



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 8, 2007

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

FROM: Mara Ulloa, Plan Amendment Program Specialist

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



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. The proposed Plan Amendment [P-089] was denied.

Appeal Procedures*

DLCD ACKNOWLEDGMENT or DEADLINE TO APPEAL: February 21, 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.

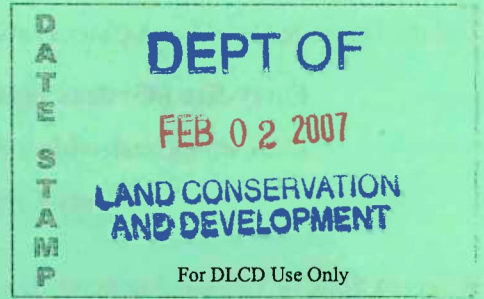
***NOTE: THE APPEAL DEADLINE IS BASED UPON THE DATE THE DECISION WAS MAILED BY LOCAL GOVERNMENT. A DECISION MAY HAVE BEEN MAILED TO YOU ON A DIFFERENT DATE THAN IT WAS MAILED TO DLCD. AS A RESULT YOUR APPEAL DEADLINE MAY BE EARLIER THAN THE ABOVE DATE SPECIFIED.**

Cc: Doug White, DLCD Community Services Specialist
Tamra Mabbott, Umatilla County

<paa> n

2 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: Umatilla County Local file number: P-089
Date of Adoption: ~~1-18-07~~ Date Mailed: 1-31-07
Date original Notice of Proposed Amendment was mailed to DLCD: 8-09-06

- Comprehensive Plan Text Amendment
- Land Use Regulation Amendment
- New Land Use Regulation
- Comprehensive Plan Map Amendment
- Zoning Map Amendment
- Other: _____

Summarize the adopted amendment. Do not use technical terms. Do not write "See Attached".
Proposed Plan Amendment was denied.

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".
Application Denied

Plan Map Changed from: N/A to: _____
Zone Map Changed from: N/A to: _____
Location: Talgate Acres Involved: _____
Specify Density: Previous: N/A New: _____
Applicable Statewide Planning Goals: 3, 4, 14
Was and Exception Adopted? YES NO

DLCD File No.: 008-06 (15461)

Did the Department of Land Conservation and Development receive a Notice of Proposed Amendment.....

- Forty-five (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

Affected State or Federal Agencies, Local Governments or Special Districts:

DLCD, DOF, CDFW, DSL

Local Contact: Tamra Mabbott Phone: (503) 278-6246 Extension: _____

Address: 216 SE 4th St City: Penolleten

Zip Code + 4: - 97801 Email Address: tamra @ cc.umatilla.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.

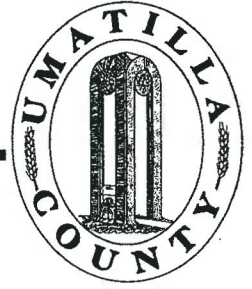
1. Send this Form and TWO (2) Copies of the Adopted Amendment to:

**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 maria.ulloa@state.or.us - ATTENTION: PLAN AMENDMENT SPECIALIST.

Umatilla County

Department of Resource Services and Development



Director
Tamra Mabbott

January 31, 2007

Planning &
Development
Division:

Timothy & Kathryn Bush
929 Aaron Drive
Richland, WA 99352

LAND USE
PLANNING
541-278-6252

CODE
ENFORCEMENT
541-278-6300

RE: Bush Plan Map Amendment #P-089

Emergency
Management
Division:

EMERGENCY
MANAGEMENT
541-966-3700

CHEMICAL
STOCKPILE
EMERGENCY
PREPAREDNESS
PROGRAM
(CSEPP)
541-567-2084
541-966-3700
1-877-367-2737

Dear Mr. & Mrs. Bush:

The Umatilla County Board of County Commissioners has signed the Final Findings and Conclusions and adopted Ordinance No. 2006-90 denying the appeal of your land use application to change the Comprehensive Plan designation of your property described as tax lot 7200 of Assessor's Map 4N 37. Copies of these documents are enclosed.

The date of this letter begins the 21-day Land Use Board of Appeals appeal period. The appeal period will end at 5:00 p.m. on February 21, 2007.

County/State
Services
Division:

COUNTY FAIR
541-567-6121

Appeals must be made to the Land Use Board of Appeals (LUBA). Appeal provisions are outlined in Section 152.766(F) of the County Development Code. If you wish to contact LUBA to file an appeal their address is: 550 Capitol Street NE, Suite 235, Salem, OR 97310; phone (503) 373-1265.

State Agency
Liaisons:

OSU EXTENSION
SERVICE
541-278-5403

WATERMASTER
541-278-5456

Please feel free to contact me at (541) 278-6246 if you have any questions or concerns.

Sincerely,

Handwritten signature of Tamra J. Mabbott in black ink.

Tamra J. Mabbott,
Planning Director

Enc: signed Findings and Ordinance, §152.766(F)

cc: Ed Sullivan, Attorney, with attachments
Leslie Ann Hauer, Planning Consultant, with attachments
DLCD-Jon Jinings and Salem office with 45- Day Notice and attachments
Eric D. Metz, Division of State Lands w/out attachments
Interested persons, w/out attachments

RECEIVED

DEC 18 2006 THE BOARD OF COMMISSIONERS OF UMATILLA COUNTY

UMATILLA COUNTY RECORDS

STATE OF OREGON

In the Matter of Denying)
 Application of Timothy &)
 Kathryn Bush to Change) Order No. BCC2006-90
 Comprehensive Plan Designation)
 From Grazing Farm to Forest)
 Residential)

WHEREAS the Board of Commissioners has adopted a Comprehensive Plan for Umatilla County;

WHEREAS an application was received from Timothy and Kathryn Bush requesting Umatilla County to change the designation from Grazing Farm to Forest Residential on the property known as Umatilla County Tax Lot 4N37-7200, located in the Northeast Quarter of the Northwest Quarter of Section 36, Township 4 North, Range 37, East of Willamette Meridian, Umatilla County, Oregon;

WHEREAS the Umatilla County Planning Commission held a public hearing on September 28, 2006, continued to October 10, 2006, to review the application and the proposed amendment to the plan and recommended that the Board of Commissioners adopt the amendment;

WHEREAS the Board of Commissions held a public hearing on November 28, 2006, continued to December 18, 2006, to consider the proposed amendment, and voted to deny the application and the amendment.

NOW THEREFORE, the Board of Commissioners orders that the application filed by Timothy and Kathryn Bush to change the comprehensive plan designation from Grazing Farm to Forest Residential for Umatilla County Tax Lot 4N37-7200, Plan Amendment Application #P-89, is denied.

DATED this 18th day of December, 2006.

UMATILLA COUNTY BOARD OF COMMISSIONERS



 Dennis D. Doherty, Chair

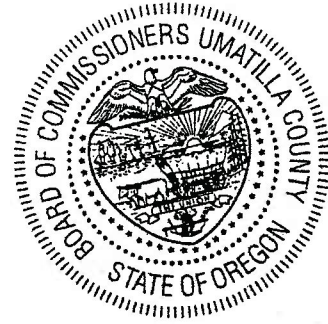


IN OPPOSITION

Emile M. Holeman, Commissioner

William S. Hansell

William S. Hansell, Commissioner

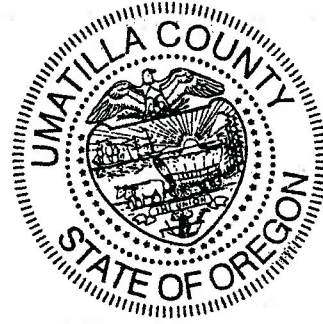


ATTEST:

OFFICE OF COUNTY RECORDS

Jeanne Humphries

Records Officer



**BEFORE THE BOARD OF COMMISSIONERS
FOR UMATILLA COUNTY, OREGON**

In the matter of an application for a Comprehensive Plan map amendment from Grazing/Farm (GF) to Forest Residential (FR) and related exceptions from State-wide Planning Goals 3, 4 and 14 for a 39.93-acre parcel (TL 7200, Map 4N37) in unincorporated Umatilla County.

**FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND FINAL ORDER**

(Bush Plan Amendment)

I. Summary:

This Opinion is the decision of the Board of Commissioners denying the application of Timothy and Kathryn Bush for a Comprehensive Plan map amendment for their 39.93-acre property from Grazing/Farm (GF) to Forest Residential (FR) and exceptions to State-wide Planning Goals 3 (Agricultural Lands), 4 (Forest Lands) and 14 (Urbanization). This decision is based on the Findings of Fact and Conclusions of Law set forth below.

II. Procedural Overview:

The subject property is Tax Lot 7200 (Umatilla County Assessor's Map 4N37) on the south side of State Highway 204 (the Tollgate Highway) in the Tollgate area. The property is zoned Forest Residential (FR)-5, which is not a resource zone and allows residential uses on 5-acre lots. The property bears a GF comprehensive plan designation, however, which is a resource designation implementing State-wide Planning Goals 3 (Agricultural Land) and 4 (Forest Land). The property is near, but not within, existing exception areas. In particular, the County took exceptions to Goals 3 and 4 in 1982 for several areas along the Tollgate Highway based on several clusters of small (substandard sized) lots with residential homesites, used primarily for rustic cabins and small-scale vacation homes. TL 7200 was considered for inclusion in these exception areas (most notably Special Exception Areas 3 and 5), but eventually was not included, and therefore retained its GF plan designation. It is not clear how, when or why the property's zoning was changed to a non-resource designation, but the record clearly shows a conflict between the current comprehensive plan and zoning designations. Oregon law provides that, when such a conflict exists, the comprehensive plan designation controls over any inconsistent zoning designation.

The current owners of TL 7200, Timothy and Kathryn Bush, requested a comprehensive plan map amendment from GF to FR to implement the land's forest residential zoning. Pursuant to ORS 197.732, such an amendment requires exceptions to Goals 3 and 4, and the applicants advance two alternative bases for these goal exceptions: a reasons exception under OAR 660-004-0020, and a developed and committed exception under OAR 660-004-0028. Moreover, because the proposed plan designation would allow lots smaller than 10 acres, an exception to Goal 14 (Urbanization), which imposes a 10-acre minimum lot size for rural areas, is also required. See OAR 660-004-0040(7)(i)(A).

The Umatilla County Planning Commission duly noticed and held a public hearing on the application on September 28, 2006, at which time the planning commission received testimony from the applicants' attorney and planning consultant as well as opponents from the surrounding

Tollgate area. The hearing was continued to October 10, 2006, at which time the planning commission received additional testimony and exhibits into the record. At the conclusion of the October 10th hearing the Planning Commission voted 7:2 to forward a recommendation of approval to the Board of Commissioners.

The Board of Commissioners duly noticed and held a public hearing on the application on November 28, 2006. At the beginning of the November 28th hearing, the Board Chair made the announcements required by ORS 197.763 (5) & (6) and ORS 197.796. The members of the Board disclosed all ex parte contacts, conflicts of interest and bias, after which there were no procedural objections, nor any objections to the participation of any member of the Board. The Board Chair opened the hearing and received testimony and new exhibits from the applicants' representatives and from opponents, many of whom live and own property in the Tollgate area. At the conclusion of the November 28th hearing, the Board declared the following open record schedule, which was agreed to by all of those present:

December 6 Evidence and argument from anyone on any relevant issue
December 13..... Applicant's final rebuttal, argument only no new evidence

The Board reconvened at its regular meeting on December 18, 2006 for deliberation and decision only. At the conclusion of the December 18th meeting, the Board voted 2:1 to deny the application.

III. Findings of Fact and Conclusions of Law: Being fully apprized of the testimony received during public hearings in this matter and all of the evidence, exhibits and arguments submitted into the record, the Board of Commissioners finds as follows:

A. Is the comprehensive plan map designation a mistake: As a starting point, the applicants assert that the current GF comprehensive plan designation for TL 7200 is a mistake, that the property qualified for a goal exception in 1982 when the other Tollgate area exceptions were approved, and that the parcel should therefore qualify for an exception today. The applicants further assert they purchased TL 7200 based on its non-resource (FR-5) zoning and the county's representation that the property could be subdivided into 5-acre lots pursuant to that zoning.

State law is quite clear and strict about land with a resource comprehensive plan designation and the criteria that must be met to convert that land to a non-resource plan designation. State law is also clear that, when there is a conflict between a parcel's comprehensive plan designation and its zoning, the plan designation controls. Even if there were a mistake, and we decline to find that the comprehensive plan designation for TL 7200 is a mistake, these applicants would still have to demonstrate compliance with all of the applicable approval criteria for exceptions to Goals 3, 4 and 14. In light of these legal requirements, we find that the non-resource zoning for TL 7200 is a mistake, not its comprehensive plan designation.

Before we can change the resource plan map designation for TL 7200, the applicants must first demonstrate that the criteria for either a reasons exception or a developed and committed exception are met relative to Goals 3, 4 and 14. The Goal 14 exception is needed only because the applicants seek a plan designation that allows lots smaller than 10 acres. The applicants argue that they meet both of two alternative goal exceptions, *viz.*, a reasons exception and a developed and committed exception. We will address both exception arguments separately.

B. Reasons Exception: OAR 660-004-0020 allows an exception to the goals when there are reasons that “justify why the state policy embodied in the applicable goal should not apply.” We do not find any sufficient reasons that justify an exception to the goals for this proposal. There is nothing unique about this request nor the facts of the case that justify not following state law – that law being the requirements of State-wide Planning Goals 3 and 4, which require preserving forest land for forest uses and preserving farm land for farm uses, and Goal 14, which restrict lots smaller than 10 acres to urban growth areas or existing exception areas. The only reason offered for these exceptions is that the applicants’ predecessor could have but chose not to take an exception in 1982 (the mistake argument) and that there is a generally recognized need for rural residential vacation homes on 5-acre lots in the Tollgate area – a need the applicants claim cannot be met anywhere else by any other form of housing. We disagree. We see no reason that justifies the creation of additional residential property. There simply is no legitimate “reason” in this case for not following the Goals.

OAR 660-004-0020(1)(b) requires an inventory of alternative sites for this proposed development – a 7-lot rural residential subdivision on 5-acre lots – by looking at all areas that could accommodate the use without a new exception. These alternative sites include land inside existing UGBs, land in existing acknowledged rural communities, land inside existing exception areas (such as the acknowledged Tollgate exception areas), and today it requires us to consider land approved or approvable for rural residential development under Measure 37.

The applicant has characterized this proposed development as completely unique with no possible alternative locations. We do not accept this position. At its core, this is a proposal for a 7-lot rural residential subdivision on 5-acre lots. If these goal exceptions and plan amendment are approved, TL 7200 could lawfully be subdivided and developed with 7 full-time, standard, permanent single-family homes. We find that the use proposed is not unique or rare, nor is it allowed on resource land.

We also find there are ample, currently-available alternative locations for a 7-lot residential subdivision on 5-acre lots in the Tollgate area and elsewhere in Umatilla County that do not require a new exception. For example, the applicants’ own housing inventory shows there are 87 properties in the vicinity of TL 7200, of which 63 appear to have structures (presumably houses and cabins). From this the applicant concludes there is an “increase in interest” in properties with homes on them in the vicinity – which does not meet the standard in OAR 660-004-0022(2) for a demonstration that there is a demand for housing of a particular type or cost. From the applicant’s own data, there appear to be 24 properties in the vicinity of TL 7200 without a home or cabin, *i.e.*, more than 25% of the parcels in the vicinity are available for development with a home or cabin. Also, oversized lots in the existing Tollgate exception areas can be subdivided to produce additional buildable lots, again, a category of alternative sites that is not assessed. The vacancy rate shown in the record indicates no unmet need for yet another 7-lot residential subdivision in the Tollgate area. Finally, the record contains a current (as of November 28, 2006) summary of pending Measure 37 claims. Based on the evidence presented in this matter, there is an adequate supply of residential lots without the need for any goal exceptions.

OAR 660-004-0020(1)(c) requires a thorough analysis of the long-term environmental, economic, social and energy consequences resulting from the conversion of a 39.93-acre forest parcel to a 7-lot rural residential non-resource subdivision. According to the applicants, there will be no impacts or conflicts if the County allows this conversion. We disagree based on the conflicts between resource uses and non-resource development described in the

Comprehensive Plan. See e.g., Grazing/Forest discussion in the Comprehensive Plan at pp VII-1 through VII-8, and discussion of Resource Impracticalities and Incompatibilities in the Comprehensive Plan at pp XVIII-155 through XVIII-162. We find that approval of a 7-lot subdivision on 5-acre lots on TL 7200 would create the same sorts of conflicts with near-by resource land.

Mrs. Shumway owns, leases and manages approximately 900 acres of land immediately south of TL 7200 for timber production and grazing according to the management techniques described by Bob Holowecky (Sept. 23, 2006 letter). Mrs. Shumway and others testified as to how the conversion of TL 7200 into a 7-lot non-resource subdivision would interfere and conflict with her continued forest and livestock grazing operations. These are exactly the kinds of conflicts that OAR 660-004-0020(1)(c) requires us to evaluate. Introduction of a new 7-lot subdivision may also impact the quality and quantity of ground and surface water for near-by resource operations. There will be trespass problems, gates left open by ATV users, fences knocked down, complaints from new homeowners about unpleasant livestock and forest practices, and similar problems between resource and non-resource neighbors. The County cannot assume these conflicts will not occur, and in fact, we believe they likely will occur.

If this proposal is for "rural" residential development, OAR 660-004-0022(2) requires the applicants to "show why, based on the economic analysis in [the County's comprehensive] plan, there are reasons for the type and density of housing planned which require this particular location on resource lands." The applicants only point to the reality of the vacation cabins that exist along Highway 204 in the Tollgate area. There is nothing in the Umatilla County Comprehensive Plan that plans for an "economic activity" in the area, and nothing that would justify the conversion of a 40-acre forest parcel, currently and actively employed in forest practices, into a new 7-lot rural residential non-resource subdivision. The fact that there are many non-resource vacation homes and cabins in the Tollgate area does not amount to a planned "economic activity" that could justify this proposal. In other words, the fact that there are many non-resource vacation homes and cabins in the area does not qualify as a land use plan that could justify yet another 7-lot subdivision with 5-acre lots. If that were sufficient justification, as the applicants suggest, then existing non-resource rural residential development could and would always justify even more non-resource rural residential subdivisions. We find that this is not responsive to OAR 660-004-0022(2) and is not a sufficient reason that justifies a new 7-lot non-resource, residential subdivision.

C. Developed and Committed Exception: Alternatively, the applicants suggest that a developed and committed lands exception is justified. To approve such an exception under OAR 660-004-0028, the applicants must demonstrate that the following uses or activities are impracticable:

- (a) Farm use as defined in ORS 215.203;
- (b) Propagation or harvesting of a forest product as specified in OAR 660-033-0120; and
- (c) Forest operations or forest practices as specified in OAR 660-006-0025(2)(a).

This means that, where farm uses (like grazing) or forest uses or practices are practicable, a developed and committed exception is not legally possible. We find that actual forest or grazing use is conclusive evidence that a property is suitable (feasible and practicable) for resource use. The record shows that the applicants conducted a selective timber harvest in 1997, and trees continue to grow on the land. We find evidence of active and on-going forest management, and that propagation and harvesting of forest products and forest operations and forest practices are practicable on TL 7200. The record also shows that surrounding parcels

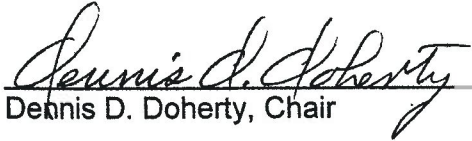
with similar soils and physical conditions have been and are actively managed for timber production, according to the methods described by Mr. Holowecky, as well as livestock grazing.

IV. Decision:

Based on the foregoing findings and conclusions, the Board of Commissioners for Umatilla County denies the requested goal exceptions and application for a Comprehensive Plan map amendment.

Date of Decision: January 18, 2007.

UMATILLA COUNTY BOARD OF COMMISSIONERS



Dennis D. Doherty, Chair