:** To preserve and maintain agricultural land in Malheur County for agricultural purposes.

The subject property is not zoned Exclusive Farm Use or classed as agricultural land pursuant to the Statewide Planning Goal 3, Agricultural Lands. A built and committed exception to Goal 3, Agricultural Lands, for the subject property was adopted by the County when the property was originally zoned Rural Residential. Therefore, the Goal does not apply.

6. **Goal 4- Forest Lands:** To preserve and maintain forest lands for allowable agriculture and forest uses.

There are no Goal 4 forest resources on or near the subject property. This Goal does not apply.

7. **Goal 5-Open Space, Scenic and Historic and Natural Resources:** To conserve open space and protect natural and scenic resources.

There are no Goal 5 resources on or near the subject property. This Goal does not apply.

8. Goal 6-Air, Water and Land Quality: To maintain and improve the quality of Malheur County's air, water and land resources.

Use of the property will be limited by the County's zoning regulations. The proposed zoning designation for the subject property as described in this application will not have any adverse impact on air, water or land quality. The use of the property will not be substantially changed from the manner the property is used presently. If re-zoned, any new use of the property will be reviewed pursuant to the design review requirements of Malheur County Code, Chapter 5, Design Review Overlay Zone to insure it will not have any negative effect on adjoining properties.

9. Goal 7-Natural Disasters and Hazards: To protect life and property from natural disasters and hazards.

There are no natural hazards on the subject property. The property is located outside the designated flood plain. The proposal complies with Goal 7.

10. Goal 8-Recreation: To meet the park and recreation needs of the citizens of Malheur County and visitors.

This Goal is not applicable to this application.

11. Goal 9-Economy: To diversify and improve the economy of Malheur County.

Allowing the proposed re-zoning promotes the County's Goal 9 and several policies under Goal 9. Allowing the re-zoning of the subject property will encourage the continuation and expansion of an existing business in the County which provides employment opportunities and provides a service to residence of the County.

12. Goal 10-Housing: To promote reasonable land use policies at minimal government interference to insure citizens have ample opportunity to obtain adequate housing. *This application proposes no changes in the County housing policies. This Goal is not applicable to this application.*

13. Goal 11-Public Facilities and Services: To Plan and develop a timely, orderly and efficient arrangement of public facilities and services to serve as a framework for urban and rural development.

The proposed zone change should have no effect on public facilities and services. The subject property is already developed into a commercial/industrial use and serviced by a well and septic system. The site is also within the Ontario Rural Fire Protection District. Power and telephone services have already been extended to the property.

14. Goal 12-Transportation: To provide and encourage a safe, convenient and economic transportation system.

The subject property is accessed from SW 18th Avenue. The re-zoning of the property will not create a major change in the existing use of the subject property and have a significant impact on traffic in the area. The re-zoning will not change the basic use of the subject property as an auto repair and machine shop. This use was established in the mid 1960's and should not generate more traffic than the current use or more than SW 18th Avenue is rated to handle.

15. Goal 13-Energy: To conserve energy.

Allowing the proposed re-zoning of the subject property to make the existing use an allowed outright use will have no significant impact on energy resources because the business is an existing use on the property and no new energy demands will be required.

16. Goal 14-Urbanization: To provide or an orderly and efficient transition from rural to urban use.

The subject property borders the Ontario urban area and is proposed to be included in the Ontario Urban Reserve Area for future inclusion in the Ontario Urban Growth Boundary and eventually within the City of Ontario. The proposed action is consistent with Goal 14.

17. Section 6-10-7: B. The level of development in other locations has reached the point where additional land is needed for the proposed use and that the proposed zone change can best meet such needs.

The present commercial/industrial use of the subject property was established in the mid 1960's and has continued to the present time. The proposed re-zoning of the property will make the existing use of the property and allowed outright use rather than a non-conforming use which will encourage the continuation and possible expansion of the existing business. No land will be taken out of farm production and the actual existing use of any property will not be changed by the re-zoning of the subject property.

18. Section 6-10-7: C. That adequate rural services are available to the property.

The water and sanitation requirements for the use of the property are handled by a well and sanitation system contained on the subject property. Fire, emergency and police services are already available to the property. Electrical and telephone services are already extended to the property. Adequate rural services are available to the property and will not be overburdened by the re-zoning of the property.

19. Section 6-10-7: D. That amendments to the text or the zoning map which significantly affect the transportation facility, shall assure that the allowed uses are consistent with the

function, capacity and level of service of the facility identified in the Transportation Systems Plan.

The current use of the subject property is commercial/industrial. The property was developed in the mid 1960's. The re-zoning of the property is to allow the existing use to be considered an allowed outright use as opposed to a pre-existing non-conforming use, which can make ongoing operation or expansion of the business difficult. The business provides a needed service to the area and provides employment for several persons. Southwest 18th Avenue is classified in the Malheur County Transportation Plan as a Urban Collector/Rural Major Collector which connects minor collectors and local roads to urban centers or to interstate, major arterial or minor arterial facilities. Major collector routes in Malheur County generally carry anywhere from 500 to 1000 vehicle trips per day. The proposed zone change will not drastically change the operation level of the existing business on the property and therefore will not generate any more traffic than SW 18th Avenue is approved for.

V. CONCLUSIONS OF LAW

The subject property adequately meets the applicable criteria contained in Malheur County Code Section 6-10-7 and the Malheur County Comprehensive Plan Goals and Policies for a change of zoning designation from Rural Residential (R-1) To Light Industrial (M-1).

VI. PLANNING COMMISSION RECOMMENDATION TO THE COUNTY COURT

The Planning Commission adopts the above findings of fact and conclusions of law and recommends to the County Court approval of the application to change the zoning designation of the subject property from Rural Residential (-1) to Light Industrial (M-1).



Chair, Malheur County Planning Commission

11/25/07

Date

Exhibit 3

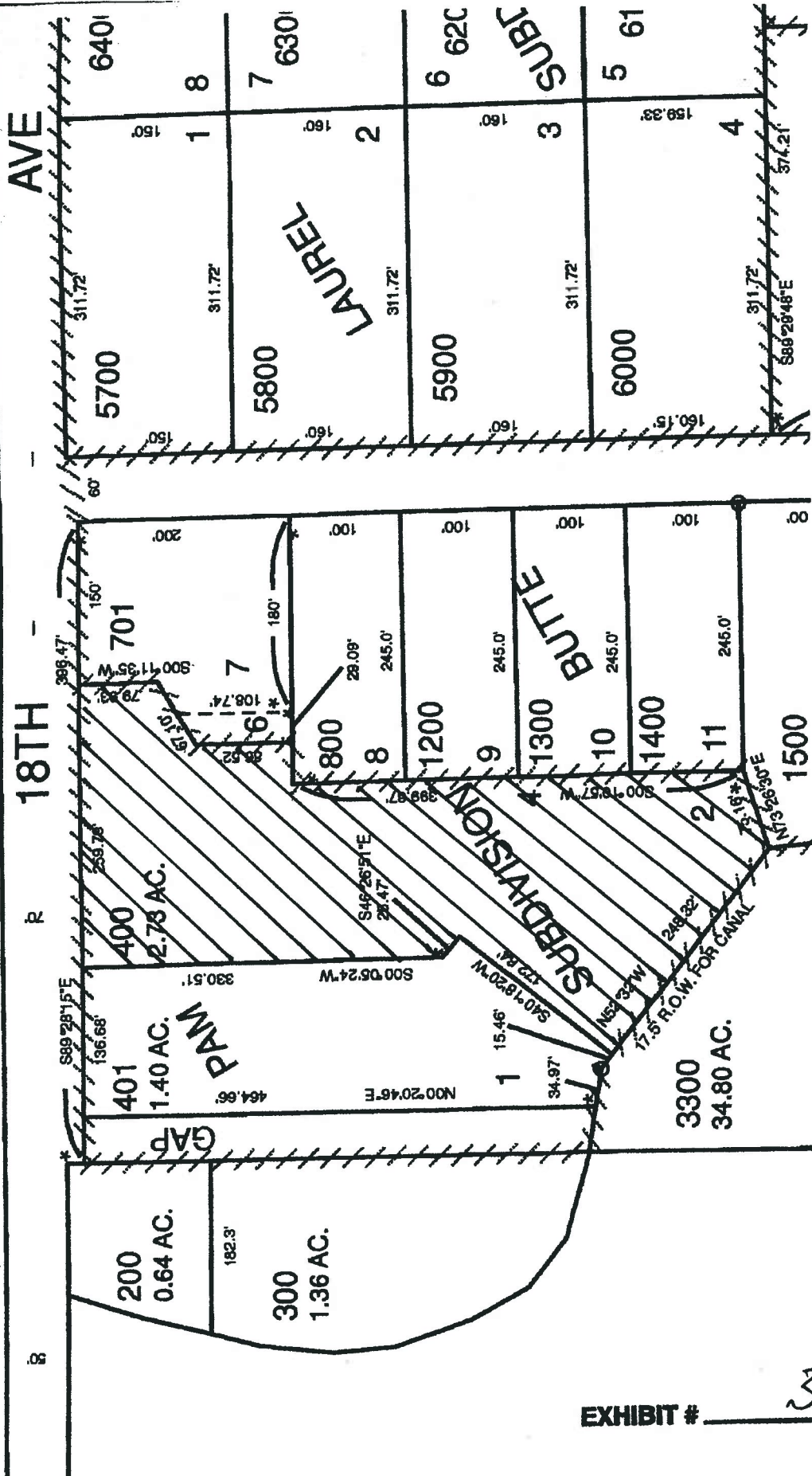
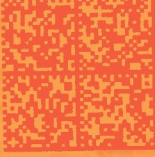


EXHIBIT # 3

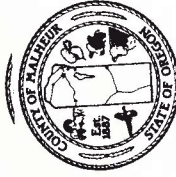
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DEPT OF

FEB 21 2008

LAND CONSERVATION
AND DEVELOPMENT



FROM: Malheur County
Planning Department
Courthouse, #12
251 B Street West
Vale, OR 97918

TO: ATTN: Plan Amendment Specialist
Dept of Land Conservation & Development
635 Capitol Street NE, Suite 150
Salem, Oregon 97301-2540