

## STAFF REPORT

DATE: May 25, 2004

TO: Jefferson County Board of County Commissioners

FROM: Jefferson County Department of Community Development

SUBJECT: To re-examine a 2002 Comprehensive Plan Amendment (MLA 02-235 – Fred Hill Materials Inc.) based on new environmental information as required by the Western Washington Growth Management Hearings Board (WWGMHB)

### **1.0 Background:**

1.1 The adoption of Ordinance 14-1213-02 on December 13, 2002 for a 690-acre Mineral Resource Land (MRL) Overlay District with 15 conditions of approval (MLA 02-235) was appealed to the WWGMHB. On August 15, 2003 a Final Decision and Order 03-2-0006 (FDO) was issued. The FDO found deficiencies with the environmental review and raised other issues with MLA 02-235. Around February 18, 2004, a revised compliance schedule was established by the WWGMHB. The county is required to have all actions completed by May 25, 2004. A County Compliance Report is due to the WWGMHB on May 28, 2004. A Compliance Hearing is scheduled for August 3, 2004 before the WWGMHB.

1.2 Jefferson County prepared a Request for Proposals (RFP) for consultant services to address issues raised in the FDO. On October 29, 2003 and November 5, 2003 the RFP was published in *The Daily Journal of Commerce* and the RFP was published on November 5, 2003 in *The Leader* with a deadline for submission of proposals of November 21, 2003.

1.3 Four proposals were received by the deadline. The County selected the Wheeler Consulting Group and Intergroup Development Corporation proposal because: they have over 20 years of experience preparing Environmental Impact Statement (EIS) documents; their experience with mining proposals and the WWGMHB; and their ability to prepare a Draft Supplemental Environmental Impact Statement (DSEIS) and Final Supplemental Environmental Impact Statements (FSEIS) within the allotted time frame for the proposed budget.

1.4 To ensure that Jefferson County had control of the EIS process, Jefferson County enacted a three party agreement where the consultant would report to Jefferson County and submit invoices to Jefferson County. The County would pay the consultant and would then be reimbursed by the applicant Fred Hill Materials Inc. (FHM) for the costs incurred.

1.5 The county's instructions to the consultant were to prepare a non-project DSEIS and FSEIS in accordance with SEPA and to address the issues raised by the WWGMHB. The county provided the consultant with direction and input in the preparation of the DSEIS and FSEIS.

1.6 On March 3, 2003 the DSEIS was issued and widely distributed for a 30-day comment period. Six comments were received by the April 2, 2004 deadline. The FSEIS addressed comments received on the DSEIS and also included additions, corrections and clarifications to the DSEIS. The FSEIS was issued on May 12, 2004. The notice of the May 25, 2004 Public Hearing for MLA 02-235 along with the Notice of Availability of the FSEIS was published in *The Leader* on May 12, 2004.

1.7 Although the SEPA process has concluded with the issuance of the FSEIS, the purpose of the DSEIS and FSEIS (the complete product known as the SEIS) is to allow government agencies and interested citizens to review and comment on proposed government actions, and to ensure that decision makers can make an informed decision (WAC 197-11-400). Below is a summary of the information found in the SEIS.

## **2.0 Alternatives:**

2.1 Three alternatives were analyzed in the SEIS.

2.2 The **Proposed Action Alternative** is the 6,240-acre MRL (excluding critical areas) proposed by the applicant. The Proposed Action Alternative does not include a limit on mining size so mining size would be determined by DNR.

2.3 The **Approved Action Alternative** is the modified 690-acre MRL approved by the Board, through Ordinance 14-1213-02 on December 13, 2002, and includes the 15 conditions of approval. The Approved Action has a 40 acre limit on mining segments and a limit on mining depth, i.e., no mining shall occur closer than 10 feet above any underground aquifer.

2.4 The **No Action Alternative** (described in Section 2.7 of the DSEIS) examines not designating a MRL and relying on the current Unified Development Code (UDC) requirements for extraction and processing outside of a MRL. This alternative examined the possibility that mineral extraction could occur in any Resource District as a permitted use, and examined the 10 acre maximum of disturbed area for mineral extraction activities outside of a MRL. The significance of the term "Disturbed Area" is that under the No Action Alternative once an area has been reclaimed to DNR standards (see Section 3.2 below), a corresponding additional area could be mined, provided that no more than 10 acres is disturbed at any one time. This means that a large area could be mined in this fashion.

## **3.0 Intensity of Use**

3.1 The SEIS addressed the implications of regulations related to the size of mining areas and the intensity of use. (Section 2.8 of DSEIS and Section 2.3 of FSEIS.)

3.2 The term disturbed area is defined in RCW 78.44.031(5) (Surface Mining Act) and this is referenced in Section 2.8 of the DSEIS. Disturbed area is a broad and inclusive term that

includes cleared or altered areas in preparation of mining along with mine related extraction, pit floors, areas for processing, stockpiles, spoil areas, and equipment staging areas. RCW 78.44.031(5)(b) states that “Disturbed areas do not include lands that have been reclaimed to all standards outlined in this Chapter (RCW 78.44), rules of the department (DNR), any applicable SEPA documents, and approved reclamation plans.”

3.3 The term segment is discussed in Section 2.8 of the DSEIS. The easiest way to distinguish between “segments” and “disturbed areas” is to state that while all disturbed areas would satisfy the definition of a segment, not all segments are disturbed areas, since disturbed area holds a quite precise definition under the Surface Mining Act, 78.44 RCW. For instance, a segment that was being reclaimed would not be a “disturbed area” but would be a segment in the reclamation plan the miner must have approved by DNR.

3.4 Typically, with segmental reclamation, mining areas are divided into segments (or phases) where the order of mining and reclamation is determined. An example of this is after the first segment is mined, the miner moves into the second segment and if the first segment is no longer needed or impacted, this area would be reclaimed typically within 2 years (RCW 78.44.111). DNR starts with 7 acre segments but will allow larger segments if the miner can show why larger segments are needed [RCW 78.44.031(15)]. DNR will typically allow more than one segment to be disturbed at one time, because reclamation may lag several segments behind a segment being actively mined. In other words, a mining operation may include areas being reclaimed, areas being mined, and areas being prepared to be mined).

3.5 Section 2.8 of the DSEIS indicates that larger segment sizes (allowed in the MRL alternatives but not in the No-Action Alternative) are more efficient than smaller sized segments based on the nature of the resource found in the Shine-Thorndyke area. Ten Acre segment/disturbed areas incorporated into a larger plan for mining outside of a MRL in deep unconsolidated deposits would be inefficient in terms of non-renewable resource recovery because of the reclamation setbacks anticipated under RCW 78.44.121(1) of the Surface Mining Act. Furthermore, since the maximum slope angle that can occur between the ground and the extraction ‘face’ is 45 degrees in order to prevent dangerous slides and/or erosion from occurring, the consequence of that limit is that deeply-buried resources will not be accessible if the disturbed area cannot exceed 10 acres.

3.6 Section 2.8 of the DSEIS also concludes that for deep deposits of unconsolidated deposits of sand and gravel that small segment sizes would result in the need for more disturbed area to obtain the same quantity of resource recovery than larger mining segments. The inefficiency related to resource recovery with the No Action Alternative appears to be in conflict with the RCW 36.70A.060 that requires counties to adopt development regulations that assure the conservation of designated resource lands.

#### **4.0 Summary of Impacts**

4.1 Table 4-3 of the Jefferson County Comprehensive Plan has 13 factors utilized for assessing lands for MRL designation. These 13 factors were analyzed in the SEIS for the three alternatives, as was requested by the Hearings Board. The 13 factors were categorized according

to WAC 197-11-444 (Section 2.5.5 of the DSEIS). These factors include: earth, air quality, water resources, plants and animals, environmental health, land use, and transportation for the three alternatives. These impacts are summarized in Section 1.5.5 of the DSEIS.

4.2 **Earth-** The Proposed and Approved Action would protect mineral resource lands by providing nuisance protection to mineral extractors, and providing notice to adjacent property owners as provided by areas designated MRL by Section 3.6.3 of the UDC. The No Action Alternative does not provide nuisance protection to mineral extractors, or provide notice to adjacent property owners as provided by areas designated MRL by Section 3.6.3 of the UDC.

4.3 **Water Resource** - The Approved Alternative has a 10 foot limit on mining above the water table to protect aquifer recharge and surrounding wells. The Proposed and No Action Alternatives do not include this safeguard.

4.4 **Plants and Animals** - The Approved Action Alternative is outside of known territories of priority species. Mineral extraction could occur near known territories of priority species under the Proposed and No Action Alternatives.

4.5 **Environmental Health (noise)** – With the Approved Action Alternative, mineral extraction would occur at the western edge of the study area away from sensitive receptors, i.e. residences. Mineral extraction could occur near sensitive receptors under the Proposed and No Action Alternatives.

4.6 **Land Use (aesthetics)** - With the Approved Action Alternative, mineral extraction would occur at the western edge of the study area away from residences to the south and east and away from SR 104. Mineral extraction could occur in highly visible locations under the Proposed and No Action Alternatives.

4.7 **Transportation** – Transportation impacts should be similar for the Proposed and Approved Alternatives, roughly seven (7) additional truck trips on eastbound SR 104 for every 1,000 vehicle trips already occurring on that segment of SR 104 according to a State DOT study from 2001. Impacts associated with the No Actions Alternative would be dependent on factors for mineral extraction and processing proposed.

4.8 The FDO indicated that it is not appropriate to evaluate the Pit-to-Pier, but it is appropriate to examine the transportation impacts of the three alternatives as part of the non-project EIS for the MRL. Section 2.9 of the DSEIS addresses resource transport and states that extraction rates depend on the product demand and the ability to transport material to the end user. This section also indicates that SR 104 is at/near capacity and that if other transportation methods (i.e. marine transport) become available new or expanded markets may be found resulting in the higher extraction rates. Section 3.23 of the DSEIS addresses transportation impacts of the three alternatives. This section also provides clarification that the conveyor proposed for transport of material from the point of extraction to the Shine Processing Hub is different than the conveyor associated with the delivery of processed material associated to with

a perspective marine transport facility (pit-to-pier). In any event, truck traffic will continue whether or not marine transport is approved.

4.9 Section 2.2 of the FSEIS addresses transportation issues and provides additions and clarifications to Section 2.9 and Section 3.23 of the DSEIS. This section provides additional transportation information on the extraction rates on FHM truck based operation (including general traffic impacts) and potential marine transport, which are independent of each other because they would serve different markets.

### **Recommendation**

Based on these factors above, staff is recommending the adoption of the Approved Action Alternative with the conditions from Ordinance 14-1213-02 with two modifications.

#### Proposed Condition #12

**Condition #12** – Maximum “disturbed area” [as that term is defined at RCW 78.44.031(5)] size shall be determined in consultation with Department of Natural Resources, but shall not exceed the lesser of 40 acres or the appropriate size for a specific proposed site according to consideration and implementation of the ‘best management practices’ promulgated by DNR. Reclamation shall be conducted on an on-going basis, pursuant to progressive segmental reclamation standards and according to the specific mining segment sizes and timelines established in DNR-approved Reclamation Plans.

#### Condition #12 from Ordinance 14-1213-02

Maximum active mining area (segment) size shall be determined in consultation with Department of Natural Resources, but shall not exceed 40 acres. Reclamation shall be conducted on an on-going basis, pursuant to progressive segmental reclamation standards and according to the specific mining segment sizes and timelines established in DNR-approved Reclamation Plans.

*Staff Comment: The proposed change is from a maximum 40 acre segments to the lesser of 40 acre disturbed area or as recommended by DNR. This change is more restricted than what was initially adopted by Ordinance 14-1213-02 and reflects the difference in definition of segments and disturbed area discussed in Sections 3.2 and 3.3 above. This also clarifies the county’s intent to keep the disturbed area at an appropriate level and not to have large areas of forest land removed from production, which would displace wildlife habitat.*

#### Proposed Condition #14

Any application for a conveyor and pier facility for barge loading in the Hood Canal would automatically receive a threshold Determination of Significance (DS) from Jefferson County, requiring the preparation of a project action Environmental Impact Statement (EIS). Transportation of extracted materials to anticipated markets shall be a component of the environmental review of any extraction permit applications. Any permit issued shall be based on the transportation methods and anticipated rate of transport stated in the project application. Subsequent to extraction project approval, any substantial change in the rate of extraction associated with that extraction proposal shall require either a new or amended permit, and

potentially a new threshold determination issued by Jefferson County as is allowed by WAC 197-11-600(3)(b)(i).

Condition #14 from Ordinance 14-1213-02

Any application for a conveyor and pier facility for barge loading in the Hood Canal would automatically receive a threshold Determination of Significance (DS) from Jefferson County, requiring the preparation of a project action Environmental Impact Statement (EIS). The permit application review process for any application for mineral extraction in the newly adopted Wahl Lake/Meridian MRL overlay shall include a full environmental review of all transportation options of mined material, including terrestrial and marine options. If an application is submitted for mineral extraction in the Thorndyke Tree Farm, but a concurrent zoning and shoreline conditional use application is not submitted for a conveyor and pier facility for barge loading in the Hood Canal, the marine transportation option shall be fully analyzed and considered during SEPA review, the absence of an application notwithstanding, or the marine transportation option shall be eliminated from future consideration. This measure is established as a matter of policy and in an effort to fulfill the spirit and intent of the State Environmental Policy Act and the Jefferson County Comprehensive Plan, which call for full environmental review of all probable short- and long-term environmental impacts.

*Attachments:*

*Applicable Washington Administrative Code (WAC)*

*Applicable Revised Code of Washington (RCW)*

*Comments Received on May 24, 2004 & May 25, 2004 for today's hearing*