

1 Opinion by Gustafson.

2 **NATURE OF THE DECISION**

3 Petitioner appeals the county's approval of an
4 amendment to a conditional use permit, which allows
5 expansion of an aggregate extraction site.

6 **MOTION TO INTERVENE**

7 Larry Wells, Lois Wells and George Groom move to
8 intervene on the side of respondent. There is no objection
9 to the motion, and it is allowed.

10 **DISCUSSION**

11 Intervenors applied for and were granted approval of an
12 amendment to an existing conditional use permit, which
13 allows them to expand their existing aggregate mining
14 operation. Petitioner resides 800 feet from the operation,
15 and objected during the local hearing that the noise levels
16 generated by the equipment and their operation violate DEQ
17 noise standards.

18 Petitioner appeals the county's approval of the
19 conditional use permit amendment. Petitioner alleges that
20 the county did not require the applicant to comply with
21 Jackson County Land Development Ordinance (LDO) 272.050(5),
22 and that a condition requiring compliance with DEQ noise
23 standards both improperly defers compliance with a mandatory
24 approval standard, and does not ensure compliance with the
25 noise standards.

26 LDO 272.050(5) does not contain any approval criteria.

1 It is an application requirement that the applicant for an
2 aggregate operation:

3 "Include written description of general types of
4 equipment used in the operation and estimates of
5 noise levels anticipated during operation
6 periods."

7 That section does not require a comprehensive listing of
8 all equipment to be used, nor does it include any
9 substantive requirements for evaluation of the types of
10 equipment to be used, or their operational characteristics.

11 At oral argument, petitioner extended the scope of his
12 assignment to include LDO 272.040, which does contain
13 approval criteria for review of a conditional use permit for
14 an aggregate operation. Petitioner did not raise that issue
15 in his petitioner for review, and cannot raise it for the
16 first time at oral argument.¹ See DLCD v. Douglas County,
17 28 Or LUBA 242, 252 (1994).

18 Petitioner's essential concern is that intervenors will
19 not comply with DEQ noise standards, and that with only one
20 noise control officer in the county, those standards will
21 not be enforced. That concern does not relate to compliance
22 with any of the approval criteria for the challenged
23 conditional use permit amendment.

24 Petitioner has not established any basis for remand or

¹Even if petitioner had assigned error to the county's findings of compliance with LDO 272.040, petitioner has not established that the county erred in its interpretation or evaluation of that provision.

1 reversal of the county's decision. Pursuant to ORS
2 197.835(16), the county's decision is affirmed.