



Oregon

Theodore R. Kulongoski, Governor

Department of Land Conservation and Development

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NOTICE OF ADOPTED AMENDMENT

January 30, 2006



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

FROM: Mara Ulloa, Plan Amendment Program Specialist

SUBJECT: Deschutes County Plan Amendment
DLCD File Number 004-98

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: February 9, 2006

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: Paul Blikstad, Deschutes County

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DLCD NOTICE OF ADOPTION

JAN 23 2006

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

LAND CONSERVATION
AND DEVELOPMENT

(See reverse side for submittal requirements)

Jurisdiction: Deschutes County Local File No.: TA-97-9
(If no number, use none)

Date of Adoption: August 26, 1998 Date Mailed: 1-17-06
(Must be filled in) (Date mailed or sent to DLCD)

Date the Notice of Proposed Amendment was mailed to DLCD: Feb. 13, 1998

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

Summarize the adopted amendment. Do not use technical terms. Do not write ASee Attached.≡

Amend nonconforming use section to be in conformance with state law.

Describe how the adopted amendment differs from the proposed amendment. If it is the same, write ASame.≡ If you did not give notice for the proposed amendment, write AN/A.≡

Same

Plan Map Changed from : _____ to _____

Zone Map Changed from: _____ to _____

Location: _____ Acres Involved: _____

Specify Density: Previous: _____ New: _____

Applicable Statewide Planning Goals: _____

Was an Exception Adopted? Yes: _____ No: _____

DLCD File No.: 004-98
(8899)

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: Paul Blikstad Area Code + Phone Number: 541-388-6554
Address: 117 NW Lafayette City: Bend, OR
Zip Code+4: 97701 Email Address: paulb@co.deschutes.or.us

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 ANotice of Adoption is sent to DLCD.
6. In addition to sending the ANotice 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 Larry.French@state.or.us - ATTENTION: PLAN AMENDMENT SPECIALIST.

EXHIBIT "A"

18.120.010. Nonconforming uses.

Except as otherwise provided in this title, the lawful use of a building, structure or land existing on the effective date of this title, ~~or any amendment thereto~~ or any ordinance codified therein may be continued although such use or structure does not conform with the standards for new development specified in this title. A nonconforming use or structure may be altered, restored or replaced subject to this section. No nonconforming use or structure may be resumed after a one year period of interruption or abandonment unless the resumed use conforms with the provisions of this title in effect at the time of the proposed resumption.

A. Expansion or Replacement of a Nonconforming Structure.

1. **Nonconforming Structure.** For the purposes of this section, a nonconforming structure is one that was lawfully established and violates current setbacks of this title but conforms with respect to use.

2. **Replacement or Expansion without Additional Encroachment in Setback Area.** A nonconforming structure may be replaced with a new structure of the same size on the same footprint as the preexisting nonconforming structure or may be expanded with an addition that does not project into the setback area at any point along the footprint of the structure, subject to all other applicable provisions of this title.

3. **Replacement or Expansion with Additional Encroachment in Setback Area.** Replacement or expansion of a nonconforming structure that would involve an additional projection into the front, side or rear yard setback area at any point along the footprint of the existing or preexisting structure may be allowed provided such additional projection into the setback area (1) does not exceed 900 square feet; (2) does not exceed the floor space of the existing or preexisting structure; (3) does not cause the structure to project further toward the front, side or rear property lines than the closest point of the existing or preexisting structure; and (4) meets the variance approval standards set forth in paragraphs 18.132.025(A)(1), (A)(2), (A)(3) and (A)(4) of this title.

Such replacements or expansions must conform with all other applicable provisions of this title.

B. Verification of Nonconforming Use.

1. Subject to the procedures set forth in this section and in chapter 22.40 Title 22 of the county code for processing declaratory rulings, the planning division will verify whether or not a use constitutes a valid nonconforming use in accordance with the provisions of this section and applicable state law. Verification of the existence of a nonconforming use is required prior to or concurrent with any application to alter or restore the use. ~~The burden of proof shall be on the applicant to demonstrate its lawful existence.~~

2. Subject to paragraph (F)(2) of this section, ~~The~~ The applicant shall demonstrate all of the following:

a1. The nonconforming use was lawfully established on or before the effective date of the provisions of this title the zoning ordinance prohibiting the use.

2. ~~The nonconforming use was actually in existence on the effective date of the provisions of this title prohibiting the use,~~ or had proceeded so far toward lawful completion as of the date it became nonconforming that a right to complete and maintain the use would be vested;

b3. The nonconforming use as it existed on the date it became nonconforming, considering the nature and the extent of the actual use of the property, ~~has not been interrupted~~ continued without abandonment or interruption ~~for a period in excess of one year or was never abandoned;~~ and

c. Any alteration in the nature and extent of the nonconforming use was done in compliance with applicable zoning ordinance standards governing alterations of nonconforming uses.

3. For purposes of determining whether an abandonment or interruption of use has occurred, the following shall apply:

a. The reference period for determining whether an abandonment or interruption of a nonconforming use or an aspect thereof has occurred shall be one year.

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b. An abandonment or interruption in a use or portion thereof may arise from the complete cessation of actual use of a property for a one-year period or may arise from a change in the nature or extent of the use made of the property for a one-year period or more.

c. An interruption or abandonment that constitutes less than full cessation of the use or a portion thereof may, in accordance with paragraph (F)(4) of this section, result in a declaration of a continuing use, but of a lesser intensity or scope than what would have been allowable if the nature and extent of the use as of the date it became nonconforming had continued.

d. Absent an approved alteration, a change in the nature of the use may result in a determination that the use has been abandoned or has ceased if there are no common elements between the activities of the previous use and the current use.

e. Change of ownership or occupancy shall not constitute an interruption or abandonment, provided that, absent an approved alteration, the continuing use made of the property falls within the allowed scope of use made of the property by previous owners or occupants.

f. Factors to be considered in determining whether there has been a change in the nature and/or extent of a use shall include, but are not limited to, consideration of the type of activities being conducted, the operating characteristics of the activities associated with the use (including off-site impacts of those activities), the frequency of use, the hours of operation, changes in structures associated with the use and changes in the degree to which the activities associated with the use occupy the site.

C. Maintenance of a Nonconforming Use. Normal maintenance of a verified nonconforming use or structure shall be permitted. Maintenance does not include alterations which are subject to paragraph subsection (E) below of this section.

D. Restoration or Replacement of a Nonconforming Use. A verified nonconforming use may be restored or replaced if all of the following criteria are met:

1. Restoration is made necessary by fire, natural disaster or other casualty;

2. The nonconforming use is restored or replaced on the same location and is the same size or smaller than it was prior to the damage or destruction; and

3. The restoration or replacement of the nonconforming use is commenced within one year of the damage or destruction.

E. Alteration of a Nonconforming Use.

1. The alteration of a nonconforming use shall be permitted when necessary to comply with any lawful requirement.

2. Any other alteration to a nonconforming use permitted under this section shall also may be permitted subject to all applicable provisions of this title, including site plan review and upon a finding that the ~~Alteration does not include expansion of a use or structures associated with that use or a change in use.~~

1. The alteration of a noneonforming use shall be permitted when necessary to comply with any lawful requirement.

2. In all cases other than that described in above, alteration of a noneonforming use or any physical improvements may be permitted by the hearings Officer when both of the following criteria are met:

a. The alteration is necessary to reasonably continue the noneonforming use.

b. The alteration will have no greater adverse impact on the neighborhood.

3. For the purposes of paragraph (E)(2) of this subsection, an "alteration of a nonconforming use" shall include any change in the use of the property that would constitute a change in the nature or extent of the use of the property.

F. Procedure.

1. Any application for verification of a nonconforming use or to expand, alter, restore or replace a nonconforming use shall be processed in conformance with the applicable procedures set forth in this section and the applicable procedures for a declaratory ruling under of Title 22, the Deschutes County Uniform Development Procedures Ordinance.

2. Notwithstanding section 22.20.010 of the Deschutes County Code, the initial decision on an application for an alteration of a nonconforming use shall be made administratively, without a

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public hearing. The Planning Director may give prior notice of the pending application pursuant to section 22.20.020 of the Deschutes County Code.

3. Except as allowed by subparagraph (a) of this paragraph, the burden of proof shall be on a verification applicant to prove the existence, continuity, nature and extent of the use.

a. Notwithstanding section 22.24.050 of the Deschutes County Code, if an applicant demonstrates by a preponderance of the evidence that the nature and extent of the use sought to be verified is of the same nature and extent as the use of the property for the 10-year period immediately preceding the application, without interruption or abandonment, it shall be presumed that the nonconforming use, as proven, lawfully existed at the time the use became nonconforming and has continued without interruption or abandonment until the date of application.

b. The presumption may be rebutted by a preponderance of evidence showing that the use was unlawful prior to the time it became nonconforming, or that the use prior to the 10-year period was of a different nature or different in extent than the use, as proven, or that the use prior to the 10-year period was interrupted or abandoned. If the presumption is so rebutted, the presumption shall disappear and be of no further aid to the applicant.

4. If the proof demonstrates the continued existence of a valid non-conforming use, but of a different nature or extent than that claimed by the applicant, the hearings body may declare there to be a valid nonconforming use to the extent proven.

5. An approval of a verification, replacement or restoration of a nonconforming use verification shall not be conditioned; an approval shall be sufficiently detailed to describe the allowed parameters of the verified use. However, an approval of an alteration of a nonconforming use may be conditioned in a manner calculated to ensure mitigation of adverse impacts so that the change has no greater adverse impact to the neighborhood.

6. After a decision has been rendered on an application for a verification of a nonconforming use (including any appeals

provided for under Title 22 and under state law), the applicant shall not be entitled to reapply under section 22.28.040 for another verification determination involving the same use of the property. (Ord. 98-037 § 1, 1998; Ord. 95-050 § 1, 1995; Ord. 93-043 § 20, 1993; Ord. 91-038 § 1, 1991)