

Draft Under Construction & Review: June 6, 2014

Letter/Proceeding Handout for BCC Hearing

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

Dear Commissioners:

These comments are submitted “for the record” for the Sunny Valley Sand & Gravel LLC JCCP/ZC land use application (i.e., Josephine County Comprehensive Plan (JCCP)/zone change (zc) land use application. If approved by the county, this request 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), and to authorize the mining operation on the subject parcels.

I am a party to this land use application and have standing because I am aggrieved (Josephine County Rural Land Development Code (RLDC 31.100). I live on Placer Road a little over one mile from the proposed land use application site. I have participated in the record for this land use application and I am personally interested in the outcome of the proceedings. I have a personal philosophy about land use in general, and specific concerns such as protecting clean air, water quality and quantity, and the scenic environment. Air quality and avoiding Crystalline Silica are especially important to my continued health as I spent almost 40 years as a member of the operating engineers. This involved working with a lot of sand and gravel, not only as fill for the roads and trenches I dug and built, but I have also worked in the sand and gravel plants that supplied these materials to the industry. I now have issues with my lungs.

Being a member of the community is also important to me. As a member of the neighborhood I have always been engaged in touring Grave Creek and getting to know my neighbors and seeing the country. I continue to have real pleasure viewing its rural pastoral environments, especially its farming and forest uses and scenes. I am deeply concerned that continued land divisions and development will damage our local rural setting, which would injure my use and enjoyment of the area and, therefore, I am very interested in the outcome of this hearing.

The outline of my written testimony for my public health issue has four sections patterned after RLDC 11.030, Findings: 1. Final Action, 2. Criteria & Standards, 3. Analysis of Facts/Evidence, and 4. Conclusions.

1. FINAL ACTION

Issue - Why put a Gravel Pit/Mining Operation that creates known carcinogens (cancer-causing) right next to our homes? The Josephine County Board of County Commissioners' (BCC) approving county's findings will be inadequate and the decision not supported by substantial evidence in the whole record where in conflict with the JCCP's purpose to control pollution, and the RLDC's purpose "*To protect the public health, safety, and welfare.*"

2. CRITERIA & STANDARDS

Josephine County Comprehensive Plan, Goal 8: Pollution Shall Be Controlled

POLICIES:

1. The Board of County Commissioners shall monitor and maintain acceptable standards to avoid air, water and noise pollution, (including chemical and thermal pollution and unnecessary sedimentation of existing and future surface and ground water supplies). Ordinances adopted under this policy shall be coordinated with affected agencies and/or programs.
2. The Board of County Commissioners shall investigate and identify potential mass transportation methods when warranted and continue management programs which emphasize the **reduction of road-associated dust and other sources of air contamination** [emphasis added].
3. The Board of County Commissioners shall seek the improvement of alternative routes around commercial districts within urbanizing areas to reduce congestion.
4. County agencies such as the Planning and Environmental Health Departments shall coordinate activities with State agencies involved in the regulation of **air** [emphasis added], water and noise pollution to ensure application of **State and federal standards** [emphasis added]. Ordinances shall be adopted which require compliance with State discharge and construction permits for new or industrial land uses.

Josephine County Rural Land Development Code

RLDC 10.010 - Title. The land use regulations contained in this document shall be collectively known as the Josephine County Rural Land Development Code, hereinafter referred to as the "code."

RLDC 10.020 - Purpose. The purpose of this code is to coordinate Josephine County regulations governing the use and development of land, and more specifically:

- A. To implement the Josephine County Comprehensive Plan and to guide and manage the future growth of the county in accordance with that plan.
- B. **To protect the public health, safety, and welfare** [emphasis added].
- C. To assist the public in identifying and understanding regulations affecting the development and use of specific parcels of land.

RLDC 11.030. "Findings. As required in ORS 215.416(8), written statements of fact, conclusions, and determinations based upon the evidence at hand, presented relative to the criteria and standards for such review and accepted by the review or hearing body in support of a final action."

RLDC 12.020.B Consistency with Plans and Laws. B. Actions initiated and approved under this code **shall be consistent with the requirements of** [emphasis added] the Josephine County Comprehensive Plan, the Goals and Policies of the Comprehensive Plan, and any **applicable local, state, or federal laws, rules and regulations** [emphasis added].

Dust [emphasis added] and other discharges generated by the mining must be minimized and comply with OAR 660-023-0180(5)(c) and RLDC 91.030.B.2.

Traffic Related Conditions. The access or service road(s) [emphasis added] to and from the extraction site to a public road shall meet the following standard. The most current **air quality standards** [emphasis added] from Oregon Administrative Rules Chapter 340, Division 20, 21, and 28, **for ambient air quality for a distance of 500 feet in all directions from any public road or conflicting use located along the access road if the mining traffic is the primary cause of the road dust** [emphasis added] (RLDC 91.030.B.2).

State & Federal Standards

Goal 5 Decision-Making Process For Significant Aggregate Sites

Oregon Department of Land Conservation & Development

<http://www.oregon.gov/LCD/pages/goal5agg.aspx>

OAR 660-023-0000

Procedures and Requirements for Complying with Goal 5

http://arcweb.sos.state.or.us/pages/rules/oars_600/oar_660/660_023.html

OAR 660-023-0010 Definitions

OAR 660-023-0010(2) "**ESEE consequences**" are the **positive and negative economic, social, environmental, and energy (ESEE) consequences** [emphasis added] that could result from a decision to allow, limit, or prohibit a conflicting use.

OAR 660-023-0180. Mineral and Aggregate Resources

OAR 660-023-0180(1)(g) "Minimize a conflict" means to reduce an identified conflict to a level that is no longer significant. For those types of conflicts addressed by **local, state, or federal standards** [emphasis added] (such as the Department of Environmental Quality standards for noise and **dust** [emphasis added] levels), to "**minimize a conflict**" means to ensure conformance to the applicable standard [emphasis added].

OAR 660-023-0180(5) 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** [emphasis added] that is consistent with section (8) of this rule, or by the earliest date after 180 days allowed by local charter.

OAR 660-023-0180(5)(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.** [emphasis added] 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:

OAR 660-023-0180(5)(b)(A) Conflicts due to noise, **dust** [emphasis added], 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;

OAR 660-023-0180(5)(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** [emphasis added].

OAR 660-023-0180(5)(d) **The local government shall determine any significant conflicts identified under the requirements of subsection (c) of this section that cannot be minimized** [emphasis added]. 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.

Oregon OSHA has established an permissible exposure limit (PEL) to silica of 0.1 milligrams per cubic meter of air (mg/m³) averaged over an 8-hour period. This limit is for the respirable fraction of the dust (particle sizes of 1 to 10 micrometers, or microns), and requires specialized collection equipment in order to accurately collect an air sample (Reference 11, Appendix A).

Crystalline Silica Federal Standards & Criteria. Standards are designed to limit exposures to 0.1 mg/m³ (100 ug) of silica. The Secretary of Labor's Advisory Committee on the Elimination of Pneumoconiosis Among Coal Mine Workers made several recommendations related to reducing exposure to silica. NIOSH recommends a 50 ug/m³ exposure limit for respirable crystalline silica. MSHA will publish a proposed rule to address miners' exposure to respirable crystalline silica (Reference 10, Appendix A).

Inhalation of very small (respirable) crystalline silica particles puts workers at risk for silicosis, lung cancer, chronic obstructive pulmonary disease (COPD), and kidney disease. OSHA recently released a proposed rule to protect workers exposed to respirable crystalline silica (Reference 6, Appendix A).

"Exposure to silica can be deadly, and limiting that exposure is essential. Every year, many exposed workers not only lose their ability to work, but also to breathe. This proposal is expected to prevent thousands of deaths from silicosis – an incurable and progressive disease – as well as lung cancer, other respiratory diseases, and kidney disease. Workers affected by silica are fathers, mothers, sisters and brothers lost to entirely preventable illnesses. We're looking forward to public comment on the proposal." Dr. David Michaels Assistant Secretary of Labor for Occupational Safety and Health (Reference 6, Appendix A).

Why is OSHA proposing a crystalline silica rule? OSHA's current permissible exposure limits (PELs) for crystalline silica were adopted in 1971 and have not been updated since that time. They do not adequately protect workers; they are outdated, inconsistent and hard to understand (Reference 3, Appendix A).

OSHA Proposed Standards. Measure the amount of silica that workers are exposed to if it may be at or above an action level of 25 µg/m³ (micrograms of silica per cubic meter of air), averaged over an 8-hour day; Protect workers from respirable crystalline silica exposures above the permissible exposure limit (PEL) of 50 µg/m³, averaged over an 8-hour day (Reference 7, Appendix A).

3. ANALYSIS OF FACTS/EVIDENCE (SOME CRYSTALLINE SILICA FACTS)

It is a known fact that Crystalline Silica is produced during the rock crushing, drilling and the blasting process. The smaller size Crystalline Silica that measures less than 2.5 micrometers (about 1/15th the diameter of a human hair) is the most dangerous variety, according to the EPA, OSHA, and the American Lung Association. Once these fine particles enter the lungs, the body has no means to expel them. The body's natural defense is to encapsulate them, causing permanent lung damage. Health effects can range from silicosis, lung cancer, tuberculosis, and

increased lung irritation. There is no cure for silicosis. Those fine particles can travel a great distance, not only blown by the wind but from un-tarped dump trucks, and these particles will concentrate in our valley.

The closer you live to the source the more toxic dust you will inhale. Crystalline Silica dust will build up each day and become more toxic to the population of Sunny Valley as it accumulates inside and around homes and roadways. This is a residential area and there are many homes adjacent to this proposed pit and its crushing and loading facility. Kids waiting along Placer Road for the school bus will be inhaling the dust from the 80 trucks SVS&G proposes running per day.

The reason I am so up on Crystalline Silica is that I spent almost 40 years as a local 3 member of the operating engineers. This involved working with a lot of sand and gravel, not only as fill for the roads and trenches I dug and built, but I have also worked in the sand and gravel plants that supplied these materials to the industry. I now have issues with my lungs and one of the best things I can do is walk my dogs 5 to 6 times a week on Placer Road just to keep my lungs functioning as best I can. What do you think will happen to me when I have to share the road with a loaded un-tarped gravel truck every 6 minutes? I now can walk the road with very little traffic but, if this mine is approved, it will be a serious health hazard for me.

The following handouts (Appendix A) are some research information supporting my issue, non-compliance with the standards and criteria, and the facts I provide for your consideration.

- . Handout 1. Understanding Silicosis, American Lung Association
- . Handout 2. *Respirable Crystalline Silica from Sand Mining*, Wisconsin Department of Health Services
- . Handout 3. *Dust from Gravel Pit/Quarry Operations*, Gravel Watch Ontario
- . Handout 4. *Say "NO" to the Brock Pit*. ProtectCaledon.org, Citizens For Responsible Aggregate Mine Approval

On August 23, 2013, OSHA released a proposed rule to protect workers exposed to respirable crystalline silica. Until a final silica standard is issued, there are several OSHA standards that employers are required to comply with that can help protect workers exposed to silica dust (Reference 9, Appendix A). These should be conditions of approval if the applications is approved.

1. General Safety and Health Provisions Standard (1926.20) addresses the employee's general right to a safe workplace.
2. Gases, Vapors, Fumes, Dusts and Mists Standard (1926.55(a)) lists the airborne levels of substances that would make a workplace hazardous.
3. The Ventilation Standard (1926.57) must be consulted for specific requirements about removing silica dust from a worker's breathing zone.
4. For worker training requirements about silica hazards, the Hazard Communication Standard (1926.59) applies, which is identical to 1910.1200.
5. If respirators are required on-the-job, then employers must comply with the OSHA Respiratory Protection Standard (1926.103), which is identical to 1910.134.

Additional Proposed Conditions of Approval for Preventing Silicosis

- . Identify quarry work and neighborhood areas, tasks, and quarry and transportation equipment that could expose workers and Sunny Valley neighbors to crystalline silica dust.
- . Use materials that don't produce crystalline silica.
- . Work wet and use dust-containment systems to control dust.
- . Ventilate to keep work areas dust free.
- . Use personal protective equipment when necessary. (See OR-OSHA's "*Respiratory Protection Standard*" for more information on using respirators properly.)
- . Transportation equipment hauling sand and gravel must be tarped.
- . Monitor the air at the proposed development site along and along Placer Road from the development site to I-5 to determine worker and neighbors' exposure levels - monitor within 500 feet in all directions from any public road or conflicting use located along the access road if the mining traffic is the primary cause of the road dust (RLDC 91.030.B.2).
- . Give exposed workers and neighbors (that request the health service) that live along and use Placer Road from the development site to I-5 regular medical exams.
- . Practice good personal hygiene.
- . Educate workers and neighbors about silica-dust hazards and silicosis; train them how to control their exposure.
- . Label products that contain crystalline silica.

The county analysis provided in the April 18, 2014 Josephine County Planning Staff Report is not in compliance with the requirements that dust and other discharges generated by the mining must be minimized (OAR 660-023-0180(5)(c) and RLDC 91.030.B.2).

An economic, social, & energy (ESEE) analysis is required because all conflicts have not been satisfactorily satisfied, especially impacts to water quantity and quality, endangered salmon, and quarry dust leading to human exposure of carcinogenic air pollution at and around the proposed development site and along Placer Road.

4. CONCLUSIONS

A finding and decision to approve the land use application that it will "protect the public health, safety, and welfare" and not prepare an ESSE analysis will be misinterpreted and contrary to applicable law and will not be supported by substantial evidence in the record (ORS 197.835(6); 197.835(7)(a); 197.835(8); 197.835(9)(a)(C); 197.835(11)). Therefore, the county's decision should be remanded.

Respectfully,

John J Ahlf
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Appendix A. Contact Information For Handouts & References

Handout 1. *Understanding Silicosis*. American Lung Association. 55 W. Wacker Drive, Suite 1150, Chicago, IL 60601. T: 1-800-LUNGUSA | F: 202-452-1805 <http://www.lung.org/lung-disease/silicosis/understanding-silicosis.html>. Downloaded June 5, 2014

Handout 2. *Respirable Crystalline Silica from Sand Mining*. Wisconsin Department of Health Services, Department of Health Services, 1 West Wilson Street Madison, WI 53703. General Phone Number: 608-266-1865, TTY Phone Number: 888-701-1251. Email: DHSwebmaster@wisconsin.gov <http://www.dhs.wisconsin.gov/eh/air/fs/RCS.htm>. Downloaded June 5, 2014

Handout 3. *Dust from Gravel Pit/Quarry Operations* Gravel Watch Ontario. c/o Lawson Park Ltd, Box 15, RR#1, Freelon ON L0R 1K0. 905-659-5417. <http://www.gravelwatch.org/dust.htm>. Email: info@gravelwatch.org. Downloaded June 5, 2014

. Handout 4. *Say "NO" to the Brock Pit* ProtectCaledon.org. Citizens For Responsible Aggregate Mine Approval. <http://www.protectcaledon.org/>. Downloaded June 5, 2014

. Reference 1. *Crystalline Silica Exposure Health Hazard Information*. Occupational Safety and Health Administration (OSHA) FACT Sheet. Downloaded June 5, 2014.

. Reference 2. *Crystalline Silica Exposure*. Health Hazard Information for General Industry Employees. U.S. Department of Labor, Occupational Safety and Health Administration. OSHA 3176. 2002 (Revised) <https://www.osha.gov/Publications/osa3176.html> Downloaded June 5, 2014.

. Reference 3. *OSHA's Proposed Crystalline Silica Rule: Overview*. OSHA Fact Sheet. U.S. Department of Labor, Occupational Safety and Health Administration (OSHA). 200 Constitution Avenue, N.W. Washington, D.C. 20210. 800-321-OSHA (6742). https://www.osha.gov/silica/factsheets/OSHA_FS-3683_Silica_Overview.html. Downloaded June 5, 2014

. Reference 4. *Crystalline Silica Rulemaking*. U.S. Department of Labor, Occupational Safety and Health Administration (OSHA). 200 Constitution Avenue, N.W., Washington, D.C. 20210. 800-321-OSHA (6742) <https://www.osha.gov/silica/index.html>. Downloaded June 5, 2014

. Reference 5. *Silica, Chrystine*. OSHA. <https://www.osha.gov/dsg/topics/silicacrystalline/>. Downloaded June 5, 2014

. Reference 6. *Crystalline Silica Rulemaking*. OSHA. <https://www.osha.gov/silica/index.html> Downloaded June 5, 2014.

. Reference 7. *OSHA's Proposed Crystalline Silica Rule: General Industry and Maritime*. OSHA. https://www.osha.gov/silica/factsheets/OSHA_FS-3682_Silica_GIM.html. Downloaded June 5, 2014.

. Reference 8. *Occupational Health Guideline for Crystalline Silica*. OSHA. <http://www.cdc.gov/niosh/docs/81-123/pdfs/0553.pdf>. Downloaded June 5, 2014.

. Reference 9. *Work Safely With Silica*. CPWR — The Center for Construction Research and Training is an international leader in applied research and training for the construction industry, and serves as the National Construction Center for the National Institute for Occupational Safety and Health (NIOSH). <http://www.silica-safe.org/regulations-and-requirements/osha>. Downloaded June 5, 2014.

. Reference 10. *Respirable Crystalline Silica Standard*. United States Department of Labor. <http://www.dol.gov/msha/regs/unifiedagenda/fall2010/1219-AB36.htm>. Downloaded June 5, 2014.

. Reference 11. *Its Not Just Dust*. Oregon OSHA. <http://www.cbs.state.or.us/osha/pdf/pubs/3301.pdf>. Downloaded June 5, 2014.

. Reference 12. *Can Dust Hurt You?*. Cobra Building, Central Oregon. <http://buildingcentraloregon.org/can-dust-hurt-you/>. Downloaded June 5, 2014.

. Reference 13. *Oregon OSHA - Adopted Changes To Silica and Corrections to Air Contaminants in General Industry and Construction*. Oregon OSHA. http://www.orosha.org/pdf/notices/adopted2008/ao62008_div2-3_ltr.pdf. 2008. Downloaded June 5, 2014.

. Reference 14. *Oregon OSHA Home Page*. Oregon OSHA. <http://www.orosha.org/>. Downloaded June 5, 2014.