

BEFORE THE HEARING EXAMINER FOR SKAGIT COUNTY

RE: DENIAL OF SPECIAL
USE PERMIT FOR FAILURE
TO TIMELY PROVIDE
INFORMATION

WILLIAM WOODING,
Appellant,

v.

SKAGIT COUNTY,
Respondent.

APPEAL NO. PL21-0421

Application No. PL16-0556

**RESPONSE TO
MOTION TO INTERVENE**

Skagit County respectfully submits this Response to Evergreen Islands' Motion to Intervene. The County respectfully requests the Hearing Examiner deny this motion because it has not satisfied the requirements for intervention in this matter.

1. INTRODUCTION

This case involves a straightforward appeal: whether it was clear error for the County to deny William Wooding's special use permit to expand the Lake Erie gravel mine because he was unable to timely provide a Geologically Hazardous Site Assessment. Evergreen seeks to intervene but does not state any reason for that intervention within the narrow scope of this appeal. Rather, they assert they have an unrepresented "interests in ensuring that the proposed mine does not increase the risk that community members' homes will not suffer landslides and in responding to defamatory statements about Evergreen's statements to the hearing examiner." (Mot. to Intervene at 6.) Since these interests, even assuming they were significant

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and otherwise satisfy Rule 3.07, are unrelated to what is actually being appealed the Hearing Examiner should deny the motion to intervene.

2. ARGUMENT

Rule 3.07 governs intervention in appeals. This rule requires Evergreen to show: (1) “a significant interest not otherwise adequately represented”; and (2) “that the intervention will not interfere with the orderly and prompt conduct of the proceedings or otherwise prejudice the rights of any of the original parties.” Furthermore, the Hearing Examiner is empowered to condition any intervention, “including precluding the intervenor from expanding the issues in the appeal.”

Evergreen fails to carry its burden to be permitted intervention. Their motion fails to articulate a unrepresented significant interest in this appeal. Furthermore, because the interests they do articulate fall outside the narrow scope of this appeal they would necessarily interfere with the orderly and prompt conduct of the proceedings.

2.1. Evergreen has not articulated an unrepresented significant interest related to the appeal.

Rule 3.07, by its plain language, requires any interest justifying intervention must be significant¹ and unrepresented. Evergreen has not met this burden. It states that it has two interests that are not otherwise adequately represented: “to defend itself from Wooding’s attacks [on Evergreen Islands] and to represent its unique interest in ensuring that project impacts will be evaluated.” (Mot. to Intervene at 1–2.) Nothing in the motion to intervene explains how these interests relate to the issue present in this appeal: denial of a special use permit for the untimely provision of information.

Evergreen states it has an interest in responding to claims made by Wooding that Evergreen misled the Hearing Examiner in the first appeal. (Mot. to Intervene at 6.) But this is not a significant interest in the context of this appeal because it has nothing to do with Evergreen’s previous

¹ Citing to *Columbia Gorge Audubon Society v. Klickitat County*, 98 Wn.App. 618, 629–30, 989 P.2d 1260, 1266–67 (1999), Evergreen argues that “the intervention analysis requires only a modest showing to pass its threshold and therefore should not be used to deny intervention.” (Mot. to Intervene at 6.) While, as *Columbia Gorge* held, this is true to a motion to intervene under CR 24(a), it is not true for purposes of Rule 3.07 because they are different standards. In particular, while Rule 3.07 requires a “significant interest” CR 24(a) requires simply “an interest relating to the property or transaction which is the subject of the action”.

involvement in this matter. Thus it is unclear how any such interest would be advanced in this matter.

Evergreen also asserts they have an interest in “ensuring that the proposed mine does not increase the risk that community members’ homes will not suffer landslides”. (Mot. to Intervene at 6.) To begin with, the County shares this interest, so it is not unrepresented. Regardless this appeal is not about the risks of landslides, but about the failure to timely provide information regarding that risk resulting in a denial of the application. Evergreen has not articulated any interest related to the timelines themselves, much less something significant to justify intervention. To the extent this interest is really about enforcing the required timelines, that is certainly an interest that is represented by the County.

2.2. Intervention would interfere with the orderly and prompt conduct of this appeal.

Evergreen has raised interests that are beyond the scope of this appeal. Although Evergreen claims they do not intend to expand the scope of this appeal, (Mot. to Intervene at 5), it is unclear how this is possible where the stated interests go beyond the scope of the appeal. Consequently, intervention would necessarily interfere with the orderly and prompt conduct of this appeal.

3. CONCLUSION

For the above reason, the Hearing Examiner should deny the motion to intervene.

DATED this 7th day of September, 2021.

RICHARD A. WEYRICH
PROSECUTING ATTORNEY
FOR SKAGIT COUNTY



JASON C. D'AVIGNON, WSBA #44259
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CERTIFICATE OF SERVICE

I hereby certify that on September 7, 2021, I filed the foregoing original document with the Skagit County Hearing Examiner via email to Stevee Kivi, Hearing Coordinator, at skivi@co.skagit.wa.us and served the foregoing document via email to the following parties at the addresses stated below:

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I declare under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

Dated this 7th day of September, 2021, at Mount Vernon, Washington.



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