

Hugo Neighborhood Association & Historical Society

P.O. Box 1318
Merlin, Oregon 97532
541-471-8271

Email: hugo@jeffnet.org

Web Page: <http://www.hugoneighborhood.org/>

June 11, 2014

Cherryl Walker, Commissioner Chair
Keith Heck, Commissioner Vice Chair
Simon Hare, Commissioner
Josephine County
Room 154, Courthouse
Grants Pass, Oregon 97526



Reference: For "The Record" Testimony For Sunny Valley Sand & Gravel Josephine County Comprehensive Plan (JCCP)/Zone Change (ZC) Land Use Application Before The Josephine County Board of County Commissioners (BCC)

Dear Commissioners:

These comments are submitted "for the record" for the Sunny Valley Sand & Gravel LLC JCCP/ZC land use application. If approved, this application will allow, with conditions, to add the proposed aggregate site to the county's significant aggregate inventory; change the comprehensive plan map from Forest/Residential to Aggregate and change the zone from Woodlot Resource (WR)/Rural Residential (RR-5 Acre) to (MARZ). In addition, it will authorize the mining operation on the subject parcels: 34-05-08, TL 400, 34-05-08, TL 1002, 34-05-07, TL 1200, and 34-05-07, TL 1300.

Per the Josephine County Rural Land Development Code (RLDC 31.100 - Parties), if I give testimony I must identify myself as: 1. a witness; or 2. a party as defined in RLDC 11.030; or 3. a county or other public official. I am not a person entitled to notice. Per the RLDC I claim party status because I will be aggrieved by decision if it is to approve, and, therefore, I must identify and document the facts showing how I will be aggrieved. Persons who fail to do so shall be witnesses. I am a party to this land use application and have standing because I am aggrieved (Attachment 1).

One of the findings criterion that local government hearing bodies (i.e., planning commission (PC) and board of county commissioners (BCC)) are required to address is conditions of approval when needed (i.e., they are usually needed for a compliance determination).

Documented Compliance Determinations for Conditions of Approval to Meet Criteria That Determinations Are Made at a Stage That Provides Opportunity for Public Review and Comment

The requirement and needed evidence is that the BCC must conclude that the approval standards and/or criteria are met, or that compliance is feasible and impose conditions that will ensure compliance. Compliance means that substantial facts/evidence support findings that solutions to certain problems posed by the project are possible, likely and reasonably certain to succeed. The BCC findings must meet this criterion of findings.

Local government can have a condition of approval that an agency will later oversee compliance for some environmental issue (e.g., noise, dust, traffic, groundwater, riparian, wildlife, etc.) by issuing permits, etc. However, the determination of feasibility is the responsibility of government during the proceedings at a stage that provides opportunity for public review and comment. This is where the local government many times fails; it generally feels its job is done by having another agency responsible for compliance at a later time and does not adequately address “feasibility” that *substantial evidence* supports findings that solutions to certain problems posed by the project are possible, likely and reasonably certain to succeed (*Myer v. City of Portland*).

In summary, this assignment of issue (AOI; Appendix A) is not with what agency will later oversee compliance, but with the required determination of feasibility by the hearing body, the BCC. For example, a local government may determine and make findings that a community sewer system is feasible - meaning that "*substantial evidence* supports findings that solutions to certain problems posed by the project are possible, likely and reasonably certain to succeed - but explicitly leave to DEQ the task of actually reviewing and signing off on the system by conditioning the issuance of a building permit on DEQ approval.

A local government may property grant permit approval based on either (1) a finding that an applicable approval standard is satisfied, or (2) a finding that it is feasible to satisfy an applicable approval standard (i.e., be in compliance with the standard) and the imposition of conditions necessary to ensure that the standard will be satisfied. Compliance determinations mean that substantial facts/evidence supports findings that solutions to certain problems posed by the project are possible, likely and reasonably certain to succeed. Findings will fail that do not accomplish these standards and do not identify that the approval standards are met except in the most generic manner, or that compliance is feasible and that the imposed conditions will ensure compliance. The proceedings before the Josephine County Planning Commission have failed that requirement (Appendix A).

Documented compliance determinations for conditions of approval to meet criteria that determinations are met must be made at a stage that provides opportunity for public review and comment. Where the staff report identifies an approval criterion and the final decision fails to demonstrate compliance with the criterion or take the position that the criterion does not apply, the decision will be remanded. If not corrected and in a appeal to LUBA, it will remand when there are inadequate findings to allow review of the decision. OAR 661-010-0071(2)(a); OAR 661-010-0073(2)(a).

Sincerely,

Mike :)

/s/ Mike Walker

Mike Walker, As An Individual
P.O. 1318
Merlin, OR 97532
541-471-8271
Email: hugo@jeffnet.org

/s/ Mike Walker

Mike Walker, Member
Hugo Land Use Committee
Representing Hugo Neighborhood Association & Historical Society
(same contact information)

/s/ Mike Walker

Mike Walker, Director/Vice President
Rogue Advocates
Representing Rogue Advocates
(same contact information)

/s/ Mike Walker

Mike Walker, Director
Goal One Coalition
Representing Goal One Coalition
(same contact information)

Appendices

Appendix A. Sunny Valley Sand & Gravel Land Use Application Assignment of Issue:
Documented Compliance Determinations for Conditions of Approval to Meet
Criteria That Determinations Are Made at a Stage That Provides Opportunity for
Public Review and Comment

Attachments

Attachment 1. Aggrieved Person Statement