Testimony on Aggregate Amendment to HB 4060

February 14, 2018

Our Coalition OPPOSES the Changes to the Existing Aggregate

Permitting Process in the -7 Amendments

Co-Chairs Beyer and McKeown and Members of the Committee,

Thank you for the opportunity to comment on proposed -7 amendments to HB 4060 regarding aggregate permitting. As drafted, the proposed amendments that would prevent a county from addressing any noise, water, dust or "other regulated environmental impacts" on neighbors when the operator has permits from other federal or state agencies.

These amendments would eliminate the ability of the county to address specific impacts of an aggregate mine on neighboring landowners. The state and federal permitting processes and local land use process have different standards and look at different impacts. The state and federal process look at impacts to public resources, and are designed to ensure that aggregate operations will not exceed a set threshold of impacts to these public resources. The local process looks like localized impacts to neighbors and the compatibility of the use with neighboring farm operations. None of the state or federal permits look at impacts to existing farm operations or analyze dust, noise or water quality impacts in relation to neighboring farm operations.

For example, while aggregate mines generally require a storm water permit from DEQ, there are a number of potential, site-specific impacts to neighboring wells that can only be dealt with through the local permitting process. Indeed, on the face, the amendment would prevent the county from addressing air, water quality, or noise impacts, regardless of whether the mine actually requires a permit for those activities. This approach would eliminate the ability of neighboring landowner to ask for conditions that limit significant air, water quality, and noise impacts on their property.

We understand the desire for a streamlined permitting process, and we have made clear over the past several years that we would support a streamlined permitting process that allows neighbors to address impacts from a mine to their property. However, the solution proposed by this amendment eliminates the ability of landowners to address legitimate concerns and has the potential for significant unintended consequences.

Indeed, a similar provision was included in SB 644 in 2017 relative to statewide DOGAMI operating permits, including those for aggregate mining. While DOGAMI is in the early stages of implementing the legislation, they have indicated that they are seeking legal advice on whether the new provisions could impact their ability to implement their existing

statutes and are unsure when an issue would be deemed to have been addressed by another permit.

We understand that the committee is concerned about the availability of aggregate resources for transportation projects. However, the data shows that local land use approval is not a barrier to siting these projects. Data from the Oregon Department of Land Conservation and Development (DLCD) demonstrate that between 1994 and 2015, only 11 projects out of the 358 tracked by DLCD were been denied the right to mine for aggregate resources within lands zoned for exclusive farm use. **This is a 97% success rate for aggregate projects within farm zones.**

The proposed -7 amendment would limit the ability of farmers and other neighbors whose land is impacted by an aggregate operation to have their impacts addressed. The current balance struck for aggregate operations on farm zones is effective, and any changes to the process at this juncture could have significant unintended consequences. We urge you not to adopt this amendment. This is a significant policy discussion that requires additional discussion.[1]

Contacts:

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[1] We also have concerns about the constitutionality of the amendment. This bill has a "relating to" clause of "relating to transportation," while the proposed amendments concern local land use and state permitting. We are concerned these amendments far exceed the scope of the "relating to" clause of the bill and are not properly considered in HB 4060.