



Responsible Growth * NE Washington,
P.O. Box 317, Newport, WA 99156



Citizens Against Newport Silicon Smelter
P.O. Box 1347, Newport, WA 99156

Resolution: No. 08-08-2018

Subject: Resolution Opposing the Rezoning of Public Land to R40 owned by PacWest Silicon, LLC.

Date: 29 August 2018

RESOLUTION NO. 08-08-2018

WHEREAS, on 19 September 2017, HiTest Sands, Inc. purchased collectively from Pend Oreille County Public Utilities District #1 four parcels of Public Land for the expressed purpose of constructing and operating a silicon metals smelter; and

WHEREAS, HiTest Sands, Inc. was fully aware that when it purchased the four parcels of land that was zoned Public Land and was exempt from Industrial Development; and

WHEREAS, Hitest Sand, Inc. was fully aware of the rural nature of the property and its limitations with regards to water, sewer, other utilities and accessibility prior to the purchase of the parcels; and

WHEREAS, the legalities of the sale of the parcels of land are being contested in the Superior Court for the State of Washington in and for the County of Spokane; and

WHEREAS, the Land Use Map amendment should be addressed on an individual property owner basis and not collectively as Pend Oreille County proposes. Since the individuals who purchased the various parcels designated public land may not share the same value or purpose for the development of that land, the environmental impact on the properties will not be the same, therefore each parcel should be addressed separately; and

WHEREAS, the Land Use Map amendment submitted by Pend Oreille County, that includes PacWest properties to be used for the intended purposes of an urban, industrialized silicon metals smelter, does not meet the criteria specified by the Pend Oreille County Development code for a comprehensive plan amendment and therefore, should be denied; and

*The Proposed Amendment Will Impermissibly Promote Urban Growth in a Rural Area.*¹

¹ Pend Oreille County Development Regulations, 2015.

WHEREAS, if these PacWest Silicon, LLC properties are rezoned to an R40, the groundwork would be open for a proposed silicon metals smelter that would violate the very essence of the Comprehensive Plan's Statement of Values: Why We Live Here: and, therefore should be denied; and

The purpose of this plan is to translate that vision and our values into goals and policies to guide future growth and development, to protect private property rights, preserve the quality of the natural environment and rural lifestyle that we enjoy, strengthen our local economy, and to provide direction for the allocation of our limited financial resources.²

WHEREAS, the proposed Land Use Map amendment, which includes 188 acres of land specific to the development of a silicon metals smelter, directly contradicts the Washington Growth Management Act's (GMA) underlying goals, and should be denied. RCW 36.70A.011; and

A county should foster land use patterns and develop a local vision of rural character that will: Help preserve rural-based economies and traditional rural lifestyles; encourage the economic prosperity of rural residents; foster opportunities for small-scale, rural-based employment and self-employment; permit the operation of rural-based agricultural, commercial, recreational, and tourist businesses that are consistent with existing and planned land use patterns; be compatible with the use of the land by wildlife and for fish and wildlife habitat; foster the private stewardship of the land and preservation of open space; and enhance the rural sense of community and quality of life.

WHEREAS, the Pend Oreille County Comprehensive Plan emphasizes the importance of maintaining rural character.³ For example; and

Land Use Goal #2: Maintain the rural character of Pend Oreille County, including: forest lands, agricultural lands, mining and natural resource based industries, home-based businesses, and recreational properties.

Land Use Goal #4: Encourage urban type development to be concentrated in urban growth areas where existing facilities either have adequate capacity or where appropriate levels of service can be reasonably provided.

WHEREAS, if these PacWest properties are rezoned to an R40, the groundwork will be open for a proposed silicon metals smelter that would emit 320,256 tons of greenhouse gases per year; 760 tons of sulfur dioxide (acid rain) per year; 610 tons of carbon dioxide per year; 700 tons of nitrous oxide per year, and other toxic emissions in direct violation of GMA and, therefore, should be denied. RCW 36.70A.020, and

Environment. *Protect the environment and enhance the state's high quality of life, including air and water quality, and the availability of water.*

² Pend Oreille County Comprehensive Plan, page 1.

³ Ibid., page 13.

WHEREAS, PacWest has a Phase II plan, which includes adding two more furnaces and 1 more stack, which will double the amount of greenhouse gases, sulfur dioxide, carbon dioxide and other toxic emissions, and, therefore, the Land Use Map amendment should be denied; and

WHEREAS, the sale of this property and the Land Use Map amendment has all the appearances of “spot zoning” which is basically “disfavored” in the State of Washington, and should be denied; and

*"Spot zoning" is thought of as zoning not in accordance with a comprehensive plan, but for mere private gain to favor or benefit a particular individual or group of individuals and not the welfare of the community as a whole, and thus in effect granting by amendment, a special exception or variance from general regulations. "Spot zoning" of this nature has been found unauthorized, discriminatory, and invalid and an unlawful usurpation of the power to grant a variance. . . .' Rhyne, Municipal Law, chapter 32, p. 810, 825."*⁴

WHEREAS, the Planning Commission is not qualified to make legal determinations of spot zoning, it is nonetheless the gatekeeper of identifying whether that situation might exist. It is therefore appropriate for the Commission to defer its recommendations on the Public Land rezoning and consult with the County’s attorney before voting to approve or deny the rezoning and referring it to the County Commissioners; and

WHEREAS, a proposed silicon metals smelter is totally incompatible with one of the key planning goals of the *Washington Growth Management Act* to “*maintain and enhance natural resource-based industries, including productive timber, agricultural and fisheries industries. Encourage the conservation of productive forestlands and productive agricultural land, and discourage incompatible uses,*” and, therefore, the Land Use Map amendment should be denied; and

WHEREAS: those parcels of PacWest property have been managed as productive timberland as well as the adjoining acreage owned by timber interest companies managed as productive timberland for decades providing Pend Oreille County and Bonner County with an economic base of production and employment; and

WHEREAS, Land Use Goal #6 of the *Comprehensive Plan*: *supports new development that is consistent with a realistic assessment of the availability of water and that does not adversely affect the rights of existing waters users;* and

WHEREAS, Land Use Goal #9 of the *Comprehensive Plan*: *protects ground water recharge areas and prevents contamination of vulnerable groundwater resources to ensure water quality and quantity for public and private uses and critical area function;* and

⁴ Washington State Office of the Attorney General.

WHEREAS, 2.7 Critical Areas – Water Quality of the *Comprehensive Plan* states “wetlands, streams, rivers, lakes, and groundwater are among Pend Oreille County’s most valuable natural resources. The quality of these resources may be threatened by land use change, including dense development served by on-site sewage disposal systems, the accelerated runoff and erosion that can result from road construction and other development activities, hazardous waste spills, and the destruction of the riparian vegetation that provides natural filters along lakeshores and streams,” and, therefore, the Land Use Map amendment should be denied; and

WHEREAS, the PacWest Silicon, LLC. properties sit either on top of or in very close proximity to the City of Newport’s Water Recharge Zone; The City of Oldtown’s Water Recharge Zone; and two major watersheds – the Pend Oreille and the Little Spokane Rivers, and therefore, the Land Use Map amendment should be denied; and

WHEREAS, *Pend Oreille County is in a critical Water Resource Inventory Area and is one of the administrative boundaries for watersheds in the state of Washington*, and, therefore the Land Use Map amendment should be denied; and

THEREFORE, BE IT RESOLVED, the *Responsible Growth * NE Washington & Citizens Against Newport Area Silicon Smelter*, both non-profit organizations, who represents and speaks on behalf of area citizens, who would be adversely affected by a silicon metals smelter, strongly opposes the Land Use Map amendment from Public Land to R40, specifically Public Land legally described as Parcels #19182, #17036, #19193 and #19194 only, and owned by PacWest Silicon, LLC. (formerly known as HiTest Sands, Inc.), therefore,

*Responsible Growth * NE Washington & Citizens Against Newport Silicon Smelter* hereby petitions the Pend Oreille County Planning Commission to recommend to the Pend Oreille County Board of Commissioners that the Land Use Map amendment, specific to the PacWest properties only and submitted by Pend Oreille County, be denied.

Resolution No. 08-08-2018 Opposing the Rezoning of Public Land owned by
PacWest Silicon, LLC.

Passed and approved by Responsible Growth * NE Washington this _____ Day of August 2018.

Passed and approved by Citizens Against Newport Silicon Smelter this _____ Day of August 2018.

Signature: _____ Responsible Growth * NE Washington co-chair

Signature: _____ Responsible Growth * NE Washington co-chair

Signature: _____ Citizens Against Newport Silicon Smelter, chair

Signature: _____ Citizens Against Newport Silicon Smelter, co-chair