

Clark County Ordinance Report

As Reported by Community Planning Department
On: December 16, 2014

Title: An ordinance amending CCC Title 40 with new code language on surface mining development standards.

Brief Description: The ordinance (Ord. 2014-12-06) adopts new standards for surface mining operations (Section 40.250.022), and amends other sections of Title 40.

Brief History:

PC Hearings: September 19, October 3, November 7, and December 5, 2013; November 20, 2014

BOCC Hearings: November 25, 2014

DEPARTMENT REPORT

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Legal Counsel: Chris Cook, ext. 4775

Background: As required by the Growth Management Act, and using updated information from the Washington Department of Natural Resources on the location of mineral resources in Clark County, the county in 2010 began a process to update comprehensive plan and development code provisions related to mineral resource lands and the location of surface mining overlays. To complete this work, the county needs to update 1) its designation of mineral resource lands; 2) the comprehensive plan policies related to mineral resources; and 3) the development regulations in Title 40 of the Clark County Code that concern surface mining.

The Planning Commission reviewed comprehensive plan policies and development regulations and made a recommendation to the Board of County Commissioners in December 2013. Since then the Board has held work sessions, Planning Commission has revisited code provisions, and staff has conducted further public outreach. The Board agreed on where the surface mining overlay will be applied in June 2014. The Board held a hearing on November 25, 2014 and adopted updates 1) to the surface mining overlay map and revisions to comprehensive plan policies on the designation of mineral resource lands (Ord. 2014-12-08), and 2) to development standards for surface mining (Ord. 2014-12-06).

Summary of Ordinance: The ordinance (Ord. 2014-12-06) adopts new standards for surface mining operations.

Appropriation: None.

Fiscal Note: None.

Committee/Task Force Created: The Mineral Lands Task Force made recommendations considered by the Planning Commission in 2013.

Effective Date: These amendments shall go into effect at 12:01 a.m. on January 1, 2015.



APPROVED- DEC. 16, 2014
SR 293-14 1

ORDINANCE NO. 2014-12-06

An ordinance relating to land use; updating the Clark County Comprehensive Plan with new surface mining overlay code language.

WHEREAS, Clark County is required under the Growth Management Act to designate minerals resources lands (RCW 36.70A.050); and

WHEREAS, the current minerals resource lands designations were done with the adoption of the 1994 Comprehensive Plan by applying a surface mining overlay (SMO); and

WHEREAS, the Washington Department of Natural Resources Division of Geology and Earth Resources produced an aggregate resource inventory of Clark County in October 2005; and

WHEREAS, in 2009 the Washington Legislature adopted changes to the regulations and guidelines for classifying and designating minerals resources lands that took effect in February 2010; and

WHEREAS, the Board of County Commissioners (Board) appointed a Mineral Lands Task Force in 2011 to make recommendations on the SMO map, comprehensive plan policies and development standards; and

WHEREAS, task force recommendations were the subject of a public open house on July 18, 2012, and were considered by the Planning Commission during duly-advertised public hearings on September 19, October 3, November 7, and December 5, 2013; and

WHEREAS, the Planning Commission made recommendations to the Board on December 5, 2013 which included a revised overlay map, comprehensive plan policies and development standards, and that a code section on monitoring and enforcement be drafted; and

WHEREAS, a SEPA notice with a determination of non-significance was issued on August 30, 2013; and

WHEREAS, an appeal was filed and subsequently withdrawn, and no other comments were received on compliance with SEPA; and

WHEREAS, the Board and the Planning Commission held a joint meeting on April 17, 2014 on the Planning Commission recommendations; and

WHEREAS, the Board at a duly advertised public hearing on June 3, 2014 agreed in principle on a map of where the SMO should be applied; and

WHEREAS, the Board at an August 27, 2014 work session directed staff to continue to work with stakeholders on policy and code language differences; and

WHEREAS, the Planning Commission in a duly advertised public hearing on November 20, 2014 made an additional recommendation on proposed monitoring and enforcement code language; and

WHEREAS, the Board held a duly advertised public hearing on November 25, 2014 for the purpose of considering all the Planning Commission recommendations as well as staff's proposals to reconcile differences among stakeholders; and

WHEREAS, the Board adopted a new SMO map and revisions to the comprehensive plan policies and development standards on November 25, 2014; and

WHEREAS, the Board of County Commissioners finds that adoption of this ordinance will further the public welfare;

NOW, THEREFORE, BE IT ORDERED AND RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF CLARK COUNTY, STATE OF WASHINGTON, AS FOLLOWS:

SECTION 1. Repealer. Section 40.250.020 of Ordinance 2003-11-01, most recently amended by Exhibit A, Section 21 of Ordinance 2009-03-02, and codified as CCC Section 40.250.020 Surface Mining Overlay are each hereby repealed.

SECTION 2. New. A new CCC Section 40.250.022 Surface Mining Overlay is hereby adopted, as follows:

40.250.022 SURFACE MINING OVERLAY DISTRICT

A. Purpose.

The purpose of the surface mining overlay district is to ensure the continued availability of rock, stone, gravel, sand, earth and mineral products without disrupting or endangering adjacent land uses, while safeguarding life, property and the public welfare.

B. Applicability.

1. The provisions in this section shall apply to parcels designated with the surface mining overlay.
2. With the exception of 40.250.022(F), the provisions of this section shall apply only to new applications for surface mines and related uses and expansions of existing mines. Operation of existing surface mines and

related uses shall conform to the conditions of approval adopted with their site plan and/or conditional use approval. Section 40.250.022(F) is applicable, according to its terms, to all existing, expanded, and new surface mines and related uses.

3. Provisions of Chapter 78.44 RCW and Chapter 332-18 WAC pertaining to surface mining that are applicable to Clark County are adopted by reference.
4. Surface mining activity and related processing within the Columbia River Gorge National Scenic Area are subject to Chapter 40.240. Where Section 40.250.022 is in conflict with this section, the provisions of Chapter 40.240 govern.

C. Uses.

1. Permitted uses. In addition to uses allowed in the underlying zoning district, the following uses are permitted in the surface mining overlay district:
 - a. Temporary offices, shops or other accessory buildings and structures used for the management and maintenance of onsite mining and processing equipment; and
 - b. Short-term stockpiling of extracted materials at a road improvement site or construction site, for use at that job site.
2. Conditional uses. In addition to uses allowed conditionally in the underlying zoning district, the following uses are allowed in the surface mining overlay district, subject to conditional use approval:
 - a. Extractions of rock, stone, gravel, sand, earth and minerals;
 - b. Asphalt mixing;
 - c. Concrete batching;
 - d. Clay bulking; and
 - e. Rock crushing.

D. Standards.

1. Site area. When the activity includes both extraction and any one of the other uses listed on Section 40.250.022(C)(2), the total site area shall be a minimum of twenty (20) acres. Activities which are limited to extraction only shall not have a minimum site size.
2. Setbacks.
 - a. Mineral uses on designated mineral resource land shall be setback at least two hundred (200) feet from abutting parcels with existing lawfully-established residential structures or adjacent rural (R) zoning. The setback area shall be used only for roads, berms, landscaping, signs, fencing and reclamation activities. The setback may be reduced by the responsible official if the purposes of this chapter can be met with the reduced setback.
 - b. Structures on properties adjacent to designated mineral resource land shall be setback at least one hundred fifty (150) feet from such land. The setback may be reduced by the responsible official if the purposes

of this chapter can be met with the reduced setback or if it is not feasible to meet the setback due to site constraints. Setbacks shall not apply to existing structures.

3. Access. Roads into the site shall be gated and the site or mining area shall be fenced and posted "No Trespassing".
4. Noise. Maximum permissible noise levels must be in accordance with the provisions of Chapter 173-60 WAC or as identified in the SEPA document.
5. Hours and days of operation.
 - a. No operations shall take place on Sundays or on the following holidays: New Year's Day, Memorial Day, July 4th, Labor Day, Thanksgiving Day, Easter, MLK Day, Veterans Day, and Christmas Day.
 - b. All operations and activities other than blasting and maintenance are restricted to the hours of 6:00 a.m. to 6:00 p.m. Monday through Friday and 8:00 a.m. to 5:00 p.m. Saturday.
 - c. Blasting is restricted to the hours of 9:00 a.m. to 4:00 p.m. Monday through Friday.
 - d. Maintenance activities, excluding mining, crushing, and loading, may be performed outside the normal hours of operation, provided that no equipment with narrow-band (beeping) back-up alarms is used. Noise levels must comply with night-time noise requirements.
 - e. Loading and hauling outside of normal hours of operation may be approved by the responsible official provided that:
 - (1) the applicant provides at least fourteen (14) days' notice to the county prior to the event such that the county can provide at least ten (10) days' notice to property owners within one-half (1/2) mile of the site boundary and to owners of all parcels abutting local access roads to be used for hauling that are between the site and roads designated in the Arterial Atlas as connectors, arterials, or State highways;
 - (2) the applicant provides evidence that the contract requires delivery of rock or rock products outside of normal operating hours; and
 - (3) all equipment shall utilize broadband back-up alarms or reverse-activated strobe lights conforming to Mining Safety and Health Administration (MSHA) requirements.
 - (4) In an emergency, the responsible official may waive the requirements of this subsection.
6. Stormwater and erosion control must meet the standards of Chapter 40.385.
7. Blasting and mining activities shall not:
 - a. adversely affect the quality or quantity of groundwater or groundwater wells; or
 - b. cause damage to offsite structures, where such structures were constructed pursuant to an approved permit, if one was required.
8. Notice of blasting events shall be provided by the operator to property owners within one-half (1/2) mile of the mining limits by mail at least seven (7) days prior to blasting. Any person requesting notice via electronic

communication shall be notified at least twenty-four (24) hours prior to blasting.

9. Mining activities must meet applicable Federal, State and county standards governing odors, dust, smoke, blasting and vibration. Lighting shall not cast significant light or glare on adjacent properties.
10. The director of public works may require pavement wear agreements for public roads used to access the site. Public access roads to mining sites must be maintained to the satisfaction of the director of public works, to minimize problems of dust, mud, potholes, runoff and traffic safety. All vehicles shall comply with RCW 46.61.655 (escape of load materials and cleaning of vehicles).
11. Internal access roads shall be paved within one hundred (100) feet of a paved county road or state highway to reduce tracking of dirt, mud and rocks.
12. The applicant shall identify the source or potential source and approximate amount of water anticipated to be used on the site. If this amount exceeds the exemption provided for under RCW 90.44.050, the applicant must present evidence that adequate water can be made available without adversely affecting nearby uses.
13. Consistent with CCC 32.04.040, the operator shall grant access for inspection of the mine operation in order for the county to monitor and, if necessary, enforce the provisions of the conditional use permit.

E. Approval Process.

1. Site plan approval is required prior to any surface mining use.
2. Plans shall be drawn to an engineer's scale and shall be of sufficient clarity to indicate the nature and extent of the work proposed and show in detail that they will conform to the provisions of this section and all other relevant laws, ordinances, rules and regulations. The first sheet of each set of plans shall give the location of the work, the names and addresses of the owner, and the person by whom they were prepared. The plans shall include the following minimum information:
 - a. General vicinity maps of the proposed site;
 - b. Property boundaries and contours of existing ground, details of existing terrain, and details of existing area drainage;
 - c. Proposed elevations and contours of the greatest extent of the proposed mining and proposed drainage channels and related construction;
 - d. Detailed plans of all surface and subsurface drainage devices, walls, cribbing, dams, berms, settling ponds and other protective devices to be constructed with or as a part of the proposed work, together with the maps showing the drainage area and the estimated runoff of the area served by any drains;
 - e. Location of any buildings or structures on the property where the work is to be performed, and the location of any buildings or structures on

land of adjacent property owners which are within two hundred (200) feet of the property;

- f. Location of access roads and primary haul routes.
 - g. Stormwater calculations and proposed treatment facilities for runoff from access roads and impervious areas;
 - h. A hydrogeology report which characterizes the groundwater and surface water and identifies wells within one-half (1/2) mile of the proposed mining limits and a monitoring and mitigation plan if there are existing wells within one-half (1/2) mile of the proposed site; and
 - i. A traffic impact analysis including the following elements, or as directed by the director of public works:
 - (1) Trip generation, including passenger & haul vehicles;
 - (2) Trip assignment and distribution;
 - (3) Capacity analysis: Existing and proposed operational level of service at the site access and intersections along primary and secondary haul routes including any proposed mitigations;
 - (4) Safety analysis: Sight distance at intersections and crash history at intersections and along all haul route corridors, including any proposed mitigations;
 - (5) Vehicle maneuvering analysis: Turning movements at intersections and tracking at intersections and horizontal curves including any proposed mitigations; and
 - (6) Structural capacity analysis: Remaining life of primary and secondary haul routes under current and proposed loading including any improvements needed to achieve a fifteen- (15-) year structural capacity.
3. Conditional uses permitted under Section 40.250.022(C)(2) shall be reviewed through a conditional use process pursuant to Section 40.510.030.
 4. For temporary uses permitted under Section 40.250.022(C)(1) that are not exempt from review per Section 40.260.220(C)(3)(b), the responsible official shall review and approve plans and specifications through a Type I process pursuant to Section 40.510.010.
 5. Notice required by Sections 40.250.022(E)(3) and (4) above shall be sent to owners of property within a radius of one (1) mile of the site and to owners of all parcels abutting local access roads identified as the primary haul route that are between the site and roads designated in the Arterial Atlas as collectors, arterials or State highways.

F. Monitoring and Enforcement.

The following shall apply to all existing, expanded and new mining operations, except that subsections (2) and (3) shall not apply to mining operations that predate the adoption of this section.

1. Operating requirements and standards shall be implemented through compliance with conditions of approval as specified in this section and in the conditional use permit issued by the county.

2. In order to ensure compliance with conditions of approval the applicant shall develop and conduct a monitoring program. The monitoring program shall be approved by the county prior to beginning operations under the permit, and shall include the following:
 - a. A statement of the operating requirements and standards for each condition of approval in the permit for mineral extraction, materials processing, and materials transport;
 - b. A description of the methodology for determining compliance with each requirement and standard; and
 - c. A schedule for conducting the required monitoring.
3. At the applicant's expense, all results of the required monitoring shall be kept for at least 10 years, and included in a report submitted to the county:
 - a. beginning twelve (12) months after approval of the conditional use permit;
 - b. continuing at twelve- (12-) month year intervals thereafter; and
 - c. as needed, in the determination of the responsible official, to correct any instances of non-compliance.
4. The county shall conduct a periodic performance review of permit requirements and standards at the end of the first three years, and at three-year intervals after that. The periodic review shall be a Type 2 land use decision. The periodic review shall determine whether the facility is operating consistent with all existing permit conditions.
5. The county shall conduct an inspection of the mining facility no less than once per year in order to assess the accuracy and effectiveness of the monitoring program and, if necessary, enforce the provisions of the conditional use permit, pursuant to the provisions of Title 32.
6. Failure to comply with the operating requirements and standards specified in the conditional use permit may result in revocation of the conditional use permit, pursuant to the provisions of Title 32 and Section 40.520.030.

G. Resource Activity Notification.

1. All approvals for subdivisions, short plats, site plans, zone reclassifications, manufactured home park site plan approvals, variances, conditional use permits, shoreline permits and building permits issued or approved for land on or within one thousand (1,000) feet of lands designated as natural resource land (agricultural, forest or mineral lands), pursuant to RCW Chapter 36.70A.170, shall contain or be accompanied by a notice stating the following:

"The subject property is adjacent or in close proximity to designated mineral resource land on which a variety of commercial mining activities may occur that are not compatible with residential development. Potential disturbances or inconveniences may occur 24 hours per day and include but are not limited to: noise, blasting, odors, fumes, dust, smoke, and operation of heavy machinery".

2. In the case of plats, short plats and binding site plans, notice shall also be included in the plat or binding site plan dedication.

H. Land Restoration.

1. Upon the exhaustion of minerals or materials, or upon the permanent abandonment of the quarrying or mining operation, all buildings, structures, apparatus or appurtenance accessory to the quarrying and mining operation which are nonconforming to the underlying district shall be removed or otherwise dismantled to the satisfaction of the responsible official.
2. Unless approved as a sanitary landfill, grading or backfilling shall be made with non-noxious, non-flammable, non-combustible and non-putrescible solids.
3. Such graded or backfilled areas, except for roads, shall be sodded or surfaced with soil of a quality at least equal to the topsoil of the land areas immediately surrounding, and to a depth of at least four (4) inches, or a depth of that of the topsoil of land areas immediately surrounding, if less than four (4) inches.
4. Such topsoil as required by Section 40.250.022(H)(3) shall be planted with trees, shrubs or grasses. If the site is within an AG or FR district, the topsoil shall be of a similar type to the surrounding area.
5. Graded or backfilled areas shall be reclaimed in a manner which will not permit stagnant water to remain. Suitable drainage systems approved by the responsible official shall be constructed or installed if natural drainage is not possible.
6. Waste or soil piles shall be leveled and the area treated, as required in Sections 40.250.022(H)(3) and (H)(4).

I. Applicability to Pre-Existing Operations.

Notwithstanding Section 40.530.010, the provisions of the surface mining overlay district shall apply to surface mining operations commenced prior to, and in continued operation, as of December 30, 1997.

SECTION 3. Repealer. Section 40.260.120 of Ordinance 2003-11-01, as codified by CCC Section 40.260.120 Mines, Quarries and Gravel Pits are each hereby repealed.

SECTION 4. Amendatory. Section 40.260.220 of Ordinance 2003-11-01, most recently amended by Exhibit A, Section 41 of Ordinance 2007-06-05, and codified as CCC Section 40.260.220 Temporary Uses and Structures are each hereby amended, as follows:

40.260.220 TEMPORARY USES AND STRUCTURES

C. Uses and Exceptions.

3. Exceptions. Certain structures and uses are exempt from the requirement to obtain a temporary use permit. However, building and fire code requirements still apply. The following are exempt from the requirement for a temporary use permit:
 - b. For non-residential districts:
 - (1) Temporary construction trailers, construction materials, and equipment storage areas, and construction offices accessory to a construction or mining site.

SECTION 5. Amendatory. Section 40.560.010 of Ordinance 2003-11-01, most recently amended by Section 27 of Ordinance 2012-12-14, and codified by CCC Section 40.560.010 Plan Amendment Procedures are each hereby amended, as follows:

40.560.010 PLAN AMENDMENT PROCEDURES

S. Additional Criteria for Surface Mining Overlay Changes.

1. Designation of additional areas with the surface mining overlay shall only occur if:
 - a. the designation criteria in the comprehensive plan have been met;
 - b. The quantity and characteristics of the resource including the size of the deposit, the depth of overburden, the distance to market, and the cost of transport and resource availability in the region, suggest that mining is economically viable; and
 - c. at least sixty percent (60%) of the area within one thousand (1000) feet of the proposed mineral resource land is characterized by parcels of five (5) acres or larger.
2. Removal of the surface mining overlay shall only occur if one of the following conditions is met:
 - a. The mineral resources have been depleted;
 - b. There is evidence that the mining of the mineral resource is not economically feasible based on the factors listed in Section 40.560.010(S)(1)(b);
 - c. Environmental or access constraints make it impractical to mine the resource; or
 - d. The area has been brought into an urban growth boundary or adjacent land uses or developments are incompatible with mineral extraction.

T. S. Cumulative Impact.

U. T. Fees.

SECTION 6. Effective Date. This ordinance shall go into effect at 12:01 a.m. on January 1, 2015.

SECTION 7. Instructions to Clerk. The Clerk to the Board shall:

1. Transmit a copy of this ordinance to the Washington State Department of Commerce within ten days of its adoption pursuant to RCW 36.70A.106.
2. Transmit a copy of the adopted ordinance to Clark County Geographic Information Systems (Ken Pearrow GIS Coordinator), to Community Planning Department, and to Community Development Department (Debra Weber, Tidemark Data Manager).
3. Record a copy of this ordinance with the Clark County Auditor.
4. Cause notice of adoption of this ordinance to be published forthwith pursuant to RCW 36.70A.290.

ADOPTED this 16 day of December 2014.

BOARD OF COUNTY COMMISSIONERS
FOR CLARK COUNTY, WASHINGTON

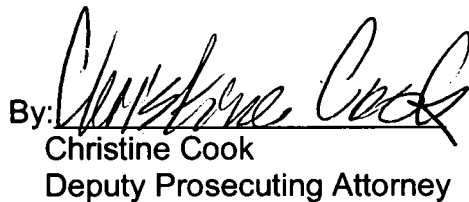
Attest:


Clerk to the Board

By: 
Tom Mielke, Chair

Approved as to Form Only:
Anthony F. Golik
Prosecuting Attorney

By: _____
David Madore, Commissioner

By: 
Christine Cook
Deputy Prosecuting Attorney

By: _____
Jeanne Stewart, Commissioner