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RESOURCE STEWARDSHIP DEPARTMENT

Creating Solutions for Our Future

Joshua Cummings,
Interim Director

MEMORANDUM (3)

TO: Planning Commission; Mineral Resource Lands Focus Group Members

FROM: Maya Bühler, Associate Planner
Allison Osterberg, Senior Planner

DATE: October 12, 2017

SUBJECT: Comprehensive Plan Update - Mineral Resource Lands: Response to Stakeholder Group Questions from September 19, 2017 meeting

The questions outlined below were raised at the Mineral Resource Lands Stakeholder Group Meeting on September 19, 2017, in which initial drafts of the designation criteria and maps were discussed. Staff have provided responses to some questions, and are continuing to research others.

Why Use a Minimum Site Size of 5 acres?

The Mineral Resource Lands criteria in the Comprehensive Plan currently includes a minimum site size of 5 acres. This minimum size was adopted on the recommendation of the Mineral Lands Task Force (MLTF), an 11-member group established by the Board of County Commissioners in October 2003, to address emerging concerns with the location of sand and gravel mines and asphalt plants in Thurston County. The Final Recommendations Report from the MLTF was reviewed by the Planning Commission in 2004.

Prior to the 2010 revisions (Resolution #14401), Thurston County's mineral lands designation criteria did not have a minimum site size, but required an area width of 500 feet. This works out to approximately 5.7 acres of land. In addition, Thurston County generally does not have many large parcels, and much of the rural area is already subdivided into parcels. The MLTF discussed these considerations and also indicated a desire not to exclude small landowners. Every lot is configured differently, but minimum site size allows several smaller parcels to be grouped to increase the size. Based on this discussion, the MLTF unanimously settled on a 5-acre minimum as reasonable (MLTF Final Report, July, 2004).

According to the Department of Natural Resources (DNR), the average size of mining operations in Washington State is 30 acres. The state threshold (minimum size) for a site is 3 acres. Pierce County’s mineral lands criteria identifies the minimum site size as 40 acres; Whatcom County’s mineral lands criteria identifies the minimum site size as 20 acres (WCC 20.73.250).

The 5-acre minimum size criteria was included in the final set of criteria found to be in compliance with the Growth Management Act (GMA) by the Growth Management Hearings Board (2013).

Why have a 1,000-foot Setback from Parks, Preserves, Urban Growth Areas, and Areas with Densities of 1/5 or Higher?

The County’s current mineral lands designation criteria requires a 1,000-foot separation from public preserves, parks, national wildlife refuges, state conservation areas, wildlife areas, and other government preserves. It requires the same setback from urban growth areas and rural residential areas with existing densities predominantly one dwelling unit per five acres or higher.

Thurston County’s original designation criteria for mineral lands, adopted in June 1993 (Ord. #10398), said mineral lands must be located outside a public park or preserve, but did not specify a buffer. In August 1993, this criteria was updated to also exclude areas within 1,000 feet from UGAs and residential areas with densities of 1/5. Resolution #10400 contains the following finding:

“(23) Mineral extraction has the potential to create marked conflicts with surrounding uses, especially rural residential. While meeting the designation requirements of the GMA to conserve mineral lands, the criteria for designation and the measures to conserve such lands also consider such issues as ground water protection, hazards from gravel trucks, and compatibility with surrounding residential densities.”

The Mineral Lands Task Force (MLTF) in 2004 recommended that designated mineral lands be separated from public preserves, including parks, national wildlife refuges, state conservation areas, wildlife areas, and other government-owned preserves by a distance of 1,000 feet. A minority opinion existed, in which three voters supported this concept with the reservation that 1,000 feet seemed excessive and that separation distance should be a site-specific issue.

The MLTF arrived at this recommendation after creating sample maps of three different areas of the county with a high potential for gravel mining and layering on the criteria to give a picture whether adequate land is available to secure a long-term gravel supply. At the time, the picture was incomplete due to a lack of data on long-term sources of quality gravel (MLTF Final Report, July, 2004). The rationale for this criteria was to establish adequate separation to limit most off-site impacts (i.e., heavy equipment, vehicles, and machinery that can cause noise, dust, vibrations and view).

This buffer distance also matches the buffer distance used to evaluate surrounding parcel size (at least 60% of the area within 1,000 feet be a minimum parcel size of 5 acres or greater at the time of application).

The 1,000-ft setback criteria was included in the final set of criteria found to be in compliance with GMA by the Growth Management Hearings Board (2013).

Why are Agricultural Activities Allowed on Mazama Pocket Gopher Habitat, but not Mining?

Stakeholders questioned why mineral extraction activities would require a review under the Endangered Species Act, and agricultural activities such as tilling would not, when both activities involve disturbing soil.

Agricultural activities (existing and on-going) are permitted by the 4(d) rule in the Endangered Species Act. The “4(d) Rule” is a special rule within the Endangered Species Act (ESA) that protects species listed as ‘threatened.’ The 4(d) Rule is typically used to incentivize positive conservation actions and streamline regulatory process for minor impacts.¹

The U.S. Fish and Wildlife Service determines which regulations are “necessary and advisable” using best available information, which may come in the form of scientific papers, input from species’ experts, or other written materials.

The 4(d) rule explains that certain activities are consistent with or contribute to a species’ overall conservation; therefore, even if those activities result in take of a threatened species, that take is not prohibited.

Accepted activities under the 4(d) rule for the Mazama Pocket Gopher include certain general activities on the Olympia Airport, certain on-going non-commercial activities by small private landowners, control of noxious weed and invasive plants on non-federal lands, and maintenance of roadside right-of-way on both Federal and non-Federal lands.²

Agricultural activities allowed under the Special Rule include: grazing; routine installation, management, and maintenance of stock water facilities such as stock ponds, berms, troughs, and tanks, pipelines and watering systems to maintain water supplies; routine maintenance or construction of fencing; planting, harvest, fertilization, harrowing, tilling, or rotation of crops.

Mining is not a listed activity on the 4(d) rule, and is therefore not considered exempt.

Are Prehistoric/ Pre-settlement Sites Excluded from the Mineral Lands Designation?

¹ USFWS. (Feb, 2014). *Endangered Species Act and Special Rules*. <https://www.fws.gov/mountain-prairie/factsheets/ESA%20SpecialRules%20Factsheet_020714.pdf>.

² USFWS. (Apr, 2014). *Mazama Pocket Gopher 4(d) Special Rule Summary*. <https://www.fws.gov/wafwo/species/mpg/draftdocsforpocketguide/4dSummary%20pages_FINAL_PDF.pdf>.

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The current criteria excludes historical and cultural preservation sites from designated mineral lands of long-term commercial significance. These are easily identified on County maps using GIS data, and cannot be replaced if mined. Currently, with some small exceptions, archaeological sites are not included in the data.

The spatial data layer used for this exclusion includes historic buildings, sites, natural features and objects from the Washington State Historic Register. This data layer is maintained and updated by the Thurston GeoData Center with input from the Resource Stewardship Department. This data includes federal, state and local historic registered sites. The complete historic database, including some site-specific photographs is available through both the Thurston GeoData Center and the Thurston Regional Planning Council (TRPC). This dataset was originally updated and maintained by TRPC, under contract with Thurston County. It was taken over by the Thurston GeoData center for maintenance under the direction of the Thurston County Natural Resources Department Permitting Division around 2008. Edits were completed in 2013/2014 and this new dataset was created to house all changes and updates. It was edited on 08/08/14, with further edits made to include new historic sites on 06/26/2015.

The Washington State Office of Archeology and Historic Preservation (OAHP) maintains records on known archeological sites in the county, but this information is confidential. In addition, the Nisqually Tribe, Squaxin Island Tribe, and Confederated Tribes of the Chehalis all have cultural resources staff who can review whether a project on a particular site may impact a known archeological or pre-settlement site. This review is generally handled on the site scale, through the SEPA process, and because of confidentiality considerations, is not available for general mapping purposes.

In addition to the above questions, staff are continuing to research several additional questions from the stakeholders. The following will be addressed in future memos:

- Supply and Demand of Mineral Resources
 - What is the supply and demand of mineral resources on a regional basis, including in neighboring counties?
 - Is Thurston County a net importer or exporter of mineral resources?
 - How is projected demand for mineral resources calculated?
- Agriculture and Mineral Lands
 - Is mining compatible with preservation of agricultural lands of long term significance? Can reclamation plans adequately recover agricultural soils?
- Floodplains and Mineral Lands
 - What evidence is there that mining activities are not compatible with floodplains?