

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

The Honorable County Commissioners  
Clark County Board of Commissioners  
1300 Franklin St., 6<sup>th</sup> 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 10<sup>th</sup> 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 15<sup>th</sup> 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 22<sup>nd</sup> 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 27<sup>th</sup> update and their October 21<sup>st</sup> 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