



# 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

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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)

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

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

## Appellant

<b>Standing to appeal</b>	<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			
<b>Name</b>	Martha Bray, et al			
<b>Address</b>	6368 Erwin Lane			
<b>City, State</b>	Sedro Woolley, WA	<b>Zip</b>	98284	<b>Phone</b> (360) 856-0644
<b>Email</b>	mbray1107@gmail.com	<b>Signature</b>		

## Attorney or Representative None

<b>Name</b>	Kyle Loring, Loring Advising PLLC			
<b>Address</b>	P.O. Box 3356			
<b>City, State</b>	Friday Harbor, WA	<b>Zip</b>	98250	<b>Phone</b> (360) 622-8060
<b>Email</b>	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  
21710 Prairie Rd.  
19 Sedro-Woolley, WA 98284

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

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

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

22 Josie Hedgpeth  
5809 Brookings Rd.  
23 Sedro-Woolley, WA 98284

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

24 Wallace Groda  
25 6386 Lillian Ln.  
26 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  
2 of individual choice;

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

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

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

### 10 **V. DESIRED OUTCOME/RELIEF REQUESTED**

11 Appellants respectfully request the following relief:

12 5.1. An Order reversing the MDNS and requiring that:

13 5.1.1. PDS withdraw the MDNS;

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

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

**BEFORE THE SKAGIT COUNTY HEARING EXAMINER**

In the Matter of the Appeal of	)	
	)	
<b>MILES SAND AND GRAVEL</b>	)	<b>ORDER DENYING APPEAL</b>
<b>AND CONCRETE NOR'WEST,</b>	)	
Appellant,	)	
	)	PL21-0348
v.	)	
	)	
<b>SKAGIT COUNTY,</b>	)	
	)	
Respondent.	)	
_____	)	

This matter has proceeded through the submission of written briefs per Order of the Hearing Examiner. The Appellant, is the Applicant for a Special Use Permit. The Applicant was represented by William T. Lynn and Reuben Schutz, Attorneys at Law. The County was represented by Jason D'Avignon, Deputy Prosecuting Attorney.

**ACTION APPEALED**

The appeal, dated June 24, 2021, concerns a determination by the County of the need for Applicant to complete and submit Critical Areas Standard Review in relation to the operation of a proposed gravel mine. The County's determination, dated June 17, 2021, stated:

Critical Areas Standard Review has not been completed as to the whole of the proposed mine's operations. In particular, the use of the haul road to transport minerals from the proposed mine.

**FACTUAL SETTING**

The Applicant seeks a mining Special Use Permit to develop a gravel mine on 68 acres north of Grip Road and south of the Samish River.

Gravel will be transported from the mine site over a haul road that traverses forest land, before connecting to Grip Road. The haul road is a private road currently used by the Applicant in connection with permitted forest practice activities. The mine site is within the County's Mineral Resources Overlay on Rural Resource-Natural Resource Land

## **PROCEDURAL BACKGROUND**

The Special Use Permit application was filed on March 7, 2016 (PL16-00097/98). On March 22, 2016, the County deemed the application complete for continued processing.

Two years later, on April 5, 2018, the County denied the application on the basis that it was incomplete. The Applicant appealed. After a conference, the Examiner continued the matter to accommodate settlement discussions.

The Applicant submitted additional materials but, on February 22, 2019, the County sent a letter that it still considered the application incomplete. Thereafter, the Applicant sought a written specification of the items of information the County desired and the Examiner ordered that such a specification be provided.

The County did not comply with this order and ultimately moved for Summary Judgment in Applicant's appeal of the permit denial. On October 17, 2019, the Examiner denied the motion and granted judgment to the Applicant, deeming the application to be complete and calling for a new Staff Report, followed by a hearing on the merits in due course. No new Staff Report has been issued.

Now, nearly another two years later, this new appeal has been filed in response to the County's recent determination that the Applicant must now complete and submit Critical Areas Standard review.

In the interim, on April 15, 2021, the County withdrew its initial Mitigated Determination of Non-Significance. (MDNS) and issued a new one. The new MDNS elicited a significant amount of public comment.

Thereafter, on May 11, 2021, the County withdrew its second MDNS. That County action was not appealed. No new threshold decision under SEPA has yet been made.

The County's determination of June 17, 2021, calling for submission of Critical Areas Standard Review, was timely appealed by the Applicant and, on July 6, 2021, the Hearing Examiner entered a briefing schedule on the matter.

## **POSITIONS OF PARTIES**

The Appellant urges that (1) the parties are bound by the Hearing Examiner's October 17, 2019 ruling that the application is complete, and that (2) in any event, critical area's review is not required in this situation.

The County argues that in the absence of a SEPA threshold determination the application cannot be heard on the merits and that the haul road is subject to the Critical Areas Ordinance

## DISCUSSION

### Finality of the Examiner's Completeness Order

The Examiner's prior Order deeming the application complete was not appealed. It became final.

The Applicant's responses to the County's more recent requests for information do not necessarily show an intent to waive completeness. As relevant here, this is particularly true as to information sought that is unrelated to critical areas. Therefore, no waiver can be found.

The Washington Court has strongly endorsed the concept of finality in dispute resolution. Normally this means that a final decision that is not timely appealed cannot later be attacked and must be given full affect. *Wenatchee Sportsmen v. Chelan County*, 141 Wn.2d 169, 4P.3d 123 (2000), *Habitat Watch v. Skagit County*, 155 Wn.2d 397, 120 P.3d 56(2006).

However, the County's recent withdrawal of the MDNS puts this case on a different footing. That action also was not appealed and therefore, must itself be viewed as final. This means that SEPA compliance has not been achieved.

In circumstances where an application is still pending, the finality doctrine cannot operate to render compliance with the procedural requirements of SEPA unnecessary. In the posture of the case at present, a threshold determination is needed to determine whether the preparation of an environmental impact statement is required.

The result is that what was a complete application has been rendered incomplete.

### Applicability of the Critical Areas Ordinance to the Existing Logging Road

The need to comply with SEPA, makes it necessary to address whether the planned haul road is subject to the Critical Areas Ordinance.

The Applicant urges that this issue is governed by the ordinance itself. Critical areas review is required only where a "development activity" is planned or where an activity may disturb the soil, water, or existing vegetation. SCC 14.24.060. The Applicant asserts that the proposed road use is not a "development," as that term is defined by the County Code.

"Development," as defined by SCC 14.04.020, does not include site disturbance for internal logging roads. The Code's language in context refers to disturbance contemplated by building a logging road. The activity contemplated here is about using a logging road for a completely different purpose. It is a form of site disturbance. Therefore, the haul road use for the gravel mine does not fall outside the definition of "development."

Moreover, the new use of the road is subject to critical areas review because it presents a potential to disturb the soil, water or existing vegetation along its route. Evaluating a project for that potential is the whole point of requiring critical areas review.

Additionally, the Applicant argues that the haul road is exempt from critical areas review because normal maintenance of private roads is listed as exempt under SCC 14.24.070(3). It is not road maintenance that is the focus of the County's order. The maintenance exemption has nothing to do with how new use of the road for gravel hauling may impair functions and values of critical areas or their buffers.

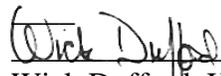
The goals, policies and purposes of the Critical Areas Ordinance are explicitly considered policies of the County under SEPA. SCC 14.24.060(3). SEPA is not limited in its reach by issues of governmental jurisdiction. The point of review under SEPA is to determine whether

significant adverse environmental impacts are likely. Therefore, SEPA compliance, which is still undetermined for this application, necessarily calls for the completion and submission of the critical areas review called for by the County.

**ORDER**

The appeal (PL21-0348) is denied. The County's Determination of need to complete Critical Areas Standard Review is affirmed.

**SO ORDERED**, this 30<sup>th</sup> day of August, 2021.

  
\_\_\_\_\_  
Wick Dufford, Hearing Examiner

Transmitted to the Parties and Counsel, this 30<sup>th</sup>, day of August. 2021.



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

File #:
Received by:

## 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	PL16-0097/98	Appeal Fee	\$	PDS will calculate
Date of Appealed Decision or Permit	June 17, 2021	Publication Fee	\$	PDS will calculate

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

## Appellant

Standing to appeal	<input checked="" type="checkbox"/> Permit applicant <input type="checkbox"/> Party of Record <input type="checkbox"/> Party subject to code enforcement order <input type="checkbox"/> Other			
Name	Miles Sand & Gravel Company and Concrete Nor'west			
Address	PO Box 280			
City, State	Mt Vernon	Zip	WA	Phone
Email	Dan.Cox@miles.rocks	Signature		

## Attorney or Representative None

Name	William T. Lynn and Reuben Schutz			
Address	1201 Pacific Avenue, Suite 2100			
City, State	Tacoma	Zip	WA	Phone 253-620-6500
Email	blynn@gth-law.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? **See Attached Letter, paragraph (b)**
  2. How are you aggrieved by the decision you are appealing? **See Attached Exhibit B**
  3. What are the specific reasons you believe the decision is wrong? **See Attached Exhibit B**  
e.g. erroneous procedures, error in law, error in judgment, discovery of new evidence
  4. Describe any new evidence. **See Attached Exhibit B**
  5. List relevant sections of Skagit County Code. **See Attached Letter and Exhibit B**
  6. Describe your desired outcome or changes to the decision. **See Attached Letter, paragraph (d)**
- For a request for **reconsideration** of a Hearing Examiner decision, attach a statement identifying the specific errors alleged.

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

June 24, 2021

Skagit County Hearing Examiner  
1800 Continental Place  
Mount Vernon, WA 98273

RE: PL16-0097/98 Determination of Need to Complete Standard Areas Review (Dated June 17, 2021)

This letter shall serve as the Appeal by Miles Sand & Gravel Company and Concrete Nor'west of the Skagit County Planning and Development Services Department's June 17, 2021 Decision to require additional Critical Area review. A copy of the Decision appealed from is attached.

This Appeal is filed under Skagit County Code (SCC) 14.06.110 and SCC 14.06.160. The following statements are set forth to meet the requirements of SCC 14.06.110(8)(a-e)

a) The Decision Being Appealed.

The Decision being appealed is the letter dated June 17, 2021, a copy of which is attached as Exhibit A.

b) The Name and Address of the Appellant and His Interest(s) in the Matter.

The Appellant is Miles Sand & Gravel Company and Concrete Nor'west, c/o Dan Cox, P.O. Box 280, Mt. Vernon, Washington 98273. The Appellant's Attorneys are William T. Lynn and Reuben Schutz, Gordon Thomas Honeywell, 1201 Pacific Avenue, Suite 2100, Tacoma, Washington 98402. Appellant has standing in this matter because it is the owner of the property that is the subject of the application and is the applicant for the permit at issue.

c) The specific reasons why the appellant believes the decision to be wrong.

See attached Exhibit B.

Reply to:

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

Seattle Office  
520 Pike St, Suite 2350 (206) 676-7500  
Seattle, WA 98101 (206) 676-7575 (fax)

d) Desired outcome or changes to the decision.

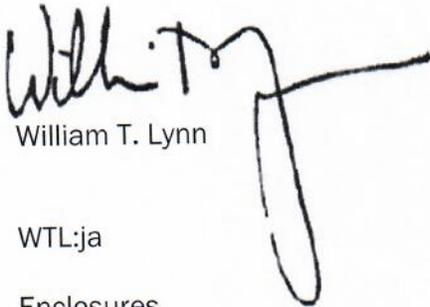
The appellant requests that the decision be reversed and the application be again deemed complete and processed.

e) Any Skagit County Code Section(s) the appellant deems relevant.

Relevant Code Sections are included on Exhibit B. In general, this is based on SCC Ch. 14.06 which implements RCW Ch. 36.70B.

We submit this appeal with a filing fee in the amount of \$1,080.00. If anything further is necessary to perfect this appeal please notify me immediately.

Very truly yours,



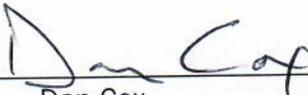
William T. Lynn

WTL:ja

Enclosures  
cc: Client

Approved this 24 day of June, 2021.

Miles Sand & Gravel Company  
(Concrete Nor'west)

By:  \_\_\_\_\_  
Dan Cox

# EXHIBIT A



## SKAGIT COUNTY PLANNING & DEVELOPMENT SERVICES

Mr. Dan Cox  
PO Box 280  
Mount Vernon, WA 98273

June 17, 2021

RE: PL16-0097/98 Determination of need to complete Standard Critical Areas Review

Dear Mr. Cox,

Please accept this letter as formal notification that pursuant to SCC 14.24.080 your project PL16-0097/98 requires Critical Areas Standard Review. This is a Type I decision that is appealable pursuant to SCC 14.06.170.

Critical Areas Standard Review has not been completed as to the whole of the proposed mine's operations. In particular, the use of the haul road to transport minerals from the proposed mine. As this portion of the mine operations constitutes a "land use activity that can impair the functions and values of critical areas or their buffers" critical areas review is required. SCC 14.24.060.

The County has completed a critical areas site visit as part of the standard project review and determined the likelihood of the presence of steep slopes, wetlands within 300 feet, and stream areas within 200 feet of the proposal. Please see the attached map for more detail on the approximate locations of these potential critical areas. As a result, a site assessment must be completed by a qualified professional and approved by County staff prior to completing review of your application.

The Skagit County Critical Areas Ordinance, chapter 14.24 SCC, requires that you retain a qualified consultant to create a plan that assesses the potential impacts of your proposal on any nearby critical areas. If you are unable to avoid impacts to any critical area and/or buffer, your consultant will need to design a mitigation plan.

Per SCC 14.06.105, you have 120 days to submit the information requested or your application will expire. The 120 days ends on October 15, 2021.

***Please note: This review is only to determine compliance with SCC 14.24. Approval of this proposal does not constitute approval under SCC 14.26, the Shoreline Master Program, SCC 14.16, Skagit County Zoning, or any other applicable regulations.***

If you have any questions, please feel free to contact our office.

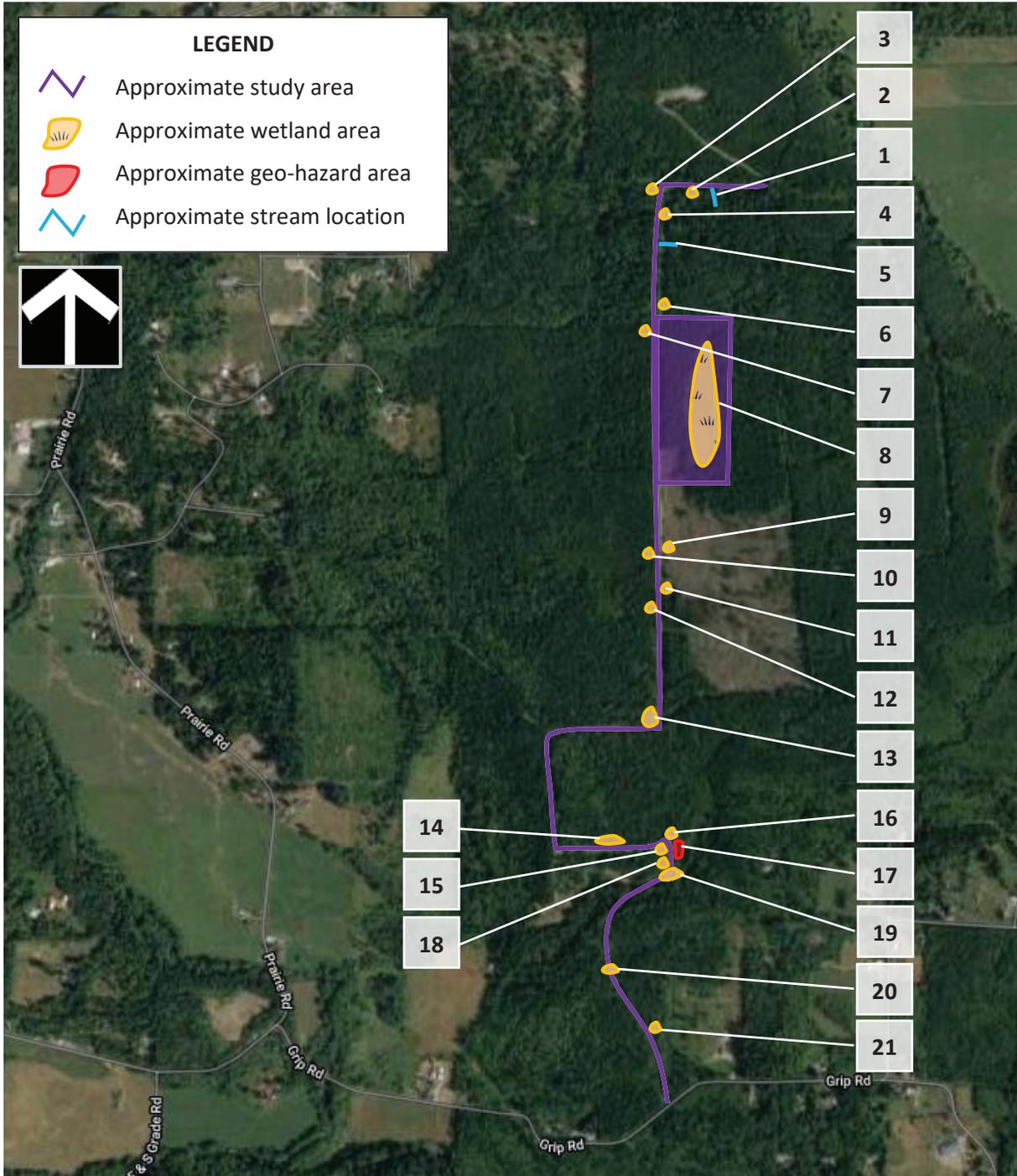
Sincerely,

Hal Hart, AICP  
Director

### Critical Areas Reconnaissance Sketch

Location: Skagit County, WA  
 Parcel Number: P35704 (road frontage)  
 Site Visit Date: June 4, 2021

Prepared for: Hal Hart, Michael Cerbone  
 TWC Ref. No.: 210231.4



**Note:** Field sketch only. Features depicted are approximate and not to scale. Portions of the site located outside of the approximate study area have not been screened for critical areas; additional regulated features may be present.

# EXHIBIT B

## EXHIBIT B TO APPEAL

This appeal is based upon the following assignment of errors.

### 1. THE PARTIES ARE BOUND BY THE HEARING EXAMINER'S OCTOBER 17, 2019 RULING

Under the County's code, the County is required to make a determination as to the completeness of a permit application, and for applications found to be complete the County must issue a determination of completeness.<sup>1</sup> A determination of completeness does not preclude the County from requesting additional information under certain circumstances.<sup>2</sup> In this case though the County's authority to request additional study and review related to Miles Sand & Gravel Company's (Miles') complete special use permit (SUP) application, including the use of the logging road, ended when the Hearing Examiner ruled that the County had all the information it needed.

The County deemed Miles' SUP application complete on March 22, 2016. Nearly two years later on, April 5, 2018, after a lengthy comment period and numerous submittals including new reports, the County denied the application on the basis that it was incomplete. On April 12, 2018, Miles filed an appeal in response to the County's denial determination.

In the course of that appeal, the Hearing Examiner ordered the County to provide a written statement of the specific information and items it claimed were deficient. The County did not comply with that order. Instead, it filed a motion for summary judgment to dismiss the appeal.

On October 17, 2019, the Hearing Examiner issued a decision that, among other things stated:

The overwhelming conviction derived from the record is of an Applicant attempting in every way possible to work with the County to resolve what is essentially an argument about process.

The Examiner is convinced that the Appellant has done what it can to resolve the County's perceived informational gap. The County has not identified any current shortcomings in the quantum of information presented. ***The Examiner concludes that the case should move forward, with the application being evaluated on the basis of the submissions made to date.***

.... The Application is deemed complete. The County shall prepare a new Staff Report based on the application information presently at hand. Thereafter, a

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<sup>1</sup> Skagit County Code (SCC) 14.06.100(3).

<sup>2</sup> SCC 14.06.100(5), .105.

hearing on the merits shall be scheduled in the ordinary course by County Staff.

Thus, the Examiner ruled that the application was complete and ready for final processing *in October of 2019*. This includes issues relating to the use of the private logging road for the following reasons:

- A. Even prior to Miles' submittal of its complete SUP application, the County was aware that the application review would cover Parcel Nos. P125644, P125645, and P50155 (the parcels on which mining would occur), and that the site will access onto Grip Road from "an existing private forest road...." It was clear to all at that time that the private logging road, outside of the special use permit parcels, was the planned access to the proposal.
- B. Miles provided the County with an as-built survey of the private logging road on September 17, 2018. This was followed by a field meeting on December 4, 2018, between Miles' representatives and the County. The only potential critical areas issue that was raised at that time had to do with a potential widening of a short bridge crossing. This widening was ultimately deemed unnecessary by the County and will not occur as part of the proposal.
- C. In February 2019, during the Hearing Examiner appeal process, Miles through its attorney sought written specification of all information, review, and studies that the County claimed it needed. This specifically included information as to the use of the private logging road. As discussed, the Examiner ordered the County to provide such written specification and the County did not do so.
- D. The Hearing Examiner – having reviewed the County's letter denying the application and Miles' request for written specification and having recognized the County's failure to provide any specification – determined that the "County has not identified any current shortcomings in the quantum of information presented" and ordered the County to process the application as is.

No appeal was taken by any party of the Hearing Examiner's decision.<sup>3</sup>

Over twenty years ago, in *Wenatchee Sportsmen*, the Washington Supreme Court enunciated the rule that, with the enactment of the Land Use Petition Act (LUPA), if a final land use decision is not timely appealed, it becomes immune from attack and must be given full effect.<sup>4</sup> Since that time, the Court has repeatedly affirmed and reinforced this rule.<sup>5</sup>

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<sup>3</sup> Under the County's Code, the decision of the Hearing Examiner is appealable to the Board of County Commissioners within 14 days of the Examiner's decision. SCC 14.06.110(13). The Board's decision is appealable to Superior Court under the Land Use Petition Act (LUPA). SCC 14.06.110(14), .220.

<sup>4</sup> 141 Wn.2d 169, 181-82, 4 P.3d 123 (2000).

<sup>5</sup> *Chelan County v. Nykreim*, 146 Wn.2d 904, 52 P.3d 904 (2002); *Samuel's Furniture, Inc. v. Washington Dept. of Ecology*, 147 Wn.2d 440, 54 P.3d 1194 (2003); *James v. Kitsap County*, 154 Wn.2d 574 (2005); *Habitat Watch v. Skagit County*, 155 Wn.2d 397, 120 P.3d 56 (2006); *Durland v. San Juan County*, 182 Wn.2d 55, 340 P.3d 191 (2014).

The policy behind this rule was stated in *Chelan County v. Nykreim*, which involved an attempt by Chelan County to withdraw its previously approved boundary line adjustment (BLA) when it later determined the BLA had unlawfully created an additional lot. The Supreme Court, applying the *Wenatchee Sportsmen* rule, overturned the attempted withdrawal despite the additional lot, holding that the rule:

is consistent with this court's stringent adherence to statutory time limits. This court has

also recognized a strong public policy supporting administrative finality in land use decisions. In fact, this court has stated that "[i]f there were not finality [in land use decisions], no owner of land would ever be safe in proceeding with development of his property... To make an exception ... would completely defeat the purpose and policy of the law in making a definite time limit."

146 Wn.2d at 931, quoting *Skamania County v. Columbia River Gorge Commission*, 144 Wn.2d at 49, 26 P.3d 241.

Leaving land use decisions open to reconsideration long after the decisions are finalized places property owners in a precarious position and undermines the Legislature's intent to provide expedited appeal procedures in a consistent, predictable and timely manner.<sup>6</sup>

Underscoring the import of this policy of finality, Washington courts have repeatedly stated that even illegal decisions under local land use codes must be timely challenged under LUPA.<sup>7</sup> Likewise, courts have held that the policy of finality prevails even in the absence of notice of a particular land use decision.<sup>8</sup>

Because no party appealed the Hearing Examiner's October 17, 2019 decision, it is final and binding on all parties. This includes the specific holding that the County must proceed based on the application information at hand, including the information it has as to the use of the private logging road. Clearly no entirely new application for critical areas or otherwise can be required.

The County's opportunity to request additional studies, including a critical areas review, existed at the latest until the Hearing Examiner issued his Order. That opportunity has long-passed. The parties are bound by the Examiner's final decision.

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<sup>6</sup> *Id.* at 933.

<sup>7</sup> *Asche v. Bloomquist*, 133 Wn. App. 784, 795, 133 P.3d 475 (2006) (Holding public nuisance claim preempted by LUPA because building permit was not timely appealed). See also, *Habitat Watch*, 155 Wn.2d at 406-07; *Applewood Estates Homeowners Ass'n v. City of Richland*, 166 Wn. App. 161, 168, 269 P.3d 288 (2012); *Vogal v. City of Richland*, 161 Wn. App. 770, 777, 255, P.3d 805 (2011).

<sup>8</sup> *Asche*, 132 Wn. App. at 798-99, *Habitat Watch*, 155 Wn.2d at 401.

## 2. A CRITICAL AREAS REVIEW IS NOT REQUIRED UNDER THE COUNTY'S ORDINANCE

Miles' proposed use and limited maintenance of the private logging road is, in any event, not subject to the County's Critical Areas Ordinance:

### A. Use and Maintenance of the Road Does Not Constitute "Development Activity"

While the County's Critical Areas Ordinance, SCC Ch. 14.24, (CAO) applies broadly,<sup>9</sup> the particular question of whether a critical areas review and written authorization is required is specifically set forth in SCC 14.24.060. That section states:

With the exception of activities identified as allowed without standard review under SCC 14.24.070, any land use activity that can impair the functions and values of critical areas or their buffers, including suspect or known geologically hazardous areas, through a development activity or by disturbance of the soil or water, and/or by removal of, or damage to, existing vegetation, shall require critical areas review and written authorization pursuant to this Chapter.<sup>10</sup>

Thus, under the County's code a critical areas review is triggered only in cases where either a "development activity" is planned or where the activity may disturb the soil, water, or existing vegetation.

"Development" is a specific defined term under the code:

**Development:** construction or exterior alteration of structures, dredging, drilling, dumping, filling, earth movement, clearing or removal of vegetation (except activities meeting the definition of forest practices), storage of materials or equipment in a designated floodway, or other site disturbance, other than internal logging roads, which either requires a permit, approval or authorization from the County or is proposed by a public agency.<sup>11</sup>

Other than the use of the existing private logging road, the only activity potentially planned for the road is the paving of a single, short section where the grade is greater than 12%. This paving will match the dimensions of the current road and no widening will occur. No alteration to any structures, no dredging, no drilling, no dumping, and no vegetation removal is contemplated.

### B. Use of and Maintenance Work on the Logging Road Are Not Subject to the CAO

Even if the activity resulted in a small amount of earth movement or otherwise disturbed the soil or existing vegetation, the activity is exempt as it involves an internal logging road and

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<sup>9</sup> SCC 14.24.040.

<sup>10</sup> SCC 14.26.060.

<sup>11</sup> SCC 14.04.020 (emphasis added).

maintenance of the road meets the definition of forest practices. Under the Forest Practices Act, RCW Ch. 76.09, "Forest Practices" means:

[A]ny activity conducted on or directly pertaining to forestland and relating to growing, harvesting, or processing timber, including but not limited to:

- (a) Road and trail construction, including forest practices hydraulic projects that include water crossing structures, and associated activities and maintenance....

RCW 76.09.020(17)(a). "Forest Road" is itself defined as follows:

"Forest road," as it applies to the operation and road maintenance and abandonment plan elements of the forest practices rules on small forestland owners, means a road or road segment that crosses land that meets the definition of forestland, but excludes residential access roads.<sup>12</sup>

RCW 76.08.020(20).

The private logging road at issue constitutes a forest road under the Forest Practices Act and maintenance of the road is exempt. The property on which the private logging road is located is under a Forest Land Designation and the property continues to be maintained as a Department of Natural Resources (DNR)-regulated productive tree farm. Moreover, the logging road is covered by a Road Maintenance and Abandonment Plan (RMAP) under the Forest Practices Act that was approved by DNR in 2002.

Under the DNR approved plans, all road surface, turnout, and shoulders are to be graded and shaped as needed to provide a suitable travel surface and to control water in an even dispersed manner. Roadside vegetation is to be controlled every 2-years using an appropriate herbicide or every 2-3 years using mechanical brush control.<sup>13</sup>

The fact that Miles' trucks will also use the private logging road does not change the fact

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<sup>12</sup> The Department of Natural Resources regulations also defined "Forest Road" as any: "[W]ays, means, lanes, roads, or driveways on forest land used since 1974 for forest practices...." WAC 222-16-010.

<sup>13</sup> This type of maintenance is required under the DNR regulations, which state that:

[T]he following maintenance shall be conducted on forest roads...:

- (c) Road surface must be maintained as necessary to:
  - (i) Minimize erosion of the surface and the subgrade; and
  - (ii) Minimize direct delivery of surface water to typed water; and
  - (iii) Minimize sediment entry to typed water; and
  - (iv) Direct any groundwater that is captured by the road surface onto stable portions of the forest floor.

WAC 222-24-052. The limited maintenance proposed by Miles will minimize erosion of the road's surface and the subgrade.

that it is an “internal logging road” and that maintenance of the road constitutes “forest practices.” The road was constructed as a forest road and continues to be used as such. Because this road and these activities are explicitly excluded from the definition of “development” under the CAO and because a critical areas review is only required in the case of development activity, such a review is not required here.

**C. Section .060 of the CAO Does Not Make the Use of the Logging Road Subject to its Terms**

SCC 14.24.060(1) does not change the analysis. That provision states that:

No land use development permit, land division, development approval, or other County authorization required by County Ordinance shall be granted until the applicant has demonstrated compliance with the applicable provisions of this Chapter.

All this means is that compliance with the Ordinance is required before permits may be issued. It does not set a new or different standard or a trigger for when a critical areas review and authorization is required. That is set forth in SCC 14.24.060 discussed above. Nor does it enlarge what is required for issuance of the “land use application,” which here is the special use permit. The only activity requiring a special use permit is surface mining and that will occur only on three parcels that are the subject of the application as noted above. Increased traffic does not require a special use permit or any other approval. Because the use and maintenance in this case does not trigger a critical areas review, Miles is complying with this the Ordinance and this provision.<sup>14</sup>

**D. The Use of the Private Logging Road is Also Specifically Exempt Under SCC 14.24.070**

Miles’ limited proposed maintenance of the private logging road is also specifically exempt under SCC 14.24.070(3), which states that:

The following developments, land use activities and associated uses are allowed without standard critical areas review; provided, that they are consistent with other applicable provisions of this Chapter and other chapters of the Skagit County Code....

...

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<sup>14</sup> To the extent that there is any perceived conflict between SCC 14.24.060 and SCC 14.24.040(1) or SCC 14.24.060(1), the more specific provisions of SCC 14.24.060 govern under the “general-specific” rule, which states that a specific statute, regulation, or code provision will prevail over a general one. *Residents Opposed to Kittitas Turbines v. State Energy Facility Site Eval. Council (EFSEC)*, 165 Wn.2d 275, 309, 197 P.3d 1153 (2009). SCC 14.24.060 specifically addresses when a critical area review is required and it is not required here.

(3) Normal maintenance, repair, or operation of existing structures, utilities, sewage disposal systems, potable water systems, drainage facilities, detention/retention ponds, or public and private roads and driveways associated with pre-existing residential or commercial development, provided any maintenance or repair activities shall use best management practices (BMPs) with the least amount of potential impact to the crucial areas and any impact to a critical area or its buffer shall be restored after the maintenance to the extent feasible.

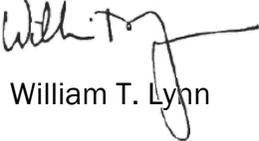
Miles' proposed activities associated with the private logging road fit squarely within this exemption. The small amount of paving that is proposed constitutes normal maintenance and repair of a "private road" associated with a pre-existing commercial use – i.e., timber production. This maintenance is contemplated under the Forest Management Plan and Road Maintenance and Abandonment Plan for the property. Maintenance and repair will need to comply with the BMP requirements and other provisions of SCC 14.24.070(3), but a separate critical areas review under SCC 14.24.060 is not required.

### **3. THE COUNTY'S ACTION IS CONTRARY TO THE COUNTY'S LONG-STANDING INTERPRETATION OF THE CAO**

The County has not required CAO analysis of areas adjacent to roads used by traffic from uses permitted through the special use permit process or other permit processes. That is a recognition that increases in traffic volumes are not development activities that trigger CAO analysis.

### **4. OTHER**

The decision is otherwise contrary to law and not supported by substantial evidence.

  
William T. Lynn

**BEFORE THE SKAGIT COUNTY HEARING EXAMINER**

<b>CONCRETE NOR'WEST</b>	)	
<b>MILES SAND AND GRAVEL,</b>	)	
	)	
Appellant,	)	PL18-0200
	)	
v.	)	<b>ORDER DENYING COUNTY'S MOTION FOR</b>
	)	<b>SUMMARY JUDGMENT, GRANTING</b>
<b>SKAGIT COUNTY,</b>	)	<b>JUDGMENT TO APPELLANTS,</b>
	)	<b>AND ORDERING FURTHER PERMIT</b>
Respondent.	)	<b>PROCESSING</b>
	)	
_____	)	

**PROCEDURE**

Following a conference on August 7, 2019, the Examiner established a schedule for further proceedings in this matter. The schedule allowed the filing of prehearing motions, provided for the Examiner to decide on any motions made, and set a hearing on the case for October 23, 2019.

Pursuant to the schedule Skagit County filed a Motion for Summary Judgment and To Dismiss, dated October 9, 2019. The Appellant, Concrete Nor'West/Miles Sand and Gravel filed a response to the Motion, dated October 16, 2019.

This project involves an application for a Special Use Permit, filed March 7, 2016, (PL16-0097) to conduct a gravel mining operation north of Grip Road. It has a long history of submissions by the Appellant and review by the County. The present proceeding is the appeal, of a decision by the County, dated April 5, 2018, to deny the application on the grounds that the applicant failed to provide necessary additional information to process the application after being requested to do so (PL18-0200).

A Prehearing Conference was convened on May 9, 2018, during the course of which it became known that the Appellant and County were actively engaged in settlement discussions and the Examiner continued the matter while those discussions continued. The case remained in this posture until the above-noted schedule contemplating prehearing motions was entered.

During the interim, the Appellant submitted additional materials and communicated with County personnel. The County sent a letter on February 22, 2019, nearly a year into the process, stating that they still considered the application incomplete. The Appellant sought a written specification of the items the County desired and the Examiner ordered that such a specification be provided.

The County did not comply with this order, but continued to rely on its February 22 letter. Ultimately the Examiner convened another conference on August 7, 2019, which resulted in an order contemplating face-to-face discussions at the staff level and which established the schedule that resulted in the Motion under consideration.

The County has moved for Summary Judgment and to Dismiss, urging that, in effect, the Examiner view the application as frozen in time as of April 5, 2018.

In connection with the motion the Examiner has considered the following:

- A. Skagit County's Motion for Summary Judgment and to Dismiss
- B. Declaration of Julie S. Nicoll and Exhibits 1 through 9 attached thereto.
- C. Concrete Nor'West/Miles Sand and Gravel's Response to Motion for Summary Judgment
- D. Addendum to Response and Exhibits A and B thereto.
- E. Declaration of Dan Cox.
- F. Appeal, dated April 16, 2018, and exhibits thereto.

After reviewing this record, the Examiner concludes that the County's Motion should be denied and that judgment should be granted to the Appellant.

## **DISCUSSION**

This land use permit proceeding has involved an ongoing effort by the Appellant to determine what it is that the County wants to know and to provide it with information sufficient to make a decision on its application. It defies logic and common sense to conclude that the application cannot be supplemented in connection with the appeal process. That process has been largely devoted to trying to figure out what information the County needs and to supplying it. To say now, that this entire effort over the last year and half was a meaningless waste of time smacks of a late-dawning revelation.

At this juncture, after the efforts made, it is no answer to say that the Applicant may reinstate review by submitting a new application. To so require would be merely punitive, considering the quantum of information the County has already received. The overwhelming conviction derived from the record is of an Applicant attempting in every way possible to work with the County to resolve what is essentially an argument about process.

The Examiner is convinced that the Appellant has done what it can to resolve County's perceived informational gap. The County has not identified any current shortcomings in the quantum of information presented. The Examiner concludes that the case should move forward, with the application being evaluated on the basis of the submissions made to date.

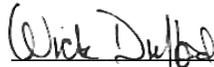
This is a far cry from concluding that the project should be approved. It is merely to say that at some point the merits of this project must be squarely addressed. When that occurs the County can still conclude that the project should be denied. And members of the public can weigh in and present arguments in opposition if they so desire. The recent denial of intervention of the Neighbors group in this procedural appeal was predicated on the understanding that public views on the merits will be heard prior to the final determination on this Special Use Permit application.

**ORDER**

In light of the above, the following Order is entered:

The County's Motion for Summary Judgment and To Dismiss is denied. The Appeal is granted. The application is deemed complete. The hearing scheduled for October 23, 2019 is cancelled. The County shall prepare a new Staff Report based on the application information presently at hand. Thereafter, a hearing on the merits shall be scheduled in the ordinary course by County Staff.

**DONE**, this 17<sup>th</sup> day of October, 2019.



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Wick Dufford, Hearing Examiner

Transmitted to the parties, October 17, 2019.

**APPEAL**

This is a final order which may be appealed to the Board of County Commissioners by filing a written notice of appeal with the Clerk of the Board within 14 days after the date hereof.



# 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 #:  
PL18-0200

**RECEIVED**  
APR 16 2018

SKAGIT COUNTY  
Received PDS

## 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	PL16-0097	Appeal Fee	\$ 1000. <sup>00</sup>	PDS will calculate
Date of Appealed Decision or Permit	4-5-2018	Publication Fee	\$ 280.-	PDS will calculate

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

74- Rfc Dec

## Appellant

Standing to appeal	<input checked="" type="checkbox"/> Permit applicant <input type="checkbox"/> Party of Record <input type="checkbox"/> Party subject to code enforcement order <input type="checkbox"/> Other			
Name	miles Sand & Gravel		Dan COX (Contact)	
Address	PO Box 280			
City, State	Mount Vernon	98273	Zip	Phone (360) 757-3121
Email	dan.cox@miles.rocks	Signature	Dan Cox	

## Attorney or Representative None

Name	William T Lynn			
Address	1201 Pacific Ave Ste 2100			
City, State	Tacoma, WA	Zip	98402	Phone 253-620-6416
Email	blynn@gth-law.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.

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

April 12, 2018

Skagit County Hearing Examiner  
1800 Continental Place  
Mount Vernon, WA 98273

RE: Concrete Nor'west  
PC16-0097 – County Decision to Deny Application dated April 5, 2018

This letter shall serve as the Appeal by Miles Sand & Gravel Company and Concrete Nor'west of the Skagit County Planning and Development Services Department Decision April 5, 2018 to deny the above-referenced Miles' application for failure to submit timely requested information. A copy of the Decision appealed from is attached.

This Appeal is filed under Skagit County Code (SCC) 14.06.105 and .110. The following statements are set forth to meet the requirements of SCC 14.06.110(8)(a-e)

- a) *The Decision Being Appealed.* The Decision being appealed is the letter dated April 5, 2018 a copy of which is attached as Exhibit A.
- b) *The Name and Address of the Appellant and His Interest(s) in the Matter.* The Appellant is Miles Sand & Gravel Company and Concrete Nor'west, c/o Dan Cox, P.O. Box 280, Mt. Vernon, Washington 98273. The Appellant's Attorney is William T. Lynn, Gordon Thomas Honeywell, 1201 Pacific Avenue, Suite 2100, Tacoma, Washington 98402. Appellant has standing in this matter because it is the owner of the property that is the subject of the application and is the applicant for the permit at issue.
- c) *The specific reasons why the appellant believes the decision to be wrong.* See attached Exhibit B.
- d) *Desired outcome or changes to the decision.* The appellant requests that the decision be reversed and the application processed. Alternatively, the Appellant requests that the matter be remanded by the Examiner so that the Appellant has a fair opportunity to cure any defects.

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

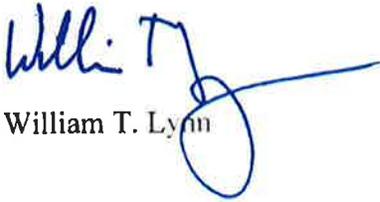
Seattle Office  
600 University, Suite 2100 (206) 676-7500  
Seattle, WA 98101 (206) 676-7575 (fax)

Gordon Thomas Honeywell<sup>LLP</sup>  
April 12, 2018  
Page 2

*e) Any Skagit County Code Section(s) the appellant deems relevant.*  
Relevant Code Sections are included on Exhibit B. In general, this is based on  
SCC 14.06 chapter which implements RCW 36.70B chapter

We submit this appeal with a filing fee in the amount of \$1,000.00. If anything further is  
necessary to perfect this appeal please notify me immediately.

Very truly yours,



William T. Lynn

WTL:lb  
Enclosures  
cc: Client

Approved this 16 day of April, 2018.

Miles Sand & Gravel Company  
(Concrete Nor'west)

By:  \_\_\_\_\_  
Dan Cox

## EXHIBIT B

The Appellant alleges that the County Decision dated April 5, 2018 is incorrect for the following reasons:

1. Brief Procedural History. A brief procedural history will help provide context for the additional allegations set forth below. The Special Use Permit Application (Application) was filed March 7, 2016, assigned permit number PL16-0097, and deemed complete by the County on March 22, 2016. Notice of the Application was published March 31, 2016. The SEPA review process was completed, the SEPA MDNS was issued May 24, 2016, and the matter was set to go before the Hearing Examiner for public hearing. The Examiner actually convened the Hearing on November 16, 2016. The published staff report presented to the Examiner (attached here as Exhibit C) found that the Application met the requirements of applicable County codes, and that all findings necessary for the approval by the Examiner could be made. The staff report recommended approval subject to conditions.

Near the time of the public hearing, the County determined that notice of the Application had not been properly given. As a result, the hearing was opened by the Hearing Examiner, but then continued to a date to be set in the future. The County then recirculated a Notice of the Application for public comment and provided an opportunity for additional public comment with a deadline of December 30, 2016.

Since that time, the County has essentially treated the Application as being in an unending public comment period. In place of codes that formed the basis of its prior staff determination, the County has requested information seemingly based on “whatever the public wants”, and has required the Appellant to meet a standard of “whatever will satisfy objecting parties.”

The County has disregarded its own previous determinations made as to the completeness of the Application, and has disregarded the analysis of its own experts in reviewing Application materials, particularly related to wetlands, public works and traffic. In some cases (the noise and vibration study) the Appellant has been given no County comments and no real opportunity to respond to public comments. In some cases (traffic) the Appellant is still awaiting County comments. In other cases, the County has completely ceded its review authority to others (agencies or the public) without exercising the review discretion that the County staff is provided by code and statute. In still other cases, the County has ignored important mitigation measures provided by other agency permitting, in contravention of SEPA. More specific allegations are set forth below.

2. The first cited basis for denial in the letter is the Appellant’s failure to show a 300-foot buffer from the edge of the wetland to the gravel mining operation. This ignores the previous County determination that a 200-foot buffer was consistent with County standards (see staff report attached as Exhibit B, p. 6). Moreover, this so-called defect does not affect the sufficiency of the Application. An application is complete if the submittal standards are met and requested information is provided SCC 14.06.090, .100 and .105. Here, the County is not requesting “information” but rather substantive changes to the proposal. The Application should go to the Examiner for his review. If the Hearing Examiner should determine that a 300-foot buffer is

required, that condition can be imposed at the time of the public hearing on the Application and the plan can be simply revised.

3. The County asserts that the Application must be modified to ensure the access road is in compliance with the private road standards that it deems applicable. This again does not affect the adequacy of the Application, which was previously deemed complete. And again, this is not a request for “information”. If the Hearing Examiner determines that the project has to meet the private road standards, then a condition to that effect can be imposed. The most recent application materials submitted by the Appellant (February 23, 2018) specifically suggest a condition of approval to this effect if deemed necessary.

4. The County then requests a “site-specific Spill Control Plan” to address potential water pollution impacts. The County is required by SEPA to take into account mitigation provided by other permits to which an application is also subject. WAC 197-11-330(1)(c). The Appellant has advised the County on several occasions that the Department of Ecology has authority under the Clean Water Act to protect water quality and will require the applicant to comply with the provisions of the Sand and Gravel General Permit issued by the Department of Ecology under the National Pollution Discharge Elimination System process and the requirements of the State Waste Discharge General Permit. This includes the requirement for a Spill Control Plan. The County erred in failing to consider the requirements of these permit requirements administered by the State agency with primary authority with respect to water quality.

The County further asserts that the Spill Control Plan is inadequate because it fails to address “on-site operations and site-specific equipment and does not contain a site plan.” This ignores the fact that a surface mine by its very nature is a land use that evolves over time. The various features that have the potential to adversely affect water quality move throughout the site as the mining proceeds. That is the reason that, as a generally accepted practice in the field, spill control plans are written generically so that the required measures (BMPs) apply wherever on the site activities with potential impact might occur. Nothing in the County Code including the provision cited by the County in its letter (SCC 14.16.900(1)(b)(v)(C) requires the details requested by the County, and the absence of those certainly has no bearing on the completeness of the Application. In fact a site specific plan would defeat the purpose of the measures by tying them to a specific location.

5. The County’s comments regarding the noise study are particularly disturbing for several reasons. First, there was no evidence presented to the County to support the need for a study. The County should have adhered to its staff report finding of no adverse impact unless presented with facts to overcome that. Community displeasure is not a basis for land use decision-making. *Marantha Mining v. Pierce County*, 59 Wn. App. 795 (1990). The County’s finding is supported by adopted noise standards (SCC Chapter 9.50) that apply to the proposal.

Second, the noise report was submitted on February 23, 2018 at the County’s request, and the Appellant was never provided any County comments about the alleged “defects” until the application was denied. The only comments the Appellant received from the County were those forwarded from a neighbor on March 29<sup>th</sup>, four business days before the County denied the Application as incomplete. It is arbitrary and capricious and an erroneous process to summarily reject a noise study prepared by the professional without any opportunity to respond to

comments. We are confident that none of the bases cited in the County's April 5<sup>th</sup> letter would change the conclusions of the noise expert. In any event, the standard practice in this County and elsewhere (and the only process consistent with the rights of an applicant) is to provide comments and then allow an opportunity for correction or modification.

Moreover, the alleged deficiencies in the April 5 letter are exactly the same as those identified by the objecting neighbor in the comment forwarded by email on March 29<sup>th</sup>. The County is clearly not providing its own analysis and applying its own expertise. It is simply forwarding comments of neighbors and asking the Appellant to respond. In this case, the County went a step further and determined that the Appellant's failure to respond to the neighbor concerns within 4 business days was a reason to deny the Application altogether. This is completely inconsistent with any fair and objective process and unlawfully delegates the County's duties and powers to the public.

6. The County asserts that the Appellant failed to provide sufficient evidence showing that the criteria for the issuance of the Special Use Permit have been met. Of course, this first ignores the County's own previous findings that the criteria were met (see staff report). Second, it is not a request for "information". Third, it ignores the fact that the County staff's role here is to merely provide a recommendation and input to the Hearing Examiner. The Hearing Examiner's role is to make these determinations. Though this Appellant certainly makes every effort to do so, it is not required to satisfy the staff as to the merit of the proposal. The Appellant's burden is to satisfy the Hearing Examiner, and in denying the Application on the basis of incompleteness, the staff has usurped the Examiner's authority.

It is particularly troublesome that the staff's assertion here is that there were "numerous public comments" as to adverse effects that the applicant failed to address. It is not the Appellant's responsibility to respond to every public concern (though the Appellant certainly attempts to respond to all legitimate comments). The County staff's responsibility is to analyze the public comments and discern which of those require further analysis and then to advise the Appellant of that in due course. The staff is not to simply pass along every public comment and determine as a gate-keeper that all must be satisfied prior to advancing the Application to the Hearing Examiner process.

7. Although not mentioned in the letter, the Appellant is also concerned about the County's review of traffic impacts. We were advised some months ago that the County has retained a third party expert to review and comment upon the traffic study submitted to support the Application. To date, the Appellant has received no communications regarding the third party experts' conclusions. Based upon the history of this County review, the Appellant is justifiably concerned that, should this Application move forward as requested, the County will at some later point present a new list of comments requiring a response. The County should be required to provide all of its comments, including any as to the traffic report, in a specified period of time, well in advance of the hearing on this appeal. And, an extension of the Application time is appropriate for this. The County has specific authority to extend the time when needed to get input from another reviewer. SCC 14.06.105(5).

8. The staff has opened this Application to what seems to be unending public comment, and has changed its views about the proposal based upon those comments, even when they consisted of statements of opinion or mere conclusions. Many if not most comments do not present facts,

and certainly not facts based on expertise. The staff has set impossible goals for the Appellant: to address all public comments even from those who would never be satisfied. It would be bad enough if these public comments simply affected the staff's recommendation to the Hearing Examiner, but here, they are being used as a screen to deny the Appellant an opportunity to present its case to the Hearing Examiner. That is not a lawful process. It is arbitrary and capricious and contrary to the Appellant's right to have its proposal heard fairly before the Hearing Examiner. It also denies the Appellant the due process the U.S. and State Constitutions require.

9. On these bases, the Appellant will be requesting that the Hearing Examiner either overturn the staff's decision altogether and bring the matter on for hearing, or at the very least, remand the application for specific information requests consistent with the requirements of law.



# Skagit County Planning & Development Services

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April 5, 2018

Via E-mail Only: [john@semrau.com](mailto:john@semrau.com); [BLynn@gth-law.com](mailto:BLynn@gth-law.com)

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Dan Cox  
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RE: Denial of Application for Failure to Timely Submit Requested Information (PL16-0097)

Gentlemen:

We are in receipt of your correspondence dated February 23, 2018. Your project application materials continue to be incomplete as discussed in person with Planning & Development Services on November 20, 2017 and as noted in our prior correspondence. Courtesy copies of our prior correspondence are enclosed for your convenience. To summarize, dating back to our March 14, 2017 letter, we asked you to update your application materials and all supporting documentation to address numerous factual inaccuracies and to ensure consistency with your current project plans. We reiterated our request for this additional information in our July 6, 2017 letter. As discussed at the November 20, 2017 meeting, we specifically requested new, updated versions of these documents, which we have not received.

In our July 6, 2017 letter, we asked you to revise your application and plans to indicate a 300-foot buffer from the edge of the wetlands to the gravel mining operation. We also asked you to amend your application to ensure the access road is in compliance with the private road standards. However, your submittal on February 23, 2018 did not include this information. The revised application form recently transmitted fails to address the access road.

Our July 6, 2017 letter also requested a site-specific Spill Control Plan to address potential water pollution impacts under Skagit County Code ("SCC") 14.16.900(1)(b)(v)(C). Via letter on October 24, 2017 and again in person on November 20, 2017, we informed you that the Spill Control Plan was incomplete. The revised Spill Control Plan submitted on February 23, 2018 remains incomplete since it fails to address on-site operations and site-specific equipment, and does not contain a site plan.

With respect to the Noise Study submitted on February 23, 2018, several underlying assumptions in the study appear to be incorrect. For example, page 7 of the study states the primary noise source will be a “front-end loader excavating material from the floor of the pit.” However, a front-end loader is not used to excavate material. In addition, the Noise Study fails to analyze other heavy equipment (excavator, dozer and dump trucks) that may be used at the site according to your application. The Noise Study also inaccurately states that the proposed mine “would be situated in the middle of 726 acres of continuously owned property” and presumes that “most of the existing buffers would remain intact.” It is our understanding that your surrounding properties may be harvested and buffers de-forested, which may impact noise transmission off-site. It is unclear whether this was addressed in the Noise Study. Accordingly, we find the Noise Study to be inaccurate and incomplete for the operations proposed.

Concrete Nor’West’s revised application materials also failed to provide sufficient evidence showing compliance with the criteria in SCC 14.16.900(1)(b)(v) as noted in the March 14, 2017 letter. Specifically, there have been numerous public comments on the “potential adverse effects on the general public health, safety and welfare” of the proposed operations, which Concrete Nor’West has failed to address.

Since the additional information requested on March 14, 2017 and again on July 6, 2017 was not provided (despite an extension through the end of February, 2018), Skagit County Planning & Development Services is denying your application (PL16-0097) at this time pursuant to SCC 14.06.105. A denial for failure to timely submit requested information is a Level I decision that may be appealed to the Hearing Examiner. Pursuant to SCC 14.06.105(4), Concrete Nor’West may only reinitiate review by submitting a new application consistent with all current requirements.

If you have any questions, please contact me at (360) 416-1328.

Sincerely,



Hal Hart  
Director of Planning & Development Services

Enclosures

1. March 14, 2017 letter from Skagit County
2. July 6, 2017 letter from Skagit County
3. October 24, 2017 letter from Skagit County

cc: John Cooper  
Betsy Stevenson  
Board of County Commissioners  
Tim Holloran  
Julie Nicoll



# Skagit County Planning & Development Services

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March 14, 2017

Via E-mail: Dan.Cox@miles.rocks; john@semrau.com; BLynn@gth-law.com

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RE: Request for Additional Information (PL16-0097)

Gentleman:

As you know, the second public comment period for Concrete Nor'West's gravel mining application has resulted in over one hundred comment letters. The comments indicated great concern about truck traffic and road safety. To address these concerns, Skagit County Public Works will run additional traffic models and road tests to ensure compliance.

Comment letters also indicated concern about noise and the facility's hours of operation. Per SCC 14.16.900 (Special Use Permit Requirements), the proposed use shall "not create undue noise, odor, heat, vibration, air or water pollution impacts" to its surroundings and shall "not cause potential adverse effects on the general public health, safety and welfare." To achieve compliance with this rule, the maximum number of truck trips per day and hours of operation will be conditioned. Based on the information you provided us, 46 truck trips per day is a reasonable limit. In addition, operations will be limited to Monday through Friday, 7:00 a.m. to 5:00 p.m. (except holidays).

In order for Skagit County to further evaluate the public's concerns, the following information is required:

- The Upper Skagit Tribe and Washington Department of Archaeology and Historic Preservation have indicated that the area proposed for mining has been inhabited by the Nuwaha band of the Upper Skagit Tribe. In order to confirm that mining activities do not disturb archaeological resources, please submit a professional archaeological survey for the project area.
- Comment letters stated that improvements to the access road are required to meet private road standards. Skagit County Public Works Department confirmed the access road is insufficient to meet private road standards and the Fire Marshal's Office requires improvements to the access road to meet private road standards. For example, 20 feet of driving surface is required for emergency access. See SCC 15.040.030(2)(f) (Section D103.2 Fire Department Vehicle Access Roads) and

"Helping You Plan and Build Better Communities"

Skagit County Road Standards. Please provide a plan indicating the proposed improvements to the access road to achieve private road standards. Also include verification that the bridge over Swede Creek is rated as HS-25. In the event that the improvements to the access road are required within 200 feet of Swede Creek or other critical areas, additional critical areas review may be necessary.

- The application indicates that a 2,000 gallon fuel tank *may* be stored on-site. However, the Hydrogeologic Site Assessment indicated that a mobile fuel truck may be used and no permanent fueling or maintenance facilities are proposed on-site. Please verify whether a fuel storage tank will be placed on-site or if a mobile fuel system will be used. Comment letters have also indicated a concern about potential fuel, hydraulic fluid, and oil spills on-site and potential impacts to water quality. Please include all plans to contain and prevent hazardous material spills, including the spill control plan and a clean-up plan in the event of a spill.
- The application indicates that no processing of material, including dry screening will occur on-site. However, the Hydrogeological Site Assessment indicates that dry screening of material (page 4, second paragraph) may occur. Accordingly, please verify whether processing or screening will occur on-site.
- Comment letters indicated that a full review of Endangered Species Act (ESA)-listed species, such as the Oregon spotted frog and Washington State sensitive species, was not addressed in the fish & wildlife/wetland site assessment per SCC 14.24.220 and SCC 14.24.520. Comment letters also indicate a 300 foot buffer should be applied due to the high intensity use. Currently, your fish & wildlife/site assessment plan includes a 200 foot buffer. Please update your fish & wildlife/wetland site assessment to address these comments.

Finally, as noted above and in the public comment letters received to date, there are numerous factual discrepancies in your Application, Project Description, SEPA Checklist, Traffic Study, and Fish & Wildlife Site Assessment. While we understand these materials were prepared at different times throughout the planning process, we ask that you update these materials to include the supplemental information requested above and to ensure consistency with your current project plans.

After receiving your updated materials, the County will issue a Revised SEPA Determination for public comment. Since certain neighbors were inadvertently excluded from the original notice list you prepared, we will update the list and ensure that proper notice is provided. Subsequently, the Staff Report for the Special Use Permit will be revised and published for public comment and hearing.

Thank you for your patience in this matter. If you have any questions, please contact my office at (360) 416-1334.

Sincerely,



John Cooper, LG  
Planner/Geologist



# Planning & Development Services

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July 6, 2017

*Via E-mail Only: Dan.Cox@miles.rocks; john@semrau.com; BLynn@gth-law.com*

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RE: Response to Concrete Nor'West May 15, 2017 Letter (PL16-0097)

Gentlemen:

Thank you for your response letter dated May 15, 2017. Your revised application materials are incomplete, as described below. Accordingly, additional information is necessary before we can continue processing your application.

1. With respect to the proposed hours of operations, SCC 14.16.440 states:
  - (i) Hours of operation shall vary according to the location of the site as stated below and may be shortened by the Hearing Examiner based on site-specific circumstances:
    - (i) Within designated natural resource lands, the hours of operation *may be* unlimited. **The Hearing Examiner may limit hours of operation to daylight hours or to such other reasonable limitation deemed necessary to address potential significant adverse impacts to existing adjacent land uses**, on any portion of the mining site where mining activity is proposed to occur less than 1/4 mile from existing Rural Intermediate, Rural Village, or Urban Growth Area designated lands[.]

While the Hearing Examiner is the decision-maker with respect to the hours of operation, Planning & Development Services (PDS) provides the Hearing Examiner with recommendations based on its review and analysis of the proposed project and its potential impacts. Based on the limited information received to date from Concrete Nor'West, we initially recommended that operations be limited to Monday through Friday, 7:00 a.m. to 5:00 p.m. (except holidays). It is unclear what evidence Concrete Nor'West relies on to support its position of unlimited operations pursuant to SCC 14.16.440.

2. Furthermore, there are additional general special use permit criteria that Concrete Nor'West must comply with as set forth in SCC 14.16.900(1)(b)(v). To date, Concrete Nor'West's application materials have failed to provide sufficient evidence to support the following criteria in SCC 14.16.900(1)(b)(v):

- (A) The proposed use will be compatible with existing and planned land use and comply with the Comprehensive Plan.
- (B) The proposed use complies with the Skagit County Code.
- (C) The proposed use will not create undue noise, odor, heat, vibration, air and water pollution impacts on surrounding, existing, or potential dwelling units, based on the performance standards of SCC 14.16.840.
- (D) The proposed use will not generate intrusions on privacy of surrounding uses.
- (E) The proposed use will not cause potential adverse effects on the general public health, safety, and welfare.
- (F) For special uses in Industrial Forest—Natural Resource Lands, Secondary Forest—Natural Resource Lands, Agricultural—Natural Resource Lands, and Rural Resource—Natural Resource Lands, the impacts on long-term natural resource management and production will be minimized.
- (G) The proposed use is not in conflict with the health and safety of the community.
- (H) The proposed use will be supported by adequate public facilities or services and will not adversely affect public services to the surrounding areas, or conditions can be established to mitigate adverse impacts on such facilities.
- (I) The proposed use will maintain the character, landscape and lifestyle of the rural area. For new uses, proximity to existing businesses operating via special use permit shall be reviewed and considered for cumulative impacts.

**To show compliance with the above criteria, a noise and vibration study should be conducted and your application materials should be updated to include all supporting evidence.** This type of assessment will identify any potential noise and vibration impacts to the surrounding community and will support a final determination on the proposed hours of operations and any limitations to address potential impacts.

3. Concrete Nor'West's proposed operation includes an average of 46 truck trips per day, with a potential maximum limit of 720 truck trips per day. These figures have resulted in significant public concern about traffic and noise impacts to local residents. Per SCC 14.16.900 (Special Use Permit Requirements), the proposed use shall "not create undue noise, odor, heat, vibration, air or water pollution impacts" to its surroundings and shall "not cause potential adverse effects on the general public health, safety and welfare." As previously noted, to achieve compliance with Skagit County Code, we initially recommended that the number of truck trips be limited to 46 per day based on the information provided by Concrete Nor'West to date. Based on the results

of the additional traffic study that will be conducted as described below, we may revisit this proposed limitation.

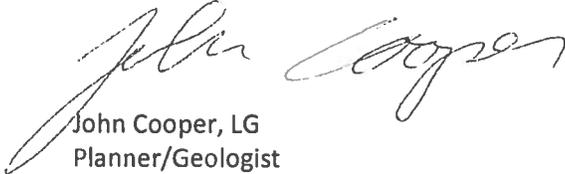
Additionally, existing traffic reports from DN Traffic Consultants have not alleviated public concern. As a result, Skagit County Public Works is in the process of retaining a third party traffic consultant to further evaluate potential traffic impacts of the proposed project, including safety concerns relating to pedestrians, bicycle riders, and school bus stops. Pursuant to SCC 14.16.440(8)(i), the consultant will also determine whether the "roads or bridges are capable of sustaining the necessary traffic for the proposed mineral extraction operation, and that the proposed operation meets level-of-service, safety, and other standards as outlined in the Skagit County Transportation Systems Plan, the Skagit County Comprehensive Plan, and applicable State and local regulations." Finally, the consultant will evaluate the sufficiency of the proposed mitigation and may propose additional mitigation if necessary to reduce or eliminate potential traffic impacts.

4. While the access road is currently being used for forest practice activities, the road will need to be upgraded to Skagit County private road standards to accommodate the commercial gravel operations pursuant to SCC 14.36.010, the County Road Standards adopted by Resolution 17930, and the Fire Marshal Standards set forth in SCC 15.04.030(2)(f) (Section D103.2 Fire Dept. Vehicle Access Roads). Accordingly, **please amend your application to ensure compliance with these requirements.** In the event that the improvements to the access road are required within 200 feet of Swede Creek or other critical areas, additional critical areas review may be necessary.
5. Thank you for confirming that your proposal includes the potential of storing a 2,000 gallon fuel tank on-site. Your application will be processed reflecting the possibility of potential fuel, hydraulic fluid, and oil spills on-site and potential impacts to water quality. You have indicated that you will include this mining location into Miles' Sand and Gravel General Permit and will apply certain provisions of the Sand and Gravel General Permit as your procedures for managing fuel and other hazardous materials onsite. It is our understanding that the Sand and Gravel General Permit does not include a site-specific Spill Control Plan for the proposed operations. Accordingly, **please submit a copy of your site-specific Spill Control Plan.**
6. The Fish and Wildlife Site Assessment prepared by Graham Bunting and Associates discusses land use impacts in Section 5.2.2 and concludes that the gravel mining operation is a moderate impact land use, thus a 200-foot buffer is adequate to protect the Samish River and associated wetlands. However, comment letters received from the Washington Department of Ecology (dated June 1, 2016 and December 27, 2016) and other local wetland professionals conclude that the gravel mining operation is a high impact land use and will require a 300-foot buffer from the edge of the wetland to the gravel mine. SCC 14.04 defines High Impact Land Use as *"land uses which are associated with high levels of human disturbance or substantial habitat impacts including, but not limited to, medium- and high-density residential (more than one home per five acres), multifamily residential, some agricultural practices, and commercial and industrial land uses."* Since your proposal is both a commercial and industrial land use that involves the extraction of approximately 4,280,000 cubic yards of material over 20 years, the proposed operations are a high impact land use. **Please amend your application and plans to indicate a 300-foot buffer from the edge of the wetlands to the gravel mining operation.**

7. Although the information you provided included many supporting documents, your submittal did not include updated application materials, as requested in our March 14, 2017 letter, resolving the numerous factual discrepancies in your Application, Project Description, and SEPA Checklist. **Please update these materials to include the supplemental information requested and to ensure consistency with your current project plans.**

After receiving your updated materials, the County will determine if your application is complete and proceed accordingly. Thank you for your patience in this matter. If you have any questions, please contact my office at (360) 416-1334.

Sincerely,



John Cooper, LG  
Planner/Geologist



# Planning & Development Services

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October 24, 2017

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**RE: Response to Concrete Nor'West September 20, 2017 Letter (PL16-0097)**

Gentlemen:

We are writing to respond to your letter dated September 20, 2017. Your revised application materials remain incomplete as described in our prior letters dated March 14, 2017 and July 6, 2017 (copies of which are enclosed). Skagit County Planning & Development Services (PDS) requested additional information pursuant to Skagit County Code (SCC) 14.06.100(5), and we cannot continue processing your application without this information. In addition, the Spill Control Plan submitted with your September 20, 2017 letter is incomplete and should be re-submitted.

Pursuant to SCC 14.06.105(1), you have 120 days to submit the information requested on July 6, 2017. Accordingly, please submit the additional information **on or before November 3, 2017**. If all of the requested information is not received by PDS within 120 days, PDS will deny the application for failure to timely submit the requested information.

If you have any questions regarding this matter, please contact me directly at (360) 416-1328.

Sincerely,

Dale Permula, AICP  
Director

Enclosures