

Decision:

A Conditional Use Permit shall be required for further mining activities on parcel 821291002.

Appeal:

As outlined in JCC 18.40.390, the applicant requesting a code interpretation may appeal the decision to the Hearing Examiner within fourteen (14) calendar days of the decision using the process for appeals of Type II permit decisions as set forth in JCC 18.40.330.



JEFFERSON COUNTY

DEPARTMENT OF COMMUNITY DEVELOPMENT

621 Sheridan Street

Port Townsend, WA 98368

Al Scalf, Director

Unified Development Code Interpretation

This interpretation is made according to Article VI of Chapter 18.40 of the Unified Development Code, Jefferson County Code (JCC 18.40.350). An interpretation of the provision of the UDC is intended to clarify conflicting or ambiguous wording, interpret proper classification of a use, or interpret scope or intent. The "Factors for Consideration" listed in JCC 18.40.360(4) were considered in making this UDC interpretation, including applicable policies of the Jefferson County Comprehensive Plan.

Date: June 11, 2008
Case: ZON08-00062/MLA08-00239

Applicant: Gordon Derr, Attorneys at Law
Attn: Keith Moxon
2025 First Ave Suite 500
Seattle, WA 98121

Property Owner: Pope Resources
C/O Olympic Resource Management
19245 10th Ave NE
Poulsbo, WA 98370

Subject: Iron Mountain Quarry (IMQ) seeks clarification and interpretation of Jefferson County Code (JCC) 18.20.240(2)(g)(i).

Request: IMQ requests that the County confirm that JCC 18.20.240(2)(g)(i) which requires a conditional use permit "if increased off-site impacts (noise, vibration, dust, traffic) would result from expansion, intensification, or modification" of "existing gravel pits and surface mining operations" does not apply where the applicant has existing non-conforming mineral use rights for the proposed mineral resource uses.

Relevant Law, Code, Plans, Ordinances or Policies:

This interpretation is made according to Article VI, Chapter 18.40 JCC. An interpretation of the provision of the Unified Development Code is intended to clarify conflicting or ambiguous wording, interpret proper classifications of a use, or interpret scope or intent. The "Factors for Consideration" listed in JCC 18.40.360(4) (identified below) were considered in making this UDC interpretation, including applicable goals and policies of the Jefferson County Comprehensive Plan.

- (a) The applicable provisions of this code, including its purpose and context;
- (b) The implications of the interpretation for development within the county as a whole, including the precedent the interpretation will set for other applicants; and
- (c) Consistency with the Jefferson County Comprehensive Plan and other relevant ordinances and policies.

JCC 18.20.240 Mineral extraction, mining, quarrying and reclamation.

(2)

The following standards apply to all surface mining and reclamation activities:

- (g) states: "The alteration, intensification, and expansion of existing gravel pits and surface mining operations is allowed subject to reasonable performance standards to ensure that alteration, intensification, and expansion of such uses have minimal adverse impacts on surrounding areas and uses; and provided, that:"
- (i) states: "If increased off-site impacts (noise, vibration, dust, traffic) would result from expansion, intensification, or modification, a conditional use permit shall be required."

Hearing Examiner Decision:

On April 9, 2008 the Jefferson County Hearing Examiner ordered a decision on appeal of a Department of Community (DCD) Code Interpretation (MLA07-00638) in which IMQ sought relief from the JCC 18.20.240(1)(a) 10 acre at a time mining restriction without a Mineral Resource Land (MRL) overlay by demonstrating they had nonconforming use rights under the Diminishing Asset Doctrine. The Hearing Examiner concluded the following relevant to the subject Code Interpretation:

- 3. The appellant has a conforming use under the applicable CF zone classification to mine the entire 142 acre leased parcel subject to disturbing no more than ten gross acres at any one time. The appellant also has nonconforming use rights to mine the entire parcel which are not subject to the ten acre limitation. *However, the appellant must meet requirements of the JCC and the DNR pursuant to Rhod-A-Zalea, supra. (emphasis added)*
- 4. Pope has not abandoned its nonconforming use rights by development of Port Ludlow. *However, the location of Port Ludlow and its amenities must be*

considered in both SEPA review and review under the JCC mining requirements.
(emphasis added)

Rhod-A-Zalea:

Although the Hearing Examiner Decision allows mining beyond the ten acre limitation without an MRL, he refers to the Supreme Court of Washington case Rhod-A-Zalea as a basis for the applicant to meet County Code requirements exclusive of JCC 18.20.240(1)(b). Relevant cites from Rhod-A-Zalea as they relate to the Hearing Examiners requirements and the subject Code Interpretation are as follows:

Referring to a supporting case, Dock Watch Hollow Quarry, Inc v. Township of Warren, the Court states "The court found that although the quarry's status as a nonconforming use 'may protect it from later zoning restrictions, its status as such does not render it immune from reasonable regulations pursuant the police power in the interest of the public health, welfare and safety,' including 'those designed for the preservation of the environment and protection of ecological values.'" Dock Watch, 361 A.2d at 20.

"the welfare of the community should not be sacrificed for the purpose of permitting Dock Watch the most profitable use of that land." Id. at 25.

"Thus, courts agree that nonconforming uses, although protected from zoning ordinances which immediately terminate their use, are subject to later enacted regulations enacted for the health, safety and welfare of the community."

"A successful defense to the imposition of one regulation does not erect a constitutional barrier to all other regulation. The first suit was brought to enforce a zoning ordinance, while the present one is to enforce a safety ordinance." Goldblatt, 369 U.S. at 597, 82 S.Ct. 987

"In conclusion, we find that Rhod-A-Zalea's nonconforming use is subject to the grading permit requirement contained in SCC 17.04.280. Nonconforming uses have only a vested right not to have the use immediately terminated in the face of a zoning ordinance which prohibits the use. The case law overwhelmingly holds that nonconforming uses are subject to later enacted reasonable police power regulations."

Comprehensive Plan Goal & Policy:

NRG 7.0 Provide for mitigation of potential adverse impacts associated with mining extraction and processing operations.

Policies:

NRP 7.1 Require environmental review on all mineral lands designation requests and/or conditional use permits

NRP 7.2 Provide for the following factors in mineral resources land use decisions:

- a. The range of environmental impacts, including short-term and long-term effects arising over the lifetime of the proposal;
- b. The ability of the site to confine or mitigate all operational impacts;
- c. The compatibility of operations with adjacent land uses when mitigating measures are applied;
- d. The capacity of transportation facilities to handle safely the transport of products from the site; and,
- e. The adequacy of plans for reclamation of the site for appropriate future use.

NRP 7.3 Develop standards and guidelines to identify and address the impact of mining operations on adjoining properties. Such conditioning should not have the intent of rendering mining operations economically unfeasible.

NRP 7.4 Evaluate small mining operations to determine when the cumulative impact of small operations becomes a significant adverse impact upon the land or upon adjacent lands.

Findings of Fact:

The Hearing Examiner Decision issued April 10, 2008 requires IMQ comply with JCC mining requirements exclusive of JCC 18.20.240(1)(b).

JCC 18.20.240 Mineral extraction, mining, quarrying and reclamation, are the JCC mining requirements referred to in the Hearing Examiner's Decision.

Rhod-A-Zalea states, "Nonconforming uses have only a vested right not to have the use immediately terminated in the face of a zoning ordinance which prohibits the use."

JCC 18.20.240 Mineral extraction, mining, quarrying and reclamation, are not zoning restrictions, regulations or ordinances that prohibit the use, but are the Performance Standards (regulations) enacted for the health, safety and welfare of the community.

JCC 18.20.240(2)(g)(i) states, "The alteration, intensification, and expansion of existing gravel pits and surface mining operations is allowed subject to reasonable performance standards to ensure that alteration, intensification, and expansion of such uses have *minimal adverse impacts on surrounding areas and uses; and provided, that:*

- (i) If increased off-site impacts (noise, vibration, dust, traffic) would result from expansion, intensification, or modification, *a conditional use permit shall be required.*" (emphasis added)

The subject parcel 821291002 which IMQ proposes to mine a portion of abuts the Single Family Residential zone of the Port Ludlow Master Planned Resort (MPR) boundary. The "leased area" indentified by IMQ for mineral extraction activities are within 1/2 a mile of the MPR boundary.

The Hearing Examiner Decision specifically identifies Port Ludlow and its amenities as important considerations when reviewing any mining under JCC mining requirements.

The Hearing Examiner Decision does not specifically state that a Conditional Use Permit shall not be required.

Conclusion:

The Hearing Examiner's Decision of April 10, 2008 allows IMQ to mine the entire 142 acre leased area without a ten acre limitation as long as IMQ meets the JCC mining requirements. JCC 18.20.240(2)(g)(i), which is part of the JCC mining requirements, requires a Conditional Use permit if increased off-site impacts would result from an intensification or expansion of mining activities. Due to the proposed mining activities within close proximity to the Port Ludlow MPR, and the potential for IMQ to mine 142 acres at one time, Jefferson County believes that the proposed mining by IMQ will result in increased impacts to Port Ludlow.

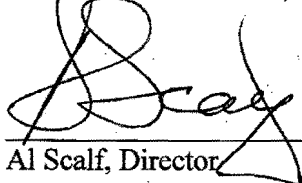
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Dated this 11th of June, 2008.



Al Scalf, Director