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JEFFERSON COUNTY  
RUTH GORDON, CLERK

1 SUPERIOR COURT OF THE STATE OF WASHINGTON  
2 IN AND FOR THE COUNTY OF JEFFERSON  
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6 IRON MOUNTAIN QUARRY, LLC,  
7 A Washington Limited Liability Company  
8 and  
9 POPE RESOURCES,  
10 A Delaware Limited Partnership

Case No.: 08-2-00350-6

OPINION ON LAND USE PETITION

11 Petitioners,

12 vs.

13 JEFFERSON COUNTY

14 Respondent.  
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20 This matter came on for hearing on March 19, 2009 to consider the  
21 merits of the Land Use Petition filed herein. Petitioners appeared through  
22 their attorneys, Keith Moxon and Donald Johnson, of GordonDerr, LLP.  
23 Respondent appeared though Deputy Prosecuting Attorney David Alvarez.  
24

25 The court considered the complete record in this matter, the pleadings  
26 filed by the parties and the arguments of counsel.  
27

28 ISSUE

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30 The sole issue before the Court is whether Hearing Examiner Stephen  
31 Causseaux erred in interpreting Jefferson County Code 18.20.240 to require  
32 that Petitioners obtain a Conditional Use Permit even though they have  
33 already established their existing nonconforming mineral use rights.  
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39 CRADDOCK D. VERSER  
40 JUDGE

41 Jefferson County Superior Court  
42 P.O. Box 1220  
43 Port Townsend, WA 98368

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5 OPINION  
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7 Both parties provided well reasoned arguments and legal memoranda in  
8 support of their positions.  
9

10 The court has reviewed the record in this matter and has reviewed both  
11 City of University Place V. McGuire, 144 Wn.2d 640, 30 P.3d 453 (2001) and  
12 Rhod-A-Zalea and 35<sup>th</sup> Inc. v. Snohomish County, 136 Wn. 2d 1, 959 P.2d 1024  
13 (1998). The court finds those cases particularly persuasive. The court is  
14 convinced and finds that hearing Examiner Causseaux's September 24, 2008  
15 Unified Development Code Interpretation is an erroneous interpretation of  
16 the law and is a clearly erroneous application of the law to the facts in  
17 this case. RCW 36.70C.130 (b) (d).  
18

19 There are ample protections afforded to the County under its general  
20 permitting authority including SEPA authority to insure that concerns  
21 relating to offsite effects of any mining (noise, vibration, dust, traffic,  
22 etc.) are addressed and that the public is protected from possible adverse  
23 impacts. A Conditional Use Permit requirement is not appropriately one of  
24 those regulatory mechanisms available to the County in light of the Court's  
25 holdings in McGuire and Rhod-A-Zalea and in light of Petitioners'  
26 established nonconforming mineral use rights.  
27

28 CONCLUSION  
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30 The Petition should be granted, the Court will enter the Order as  
31 proposed by Petitioners.  
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34 Dated this 15<sup>th</sup> day of April, 2009.  
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39 CRADDOCK D. VERSER, JUDGE  
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CRADDOCK D. VERSER  
JUDGE  
Jefferson County Superior Court  
P.O. Box 1220  
Port Townsend, WA 98368

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IN SUPERIOR COURT  
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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF JEFFERSON

IRON MOUNTAIN QUARRY, LLC, a )  
Washington Limited Liability Company, and )  
POPE RESOURCES, a Delaware Limited )  
Partnership; )

Petitioner, )

vs. )

JEFFERSON COUNTY, a Washington )  
Municipal Corporation; acting through its )  
Department of Community Development and )  
Office of the Hearing Examiner, )

Respondent. )

No. 08-2-00350-6

ORDER GRANTING LUPA  
PETITION

~~PREPARED~~

THIS MATTER came before the Court on the petition of Petitioners, Iron Mountain Quarry, LLC, ("IMQ") and Pope Resources, a Delaware Limited Partnership, ("Pope Resources") pursuant to the Land Use Petition Act ("LUPA"), Ch. 36.70C RCW. Petitioners challenge the September 24, 2008, Report and Decision issued by the Jefferson County Hearing Examiner in response to IMQ's code interpretation appeal, which determined that (1) Jefferson County Code ("JCC") 18.20.240(1)(g) (which requires a Conditional Use Permit ("CUP") if increased off-site impacts (noise, vibration, dust, traffic) would result from expansion, intensification, or modification of existing surface

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1 mining operations) applies to all existing mining operations, whether “conforming” or  
2 nonconforming; (2) that Respondent Jefferson County may require Petitioner IMQ to  
3 acquire a CUP to mine those areas of a parcel to which it has nonconforming use rights as  
4 established by controlling legal authority in *City of University Place v. McGuire*, 144 Wn.  
5 2d 640, 30 P.3d 453 (2001); and, (3) that neither *McGuire*, 144 Wn. 2d 640, 30 P.3d 453,  
6 nor *Rhod-A-Zalea and 35<sup>th</sup> Inc. v. Snohomish County*, 136 Wn. 2d 1, 959 P. 2d 1024  
7 (1998), limit Respondent Jefferson County’s authority to require a CUP as a condition for  
8 IMQ’s exercise of its existing nonconforming mineral use rights.

9 The Court considered the following evidence:

10 1. The record evidence including Jefferson County Community Development  
11 Department’s Certification of Record, the Hearing Examiner’s Report and Decision dated  
12 September 24, 2008, and all exhibits and attachments listed in the Hearing Examiner  
13 decisions.

14 2. Petitioners Summons and LUPA Petition for Review;

15 3. Transcript of testimony of appeal hearing;

16 4. Briefs of Petitioners and Respondent including attachments;

17 5. The Court’s decision and order in related Cause No. 08-2-00142-2;

18 6. Petitioners’ and Respondent’s other submissions to this Court;

19 7. Oral argument of the parties; and

20 8. The pleadings and records on file in this action.

21 Based upon the foregoing evidence, and being otherwise fully advised of the  
22 premises, IT IS HEREBY ORDERED:

23 1. Petitioners’ LUPA petition is GRANTED.  
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2. The Decision of the Jefferson County Hearing Examiner in Appeal of Unified Code Interpretation: MLA08-00239-ZON08-00062 Iron Mountain Quarry, dated September 24, 2008, is REVERSED.

DONE IN OPEN COURT this 15 day of April, 2009.



JUDGE CRADDOCK VERSER

Presented by:  
GORDONDERR LLP

By: \_\_\_\_\_  
Keith E. Moxon, WSBA #15361  
Dale N. Johnson, WSBA #26629  
Attorneys for Iron Mountain Quarry, LLC  
and Pope Resources

Approved as to Form; Notice of Presentation Waived:  
JEFFERSON COUNTY

By: \_\_\_\_\_  
Mr. David W. Alvarez, WSBA # 29194  
Attorney for Respondent Jefferson County