



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

11/05/2012

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

FROM: Plan Amendment Program Specialist

SUBJECT: Morrow County Plan Amendment  
DLCD File Number 001-12

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: Friday, November 16, 2012

This amendment was submitted to DLCD for review 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 Acknowledgment or 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. NO LUBA Notification to the jurisdiction of an appeal by the deadline, this Plan Amendment is acknowledged.

Cc: Carla McLane, Morrow County  
Jon Jinings, DLCD Community Services Specialist  
Amanda Punton, DLCD Natural Resources Specialist  
Grant Young, DLCD Regional Representative

<paa> YA



FORM 2

DLCD

# Notice of Adoption

This Form 2 must be mailed to DLCD within 5-Working Days after the Final Ordinance is signed by the public Official Designated by the jurisdiction and all other requirements of ORS 197.615 and OAR 660-018-000

In person  electronic  mailed

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**OCT 29 2012**

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**LAND CONSERVATION  
AND DEVELOPMENT**

For Office Use Only

Jurisdiction: Morrow County

Local file number: AC-057-12, AC(M)-058-12

Date of Adoption: 10/17/2012

Date Mailed: 10/26/2012

Was a Notice of Proposed Amendment (Form 1) mailed to DLCD?  Yes  No Date: 7/20/2012

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 the Comprehensive Plan to include a locally significant + aggregate site to Morrow County's list of locally significant + aggregate sites. Amend the Comprehensive Plan Map to include the aggregate site location.

Does the Adoption differ from proposal? Please select one NO

Plan Map Changed from: EFU

to: EFU/Locally Significant +

Zone Map Changed from: N/A

to: N/A

Location: 25 28 TL 1300

Acres Involved: 22

Specify Density: Previous: N/A

New: N/A

Applicable statewide planning goals:

- |                                     |                          |                          |                          |                                     |                          |                          |                          |                          |                          |                          |                          |                          |                          |                          |                          |                          |                          |                          |
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| <u>1</u>                            | 2                        | 3                        | 4                        | <u>5</u>                            | 6                        | 7                        | 8                        | 9                        | 10                       | 11                       | 12                       | 13                       | 14                       | 15                       | 16                       | 17                       | 18                       | 19                       |
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Was an Exception Adopted?  YES  NO

Did DLCD receive a Notice of Proposed Amendment...

35-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. 001-12 (19428) [17223]

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

DLCD, DOGAMI, DEQ, OWRD, ODOT

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Local Contact: *Carla McLane*

Phone: *(541) 922-4624* Extension:

Address: *PO Box 40*

Fax Number: *541-922-3472*

City: *Irrigon*

Zip: *97844*

E-mail Address: *cmclane@co.morrow.or.us*

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## ADOPTION SUBMITTAL REQUIREMENTS

**This Form 2 must be received by DLCD no later than 5 working days after the ordinance has been signed by the public official designated by the jurisdiction to sign the approved ordinance(s)**

per ORS [197.615](#) and OAR Chapter 660, Division 18

1. This Form 2 must be submitted by local jurisdictions only (not by applicant).
2. When submitting the adopted amendment, please print a completed copy of Form 2 on light **green paper if available**.
3. Send this Form 2 and one complete paper copy (documents and maps) of the adopted amendment to the address below.
4. Submittal of this Notice of Adoption must include the final signed ordinance(s), all supporting finding(s), exhibit(s) and any other supplementary information ([ORS 197.615](#)).
5. Deadline to appeals to LUBA is calculated **twenty-one (21) days** from the receipt (postmark date) by DLCD of the adoption ([ORS 197.830 to 197.845](#)).
6. In addition to sending the Form 2 - Notice of Adoption to DLCD, please also remember to notify persons who participated in the local hearing and requested notice of the final decision. ([ORS 197.615](#)).
7. Submit **one complete paper copy** via United States Postal Service, Common Carrier or Hand Carried to the DLCD Salem Office and stamped with the incoming date stamp.
8. Please mail the adopted amendment packet to:

**ATTENTION: PLAN AMENDMENT SPECIALIST  
DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT  
635 CAPITOL STREET NE, SUITE 150  
SALEM, OREGON 97301-2540**

9. **Need More Copies?** Please print forms on **8½ -1/2x11 green paper only if available**. If you have any questions or would like assistance, please contact your DLCD regional representative or contact the DLCD Salem Office at (503) 373-0050 x238 or e-mail [plan.amendments@state.or.us](mailto:plan.amendments@state.or.us).

BEFORE THE MORROW COUNTY COURT  
OF MORROW COUNTY

AN ORDINANCE AMENDING THE MORROW  
COUNTY COMPREHENSIVE PLAN AND THE  
COMPREHENSIVE PLAN MAP TO INCLUDE  
A LOCALLY SIGNIFICANT AGGREGATE  
RESOURCE SITE

COUNTY ORDINANCE

NO. MC-3-2012

WHEREAS, ORS 203.035 authorizes Morrow County to exercise authority within the county over matters of County concern; and

WHEREAS, Morrow County adopted a Comprehensive Land Use Plan which was acknowledged by the Land Conservation and Development Commission on January 15, 1986; and

WHEREAS, an application was filed by John Kilkenny to include approximately 22 acres of ground as a locally significant resource site and to amend the Morrow County Comprehensive Plan Inventory of Significant Aggregate Sites by a Post Acknowledgment Plan Amendment; and

WHEREAS, the Morrow County Planning Commission held one hearing to review the request on August 28, 2012 at Heppner City Hall; and

WHEREAS, the Morrow County Planning Commission unanimously recommended approval of the request and adopted Planning Commission Final Findings of Fact; and

WHEREAS, the Morrow County Court held a hearing to consider the recommendation of the Morrow County Planning Commission on October 3, 2012 at the Morrow County Courthouse in Heppner, Oregon; and

WHEREAS, the Morrow County Court affirmed that the proposed aggregate site meets the requirements under Oregon Administrative Rule whereby a site shall produce less than 500,000 tons of aggregate material and the soils contain less than 35 percent of soils classified as Class I or II on NRCS maps; and

WHEREAS, the Morrow County Court deemed the site at the subject property a locally significant aggregate site.

NOW THEREFORE THE COUNTY COURT OF MORROW COUNTY ORDAINS AS FOLLOWS:

Section 1 Title of Ordinance:

This Ordinance shall be known, and may be cited, as the "2012 Kilkenny Aggregate Locally Significant Site Comprehensive Plan and Map Amendment."

Section 2 Affected Documents:

The Morrow County Comprehensive Plan and the Morrow County Comprehensive Plan Map are amended with a text amendment in the Goal 5 Analysis Chapter Aggregate Sites List.

1. Text Amendment: Insert the following on page 102 of the Comprehensive Plan:  
Site/Permit Number TBD Type of Material: Quarry Rock County Zone Designation:  
EFU Remarks: Locally Significant Goal 5 Designation: n/a
2. Map Amendment: The Morrow County Comprehensive Plan Aggregate Resources Map will be amended to indicate the site as shown on the attached Boundary Map.

Section 3 Effective Date

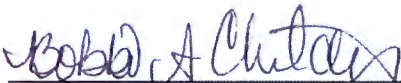
This ordinance shall be effective on November 1, 2012.

Date of First Reading: October 10, 2012


Date of Second Reading: October 17, 2012

DONE AND ADOPTED BY THE MORROW COUNTY COURT THIS 17th DAY OF OCTOBER, 2012

ATTEST:


  
\_\_\_\_\_  
Bobbi Childers  
County Clerk



  
\_\_\_\_\_  
Jerry K. Tallman, Judge

  
\_\_\_\_\_  
Ken Grieb, Commissioner

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Ryan Swinburnson  
County Counsel  
MORROW COUNTY COURT:

  
\_\_\_\_\_  
Leann Rea, Commissioner

Morrow County Comprehensive Plan Page 102

List of Significant Aggregate Sites

Site/Permit Number- TBD

Type of Material- Basalt



County Zone Designation- EFU

Remarks- Kilkenny Aggregate Site

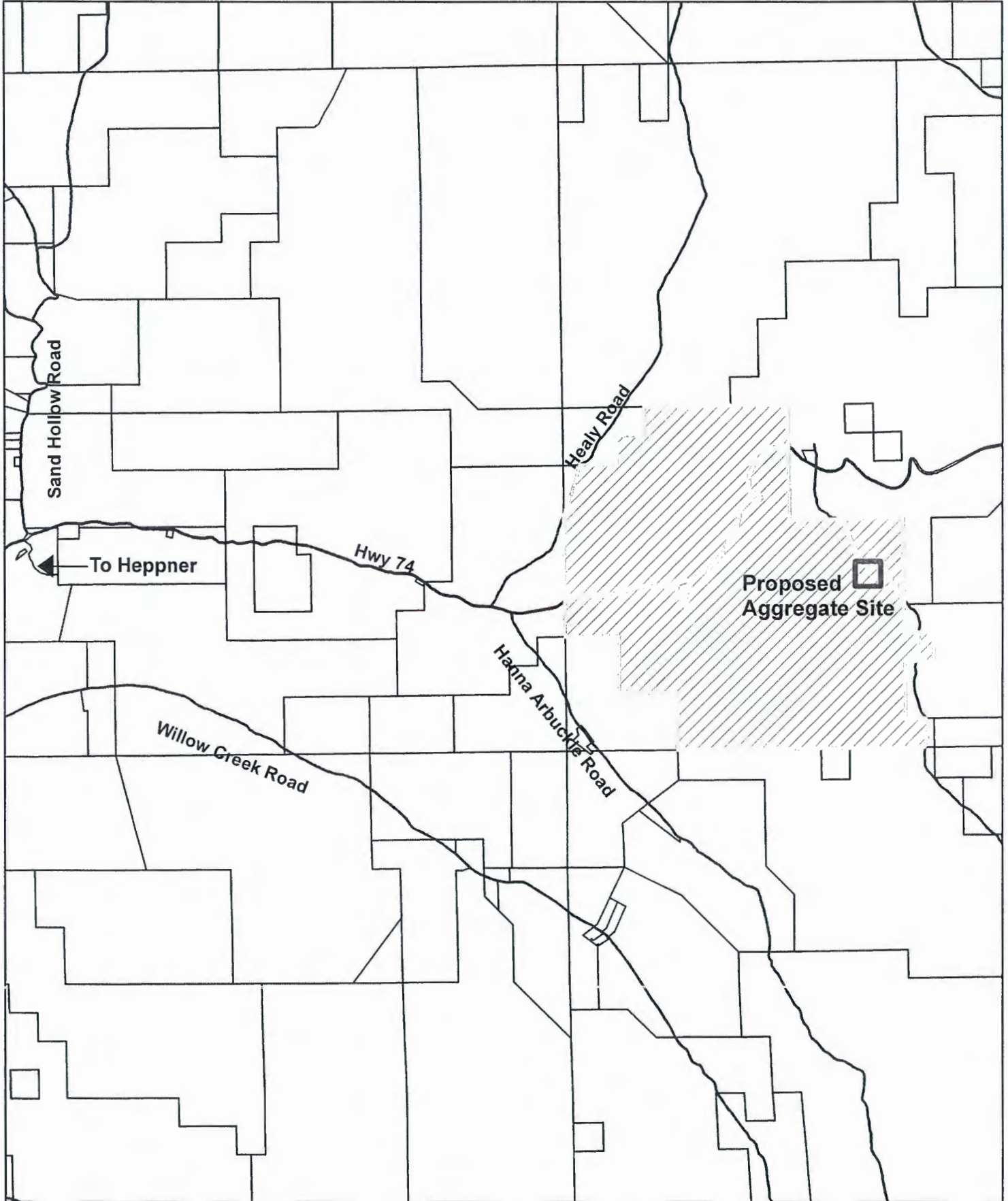
Designation- Locally Significant



Morrow County Planning Department  
 August 2012  
 Map for Reference Purposes Only

 Subject Property  
 Tax Lot

**Vicinity Map**  
 CUP-S-297  
 AC-057-12  
 AC(M)-058-12



0 0.5 1 2 3 4 5 Miles

**FINAL FINDINGS OF FACT**  
**AC-057-12, AC(M)-058-12**  
**Aggregate Site**

**REQUEST:** Amend the Comprehensive Plan to include a locally significant aggregate site to Morrow County's list of significant aggregate sites. Amend the Comprehensive Plan Map to include the aggregate site location.

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**APPLICANT:** John Kilkenny  
79074 Highway 74  
Heppner, OR 97836

**PROPERTY OWNER:** Same

**PROPERTY DESCRIPTION:** Tax Lot 1300 of Assessor's Map 2S 28 Section 28

**PROPERTY LOCATION:** Approximately 8 miles east of Heppner off Highway 74 and about 1 3/4 miles south on Freezeout Ridge Road

**I SUMMARY OF APPLICATION AND PROCESS:**

This application came about as a result of the need to provide aggregate for road and wind projects in the area. The proposed quarry is estimated to produce less than 500,000 tons of aggregate material and the soils are predominately Waha-Rockly complex, Class VIIs and Waterbury extremely stony silt loam, Class VIIs. See the accompanying Soils Map.

Oregon Administrative Rule (OAR) 660-023-0180 sets forth the process and conditions by which aggregate sites are approved. When a proposed aggregate quarry is estimated to produce less than 500,000 tons of material outside the Willamette Valley and when the soils are not more than 35 percent Class I soils, or classified as Class II, or of a combination of Class II and Class I or Unique soil as classified on the NRCS soil maps, the site may be approved as a Conditional Use in Morrow County.

Oregon Revised Statute 215.298 and Oregon Administrative Rule Division 23 requires that a permit for mining of aggregate shall be issued only for a site included on an inventory in an acknowledged comprehensive plan; this action will meet that requirement. The applicant has submitted an application for a Conditional Use Permit to mine aggregate on the subject property along with the application to include the site in the Comprehensive Plan and Map. As required by the Morrow County Comprehensive Plan two public hearings will be required – one Planning Commission and one County Court – prior to approval of the requested amendment. The tentative hearing schedule is included at the end of these Findings of Fact. If the Planning Commission approves the Conditional Use Permit for the proposed quarry site, mining will be allowed only after the site has been added to the Comprehensive Plan's list of significant aggregate sites and map.

**II SUMMARY OF APPLICABLE CRITERIA** To approve the requests the Planning Commission will need to make findings to show that the requests meet the necessary criteria in the Comprehensive Plan for review and revision processes. Those criteria are presented below in **bold** print with responses in regular print.



**At a minimum, the review should determine Plan and Implementing Ordinance conformity with changes in:**

**1. The Oregon Revised Statutes;** The Oregon Revised Statutes(ORS) and Oregon Administrative Rules (OAR), specifically ORS 215.298 and OAR 660-023-0180 require a permit for mining of aggregate be issued only for a site included on an inventory in an acknowledged comprehensive plan. This action will accomplish that requirement.

**2. Oregon Case Law;** Oregon Case Law LUBA Beaver State Sand and Gravel v. Douglas County, 43 or LUBA 140 (2002). The ORS 215.298 provision allows a mining operation on EFU-zoned lands if the site is on an “inventory” in a comprehensive plan. Because under the 1982 Goal 5 rule the term “inventory” referred to an inventory of significant mineral sites, ORS 215.209 allows mining in an EFU zone only if the site is on a comprehensive plan inventory of significant mineral sites, not if the site is on a separate list of non-significant sites. This action takes into account the LUBA Case described above. The aggregate mine will be placed on the Comprehensive Plan list of significant mineral sites.

**3. Oregon Statewide Planning Goals;** Oregon Administrative Rule 660 Division 23 lists mineral and aggregate resources as a Goal 5 resource and includes them within the procedures and criteria for inventorying and evaluating Goal 5 resources. All new mining sites shall be approved according to these rules. In the case of this application, the applicable language is found under 660-023-0180(6)(c), which states: the local government shall issue a permit for mining aggregate only for a site included on an inventory of significant aggregate sites in the comprehensive plan in accordance with ORS 215.298(2). This action will accomplish the requirement of the Rule described above.

**4. Requirements of the County and Cities;** This amendment meets the requirement that Morrow County comply with Statute and Rule as specified above. There is no requirement that any city or town within Morrow County be a party to this amendment.

**5. Needs of residents or landowners within the County and Urban growth areas.** There is potential for road projects, private construction and wind energy facilities that have been approved in this area or are being considered. Road projects and especially wind farms in particular, require aggregate in order to create and improve existing roads, and to build the wind tower turbine footings. Aggregate needs to be available near these projects and wind farm facilities, and application has been made to the County for a Conditional Use Permit for an aggregate mine in compliance with County and State requirements. When the Conditional Use Permit and the subject amendment have been approved by the Planning Commission and the County Court, the need of the applicant to provide the aggregate to the County, private developer, or the wind project developer to develop a facility, will have been met.

**6. Concerns of the County and other affected governmental units.** It is a matter of County concern that the County meet its obligations under State Statute and Rule in a timely manner. All affected agencies as listed in Section VI below have been notified. This amendment and accompanying application for the aggregate mine has been given lawful public notice and all comments will be considered by the Planning Commission and the County Court and entered into the Public Record as required.

**Minor or Quasi-Judicial Changes.** Minor changes, i.e., those which do not have significant effect beyond the immediate area of the change, should be based on special studies or other information which will serve as the factual basis to support the change. The public need and justification for the particular change should be established. Minor changes should not be made more frequently than once a year, if at all possible. The factual basis and public need and justification supporting the amendment are established above.


- III DLCD 45 DAY NOTICE: July 25, 2012
- IV PROPERTY OWNER NOTICE: August 8, 2012
- V LEGAL NOTICE: Heppner Gazette Times and East-Oregonian August 8, 2012 and September 7, 2012
- VI AGENCIES NOTIFIED: Amanda Punton, Grant Young, Angela Houck, Department of Land Conservation and Development; Ben Mundie, DOGAMI; Greg Sweek, Morrow County Assessor
- VII HEARING DATES:
  - Planning Commission
  - August 28, 2012
  - Heppner City Hall
  - Heppner, Oregon
  
  - County Court (Tentative)
  - October 3, 2012
  - Heppner, Oregon

**IX RECOMMENDATION OF THE MORROW COUNTY PLANNING COMMISSION:**  
Recommend to the Morrow County Court approval of the application as presented:

1. Amend the Comprehensive Plan to include the subject aggregate quarry site as part of Morrow County's list of significant aggregate sites:

Morrow County Comprehensive Plan Page 102  
List of Significant Aggregate Sites  
Site/Permit Number- TBD  
Type of Material- Quarry Rock  
County Zone Designation- EFU  
Remarks- Kilkenny Aggregate  
Designation- Locally Significant

2. Amend the Comprehensive Plan Map to include the aggregate site location.

  
\_\_\_\_\_  
David Sykes, Chair

8/28/2012  
\_\_\_\_\_  
Date

Attachments:  
Vicinity Map  
Soils Map  
Aggregate Boundary Map



# Vicinity Map

CUP-S-297

AC-057-12

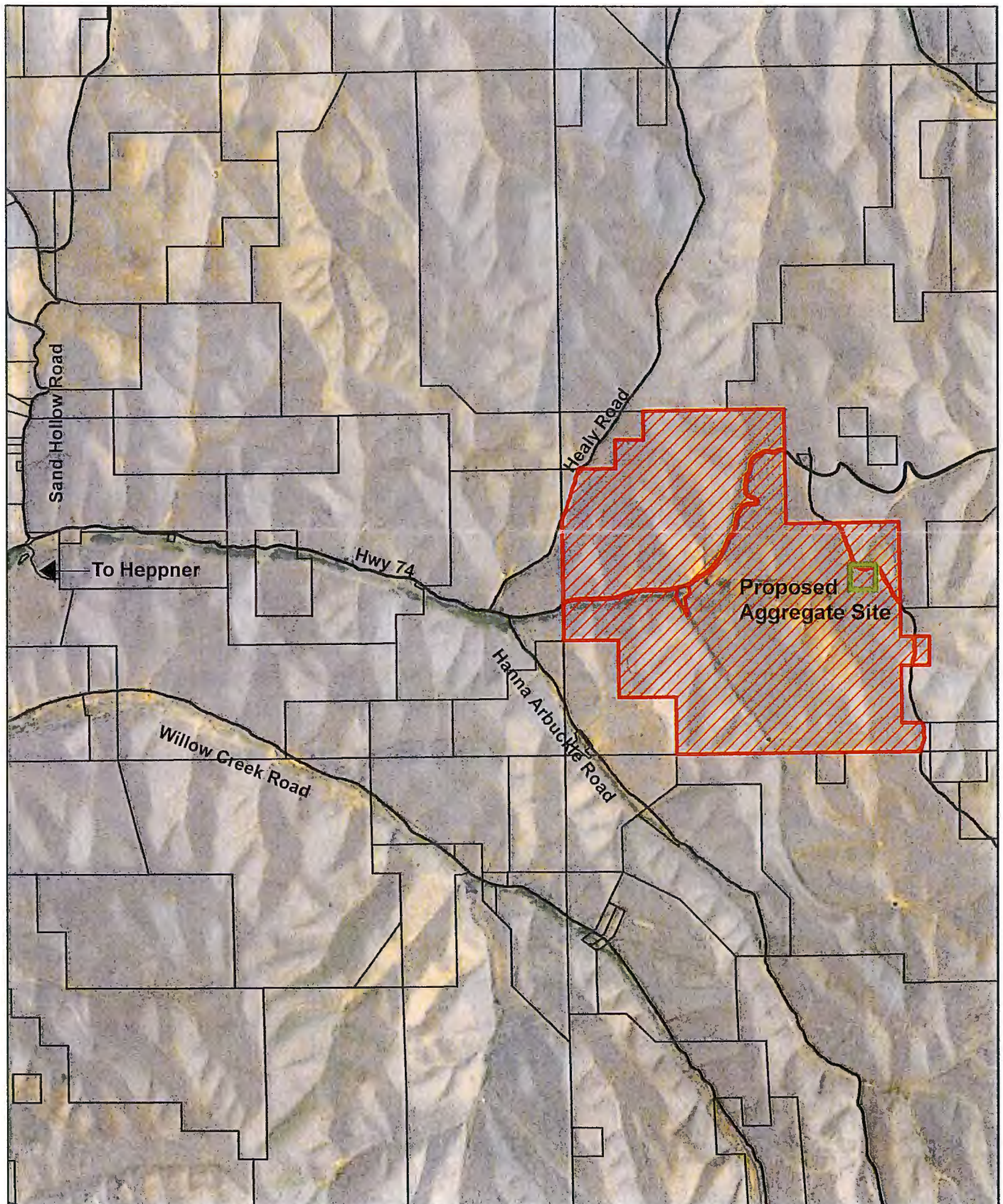
AC(M)-058-12

2S 28E (28) Tax Lot 1300

Morrow County Planning Department  
August 2012  
Map for Reference Purposes Only

 Subject Property

 Tax Lot



# Conservation Plan Map

Customer(s): KILKENNY CATTLE COMPANY


PO Box 40  
Troy, OH 45359

Field Office: HEPPNER SERVICE CENTER  
Agency: NRCS





## Legend

### Soils Map rock

 <all other values>

### muname

 Waha-Rockly complex, 2 to 20 percent slopes

 Waterbury extremely stony silt loam, 7 to 40 percent slopes

 Practices (polygons)

 Tract 1216

 Soils Map

 Sections



N





# Boundary Map

CUP-S-297

AC-057-12

AC(M)-058-12

2S 28E (28) Tax Lot 1300

Morrow County Planning Department  
August 2012  
Map for Reference Purposes Only



MORROW COUNTY PLANNING DEPT.  
P.O. BOX 40  
IRRIGON, OR 97844



DLCD  
Angela Houck  
635 Capitol St. NW, Ste 150  
Salem, OR 97301-2540

DEPT OF

OCT 29 2012

LAND CONSERVATION  
AND DEVELOPMENT

9730198540 C007

