



Appeal or Request for Reconsideration

Planning & Development Services · 1800 Continental Place · Mount Vernon WA 98273
voice 360-416-1320 · inspections 360-416-1330 · www.skagitcounty.net/planning

File #:
PL22-0142
RECEIVED
MAR 25 2022
SKAGIT COUNTY
PDS
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Appeal

What are you appealing?

- Appeal of an Administrative Interpretation/Decision/Action to the Hearing Examiner
- Appeal of an Administrative Order to Abate (code enforcement order) to the Hearing Examiner
- Appeal of Impact Fees to the Hearing Examiner (impact fees must be paid) (SCC 14.30.070)
- Appeal of Hearing Examiner Decision/Action to the Board of County Commissioners
- Request for Reconsideration of a Hearing Examiner Decision (SCC 14.06.180)

File # of Appealed Decision or Permit	MDNS for PL16-0097, PL16-0098	Appeal Fee	\$	PDS will calculate
Date of Appealed Decision or Permit	February 24, 2022	Publication Fee	\$	PDS will calculate

PDS staff: do not accept appeal form without full payment of fees

Appellant

Standing to appeal	<input type="checkbox"/> Permit applicant <input checked="" type="checkbox"/> Party of Record <input type="checkbox"/> Party subject to code enforcement order <input type="checkbox"/> Other			
Name	Martha Bray, et al			
Address	6368 Erwin Lane			
City, State	Sedro Woolley, WA	Zip	98284	Phone (360) 856-0644
Email	mbray1107@gmail.com	Signature		

Attorney or Representative None

Name	Kyle Loring, Loring Advising PLLC			
Address	P.O. Box 3356			
City, State	Friday Harbor, WA	Zip	98250	Phone (360) 622-8060
Email	kyle@loringadvising.com			

Attachments

- For any of the **appeals** listed above, please attach a concise statement with numbered responses to the following questions.
 1. What is your interest in this decision?
 2. How are you aggrieved by the decision you are appealing?
 3. What are the specific reasons you believe the decision is wrong?
e.g. erroneous procedures, error in law, error in judgment, discovery of new evidence
 4. Describe any new evidence.
 5. List relevant sections of Skagit County Code.
 6. Describe your desired outcome or changes to the decision.
- For a request for **reconsideration** of a Hearing Examiner decision, attach a statement identifying the specific errors alleged.

**SKAGIT COUNTY PLANNING & DEVELOPMENT SERVICES
SEPA MITIGATED DETERMINATION OF NONSIGNIFICANCE (MDNS)**

For: Concrete Nor'West/Miles Sand & Gravel
File #: PL16-0097 (Special Use Permit) &
File #: PL16-0098 (Forest Practice Conversion)

PROJECT DESCRIPTION:

On March 7, 2016, Skagit County Planning & Development Services received an application for a Special Use Permit (File: **PL16-0097**) to permit a proposed gravel mine/quarry on the subject property. The proposed gravel mine would remove approximately 4,280,000 cubic yards of gravel from three parcels (P125644, P125645, & P50155) over a period of approximately 25 years. The three parcels total approximately 77 acres, of which 68 acres will be cleared, however the mining will occur on approximately 51 acres of the 68-acre cleared area. Gravel will be removed from the site by truck and trailer, generating an average of 46 trips per day, and the material will be transported to market or to one of Concrete Nor'West's nearby facilities for processing. The site is accessed from Grip Road on an existing private gravel haul road located approximately 0.70 miles east of the Prairie Road/Grip Road intersection. Operations onsite will be limited to excavation. No processing is proposed onsite. The applicant is proposing to haul material from 7:00 AM to 5:00 PM Monday through Friday.

In addition to the Special Use Permit application, the applicant also applied for a Forest Practice Conversion application (File: **PL16-0098**). To facilitate the proposed mining/quarry operation onsite, the applicant proposes to harvest approximately 50,000 board feet of timber on 68 acres, remove the stumps, and convert the parcels to a gravel mining operation.

Both applications were determined to be complete on **March 22, 2016** and a letter of completeness was issued for the applications. Additional information regarding this project is available at the Skagit County Planning and Development Services website:

<https://www.skagitcounty.net/Departments/PlanningAndPermit/gravelmine.htm>

APPLICANT:

Concrete Nor'West / Miles Sand & Gravel
C/O: Dan Cox, General Manager
P.O. Box 280
Mount Vernon, Washington 98273

LANDOWNER:

Lisa Inc.
Attention: Concrete Nor'West
400 Valley Avenue Northeast
Puyallup, Washington 98372

AGENT:

John Semrau, PLS, PE
Semrau Engineering & Surveying
2118 Riverside Drive, Suite 208
Mount Vernon, Washington 98273

PROJECT LOCATION:

The proposed properties subject to the mining operation are located approximately 1.5 miles north of Grip Road and south/southwest of the Samish River, within a portion of the Southeast Quarter of Section 27; Township 36 North; Range 04 East; Willamette Meridian within unincorporated Skagit County,

Washington.

SUBJECT PARCELS:

- Proposed Mine/Quarry: P125644, P125645, & P50155
- Haul Road: P125646, P125647, P125626, P125627, P125628, P125629, P125630, P125631, P125623, P125624, P125632, P125633, & P35704
- Contiguous Subject Parcels (Under Same Ownership): P125648, P125649, P50087, P125618, P125634, P125640, P125619, P125635, P125641, P125620, P125636, P125642, P125621, P125637, P125643, P125622, P125638, P125639, & P125625

ZONING & MINERAL RESOURCE OVERLAY:

The subject properties lie in the **Rural Resource-Natural Resource Lands (RRc-NRL)** Zoning District of unincorporated Skagit County. Additionally, the subject properties where the proposed mine/quarry would be located at is in a designated **Mineral Resource Overlay (MRO)**. Since the proposed use [a mine/quarry] is located in an MRO, it is permitted in the underlying RRc-NRL Zoning District with an approved Hearing Examiner Special Use Permit per Skagit County Code 14.16.430(4)(g).

LEAD AGENCY: Skagit County Planning and Development Services.

The lead agency for this proposal has determined that, with appropriate mitigation, this project does not have a probable significant adverse impact on the environment. An environmental impact statement (EIS) is not required under RCW 43.21C.030(2)(c). This decision was made after review of a completed environmental checklist and other information on file with the lead agency. This information is available to the public on request and can be viewed on the PDS website at <https://www.skagitcounty.net/Departments/PlanningAndPermit/gravelmine.htm>.

The lead agency has determined that the requirements for environmental analysis, protection, and mitigation measures in Skagit County Code, Skagit County's Comprehensive Plan adopted under RCW 36.70A, and in other applicable local, state, or federal laws and rules, provide adequate analysis of and mitigation for the specific adverse environmental impacts of the project action to which the requirements apply. This determination is subject to the mitigated measures as identified below and shall be deemed conditions of approval of the land use and/or permit pursuant to Skagit County Code 16.12 and RCW 43.21C. Such conditions are considered binding and may not be altered by subsequent decisions unless a threshold determination is re-issued.

MITIGATION MEASURES:

1. The scope of the project shall not exceed that as set-out in the Special Use Permit application (including attachments), those activities described in the SEPA checklist and supporting documents, and in accordance with the determinations made and conditions imposed. No crushing, processing, recycling, or blasting activities are permitted as part of this Special Use Permit application. Only excavation and transportation of mined material offsite is permitted. Significant deviation from the proposal will require additional review and approval by Skagit County Planning and Development Services.
2. Hours of operation of the mine/quarry are hereby limited to Monday through Friday from 7:00

AM to 5:00 PM. No mining operations are permitted outside of these times including holidays. If seasonal (temporary) demand indicates a need for extended hours, or Saturday or Sunday operations, the applicant shall submit a request for a temporary deviation to these permitted hours to Planning & Development Services (PDS). If permitted by PDS, such operations may be subject to additional conditions by PDS.

3. No track out of dirt, debris, or rocks onto county road/rights-of-way is permitted. For the duration of construction/mining activities, the applicant shall sweep, as needed, track out from county roadways/rights-of-way adjacent to the access associated with the proposed mine/quarry.
4. The applicant shall comply with Northwest Clean Air Agency (NWCAA) requirements for mining related activities both on and offsite. Visible dust generation shall require immediate best management practice (BMP) implementation. The Development at all times shall comply with Concrete Nor' West Fugitive Dust Control Plan (FDCP).
5. The applicant shall comply with the provisions of Chapter 14.32 of the Skagit County Code, the Skagit County Stormwater Management Ordinance, as it relates to increased runoff resulting from additional impervious surfaces. Best Management practices shall be utilized throughout the life of the project. Temporary erosion/sedimentation control measures, as approved by the Skagit County Planning and Development Services, shall be in place prior to mining, grading, or paving operations. The applicant shall maintain all temporary erosion/sedimentation control measures in accordance with (SCC 14.32). Said measures shall remain in place until the completion of the project.
6. The proposed gravel mine/quarry shall comply with SCC 14.16.840 (Skagit County Performance Standards) regulating vibration, heat, glare, steam, electrical disturbance, and noise in unincorporated Skagit County.
7. The applicant shall comply with the provisions of Washington State Administrative Code (WAC) 173-200 & 173-201A as required to prevent surface water quality and groundwater impacts. Best Management Practices shall be utilized to prevent interference and/or degradation of water quality.
8. This project may be subject to one of Ecology's National Pollutant Discharge Elimination Systems (NPDES) permits. A Construction Stormwater General or Industrial Permit may be required by the Department of Ecology (WSDOE) for this project. Contact the WSDOE Northwest Regional Office at (206) 594-0000 to determine if an NPDES permit is required.
9. An approved/issued Class IV General Forest Practice Permit shall be obtained from the Washington State Department of Natural Resources prior to harvest of any trees onsite. A copy of the DNR issued Class IV General Forest Practice Permit shall be provided to Skagit County Planning & Development Services.
10. An approved/issued Reclamation and Surface Mining Permit shall be obtained from the Washington State Department of Natural Resources prior to any mining onsite. A copy of this permit shall be provided to Skagit County Planning & Development Services.
11. Should any human remains, archaeological, historic, or cultural resources be discovered during construction, work in the affected area shall cease immediately and the area shall be secured. Within 24 hours of discovery, or as soon thereafter as possible, the owner/

applicant shall notify the Skagit County Sheriff's office, Skagit County Planning and Development Services, the Washington Department of Archaeology and Historic Preservation, and affected tribal governments. If, following consultation with all parties, it is determined additional archaeological and cultural resource assessment is required, the owner or operator of the mining operation shall retain the services of a professional archaeologist to prepare an assessment. Project work in the affected area shall only continue when conformance with applicable state and federal law is met.

12. Any proposed refueling of trucks and/or equipment onsite shall comply with all requirements of Skagit County, including but not limited to, the following:
 - i. Obtain all required permits and approvals from the appropriate agencies. Provide copies of these permits to Skagit County Planning & Development Services.
 - ii. The applicant shall comply with the current Fire Code addition (per the IFC) and adopted Skagit County Fire Code Standards.
 - iii. Install all required improvements (approved and inspected by Skagit County Planning & Development Services) including but not limited to a concrete fueling pad; oil/water separator; gutter/swale to prevent runoff from leaving the pad; and spill kit. Any improvements shall be permitted, approved, and inspected prior to any onsite refueling.
13. Development shall comply with all requirements from both Skagit County Planning & Development Services and Skagit County Public Works including but not limited to:
 - i. Within the existing prism of the haul road that provides ingress and egress to the proposed mine/quarry, maintenance and repair may occur to the road itself. No further expansion of the roadway of any kind outside of the existing prism may occur without first obtaining the required permits, approvals, and reviews. Critical Area review would also be required with possible mitigation to any impacted critical areas and/or associated buffers pursuant to SCC Chapter 14.24.
 - ii. The Applicant shall purchase and install, at Applicants' expense, a Traffic Activated Flashing Beacon System in the area of the Grip Road and Prairie Road intersection to address sight distance deficiencies. The Applicant will submit a proposed plan for review and approval to the Skagit County Engineer. All equipment and signage to be installed shall meet the standards and specifications of Skagit County Public Works. After installation and acceptance by the Skagit County Engineer, said equipment will be turned over to Skagit County for ongoing operation and maintenance. The truck activated flashing beacon detector north of Grip Road on Prairie Road for southbound traffic shall activate the flashing beacon/lights for the following scenarios:
 - I. Westbound trucks on Grip Road approaching Prairie Road.
 - II. Southbound truck stopped on Prairie Road waiting to turn left onto Grip Road.
 - iii. The Applicant shall purchase and install at Applicants' expense, a Traffic Activated Flashing Beacon System in the area of the Grip Road and Mine Access Road intersection to address sight distance deficiencies. The Applicant will submit a proposed plan for review and approval to the Skagit County Engineer. All equipment and signage that is to be installed shall meet the standards and specifications of Skagit County Public Works. After installation and acceptance by the Skagit County Engineer, said equipment will be

turned over to Skagit County for ongoing operation and maintenance.

- iv. Prior to operating the mine, the applicant shall design and construct improvements to the two (2) sharp turns immediately east of the intersection of Prairie Road and Old Highway 99N ("road improvements") to mitigate for trucks with trailers crossing over the center line while turning at said locations. Said road improvements shall be constructed at the applicant's sole cost, expense, and liability, shall be constructed in accordance with plans and specifications reviewed and approved by the Skagit County Engineer, and shall be constructed in accordance with all applicable laws, rules, regulations, and standards.
 - v. All parking associated with mining/quarry operation's employees, trucks, and associated equipment shall be off street onsite and not include the public right-of-way or the private haul road.
 - vi. The applicant shall comply with all Skagit County load restrictions on the Samish River bridge on Old Highway 99 North. If the dump truck/pup trailer combinations exceed the load restrictions, the applicant will use Interstate 5 (I-5) for southbound access to the Belleville pit located on Old Highway 99 North, south of the Samish River Bridge until such time as the bridge is improved.
 - vii. The maximum daily truck traffic that is allowed associated with the subject gravel mine/quarry is limited to an average of 46 daily trips during mining operations not to exceed 30 trucks per hour under extended hours operations. To address the extended hours conditions, the applicant will seek permission from Skagit County prior to generating the higher truck volume.
 - viii. When hauling on any public highway and/or Skagit County Roadways, all loads shall meet the requirements as outlined in RCW 46.61.655 – Dropping load, other materials – Covering.
14. The subject parcels where mining is to occur, shall be reclaimed in accordance with the Washington State Department of Natural Resource's (DNR) Reclamation Plan, associated issued permits, and Washington State law.
 15. No gravel mining operations shall occur within 10 feet of the groundwater table as established by the Hydrogeologic Site Assessment report by Associated Earth Sciences, dated August 21, 2015. The proposed mine shall maintain a minimum of a 10-foot buffer of natural material between the base of the mine and typical seasonal high ground water levels. The applicant shall work with their consultant(s) to determine where this is in the field so that no encroachment of the groundwater table occurs.
 16. Development shall comply with Skagit County Code Chapter 14.24 (Skagit County Critical Areas Ordinance) including but not limited to:
 - A. Per "Northwest Ecological Service's Impact Assessment & Mitigation Plan" dated December 2021, the following is required:
 - I. During resurfacing of the haul road, establish erosion control and BMPs to ensure protection of downstream waters.
 - II. Haul trucks shall be maintained in good working condition such that petroleum products or other harmful chemicals do not adversely affect adjacent critical areas.
 - III. During operation of the mine, maintain existing forested vegetation adjacent to the roadway, particularly in wetlands and buffer areas. This forested buffer along the

road provides water quality filtration of surface waters prior to entering adjacent wetlands and streams and provides a buffer and screening for wildlife using the interior of the site.

- IV. Review the proposal for compliance with applicable County/State stormwater management requirements.
- B. Per “Associated Earth Sciences Incorporated’s Geological Hazard Assessment Report” dated December 16, 2021, the following recommendations shall be followed:
 - I. No clearing of vegetation within the geologic hazard areas.
 - II. Maintain roadside swales and check dams. Clean out material that has sloughed into the swales that could potentially block surface water. Avoid concentrated surface water discharge onto the steep slopes.
 - III. Do not place uncontrolled fill, strippings, or other debris over the top of steep slopes.
17. Development shall comply with all applicable provisions of Skagit County Code Chapter 14.26, the Shoreline Master Program (SMP), including but not limited to:
 - A. A 200-foot buffer of undisturbed vegetation shall be provided between the Samish River and the gravel mine. The buffer shall be measured on a horizontal plane landward of the ordinary high-water mark (OHWM) and associated wetland(s) edge.
 - B. The 200-foot buffer and associated wetlands shall be designated as a Protected Critical Area (PCA) to assure identification and long-term protection. A Protected Critical Area Easement site plan acceptable to Skagit County’s Natural Resource division of Planning & Development Services shall be recorded with the Skagit County Auditor’s office.
18. Development shall comply with the Washington State Department of Ecology’s (DOE) requirements including but not limited to:
 - A. Any wetlands that occur on the property would be waters of the state subject to the applicable requirements of state law (see RCW 90.48 and WAC 173.201A) and Section 401 of the Clean Water Act (33 USC §1341) and 40 CFR Section 121.2. If any wetland impacts do occur, the applicant shall obtain all necessary state and federal authorizations prior to beginning any ground-disturbing activities or vegetation removal.
 - B. Wetland impacts shall be avoided by not allowing any excavation within the buffer area associated with Samish River and its associated riparian wetlands; don’t excavate below 10 feet above the groundwater table to prevent dewatering the Samish River; and maintain an earthen berm between the gravel pit and the Samish River so stormwater runoff cannot discharge directly.
 - C. All storm water runoff generated within the gravel mine excavation should flow into the closed depression and be prevented from reaching the Samish River.
 - D. The operation will require coverage under the NPDES Sand & Gravel General Permit to authorize the discharge of stormwater and/or process water to surface waters and/or groundwaters from sand and gravel operations. Applicants must submit the Notice of Intent (NOI) application online through Ecology's Water Quality Permitting Portal.

19. Development shall comply with Skagit County Code 14.16.440 regulating the Mineral Resource Overlay.

A copy of the SEPA MDNS, approved special use permit, and issued Forest Practice Conversion shall be kept onsite and made available to inspecting agencies. Failure to comply with any of these conditions will result in all work on the site being stopped until the condition is remedied. This MDNS is issued under WAC 197-11-350. The lead agency will not act on this proposal for fifteen (15) days from the date of the publication below.

Written comments must be received no later than **4:30 PM on March 11, 2022**

Email correspondence will not be accepted, however comments may be submitted via the PDS website under "recent legal notices" tab. (www.skagitcounty.net/pdscomments)

You may appeal this threshold determination in accordance with Skagit County Code 14.06 and 16.12 and then by filing such with Skagit County Planning and Development Services for service to the SEPA responsible official within fourteen (14) calendar days after the date of the closing of the above-described comment period.

Appeals must be submitted no later than **March 25, 2022**

RESPONSIBLE OFFICIAL: Director of Planning and Development Services
CONTACT PERSON: Kevin Cricchio, AICP, Senior Planner
MAILING ADDRESS: 1800 Continental Place, Mount Vernon, WA 98273
PHONE: (360) 416-1423

Date: **February 22, 2022** **Signature:** **Kevin Cricchio**
(On behalf of Hal Hart, Planning and Development Services Director)

CC: WSDOT, WDNR, WDOE, Skagit County Public Works, NW Clean Air Agency, Skagit County Fire Marshal, WSDF&W, Skagit River Systems Coop, Army Corps., DHAP, Samish Indian Nation, Upper Skagit Indian Tribe, Skagit County Health Department, Applicant, SEPA Register, Parties of Record

Date Transmitted to Skagit Valley Herald: **February 22, 2022**

Please Publish in the Skagit Valley Herald: **February 24, 2022**

ATTACHMENT A

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BEFORE THE HEARING EXAMINER

IN AND FOR THE COUNTY OF SKAGIT, WASHINGTON

**In the Matter of the Appeal of Skagit
County SEPA Mitigated
Determination of NonSignificance for
File Nos. PL16-0097 & PL16-0098.**

No. PL16-0097
No. PL16-0098

NOTICE OF APPEAL

I. INTRODUCTION AND DECISION BEING APPEALED

Appellant Central Samish Valley Neighbors and its representatives Martha Bray, John Day, Linda Walsh, Larry Hedgepeth, Josie Hedgepeth, Wallace Groda, Brian Bowser, Jedidiah Holmes, Kathy Reim, Robert Reim, Jim Wiggins, and Abbe Rolnick (“Appellants”), respectfully file this Notice of Appeal pursuant to SCC 14.06.110(8) to request that the Skagit County Hearing Examiner reverse the Mitigated Determination of NonSignificance (“MDNS”) that the Skagit County Planning & Development Services (“PDS”) issued on February 24, 2022 for Applications No. PL16-0097 and PL16-0098. That MDNS erroneously concludes that the clearing of 68 forested acres nestled against the Samish River and its associated wetlands, and the extraction of 4,280,000 cubic yards of gravel from across 51 mining acres, will occur without significantly affecting the natural environment and local traffic. While the mine applicant, Concrete Nor’ West (“Applicant” or “CNW”), has submitted several consultant reports since first applying for a Special Use Permit to create and operate the mine, the reports have yet to adequately evaluate the ecological impacts of a substantially undersized wetland buffer, the expansion of a 2.2-mile-long internal haul road amidst 36 wetlands, 21 seasonal streams, and Swede Creek, converting 68 acres of forested wildlife corridor to gravel mine, the

1 carbon emissions generated by industrial trucking, sight distance impacts and other traffic
2 hazards along several potential public roads that might serve as haul routes, geological
3 instabilities that could lead to sediment pollution of Swede Creek, and more.

4 Washington's State Environmental Policy Act ("SEPA") mandates that a lead agency
5 obtain reasonably sufficient information to evaluate the environmental impacts of a proposal
6 before issuing a threshold determination. PDS' decision to issue the MDNS before obtaining all
7 of the necessary information was clearly erroneous, and the modest conditions attached to the
8 MDNS fail to correct that error. Consequently, Appellants respectfully request that the Hearing
9 Examiner reverse and vacate the MDNS, a copy of which is attached hereto as Attachment A.

10 **II. NAME, ADDRESS, AND INTEREST OF APPELLANT.**

11 2.1 Appellants' names and addresses are as follows:

12 Martha Bray
13 6368 Erwin Ln.
14 Sedro-Woolley, WA 98284

Brian Bowser
21110 Parson Cr. Rd.
Sedro-Woolley, WA 98284

15 John Day
16 6368 Erwin Ln.
17 Sedro-Woolley, WA 98284

Jedidiah Holmes
7691 Delvan Hill Rd.
Sedro-Woolley, WA 98284

18 Linda Walsh
19 21710 Prairie Rd.
20 Sedro-Woolley, WA 98284

Kathy Reim
23262 Meadow View Lane
Sedro-Woolley, WA 98282

21 Larry Hedgepeth
22 5809 Brookings Rd.
23 Sedro-Woolley, WA 98284

Robert Reim
23262 Meadow View Lane
Sedro-Woolley, WA 98282

24 Josie Hedgpeth
25 5809 Brookings Rd.
26 Sedro-Woolley, WA 98284

Jim Wiggins
21993 Grip Rd.
Sedro-Woolley, WA 98284

Wallace Groda
6386 Lillian Ln.
Sedro-Woolley, WA 98284

Abbe Rolnick
21993 Grip Rd.
Sedro-Woolley, WA 98284

2.2. Appellants are represented in this appeal by Kyle Loring, who can be reached as

1 follows:

2 Kyle Loring
3 Loring Advising, PLLC
4 PO Box 3356
5 Friday Harbor, WA 98250
6 360-622-8060
7 kyle@loringadvising.com

8 2.3. Appellants have a direct interest in the proposed development of a gravel mine
9 because they are parties of record and because they live and recreate in the vicinity of the
10 proposal and would be affected by the traffic, noise, pollution, and ecological impacts it would
11 generate. As an initial matter, Appellants have submitted numerous comment letters to address
12 the flaws in PDS' State Environmental Policy Act ("SEPA") review of the proposed gravel
13 mine, as individuals, as Central Samish Valley Neighbors, and through representation by Loring
14 Advising, PLLC. The Skagit County Code ("Code") defines a "party of record" as "any person
15 who has testified at a hearing or has submitted a written statement related to a development
16 action and who provides the County with a complete address, or a person who has formally
17 requested to receive information via a written statement with a complete mailing address." SCC
18 14.04.020. Appellants qualify as parties of record because they have submitted written
19 statements related to the applications for PL16-0097 and PL16-0098 and the SEPA review for
20 those applications. As parties of record, they have standing to appeal the MDNS in an open
21 record public hearing pursuant to SCC 14.06.160(2).

22 2.4. In addition, Appellants live, commute, recreate, run errands, and observe and
23 enjoy fish and wildlife and their natural surroundings, all in the vicinity of the proposed Grip
24 Road gravel mine, and will be significantly harmed by the MDNS. As explained below,
25 Appellants all have a clear and direct interest in a proper SEPA review of the proposed mine's
26 impacts and in efforts to ameliorate those impacts so that they do not suffer them. All of the
Appellants live near and travel frequently along potential haul routes and are aggrieved by the
lack of adequate review of traffic impacts described below. Appellants are aggrieved by the lack

1 of adequate review of the impacts of the mine operations, including those of its heavy gravel
2 hauling trucks, on the local wildlife that they observe in their own backyards and that ply the
3 waters of the Samish River and Swede Creek, where some of them volunteer and recreate.
4 Appellants all share a concern for their own safety and the safety of their family, friends and
5 neighbors who frequently travel the proposed haul route. And Appellants who live directly
6 adjacent to the mine site are aggrieved by the inadequate review of mine site pollution and
7 habitat degradation.

8 2.5. Martha Bray and John Day have an interest in traveling safely along the same
9 Grip Road that would be traveled by the project's large trucks and trailers, which they also
10 travel frequently. They regularly ride their bikes along the likely haul route and are concerned
11 that the increased truck traffic along the narrow rural roads will harm their safety and
12 enjoyment. They also have an interest in maintaining and restoring wildlife habitat in the
13 vicinity of the proposed mine. They chose to live within their rural surroundings so that they
14 could enjoy the peace and quiet and live close to nature, and are actively restoring wildlife
15 habitat on their property. In addition, they have an interest in the preservation and restoration of
16 salmon runs in Swede Creek and the Samish River, which border and traverse the mine
17 property. Mr. Day serves as a volunteer steward of Skagit Land Trust's Tope Ryan
18 Conservation Area, which is located at the confluence of Swede Creek and the Samish River,
19 just downstream of the mine property.

20 2.6. Jedediah Holmes has an interest in safely commuting and cycling along the same
21 roads that gravel trucks and trailers from the mine may use. He is interested in his daughter
22 safely waiting for the school bus along that same route. He has an interest in being able to
23 continue to observe the same abundant wildlife that currently visits his family's lands, and in
24 being able to observe salmon where he volunteers to survey them in the Samish River basin.
25 And he is concerned that other mineral resource overlay properties near his home be held to a
26 high standard when applying to establish new, intensive mines.

1 2.7. Wallace Groda owns a farm less than ½ mile from the Grip Road entrance to the
2 proposed mine and has an interest in safely traveling along Grip Road and in maintaining his
3 property value and quality of life. He hauls farm equipment along the haul route and
4 understands firsthand the hazards related to encountering truck traffic on it.

5 2.8. Linda Walsh lives directly adjacent to the mine parcels that would be stripped
6 and excavated just 100 feet from her property line. She and her family have lived in this
7 location for many years, long before the mine was proposed, or even before the current owners
8 purchased the property. Ms. Walsh has an interest in ensuring safe travel along Grip and Prairie
9 Roads at the same time as the mine traffic. Ms. Walsh has an interest in avoiding noise impacts
10 from the neighboring mine, as well as dust wafting onto her property and into the Samish River
11 that runs through her property. Ms. Walsh also has an interest in preserving the wildlife that
12 travel across her property and onto the mine property, and preventing impacts to them from the
13 mine's heavy truck traffic and associated pollution, noise, erosion, and other impacts. She
14 wishes to continue the quiet enjoyment of her property along the Samish River for her family
15 and grandchildren.

16 2.9. Kathy and Robert Reim have an interest in preserving the safety of their growing
17 residential area from the proposed mine operations. They have experienced traffic impacts and
18 observed automobile crashes on the narrow, rural roads that the mine's gravel trucks and trailers
19 would have to negotiate.

20 2.10. Jim Wiggins and Abbe Rolnick live directly adjacent to the mine property. They
21 have an interest in safely navigating intersections like Grip Road and Prairie Road when gravel
22 truck and trailers from the mine would be negotiating that same intersection, especially in light
23 of increased vehicular traffic there in recent years. They also have an interest in maintaining the
24 quantity and quality of water in Swede Creek and the Samish River in their neighborhood while
25 the mine operates. And they have an interest in continuing to enjoy the peace and tranquility of
26 their rural home at the same time that the mine operators propose to generate significant heavy

1 truck traffic. When the applicant conducted work on the haul road during the summers of 2018
2 and 2019, the experienced significant noise.

3 2.11. Larry and Josie Hedgpeth are concerned about traffic safety along the likely haul
4 route. Their grandson lives with them and attends nearby public school. They are particularly
5 concerned about his safety riding his bike and traveling to and from school. They also have
6 participated in stream enhancement projects on their property to restore fish habitat in Swede
7 Creek, and are concerned about impacts to this important aquatic habitat from the mine
8 operations.

9 2.12. Brian Bowser has lived in the Prairie Road/Parson Creek road area for more than
10 forty years. He has an interest in ensuring that the proposed mine does not significantly lower
11 the quality of life in the community. Mr. Bowser has an interest in ensuring that traffic
12 generated by the mine does not cause undue repair needs for Grip Road and that the gravel
13 shipping does not create safety hazards on the road. Mr. Bowser also has an interest in ensuring
14 that the mine operations do not cause excessive noise

15 **III. SPECIFIC REASONS WHY THE DECISION IS WRONG**

16 3.1. The decision to issue the MDNS is clearly erroneous because PDS did not first
17 obtain reasonably sufficient information to evaluate the environmental impacts of the mine
18 before issuing that threshold determination.

19 3.2. On February 24, 2022, PDS issued the MDNS for a proposed gravel mine that
20 would remove approximately 4,280,000 cubic yards of gravel from three parcels over an
21 unlimited time period, though estimated to span approximately 25 years. The MDNS notes that
22 the three parcels total approximately 77 acres, of which 68 acres would be cleared and 51 of
23 those acres would be mined. The mine would employ large gravel truck and trailer
24 combinations to transport the gravel from the mine to a separate CNW processing facility.
25 Neither the application materials nor the MDNS prescribe the use of a specified haul route for
26 this shipping. The MDNS allows up to 30 trucks per hour during extended hour operations, and

1 an average of 46 daily trips over the 25-year life of the quarry. The MDNS does not define
2 “trucks per hour” or “daily trips” or identify the time frame used to calculate the average daily
3 trips. If demand cannot be satisfied by operating 7:00 AM to 5:00 PM Monday through Friday,
4 the applicant can request approval for extended hours or weekend operations. The MDNS does
5 not specify review criteria for determining whether to authorize evening or weekend operations.

6 3.3. The mine would be developed in a rich ecological setting in a forested landscape
7 along the Samish River and its associated wetlands. An internal haul road winds through and
8 within 300 feet of 36 wetlands and 21 seasonal streams and crosses Swede Creek, a fish-bearing
9 tributary of the Samish River.

10 3.4. Against this background, the issuance of the MDNS was clearly erroneous
11 because it was issued absent an acknowledgment and evaluation of the environmental impacts
12 identified below and thus was not based on sufficient information.

13 3.5. Lack of transportation impact information. PDS issued the MDNS without
14 specifying a haul route and without information about potential traffic impacts along the various
15 roads that CNW could use to haul road between its two locations and that private users who
16 purchase gravel at the site would use to transport that material. These unevaluated issues
17 include an evaluation of site distance impacts for intersections like that at Grip Rd and the site
18 access road, modeling with speeds anticipated by Skagit County’s Road standards, mitigation
19 for site distance impacts, the impact of truck-trailers crossing the centerline at all locations
20 along routes that could be used for mine hauling, including the likely use of F & S Grade Road
21 instead of I-5 South, traffic east of the intersection of the mine access road and Grip Road, and
22 traffic redistributed to Cook Road.

23 3.6. No review of impacts of internal haul road development. Although CNW
24 eventually acknowledged that the use of the 2.2-mile-long internal haul road was connected
25 with the operation of the mine, it has not provided an evaluation of the impacts of the road work
26 that occurred in approximately 2018 to develop the haul road with gravel, and, on information

1 and belief, to widen the road. These impacts to the numerous wetlands and streams in the
2 vicinity of the road likely would have been significant.

3 3.7. Inadequate review of undersized buffer. Without requiring a variance and
4 without explanation, the MDNS unilaterally shrinks the Samish River wetland buffer for the
5 proposal to 200 feet, surrendering 100 feet of the standard 300-foot buffer for a high intensity
6 land use like stripping everything from the soil up. In addition, although there is some
7 ambiguity in the materials, the application suggests that CNW did not physically delineate and
8 survey the wetland edge near the Samish River, but instead relied on LIDAR to estimate the
9 edge. The undersized buffers, measured without a delineated wetland edge, likely will impact
10 essential habitat for the Oregon spotted frog, listed as endangered by Washington in 1997 and
11 threatened federally in 2014.

12 3.8. No review of wildlife impacts. Notwithstanding the MDNS-acknowledged
13 clearing of 68 acres of forested land, the application did not evaluate the impacts of that
14 conversion on bears, cougars, bobcats, and other species that have been reported to use those
15 lands as a wildlife corridor between Butler Hill to the south and the Samish River Valley and
16 Anderson Mount to the north. The SEPA Checklist provided by CNW asserts that the property
17 is not an animal migration route. Acknowledging and understanding the impacts of the mine on
18 the species that use that corridor is necessary to adequately review project impacts under SEPA.

19 3.9. No review of carbon emissions. Notwithstanding the carbon-intensive nature of
20 the industrial mining and transport of gravel, as well as the removal of more than 51 acres of
21 carbon absorbing trees, shrubs, and soils, the application does not evaluate its carbon emission
22 impacts over the approximately 25-year life of the mine.

23 3.10. Incomplete review of water pollution impacts. The application does not identify
24 or evaluate slope instabilities in the vicinity of the road where it crosses Swede Creek, and thus
25 does not evaluate potential water pollution from sediment that could erode into the creek.

26 3.11. Incomplete review of noise impacts. While the application contemplates both

1 normal operations at the mine and increased mine operations depending on level of demand for
2 the product, a noise and vibration study assumed a single operating scenario involving one
3 front-end loader, dozer, and excavator and does not appear to have studied the noise generated
4 by a maximum production scenario. The review also did not cite the source for the noise levels
5 it used. The lack of modeling of all likely scenarios, including those likely to generate
6 maximum noise and vibration levels, failed to satisfy the requisite review.

7 3.12. Lack of evaluation of trucking impacts on recreational users. The application's
8 traffic studies overlooked recreational use of roads on the likely haul routes, such as federal and
9 regional bicycle routes. This error is compounded by the fact that significant portions of these
10 roads are narrow and lack adequate shoulders, including shoulders shrunk further by guard rails.

11 3.13. The mitigation measures identified in the MDNS do not address the potential
12 impacts above and thus cannot render the impacts non-significant.

13 3.14. Furthermore, the applicant can deviate from its proposal without additional
14 review if it decides that such deviation would not qualify as "significant." The MDNS does not
15 attempt to define that term.

16 **IV. RELEVANT SECTIONS OF SKAGIT COUNTY CODE**

17 The legal framework for this appeal involves SEPA, Chapter 43.21C RCW and Chapter
18 197-11 WAC, as well as the following sections of the Skagit County Code and related
19 jurisprudence:

20 4.1. SCC 14.06.110(11). The appellant bears the burden of proving that the decision
21 of the administrative official was clearly erroneous.

22 4.2. SCC 14.06.070(2) (Integration of SEPA review with development permit
23 review). Requires developments to be reviewed in accordance with the policies and procedures
24 of Chapter 16.12 SCC, SEPA, and Chapter 197-11 WAC.

25 4.3. Chapter 16.12 (State Environmental Policy Act). This Chapter incorporates
26 SEPA, which requires agencies to "consider total environmental and ecological factors to the

1 fullest extent when taking ‘major actions significantly affecting the quality of the
2 environment.’” *Lassila v. City of Wenatchee*, 89 Wn.2d 804, 814, 576 P.2d 54 (1978) (quoting
3 *Sisley v. San Juan County*, 89 Wn.2d 822, 830, 567 P.2d 1125 (1977)). A major action
4 significantly affects the environment when it is reasonably probable that the action will have
5 more than a moderate effect on the quality of the environment. WAC 197-11-794; *Boehm*, 111
6 Wn. App. at 717 (citing *Norway Hill Pres. & Prot. Ass’n v. King County Council*, 87 Wn.2d
7 267, 278, 552 P.2d 674 (1976)). Significance involves a proposal’s context and intensity; an
8 impact may be significant if its chance of occurrence is low but the resulting impact would be
9 severe. WAC 197-11-794. An agency that determines that a proposal will not result in a
10 significant impact bears the burden of demonstrating “that environmental factors were
11 considered in a manner sufficient to be prima facie compliance with the procedural dictates of
12 SEPA.” *Bellevue v. Boundary Rev. Bd.*, 90 Wn.2d 856, 867, 586 P.2d 470 (1978) (quoting
13 *Lassila*, 89 Wn.2d at 814). For example, the threshold determination must be based on
14 information sufficient to evaluate the proposal’s environmental impact. *Boehm*, 111 Wn. App.
15 at 718. In addition, a court will not uphold a DNS unless the record demonstrates that the
16 government gave actual consideration to the environmental impact of the proposed action or
17 recommendation. *Boehm*, 111 Wn. App. at 718. An incorrect threshold determination will be
18 vacated because it thwarts SEPA’s policy to ensure the full disclosure of environmental
19 information so that environmental matters can be given proper consideration during decision-
20 making. *Norway Hill Pres. & Prot. Ass’n v. King County Council*, 87 Wn.2d 267, 273, 552 P.2d
21 674 (1976)). Last, a lead agency must adequately consider the environmental factors, “in a
22 manner sufficient to be a prima facie compliance with the procedural dictates of SEPA.” *Lassila*
23 *v. City of Wenatchee*, 89 Wn.2d 804, 814, 576 P.2d 54 (1978).

24 4.4. SCC 16.12.020, incorporating WAC 197-11-060 (content of environmental
25 review). Agencies must “carefully consider the range of probably impacts, including short-term
26 and long-term effects. Impacts shall include those that are likely to arise or exist over the

1 lifetime of a proposal or, depending on the particular proposal, longer.” WAC 197-11-060(4)(c).
2 As explained at Section III above, the MDNS issued without an evaluation of all of the short-
3 term and long-term impacts, including the long-term loss of a wildlife corridor in rural Skagit
4 County. A proposal’s effects also including “direct and indirect impacts caused by a proposal,”
5 such as growth caused by a proposal or the precedential value of a proposal. WAC 197-11-
6 060(4)(d).

7 4.5. SCC 16.12.070 (Purpose). This section incorporates WAC 197-11-330, which
8 establishes the threshold determination process, and notes that “[a]n EIS is required for
9 proposals for legislation and other major actions significantly affecting the quality of the
10 environment.” The lead agency “shall make its threshold determination based upon information
11 reasonably sufficient to evaluate the environmental impact of a proposal.” WAC 197-11-335. In
12 addition, a proposal may to a significant degree, “adversely affect environmentally sensitive or
13 special areas, such as...wetlands” or “adversely affect endangered or threatened species or their
14 habitat.” WAC 197-11-330(3)(e). Where a proposal may have a probable significant adverse
15 environmental impact, the responsible official must issue a Determination of Significance that
16 identifies items that must be discussed in an Environmental Impact Statement. WAC 197-11-
17 369(1).

18 4.6. SCC 16.12.200(4)(a). The County has established policies to ensure that it and
19 its citizens may:

- 20 (i) Fulfill the responsibilities of each generation as trustee of the environment for
21 succeeding generations;
- 22 (ii) Assure for all people of Washington State safe, healthful, productive, and
23 aesthetically and culturally pleasing surroundings;
- 24 (iii) Attain the widest range of beneficial uses of the environment without degradation,
25 risk to health or safety, or other undesirable and unintended consequences;
- 26 (iv) Preserve important historic, cultural, and natural aspects of our national heritage;

1 (v) Maintain, wherever possible, an environment which supports diversity and variety
of individual choice;

2 (vi) Achieve a balance between population and resource use which will permit high
3 standards of living and a wide sharing of life's amenities; and

4 (vii) Enhance the quality of renewable resources and approach the maximum attainable
5 recycling of depletable resources.

6 4.7. SCC 16.12.200(4)(b). The County "recognizes that each person has a
7 fundamental and inalienable right to a healthful environment and that each person has a
8 responsibility to contribute to the preservation and enhancement of the environment."

9 **V. DESIRED OUTCOME/RELIEF REQUESTED**

10 Appellants respectfully request the following relief:

11 5.1. An Order reversing the MDNS and requiring that:

12 5.1.1. PDS withdraw the MDNS;

13 5.1.2. the applicant submit complete information about the impacts of the
14 following aspects of the project: (1) ambiguous maximum number of truck-trailer trips
15 per hour under regular hours operations, (2) extended hours operations, including the
16 lack of specified conditions for allowing such operations, unidentified additional safety
17 measures, and lack of definition for seasonal duration, (3) applying a 200-foot buffer
18 rather than the standard 300-foot buffer, (4) haul road widening and hardening on the
19 wetlands and water courses in its vicinity, (5) the carbon emissions from excavating and
20 transporting the mined gravel, (6) clearing 68 acres of forestland and wildlife habitat, (7)
21 unexamined site distances and haul routes, (8) geological instability and potential
22 sediment pollution along Swede Creek, (9) potentially redirecting water from its natural
23 flow in the outer 100-foot of the standard buffer toward the center of the mine, (10)
24 noise and vibration at maximum operations, and (10) heavy trucks traveling along a
25 well-used recreational route; and

26 5.2. Such other and further relief as the Hearing Examiner deems just and equitable.

1 Dated this 25th day of March, 2022.

2 Respectfully submitted,

3 LORING ADVISING PLLC

4
5 By



6 Kyle A. Loring, WSBA No. 34603
7 Attorney for Appellants