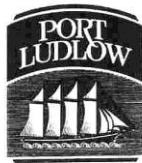


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APPARENT DISCREPANCIES IN POPE  
RESOURCES' PROPERTY DISCLOSURES  
CONCERNING THE NEW SHINE QUARRY

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PORT LUDLOW VILLAGE COUNCIL  
P.O. BOX 65012  
PORT LUDLOW, WA 98365

The Port Ludlow Village Council accepted this Report from its Iron Mountain Quarry Mitigation Committee by Resolution at its General Meeting on December 2, 2010.

DIRECTORS OF THE PORT LUDLOW VILLAGE COUNCIL

Thomas E. Stone, President BS Eng, MS EE, Rear Admiral USN (Ret.)	Arthur Zoloth, Vice President & Chair "Futures Committee" Pharm D, Director of Pharmacy, Virginia Mason
Ned Luce, Secretary BA Econ. Wabash College, USN, and IBM Product Manager	Donald Thompson, Treasurer BA, BS EE, MBA, Aerospace Engineer
Peter Leenhouts BA Marquette, MA NPGS, MS National War College, Captain USN (Ret.)	Lawrence Nobles, Chair, "Community Development" MS, PhD (Harvard), Dean & Emeritus Professor Geology NWU
Laurason T. Hunt BA History, Lawyer Washington Bar, Hunt Law Offices	Shane Seaman Lawyer WA and Fed Bars, County Judge Pro Tem & Prosecutor
James Boyer Developer, Licensed Contractor CA, NA, NM, CO	Anthony U. Simpson, Chair, "IMQM Committee" MA (Cantab), MSME, PhD (Chem Eng), PEng (ME CA & PQ)
Paul A. Traci, Director SBCA PhD Microbiology, WI; President, PAT International	Elizabeth Van Zonneveld, President LMC BSc Life Sciences, Parks & Recreation, Community Affairs

IRON MOUNTAIN QUARRY MITIGATION COMMITTEE

David Armitage, Laury Hunt, Bert Loomis, Bruce Schmitz, Shane Seaman,  
Randall Shelley, Tony Simpson (Chair), Kathy Traci

ACKNOWLEDGEMENTS

The Village Council expresses its appreciation and thanks to all the members of the community and those outside the community who have assisted in and contributed their expertise to this effort. The Village Council, of course, takes full responsibility for content of the document. In particular, we acknowledge the following persons and we apologize for any omissions:

Brian Belmont

Dan Meade

Danae Larrance

Dianne Ridgley

Don Anderson

Eve McDougall

Leslie Powers

Mary Ronen

Richard Shattuck

Robert Schreyer

Terry Freeman

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## INTRODUCTION, SUMMARY, AND CONCLUSIONS

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This report documents the contradictory statements by two Presidents of Pope Resources.

1. Development of the New Shine Quarry<sup>1</sup> had started by early 1974. Although the initial quarry was small, Pope Resources' current President (Mr. Nunes) has testified under oath that since the 1970s the company has **always intended** it to become the large 142-acre quarry next to Port Ludlow as publicized today. This testimony persuaded Jefferson County to grant non-conforming (i.e., "grandfathered") quarry rights to Pope Resources in 2008.
2. On the other hand, a prior<sup>2</sup> Pope Resources' President (Mr. Bruce) signed Federal and State full disclosures in the 1970s describing all existing and planned quarries that might create nuisance or risk for property purchasers. The more distant Mats Mats quarry was always included in the property reports, as were two small Pope Resources' quarries before they became defunct. Pope Resources' New Shine Quarry was never mentioned, showing that Pope Resources **never intended** to develop the large 142-acre New Shine Quarry.

In general, these 1970's contemporaneous disclosure statements of intent should carry far more weight than the 2008 statement of intent by Mr. Nunes, who was a **teenager** in the 1970s and presumably without contemporaneous knowledge.

Because prospective purchasers had no knowledge of Pope Resources' actual intention to develop a 142-acre commercial quarry in close proximity to Port Ludlow, they bought properties without this consideration until Pope Resources made their intentions public on March 14, 2008.

It is clear that Pope Resources' Presidents had actual knowledge of these discrepancies. Unfortunately, these discrepancies have potentially large environmental and financial implications. As no subsequent disclosure ever contradicted the 1970s' disclosures, realtors and residents have believed them explicitly when making decisions about quality-of-life, tranquility, natural beauty, and fairness of real estate prices. Property sold by Pope Resources with its disclosure inducements now has a taxable value of about \$650 million. Sales of aggregate from the New Shine Quarry would be worth probably a lesser yet comparable amount. Depending on State Environmental Policy Act constraints and long-term aggregate market growth, the quarry's environmental impact will probably range from modest to disastrous for Port Ludlow, with negative property value impacts anticipated from a few percent to 20-30 percent.

The report presents detailed information from Pope Resources' own source documents augmented by some Washington State documents. Their provenance adds to the report's strength and integrity.<sup>3</sup>

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1 This quarry has had several names e.g., Old Rock Quarry, Original Shine Quarry, Iron Mountain Quarry, and New Shine Quarry. For clarity, it is called New Shine Quarry or NSQ herein.

2 Mr. Bruce was president of Pope & Talbot Management, which merged into Pope Resources in 1985. For clarity, the company is called Pope Resources or PR herein (see details).

3 The reader should note that when the report is transmitted as a Portable Document Format (PDF) attachment by email, the links remain active. A convenient way to read this document is to print it for reading and annotation and to use the computer PDF version to look up the references.

If you have only a printed copy, the PDF version can be downloaded from the Internet at from the link: [Discrepancies in Pope 1970s NSQ Property Disclosures PLVC Report 2-Dec-2010.pdf](#).

## PORT LUDLOW GEOLOGY, PLANNING, AND NSQ PROXIMITY

This section provides the discrepancies' background and their physical context.

### UNDERLYING GEOLOGY

Exposed basalt layers are shown in green. Tertiary Eocene Volcanic basalt-flow bedrock deposits, exposed in road cuts and rock cuts from Port Discovery southeastward to Squamish Bay, underlie Port Ludlow. Geologic mapping shows a continuous deposit of the Tertiary Volcanic bedrock extending from the subject site (and the adjacent Shine Quarry) on the south to the Port Ludlow area approximately 3 miles to the northeast. This same deposit is described as comprising the rock at the Mats Mats quarry approximately 4 miles northeast of the NSQ. (Ref. 25)

In North Port Ludlow, Continental glacial till covers the basalt; in South Port Ludlow, the basalt is exposed or covered by a layer of organic soils and vegetation.

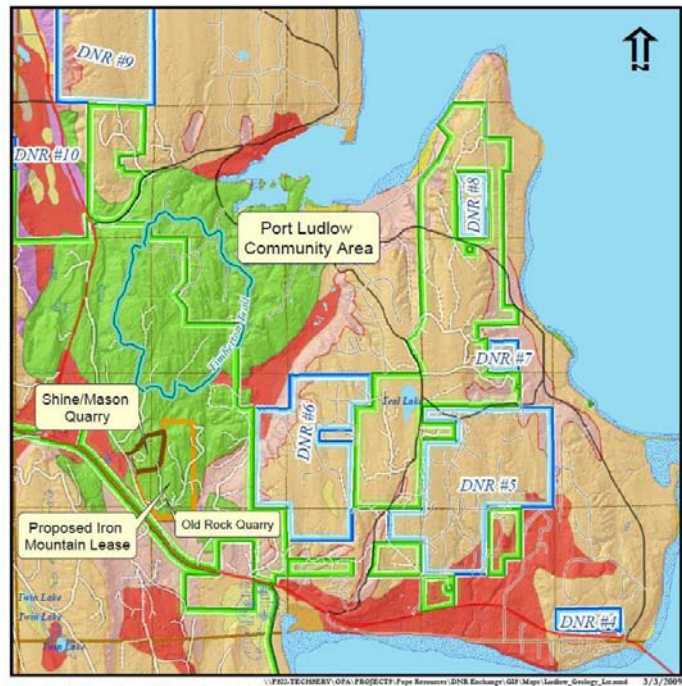
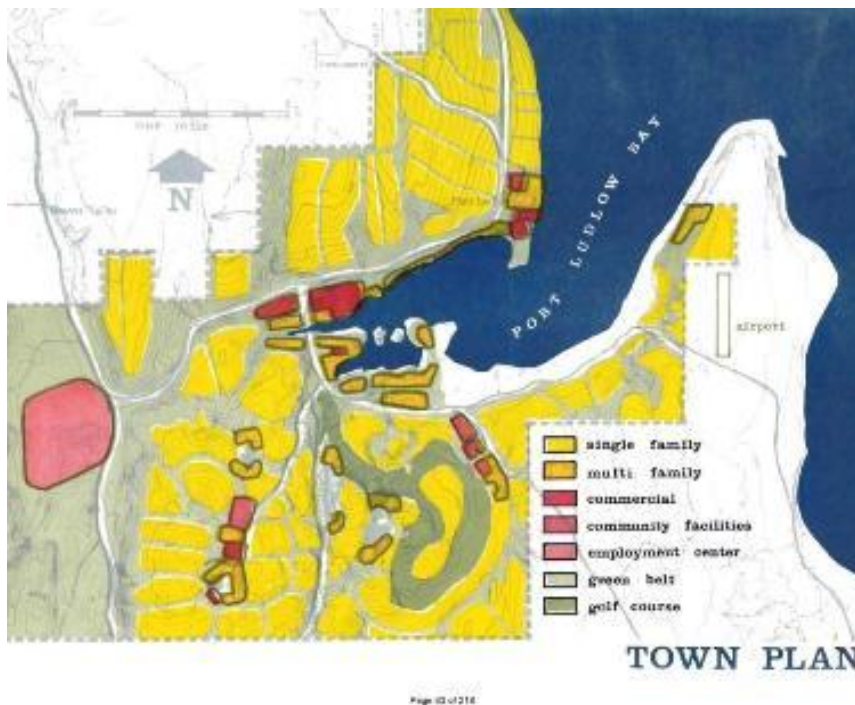


Exhibit 2 - Underlying Geology



Data Sources: Geology from WA DNR Open File Report 2005-3 Digital 1:100,000-scale Geology of Washington State, Hillshaded Topographic Image created from Puget Sound Lidar Consortium Data by Pope Resources, DNR Ownership from DNR GIS, Pope Resources Ownership from Jefferson County and Pope Resources GIS.

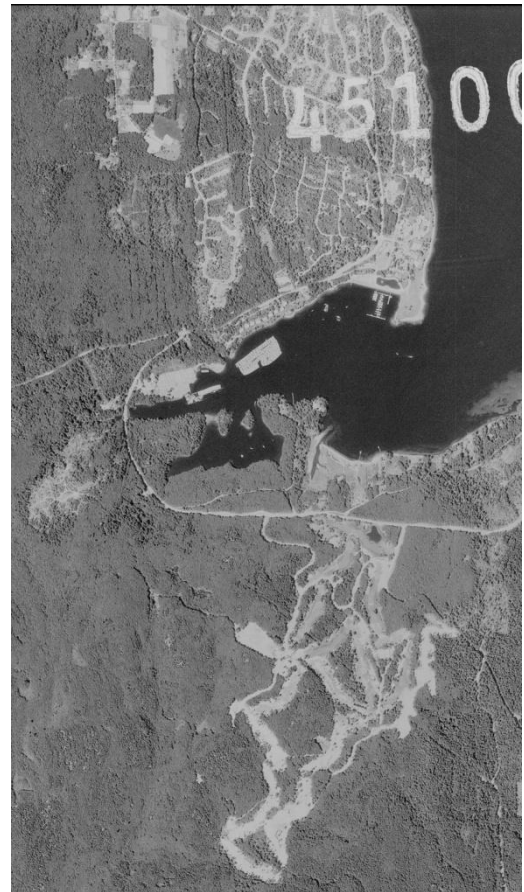


### PORT LUDLOW 1967 TOWN PLAN

The Port Ludlow Town Plan (click to enlarge) from PR's 1967 planning report (Ref. 18, p. 63) shows that Port Ludlow always extended to the region proximate to the 142 acres now known as the NSQ. The Golf Course surrounded by homes was always a central theme. The NSQ is located a little below the bottom of the plan.

STATUS OF PORT LUDLOW DEVELOPMENT IN 1974

The aerial photo at right dated June 16, 1974 shows the status of Port Ludlow shortly after development of the New Shine Quarry started. It confirms the southerly development was proximate to the 142-acre quarry even in 1974. This blowup comes from the same photo exposure as the June 16, 1974 aerial photograph of the New Shine Quarry (courtesy of DNR Photogrammetry). It is also contemporaneous with the May 23, 1974 Property Report disclosure. It is apparent that the geographical relationships discussed in this section were well known to Pope Resources from the early 1970s.



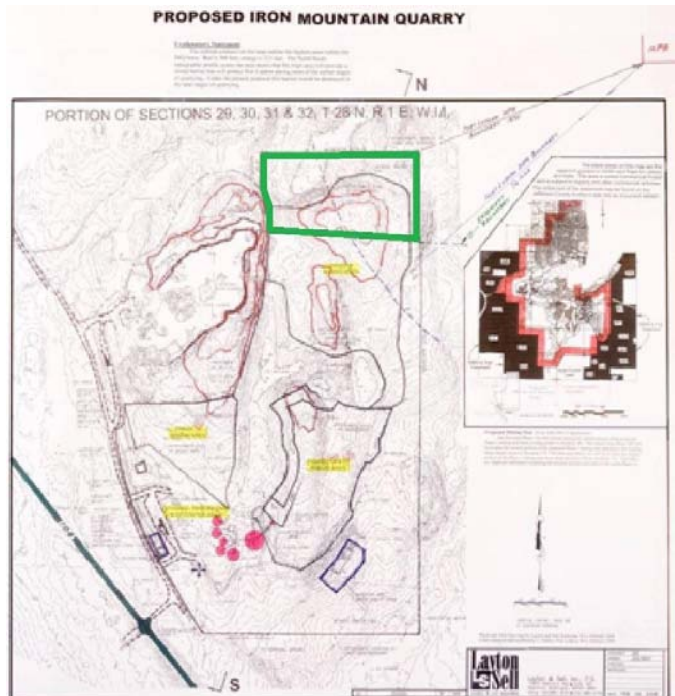
PROXIMITY OF NEW SHINE QUARRY (IRON MOUNTAIN LEASE) TO PORT LUDLOW MPR

Pope Resources and lessee Iron Mountain Quarry proposed the February 28, 2008 plan for the 142-acre quarry shown below by a map prepared by IMQ with connections to Port Ludlow added by Professor Nobles. The “L” shaped red mark indicates the south-west corner of Port Ludlow Master Planned Resort (MPR) proper—i.e., excluding easements. The MPR is Pope Resources' Port Ludlow development. The map in the development agreement with Jefferson County (Ref. 27) shows the MPR boundary. The distance between the quarry and Port Ludlow MPR proper is 1,870 ft or about 1/3 mile.

(Readers please note: Click on most photos or documents for a larger-scale image)

The green-lined rectangle shows the area over which the NSQ intrudes into the Port Ludlow utility and trails easement. This intrusion area includes the ridgeline of the quarry. In the sale of Port Ludlow development to PLA, PR retained only limited rights within the easements (Ref. 2), which do not appear to include quarry rights. There is also a trails use agreement between Pope Resources and PLVC (Ref. 11).

Pope Resources and IMQ plan to remove the ridgeline, exposing the quarry to line-of-sight view from portions of Port Ludlow. It will also expose Port Ludlow MPR to direct noise from the quarry. Even after the quarry is gone, the absence of the ridgeline will expose Port Ludlow MPR forever to noise from State Route 104, which carries the traffic crossing the Hood Canal Bridge traffic bound for the rest of the Olympic Peninsula.



**PROXIMITY OF PORT LUDLOW MPR TO MATS MATS QUARRY**

The closest point in Port Ludlow MPR to Mats Mats quarry is the North end of Montgomery Lane shown by the red line, which is 5,600 feet (1.06 miles) using Google measuring tool and 2010 satellite photo.

In other words, the NSQ is three times closer than Mats Mats is to Port Ludlow MPR boundary.



**PROXIMITY OF NEW SHINE QUARRY TO TIMBERTON TRAIL**



The Google photo taken in 2010 shows the closest distance between to the NSQ and the Timberton Trail, one of the key environmental amenity attractions of Port Ludlow MPR.

The vertical line yellow line shows the distance to be 850 ft, or 280 yards.

## POPE RESOURCES' STATEMENTS OF INTENTION TO QUARRY

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### LETTER FROM POPE RESOURCES TO JEFFERSON COUNTY DATED MAY 21, 2007

Mr. Nunes, the President of Pope Resource, defined the company's quarry intentions in his letter [\(Ref. 13\)](#) to JeffCo dated May 21, 2007. However, the letter was not provided to Port Ludlow residents until the Examiners Hearing on March 14, 2008. The letter's second paragraph reads:

*"The purpose of this letter is to clarify that all of the area proposed to be leased to Iron Mountain Quarry is within an area of known mineral deposits that Pope Resources and its predecessor, Pope and Talbot, owned and intended to be used for hard rock mining from the time the first mining occurred at this location in the 1970's. Attached to this letter are aerial photographs from the Washington State Department of Natural Resources showing the history of mining at this location. The 1979 aerial photo shows mining activity at the original Shine quarry location, which is south of the current Shine quarry and is within the area to be leased to Iron Mountain Quarry. In fact, this original Shine quarry site has been used continuously for mining related activities until recently when the lease agreement was signed with Iron Mountain Quarry."*

The letter states that the New Shine Quarry is within a larger undefined area of mineral deposits that Pope Resources knows and intends to use for quarrying. An attachment to the letter shows the Pope Resources' 1979 photograph of the quarry [\(see photo\)](#).

### Discussion

The discovery of the 1974, 1976, and 1977 photographs on October 20, 2010 provides clear evidence that quarrying had started by 1974.

Pope Resources omits these 1974, 1976, and 1977 photographs and the Property Report disclosures made by Pope Resources in 1974, 1976, and 1978. All of these documents were unknown to the PLVC and to Jefferson County and required great effort to recover. However, they almost certainly exist and are probably easily available in Pope Resources' private archive of Port Ludlow that Pope Resources consolidated into their vaults in Port Gamble during their sale of Port Ludlow's development to Port Ludlow Associates in 2001 [\(see PLA sale\)](#).

It is noteworthy that the only photograph mentioned in the letter is from 1979, which postdates the Property Reports. On this single item of photographic evidence, an argument could be made that Pope Resources only decided to mine this area in late 1978 or 1979 and could not therefore be proven to violate any 1974, 1976, and 1978 Property Reports that might still exist and might still be discovered.

### CODE INTERPRETATION HEARING MARCH 14, 2008

Exhibit B in the hearing reads:

*"DECLARATION IN SUPPORT OF IRON MOUNTAIN QUARRY APPEAL OF CODE INTERPRETATION HEARING MARCH 14, 2008*

*DAVID L. NUNES declares as follows:*

*1. I am over the age of 18, I have personal knowledge of the facts stated in this declaration, and I am competent to testify regarding these facts.*

2. I am the President and Chief Executive Officer of Pope MGP, Inc.<sup>4</sup>, Managing Partner of Pope Resources, a Delaware limited partnership that is the owner of the land that is the subject of this code interpretation appeal- approximately 142 acres of land adjacent to the existing Shine Quarry on the north side of SR 104 about 4 miles west of the Hood Canal bridge.

3. Pope Resources has entered into an agreement with Iron Mountain Quarry to lease this 142-acre area for expansion of hard rock mining at this location.

4. I wrote a letter to Mr. Al Scalf., the Director of Jefferson County's Department of Community Development, dated May 21, 2007. A copy of this letter is attached. By this declaration, I affirm that the facts stated in my May 21, 2007, letter to Mr. Scalf are true and correct and that the letter and this declaration may be submitted to the Hearing Examiner and relied upon as evidence in support of Iron Mountain Quarry's code interpretation appeal

5. As further clarification of the landowner's intent regarding the extent of non-conforming mineral use rights at this location, Pope Resources confirms that the total area that is subject to the diminishing asset doctrine at this location is 182 acres – 142 acres that is the subject of Iron Mountain Quarry's appeal and 40 acres that is the expansion granted to the Shine Quarry operation at this location in 2004.

The foregoing is made under penalty of perjury under the laws of the state of Washington and is true and correct.

DATED this 12<sup>th</sup> day of March, 2008.

By David L. Nunes”

### **Comments**

Mr. Nunes was born circa 1960 and was about 14 years old in 1974. He joined Pope Resources in 1997. He could have no contemporaneous knowledge of the facts of Pope Resources' intention to quarry since the 1970s. The only contemporaneous (1970s) evidence brought before the hearing examiner appears to have been the 1972 and 1979 photographs.

The hearing concerned the matter of a code interpretation and was so advertised on February 27, 2008 ([Ref. 22](#)). Somehow, the outcome of the hearing went far beyond a code interpretation and non-conforming rights were awarded to Pope Resources based on the diminishing asset doctrine. This was done without an advertised public hearing on non-conforming rights to quarry, at which it is possible that a Port Ludlow resident would have presented evidence of a 1970s Property Report disclosure.

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<sup>4</sup> Pope MGP, Inc., is the managing general partner of Pope Resources, a Delaware Limited Partnership

## POPE RESOURCES' PROPERTY DISCLOSURES

### DESCRIPTION OF PROPERTY DISCLOSURES

Pope Resources had to file a property-report disclosure statement for each subdivision of land. All salespersons had to obtain each purchaser's signature confirming that the purchaser received the disclosure statement before they bought the property—otherwise the purchaser could void the purchase.

The president of Pope Resources signed the disclosures. The disclosures include meticulous detail of all "facts about this development which will make purchase a risk." They include industrial risks such as Mats Mats quarry, four small Pope Resources' quarries (now defunct) in and around Port Ludlow, and risks as far away as the Paper Mill in Port Townsend and Jefferson County Airport.

The table below shows examples of these Property Report disclosures from the 1970s covering Port Ludlow subdivisions 1, 2, and 3. These three subdivisions contain 720 taxable properties, which today represent 43 percent of all Port Ludlow taxable properties not owned by the developer.

### Cover Pages of Property Reports

May 23, 1974 Washington State	July 20, 1976 US Department of HUD	February 10, 1978 US Department of HUD
<p>PROPERTY REPORT FILED BY: POPE &amp; TALBOT DEVELOPMENT, INC. Suite 218, 2722 Eastlake Avenue East Seattle, Washington 98102</p> <p>FOR PORT LUDLOW NO. 1 PORT LUDLOW NO. 2 PORT LUDLOW NO. 3</p> <p>Port Ludlow Jefferson County Washington 98345</p> <p>AMENDED EFFECTIVE DATE: May 23, 1974 FILE NUMBER: 0080</p> <p><b>NOTICE TO PURCHASERS</b></p> <p><b>YOU MAY REVOKE ANY CONTRACT OR AGREEMENT WITHIN 48 HOURS, IF YOU RECEIVED THE PROPERTY REPORT LESS THAN 48 HOURS BEFORE YOU SIGNED THE CONTRACT OR AGREEMENT. NOTICE OF REVOCATION MUST BE BY WRITTEN NOTICE DELIVERED TO THE DEVELOPER OR HIS AGENT. THE TIME PERIOD OF 48 HOURS DOES NOT INCLUDE ALL OR ANY PART OF A SATURDAY, SUNDAY OR HOLIDAY.</b></p> <p><b>DISCLAIMER</b></p> <p>THIS PROPERTY REPORT IS FOR INFORMATIONAL PURPOSES ONLY. THE WASHINGTON LAND DEVELOPMENT REGISTRATION AND ADMINISTRATION HAS NEITHER APPROVED NOR DISAPPROVED THE MERITS OF THIS OFFERING. THE DEVELOPER IS RESPONSIBLE FOR THE ACCURACY AND COMPLETENESS OF THIS REPORT.</p> <p><b>FACTS ABOUT THIS DEVELOPMENT WHICH WILL MAKE PURCHASE A RISK TO YOU ARE PRINTED IN CAPITAL LETTERS AND UNDERLINED.</b></p> <p>If you believe that the developer has made any wrong statement in this Property Report, please tell the developer and the</p> <p>Land Development Registration and Administration Land Development Chief P. O. Box # 247 Olympia, WA 98504 Phone: (206) 753-1061</p>	<p>PROPERTY REPORT NOTICE AND DISCLAIMER BY OFFICE OF INTERSTATE LAND SALES REGISTRATION U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT</p> <p>The Interstate Land Sales Full Disclosure Act specifically prohibits any representation to the effect that the Federal Government has in any way passed upon the merits of, or given approval to this subdivision. It is unlawful for the developer to make any representation contrary to the foregoing or any representations which differ from the statements in this Property Report. If any such representations are made, please notify the Office of Interstate Land Sales Registration at the following address:</p> <p>Office of Interstate Land Sales Registration HUD Building 400 North Capitol Street, N.E. Washington, D.C. 20540</p> <p>Inspect the property and read the document. Seek professional advice.</p> <p>Unless you receive the Property Report at least 48 hours before signing a contract or agreement, you have until midnight of the third business day following the consummation of the transaction to revoke your contract by notice to the seller.</p> <p>1. Name of Subdivision: <u>POPE &amp; TALBOT DEVELOPMENT, INC. PORT LUDLOW NO. 1, PORT LUDLOW NO. 2, and PORT LUDLOW NO. 3</u></p> <p>2. Name of Subdivision: <u>PORT LUDLOW NO. 1, PORT LUDLOW NO. 2, and PORT LUDLOW NO. 3</u></p> <p>Location: <u>Port Ludlow, Washington State</u></p> <p>(a) Effective Date of Property Report: <u>July 20, 1976</u></p> <p><b>IMPORTANT READ CAREFULLY</b> Name of Subdivision: <u>PORT LUDLOW NO. 1, PORT LUDLOW NO. 2, and PORT LUDLOW NO. 3</u> By signing this receipt you acknowledge that you have received a copy of the Property Report prepared pursuant to the Rules and Regulations of the Office of Interstate Land Sales Registration, U.S. Department of Housing and Urban Development.</p> <p>Received by: _____ Street Address: _____ Date: _____ State: _____ City: _____ Zip: _____</p> <p>Notwithstanding your signature by which you acknowledged that you received the Property Report you still have other important rights under the Interstate Land Sales Full Disclosure Act.</p>	<p>PROPERTY REPORT NOTICE AND DISCLAIMER BY OFFICE OF INTERSTATE LAND SALES REGISTRATION U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT</p> <p>The Interstate Land Sales Full Disclosure Act specifically prohibits any representation to the effect that the Federal Government has in any way passed upon the merits of, or given approval to this subdivision. 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Name of Subdivision: <u>PORT LUDLOW NO. 1, PORT LUDLOW NO. 2, and PORT LUDLOW NO. 3</u></p> <p>Location: <u>Port Ludlow, Washington State</u></p> <p>(a) Effective Date of Property Report: <u>February 10, 1978</u></p> <p><b>IMPORTANT READ CAREFULLY</b> Name of Subdivision: <u>PORT LUDLOW NO. 1, PORT LUDLOW NO. 2, and PORT LUDLOW NO. 3</u> By signing this receipt you acknowledge that you have received a copy of the Property Report prepared pursuant to the Rules and Regulations of the Office of Interstate Land Sales Registration, U.S. Department of Housing and Urban Development.</p> <p>Received by: <u>John M. Beale</u> Street Address: <u>1234 E. Beach</u> Date: <u>2/10/78</u> State: <u>WA</u> City: <u>Port Ludlow</u> Zip: <u>98345</u></p> <p>Notwithstanding your signature by which you acknowledged that you received the Property Report you still have other important rights under the Interstate Land Sales Full Disclosure Act.</p>

**NOTE:** Click on cover pages to view complete documents, opening at the key page.

### RETENTION OF PROPERTY DISCLOSURES

Pope Resources store records from Port Ludlow in vaults at Port Gamble. They are not accessible without special permission. Disclosure statements are not part of the property title, so each purchaser is responsible for retaining their disclosure statement. Inevitably, many purchasers lost their copy. In the 30-40 years since the 1970s, almost all homes have changed ownership and the property disclosures

were lost in the process. Since Port Ludlow is primarily a retirement community, most original residents from the 1970s have moved, died, or gone into care facilities and their successors have cleaned out their belongings.

A thorough search for 1970s property reports in the Washington State archive revealed many property reports dating from 1974 through 1983. There were no filings for Port Ludlow, but no inferences can be drawn from this because the property report archive is incomplete due to purging and losses.

With great effort, the PLVC has found 1970s property report disclosures from five property-owners in Port Ludlow 1, 2, and 3—less than one percent of the original number of properties sold there by Pope Resources. These five extant disclosures consist of three versions as shown above. If Pope Resources had waited another five to ten years before applying for a NSQ permit, it is unlikely that any 1970s property reports would have survived.

PROPERTY REPORT MAY 23, 1974, LAND DEVELOPMENT REGISTRATION AND ADMINISTRATION, OLYMPIA, WA 98504

The following disclosure statements are near the bottom of page 1, and paras 3 and 4 on page 6 of the Property Report [\(Ref. 21\)](#) for Port Ludlow Subdivisions 1, 2, 3:

*“FACTS ABOUT THIS DEVELOPMENT WHICH WILL MAKE PURCHASE A RISK TO YOU ARE PRINTED IN CAPITAL LETTERS AND UNDERLINED.”*

*“The developer owns, outside the area of the filing but WITHIN ONE MILE OF THE CENTER OF THIS FILING, A ROCK QUARRY alongside the southerly right-of-way of Jefferson County Road #10, southwesterly of this filing<sup>5</sup>; A GRAVEL PIT located directly southeast of the lots subject to this filing in Port Ludlow No. 3 AND A QUARRY west of the Pacific Northwest Bell Telephone Company service building between this filing and the Port Ludlow Golf Course. Also located within the area of this filing, but outside the developer's project is a LARGE, COMMERCIAL QUARRY TWO MILES north of the center of this filing at Mats Mats Bay.*

*At greater distances are potential land uses that could produce odors, noise and other nuisances to the property subject to this filing INCLUDING A LARGE PULP MILL NORTH-NORTHWEST of the filing at an approximate air distance of 13 miles AND THE JEFFERSON' COUNTY AIRPORT, at a distance of approximately 13 road miles from the center of this filing. UNDER CERTAIN ATMOSPHERIC AND WIND CONDITIONS, EMISSIONS FROM THE PULP PLANT MIGHT CREATE ODORS WITHIN THE AREA OF THE PROPERTY COVERED BY THIS FILING. Aircraft enroute to the Jefferson County Airport, as well as float planes landing within Ludlow Bay may create noise if passing over the area of this filing.”*

The contemporaneous aerial photo [\(see photo 3\)](#) was taken three weeks later showing that work on the NSQ was already underway at the time of filing of the Property Report. The property report omits any reference to its New Shine Quarry development, though the Property Report saw fit to disclose the large

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5 This quarry cannot be mistaken for the New Shine Quarry. It is just south of Jefferson County Road 10, which is another name for Oak Bay Road, and which terminates at Beaver Valley Rd as shown in contemporaneous (1971) Jefferson County Public Works records [\(Ref. 8\)](#). The New Shine Quarry is just north of State Highway 104.

commercial quarry at Mats Mats Bay, three Pope Resources surface mines in and around Port Ludlow (now defunct), and other risks such as the Port Townsend Pulp Mill 13 miles away.

The geographic relationships show the New Shine Quarry to be three times closer to Port Ludlow than the Mats Mats quarry ([see geography](#))

PROPERTY REPORT JULY 20, 1976 FILED WITH OFFICE OF INTERSTATE LAND SALES REGISTRATION, U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

The following disclosure statements are on pages 12, 15, and 16 of the Property Report ([Ref. 20](#)) for Port Ludlow Subdivisions 1, 2, 3:

*“(d) LIST ALL EXISTING OR PROPOSED UNUSUAL CONDITIONS RELATING TO THE LOCATION OF THE SUBDIVISION AND TO NOISE, SAFETY OR OTHER NUISANCES WHICH AFFECT OR MIGHT AFFECT THE SUBDIVISION.”*

*“Off-site land uses and nuisances which may affect the subdivision include:”*

*“j. Permanent existing rock quarry intermittently used alongside the southerly right-of-way of Jefferson County Road 10 at approximately 2.2 road miles distant.”<sup>6</sup>*

*k. Permanent existing commercial quarry in constant operation at Mats Mats Bay at approximately 2 road miles distant.*

*l. Permanent existing large pulp mill in constant operation northerly approximately 13 air miles distant.”*

*“The Developer does not know of proposed plans, private or governmental, for construction of any facility which may create a nuisance or adversely affect the use of the land except...”* Note that no information about ongoing mining and planned mining for the 142-acre NSQ is included.

The 1976 photo of the New Shine Quarry ([see photo](#)) was taken ten weeks earlier showing that work on the NSQ was underway contemporaneously with the filing of the 1976 Property Report. Again, PR saw fit to omit disclosure of the NSQ one-third mile from Port Ludlow despite the fact that PR has intended to mine the 142-acre NSQ since the 1970s. Again, Pope Resource saw fit to disclose the large commercial quarry at Mats Mats Bay, which is one mile from the closest point in Port Ludlow, and the Pulp Mill, which is 13 miles from Port Ludlow.

PROPERTY REPORT FEBRUARY 10, 1978 FILED WITH OFFICE OF INTERSTATE LAND SALES REGISTRATION, U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Many, but not all, of the pages in the 1978 version are copies of the 1976 version and share a similar cover page ([see 1978 cover](#)). The following disclosure statements are paras 6 to 8 on page 16 of the Property Report ([Ref. 19](#)).

*The page containing the quotations for “Off-site land uses and nuisances which may affect the subdivision” and “The Developer does not know of proposed plans; private or governmental, for construction of any facility which may create a nuisance or adversely*

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6 As footnoted previously, this quarry cannot be mistaken for the New Shine Quarry.

*affect the use of the land except:" are taken directly from the July 1, 1976 Property Report.*

Photos taken eight months (see 1977 photo) before and thirteen months after (see 1979 photo) show that work on the NSQ was underway contemporaneously with the filing of the Property Report.

A contemporaneous Document Checklist right shows that the sales persons provided the property reports to all purchasers.

Once more, PR saw fit to omit disclosure of the NSQ one-third mile from Port Ludlow despite the fact that PR has intended to mine the 142-acre NSQ since the 1970s. Yet again, Pope Resource saw fit to disclose the large commercial quarry at Mats Mats Bay, which is one mile from the closest point in Port Ludlow, and the Pulp Mill, which is 13 miles from Port Ludlow.

**OTHER PROPERTY REPORTS**

Property Reports presented here relate to the 1970s, because this is when Pope Resources claim to have known that the company intended to develop the New Shine Quarry. The first Property Report is an amendment dated May 23, 1974, which infers at least one undiscovered version may have been in use.

**CONCLUSION**

In the Property Report disclosures described above, Pope Resources should have identified the New Shine Quarry as required by the reports:

*"FACTS ABOUT THIS DEVELOPMENT WHICH WILL MAKE PURCHASE A RISK TO YOU..."*

*"...EXISTING OR PROPOSED UNUSUAL CONDITIONS RELATING TO THE LOCATION OF THE SUBDIVISION AND TO NOISE, SAFETY OR OTHER NUISANCES WHICH AFFECT OR MIGHT AFFECT THE SUBDIVISION*

*"Off-site land uses and nuisances which may affect the subdivision include:"*

*"The Developer does not know of proposed plans, private or governmental, for construction of any facility which may create a nuisance or adversely affect the use of the land except..."*

In the event, Pope Resources failed to make any disclosure of its intentions that the New Shine Quarry, which Pope Resources later declared (see letter):

*"is within an area of known mineral deposits that Pope Resources and its predecessor, Pope and Talbot, owned and intended to be used for hard rock mining from the time the first mining occurred at this location in the 1970's."*

**DOCUMENT CHECKLIST** (Complete in duplicate: One copy-Purchaser; One copy-File)

LOT NO. 14 AREA 1 PORT LUDLOW NO. 2 SOUTH BAY NO. \_\_\_\_\_

**OILSR (HUD) PROPERTY REPORT**

- All purchasers regardless of residence should read before signing anything.
- Purchaser signs two first page receipts at same time EMRA is signed.
- Purchaser receives Report including a signed first page. P & T retains one signed first page.
- Receipt for Property Report satisfies State of Wash. Filing requirements.

**OREGON SUBDIVISION PUBLIC REPORT NO. 164 (Oregon Buyers Only)**

- Purchaser signs both copies of first page.
- Purchaser receives Report including a signed first page. P & T retains one signed first page.

**OREGON RESIDENTS: NOTICE OF INTEREST (Oregon Buyers Only)**

- Purchaser signs two copies.
- Purchaser receives one signed copy. P & T retains one signed copy.

**BRITISH COLUMBIA PROSPECTUS (B.C. Purchasers Only)**

- Purchaser signs both copies of first page.
- Purchaser receives Prospectus including a signed first page. P & T retains one signed first page.

**EARNEST MONEY RECEIPT AND AGREEMENT**

- Use Company Lot E. M. for applicable subdivision.
- Purchasers' legal names and marital status must be filled in.
- Seller's acceptance date in Para. 5 is 7 calendar days later than EM date.

**CONTRACT OF SALE - SPECIMEN COPY**

- Purchaser must receive a copy at time of sale.

**DISCLOSURE STATEMENT (TRUTH IN LENDING)**

- Purchaser signs two copies at time EM is signed.
- Purchaser receives one signed copy. P & T retains one signed copy.
- If purchaser indicates he expects to use lot for his principal residence he must be given Notice of Right of Recision.

**NOTICE OF RIGHT OF RECISSION (Only if purchaser marks blank on Disclosure Statement which states he intends to use lot as principal residence)**

- Purchaser must sign acknowledgement of receipt.
- Purchaser receives white & yellow copies after signing. P & T retains white copy.

I hereby certify that I have furnished to the below signed Purchaser all the documents checked above.

Paukman Sales Associate      4/24/78 Date

I (we) certify that I (we) have received all documents as checked above.

[Signature] Purchaser

[Signature] Purchaser (Spouse)

4-25-78 Date

*STEW & RETURN NEW COPY COPY*

## DATING THE NEW SHINE QUARRY EXCAVATION

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These photos show that the NSQ did not exist before July 14, 1973. Pope Resource had started the quarry before June 16, 1974. It was actively worked to extract rock from 1974 through 1979.

Figures 1 and 6 were provided by Pope Resources at the examiners hearing on March 14, 2008 ([Ref. 4](#)). Figures 2, 3, 4, and 5 were discovered on October 20, 2010 when copies were received from the archives of and certified courtesy of DNR Photogrammetry. All photos are adjusted to cover the same geographic area that is referenced to the intersection of State Route 104 and Rocktogo Rd in the bottom left corner.



Figure 1: Pope Resources Photo 4-May-1972



Figure 2: DNR Photo 14-Jul-1973



Figure 3: DNR Photo 16-Jun-1974



Figure 4: DNR Photo 9-May-1976



Figure 5: DNR Photo 11-Jun-1977



Figure 6: Pope Resource Photo 9-Mar-1979

### **Significance of Photographic Dating**

Pope Resources chose to use the first (1972) and last (1979) of these photos at the examiner's hearing on March 14, 2008. However, the intervening photos are vitally important because they show that Pope Resource worked this early NSQ site concurrently with the 1974, 1976, and 1978 Property Reports [\(see reports\)](#) that should have disclosed these mining activities but failed to do so.

Without this intervening photographic evidence, Pope's lawyers could have argued that there was no evidence to show that the quarry existed or was planned before 1979, and therefore the 1974, 1976, and 1978 property reports were not required to disclose the quarry.

It is reasonable to suppose that had Pope Resources disclosed its NSQ intentions and actions in the Property Reports, virtually every property-owner, Realtor, and prospective buyer in Port Ludlow would have known via word of mouth, newsletter, association meetings, club meetings, etc. Thus, this evidence appears to suggest that Pope Resources either hid its ultimate aims or had a much more limited purpose in their early mining endeavor.

## CLARIFICATION OF RELATIONSHIPS AND RESPONSIBILITIES BETWEEN THE PARTIES

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The relationship and responsibilities between the parties needs definition for many readers, otherwise discussion of several issues will be unclear. The conclusion at the end of each relationship explains its relevance.

### RELATIONSHIP BETWEEN POPE RESOURCES (PR) AND POPE & TALBOT (P&T)

In 1967, Pope & Talbot Development, a subsidiary of P&T, started development of Port Ludlow [\(Ref. 18\)](#).

In January 1985, P&T merged (spun off) its P&T Development subsidiary, which held its Washington State timber and real estate assets, into PR, a Delaware master limited Partnership [\(Ref. 12\)](#). It was not a sale of assets but a merger with full transfer of all obligations and liabilities of P&T into PR.

Mr. David L. Nunes, the President of PR, confirms these merger relationships in his letter [\(Ref. 13\)](#) to Jefferson County dated May 21, 2007, as follows:

*“The purpose of this letter is to clarify that all of the area proposed to be leased to Iron Mountain Quarry is within an area of known mineral deposits that Pope Resources and its predecessor, Pope & Talbot, owned and intended to be used for hard rock mining from the time the first mining occurred at this location in the 1970's.”*

### Conclusion

The point here is that Property Reports, filed with Washington State and the Federal Government by P&T, are binding on Pope Resources and are as if Pope Resources had prepared them under its own name.

### RELATIONSHIP BETWEEN THE MASON SHINE QUARRY (MSQ) AND THE NEW SHINE QUARRY (NSQ)

Pope Resources has a 40-acre quarry, generally known as the Mason Shine Quarry. It is adjacent to and northwest of the proposed New Shine Quarry. The Mason Shine Quarry evolved gradually and quietly over 25 years. It has been permitted without any public hearings known to the PLVC and was unknown to the vast majority of Port Ludlow residents.

In 1984, Clifford and Danae Larrance began building logging roads for Pope & Talbot (P&T) on an informal understanding and registered the name “Shine Quarry”. In 1990, they entered into a 10-year lease agreement with PR and expanded sales commercially to contractors other than PR. In January 1997, the arrangement was formalized [\(Ref. 16\)](#) as a 20-acre Shine Quarry lease. The lease required Larrance to obtain a surface mining permit from the Washington Department of Natural Resources, which did not require a public hearing and which Larrance received in December 1989.

In June 2004, the County DCD issued a Type I Land Use Permit [\(Ref. 26\)](#) to expand the quarry, from 20 to 40 acres based on the diminished asset doctrine, which again did not require a public hearing. The quarry must be over ½-mile from any urban growth area. The designated SEPA agency was the DNR. Construction activities cannot encroach upon stream and wetland buffers. The quarry was part of a Mineral Resource Lands Overlay (MRLO) District.

In April 2006, PR renewed the 40-acre lease through 2011 with two further 5-year renewal options. In May 2007, Danae Larrance, now widowed, sold the Shine Quarry (MSQ) to James Mason with PR's written consent dated April 2007. By May 2007, without consulting Mason who was making substantial quarry improvements, PR signed a lease for the NSQ with IMQ.

The PR-IMQ permit applications are for a New Shine Quarry (NSQ)—not an expansion of the existing and smaller MSQ. Therefore, the existence of the MSQ permits and legal constraints do not flow to PR and the NSQ. Consequently, the MSQ is not relevant to the issues raised in this report.

### **Conclusion**

Therefore, the existence of the MSQ is not relevant to the issues in this report.

### **RELATIONSHIP BETWEEN POPE RESOURCES AND PORT LUDLOW ASSOCIATES**

PR's news release [\(Ref. 15\)](#) on August 10, 2001 states that PLA bought the Port Ludlow development for a total consideration of approximately \$16.7 million. This was a sale of assets, which generally does not include any liabilities unless clearly identified—the PLVC is not privy to the sale contract.

### **Conclusion**

Therefore, unless there is an undisclosed protocol in the sale, Pope Resources is still responsible for all liability implications of the Property Report disclosures created before the sale of Port Ludlow development to PLA.

### **RELATIONSHIP BETWEEN IRON MOUNTAIN QUARRY (IMQ) AND POPE RESOURCES (PR)**

IMQ and PR have entered into a lease agreement that they have chosen not to make public. We have heard unofficially but credibly that PR based the wording of the IMQ lease on PR's lease to the Mason Shine Quarry [\(Ref. 16\)](#), which is public. The Mason Shine Quarry lease's financial arrangements are typical of many mining leases in which there is a minimum monthly or annual payment (to stop lessee "sitting" on the project) and a royalty based on some measure of the value of material shipped. In this case, royalties are a percentage of gross receipts. Lessee is also responsible for getting all permits. Lessor warrants that it has the right to lease the Premises to Lessee, and Lessor will defend Lessee's right to quiet enjoyment of the premises from the lawful claims of all persons during the term of the Lease.

The sharing of product income from the project gives the lease many aspects of a joint venture. The left hand is intertwined inexorably with the right hand; each knows what the other is doing. They both assume risk that the quarry may not produce the return on land or financial investments that each expects, they share all the revenue, and they work cooperatively for their common advantage.

### **Conclusion**

Therefore, in their NSQ venture, IMQ and PR are to all intents and purposes a single entity; lessee and lessor are the only ones able to sort out who is liable and who is responsible for what.

### **RELATIONSHIP BETWEEN THE JOINT PLVC AND SBCA IRON MOUNTAIN QUARRY MITIGATION COMMITTEE, POPE RESOURCES, AND IRON MOUNTAIN QUARRY**

Throughout 2009, the joint PLVC and SBCA IMQ Mitigation Committee met with PR; IMQ attended the last two meetings. The object was to find ways that all parties might benefit from agreement on some issues.

### **Conclusion**

The efforts in 2009 to find common ground with PR and IMQ failed.

### RELATIONSHIP BETWEEN PORT LUDLOW PROPERTY OWNERS AND POPE RESOURCES

Those who have visited IMQ's operation in Granite Falls, especially before the current recession and during the summer, know that quarry traffic through a community is a disaster for that community. Quarry towns that develop in symbiotic relationship between the quarry and the town may have their own uniqueness, not least because the principle employer is the quarry. However, Port Ludlow was always a vacation and retirement community and classified by the State and County as a Master Planned Resort—it is the antithesis of a quarry town.

As an MPR, the assessed value of Port Ludlow Property as of August 5, 2008 was \$687 million [\(Ref. 7\)](#). Port Ludlow's property owners have environmental rights established by PR in the Property Reports filed with Washington State and the Federal Government. The quality of the surrounding environment heavily affects the values of the properties in Port Ludlow.

### **Conclusion**

The Port Ludlow community anticipates that the NSQ will affect Port Ludlow's environment to a degree ranging from tolerable up to severe. The degree will depend strongly on the constraints imposed by SEPA and the motivation for maximum profit of the quarry's current or successor lessee and lessor. In addition to depressing real-estate values, threatened and actual environmental degradation exacerbates a variety of physical and psychological health issues in a retirement community such as Port Ludlow.

## REFERENCES

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3. [Examiner's Decision Granting Pope/IMQ Legal Nonconforming Rights April 9, 2008](#)
4. [Examiners Appeal Hearing Transcript re Pope-IMQ Nonconforming Rights 14-Mar-2008](#)
5. [IMQ re Parties-of-Record at 14-Mar-2008 Hearing Only JeffCo and IMQ 12-Mar-2008](#)
6. [Interstate Land Sales Full Disclosure Act of 1968 US HUD 15-USC-1701 et seq 1-Aug-1968](#)
7. [Jefferson County Assessor's Taxable Value of Port Ludlow Property August 5, 2008](#)
8. [Jefferson County Road No 10 Oak Bay Rd Indian Island to Beaver Valley 17-Mar-1971](#)
9. [Jefferson Superior Court Order Affirming Pope/IMQ Nonconforming Rights November 19, 2008](#)
10. [Notice of Appeal re Motion to Intervene to Court of Appeals Division II 12-Oct-2010](#)
11. [Pope and PLVC Trail Use Agreement March 4-2002](#)
12. [Pope and Talbot Development Merger into Pope Resources February 15, 1985](#)
13. [Pope Intention to Mine Since 1970s in Letter 21-May-2007](#)
14. [Pope Resources Public Offering Property Disclosure LPV1 Feb-1990](#)
15. [Pope Sale of Port Ludlow Development Assets to PLA-HCV Notice August 10, 2001](#)
16. [Pope-Shine Quarry Permit and Lease 27-Jan-1997](#)
17. [Pope/IMQ Quarry Plan Showing MPR by L. Nobles February 26, 2009](#)
18. [Port Ludlow Town Plan by Naramore Bain Architects June 15, 1967](#)
19. [Property Report Filed by Pope and Talbot Effective February 10, 1978](#)
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21. [Property Report Filed by Pope and Talbot Effective May 23, 1974](#)
22. [Public Notice Affidavit for IMQ-Pope Application Hearing 14-Mar-2008](#)
23. [RCW 58.19 Land Development Act Amended 1994](#)
24. [Salesperson Checklist Pope and Talbot Property Report April 25, 1978](#)
25. [Water Supply Bulletin No 54 East JeffCo DOE and DNR 1-Apr-1981](#)
26. [Type I Land-Use Permit Shine Quarry Expansion from 20 to 40 Acres 23-Jun-2004](#)
27. [JeffCo-Pope MPR Development Agreement Exhibit 2 Map of Properties 8-May-2000](#)
28. [Land Development Act Washington State RCW Chapter 58.19 1973](#)

## ACRONYMS

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DNR: Washington State Department of Natural Resources

IMQ: Iron Mountain Quarry, Inc

JeffCo: Jefferson County

LMC: Ludlow Maintenance Commission, Inc

MGP: Managing General Partner (Pope MGP, Inc. is the managing general partner of Pope Resources)

MPR: Port Ludlow Master Planned Resort

MSQ: Mason Shine Quarry (a 40-acre quarry, also Shine Quarry, a registered name of Mason)

NSQ: New Shine Quarry (a 142-acre quarry, a.k.a. Old Rock Quarry, Old Shine Quarry, Iron Mountain Quarry)

P&T: Pope and Talbot Management, Inc (merged into Pope Resources)

PDF: Portable Document Format

PLA: Port Ludlow Associates

PLVC: Port Ludlow Village Council, Inc

PR: Pope Resources, Inc

SBCA: South Bay Community Association, Inc

WAC: Washington Administrative Code