



Oregon

Theodore R. Kulongoski, Governor

Department of Land Conservation and Development

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Salem, OR 97301-2540

(503) 373-0050

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NOTICE OF ADOPTED AMENDMENT

April 6, 2007

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

FROM: Mara Ulloa, Plan Amendment Program Specialist

SUBJECT: Jefferson County Plan Amendment
DLCD File Number 008-06



The Department of Land Conservation and Development (DLCD) received the attached notice of adoption. Copies of the adopted plan amendment are available for review at DLCD offices in Salem, the applicable field office, and at the local government office.

Appeal Procedures*

DLCD ACKNOWLEDGMENT or DEADLINE TO APPEAL: April 23, 2007

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 THAN IT WAS MAILED TO DLCD. AS A RESULT YOUR APPEAL DEADLINE MAY BE EARLIER THAN THE DATE SPECIFIED ABOVE.**

Cc: Doug White, DLCD Community Services Specialist
Amanda Punton, DLCD Natural Resource Specialist
Jon Jinings, Dlcd Regional Representative
Sandy Mathewson, Jefferson 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

(See reverse side for submittal requirements)

APR 04 2007
LAND CONSERVATION
AND DEVELOPMENT

Jurisdiction: Jefferson County Local File No.: 06-PA-10
(If no number, use none)

Date of Adoption: 3/28/07 Date Mailed: 3/29/07
(Must be filled in) (Date mailed or sent to DLCD)

Date the Notice of Proposed Amendment was mailed to DLCD: 12/19/07

- 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."

Added 30 acres to the Comprehensive Plan
Mineral and Aggregate Inventory.

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: Geeder Canyon 9-13-31-100 Acres Involved: 30

Specify Density: Previous: — New: _____

Applicable Statewide Planning Goals: 5

Was an Exception Adopted? Yes: _____ No: X

DLCD File No.: 008-06 (15762)

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: ODOT

Local Contact: Sandy Mathewson Area Code + Phone Number: 541-475-4462

Address: 85 SE 'D' St. City: Madras

Zip Code+4: 97741 Email Address: sandy.mathewson@co.jefferson.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 "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 Larry.French@state.or.us - ATTENTION: PLAN AMENDMENT SPECIALIST.

**BEFORE THE BOARD OF COMMISSIONERS OF THE STATE OF OREGON FOR
THE COUNTY OF JEFFERSON**

**IN THE MATTER OF AMENDING THE)
COMPREHENSIVE PLAN INVENTORY)
OF MINERAL AND AGGREGATE SITES,) Ordinance No. O-48-07
and DECLARING AN EMERGENCY)**

WHEREAS, the Oregon Department of Transportation (ODOT) has a quarry on a portion of a 40-acre parcel they own in the Exclusive Farm Use A-1 zone, tax lot 100 in Township 9 South, Range 13 East, Section 31; and

WHEREAS, ORS 215.298 states that a permit for mining of aggregate shall be issued only for a site included on an inventory in an acknowledged comprehensive plan, and only ten acres of the ODOT parcel is currently included in the Jefferson County Comprehensive Plan inventory of Mineral and Aggregate Sites; and

WHEREAS, ODOT submitted an application, Casefile 06-PA-02, for a Comprehensive Plan amendment to add the remaining 30 acres of the parcel to the Mineral and Aggregate Sites inventory; and

WHEREAS, the Jefferson County Planning Commission held a public hearing on the application on January 11, 2007, and met for deliberation on February 8, 2007, at which time they voted to recommend that the Board of Commissioners approve the Comprehensive Plan amendment; and

WHEREAS, the Jefferson County Board of Commissioners conducted a public hearing on March 14, 2007, and after considering all evidence in the record and public testimony presented, voted to ACCEPT the Planning Commission recommendation.

NOW THEREFORE, the Jefferson County Commission hereby **ORDAINS** as follows:

1. Adoption of Comprehensive Plan Amendment

Jefferson County hereby AMENDS its Comprehensive Plan Mineral and Aggregate Sites Inventory to add the remaining 30 acres of tax lot 100 in Township 9 South, Range 13 East, Section 31 to the inventory, so that the entire 40-acre parcel is included on the inventory.

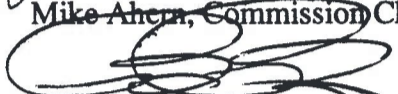
2. Adoption of Findings

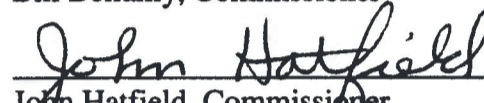
The Board of Commissioners hereby adopts the findings of fact and conclusion set forth in Exhibit B, a copy of which is attached hereto and incorporated herein by this reference.

Dated this 28th day of March, 2007.

BOARD OF COMMISSIONERS:


Mike Ahern, Commission Chair


Bill Bellamy, Commissioner


John Hatfield, Commissioner

Attest:



Appeal Information

Planning Casefile #06-PA-10

This decision may be appealed to the Land Use Board of Appeals within 21 days of the Jefferson County Board of Commissioners Decision. Oregon Revised Statute (ORS) 197.830 sets forth the review procedures. Copies of the Board of Commissioners decision and the state statute are available from the Community Development Department located at 85 SE "D" Street, Madras, Oregon 97741.

Board of Commissioners adoption date: March 28, 2007

The complete file is available for review at the Jefferson County Community Development Department. For further information, contact the Community Development Department. Phone (541) 475-4462.

EXHIBIT B**FINDINGS OF FACT AND CONCLUSION**

1. The applicant has requested a Post Acknowledgement Plan Amendment (PAPA) to amend the Comprehensive Plan to include the subject property on the inventory of Mineral and Aggregate sites. OAR 660-023-0180(9) requires the county to amend its Comprehensive Plan and land use regulations to include procedures and requirements consistent with the rule for the consideration of PAPAs. Until such regulations are adopted, or unless the county Comprehensive Plan contains specific criteria regarding the consideration of a PAPA to add a site to the list of significant aggregate sites, the procedures and requirements of the OAR must be applied directly. Since the County's Comprehensive Plan and Zoning Ordinance do not contain specific criteria to add potential aggregate sites to the county inventory, the OAR must be applied directly.
2. OAR 660-023-0180 contains the procedures for completing the Goal 5 inventory process for mineral and aggregate resources and determining whether a site is significant. OAR 660-023-0180(3) states:

An aggregate resource site shall be considered significant if adequate information regarding the quantity, quality, and location of the resource demonstrates that the site meets any one of the criteria in subsections (a) through (c) of this section, except as provided in subsection (d) of this section:

- (a) *A representative set of samples of aggregate material in the deposit on the site meets applicable Oregon Department of Transportation (ODOT) specifications for base rock for air degradation, abrasion, and soundness, and the estimated amount of material is more than 2,000,000 tons in the Willamette Valley, or more than 500,000 tons outside the Willamette Valley;*
- (b) *The material meets local government standards establishing a lower threshold for significance than subsection (a) of this section; or*
- (c) *The aggregate site was on an inventory of significant aggregate sites in an acknowledged plan on September 1, 1996.*
- (d) *Notwithstanding subsections (a) and (b) of this section, except for an expansion area of an existing site if the operator of the existing site on March 1, 1996, had an enforceable property interest in the expansion area on that date, an aggregate site is not significant if the criteria in either paragraphs (A) or (B) of this subsection apply:*
 - (A) *More than 35 percent of the proposed mining area consists of soil classified as Class I on Natural Resource and Conservation Service (NRCS) maps on June 11, 2004; or*

- (B) *More than 35 percent of the proposed mining area consists of soil classified as Class II, or of a combination of Class II and Class I or Unique soil, on NRCS maps available on June 11, 2004, unless the average thickness of the aggregate layer within the mining area exceeds:*
- (i) *60 feet in Washington, Multnomah, Marion, Columbia, and Lane counties;*
 - (ii) *25 feet in Polk, Yamhill, and Clackamas counties; or*
 - (iii) *17 feet in Linn and Benton counties.*

A letter dated October 25, 2006 from Amy Pfeiffer, an Engineering Geologist with ODOT, states that the rock at the quarry site exceeds ODOT specifications for base rock. The letter also states that the estimated amount of rock is approximately 3,000,000 tons for the area north of the creek. This complies with (a). Regarding (d), according to NRCS information, the soils within the area that is proposed to be added to the Mineral and Aggregate Inventory are Class 7E (mapping units 120F and 121F) and are not Unique soils. Since the standards in (a) and (d) are met, the site is significant.

3. OAR 660-023-0180(5) contains the requirements for deciding whether to authorize mining at the site, as follows:

For significant mineral and aggregate sites, local governments shall decide whether mining is permitted. For a PAPA application involving an aggregate site determined to be significant under section (3) of this rule, the process for this decision is set out in subsections (a) through (g) of this section. A local government must complete the process within 180 days after receipt of a complete application that is consistent with section (8) of this rule, or by the earliest date after 180 days allowed by local charter.

- (a) *The local government shall determine an impact area for the purpose of identifying conflicts with proposed mining and processing activities. The impact area shall be large enough to include uses listed in subsection (b) of this section and shall be limited to 1,500 feet from the boundaries of the mining area, except where factual information indicates significant potential conflicts beyond this distance. For a proposed expansion of an existing aggregate site, the impact area shall be measured from the perimeter of the proposed expansion area rather than the boundaries of the existing aggregate site and shall not include the existing aggregate site.*
- (b) *The local government shall determine existing or approved land uses within the impact area that will be adversely affected by proposed mining operations and shall specify the predicted conflicts. For purposes of this section, "approved land uses" are dwellings allowed by a residential zone on existing platted lots and other uses for which conditional or final approvals have been granted by the local government. For determination of conflicts from proposed mining of a significant aggregate site, the local government shall limit its consideration to the following:*

- (A) *Conflicts due to noise, dust, or other discharges with regard to those existing and approved uses and associated activities (e.g., houses and schools) that are sensitive to such discharges;*
- (B) *Potential conflicts to local roads used for access and egress to the mining site within one mile of the entrance to the mining site unless a greater distance is necessary in order to include the intersection with the nearest arterial identified in the local transportation plan. Conflicts shall be determined based on clear and objective standards regarding sight distances, road capacity, cross section elements, horizontal and vertical alignment, and similar items in the transportation plan and implementing ordinances. Such standards for trucks associated with the mining operation shall be equivalent to standards for other trucks of equivalent size, weight, and capacity that haul other materials;*
- (C) *Safety conflicts with existing public airports due to bird attractants, i.e., open water impoundments as specified under OAR Chapter 660, Division 013;*
- (D) *Conflicts with other Goal 5 resource sites within the impact area that are shown on an acknowledged list of significant resources and for which the requirements of Goal 5 have been completed at the time the PAPA is initiated;*
- (E) *Conflicts with agricultural practices; and*
- (F) *Other conflicts for which consideration is necessary in order to carry out ordinances that supersede Oregon Department of Geology and Mineral Industries (DOGAMI) regulations pursuant to ORS 517.780;*

No factual information was submitted to indicate that there will be significant potential conflicts beyond 1,500 feet, so that was the impact area considered for purposes of OAR 660-023-0180(5). There are no existing or approved dwellings or other uses that are sensitive to noise, dust, or other discharges within the impact area. The subject property is a canyon bisected by an unnamed intermittent creek. The canyon walls are 700 – 800 feet high and extend beyond the boundaries of the property. The mining operation will essentially widen the floor of the canyon. Because of the depth of the canyon, the mining operation will not cause any potential significant conflicts with farming operations occurring above the canyon rim to the north and south. The canyon runs in an east to west direction. There are no existing uses within the canyon east or west of the subject property that would be adversely affected by proposed mining operations. Access to the site is by easement through the adjoining BLM land to Highway 26. Consequently, there will be no conflicts with local roads. There will be no safety hazard from birds being attracted to the site because no open water impoundments will be developed other than possible stormwater runoff settling ponds. Since the site is more than six miles from the nearest public airport this will not cause a safety conflict.

The Deschutes River is approximately 1,500 feet west of the subject property. It is a State Scenic Waterway and Federal Wild and Scenic River, and is also protected as fish habitat. Highway 26 separates the site from the river. The intermittent creek through the canyon is not a designated Goal 5 resource. The Confederated Tribes of the Warm Springs Reservation of Oregon indicated that they are concerned about runoff causing sediment or pollutants to enter the unnamed creek and make its way into the Deschutes River, causing damage to fish habitat and water quality.

There are golden eagle nesting sites approximately ½ mile north of the subject property, on the south rim of the Deschutes River canyon, east of Warm Springs. Because of the distance from the quarry site and the intervening landform, the proposed mining operation is unlikely to have any adverse impact on nesting.

- (c) *The local government shall determine reasonable and practicable measures that would minimize the conflicts identified under subsection (b) of this section. To determine whether proposed measures would minimize conflicts to agricultural practices, the requirements of ORS 215.296 shall be followed rather than the requirements of this section. If reasonable and practicable measures are identified to minimize all identified conflicts, mining shall be allowed at the site and subsection (d) of this section is not applicable. If identified conflicts cannot be minimized, subsection (d) of this section applies.*

The only potential conflict that has been identified is the possible impact to the Deschutes River. DOGAMI regulates all mining activities and specifically requires that runoff not be allowed to enter waterways. Specifications for the quarry operation submitted by ODOT indicates that they will require an erosion control and sediment control plan, and a pollution control plan prior to beginning mining operations in order to control runoff and any discharge that would contaminate soils or result in harm to fish, wildlife or water sources. The County also can place a condition on the conditional use approval requiring that measures be taken to prevent any sediment from entering the unnamed creek channel. Considering the distance of the mining site from the river, these measures will be adequate to minimize the potential impact.

Since reasonable and practical measures can be taken to minimize all identified conflicts, mining should be allowed at the site.

- (d) *The local government shall determine any significant conflicts identified under the requirements of subsection (c) of this section that cannot be minimized. Based on these conflicts only, local government shall determine the ESEE consequences of either allowing, limiting, or not allowing mining at the site. Local governments shall reach this decision by weighing these ESEE consequences, with consideration of the following:*
- (A) *The degree of adverse effect on existing land uses within the impact area;*
 - (B) *Reasonable and practicable measures that could be taken to reduce the identified adverse effects; and*

- (C) *The probable duration of the mining operation and the proposed post-mining use of the site.*

All identified conflicts can be minimized by the placement of conditions on the conditional use permit. Consequently, subsection (d) is not applicable and an ESEE analysis is not required.

- (e) *Where mining is allowed, the plan and implementing ordinances shall be amended to allow such mining. Any required measures to minimize conflicts, including special conditions and procedures regulating mining, shall be clear and objective. Additional land use review (e.g., site plan review), if required by the local government, shall not exceed the minimum review necessary to assure compliance with these requirements and shall not provide opportunities to deny mining for reasons unrelated to these requirements, or to attach additional approval requirements, except with regard to mining or processing activities:*

- (A) *For which the PAPA application does not provide information sufficient to determine clear and objective measures to resolve identified conflicts;*

- (B) *Not requested in the PAPA application; or*

- (C) *For which a significant change to the type, location, or duration of the activity shown on the PAPA application is proposed by the operator.*

The Comprehensive Plan will be amended to add the site to the mineral and aggregate inventory. The County does not have provisions in its Zoning Ordinance to allow mining as a permitted use. The JCZO requires that mining and processing operations obtain conditional use approval. The conditional use permit has been approved by separate Order.

- (f) *Where mining is allowed, the local government shall determine the post-mining use and provide for this use in the comprehensive plan and land use regulations. For significant aggregate sites on Class I, II and Unique farmland, local governments shall adopt plan and land use regulations to limit post-mining use to farm uses under ORS 215.203, uses listed under ORS 215.213(1) or 215.283(1), and fish and wildlife habitat uses, including wetland mitigation banking. Local governments shall coordinate with DOGAMI regarding the regulation and reclamation of mineral and aggregate sites, except where exempt under ORS 517.780.*

The reclamation plan that was submitted to DOGAMI for the ten acres of the property that is already on the inventory states that the site will be used as "marginal grazing land." Since the property is at the bottom of a canyon and does not have direct access to other agricultural land, it is doubtful that the site will ever be used for grazing. A letter from ODOT and accompanying drawing indicates that the benches that will be created during mining operations will be blasted to break them up and create a more natural-appearing canyon wall, and that the floor of the quarry will be graded and planted to

return it to a natural appearance. Since the site does not contain class I, II or Unique farmland, it does not have to be reclaimed for agricultural use.

- (g) *Local governments shall allow a currently approved aggregate processing operation at an existing site to process material from a new or expansion site without requiring a reauthorization of the existing processing operation unless limits on such processing were established at the time it was approved by the local government.*

Processing of material at or from a different site is not proposed.

4. OAR 660-023-0180(7) states:

Except for aggregate resource sites determined to be significant under section (4) of this rule, local governments shall follow the standard ESEE process in OAR 660-023-0040 and 660-023-0050 to determine whether to allow, limit, or prevent new conflicting uses within the impact area of a significant mineral and aggregate site.

OAR 660-023-0180(2)(d) states:

For significant mineral and aggregate sites where mining is allowed, except for aggregate sites that have been determined to be significant under section (4) of this rule, local governments shall decide on a program to protect the site from new off-site conflicting uses by following the standard ESEE process in OAR 660-023-0040 and 660-023-0050 with regard to such uses.

OAR 660-023-0180(1)(a) defines “conflicting use” as “a use or activity that is subject to land use regulations and that would interfere with, or be adversely affected by, mining or processing activities at a significant mineral or aggregate resource site.”

All surrounding land within the 1500-foot impact area is zoned EFU A-1. Any proposed new use within the impact area that requires administrative review or conditional use approval will also be subject to review for potential conflicts with mining and processing activities following the ESEE process in OAR 660-023-0040 and -0050.

5. Part V of the Comprehensive Plan, Administrative Procedures, contains applicable procedures for quasi-judicial revisions to the Comprehensive Plan. It states:

In order to submit a favorable recommendation for the proposed change to the County Court, the Planning Commission shall establish the compelling reasons and make the following findings of fact for the proposed change:

- A. *The proposed change will be in conformance with the statewide planning goals.*
B. *There is a demonstrated public need for the proposed change.*

Goal 5 is the only applicable statewide planning goal. It requires that the county adopt a program to identify and protect mineral and aggregate resources and sites for removal

and processing of such resources. Areas identified as having non-renewable mineral and aggregate resources should be planned for interim, transitional and “second use” utilization as well as for the primary use. Further requirements for compliance with Goal 5 are found in OAR 660-023. OAR 660-023-0180 contains provisions specific to mineral and aggregate resources, as addressed in the previous findings. OAR 660-023-0180(9) requires the county to apply the OAR directly. The provisions in Subsection -0180 do not allow consideration of other county approval criteria when determining whether an aggregate site is significant and should be added to the county’s Comprehensive Plan inventory. Consequently, criterion (B) is not applicable.

CONCLUSION: The site meets the requirements of OAR 660-023-0180(3) to be deemed significant, so the Comprehensive Plan must be amended to add the site to the Mineral and Aggregate inventory. A 1500-foot impact area is adequate to consider potential impacts to surrounding properties. The only potential conflict that was identified within the impact area is the potential impact to the Deschutes River if sediment and runoff are not contained on-site. Adequate measures can be taken to minimize the potential impacts by the imposition of conditions on the conditional use permit which is required in order for mining to take place.