



JEFFERSON COUNTY

DEPARTMENT OF COMMUNITY DEVELOPMENT

621 Sheridan Street
Port Townsend, WA 98368
Al Scalf, Director

Unified Development Code Interpretation

Date: January 5, 2008
Case: MLA07-00638 (ZON07-00098)
Applicant: Iron Mountain Quarry
Representative: Keith Moxon, Law Firm of GordonDerr

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.

SUBJECT: Is the 10-acre restriction found in JCC 18.20.240(1)(a), applicable to “new” mineral resource uses outside of designated Mineral Resource Land, [applicable] where the applicant can demonstrate that the property falls within the non-conforming mineral use rights established under the Diminishing Asset Doctrine of *McGuire v. City of University Place*, 144 Wn.2d 640,30 P.3d 453 (2001).

Background History on Jefferson County Mineral Land Designations:

In early 1990, after the adoption of the Growth Management Act (GMA), the County commenced compliance with GMA regulations, RCW 36.70A.050, through the adoption of a Mineral Land Ordinance. The final Mineral Land Ordinance (No. 09-0525-95) was adopted by the Jefferson County Board of Commissioners (BOCC) on May 25, 1995. In Section 7 of this Code it states under the Development Regulations, land designated as mineral land of long-term commercial significance shall not be less than ten (10) acres. Uses legally established prior to ordinance adoption (i.e., May 25, 1995) remain “grandfathered” with the right to continue as existing uses. This parcel size requirement was never appealed while part of the above-referenced Code and was carried forward into the Unified Development Code, which was adopted on December 13, 2000 and became effective on January 16, 2001.

JCC 18.20.240 (1) states:

“In addition to meeting all other applicable requirements of this code, including this section, all new mineral extraction and mineral processing activities located outside of an approved mineral resources land (MRL) overlay district designation (as specified in Article VI-C of Chapter 18.15.JCC) shall be subject to the following standards:

- (a) New mineral extraction and mineral processing activities in rural residential districts shall require a conditional use permit subject to a Type III permit approval process.
- (b) The total disturbed area of mineral extraction, mining and quarrying sites (excluding access roads) and any 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 MRL designation in accordance with Article VI-C of Chapter 18.15 JCC.”

In order to consider this fully we must take into consideration the applicable Jefferson County Comprehensive Plan Goals and Policies adopted by the BOCC on August 28, 1998, the applicable provisions of the Jefferson County Code and

the implications to the county as a whole. In order to conserve the mineral resource land base that is currently being operated by the mining industry, any parcel that meets both of the following criteria has been designated as Commercial Mineral Land of Long-Term Significance in the Interim Mineral Lands Ordinance:

- Is currently operating under a surface mining permit issued by the Washington State Department of Natural Resources; and,
- No part of the parcel lies within one half (1/2) mile of an Interim Urban Growth Area.

See the County's Comprehensive Plan, at page 4-7.

The following are applicable Comprehensive Plan Goals and Policies:

Comprehensive Plan Goal:

NRG 6.0 Conserve and protect Mineral Resource Lands for long-term economic use.

Policies:

NRP 6.1 Adopt a final Mineral Lands Ordinance that includes criteria from the Interim Mineral Lands Ordinance for classifying and designating Mineral Resource Lands of commercial significance based on physical and topographic characteristics, distance from populated areas, and the quality of the resource.

NRP 6.2 Adopt a final Mineral Lands Ordinance that includes a process for reviewing mineral lands designation petitions which assesses the feasibility of designating mineral resource lands according to Table 4.3, and considers compatibility with adjacent land uses, economic issues and environmental impacts.

NRP 6.3 Adopt a final Forest Lands Ordinance that includes criteria from the interim ordinance allowing mineral extraction and the primary processing of materials on designated Forest Lands, provided that the extraction is conducted under a Washington State Department of Natural Resources Surface Mining Permit and/or other applicable permit and is performed in accordance with the guidelines for best management practices established by Jefferson County.

NRP 6.4 Mitigate conflicts with adjacent land uses by zoning and regulations including operation, siting, buffering and design requirements which minimize conflicts between mineral extraction/primary processing activities and land use activities located adjacent to designated mineral lands.

Table 4-3
Matrix for Assessing Lands for designation as Mineral Resource Lands

	NOT SUITABLE FOR DESIGNATION	CONSIDER FOR DESIGNATION	DESIGNATION DESIRABLE	DESIGNATION HIGHLY DESIRABLE	DESIGNATION CRITICAL
QUALITY OF DEPOSIT	Low grade deposit.	Variable but located near use area or processing plant.	Deposit made economical to mine by upgrading material.	Grade meets the requirements for road construction or can be upgraded.	Concrete quality.
SIZE OF DEPOSIT	Small deposit.	Small deposit (less than 2,000 tons).	Medium-size deposit.	Large deposit (7.5 million tons).	Very large deposit (10 million tons).
ACCESS DISTANCE FROM MARKET	More than 20 miles from use area.	Distance from use area is minimized due to access to interstate.	Less than 10 miles of the use area; alternative access route available.	Large deposit presently beyond economical hauling distance to present use area. Near highways; access can be provided.	Within 5 miles of use area. Adjacent to highway with access for trucks.
COMPATIBLE WITH NEARBY AREAS	Adjacent land use presently incompatible with mining (appreciable residential development within range of excessive noise, dust, blasting, vibrations, etc.).	Scattered development within outer range of impacts of mining; owners may not object to mining.	Adjacent land suitable for development and within commuting distance of use area.	Immediate incompatible development on adjacent lands.	No incompatible land uses existing or likely in the foreseeable future (adjacent land in national forest, operator's ownership, agricultural land use).
IMPACT OF NOISE	Noise level in adjacent presently developed areas would clearly exceed standards if mining occurred.		Noise level in adjacent undeveloped areas would exceed standards for likely use, but use of these areas can be easily delayed or economical mitigation can be provided by barriers.		Noise at adjacent residential areas less than 50 dB(A) due to distance or topographical barrier; berm can be constructed easily.
IMPACT OF BLASTING	Too close to existing subdivision.				Blasting not required; permanent open space between quarry and other uses; topographical barrier between quarry and other land uses; only occasional light blasting; blasting compatible with adjacent uses.
	NOT SUITABLE FOR DESIGNATION	CONSIDER FOR DESIGNATION	DESIGNATION DESIRABLE	DESIGNATION HIGHLY DESIRABLE	DESIGNATION CRITICAL
IMPACT OF TRUCK TRAFFIC	Only access is local road through residential area.	Slightly longer alternative route exists.	Alternative truck route can be built at reasonable expense; alternative transportation (conveyor, etc., can be used past residential streets).		Adjacent to freeway with access to site.
VISUAL IMPACT	Mining would destroy or create.	Mining activity cannot be screened and would permanently alter landscape.	Some activity visible from residential areas, but no permanent destruction of landscape.	Mining activity can be easily screened by berms and/or vegetation.	Activity screened by topography or vegetation, or appreciably reduced by distance.
SURFACE & GROUND WATER IMPACTS	Potential adverse impacts to water resources on site.	Water resources on site and can be avoided.	Limited water resources on site and can be mitigated.		No water resources on site.
WETLANDS IMPACT	High quality wetlands throughout the site.	High quality wetlands only on a portion of site and can be avoided.	Lower quality wetlands on site and can be mitigated.	Wetlands can be avoided on site.	No or minimal wetlands on site and of low quality.
SLOPES	Site located in active unstable slope area.	Potential or historical unstable slopes.	Unstable slopes on site can be avoided.	Minimal slopes throughout the site.	Level grade mining site with minimal slopes.
BIOLOGICAL IMPACT	Rare and threatened/endangered plants or animals on site.	Site includes priority wildlife habitat that would be permanently removed by mining.	Species of Special Concern habitat located on site.	Minor or temporary loss of fish and wildlife habitat.	No significant biological resources; rehabilitation of site would replace or create habitat.
IMPACT OF FLOODING	Mining would cause erosion of adjacent property; could be prevented only at great expense.		Mining would create erosion hazard for roads, bridges, and utility lines; however, these structures could be strengthened at reasonable costs.		Mining would create flood control channel and would not damage adjacent land.

Comprehensive Plan Goal:

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.

If the application to extract mineral resources was new (no SM-6 or SM-9 extant for that location) and if the location where the extraction was to occur failed to previously qualify for designation as Mineral Lands of Long-Term Significance under the 1995 Interim Mineral Lands Ordinance (as carried forward by the current Comprehensive Plan and current County Code), then for the policy reasons listed above, that application would be subject to the performance standard of mandating mining in segments not larger than ten acres unless and until the landowner and/or the extracting firm obtained a Mineral Resource Land Overlay for that parcel or parcels.

Findings & Analysis:

1. If the diminishing asset doctrine is applied in this case, then you could presume that the entire 72,000-acres owned by Pope Resources would also be subject to the diminishing asset doctrine.
2. The precedent of dismissing the 10-acre performance standard for properties that are (a) owned by forestry companies with leases to mine a portion of their properties that (b) do not have permits with DNR for mining activities would be that no MRL overlay would ever be required in Jefferson County.
3. The 10-acre requirement does not preclude mining, it merely adds a performance standard for how mining can occur.

Given the analysis above, DCD would require an MRL overlay to allow mining activities to exceed the 10-acre performance standard in JCC 18.20.240(1)(a).

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.

Dated this 5 day of January 2008.

 1/5/2008
Stacie Hoskins, Planning Manager