

Exhibit C-49 S-11: Skagit County Code

Skagit County Code Excerpts re Mining Special Use Permit

Source: Skagit County Website via Code Publishing

<https://www.codepublishing.com/WA/SkagitCounty/html/SkagitCounty14/SkagitCounty1416.html#14.16.900>

Accessed: September 8, 2022

14.16.440 Mineral Resource Overlay (MRO).

(1) Purpose. The purpose of the [Mineral](#) Resource Overlay (MRO) is to maintain and enhance natural resource-based industries by conserving [mineral resource lands](#), allowing continued operation of existing legally established [uses](#), and by assuring that [use](#) of adjacent lands does not interfere with the extraction and quarrying of [minerals](#). A MRO overlays [Natural Resource Lands \(NRL\) zoning districts](#) and imposes regulations in addition to those normally required in the underlying NRL [zoning district](#). [Mineral](#) extraction and processing activities are allowed as a [Hearing Examiner](#) special [use](#), and must comply with the [Surface Mining Act](#), Chapter [78.44](#) RCW. The MRO recognizes those areas that are designated to protect long-term, commercially viable [mineral](#) Natural Resource Lands and recognizes that [mineral](#) resources must be in close and economic proximity to the market to be served.

(2) Designation Procedure. The MRO represents those areas that are designated as [Mineral](#) Resource Overlay (MRO) on the Skagit [County](#) Comprehensive Plan Map adopted by Ordinance 16550, or as thereafter amended. Unless otherwise restricted by ordinance, new [Mineral](#) Resource Overlay areas may be designated by complying with Chapter [36.70A](#) RCW, the [Comprehensive Plan amendment](#) procedures of the Skagit [County](#) Comprehensive Plan, and Chapter [14.08](#) SCC.

(3) Pre-Existing Designated and Undesignated [Mining Operations](#).

(a) Except as allowed in Subsection (3)(b) of this Section, or as allowed pursuant to [SCC 14.16.410\(3\)\(d\)](#), [14.16.420\(2\)\(f\)](#), [14.16.430\(2\)\(k\)](#) and [14.16.430\(4\)\(d\)](#), no new [mining](#) uses shall be allowed outside of the designated [Mineral](#) Resource Overlay.

(b) Commercial [mining operations](#) lying outside of a designated MRO that are permitted and legally existing at the time of adoption of the ordinance codified in this Section may continue to operate on the permitted [mining](#) site. Expansion of the existing operations beyond the geographical and/or operational limits imposed by the existing approval is allowed, provided the [owner](#) applies for and receives a new [mining](#) special-use permit issued under this Section that covers the expanded operation area. Any

expansion shall not extend beyond the legal parcel on which the legally existing, [permitted use](#) is located.

(c) Commercial [mining operations](#) lying within a designated MRO that are permitted and legally existing at the time of adoption of the ordinance codified in this Section may continue to operate on the permitted mine site. Expansion of the existing operations beyond the geographical and/or operational limits imposed by the existing approval is allowed, provided the [owner](#) applies for and receives a new [mining](#) special-use permit issued under this Section that covers the expanded operation and/or area.

(4) Removal of Designation Status. A petitioner may seek removal of designated [Mineral Resource Lands](#) and the associated [Mineral Resource Overlay](#) on the Official Zoning Map through the [Comprehensive Plan amendment](#) process, pursuant to Chapter [14.08 SCC](#), and by demonstrating 1 or more of the following:

(a) The [mineral](#) resource is depleted to a point that it is no longer economically feasible to continue [mining](#) on the site.

(b) New or updated geological data no longer indicates the potential for [mineral](#) resources of regional or [long-term commercial significance](#) on the site.

(c) The [Mineral Resource Overlay](#) was designated based on a technical mapping error.

(5) [Permitted Uses](#). All [uses](#) permitted in the underlying [zone](#) are allowed in the MRO.

(6) [Accessory Uses](#). All [accessory uses](#) permitted in the underlying [zone](#) are allowed in the MRO.

(7) [Special Uses](#).

(a) Any other special [use](#) permitted in the underlying [zoning district](#) is likewise permitted in the MRO.

(b) The following [uses](#) are permitted as a [Hearing Examiner Special Use](#) in the [Mineral Resource Overlay](#) subject to the requirements of this Section and the restrictions contained in the underlying [zone](#). [Uses](#) under this Section must comply with Chapter [78.44 RCW](#), [Surface Mining Act](#), Chapter [90.48 RCW](#), the Water [Pollution Control Act](#), and all other applicable laws and regulations:

(i) Activities associated with [mining](#) or quarrying operations, including blasting and [use](#) of equipment in connection with an extraction operation, maintenance of [mineral](#) extraction equipment, maintenance of [roads](#), traffic control, sorting, crushing, cleaning and loading;

(ii) On-site processing including asphalt or concrete batching and asphalt or concrete recycling;

- (iii) Surface or underground mining or quarrying of mineral deposits or building materials from rock, stone, gravel, sand, and earth together with associated structures and equipment; and
- (iv) Temporary dwellings for a caretaker or superintendent and their family.

(8) Application For Mining Special Use Permit. An applicant for a mining operations special use permit shall submit:

- (a) The following information on maps in an 11-inch by 17-inch format size:
 - (i) A vicinity map with a north arrow indicating the area on which the extraction operation is proposed including a legal description, showing right-of-way width of access roads to the proposed site from the nearest community and any roads proposed on the site, and showing zoning of adjacent properties and land uses within 5 miles of the area proposed for mineral extraction and related activities;
 - (ii) A pre-mining map drawn to scale with an appropriate scale bar showing the permit area and buffers, elevations and contours, natural slopes and other drainage patterns, boundaries of municipalities, boundaries of property ownership, names and addresses of adjacent property owners, locations of nearby mines, locations of all railroads, bridges, utility lines or other rights of way, locations and names of any streams and natural or artificial drain ways on or adjacent to the site, locations of parks and other significant features;
 - (iii) A reclamation sequence map drawn to scale with an appropriate scale bar covering the same area as the pre-mining map showing the permit area border and buffers, excavation areas, location of all proposed access roads to be built, location of types of setbacks and beams, numbered segments and the direction of the sequence of mining, soil storage areas and sequence of stripping, storing and replacement of mined segments, overburden storage areas and sequence of stripping, storing and replacement of overburden on mined segments, waste rock piles and how they will be reclaimed and stabilized, operation plant and processing areas, measures to be taken to adjacent surface area to prevent slumping or landslides on adjacent lands, location and description of stormwater and erosion control systems, including drainage facilities and settling ponds and estimated runoff served by individual facilities; and
 - (iv) A final reclamation map drawn to scale with an appropriate scale bar covering the same area as the pre-mining map permit area and buffers, final elevations and contours, adjacent natural ground slopes, reclaimed drainage patterns, general topography, locations and names of any roads, utility lines, rights-of-way, streams, bridges, lakes, springs, wetlands, location and depth

of topsoil to be replaced after seedbed preparation, permanent [drainage](#) and water control systems, area to be re-vegetated and proposed species, 2 cross-sections (at right angles) with horizontal and vertical scales the same that show the original and final topography and the water table.

(b) A report by a qualified geologist, hydrogeologist or licensed engineer characterizing the area's ground water including, but not limited to, the following information:

(i) A description of the geology and hydro-geology of the area including the delineation of [aquifer](#), [aquitards](#), or [aquicludes](#) (confining layers), hydrogeologic cross-sections, [porosity](#) and horizontal and vertical permeability estimates;

(ii) Determination of the direction and velocity of ground water movement, water table contour and [potentiometric surface](#) maps (for confined [aquifers](#)), if applicable; and

(iii) A map containing the limits of the mine, [buffer](#) zones, location of all ground water wells within 1 mile [distance](#) down gradient from the property boundaries, location of all [perennial streams](#) and springs, and definition or specification of locations of [aquifer](#) recharge and discharge areas.

(c) The estimated quantities of all materials to be extracted.

(d) Identification of any possible Scientific Resource Sites that may be located on the proposed site. Scientific Resource Sites include unique or rare occurrences of rocks, [minerals](#), or fossils that are of outstanding scientific significance. These areas must be delineated on the map in Subsection (8)(a)(ii) above and the proposal for preservation of the identified area(s) must be addressed.

(e) An on-site study to determine appropriate mitigation requirements for noise, vibration and dust levels. The study should specify what levels the [applicant](#) deems satisfactory to mitigate off-site disturbances.

(f) An operations proposal detailing estimated frequency of blasting, estimated truckloads per [day](#), what provisions for [screening](#) and fencing are proposed, and estimated hours of operation.

(g) Identification and description of those [critical areas](#) designated and regulated by Chapter [14.24 SCC](#), together with any [critical areas](#) studies that may be required by Chapter [14.24 SCC](#).

(h) A completed environmental checklist.

(i) A review from Skagit County Public Works Department or Washington State Department of Transportation demonstrating that roads or bridges are capable of sustaining the necessary traffic for the proposed mineral extraction operation, and that the proposed operation meets level-of-service, safety, and other standards as outlined in the Skagit County Transportation Systems Plan, the Skagit County Comprehensive Plan, and applicable State and local regulations.

(9) Hearing Examiner Review. Except as may be provided herein to the contrary, all applications for mining operations special use permit shall be reviewed by the Hearing Examiner under the procedures set forth in Chapter 14.06 SCC. The Hearing Examiner shall make a decision as to whether or not it should be approved based upon the special use approval criteria and the following provisions:

(a) When reviewing an application for mining operations special use permit, the Hearing Examiner should recognize that surface mining is an essential economic activity and that it is not possible to extract minerals without producing some environmental impacts. The Hearing Examiner shall consider all relevant evidence and conditions that will mitigate detrimental impacts to the environment and conditions that protect the general welfare, health and safety. The permit shall be granted if the impacts are mitigatable. The burden of proof shall be on the applicant. Mitigating conditions shall be performance-based, objective standards that:

- (i) Are directly and proportionately related to limiting surface mining impacts;
- (ii) Are reasonable, practicable and generally capable of being achieved by the mine operator; and
- (iii) Take into consideration existing and available technologies applicable to mining operations.

(b) The Hearing Examiner shall consider the requirements of this Chapter as minimum standards based on unique site-specific factors or conditions as appropriate to protect public health, safety, and the environment.

(c) Appropriate site-specific conditions shall be required to mitigate existing and potential incompatibilities between the mineral extraction operation and adjacent parcels. Such limitations shall reflect the differences in potential impacts based on the mineral extraction operation's location in resource, rural or urban growth areas and recognize that the purpose of designating mineral resource lands is to conserve mineral resource lands, allow continued operation of existing legally established mining operations, and assure that use of adjacent lands does not interfere with the extraction of minerals. The Hearing Examiner shall take into consideration the January 1996 publication *Best Management Practices for Reclaiming Surface Mines in Washington and Oregon*,

published jointly by the Oregon Department of Geology and Mineral Industries and the Washington State Department of Natural Resources, Ch. 3, Operation and Reclamation Strategies, in determining appropriate mitigation requirements for operational impacts.

(d) Appropriate site-specific conditions shall be required to mitigate stormwater runoff and erosion impact. The Hearing Examiner shall take into consideration the January 1996 publication *Best Management Practices for Reclaiming Surface Mines in Washington and Oregon*, published jointly by the Oregon Department of Geology and Mineral Industries and the Washington State Department of Natural Resources, Ch. 2, Storm Water and Erosion Control, and the National Pollutant Discharge Elimination System (NPDES) Surface Water Protection requirements in determining appropriate conditions for mitigating stormwater and erosion impacts.

(e) The Hearing Examiner shall consider public interests such as fishing, boating, hiking and camping when reviewing a mining operations special use permit, and may impose mitigating measures as necessary and appropriate.

. . . .

(Ord. O20110007 Attch. 1 (part); Ord. O20090010 Attch. 1 (part); Ord. O20070009 (part); Ord. 17938 Attch. F (part), 2000)

14.16.900 Special use permit requirements.

(1) Special [Uses](#).

(a) Purpose. To provide a means to recognize and approve land [uses](#) not specifically identified as allowed [uses](#). A special [use](#) permit must demonstrate that the proposed activity will not adversely affect or prevent those [uses](#) normally allowed within the respective district.

(b) Process/Authority for Special [Use](#) Permit.

(i) Administrative special [uses](#) shall be reviewed as a Level I permit, pursuant to Chapter [14.06 SCC](#).

(ii) [Hearing Examiner](#) special [uses](#) shall be reviewed as a Level II permit, pursuant to Chapter [14.06 SCC](#).

(iii) The [Hearing Examiner](#) shall have authority to order that a special [use](#) permit be revoked, suspended, or modified based on a finding that the conditions have not been satisfied by the [applicant](#). The [Administrative Official](#) or [party of record](#) may request a review by the [Hearing Examiner](#) on a special [use](#) permit pursuant to a Level II action, pursuant to Chapter [14.06 SCC](#).

(iv) The [approving authority](#)'s decision may be to grant or to deny an [application](#).

(v) The burden of proof shall be on the [applicant](#) to provide evidence in support of the [application](#). The criteria for approval or denial shall include the following:

(A) The proposed [use](#) will be compatible with existing and planned land [use](#).

(B) The proposed [use](#) complies with the Skagit [County](#) Code.

(C) The proposed [use](#) will not create undue noise, odor, heat, vibration, air and water [pollution](#) impacts on surrounding, existing, or potential [dwelling units](#), based on the [performance standards](#) of [SCC 14.16.840](#).

(D) The proposed [use](#) will not generate intrusions on privacy of surrounding [uses](#).

(E) The proposed [use](#) will not cause potential adverse effects on the general public health, safety, and welfare.

(F) For special [uses](#) in Industrial Forest—[Natural Resource Lands](#), Secondary Forest—[Natural Resource Lands](#), Agricultural—[Natural Resource Lands](#), and Rural Resource—

[Natural Resource Lands](#), the [impacts](#) on long-term natural resource management and production will be minimized.

(G) The proposed [use](#) is not in conflict with the health and safety of the community.

(H) The proposed [use](#) will be supported by adequate public facilities or services and will not adversely affect [public services](#) to the surrounding areas, or conditions can be established to mitigate adverse [impacts](#) on such facilities.

(I) The proposed [use](#) will maintain the character, landscape and lifestyle of the rural area. For new [uses](#), proximity to existing businesses operating via special [use](#) permit shall be reviewed and considered for cumulative [impacts](#).

.

(Ord. O20180010 § 1; Ord. O20160004 § 6 (Att. 6); Ord. O20150005 § 3 (Att. 1); Ord. O20110007 Attch. 1 (part); Ord. O20090011 Attch. 2 (part); Ord. O20090010 Attch. 1 (part); Ord. O20080012 (part); Ord. O20080004 (part); Ord. O20070009 (part); Ord. O20050009 (part); Ord. O20050003 (part); Ord. 17938 Attch. F (part), 2000)