

CLEARANCES:	Initial	Date	Date Received in Council Office	Agenda Date	Assigned To
Originator-irg c:\f4\2\emextgp.Ab	JS	6/14/92		6/23/92	P&D/Council
Division Head-					
Department Head-	DW	6/16/92			
Prosecutor Review-					
Purchasing/Budget Dir.-					
Executive-					

**SUBJECT: FILE REF: 12-90: ZT AN EMERGENCY EXTENSION OF THE MORATORIUM ON NEW SURFACE MINING PERMITS**

**ATTACHMENTS:** Draft Ordinance

Public Hearing Needed? Yes /\_\_/ No /XX/

**SUMMARY STATEMENT:** In early 1991, the County Council passed an emergency ordinance declaring a moratorium on new surface mining permits based upon a finding that the state pre-empted local authority to regulate surface mining subject to the State Surface Mining Act. The moratorium was later extended until basic mineral classification and designation work and Critical Areas mapping could be completed under the Growth Management Act, and until the State Legislature completed its work on the revisions to the Surface Mining Reclamation Act.

Recently, interim Agriculture, Forestry, and Mineral resource classifications and designations were adopted. The County is also now in the later stages of interim Critical Areas mapping and ordinance adoption. Aquifer Recharge Areas have been defined and a broad map prepared of these areas. In addition, the surface mining bill was not passed by the State Legislature. The timing of this new information provided a small window of time before the moratorium's June 30 expiration to replace existing text in Title 20 with regulations more consistent with GMA mandates and the County's legal authority to regulate surface mining. Planning staff met with an advisory committee and had prepared a regulatory proposal for the Planning Commission. However, the SEPA responsible official was not prepared to issue a Determination of Non-Significance (DNS) on the proposal. Therefore the Planning Commission hearing was canceled. Staff is now waiting for the Critical Areas Ordinance to be adopted and is considering some alternatives to the proposed regulations. These may result in a DNS. Alternatively, staff could write an EIS and proceed with the ordinance as drafted.

**RECOMMENDED ACTION:** Since there is not enough time before the moratorium expires on June 30 to prepare and adopt a modified proposal, staff recommends a sixty day emergency extension to the moratorium, with the possibility of an additional extension.

**COMMITTEE ACTION (including dates):**

RECEIVED

JUN 17 1992

**COUNCIL ACTION (including dates):**

WHATCOM COUNTY COUNCIL

6/23/92: Council approved the amended ordinance. 7-0

ORDINANCE NO. 92-035

**AN EMERGENCY EXTENSION OF THE INTERIM ZONING ORDINANCE EXTENDING A MORATORIUM ON SURFACE MINING PERMITS IN WHATCOM COUNTY**

WHEREAS, the Official Zoning Ordinance, Title 20, and the Interim Zoning Ordinance, WCC Chapter 2.24A, have regulations related to surface mining; and

WHEREAS, based on a number of concerns regarding the existing regulations, the Whatcom County Council directed the Planning staff and the Planning Commission to review and propose revisions to these regulations; and

WHEREAS, the Planning Commission held a public hearing on proposed revisions on July 17, 1990, and heard all testimony on the issues; and

WHEREAS, the Planning Commission discussed the proposal at seven additional meetings on September 11, October 8 and 16, and November 6, 14, and 27, and after due deliberation made a determination that the application be approved with revisions by the Planning Commission and staff; and

WHEREAS, the Council received the Planning Commission recommendations and based on their controversial nature, determined to hold its own hearing on five aspects of the proposed regulations; and

WHEREAS, subsequent to the Planning Commission's final action, it came to the County's attention that State legislation may preempt local regulations regarding surface mining; and

WHEREAS, the Deputy Prosecutor has determined that the legislature has preempted local regulations and that the County's proposed regulations probably would not stand up to legal challenge; and

WHEREAS, based on the above determination, the Council canceled the public hearing on aspects of the proposed surface mining regulations; and

WHEREAS, SHB 2929, the Growth Management Act, reestablished a regulatory role for local government in forestry, mineral resources, agricultural lands, and critical areas; and

WHEREAS, in Whatcom County there is the potential for major conflict between these valuable resources, particularly agricultural and mineral resource lands as a surface mine could preclude the re-use of land for agricultural production; and

WHEREAS, surface mining activity in some locations may also be inconsistent with the mandate to protect aquifer recharge areas; and

1           WHEREAS, the Growth Management Act requires that Counties designate and regulate  
2 on an interim basis, critical areas and natural resource areas by September 1, 1991, with a six  
3 month allowed extension; and

4           WHEREAS, Whatcom County has significant agricultural and forestry zoning in place now  
5 to qualify for the interim designation and regulations of these resources, leaving only mineral  
6 resources to be considered; and

7           WHEREAS, Whatcom County has recently done an extensive inventory of existing  
8 mineral resource operations, including clay, sand, gravel, rock, and shale excavations, which  
9 is required by the Growth Management Act; and

10           WHEREAS, Whatcom County is likely to designate the aforementioned lands as mineral  
11 resource lands under the Growth Management Act; and

12           WHEREAS, Whatcom County is currently moving forward with formally adopting  
13 designations, interim, and subsequently final, regulations and comprehensive plan amendments  
14 for agricultural, forestry, mineral resource lands, and critical areas in accordance with the  
15 Growth Management Act timetable; and

16           WHEREAS, substantial time will pass prior to adoption of such designations, regulations,  
17 and comprehensive plan amendments during which the designation process may be thwarted  
18 by a flood of applications for surface mining conditional use permits; and

19           WHEREAS, currently, there are a total of approximately 275 acres being surface mined  
20 in the agricultural zone; and

21           WHEREAS, since March 11, 1991, four surface mining conditional use applications had  
22 been received, including three in the Agricultural Zone, totalling 487 acres; and

23           WHEREAS, the Division of Buildings and Code Administration is processing several  
24 permits now; and

25           WHEREAS, extensive inquiries have been made regarding additional applications; and

26           WHEREAS, the accumulation of these surface mining applications in the Agricultural  
27 Zone could impact the agricultural resource; and

28           WHEREAS, the Council, based on the Deputy Prosecutor's opinion, canceled a hearing  
29 on surface mining on March 12, 1991 and adopted an emergency ordinance on the same date;  
30 and

31           WHEREAS, the Planning Commission held a legally advertised public hearing on the  
32 need for maintaining a moratorium on April 16, 1991, and voted in favor of recommending its  
33 extension until no later than December 31, 1991; and

34           WHEREAS, the SEPA Responsible Official made a determination of non-significance on  
35 the proposed moratorium on April 17, 1991.

1 The above paragraphs represented findings of fact by the Whatcom County Council.  
2 Based upon these findings of fact, it was declared that enactment of a one year moratorium  
3 on surface mining activity was necessary for the preservation of the public peace, health and  
4 safety.

5 Furthermore,

6 WHEREAS, the above findings of fact in support of a one year moratorium on surface  
7 mining activity also support a shorter moratorium on surface mining activity relating to pits of  
8 less than three acres and on-site processing and are herein incorporated; and

9 WHEREAS, the proposed regulations on surface mining referred to in paragraphs three  
10 (3) through eight (8) above would not be preempted by the State Surface Mining Act if applied  
11 only to pits of less than three acres and the on-site processing of minerals; and

12 WHEREAS, the on-site processing of minerals present serious public health and safety  
13 concerns over creation of noise, dust, and pollution of aquifer recharge areas; and

14 WHEREAS, adoption of proposed regulations applicable to pits of less than three acres  
15 and on-site processing will require additional staff time, an additional hearing and further review  
16 by the Planning Commission, and final consideration by the County Council; and

17 WHEREAS, this process has begun but will require several months for completion; and

18 WHEREAS, potential new regulation of surface mining has received a high amount of  
19 publicity; and

20 WHEREAS, a moratorium on surface mining applicable to pits of less than three acres  
21 and on-site processing is necessary to prevent a flood of new applications for such activity  
22 while the proposed regulations are reviewed for adoption; and

23 WHEREAS, there is already evidence of increased interest in applications for on-site  
24 processing before new regulations are adopted.

25 The above paragraphs represented findings of fact by the Whatcom County Council.  
26 Based upon these findings of fact, was declared that enactment of a moratorium on surface  
27 mining activity relating to pits of less than three acres and on-site processing until September  
28 30, 1991 was necessary for the preservation of the public peace, health, and safety.

29 Furthermore,

30 WHEREAS, the Agriculture and Mineral Resources classification and designation efforts  
31 under Growth Management are only partially completed. This issue is important for both small  
32 and large excavations, including sites under three acres. Coordination with resource protection  
33 areas as directed by GMA is critical to the success of mining regulations; and

34 WHEREAS, efforts towards identifying and regulating critical areas are in initial stages.  
35 Land use decisions for activities such as surface mining will be dependant upon information

1 concerning these areas, especially aquifer recharge areas, including sites under three acres;  
2 and

3 WHEREAS, Whatcom County received a six month extension to the Growth Management  
4 Act requirement that Counties designate and regulate critical areas and natural resource areas  
5 by September 1, 1991.

6 WHEREAS, the State is working towards revising the RCW 78.44 for consideration during  
7 the next legislative session. Currently, the Department of Natural Resources is in the process  
8 of meeting with task force members to revise the surface mining statutes, discuss issues, and  
9 receive and consider public comment; and

10 WHEREAS, these proposed revisions of surface mining statutes include the delegation  
11 of new authority to counties to regulate surface mining activity; and

12 WHEREAS, the County has already expended considerable effort in drafting proposed  
13 surface mining regulations; and

14 WHEREAS, any new authority delegated to Whatcom County for surface mining  
15 regulations will likely result in the adoption of a local ordinance regulating such activities; and

16 WHEREAS, for all of the foregoing reasons a moratorium is needed at this time to  
17 preserve the County's ability to regulate surface mining and to meet directives of the Growth  
18 Management Act; and

19 WHEREAS, the Planning Commission held a legally advertised public hearing on July 23,  
20 1991, and voted in favor of extending both moratoriums until June 30, 1992; and

21 WHEREAS, the SEPA Responsible Official made a determination of non-significance on  
22 the proposed moratorium on September 17, 1991; and

23 WHEREAS, the Whatcom County Council held a public meeting on September 24 to  
24 consider the Planning Commission recommendations.

25 All of the above paragraphs represented findings of fact by the Whatcom County Council.  
26 Based upon these findings of fact it was declared that inactement of a moratorium until June  
27 30, 1992 on new surface mining activities was necessary for preservation of the public peace,  
28 health, safety and welfare.

29 Futhermore,

30 WHEREAS, in February, 1992, Substitute Senate Bill 6119, an act related to mining  
31 amending RCW 78.44, the State Surface Mining Act, perished in the Senate Ways and Means  
32 Committee due to an unresolved conflict; and

33 }  
34 WHEREAS, at a public meeting on May 26, 1992, the County Council adopted interim  
35 classifications, designations, and protections for mineral resource lands to comply with the  
Growth Management mandate, and

1           WHEREAS, the Planning Department has prepared temporary Critical Areas maps which  
2 indicate the location of Critical Areas, and

3           WHEREAS, the County Council may soon adopt a temporary Critical Areas Ordinance  
4 which includes definitions of and regulations to protect Critical Areas; and

5           WHEREAS, the Planning Department prepared an ordinance to replace existing  
6 regulations in Title 20 with new provisions in accordance with local authority to regulate surface  
7 mining, including that authority granted under the Growth Management Act; and

8           WHEREAS, the proposed ordinance was submitted to the Whatcom County SEPA Official  
9 on May 6, 1992, and it was evident through discussion that the SEPA Official was not prepared  
10 to issue a determination of non-significance on the proposal as written; and

11           WHEREAS, there is not enough time before the moratorium expires on June 30, 1992  
12 to either prepare and adopt a modified proposal, or prepare an environmental impact  
13 statement; and

14           WHEREAS, for all of the foregoing reasons an emergency extension to the moratorium  
15 is needed to preserve the County's ability to regulate surface mining and to meet directives of  
16 the Growth Management Act.

7           All of the above paragraphs represent findings of fact by the Whatcom County Council. Based  
18 upon these findings of fact it is declared that an emergency extension of the moratorium on  
19 new surface mining activities is necessary for preservation of the public peace, health, safety  
20 and welfare.

21           **NOW THEREFORE BE IT ORDAINED BY THE WHATCOM COUNTY COUNCIL:**

22           Section 1. To preserve the integrity of the process and directives mandated by the  
23 Growth Management Act and pursuant to RCW 36.70.790, it is hereby ordained that the existing  
24 surface mining moratorium adopted in ordinance number 91-069 be extended for sixty (60)  
25 days from adoption of this Ordinance.

26           Section 2. Adjudication of invalidity of any of the sections, clauses, or provisions of  
27 this ordinance shall not affect or impair the validity of the ordinance as a whole or any part  
28 thereof other than the part so declared to be invalid.

1 PASSED this 23rd day of June, 1992.

2 WHATCOM COUNTY COUNCIL  
3 WHATCOM COUNTY, WASHINGTON

4 Daniel M. Warner  
5 Daniel M. Warner, Chairperson

6 (x) APPROVED ( ) VETOED

6 ATTEST:

7 Raymond Rasmussen  
8 Clerk of the Council

9 Shirley Van Zanten  
10 Shirley Van Zanten, County Executive

9 APPROVED AS TO FORM:

10 Karen Frakes  
11 Karen Frakes  
12 Civil Deputy Prosecuting Attorney  
13

Date 7-10-92

Date I received  
to sign. therefore  
effective date  
is.