Department of Commerce

Designation of Mineral Resource Lands under the GMA

GMA Goals and Requirements

The 8th planning goal of the Growth Management Act (GMA) in RCW 36.70A.020 is to "(M)aintain and enhance natural resource-based industries". Curiously, the goal specifically mentions timber, agricultural, and fisheries industries, but does not mention the mining industry.

The GMA requires in RCW 36.70A.170 that the very first action of all counties and cities is designating natural resource lands and critical areas (this was to occur by 9/1/1991.) Counties and cities are to designate mineral resource lands (MRL) of long-term commercial significance in areas that are not already characterized by urban development. Some cities have been challenged for not designating MRL, but have been upheld by hearings boards for having gone through the process of considering potential MRL, and excluding any potential MRL from designation.

The GMA in RCW 36.70A.060 requires that all fully planning jurisdictions adopt development regulations to conserve all designated resource lands, in part by restricting land uses on lands adjacent to the designated resource lands.[1] New rural development is supposed to occur outside of any designated MRL. This recognizes the inherent potential for land use conflicts between rural residential use and mining activities.

The GMA also requires that all plats, short plats, development permits, and building permits issued for development activities on, or within 500 feet of, designated resource lands, contain a notice that the subject property is within or near designated resource lands on which a variety of commercial activities may occur that are not compatible with residential development for certain periods of limited duration. The notice for property nearby mineral resource lands must also inform that an application may be made for mining-related activities, including mining, extraction, washing, crushing, stockpiling, blasting, transporting, and recycling of minerals.

The RCW 36.70A.030 (16) definition of "rural development" refers to development outside the urban growth area and outside designated agricultural, forest, and mineral resource lands. These regulatory requirements and this definition are intended to ensure that other land uses not preclude use of these vital resources, and that people are notified of the existence of potential mining activities before developing their property.

Resource lands occur in specific locations

While most resource lands are located in counties outside of urban areas, resource lands can be located within cities and urban areas. In recognition of the changing nature of surface mines as they are depleted and reclaimed for their previous or new land uses, MRL are not included with forest and agricultural resource lands in the requirement of RCW 36.70A.060 (4) for jurisdictions to enact transfer or purchase of development rights (TDR/PDR) programs to conserve resource lands within any UGA. Thus surface mining

[1] An interesting difference between fully and partially planning jurisdictions is that while the latter jurisdictions must also designate resource lands, they do not need to adopt development regulations to conserve these resource lands.

could occur within a UGA in anticipation of future urban development once mine land reclamation is complete.

Designations are critical

Criteria used to analyze potential mineral resource lands generally follow Commerce guidelines to classify mineral resource lands in WAC 365-190-070, although the relative weight assigned to various criteria for designation can vary widely. There has been a tendency to focus on the criteria as exclusionary, limiting designations near urban growth areas to only active mines. Many jurisdictions also specify minimum land parcel sizes or mineral volume quantities to demonstrate long-term commercial significance.

Incremental designations increase land use conflicts

Many counties have not designated all potential MRL, usually based on a lack of information as to where these resources are located. Counties generally allow for annual plan amendments to newly designate MRL, based upon property owner requests. This has lead to conflicts with rural residents opposed to new or expanding mines and subsequent appeals to the Growth Management Hearings Boards (GMHB). The Western Washington GMHB has supported the use of this incremental designation approach as consistent with the GMA, despite the potential land use conflicts that can ensue. The basis for this approach is that newly discovered mineral deposits or enhanced local demand for minerals can cause previously mined sites to become (more) commercially significant, and local situations at specific mines can be addressed case-by-case through permitting and environmental analysis through SEPA. While this is true, and is current practice in many counties, this approach to MRL designation leads to increased land use conflicts, and may lead to permanently losing access to existing mineral resources. If potential MRL of long-term commercial significance are not designated and conserved, other development of these lands may preclude access to these resources, and conflicts between existing residents and any newly designated and permitted mines will likely occur.

Unfortunately, land use conflicts between rural residential and surface mines continues, based in part upon incremental designation of mineral resource lands. In essence some rural residents are not given the anticipated notice under RCW 36.70A.060 (2) prior to developing their land. This has lead to permitting and SEPA appeals of proposed mines, and if these fail, property owners must subjugate the quiet enjoyment of their property to support the broader goal of mineral resource extraction. This is turn has caused many people to question whether the intent of the GMA is being realized.

Impediments to designation

These are preventable land use conflicts which could be avoided or minimized by using a more proactive designation process as envisioned in the GMA. To reduce future land use conflicts and legal challenges, it is recommended that all commercially significant mineral deposits be identified and designated by local governments as part of their periodic review and update under RCW 36.70A.130 and .131. The ability of local governments to accomplish this would be greatly enhanced with accurate mineral resources inventory data for their area. The Washington state Department of Natural

Resources (WDNR) has not yet been funded to do this work, but has produced high quality mineral resource maps for three counties.
Another reason that designation of mineral lands is not proactive relates to the short-term political and economic costs of restricting or postponing land development by designating large areas of land as MRL, based on the existence of sand and gravel. A large-scale designation of MRL could limit rural residential development that pays permit fees and property taxes, and might result in losing a local election.

Environmental impacts critical to discussion
Potential conflicts with designated MRL may arise in updating critical areas ordinances based on including the best available science, as some designated MRL may be within designated critical fish and wildlife habitat conservation areas or riparian areas. This is especially so based upon the requirement that governments give special consideration to conservation or protection measures necessary to preserve or enhance anadromous fisheries. Commerce guidance states that all local designations apply, and addressing multiple designations is to be through local development regulations. As both MRL and critical areas are locally designated, the economic and environmental impacts of such decisions must be addressed by each local jurisdiction, and potential appeals of adopted plans and development regulations will need to be considered.

Some jurisdictions screen potential mineral lands by environmental attributes during the designation process or the overlay application process, and may eliminate from consideration any sites with high-valued environmental resources (e.g. wetlands or fish and wildlife habitat conservation areas.) However, environmental review for mining impacts is usually addressed during the permitting of mines. Previous studies of planning for mineral lands under the GMA have recommended preparing a Programmatic Environmental Impact Statement (EIS) to address aggregate extraction and processing (either statewide, or regionally.) This would provide a common environmental review framework for the various permitting processes at the state and local level. This recommended work has also not yet been done.

Mapping is required
In classifying and designating MRL, counties and cities are to follow the Commerce minimum guidelines in Chapter 365-190 WAC. In those original regulations, when Commerce was CTED, it stated that “there is no specific requirement for inventorying or mapping” natural resource lands, but that maps are a practical way to let the community know where those lands are located (see WAC 365-190-040(d)). RCW 36.70A.070 was subsequently amended to require that all plan elements be consistent with the future land use map, so there is now a requirement that designated resource lands be shown on a map.

MRL Designation via Overlays
Local plans and regulations contain a wide variety of provisions that affect the designation of mineral resource lands and the permitting of surface mines. Many jurisdictions use an overlay approach to designation, with two variations.

The first variation makes designation via an overlay zone, which is obtained through an amendment to the comprehensive plan, and which may condition any mining activity subsequently permitted. Once an overlay is obtained, property owners within the overlay zone may apply for mining permits.
The second variation designates potential mineral resource lands generally, and an overlay is requested by a land-owner through a comprehensive plan amendment, to apply an overlay to a specific parcel or land area within a parcel. Obtaining such an overlay allows for specific conditions to be applied to future mining, but also allows for mining a larger area than would be possible without a MRL overlay. Once an overlay is adopted in a comprehensive plan amendment, there is an opportunity to apply for mining permits within the overlay area.

Permitting follows designation
Once MRL designations are completed, mining proponents need to secure a local permit to mine, and may also need several other state and local permits as well (e.g., air quality permit, water quality general permit, solid waste handling permit.) Local mining permits are focused on mine operations, while mine reclamation is addressed through a state permit from WDNR.

Some jurisdictions use a special-use or conditional-use permit to allow mining activities to occur. These permits may or may not (but usually do) require that a proposed mine is within designated mineral resource lands, as a condition of permit application. Often these permits will require buffers on the resource lands to screen for operational impacts of noise and dust. It appears to be less common (despite the GMA requirement to do so) for buffers to be applied to adjacent lands, so as to not restrict the uses of resource lands to produce material resources.

8.52.090 Mineral resource lands.

The purpose of this section is to identify and designate commercial mineral lands, to establish guidelines for their development and to discourage incompatible land use.

(a) Classification. The following criteria shall be used in determining mineral resource lands of long-term commercial significance within the county:

(1) Class 1a--Mineral deposits which could meet the immediate and future needs of the regional community. These deposits shall be of significant size (greater than twenty-five acres) and readily accessible to water traffic on the Puget Sound;

Class 1b--Mineral deposits which could meet the long-term future and immediate needs of the regional community. These deposits shall be of significant size (greater than twenty-five acres) and accessible to rail or truck haul routes;

(2) Class 2--Mineral deposits within existing permitted surface mining operations operating under authority of RCW Chapter 78.44.

(b) Designation.

(1) Mineral lands of the county meeting the classification criteria for Class 1a and 1b mineral resource of long-term commercial significance, and so specified on the official county map, available at the county Planning Department titled “Mason County Long-Term Commercial Mineral Lands, 1992” or as thereafter amended, are designated, under RCW 36.70A.060 and RCW 36.70A.170, as conversation areas for mineral lands of long-term commercial significance.

(2) Lands of the county meeting the classification criteria for Class 2 are eligible for designation as mineral lands of long-term commercial significance. Those property owners who wish to “opt in” to this designation may do so pursuant to Section 8.52.200(c) within sixty days of the effective date of this chapter. This designation shall continue for as long as a state operating permit exists.

Designation of mineral lands of long-term commercial significance does not mean that such lands are exempt from the normal environmental review process of the county or state agencies. Areas not now identified as Class 1a or Class 1b but where a qualified geologist or mining engineer can now or in the future, demonstrate the probability for occurrence of a mineral deposit, may be so designated upon approval of the county.

(c) Land Uses. Prior to full utilization of a Class 1a or 1b designated mineral resource land’s mineral resource potential, subdivisions, short subdivisions or large lot segregation shall be prohibited. Exceptions may be made through a resource redesignation or through the variance procedure.

(1) Conditional Uses.

(A) Mineral processing facilities including rock crushing, asphalt and concrete batch plants;

(B) Public and semi-public structures including but not limited to fire stations, utility substations, pump stations, and waste water treatment facilities;

(C) “Class IV--General Forest Practices” under authority of the “1992 Washington State Forest Practices Act Rules and Regulations,” WAC 222-12-030, or as thereafter amended, which involve conversion to a conditional use in designated mineral resource lands;

(D) Any industrial or commercial development.

(d) Development Standards. All mining operations shall conform to the following standards. Variances for these standards and nonconforming uses may be appropriate when an operation is located in isolated areas or contains unusual topographical conditions.

(1) Setbacks/Screening.

(A) Within Mineral Resource Lands.

(i) A fifty-foot (15.25 meter) setback from all property lines, other than for access purposes onto public rights-of-way, shall be maintained for areas of direct cut or fill connected with resource extraction operations. For mining operations, setbacks may be increased when necessary to protect lateral support of abutting properties or public rights-of-way.

(ii) A twenty-five-foot (7.63 meter) screen on all property lines, consisting of site obscuring vegetation, or other methods to conceal the mine as approved by the county shall be maintained.

(iii) A fifty-foot (15.25 meter) setback of all direct extraction operation areas shall be maintained from public utility lines.

(2) Fencing. Prior to the commencement of surface mining, a fence shall be constructed and maintained enclosing the area authorized by the surface mining permit if public safety is in question. Fences shall be at least six feet in height and constructed of woven wire. Gates, the same height as the fence, shall be installed at all points of vehicular or pedestrian ingress and egress, and shall be kept locked when not in regular use.

(3) Road Access. For surface mining operations, access on any public right-of-way shall be surfaced in accordance with the county engineering division or State Department of Highways development standards as appropriate.

(4) Road Use. In order to assure maintenance and development of adequate county roadways, owners of surface mining operations may be required to enter into a haul route agreement with the county engineer upon adoption and implementation of a haul route agreement program.

(5) Traffic Safety. The county engineer may require the installation of traffic control and warning signs at intersections of private access roads with publicly maintained roads.

(6) Noise/Bright Lights.

(A) No development or activity shall exceed the maximum Environmental Noise Levels established by WAC 173-60, and Chapter 9.36 of this code.

(B) Bright lights are allowed outside of normal operating hours only for short-term mining operations necessary to facilitate emergency repairs.

(7) Surface Mining Operation within Critical Aquifer Recharge Areas. The purpose of this section is to protect critical aquifer recharge areas as required by RCW 36.70A.060(2).

Any surface mining operation within a critical aquifer recharge area (as designated in

Section 8.52.120 shall meet the following standards:

(A) Fuel tanks and oil drums shall be double containment construction and protected by bermed areas having adequate capacity to accommodate, contain, and allow the removal of chemical spills. Fuel nozzles shall not contain locking devices. Fuel storage shall be above ground. Fueling of mobile equipment shall be located at least twenty feet above the seasonal high ground water level or within lined and bermed areas with adequate capacity to accommodate, contain and allow the removal of chemical spills;

(B) All operations shall maintain a fuels/hazardous waste management plan maintained by the operator and available on the site at all times;

(C) Fencing, or some comparable deterrent, shall be installed to prevent unauthorized dumping of any materials within surface mining operations;

(D) Surface mines shall not use any noxious, toxic, flammable, compactable, or combustible materials not specifically authorized by the county department of health for backfill or reclamation. Noncontaminated process water used for gravel washing shall be routed to settling ponds to minimize off-site discharges. A general permit from the Department of Ecology for process and storm water discharge may substitute for these requirements;

(E) On-site truck and equipment wash run-off shall be routed to a retention facilities equipped with an oil-water separator prior to its release to settling ponds;

(F) Use of chemicals, petroleum or hazardous products, and disposal of such products, in concrete or asphalt plant operations within critical aquifer recharge areas shall meet all the standards set forth in WAC 90.48 and WAC 173.303.

(8) Public Safety. Owners of surface mines shall ensure that their operation(s) will not be hazardous to neighboring uses. Blasting activities shall be conducted so that ground vibrations and fly-rock to off-mine site uses are monitored and minimized.

(9) Waiver Clauses. The county may waive some or all of the restrictions outlined above following a written finding of fact and favorable findings under SEPA.

(e) Preferential Right to Manage Resources and Resource Use Notice.

(1) For those land owners of mineral resource lands who choose to use their property for resource management, the provision of “right to mine” provided under Section 8.52.040(c)(5) shall fully apply.

(2) Mining Use Notice.

(A) For properties designated mineral resource land upon application of the property owner or owners pursuant to Section 8.52.200(b) of this chapter.

Within two weeks of redesignation to mineral resource land, pursuant to Section 8.52.200(b), the property owner(s) of the land shall submit to the county, for recording with the county auditor, a written notice of the designation. This notice shall be in a form authorized by the director and shall include:

(i) The legal description of the property subject to the designation;

(ii) The sixteenth section or sections in which lie:

a. The designated property, and

b. Any other property within five hundred feet of the boundary of the designated property;

(iii) The following statement:

Notification

This notification is to inform property owners that the property described herein is designated as or within 500 feet of land designated for mining. Mining, operations may be carried out now or in the future. Mason County has established designated Mineral Resource Land that sets as a priority the use of these lands for mining. The normal and usual practices associated with said operations when performed in accordance with County, State and Federal law, shall not be subject to legal action as a public nuisance. A variety of commercial activities may occur on Mineral Resource Land that is not compatible with residential development for certain periods of limited duration. On Mineral Resource Land, an application might be made for mining-related activities, including mining, extraction, washing, crushing, stockpiling, blasting, transporting, and recycling of minerals.

The mineral right owner/operator shall execute and acknowledge the notice, and pay the fee to the county for recording the notice.

(B) For properties designated mineral resource land pursuant to Section 8.52.090(b)(1) of this chapter.

Within four months of the effective date of this chapter, the director shall submit to the county auditor for recording, a written notice of all designated mineral resource lands. This notice shall be in a form similar to subsection (e)(2)(A)(iii) of this section.

The director shall execute and acknowledge the notice, and no affected property owner shall be charged a fee for recording the notice.

(C) For all properties within three hundred feet of designated mineral resource lands.

All plats, short subdivisions, large lot subdivisions, development permits and building permits issued by the county after the effective date of this chapter for development activities within three hundred feet of property designated as mineral resource land, or within three hundred feet thereof, shall contain a notice as specified in subsection (e)(2)(A)(iii) of this section. (Res. 91-99 (part), 1999; Ord. 77-93 (part), 1993).