

## John Cooper

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**From:** website  
**Sent:** Sunday, February 05, 2017 3:55 PM  
**To:** Planning & Development Services  
**Subject:** PDS Comments

Name : Dennis Whitcomb  
Address : 19117 Prairie Road  
City : Burlington  
State : WA  
Zip : 98233  
email : [dennis.whitcomb@gmail.com](mailto:dennis.whitcomb@gmail.com)  
Phone : 360-399-1434

PermitProposal : PL16-0097 and PL16-0098

Comments : My family and I live and farm at the corner of Prairie Road and Highway 99, near the proposed mine. I have serious concerns about the proposal.

1. In the proposal documents, no guarantee is offered about how many trucks per day will transport materials through our community. If the gravel pit comes into being, what is to stop its owners from running hundreds of trucks per day through the area? What is to stop them from running trucks 24 hours per day, waking up the neighborhood at all hours? With hundreds of trucks, or even far fewer than that, the entire character of our neighborhood will be changed. Instead of being a residential farming community, it will become an industrial throughfare. We should use especially careful scrutiny when proposals can fundamentally change our community in this way. The community and its character matters.

2. In addition to transforming our community's character, the proposal also threatens public safety. We frequently see near-crashes, and real crashes, where we live at the corner of Prairie and Highway 99. (Please feel free to look up the number of times just we ourselves have had to call 911 to report crashes at this intersection). If there is a large increase in the number of heavy trucks moving through this intersection, I have no doubt that there will be an increase in crashes and, yes, eventually a number of deaths.

3. The proposal also brings with it potential threats to local businesses. As well as living in the area, my family operates a commercial farm here. From this farm operation we sell a large number of free range eggs and vegetables. Clean water is essential. Without it, we will not be in business. What this fact illustrates is that the risks of the project do not merely redound to the local community in their private lives. They also redound to local business, including (at least) our local business. What guarantees do we have that our water, and thus our farming operation, will not be harmed by the proposed gravel pit?

4. In addition to the potential adverse economic impact of water pollution on our farming operation, there is also a potential adverse impact to our very ability to live in our home. Like the rest of the local community, we depend on wells for our water. What guarantees do we have that this water, and thus our way of life, will remain safe?

From Host Address: 24.113.254.134

Date and time received: 2/5/2017 3:53:18 PM

## John Cooper

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**From:** PDS comments  
**Sent:** Monday, February 06, 2017 1:35 PM  
**To:** John Cooper  
**Subject:** FW: Miles Sand & Gravel Grip Road Pit

**From:** Joe Prince [mailto:slumpmonkey@gmail.com]  
**Sent:** Monday, February 06, 2017 1:11 PM  
**To:** PDS comments  
**Subject:** Miles Sand & Gravel Grip Road Pit

Greetings,

I believe the proposed Grip Road pit is not in the best interest of those who live on Grip Road and the general vicinity.

While the number of truckloads per day seems relatively minor, there is no edge striping or markers on the outsides of lanes on Grip Road. Skagit County Public Works stated at the time we requested they be installed on the corners going eastbound from Prairie Rd that the lanes were to narrow to be so striped. If this is so, then I am concerned that putting 45-46 trucks per work day up and down that road will result in significant collisions and potential injury to motorists.

Further, there is the bridge across the Samish River near the intersection of Grip Rd and Prairie Rd. Adding significant, sustained traffic of fully loaded trucks is not going to be conducive to the life of that structure. Considering the state of other structures and roadways in the county, it is not clear that this structure will be suitably upgraded before it is ruined and declared deficient.

Finally, there is the intersection of Prairie and Grip Roads. The speed limit on Prairie Rd approaching Grip is now 40 MPH. However, practically speaking, there are vehicles moving very quickly around the corner from westbound Prairie. This has been the cause of countless near misses between vehicles turning left from Grip onto Prairie and those proceeding westbound on Prairie. This will be even greater of a problem when the turning traffic consists of 105,500 lbs of Mack truck and pit run.

At a minimum before this pit is granted permit, the county should mandate developer fees to widen Grip Rd to be suitable for the increased volume of truck traffic, as well as a significant contribution to reconstruction of the Samish River bridge. Finally, a three-way stop should be established at the corner of Prairie Rd and Grip Rd.

Most Respectfully,

Joe Prince  
22047 Grip Rd

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Joe Prince  
(360) 421-1745 (cell)

## John Cooper

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**From:** website  
**Sent:** Tuesday, February 07, 2017 4:35 PM  
**To:** Planning & Development Services  
**Subject:** PDS Comments

Name : Lynn Lambert  
Address : 5474 Parkridge Place  
City : Sedro Woolley  
State : WA  
Zip : 98284  
email : [Lambert.lynn78@gmail.com](mailto:Lambert.lynn78@gmail.com)  
Phone : 360-724-0566

PermitProposal : PL16-0097, P116-0098

Comments : I moved here 12 years ago with the understanding that properties were designated for- what I term -gentleman's farms, and a ride through our neighborhoods justifies that designation. We are not a city, we are not an industrial area, we are a unique collection of beautiful rural neighborhoods.

Although the pit/mine itself will not (allegedly) create noise to affect the surrounding neighborhoods, please consider that the noise and congestion of a constant trail of trucks operating whenever they wish- certainly will.

Is there a guarantee that loose gravel will not effect homes and farms that border the area or cars sharing these roadways? Also, has consideration of roads for recreation during warmer months, (bikes, equines, children, and runners) affected any decision making?

Currently, operators can simply abandon pits without reclaiming the ecological devastation they create. A hole surrounded by cliffs, lacking nutrients, does not reclaim, it negates wildlife and natural vegetation. Therefor, I would like to be assured that land reclamation is well planned and enforced via a bond.

We are only allowed one house per 5 acres, but we cherish the acreage and the quality of life that exists in this area. We pay heavily for the privilege in the form of property maintenance and taxes and don't wish our earnings to extend to maintenance fees for industrial purposes, nor do we wish our property values to crumble with the rock....due to noise, safety issues, and the destruction of our neighborhoods.

From Host Address: 172.76.133.156

Date and time received: 2/7/2017 4:34:57 PM

## John Cooper

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**From:** Lori Anderson on behalf of Planning & Development Services  
**Sent:** Thursday, February 09, 2017 2:18 PM  
**To:** John Cooper  
**Subject:** FW: PDS Comments

From Dept Email

Lori Anderson, Permit Technician  
Skagit County Planning & Development Services  
1800 Continental Place  
Mount Vernon, WA 98273  
360-416-1320  
[loria@co.skagit.wa.us](mailto:loria@co.skagit.wa.us)

[www.skagitcounty.net/planning](http://www.skagitcounty.net/planning)

**From:** [website@co.skagit.wa.us](mailto:website@co.skagit.wa.us) [mailto:[website@co.skagit.wa.us](mailto:website@co.skagit.wa.us)]  
**Sent:** Thursday, February 09, 2017 1:15 PM  
**To:** Planning & Development Services  
**Subject:** PDS Comments

Name : Donna Schoonover  
Address : PO Box 207  
City : Bow  
State : WA  
Zip : 98232  
email : [donnawh@earthlink.net](mailto:donnawh@earthlink.net)  
Phone : 360 724-3064  
PermitProposal : PL16-0097

Comments : I have concerns about the traffic hazards posed by this mining operation. The intersection of Grip and Prairie Roads is already dangerous with limited visibility and speeding. I do not feel a traffic loop activated flashing beacon system will be adequate to prevent crashes there. I am also worried about the travel on Prairie Road through Jarman Prairie where we live. There is a lot of speeding on this straight stretch of road. With so many slower gravel trucks, I am feeling that people are going to be passing them unsafely and tragedy could occur. I am thinking it will be unsafe for us to pull out of our driveway onto Prairie Road for the same reason. Finally, I already have to travel behind gravel trucks on Old Highway 99 and have had several windshields cracked by loose rocks from their trucks. Not only is this an expense, it is also a safety hazard. I hope you will consider these issues and rectify them before permitting this operation.

From Host Address: 24.113.136.26

Date and time received: 2/9/2017 1:12:38 PM

William T. Lynn  
Direct: (253) 620-6416  
E-mail: blynn@gth-law.com

February 7, 2017

John Cooper, LG. LHg  
Senior Natural Resource Planner/Geologist  
Skagit County Planning and Development Services  
1800 Continental Place  
Mount Vernon, WA 98273

RE: Concrete Nor'west - Application for Mining Special Use Permit PL 16-0097

Dear Mr. Cooper:

We are writing on behalf of Concrete Nor'west regarding the above-referenced application. We are requesting that the matter be set for hearing before the Hearing Examiner at the earliest possible date that is convenient for the County, the applicant and its representatives.

As you know, this proposal was the subject of a complete environmental review that included traffic analysis, fish and wildlife site assessment and wetland review among other things. It has also been the subject of extensive public and agency comment. The SEPA process was completed and the matter set for hearing.

Unfortunately, the County failed to give all of the required notice, and so the Hearing Examiner allowed the members of the public present on the initial hearing date to testify and then continued the hearing to a date to be set following additional notice. The matter is now pending before the Hearing Examiner; the only planning staff functions at this point are to give proper notice and set the hearing. Despite the fact that this matter is pending before the Hearing Examiner the staff has continued to receive public comments. That, in and of itself, is not troublesome. The appropriate thing to do is to pass those comments along to the Hearing Examiner as if they had been submitted at the public hearing. Despite the staff's limited role at this point (and the pendency of this matter before the Examiner) the County staff has suggested that it may continue to impose requirements for archeological surveys and traffic analysis. Given that SEPA analysis and determination of non-significance have been completed and that the matter is before the Examiner, this is not a proper procedure. The procedural status at the present time is no different than it would be if these same comments had been made during the hearing. In accordance with normal

Reply to:

Tacoma Office  
1201 Pacific Ave., Suite 2100 (253) 620-6500  
Tacoma, WA 98402 (253) 620-6565 (fax)

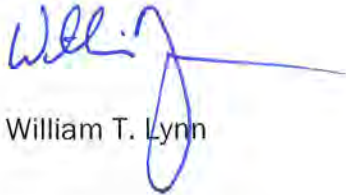
Seattle Office  
600 University, Suite 2100 (206) 676-7500  
Seattle, WA 98101 (206) 676-7575 (fax)

procedures and the Examiner's jurisdiction, the staff can make recommendations on these matters, but the significance of any public comments and the necessity of a response by the applicant are within the jurisdiction of the Examiner.

The applicant fully understands that this project has some controversy associated with it and we will come to the hearing prepared to address all public comments, and potentially to suggest some additional conditions of approval. It is not appropriate for the staff to set up additional procedural hurdles for the applicant between now and time of the public hearing.

We are providing a copy of this letter to the Hearing Examiner. If necessary, we would be happy to set up a pre-hearing conference call with the Examiner, the staff, and the applicant to address the procedure. Otherwise, we look forward to having the hearing set at the earliest available and convenient date.

Very truly yours,



William T. Lynn

WTL:lb

cc: Hearing Examiner  
Concrete Nor'west

## John Cooper

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**From:** Lori Anderson on behalf of Planning & Development Services  
**Sent:** Monday, February 13, 2017 10:38 AM  
**To:** John Cooper  
**Subject:** FW: PDS Comments

From Dept Email

Lori Anderson, Permit Technician  
Skagit County Planning & Development Services  
1800 Continental Place  
Mount Vernon, WA 98273  
360-416-1320  
[loria@co.skagit.wa.us](mailto:loria@co.skagit.wa.us)

[www.skagitcounty.net/planning](http://www.skagitcounty.net/planning)

**From:** [website@co.skagit.wa.us](mailto:website@co.skagit.wa.us) [<mailto:website@co.skagit.wa.us>]  
**Sent:** Sunday, February 12, 2017 2:05 PM  
**To:** Planning & Development Services  
**Subject:** PDS Comments

Name : Renee Kenady  
Address : 5319 Cedar Ridge Place  
City : Sedro Woolley  
State : WA  
Zip : 98284  
email : [rkenady44@gmail.com](mailto:rkenady44@gmail.com)  
Phone : (360) 661-1272  
PermitProposal : Concrete Nor'West Special Use Permit Application PL16-0097  
Comments : Re: Concrete Nor'West Special Use Permit Application PL16-0097

My husband and I bought, developed and built our dream home on 5 acres which is the third parcel from the eastern border of the proposed gravel mine. Again, I would like to emphasize that we did not choose to build our dream home by a gravel site that would create safety issues, possible damage to our water supply, property value drop and noise pollution! I tried to attach several photos of the view from our property but this format wouldn't allow it. To be sitting on our bluff, looking at our beautiful view and experience the constant beeping of trucks as they move around and other noise related to this is unacceptable. Please understand that this is about more than income for Lisa, Inc., Miles Sand and Gravel and Concrete Nor'west. It is about the quality and investments of many lives.

I will bring photos to the hearing if I cannot get them to you in this manner.

From Host Address: 50.34.100.190

Date and time received: 2/12/2017 2:03:32 PM

February 22, 2017

**VIA REGULAR U.S. MAIL AND E-MAIL**

Skagit County Hearing Examiner  
c/o Betta Spinelli, Coordinator  
1800 Continental Place  
Mount Vernon, WA 98273  
**bettas@co.skagit.wa.us**

John Cooper  
Skagit County Planning and Development  
1800 Continental Place  
Mount Vernon, WA 98273  
**johnc@co.skagit.wa.us**

**RE: NOTICE OF UNAVAILABILITY**  
SPECIAL USE PERMIT APPLICATION NO. PL 16-0097  
APPLICANT: CONCRETE NOR'WEST

Dear Ms. Spinelli and Mr. Cooper:

Our firm represents a group of concerned citizen neighbors with regard to the above-referenced permit application. Please take notice that I will not be unavailable on the following dates:

March 1, 8, 10, 15, 22-25, 31

April 1-7, 12, 21, 26

May 3, 7-10, 17-19, 24-25

I respectfully request that no hearings or any and all activity requiring a response be filed within these timeframes.

Sincerely,

CHMELIK SITKIN & DAVIS P.S.

  
Jonathan K. Sitkin

JKS/rsv  
cc: Clients



## John Cooper

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**From:** PDS comments  
**Sent:** Friday, February 24, 2017 7:42 AM  
**To:** John Cooper  
**Subject:** FW: Concrete Nor'West Special Use Permit Application PL16-0097  
**Attachments:** Rainbow.JPG; valley view.jpg; Winter scene.jpg

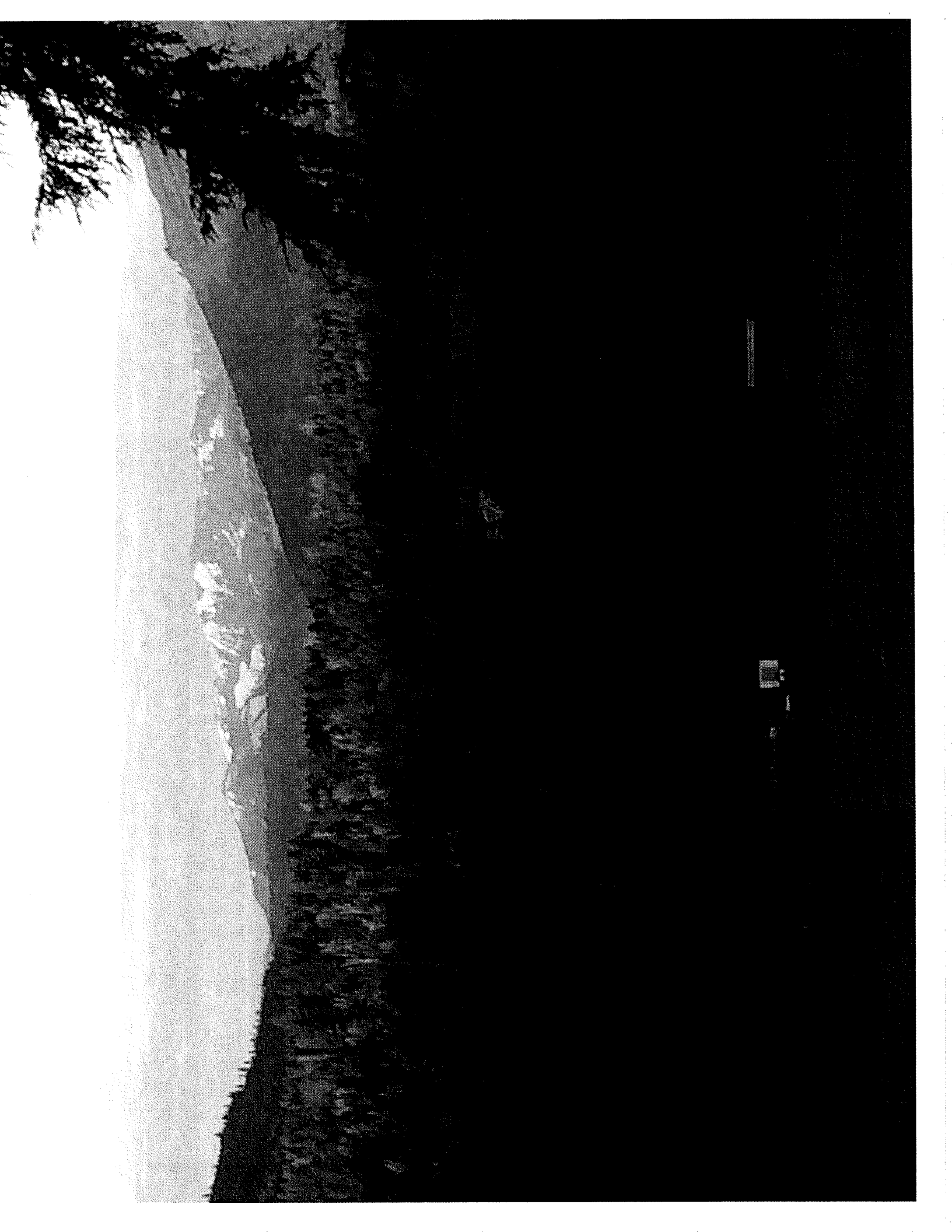
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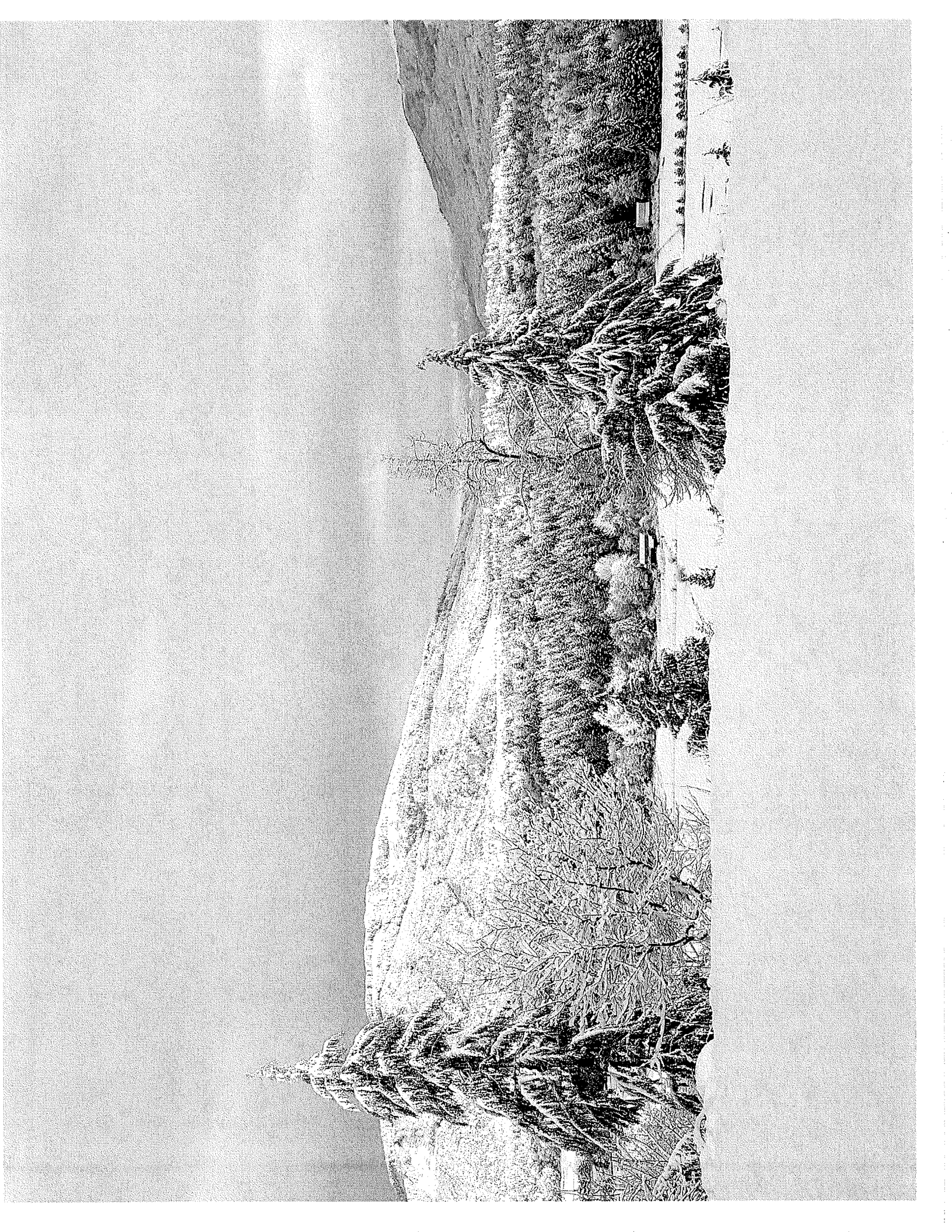
**From:** Renee Kenady [<mailto:rkenady44@gmail.com>]  
**Sent:** Friday, February 24, 2017 7:28 AM  
**To:** PDS comments  
**Subject:** Concrete Nor'West Special Use Permit Application PL16-0097

Attached are photos I referred to in my comment posted on the comment section of the county site. The comment is below as well.

My husband and I bought, developed and built our dream home on 5 acres which is the third parcel from the eastern border of the proposed gravel mine. Again, I would like to emphasize that we did not choose to build our dream home by a gravel site that would create safety issues, possible damage to our water supply, property value drop and noise pollution! I tried to attach several photos of the view from our property but this format wouldn't allow it. To be sitting on our bluff, looking at our beautiful view and experience the constant beeping of trucks as they move around and other noise related to this is unacceptable. Please understand that this is about more than income for Lisa, Inc., Miles Sand and Gravel and Concrete Nor'west. It is about the quality and investments of many lives. I will bring photos to the hearing if I cannot get them to you in this manner.









RECEIVED  
MAR 06 2017  
SKAGIT COUNTY  
PDS

Jonathan K. Sitkin  
ATTORNEY  
eljsitkin@chmelik.com

March 2, 2017

**VIA REGULAR U.S. MAIL AND E-MAIL**

johnc@co.skagit.wa.us

John Cooper  
Skagit County Planning and Development  
1800 Continental Place  
Mount Vernon, WA 98273

**RE: SPECIAL USE PERMIT APPLICATION NO. PL 16-0097**  
**PROPOSED PROJECT: CONCRETE NOR'WEST GRAVEL MINE**  
**APPLICANT: CONCRETE NOR'WEST**

Dear Mr. Cooper:

As I have mentioned in my previous correspondence to you, we represent a group of citizens who live near the above-referenced proposed project. Our clients have a number of concerns with both the project and the direct, indirect, and cumulative significant impacts of the project, the lack of consistency of the project with the comprehensive plan policy and goals, and the errors in the County processing of the application, which have effectively denied our clients' ability to meaningfully participate in the SEPA process which resulted in a lack of disclosure of the project impacts and potential mitigation contrary to SEPA and the County's SEPA rules. This letter is intended to be the first in a series of installments outlining our concerns and objections. One of the reasons for the installment responses is due to the County's installment responses to our public records request. We have just recently received the 2<sup>nd</sup> and 3<sup>rd</sup> installment responses, but we have not been advised if these are the final installments or if additional responses are anticipated.

I have attempted to reach you by telephone a few times over the past week or so to discuss the project and our clients' concerns. I understand that you were out of the office on vacation during part of this time. Previously, I sent a letter to your office asking for notice of any matters that arise with regard to the project. Earlier this week, I sent to your office and the Hearing Examiner's office a Notice of Unavailability to assure that any pre-hearing conferences, scheduling of matters such as pre-hearing discovery, briefing, and the hearing are coordinated with my schedule. At the conclusion of this letter, you will find an invitation for County staff and the applicant to attend a community meeting regarding the project. We will arrange a suitable location and a facilitator for the meeting to ensure there's a constructive dialogue so that you and the applicant can hear the community's concerns and address potential solutions.

We also request that you outline what anticipated actions by the County are forthcoming, such as the timing for deciding whether to withdraw the MDNS, when a new threshold determination would be made, when a hearing schedule will be proposed, and other key decision points. We request that you keep our firm advised in advance of all such actions.

We ask that you forward to my attention all communication from the applicant or any agency or tribe, as well as all documents received by the County provided by the applicant or their representatives in response to those other agencies or tribes.

### **DEFECTIVE SEPA PROCESS**

For the initial reasons outlined herein, the County is requested to immediately withdraw the SEPA Threshold Determination of a Mitigated Non-Significance due to the lack of compliance with notice requirements, the effective violation of the fundamental disclosure and notice requirements of SEPA, and the resulting violation of our clients' procedural due process rights. When properly noticed, such a comment hearing assures that the County has provided the public with a reasonable and meaningful opportunity to provide comments regarding the project and the SEPA Checklist when conducting its threshold determination under SEPA. When proper notice is not provided, then the public is denied this opportunity.

### **DEFECTIVE NOTICE UNDER COUNTY CODE AND SEPA RULES**

As you know, the original Notice of Application was issued in error in March 2016, due to the failure to provide mail of the notice to the proper parties.<sup>1</sup> The Skagit County Code requires that the Notice of Application be sent to the property owners surrounding the boundaries of the adjacent properties owned by the applicant—but it was not. The failure to mail the Notice of Application to the correct parties was a material nondisclosure and a failure to comply with disclosure requirements. This resulted in the cancellation of the public hearing scheduled for last fall and the re-issuance of the Notice of Application in December of 2016. However, SEPA, the County Code, and procedural due process requirements require that the Notice of Application be properly issued in advance of the SEPA determination and SEPA comment period. Proper issuance of the Notice of Application is fundamental to the required SEPA notice process. SEPA is fundamentally a public notice and public disclosure statute.<sup>2</sup>

The defective Notice of Application in March of 2016 infected the SEPA threshold determination process and the SEPA MDNS itself. The defective Notice of Application resulted in a denial of an opportunity to timely comment on the SEPA Checklist, depriving our clients of their rights and

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<sup>1</sup> SCC 14.06.150(2) requires that a Notice of Application be mailed to all physical addresses and all owners of real property within 300 feet of any portion of the boundaries of such adjacent properties owned by the applicant. See SCC 14.06.150(2)(d)(iii). The County's Notice of Application issued in March of 2016 did not comply with this requirement.

<sup>2</sup> "[T]he procedural provisions of SEPA constitute an environmental full disclosure law." *Norway Hill Pres. & Prot. Ass'n v. King Cty Council*, 87 Wn.2d 267, 272, 552 P.2d 674, 677 (1976). "The act's procedures promote the policy of fully informed decision making by government bodies when undertaking 'major actions significantly affecting the quality of the environment.'" *Id.* (quoting RCW 43.21C.010; RCW 43.21C.030).

prejudicing our clients. Because the notice was defective, our clients were denied their ability to participate in the SEPA process. This is significant, substantial, and sufficient prejudice and harm to our clients that if the County were not to withdraw the MDNS immediately, we would anticipate that the Hearing Examiner or Court would require that a permit and a MDNS be invalidated with a requirement that the County re-commence the SEPA process.

As the Court of Appeals noted, “[o]ne purpose of specific statutory requirements for public notice of an impending land use decision is to ensure that the decision makers receive enough information from those who may be affected by the action to make an intelligent decision” and “defective notice undermines the information-gathering process.” *Prosser Hill Coal. v. Cty. of Spokane*, 176 Wn. App. 280, 291, 309 P.3d 1202, 1208 (2013).

The lead agency is required to consider the timely comments from the general public regarding a threshold determination. WAC 197-11-340(2)(c) and (f).<sup>3</sup> Recognizing the importance of the Notice of Application and the ability of the public to meaningfully comment on the SEPA Checklist and threshold determination, Skagit County has integrated the SEPA review process with the Notice of Application.<sup>4</sup>

The SEPA Rules (WAC 197-11) contemplate a situation where DNS was issued as a result of a misrepresentation or a lack of material disclosure, as is the case here, due to the failure to properly issue the Notice of Application. In such instances, the lead agency has no choice but to withdraw the DNS. And, in this case, the County or its consultant must prepare the SEPA Checklist at the expense of the applicant. WAC 197-11-340(3)(a) provides, in part, (emphasis added):

The lead agency shall withdraw a DNS if:

...  
(iii) The DNS was procured by misrepresentation or lack of material disclosure; if such DNS resulted from the actions of an applicant, **any subsequent environmental checklist on the proposal shall be prepared directly by the lead agency or its consultant at the expense of the applicant.**

State agencies have also complained to the County regarding the lack of proper notice of the application and of the SEPA threshold determination. For example, the Department of Archaeology and Historic Preservation (“DAHP”) informed the County that “[w]e were not notified of the project in order to provide timely comments. One of our tribal partners notified us and we share his concerns that cultural resources may be damaged by this project.”

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<sup>3</sup> SCC 16.12.070 adopts WAC 197-11-340.

<sup>4</sup> See SCC 14.06.070(2)(c). The Skagit County Code allows a SEPA threshold determination notice to be issued with the Notice of Application, provided that a determination of non-significance may not be issued until after the expiration of the comment period. The County’s SEPA ordinance requires that if a SEPA document is issued with the Notice of Application, the public notice requirements for the Notice of Application suffice to meet the SEPA notice requirements. SCC 16.12.160 (2)(c). See, also, SCC 16.12.160(3).

Due to the lack of proper disclosure of the adjacent property owners and state agencies, and potentially others, as required by Skagit County Code, Skagit County is obligated to withdraw the MDNS.

### **MATERIAL DISCREPANCIES IN THE APPLICATION**

In addition to the above procedural defects in the SEPA process, there are material discrepancies regarding the project description and its impact between the special use permit application, the SEPA Checklist prepared by the applicant, and other material submitted regarding the application. These discrepancies are so significant that one cannot discern what is proposed, other than it is a gravel mine at a particular location. The following is a summary of these discrepancies:

- Traffic Figures: A May 2015 traffic study presumed 25,000 tons of gravel would be removed from the mine each year, and used this figure to calculate that there would be an average of 6 truck trips per day. The same traffic study was apparently reissued in February 2016 with new figures—200,000 tons of gravel to be removed annually, and 46 truck trips per day—but no new conclusions. Both traffic studies were identified by the author as “preliminary” and stated that “additional traffic analysis will be required,” which was never undertaken. The applicant’s Special Use Permit Application, which was filed with the County on March 7, 2016, refers only to the earlier May 2015 study. However, the applicant’s SEPA Checklist refers to the later February 2016 study. The Staff Report issued by Skagit County Planning & Development doesn’t specify which study it relies upon but uses the later February 2016 figures (and contemplates a theoretical maximum of 720 truck trips per day).
- Hours of Operation: The Special Use Permit Application proposes that the mine’s hours of operation will be “unlimited.” The applicant then suggests that “normal” hours of operation would be 7:00 a.m. to 5:00 p.m., Monday through Friday. Elsewhere in the application, the applicant suggests these “normal” hours would actually be Monday through Saturday. An email from the applicant to the County explains that the mine would operate “in general” from 6:00 a.m. to 6:00 p.m., Monday through Saturday, but the applicant reserved the right to work through the night “without restriction.” The Staff Report lists the hours of operation as “Monday through Saturday, dawn to dusk,” with expanded hours depending on “market conditions” and “seasonal demands.”
- Hazardous Substances: The Special Use Permit Application states that hazardous substances will be stored on site, including a 2,000-gallon diesel fuel tank. The Staff Report contradicts the application, stating that “no hazardous materials or fuels are proposed to be stored on site.” The Staff Report, then, contradicts *itself*, stating that “relatively minor” amounts of fuel will be stored on site.
- Depth of the Mine: The SEPA Checklist and Staff Report both state a proposed depth of 154 to 163 feet above mean sea level (“msl”), which is purportedly “ten feet above the water table.” However, the hydrogeological site assessment performed by Associated



Earth Sciences states that the water table ranges from 145 to 155 feet above msl. If the applicant mines to a depth of 154 feet msl, as proposed, the mine could be below the water table, not ten feet above it.

- Amount of Gravel to be Removed: The SEPA Checklist, Special Use Permit Application, and Staff Report all say 4.28 million cubic yards of gravel are proposed to be excavated over the life of the mine. But, the traffic studies relied upon figures of 25,000 tons (earlier May 2015 study) and 200,000 tons (later February 2016 study) to be removed annually. There is no explanation of how those figures were calculated in reference to the cubic yards of excavation, or why the figure was apparently off by a factor of ten in the earlier study.
- On Site Processing: The fish and wildlife site assessment conducted by Graham-Bunting Associates states that “[n]o processing or industrial activity will occur on site.” However, the hydrogeological report states that certain processing—including stockpiling and dry screening—will be performed on site. The MDNS and the Staff Report both state that no on site processing is proposed “at this time,” suggesting that on site processing is contemplated in the future.
- Noise: In the Special Use Permit Application, the applicant cites unspecified personal experience for the assertion that there will be no effect from noise, vibration, or dust. The Staff Report gives three contradictory assessments of noise. First, it states that “[t]he applicant has indicated that the proposal would not result in noise or vibration impact beyond the site boundaries.” The Staff Report then states that “[t]he applicant has indicated the noise at receiving properties is expected to be relatively low” and identifies certain noise mitigation measures. Elsewhere, the Staff Report states that “[p]otential impacts from noise, dust and traffic to surrounding, existing or potential dwelling units from the proposed operation are possible and exceed those currently experienced in the area.”

The inconsistent project descriptions and analysis identified above is effectively material nondisclosure and misrepresentation requiring withdrawal of the MDNS. See WAC 197-11-340(3)(a)(iii), *discussed above*. The applicant has not disclosed an accurate, consistent project description capable of environmental review. The inconsistencies are significant and functionally a material misrepresentation of the project because the actual project and its potential impacts cannot be readily discerned. This misrepresentation undermines and defeats the public’s ability to review and comment upon the SEPA environmental review process. Because the MDNS was procured due to such misrepresentation resulting from inconsistent project information, Skagit County is obligated to withdraw the MDNS and require the applicant to provide a specific and detailed project description in one definitive document.

WAC 197-11-340, cited in part above, also requires that the lead agency shall withdraw an MDNS where there are substantial changes to the proposal, or significant new information indicating probable significant adverse impact. See WAC 197-11-340 (3)(a)(ii). The application itself is sufficiently unclear and inconsistent with other submissions by the applicant that there are either substantial changes to the proposal since the SEPA Checklist was submitted or the

more recent submissions that expand the scope and potential impact of the project requiring withdrawal of the MDNS by Skagit County.

### **AGENCY COMMENTS**

We also note from our initial cursory review of the County's installments provided in response to our records request, that an archeological review has been required since the SEPA MDNS was issued, and the Department of Ecology has questioned the moderate use intensity evaluation of the wetland by the applicant's consultant. These two comments alone warrant and require withdrawal of the MDNS by the County under WAC 197-11-340(3)(a). Indeed, the Skagit County Code encourages withdrawal when a mitigation measure is not included in an MDNS, such as the requirement to conduct an archeological study. See SCC 16.12.110(8). In addition, as to the wetland report, initially it does not appear that a wetland delineation and assessment occurred. Rather, the applicant sought the bare minimum reconnaissance review which, not surprisingly, limits the scope and detail review that the consultant could perform, and results in material questions as to whether the assessment was accurate as noted by the Department of Ecology. The County should require a full wetland delineation and assessment as part of the full disclosure associated with a SEPA review.

### **WAC 197-11-350(2)**

It is noted that the MDNS indicates that it was issued pursuant to WAC 197-11-350(2). This provision of the SEPA Rules allows an applicant to seek early notice of whether a Determination of Significance is likely, and that the applicant may change the project and submit a revised SEPA Checklist to bring the project below the level of significance. There is no indication in the MDNS that a revised SEPA Checklist was submitted. Perhaps when we have a complete record from Skagit County we will receive a copy of the revised SEPA Checklist. If not, then this is a procedural error in the environmental review process and/or the issuance of the MDNS itself necessitating withdrawal of the MDNS and requiring a revised SEPA Checklist to be submitted, or re-issuing the MDNS under a correct provision of the SEPA Rules.

The forgoing are our initial comments on the SEPA procedural errors and defects. We anticipate further substantive comments on the application and the SEPA process once we have received the complete record and any additional reports submitted by the applicant.

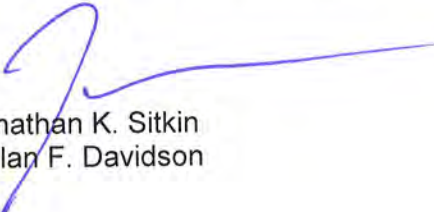
### **INVITATION**

To date, neither the applicant nor the County has directly and meaningfully engaged the adjacent property owners regarding the proposed project. We are arranging for a community/neighborhood meeting where the County Planning Staff, Public Works staff, and the applicant will be invited to discuss the neighborhood's concern with the project. We are working to retain an independent facilitator for such a meeting. The time and place for such a meeting is forthcoming. I am happy to speak with Tim Holloran, Dale Pernula, or others, as necessary to ensure the County's involvement.

I look forward to an opportunity to discuss these concerns with you.

Sincerely,

CHMELIK SITKIN & DAVIS P.S.



Jonathan K. Sitkin  
Nolan F. Davidson

JKS/NFD/rsv  
cc: Clients