



May 12, 2010

Jennifer Anderson, Code Compliance Officer
cc: Jeff Daugherty, Planning Director
Re: Melody Ranch Gravel Operation – Special Use Permit application
Submitted via email

Dear Jennifer,

On behalf of the Jackson Hole Conservation Alliance, I am submitting the following preliminary comments regarding Melody Ranch Investments, LLC's special use permit application for gravel extraction and processing. Our questions and comments are based on the information that is currently available on the county website, as well as a review of additional historical documents that refer to the original approval for the Melody Ranch PUD and subsequent permitting for temporary gravel extraction.

There are a number of questions and issues that must be addressed as part of the county's consideration to "allow Melody Ranch to operate a Level 1 Gravel operation independently from the current Melody Ranch Planned Unit Development." The permitting of gravel operations at the proposed site has a long history of debate regarding the continuation of "temporary use," the original intentions of the Melody Ranch approval in 1995, and the public's understanding and expectations of those terms and conditions for approval. While our organization recognizes the need to always consider new information, new circumstances, and new challenges to the county when making decisions for the future, the application should be reviewed with the site's complex history in mind.

Moving forward, it is important for the county to take all the steps possible to ensure that previous commitments are being upheld; otherwise, it will send the wrong message to the public about the integrity of the public process in major land-use decisions as well as ultimately result in the degradation of important local wildlife and scenic resources. At the most basic level, the public had expectations for specific community benefits to be realized in exchange for the density bonus granted to Melody Ranch during their approval process. Any land-use decision that compromises those benefits from being realized should be avoided.

With this historical context in mind, we provide the following broad, preliminary comments and also raise questions to better understand the nature of the proposed application:

Process – PUD approval and conditions

PUD Modification Requirements

- Given the conditions placed on the Melody Ranch PUD that refer to the southern portion of the development, including specific geographic areas that are proposed for expanded gravel operations, what are the legal issues with proposing an industrial operation (that could be of a more permanent nature) that is "independent" of the development itself, particularly without first modifying the original PUD plan?

If the permit is intended to operate "independent of the development itself," why include the following remarks regarding condition 4, "The term of the gravel operation depends upon market demands and the future timing for the development of the lower Melody Ranch property"?

- Does the vacation of plats (which happened several years ago) in any way affect the special use permit application now being proposed? (It appears that gravel operations are now proposed in a geographic area where home sites were originally proposed to be developed. Could this be clarified?)

Setting an End Date for Operations

- While we acknowledge that no time limits were originally given for the completion of the Melody Ranch PUD, which was an unfortunate omission in the original approval process, the

applicant should now be required to provide a more specific timeline and certainty about the proposed length of time for use for gravel operations. Lacking a clear consensus on what “temporary” means, or what types of timeframes are appropriate has been problematic in the past, and should be avoided in the future.

Specifically, the suggested condition regarding the length of gravel operations is not predictable or strong enough to ensure a set time for closure of the gravel pit operation, particularly given the last sentence: “The Term of operation shall be ten years from date of Special Use Permit Approval, with one additional year for final reclamation. The owner shall be permitted to request a modification of the time period if the gravel operation is affected by the rate of gravel removal or plans for development.”

If this application moves forward, consensus on an expected timeframe for operations is a key issue for this application. While the PUD Master Plan did not include a deadline for completion of the lower portion of the development, it’s safe to say that the original intention was not to grant what could be 25 years or more of an industrial gravel operation in exchange for a density bonus. The intent was to ensure that the applicant provided quality open space for purposes of wildlife and scenic protection in exchange for the density bonus Melody Ranch received.

Scale of Operations

- Additional clarification should be provided about the terms and conditions for permitting an increased scale of gravel operations (with specific reference to condition 21, “The area of disturbance may be expanded beyond 15 acres for approved public projects, subject to review by Teton County.”

Wildlife & Scenic Values

Past versus Future Impacts

- The application (p.15) states that the historical “mitigation progress has been very successful in resulting in almost no impacts to wildlife.” Are there studies or a report upon which this statement is based? While we appreciate the operation’s compliance with winter closures in the past, and understand how this condition for winter closures has likely lessened impacts to wildlife, what types of new impacts can be expected to result from new and expanded activities at the site? Specifically, what types of impacts can be expected to result from processing (crushing, etc.) at this site? And, what types of conditions to limit those impacts can be expected?

Reclamation Plan – Need for Comparison

- For purposes of ensuring the best possible outcomes for wildlife and scenic resource protection, it is important to clearly compare the reclamation plan to which the operation must currently abide by versus the plan they are proposing. Even if federal wetland regulations have changed since the last filed reclamation plan, it is important to evaluate the ecological consequences of the proposed changes. Does the proposed reclamation plan have fewer requirements (and details) than the originally proposed reclamation?

Flexibility For Wildlife Underpass and Associated Fencing

- The terms of the 1996 wildlife migration corridor easement must be evaluated in light of this new application. With regard to “reserved rights and allowed uses,” specifically commercial gravel extraction and processing, the easement language states “The extent and nature of the activities shall be as permitted in the Final Development Plan [FDP] and as established in the applicable County permit.” According to the FDP, is an independent commercial operation a permitted use? It appears that the activities permitted within the corridor must be tied to the FDP.
- If this project moves forward, new opportunities for integrating a wildlife crossing (and associated fencing) should be promoted. Flexible language that would allow for a wildlife underpass in this area should be instated (given there is common ownership with a wildlife migration corridor easement on both sides of the highway).

Wildlife Protection as Number One Priority

- On page 12 of the application, the applicant suggests possible changes to seasonal closures (mitigation for wildlife protection) in order to help minimize visual impacts. While we fully support measures to protect scenic resources in the area, anytime a choice arises between wildlife versus scenic resource protection, mitigation measures for wildlife protection should take precedence.

Gravel Study 2009 and Looking Ahead

The Conservation Alliance has consistently supported temporary - as opposed to permanent - gravel operations because operations are then designed to be of a small scale and of limited duration. Project-specific operations are ideal because extraction activities are restricted in location, scale and duration and can provide for more energy-efficient construction.

The first temporary permit granted to Melody Ranch was to accommodate the development of the PUD as a project-specific operation. This site was never intended to serve as a primary gravel source for the county or as a long-term gravel mining and processing area. Repeated and incremental issuances of temporary permits have since made this site a key source for gravel - a source some would argue that the county now depends on for future projects.

Now, in 2010, and with the 2009 Gravel Study Update as an informative document, the county is faced with identifying sites that will carry the least impacts to local resources and resident's quality of life. While we recognize that Melody Ranch ranks as one of the top three potential sites, and appreciate the evaluation criteria used in the study, previous commitments associated with this specific site must be adequately weighed in your decision, or as you recommend conditions for operations at this site.

Closing Thoughts

The application, including the recommended conditions, should not be supported as it is currently proposed. To move forward with this application, we request that you take considerable steps, such as more conditions than are currently proposed by the applicant, to ensure an adequate balance of upholding the original intent of the Melody Ranch PUD approval and meeting the county's future gravel needs. Following are some examples of some key topics/conditions that should be imposed in the case the application moves forward: *no processing activities allowed, establishment of a specific end date for operations, language that permits integration of a wildlife crossing in the future, predictable winter closure dates, and a detailed, functional reclamation plan that includes long-term wildlife and scenic resource protection.*

This application, given its considerable amount of vague language, certainly raises a lot of questions, many of which we assume will be addressed in the staff report. With a nearby major public project in the pipeline (Jackson South, etc.), as well as other future public projects, our county will be faced with difficult decisions about future gravel sources. We understand this challenge. However, we find it incredibly unfortunate for our county to be in a position where one of the least detrimental areas for a gravel operation (according to the 2009 Gravel Study) lies in both the Natural Resources Overlay, the Scenic Resources Overlay, and is part of the only dedicated wildlife migration corridor easement (of its kind) in the county.

With these circumstances in mind, it is time for our community to step back and think comprehensively about the consequences of our land-use decisions. We need to more directly address *demand for gravel* - including all the factors that affect the extent and scope of these needs. With every development application, we must take into consideration where the resources required to complete the project will originate, be it gravel, wood products or energy to build and then maintain the development. We must, as a community, assess all impacts associated with development when reviewing each and every application. Gravel is no exception; it is a real cost that continues to have impacts on our scenic and wildlife resources as well as existing residents' quality of life.

Thank you for your consideration of these preliminary comments. As the application progresses to include more detailed language, requirements and conditions, we will provide additional comments.

Sincerely,



Kristy Bruner
Community Planning Director