

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