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Clark County Planning Commission
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Re: Surface Mining Overlay

Dear Clark County Planning Commissioners:

I write on behalf of the Friends of Livingston Mountain (“Friends”) to provide further comments on the proposed amendments to Clark County’s mineral lands policies, procedures and surface mining overlay code. The comments are intended to supplement comments you will receive directly from members of the Friends of Livingston Mountain.

These comments follow the order of the November 14, 2013, Staff Recommendations.

A. Draft Policy Changes

1. Proposed New Policies

Friends supports the proposed new policies 3.5.1 through 3.5.6 with the following changes:

3.5.1 Support the conservation of mineral lands for productive economic use by identifying and designating lands that have long-term commercial significance for mineral extraction ~~and~~ that are not already characterized by urban growth, not already developed with inconsistent uses, that can be developed without significant environmental impact, and have suitable access.

3.5.2 Designate mineral resource lands based on the following:

- a. geological, environmental, and economic factors;
- b. surrounding land uses, zoning, and parcel size; and
- c. the suitability of access roads to be used as haul roads connecting the potential mineral lands to market.

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

3.5.4 Ensure that land use activities adjacent to designated mineral resource lands and mining

activities are located and designed to minimize conflicts with each other.

3.5.5 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.

3.5.6 The surface mining overlay shall not be designated within rural residential (R) zones. ~~except to allow the expansion of an existing mining site.~~

2. Strategies for Mineral Resource

Friends supports the two identified “strategies for mineral resource lands” but strongly believes that the following addition should be made to the enforcement strategy:

“Develop a program for coordinated monitoring and enforcement of conditions of approval for active mining sites including the creation of: (1) a dedicated monitoring and enforcement account funded by permit fees for existing and ndw mines; and (2) a County Ombudsman position for assisting local residents to resolve conflicts with mining operations. Until the County’s program for monitoring and enforcing is established, no existing mines should be allowed to expand and new mines should be permitted.”

3. Existing Policies Proposed for Deletion

While Friends does not oppose deletion of several of the existing policies, there are also several that should be left in place including the following:

Existing Policy 3.5.5: “Encourage recycling of concrete, aggregate and other minerals.” We respectfully disagree with Staff that encouraging recycling is not a County activity. The County should be encouraging the recycling of concrete, aggregate and other minerals during the process of reviewing and approving demolition permits as well as for County road and building projects.

Existing Policy 3.5.19 Contains a list of conditions necessary for future designation of new surface mining overlays. Staff recommends deletion of these policies as well as the current Designation Criteria Table and instead adopting designation criteria in County Code. FOLF strongly believes that the existing policy *and* Designation Criteria Table should remain in place as part of the Comprehensive Plan Policies *and* be fully codified in the County Code.

B. Procedures and Criteria to Amend Surface Mining Overlay

1. Amendments Must Remain a Type IV Process

Friends fully concurs with Staff that amendments to the Surface Mining Overlay must remain a Type IV Legislative Action. The process of designation natural resource lands, including mineral resource lands is required to be done on a county-wide basis and not in a piecemeal

manner. GMA itself clearly mandates that the review and amendment process be carried out by the legislative body – the County Council. RCW 36.70A.131 set out that the review and designation of mineral resource lands and mineral resource lands development regulations are to be done in context of the County’s overall Comprehensive Plan Amendment process set out in RCW 36.701.130(1). According to RCW 36.70A.130(1):

(1)(a) Each comprehensive land use plan and development regulation shall be subject to continuing review and evaluation by the county or city that adopted them. Except as otherwise provided, a county or city *shall take legislative action*, to review, and if needed, revise its comprehensive land use plan and development regulations to ensure that plan and regulations comply with the requirements of this chapter....

This requirement for county-wide and legislative approvals is carried forward in GMA’s implementing regulations. For example, WAC 365-190-040(10)(b) provides that when reviewing and amending natural resource lands designations:

“(10)(b) In classifying and designating natural resource lands, counties must approach the effort as a county-wide or regional process. Counties and cities should not review natural resource lands designations solely on a parcel-by-parcel process.”

Similarly, WAC 365-190-070(1) makes abundantly clear that “Counties and cities should not review mineral resource lands designations solely on a parcel by parcel basis.”

Amendments to the surface mining overlay should be restricted to the Type IV process and then conducted county-wide during the county-wide review and update process. The Planning Commission should recommend against modifying the process for reviewing amendments.

2. Proposed CCC 40.25.010(S) Surface Mining Overlay District

Friends supports the codification of designation criteria for Surface Mining Overlay Changes, but the proposed code should include all of the criteria currently set out in the existing Comprehensive Plan Table 3.4 Matrix for Assessing Mineral Resources. This includes the following changes to Staff’s proposal:

40.25.012(S). Additional Criteria for Surface Mining Overlay Changes.

1. Amendments to the plan map to designate additional areas with the Surface Mining Overlay shall demonstrate that the following criteria have been met:
 - a. The quality of the resource meets applicable specifications for the intended uses;
 - b. The quantity of the resource is sufficient to economically justify development based on the size of the deposit, the depth of overburden, the distance to market, the cost of transport and resource availability in the region;

c. The site is accessible and haul road conditions are suitable for safe truck travel or will be improved to meet County standards;

d. At least sixty percent (60%) of the ~~lots area~~ within one-half mile ~~one thousand (1000) feet~~ of the proposed mineral resource land is characterized by parcels of five (5) acres or larger.

e. Existing uses within one-half mile are not presently incompatible with mining and its impacts including noise, dust, blasting, heavy truck traffic;

f. There is an adequate supply of water to serve any proposed mining operation;

g. Mining operations will not significantly impact existing ground or surface water uses;

h. Mining operations will not significantly impact wetlands, riparian areas, or wildlife habitat;

i. Mining operations will not be located on active unstable slopes, or potentially or historically unstable slopes.

3. Proposed CCC 40.250.020 Surface Mining Overlay District

Friends strongly supports Staff's recommendation to retain uses such as Asphalt mixing, Concrete batching, Clay bulking, and Rock crushing, process and stockpiling as conditional uses in the proposed new CCC 40.250.020 Surface Mining Overlay District. FOLF also request the following amendments to Staff's proposal:

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.

2. The provisions of this section 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 approval. [CALM + Turner]

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.

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 from deposits of rock, stone, gravel, sand, earth and minerals.

b. Temporary offices, shops or other accessory buildings and structures used for the management and maintenance of onsite mining and processing equipment may be allowed only where the if predicted mine life is less than 10 years.

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. Asphalt mixing
- b. Concrete batching;
- c. Clay bulking;
- d. Rock crushing, processing and stockpiling.

D. Standards.

1. Site area. When the activity includes both extraction and any one of the 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. [*Retains existing language.*]

2. Setbacks.

a. A minimum 200-foot setback shall be required for all mining uses abutting residential uses. ~~The setback may be reduced by the 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. [*similar to CALM proposal*]

b. Adjacent properties shall maintain a 100-foot setback from designated mineral resource land. The setback may be reduced by the approval authority if 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. Setbacks shall not apply to existing structures. [*similar to CALM proposal*]

3. Access. Roads into the site shall be gated and the site or mining area shall be fenced and posted "No Trespassing". [*similar to Storedahl proposal*]

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. whichever is lower.

5. Hours and days of operation.

a. No operations shall take place on Sundays or on the following legal holidays: New Year's Day, Memorial Day, July 4th, Labor Day, Thanksgiving 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, unless further restricted through SEPA review due to proximity of existing uses and/or site specific conditions. [*Turner - format*]

c. Blasting is restricted to the hours of 9:00 a.m. to 4:00 pm 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;

(3) the contract is for a Public Works and not private contract; and

(4) all equipment shall utilize broadband back-up alarms or reverse-activated strobe lights conforming to Mining Safety and Health Administration (MSHA) requirements.

In an emergency, the responsible official may waive the requirements of this subsection except noise limits.

6. Stormwater and erosion control must meet the standards of Chapter 40.385, and all applicable federal and state requirements.

7. Blasting and mining activities must not adversely affect the quality or quantity of groundwater or groundwater wells or cause damage to offsite structures. *[Turner]*

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 or by electronic communication 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. *[Storedahl and 40.340.010(7)]*

10. Odor, dust, noise, or drainage shall not be permitted to create or become a nuisance to surrounding properties.

11. The director of public works ~~may~~ shall 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). *[CALM]*

12. 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. Wheel washes or other methods may also be used to control these impacts. *[similar to Storedahl]*

13. 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 negatively affecting neighboring wells and aquifers. *[similar to Storedahl]*

E. Approval Process.

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: *[Turner]*

a. General vicinity maps of the proposed site;

b. Property boundaries and accurate contours of existing ground, details of existing

terrain, and details of existing area drainage; *[Turner]*

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; *[Turner]*

f. Location of internal access roads and primary haul routes. *[CALM]*

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. ~~If impacts are anticipated offsite properties.~~

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. *[CALM]*

4. Conditional uses permitted under Section 40.250.020(C)(2) shall be reviewed through a conditional use process pursuant to Section 40.520.030. *[CALM]*

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. *[CALM]*

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 to be used for hauling that are between the site and roads designated in the Arterial Atlas as collectors, arterials or State highways. *[Turner]*

D. Conclusion

Thank you for your time and careful consideration of these comments. Please do not hesitate to contact me if you have any questions.

Very truly yours,

GENDLER & MANN, LLP



David S. Mann