

Adam Zack

From: R. Brent Lyles <brent@sanjuans.org>
Sent: Wednesday, August 4, 2021 3:47 PM
To: Comp Plan Update
Cc: San Juan County Council
Subject: Friends comments on Mineral Resource Lands designations
Attachments: Friends comments on Mineral Resource Lands Overlay - 4aug2021.pdf

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Hello,

Please find attached a comment letter from Friends of the San Juans on Mineral Resource Lands and the Mineral Resource Lands Overlay (MRLO) designation process. Thank you for passing along these comments to the Planning Commissioners (and the County Councilmembers) for their due consideration.

If you would please reply to this email to confirm receipt of this email and its attachment, I'd appreciate it. Thanks so much.

Respectfully,

Brent

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By Email

August 4, 2021

San Juan County Planning Commissioners
c/o Adam Zack
SJC Department of Community Development
PO Box 947
Friday Harbor, WA 98250
compplancomments@sanjuanco.com

Re: San Juan County Comprehensive Plan
Element B.2 Land Use and Rural
Mineral Resource Lands Overlay

Dear Planning Commissioners,

I'm writing to comment on San Juan County's proposal to designate several parcels with the Mineral Resource Land Overlay ("MRLO"). While you've already discussed this topic at your July 16th meeting, these comments can inform your continued conversation about site-specific proposals and how the County addresses local mining. Friends of the San Juans ("Friends") appreciates the effort to address local resource use and provide certainty about where those resources will be mined. We believe in making sure that we don't impose our community's environmental burdens on other communities unnecessarily and that we take steps to limit harmful carbon emissions generated by transporting resources to the islands. At the same time, we recognize the potentially severe impacts that mining operations can impose on neighborhoods and other high-density areas as well as on critical areas and their buffers and urge the County to consider and avoid unnecessary impacts in designating MRLOs.

In designating MRLO, it also will be important to ensure that new designations meet the standards for designation found in County development regulations, as well as the Comprehensive Plan. **After reviewing the July 2, 2021 staff memorandum, we didn't see a reference to reports by qualified professionals for the applications, and thus believe that the existing code standards have not been met.** (The existence of a mining operation does not mean that the site will continue to have adequate resources for mining into the future, and therefore assessments by qualified professionals are still needed.)

This letter: (A) identifies the Growth Management Act ("GMA") requirements for designating MRLOs; (B) recommends that MRLO applications be supported by a qualified professional report, consistent with the County Code; (C) explains concerns with the Egg Lake Quarry parcels being

designated MRLO; (D) proposes a local permit process for approving the expansion of mining operations; (E) reminds County staff and the Planning Commission that protections for critical area buffers must be in place; and (F) briefly explains that MRLO designation likely does not bar a nuisance claim.

A. GMA Designation of Mineral Resource Land Overlay.

As with Agricultural Resource Lands and Forest Resource Lands, the GMA sets forth criteria for designating Mineral Resource Lands. With the exception of owner-initiated requests, counties must approach the effort as a county-wide or regional process.¹ Counties must identify lands anticipated for mineral extraction, and must classify the MRLO parcels based on geologic, environmental, and economic factors, as well as existing land uses and ownership. As with other resource lands, the classification should be based on the geology and the availability of markets.

While the County initially commenced review of Mineral Resource Lands and the MRLO in response to a single application, we appreciate that it has expanded its review to additional parcels to help provide certainty for neighbors about the scope of expected activities on those lands. However, the County does not appear to be conducting the sort of countywide review contemplated by the GMA. Consequently, the County should expand the scope of its review **unless** it believes that the applications currently before it include all of the lands that would be designated MRLO.

In a comment letter from Friends of the San Juans dated January 13, 2021, we recommended that the Mineral Resources Lands Goal 1.a., regarding MRLO designation, be revised to require a geologic and economic report prepared by a qualified professional **and** that the land has a legally established mining operation **and** that the County Council adopts findings that the land has commercial significance for mineral resources. With this approach, a countywide review could be confined to SJC's legally established mining operations.

B. MRLO Applications Must Be Supported By a Qualified Professional Report Attesting to Commercial Quantities of Material.

In reviewing the proposed designations against the proposed Comprehensive Plan language for designations, the County is overlooking the existing County Code standards for MRLO. While the current proposal is to amend the Comp Plan to allow designation without a report about commercial quantities from a qualified professional, if a legally-established mine were operating there, the County Code does not offer that option. Instead, it states that mineral resource lands of long-term commercial significance are “those lands from which the commercial extraction of minerals...can be anticipated within 20 years” and “[h]ave a known or potential extractable resource in commercial quantities verified by submittal of a geologic and economic report prepared by a

¹ WAC 365-190-070(1).

qualified professional.”² The staff report did not indicate that such information has been submitted, and this omission will need to be remedied before continued review of the applications.

C. Concerns With MRLO Designation of the Egg Lake Quarry.

With regard to the current proposals for MRLO designation, we do not consider it appropriate to designate the Egg Lake Quarry with the MRLO. First, the two smaller residential parcels, TPNs 363250021000 and 363250023000, measure just 2.72 acres and 1.75 acres in size and are part of the Eagle Crest subdivision, Lots 21 and 23. In addition to likely upsetting reasonable expectations held by members of the Eagle Crest community, the designation of those three parcels together would violate the MRLO designation criterion that “current or future land use will not exceed a residential density of one dwelling unit per ten acres.” Including the larger parcel, which measures 10.44 acres, the total acreage of the expanded quarry would be about 15 acres, creating a situation where the land use would equal one dwelling unit per five acres, or twice the density allowed by the designation criteria. Second, the larger parcel also doesn’t meet the 10-acre expectation for mining lands because it could be subdivided into two parcels. This is further reinforced by the smaller parcel sizes that exist generally in the vicinity of this operation. Thus, we recommend that the County deny this application.

The mining operations that have occurred at the Egg Lake Quarry (TPN 363244001000) have resulted in mining encroachment on two of the adjacent Eagle Crest subdivision parcels. This raises questions about whether the current quarry still has potential extractable resources in commercial quantities, and it emphasizes the need for a geologic and economic report prepared by a qualified professional, as discussed above.

D. Local Process for Designating MRLOs and for Mining Operations.

As the County formalizes its approach to surface mining, it is essential that it establish an approval process for those operations. As an initial matter, it may be useful to clear up a misconception stated by staff about the role that Washington’s Department of Natural Resources (“DNR”) plays in mining operations: DNR reviews reclamation proposals, but they do not provide any review or oversight of mining operations, including environmental, transportation, or human impacts. As stated in the DNR document referenced by the staff presentation, “Mine operations are regulated by local governments or state and federal agencies exclusive of the DNR.”³ Per Washington’s surface mining law (Chapter 78.44 RCW), those operations include mining or extraction of rock, blasting, sorting, crushing, loading, on-site mineral processing, transporting materials, and activities that generate noise and affect air quality, glare, pollution, traffic safety, ground vibrations, and surface and ground water quality, quantity, and flow. Consequently, it falls to

² SJCC 18.35.015.A.

³ David K. Norman, *Mining Regulations in Washington*, Open File Report 200-3, at 1 (Sept. 2000).

local governments to establish clear standards for all aspects of a mine's operations. San Juan County has yet to adopt those criteria.

With this in mind, we recommend that in conjunction with designating MRLO parcels, the County establish a permit process for expanded mining operations. That process could look like Skagit County's regulations for mining, which establish a mining special use permit process that seeks relevant application information, sets standards for approval of expanded mining operations, and provides clear standards for operations themselves. For example, Skagit County sensibly establishes a minimum 200-foot buffer between crushing and processing activities and neighboring properties, as well as maximum permissible noise levels, daytime blasting requirements, aquifer protection, surface water protection, and hours of operation.⁴ In addition, we recommend that the designation criteria for Mineral Resource Lands and MRLO continue to require an assessment of commercial quantities of materials.

E. MRLO Designation Must Include Critical Area Buffers

The designation criteria for MRLO parcels must account for critical area buffers as well as the critical areas themselves. This latter point could be achieved simply by revising the provisions so that paragraph 1.d. reads as follows (with the underlined blue language below being the addition),

d. Are not within a wetland or fish and wildlife habitat conservation area as defined in this Plan or the associated buffer for those critical areas.

F. MRLO Designation Likely Does Not Prevent Nuisance Claims.

In the July 2 staff report, it was surprising to see a statement that MRLO designation would prevent nuisance lawsuits against mining operations. While the local regulation cited by staff states generically that mineral resource extraction and processing activities during weekday hours are not considered a nuisance, state law takes a broader view of actions that can qualify as a public or private nuisance, and it is entirely possible that mining activities could qualify as such a nuisance and that state law would supersede the local regulation. Before providing assurances to mining operators that a MRLO designation provides any immunity against nuisance suits, we recommend that County staff obtain a legal opinion regarding state nuisance laws found at Chapter 7.48 RCW.

In summary, given how impactful local mining operations can be, it makes sense to put careful thought into how our County designates Mineral Resource Lands, protecting critical areas and communities from impacts, and the implications for the future. As noted above, the County's decisions (and designations), both now and in the future, must stand on solid legal ground. We hope

⁴ See Skagit County Code 14.16.440 for more details.

that our comments here have provided workable solutions to some of the bigger issues raised during this process.

Thank you for your consideration. We welcome any questions you have.

Sincerely,

A handwritten signature in black ink, appearing to read "R. Brent Lyles". The signature is stylized with a large initial "R" and a long horizontal stroke at the end.

R. Brent Lyles, Executive Director

Cc. San Juan County Council