

SULTAN CITY COUNCIL

AGENDA ITEM COVER SHEET

ITEM NO: D-1
Shoreline Master Program (SMP)

DATE: June 11, 2007

SUBJECT: Gravel and Gold Mining Uses in the Shoreline Master Program

CONTACT PERSON: Rick Cisar, Director of Community Development

ISSUE:

The issue before the City Council is to consider allowing or deleting Gravel and Gold Mining Activities as Conditional Uses in the Shoreline Master Program.

ACTION REQUESTED:

This is a Discussion Item for the City Council, however City Staff is requesting direction from Council in order to prepare the final draft of the SMP.

SUMMARY:

During the May 10, 2007 City Council and Planning Board Shoreline Master Plan Workshop, the issues of Gold Mining were discussed and questions raised if existing mining activities, in particular gold mines, are allowed under the proposed SMP.

City Staff and the Department of Ecology Representative, David Pater, advised the City Council they would research the gold mining question and report back to the City Council at the next Council Meeting.

On May 17, the Department of Ecology provided the following e-mail response to gold mining question:

Rick and Aubin,

Below are a couple of opinions I received on the gold mining question. I also spoke more with the State Attorney General's office about this. The most consistent message I've gotten is that the "active" gold mining claims would be considered a non conforming use in the SMP and would not have to follow all the applicable SMP policies and regulations. The Draft SMP mining regulations basically prohibit mining except for gravel bar scalping. So this prohibition would also apply to new gold mining claims or inactive old claims. WAC 173-27-080 (9) defines the time limitations for nonconforming uses.

WAC 173-27-080 Nonconforming use and development standards.

When nonconforming use and development standards do not exist in the applicable master program, the following definitions and standards shall apply:

(1) "Nonconforming use or development" means a shoreline use or development which was lawfully constructed or established prior to the effective date of the act or the applicable master program, or amendments thereto, but which does not conform to present regulations or standards of the program.

(9) If a nonconforming use is discontinued for twelve consecutive months or for twelve months during any two-year period, the nonconforming rights shall expire and any subsequent use shall be conforming. A use authorized pursuant to subsection (6) of this section shall be considered a conforming use for purposes of this section.

My guess is most of these mining claims have not been active over the past year or two. So if a claim does not meet this timeline criteria, it has lost its nonconforming use status. Thus the claim would fall under the Sultan SMP jurisdiction and not be allowed. I did not get many recommendations for adding or modifying the draft SMP regulatory language. I assume that the City prefers not have active gold mining on the rivers. And it seems most of the gold mining can be avoided given nonconforming use time limitations. There is chance someone with an old inactive mining claim could file a property takings if they are prohibited from getting value out their claim; but this goes beyond what the SMP can deal with.

I hope this helps clarify this issue somewhat. Give me a call if you'd like to discuss this further.

On another subject: Rick, Aubin said you were considering moving the next SMP Council meeting out a couple of weeks. The next meeting is scheduled for the 24th. Let me know if there is a change.

Thanks

David

After receiving the response from Ecology, staff contacted Snohomish County. The county who is also updating its Shoreline Master Program to inquire if mining activities were allowed in their proposed SMP. The Snohomish County Staff indicated mining is only permitted in the County's Mineral Overlay Zone, which does not include waterways within the SMP. Therefore, mining in the Skykomish, Sultan, and Wallace Rivers is not allowed under the new Snohomish County SMP.

City Staff then reviewed Sultan's Zoning Regulations to determine if mining activities were a permitted or a Conditional Use within the Sultan Municipal Code. Chapter 16.16, General Regulations of the Unified Development Code prohibit quarrying or mining operations, or the removal and processing of sand, gravel, rock, peat, black soil and other natural deposits. The current Snohomish County SMP which the City adopted in the 1980's, allows gravel and mineral extraction providing it is done in strict conformance to the Washington State Mine Surface Reclamation Act. Our records indicate, since the adoption of that program, the City has not received or processed any mining or mineral extraction permits.

In a May memo from City Staff to the City Council and Planning Board, City Staff indicated mining in the Aquatic Zone (Rivers) may provide some benefits if it was done in conjunction with Snohomish County and the development of the Skylight Tracts property for park purposes. However, since Snohomish County does allow mining activities in their SMP a joint venture is not possible.

RECOMMENDATION:

Request City Staff, if City Council concurs with City Staff's conclusions, to finalize the Shoreline Master Program (SMP) and delete mining as a permitted use.