

*2017 King County Comprehensive Plan Update*

***Docket Item #3 —  
Reserve Silica Rezone***

**November 7, 2017**

*Public Comment by*

***Greater Maple Valley Unincorporated Area Council***

*Presented to*

***King County Executive's Office***

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## **Executive Summary**

The Greater Maple Valley Unincorporated Area Council (GMVUAC) has provided a voice for Rural Area residents in the greater Maple Valley area for 40 years. Currently, there are ~16,000 residents whom we help connect with King County government, their “*local*” government. The GMVUAC takes seriously this charge, as it endeavors to execute its mission to “*Keep the Rural Area Rural.*”

The GMVUAC conducts thorough reviews of King County Comprehensive Plan Updates—both minor (annual) and major (quadrennial)—and provides King County officials detailed comments on same.

The GMVUAC has followed the activities at the Reserve Silica site in Ravensdale for decades. The GMVUAC has convened multiple meetings on Reserve Silica’s past attempts at securing an upzone and a Demonstration Project, respectively, through the 2012 and 2016 KCCPs. The GMVUAC has met with all key WA State and King County Agencies, as well as the requestor, and has conducted extensive research into Reserve Silica’s 2017 KCCP Docket Item #3 request (the subject of the comments herein).

The GMVUAC opposes the Docket Item #3 request for the following reasons with details and supporting rationale presented herein:

**1. State’s Growth Management Act (GMA)**

It does not in any way conform to the GMA to repair a “*deficiency*” in the King County Comprehensive Plan (KCCP).

**RCW 36.70A GROWTH MANAGEMENT—PLANNING BY SELECTED COUNTIES AND CITIES** codifies main elements of the State’s Growth Management Act. It provides jurisdictions specific guidance on comprehensive planning including amendments thereof in **RCW 36.70A.130 Comprehensive plans—Review procedures and schedules—Amendments.**

The Annual cycle of amending comprehensive plans is meant to handle “*minor*” technical revisions.

**2. State Appellate Court Decisions**

By not *bifurcating* the consideration of the Comprehensive Plan and what is a *separate* zone change subject to independent public hearings conducted by the Hearing Examiner, the site specific proposal made by Reserve Silica and the combination of concurrent legislative and quasi-judicial functions constitutes illegal spot zoning clearly in contravention of numerous State appellate court decisions.

**3. King County Code**

It would violate, at a minimum, the following King County Code titles:

**TITLE 19A. LAND SEGREGATION**

**19A.04 DEFINITIONS**

**19A.04.205 Large lot segregation.**

**TITLE 20. PLANNING**

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**20.18 PROCEDURES FOR AMENDMENT OF COMPREHENSIVE  
PLAN OR OF DEVELOPMENT REGULATIONS-PUBLIC  
PARTICIPATION**

**20.18.030 General procedures. B.**

**20.18.050 Site-specific land use map and shoreline master  
program map amendments initiation. I. and J.**

**20.18.055 Site-specific land use map amendment review  
standards and transmittal procedures.**

**20.18.140 Provision for receipt, review of and response to the  
docket.**

**TITLE 21A ZONING**

**21A.12 DEVELOPMENT STANDARDS - DENSITY AND DIMENSIONS**

**21A.12.040 Densities and dimensions - resource and  
commercial/industrial zones.**

**21A.22 DEVELOPMENT STANDARDS - MINERAL EXTRACTION**

**21A.22.081 Reclamation B.**

**4. King County Comprehensive Plan (KCCP)**

It would violate, at a minimum, the following KCCP policies:

**Chapter 3—Rural Areas and Natural Resource Lands**

**R-208** [Rural Forest Focus Areas]

**R-304** [individual zone reclassifications are discouraged and should not  
be allowed in the Rural Area]

**R-305** [residential density of one home per 20 ac on Rural Area lands  
managed for forestry]

**R-691** [reclamation of mining sites in the Forest Production District should  
return the land to forestry...zoning classification should be compatible  
with the surrounding properties]

**Chapter 12—Implementation, Amendments, and Evaluation**

**I-203** [annual cycle shall not consider proposed substantive changes]

**5. Forest Production District (FPD)**

It essentially would establish residential use *within* the boundaries of the FPD. The overarching goal of the FPD—and the Rural Forest Focus Areas (RFFAs)—is to retain large, contiguous blocks of forest land. This overarching goal would clearly not be achieved by upzoning the 122 ac to a RA-10 land use/zoning. As recently confirmed by King County's Department of Permitting & Environmental Review (DPER) staff, reforestation of all this land and retaining the underlying zone as Forestry are also consistent with the King County Code requirements applicable to the surface mining permit reclamation plan and program for the entire Reserve Silica site.

King County goals would best be achieved by *returning* this property to it's underlying Forestry land use/zoning. [Note: even if the land use is changed to rural residential, these parcels should clearly be included *within* the RFFA, to achieve the

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goals of that program, and, if included within the RFFA, then the minimum lot size is 20 ac, not 10 ac.]

**6. Upzoning “*Domino*” Effect**

It could cause a “*domino*” effect in the FPD. If these 122 ac go to a rural residential land use, then the two Forestry-zoned, FPD parcels to the west will be forever isolated from the FPD block. So, why not upzone them also, as Reserve Silica tried to do in 2012? Then why not upzone the 52-ac Inert Waste Lot #5 next? Then why not upzone the 58-ac “Plant Site/Settling Ponds” tract? Should the precedent be set with these 122 ac, a classic *domino effect* of continuing upzones likely could follow. In fact, if the FPD boundary were pushed to the east of Reserve Silica’s site, the 80-ac Lot 3, currently zoned Forestry, could be upzoned as Reserve Silica tried to do in 2016.

It should be noted there are six or seven other mining sites in the area that, with a precedent set, could fully expect to petition for a rural residential upzone.

Finally, there are thousands of acres in the area, that are zoned Forestry and within the FPD, that Plum Creek, Weyerhaeuser, and Palmer Coking Coal segmented to substandard-sized lots before selling them to private investors, whose clear goal is to develop these lots for residential use once they can get out from under the Forestry zoning. Being substandard lots (mostly 20 ac, against an 80-ac minimum Forestry lot size), one can easily imagine these lot owners could try to tag along on Reserve Silica’s coattails to upzone their substandard lots, which they likely would argue are ‘*too small to practice commercial forestry on.*’

Consequently, upzoning of Reserve Silica’s 122 ac would create a precedent for upzoning other depleted mining/industrial sites and a *loop-hole* for upzoning other substandard sized lots in the FPD. Such a very dangerous *domino effect* should be avoided at all costs!

**7. State Department of Ecology (DOE)**

It is *premature* to even contemplate any change in use until a Model Toxics Control Act (MTCA) Remedial Investigation/Feasibility Study (RI/FS) has been completed and accepted by the State DOE. Until DOE accepts a final RI/FS and clearly defines the MTCA cleanup “*site*” contours (i.e., parts or all of the site), Reserve Silica cannot state or prove unequivocally that contamination is contained to any portion of the site, thus rendering any consideration for future residential zoning moot.

**8. Administrative**

Finally, the King County Council has taken two previous actions during the major four-year KCCP Update related to the Reserve Silica site in 2012 and 2016. Both decisions wisely rejected Reserve Silica’s *previous* requests to change its land use and zoning from Mineral/Mining to Rural Residential/RA-10. In addition, the 2016 decision *removed* the option from being pursued during the annual KCCP Update cycles.

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Consequently, the GMVUAC requests the Executive recommend to the King County Council denial of the Docket Item #3 request to rezone 122 ac of isolated land outside of Ravensdale currently zoned Mining to Rural Area land use (RA-10).

Upon State Department of Ecology approval of the successful completion of any mine reclamation plans and upon approval of the successful completion of any Remedial Investigation/Feasibility Studies, the subject lands should revert back their original land use of forestry and underlying zoning of Forestry. Further, the subject lands should then be re-incorporated in the Forest Production District.

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## **1. KCCP Docket Item #3 Request**

### **Docket Item Request**

Reserve Silica seeks zoning, land use and parcel configuration Amendments:

*“Change 122 ac of the 245 ac currently designated mineral and zoned mining to Rural Area land use (RA-10). The proposed use of the parcels would allow 12 rural residential lots averaging 10 ac in size. The existing tax parcels are being divided into 6 (six) 40-80 acre Tax Lots. The site specific land use map amendment and the companion rezone will apply to 3 (three) of the Tax Lots. The amendment and rezone will be filed before November 1, 2017.” [Parcel Identification Numbers - 3522069018, 3622069065 and 0121069002] See — [http://www.kingcounty.gov/~media/depts/executive/performance-strategy-budget/regional-planning/2016CompPlanUpdate/Summary\\_2017Docket\\_Submittals.ashx?la=en](http://www.kingcounty.gov/~media/depts/executive/performance-strategy-budget/regional-planning/2016CompPlanUpdate/Summary_2017Docket_Submittals.ashx?la=en)*

Per the Docket Item #3 request:

*“This property was included in the 2012 Comprehensive Plan as an adopted Demonstration Project Option; this option was repealed in 2016. Total area 325 ac - 80 ac zoned forestry and 245 ac zoned mining. This docket request affects 122 ac currently designated Mineral. The docket states that there would be no affect on the adjoining parcels, with the proposed large rural residential lots with setback and restrictions regarding maintaining compatibility with adjacent forest uses.”*

### **Inaccuracies in the Request**

There are inaccuracies in the Docket Item #3 request. The 2012 KCCP provided for a mining site conversion demonstration project, and laid out very specific conditions for a property to qualify for such a demonstration project. Reserve Silica assumed at the time its property would likely qualify, but there was no assurance of this in the 2012 KCCP; and the property was not “*adopted*” as a Demonstration Project at any point in the process. Further, the statement regarding “*compatibility with adjacent forest uses*” is an assertion, which was disputed by the Rural Forest Commission in 2016 (this is explored in more detail herein).

### **Site Map**

The *Proposed Map* from the Docket Item #3 request is provided as *Figure 1-1* in the Appendix.

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## **2. Reserve Silica Site**

### **History**

The Reserve Silica site consists of ~382 ac immediately southwest of Ravensdale in southeast King County. Originally, the property was acquired in pieces by the Northern Pacific Railway, as part of its 1870 Land Grant, and in 1903 from the Seattle and San Francisco Railway and Navigation Company. Northern Pacific Railway and its subsidiaries and successors (Burlington Northern, Plum Creek, and Glacier Park) owned and managed the property until 1997. Reserve Silica has owned and managed the property from 1997 until present.

For 100 years *prior to* the 1997 sale to Reserve Silica, the vast majority of the property was managed for commercial forestry operations (a small portion was actively mined). When King County delineated the FPD in the 1990's, the entire property (excepting the Plant Site/Settling Ponds) was zoned Forestry and included *within* the FPD. Eighty ac still retain a Forestry zoning, while the remaining ~300 ac carry the later-instituted “*Minerals*” zoning (i.e., “*Mining*” land-use designation). King County policies, in place at that time, required the land would revert back to its “*underlying zoning*” (i.e., Forestry) upon completion of approved mine reclamation plans. Recently, per discussion with King County’s Department of Permitting & Environmental Review (DPER), Product Line Manager for Resources, Randy Sandin, stated: “*adjoining land use in the area is forestry so DPER’s expectation is that the property will be reclaimed in a manner to allow/support that use*” (ref.: 10/9/17 e-mail).

From 1924 to 1947 coal mining was conducted on the property by Dale Coal Company. Then from 1948 to 1967 no mining activity occurred on the property. In 1967, a portion of the property was leased for mining silica sand. In 1972 Industrial Mineral Products acquired the lease and continued sand mining operations until 1986, when Reserve Industries took over and continued sand mining until December 2007.

### **Industrial and Solid Waste Fill Operations**

Industrial Mineral Products, also an industrial waste processing firm, accepted ASARCO slag and Cement Kiln Dust to be dumped on the property. In 2016 the State Department of Ecology (DOE) designated the property as a Class I Model Toxics Control Act (MTCA) toxic waste clean-up site.

In addition to the known toxins dumped on the property, pit-filling permits (issued by King County DPER) allowed all manner of solid waste dumping since 1971. In the 1980s Seattle-King County Public health (S-KCPH) issued permits for landfill operations. Both the State DOE and Reserve Silica’s environmental consultants, Aspect Engineering, have concluded that it is unknown what other waste materials may have been dumped at the site *prior to* 2012 when an Inert Waste Disposal Permit was issued.

<b>The site has been managed for forestry for nearly the entire 20th century.</b>
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### **3. Site Reclamation**

#### **History**

All sand mining on the property ended in 2007 with ~ 35% of the land impacted by sand or coal mining. Reclamation efforts began in 2008 with no timeline for completion agreed to by the State DOE. Applicable governing state laws are codified in **WAC 173-350-410: Inert waste landfills** and **WAC 173-340: MTCA—CLEANUP**.

#### **1988 Reclamation Plan**

This 1988 plan was quite general and not particularly specific, as mining was very active and expected to continue for “10+ years.” It states “*the overall reclamation plan is only outlined in general terms.*” As such, it is not particularly useful to the discussion herein.

#### **Revised Surface Mining Permit**

In 1991 the State Department of Natural Resources (DNR) issued a letter to Reserve Silica which discusses future site reclamation (ref.: “*Revised Surface Mining Permit No. 70-010346*”).

In a subsequent “*Application for Reclamation Permit*” (undated, but sometime after 2001), it states in multiple places the mined areas will be “*reclaimed for forestry*” and under “*Subsequent Land Use*” it states: “*The subsequent land use for this site is forestry.*”

#### **Hydrogeologic Studies**

The City of Kent, as part of its Wellhead Protection Program, has conducted hydrogeologic studies of all the areas in the vicinity of its watershed located west of Ravensdale and the Reserve Silica site. It has identified concerns with groundwater, soils, and surface water and ranked the site as a “*high priority*” for its Kent Springs site and a “*medium priority*” for both its Clark Springs and Armstrong Springs sites.

These analyses and rankings were detailed in the *City of Kent Wellhead Protection Program Clark, Kent, and Armstrong Springs* report (No. J-3508-01) issued on April 2, 1996. Consequently, this report does not capture any additional contamination risks incurred over the last 21 years. However, the report clearly shows both the Kent and Covington wellfields to be downgradient just a short distance from the known Reserve Silica groundwater contamination, with very high hydrologic conductivity soils in between. The City of Kent’s concerns remain.

#### **Transfer of Reclamation Responsibilities**

In a March 31, 2010, DPER (Fred White) memo to the DNR (Rian Skov)—subject: “*Reserve Silica: Transfer of Reclamation Responsibilities to King County*”—it was stated: “*a final reclamation in exceedence of that required and approved under the State Reclamation Permit*” would occur, and the site would be “*totally revegetated in accordance with the zoning and applicable standards.*”

#### **“Interim Reclamation Plan”**

In an “*Interim Reclamation Plan for the Ravensdale Quarry*” dated May of 2014 (Reserve Silica had this prepared to support its May 2016 “*Rural Mining Site Conversion Project*” document it planned to present to the County as part of its 2016 KCCP Demonstration Project

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proposal). This *Interim Reclamation Plan* was approved by DPER contingent upon the following required revisions:

1. Struck Reserve Silica's assertion the site was unsuitable for forestry (p. 7) and
2. Added the condition the final reclamation and revegetation plan for the site would be developed once future zoning was determined, and could include reforestation (p. 17).

Of particular note is that the *Interim Reclamation Plan* states less than 17% of the property is suitable for forestry. In fact, the majority of this property is suitable for commercial forestry, and does satisfy King County FPD criteria to determine forest land with long term commercial significance:

1. Predominant parcel size  $\geq$  80 ac;
2. Site characteristics make it possible to sustain timber growth and harvest over time;
3. Adjacent residential development is scarce, and siting of future dwelling likely to limit any adverse impacts to forestry; and
4. Predominant land use of the property is forestry. It should be noted the vast majority of the property has been managed for forestry from the 1890's until the mid 1980's.

Consequently, it appears, reclamation of the majority of this property for long-term forest use, as dictated by King County policy, would be prudent and should be required.

#### **Site Hazard Assessment**

The State DOE performed a Site Hazard Assessment of the property in January 2016 to confirm the presence of hazardous substances, as well as to determine the risks posed to human health and the environment. Based on this assessment, the Reserve Silica site is ranked as a Class 1 (i.e., most dangerous) toxic waste clean-up site.

Following the DOE's Class 1 ranking of a site, a Site Hazard Assessment was conducted in February 2016 to confirm the presence of hazardous substances, as well as to determine the risks posed to human health and the environment.

#### **Remedial Investigation/Feasibility Study**

The next step in the DOE process is to perform a Remedial Investigation/Feasibility Study (RI/FS) to define the extent (and amount) of site contamination. The clean-up site boundaries should be determined during the RI phase of the work, while it is the FS that should provide the proposed options for cleaning up the site.

Clearly, It will be important to know what is being proposed for cleanup for the site as well, such as, what will be done with the ASARCO slag "*gravel*" remaining along the roadways? Potential impacts on human health and the environment and potential cleanup processes are evaluated as part of the RI/FS.

Reserve Silica's consultant, Aspect Engineering, conducted a preliminary investigation in early 2017, but a draft RI/FS has yet to be submitted to the State Department of Ecology. Until that study is submitted, reviewed, modified, finalized, publicly available, and approved, no decisions on site rezoning or future use should be undertaken.

**There are a myriad of concerns with placing future residences—especially on public water and with on-site septic systems—on a site through which as number of toxic contaminants have penetrated and immediately above the already identified Cement Kiln Dust pits, to which approval of Docket Item #3 would eventually lead. This will only**

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serve to compound the problems over the past couple of decades in attempting to control such contamination, as well as further increasing risks to downstream Kent and Covington water supplies.

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## **4. Large Area Subdivision**

### **Request**

To facilitate Reserve Silica's request to change land-use designation and upzone 122 ac of its property as proposed in Docket Item #3, it filed a Large-Lot Subdivision request with King County DPER to split two existing parcels into six separate lots. Three of the resulting lots, totaling 122 ac, are what is being requested for *upzone* in Docket Item #3.

### **Procedure**

This presents a procedural issue with no real means to resolve same. Our understanding is that DPER has approved the Large-Lot Subdivision request, in spite of knowing five of the six resulting lots would be *substandard size* (i.e., less than the 80-ac Forestry minimum lot size). So, should the King County Executive (and subsequently the King County Council) reject the Docket Item #3 request and require the property revert back to its underlying Forestry land use and zoning following reclamation (as King County policy would dictate), the Large-Lot Subdivision request would need to be revisited.

### **Concerns**

The Rural Forest Commission strongly recommended the property revert back to its Forestry zoning during both the 2012 and 2016 major 4-yr KCCP updates. The King County Council previously *rejected* Reserve Silica's requests for a Rural Residential land use and upzone in both those same updates.

**The King County DPER approval of Reserve Silica's Large-Lot Subdivision request was made in error and should be rescinded.**

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## **5. State Growth Management Act on Planning**

The State Growth Management Act (GMA), as codified in **RCW 36.70A GROWTH MANAGEMENT—PLANNING BY SELECTED COUNTIES AND CITIES**, is clear on what is required by jurisdictions when preparing and amending their comprehensive plans. King County has developed its Code in conformance to **RCW 36.70A**. The following subsections under **TITLE 20 PLANNING** specifically delineate the KCCP amendment process.

### **Planning**

#### **20.18 PROCEDURES FOR AMENDMENT OF COMPREHENSIVE PLAN OR OF DEVELOPMENT REGULATIONS-PUBLIC PARTICIPATION**

**20.18.030 General procedures. B.** *Every year the Comprehensive Plan may be amended to address technical updates and corrections, and to consider amendments that do not require substantive changes to policy language, changes to the priority areas map, or changes to the urban growth area boundary, except as permitted in subsection B.9. and 11. of this section. This review may be referred to as the annual cycle. The Comprehensive Plan, including subarea plans, may be amended in the annual cycle only to consider the following:*

- 1. Technical amendments to policy, text, maps or shoreline designations;*
- 2. The annual capital improvement plan;*
- 3. The transportation needs report;*
- 4. School capital facility plans;*
- 5. Changes required by existing Comprehensive Plan policies;*
- 6. Changes to the technical appendices and any amendments required thereby;*
- 7. Comprehensive updates of subarea plans initiated by motion;*
- 8. Changes required by amendments to the countywide planning policies or state law;*
- 9. Redesignation proposals under the four-to-one program as provided for in this chapter;*
- 10. Amendments necessary for the conservation of threatened and endangered species;*
- 11. Site-specific land use map amendments that do not require substantive change to comprehensive plan policy language and that do not alter the urban growth area boundary, except to correct mapping errors;*
- 12. Amendments resulting from subarea studies required by comprehensive plan policy that do not require substantive change to comprehensive plan policy language and that do not alter the urban growth area boundary, except to correct mapping errors; and*
- 13. Changes required to implement a study regarding the provision of wastewater services to a Rural Town. The amendments shall be limited to policy amendments and adjustment to the boundaries of the Rural Town as needed to implement the preferred option identified in the study.*

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Item 11. above (underlined) could be construed to possibly fit Reserve Silica's Docket Item #3 request; however, because of the "spot-zoning" contemplated for RA-10 zoning completely surrounded by nonresidential uses, this does constitute a "substantive change to comprehensive plan policy." Also, KCCP Policy I-203 states much of the same in that: "... the annual cycle shall not consider proposed amendments to the King County Comprehensive Plan that require substantive changes to Comprehensive Plan policies and development regulations...."

Reserve Silica is requesting the creation of 12 new development rights on its 3 large lots (122 ac with RA-10 zoning conferred). The following Code section on "site-specific land-use map amendments" (as listed in item 11. underlined above under **20.18.030 General procedures. B.**) outlines the specifics of the process:

**20.18.050 Site-specific land use map and shoreline master program map amendments initiation.**

*I. A property-owner-initiated docket request for a site-specific land use map or shoreline master program map amendment may be accompanied by an application for a zone reclassification to implement the proposed amendment, in which case administrative review of the two applications shall be consolidated to the extent practical consistent with this chapter and K.C.C. chapter 20.20. The council's consideration of a site-specific land use map or shoreline master program map amendment is a legislative decision that should be determined before and separate from its consideration of a zone reclassification, which is a quasi-judicial decision. If a zone reclassification is not proposed in conjunction with an application for a site-specific land use map or shoreline master program map amendment and the amendment is adopted, the property shall be given potential zoning. A zone reclassification in accordance with K.C.C. 20.20.020 is required in order to implement the potential zoning.*

A "site-specific land use map ... amendment" is a "legislative decision" that is generally determined before a "zone reclassification, which is a "quasi-judicial decision" (underlined above). These cannot be combined into one legislative decision by the King County Council. In fact, such decisions should be subject to SEPA under **WAC 197-11 SEPA RULES** and King County Code **Title 20.44 COUNTY ENVIRONMENTAL PROCEDURES**.

Also,

**20.18.050 Site-specific land use map and shoreline master program map amendments initiation.**

*J. Site-specific land use map or shoreline master program map amendments for which a completed recommendation by the hearing examiner has been submitted to the council by January 15 will be considered concurrently with the annual amendment to the Comprehensive Plan. Site-specific land use map or shoreline master program map amendments for which a recommendation has not been issued by the hearing examiner by January 15 shall be included in the next appropriate review cycle following issuance of the examiner's recommendation.*

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We are not aware of any Hearing Examiner decision on a “*Site-specific land use map amendment*” (see underlined above). Consequently, the Docket Item #3 request cannot be brought forth this year before any issuance of recommendations by the County’s Hearing Examiner. **TITLE 20.18.055 Site-specific land use map amendment review standards and transmittal procedures** discussed below also addresses this issue.

There are certain review standards which must be following as delineated in the following:

***20.18.055 Site-specific land use map amendment review standards and transmittal procedures.***

A. All site-specific land use map amendments, whether initiated by property owner application, by council motion, or by executive proposal, shall be reviewed based upon the requirements of Comprehensive Plan policy RP-307, and must meet the following additional review standards:

1. Consistency with the policies, objectives and goals of the Comprehensive Plan, (including any applicable subarea plans), the countywide planning policies and the state Growth Management Act;
2. Compatibility with adjacent and nearby existing and permitted land uses; and
3. Compatibility with the surrounding development pattern.

B. Site-specific land use map amendments for which recommendations have been issued by the hearing examiner by January 15 shall be submitted to the executive and the council by the hearing examiner by January 15. The department will provide for a cumulative analysis of these recommendations and such analysis will be included in the annual March transmittal. All such amendments will be considered concurrently by the council committee charged with the review of the comprehensive plan. Following this review, site-specific land use map amendments which are recommended by this committee will be incorporated as an attachment to the adopting ordinance transmitted by the executive for consideration by the full council. Final action by the council on these amendments will occur concurrently with the annual amendment to the comprehensive plan. (Ord. 14047 § 4, 2001).

The Docket Item #3 amendment request does not conform to any of the provisions (i.e., ,1., 2. and 3.) of **20.18.055. A.** above (see underlined).

The provisions below delineate the purpose of Docket Item process as codified in **RCW 36-070A.470**:

***20.18.140 Provision for receipt, review of and response to the docket.***

A. In accordance with RCW 36.70A.470, a docket containing written comments on suggested plan or development regulation amendments shall be coordinated by the department. The docket is the means either to suggest a change or to identify a deficiency, or both, in the Comprehensive Plan or development regulation. For the purposes of this section, “deficiency” refers to the absence of required or potentially desirable contents of the Comprehensive Plan or development regulation and does not refer to whether a development regulation addressed a project’s probable specific

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*adverse environmental impacts that could be mitigated in the project review process. Any interested party, including applicants, citizens and government agencies, may submit items to the docket.*

The Docket Item #3 amendment request does not “*identify a deficiency*,” nor does it attempt to rectify any “*deficiency*” in the KCCP.

**Additional Planning Issues to Consider**

In light of the State’s GMA and King County Code to implement same—some of which were identified above, there are a plethora of problems associated with the Docket Item #3 request to amend the KCCP during its “*minor*” annual amendment cycle, when only “*technical updates and corrections*” (see **TITLE 20.18.030 General procedures. B.** discussed above) are to be addressed.

**“Spot Zoning”**

An annual amendment to the KCCP should be supported by changed circumstances or some palpable land-use change in the neighborhood that supports such a change in the KCCP -- especially where such a change is related to and stems from a site-specific request for a spot of land in a sea of other uses and that occurs so soon after the last major update of the KCCP. The 2016 KCCP designates the Reserve Silica property itself as “*Mining*.”

This is a classic case of, and constitutes, what is commonly called “*spot zoning*,” which consistently has been “*defined to be zoning action by which a smaller area is singled out of a larger area or district and specially zoned for a use classification totally different from and inconsistent with the classification of surrounding land, and not in accordance with the comprehensive plan.*” However, “*(n)ot all spot zones are illegal; the main inquiry being the relationship of the rezone to the ‘general welfare of the affected community.’*” [Ref.: KC Hearing Examiner Report and Recommendation re: Maple Valley Rezone; July 31, 2015; KC Council file no. 2015-0170; Proposed ordinance no.: 2015-0170]. When it comes to the “*welfare*” test, clearly the requested rezone fails, as there is no clear Public benefit.

The following characterizes the properties surrounding the site:

To the north properties are all part of King County's Black Diamond Open Space. These will never have any residential use. Although the land northerly of the property is designated Rural Area 2.5-10 du/ac, it has been irrevocably placed in trust or reserve as “*Open Space*” — King County's Black Diamond Natural Area — such that an actual use should not be able to constitute valid support to spot zone the requested Reserve Silica property to residential RA-10.

To the east properties are all Forestry-zoned, and have a perpetual Conservation Easement on them owned by Forterra, which disallows construction of any permanent structure on these lands in perpetuity.

To the south properties are all Forestry-zoned, and have a perpetual Conservation Easement on them owned by Forterra, which disallows construction of any permanent structure on these lands in perpetuity.



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To the west (beyond the two adjacent Forestry-zoned parcels) properties are all part of King County's Black Diamond Open Space. These will never have any residential use.

Consequently, all the properties surrounding the Reserve Silica lands will never have any kind of residential development of any kind on them. [See *Figure A-2: King County iMap* and *Figure A-3: Aerial View* in the Appendix.]

**Finally, KCCP Docket Item requests are supposed to be simple mid-term corrections of deficiencies in the currently adopted plan; otherwise, such proposals should be part of the major update of the plan every four years (the last KCCP major update was just adopted less than a year ago in December 2016. According to the King County Office of Performance, Strategy and Budget's March 2017 Comprehensive Plan Information Bulletin: "*While Annual Amendments and Docket Requests are allowed during these [interim] years, the issues are typically folded into the Four Year Cycle.*" [See KCC 20.18.140; RCW 36.70A.470(2); RCW 36.70A.130(1)(d) ( "*Any amendment of or revision to a comprehensive land use plan shall conform to this chapter.*")].**

**The Docket process is a means for citizens to petition the County on an annual basis (interim to major update cycles) to address existing "*deficiencies*" in the adopted plan. "[A] *deficiency in a comprehensive plan or development regulation refers to the absence of required or potentially desirable contents of a comprehensive plan.*" [See RCW 36.70A.470(3)].**

**Further, one of the intended purposes of comprehensive plans and planning is to conserve mineral resource lands [See RCW 36.70A.180] -- such as the Reserve Silica site is currently designated in the 2016 KCCP. Clearly, the Reserve Silica Docket Item #3 request does not address correction of any *deficiency* in the currently adopted KCCP, nor does it *conserve* resource lands.**

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## **6. State Appellate Court Decisions**

The State appellate courts have addressed the legal problems stemming from a concurrent private party-sponsored amendment to a comprehensive plan and request for zone change. The resultant illegal spot zoning stemming from this intertwining of legislative and quasi-judicial functions should give pause as the County considers the Docket Item #3 amendment request.

### **Spot Zoning**

When specific parties request a zone classification change for a specific tract, the County's action constitutes rezoning. *Cathcart-Maltby-Clearview Community Council v. Snohomish County*, 96 Wn.2d 201, 212, 634 P.2d 853 (1981). Legally, the Docket Item #3 request constitutes "*a site-specific rezone [because it] is a change in the zone designation of a 'specific tract' at the request of 'specific parties.'*" *Spokane County v. Eastern Washington Growth Management Hearings Board*, 176 Wn. App. 555, 570, 309 P.3d 673 (2013) (internal quotation marks omitted) (quoting *Woods v. Kittitas County*, 162 Wn.2d 597, 611 n.7, 174 P.3d 25 (2007)), *review denied*, 179 Wn.2d 1015 (2014).

Whereas the amendment of an existing comprehensive plan is a *legislative* function, it is clear that a private party-sponsored zone change request is a separate *quasi-judicial* junction. *Coffey v. City of Walla Walla*, 145 Wn. App. 435, 441, 187 P.3d 272 (2008); *Barrie v. Kitsap Cy.*, 93 Wn. 2d 843, 852, 613 P.2d 1148 (1980); *Parkridge v. Seattle*, 89 Wn. 2d 454, 460, 573 P.2d 359 (1978).

As there is no presumption of validity favoring a rezone, the proponents of the rezone have the burden of proving that conditions have substantially changed since the original zoning or the most recent plan amendment. *Parkridge*, 89 Wn.2d at 462. A change in a comprehensive plan does not constitute sufficient legal support for the concurrent zone change of affected parcels – especially where the proposed zoning for such parcels is sponsored by a private party and is not consistent with that of adjoining surrounding parcels. *Woodcrest Investments Corp. v. Skagit County*, 39 Wn. App. 622, 627-29, 694 P.2d 705 (1985). Such a zone change constitutes illegal spot zoning. Spot zoning is "*zoning action by which a smaller area is singled out of a larger area or district and specially zoned for a use classification totally different from and inconsistent with the classification of surrounding land*". *Smith v. Skagit County*, 75 Wn.2d 715, 743, 453 P.2d 832 (1969); *Lutz v. City of Longview*, 83 Wn.2d 566, 573-74, 520 P.2d 1374 (1974).

Where the site specific rezone (*i.e.*, spot zone) grants a discriminatory benefit to one or a group of owners to the detriment of their neighbors or the community at large without adequate public advantage or justification, a county's rezone is illegal and will be overturned. *Anderson v. Island County*, 81 Wn.2d 312, 325, 501 P.2d 594 (1972); *Save A Neighborhood Environment [SANE] v. Seattle*, 101 Wn.2d 280, 286, 676 P.2d 1006 (1984).

### **Concurrent Comprehensive Plan Amendment**

Docket Item #3 is a private party-sponsored request to concurrently amend the comprehensive plan and rezone specific parcels of land totally inconsistent with that of surrounding parcels. This is a site specific proposal that improperly conjoins legislative and quasi-judicial functions, and in so doing attempts to bypass the normal procedures attendant with comprehensive plan amendments and applications for a rezone.

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This proposal also bypasses the normal procedure for Hearing Examiner and public review of rezone applications, including the SEPA process.

Moreover, such a proposal is not a mere mid-term correction to a deficiency in the very recently adopted 2016 Comprehensive Plan and zoning approved thereunder. In accordance with the rule of law applicable to such requests, the GMVUAC recommends the County Council deny Reserve Silica's proposal, bifurcate the requests, and consider them separately, if at all, as part of the normal major 4-year cycle of update and amendments to the Comprehensive Plan.

<b>In accordance with the rule of law applicable to such requests, the County should deny Reserve Silica's proposal, bifurcate the requests, and consider them separately, if at all, as part of the normal major 4-year cycle of update and amendments to the Comprehensive Plan.</b>
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## **7. King County Code**

In addition to King Code sections/subsections cited earlier in section 5 regarding the State GMA, there are others that must be considered as King County contemplates the Docket Item #3 request.

### **TITLE 19A. LAND SEGREGATION**

**19A.04.205 Large lot segregation.** *"Large lot segregation" means the division of land into lots or tracts each one of which is one-sixteenth of a section of land or larger, or forty acres or larger if the land is not capable of description as a fraction of a section of land. However, for purposes of computing the size of a lot that borders on a street or road, the lot size shall be expanded to include that area that would be bounded by the center line of the road or street and the side lot lines of the lot running perpendicular to such center line. Also, within the resource zones, each lot or tract shall be of a size that meets the minimum lot size requirements of K.C.C. 21A.12.040.A. for the respective zone. (Ord. 17841 § 1, 2014).*

Since the underlying zoning for the Reserve Silica site is Forestry (and to which it must revert back to after exhausting its mineral rights) and the highlighted (underlined) KC Code section (**21A.12.040 Densities and dimensions - resource and commercial/industrial zones.**) calls for a minimum of 80 ac for "*minimum lot area*," the Large Lot Segregation to a minimum of 40-ac lots, sought by Reserve Silica, clearly should have been rejected outright by DPER.

### **TITLE 20. PLANNING**

**20.18.050 Site-specific land use map and shoreline master program map amendments initiation.**

*I. A property-owner-initiated docket request for a site-specific land use map or shoreline master program map amendment may be accompanied by an application for a zone reclassification to implement the proposed amendment, in which case administrative review of the two applications shall be consolidated to the extent practical consistent with this chapter and K.C.C. chapter 20.20. The council's consideration of a site-specific land use map or shoreline master program map amendment is a legislative decision that should be determined before and separate from its consideration of a zone reclassification, which is a quasi-judicial decision. If a zone reclassification is not proposed in conjunction with an application for a site-specific land use map or shoreline master program map amendment and the amendment is adopted, the property shall be given potential zoning. A zone reclassification in accordance with K.C.C. 20.20.020 is required in order to implement the potential zoning.*

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Our underlining above highlights that “a *site-specific land use map ... amendment*” be addressed “*before and separate*” from “a *zone reclassification*.” Yet, Reserve Silica’s Docket Item #3 request states: “*The site specific land use map amendment and the companion rezone....*”

*J. Site-specific land use map or shoreline master program map amendments for which a completed recommendation by the hearing examiner has been submitted to the council by January 15 will be considered concurrently with the annual amendment to the Comprehensive Plan. Site-specific land use map or shoreline master program map amendments for which a recommendation has not been issued by the hearing examiner by January 15 shall be included in the next appropriate review cycle following issuance of the examiner’s recommendation.*

Our underlining above highlights the examiner’s recommendation. We are unaware the Hearing Examiner has reviewed and provided recommendations on the Reserve Silica’s proposed “*site-specific land use map amendment*.”

## **TITLE 21A. ZONING**

Regarding mining site reclamation and underlying zoning, the following Code section applies:

**21A.22.081 Reclamation B.** *A reclamation plan approved in accordance with chapter 78.44 RCW shall be submitted before the effective date of a zone reclassification in Mineral-zoned properties or the acceptance of any development proposal for a subsequent use in Forest-zoned properties. The zone reclassification shall grant potential zoning that is only to be actualized, under K.C.C. chapter 20.22, upon demonstration of successful completion of all requirements of the reclamation plan. Development proposals in the Forest zone for uses subsequent to mineral extraction operations shall not be approved until demonstration of successful completion of all requirements of the reclamation plan except that forestry activities may be permitted on portions of the site already fully reclaimed.*

There is no reclamation plan that has been accepted or completed.

The regulations governing reclamation of the Reserve Silica site are found, in part, in KCC 21A.22.081.

**21A.22.081 RECLAMATION C.2.** *Mineral extraction operations that are not required to have an approved reclamation plan under chapter 78.44 RCW shall meet the following requirements:*

*2. Final grades shall:*

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- a. *be such so as to encourage the uses permitted within the primarily surrounding zone or, if applicable, the underlying or potential zone classification; and....*

As mentioned earlier, per discussion with KC DPER's Randy Sandin (10/9/17 e-mail), the "adjoining land use in the area is forestry so DPER's expectation is that the property will be reclaimed in a manner to allow/support that use." In fact, Reserve Silica on its "Application for Reclamation Permit" form (undated, but sometime after 2001) stated: "The subsequent land use for this site is forestry."

Further, as mentioned earlier, in a March 31, 2010, KC DPER (White) memo to the WA DNR (Skov)—subject: Reserve Silica: Transfer of Reclamation Responsibilities to King County—it was stated: "a final reclamation in exceedence of that required and approved under the State Reclamation Permit" would occur, and that the site would be "totally revegetated in accordance with the zoning and applicable standards."

Finally, it is critical that any approved reclamation plan include how the parties will effectively deal with contamination resulting from the mining/reclamation activities. The Public, nor the Department of Ecology and the County, would consider a site "reclaimed", and reclamation complete, if there is still highly contaminated areas on the site which pose extreme risk to the environment and/or human health.

<b>King County Code is very clear on land segregation, planning, and zoning related to the Docket Item #3 request.</b>
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## 8. King County Comprehensive Plan

### Chapter 3—Rural Areas and Natural Resource Lands

Per KCCP—Chapter 3—Rural Areas and Natural Resource Lands (pp. 3-12; 3-17 to 3-18; 3-75)

**R-208 The Rural Forest Focus Areas should be maintained in parcels of 20 acres or more in order to retain large, contiguous blocks of rural forest. Regulations and/or incentives should seek to achieve a maximum density of one home per 20 acres.**

The highlighted (underlined) portion above of KCCP **Policy R-208** seek to maintain large contiguous blocks of forest in Rural Forest Focus Areas (RFFAs) consisting of parcels of 20 ac or greater, which would not be achieved should the requested KCCP Docket Item #3 be approved. It is no clear if the Reserve Silica site lies within the Cedar River/Ravensdale RFFA or the FPD according to the 2016 KCCP Update's "*Agriculture and Forest Lands 2016*."

Some history is required here: This property was originally classified as Forestry and included within the FPD (clearly obvious from the *'island'* nature of this property, as designation of the FPD was set up to delineate large contiguous blocks of forest production land). The Rural Forest Commission confirms this property was originally zoned Forestry and included within the FPD. After King County placed the Minerals/Mining overlay zoning on the property (to reflect the active and potential mining on this site), it stopped showing the property as being *within* the FPD. What is unclear is whether it *explicitly excluded* it from the FPD, given that it now had a Mining/Minerals overlay zoning; or if it just *informally stopped* showing the property as FPD on their maps because of the Mining zoning.

It should be noted that removing this property from the designated FPD would have violated State GMA, because there are specific criteria to be satisfied in order to remove lands from the FPD, plus such a removal also created two small, substandard parcels (to the west), that no longer satisfied FPD requirements. Since these two parcels *remained* in the FPD, it appears King County simply *informally stopped* showing the property as FPD on its maps strictly due to the Mining zoning overlay.

The view at the time was that the Minerals/Mining was a *temporary* land use/zoning and the zoning/land use would *revert back* to it's underlying Forestry zoning upon completion of mining and reclamation activity. Presumably, the property would also again be formally included and shown as being within the FPD, thus restoring the integrity of the contiguous, large-block character of the FPD.

**R-304 Rural Area zoned residential densities shall be applied in accordance with R-305 – R-309. Individual zone reclassifications are discouraged and should not be allowed in the Rural Area. Property owners seeking individual zone reclassifications should demonstrate compliance with R-305 – R-309.**

The highlighted (underlined) portion above of KCCP **Policy R-304** seek to not allow such "*individual zone reclassifications*" as requested in KCCP Docket Item #3.

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- R-305**     **A residential density of one home per 20 acres or 10 acres shall be achieved through regulatory and incentive programs on lands in the Rural Area that are managed for forestry or farming respectively, and are found to qualify for a Rural Forest Focus Area designation in accordance with R-207.**

The highlighted (underlined) portions above of KCCP **Policy R-305** seek to not allow such zoning changes as requested in KCCP Docket Item #3, when it is considered that reclaimed natural resource lands revert back to their original underlying zoning, in this case Forestry.

- R-691**     **King County should work with the Washington State Department of Natural Resources to ensure that mining areas are reclaimed in a timely and appropriate manner. Reclamation of mining sites in the Forest Production District should return the land to forestry. Where mining is completed in phases, reclamation also should be completed in phases as the resource is depleted. When reclamation of mining sites located outside of the Forest Production District is completed, the site should be considered for redesignation to a land use designation and zoning classification compatible with the surrounding properties.**

The highlighted (underlined) portion above of KCCP **Policy R-691** seek any *redesignation* compatible with surrounding land. As detailed herein, that is not the case with the KCCP Docket Item #3 request.

**Chapter 12—Implementation, Amendments, and Evaluation**

Per KCCP—Chapter 12—Implementation, Amendments, and Evaluation (p. 12-5)

- I-203**     **Except as otherwise provided in this policy, the annual cycle shall not consider proposed amendments to the King County Comprehensive Plan that require substantive changes to Comprehensive Plan policies and development regulations or that alter the Urban Growth Area Boundary. Substantive amendments and changes to the Urban Growth Area Boundary may be considered in the annual amendment cycle only if the proposed amendments are necessary for the protection and recovery of threatened and endangered species, or to implement:**
- a. A proposal for a Four-to-One project; or**
  - b. An amendment regarding the provision of wastewater services to a Rural Town. Such amendments shall be limited to policy amendments and adjustments to the boundaries of the Rural Town as needed to implement a preferred option identified in a Rural Town wastewater treatment study.**



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The highlighted (underlined) portion above of KCCP **Policy I-203** clearly states that the KCCP annual review cycle shall not include “*substantive changes.*”

<p><b><i>King County Comprehensive Plan policies are very clear on rural forest focus areas, forestry, zoning, residential densities, sites reclamation, and plan amendments related to the Docket Item #3 request.</i></b></p>
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## **9. State Department of Ecology**

### **Scope**

As briefly mentioned earlier, the entire Reserve Silica site has been the subject of DOE investigation of contaminants and their movement within and without. DOE's Water Quality Program, Solid Waste Program, and Toxic Cleanup Program have all had some level of connection to the site.

### **Remedial Action**

Remedial action on the site has been deferred and the owners have been out of compliance with State water quality standards for decades. Contaminants include: Cement Kiln Dust (CKD), high-pH leachate seepage, and Arsenic. DOE conducted a Site Hazard Assessment in January 2016 and rated it as a Class 1 (highest priority) Model Toxics Control Act (MTCA) toxic waste clean-up site. Reserve Silica has chosen to do an Remedial Investigation (RI), since DOE does not have the manpower to do it. Aspect Engineering, Reserve Silica's consultant, presented the results of its DRAFT RI at our June GMVUAC meeting, but it has yet to be submitted to DOE for review.

### **Closure Plan ?**

An acceptable closure plan has yet to be developed and agreed upon so as not to allow the site to remain out of compliance into the unforeseen future. Such a closure plan must ensure requirements of environmental laws are met or that measures to implement and assure compliance are underway with enforceable milestones.

### **Landfill Operations**

In addition, the site is being used as solid waste landfill under continuing Solid Waste permits from Department of Public Health—Seattle-King County. This in itself entails another closure plan per the requirements of WAC 173-350-410(6).

DOE has formally concluded that Holcim (originally responsible for the CKD) and Reserve Silica are both "*Liabe Parties*" in the CKD contamination, and have warned the neighboring property owner (Baja Properties) that contamination has spread to its property.

**It is far too premature for the County to even consider such a rezone proposal as presented in Docket Item #3.**

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## **10. Water Banking Proposal**

Although Reserve Silica's proposed water banking proposal is *not directly tied* to its Docket Item #3 rezone request, it must be ensured it does not in any way affect the Executive's recommendations, nor the King County Council's decisions.

Below we provide some background:

### **History**

On June 2, 1967 a Water-Use Permit (Book No 38 of Permits, on Page 15096, Under Application No. 20279) was issued to Northern Pacific Railway Company. On April 28, 1970 a Surface Water Right Certificate (# 11039) was issued to Burlington Northern, Inc., successor to NP Railway Co. (NP/BN) to withdraw up to 744 ac-ft per yr of surface water from Ravensdale Lake for "*processing mineral products*" on the 'plant site' south of the BN right-of-way. On December 18, 1967 a Report of Examination by the Water Resources Inspector for the Division of Water Management, clarified that: "... *use of the water appropriated under this application will be largely non-consumptive and all or a portion of the diverted quantity will be returned to this source of supply or other public waters.*" Also "*All of the utilized waters, less normal evaporation, will be returned to the water course*" [i.e., the "outlet stream" of Ravensdale Lake].

### **Discussions with DOE**

On September 5, 2017, we met with Buck Smith & Ria Berns of the State Department of Ecology's (DOE's) Water Resources Program (Hydrogeology/Ground Water Supply - Quantity) at its offices at Eastgate in Bellevue. The purpose of the meeting was To better understand the current status of Reserve Silica proposal to create an Osprey Water Exchange, LLC Water Bank.

DOE has not approved Reserve Silica proposed *Water Bank*. DOE has told Reserve Silica it cannot apply for any *Water Right* conversion or *Transfer of Right to Trust* status until it has ceased using the water (Reserve Silica told DOE this could be in ~12 – 18 mo). DOE has told Reserve Silica it must have a clearly "*defined project*" before DOE will consider its *Water Right* conversion proposal.

DOE stated that once Reserve Silica's current use of the *Water Right* is concluded, Reserve Silica can put it into the State *Water Trust*, indefinitely, to hold it, which freezes the 5-yr time clock on past use.

**Reserve Silica does not have an existing Water Bank, nor will it have one during the KC Council's deliberations regarding the Docket Item #3 request. It is important the Executive and the Council not consider any approval of Reserve Silica's Water Bank proposal as "*pending*," as it could be more than a year from now before Reserve Silica can even apply to DOE for any *Water Right* conversion or *Transfer of Right to Trust* status.**

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## **11. Recommendations**

For the reasons and supporting rationale detailed herein, the GMVUAC opposes the Docket Item #3 request.

The GMVUAC requests the Executive recommend to the King County Council denial of the Docket Item #3 request to rezone 122 ac of isolated land outside of Ravensdale currently zoned Mining to Rural Area land use (RA-10).

Upon State DOE approval of the successful completion of any mine reclamation plans and upon approval of the successful completion of any Remedial Investigation/Feasibility Studies, the subject lands should *revert back* their original land use of forestry and underlying zoning of Forestry. Further, the subject lands should then be *re-incorporated* in the Forest Production District.

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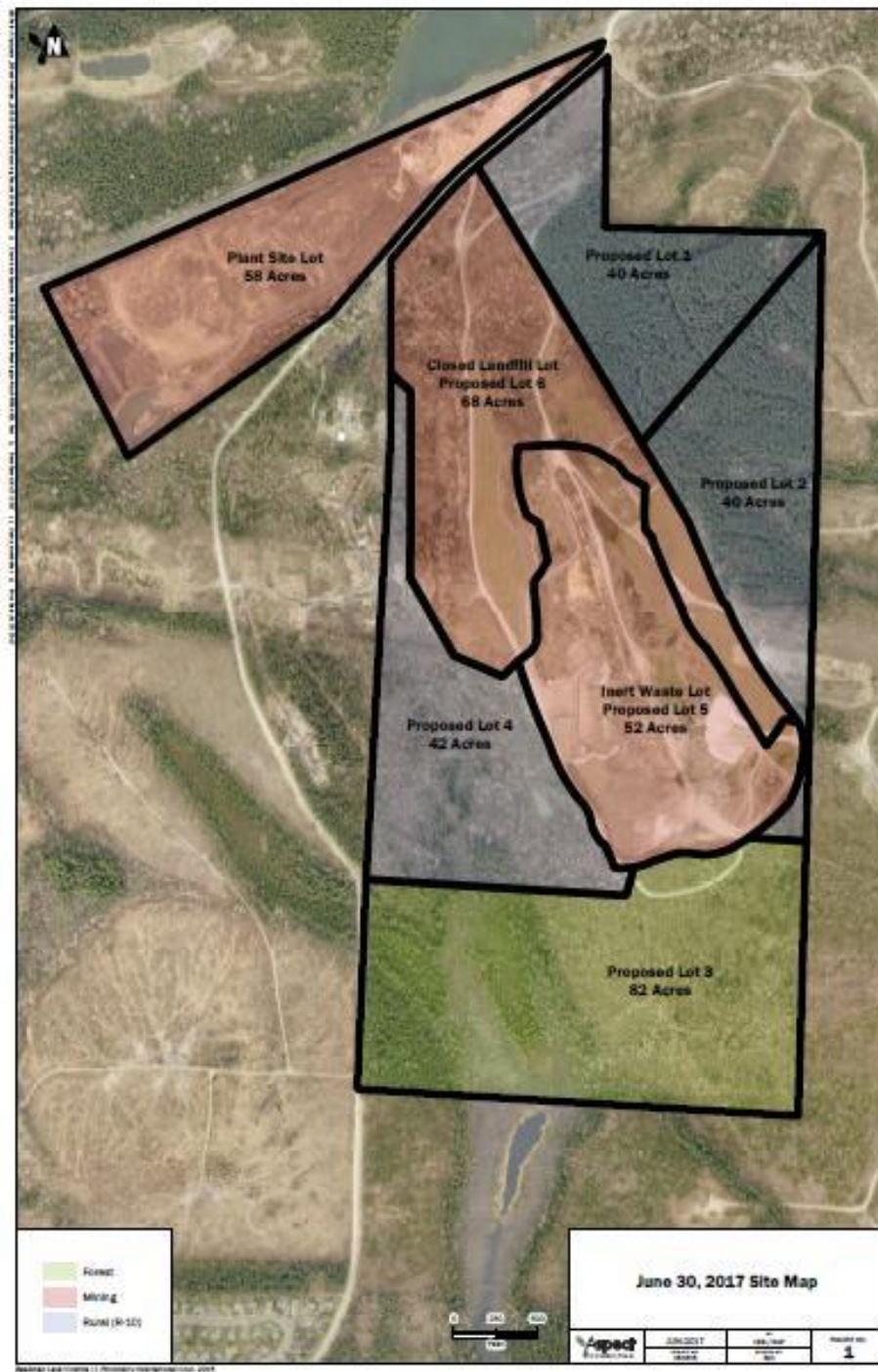
**Appendix—Maps**

*Figure A-1 — Proposed Map (from Docket item #3 Request)*

*Figure A-2 — Map of the Reserve Silica Site and Surrounding Open Space and FPD Lands*

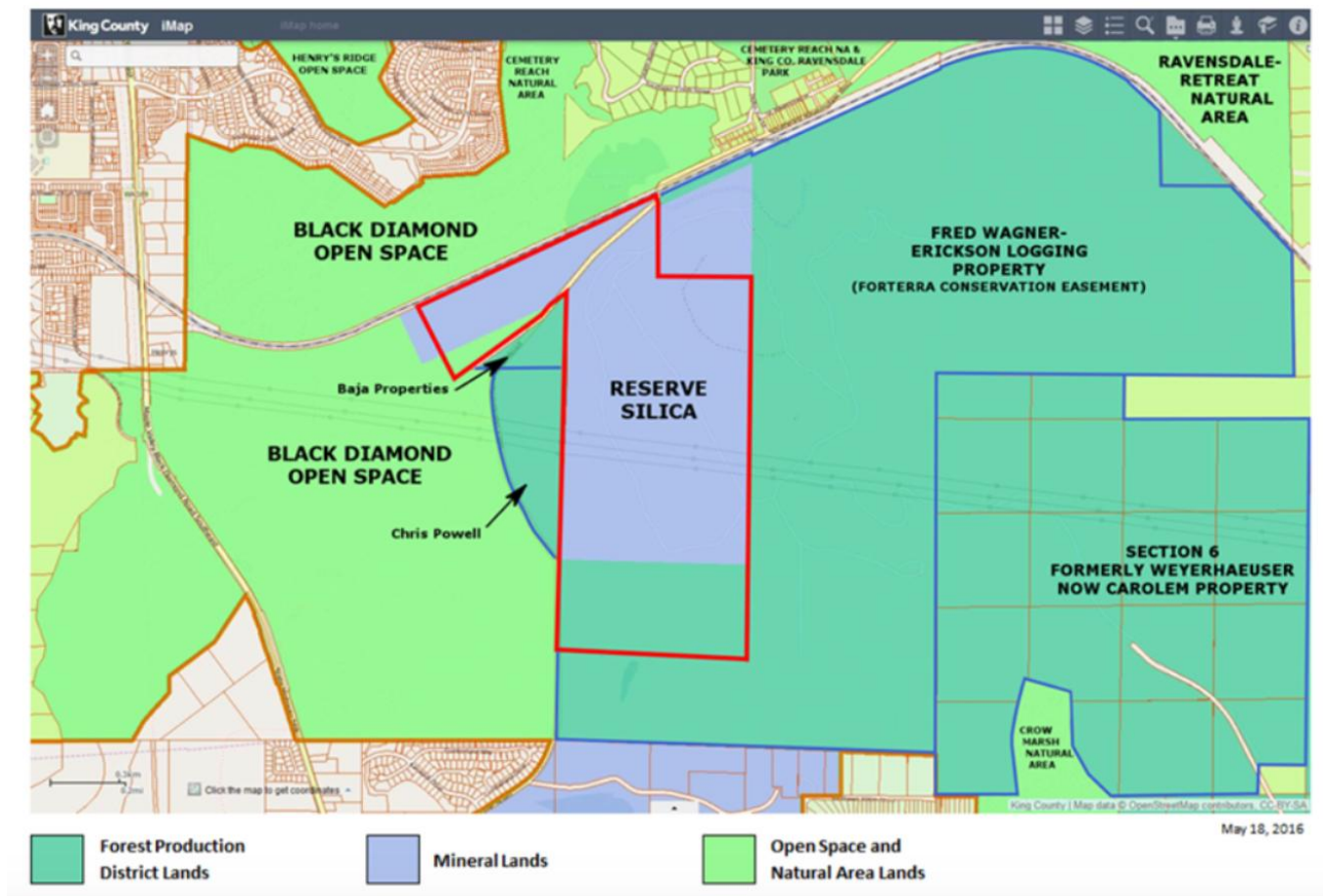
*Figure A-3 — Aerial View of Reserve Silica Site and Surrounding Forest Lands*

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*Figure A-1: Proposed Map (from Docket item #3 Request)*

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*Figure A-2: Map of the Reserve Silica Site and Surrounding Open Space and FPD Lands*



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*Figure A-3: Aerial View of Reserve Silica Site and Surrounding Forest Lands*