



# Oregon

Theodore R. Kubongski, 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

12/10/2009

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

**FROM:** Plan Amendment Program Specialist

**SUBJECT:** Deschutes County Plan Amendment  
DLCD File Number 005-09

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:** Wednesday, December 23, 2009

This amendment was submitted to DLCD for review prior to adoption with less than the required 45-day notice. 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:** Paul Blikstad, Deschutes County  
Gloria Gardiner, DLCD Urban Planning Specialist  
Amanda Punton, DLCD Regional Representative  
Jon Jinings, DLCD Regional Representative  
Matt Crall, DLCD Regional Representative

<paa> YA

# 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

Jurisdiction: Deschutes County Local file number: TA-09-3  
 Date sent to DLCD: 12-1-09 mail Electronic in person Date of Adoption: 11-30-09  
 Was a Notice of Proposed Amendment (Form 1) mailed to DLCD? No If yes, when: 8-17-09  
 Comprehensive Plan Text Amendment  Comprehensive Plan Map Amendment  
 Land Use Regulation Amendment  Zoning Map Amendment  
 New Land Use Regulation  Other: \_\_\_\_\_

Summarize the adopted amendment. Do not use technical terms. Do not write "See Attached".  
Amend section 18.52.115, Extended Operating Hours, to allow for public safety operations outside of the hours specified in 18.52.110(I). The applicant for this text amendment was the Oregon Department of Transportation (ODOT).

Does the Adoption differ from proposal? Please describe. If no proposal submitted, check here:   
Just a minor formatting change.

Plan Map Changed from: \_\_\_\_\_ to: \_\_\_\_\_  
 Zone Map Changed from: \_\_\_\_\_ to: \_\_\_\_\_  
 Address of Property: \_\_\_\_\_ Acres Involved: \_\_\_\_\_  
 Specify Density: Previous: \_\_\_\_\_ New: \_\_\_\_\_

Applicable statewide planning goals:  
 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19

Was an Exception Adopted?  YES  NO  
 Did DLCD receive a Notice of Proposed Amendment...  
 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

DLCD file No. 005-09 (17771) [15871]

Please list all affected State or Federal Agencies, Local Governments or Special Districts:

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Local Contact: Paul Blikstad Phone: (541) 388-6554 Extension: \_\_\_\_\_  
Address: 117 NW Lafayette City: Bend, OR Zip: 97701  
Fax Number: (541) 385-1764 E-mail Address: paulb@co.deschutes.or.us

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## 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 Complete Copies (documents and maps) 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. **Electronic Submittals:** Go to: <http://webserver.lcd.state.or.us/upload2/uploadForm1.php>  
Enter the number of files to be uploaded and then browse to locate files and when all files are found, press submit and your files will be sent to DLCD. At least **one** hard copy must be sent by mail or delivered in person. If you would like help with electronic submittals, please call Mara Ulloa at (503) 373-0050 extension 238.
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 now access these forms online at <http://www.lcd.state.or.us/>. Please print on **8-1/2x11 green paper only**. You may also 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](mailto:mara.ulloa@state.or.us) - ATTENTION: PLAN AMENDMENT SPECIALIST.

REVIEWED  
*Je*  
LEGAL COUNSEL

For Recording Stamp Only

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON

An Ordinance Amending the Deschutes County Code \*  
Chapter 18.52 to Allow Public Safety Operations in \*                   ORDINANCE NO. 2009-026  
the Surface Mining Zone, and Declaring an \*  
Emergency. \*

WHEREAS, the Oregon Department of Transportation submitted a text amendment to Deschutes County Code (DCC) Chapter 18.52 to allow public safety operations in the Surface Mining Zone; and

WHEREAS, after notice was given in accordance with applicable law, a public hearing was held on October 1, 2009 before the Deschutes County Planning Commission, and on October 22, 2009 the Deschutes County Planning Commission recommended approval of the proposed text amendment; and

WHEREAS the Board of County Commissioners considered this matter after a public hearing on November 30, 2009 and concluded that the proposed changes are consistent with the County's Comprehensive Plan, and that the public will benefit from changes to the land use regulations ; now, therefore,

THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON, ORDAINS as follows:

Section 1. AMENDMENT. DCC Section, 18.52.115, Extended Operating Hours, is amended to read as described in Exhibit "A," attached hereto and by this reference incorporated herein, with new language underlined.

Section 2. FINDING. The Board adopts as its findings in support of this decision, Exhibit "B," attached and incorporated by reference herein.

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Section 3. EMERGENCY. This Ordinance being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this Ordinance takes effect on its passage.

Dated this 30<sup>th</sup> of Nov., 2009

BOARD OF COUNTY COMMISSIONERS  
OF DESCHUTES COUNTY, OREGON

Tammy Baney  
TAMMY BANEY, CHAIR

Dennis R. Luke  
DENNIS R. LUKE, VICE CHAIR

Alan Unger  
ALAN UNGER, COMMISSIONER

ATTEST:

Bonnie Baker  
Recording Secretary

Date of 1<sup>st</sup> Reading: 30<sup>th</sup> day of Nov., 2009.

Date of 2<sup>nd</sup> Reading: 30<sup>th</sup> day of Nov., 2009.

Record of Adoption Vote

Commissioner	Yes	No	Abstained	Excused
Tammy Baney	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Dennis R. Luke	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Alan Unger	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Effective date: 30<sup>th</sup> day of Nov., 2009.

ATTEST:

Bonnie Baker  
Recording Secretary

#### 18.52.115. Extended Operating Hours.

Notwithstanding the limitations set forth in an approved site plan for surface mining or the limitation on hours of operation set forth in DCC 18.52.110(I), a special operating permit for extended hours of operations at a mining site may be approved when the Planning Director or Hearings Body finds that an applicant demonstrates that:

- A. Project Necessity. Extended hours of operation are necessary to construct capital improvements and other specific public roadway improvements, including but not limited to public safety operations, road widening, paving, surfacing and realigning, where practical difficulties not created by the applicant such as transportation management requirements necessitate project construction and operation of equipment outside the hours specified in DCC 18.52.110(I) or otherwise set forth in a surface mining site plan;
- B. Equipment Limitation. During the extended hours of activity, operations at the mining site shall include only those uses allowed under DCC 18.52.040 and, when already approved as a conditional use, those uses listed in DCC 18.52.050, including vehicular traffic, and shall be limited to the minimum necessary to complete the project; and
- C. Time Limitation. Except as provided in (D) below, Activities approved under DCC 18.52.115(B) shall not exceed a period of 14 days but may be renewed for successive periods not exceeding three days each if: the extension is necessary to complete the roadway or capital improvement project; and transportation management concerns or unique project characteristics justify the extension.
- D. Public safety operations.
  - 1. Public safety operations are those operations permitted under DCC 18.52.040 that are required to respond to a road hazard or incident such as snow, ice, a vehicle crash or other road blockage such as a tree, power line, fire, or animal.
  - 2. Public safety operations are exempt from the time limitations imposed by DCC 18.52.115(C) and 18.52.110(I), provided that the noise and air quality standards of DCC 18.52.110 are met at all times.

DE.Noise Control. Activities permitted under DCC 18.52.115 are subject to DCC 8.08.090(D).  
(Ord. 2009-026 §1, 2009; Ord. 98-038 §1, 1998)

## **EXHIBIT "B"**

### **PURPOSE & BACKGROUND**

This is a citizen-initiated (Oregon Department of Transportation) text amendment to Chapter 18.52 (Surface Mining Zone) of Title 18 of the Deschutes County Code, to include language allowing for public safety operations/activities within the SM zone. The language would allow for the possibility of ODOT establishing a site for public safety operations/activities for the roads (highways) under their administration. While this text amendment is essentially directed at one surface mining site, which is the ODOT site on Highway 126, just east of Sisters, it would apply to all zoned surface mining sites, owned by a public entity.

The applicant is proposing to amend section 18.52.115, Extended Operating Hours, to provide for public safety operations for ODOT.

### **TEXT AMENDMENT REVIEW CRITERIA & ANALYSIS**

The proposed amendment revises Deschutes County Code Title 18, Chapter 18.52, to permit public safety operations such as: the loading and distribution of road sanding or de-icing equipment (trucks) and materials, and incident response (e.g. sending teams to a vehicle crash, or road hazard such as a tree, power line, fire, or animal blocking the roadway).

### **ISSUES**

The primary pro or favorable issue is that this ordinance change could provide for a reasonable and efficient use of publicly owned surface mining sites, by allowing them to be used for something other than just resource (gravel, cinders, sand) storage.

The primary con or non-favorable issue would be the potential noise associated with these operations during off hours for normal use.

The Planning Commission forwarded a recommendation of approval for the proposed text amendment at their October 22, 2009 meeting. Staff concurs with the applicant's findings on conformance with the intent of the SM zone and the comprehensive plan. Staff believes that the proposed use will not impact any mining resource identified in the County comprehensive plan, and will be consistent with the plan.

### **CONFORMANCE WITH THE DESCHUTES COUNTY COMPREHENSIVE PLAN**

All amendments to the zoning regulations must comply with the County's comprehensive plan. The following is an analysis of those applicable plan provisions.

#### **Chapter 23.100, Surface Mining**

Under Section 23.100.060, the following General Policy applies:

To protect and utilize appropriately, within the framework established by Statewide Land Use Planning Goal 5 and its implementing administrative rules, the mineral and

aggregate resources of Deschutes County, while minimizing the adverse impacts or mineral and aggregate extraction and processing upon the resource impact area.

The proposed text amendment allows for the continued use of mineral and aggregate resources in the surface mining zone, while providing for highway/road maintenance, including hours allowed beyond the normal surface mining hours established under DCC 18.52.110(I). The proposed amendment will assure the minimization of any adverse impacts of surface mining operations by requiring that State noise and dust regulations are continuously met.

#### Chapter 23.64, Transportation System Plan

Under Section 23.64.020, the following policy applies:

- i. The lead agency for transportation project review in Deschutes County shall be:
  1. Deschutes County for projects outside UGBs;
  2. The affected city for projects within UGBs; and
  3. The State of Oregon, Deschutes County and affected cities on projects involving state-owned facilities.

The proposal for extended hours of operation for public safety operations, including highway maintenance, will maintain the roads so that the roads may continue to be used by the public as outlined in the transportation system plan. The extended hours will also lessen the stress on other roads not designed to handle the traffic that will result from drivers taking a detour around emergency areas.

#### Chapter 23.52, Economy

The proposal will comply with the goals and policies listed in this chapter because the extended hours will allow ODOT to clear the highways earlier and make them more safe for people traveling to and from the County for business and for delivery and service vehicles.

#### Chapter 23.80, Natural Hazards

The extended hours will further the goals and policies of this chapter by allowing ODOT to respond during those hours to natural hazards that may be blocking the highways.

#### Chapter 23.88, Agriculture and Chapter 23.92, Forest Lands

The County's goal of preserving and maintaining agricultural and forest lands will be met because the proposal will allow ODOT to clear the highways of hazards that may impede the ability of farmers, ranchers and timber companies to receive needed supplies or to deliver their products to the market.

The remaining Comprehensive Plan chapters are not implicated or are not relative to this proposal.





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***Deschutes County Community Development Department***

117 NW LAFAYETTE AVENUE  
BEND, OREGON 97701-1925  
(541) 388-6575

ATTENTION: PLAN AMENDMENT SPECIALIST  
DEPT. OF LAND CONSERVATION AND DEVELOPMENT  
635 CAPITOL STREET NE, SUITE 150  
SALEM, OR 97301-2540