

Community Development

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Woodland, WA 98674

12/22/2022

Clark County Council
1300 Franklin Street; 6th Floor
Vancouver, WA 98666-9810

RE: Appeal of the SEPA DNS for ORL-2022-00014 – Cardai Hill Surface Mining Overlay

Councilmembers,

The City of Woodland formally appeals the SEPA Determination of Non-Significance (DNS) issued November 28th, 2022, for the above referenced Surface Mining Overlay designation request.

While the City desires for the Clark County Council to deny the Surface Mining Overlay designation because of the significant adverse impacts it will have on the citizens of the City, the appeal is based on the fact that the SEPA DNS decision is in clear error given the evidence in the file and the fact that there is insufficient information in the file to reach the conclusion that there will not be any significant adverse impacts from the decision being made.

Procedural issue - DNS issuance

1. As the first item of appeal, the City asserts the DNS in the record has procedural errors. The DNS available on the City Planning Commission (PC) page is formatted like a DNS with an issuance date and comment period but does not include adequate appeal information.

The DNS document has an appeal section which says: "Appeal process: All appeals shall be in writing, filed with the responsible official and accompanied by an appellate fee, pursuant to CCC 40.570.080.D SEPA and County Decisions."

One has to assume that the responsible official referred to is Oliver Orjiako, the SEPA Responsible Official for Clark County Community Planning. However, CCC 40.570.080 (D)(2)(b)(2), states "For proposals which may only be recommended for approval following a public hearing by the Planning Commission, including but not limited to comprehensive plan amendments and rezones, SEPA appeals shall be filed in writing with Council within fourteen (14) calendar days of issuance of said recommendation, which appeal shall be decided by Council in conjunction with its decision on the underlying recommendation."

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So, in fact, appeals cannot be submitted to the SEPA Responsible Official, by County code, appeals must be filed "in writing with council". Therefore, the DNS has a procedural error because it misdirects the public and commenters, and parties of record where appeals of the DNS can be filed.

In addition, the PC did not issue a recommendation, the motion was defeated so it is going forward with "no recommendation", so the SEPA appeal period may not have started under CCC 40.570.080 (D)(2)(b)(2). (See below for more on this issue.)

Procedural issue – Inadequate notice

2. The City would like to point out that there is no SEPA permit number or identifier in the formal DNS in the record. The DNS and notice also lack SEPA language necessary to meet code.

The record available on the County's Planning Commission (PC) agenda include an item labeled "Supporting Documents" which include a legal notice for the hearing but the notice itself does not include any SEPA case number or identifying information regarding the fact that a SEPA is being concurrently reviewed with the request. The notice only identifies a case number ORL-2022-00014 and does not identify any additional permits or reviews that accompany that case. Nor does it identify what "ORL" stands for.

Under CCC 40.510.040 Type IV Process – Legislative Decisions, subsection (E)(1)(a)(7) states that the notice shall include a SEPA statement. The notice does not include a SEPA case number or any identifying language regarding the SEPA review and the availability of environmental documents for review. Nor does it indicate that the public has the right to review those documents and to comment on the environmental checklist or the DNS.

Both the PC mailer and the posted notice in the "Supporting Document" appear to have similar omission problems.

Procedural issue – Failure to make an affirmative recommendation

3. The City cites CCC 40.510.040(F)(2) as a procedural error related to the processing of case ORL-22-0014 and the SEPA DNS.

Under CCC 40.510.040(F) - Planning Commission Hearings - The PC shall conduct a hearing and at the conclusion of the hearing, shall announce a recommendation of their action. Those actions may include recommendations for "*approval of the proposal, with or without amendment, or that the Planning Commission will recommend neither against nor for approval of the application(s)*".

In this case, the PC made a motion to Recommend Approval of the request. The motion was defeated by a vote of 2-3. It was announced that the failure to pass the motion meant that the proposal would go to the Council with "no recommendation".

Taking the project to the council with "no recommendation" constitutes a recommendation "neither against nor for approval" which is an option outlined in CCC 40.510.040(F)(2)(a).

However, CCC 40.510.040(F)(2)(b) specifically states that "PC recommendations shall be by the affirmative vote of the majority of the quorum present." The failure to pass a motion by a 2-3 vote is not an affirmative vote for a recommendation. To meet that standard, the PC would have to pass a motion

to move the action forward with “no recommendation”. The Record does not support that action because there was no affirmative vote to do so.

Substantive SEPA issue – Piecemeal review

WAC 197-11-060 governs the content of environmental review for a range of proposed activities and impacts to be analyzed in an environmental document. The content of environmental reviews depends on each proposal and the agency’s planning and decision-making processes so that impacts and alternatives can be meaningfully evaluated.

4. The applicant claims this is a non-project SEPA action to get a Comprehensive Plan Overlay but the city challenges that determination as piecemeal review.

WAC 197-11-774 defines “Nonproject” to mean “actions which are different or broader than a single site-specific project, such as plans, policies, and programs...”.

Clark County took non-project actions when they adopted the Surface Mining Overlay (SMO) district. A county wide analysis of mineral lands could also be considered a non-project action, as would the assembly and designation of a county wide map of mineral resources.

However, an application for a SMO on a specific property is by definition a site-specific project and therefore cannot be a non-project action. By extension, a Determination of Non-Significance based on a non-project checklist cannot meet SEPA and WAC 197-11-060.

5. Scoping the proposal

WAC 197-11-060(3) requires that proposals be properly defined and specifically states:

(b) Proposals or parts of proposals that are related to each other closely enough to be, in effect, a single course of action shall be evaluated in the same environmental document. (Phased review is allowed under subsection (5).) Proposals or parts of proposals are closely related, and they shall be discussed in the same environmental document, if they:

- (i) Cannot or will not proceed unless the other proposals (or parts of proposals) are implemented simultaneously with them; or*
- (ii) Are interdependent parts of a larger proposal and depend on the larger proposal as their justification or for their implementation.*

The request is for a Surface Mining Overlay designation. The SMO comp plan request amounts to a zoning district designation governed by CCC 40.250.022 which has two permitted uses (offices and accessory buildings for mines, and short-term stockpiling for projects), and five conditional uses (extraction, asphalt mixing plants, concrete batching plants, clay bulking, and rock crushing).

In this case, the applicant has argued that their request is a non-project action to get the comprehensive plan amendment, and that this action should be compartmentalized from any potential actions that would result from this decision. This piecemeal approach ignores whether a zone change is needed and that surface mining activity will only result if the SMO is approved. And unfortunately, the staff has erred in accepting this premise when it issued a determination of non-significance.

In reality, WAC 197-11-060(3)(b) prohibits this because there is insufficient information in the file to say that there will not be significant impact as a result of the designation. In fact, approval of any surface mining activity is dependent on the SMO approval, as would giving the site an overlay designation on the zoning map. Neither of those actions can occur without the SMO, making the SMO a part of a proposal that should be covered under the same environmental document. The action of designating the site for surface mining activities and the outcome of making a mine possible, are so closely dependent and related that under (b) they need to be evaluated in the same environmental document as a single-action. Per (b)(i), the designation should not proceed unless the other action is evaluated simultaneously with the designation.

As a best-case scenario, the applicant can argue that an Environment Impact Statement could be reviewed without a site-specific development proposal for a mine, but the idea that they can get the site approved for surface mine; an asphalt batch plant; a concrete batch plant; and/or a rock crushing operation without even having to analyze the impacts of that activity, is laughable. (It would be like arguing that subdivisions don't have impacts because dividing the land doesn't result in houses. Building permits result in houses. So, by this logic impacts to streets, utilities, and schools shouldn't be evaluated until the owner of each lot decides if they want to build a house.)

The city argues that surface mines; asphalt batch plants; concrete batch plants; and crushing operations do cause significant adverse impacts and those impacts need to be identified prior to making a decision that such activities are appropriate for any specific site.

Whether those impacts can be avoided, minimized, or mitigated for can only be evaluated after proper review. There is no evidence in the record that the applicant has provided sufficient information to warrant a determination of non-significance.

6. Scoping and Impact Assessment

Within the PC record is a package of comments. Attachment A of this appeal is a letter dated June 24th, 1998 from then Senior Planner Oliver Orjiako, (Page 140 of 159 from the PC comments package) stating that the request for a surface mining designation had triggered a Determination of Significance (DS) and that an Environmental Impact Statement (EIS) was warranted. What this means is that when this site was previously considered for siting a surface mine, staff had determined that there would be significant adverse impacts that warrant additional study. (Or using technical terms, they issued a DS saying an EIS was warranted.)

After twenty years of growth and development, it seems highly unlikely that the impacts of a surface mine at that location would have gone from "significantly adverse" to "non-significant". It is more likely that the scoping of the project has been piecemealed to make each successive (and dependent) step non-significant.

Such scoping does not meet WAC 197-11-060(3)(b) on its face.

Substantive SEPA issue – Failure to consider substantive environmental impacts when issuing a DNS

7. As noted in the City's comments to the PC, there are a number of particular environmental impacts which are likely to result from the designation of this site as a SMO. These impacts require review

under SEPA prior to making any decision on the appropriateness of designating this site for the SMO.

The environmental elements identified as a direct concern to the city and which warrant consideration include the following:

- Earth (erosion, steep slopes, and unstable slopes/landslides)
- Air (air quality impacts from dust given the location and proximity to the city)
- Water (surface water impacts to onsite creeks and the Lewis River/Groundwater and the impacts to wells/water runoff)
- Energy and Natural Resources (what sources of energy will power the operation and their impacts)
- Environmental health (environmental health impacts from noise and dust, plus the potential release for contaminants into the Lewis River upstream of the City's Ranney well which is the sole source of drinking water for the city)
- Land and Shoreline Use (the designation opens the door for specific uses that could affect a significant number of nearby properties, each potential use should be evaluated for the likelihood, scope and intensity of those impacts in order for the impacts of the designation to be fully understood. / It should also be noted that the SEPA checklist indicates that the impacts of mineral resource uses are similar to those of forest resource uses, this is an assumption that warrants more review. / Geological hazards may include Lewis River settlement which will affect the operation of the City's Ranney well.)
- Housing (The site is in direct line-of-sight and there are unique concerns about noise at this site for approximately 60% of the housing units in the city.)
- Aesthetics (The proximity and visibility of the site, as well as the potential impact from noise and dust.)
- Light and Glare (Hours of operation and the operational layout of a mine on this property will have light and glare impacts for the city.)
- Recreation (Impacts to fishing on the Lewis River. Boating and recreation facilities may likely be affected by any mine that results from the designation.)
- Transportation (Impacts for developments on the site will have a measurable impact on city, county, state and interstate transportation infrastructure. Impacts to the CC Street Bridge and the two I-5 bridges over the Lewis River. Truck turning movements.)
- Public Services
- Utilities

Any one of these environmental elements can be adversely affected by the designation because the designation permits a narrow scope of uses that would result in impacts. Designation of the site as fit for a surface mine is a policy level decision about the appropriateness of the site for any and all of the uses allowed under the surface mining overlay.

Therefore, a DS is warranted so that an EIS can inform the SEPA Responsible Official of the impacts from such a designation. This study is warranted before the site receives the designation.

Surface Mining Overlay District

“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.” (CCC 40.250.022)

- 8. There is inadequate information in the record to warrant a DNS or to demonstrate that the site meets the purpose statement for the overlay designation. Without an EIS, the County should not be considering site designation. And even with an EIS, the County should not be approving such a designation on this property because there is no way that the disruption to the properties within the city meets the purpose of the designation. (See #11 below for more information and argument.)

Evidence in the record which conflicts with the claim of non-project status and the issued DNS

- 9. Evidence of the project scope in the Geology Report

The Cardai Hill Soils Geology Report from November of 1999 by SubTerra, Inc. states in Section 1. Introduction “The project site contains a small inactive quarry where high quality quarry rock is exposed in the excavation. Because such rock is in high demand in the Clark County region, a diamond core drilling program was undertaken across the site in late 1999 to delineate the extent of the potential quarry reserves. Based on the success of this drilling program a phased mining plan has been proposed to expand the existing quarry to mine approximately 10 million tons of the rock over a 20-year period.”

The next section states:

2. PURPOSE AND SCOPE OF THIS STUDY

This study was completed as part of a Draft Environmental Impact Statement (EIS) to assess the effect of mining operations at the site. In this study the existing soils, geology, and the potential for mass wasting and erosion (geologic hazards) were investigated prior to quarry development. Where applicable, this report proposes mitigation measures that would limit the impact of the proposed quarry operations on the surrounding vicinity.

Our field study included a geologic reconnaissance of the site and surrounding area, with detailed mapping of soil and rock exposures across the property. A March 1999 aerial photograph with site topography, prepared by Photogrammetric Data Services, Inc. of Eugene, Oregon, served as our base map. The soil data for this study was taken from the regional soil survey of Clark County, published in 1972, and prepared by the Soil Classification Service (SCS) of the United States Department of Agriculture (USDA). The soils identified at the site by the SCS are displayed on Figure 2 and discussed in Section 4 of this report.

This clearly demonstrates that there is an intent to develop the site as a surface mine. Section 2 also mentions that the report was created in response to a DS which triggered an EIS. It is therefore reasonable to assume that both the applicant and Clark County recognized that the designation would have adverse impacts.

It is not reasonable for Clark County to be considering the same (or a similar request) twenty-five years later, without recognizing that the request still warrants study. Especially considering the applicant

makes the request while submitting documents that openly states that significant impacts have been studied.

It also needs to be noted that the SubTerra, Inc. report originally included Figures, Plates, and Appendices while the copy submitted for the non-project review does not include any of the Figures. This is especially important because Section 5 of the report refers to a "Site Plan (Figure 3) and mine cross sections (Figures 4 & 5).

City staff argues that those figures would help answer some of the questions that it has concerns about. However, we also recognize that if the applicant had submitted those figures, such figures would have undermined the applicant's argument that this is a non-project request. The suspicion being that the figures would have either demonstrated that this isn't a non-project request, OR, they would likely have raised the likelihood that Clark County would have issued another DS like it did in 1998.

10. Evidence of the project scope in the Traffic Impact Analysis (TIA) report

The fact that the TIA analyses the impacts from a quarry on the site disproves that the request is a non-project SEPA action (as discussed above). While the TIA may have been submitted to show that the SMO designation will not result in significant traffic impacts, what it really demonstrates is that the project couldn't be piecemealed in a way that allowed the applicant to get a DNS without discussing how non-significant the impacts will be after the designation is given.

On top of that, the TIA appears to be improperly scoped because it assumes a 20-year lifespan wherein approximately 4.7 million tons of total aggregate are removed at a rate of 235,000 tons a year. The future conditions are then modeled with 82 trips per day while we know from Clark County permit records that other quarries in Clark County have trip limits of 300 trips per day. Anecdotal testimony from contractors says that the 300 trips are exhausted by noon on most days so contractors have to compete to get rock in the morning before capacities have been consumed. A new mine will suffer similar capacity pressures and an EIS would force them to consider capacity and lifespan issues in context.

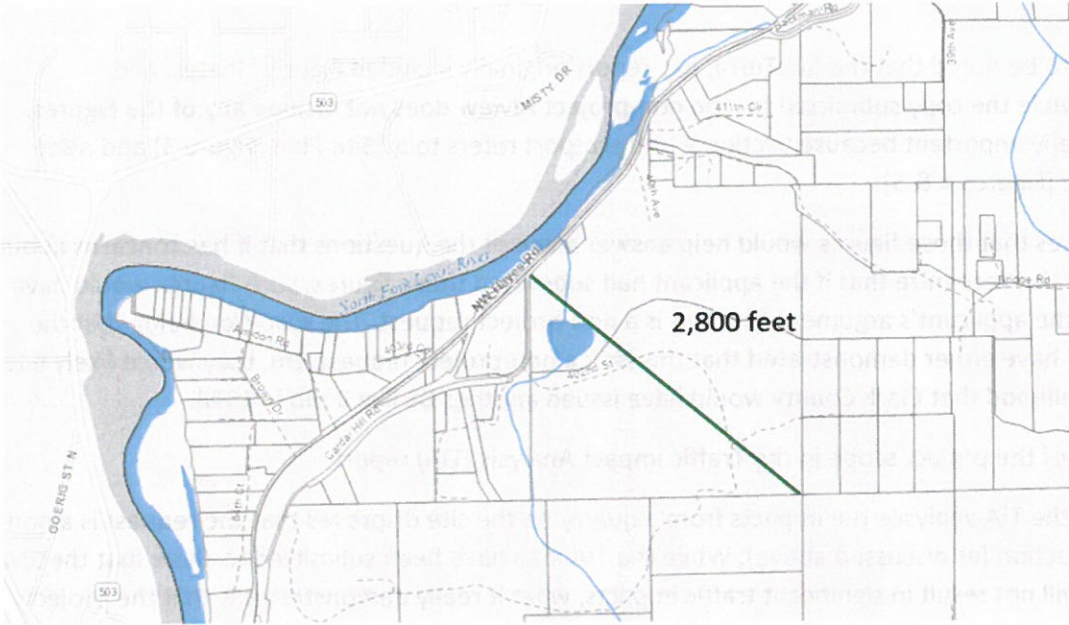
The study also recognizes that the existing service levels are at LOS D and F at intersection #6 (Atlantic at SR-503) while noting that future PM Peak Hour service levels fall to LOS D on the worst movement.

The County's DNS implies that this known service impact does not warrant additional study let alone mitigation. The TIA itself proposes mitigation in the form of \$28,864 in Traffic Impact Fees paid to Clark County. This mitigation is not only inadequate, it does not appear to even mitigate the impacts that these heavily loaded trucks will have on the County roads let along the city streets and Exit 21. (Unless Clark County is going to step up and use taxpayer dollars help fund improvements to Exit 21, State Route-503, and other city road projects. In which case the County can assume the burden of those impacts if they choose to.)

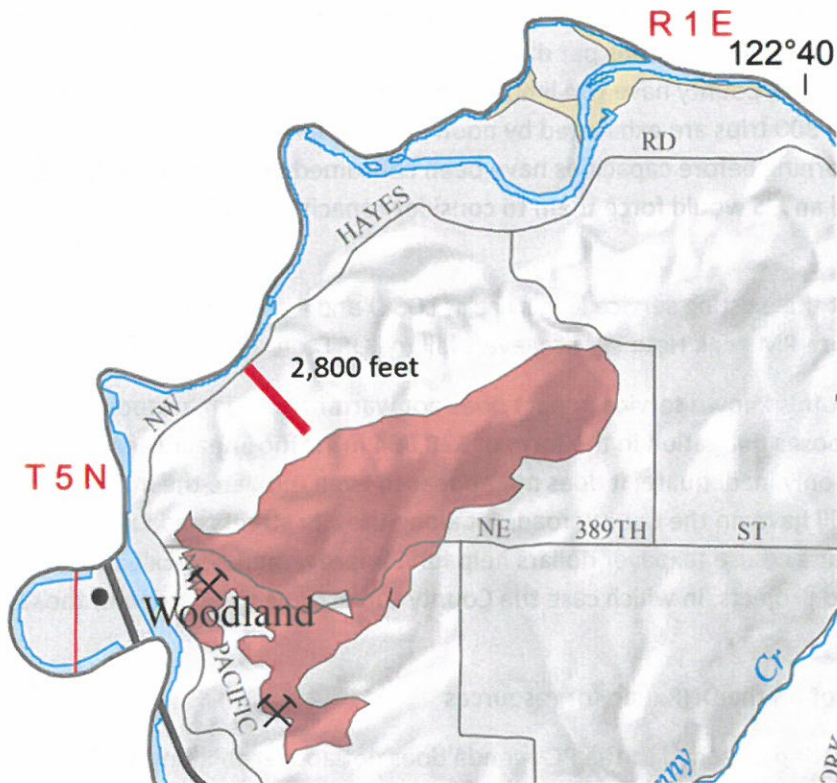
11. Evidence that the site is not on the DNR map for resources

The DNR Aggregate Inventory Map attached to the PC agenda does not appear to identify the subject property yet is quoted as a justifying factor for the designation. This screen shot from the Clark County

GIS shows the southeast corner of the property to be approximately 2,800 feet from Hayes Road.



While the DNR resources map seems to scale out in a way that would indicate the subject property is not included in the mapped resources.



Without an EIS and substantial proof that the site is a source for high quality mineral material, Clark County cannot conclude that the needs for aggregate material from this site is more important than the impacts that would likely occur if this site is given the SMO.

Appeal standing and statement of interest.

As a party of record for case ORL-2022-0014, the City of Woodland has interest in the case and asserts that harm will occur within the city as detailed herein and by the comment letter dated December 8, 2022 and attached as Attachment B.

The city recommends denial of the comp plan amendment request.

There is inadequate evidence that an appropriate SEPA decision has been made and that approval of the overlay designation is warranted. In spite of Clark County staff's recommendation for approval, the assertion that following the procedural steps in CCC 40.560 is what makes the proposal acceptable, is patently wrong.

The City of Woodland strongly recommends that Clark County deny the request for a surface mining overlay, and that it find such designations are not appropriate within proximity to urban centers under any circumstances. Now or in the future.

It also needs to be asked as to whether another SEPA decision can be issued for this request. The County already determined an EIS was warranted and may have already been prepared. With significant impacts identified, the applicant should not be able to ignore that DS and simply be allowed to keep submitting identical applications until such time as the county makes a different decision. In 1998, this request was reviewed and the County issued a DS. Documents for an EIS were prepared. Waiting 24 years then asking permission again does not give the County authority to ignore the previous decision nor the significant adverse impacts identified by that decision.

The city further argues that at a minimum, the SEPA DNS needs to be found in error and that Clark County needs to make a Determination of Significance. For consistency's sake, SEPA reviews are tied to environmental context and consider impacts to the environment, they are not specifically tied to a specific applicant, nor do they expire. So, shelving a proposal and waiting for a loss of institutional memory at the County should not allow the applicant to dilute the analysis of those impacts with a piecemeal review. Based upon the site and context of impacts, an environmental impact statement should be prepared before any further action is taken on the request.

If you have any questions, please contact me at (360) 225-7299 or by email at goddardt@ci.woodland.wa.us.

Respectfully,



Travis Goddard
Community Development Director

CC: Clark County Community Planning
Clark County Community Development
File

Attachments

- A. 1998 Clark County DNS
- B. City of Woodland comment letter dated 12/8/2022



DEPARTMENT OF
COMMUNITY DEVELOPMENT

June 24, 1998

Roger B. and Michele R. Heckroth
4204 NW 402nd St.
Woodland, WA 98674

Re: AR 98-006/REZ 98-006, Integral 786 (Carder Hill)

Dear Mr. and Mrs. Heckroth:

Thank you for your letters, dated February 17 and June 5, 1998, regarding the above application to change the Comprehensive Plan designation and zoning map from Agri-Forest/Forest Tier II to apply the Surface Mining Combining District (-S). After review of the site and the information provided by the applicant, the County issued a Determination of Significance (DS) relating to environmental concerns. Pursuant to Washington State SEPA (State Environmental Policy Act) rules, no further action will be taken on this application until a Draft Environmental Impact Statement (DEIS) is issued. It is likely that the proposal will not be considered as part of this year's Annual Review process. Should the applicant decide to proceed with the requested change, it will be considered during the 1999 Annual Review cycle.

Your letter and the issues you raised will be included in the scoping notice and the packet for consideration in preparing the DEIS. In the meantime, your name will be included in the list of party of record, and we will keep you informed of any future action on this proposal.

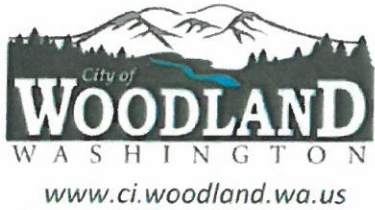
Again, thank you for your interest in the Clark County planning process.

Sincerely,

Oliver Orjiako
Senior Planner

cc: Troy Rayburn
file

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Clark County Community Planning
c/o Oliver Orjiako
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Vancouver, WA 98666-9810

RE: ORL-2022-00014 – Cardai Hill Surface Mining Overlay

Mr. Orjiako,

The city strongly recommends that Clark County deny the request for a Surface Mining Overlay (SMO), and that it find such designations are not appropriate within proximity to urban centers under any circumstances. Now or in the future. This recommendation is based on the review of the above referenced application materials and has the following concerns to be considered as part of this review:

Impacts to the City of Woodland

This site is within direct line of site from approximately 1,400 residences in the City of Woodland. That's approximately 60% of the City's housing units that will be affected by this decision. With roughly 2.5 residents per household, this decision will have a direct impact on approximately 2,100 people.

It also needs to be noted that the site is approximately 1,500 feet from the city limits. Having a surface mine (or any of the other primary uses associated with the SMO) within a quarter mile, and with direct line of site, will have significant adverse impacts on the residents of the city.

Is there no other property within Clark County that already has the overlay designation which would have less direct impact than the property that the County is now considering for the overlay?

It is recognized that the staff recommendation is narrowly looking at the comp plan amendment criteria in CCC 50.560 as a "met" or "not-met" question but it totally ignores the environmental implications of the decision, including:

Visual – The site is clearly visible from a large portion of the City of Woodland. This means that there will be impacts to the city which have not been considered.

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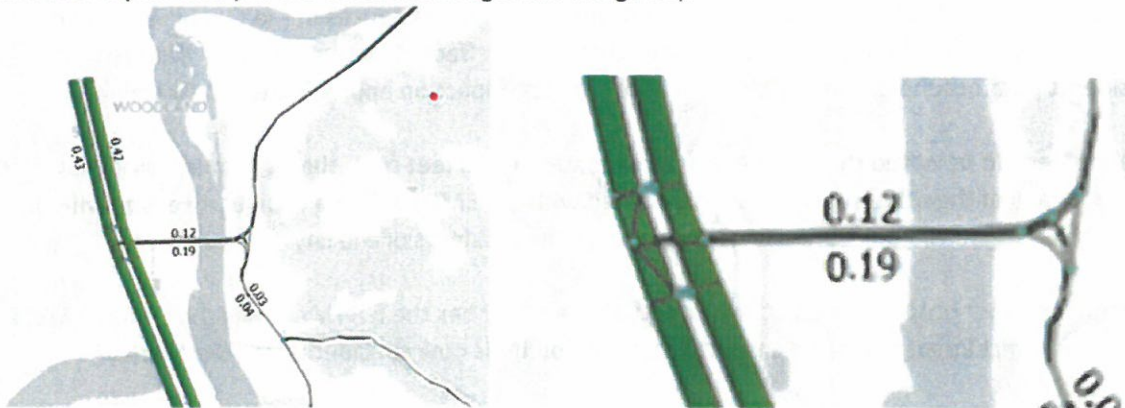
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Noise – The site is within the valley of the Lewis River and approximately 1,500 feet from the city. Designating the site for development of a surface mine without a full understanding of how the potential noise from such an operation will affect the valley, is a monumental mistake. A mine will cause noise, that noise will cross the valley unimpeded and will bounce back from the opposing valley wall, approximately 3,500 feet (or about .73 miles) away. The effects of that noise are not discussed. The impact of noise should be considered as part of an informed discussion when considering the impacts of an overlay.

Noise is known to have effects on health, property values, standard of living, and quality of life. There is insufficient evidence that the proposal will not have significant adverse noise impacts.

Traffic – The designation will have impacts that are not typical for rural development. Specifically, site size, weight and number of trucks on the transportation system. The impacts from trucks carrying surface mining products will definitely impact city transportation infrastructure. The applicant's submittal ignores those impacts and makes assumptions that allow them to minimize the impacts that could occur from the SMO designation.

Truck Turning Movements - The staff report's analysis of traffic impacts are completely inadequate because the TIA appears to include only a partial analysis of the potential impacts. The staff report from the County Engineer does not appear to expect or discuss impacts beyond the impacts to county road system. For example, impacts to the city seem to assume a straight-line connection to Interstate-5 Exit 21 from Hayes Road (via the CC Street bridge AKA Bridge 80).



In reality, the connection from Hayes Road requires a sweeping right hand turn to a traffic light on State Route 503, followed by a left hand turn to a second traffic light at the Northbound off ramp of Exit 21 (approximately 40-feet away), followed by either right hand turn and a 1-mile run on Atlantic Avenue to the Exit 21 Northbound on-ramp, OR, the need go through the 2nd light, under Interstate-5, and to take a left had turn at a third traffic light, onto the Southbound on-ramp for Interstate-5.

The obvious argument being that if the county used its discretion to approve a comp plan surface mining designation, it won't be possible for a Hearing Examiner to find that approval of a CUP is inappropriate. After all, the Examiner cannot substitute his discretion for that of the Clark County Board of Commissioners who approved the overlay by finding the site appropriate for a surface mining overlay.

Overlay designation without project specific review as a non-project

First, City staff recognizes that this is a non-project review for a comprehensive plan amendment, but questions whether an approval decision can be made without considering the impacts that such a decision will have on the types of development that can occur and by extension the impacts of the development that will occur.

The applicant is not asking for a mixed-use overlay, a transit-oriented development overlay, or some other type of urban overlay that will result in an undefinable range of development impacts because the exact character of the development can't be predicted.

This is a request for a surface mining overlay so it will result in a surface mine. There is no way an argument can be made that the impacts from a surface mine can't, or shouldn't be considered when the decision is made to place a Surface Mining Overlay.

The SMO will not result in unpredictable or unforeseeable types of development. The title of the overlay is predictive of the exact type of development that will occur as a result of this decision. Designation of the site for a mining overlay is a de facto approval for a surface mining operation. The only questions left to answer are when, where, how, and how much.

The applicant's SEPA checklist tries to be coyly argue "The proposed Surface Mining Overlay (SMO) to site is a singular action that demonstrates independent utility." Yet if approved, the applicant "could seek additional authorization in the future to establish and operate a rock quarry". (Page 3 of the DNS, Section A Question 7)

As if there is a question that the "rock quarry" will result from the completely independent utility of seeking approval of this overlay? It's a laughable attempt at piecemeal review. And the Clark County SEPA decision appears to find that a credible argument and that no mitigation is warranted.

The entire exercise is a piecemeal request to get permission for a quarry, as if there is some question as to what the site would be used as if it gets a surface mining designation. If that were true and they were considering other options, they would be asking to go from Forest Resource to one of the Rural designations with an associated zone change request. But they aren't. They are asking for a limited and focused overlay designation with an identified outcome, not a more flexible zoning designation that gives them more development choices. That wouldn't happen if there was a question of what the planned use for the site is.

This suspicion is bolstered by the fact that the applicant produced a Transportation Impact Analysis for a mine, and is basing their request on reports produced nearly 25 years ago on the hydrology and Geology & Geologic Hazards of Cardai Hill. One can assume that their focus on the "aggregate shortage" and

their desire to address that shortage, opens the door for the discussion of project specific impacts that will result from the SMO decision. Otherwise, they wouldn't have a 20+ year old document to justify the request.

Amendment of the Comp Plan as a discretionary decision

The prevalent answer in the SEPA checklist calls attention to this request as a "non-project action". While this is technically true, it fails to recognize that the checklist fails to provide the basic information necessary to justify the designation by putting off impact assessment of this discretionary decision, until such time as the County does not have the discretion to determine the appropriateness of putting a surface mine in that location.

If the information from 1999 was compelling and the location appropriate, Clark County would have applied the designation when the SMO was created, or during any number of the annual reviews from comp plan amendments that have occurred since.

The SEPA, and the staff's analysis of It also ignores that the appropriateness of the decision in light of the underlying zoning that results from the comp plan amendment. (More below.)

Which raises the question, if this site is such a valuable resource why wasn't it already in the SMO? According to the GIS, this property was purchased May 4th, 2000 and is owned by Cardai Hill Rock Quarry LLC. So, in spite of the coy allegation that they might want to do a quarry, having sat on the document and the property for more than 20 years, why now? After all, Cowlitz County just amended their mining codes to allow mines on virtually any property in the county. So, there are many more places where these activities could occur without such direct effects to the city.

The City argues that there is insufficient evidence in the record to justify approval of the designation. Additional analysis of the impact of this designation is needed in order to show the benefits of the SMO outweigh the significant adverse impacts which will occur from the surface mine which will occur.

Why?

Location matters when making decision on overlay designations

As stated above, the proposed location is not just a random remote rural property.

Nor is there an argument that the quality of the rock is so amazingly good that it can only be found at sites which will cause significant adverse impacts to urban areas. If that were the case, the applicant could argue that there is a public good that warrants the negative impacts that a mine in this location will cause to the residents of the City of Woodland. In other words, that the value of the rock outweighs the value of the property, lives, and health of those Woodland residents who will be impacted.

The county's experience with Livingston Mountain Quarry, Yacolt Mountain Quarry, and the Daybreak Mine, have already demonstrated how this type of activity can affect nearby residents for decades.

Designating a SMO within a quarter-mile of an urban population center like the City of Woodland is negligent unless you have a full understanding of the impacts of such a designation. Postponement of

the discussion about impacts may not be a defensible act in the event a Hearing Examiner may try to exercise the discretionary power of a CUP.

Surface Mining Overlay District (CCC 40.250.022)

The SMO zoning itself has standards that are applicable when making the decision about a comprehensive plan amendment. In fact, the only time a purpose statement can be used is when making decisions about whether the zoning designation should be applied. Otherwise, “purpose statements” have no regulatory authority. They are simply a policy statement.

The Clark County staff’s report reviews for consistency with CCC 40.560 (Plan and Code Amendments) but it completely fails to consider CCC 40.250.022 which is the zoning standard for the Surface Mining Overlay District.

For example, the request clearly fails the purpose statement in CCC 40.250.022 which states that the county desires to ensure the continued availability of mineral products “without disrupting adjacent land uses, while safeguarding life, property, and the public welfare.”

Nothing in the application demonstrates that the SMO can be implemented without violating that purpose statement. And, legal precedence has shown that you cannot regulate development projects using a purpose statement.

So, if you do not use the purpose statement to make your SMO decision, the argument that a surface mine would disrupt adjacent land uses may forever be moot.

Changing the comp plan designation without analyzing the appropriateness of the zoning is a bad policy decision. The city argues that the only option for the County is to deny this request as inappropriate given that it will disrupt adjacent land uses and be injurious to the public welfare. The County also needs to make a clear policy statement that locating new surface mining operations adjacent to urban centers.

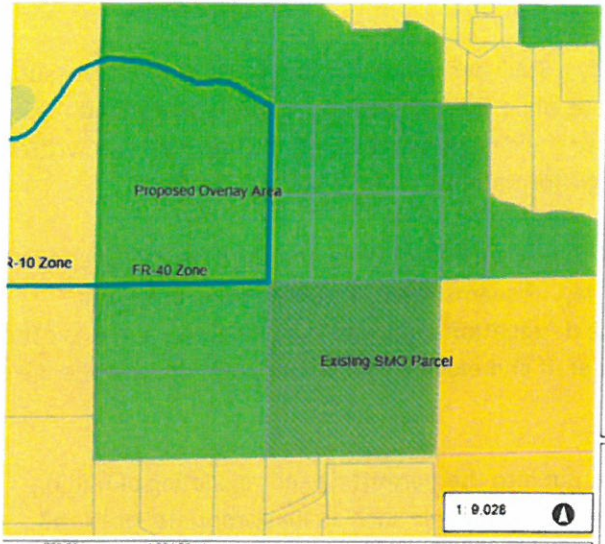
Concurrency and GMA consistency

In order for a request to be found compliant with the Growth Management Act (GMA), Clark County would need to show that the decision will be consistent with GMA. There is insufficient evidence in the record to show that the expansion of the SMO onto this site can meet concurrency standards. The presence of a county road may not be adequate to meet that standard. The assumption that the County can attach conditions of approval at the time of site development may also not justify a finding of concurrency.

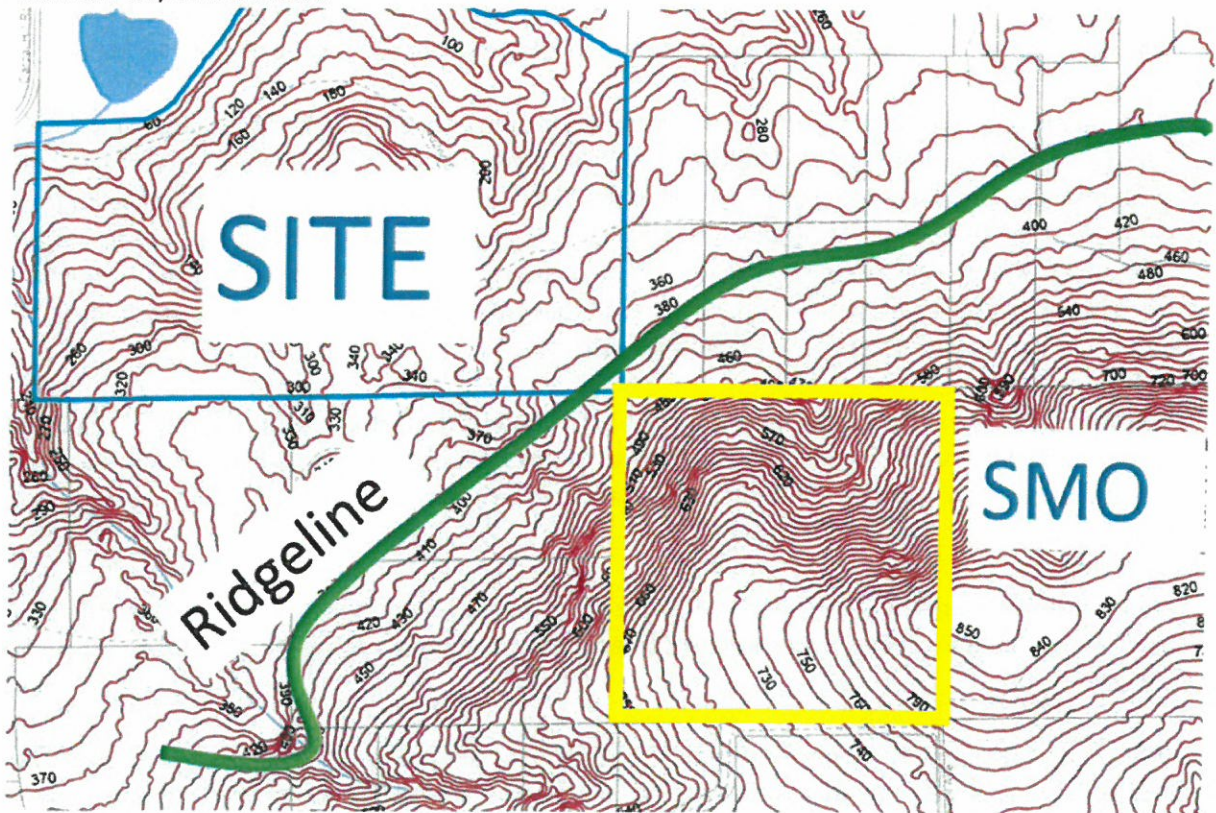
There are also other GMA goals that are not demonstrated to be consistent. The staff report seems limited to analysis of compliance with the Clark County Code for comp plan amendments. (CCC 40.560) Compliance with the local amendment process is not the same as compliance with state and local regulations. City staff does not believe that the SMO request can be completed without a concurrent review of the full development proposal, in order for the County to make an informed decision of this magnitude.

Existing SMO on adjacent property

A quick review of the GIS packet shows that there is already a parcel with the SMO immediately adjacent to the property.



Even a cursory review of the Clark County GIS system shows that the property with the SMO designation that is not in use as a surface mine. It also shows that the existing SMO is on the far side of the ridgeline from the City of Woodland.



This circumstance means that a surface mine on that property would direct its noise up and away from the City of Woodland. This factor probably contributed to the fact that one property was found appropriate for the mining overlay while the other was not.

I suspect that the 1999 report was meant to justify a SMO designation at that time, but that the subject property was found to be completely inappropriate while the neighboring property was found to be appropriate. Otherwise, they both would have had the designation when the comp plan was written or updated. (Since they are both on the same geologic formation.)

It seems unlikely that the property owner, which is clearly a mining company...had the 1999 report in their possession but chose not to ask for the overlay. It seems more likely that they requested consideration decades ago but were not given the designation after rigorous review for reasons other than the quality of the rock. Waiting 20 years for staff and elected official turnover, doesn't change the fact that the location is bad for a mining pit.

Do not fall for this. For all the effort that has been put into the permitting and regulating of mining activity in the County, why would the County allow a new mine in such an inappropriate location?

Why create a Code Enforcement nightmare?

Clark County has a long and proud history of reviewing and permitting the operation of surface mines in the county. Permits for mining operations are always intense reviews that consider the impacts to both the natural and built environments in which they are located. But the intensity and thoroughness of that review does not guarantee that the operation of a mine can or will be free of negative impacts.

Clark County continues to struggle with providing the resources needed for the development industry. Surface mining operations are a prime example of that challenge. The County struggles with regulating several mining operations that currently exist within the county, including the Daybreak Mine on the East Fork of the Lewis River, Livingston Mountain Quarry, and Yacolt Mountain Quarry. In each of those cases, the operator was able to show that they could open and operate their mine in a manner that avoided, minimized, or mitigated for the impacts of their operation. And for the most part, those operations have been successful. Sometimes for decades.

However, history has shown that there are neighbors who are affected by mining operations. Permitting is not a perfect process and conditions of approval on any project can never be perfect. That means that even legal permits and permitted activities can have code enforcement issues of some type and to some degree.

From personal experience, I can say that all three of the mines listed above have had, and continue to have, code enforcement challenges when it comes to stormwater, noise, vibration, and especially truck traffic.

History has shown that decades of heavy truck traffic can have impacts on neighbors and roads. And the fact that surface mining operations can and will have impacts that span decades, the best and most

effective means for avoiding, minimizing and mitigating for those impacts is for the County to make good and reasoned siting decisions.

In the case of Yacolt Mountain, and Livingston Mountain, even with remote operations the county continues to deal with active code enforcement complaints. And those mines have been operating for approximately 20 years already. So, there is no denying that permitted uses create an ongoing workload for the County.

So, if you have mining operations that are located miles from the nearest urban center, and a small number of rural property owners get motivated to (and sometimes can) make life a living hell for the operator, county staff, and the County's elected officials, why would you even consider starting a new operation at the location being considered?

If you have 50 residents complaining about a rural mine that is 2 miles from their house, why would you ever consider opening a new mine that is a quarter mile from 2,100 residents?

Logic tells you your problem will be exponential if you don't make good discretionary decisions when the opportunity presents itself.

Even if you used a wild estimate that only 1% of those city residents will file a complaint on any given day (ranging from noise; dust; the impact on their view; or from the trucks on their roads; to the damage the trucks are causing to the city's streets, etc.) that means you could expect 21 complaints a day, 105 a week, 630 a month, and 7,665 a year. Over the 30-year life of the mine you are asking for 229,950 calls, complaints, or inquiries. And that only assumes that 1% make it their mission to punish the county. What if they get organized and call each commissioner individually? Plus, the County Administrator; the Code Enforcement office; Public Works staff; and the Sherriff? A motivated 1% group of citizens could easily generate 100 phone calls or complaints a day or a half-million calls a year.

(And trust me, the citizens of Woodland and Cowlitz County can do it. The city has gone from about 75 public records requests a year to over 350 public record requests in 2022, and the city has produced an estimated 50,000 public documents in response to those requests over the last couple years. It's so much workload that the city considered having to hire a new full-time employee to handle public records requests but instead opted to close its doors to the public on Fridays so that staff can compartmentalize their workload to work without disruption at least one day a week. So, I can tell you that there are citizens who think nothing of using the tools they have to make an effective point. Even if there is no constructive end to the effort. So doing it with a purpose means it will likely happen. A lot.)

Why would the county even consider opening itself up to that?

It might be mercenary but the question has to be asked...why would you anger 2,100 people when you could find another site where that number would be 50 people or less in some remote rural corner of the County? Especially when there are SMO properties, like the one right next door, that is already zoned for the exact same use? Why create a monumental point of conflict where none currently exists?

The city recommends denial of the comp plan amendment request.

There appears to be inadequate evidence that an appropriate SEPA decision has been made and that approval of the overlay designation is warranted. In spite of staff's recommendation of approval, the assertion that following the procedural steps in CCC 40.560 is what makes the proposal acceptable, is patently wrong.

The City of Woodland strongly recommends that Clark County deny the request for a surface mining overlay, and that it find such designations are not appropriate within proximity to urban centers under any circumstances. Now or in the future.

If you have any questions, please contact me at (360) 225-7299 or by email at goddardt@ci.woodland.wa.us.

Respectfully,



Travis Goddard
Community Development Director