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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF JEFFERSON

PORT LUDLOW VILLAGE COUNCIL, a)
Washington Nonprofit Corporation; PORT)
LUDLOW ASSOCIATES, LLC, a Washington)
Limited Liability Company; and SOUTH BAY)
COMMUNITY ASSOCIATION, a Washington)
Nonprofit Corporation,)

Petitioners,)

v.)

JEFFERSON COUNTY, a Washington)
Municipal Corporation; acting through is)
Department of Community Development and)
Office of the Hearing Examiner; POPE)
RESOURCES, a Delaware Limited Partnership;)
and iron MOUNTAIN QUARRY, LLC, a)
Washington Limited Liability Company;)

Respondents.)

No. 08-2-00142-2

RESPONDENT IRON
MOUNTAIN QUARRY, LLC'S
MOTION TO DISMISS UNDER
CR 12(b)(1) FOR FAILURE TO
ESTABLISH STANDING AS
REQUIRED BY RCW 36.70C.060

[Clerk's Action Required]

I. INTRODUCTION

This case results from a land use petition ("Petition") filed under the Land Use
Petition Act ("LUPA"), Chapter 36.70C RCW, challenging Jefferson County's decision
in favor of Iron Mountain Quarry, LLC, ("IMQ") regarding the interpretation of mineral
use regulations contained in the Jefferson County Code ("JCC"). On April 9, 2008, the
Jefferson County Hearing Examiner affirmed IMQ's non-conforming mineral use rights

1 pertaining to certain leased property within the County under the doctrine of diminishing
2 asset and clarified the application of specific JCC provisions to those rights. This is an
3 unusual LUPA appeal because the County has not acted upon any land use application or
4 permit. The County has simply issued a Code Interpretation, which Petitioners seek to
5 challenge in this appeal.

6 An initial LUPA hearing has been noted for June 16, 2008, to address motions on
7 "jurisdictional and procedural issues" pursuant to RCW 36.70C.080(2). IMQ's motion to
8 dismiss is based on a jurisdictional ground - That Petitioners lack standing to bring this
9 LUPA appeal.

10 LUPA provides that an appeal of a land use decision may be brought only by the
11 applicant, the owner of the property to which the land use decision is directed or an
12 aggrieved or adversely affected person. RCW 36.760C.060. Because the Petitioners are
13 not the applicants or owners of the property at issue in this case, they must establish that
14 they (or the members they purport to represent) are "aggrieved or adversely affected" by
15 the County's Code Interpretation decision. Petitioners must demonstrate that: (1) the
16 County's decision will prejudice Petitioners and their individual members; (2) the interests
17 asserted by Petitioners are among those that the County was required to consider; (3) a
18 judgment in Petitioners' favor would substantially eliminate or redress the prejudice; and,
19 (4) the Petitioners have exhausted their administrative remedies to the extent required by
20 law. RCW 36.70C.060(2). Because none of the Petitioners can demonstrate that they
21 satisfy all four of these required elements, the Court must dismiss the Petition for lack of
22 standing.

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II. STATEMENT OF FACTS

This case involves Respondent IMQ's right to commence the permit process for the proposed expansion of existing mineral resource operations without first having to obtain a Comprehensive Plan amendment to designate the property as Mineral Resource Land ("MRL"). The proposed mineral use operations are adjacent to and south and east of the existing Mason Quarry (formerly known as "Shine Quarry") hard rock mining operation in an area northwest of Hood Canal in Jefferson County. The property at issue in this appeal is comprised of the existing 40-acre Mason Quarry site and the 142-acre IMQ Project Site, all of which is owned by Pope Resources. The property is on the north side of SR 104, mostly in Sections 29 and 30, Township 28, Range 01 East, WM in Jefferson County. IMQ has mineral lease rights to approximately 142 acres adjacent to and south and east of the existing Mason Quarry operation (the "IMQ Project Site").

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Exhibit A.¹

IMQ and Jefferson County are defending the County's final Code Interpretation decision that confirms IMQ's non-conforming mineral use rights at this location. No permit application for mineral extraction or use has been filed. The only County action to date is a Unified Development Code Interpretation ("Code Interpretation"), regarding IMQ's non-conforming mineral use rights.

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¹ IMQ's lease area is shown on the drawing prepared by Layton & Sell attached to IMQ's pre-application conference request form included in the record before the Hearing Examiner as Log Sheet Item # 11. IMQ's lease area is located on the north side of SR 104 approximately 4 miles west of the Hood Canal bridge. IMQ's lease area lies mostly within Section 29, T28N, R1E, W.M., but the lease area includes small portions of Sections 30, 31, and 32.

1 **A. Jefferson County Mineral Use Regulations.**

2 1. Mineral Resource Land Designation.

3 JCC 18.15.155 establishes comprehensive planning overlay districts for certain
4 areas of the County, including mineral resource lands. Under Ordinance #09-0525-95,
5 effective June 5, 1995, the County designated a portion of the IMQ Project Site and 21
6 other sites within Jefferson County operating under DNR surface mining permits, as
7 “Interim Mineral Resource Lands.”² Mineral extraction operations greater than 10 acres
8 are allowed at those sites. However, the County’s MRL designation of the IMQ Project
9 Site is ambiguous and does not include the entire IMQ Project Site. Pursuant to JCC
10 18.15.170, in order to establish an MRL overlay district for all of the remainder of the
11 IMQ Project Site, it would be necessary for IMQ to request a Comprehensive Plan
12 amendment from the County. Obtaining such an amendment involves a discretionary
13 approval process. It is undisputed that the Board of County Commissioners could deny a
14 Comprehensive Plan amendment for an MRL designation.

15 The County adopted the existing JCC, Title 18 (Unified Development Code
16 (“UDC”)), including the mineral resource regulations in JCC 18.15.170, in January 2001.
17 This designation preceded the Washington State Supreme Court’s unanimous decision in
18 *City of University Place v. McGuire*, 144 Wn.2d 640, 30 P.3d 453 (2001), which adopted
19 the doctrine of diminishing asset as the law of the land in Washington applicable to non-
20 conforming mining operations. Therefore, neither the UDC nor the 1995/1998 MRL
21 designation expressly recognized the diminishing asset doctrine. As such, they fail to
22 recognize non-conforming mineral use rights such as those of IMQ.

23 _____
24 ² The County’s 1995/1998 Interim Mineral Resource Lands designation map (MRL map
25 dated August 28, 1998) is included in the record before the Hearing Examiner as Log
Sheet Item # 57, Exhibit F.

1 The doctrine of diminishing asset, as adopted by the Court in *McGuire*, provides
2 that “[t]he proper scope of a lawful nonconforming use in an exhaustible resource is the
3 whole parcel of land owned and intended to be used by the owner at the time the zoning
4 ordinance was promulgated.” *McGuire*, 144 Wn. 2d 640, 651. Thus, under *McGuire*,
5 IMQ and Pope Resources have legal non-conforming mineral use rights applicable to the
6 entire IMQ Project Site because mining commenced on the 182-acre parcel within which
7 the Site lies as early as the 1970’s and Pope Resources has provided evidence of the
8 owner’s intent to mine the minerals located on that property. Hearing Examiner Report
9 and Decision (“Decision”) at pp. 12-13, attached as **Exhibit E**. Accordingly, IMQ cannot
10 be required to obtain an MRL overlay through a Comprehensive Plan amendment under
11 JCC 18.15.170 in order to obtain mineral use rights at the IMQ Project Site. Such mineral
12 use rights are already established under the diminishing asset doctrine adopted by the
13 Washington Supreme Court.

14 2. 10-Acre Mineral Use Limitation.

15 In the absence of an MRL overlay, JCC 18.20.240(1) restricts mineral use rights
16 as follows:

17 In addition to meeting all other applicable requirements of
18 this code, including this section, all new mineral extraction
19 and mineral processing activities located outside of an
20 approved mineral resource land (MRL) overlay district
21 designation (as specified in Article VI-C of chapter 18.15
22 JCC) shall be subject to the following standards:

23 (b) The total disturbed area of mineral extraction, mining
24 and quarrying sites (excluding access roads) and any
25 associated mineral processing activities shall not exceed 10
acres. Any proposed mineral extraction which would create
disturbed areas in excess of 10 gross acres shall require an

1 MRL designation in accordance with Article VI-C of
2 Chapter 18.15 JCC. (Emphases added).

3 As applied to non-conforming mineral use rights, these regulations are contrary to
4 the law pertaining to diminishing asset adopted in *McGuire*. Nonetheless, at a pre-
5 application conference with the Jefferson County Department of Community
6 Development in August 2007, County staff took the position that JCC 18.20.240 would
7 limit the total area of mineral extraction at the IMQ Project Site to ten acres. Staff refused
8 to recognize IMQ's non-conforming use rights under the diminishing asset doctrine and
9 stated that the County would not process IMQ's application for mineral uses in non-MRL
10 land over ten acres, unless IMQ obtained approval of a Comprehensive Plan amendment
11 for MRL designation of all areas proposed for mineral use.

12 **B. Procedural Background.**

13 To resolve the conflict between the County staff position regarding the 10-acre
14 limit and the doctrine of diminishing asset, IMQ filed a Code Interpretation request with
15 the Jefferson County Department of Community Development pursuant to Article VI,
16 Chapter 18.40 JCC on December 3, 2007. **Exhibit B.** The request sought an
17 interpretation of JCC 18.20.240 as follows:

18 Specifically, we request that the County confirm that the 10-
19 acre restriction found in JCC 18.20.240(1)(a)[sic] applicable
20 to "new" mineral resource uses outside of designated
21 Mineral Resource Land, does not apply where the applicant
22 can demonstrate that the property falls within the non-
23 conforming mineral use rights established under the
24 diminishing asset doctrine of *McGuire v. City of University*
25 *Place*, [sic] 144 Wn.2d 640, 30 P.3d 453 (2001).

23 The Community Development Department issued a Code Interpretation on January
24 5, 2008, concluding that the diminishing asset doctrine did not apply to the IMQ parcel
25 and that IMQ was subject to the 10-acre restriction found in JCC 18.20.240(1). **Exhibit**

1 C. IMQ filed an appeal of that Code Interpretation pursuant to JCC 18.40.330 on January
2 11, 2008. **Exhibit D.**

3 The Jefferson County Hearing Examiner held a public hearing to consider IMQ's
4 Code Interpretation appeal on March 14, 2008. After considering the evidence and the
5 relevant law and regulations, the Hearing Examiner issued his Report and Decision on
6 April 9, 2008. **Exhibit E.** The Hearing Examiner concluded that "Pope Resources and
7 therefore Iron Mountain Quarry, LLC, have legal non-conforming use rights to mine the
8 entire 142-acre leased parcel pursuant to the doctrine of diminishing asset." Decision at p.
9 13. The Hearing Examiner's decision is the final decision of Jefferson County on this
10 matter. JCC 18.40.320(1); JCC 18.40.390; and JCC 18.40.400. Thus, Jefferson County
11 has issued a final and binding Code Interpretation that IMQ's mineral use operations at
12 the IMQ Project Site are not subject to the provisions of JCC 18.20.240(1) applicable to
13 "new" mineral extraction and processing activities, including the 10-acre restriction at
14 JCC 18.20.240(1)(b). Decision, Conclusion 5 at p. 13. The County has determined that it
15 is not necessary for IMQ to obtain a Comprehensive Plan amendment for an MRL
16 designation prior to exercising its mineral use rights at the IMQ Project Site.

17 **C. Permit Requirements Will Apply to IMQ.**

18 The Hearing Examiner concluded that, although IMQ "has non-conforming use
19 rights to mine the entire parcel . . . [it] must meet the requirements of the JCC and the
20 [Department of Natural Resources] pursuant to *Rhod-A-Zalea [Rhod-A-Zalea and 35th Inc.*
21 *v. Snohomish County*, 136 Wn. 2d 1 (1998)]." Decision, Conclusion 4 at p. 12.
22 Moreover, the Hearing Examiner determined that "Port Ludlow and its amenities must be
23 considered in both SEPA review and review under the JCC requirements." *Id.* Decision,
24 Conclusion 5 at p. 13. The Hearing Examiner's decision confirms that IMQ will be
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1 required to comply with applicable JCC performance standards and other requirements
2 appropriate to the exercise of its non-conforming mineral use rights, including the State
3 Environmental Policy Act (SEPA), Chapter 43.21C RCW, the Washington State Surface
4 Mining Act, Chapter 78.44 RCW, and the performance standards set forth at JCC
5 18.20.240(2)(a) thru (f) and (h). However, the Hearing Examiner's decision makes clear
6 that IMQ's non-conforming mineral use rights cannot be subjected to a discretionary
7 approval process that could result in the County's denial of those rights.

8 On April 28, 2008, Petitioners filed this appeal pursuant to the Land Use Petition
9 Act, Chapter 36.70C RCW, seeking to reverse the County's final Code Interpretation
10 decision.

11 III. STATEMENT OF ISSUES

12 Whether Petitioners have standing pursuant to RCW 36.70C.060(2).

13 IV. EVIDENCE RELIED UPON

- 14 1. Jefferson County Department of Community Development Code
15 Interpretation.
- 16 2. Jefferson County Hearing Examiner Report and Decision and exhibits
17 referenced therein.
- 18 3. Land Use Petition.
- 19 4. Deed creating Easements Over Adjoining Lands, dated August 8, 2001.

20 V. ARGUMENT

21 A. Petitioners Must Establish Standing to Bring a LUPA Petition.

22 A LUPA petition must set forth facts demonstrating that the petitioner has standing
23 to seek judicial review. RCW 36.70C.070(6). A LUPA appeal may be brought only by
24 the applicant, the owner of the property to which the land use decision is directed or an
25 aggrieved or adversely affected person. RCW 36.70C.060. Petitioners are not applicants

1 or the property owners. They must, therefore, show that they are aggrieved or adversely
2 affected persons. To be aggrieved or adversely affected persons, Petitioners must
3 demonstrate:

4 (1) The County's Code Interpretation in this case has prejudiced or is
5 likely to prejudice them;

6 (2) The Petitioners are among those that Jefferson County was required
7 to consider when it issued its Code Interpretation;

8 (3) A judgment in Petitioners' favor would substantially eliminate or
9 redress the prejudice to them caused or likely to be caused by the Code
10 Interpretation; and

11 (4) Petitioners have exhausted their administrative remedies to the
12 extent required by law.

13 RCW 36.70C.060(2).

14 The principal of standing originated in American jurisprudence from Article III
15 of the United States Constitution, which limits the power of the federal courts to the
16 adjudication of actual "cases" and "controversies." The Supreme Court has articulated a
17 test for Article III standing that is premised upon three requirements—injury, causation
18 and redressibility. *See Valley Forge Christian College v. Americans United for*
19 *Separation of Church and State*, 454 U.S. 464, 472, 102 S.Ct. 752, 70 L.Ed.2d 700
20 (1982). To demonstrate standing to seek review of an agency action, "a plaintiff must
21 allege that the agency action has caused him an 'injury in fact' and that this injury is
22 'arguably within the zone of interest to be protected or regulated' by the statute that the
23 plaintiff claims the agency violated." *Port of Astoria, Oregon v. Hodel*, 595 F.2d 467,
24 474 (9th Cir. 1979)(citations to U.S. Supreme Court cases omitted).

25 The Washington Supreme Court has expressly adopted the federal approach to
standing in environmental cases. *Save a Valuable Environment v. Bothell*, 89 Wn. 2d 862,
865-68, 576 P.2d 401 (1978). As a result, Washington courts require a party challenging

1 an agency action in environmental cases to demonstrate that (1) the governmental action
2 causes a specific and perceptible injury-in-fact that is immediate, concrete, and specific;
3 and, (2) that the interest he or she seeks to protect falls within the zone of interests that the
4 statute is designed to protect. *Leavitt v. Jefferson County* 74 Wn. App. 668, 875 P. 2d 681
5 (1994); *Trepanier v. Everett*, 64 Wn. App. 380, 383 (1992), *review denied*, 119 Wn. 2d
6 1012 (1992) (“*Trepanier*”).

7 Where a person alleges a threatened injury, rather than an existing injury, an
8 “immediate, concrete and specific injury” must be proven. If the injury is merely
9 conjectural or hypothetical, there is no standing. *Trepanier*, 64 Wn. App. At 383.
10 “Pleadings and proof are insufficient if they merely reveal imagined circumstances in
11 which the plaintiff could be affected.” *Snohomish County Property Rights Alliance v.*
12 *Snohomish County*, 76 Wn. App. 44, 53, 882 P. 2d 807 (1994). This standing test is
13 embodied in LUPA. RCW 36.70C.060(2)(a)-(c).

14 **B. Petitioners Have Failed to Establish That They Have Standing to Sue**
15 **on Behalf of Their Members.**

16 As a threshold matter, Petitioners have the burden of establishing that they have
17 standing to sue on behalf of their individual members. *See, e.g., Save a Valuable*
18 *Environment (SAVE) v. City of Bothell*, 89 Wash.2d 862, 866-67, 576 P.2d 401 (1978);
19 *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561, 112 S.Ct. 2130, 2136, 119 L.Ed.2d 351
20 (1992). An association must meet all three of the following elements to have standing: (1)
21 the members of the organization must have standing to sue in their own right; (2) the
22 interests that the organization seeks to protect are germane to its purpose; and (3) neither
23 the claim asserted nor the relief requested requires the participation of the organization's
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1 individual members. *International Ass'n of Firefighters, Local 1789 v. Spokane Airports*,
2 146 Wn. 2d 207, 213-14, 45 P.3d 186 (2002).

3 Petitioners have failed to allege facts sufficient for the Court to apply the
4 associational standing test. The Petition is devoid of any factual allegations that purport to
5 establish harm to any individual association member, the nature and scope of such a
6 member's interests, or the authority for Petitioners' presumed representation of those
7 interests.³ Thus, it is impossible to ascertain from the Petition what, if any, specific injury
8 any individual member of a Petitioner association would suffer as a result of the County's
9 Code Interpretation decision, and therefore whether any such member would have
10 standing to sue in his or her own right. The lack of information about the Petitioner
11 associations further renders it impossible to determine if the interests Petitioners seek to
12 protect are germane to their purpose and whether they have authority to sue on their
13 members' behalf. Simply put, Petitioners' failure to identify any individual member and
14 the specific injury to such member that will result from the County's Code Interpretation
15 decision and Petitioners' further failure to describe their respective organizations and
16 purposes makes it impossible for this Court to find that Petitioners have alleged a concrete
17 and specific injury resulting from the County's decision.

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22 ³ Moreover, none of the Petitioner associations have alleged that they have authority to sue
23 on behalf of their individual members. As discussed *supra*, Petitioner Port Ludlow
24 Associates alleges injury to easement rights granted to it by Pope Resources. However, an
25 association's interest in common property, alone, does not endow it with standing to assert
its members' rights. *Timberlane Homeowners Ass'n, Inc. v. Brame*, 79 Wn.App. 303, 309,
901 P.2d 1074 Wn.App. Div. 1 (1995). Petitioners Port Ludlow Village Council and
South Bay Community Association have failed to allege any injury to specific members or
their authority to sue on behalf of their members.

1 **C. Petitioners Lack Standing Because They Have Failed to Establish an**
2 **Immediate, Concrete and Specific Injury Resulting From the County’s**
3 **Code Interpretation.**

4 Even assuming *arguendo* that one or more of the Petitioners could have
5 demonstrated capacity to sue on their members’ behalf, Petitioners have failed to
6 demonstrate standing because they have not, and cannot, allege an “immediate, concrete
7 and specific injury” resulting from the County’s Code Interpretation decision. Petitioners
8 have failed to allege any injury that will necessarily result from that decision. Contrary to
9 the Petitioners’ allegations, the Code Interpretation does not purport to “allow Pope and
10 Iron Mountain to extract minerals . . . without meeting the requirements of the Jefferson
11 County Code for extraction of minerals.” Rather, the County concluded that “Pope
12 Resources and therefore Iron Mountain Quarry, LLC, have legal non-conforming use
13 rights to mine the entire 142-acre leased parcel pursuant to the doctrine of diminishing
14 asset.” Decision at p. 13. The County further concluded that the exercise of those rights
15 are subject to the “requirements of the JCC and the [Department of Natural Resources
16 (“DNR”)]” pursuant to *Rhod-A-Zalea and 35th Inc. v. Snohomish County*, 136 Wn. 2d 1
17 (1998). Decision, Conclusion 2, at p. 12. Nothing in the County’s decision authorizes
18 IMQ to engage in mining activities without full compliance with JCC performance
19 standards pertaining to mineral extraction activities as well as State Environmental Policy
20 Acts (“SEPA”) and DNR requirements.

21 Jefferson County and the DNR have yet to apply those requirements because IMQ
22 has not yet submitted permit applications for any mineral operations at the IMQ Project
23 Site. Thus, the impact of IMQ’s exercise of its mineral use rights upon Petitioners’
24 interests, if any, cannot yet be determined. Petitioners can claim no injury because no
25 action has been taken that could create an injury. The County’s Code Interpretation

1 decision merely establishes that IMQ has non-conforming use rights to commence the
2 permit process for mineral extraction activities at the IMQ Project Site without having to
3 obtain a Comprehensive Plan amendment. The County has not authorized any exercise of
4 IMQ's mineral use rights. That is a matter for further resolution among Jefferson County,
5 the State of Washington, Pope Resources and IMQ. Until the necessary permit
6 applications are submitted, reviewed, and approved, no injury to anyone has occurred.
7 Petitioners' vague assertion that the County's decision "would significantly impact their
8 ability and that of their membership to enjoy their property rights, including the easements
9 granted by Pope," in the absence of any permit application or approval is pure speculation.
10 This is exactly the type of conjectural and hypothetical injury that Washington Courts
11 have refused to accept to show injury sufficient for standing.

12 There is no evidence in this case that the County's Code Interpretation decision
13 will impact Petitioners' ability to enjoy their property rights. The only issue before the
14 Hearing Examiner was the existence of IMQ's non-conforming use rights and whether the
15 10-acre restriction found in JCC 18.20.240(1)(b) applies to those rights, not how or when
16 those rights can be exercised. Such is the nature of a code interpretation. An
17 interpretation of the provisions of the Unified Development Code is intended to clarify
18 conflicting or ambiguous wording, interpret proper classification of a use, or interpret the
19 scope or intent of the provisions of the Code. JCC 18.40.350. Thus, as would be
20 expected, the County did not examine the potential impacts of mining at the IMQ Project
21 Site during the code interpretation process. Such an examination would be purely
22 speculative because no mineral use application has been submitted and there is simply
23 nothing to consider. There are no specific plans to review and the impacts are therefore
24 undetermined. Petitioners' claim of alleged injury amounts to pure conjecture.
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1 Case law directly discussing standing under LUPA confirms that these Petitioners
2 do not have standing in this situation. Petitioners maintain that “[i]f the Decision is
3 affirmed, Petitioners property rights will be severely and unjustifiably impacted . . .
4 because it would significantly impact their ability and that of their membership to enjoy
5 their property rights, including the easements granted by Pope.” Petition at 5-6. The
6 Petitioners fail to state how the County’s Code Interpretation Decision could result in any
7 such adverse impact. Without alleging more specific injuries adversely affecting them or
8 their property, Petitioners have not established that they are prejudiced within the meaning
9 of an “aggrieved person” under LUPA. See e.g., *Biermann v. City of Spokane*, 90
10 Wn.App. at 820, 960 P.2d 434 (finding a sufficient interest to merit standing where health,
11 safety and comfort of Petitioner were directly affected by proposed construction of
12 garage).

13 The Petitioners must allege an “injury in fact,” i.e., that they will be “specifically
14 and perceptibly harmed” by the proposed action. *Trepanier* at 383, citing *Save a Valuable*
15 *Env’t*, 89 Wn.2d at 866, 576 P.2d 401; *Concerned Olympia Residents v. Olympia*, 33
16 Wn.App. 677, 683, 657 P.2d 790 (1983); *Coughlin v. Seattle Sch. Dist. No. 1*, 27 Wn.App.
17 888, 621 P.2d 183 (1980). In order to show injury in fact, Petitioners must present facts
18 that show they will be adversely affected by the County’s decision that IMQ has legal
19 non-conforming use rights to mine the entire 142-acre parcel. Petitioners must allege
20 “sufficient evidentiary facts to indicate that [they] will suffer an ‘injury in fact.’ ”
21 *Trepanier*, citing *Concerned Olympia Residents*, 33 Wn.App. at 683, 657 P.2d 790. They
22 have failed to do so. Further, because the Petitioners allege a threatened injury, as
23 opposed to an existing injury, they must show an immediate, concrete, and specific injury
24 to themselves. *Trepanier*, citing *Roshan v. Smith*, 615 F.Supp. 901, 905 (D.D.C.1985). If
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1 the injury is merely conjectural or hypothetical, there can be no standing. *United States v.*
2 *Students Challenging Regulatory Agency Procedures (SCRAP)*, 412 U.S. 669, 688-89, 93
3 S.Ct. 2405, 2416-17, 37 L.Ed.2d 254 (1973).

4 Petitioners have failed to allege any facts to show that their property interests
5 would be injured by the County's Code Interpretation decision. The only threatened
6 injury alleged is that the Code Interpretation decision would significantly impact
7 Petitioners' ability and that of their membership to enjoy their property rights. The only
8 such rights identified in the Petition are rights claimed under an easement granted by
9 Pope. Petitioners' arguments are based on the assumption that the County's confirmation
10 of IMQ's mineral rights will *necessarily* result in an unspecified impact to those rights.
11 Petitioners' argument is fatally flawed because their bare assertion that the County's Code
12 Interpretation decision will likely result in serious adverse impacts to their property
13 interests is not supported by any factual allegation in the Petition and has absolutely no
14 factual support in the record.

15 Moreover, the Petitioner's claimed easement rights do not support their allegations
16 of injury. Petitioners' allegations of threatened injury to their easement and trail interests
17 are flatly contradicted by the terms of the easement granted by Pope Resources. The
18 record clearly demonstrates that the development of Port Ludlow, the golf course, and the
19 trails are no closer than 1,250 feet from the exterior of the 182-acre parcel at issue in this
20 case.⁴ Decision, Finding 16, p. 11. Nevertheless, in their LUPA petition, Petitioners

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22 ⁴ Golf course facilities at the Port Ludlow Master Planned Resort ("Port Ludlow") are
23 located more than 2,200 feet from the northwestern corner of the IMQ project site and the
24 nearest residence is over 6,000 feet from the site. On August 8, 2001, Pope Resources
25 established a "Trail Easement" for the benefit of Petitioner Port Ludlow Associates, LLC,
across Pope's lands adjacent to Port Ludlow in a document entitled "Easements Over
Adjoining Lands" ("Easement Document"). **Exhibit F**. The Easement Document
purports to establish an Easement Area over a large swath of Pope land, comprising over
18 parcels that covers approximately 1,600 acres. Under the terms of the Easement

1 make the misleading statement that “some of these amenities rest within the boundaries of
2 the 182 acres.” That statement is not true. It is an apparent reference to trail easement
3 rights granted to PLA by Pope Resources by way of a document entitled “Easements Over
4 Adjoining Lands” (“Easement Document”) on August 8, 2001. **Exhibit F.**

5 In relevant part, the Easement Document grants to PLA a nonexclusive easement
6 for “access, and maintenance, construction, installation, repair, replacement, and use of
7 paved or unpaved recreational bicycle and pedestrian trails for non-motorized use only
8 (the “Trail Facilities”) within Parcel GG, a portion of which is included within the 142-
9 acre parcel leased by IMQ from Pope Resources, as depicted in **Exhibit F.** However,
10 there is no evidence of any Trail Facilities within the IMQ Project Site. Even if such Trail
11 Facilities existed within the IMQ Site, no injury to those Trail Facilities could result from
12 the County’s Code Interpretation decision. Furthermore, if a later permit decision were to
13 result in an impact to the Trail Facilities, the Easement Document reserves the right of
14 Pope Resources to relocate any such Trail Facilities within the easement area. **Exhibit F,**
15 ¶ 7. Thus, there is no possibility that IMQ’s future exercise of its mineral use rights could
16 impact any Trail Facility to the detriment of any of Petitioners’ legal rights.

17 Because Petitioners have failed to allege facts to the contrary, their allegations of
18 significant adverse impacts to their property interests are purely speculative and
19 conjectural. Concerned Olympia Residents, 33 Wash.App. at 683-84, 657 P.2d 790
20 (plaintiff’s bald assertion of injury is insufficient to support standing absent evidentiary

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22 Document, Petitioner PLA may construct Trail Facilities comprising no more than
23 250,000 square feet in the aggregate within the entire Easement Area. That Easement
24 Area includes “Parcel GG,” which, in part, overlies the IMQ Project Site. **Exhibit F**, p.2.
25 However, no Trail Facilities have been established in that small part of the Easement
Area. Accordingly, there are no Trail Facilities within the 142-acre IMQ Project Site at
issue in this case. The closest Trail Facility is the Limberton Trail, which, at its closest
point, is located more than 1,250 feet from the extreme northern boundary of the IMQ
project site. Decision, Finding 16, p. 11.

1 facts to support it); *see also Roshan, 615 F.Supp. at 907*. Accordingly, Petitioners have
2 failed to establish standing.

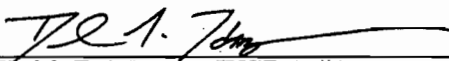
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4 **VI. CONCLUSION**

5 Petitioners have failed to allege facts sufficient to meet their burden to establish
6 that they have standing to bring suit on behalf of their members or that they have authority
7 do so. Moreover, to the extent Petitioners have alleged any injury to themselves or their
8 members, those injuries are merely speculative and fail to demonstrate how their alleged
9 interests can in any way be affected by the County's Code Interpretation decision.

10 Examination of any potential impacts of mining at the IMQ Project Site at this
11 point would necessarily be speculative because there is simply nothing to consider. There
12 are no permit applications or specific plans to review, and the potential impacts are
13 therefore unknown. Petitioners have failed to allege any "injury in fact," *i.e.*, that they
14 will be "specifically and perceptibly harmed" by the Code Interpretation. The Petition
15 must, therefore, be dismissed for lack of standing.

16 DATED this 9th day of June, 2008.

17 GORDONDERR LLP

18 By: 
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