



COMMUNITY PLANNING

MEMORANDUM

TO: Board of Clark County Commissioners
FROM: Clark County Planning Commission
DATE: November 25, 2014
SUBJECT: Surface Mining Overlay (SMO) Update; Public Hearing

PURPOSE

The purpose of the hearing is to consider Planning Commission recommendations for mineral resource lands in support of the Surface Mining Overlay (SMO) update. The SMO update includes 1) an update to the comprehensive plan map of where the overlay is applied; 2) revisions to comp plan mineral resource lands policies; and 3) revisions to development standards relating to mining activities.

BACKGROUND

Clark County adopted a Surface Mining Overlay map and code standards as well as mineral lands policies in 1994. These standards and designations have not changed substantially since then. Two events prompted the County to initiate an update of its mineral resource lands regulations:

- In October 2005, the Washington Department of Natural Resources Division of Geology and Earth Resources produced an aggregate resource inventory map for Clark County. Resources were classified and mapped as identified, hypothetical, and speculative.
- In 2009, the Washington State Legislature adopted changes to the regulations and guidelines for classifying and designating mineral resource lands which became effective February 2010.

Counties planning under the Growth Management Act are required to identify, designate, and protect mineral resource lands that are not already characterized by urban growth and that have long-term significance for the extraction of minerals (RCW 36.70A.170). There are four mandatory elements when updating the Surface Mining Overlay (SMO):

- The County must approach the effort as a county-wide or regional process.
- The County must identify and classify mineral resource lands from which the extraction of minerals occurs or can be anticipated.
- The County must designate known mineral deposits so that access to mineral resources of long-term commercial significance is not knowingly precluded.
- The County must review its policies and development regulations for mineral resource lands. (RCW 36.70A.131).

PROCESS

The Board appointed a Mineral Lands Task Force which held 13 meetings between November 8, 2011 and August 13, 2013. Recommendations came from the task force for updating the surface mining overlay map, as well as on the mineral lands policies and standards. Most of the public outreach, including the 60-day Commerce review and the preparation of a SEPA checklist, occurred prior to the Planning Commission hearings.

The Planning Commission held four public hearings in the fall of 2013, and made its recommendations to the Board. The Board of County Commissioners and the Planning Commission held a joint meeting on April 17, 2014 to discuss proposed SMO designations as recommended by the Planning Commission. The Board on June 3, 2014 agreed in principle to the Planning Commission recommendation with the exception of the inclusion of Courtney Pit.

The Planning Commission also made recommendations on the comp plan policies and development standards related to mineral resource lands. Those recommendations to the Board are dated December 5, 2013. One of the recommendations was for staff to draft a new code section on monitoring and enforcement.

Staff presented the updated policy and development standard language at a Board work session on August 27, 2014. The Friends of Livingston Mountain (FLM) also presented recommendations to the Board at that meeting. The Board asked staff to attempt to reconcile the Planning Commission recommendations and proposed staff changes with various stakeholders. Staff met with both the Friends of Livingston Mountain and with industry operators to attempt to work out any remaining differences.

PROPOSAL

The proposal is to:

- 1) amend where the surface mining overlay is applied on the comprehensive plan map. The Board has already agreed on where the SMO will be applied. The map and map rationale are attached (Attachments A and B);
- 2) revise mineral resource lands policies in the Rural Element of the Comprehensive Plan (Attachment C);
- 3) amend the procedure and criteria for changing the SMO in Section 40.560.020(S) Attachment C);
- 4) replace the SMO code language (CCC Section 40.250.020) with new code language (Attachment C);
- 5) amend Section 40.260.220 Temporary Uses and Structures to allow temporary trailers, construction materials, and equipment storage areas at a mining site without a temporary use permit (Attachment C); and
- 6) delete Section 40.260.120 Mines, Quarries, and Gravel Pits.

To the extent possible, proposed changes to mineral resource lands policies and development standards include suggestions from stakeholders (Attachments D through H). Alternative language for areas where there isn't agreement is included in the Alternative Language Matrix.

PLANNING COMMISSION RECOMMENDATION

Because of the new language on monitoring and enforcement and the suggestion by staff that mining be a conditional use, it was decided that these items should go back to the Planning Commission before the entire package is considered by the Board. The Planning Commission had a work session on November 6, 2014.

The Planning Commission held a public hearing on November 20, 2014, and they recommended the following:

On the new language on monitoring and enforcement (Section 40.520.020(F)), the changes in gray shading, on a 6-0 vote:

F. Monitoring and Enforcement.

1. Operating requirements and standards shall be implemented through compliance with conditions of approval as specified in this section and in the conditional use permit issued by the county.
2. In order to ensure compliance with conditions of approval the applicant shall develop and conduct a monitoring program. The monitoring program shall be approved by the county prior to beginning operations under the permit, and shall include the following:
 - a. A statement of the operating requirements and standards for each condition of approval in the permit for mineral extraction, materials processing, and materials transport;
 - b. A description of the methodology for determining compliance with each requirement and standard; and
 - c. A schedule for conducting the required monitoring.
3. At the applicant's expense, all results of the required monitoring shall be kept for at least 10 years, and included in a report submitted to the county:
 - a. beginning twelve (12) months after approval of the conditional use permit;
 - b. continuing at twelve- (12-) month year intervals thereafter; and
 - c. as needed, in the determination of the responsible official, to correct any instances of non-compliance.
4. The county shall ~~will~~ conduct a periodic performance review of permit requirements and standards at the end of the first three years, and at three-year intervals after that. The periodic review shall be a Type 2 land use decision. The periodic review shall determine whether the facility is operating consistent with all existing permit conditions pursuant to the provisions of Title 32.
5. The county shall ~~will~~ conduct an inspection of the mining facility no less than once per year in order to assess the accuracy and effectiveness of the monitoring program and, if necessary, enforce the provisions of the conditional use permit.
6. Failure to comply with the operating requirements and standards specified in the conditional use permit may result in revocation of the conditional use permit pursuant to the provisions of Title 32 and Section 40.520.030.

(Note: Title 32 of the Clark County Code contains the county's enforcement procedures; Section 40.520.030 deals with conditional use permits.)

On the proposal to make extraction a conditional use as proposed to leaving it as a use permitted outright: Leave as a use permitted outright, on a 4-0 vote.

The Planning Commission's final recommendation was for the Board to adopt the recommendations dated December 5, 2013, with the amended new language in Section 40.250.020(F) above, on a 4-0 vote.

Attached are several recent letters and emails received with regard to the SMO update.

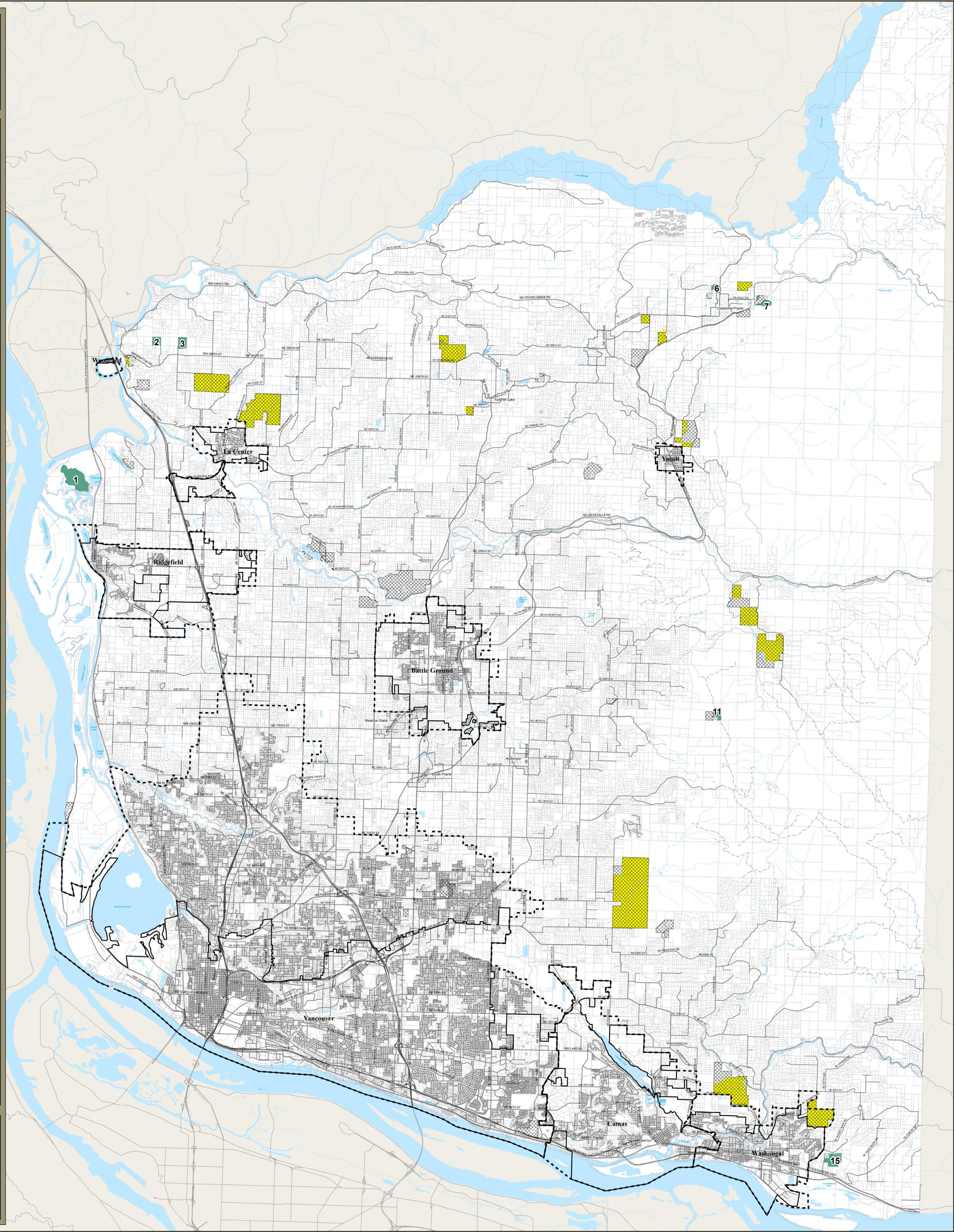
Attachments

- A: Map of proposed locations for the SMO
- B: Explanation for SMO map locations
- C: Planning Commission recommendation for minerals lands policies and development standards, with staff and stakeholder proposals
- D: Friends of East Fork letter, 10/04/14
- E: Dentler letter, 10/10/14
- F: FLM response to the Dentler letter, 10/25/14
- G: Christ comment, 10/23/14
- H: Mann letter, 11/3/14
- I: DNR/Goetz letter, 11/4/14
- J: Mann letter, 11/19/14
- K: Lynn letter, 11/19/14
- L: Greene comment, 11/20/14
- M: Dyrland letter, 11/20/14
- N: DNR/Kyle Blum letter, 11/20/14
- O: Martin email, 11/20/14
- P: Dennis PC testimony, 11/20/14

Clark County Draft Surface Mining Overlay

Key

- New Surface Mining Overlay Areas
- Removal of Surface Mining Overlay
- Existing Surface Mining Overlay
- Terminated Mine
- Active Mine
- City Limits
- Urban Growth Area(UGA) Boundary
- Rural Center



**BOCC Recommendation
07/08/2014**



This data was derived from several sources and scales. Clark County makes this information available as a service, and accepts no responsibility for any inaccuracy, actual or implied.

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Surface Mining Overlay Map – Recommendations & Final Outcomes						2014
Map Area #	Name	Recommendation	PC Vote	BOCC Vote	Rationale	Final Outcome
1	Morgan	Reduce size of overlay area per submittal.	5-0	3-0	Better matches extent of the proven resource.	APPROVED
2	Goose Hill	Add overlay as proposed	5-0	3-0	Meets criteria for mapped resource area.	ADDED
3	Maple Ridge	Add overlay as proposed	5-0	3-0	Meets criteria for mapped resource area.	ADDED
4	South of Tebo	Don't add overlay	3-2	3-0	No proven resource; adverse impacts from existing pit.	REMOVED
5	Courtney Pit	Add overlay as proposed	5-0	3-0	Expands overlay around exiting main; mapped resource. PC voted 5-0 to add. BOCC removed overlay with unanimous 3-0 vote.	REMOVED
6	Chelatchie Creek	Add overlay as proposed	5-0	3-0	Meets criteria for mapped resource area.	ADDED
7	Chelatchie Rock	Add overlay as proposed	5-0	3-0	Expands overlay around existing mine; mapped resource.	ADDED
8	Yacolt Mountain	Don't add overlay	4-1	3-0	Topography, road access, endangered species impacts; more suited for forestry.	REMOVED
9	Matilla	Don't add overlay	3-2	3-0	No mapped or proven resource.	REMOVED
10	Bells Mountain	Don't add overlay	3-2	3-0	Impacts to Salmon Creek & East Fork fish & Wildlife; Berry Rd. Access unsuitable.	REMOVED
11	Spotted Deer	Add overlay as proposed	5-0	3-0	Expansion of exiting DNR area already approved.	ADDED
12	Little Baldy Mountain	Don't add overlay	5-0	3-0	Study of traffic safety & adequacy of 262 nd Ave/53 rd St/Bradford needed.	REMOVED
13	Diamond Ridge	Don't add overlay	5-0	3-0	Livingston and Hancock Roads are not suitable for truck traffic.	REMOVED
14	WSDOT parcel	Don't add overlay	5-0	3-0	Livingston and Hancock Roads are not suitable for truck traffic.	REMOVED
15	Washougal Pit	Add overlay as proposed	5-0	3-0	Re-designates an existing mine within the Gorge Scenic Area.	ADDED

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**SURFACE MINING OVERLAY
PLANNING COMMISSION RECOMMENDATION
WITH STAFF RECOMMENDED CHANGES
OCTOBER 21, 2014**

The following text amendments to the comprehensive plan regarding the surface mining overlay, and proposed changes to the mining code in Title 40 are reflect the Planning Commission (PC) recommendations to the Board of County Commissioners from December 5, 2013.

Staff has proposed changes to the PC recommendation, which are shown as double underlined or ~~struck~~.

A. Planning Commission recommendation regarding Comprehensive Plan Goals and Policies, with proposed changes.

Current mineral lands policies can be found in the Comprehensive Plan Rural and Natural Resource Element, Chapter 3. The PC proposal is to retain the Goal language below, and to adopt new policy language. Storedahl requested GOAL language similar to what's below. Policy changes below were also suggested by Storedahl.

Mineral Resource Lands

GOAL: To identify and designate mineral resources and to protect and ensure appropriate extraction and use of gravel and mineral resources of the county while and minimizing conflicts between surface mining and surrounding land uses.

3.5 Policies

3.5.1 Support the conservation of mineral resource lands for productive economic use by identifying and designating lands with a surface mining overlay that have long-term commercial significance for mineral extraction and that are not already characterized by urban growth.

3.5.2 Designate mineral resource lands based on the following:

- a. Geological, environmental, and economic factors, including, without limitation, consideration of the evidence of the quality, quantity and characteristics of the resource deposits in the area of interest; proximity to unstable slopes, riparian and wetland areas, habitat for endangered or threatened species, flood hazard areas, parks, public preserves, or other sensitive lands; and economic impacts of mining and other uses of the area;
- b. Surrounding land uses, zoning, and parcel size, including, without limitation, consideration of proximity to and impacts on residentially zoned areas with existing densities of predominantly one dwelling unit per five acres or higher,

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- 33 and proximity to and impacts on agricultural and forest lands; and
- 34 c. Suitability and safety of the existing transportation system to bear the traffic
35 associated with mining, including, without limitation, the suitability of public
36 access roads to be used as haul roads, the distance to market, the need to
37 route truck traffic through residential areas, and adequacy of intersections to
38 handle mining traffic plus other traffic. Consideration will include options for
39 mitigating proposed impacts to the existing transportation system.
- 40 d. The surface mining overlay shall not be designated on parcels zoned Rural (R)
41 within rural residential (R) zones except to allow the expansion of an existing
42 mining site.
- 43 e. Consideration that reclamation of mineral resource lands occurs after mining
44 and that such lands may be re-purposed consistent with the comprehensive
45 plan.

The above text replaces the designation criteria in the existing Matrix for Assessing Mineral Resources (Table 3.4) in the comprehensive plan matrix. The matrix is a cumbersome tool that is generally difficult to use as a policy document.

- 46 3.5.3 Ensure that mining-related activities on mineral resource lands follow best
47 management practices.
- 48 3.5.4 Ensure that mineral extraction and processing operations minimize and mitigate
49 any significant adverse impacts on water, fish, wildlife, and nearby land uses.
- 50 3.5.5 Ensure that the use of adjacent lands will not interfere with the continued use of
51 designated mineral resource lands for the extraction of minerals. ~~in the~~
52 ~~accustomed manner and in accordance with best management practices.~~
- 53 3.5.6 Establish notification standards whereby developments on lands in the vicinity of
54 designated mineral resource lands are given notice that they are locating in or
55 adjacent to a potential mining area.
- 56 ~~3.5.7 The surface mining overlay shall not be designated within rural residential (R)-~~
57 ~~zones except to allow the expansion of an existing mining site.~~

Moved to 3.5.2(d). 'Friends of Livingston Mountain' still have an issue with the way this is worded.

- 58 3.5.8₇ Surface mining other than Columbia River dredging shall not occur within the
59 100-year floodplains except for projects 1) with an approved Habitat Conservation
60 Plan, and 2) that are consistent with the shoreline master program.

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62 Implementation Chapter

63 Strategies for mineral resource lands:

- 64 • Maintain a map showing areas designated with the surface mining overlay and
65 permitted mining sites.
- 66 • Develop a program for coordinated monitoring and enforcement of conditions of
67 approval for active mining sites.

68 B. Planning Commission recommendation regarding Surface Mining Overlay
69 designation/amendment procedures in Title 40, with proposed changes.

The PC proposal is to add a new subsection (S) to Section 40.560.010 Changes to Districts, Amendments, Alterations; re-number subsequent sections; and correct citations.

70 40.560.010 CHANGES TO DISTRICTS, AMENDMENTS, ALTERATIONS

71 S. Additional Criteria for Surface Mining Overlay Changes.

- 72 1. ~~Amendments to the plan map to designate~~ Designation of additional areas with the
73 surface mining overlay shall only occur if demonstrate that the following criteria
74 ~~have been met:~~
 - 75 a. designation criteria in the comprehensive plan have been met; and ~~The~~
76 ~~quality of the resource is sufficient for the intended uses;~~
 - 77 b. ~~The quantity and characteristics of the resource including the size of the~~
78 ~~deposit, the depth of overburden, the distance to market, and the cost of~~
79 ~~transport and resource availability in the region, suggest that mining is~~
80 ~~economically viable;~~
 - 81 b.e. at least sixty percent (60%) of the area within one thousand (1000) feet of the
82 proposed mineral resource land is characterized by parcels of five (5) acres or
83 larger.
- 84 2. ~~Amendments to the plan map to remove~~ Removal of the surface mining overlay
85 shall only occur if demonstrate that one of the following conditions is met:
 - 86 a. The mineral resources have been depleted;
 - 87 b. There is evidence that the mining of the mineral resource is not economically
88 feasible based on the factors listed in Section 40.560.010(S)(1)(b);
 - 89 c. Environmental or access constraints make it impractical to mine the resource;
90 or
 - 91 d. The area has been brought into an urban growth boundary or adjacent land
92 uses or developments are incompatible with mineral extraction.

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93 T. S. Cumulative Impact.

94 U. T. Fees.

95 C. Planning Commission recommendation regarding Surface Mining Overlay Standards,
96 with proposed changes.

The PC proposal is to repeal the current Section 40.250.020 and replace it with new language below.

97 **40.250.020 SURFACE MINING OVERLAY DISTRICT**

98 A. Purpose.

99 The purpose of the surface mining overlay district is to ensure the continued
100 availability of rock, stone, gravel, sand, earth and mineral products without disrupting
101 or endangering adjacent land uses, while safeguarding life, property and the public
102 welfare.

103 B. Applicability.

104 1. The provisions in this section shall apply to parcels designated with the surface
105 mining overlay. ~~Surface mining activity and related processing within the~~
106 ~~Columbia River Gorge National Scenic Area is subject to Section 40.240. Where~~
107 ~~Section 40.250.020 is in conflict, the provisions of section 40.240 govern.~~

108 2. The provisions of this section shall apply only to new applications for surface mines
109 and related uses and expansions of existing mines. Operation of existing surface
110 mines and related uses shall conform to the conditions of approval adopted with
111 their site plan and/or conditional use approval.

112 3. Provisions of Chapter 78.44 RCW and Chapter 332-18 WAC pertaining to surface
113 mining that are applicable to Clark County are adopted by reference.

114 4. Surface mining activity and related processing within the Columbia River Gorge
115 National Scenic Area are subject to Chapter 40.240. Where Section 40.250.020
116 is in conflict with this section, the provisions of Chapter 40.240 govern.

117 C. Uses.

118 1. Permitted uses. In addition to uses allowed in the underlying zoning district, the
119 following uses are permitted in the surface mining overlay district:

120 ~~a. Extractions of rock, stone, gravel, sand, earth and minerals and the sorting,~~
121 ~~and stockpiling of such materials.~~

122 a.b. Temporary offices, shops or other accessory buildings and structures used for
123 the management and maintenance of onsite mining and processing
124 equipment; and

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125 b. short-term stockpiling of extracted materials at a road improvement site or
126 construction site, for use at that job site.

127 2. Conditional uses. In addition to uses allowed conditionally in the underlying
128 zoning district, the following uses are allowed in the surface mining overlay district,
129 subject to conditional use approval:

130 a. Extractions of rock, stone, gravel, sand, earth and minerals;

131 b.a. Asphalt mixing;

132 c.b. Concrete batching;

133 d.e. Clay bulking; and

134 e.d. Rock crushing.

This is a significant change from the PC recommendation. Under the PC recommendation, mining (by itself without an associated crusher or concrete batch plant) would be a Permitted use, subject to Type II review (a staff decision). Storedahl requested that stockpiling at a job site be a permitted use.

135 D. Standards.

136 1. Site area. When the activity includes both extraction and any one of the other
137 uses listed on Section 40.250.020(C)(2), the total site area shall be a minimum of
138 twenty (20) acres. Activities which are limited to extraction only shall not have a
139 minimum site size.

140 2. Setbacks.

141 a. Structures on designated mineral resource land shall be setback at least A-
142 minimum two hundred (200) one hundred fifty (150) feet ~~foot~~ ~~setback shall be~~
143 ~~required for all mining uses from abutting parcels with existing~~
144 lawfully-established residential structures or adjacent rural (R) residential-
145 zoning. The setback area shall be used only for roads, berms, landscaping,
146 signs, fencing and reclamation activities. The setback may be reduced by the
147 responsible official approval authority ~~approval authority~~ ~~if the purposes of this chapter can be met~~
148 ~~with the reduced setback. The setback area shall be used only for roads,~~
149 ~~berms, landscaping, signs, fencing and reclamation activities.~~

150 b. Structures on properties adjacent properties to designated mineral resource
151 land shall be setback at least maintain a one hundred fifty (150) (100) feet ~~feet~~
152 setback from such designated mineral resource land. The setback may be
153 reduced by the approval authority responsible official ~~approval authority~~ ~~if the purposes of this~~
154 ~~chapter can be met with the reduced setback or if it is not feasible to meet the~~
155 ~~setback due to site constraints. Setbacks shall not apply to existing~~
156 ~~structures.~~

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The PC recommendation was for a 200-foot setback on mineral resource lands and a 100-foot setback on adjacent properties. For fairness, staff proposes that setbacks for both be 150 feet.

- 157 3. Access. Roads into the site shall be gated and the site or mining area shall be
158 fenced and posted "No Trespassing".
- 159 4. Noise. Maximum permissible noise levels must be in accordance with the
160 provisions of Chapter 173-60 WAC or as identified in the SEPA document.
- 161 5. Hours and days of operation.
- 162 a. No operations shall take place on Sundays or on the following holidays: New
163 Year's Day, Memorial Day, July 4th, Labor Day, Thanksgiving Day, Easter,
164 MLK Day, Veterans Day, and Christmas Day.
- 165 b. All operations and activities other than blasting and maintenance are restricted
166 to the hours of 6:00 a.m. to 6:00 p.m. Monday through Friday and 8:00 a.m. to
167 5:00 p.m. Saturday.
- 168 c. Blasting is restricted to the hours of 9:00 a.m. to 4:00 p.m. Monday through
169 Friday.
- 170 d. Maintenance activities, excluding mining, crushing, and loading, may be
171 performed outside the normal hours of operation, provided that no equipment
172 with narrow-band (beeping) back-up alarms is used. Noise levels must
173 comply with night-time noise requirements.
- 174 e. Loading and hauling outside of normal hours of operation may be approved by
175 the responsible official provided that:
- 176 (1) the applicant provides at least fourteen (14) days' notice to the county prior
177 to the event such that the county can provide at least ten (10) days' notice to
178 property owners within one-half (1/2) mile of the site boundary and to
179 owners of all parcels abutting local access roads to be used for hauling that
180 are between the site and roads designated in the Arterial Atlas as
181 connectors, arterials, or State highways;
- 182 (2) the applicant provides evidence that the contract requires delivery of rock or
183 rock products outside of normal operating hours; and
- 184 (3) all equipment shall utilize broadband back-up alarms or reverse-activated
185 strobe lights conforming to Mining Safety and Health Administration
186 (MSHA) requirements.
- 187 (4) In an emergency, the responsible official may waive the requirements of this
188 subsection.
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191 6. Stormwater and erosion control must meet the standards of Chapter 40.385.

192 7. Blasting and mining activities ~~shall~~ must not:

193 a. adversely affect the quality or quantity of groundwater or groundwater wells; or

194 b. cause damage to offsite structures, where such structures were constructed

195 pursuant to an approved permit, as required.

196 8. Notice of blasting events shall be provided by the operator to property owners
197 within one-half (1/2) mile of the mining limits by mail at least seven (7) days prior to
198 blasting. Any person requesting notice via electronic communication shall be
199 notified at least twenty-four (24) hours prior to blasting.

200 9. Mining activities must meet applicable Federal, State and county standards
201 governing odors, dust, smoke, blasting and vibration. Lighting shall not cast
202 significant light or glare on adjacent properties.

203 10. The director of public works may require pavement wear agreements for public
204 roads used to access the site. Public access roads to mining sites must be
205 maintained to the satisfaction of the director of public works, to minimize problems
206 of dust, mud, potholes, runoff and traffic safety. All vehicles shall comply with
207 RCW 46.61.655 (escape of load materials and cleaning of vehicles).

208 11. Internal access roads shall be paved within one hundred (100) feet of a paved
209 county road or state highway to reduce tracking of dirt, mud and rocks.

210 12. The applicant shall identify the source or potential source and approximate amount
211 of water anticipated to be used on the site. If this amount exceeds the exemption
212 provided for under RCW 90.44.050, the applicant must present evidence that
213 adequate water can be made available without adversely affecting nearby uses.

214 13. Consistent with CCC 32.04.040, the operator shall grant access for inspection of
215 the mine operation in order for the county to monitor and, if necessary, enforce the
216 provisions of the conditional use permit.

217 E. Approval Process.

218 1.2. Site plan approval is required prior to any surface mining use.

219 2.4. Plans shall be drawn to an engineer's scale and shall be of sufficient clarity to
220 indicate the nature and extent of the work proposed and show in detail that they will
221 conform to the provisions of this section and all other relevant laws, ordinances,
222 rules and regulations. The first sheet of each set of plans shall give the location of
223 the work, the names and addresses of the owner, and the person by whom they
224 were prepared. The plans shall include the following minimum information:

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- 225 a. General vicinity maps of the proposed site;
- 226 b. Property boundaries and ~~accurate~~ contours of existing ground, details of
227 existing terrain, and details of existing area drainage;
- 228 c. Proposed elevations and contours of the greatest extent of the proposed
229 mining and proposed drainage channels and related construction;
- 230 d. Detailed plans of all surface and subsurface drainage devices, walls, cribbing,
231 dams, berms, settling ponds and other protective devices to be constructed
232 with or as a part of the proposed work, together with the maps showing the
233 drainage area and the estimated runoff of the area served by any drains;
- 234 e. Location of any buildings or structures on the property where the work is to be
235 performed, and the location of any buildings or structures on land of adjacent
236 property owners which are within two hundred (200) feet of the property;
- 237 f. Location of access roads and primary haul routes.
- 238 g. Stormwater calculations and proposed treatment facilities for runoff from
239 access roads and impervious areas; ~~and~~
- 240 h. A hydrogeology report which characterizes the groundwater and surface water
241 and identifies wells within one-half (1/2) mile of the proposed mining limits and
242 a monitoring and mitigation plan if there are existing wells within one-half (1/2)
243 mile of the proposed site; and
- 244 i. A traffic impact analysis including the following elements, or as directed by the
245 director of public works:
- 246 (1) Trip generation, including passenger & haul vehicles;
- 247 (2) Trip assignment and distribution;
- 248 (3) Capacity analysis: Existing and proposed operational level of service at the
249 site access and intersections along primary and secondary haul routes
250 including any proposed mitigations;
- 251 (4) Safety analysis: Sight distance at intersections and crash history at
252 intersections and along all haul route corridors, including any proposed
253 mitigations;
- 254 (5) Vehicle maneuvering analysis: Turning movements at intersections and
255 tracking at intersections and horizontal curves including any proposed
256 mitigations; and
- 257 (6) Structural capacity analysis: Remaining life of primary and secondary haul
258 routes under current and proposed loading including any improvements
259 needed to achieve a fifteen- (15-) year structural capacity.

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260 ~~2. Site plan approval is required prior to any surface mining use.~~

The requirement for site plan approval is not removed, just re-ordered to number (1) in this section.

261 ~~3. For those uses permitted under Section 40.250.020(C)(1), the responsible official~~
262 ~~shall review and approve plans, specifications, and other supporting data through~~
263 ~~a Type II-A process pursuant to Section 40.510.025.~~

264 3.4. Conditional uses permitted under Section 40.250.020(C)(2) shall be reviewed
265 through a conditional use process pursuant to Section 40.510.030.

266 4.5. For temporary uses permitted under Section 40.250.020(C)(1) ~~(b)~~ that are not
267 exempt from review per Section 40.260.220(C)(3)(b), the responsible official shall
268 review and approve plans and specifications through a Type I process pursuant to
269 Section 40.510.010.

270 5.6. Notice required by Sections 40.250.020(E)(3) and (4) above shall be sent to
271 owners of property within a radius of one (1) mile of the site and to owners of all
272 parcels abutting local access roads identified as the primary haul route that are
273 between the site and roads designated in the Arterial Atlas as collectors, arterials
274 or State highways.

The PC requested that staff develop a Monitoring and Enforcement section. The following Subsection (F) is new language developed by staff that has not been reviewed by the PC.

275 F. Monitoring and Enforcement.

276 1. Operating requirements and standards shall be implemented through compliance
277 with conditions of approval as specified in this section and in the conditional use
278 permit issued by the county.

279 2. In order to ensure compliance with conditions of approval the applicant shall
280 develop and conduct a monitoring program. The monitoring program shall be
281 approved by the county prior to beginning operations under the permit, and shall
282 include the following:

283 a. A statement of the operating requirements and standards for each condition of
284 approval in the permit for mineral extraction, materials processing, and
285 materials transport;

286 b. A description of the methodology for determining compliance with each
287 requirement and standard; and

288 c. A schedule for conducting the required monitoring.

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289 3. At the applicant's expense, all results of the required monitoring shall be kept for at
290 least 10 years, and included in a report submitted to the county;

291 a. beginning twelve (12) months after approval of the conditional use permit;

292 b. continuing at twelve- (12-) month year intervals thereafter; and

293 | c. as needed, in the determination of the responsible official, to correct any
294 instances of non-compliance.

295 4. The county will conduct a periodic performance review of permit requirements and
296 | standards at the end of the first three years, and at three-year intervals after that.
297 The periodic review shall be a Type 2 land use decision. The periodic review shall
298 determine whether the facility is operating consistent with all existing permit
299 conditions.

300 5. The county will conduct an inspection of the mining facility no less than once per
301 year in order to assess the accuracy and effectiveness of the monitoring program
302 and, if necessary, enforce the provisions of the conditional use permit.

303 6. Failure to comply with the operating requirements and standards specified in the
304 conditional use permit may result in revocation of the conditional use permit.

305 G. Resource Activity Notification.

306 1. All approvals for subdivisions, short plats, site plans, zone reclassifications,
307 manufactured home park site plan approvals, variances, conditional use permits,
308 shoreline permits and building permits issued or approved for land on or within one
309 thousand (1,000) feet of lands designated as natural resource land (agricultural,
310 forest or mineral lands), pursuant to RCW Chapter 36.70A.170, shall contain or be
311 accompanied by a notice stating the following:

312 "The subject property is adjacent or in close proximity to designated mineral resource
313 land on which a variety of commercial mining activities may occur that are not compatible
314 with residential development. Potential disturbances or inconveniences may occur 24
315 hours per day and include but are not limited to: noise, blasting, odors, fumes, dust,
316 smoke, and operation of heavy machinery".

317 2. In the case of plats, short plats and binding site plans, notice shall also be included
318 in the plat or binding site plan dedication.

319 D. Planning Commission recommendation on other Title 40 changes, with proposed
320 changes.

321 **40.260.220 TEMPORARY USES AND STRUCTURES**

322 C. Uses and Exceptions.

DRAFT

323 3. Exceptions. Certain structures and uses are exempt from the requirement to
324 obtain a temporary use permit. However, building and fire code requirements still
325 apply. The following are exempt from the requirement for a temporary use permit:

326 b. For nonresidential districts:

327 (1) Temporary construction trailers, construction materials, and equipment
328 storage areas, and construction offices accessory to a construction or
329 mining site.



RECEIVED OCT 06 2014

Clark County Community Planning

Oct 4, 2014

Community Planning Office & Board

1300 Franklin, 6th Floor

Vancouver, WA 98666-5000

Subject: Surface Mining Policy Changes

Dear Clark County Community Planning Board,

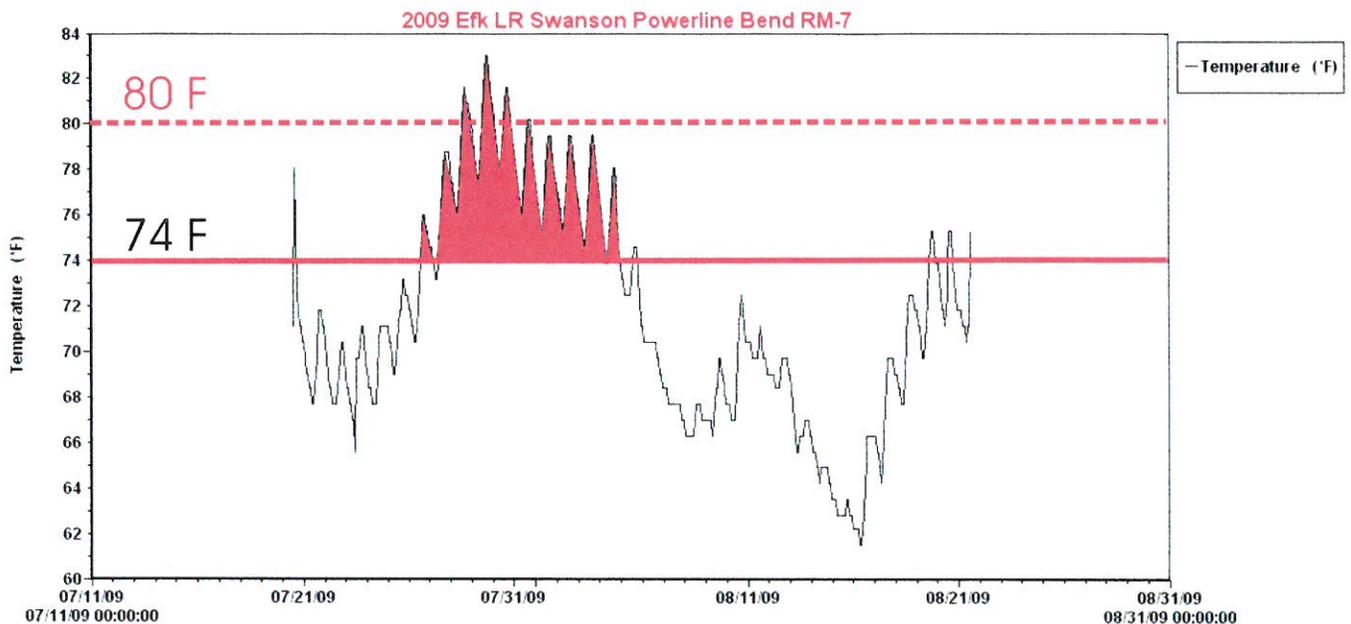
Friends of the East Fork has two critical policy items for the Surface Mining update in addition to those submitted by the Livingston Mountain Groups and we are a member of that coalition.

The first is the need to continue the "No Mining in the 100 yr. Floodplain" which was put in place by previous Commissioners about 10 years ago and was a key step in protecting the streams and rivers in Clark County from further degradation.

Surface mining in the flood plain has a history dating back as the 1960's or later and cause severe erosion, sedimentation, and stream degradation that continues on today. This is well documented by the WA. Dept. of Ecology, a number of scientific reports, and very evident on aerial photos taken over a series of years.

A typical example of this is the East Fork Lewis River, which even though it has 4 federally listed "T&E" species and is now an official WA State Steelhead Sanctuary Stream, the impacts of mining in the floodplain are still ongoing. Most obvious is the impact of water filled gravel pits that both heat up the water that feeds into the East Fork and the interception of groundwater fields that sustain the East Fork in the critical low flow summer months. This low flow condition (often 40 cfs to 50 cfs) allows stream temperatures to reach lethal levels to both fish and macro-invertebrate life in the river (see the actual recording of temperatures in the lower East Fork that exceeded 80 degrees F. High stress temperature starts at 75 F and even this year that temperature has been exceeded.

Clark County needs to retain the "No mining in the 100 yr. Floodplain" policy. There is plenty of Missoula Flood gravel up on the terraces of our rivers and no need to mine in the floodplain which creates long-term impacts that cannot be mitigated.



The other policy concern we have is that of operating hours. Hours at all surface mining operations are supposed to be from 7:00 AM in the morning till no later than 6:00 PM at night. Yet we have one mining site on the lower East Fork who in this September and now into October, has been starting up at 6:00 AM each morning and disturbing the sleep and rest of over 50 households in the river valley. This should not be allowed. It is bad enough that there is no adequate noise control installation at the site as the sound echo's up and down the river valley and appears to exceed noise limit regulations.

Please give these concerns careful considerations. We will follow up with more information and testimony.

Respectfully,

Richard Dyrland, Supervisory Hydrologist & President

Friends of the East Fork Lewis River, WA

27511 NE 29th Ave, Ridgefield, WA 98642

360-887-0866 toppacific2@msn.com WEB-Page: eastforklewisriver.org

UBI Code: 601-500-839



Working together to restore & conserve our waters

John L. Dentler
Attorney at Law
8920 Franklin Avenue
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The Honorable David Madore
The Honorable Tom Mielke
The Honorable Edward Barnes
Clark County Board of Commissioners
1300 Franklin, 6th Floor,
Vancouver, WA 98666-5000,

October 10, 2014

RE: Proposed Changes regarding Mineral Resources -- Comprehensive Plan and Surface Mining Overlay Code

Dear Commissioners

The purpose of this letter is to submit comments on behalf of J.L. Storedahl & Sons, Inc. on the proposed revisions to the Comprehensive Plan (CP) Policies and Surface Mining Overlay (SMO) Ordinance.

Let me begin by thanking the Planning Commission, the Planning Staff and the Commissioners for the substantial work represented by the proposed changes in the CP and SMO ordinance. Mineral Resources and, in particular, aggregate materials are essential to a modern society. These materials are used to construct and maintain our roads, they are the base materials to the very foundation to our public infrastructure, such as schools, as well as the foundation of all private residences.

Aggregate materials must be accessible and affordable or the County's economy will surely suffer. On the other hand, we understand that extraction of these resources comes with some impacts to surrounding areas -- noise, traffic, etc. Our industry is, however, highly regulated. We must and do abide by regulations that govern, for example, the safety of our vehicles, the ability and skills of our drivers, dust and noise limitations, wastewater discharge limitations, erosion controls, and stormwater controls under the Clean Water Act and Washington Water Pollution Control Act and County regulations. Our operations must take into consideration effects on threatened and endangered species and any designated critical habitat. In fact, at our Daybreak Mine, Storedahl, in consultation and cooperation with the U.S. Fish & Wildlife Service and the National Marine Fisheries Service, developed and implemented the first comprehensive Habitat Conservation Plan designed to conserve, create and protect, in perpetuity,

fish and wildlife habitat and to help conserve several species listed as threatened or endangered under the Endangered Species Act. Moreover, our hard rock mines are highly regulated with regard to limitations on the time, place and manner of blasting and resulting vibrations, and a panoply of other regulations such as hours of operation, and various measures to protect our workers and the public under the Mining Safety and Occupation Act, etc..

Over the past several years, many allegations have been made to County staff and officials regarding violations at the mines we operate. We have responded and cooperated with staff to address the alleged violations. In each instance, the end result and conclusion was that there were no bases to the allegations. We are confident that if the Commission were to conduct a thorough review of alleged violations tendered by many individuals it would find, first that many of the alleged violations are tendered repeatedly by the same individuals, and secondly, as the staff has found, that conditions of operation have been followed and that all other applicable conditions were adhered to at Storedahl-operated mines.

The essence of making good decisions, is that (1) the "problem" be appropriately framed, (2) the alternatives identified can be implemented, if chosen, (3) that meaningful and reliable information is available that bear on each alternative, (4) that clear values and trade-offs are identified and (5) that logical reasoning is applied to arrive at the best solution. We urge the Board to consider these steps and make the best decision possible as it considers whether there is a problem, whether the existing regulatory framework resolves the matter and, if not, why not.

With that introduction, following are some general thoughts and comments on the proposed changes:

- the CP should explicitly recognize that aggregate resources are needed for a sound economy, strong employment opportunities and are essential in the construction and maintenance of public infrastructure such as roads and schools.
- Many of the current conditions applicable to existing mines and adopted under the current CUP process are inconsistent, even for mining operations directly adjoining one another. Thus each mine may have completely different hours of operation. The standards set out in the draft documents would be helpful helpful in eliminating confusion and inconsistency in conditions applicable between mining operations.
- *existing* road conditions should not govern whether Mineral Resource Lands should be designated; rather the issue should be whether existing road conditions may be reasonably improved to accommodate vehicle traffic anticipated with mining. Nearly every mining location in Clark County of which we are aware has required improvements in then-existing roads to accommodate the movement of aggregate resources from the mine to the areas of use. If *existing* road conditions governed whether MRL were designated no lands would be able to meet the criterion.
- The SMO Code should recognize the need for some exception to the CUP requirement for those situations where temporary stockpiling is necessary to public or private

construction or public road construction or maintenance. A CUP should not be required to merely use material that has been temporarily stock piled.

- The SMO Code regarding setbacks should recognize that the Growth Management Act requires that Mineral Resource Lands should be protected from uses that are incompatible with the extraction of mineral resources. For that reason, setbacks for structures on adjacent should be required rather than setbacks on lands designated as MRLs.
- We are concerned that the monitoring and enforcement provisions will create a burdensome and duplicative process with few additional benefits. The County has at its discretion considerable power to require compliance, such as using stop-work orders or administrative penalties, or even civil and criminal proceedings. The facts are that when staff has investigated complaints, no violations were found.
- The County should utilize modern data base management to track conditions applicable to each mine. The County has all this information at its disposal but the staff appears to lack the resources or technology to rapidly access and utilize such information.

Following are more specific comments and recommendations:

1. The Comprehensive Plan "Goal" statement should be revised to recognize the value of mineral resources to Clark County. The following changes are recommended.

GOAL: To identify, and designate and protect adequate mineral resources needed for the future, and ensure appropriate use of gravel and mineral resources of the county, and ensure that such mineral resources are protected from incompatible or conflicting uses and to minimize conflict between surface mining and surrounding land uses.

2. Section 3.5.2 should be amended to reflect the actual need for commercially significant mineral resources and that Natural Resource Land designation may overlap.

Designate mineral resource lands based on the following:

a. The need for commercially significant mineral resources to supply long-term forecasted needs

~~a~~b. geological, environmental, and economic factors, which include, without limitation, consideration of ~~the proven~~ evidence of the quality, the quantity and characteristics of the resource deposits in the area of interest; proximity to ~~steep or~~ unstable slopes, riparian and wetland areas, habitat for endangered or threatened species, flood hazard areas, parks, public preserves, or other sensitive lands; and economic impacts of mining and other uses of the area;

~~b~~c. surrounding land uses, zoning, and parcel size, including, without limitation, consideration of proximity to and impacts on residentially zoned areas with existing

densities of predominantly one dwelling unit per five acres or higher, ~~and proximity to and impacts on agricultural and forest lands;~~¹ and

ed. suitability and safety of the existing and the potential of future transportation system to bear the traffic associated with mining, including, without limitation, the current suitability of public access roads to be used as haul roads and whether such roads may be improved or upgraded, the distance to market, the need to route truck traffic through residential areas, adequacy of intersections to handle mining traffic plus other traffic and necessary changes to accommodate mining.

e. Consideration that reclamation of mineral resource lands occurs after mining and that such lands may be used for subsequent uses, consistent with the Comprehensive Plan.

We also wish to point out an apparent misapprehension of the GMA and relevant rules. Mineral Resource Lands are not necessarily inconsistent with other Natural Resource Land designation or uses. In other words, MRL may overlap with Agricultural or Forestry Lands. The reasons for this are logical but perhaps not apparent without some reflection. Under Washington Law, all surface mines must be subject to reclamation plans that render the land capable of being used in accordance with the relevant comprehensive plan. RCW 78.44.091.² Thus if property is designated as MRL and Forestry Land, once mining is complete and reclamation implemented, then the land may be replanted for forestry uses or agricultural uses. The GMA rules also expressly note that Natural Resource Land designations often overlap. WAC 365-190-120.³

¹ Note that the GMA indicates that Mineral Resource designation can overlap with Forestry or Agricultural Land designation. Moreover, mining is not is not a permanent condition and reclamation must make the land compatible with uses designated under the Comprehensive Plan. For that reason, it is probably wiser to delete this provision. [cite]

² RCW 78.44.091 provides:

Each applicant shall also supply copies of the proposed plans and final reclamation plan approved by the department to the county, city, or town in which the mine will be located. The department shall solicit comment from local government prior to approving a reclamation plan. The reclamation plan shall include:

(1) A written narrative describing the proposed mining and reclamation scheme with:

(a) A statement of a proposed subsequent use of the land after reclamation that is consistent with the local land use designation. Approval of the reclamation plan shall not vest the proposed subsequent use of the land;

³ WAC 365-190-020(5) provides:

(5) There are also qualitative differences between and among natural resource lands. The three types of natural resource lands (agricultural, forest, and mineral) vary widely in their use, location, and size. One type may overlap another type. For example, designated forest resource lands may also include designated mineral resource lands. Agricultural resource lands vary based on the types of crops produced, their location on the landscape, and their relationship to sustaining agricultural industries in an identified geographic area.

(Emphasis added).

Further, steep slopes should not be considered among the criteria that makes land unsuitable for mining. Mining often creates steep faces and this is not an impediment to mining -- in fact, such slopes and faces may facilitate mining. Unstable slopes, on the other hand, may be an impediment to safe mining and to good reclamation results. Unfortunately, most of the gentle sloping land with unconsolidated aggregates and materials which are easy to mine are no longer available because such parcels have been developed or nearby lands have been developed making mining all but impossible. For these reasons, we recommend that the language on steep slopes be deleted.

3. The Conditional Use Permit requirement should be clarified so that temporary stockpiling of materials commonly used in private and public construction projects and public road construction does not trigger the requirement for a CUP.

Part C, "Draft Surface Mining Overlay Standards" includes paragraph C "Uses." This section would amend the current code to require a Conditional Use Permit (CUP) for all future mining activity. However, from time to time, construction practices, primarily road construction and paving or large construction projects may require temporary stockpiling of aggregate materials. The language currently used would require a CUP for temporary stockpiling at such project locations. An exception should be made for temporary stockpiling of materials. A proposed amendment to the proposed provision is as follows:

2. Conditional uses. In addition to uses allowed conditionally in the underlying zoning district, the following uses are allowed in the surface mining overlay district, subject to conditional use approval:

- a. Extractions of rock, stone, gravel, sand, earth and minerals and the sorting, and stockpiling of such materials, except where aggregate materials have been moved from a mine to road improvement or construction project and temporarily stockpiled where such materials are needed on a short-term basis for efficient and timely completion of such projects;
- b. Asphalt mixing;
- c. Concrete batching;
- d. Clay bulking; and
- e. Rock crushing.

4. The provision establishing setbacks should be amended to reflect the directives of the GMA or at the very least create symmetry in the required setbacks.

Part D Standards, includes Section 2 relating to setbacks. The GMA mandates that the County is obligated to protect mineral resource lands from incompatible uses on adjacent lands. WAC

365-196-480(1)(f).⁴ For that reason paragraph (a) should be eliminated. Moreover, the corresponding setback on adjacent properties set out in paragraph (b) should be increased from 100 to 200 feet. The GMA and rules adopted by the Washington Department of Commerce also make clear it is adjacent lands, not Mineral Resource Lands that should be burdened in protecting extraction of mineral resources from lands designated as MRL.⁵ For that reason, we recommend this provision be eliminated.

Should the above recommendation not be accepted then, at a bare minimum, the corresponding setbacks should be increased for structures on adjacent properties. The following changes are recommended:

2. Setbacks.

a. A minimum two hundred- (200-) foot setback from properly permitted or grandfathered residential structures shall be required for all mining uses abutting existing residential structures or adjacent rural residential zoning. The setback may be reduced by the responsible official approval authority if the purposes of this chapter can be met with the reduced setback. The setback area shall be used only for roads, berms, landscaping, signs, fencing and reclamation activities.

b. Residential structures on Adjacent properties adjacent to lands with the surface mining overlay or Mineral Resource Land designation shall maintain a ~~one~~ two

⁴ The WAC implementing the Growth Management Act states:

(1) Requirements:

"(f) In adopting development regulations to conserve natural resource lands, counties and cities shall address the need to buffer land uses adjacent to the natural resource lands. Where buffering is used it should be on land within the adjacent development unless an alternative is mutually agreed on by adjacent landowners."

⁵ The Growth Management Act states:

Such regulations shall assure that the use of lands adjacent to agricultural, forest, or mineral resource lands shall not interfere with the continued use, in the accustomed manner and in accordance with best management practices, of these designated lands for the production of food, agricultural products, or timber, or for the extraction of minerals"

RCW 36.70A.060(1)(a) (emphasis added).

Similarly, the GMA Rules state:

(2) Recommendations for meeting requirements.

(e) The review of existing designations should be done on an area-wide basis, and in most cases, be limited to the question of consistency with the comprehensive plan, rather than revisiting the entire prior designation and regulation process. However, to the extent that new information is available or errors have been discovered, the review process should take this information into account. Review for consistency in this context should include whether the planned use of lands adjacent to agricultural, forest, or mineral resource lands will interfere with the continued use, in an accustomed manner and in accordance with the best management practices, of the designated lands for the production of food, agricultural products, or timber, or for the extraction of minerals.

WAC 365-196-480.

hundred- (~~±200-~~) foot setback- from designated mineral resource land. The setback may be reduced by the approval authority only if no reasonable use of the property may be achieved due to the setback and site constraints and the purposes of this chapter can be met with the reduced setback or if it is not feasible to meet the setback due to site constraints. Corresponding deeds and permit approvals shall note that mining may take place in the future which could create conditions incompatible with such residential development within the 200-foot setback. Setbacks shall not apply to existing structures.

5. The provisions regarding blasting should be modified to recognize that structures should be constructed in accordance with standards and criteria.

With regard to blasting, we note and have noted to the Commissioners in the past that all blasting must comply with federal and Washington law and, in particular, rules promulgated by the Washington Department of Labor and Industry. These rules, among other things, limit the vibration intensity at the property boundaries of a blasting site. These standards have been developed to ensure that blasting does not damage nearby structures such as building foundations.

In the past, unsupported and baseless claims have been made before the Commissioners; in particular, by Mr. Charles Bronson to the effect that blasting at the Livingston Quarry has damaged the foundation and windows of residential structure owned by Mr. Bronson. Planning Commission Hearing Transcript October 17, 2013. Storedahl and its experts went to Mr. Bronson's property and measured ground vibrations during blasting events. The measurements and data showed that at the time of a typical blasting event, the corresponding vibrations at the residence of Mr. Bronson were non-detectable. These materials and conclusion were provided to the Planning Commission. See Planning Commission Hearing Transcript of November 21, 2013 and Exhibits submitted by Storedahl on May 3, 2014. The blasting could not be the source of alleged damage to a foundation. Moreover, if off-site structures are not built according to standards at the time the structure was built, then claims that blasting has damaged the structure can be even more dubious. Accordingly, we suggest the following amendment to paragraph 7:

7. Blasting and mining activities shall must not adversely affect the quality or quantity of groundwater or groundwater wells or cause damage to offsite structures, where such structures have been constructed in accordance with applicable standards and criteria established or customary at the time of construction.

6. The new provisions under Section F, creating monitoring and reporting requirements and hearings are burdensome and costly and the required information is currently available to the County.

Under section F, Monitoring and Reporting, we note that generally, the procedure that would be established is generally duplicative of current reporting requirements. All monitoring results are

currently sent to the County upon request. Often, it is apparent that the County staff does not have a good method of tracking this information. When a complaint is received, often the first response of County staff is to call the mining operator asking for information that should be readily available to the County. For example, often staff is not aware of limitations on hours of operation at a mine and ask the operator about this. The County should implement a database system that could help staff easily access limitations, criteria and standards that apply to each mine.

The monitoring and reporting schedule for many activities is set out in federal or state law. Is it the County's intention to require duplication of these reporting requirements? While it is easy to ask for such information, the County should ask whether duplication is truly necessary as duplication comes with attendant costs both for the operator and the County in handling additional data and information.

The County has many tools available should it believe that a mining operator is not complying with the terms of a conditional use permit or related approvals. For example, the County may issue "stop work orders" if it determines non-compliance is an issue. Administrative, civil and criminal action may also be taken and penalties exacted by the County where non-compliance is an issue that has not been remedied. We urge the County to consider these options before a new highly burdensome process is created regarding compliance with permit terms.

We suggest that the Type 2 decision should depend on whether there appear to be violations of the criteria or reporting requirements. Staff can simply review the materials available and make a determination. Some of the proposed language is a bit awkward and unclear and could likely be improved. Following are some recommended changes. The first paragraph, for example, references "operating permits;" however, insofar as we are aware Clark County does not issue "Operating Permits". In summary, Storedahl does not believe the monitoring and enforcement provision is necessary and it would create additional and substantial burdens for mining operators and County staff with few benefits. However, should the County proceed with Section F, we recommend several changes to the Monitoring and Enforcement provision as follows:

F. Monitoring and Enforcement.

1. Mining operations shall comply with all applicable criteria, standards and conditions as set forth in conditional use permits, conditions adopted under the State Environmental Policy Act, or any other County-issued permit or approval. Operating standards shall be implemented through compliance with conditions of approval as specified in this section and in the conditional use permit issued by the county.

2. In order to ensure compliance with conditions of approval the applicant shall develop and conduct a monitoring program. The monitoring program shall be approved by the county prior to beginning operations under the permit, and shall include the following:

- a. A statement of the operating requirements and standards for each condition of approval in the relevant permits or approvals for mineral extraction and materials processing, and materials transport;
- b. A brief description of the methodology for determining compliance with each requirement and standard. Where practical to do so, applicants may refer to relevant laws, codes, guidelines or standard methods adopted by government agencies or recognized institutions; and
- c. A schedule for conducting the required monitoring. Where practical to do so, applicants may refer to relevant laws, codes, guidelines or standard methods adopted by government agencies or recognized institutions;

3. ~~At The applicant 's expense, all results of the required~~ shall maintain monitoring ~~shall be kept~~ for at least 10 years, ~~included in a report submitted and upon the County's request, shall~~ (a) submit such records to the county or (b) make such records available for inspection at reasonable times and places. Annual monitoring results shall be prepared and submitted:

- a. beginning twelve (12) months after approval of the conditional use permit;
- b. continuing at twelve- (12-) month year intervals thereafter; and
- c. ~~as needed,~~ as determined by the responsible official to correct any instances of non-compliance.

4. The county will conduct a periodic performance review of permit requirements and standards at the end of the first three years, and subsequently, at three-year intervals after that. The periodic review shall be a Type 2 land use decision. The periodic review shall determine whether the facility is operating consistent with all existing permit conditions. If the periodic review concludes that the facility is not operating consistent with all existing permit conditions then such decision shall proceed under a Type 2 land use decision.

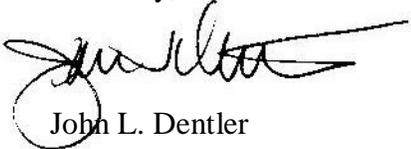
5. Failure to comply with the operating requirements and standards specified in the conditional use permit may result in "stop work orders", administrative penalties, or revocation of the conditional use permit.

7. Conclusions: The proposed changes are in need of further revision in order to achieve the directives and objectives of the Growth Management Act.

We believe that the proposed amendments need additional changes in order to meet the directives, objectives and guidance set out in the Growth Management Act. The monitoring provisions as written are in need of clarification and improvement. However, the changes to some of the standards represent a significant improvement from the proposed revisions submitted

by the Planning Commission to the Board of County Commissioners. We believe several additional changes should be adopted and have provided our suggested changes. Please feel free to contact me should you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "John L. Dentler", with a large, stylized flourish at the end.

John L. Dentler
Attorney at Law

cc: Kimball Storedahl
Christine Cook, Sr. Dep. Prosecuting Attorney
Oliver Orjiako, Planning

Mark H. Martin
Citizen-in-Chief
26520 NE 52nd Way
Vancouver Washington 98682

The Honorable County Commissioners
Clark County Board of Commissioners
1300 Franklin St., 6th Floor
Vancouver, WA 98666-5000

October 25, 2014

RE: Proposed Changes to Policy and Code—Comprehensive Plan and Surface Mining Overlay Code

Dear Commissioners,

Representatives of the Livingston Mountain neighborhood have recently met twice with County Staff on proposed revisions to the Comprehensive Plan (CP) and Policies and Code on the Surface Mining Overlay (SMO) Ordinance. We have been making an honest effort to sit down with staff and craft a workable compromise on a number of contentious issues surrounding this issue. As did the County Staff, we started with the Planning Commission's recommendations of 12/5/13 and moved forward from there; we also met at a working public hearing with County Commissioners during the summer to discuss potential changes to the above mentioned documents. Recently, John Dentler, representing Storedahl, sent the Commissioners a 10-page letter that makes some very questionable statements, some of which were incorporated into the most recent staff update of 10-21-14.

We look forward to our continued dialogue regarding changes to the aforementioned documents as the process moves forward towards some sort of mutually beneficial resolution. We'd like to thank staff, the Planning Commission, and the Commissioners for their laser-like focus on these tremendously important discussions and ultimate decisions being made about our lives.

In response to Mr. Dentler's letter, no one doubts that aggregate materials must be accessible and affordable to the County, but we do have serious reservations above the alleged needs of our county when more than 50-60% of the aggregate is transported out of our county and state. We would challenge Mr. Dentler, as the Planning Commission did to provide any documentation from his clients to demonstrate that this is not the case, but he has never done so and the industry, as a whole, is not required to do so, nor have they. Instead, they protect "rock" prices by failing to provide full transparency of supply and demand even in the entire state, let alone in Clark County. Meanwhile, our environment is degraded or destroyed, our property values are threatened, and therefore the potential property taxes collected from the thousands of people in these residential

areas are in peril, for the profit of a relative few mining owners. That should be of paramount concern to the Commissioners, as well as the residents of Clark County. One major study suggests a devaluation of property values by 30% to properties directly adjacent to a mine. Well, we have two mines with an industry that would like to turn the area completely over to mining interests. Even property values as far away as two miles from a single mine are reduced by 9% according to this published study. One of the questions the county must ask itself is, will the current 2.97 million dollars in annual property taxes from Livingston Mountain be threatened if another expansion of mining takes place. I think we all know the answer to that question.

As to Mr. Dentler's statement that the mining industry is, "highly regulated," there is no historical record of any industry in the United States being highly regulated when there is only self-regulation. We agree there are county, state and federal regulations and laws that are suppose to regulate this dirty industry, but unfortunately, in most counties of Washington, these so-called regulations and Conditional Use Permits are self-regulating. The lack of real regulation, sadly, has forced a number of lawsuits to go forward, as a expensive last resort. Instead, we'd like to see this circumvented by real monitoring and enforcement as recommended by the Planning Commission last December and now apparently supported by the Commissioners.

Mr. Dentler goes on to say in his recent October 10th letter, "many allegations have been made to County staff and officials regarding violations at the mines we operate. In each instance, the end result and conclusion was that there was no basis (not were no bases) to the allegations." First of all this is not true. In fact, I have pointed out numerous violations on the noise limits being exceeded by the mines. 46 Decibels is the maximum allowed when the two mines are operating. Each time, Jan Bazala has dismissed the documentation he provided me with, he makes statement like, "maybe it was the wind." It is not the job of Mr. Bazala to interpret scientific evidence. The maximum levels were set by Hearing Examiner and the experts in the Conditional Use Permits (CUPs). Moreover, the county is not keeping these records as is required by the CUP. Nor are they any longer keeping a log of the daily weather, despite the fact that this is also a Condition of Approval requirement. Jan had to request the few records from Storedahl that I received on a freedom of information request, yet I didn't receive all the records I requested because apparently Storedahl would not provide them. Again, I'd like to reiterate that it is not Mr. Bazala's responsibility or job to explain away data showing violations of the noise limits, especially when in writing he claims to not have the time to review that data. The county is opening itself up to a serious liability issue by failing to properly enforce the Conditional Use Permits and negligence of following the CUPs, especially considering the Livingston Quarry is leased by the County.

There continues to be no Code Enforcement of the surface mining industry in Clark County, even though CCC Title 32.04 grants this power to regulate. Without real enforcement, very expensive lawsuits have to be brought against the perpetrators by the citizenry. Moreover, to respond to Mr Dentler's charge "that violations are tendered repeatedly by the same individuals," I would ask Mr. Dentler to stop cherry-picking his examples. Of all of the people I have become closely involved with in our struggle to

save our neighborhood and achieve real regulation, none are in this category. I personally don't know of any people that have made repeated complaints against his client, but perhaps Mr. Dentler should ask himself, why so many people have made repeated complaints. Maybe, this fact justifies crafting a regulatory regimen that is more than simply lip-service but not real regulation.

As for Mr. Dentler's comment that all the charges against his client were baseless, we don't need to look further than the lawsuits filed by The Friends of East Fork to see that Mr. Dentler's claims are fabrications. Dentler's letter continues with his cheerleading effort for his client, even as complaints against his client continue to mount. The problem with complaining to the county is that, none of the complaints is ever dealt with or apparently recorded. For example, there was an open code enforcement case before the county in 2007 against the Livingston Mountain Quarry (before Storedahl became the operator) that alleged five violations of the conditions of approval, yet no one in the County Staff seems to know the outcome of this case. Apparently, few if any records are kept. The entire staff is aware that the trucks from the Mountain Quarry are still required by the conditional use permit to be lined, yet they are not and nothing is ever done about this. The two quarries have different operating hours allowed, so Storedahl simply assumes the earlier hours allowed under the Livingston Mountain Quarry operation. This needs to be addressed. Only yesterday, the Washington State Patrol set up an enforcement operation directed against overloaded Storedahl trucks after repeated complaints of flying gravel hitting cars, reckless driving habits etc. In 4/5 trucks inspected by Sergeant Randy Hullinger, the trucks were overloaded. He only gave them warnings, which means there is no paper trail of complaints and no incentive for Storedahl truckers to stop behaving like "cowboy miners." Once word got back to Storedahl of the inspections, they changed their usual Northwesterly route. This was observed by numerous residents, but it seems our observations don't matter. That is, of course why the WSP carried out the operation in the first place, but Storedahl changed it's truck routes, hence no more inspections. Still, 80% non-compliance was duly noted. Sergeant Randy's phone number is 360) 449-7930 if you wish to verify these stats.

There are some points of agreement between FLM and Mr. Dentler's recent proposals. For example, we do not have a problem with temporary stockpiling of materials for public or private construction or public road construction and maintenance, as long as there is a time limit for such "temporary" storage. We also agree that the County should utilize modern data base management to track conditions of approval, standards and complaints for each mine. The reason Mr. Dentler can make the statement that there is no basis for the complaints against his company is precisely because "staff appears to lack the resources or technology to rapidly access and utilize such information." All complaints wind up in some black hole, never to be seen again.

In response to other parts of Mr. Dentler's letter, the SMO Code regarding setbacks should continue to require setbacks for Mineral Resource Lands of 200 feet because in most cases the houses of the rural residential property existed prior to the mine or the mine expansion. Even Mr. Dentler agrees that a two hundred (200-) setback from properly permitted or grandfathered residential structures shall be required for all mining

uses abutting existing residential structure or adject rural residential zoning. So then, why did staff reduce this to one hundred and fifty (150-)? We concur that this two hundred (200-) should be maintained until the mine resource is depleted.

On the issue of reclamation of MRL about which Mr. Dentler makes much hay, we find his proposals strangely irrelevant since mining is apparently never completed; only in the rarest of cases are reclamations implemented. After all, this would deplete DNR's accumulated trust fund. Last year, I spoke with DNR officials and asked about any implemented reclamation projects for former mines in the state of Washington. They could not cite even one example. Moreover, it is apparent that heavily scarred and destroyed land from a rock pit is rarely suitable for a forestry or agricultural use at least in the near 500 year future.

Upon review of the partial Blast records for two quarries, that were provided us, we did not find any irregularities, however the records were incomplete, just as the one cited example by Dentler of Mr. Bronson's property were conducted by Storedahl's people and they only measured "a typical blasting event," according to Dentler, not every blasting event. I continue to hope that the weekly vibrations that shake our foundation nearly one mile away from the mine are being properly regulated.

The new Monitoring and Enforcement requirements under Section F were recommended by the Planning Commission and FLM continues to support these new requirements. The current monitoring results are only sent to the County upon request and since that only happens when a person not from the County government makes a request, they are woefully inadequate. Moreover, often this monitoring is incomplete; in many cases it is already a requirement that records be kept by the County. This is not happening right now. We agree that the County should implement a database system on each mine together with all the applicable criteria, standards and conditions as set forth in the individual CUPs. This system could also track the various complaints against each mine. One final point on this subject, Title 32.04 already provides for better Code Enforcement than we've had, indeed even the right of the County to carry out inspections exists, yet the County has so far refused to use this broad discretionary authority on surface mines. God only knows why.

Finally, I'd like to address comments made by Axel Swanson in his October 15th update to the Commissioners. He characterized the surface mining amendment process as proceeding forward with only one real difference from what the FLM had proposed. I'm sorry to say that based on the October 22nd update, this is not the case. We like Axel and believe he is trying to act as an honest broker between different stakeholders. Perhaps he was simply misinformed, but we consider the current update by staff to be seriously deficient in protecting the citizens of Livingston Mountain. The goals for Surface Mining Ordinance were changed to our detriment; other sections of earlier agreed up language were changed, deleted or completely altered. There is a vast difference in 3.5.2 d where we had included the language, "The surface mine overlay shall not be designated or expanded within rural residential (R) zones." Now it reads, the surface mining overlay shall not be designated on parcels zoned Rural (R) except to allow the expansion of an existing mining site. Apparently staff, no longer believes we are a residential area, in

spite of the map showing just the opposite. We won an important decision at the beginning of summer on the map to not expand the SMO. We now feel that Staff has given an edge to the mining interests to pursue their relentless expansion of mining in our neighborhood despite the fact that it has already been shown that expansion is incompatible with the surrounding land uses which existed before mine expansion began. We are in a rural residential zone and that fact must be acknowledged in the new policies and code for the comprehensive plan. Expansion of the current two mines is simply not an option that the county can afford to entertain. It will destroy the neighborhood, people's lives and investments, and a major aspect of the county's financial base. In the words of Commissioner Madore, "that opportunity (expansion of the mines) was forfeited years ago by the unconstrained development of neighboring properties. The door was closed when the land immediately adjacent to those areas made extraction incompatible." We agree. The new policies and codes for the Comprehensive Plan need to reflect this Madorian wisdom. Also, if staff could again be directed to show the differences between their August 27th update and their October 21st update in red on the public website, this would be quite helpful to all concerned.

I am sure we will have more testimony to discuss once the public process begins. Perhaps, we should book an auditorium for the massive numbers of people we plan to turn out.

Sincerely yours,

Mark H. Martin

"I like the dreams of the future better than the history of the past." Thomas Jefferson

McCall, Marilee

From: McCall, Marilee
Sent: Thursday, October 23, 2014 3:00 PM
To: Euler, Gordon; Orjiako, Oliver
Subject: FW: CLARK COUNTY UPDATE: Surface Mining Overlay webpage has been updated with new information and upcoming worksession & hearing dates
Attachments: image001.jpg
Follow Up Flag: Follow up
Flag Status: Flagged

*Forwarding comments received after latest email blast.
Marilee*

From: Peter [<mailto:peteroboe@comcast.net>]
Sent: Thursday, October 23, 2014 2:46 PM
To: McCall, Marilee
Cc: Friends Of Livingston; Martin, Mark; Cantrell, Bill; Pond, Angela; Pond, Robert; McCullough, Tyler; Silvis, Terri; Felver, Linda; Pickering, Karen
Subject: Re: CLARK COUNTY UPDATE: Surface Mining Overlay webpage has been updated with new information and upcoming worksession & hearing dates

Dear Marilee,

Thank you for keeping me and others in the loop regarding information on Surface Mining Overlay.

I have scanned the latest staff recommendations and there are several items that really are not appropriate and should not be there, but there is one that is particularly egregious.

Paragraph 3.5.2(d) states that "The surface mining overlay shall not be designated on parcels zones Rural (R) except to allow the expansion of an existing mining site." This clause is one that all of us on Livingston Mountain ave been objecting to since the beginning of the hearings last year. Allowing expansion of existing mines almost negates the purpose of the decision of the Commissioners restricting SMO in certain areas. It is obvious that the only reason Stordahl wants this provision is to expand without citizen review, thereby allowing daisy chaining from one site to another, ultimately taking over most of Livingston Mountain, even in areas that the Commissioners specifically said should not have Surface Mining.

I am amazed that the staff continues to include that very dangerous clause in their suggestions.

I know all of us on Livingston Mountain will be watching this very carefully. You write that Friends of Livingston Mountain still have an issue with 3.5.2(d). You bet we do. That is a giveaway to Stordahl and all mining interests and will adversely affect all of us.

Thank you for sharing my letter with all concerned parties.

Sincerely,

Peter Christ
28818 NE Hancock Road
Camas, WA 98607

From: "Marilee McCall" <Marilee.McCall@clark.wa.gov>
To: "Marilee McCall" <Marilee.McCall@clark.wa.gov>, "Gordon Euler" <Gordon.Euler@clark.wa.gov>
Cc: "Mary Keltz" <Mary.Keltz@clark.wa.gov>
Sent: Wednesday, October 22, 2014 12:24:38 PM
Subject: CLARK COUNTY UPDATE: Surface Mining Overlay webpage has been updated with new information and upcoming worksession & hearing dates



The latest document with staff recommendations on Policy and Enforcement has been added to the Surface Mining Overlay web page.

You can view the updated information here:

<http://www.clark.wa.gov/planning/mining/index.html>

A work session has been scheduled with the Planning Commission for **Thursday, November 6 at 5:30 p.m.** with a hearing scheduled on **Thursday, November 20 at 6:30 p.m.**

The Board of County Commissioners will have a work session on **Wednesday, November 12 at 9:00 a.m.**, with a hearing scheduled on **Tuesday, November 25 at 10:00 a.m.**

Thank you for your interest in Clark County!

Marilee McCall | Administrative Assistant

Clark County Community Planning

360-397-2280 ext. 4558

1300 Franklin Street | Vancouver, WA 98660

P.O. Box 9810 | Vancouver, WA 98666

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This e-mail and related attachments and any response may be subject to public disclosure under state law.

David S. Mann
Direct: (206) 621-8869
mann@gendlermann.com

November 3, 2014

Clark County Planning Commission
Clark County Community Planning
PO Box 9810
Vancouver, WA 98666-9810

email: Gordon.Euler@clark.wa.gov

Re: Surface Mining Overlay –Comprehensive Plan and Development Regulation
Amendments

Dear Clark County Planning Commissioners:

I write on behalf of the Friends of Livingston Mountain to provide comments on the proposed amendments to Clark County's Comprehensive Plan Goals and Policies, and Title 40 related to mineral resource lands. We thank you for the opportunity to comment, and thank you for the time you and staff have devoted to this amendment process.

These comments address the October 21, 2014, Staff recommended changes to the Planning Commission's December 5, 2013, recommendations. These comments are submitted for both your upcoming planning session and the public hearing.

A. Comprehensive Plan Goals and Policies

1. Mineral Resource Lands Goal

Staff recommends the addition of the phrase "identify and designate mineral resources" to the current Mineral Resource Lands Goal. Friends of Livingston Mountain sees no need to make this change. Indeed we believe it puts undue influence on simply identifying and designating mineral resources without adequately balancing the numerous other Growth Management goals including protecting property values, property rights, and the environment. This proposed change also incorrectly assumes that the County has identified and quantified the need for mineral resources within the County over the next 10 or 20 years. The existing Goal should remain as is.

2. Mineral Resource Lands Policies

While, in general, Friends of Livingston Mountain supports many of Staff's recommended changes to the Comprehensive Plan Policies in Chapter 3.5, there are a couple of notable exceptions.

- First, while proposed Policy 3.5.2.a correctly requires consideration of the proximity to

“unstable slopes,” this should be expanded to take into consideration all “geological hazardous areas” including steep slopes and landslide hazard areas as defined by Clark County’s Critical Area Ordinance. CCC 40.430.010.C.

- Second, while proposed Policy 3.5.c correctly requires consideration of the existing transportation system, the last sentence is confusing and appears to imply that the impact of mineral operation on the transportation system can be ignored based on vague consideration of mitigation. This last sentence should be stricken. If future improvements to the transportation system are to be considered, it should be limited to improvements identified and funded as part of the County’s transportation plan.
- Third, while we appreciate that proposed Policy 3.2.d requires that the surface mining overlay not be designated on parcels zoned Rural (R), Friends of Livingston Mountain strongly object to the proposal to allow the expansion of mines in the Rural (R) zone. In 1994 Clark County adopted current Mineral Lands Policy 3.5.15 which reads:

Potential aggregate sites *or expansion shall* not be designated within rural zoning categories

Since 1994 citizens of this County have relied on this prohibition when purchasing property and building homes. As the attached map illustrates in the Livingston Mountain area, a great many residents have been built in proximity to existing mines since 1994. These citizens have had the right to assume that existing mines would not expand. Now, 20 years later, the County proposes taking this important property right away. Friends of Livingston Mountain strongly requests you leave the prohibition in place and remove the proposed exception in Policy 3.2.d.

B. Changes to CCC 40.250.020 Surface Mining Overlay

Friends of Livingston Mountain strongly supports most of the proposed amendments to CCC 40.250.020 and in particular the requirement in CCC 40.250.020.C that all extraction, sorting and stockpiling of stone, gravel, earth and minerals be subject to obtaining a Conditional Use Permit to ensure compatibility with surrounding uses.

And while Friends of Livingston Mountain also supports most of the Standards set out in CCC 40.250.020.D, there again a few exceptions. These include:

CCC 40.250.020.D.2 sets out requirements for setbacks from adjacent residential structures and zoning. Two changes to the proposed amendment should be made.

- First, in subsection (a), the code requires “Structures” on designated mineral resource lands be setback from abutting parcels. The term “Structures” should be changed to “Mineral Uses” and include extraction, mixing, batching, bulking and crushing.
- Second, also in subsection (a), we support the Planning Commissions original

recommendation that mineral uses be set back at least 200 feet from abutting parcels zoned R or containing residential structures. Staff recommends a reduction to 150 feet based on a compromise with the requirement that residential structures be set back only 100 feet. But this compromise makes no sense. Residential structures do not create noise, dust, vibration or interfere with the reasonable use and enjoyment of mineral resource operation. The setback for operation on mineral resource lands should remain at 200 feet.

CCC 40.250.020.D.7 sets out requirements for blasting. While we support the language prohibiting damage to offsite structures, the proposed exception should be stricken. As proposed, the exception grants carte blanche authority to mine operators to cause damage to unpermitted buildings, including older structures that may not have required a permit. Clark County should prohibit damage to *all* off site structures.

Once again, thank you for the opportunity so submit these comments. Please do not hesitate to contact me if you have any questions.

Very truly yours,

GENDLER & MANN, LLP

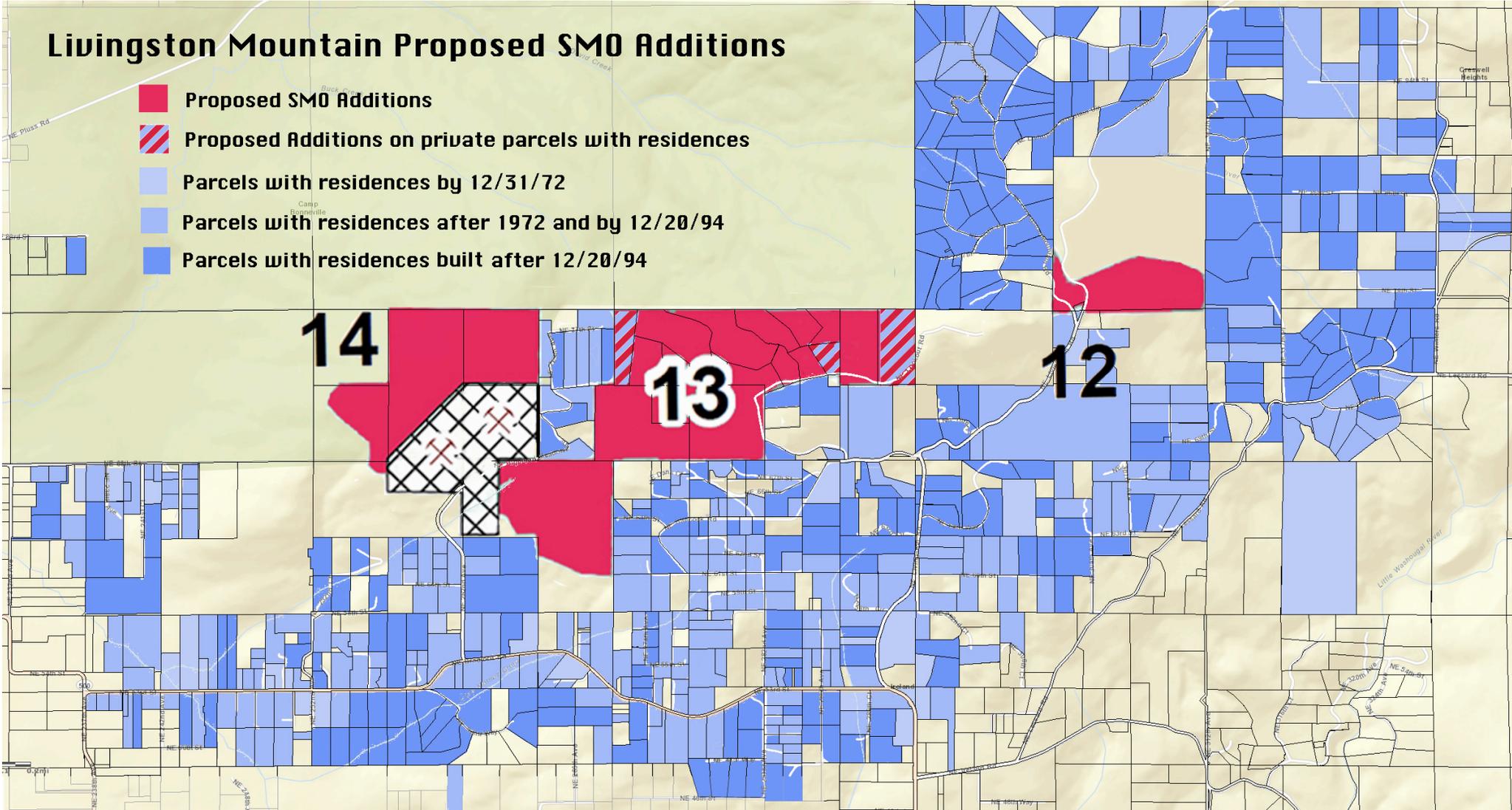


David S. Mann

cc: Client
Marilee McCall
Axel Swanson

Livingston Mountain Proposed SMO Additions

-  Proposed SMO Additions
-  Proposed Additions on private parcels with residences
-  Parcels with residences by 12/31/72
-  Parcels with residences after 1972 and by 12/20/94
-  Parcels with residences built after 12/20/94



From: [Euler, Gordon](#)
To: [McCall, Marilee](#)
Subject: FW: SMO permitting questions for you!!
Date: Tuesday, November 04, 2014 9:14:39 AM
Importance: High

Marilee:

For the SMO PC binder. Thanks.

Gordy

From: GOETZ, VENICE (DNR) [mailto:VENICE.GOETZ@dnr.wa.gov]
Sent: Monday, November 03, 2014 6:49 PM
To: Euler, Gordon
Cc: GOETZ, VENICE (DNR)
Subject: SMO permitting questions for you!!
Importance: High

Hi Gordie – I am rewriting a DNR letter to the commissioners and have to have you reiterate the permitting thing. Please tell me if these are right or wrong.

- If a parcel is within the SMO, it is “permitted outright”. If certain mining activities go with that SMO designation then those activities are “permitted outright” and the operator or landowner does not need a CUP to mine.
- If a parcel is not within the SMO it needs a CUP in order to be mined.

Did I get this right? Need to know ASAP the difference between the two forms of permitting. I know you tried explaining it to me recently (but that was before I went to Albuquerque last weekend to dance at a tango festival. Now I can’t remember! All I hear in my head is tango music!)

I need this info so I can get the DRAFT letter to the powers-that-be this week – preferably by Wednesday. I will try calling you tomorrow – Tuesday.

THANK YOU!

Venice

Venice Goetz

State Lands Minerals Geologist, LEG #468
Product Sales and Leasing Division
Washington Department of Natural Resources
360-902-1056
venice.goetz@dnr.wa.gov

David S. Mann
Direct: (206) 621-8869
mann@gendlermann.com

November 19, 2014

Clark County Planning Commission
Clark County Board of County Commissioners
PO Box 9810
Vancouver, WA 98666-9810

Re: Surface Mining Overlay –Comprehensive Plan and Development Regulation
Amendments

Dear Clark County Planning Commissioners:

I write on behalf of the Friends of Livingston Mountain to follow up on our October 30, 2014, comments on the proposed amendments to Clark County's Comprehensive Plan Goals and Policies, and Title 40 related to mineral resource lands. The purpose of this letter is to set out our proposed changes to the Staff Recommended changes in a format that is easier to review. The justification for our proposed changes is explained in our earlier letter which is attached for reference.

The following are our proposed changes to October 21, 2014, Staff Recommendation. If we do not recommend a change, then we support the October 21, 2014 Staff Recommended changes.

A. Comprehensive Plan Goals and Policies

1. Mineral Resource Lands Goal

Staff Recommendation:

GOAL: To identify and designate mineral resources and to protect and ensure appropriate extraction and use of gravel and mineral resources of the county while minimizing conflicts between surface mining and surrounding land uses.

Friends of Livingston Mountain Recommendation:

GOAL: To protect and ensure appropriate extraction and use of gravel and mineral resources of the county while minimizing conflicts between surface mining and surrounding land uses.

2. Mineral Resource Lands Policies

a. Policy 3.5.2.a:

Staff Recommendation:

3.5.2 Designate mineral resource lands based on the following:

- a. Geological, environmental, and economic factors, including, without limitation, consideration of the evidence of the quality, quantity and characteristic of the resource deposits in the area of interest; proximity to unstable slopes, riparian area and wetland areas, habitat for endangered or threatened species, flood hazard areas, parks, public reserves, or other sensitive lands; and economic impacts of mining and other uses of the area;

Friends of Livingston Mountain Recommendation:

- a. Geological, environmental, and economic factors, including, without limitation, consideration of the evidence of the quality, quantity and characteristic of the resource deposits in the area of interest; proximity to geologically hazardous areas including steep and unstable slopes, riparian area and wetland areas, habitat for endangered or threatened species, flood hazard areas, parks, public reserves, or other sensitive lands; and economic impacts of mining and other uses of the area;

b. Policy 3.5.2.c:

Staff Recommendation:

- c. Suitability and safety of the existing transportation system to bear the traffic associated with mining, including, without limitation, the suitability of public access roads to be used as haul roads, the distance to the market, the need to route traffic through residential areas, the adequacy of intersections to handle mining traffic plus other traffic. Consideration will include options for mitigating proposed impacts to the existing transportation system.

Friends of Livingston Mountain Recommendation:

- c. Suitability and safety of the existing transportation system to bear the traffic associated with mining, including, without limitation, the suitability of public access roads to be used as haul roads, the distance to the market, the need to route traffic through residential areas, the adequacy of intersections to handle mining traffic plus other traffic. ~~Consideration will include options for mitigating proposed impacts to the existing transportation system.~~ of future improvements to the transportation system may be considered only if the specific improvements are identified and funded as part

of the County's current transportation plan.

c. Policy 3.5.2.d:

Staff Recommendation:

- d. The surface mining overlay shall not be designated on parcels zoned Rural (R) except to allow the expansion of an existing mining site;

Friends of Livingston Mountain Recommendation:

- d. The surface mining overlay shall not be designated on parcels zoned Rural (R); ~~except to allow the expansion of an existing mining site;~~

B. CCC 40.250.020 Surface Mining Overlay

1. CCC 40.250.020.B:

Staff Recommendation:

- B. Applicability.
2. The provisions of this section shall [CCC 40.250.020] shall apply only to new applications for surface mines and related uses and expansions of existing mines. Operation of existing surface mines and related uses shall conform to the conditions of approval adopted with their site plan and/or conditional use permit.

Friends of Livingston Mountain Recommendation:

- B. Applicability.
2. With the exception of CCC 40.250.020.F, the provisions of this section shall [CCC 40.250.020] shall apply only to new applications for surface mines and related uses and expansions of existing mines. Operation of existing surface mines and related uses shall conform to the conditions of approval adopted with their site plan and/or conditional use permit. CCC 40.250.020.F (Monitoring and Enforcement) is applicable to all existing, expanded, and new surface mines and related uses.

2. CCC 40.250.020.D.2

Staff Recommendation:

2. Setbacks
 - a. Structures on designated mineral resource land shall be set back at least one hundred fifty (150) feet from abutting parcels with existing lawfully established residential structures or adjacent rural (R) zoning. The setback area shall be used only for roads, berms, landscaping, signs, fencing and reclamation activities. The setback may be reduced by the responsible official if the purposes of this chapter can be met with the reduced setback.

Friends of Livingston Mountain Recommendation:

2. Setbacks
 - a. ~~Structures~~ Mineral uses, including extraction, crushing, mixing, batching and bulking, on designated mineral resource land shall be set back at least ~~one hundred fifty (150)~~ two hundred (200) feet from abutting parcels with existing lawfully established residential structures or adjacent rural (R) zoning. The setback area shall be used only for roads, berms, landscaping, signs, fencing and reclamation activities. The setback may be reduced by the responsible official if the purposes of this chapter can be met with the reduced setback.

3. CCC 40.250.020.D.7:

Staff Recommendation:

7. Blasting and mining activities shall not:
 - a. adversely affect the quality or quantity of groundwater or groundwater wells; or
 - b. cause damage to offsite structures, where such structures were constructed pursuant to an approved permit, as required.

Friends of Livingston Mountain Recommendation:

7. Blasting and mining activities shall not:
 - a. adversely affect the quality or quantity of groundwater or groundwater wells; or
 - b. cause damage to offsite structures, ~~where such structures were constructed pursuant to an approved permit, as required.~~

3. CCC 40.560.010 Changes to Districts, Amendments, Alterations

Staff recommendation:

S. Additional Criteria for Surface Mining Overlay Changes:

1. Designation of additional areas with the surface mining overlay shall occur only if :
 - a. designation criteria in the comprehensive plan have been met; and
 - ~~b. The quantity and characteristic of the resource including the size of the deposit, the depth of the overburden, the distance to market, and the cost of transport and resource availability in the region, suggest that mining is economic viable.;~~
 - eb. at least sixty percent (60%) of the area within one thousand (1000) feet of the proposed mineral resource land is characterized by parcels of (5) acres or larger.

Friends of Livingston Mountain Recommendation:

S. Additional Criteria for Surface Mining Overlay Changes:

1. Designation of additional areas with the surface mining overlay shall occur only if :
 - a. designation criteria in the comprehensive plan have been met; and
 - b. The quantity and characteristic of the resource including the size of the deposit, the depth of the overburden, the distance to market, and the cost of transport and resource availability in the region, suggest that mining is economic viable.;
 - c. at least sixty percent (60%) of the area within one thousand (1000) feet of the proposed mineral resource land is characterized by parcels of (5) acres or larger.

Once again, thank you for the opportunity so submit these comments. Please do not hesitate to contact me if you have any questions.

Very truly yours,

GENDLER & MANN, LLP



David S. Mann

Clark County Planning Commission
Clark County Board of County Commissioners
November 19, 2014
Page 6

cc: Client
Gordon Euler
Marilee McCall
Axel Swanson

William T. Lynn
Direct: (253) 620-6416
E-mail: blynn@gth-law.com

November 19, 2014

Clark County Planning Commission
Attn: Marilee McCall (marilee.mccall@clark.wa.gov)
Oliver Orjiako (oliver.orjiako@clark.wa.gov)
Gordy Euler (gordon.euler@clark.wa.gov)
P.O. Box 9810
Vancouver, WA 98666-9810

RE: Clark County Surface Mining Overlay
Staff Recommended Changes October 21, 2014

Dear Ms. McCall, Mr. Orjiako and Mr. Euler:

This letter is submitted on behalf of J.L. Storedahl & Sons, Inc. to comment on the Surface Mining Overlay Planning Commission Recommendation with Staff Recommended Changes dated October 21, 2014. John Dentler, who has commented on behalf of Storedahl and Sons before, is out of the state. I have attached a copy of his October 10, 2014 letter as many of his comments remain pertinent.

Before turning to some specific issues, we wish to make a general observation about the process of approving surface mining. Clark County has a two-step process to identify and then permit mineral resource activities. The first is a more general screen to identify those properties that are included in the surface mining overlay. That step, of course, relies on very general information and screening criteria. But it is a critical step. Unless property has the overlay it cannot even be considered for mining. If property with important mineral resources is not included, it may be developed with another use, covering the resources.

The second step in the process is actually permitting a specific surface mine. At that point, the site specific SEPA process is followed with detailed studies on the geology, hydrology, traffic, land use impacts, critical areas and other important permitting issues. That information and a detailed plan are reviewed by local and state authorities and the public before a permit may be approved.

The proposed amendments make the second portion of this process much more restrictive, by establishing that the extraction of minerals is a conditional use rather than an outright permitted use as it was in the prior code. This conditional use permit

Reply to:

Tacoma Office
1201 Pacific Ave., Suite 2100 (253) 620-6500
Tacoma, WA 98402 (253) 620-6565 (fax)

Seattle Office
600 University, Suite 2100 (206) 676-7500
Seattle, WA 98101 (206) 676-7575 (fax)

requirement makes the permitting process more rigorous, adding significant public involvement, and establishing new standards that any proposal must meet for approval.

However, the amendments also make the initial screening criteria for the overlay more restrictive, and we are concerned that action may exclude important resources from even being considered under the rigorous conditional use permit process. That denies the opportunity to fully understand the site and to consider design and environmental mitigation that could well protect the public interest.

With this background, we turn to specific provisions of the proposal.

1. Our first comment relates to the Policy 3.5.2 with the first level screening criteria for the overlay designating mineral resource lands. The proposal before you would make those criteria far more specific, leading to the exclusion of lands that might well be suitable for surface mining over the long term. These more specific issues can and should be reviewed during the conditional use permit process where detailed information is available and where potential concerns can be more comprehensively and precisely addressed. For example, draft provision 3.5.2A requires review at this preliminary stage for proximity to unstable slopes, other critical areas, and other “sensitive lands.” This is unnecessary and overly restrictive. A large parcel might, for example, have one corner in close proximity to sensitive areas, but through design, those areas could be protected from the impacts of mining. Buffers or setbacks could well address sensitive areas through the environmental and permitting process. This rough first screening process should not exclude lands that could, upon site specific design, study and mitigation, be appropriate candidates for surface mining.

Similarly, Paragraph 3.5.2B excludes lands in proximity to residentially zoned areas of a particular density without taking into consideration other factors such as topography. Residential areas could be well-shielded from noise and other impacts by a topographical ridge or other feature. Again, this should be evaluated at the conditional use permit stage where noise studies and other pertinent information will be available to the decisionmaker.

Paragraph 3.5.2B also excludes lands in proximity to agricultural and forest lands. As noted in Mr. Dentler’s letter of October 10, 2014, a mineral resource designation can overlap with forestry or agricultural land. Further, mining is not a permanent condition and reclamation could well be fully compatible with forestry or agricultural uses. This provision should be deleted.

We are also concerned about Policy 3.5.2.C which requires that a judgment be made about the transportation system at this early screening stage, well before specific studies and mitigation are presented. In very few, if any, areas of the County could mining occur without some improvement to transportation facilities. The analysis of specific traffic impacts on particular roads and intersections and mitigation of transportation impacts are

Gordon Thomas Honeywell_{LLP}

November 19, 2014

Page 3

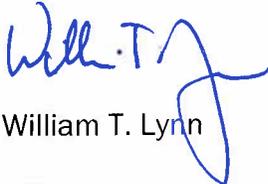
factors that should be considered at the conditional use permit stage when details are proposed.

2. We urge your careful review of Mr. Dentler's proposals on monitoring. As he noted, surface mines are heavily regulated by state agencies, in particular the Department of Natural Resources (the State agency with primary expertise and authority for surface mine reclamation) and the Department of Ecology, (the state agency with responsibility for water quality). These agencies have reporting requirements and the County should be careful not to duplicate those. Mr. Dentler's suggestions took into account those requirements and attempted to make the County's monitoring in align with those, to avoid duplication.

The County already has extensive tools at its disposal for enforcement. The recommended changes in Mr. Dentler's letter recognize those existing tools and provide a format where the monitoring and other remedies could be specifically made to fit the circumstances and compliance history of an applicant. This reflects a better use of the County's resources and avoids record keeping and public processes that add costs without providing any real public benefit. The provision should be carefully tailored to fit with existing tools and obligations.

We would be happy to provide additional information on these or other provisions.

Very truly yours,



William T. Lynn

WTL:cls

Enclosure

cc: Kimball Storedahl
John Dentler

John L. Dentler
Attorney at Law
8920 Franklin Avenue
Gig Harbor, Washington 98332

The Honorable David Madore
The Honorable Tom Mielke
The Honorable Edward Barnes
Clark County Board of Commissioners
1300 Franklin, 6th Floor,
Vancouver, WA 98666-5000,

October 10, 2014

RE: Proposed Changes regarding Mineral Resources -- Comprehensive Plan and Surface Mining Overlay Code

Dear Commissioners

The purpose of this letter is to submit comments on behalf of J.L. Storedahl & Sons, Inc. on the proposed revisions to the Comprehensive Plan (CP) Policies and Surface Mining Overlay (SMO) Ordinance.

Let me begin by thanking the Planning Commission, the Planning Staff and the Commissioners for the substantial work represented by the proposed changes in the CP and SMO ordinance. Mineral Resources and, in particular, aggregate materials are essential to a modern society. These materials are used to construct and maintain our roads, they are the base materials to the very foundation to our public infrastructure, such as schools, as well as the foundation of all private residences.

Aggregate materials must be accessible and affordable or the County's economy will surely suffer. On the other hand, we understand that extraction of these resources comes with some impacts to surrounding areas -- noise, traffic, etc. Our industry is, however, highly regulated. We must and do abide by regulations that govern, for example, the safety of our vehicles, the ability and skills of our drivers, dust and noise limitations, wastewater discharge limitations, erosion controls, and stormwater controls under the Clean Water Act and Washington Water Pollution Control Act and County regulations. Our operations must take into consideration effects on threatened and endangered species and any designated critical habitat. In fact, at our Daybreak Mine, Storedahl, in consultation and cooperation with the U.S. Fish & Wildlife Service and the National Marine Fisheries Service, developed and implemented the first comprehensive Habitat Conservation Plan designed to conserve, create and protect, in perpetuity,

fish and wildlife habitat and to help conserve several species listed as threatened or endangered under the Endangered Species Act. Moreover, our hard rock mines are highly regulated with regard to limitations on the time, place and manner of blasting and resulting vibrations, and a panoply of other regulations such as hours of operation, and various measures to protect our workers and the public under the Mining Safety and Occupation Act, etc..

Over the past several years, many allegations have been made to County staff and officials regarding violations at the mines we operate. We have responded and cooperated with staff to address the alleged violations. In each instance, the end result and conclusion was that there were no bases to the allegations. We are confident that if the Commission were to conduct a thorough review of alleged violations tendered by many individuals it would find, first that many of the alleged violations are tendered repeatedly by the same individuals, and secondly, as the staff has found, that conditions of operation have been followed and that all other applicable conditions were adhered to at Storedahl-operated mines.

The essence of making good decisions, is that (1) the "problem" be appropriately framed, (2) the alternatives identified can be implemented, if chosen, (3) that meaningful and reliable information is available that bear on each alternative, (4) that clear values and trade-offs are identified and (5) that logical reasoning is applied to arrive at the best solution. We urge the Board to consider these steps and make the best decision possible as it considers whether there is a problem, whether the existing regulatory framework resolves the matter and, if not, why not.

With that introduction, following are some general thoughts and comments on the proposed changes:

- the CP should explicitly recognize that aggregate resources are needed for a sound economy, strong employment opportunities and are essential in the construction and maintenance of public infrastructure such as roads and schools.
- Many of the current conditions applicable to existing mines and adopted under the current CUP process are inconsistent, even for mining operations directly adjoining one another. Thus each mine may have completely different hours of operation. The standards set out in the draft documents would be helpful helpful in eliminating confusion and inconsistency in conditions applicable between mining operations.
- *existing* road conditions should not govern whether Mineral Resource Lands should be designated; rather the issue should be whether existing road conditions may be reasonably improved to accommodate vehicle traffic anticipated with mining. Nearly every mining location in Clark County of which we are aware has required improvements in then-existing roads to accommodate the movement of aggregate resources from the mine to the areas of use. If *existing* road conditions governed whether MRL were designated no lands would be able to meet the criterion.
- The SMO Code should recognize the need for some exception to the CUP requirement for those situations where temporary stockpiling is necessary to public or private

construction or public road construction or maintenance. A CUP should not be required to merely use material that has been temporarily stock piled.

- The SMO Code regarding setbacks should recognize that the Growth Management Act requires that Mineral Resource Lands should be protected from uses that are incompatible with the extraction of mineral resources. For that reason, setbacks for structures on adjacent should be required rather than setbacks on lands designated as MRLs.
- We are concerned that the monitoring and enforcement provisions will create a burdensome and duplicative process with few additional benefits. The County has at its discretion considerable power to require compliance, such as using stop-work orders or administrative penalties, or even civil and criminal proceedings. The facts are that when staff has investigated complaints, no violations were found.
- The County should utilize modern data base management to track conditions applicable to each mine. The County has all this information at its disposal but the staff appears to lack the resources or technology to rapidly access and utilize such information.

Following are more specific comments and recommendations:

1. The Comprehensive Plan "Goal" statement should be revised to recognize the value of mineral resources to Clark County. The following changes are recommended.

GOAL: To identify, and designate and protect adequate mineral resources needed for the future, and ensure appropriate use of gravel and mineral resources of the county, and ensure that such mineral resources are protected from incompatible or conflicting uses and to minimize conflict between surface mining and surrounding land uses.

2. Section 3.5.2 should be amended to reflect the actual need for commercially significant mineral resources and that Natural Resource Land designation may overlap.

Designate mineral resource lands based on the following:

a. The need for commercially significant mineral resources to supply long-term forecasted needs

ab. geological, environmental, and economic factors, which include, without limitation, consideration of the proven evidence of the quality, the quantity and characteristics of the resource deposits in the area of interest; proximity to steep or unstable slopes, riparian and wetland areas, habitat for endangered or threatened species, flood hazard areas, parks, public preserves, or other sensitive lands; and economic impacts of mining and other uses of the area;

bc. surrounding land uses, zoning, and parcel size, including, without limitation, consideration of proximity to and impacts on residentially zoned areas with existing

densities of predominantly one dwelling unit per five acres or higher, ~~and proximity to and impacts on agricultural and forest lands;~~¹ and

~~ed.~~ suitability and safety of the existing and the potential of future transportation system to bear the traffic associated with mining, including, without limitation, the current suitability of public access roads to be used as haul roads and whether such roads may be improved or upgraded, the distance to market, the need to route truck traffic through residential areas, adequacy of intersections to handle mining traffic plus other traffic and necessary changes to accommodate mining.

e. Consideration that reclamation of mineral resource lands occurs after mining and that such lands may be used for subsequent uses, consistent with the Comprehensive Plan.

We also wish to point out an apparent misapprehension of the GMA and relevant rules. Mineral Resource Lands are not necessarily inconsistent with other Natural Resource Land designation or uses. In other words, MRL may overlap with Agricultural or Forestry Lands. The reasons for this are logical but perhaps not apparent without some reflection. Under Washington Law, all surface mines must be subject to reclamation plans that render the land capable of being used in accordance with the relevant comprehensive plan. RCW 78.44.091.² Thus if property is designated as MRL and Forestry Land, once mining is complete and reclamation implemented, then the land may be replanted for forestry uses or agricultural uses. The GMA rules also expressly note that Natural Resource Land designations often overlap. WAC 365-190-120.³

¹ Note that the GMA indicates that Mineral Resource designation can overlap with Forestry or Agricultural Land designation. Moreover, mining is not is not a permanent condition and reclamation must make the land compatible with uses designated under the Comprehensive Plan. For that reason, it is probably wiser to delete this provision. [cite]

² RCW 78.44.091 provides:

Each applicant shall also supply copies of the proposed plans and final reclamation plan approved by the department to the county, city, or town in which the mine will be located. The department shall solicit comment from local government prior to approving a reclamation plan. The reclamation plan shall include:

(1) A written narrative describing the proposed mining and reclamation scheme with:

(a) A statement of a proposed subsequent use of the land after reclamation that is consistent with the local land use designation. Approval of the reclamation plan shall not vest the proposed subsequent use of the land;

³ WAC 365-190-020(5) provides:

(5) There are also qualitative differences between and among natural resource lands. The three types of natural resource lands (agricultural, forest, and mineral) vary widely in their use, location, and size. One type may overlap another type. For example, designated forest resource lands may also include designated mineral resource lands. Agricultural resource lands vary based on the types of crops produced, their location on the landscape, and their relationship to sustaining agricultural industries in an identified geographic area.

(Emphasis added).

Further, steep slopes should not be considered among the criteria that makes land unsuitable for mining. Mining often creates steep faces and this is not an impediment to mining -- in fact, such slopes and faces may facilitate mining. Unstable slopes, on the other hand, may be an impediment to safe mining and to good reclamation results. Unfortunately, most of the gentle sloping land with unconsolidated aggregates and materials which are easy to mine are no longer available because such parcels have been developed or nearby lands have been developed making mining all but impossible. For these reasons, we recommend that the language on steep slopes be deleted.

3. The Conditional Use Permit requirement should be clarified so that temporary stockpiling of materials commonly used in private and public construction projects and public road construction does not trigger the requirement for a CUP.

Part C, "Draft Surface Mining Overlay Standards" includes paragraph C "Uses." This section would amend the current code to require a Conditional Use Permit (CUP) for all future mining activity. However, from time to time, construction practices, primarily road construction and paving or large construction projects may require temporary stockpiling of aggregate materials. The language currently used would require a CUP for temporary stockpiling at such project locations. An exception should be made for temporary stockpiling of materials. A proposed amendment to the proposed provision is as follows:

2. Conditional uses. In addition to uses allowed conditionally in the underlying zoning district, the following uses are allowed in the surface mining overlay district, subject to conditional use approval:

a. Extractions of rock, stone, gravel, sand, earth and minerals and the sorting, and stockpiling of such materials, except where aggregate materials have been moved from a mine to road improvement or construction project and temporarily stockpiled where such materials are needed on a short-term basis for efficient and timely completion of such projects;

b. Asphalt mixing;

c. Concrete batching;

d. Clay bulking; and

e. Rock crushing.

4. The provision establishing setbacks should be amended to reflect the directives of the GMA or at the very least create symmetry in the required setbacks.

Part D Standards, includes Section 2 relating to setbacks. The GMA mandates that the County is obligated to protect mineral resource lands from incompatible uses on adjacent lands. WAC

365-196-480(1)(f).⁴ For that reason paragraph (a) should be eliminated. Moreover, the corresponding setback on adjacent properties set out in paragraph (b) should be increased from 100 to 200 feet. The GMA and rules adopted by the Washington Department of Commerce also make clear it is adjacent lands, not Mineral Resource Lands that should be burdened in protecting extraction of mineral resources from lands designated as MRL.⁵ For that reason, we recommend this provision be eliminated.

Should the above recommendation not be accepted then, at a bare minimum, the corresponding setbacks should be increased for structures on adjacent properties. The following changes are recommended:

2. Setbacks.

a. A minimum two hundred- (200-) foot setback from properly permitted or grandfathered residential structures shall be required for all mining uses abutting existing residential structures or adjacent rural residential zoning. The setback may be reduced by the responsible official approval authority if the purposes of this chapter can be met with the reduced setback. The setback area shall be used only for roads, berms, landscaping, signs, fencing and reclamation activities.

b. Residential structures on Adjacent properties adjacent to lands with the surface mining overlay or Mineral Resource Land designation shall maintain a one two

⁴ The WAC implementing the Growth Management Act states:

(1) Requirements:

"(f) In adopting development regulations to conserve natural resource lands, counties and cities shall address the need to buffer land uses adjacent to the natural resource lands. Where buffering is used it should be on land within the adjacent development unless an alternative is mutually agreed on by adjacent landowners."

⁵ The Growth Management Act states:

Such regulations shall assure that the use of lands adjacent to agricultural, forest, or mineral resource lands shall not interfere with the continued use, in the accustomed manner and in accordance with best management practices, of these designated lands for the production of food, agricultural products, or timber, or for the extraction of minerals"

RCW 36.70A.060(1)(a) (emphasis added).

Similarly, the GMA Rules state:

(2) Recommendations for meeting requirements.

(e) The review of existing designations should be done on an area-wide basis, and in most cases, be limited to the question of consistency with the comprehensive plan, rather than revisiting the entire prior designation and regulation process. However, to the extent that new information is available or errors have been discovered, the review process should take this information into account. Review for consistency in this context should include whether the planned use of lands adjacent to agricultural, forest, or mineral resource lands will interfere with the continued use, in an accustomed manner and in accordance with the best management practices, of the designated lands for the production of food, agricultural products, or timber, or for the extraction of minerals.

WAC 365-196-480.

hundred- (~~±200-~~) foot setback- from designated mineral resource land. The setback may be reduced by the approval authority only if no reasonable use of the property may be achieved due to the setback and site constraints and the purposes of this chapter can be met with the reduced setback or if it is not feasible to meet the setback due to site constraints. Corresponding deeds and permit approvals shall note that mining may take place in the future which could create conditions incompatible with such residential development within the 200-foot setback. Setbacks shall not apply to existing structures.

5. The provisions regarding blasting should be modified to recognize that structures should be constructed in accordance with standards and criteria.

With regard to blasting, we note and have noted to the Commissioners in the past that all blasting must comply with federal and Washington law and, in particular, rules promulgated by the Washington Department of Labor and Industry. These rules, among other things, limit the vibration intensity at the property boundaries of a blasting site. These standards have been developed to ensure that blasting does not damage nearby structures such as building foundations.

In the past, unsupported and baseless claims have been made before the Commissioners; in particular, by Mr. Charles Bronson to the effect that blasting at the Livingston Quarry has damaged the foundation and windows of residential structure owned by Mr. Bronson. Planning Commission Hearing Transcript October 17, 2013. Storedahl and its experts went to Mr. Bronson's property and measured ground vibrations during blasting events. The measurements and data showed that at the time of a typical blasting event, the corresponding vibrations at the residence of Mr. Bronson were non-detectable. These materials and conclusion were provided to the Planning Commission. See Planning Commission Hearing Transcript of November 21, 2013 and Exhibits submitted by Storedahl on May 3, 2014. The blasting could not be the source of alleged damage to a foundation. Moreover, if off-site structures are not built according to standards at the time the structure was built, then claims that blasting has damaged the structure can be even more dubious. Accordingly, we suggest the following amendment to paragraph 7:

7. Blasting and mining activities shall must not adversely affect the quality or quantity of groundwater or groundwater wells or cause damage to offsite structures, where such structures have been constructed in accordance with applicable standards and criteria established or customary at the time of construction.

6. The new provisions under Section F, creating monitoring and reporting requirements and hearings are burdensome and costly and the required information is currently available to the County.

Under section F, Monitoring and Reporting, we note that generally, the procedure that would be established is generally duplicative of current reporting requirements. All monitoring results are

currently sent to the County upon request. Often, it is apparent that the County staff does not have a good method of tracking this information. When a complaint is received, often the first response of County staff is to call the mining operator asking for information that should be readily available to the County. For example, often staff is not aware of limitations on hours of operation at a mine and ask the operator about this. The County should implement a database system that could help staff easily access limitations, criteria and standards that apply to each mine.

The monitoring and reporting schedule for many activities is set out in federal or state law. Is it the County's intention to require duplication of these reporting requirements? While it is easy to ask for such information, the County should ask whether duplication is truly necessary as duplication comes with attendant costs both for the operator and the County in handling additional data and information.

The County has many tools available should it believe that a mining operator is not complying with the terms of a conditional use permit or related approvals. For example, the County may issue "stop work orders" if it determines non-compliance is an issue. Administrative, civil and criminal action may also be taken and penalties exacted by the County where non-compliance is an issue that has not been remedied. We urge the County to consider these options before a new highly burdensome process is created regarding compliance with permit terms.

We suggest that the Type 2 decision should depend on whether there appear to be violations of the criteria or reporting requirements. Staff can simply review the materials available and make a determination. Some of the proposed language is a bit awkward and unclear and could likely be improved. Following are some recommended changes. The first paragraph, for example, references "operating permits;" however, insofar as we are aware Clark County does not issue "Operating Permits". In summary, Storedahl does not believe the monitoring and enforcement provision is necessary and it would create additional and substantial burdens for mining operators and County staff with few benefits. However, should the County proceed with Section F, we recommend several changes to the Monitoring and Enforcement provision as follows:

F. Monitoring and Enforcement.

1. Mining operations shall comply with all applicable criteria, standards and conditions as set forth in conditional use permits, conditions adopted under the State Environmental Policy Act, or any other County-issued permit or approval. ~~Operating standards shall be implemented through compliance with conditions of approval as specified in this section and in the conditional use permit issued by the county.~~

2. In order to ensure compliance with conditions of approval the applicant shall develop and conduct a monitoring program. The monitoring program shall be approved by the county prior to beginning operations under the permit, and shall include the following:

- a. A statement of the operating requirements and standards for each condition of approval in the relevant permits or approvals for mineral extraction and materials processing, and materials transport;
- b. A brief description of the methodology for determining compliance with each requirement and standard. Where practical to do so, applicants may refer to relevant laws, codes, guidelines or standard methods adopted by government agencies or recognized institutions; and
- c. A schedule for conducting the required monitoring. Where practical to do so, applicants may refer to relevant laws, codes, guidelines or standard methods adopted by government agencies or recognized institutions;

3. ~~At The applicant 's expense, all results of the required~~ shall maintain monitoring shall be kept for at least 10 years, included in a report submitted and upon the County's request, shall (a) submit such records to the county or (b) make such records available for inspection at reasonable times and places. Annual monitoring results shall be prepared and submitted:

- a. beginning twelve (12) months after approval of the conditional use permit;
- b. continuing at twelve- (12-) month year intervals thereafter; and
- c. ~~as needed,~~ as determined by the responsible official to correct any instances of non-compliance.

4. The county will conduct a periodic performance review of permit requirements and standards at the end of the first three years, and subsequently, at three-year intervals after that. The periodic review shall be a Type 2 land use decision. The periodic review shall determine whether the facility is operating consistent with all existing permit eonditions. If the periodic review concludes that the facility is not operating consistent with all existing permit conditions then such decision shall proceed under a Type 2 land use decision.

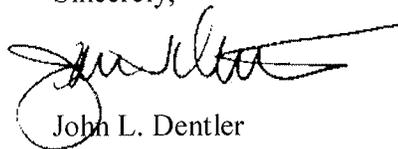
5. Failure to comply with the operating requirements and standards specified in the conditional use permit may result in "stop work orders", administrative penalties, or revocation of the conditional use permit.

7. Conclusions: The proposed changes are in need of further revision in order to achieve the directives and objectives of the Growth Management Act.

We believe that the proposed amendments need additional changes in order to meet the directives, objectives and guidance set out in the Growth Management Act. The monitoring provisions as written are in need of clarification and improvement. However, the changes to some of the standards represent a significant improvement from the proposed revisions submitted

by the Planning Commission to the Board of County Commissioners. We believe several additional changes should be adopted and have provided our suggested changes. Please feel free to contact me should you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "John L. Dentler", with a large, stylized flourish extending to the right.

John L. Dentler
Attorney at Law

cc: Kimball Storedahl
Christine Cook, Sr. Dep. Prosecuting Attorney
Oliver Orjiako, Planning

SURFACE MINING OVERLAY
PLANNING COMMISSION RECOMMENDATION
WITH STAFF RECOMMENDED CHANGES

OCTOBER 21, 2014

With additional suggested changes included from discussions with Yacolt Mt. neighbors and other interested parties. Suggested changes are in double underlined bold italics or double strikethrough subscript. No suggested changes on pages 6, 7, and 9.

A. Planning Commission recommendation regarding Comprehensive Plan Goals and Policies, with proposed changes.

Mineral Resource Lands

GOAL: To identify and designate mineral resources ^{and-to-protect} and ensure appropriate extraction and use of gravel and mineral resources of the county while minimizing conflicts between surface mining and surrounding land uses.

3.5 Policies

3.5.1 Support the conservation of mineral resource lands for productive economic use by identifying and designating lands with a surface mining overlay that have long-term commercial significance for mineral extraction and that are not already characterized by urban growth.

3.5.2 Designate mineral resource lands based on the following:

- a. Geological, environmental, and economic factors, including, without limitation, consideration of the evidence of the quality, quantity and characteristics of the resource deposits in the area of interest; proximity to **steep or** unstable slopes, riparian and wetland areas, habitat for endangered or threatened species, flood hazard areas, parks, public preserves, or other sensitive lands; and economic impacts of mining and other uses of the area;
- b. Surrounding land uses, zoning, and parcel size, including, without limitation, consideration of proximity to and impacts on residentially zoned areas with existing densities of predominantly one dwelling unit per five acres or higher **and proximity to and impacts on existing residences in all other zoning areas**, and proximity to and impacts on agricultural and forest lands; and
- c. Suitability and safety of the existing transportation system to bear the traffic

associated with mining, including, without limitation, the suitability of public access roads to be used as haul roads, the distance to market, and the need to route truck traffic through residential areas, and adequacy of intersections to handle mining traffic plus other traffic. Consideration will include options for mitigating proposed impacts to the existing transportation system.

- d. The surface mining overlay shall not be designated on parcels zoned Rural (R) ~~except to allow the expansion of an existing mining site.~~
- e. Consideration that reclamation of mineral resource lands occurs after mining and that such lands may be re-purposed consistent with the comprehensive plan.

3.5.3 Ensure that mining-related activities on mineral resource lands follow best management practices.

3.5.4 Ensure that mineral extraction and processing operations minimize and mitigate any significant adverse impacts on water, fish, wildlife, and nearby land uses.

3.5.5 Ensure **that the extraction of minerals from designated mineral resource lands will not interfere with the continued use of adjacent lands.**

3.5.6 Establish notification standards whereby developments on lands in the vicinity of designated mineral resource lands are given notice that they are locating in or adjacent to a potential mining area.

3.5.87 ~~Surface mining other than Columbia River dredging shall not occur within the 100-year floodplains~~ except for projects 1) with an approved Habitat Conservation Plan, and 2) that are consistent with the shoreline master program.

Implementation Chapter

Strategies for mineral resource lands:

- Maintain a map showing areas designated with the surface mining overlay and permitted mining sites.
- Develop a program for coordinated monitoring and enforcement of conditions of approval for active mining sites.

B. Planning Commission recommendation regarding Surface Mining Overlay designation/amendment procedures in Title 40, with proposed changes.

40.560.010 CHANGES TO DISTRICTS, AMENDMENTS, ALTERATIONS

S. Additional Criteria for Surface Mining Overlay Changes.

1. Designation of additional areas with the surface mining overlay shall only occur if:
 - a. designation criteria in the comprehensive plan have been met; **the extraction of the mineral resource is not hazardous to the public, nor detrimental to public safety or to public welfare, and the quality of the resource is sufficient for the intended uses;**
 - b. The quantity and characteristics of the resource including the size of the deposit, the depth of overburden, the distance to market, and the cost of transport and resource availability in the region, suggest that mining is economically viable;
 - b.c. at least sixty percent (60%) of the area within one thousand (1000) feet of the proposed mineral resource land is characterized by parcels of **ten (10) acres or larger, except for existing mines.**
2. Removal of the surface mining overlay shall only occur if one of the following conditions is met:
 - a. The mineral resources have been depleted;
 - b. There is evidence that the mining of the mineral resource is not economically feasible based on the factors listed in Section 40.560.010(S)(1)(b);
 - c. The resource or the extraction of the resource is hazardous to the public, or detrimental to public safety, or to the public welfare.**
 - d. Environmental or access constraints make it impractical to mine the resource;
or
 - e. The area has been brought into an urban growth boundary or adjacent land uses or developments are incompatible with mineral extraction.

T. S. Cumulative Impact.

U. T. Fees.

C. Planning Commission recommendation regarding Surface Mining Overlay Standards, with proposed changes.

40.250.020 SURFACE MINING OVERLAY DISTRICT

A. Purpose.

The purpose of the surface mining overlay district is to ensure the continued availability of rock, stone, gravel, sand, earth and mineral products without disrupting or endangering adjacent land uses, while safeguarding life, property and the public welfare.

B. Applicability.

1. The provisions in this section shall apply to parcels designated with the surface mining overlay. ~~Surface mining activity and related processing within the Columbia River Gorge National Scenic Area is subject to Section 40.240. Where Section 40.250.020 is in conflict, the provisions of section 40.240 govern.~~
2. The provisions of this section shall apply ^{only} to **all existing surface mines, expansions of existing mines, and to new applications for surface mines and related uses. Operation of existing surface mines and related uses shall conform to the conditions of approval adopted with their site plan and/or conditional use approval. The operation of all existing surface mines and related uses wherein the operation is not pursuant to a conditional use permit shall come under Type IV review for conversion to conditional use permit approval.**
3. Provisions of Chapter 78.44 RCW and Chapter 332-18 WAC pertaining to surface mining that are applicable to Clark County are adopted by reference.
4. Surface mining activity and related processing within the Columbia River Gorge National Scenic Area are subject to Chapter 40.240. Where Section 40.250.020 is in conflict with this section, the provisions of Chapter 40.240 govern.

C. Uses.

~~1. Permitted uses. In addition to uses allowed in the underlying zoning district, the following uses are permitted in the surface mining overlay district:~~

- ~~a. Extractions of rock, stone, gravel, sand, earth and minerals and the sorting, and stockpiling of such materials.~~

1. **All mining uses shall be conditional uses.** In addition to uses allowed conditionally in the underlying zoning district, the following uses are allowed in the surface mining overlay district, subject to conditional use approval:

- a. Extractions of rock, stone, gravel, sand, earth and minerals;
- b.a. Asphalt mixing
- c.b. Concrete batching;
- d.c. Clay bulking; and
- e.d. Rock crushing.
- f. Temporary offices, shops or other accessory buildings and structures used for the management and maintenance of onsite mining and processing equipment; and
- g. short-term stockpiling of extracted materials at a road improvement site or construction site, for use at that job site.

D. Standards.

1. Site area. When the activity includes both extraction and any one of the other uses listed on Section 40.250.020(C)(2), the total site area shall be a minimum of twenty (20) acres. Activities which are limited to extraction only shall not have a minimum site size

2. Setbacks.

a. All mining operations and structures on designated mineral resource land shall be setback at least a minimum three hundred (300') feet ~~one hundred fifty (150) feet~~ ^{setback shall be required for all mining uses} from abutting parcels with any zoning except for abutting parcels with existing ~~lawfully~~ established residential structures or adjacent rural (R) residential zoning. The setback from established residential structures or adjacent rural (R) residential zoning shall be five hundred feet (500'). The setback area shall be used only for roads, berms, landscaping, signs, fencing and reclamation activities. The setback may be reduced by the responsible official approval authority if the adjacent landowner does not object and the purposes of this chapter can be met with the reduced setback. ~~The setback area shall be used only for roads, berms, landscaping, signs, fencing and reclamation activities.~~

b. Structures on properties adjacent ^{properties} to designated mineral resource land shall be setback at least three hundred (300') feet ~~maintain a one hundred fifty (150)-(100) feet~~ ^{foot setback} from such designated mineral resource land. The setback may be reduced by the approval authority responsible official if the adjacent landowner agrees. Setbacks shall not apply to existing structures except as applies to any expansion of an existing mine.

3. Access. Roads into the site shall be gated and the site or mining area shall be fenced and posted "No Trespassing".

4. Noise. Maximum permissible noise levels must be in accordance with the provisions of Chapter [173-60 WAC](#) or as identified in the SEPA document.
5. Hours and days of operation.
 - a. No operations shall take place on Sundays or on the following holidays: New Year's Day, Memorial Day, July 4th, Labor Day, Thanksgiving Day, Easter, MLK Day, Veterans Day, and Christmas Day.
 - b. All operations and activities other than blasting and maintenance are restricted to the hours of 6:00 a.m. to 6:00 p.m. Monday through Friday and 8:00 a.m. to 5:00 p.m. Saturday.
 - c. Blasting is restricted to the hours of 9:00 a.m. to 4:00 p.m. Monday through Friday.
 - d. Maintenance activities, excluding mining, crushing, and loading, may be performed outside the normal hours of operation, provided that no equipment with narrow-band (beeping) back-up alarms is used. Noise levels must comply with night-time noise requirements.
 - e. Loading and hauling outside of normal hours of operation may be approved by the responsible official provided that:
 - (1) the applicant provides at least fourteen (14) days' notice to the county prior to the event such that the county can provide at least ten (10) days' notice to Property owners within one-half (1/2) mile of the site boundary and to owners of all parcels abutting local access roads to be used for hauling that are between the site and roads designated in the Arterial Atlas as connectors, arterials, or State highways;
 - (2) the applicant provides evidence that the contract requires delivery of rock or rock products outside of normal operating hours; and
 - (3) all equipment shall utilize broadband back-up alarms or reverse-activated strobe lights conforming to Mining Safety and Health Administration (MSHA) requirements.
 - (4) In an emergency, the responsible official may waive the requirements of this subsection.
6. Stormwater and erosion control must meet the standards of Chapter 40.385.
7. Blasting and mining activities shall must not:
 - a. adversely affect the quality or quantity of groundwater or groundwater wells; or
 - b. cause damage to offsite structures, where such structures were constructed pursuant to an approved permit, as required.

8. Notice of blasting events shall be provided by the operator to property owners within one-half (1/2) mile of the mining limits by mail at least seven (7) days prior to blasting. Any person requesting notice via electronic communication shall be notified at least twenty-four (24) hours prior to blasting.
9. Mining activities must meet applicable Federal, State and county standards governing odors, dust, smoke, blasting and vibration. Lighting shall not cast significant light or glare on adjacent properties.
10. The director of public works may require pavement wear agreements for public roads used to access the site. Public access roads to mining sites must be maintained to the satisfaction of the director of public works, to minimize problems of dust, mud, potholes, runoff and traffic safety. All vehicles shall comply with RCW 46.61.655 (escape of load materials and cleaning of vehicles).
11. Internal access roads shall be paved within one hundred (100) feet of a paved county road or state highway to reduce tracking of dirt, mud and rocks.
12. The applicant shall identify the source or potential source and approximate amount of water anticipated to be used on the site. If this amount exceeds the exemption provided for under RCW 90.44.050, the applicant must present evidence that adequate water can be made available without adversely affecting nearby uses.
13. Consistent with CCC 32.04.040, the operator shall grant access for inspection of the mine operation in order for the county to monitor and, if necessary, enforce the provisions of the conditional use permit.

E. Approval Process.

- 1.2. Site plan approval is required prior to any surface mining use.
- 2.1. Plans shall be drawn to an engineer's scale and shall be of sufficient clarity to indicate ~~the nature and extent of the work proposed and show in detail that they will conform to the~~ provisions of this section and all other relevant laws, ordinances, rules and regulations. The first sheet of each set of plans shall give the location of the work, the names and addresses of the owner, and the person by whom they were prepared. The plans shall include the following minimum information:
 - a. General vicinity maps of the site;
 - b. Property boundaries and accurate contours of existing ground, details of existing terrain, and details of existing area drainage;
 - c. Proposed elevations and contours of the greatest extent of the proposed mining and proposed drainage channels and related construction;

- d. Detailed plans of all surface and subsurface drainage devices, walls, cribbing, dams, berms, settling ponds and other protective devices to be constructed with or as a part of the proposed work, together with the maps showing the drainage area and the estimated runoff of the area served by any drains;
- e. Location of any buildings or structures on the property where the work is to be performed, and the location of any buildings or structures on land of adjacent property owners which are within two hundred (200) feet of the property;
- f. Location of access roads and primary haul routes.
- g. Stormwater calculations and proposed treatment facilities for runoff from access roads and impervious areas; and
- h. A hydrogeology report which characterizes the groundwater and surface water and identifies wells within one-half (1/2) mile of the proposed mining limits and a monitoring and mitigation plan if there are existing wells within one-half (1/2) mile of the proposed site; and
- i. A traffic impact analysis including the following elements, or as directed by the director of public works:
 - (1) Trip generation, including passenger & haul vehicles;
 - (2) Trip assignment and distribution;
 - (3) Capacity analysis: Existing and proposed operational level of service at the site access and intersections along primary and secondary haul routes including any proposed mitigations;
 - (4) Safety analysis: Sight distance at intersections and crash history at intersections and along all haul route corridors, including any proposed mitigations
 - (5) Vehicle maneuvering analysis: Turning movements at intersections and tracking at intersections and horizontal curves including any proposed mitigations; and
 - (6) Structural capacity analysis: Remaining life of primary and secondary haul routes under current and proposed loading including any improvements needed to achieve a fifteen- (15-) year structural capacity.

2. Site plan approval is required prior to any surface mining use.

- 3. For those uses permitted under Section 40.250.020(C) (1), the responsible official shall review and approve plans, specifications, and other supporting data through a Type II-A process pursuant to Section 40.510.025.

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- 3.4. Conditional uses permitted under Section 40.250.020(C) (2) shall be reviewed through a conditional use process pursuant to Section 40.510.030.
- 4.5. For temporary uses permitted under Section 40.250.020(C)(1) (b) that are not exempt from review per Section 40.260.220(C)(3)(b), the responsible official shall review and approve plans and specifications through a Type I process pursuant to Section 40.510.010.
- 5.6. Notice required by Sections 40.250.020(E) (3) and (4) above shall be sent to owners of property within a radius of one (1) mile of the site and to owners of all parcels abutting local access roads identified as the primary haul route that are between the site and roads designated in the Arterial Atlas as collectors, arterials or State highways.

F. Monitoring and Enforcement.

1. Operating requirements and standards shall be implemented through compliance with conditions of approval as specified in this section and in the conditional use permit issued by the county.
2. In order to ensure compliance with conditions of approval the applicant shall develop and conduct a monitoring program. The monitoring program shall be approved by the county prior to beginning operations under the permit, and shall include the following:
 - a. A statement of the operating requirements and standards for each condition of approval in the permit for mineral extraction, materials processing, and materials transport;
 - b. A description of the methodology for determining compliance with each requirement and standard; and
 - c. A schedule for conducting the required monitoring.
3. At the applicant's expense, all results of the required monitoring shall be kept for at least 10 years, and included in a report submitted to the county:
 - a. beginning twelve (12) months after approval of the conditional use permit;
 - b. continuing at twelve- (12-) month year intervals thereafter; and
 - c. as needed, in the determination of the responsible official, to correct any instances of non-compliance.

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4. The county will conduct a periodic performance review of permit requirements and standards at the end of the first three years, and at three-year intervals after that. The periodic review shall be a Type 2 land use decision. The periodic review shall determine whether the facility is operating consistent with all existing permit conditions.
5. The county will conduct an inspection of the mining facility no less than once per year in order to assess the accuracy and effectiveness of the monitoring program and, if necessary, enforce the provisions of the conditional use permit.

6. Failure to comply with the operating requirements and standards specified in the conditional use permit may result in revocation of the conditional use permit.

G. Resource Activity Notification.

1. All approvals for subdivisions, short plats, site plans, zone reclassifications, manufactured home park site plan approvals, variances, conditional use permits, shoreline permits and building permits issued or approved for land on or within one thousand (1,000) feet of lands designated as natural resource land (agricultural, forest or mineral lands), pursuant to RCW Chapter 36.70A.170, shall contain or be accompanied by a notice stating the following:

“The subject property is adjacent or in close proximity to designated natural ^{mineral}-resource land on which a variety of commercial agricultural, forestry, or mining activities may occur that are not compatible with residential development. Potential disturbances or inconveniences may occur 24 hours per day and include but are not limited to: noise, blasting, odors, fumes, dust, smoke, and operation of heavy machinery”.

2. In the case of plats, short plats and binding site plans, notice shall also be included in the plat or binding site plan dedication.

D. Planning Commission recommendation on other Title 40 changes, with proposed changes.

40.260.220 TEMPORARY USES AND STRUCTURES

C. Uses and Exceptions.

3. Exceptions. Certain structures and uses are exempt from the requirement to obtain a temporary use permit. However, building and fire code requirements still apply. The following are exempt from the requirement for a temporary use permit:

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- b. For nonresidential districts *where operations occur more than five-hundred feet (500') from any residential structure*: (1) Temporary construction trailers, construction materials, and equipment storage areas, and construction offices accessory to a construction or mining site.



Nov. 19, 2014

27511 NE 29th Ave. Ridgefield, WA 98642 T: 360-887-0866

TO THE RECORD

FOR: Clark County Board of Commissioners

1300 Franklin St., 6th Floor, Vancouver, WA 98666-5000

Also For: Gordy Euler, Program Manager II, Clark County Community Planning Staff.

Also For: Ron Barca, Clark County Volunteer Planning Group

SUBJECT: Surface Mining Overlay Planning Commission Recommendations with Staff Recommended Changes---Oct. 21, 2014

The following comments are made with the intent to improve on the good work already done by various staffs and individuals who have contributed to the update process of overlays, policies, and regulations.

Before discussing specific items in the Oct. 21, Planning Commission Draft, we state that we support and "Incorporate by Reference" the content of the following documents submitted to the Clark County Board of Commissioners and Planning Staff by:

1. Attorney David S. Mann of Gendler & Mann, LLP. Dated Nov. 3, 2014. Re: Surface Mining Overlay –Comprehensive Plan and Development Regulation Amendments.
2. Mark H. Martin, Citizen-in-Chief. Dated Oct 25, 2014. Re: Proposed Changes to Policy and Code—Comprehensive Plan and Surface Mining Overlay Code.

FRIENDS OF THE EAST FORK COMMENTS ON PLANNING COMMISSION RECOMMENDATIONS 10-21-14

Comments are submitted by Richard Dyrland, President- Friends of the East Fork and former Federal Regional Hydrologist (Retired).

COMMENTS BY Numeric Reference on left side of document pages.

Page-1 # 15-17 "GOAL" Recommend adding: Change "while minimizing" to " while avoiding or minimizing" conflicts. Applies to marginal sites or sites where substantial conflicts or tradeoffs with or on landowners or other natural resources assets would occur. Which would likely result in long-term loss of benefits from the other resources subject to be impacted. Those kinds of situations cannot be minimized or mitigated from substantial impact. Habitat Conservation Plans (HCPs) in many cases cannot and do not fix these issues.

Page-2 # 37-39 Policies 3.5 Item-C. Again the term “avoiding” should be added in similar context as the previous comment regarding the insertion of the word “avoiding”.

Page-2 # 48-49 Policies 3.5.4 Insert the term “avoid or” between the words “operations minimize” for the same reasons stated.

Page-2 # 58-60 Policies 3.5.2(d) MINING IN THE 100-YEAR FLOODPLAIN. As written in this draft, the proposed revision has serious flaws. The phrase “except for projects (1) with an approved Habitat Conservation Plan and (2) that are consistent with the shoreline master program ---if implemented as now written would allow mining in areas where the impacts on other floodplain and river resources would be severely and irreversibly impacted.

Allowing no mining in the 100-year floodplain should remain unchanged as it is in current policy. Having a Habitat Conservation Plan (HCP) is no guarantee that major impacts to other values, particularly property values, groundwater/wells, stream temperatures, stream ground & hyporheic water to summer stream flow, and impact to federally listed “Threatened & Endangered” fish species will not occur.

Requiring a HCP to be done is helpful and should be required on any proposed mining operation ---BUT IT SHOULD NOT BE A REASON OR MEANS TO ALLOW MINING & ATTENDANT IRREVERSABLE IMPACTS WITHIN THE 100-YEAR FLOODPLAIN. NO MINING SHOULD BE ALLOWED IN THE 100-YEAR FLOODPLAIN.

Clark County already has an extensive history right up to present time, of serious mining related impacts in the 100-year floodplain and Channel Migration Zone (CMZ). Certainly consistency with the Shoreline Management Program is also essential, but again, it is not a sound rationale for allowing mining in the 100-year floodplain. The WA Dept. of Ecology in its recent document “A Framework for Delineating Channel Migration Zones” Ecology Publication # 30-06-027 is a process that can identify risks and is related to WAC 173-26. Other research studies by the University of Washington (Cynthia Rapp) go into considerable more supporting detail. In addition, US Environmental Protection Agency Study “Pathways of Human Influence on Water Temperature Dynamics in Stream Channels (Geoffrey C. Poole & Cara H. Berman) present data that show in great detail the potential substantial negative effects of disturbing the floodplain and related channel migration zone. Other sources supporting this concern with impacts in the 100-Year floodplain is the State of Montana University System Water Center, which has extensive scientific research on impacts related to floodplain disturbances.

Requiring an HCP and consistency with the Shoreline Management Program is important, but should not be used as an excuse to allow surface mining in the 100-Year floodplain. And, keep in mind, Habitat Conservation Plans in themselves can be highly flawed and inadequate ---as recent examples have shown.

From both local and regional observations, it is clear that surface mining belongs up on the high terraces (Missoula Flood Deposits) and higher, and not in the floodplain or channel migration zone (CMZ).

Page-6 # 165-167 Standards 5b. Hours and days of operation. THE RESTRICTION OF STARTUP HOURS OF OPERATION SHOULD BE 7:00 a.m. ---NOT 6:00 a.m.

The sound from large trucks and crushing is well documented to reverberate to over a mile away, especially where the mine is located in a valley.

Many household members (besides retirees) remain at home during the day and do not rise before 7:00 a.m. It is in early morning when the most heathy, restful sleep occurs.

Also of great concern is the term "responsible official" and who or what that really means. Currently Clark County does not have "a person or staff individual" specifically knowledgeable and trained in mining activities and effects. It has led to a number of seemingly arbitrary waivers of requirements and enforcement/accountability as well as road regulations that has resulted in unacceptable economic, safety, and social impacts on the citizens of Clark County and particularly on those living near some of the ongoing surface mining operations.

Thank you for this opportunity to respond to the Oct. 21, 2014 and other Draft Documents.

Respectfully,

Richard Dyrland, President
Friends of the East Fork Lewis River, WA
27511 NE 29th Ave, Ridgefield, WA 98642

360-887-0866 toppacific2@msn.com WEB-Page: eastforklewisriver.org





November 20, 2014

The Honorable David Madore
The Honorable Tom Mielke
The Honorable Edward Barnes
Clark County Board of Commissioners
P.O. Box 5000
Vancouver, WA 98666-5000

Subject: Comments on the Proposed Mineral Resource Lands Policy Changes

Dear Commissioners:

Thank you for the opportunity to comment again on the proposed Mineral Resource Lands policy changes.

The Department of Natural Resources (DNR) does not have significant concerns about the proposed changes to the Mineral Resource Lands Comprehensive Plan Policies as proposed by the Planning Commission and staff (draft dated October 21, 2014). DNR's main concern is that the county maintains the opportunity for reasonable and necessary development of rock, sand and gravel resources in Clark County for years to come. DNR trust lands are the source of significant aggregate reserves in the county. It is particularly important that the county not preclude the expansion of existing mines where proven mineral resources have been identified. For that reason, please adopt the staff recommendation for Section 3.5.2.d "Policies", which will retain the exception that allows expansion of existing mining sites within the rural zones. As you know, DNR manages state trust lands for the benefit of specific beneficiaries that include schools and county governments. These resources serve as an important source of revenue for these public institutions in Clark County.

We appreciate the Board's careful consideration of our comments as part of this public process. If DNR can be of further assistance to the Board, please do not hesitate to contact Andrew Hayes at (360) 902-1347 or andrew.hayes@dnr.wa.gov.

Sincerely,

Kyle Blum
Deputy Supervisor for State Uplands



Clark County Board of Commissioners
November 20, 2014
Page 2 of 2

cc: Christine Cook, Clark County Senior Deputy Prosecuting Attorney
Gordon Euler, Clark County Community Planning
Eric Wisch, Pacific Cascade Region Manager, DNR
Darin Cramer, Product Sales and Leasing Division Manager, DNR
Andrew Hayes, Leasing and Business Management ADM, DNR
Venice Goetz, State Lands Minerals Geologist, DNR

Mark Martin

From: Mark Martin [mkmpp@me.com]
Sent: Thursday, November 20, 2014 5:08 PM
To: Mark Martin
Subject: Good Evening Planning Commissioners,

Good Evening Planning Commissioners,
While I don't pretend to know specifically about the roughly 25 SMOs or 15 newly proposed SMOs in Clark County, or the 15-16 active rock and gravel mines in this second most densely populated county of Washington, but I have read 1000s of pages on the Livingston Mountain quarries including the Conditional Use Permits and 100s of other documents. I will continue to dig more because I am certain that these mines are negatively impacting life in Clark County. I also know that this commission and the county commissioners have thoughtfully and unanimously voted against further expansion of the surface mine overlay in my neighborhood of Livingston Mountain. For that we are all grateful. Going forward, we hope those votes are sustained and validated in future resolutions on policy and code that we are discussing tonight.

Tonight I would like to address what I characterize as Code Enforcement nullification, that is the failure of Clark County staff to enforce the Conditions of Use Permits for the two mines operating on Livingston Mountain. As has been noted and stated for many months, the county has been in possession of scientific evidence showing that the maximum noise decibel levels have been breached on dozens and dozens of occasions at Livingston Mountain's two quarries. The maximum noise level allowed by the Hearing Examiner when both mines are operating is 46 decibels. This level was established by acoustical experts and approved in the Final Order of 2009 for the Conditional Use Permit of the Livingston Quarry. While I have been provided only partial information for my requests of public information, even the limited information I have been provided shows major violations of Conditional Use permits, yet no action has been taken by the county to remedy these violations. Unfortunately, the county has failed to keep the appropriate records required by the conditions of use agreements, including the noise data, the blasting data, the operating dates of Livingston Quarry, and the weather at the Livingston Quarry which the county oversees. Because of the absence of complete records, I will limit my discussion to the incomplete records provided by Storedahl to the County and forwarded to me by Mr. Jan Bazala. To reiterate, this is in spite of the fact that the county is required to keep these records and does not do so. During the period of June 1-August 5, 2014, and of the data provided to me, which was generally on an hourly basis, there were violations of the maximum permissible noise levels on 15 separate occasions during mining operating hours. These violations of the maximum decibel levels took place on June 15 at 1 p.m., June 18 at 5 and 6 p.m, June 26 at 9 and 10 a.m., as well as 4 p.m. on the same date. Moving into July, 2014, there are violations occurring on July 2 at 10:57 a.m., July 22 at 7, 8, and 9 a.m., then again on July 23 at 12, 1, 2, 3 p.m. Finally, from one last record provided for August, there was also a decibel violation noted at 4:07 p.m on August 5, 2014. We should keep in mind that the maximum permissible noise decibel levels for one operating mine is 33 decibels. Since virtually 100% of the time the noise levels from the recording stations exceed 33 decibels, it must be inferred that both mines are operating 100% of the time since at virtually all times decibel levels exceeded 33 decibels. The county is also supposed to keep the data regarding operation of its mine, the current weather conditions as well as the decibel data collection, but it doesn't do so. When I confronted Mr. Jan Bazala, the land use planner for Clark County for The Livingston mines with this evidence, he made two very telling remarks: "it might have been the wind that day and "I don't have time to review all the data." I reminded Mr. Bazala and the commissioners in my recent letter to them that it isn't up to Mr. Bazala to interpret scientific evidence in a way beneficial to J.L. Storedahl. Obviously, these violations should be brought to the attention of the Code Enforcement Manager of Clark County who apparently is not kept apprised of industry violations of the Clark County Code 32.04. If Title 32.04 the Clark County Enforcement Code was followed, the minimum fines for these breaches would amount to \$7500. Of course, repeated violations could nearly double these amounts, yet no fines have ever been imposed. In fact, it was a surprise to me that in all our recent discussions with Clark County staff, in writing, by

telephone, and in person, I have never met or had more than a brief telephone introduction to Paul Scarpele, the Code Enforcement Manager for Clark County. I think this is an indication of the severity of the problem we are here to address tonight: monitoring and enforcement of the mining industry in Clark County.

This is why I characterize this issue as Code Enforcement Nullification to the detriment of the Clark County citizenry. When I asked about what happened with the five violations of the Conditional Use permit review for Livingston Mountain quarry back in 2008, two members of county staff simply did not respond to my queries. Mr. Dentler, the attorney for Storedahl and I agree on this one issue, there is apparently no data collection on the mines of Clark County and the various conditional use permits, let alone code violations or other conditions of use violations. There is instead a black hole which I call code enforcement nullification.

As the citizens of our neighborhood see 100s of trucks daily ramble up and down 53rd and Bradford headed towards the two mines, we are appalled by the two CUPs that allow up to 470 trucks a day back and forth on a single road. That is roughly, one 18 wheel double container truck every 90 seconds during the two mines operating hours. We wonder whether the 470 maximum truck limit contained in the two conditional use permits is actually being observed since there is apparently no monitoring of those conditional uses. While the mines have two different operating hours, one earlier than the other, Storedahl assumes the earlier operating hours for all of its operations in both mines. Again no enforcement means nothing is done about this violation of the operating hours. We do know that the trucks are frequently overloaded and never covered, causing damage to our cars especially on windy days. We also know that the trucks coming from the Livingston Mountain quarry are suppose to be lined, they are not. After frequent complaints of car damage occurring by overloaded trucks, the Washington State Patrol was recently coaxed into doing an enforcement action and found that four out of five trucks stopped were overloaded or 80% of the trucks inspected. Sadly, only warnings were given and no citations issued. Storedahl trucks were quickly redirected away from their usual northwesterly route, so that more trucks were not stopped and checked in this enforcement action. To date, we know of no similar enforcement action taken by Clark County Sheriff's deputies on county roads.

One final land use and enforcement issue I'd like to bring up related to the requirement of condition of approval B-1 of the Conditional Use Permit which requires infiltration testing be conducted in the infiltration basin areas of the Livingston Quarry prior to commencement of operations. The purpose was to verify that infiltration rates meet or exceed the design rate of 60 inches per hour. Because of previous quarry operations standard infiltration testing was not possible. The Stormwater Management Manual for Western Washington recommended the Pilot Infiltration test or PIT method, however this method was "not feasible at this site," due to a lack of available water and "excessive infiltration rates." So the Alternate Single-Ring Falling Head Infiltration Test Procedure was proposed. This test has three steps to determine the rate of infiltration of 60 inches per hours or better, but instead of a 6-inch diameter 15-inch long, rigid pipe imbedded into the base of the pond along with a 4-hour pre-soak period, Maul Foster used a "12-inch PVC pipe because the shot-rock composition prevented adequate embedment of a 6-inch diameter pipe, thus a 12-inch pipe was used instead." The presoak began at 3:32 p.m; the water 3200 gallon water truck emptied in 20 minutes due to the lack of available water." According to Maul Foster, "in essence 6539 inches of water was infiltrated over a span of 21 minutes, which," they claim, equates to a tested rate greater than 18,000 inches per hour." They go on to say that, based on the excessive infiltration observed, coupled with the known site geology, it is reasonable to conclude that the infiltration rate at the pond location far exceeds the required 60 inches per hours." The County at MFA's behest, on Storedahl's behalf, determined that Condition B-1 was now met. In short, the best practices test could not be used, the second best test was not used and instead some Mickey-Mouse made up test was used to verify that proper Stormwater testing was accomplished. Isn't this exactly kind of enforcement that led to a million of dollar suit against the County in the last two years.

The sad reality in Clark county is that Code Enforcement by county authorities does not exist at least for the mining interests. Instead we have a system of mining self-regulation which as any student of history will tell you only works where honorable businesses of integrity exist. Storedahl does not rank as an honorable business of integrity by any stretch of the imagination and our county continues to practice Code

enforcement nullification. You know when the rules and regulations are not applied equally to all and when the enforcement authority refuses to take statutory action against violations, one teaches the members of society there really is no justice. People are then motivated to bypass the failings of this system and take the next steps to redress their grievances.

We hope that the Planning Commission tonight will help citizens take the first step to real Code Enforcement by adopting the newly proposed standards including standards that apply to existing mines in the 2nd highest population density county in Washington state. Please help protect our rural residential neighborhood from the abusive excesses of Companies like J.L. Storedahl. Thank you for your time.

Sent from my iPad=

A handwritten signature in black ink, appearing to be 'Wh H A' with a large loop at the end.

As we speak, the aquifer of the East Fork Lewis River, Clark County's only "sanctuary stream" is in the process of being destroyed by irresponsible gravel mining, while county, state and federal agencies look the other way.

Plus---eroding banks continue to smother the lower river with sediment and silt loads.

Let's stop this insanity now!

Support those who really care about restoring the river and returning our ESA listed salmon and steelhead back to health.

For more information call or email:

InstreamConservation

flyrod ranch@comcast.net

(360) 597-3061

www.instreamconservation.org



*BEN DENNIS
2001 NW 127th ST
VANCOUVER*

*1/20/2014 - PLANNING
COMMISSION
HEARING*