



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

August 13, 2007

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

FROM: Mara Ulloa, Plan Amendment Program Specialist

SUBJECT: Union County Plan Amendment
DLCD File Number 001-07



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: August 23, 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
Amanda Punton, DLCD Natural Resource Specialist
Jon Jinings, DLCD Regional Representative
Hanley Jenkins II, Union County

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FORM 2

D L C D 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

(See reverse side for submittal requirements)

DEPT OF

AUG 06 2007

LAND CONSERVATION
AND DEVELOPMENT

Jurisdiction: Union County Local File No.: 5553
(If no number, use none)

Date of Adoption: 8-1-07 Date Mailed: 8-2-07
(Must be filled in) (Date mailed or sent to DLCD)

Date the Notice of Proposed Amendment was mailed to DLCD: 2-15-07

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."

The adopted amendment adds a 6.7 acre basalt aggregate
site on the County Land Use Plan 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."

The adopted amendment does not include 4.7 acres in a
Surface Mining Zone as originally proposed.

Plan Map Changed from: NA to NA

Zone Map Changed from: NA to NA

Location: Twp. 2S, Range 38 EWM, Tax Lot 6.7
Sec. 31 500

Specify Density: Previous: NA New: NA

Applicable Statewide Planning Goals: _____

Was an Exception Adopted? Yes: _____ No: X

DLCD File No.: 001-07(15891)

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: DOGAMI

Local Contact: Hanley Jenkins, II Area Code + Phone Number: 541-963-1014
Planning Director
Address: 1001 4th Street, Suite C
City: La Grande Zip Code+4: 97850

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 of this Notice of Adoption must include the text of the amendment plus adopted findings and supplementary information.
5. The deadline to appeal will 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.

BE IT REMEMBERED, that at a regular term of the Union County Board of Commissioners, for the County of Union, sitting for the transaction of County business, begun and held at the Joseph Building Annex in the City of La Grande, in said County and State, on Wednesday of said month and the time fixed by law for holding a regular term of said Court, when were present:

The Honorable COLLEEN MACLEOD Chair
STEVE MCCLURE Commissioner
R. NELLIE BOGUE HIBBERT Commissioner

WHEN, on Wednesday, the 1st day of August, 2007 among others the following proceedings were had to-wit:

IN THE MATTER OF AMENDING	}	
THE UNION COUNTY LAND USE PLAN	}	ORDINANCE NO.
AGGREGATE INVENTORY (Becker)	}	2007-03

WHEREAS, Mr. Becker submitted an application to include 6.7 acres (part of Twp. 2S, Range 38 EWM, Section 31, Tax Lot 500) on the County Basalt Aggregate Inventory as a small (less than 500,000 tons) significant site;

WHEREAS, the Union County Planning Commission advertised and held a public hearing on April 23, 2007 and made a recommendation to approve the identified site;

WHEREAS, the Union County Board of Commissioners advertised and held a public hearing on June 6, 2007;

WHEREAS, the applicant submitted evidence that less than 500,000 tons of basalt rock will be removed from the subject property and there are no high value cropland soils associated with the site.

NOW THEREFORE, BE IT ORDAINED BY THE BOARD OF COMMISSIONERS, COUNTY OF UNION, STATE OF OREGON:

SECTION 1: UNION COUNTY LAND USE PLAN


The Union County Land Use Plan Supplement - June 1984 is amended to include the following described property as a significant Goal 5 site in a Timber/Grazing Plan Classification for inventoried basalt sites in Table AS:

Twp. 2S, Range 38 EWM, Section 31, Tax Lot 500- NW ¼ NW ¼, about 6.7 acres (See attached map)

SECTION 2: SUPPORTING FINDINGS

This Ordinance is passed and adopted with the supporting findings included in Attachment "A".

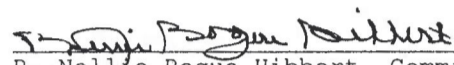
PASSED AND ADOPTED this 1st day of August, 2007, by
a vote of the following members of the Union County Board
of Commissioners voting therefore.



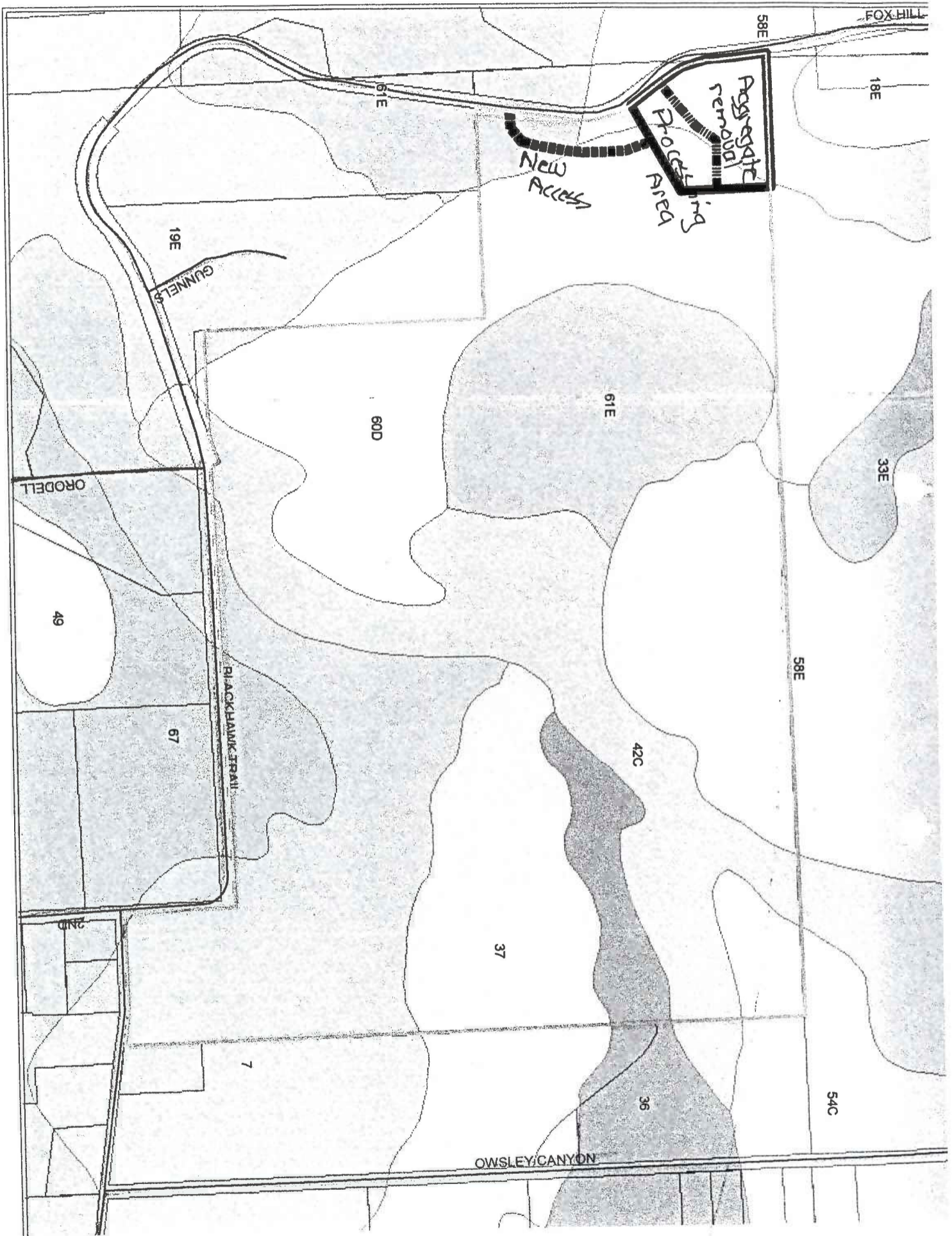
Colleen MacLeod, Chair



Steve McClure, Commissioner



R. Nellie Bogue Hibbert, Commissioner



Attachment "A"

**BECKER FOX HILL ROAD AGGREGATE EXPANSION
CONDITIONAL USE APPLICATION
BOARD OF COMMISSIONERS APPEAL DECISION
JULY 11, 2007**

INTRODUCTION

The applicant, Michael A. Becker, through Brian Cole, the authorized agent, submitted land use applications on February 12, 2007 to add 6.7 acres to an existing basalt aggregate mining operation. The original application included a request to add 6.7 acres to the County's land Use Plan basalt aggregate inventory and include about 4.7 acre of this area in a County Surface Mining Zone. The application was later amended (4-23-07) to change the Surface Mining Zone request to a Conditional Use application to mine, stockpile and crush aggregate. The original application also included a request to establish a temporary asphalt batch plant, however that request was withdrawn just prior to the Planning Commission's April 24, 2007 public hearing.

Notice to DLCD was provided 45 days prior to the Planning Commission public hearing and adjacent neighbors and the newspaper were provided notice 10 days prior.

The Planning Commission received written and oral testimony prior to and during their public hearing. They were able to make recommendations to approve the Plan amendment and the Conditional Use to add the 6.7 acres to the basalt inventory and to mine, stockpile and crush aggregate on the expansion site.

The Planning Commission's recommendations were forwarded to the Board of Commissioners who gave participating parties and the newspaper notice ten days prior to their June 6, 2007 de novo public hearing. Substantial written and oral testimony was received prior to and during the Board of Commissioners public hearing. They left the written record open for all parties until June 13 at 5:00 p.m. and allowed the applicant to submit written rebuttal testimony and arguments until June 20 at 5:00 p.m. A decision hearing was scheduled for July 11 at 10:00 a.m.

PLAN AMENDMENT CRITERIA

Plan Amendment application review requirements are found in essentially two locations. Union County Zoning, Partition & Subdivision (UCZPSO) Section 23.05 identifies several general review requirements for any amendment to the County's Land Use Plan text or map-

3. A decision on a Land Use Plan text or map amendment by the Planning Commission and Board of Commissioners shall be based on the applicant's ability to meet all of the following:
 - A. Community attitudes and/or physical, social, economic, or environmental changes have occurred in the area or related areas since plan adoption and that a public need supports the change, or that the original plan was incorrect.
 - B. Alternative sites for the proposed uses will be considered which are comparable with the other areas which might be available for the uses proposed.
 - C. All applications to take an exception or exclude certain land from the requirements of one or more applicable statewide planning goals shall be reviewed against the requirements in OAR Chapter 660, Division 4.
 - D. Determine whether the amendment significantly affects a transportation facility. The amendment shall assure that land uses are consistent with the function, capacity, and level of service of the facility identified in the Transportation System Plan. This shall be accomplished by one of the following:
 - Limiting allowed land uses to be consistent with the planned function of the transportation facility;
 - Amending the Transportation System Plan to ensure that existing, improved, or new transportation facilities are adequate to support the proposed land uses consistent with the requirement of the Transportation Planning Rule; or,
 - Altering land use designations, densities, or design requirements to reduce demand for automobile travel and meet travel needs through other modes.

A plan or land use regulation amendment significantly affects a transportation facility if it:

- Changes the functional classification of an existing or planned transportation facility;
- Changes standards implementing a functional classification system;
- Allows types or levels of land use that would result in levels of travel or access that are inconsistent with the functional classification of a transportation facility; or
- Would reduce the level of service of the facility below the minimum acceptable level identified in the Transportation System Plan.

The second set of application review requirements are found in the recently revised OAR 660-023-0180 (effective June 25, 2004)- Mineral and Aggregate Resources (the OAR is included here by reference). Essentially, the rule allows the County to amend its inventory list of basalt aggregate sites through a post acknowledgement plan amendment (PAPA). The proposed site must be found as a significant site which must produce no more than 500,000 tons of aggregate and not be more than 35% high value farmland soil.

CONDITIONAL USE CRITERIA

Review requirements for the Conditional Use application, like the Plan Amendment, derive from multiple sources including Oregon Revised Statutes (ORS), Oregon Administrative Rule (OAR) and the UCZPSO. The April 23, 2007 Staff Report identifies all of the applicable review requirements and are included here by reference. Essentially, ORS 215.298 **Mining in exclusive farm use zone; land use permit** (2) requires the site be on an inventory in an acknowledged comprehensive plan before "issuing" a permit for mining aggregate. Section (1) requires a permit when mining more than 1,000 cubic yards or mining over 1 acre. ORS 215.416 (2) requires the County to provide a consolidated process for multiple applications. OAR 660-023-0180(6) requires an aggregate site on farmland to have an approved post-mining use and a coordinated reclamation plan with DOGAMI. The conditional use permit shall limit excavation to less than 500,000 tons. UCZPSO Section 5.04 identifies two general criteria- use not significantly impact accepted farming practices and not significantly

increase fire hazards. UCZPSO Section 21.07 identifies specific siting requirements that need to be identified. ORS 215.296(2) authorizes approval conditions to satisfy review requirements where the approval conditions are clear and objective.

FINDINGS & CONCLUSIONS

The applicant proposes to expand an existing basalt aggregate removal and processing site (Shaw Pit) by 6.7 acres (about 0.6 acres currently in use) onto recently purchased, adjacent property. The Shaw Pit is on the County's Land Use Plan basalt aggregate inventory as a Goal 5 resource site with a 3C site designation (conflicts between resource sites and other uses will be mitigated in favor of the resource site). The Shaw Pit was protected with a Surface Mining Zone and a one quarter mile Surface Mining Impact Overlay Zone. Rather than expanding these zoning protection measures onto the subject 6.7 acres, the applicant has pursued the 6.7 acres inclusion on the Land Use Plan basalt aggregate inventory list and a Conditional Use permit authorization.

PLAN AMENDMENT

The applicant has stated the 6.7 acre site will be excavated for no more than 490,000 tons at up to 100,000 tons per year which is within the Goal 5 significance threshold of 500,000 tons. The County Staff Report states the USDA NRCS has identified the predominant soils on the 6.7 acres as rangeland soils and classified as Starkey very stony silt loam (map symbol 58E) which is a Class VII soil. Therefore, the 6.7 acre site is farmland but not comprised of high value farmland soils.

The Board of Commissioners conclude the proposed 6.7 acre site is a significant basalt aggregate site and should be included on the County's Land Use Plan basalt aggregate inventory.

CONDITIONAL USE

The applicant is pursuing a Conditional Use application to mine and crush basalt aggregate on the 6.7 acre site. The original application was amended from requesting a Surface Mining Zone designation for 4.7 acres

to the Conditional Use request and an initial request to include a temporary asphalt batch plant was also dropped.

The applicant proposes to operate the new site in conjunction with the Shaw Pit and create a new, lower elevation access point from Fox Hill Road to service the entire operation. The annual amount of material excavated and crushed is anticipated to be similar to historic activities from the Shaw Pit.

The applicant has stated in application Exhibit C and subsequent testimony to the Board of Commissioners that all DOGAMI standards will be met including stockpiling existing soil for future reclamation and seeding back to rangeland use (an outright use in the County's A-2 Agriculture-Grazing Zone).

The applicant has satisfied the two general criteria for a Conditional Use because there are three other aggregate operation sites adjacent to the proposed site, seasonal livestock grazing will not be significantly changed or livestock grazing costs increased because only 6.7 acres (2.7%) out of a 240 acre parcel will no longer be available for grazing use.

The applicant has addressed UCZPSO Section 21.07 (3) plans and specification standards in application Exhibit C (adopted here by reference).

OPPOSITION TESTIMONY

A number of people testified in support and opposition to the applications at and between the Planning Commission and Board of Commission hearings. Testimony in opposition focused on traffic on substandard roads, road dust and visual aesthetics. The applicant has submitted a June 20, 2007 letter to the County Commissioners responding to each of the concerns raised by objectors. The Board of Commissioners adopted these responses as their own by reference and find they adequately respond to the concerns raised, in addition to approval conditions designed to mitigate potential road dust issues.

CONCLUSION

The Board of Commissioners find the applicant has satisfied the Land Use Plan amendment requirements to include the 6.7 acre site on the County's basalt aggregate inventory list of significant Goal 5 resource sites for the reasons listed above.

The Board of Commissioners also find for the above reasons the applicant has satisfied the Conditional Use review requirements, coupled with the Approval Conditions listed below, and adequately addressed concerns raised by testimony in objection.

APPROVAL CONDITIONS

1. Conditional Use approval is limited to mining 490,000 tons of basalt aggregate material from the 6.7 acre site.
2. During aggregate (base rock or crushed rock) hauling operations (more than 8 truck loads per day) the applicant will apply some form of dust control on the gravel portion of Fox Hill Road up to the new access driveway.