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Subject: Suggestions Regarding Draft 3 of the Mining Ordinance

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Good afternoon,

Following are suggestions that I think are worth considering in regard to the current draft of the mining ordinance.

- Article VI, Section 1, Paragraphs A(4) and (5): These paragraphs and corresponding paragraphs in Section 2 establish the date of adoption of the new mining ordinance as the threshold for legally non-conforming pre-existing (that is "grandfathered") operations. To avoid completely foreseeable abuses, it would be vastly more effective and appropriate to specify the date of applicability of the mining moratorium ordinance, February 22nd, 2023. Nobody who hasn't used the pendency of the moratorium ordinance to attempt to establish a new mining operation or to resurrect such an operation that has been previously abandoned could object to such a change.
- Article VI, Section 1, Paragraph A(4): While I'll concede that submission of an annual report to some other regulatory agency might be one of many possible types of documentation of continuous, actual and substantial use of a pre-existing mining operation, I don't see why we should declare that any such report should be presumptively *sufficient*. And it's COMPLETELY insufficient to suggest that we might accept nothing more than a "signed statement identifying the last date and describing the frequency of use under which they have operated, even if intermittent to satisfy this requirement." To make matters worse, the current draft declares immediately after subparagraph (7) that "No hearing before the Board is required as there are no relevant or factual issues for the Board to determine." If these are to be our standards, we might as well not even pretend to be writing an ordinance that will regulate new mining operations because the threshold will be so trivially small for anyone to claim to be a pre-existing one.

Returning to the question of the adequacy of an annual report: by declaring that we are prepared to accept *any* annual report to *any* permitting or governmental authority, we're assuming that *all* such annual reports would serve as an adequate proxy for us to conclude that a purported operation was *actual*, *substantial*, and *not previously*

*discontinued*. Before adopting such a sweeping criterion, it should be incumbent upon us to satisfy ourselves that every such report is sufficient to these purposes. Examples:

- As written, we cannot be confident that any such report would allow us to distinguish the "sale" of a bucket of winter sand from bona fide weekly sales of truck loads of gravel. Rather than declaring that such a report is sufficient, we would do better to specify what constitutes a substantial pre-existing mining operation. (Suggestion: substantial business and tax records could be more effectively used.)
- As written, we cannot be confident that any such report would allow us to distinguish a bona fide operation that has been in continuous existence for years or generations from a new operation started only a short time before the adoption of the new mining ordinance, in an effort to become a "grandfathered" operation. By drafting language that states that such a report will be presumptively accepted as evidence of non-abandonment, we're inviting people to submit such reports for operations that don't actually exist, or that came into existence subsequent to the moratorium ordinance's date of applicability, or that may have been abandoned for untold generations past. We would do better to specify the criteria that need to be satisfied to establish that a particular site has been in continuous operation.

Please, let's revise this to something that's simpler and that can be meaningfully enforced. We can do this by developing specific standards as to what will be accepted as evidence that a registrant had an actual and substantial mining operation that has been in continuous operation since before the date of applicability of the mining moratorium.

- Article IX, Section 1, Paragraph D: While it's very good to set a 5-year expiration on permits for new or expanded operations, it would make even more sense to require existing operations to come into compliance with the ordinance by requiring such operations to obtain a new permit within five years of the ordinance's adoption. Doing so would effectively give a grace period for such operations to come into compliance with the new ordinance. That's not an onerous requirement, but rather a requirement that strikes a balance between the operating needs of bona fide operations that were in existence prior to the applicable date for the moratorium and the interests of the community in the protection of its health, the environment, and citizens' peaceful enjoyment of their homes.

- Definition of "Expansion." Please simplify the definition of the word "expansion." There should not be a separate definition for "bedrock quarrying" than for "other mining operations." As currently drafted, the definition allows a series of successive 25% enlargements of mining operations without triggering a requirement for a new permit, creating a needless opportunity for abuse. Please keep it simple by eliminating the distinction. Expansion means expansion, and any expansion should be subject to permit review.