

MLA 01-183  
20N 01-20



**JEFFERSON COUNTY**  
**DEPARTMENT OF COMMUNITY DEVELOPMENT**

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**Unified Development Code Interpretation**

This interpretation is made according to Section 8.6 of the Unified Development Code (UDC). An interpretation of the provisions of the UDC is intended to clarify conflicting or ambiguous wording, interpret proper classification of a use, or interpret scope or intent. The "Factors for Consideration" listed in UDC 8.6.2.c were considered in making this UDC interpretation, including applicable policies of the Jefferson County *Comprehensive Plan*.

Date: May 15, 2001  
Case: MLA01-000183  
Applicant: Northwest Aggregates  
Representative: Stephen H. Roos, Hillis Clark Martin & Peterson

UDC Section: 4.24 Mineral Extraction, Mining, Quarrying and Reclamation, Subsection 7

- 7. The alteration, intensification, and expansion of existing gravel pits and surface mining operations is allowed subject to reasonable performance standards to ensure that alteration, intensification, and expansion of such uses have minimal adverse impacts on surrounding areas and uses, and *provided that*:
  - a. If increased off-site impacts (noise, vibration, dust, traffic) would result from expansion, intensification, or modification, a conditional use permit shall be required.
  - b. Modification to include a new use or operation (e.g., a rock crusher) shall require a conditional use permit subject to a Type III permit approval process.

Summary of code interpretation request:

- 1. What does it mean to "alter, intensify or expand" an existing surface mine?
- 2. How will the County determine whether performance standards are "reasonable," and whether adverse impacts are "minimal"?
- 3. How will the County establish a baseline for the purposes of determining whether an activity results in "increased" off-site impacts, and is the County's analysis limited to noise, vibration, dust, and traffic?
- 4. How will the County define a "new use or operation" for purposes of UDC 4.24.7.b?

Language subject to interpretation:

- 1. "alteration, intensification, and expansion" of existing gravel pits and surface mining operations
- 2. "reasonable" performance standards; "minimal" adverse impacts

3. "increased" off-site impacts; whether noise, vibration, dust, and traffic are illustrative or exclusive examples of off-site impacts
4. "new use or operation"

Interpretation:

1. The phrase "existing gravel pits and surface mining operations" refers to gravel pits and surface mining operations (as defined in RCW 78.44 and WAC 322-18) that were in existence before the effective date of the UDC (January 16, 2001). The terms "alteration," "intensification," and "expansion" are used according to the ordinary meaning of the words, as established in dictionaries and by common usage. The terms are also defined in UDC Section 2, though in the context of nonconforming uses, which may or may not apply to particular existing gravel pits and surface mining operations. When applied to an existing surface mining operation, the terms are meant to represent a departure from the activities, pattern of intensity, and size and scale that characterized the "grandfathered" operation.

In the case of existing surface mining operations that were granted the status of "Interim Mineral Lands of Long-Term Commercial Significance" through adoption of the Mineral Lands Ordinance (No. 09-0525-95) on May 25, 1995, primary processing of mineral resources is a permitted use. The triggering criterion for the designation of these lands was whether the mine was then operating under a surface mining permit issued by the Washington State Department of Natural Resources (DNR). Without adopted regulations governing surface mining operations at that time, Jefferson County deferred to state and federal law and the parameters of the DNR surface mining permits. Therefore, the parameters of the DNR surface mining permit (i.e., "estimated total acres to be surfaced mined," "est. max. depth to be surface mined"), in combination with the character of the activities, pattern of intensity, and size and scale of the operation conducted under the DNR surface mining permit, represent the type and extent of operations conducted at these particular surface mining operations that are considered "grandfathered" by the County. Consequently, "alteration, intensification, and expansion" under UDC 4.24.7 would be a departure from the parameters of the DNR surface mining permit and/or the character of the activities, pattern of intensity, and size and scale of the operation for those surface mining operations granted "Interim Mineral Lands of Long-Term Commercial Significance" through the Mineral Lands Ordinance.

One of the intentions of UDC 4.24.7 is to bring nonconforming operations into compliance with UDC mineral extraction, mining, quarrying and reclamation regulations. Nonconforming operations may be occurring on a site in conjunction with a conforming use, as in the example of a mining operation on land classified as "Interim Mineral Lands of Long-Term Commercial Significance" in the Mineral Lands Ordinance and later mapped as Mineral Lands on the Land Use Map accompanying the *Comprehensive Plan*, adopted August 28, 1998. The use at these sites is "grandfathered," but the operations may not be in compliance with the UDC, as the County does not have active permits on file for these "grandfathered" mines and is unable to fully assess performance in relation to UDC standards absent a permit application. Thus, UDC 4.24.7 establishes a permit process, Type I or Type III depending on the specifics of the application,

in order to ensure conforming operations for those sites with conforming uses but nonconforming operations, when alteration, intensification, or expansion is proposed on those sites.

2. "Reasonable" performance standards are performance standards outlined in the UDC and/or other state and federal regulations. UDC 4.24.3 summarizes applicable performance standards. "Minimal" adverse impacts means adverse impacts that are not significant. Procedures for assessing the significance of potential adverse impacts are outlined in WAC 197-11-330 and significance in this context is defined in WAC 197-11-794. "Adverse impacts" are defined in Section 2 of the UDC: *a condition that creates, imposes, aggravates, or leads to inadequate, impractical, unsafe, or unhealthy conditions on a site proposed for development or on off-site property or facilities or on wildlife or wildlife habitat.* The determination concerning significance of the likely adverse impacts of a proposal would be made through appropriate environmental review under the State Environmental Policy Act and/or UDC.
3. The determination of "increased" off-site impacts would be made on a case-by-case basis through environmental review of a proposal. Each proposal would offer unique baseline data for use in the determination. As described in the interpretation for "alteration, intensification, and expansion" above, the parameters of previous permits and the pattern of intensity and size and scale of historic operations would be examined in the determination. Noise, vibration, dust, and traffic are illustrative of potential off-site impacts, not exclusive.
4. A "new use or operation" would be a use or operation that is different in character from those existing or otherwise permitted uses and operations. For example, for a surface mining operation that is "grandfathered" to conduct mineral extraction, as defined in UDC Section 2, a proposal to conduct mineral processing, as defined in UDC Section 2, would be considered a "new use or operation." As described in the interpretation for "alteration, intensification, and expansion" above, the parameters of previous permits and the character of historic operations would be examined in the determination.

Appeal: As outlined in UDC 8.6.5, 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 UDC 8.5.1. Appeals must be received at the Department of Community Development with the applicable fee by 4:00 PM on the last business day of the appeal period.

Dated this 15<sup>th</sup> day of May 2001.

  
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Al Scalf, Director of Community Development