HOUSE BILL REPORT
SB 5434

As Passed House-Amended:
April 15, 1997

Title: An act relating to mineral resource land designation.

Brief Description: Providing for designation of mineral resource lands.

Sponsors: Senators Stevens, Hargrove, Anderson, Rasmussen, Rossi and Benton.

Brief History:
Committee Activity:
Government Reform & Land Use: 3/26/97, 3/27/97 [DPA];
Appropriations: 4/5/97 [DPA(GRLU)].
Floor Activity:
Passed House-Amended: 4/15/97, 60-34.

HOUSE COMMITTEE ON GOVERNMENT REFORM & LAND USE

Majority Report: Do pass as amended. Signed by 9 members: Representatives Reams, Chairman; Cairnes, Vice Chairman; Sherstad, Vice Chairman; Romero, Ranking Minority Member; Bush; Fisher; Mielke; Mulliken and Thompson.

Minority Report: Do not pass. Signed by 2 members: Representatives Lantz, Assistant Ranking Minority Member; and Gardner.

Staff: Kimberly Klaiber (786-7156).

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: Do pass as amended by Committee on Government Reform & Land Use. Signed by 26 members: Representatives Huff, Chairman; Alexander, Vice Chairman; Clements, Vice Chairman; Wensman, Vice Chairman; H. Sommers, Ranking Minority Member; Doumit, Assistant Ranking Minority Member; Gombosky, Assistant Ranking Minority Member; Benson; Carlson; Cooke; Crouse; Dyer; Grant; Kenney; Kessler; Lambert; Lisk; Mastin; McMorris; Parlette; Regala; D. Schmidt; Sehlin; Sheahan; Talcott and Tokuda.

Minority Report: Without recommendation. Signed by 5 members: Representatives Chopp; Cody; Keiser; Linville and Poulsen.

Staff: Nancy Stevenson (786-7137).

Background:

The Growth Management Act

The Growth Management Act (GMA) requires certain counties and the cities within them to use an agreed-upon procedure to adopt a *county-wide planning policy*. This policy establishes a framework– from which the county and cities in the county develop and adopt *comprehensive plans*, which must be *consistent* with the county-wide planning policy. The GMA requires counties to address certain issues in the comprehensive plan (land use, housing, capital facilities plan, utilities, rural designation, transportation) and to protect critical areas, designate and conserve certain natural resource lands, and designate urban growth areas. Finally, each county and city adopts *development regulations* consistent with its comprehensive plan.

All counties that plan under the GMA and contain mineral resource lands must *designate* mineral resource lands that are not already characterized by urban growth and that have long-term significance for the extraction of minerals. The GMA cities and counties must consider the mineral resource lands classification guidelines adopted by the GMA's parent agency,– the Department of Community, Trade and Economic Development (DCTED). The DCTED must consult with the Department of Natural Resources in order to guide counties and cities in classifying mineral resource lands. To carry out this process, the DCTED must consult with interested parties (the list includes cities, counties, developers, builders, environmentalists, Indian tribes, and others) and conduct public hearings around the state.

After designating the mineral resource lands, the county, city, or town must adopt development regulations to *conserve* the designated mineral resource lands but cannot adopt regulations that prohibit uses legally existing on any land before the county adopted the regulations. The development regulations must assure that the use of lands adjacent to mineral resource lands will not interfere with the continued use, in the accustomed manner and in accordance with best management practices, of lands designated for the extraction of minerals.

Surface Mining

Counties, cities, and towns regulate local surface mining operations through zoning decisions and other local ordinances. "Mining operations" are all mine-related activities (other than reclamation), including activities that affect:

- noise generation;
- air quality;
- surface and ground water quality, quantity and flow;
- glare;
- pollution;
- traffic safety;
- ground vibrations;
- and significant or substantial impacts commonly regulated under land use permits or other local government permits, local ordinances, or other state laws.

The state's surface mining reclamation program is administered by the Department of Natural Resources (DNR), except where the DNR delegates some or all of its enforcement authority to a county, city or town. "Reclamation" means rehabilitation for future use of areas that have been disturbed by surface mining. The basic objective of reclamation is to reestablish the vegetative cover, soil stability, and water conditions appropriate to the approved subsequent use of the surface mine and to prevent or mitigate future environmental degradation.

Summary of Bill: Two provisions are added to the Growth Management Act. The first sets forth the legislative intent regarding the importance of mining and the Legislature's finding that designation, production, and conservation of adequate sources of minerals are in the best interests of the citizens of the state. The legislature finds that mining is an economically important activity but that extraction of minerals is becoming increasingly expensive. The house of representatives and senate natural resources committees will examine the question of regulatory overlap, the scope of impacts to be regulated by local ordinances, and the respective roles of state and local government, prior to the 1998 legislative session. The legislature intends to apportion regulatory authority between state and local governments to minimize redundant mining regulation and to improve consistency in laws and regulations.

The second provision changes what a county must do once it has classified mineral lands pursuant to the guidelines set forth by the Department of Community, Trade and Economic Development. If a county contains mineral resource lands of long-term commercial significance and the county classifies mineral lands under the GMA, the county must designate sufficient mineral resource lands in its comprehensive plan to meet the projected 20-year, county-wide need. Mineral resource lands of long-term commercial significance are defined as including the mineral composition of the land for long-term economically viable commercial production, in consideration with the

mineral resource land's proximity to population areas, product markets, and the possibility of more intense uses of the land.–

Once a county designates mineral resource uses, including mining operations, those uses must be established as an *allowed use* in local development regulations. Allowed use is defined as the uses specified by local development regulations as appropriate within those areas designated through the advance or comprehensive planning process.–

Once designated, a proposed allowed use is reviewed for project-specific impact and may be *conditioned* to mitigate significant adverse impacts within the context of site plan approval, but this type of a review cannot "revisit" the question of use of the land for mine-related operations.

Any additions or amendments to comprehensive plans or development regulations require reasonable notice to property owners and other affected and interested individuals. The county may use an existing method of reasonable notice or use any one of several enumerated examples.

The county or city must also designate mineral resource deposits, both active and inactive, in economically viable proximity to locations where the deposits are likely to be used. Through the comprehensive plan, the counties and cities must discourage the siting of new applications of incompatible uses adjacent to mineral resource industries, deposits, and holdings.

Amendments or additions to comprehensive plans or development regulations pertaining to mineral resource lands may be adopted in the same manner as other changes to the comprehensive plan or development regulations.

Local Government Regulation of Surface Mining Operations. Local governments may regulate specific elements of surface mining operations only by ordinance and in accordance with certain requirements and limitations. The ordinances must be adopted by July 1, 1998.

Local surface mining operating standards must be limited to those standards that address mitigation of impacts of operations. The standards must also be performance-based, objective standards that are directly and proportionately related to limiting surface mining impacts.

The operating standards must be reasonable and generally capable of being achieved, take into account existing and available technologies, and may be met by lawful means. If compliance with the standards cannot be met, and the applicant has had reasonable opportunity to propose mitigation measures that would meet the standards by other means, the county, city, or town may impose limitations on the hours of

operation on the part of the operation creating the impact that cannot be mitigated in any other way.

Operating standards must also limit application and monitoring fees to the amount necessary to pay the costs of administering, processing, monitoring, and enforcing the regulation of surface mining. A local ordinance would be implemented through and operating plan review and approval process. The approval process must require submission of information specified in the ordinance to allow review of the plan for compliance with state, federal, and local standards; it may provide for administrative approval subject to appeal or for initial consideration through a public hearing process; and must require that project-specific conditions or restrictions be based upon written findings of fact demonstrating their need to achieve compliance with local standards.

Local governments must limit application and monitoring fees to the amount necessary to pay for administering, processing, monitoring, and enforcing surface mining regulation. Approvals issued must remain valid for 50 years or until the resource is exhausted, whichever is less.

The DNR has exclusive authority to regulate surface mine reclamation, and all counties, cities, or towns have the authority to zone surface mines and adopt ordinances regulating those operations. The DNR may delegate some or all enforcement authority to a county, city, or town if they DNR believes the local government is qualified. No county, city, or town may require a separate reclamation plan or application for its approval.

Pre-Existing Mining Operations

Ordinances and amendments adopted according to these new provisions only apply to existing mining operations if: (1) a traffic ordinance relates only to the designation of approved haul routes; (2) a reasonable time period is provided for compliance with new or amended local operating standards; and (3) a variance procedure is included to allow continuation of existing mining operations where strict adherence to a standard would be economically or operationally impractical. The local ordinance must also exempt preexisting operations from any operating plan review and approval process.

Statutory Conflict or Overlap

The Growth Management Act is amended to provide that any development regulations relating to surface mining operations cannot be inconsistent with rules adopted by the DNR.

Other laws regulating matters such as fish, water, pollution, noise, drinking water, and other matters, are not preempted by the surface mining operations statutes.

Nothing in the intent section or the section that addresses mining operations should be construed to preempt and local government's authority under SEPA.

Appropriation: None.

Fiscal Note: Available. New fiscal note requested on March 27, 1997.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Testimony For: (Government Reform & Land Use) This is a companion bill to EHB 1472, which has heightened notice requirements. The bill does not affect the SEPA process or designations within a comprehensive plan. There is a SEPA checklist at several stages. Any significant impact must be addressed. Counties can do this designation in their own time, no deadlines.

(Appropriations) Counties are allowed to recover the cost of processing applications. Such funds may be used to support the program. Most counties have already designated mineral resource lands. However, a number of counties would want to reclassify and re-designate lands accordingly.

Testimony Against: (Government Reform & Land Use) Some counties have not yet developed criteria for developing sites, or they have an unacceptable level of specificity. This seems like mandatory zoning, and land-use policies forbid pre-approval. This wrests local control away; removes local government's authority to deny a permit; and places property rights of mining companies above those of adjacent property owners. Expensive truck haul distances are a myth. This hurts public participation. It is unclear whether a local government can deny a project if the project is not sufficiently mitigated. There is a 20-year projected need requirement regardless of whether it is appropriate for the county. Mineral lands designation could be overlaid– on critical areas such as Granite Falls. No state agency can predict the potential effect on aquifers. Mining expansion into forest land is harmful. This should not be an allowed use, but rather, a conditional use. Many projects did not even go through a checklist before a determination of nonsignificance was issued. It is unclear what the cities are supposed to do and what their authority is in light of the counties' duties. It is unclear whether there are any designations within city limits.

(Appropriations) None.

Testified: (Government Reform & Land Use) Bruce Barnbaum, Stillaguamish Citizens' Alliance (con); Mary Ann Kae (con); L. J. McDougal (con); Sharon Damkaer, People for the Preservation of Tualco Valley (con); Michael Waite, Whatcom Pit Watch (con); Mark Triplett, Washington Aggregates & Concrete Association (pro); Duke Schaub, Associated General Contractors of Washington (pro);

Dave Williams, Association of Washington Cities (questions); Connie Hoag, Lynden resident (con); and Scott Merriman, Washington Environmental Council (con).

(Appropriations) Mark Triplett, Washington Aggregates & Concrete Association; and Paul Parker, Washington State Association of Counties.