

Press Release

January 7, 2011

On January 3, 2010, the Jackson County Hearings Officer issued the final notice of denial for the Hill Measure 49 "Vested Rights" application that could have allowed mining of 1.4 million cubic yards of aggregate on EFU land along the Applegate River. In a prolonged legal battle between Copeland Sand and Gravel and adjacent neighbors this denial may bring to an end a series of attempts to establish a gravel mine on the 109 acre Hill property zoned Exclusive Farm Use.

The new ruling is based on the key determination that Copeland invested all the money to develop the mining operation. The law is clear that the applicants, John and Wesley Hill, who were granted Measure 37 waivers in 2005, cannot rely on expenditures by others to establish a vested right. "The Hearings Officer concludes that under the circumstances present here, the Applicant cannot rely on Copeland's investment to establish a vested right to complete and continue the use for which the waivers were granted." He continued, "Literally without exception, all payments were made by Copeland."

Crag Law Center attorney Ralph Bloemers represented local neighbors in the Ninth Circuit case this summer that held that hundreds of Jackson County Measure 37 waivers were in fact not contracts. He spoke on this recent decision, "Many people sought to take advantage of Measure 37 and develop large residential subdivisions, commercial developments and gravel mines. These proposals threatened neighboring property rights, water supplies and undermined the efforts of people with more reasonable goals. This decision protects neighboring property owners and preserves Oregon's valuable agricultural capabilities."

Measure 37 proponents insisted that the measure's purpose was to allow rural landowners to build a few houses for their family. In reality, Measure 37 resulted in over 6,800 claims, half of which were for large subdivisions and nonconforming uses such as gravel mines on valuable farm and forestlands. When Oregonians realized the impact on local agriculture and water supplies, they passed Measure 49 to reign in the worst abuses and provide modest development options instead. Measure 49 provided up to 3 houses per parcel without proof of financial loss, or more if the owner proved an actual financial loss. Measure 37 had not required any actual proof of loss.

The Hills have applied for and been granted three homesites under Measure 49. According to the County record, they also received \$19,685 in prepaid royalties from Copeland.

For the neighbors organized as SAVE, Steve Rouse stated, "The unintended result of Measure 37 is at times it pitted neighbor against neighbor. Like the Hills I am also a strong believer in personal property rights, as long as the use is respectful of and does not impact adjacent neighbors. An industrial gravel mine is inappropriate in this pristine area of rural residential farmland, and may have seriously damaged the Applegate River habitat. I am pleased by the ruling, and I also support the three homesites the Hills were granted under Measure 49."

Local land use watchdog group Rogue Advocates has been working with the county and the Applegate Sustainable Aggregate Partnership to find sustainable solutions to aggregate mining in the valley, and is also pleased with this decision. The group's Executive Director, Jimmy MacLeod, stated, "Understandably we need access to aggregate resources. However, mining aggregate on land zoned for agriculture permanently destroys valuable farmland that we can't afford to lose. Our hope is that this decision will lead to the conservation of more local agricultural land."

If this decision sounds like déjà vu, you are correct. The first Hill County Vesting Rights application was denied on August 21, 2008. That decision was reversed by the Jackson County Commissioners in a controversial "backroom deal" without public notice or a public hearing days before the scheduled judicial review in Circuit Court. Aggrieved neighbors filed suit in the same Circuit Court claiming the County actions were illegal, and in a rare ruling Judge Schiveley reversed the County/Hill settlement.

In his decision on May 19, 2009 Judge Schiveley stated, "Allowing the County to "settle" the matter with no public hearing at which the intervenors or other interested parties could be heard, essentially guts the clear intent of both

the Legislature and the County itself to be certain that affected adjacent property owners have notice of actions that may be contrary to their property interests, and a right to be heard regarding the same...Thus, the court finds that the "contract" entered into by the County to "settle" the litigation is void, because it is contrary to its own ordinance and, thus, without legal authority."

After various legal wranglings favoring the aggrieved neighbors, Copeland attorneys convinced the Judge that the County Hearing Officer misinterpreted the conveyance of the aggregate from Hill to Copeland and the initial denial was legally flawed. Judge Schiveley remanded the vesting decision back to the County on July 30, 2009. The wheels of justice apparently turn slowly. The new decision by the independent County Hearings Officer may finally put an end to this seemingly never-ending story.