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**COMMUNITY PLANNING &  
ECONOMIC DEVELOPMENT DEPARTMENT**

*Creating Solutions for Our Future*

Joshua Cummings, Director

**MEMORANDUM (2)**

**TO:** Thurston County Planning Commission

**FROM:** Maya Teeple, Associate Planner

**DATE:** January 16, 2019

**SUBJECT:** Comprehensive Plan Update: Mineral Resource Lands Associated Code Updates

**Overview of the Mineral Resource Lands Code Update**

The mineral lands mapping update (chapter 3 of the Comprehensive Plan) will have associated code changes to several chapters within the Thurston County Code. The associated code changes will help to account for a significant increase in designated mineral lands when the County moves from a site-by-site designation of 5,623 acres to a countywide designation of over 140,000 acres.

While not all designated mineral lands will be permissible at the site level, associated code changes will help to account for a potential increase in mineral extraction activities and competing goals of the GMA. As part of the mineral lands update, the primary goal of focus is the natural resource industries goal. However, GMA requires the County to plan for several additional goals. Some of the goals relevant to the mineral lands update that guide the County planning process:

- **Urban Growth** – Encourage development in urban areas where adequate public facilities and services exist or can be provided in an efficient manner;
- **Open Space and Recreation** – Retain open space, enhance recreational opportunities, conserve fish and wildlife habitat, increase access to natural resource lands and water, and develop parks and recreation facilities.
- **Historic preservation** – Identify and encourage the preservation of lands, sites, and structures, that have historical or archaeological significance.
- **Natural resource industries** – Maintain and enhance natural resource-based industries, including productive timber, agricultural, and fisheries industries. Encourage the conservation of productive forestlands and productive agricultural lands, and discourage incompatible uses.
- **Environment** – Protect the environment and enhance the state's high quality of life, including air and water quality, and the availability of water.

The following chapters of the Thurston County Code have associated code changes for the mineral lands update:

- 17.20 TCC – Mineral Extraction Code
- 18.04.055 TCC – Resource Use Notice
- 20.30B TCC – Designated Mineral Lands
- 20.54 TCC – Special Use Permit
- 20.03 TCC – Structure, Interpretations and Definitions

## **Review of Code Changes**

Staff drafted recommended code changes for the mineral lands update in April 2018, and began an iterative review process with outside stakeholders and relevant internal county departments. The mineral lands stakeholder group reviewed code changes in May 2018 and again in October 2018.

Generally, the consensus of the group was to eliminate sections of the County Code which duplicate language and processes addressed by other regulatory agencies, to the extent possible. This was recommended to streamline areas of the permitting process for mineral extraction activities. Several agencies have a regulatory role in mineral extraction activities, both before operation, during operation, and after options: Department of Natural Resources, Department of Ecology, Olympia Regional Clean Air Act, and local jurisdiction regulations.

The group generally agreed that special use permit conditions should be determined on a site-by-site basis, rather than having blanket restrictions, because extraction operations vary in activity, size, location, and impact. Some stakeholders felt that it is important to have a baseline requirement – for example frequency of water or noise monitoring quarterly at a minimum – that is required for all mineral extraction operations to protect the environment.

Stakeholder group members also expressed concern over balance between natural resources and resource industries. Members stated that it is important to protect and preserve water, parkland, open space, wildlife habitat, and other natural resources while still balancing the need for mineral resources, and therefore County regulations should be strengthened to protect these competing resources. Other stakeholders felt that protection of natural resources is adequately addressed through current or less stringent County regulations, because these concerns are also addressed in part through the permitting of several other regulatory agencies.

Internal staff from Development Services, Community Planning, Environmental Health, Hazardous Waste, and Stormwater Utility were included in the code update process. Staff met with these departments on several occasions throughout the development of the draft code to identify current strengths and weaknesses in the current permitting process and potential areas where change in code may be required with this update. The following is general feedback received from these departments:

- Some departments have less staff time to allot to mineral operation permits than other departments;
- Abandoned open pits have been an issue in the past in the County, but regulations have evolved substantially over time. DNR requires reclamation plans for mines;

- Illegal dumping is an on-going and common issue for mining operations, but this is not necessarily a fault of current code regulations;
- Noise can be difficult for the department to enforce. Noise is a common point of public testimony at hearings for mining operations, but the department does not receive substantial written noise complaints;
- Water quality monitoring within the code should be strengthened;
- Water quantity protections should be considered and added into the code.

## **Major Changes & Critical Issues in the Mineral Resource Lands Associated Code Updates**

Several sections have major changes associated with this update, which are reviewed below. Decision points needed, and the details of each specific option are addressed in the following section.

### Section 17.20 – Mineral Extraction Code

- 17.20.110 TCC – The noise monitoring section has new language that allows flexibility of the department to determine an alternative noise monitoring requirement other than the current (baseline) quarterly report submittal requirement. Additional language is added in that requires operators to retain noise reports for 7-years and provide those reports upon request of the department. An alternative option (B-2) incorporates the same changes above but also includes a continuous noise monitoring requirement for operations that are adjacent to residential zones or uses.
- 17.20.140 TCC – Item 8 within the rehabilitation plan section adds in language that specifies that lands co-designated as Long-Term Agriculture or Nisqually Agriculture and mineral resource lands be returned to a state suitable for agricultural use after mineral extraction is complete.
- 17.20.200 TCC – Hydrogeological report requirements have new language that strengthen the report requirements, including language on water quantity, cumulative impacts, and adaptive management. The hydrogeological report requirements are the upfront requirements that help determine site-level conditions of the special use permit.
- 17.20.210 TCC – Groundwater monitoring requirements have new language that state monitoring may be required on and off-site in the surrounding area and immediately downgradient of the mine, and that the designated authority may require specific timing, frequency, and distance of water monitoring based on time-of-transport, monitoring frequency, proximity to receptors, and other site conditions. Also, new language states that baseline monitoring is required for one water year in advance of permitted activities.

### Section 18.04.055 – Resource Use Notice

- Options have been added in to maintain the resource use notice at 1,000 feet or reduce the resource use notice to 500 feet at the recommendation of the mineral lands stakeholder group.

### Section 20.30B – Designated Mineral Lands

- 20.30B.015(1) TCC – This is a new section added in to provide guidance for the interpretation of the new designated mineral lands map, N-2. This section specifies the applicability of designated mineral lands. Extraction activities can only occur on designated mineral lands, unless:
  - Extraction is for the purposes of forest practices;
  - The mineral operation is legally established;
  - The operation is an expansion of an existing operation that fits within a specific condition. New options (D-2, D-3) specify additional cases where expansion of a mineral operation can occur onto undesignated lands. These options will impact what can occur on lands that are not designated mineral lands. Options are discussed in more detail under ‘decision points’ section below.
- 20.30B.015(2) TCC – New options specify how the mineral lands designation map/layer is interpreted at the site-level. Options are discussed in more detail under ‘decision points’ section below.
- 20.30B.030 TCC – The designation criteria are removed from the Thurston County Code. These criteria will be maintained in the Thurston County Comprehensive Plan. This is a proposed change to aid in consistency. Other resource use areas, such as Long Term Agriculture and Long Term Forestry, are also only maintained within the Comprehensive Plan.
- 20.30B.040 TCC – Likewise, the requirements for designation and requirements for removal from designation are removed from the Thurston County Code, and will be maintained in the Thurston County Comprehensive Plan only.

### Section 20.54 – Special Use Permit

- 20.54.070(21) TCC – Language that states additional conditions may be imposed at the time of the 5-year review is struck from the permit review section, as recommended by development services staff.

### Section 20.03 – Structure, Interpretations, and Definitions

- 20.03.040 TCC – Definitions area added in for new language in previous sections, including “adaptive management plan”, “rehabilitation plan”, and “water year”.

### **Decision Points**

Staff are requesting the Planning Commission make recommendations regarding the following 4 decision points in the Mineral Resource Lands associated code changes.

- B. Noise Monitoring (2 options)
- C. Resource Use Notice Distance (2 options)
- D. Expansion of operations onto undesignated lands (3 options)
- E. Interpreting designation map at the parcel level (5 options)

**B. Noise Monitoring Requirements (TCC 17.20.110)**

Staff are requesting a recommendation regarding options for noise monitoring requirements. Currently, the Thurston County Code requires quarterly noise monitoring reports. In speaking with staff from environmental health and current planning, issues regarding noise and mineral operations are largely compliance issues. Often, noise issues take place when an operator has an expedited job or a large job, and exceeds noise standards or operates outside of regular hours. These incidences may not be captured by a point-in-time quarterly noise report. Two options reflect changes to noise monitoring for these operations.

- B-1.** Existing language requires quarterly monitoring. New language is added that allows department to require other monitoring frequency. New language requires noise monitoring reports be available at request and retained 7-years by operator, and that fees may be assessed if not provided.
- B-2.** New language requires quarterly monitoring, unless determined otherwise by department. New language requires noise monitoring reports be available at request and retained 7-years by operator, and that fees may be assessed if not provided. Additionally, this option would require continuous noise monitoring for operations that are adjacent to residential zones or uses, and that these be reported to the department on a quarterly basis; also new language requires the operator alert the department of exceedances.

*Considerations of noise monitoring requirements:*

Currently, the department requires noise monitoring reports on a quarterly basis. Option B-2 would be a significant diversion from the current protocol for noise monitoring reports for mineral extraction operations. Option B-2 will likely result in a substantial amount of more data submitted with noise reports, and consequently more staff time to evaluate the data.

**C. Mineral Lands Resource Use Notice for Plats and Subdivisions (TCC 18.04.055)**

Staff are requesting a recommendation regarding the distance specified for resource use notification specific to plats and subdivisions. This decision will affect the policy language within the Thurston County Code, 20.30B. Currently, the code (TCC 18.04.055) specifies a resource use notification for all subdivisions or plats within one thousand feet.

- C-1.** Maintain the resource use notification at 1,000 feet. This would maintain “one thousand feet” in TCC 18.04.055(A) as the resource use notification for plats and subdivisions.
- C-2.** Reduce the resource use notification to 500 feet. This would replace “one thousand feet” in TCC 18.04.055(A) with “five hundred feet”.

**D. Mineral Lands Designation – Applicability operation expansion onto adjacent parcels (TCC 20.30B.015)**

Staff are requesting a recommendation regarding the applicability of the mineral resource lands designation. There may be some scenarios where mining does not require designation. For example, mining related to forest practices, or mining on a legally, non-conforming site that was pre-existing to the mineral lands designation. One consideration is how expansion of existing, legally established

operations is treated at the parcel level. This decision will affect language within the Thurston County Code, 20.30B.015. There are two additional sections within 20.30B that would also have different versions of code language, depending on which option (1, 2, or 3) is selected below. The sections tied to option ‘C’ are 20.30B.025 TCC and 20.30B.050 TCC

- D-1.** Allow expansion of mining operations only onto designated mineral lands.
- D-2.** Allow expansion of mining operations only onto designated mineral lands, unless an existing mining operation falls on designated mineral lands, is expanding onto adjacent undesignated lands, and can prove there are mineral resources on the property (i.e., mapped in the inventory or has boring samples). *“Existing” as used in this provision means that the mineral operation is in existence prior to the date of adopted ordinance.*
- D-3.** Allow expansion of mining operations only onto designated mineral lands, unless an existing mining operation falls on designated mineral lands, is expanding onto adjacent undesignated lands **including adjacent undesignated land within the 1,000-foot separation distance of the UGA or public parks and preserves**, and can prove there are mineral resources on the property (i.e., mapped in the inventory or has boring samples). *“Existing” as used in this provision means that the mineral operation is in existence prior to the date of adopted ordinance.*

*Considerations of expansion policies D-2 and D-3:*

The new language for Options D-2 and D-3 in the current draft of the code states that “any expansion of existing legally established mineral operations are subject to the provisions and requirements of the Thurston County Code at the time the department receives a complete permit application for an expanded operation”. Both options currently define “existing” as an operation in existence prior to the date of code adoption.

**E. Mineral Resource Lands: Designation at the Parcel Level (TCC 20.30B.015)**

Staff are requesting a recommendation regarding how designation is treated at the parcel level. If a parcel is partially mapped with mineral lands designation, then what is the “designation status” of the whole parcel? This recommendation will affect the policy language within the Thurston County Code, 20.30B.015(2) and provide protocol for how Map N-2 is reviewed at the site level.

- E-1. Double-Threshold Designation**
  - If less than 0.25 acres is mapped as designated mineral lands, then the parcel is not eligible for a mineral extraction permit.
  - If less than 5% (less than 0.25 for every 5 acres) of a parcel is mapped as designated mineral lands, then the parcel is not eligible for a mineral extraction permit.
  - If 5% or more (0.25 acres or more for every 5 acres) of a parcel is mapped as designated mineral lands, then the whole parcel is eligible for mineral extraction permitting.
  - If a single parcel has 5 acres or more of mapped designated mineral lands, the entire parcel is considered eligible for a mineral extraction permit, regardless of the total parcel size.

- E-2.** Double threshold designation. In addition, (c) and (d) above also specify that area within 1,000-foot separation-distance from the Urban Growth Area or public park/preserve would be eligible for permitting.
- E-3.** If any amount of the parcel is mapped as a designated mineral resource land, then the whole parcel is eligible for a mineral extraction permit.
- E-4.** If any amount of the parcel is mapped as a designated mineral resource land, then the whole parcel is eligible for a mineral extraction permit, including areas within the 1,000-foot separation distance from the Urban Growth Area or public/park preserve.
- E-5.** The entire parcel must be mapped as designated mineral resource land to be eligible for a mineral extraction permit.