

CHAPTER 15.16
MINERAL RESOURCE LANDS

SECTIONS:

15.16.010	Applicability
15.16.020	Purpose
15.16.030	Definitions
15.16.040	Appeal of Administrative Decision to Hearings Examiner
15.16.050	Identification of Mineral Resource Lands-Maps
15.16.060	Protected Mineral Resource Lands-Surface Mining Permits and Conditional Use Permits Granted or Pending-Designation Requirements
15.16.070	Protected Mineral Resource Lands-Application for Designation
15.16.080	Mineral Resource Areas Review
15.16.090	Special Study Required
15.16.100	Protected Mineral Resource Lands - Permitted Uses
15.16.110	Buffer Requirements
15.16.120	Commencement and Conduct of Mining Operations
15.16.130	Site Restoration
15.16.140	Site Abandonment and Reclamation-Designation Null and Void
15.16.150	Notice Required
15.16.160	Access and Ingress
15.16.170	Nuisance Claims
15.16.180	Nuisance Claim-Determination of Nuisance
15.16.190	Nuisance-Abatement of Nuisance
15.16.200	Severability
15.16.210	Effective Date

15.16.010 APPLICABILITY. This chapter shall apply to all mineral resource lands located in unincorporated Benton County that are not already compromised by on-site, immediate, or adjacent urban growth and that have long-term significance for the extraction of minerals on a commercially viable basis.

It also applies to all new development proposals on lands which are on, or adjacent to parcels with protected mineral resource designations and active commercial mining and production activities. The protection afforded by this chapter does not

automatically apply to previously unexploited or inactive mineral resource sites on the Mineral Resource Protection Ordinance (MRPO) zone designation map. Protection of these sites must be requested by the landowner or his designated agent.

[Ord. 610 (2018) § 2]

15.16.020 PURPOSE. The purpose of this chapter is to promote the conservation of mineral resource lands; to ensure that mining operations and related activities are operated in a manner that not only promote economic opportunities but afford a high degree of environmental protection thereby continuing to ensure the protection of the public health, safety, and general welfare of the citizens of Benton County; to assure that exploitation of undeveloped commercially viable mineral and material resources will not be forever compromised by prior development of the land for other purposes; and to allow for the necessary processing to convert such minerals and materials to marketable products thereby working towards meeting the requirements of Chapter 36.70A RCW.

[Ord. 610 (2018) § 3]

15.16.030 DEFINITIONS. For the purposes of this chapter, the following words and phrases shall have the indicated meanings unless the context clearly indicates otherwise:

(1) "Buffer" means a designated area used to separate incompatible uses or protect resources or development. Buffers are generally undeveloped areas. There are different types of buffers for different purposes:

(a) buffers which protect sensitive natural resources (critical areas) from the adverse impacts of development are generally undeveloped open space which are ecologically part of the protected resource; (b) buffers which protect the integrity of development from certain natural hazards such as slope instability, floods or fire prone areas, are setbacks which avoid the hazard;

(b) buffers to separate incompatible uses, such as residential from industrial, airports or certain activities common to commercial agriculture, are generally open or sparsely populated.

(2) "Clay" means that as a soil separate, the mineral soil particles are less than 0.002 millimeter in diameter. As a soil textural class, the soil material is 40 percent or more clay, less than 45 percent sand, and less than 40 percent silt.

(3) "Compatibility" means the congruent arrangement of land uses and/or project elements to avoid, mitigate, or minimize conflicts (to the greatest extent reasonable).

(4) "Comprehensive Plan" means the Benton County Comprehensive Plan and any amendments, addenda, or supplemental plans that are duly adopted under Chapter 36.70A RCW (as amended), for Benton County or any portion thereof.

(5) "Conditional Use Permit" means a permit which is granted for a conditional use. The term "conditional use" means a use subject to specified conditions which may be permitted in one or more classifications as defined by BCC Title 11, but which use, because of characteristics peculiar to it, or because of size, technological processes or type of equipment, or because of the exact location with reference to surroundings, streets and existing improvements or demands upon public facilities, or impacts to ground or surface water requires a special degree of control to make such uses consistent with and compatible to other existing or permissible uses in the same zone or zones, and to assure that such use shall not be adverse to the public interest.

(6) "County" means Benton County.

(7) "DNR" means the Washington State Department of Natural Resources.

(8) "Development" means "use" as defined by this Title.

(9) "Hearings Examiner" means an examiner appointed by the Board of County Commissioners, authorized to hear and make decisions on variances, conditional use permits, and certain appeals.

(10) "MRPO" means the Mineral Resources Protection Ordinance.

(11) "Mining" means the act of extraction from the earth minerals and/or ores (including sand and gravel) via open pit, shaft, leaching or hydraulic methods. The subcategories or mining activities are further defined as follows:

(a) Exploration - means the collection of samples of mineral and/or ores via either core drilling or hand collection.

(b) Hobby/Recreational Mining - means the collection of minerals and/or ores generally by hand (panning or digging),

small pumping and sluicing operations, or other methods which do not require the use of heavy equipment, such as: dump trucks, backhoes, and other excavation equipment.

(c) Mine Development - means the mechanical extraction of minerals and/or ores for the purpose of evaluating feasibility or initiating construction of either a sub-surface (shaft) or surface mine.

(d) Mining Operation - means the continuous or intermittent extraction of minerals and/or ores for commercial processing.

(e) Uranium or Transuranic Mining - means the mining of radioactive minerals and/or ores that emit alpha, beta or gamma particles.

(f) Pit-run Sand and Gravel Excavation - means the extraction of non-refined mineral and/or ore for use as fill or road bed material. The intent of this category is to provide for inexpensive fill and road surfacing materials. Further, it is intended to be of a small size (less than one half acre) with minimal equipment on site and no blasting or crushing allowed.

(12) "Mineral Resource Lands" means lands that are not already characterized by urban growth and are of long term commercial significance for the extraction of aggregate and mine resources, including; sand, gravel, and valuable metallic substances.

(13) "Mineral Resources Activities, Existing and Ongoing" means an activity presently operating under a valid Washington Department of Natural Resources (DNR) surface mining permit and/or presently operating under an existing Conditional Use Permit issued by Benton County.

(14) "Nuisance" means any use, activity or structure that interferes with the enjoyment and use of one's property by endangering the human senses and/or failing to conform with the provisions, intent, or standards of the district in which the use, activity or structure occurs.

(15) "PMR" means a Protected Mineral Resource.

(16) "Permit" means a written governmental approval issued by an authorized official which empowers the holder thereof to take some action permitted only upon the issuance of such written approval.

(17) "Planning Administrator" means the Benton County Planning Department Manager, Director, or designated representative who shall be responsible for the administration of this chapter.

(18) "Planning Department" means the Benton County Planning Department.

(19) "Qualified Professional" means an accredited or licensed professional with a combination of education and experience in the discipline appropriate for the subject matter that is being commented on or someone who would qualify as an expert in their field.

(20) "Reclamation" means the reestablishment on a continuing basis of the vegetative cover, slope stability, water conditions, and safety conditions suitable to the proposed subsequent use.

(21) "Restoration" means the actions taken to return a mineral resource site to a state in which its stability, functions, and values approach its unaltered state as closely as possible.

(22) "Sand" refers to large particles of soil from 0.5 to 2 millimeters in diameter. Sand soil contains at least 85 per cent sand with the percentage of silt plus 1.5 times the percentage of clay not exceeding 15 per cent.

(23) "Use" means the activity or purpose for which land or structures or combination of land and structures are designed, arranged, occupied, or maintained together with any associated site improvement. This definition includes the construction, erection, placement, movement or demolition of any structure or site improvement and any physical alteration to land itself including any grading, leveling, paving or excavation. Use also means any existing or proposed configuration of land, structures, and site improvements, and the use thereof.

(24) "Use District" means a portion of Benton County within which certain uses of land and structures are permitted and certain other uses of land and structures are prohibited, certain yards and other open space are required and specific lot areas are established, all as set forth and specified in this chapter. This definition also includes the term "zone" and "zoning district."

(25) "Use, Principle" means the primary or predominant use to which a structure, part of a structure, or lot is or may be devoted.
[Ord. 610 (2018) § 4]

15.16.040 APPEAL OF ADMINISTRATIVE DECISION TO HEARINGS EXAMINER. When the provisions of this chapter allow approval, conditional approval, or denial of a mineral resources protection designation, or use, to be made by the Planning Administrator or his designated representative, that decision may be appealed by any person aggrieved to the Benton County Hearings Examiner, and the following procedure shall apply:

(a) Appeals shall be filed within fourteen (14) days of the date of the decision being appealed. All appeals shall be in writing, in duplicate, shall be accompanied by a non-refundable fee as established by resolution of the Board of County Commissioners, and shall be filed with the Hearings Examiner.

(b) Upon the filing of an appeal the Hearings Examiner shall set the time and place at which the matter will be considered. At least a ten (10) day notice of such time and place together with one copy of the written appeal, shall be given to the official whose decision is being appealed and to the adverse parties of record, if any. The official whose decision is appealed shall transmit to the Hearings Examiner all of the records pertaining to the decision, together with such additional written report as he deems pertinent.

(c) Notice shall be given not less than twelve (12) days before the hearing date, in the following manner:

(1) By United States Mail addressed to the applicant and to the owners of all property within a distance of three-hundred (300) feet in any direction from the subject property.

(Notices addressed to the last known address of the person making the latest tax payment shall be deemed proper notice to the owner of such property.)

(2) By publication of a legal notice in a paper of general circulation.

(d) Upon hearing the appeal, the Hearings Examiner may reverse or affirm, wholly or in part, or may modify the decision appealed, and may make such decision as should be made and, to that end, shall have all the powers of the officials whose decision is appealed, as to the particular issue.

(e) The Hearings Examiner shall keep a written record of the case and the finding of facts upon which the action is based.
[Ord. 610 (2018) § 5]

15.16.050 IDENTIFICATION OF MINERAL RESOURCE LANDS-MAPS. The locations of Mineral Resource Lands are shown on the Mineral Resources Protection Ordinance Overlay Map used in conjunction with the County's Zoning Map and the Comprehensive Land Use Plan and maps. This and all County planning maps are available for review at the Benton County Planning Department Office.
[Ord. 610 (2018) § 6]

15.16.060 PROTECTED MINERAL RESOURCE LANDS-SURFACE MINING PERMITS AND CONDITIONAL USE PERMITS GRANTED OR PENDING-DESIGNATION REQUIREMENTS.

(a) Any area to which this chapter applies as specified in BCC 15.16.010 and which is presently operating under a valid Washington Department of Natural Resources (DNR) surface mining permit or an existing Conditional Use Permit (CUP) shall be designated as a Protected Mineral Resource (PMR).

(b) Any other contiguous area, of not less than 10 acres in size, governed under Title 11 BCC may be designated if a Surface Mining Permit is pending before DNR or a Conditional Use Permit is pending before the County, and an application for a designation is made. The site must:

(1) not be located in any area having substantial residential or commercial development or for which such development has an application vested with the county;

(2) not be a registered or designated historic or archeological site, or be within proximity so as to adversely impact Wildlife Conservation Areas having a primary association with rare, threatened or endangered species;

(3) have long-term commercial significance as a mineral extraction site.

(c) Any activity proposed in an application shall meet or surpass the requirements set forth in Title 11 BCC and in this title.
[Ord. 610 (2018) § 7]

15.16.070 PROTECTED MINERAL RESOURCE LANDS-APPLICATION FOR DESIGNATION. An application to designate lands as a Protected Mineral Resource Area shall be made to the Planning Department, with the approval from the legal owner of the property. The application shall be accompanied by the following information:

(a) identification of the site location by section, township and range, including a parcel map, vicinity map, and a narrative description of the existing uses on all adjacent parcels;

(b) the size in acres of the subject parcel and all surrounding parcels;

(c) the general location of the mineral resource on the site and all public and private access roads in the vicinity;

(d) a completed State Environmental Policy Act (SEPA) checklist;

(e) the special study, which is a report prepared by a "qualified professional" describing the nature of the resource and its long-term commercial value.

[Ord. 610 (2018) § 8]

15.16.080 MINERAL RESOURCE AREAS REVIEW. The Planning Administrator shall perform a Mineral Resource Areas Review for any:

(a) proposal to designate lands as a Protected Mineral Resource Area;

(b) permit application or approval requested on a parcel which contains a Mineral Resource Designation;

(c) parcel adjacent to or within five hundred (500) feet of a parcel with a Protected Mineral Resource Area Designation.

[Ord. 610 (2018) § 9]

15.16.090 SPECIAL STUDY REQUIRED. (a) A Special Study is required for all Conditional Use Permit applications for new mining operations for which a DNR Surface Mining Permit is not required.

(b) The study shall:

(1) classify the site's potential for long-term commercial significance;

(2) classify the mineral resources according to those classifications within the County's Comprehensive Plan;

(3) analyze the compatibility of the proposed use with the surrounding properties;

(4) analyze the extent of the impact(s) on other lands and critical areas; and,

(5) identify mitigation, including but not limited to buffers, in order to reduce incompatibilities and impacts.

[Ord. 610 (2018) § 10]

15.16.100 PROTECTED MINERAL RESOURCE LANDS-PERMITTED USES.

Only the following uses of land may be permitted on designated protected mineral resource lands as provided in this title and subject to the standards set forth in the underlying zoning district and other federal, state and local requirements, i.e. Planning Administrator review, SEPA, conditional use permit, etc.

(a) quarrying and mining of minerals or materials, including, but not limited to: sand and gravel, rock, clay and peat;

(b) the exploitation, primary reduction, treatment and processing of minerals or materials, together with the necessary buildings, structures, apparatus or appurtenances on said property where at least one of the major mineral or material constituents being exploited is from said property, including, but not limited to: concrete, asphalt mixing, brick, tile, terra cotta and concrete products, manufacturing, and rock crushers and the use of accessory minerals and materials from other sources necessary to convert the minerals or materials to marketable products;

(c) dwellings used and required by mining or quarrying operations for those who provide continuous supervision such as for a caretaker or superintendent and his immediate family; and

(d) non-structural agricultural uses and activities.

[Ord. 610 (2018) § 11]

15.16.110 BUFFER REQUIREMENTS.

(a) For any mineral extraction and associated activities located on mineral resource lands, physical buffers shall be required, where appropriate, to protect adjacent uses from any potential noise and pollution as well as from unsightly mining activities.

Physical buffers may include: open space, noise attenuation berms or structures, and screening vegetation.

(b) On any proposed development on property adjacent to Mineral Resource Areas, physical buffers shall be required, where appropriate, to protect sensitive uses such as residential, commercial, office and recreational from the potential of adjacent noise and pollution as well as from unsightly mining activities. Physical buffers may include: open space and screening vegetation. [Ord. 610 (2018) § 12]

15.16.120 COMMENCEMENT AND CONDUCT OF MINING OPERATIONS.

(a) Mining operations may be commenced upon the granting of a Mineral Resource Protection designation; provided, that a Surface Mining Permit has been granted by the Department of Natural Resources and/or a Conditional Use Permit has been granted by Benton County.

(b) Mining operations and facilities shall be operated in a manner which is consistent with all applicable federal, state, and local regulations. [Ord. 610 (2018) § 13]

15.16.130 SITE RESTORATION.

(a) Restoration of a site shall be as directed by the Planning Administrator and shall occur upon the exhaustion of minerals or upon the permanent cessation of mining activities. The site shall be restored to a condition which mitigates long-term impacts to the environment and protects the public health and safety.

(b) Restoration of a site on which mining operations have been undertaken pursuant to a DNR Surface Mining Permit shall be made as directed by the Department of Natural Resources and in accordance with the Reclamation Plan required under the State Surface Mining Act, Chapter 78.44 RCW. [Ord. 610 (2018) § 14]

15.16.140 SITE ABANDONMENT AND RECLAMATION-DESIGNATION NULL AND VOID. The provisions of BCC 15.16.140 shall apply once a site has been determined abandoned or reclamation has been initiated pursuant to Chapter 78.44 RCW.

(a) Upon the permanent abandonment of the mining operation, the Protected Mineral Resource designation shall become void.

(b) Prior to or during reclamation, all buildings, structures, apparatus, or appurtenances incidental to or directly part of the mining operation shall be removed or otherwise dismantled to the satisfaction of the Planning Administrator; provided, that such removal may not be required if it is permitted to continue due to the underlying zone.

(c) Upon exhaustion of minerals or materials and after completion of site reclamation, the MRPO zone designation will become null and void and the underlying zone classification will not be constrained by this chapter.

[Ord. 610 (2018) § 15]

15.16.150 NOTICE REQUIRED. A notice shall be recorded on all plats, short plats, subdivisions, development permits and building permits issued for development activities on or within five hundred (500) feet of the Mineral Resource Protection Designation and shall contain information that the subject property is within or near a mineral resource extraction area on which a variety of mining and processing related activities may occur that are not compatible with residential and some other land uses. Such notification shall be in a form specified by the Benton County Planning Department.

[Ord. 610 (2018) § 16]

15.16.160 ACCESS AND INGRESS. Access and ingress shall be located appropriately to avoid conflicts with mineral resource related activities.

[Ord. 610 (2018) § 17]

15.16.170 NUISANCE CLAIMS. A nuisance claim may be filed in the manner provided by law.

(a) Mineral resource extraction operations and routinely related activities shall not be deemed a nuisance, or become a nuisance:

(1) by any changed conditions within its vicinity after it has been in operation for more than one year, and

(2) when such operation was not deemed a nuisance at the time the operation began.

(b) The provisions of BCC 15.16.170(a) shall not apply to any claim made in regards to negligent or improper operation.

[Ord. 610 (2018) § 18]

15.16.180 NUISANCE CLAIMS-DETERMINATION OF NUISANCE. (a) In determining whether the action claimed is a nuisance, the provisions of BCC 15.16.170 and the following minimum criteria shall be considered:

- (1) endangerment of the public health, safety and welfare;
- (2) inconsistency with the terms and provisions of permits allowing the operation;
- (3) pollution of any surface or groundwater;
- (4) emission of any liquid, solid, or gaseous waste or by-product not addressed in local and state permits.

(b) An authorized officer of Benton County shall have the right to enter the site at all reasonable times for the purpose of inspecting and investigating conditions relating to nuisance claims and to ensure compliance with the provisions of this chapter.
[Ord. 610 (2018) § 19]

15.16.190 NUISANCE-ABATEMENT OF NUISANCE. In the event the activity is deemed a nuisance, such nuisance shall be promptly abated.
[Ord. 610 (2018) § 20]

15.16.200 SEVERABILITY. If any provision of this Chapter is declared unconstitutional, or the applicability thereof to any person or circumstance is held invalid, the constitutionality of the remainder of the Ordinance and the applicability thereof to other persons and circumstances shall not be affected thereby.
[Ord. 610 (2018) § 22]

15.16.210 EFFECTIVE DATE. This Chapter shall take effect and be in full force upon its passage and adoption.
[Ord. 610 (2018) § 23]