



Appeal or Request for Reconsideration

Planning & Development Services · 1800 Continental Place · Mount Vernon WA 98273
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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	PL16-0556	Appeal Fee	\$	PDS will calculate
Date of Appealed Decision or Permit	November 30, 2020	Publication Fee	\$	PDS will calculate

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

Appellant

Standing to appeal	<input type="checkbox"/> Permit applicant <input checked="" type="checkbox"/> Party of Record <input type="checkbox"/> Party subject to code enforcement order <input type="checkbox"/> Other			
Name	Evergreen Islands			
Address	PO Box 223			
City, State	Anacortes, WA	Zip	98221	Phone 415-244-9582
Email	marlenefinley17@gmail.com	Signature	<i>Marlene Finley</i>	

Attorney or Representative

None

Name	Kyle Loring			
Address	PO BOX 3356			
City, State	Friday Harbor, WA	Zip	98250	Phone 360-622-8060
Email	kyle@loringadvising.com			

Attachments

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

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2
3
4
5 BEFORE THE BOARD OF COUNTY COMMISSIONERS
6 IN AND FOR THE COUNTY OF SKAGIT, WASHINGTON

7
8 **In the Matter of the Appeal of Special**
9 **Use Permit, PL16-0556, for the**
10 **expansion of a gravel mine for 60**
11 **years.**

NO. PL16-0556

12 **NOTICE OF APPEAL**

13 **INTRODUCTION AND DECISION BEING APPEALED**

14 Appellant Evergreen Islands respectfully files this Notice of Appeal pursuant to SCC
15 14.06.120(9) to ask that the Skagit County Board of Commissioners (“Board”) reverse the
16 Skagit County Hearing Examiner’s (“Hearing Examiner”) November 30, 2020 decision
17 (“Decision”) to approve Special Use Permit PL16-0556 (“Permit”). The Permit expands a
18 17.78-acre gravel mine to 53.5 acres and extends its operations to permit the excavation of
19 approximately 60,000 tons of gravel over a full 60 years. The Decision is clearly erroneous
20 because the Permit issued without acknowledgement of an unstable slope abutting the mining
21 property or an analysis of the mine’s potential to destabilize that bluff through its deforestation,
22 excavation, and associated increase in groundwater runoff. Because a landslide would cause
23 significant safety risks to the adjacent neighborhood and to traffic on Rosario Road, it must be
24 evaluated properly and, if necessary, addressed, before the mining proposal can be permitted. A
25 copy of the Decision is attached hereto as Attachment A.

26 **I. NAME, ADDRESS, AND INTEREST OF APPELLANT.**

1.1. Evergreen Islands (“Evergreen”) can be reached as follows:

1 Evergreen Islands
2 PO Box 223
3 Anacortes, WA 98221
4 415-244-9582
5 Marlenefinley17@gmail.com

6
7 1.2. Evergreen is represented in this appeal by Kyle Loring, who can be reached as
8 follows:
9

10 Kyle Loring
11 Loring Advising PLLC
12 PO Box 3356
13 Friday Harbor, WA 98250
14 360-622-8060
15 kyle@loringadvising.com

16 1.3. Evergreen Islands has an interest as a party of record in this matter because
17 organizational representatives and members provided written and oral testimony to the Hearing
18 Examiner prior to the Decision. The Skagit County Code ("Code") defines a "party of record"
19 as "any person who has testified at a hearing or has submitted a written statement related to a
20 development action and who provides the County with a complete address, or a person who has
21 formally requested to receive information via a written statement with a complete mailing
22 address." SCC 14.04.020. Consequently, because Evergreen testified at the hearing and
23 submitted a written statement related to the mine application, it has standing to appeal the
24 Decision pursuant to SCC 14.06.170(2).

25 1.4. In addition, Evergreen Islands has an interest in environmental conservation and
26 in safeguarding local communities from unnecessary and unexamined risks of development
proposals. Evergreen Islands is a public interest, membership organization that works to
conserve natural resources and protect communities in and around Skagit County and the Salish
Sea. Evergreen is based in Anacortes. Evergreen's mission is to promote, protect, and defend
the unique ecosystems involving the saltwater islands of Skagit County and their environs as
they relate to the built and natural environments. Since incorporation in 1977, Evergreen has
focused on monitoring and supporting the responsible enforcement of local, state, and national

1 laws that protect the environment. Evergreen Islands board members and members participated
2 in the proceedings before the Hearing Examiner by testifying at the hearing and submitting
3 written comments about the mine.

4 **II. HOW APPELLANT IS AGGRIEVED**

5 2.1. Evergreen and its members would be aggrieved by the Permit's unexamined
6 community impacts and by the environmental impacts associated with the substantially
7 expanded mine. Evergreen members would be aggrieved by the increased risk of geological
8 instability that the mine would cause for Rosario Road, a popular and well-traveled route
9 between Anacortes and Deception Pass State Park and Whidbey Island. Evergreen members
10 may also be aggrieved by insufficiently examined groundwater impacts from the mine. And
11 Evergreen members would be aggrieved by the increased traffic from adding twenty-six (26)
12 one-way gravel truck trips each day on local rural roads like Rosario Road and Campbell Lake
13 Road, as well as by the unexamined increase in the risk of collision when those trucks enter or
14 exit State Route 20 from Rosario Road and Campbell Lake Road.
15

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

17 3.1. The Decision is clearly erroneous because it approved a Mining Special Use
18 Permit without statutorily-required information for that Permit. This section should be read in
19 conjunction with Section IV. below, which references applicable sections of the Skagit County
20 Code and identifies the application's inconsistencies with those sections. The Hearing Examiner
21 erred by approving a permit without inquiry into impacts to a documented unstable slope
22 directly adjacent to the mine, without an adequate hydrogeological analysis of potential
23 groundwater impacts from the deforestation and rock excavation, and without information about
24 traffic impacts at major intersections between Route 20 and Campbell Lake Road and Route 20
25 and Rosario Road.
26

3.2. The Hearing Examiner erred in approving a permit for a mine directly adjacent

1 to a documented unstable slope in the absence of an evaluation of potential impacts to that
2 slope. Like the project application, the Decision overlooked the existence of unstable slopes
3 directly adjacent to the project site, notwithstanding a geologist report identifying concerns
4 about the lack of analysis of mine impacts on those slopes. Skagit County's Critical Areas
5 Ordinance requires such an analysis, and a Licensed Geologist at Stratum Group confirmed the
6 need for that analysis in a written comment letter to the Hearing Examiner and in oral testimony
7 at the hearing. The geologist conducted several geology hazard assessments on the bluffs west
8 of the proposed mine, including field inspections that involved observations of exposed
9 geologic units, hand dug test pits to determine underlying soils and geology units, review of
10 available geologic mapping, lidar imagery, and historical aerial photographs and maps. Based
11 on his geology hazard assessments, perched groundwater flowing out of springs and seeps in the
12 hillside has a significant impact on slope stability directly west of the mine and any change in
13 groundwater at the mine would have the potential to alter that groundwater flow and
14 significantly impact the stability of the bluffs. An increase in bluff failure frequency and scale
15 would significantly impact homes near the bluff, roads and infrastructure between the mine and
16 bluff, and shoreline processes along the beach below it. Yet, the SEPA Checklist and
17 hydrogeology reports in the application did not discuss or evaluate these impacts.
18 Notwithstanding Washington Coastal Atlas maps showing unstable bluffs directly adjacent to
19 the mine, the SEPA Checklist stated that there were no surface indications or history of unstable
20 slopes in the immediate vicinity of the project.

21 3.3. The Hearing Examiner also erred in the following findings of fact related to site
22 hydrogeology:

23 3.3.1. FOF No. 10 -- the water table at the site is at an elevation of
24 approximately 200 feet. The application ignored the unstable bank to the west of the
25 mine property that contains springs. A public comment by a purported hydrogeologist
26 identified the elevation of a spring approximately 400 feet south of the pit boundary, in a

1 location called Dodson Canyon, at an elevation of 273 feet.

2 3.3.2. FOF No. 12 -- Lake Erie is about 1000 feet downgradient of the mine
3 (FOF No. 12). To the extent that this finding comes from the applicant's groundwater
4 documents, it relies on flawed information. The application's hydrogeological report
5 was flawed for at least the following reasons: (a) it failed to acknowledge the springs
6 that drain groundwater on the bluffs to the northwest and thus the likelihood that water
7 flows from the site to the springs; (b) it failed to acknowledge that the non-uniform
8 geology between reference wells precludes its conclusions about groundwater flow
9 direction; (c) it failed to identify the different percolation rates that would apply to the
10 denuded floor of the pit and the pre-mine vegetated state; and (d) it failed to use wells
11 screened at the same vertical level to ensure uniformity in the measurement. In addition,
12 as explained by the Stratum Group submission, the groundwater contour map failed to
13 show any elevation control between the mine site and the springs in the unstable slope to
14 the west, and groundwater incorrectly moving lateral to, rather than toward the springs.

15 3.3.3. FOF No. 22 -- due to permeability of geologic formation, no significant
16 erosion is anticipated and that the potential for shallow surficial landslides would be
17 offset by a 100-foot setback from the property line. To the extent that this finding relies
18 on the applicant's groundwater documents, it relies on flawed information as detailed
19 above at paragraph 3.3.2.

20 3.3.4. FOF No. 22 -- based on a hydrogeologic report, mining activities will not
21 adversely affect groundwater quality or quantity or result in draining surface water
22 resources adjacent to the mine site. To the extent that this finding relies on the
23 applicant's groundwater documents, it relies on flawed information as detailed above at
24 paragraph 3.3.2.

25 3.3.5. FOF No. 32 -- the preponderance of the evidence supports the applicant's
26 position that surface and groundwater flow moves toward the northeast and away from

1 Dodson Canyon and Sunset Lane. To the extent that this finding relies on the applicant's
2 groundwater documents, it relies on flawed information as detailed above at paragraph
3 3.3.2.

4 3.4. In addition, the Hearing Examiner made an erroneous finding of fact in stating
5 that the project's added truck trips will not adversely affect the level of service or safety in the
6 immediate vicinity, to the extent that immediate vicinity includes areas more than a few
7 hundred feet from the driveway to the property (FOF No. 34). Although evidence was not
8 presented at the hearing to demonstrate that the additional truck traffic turning onto and off of
9 Route 20 at Campbell Lake Road and Rosario Road would create a hazard, the applicant bears
10 the burden of demonstrating that the project will not cause such impacts, and the applicant's
11 traffic analysis document did not evaluate impacts at those nearby intersections.

12 3.5. The Decision also includes the following erroneous conclusions of law ("COL"):

13 3.5.1. COL No. 3 -- likely environmental consequences of the proposal have
14 been adequately evaluated. Environmental consequences of mining directly adjacent to
15 an unstable slope and gravel trucks entering and exiting challenging Route 20
16 intersections were not explored at all, and as explained above, the mine's groundwater
17 impacts were not adequately evaluated because the application did not acknowledge the
18 groundwater flow toward the unstable slope to the west of the mine site.

19 3.5.2. COL No. 4 -- the question of issuance of a Mining Special Use Permit was
20 essentially decided by inclusion of the site within a Mineral Resource Overlay. While
21 the designation of a property as Mineral Resource Overlay land indicates an intent that
22 such property be used for mining, applications must nonetheless meet Skagit County
23 Code criteria and be conditioned to ensure that inappropriate impacts or elevated risk to
24 public health and safety are addressed.

25 3.5.3. COL No. 5 -- mitigation does not mean the elimination of impacts but
26 rather the moderation or reduction of impacts. The Skagit County Code does not support

1 this broad statement. Mitigation should apply in both kind and quantity as necessary to
2 address impacts and reduce risks as much as possible.

3 3.5.4. COL No. 6 -- the conditions of approval will mitigate existing and
4 potential incompatibilities between the mineral extraction operation and adjacent
5 parcels. As set forth above, the Permit has not been conditioned to address potential
6 impacts to the unstable bluff to the west or traffic impacts at State Route 20 impacts
7 because the application did not acknowledge or evaluate those impacts.

8 3.5.5. COL No. 7 -- the requirements for approval of a Mining Special Use
9 Permit have been met. Absent an evaluation of the unstable bluff or traffic impacts, the
10 project has not met the requirements for a Mining Special Use Permit.

11 3.5.6. COL No. 8 -- the proposal is consistent with the general Special Use
12 Permit requirements of SCC 14.16.900(1)(b)(v) on the grounds that the activities, as
13 conditioned, will not unduly intrude on residential uses, cause adverse effects on public
14 health, safety, and welfare, and will not interfere with the character, landscape, and
15 lifestyle of the particular rural area. Absent an evaluation of the unstable bluff or traffic
16 impacts, the project has not satisfied these criteria.

17 3.5.7. COL No. 9 -- the application is essentially concerned with the continuation
18 of a long-time pre-existing use. While the mine has operated for some time, subject to
19 periods of much less intense activity, the Permit approves a tripling of the size of the
20 mine, more than just the continuation of an existing use.

21 **IV. APPLICABLE SECTIONS OF SKAGIT COUNTY CODE**

22 Applicable sections of the Skagit County Code and related errors in the Permit approval
23 include the following:

24 4.1. SCC 14.16.440. Mineral Resource Overlay. The application requirements at
25 SCC 14.16.440(8)(b) and (8)(g), the hearing examiner review criteria at SCC 14.16.440(9), and
26 the incorporation by SCC 14.16.440(11) of the requirements at SCC 14.16.900 are applicable.

1 4.2. SCC 14.16.440(8)(b) requires a report by a qualified geologist, hydrogeologist,
2 or licensed engineer that characterizes the area's groundwater, including: (a) a description of the
3 geology and hydro-geology of the area, such as the delineation of aquifer, aquitards, or
4 aquicludes, hydrogeologic cross-sections, porosity and horizontal and vertical permeability
5 estimates; (b) a determination of the direction and velocity of ground water movement, water
6 table contour and potentiometric surface maps, if applicable; and (c) a map containing the limits
7 of the mine, buffer zones, location of all ground water wells within 1 mile distance down
8 gradient from the property boundaries, location of all perennial streams and springs, and
9 definition or specification of locations of aquifer recharge and discharge areas. At a minimum,
10 the application for the mine did not include a map showing the wells and springs in the vicinity
11 of the mine property.

12 4.3. SCC 14.16.440(8)(g) requires the identification and description of those critical
13 areas designated and regulated by Chapter 14.24 SCC, together with any critical areas studies
14 required by Chapter 14.24 SCC. The application did not identify and describe unstable slopes to
15 the west or provide critical areas studies to evaluate the proposed mine's impacts on those
16 unstable slopes.

17 4.4. SCC 14.16.440(9)(a) requires the Hearing Examiner to evaluate mining special
18 use permits against the Skagit County Code's special use approval criteria and also imposes the
19 burden of proof on the applicant to show that impacts are mitigatable to warrant permit
20 approval. The application omits information that would be necessary to demonstrate that the
21 mine project's potential slope instability impacts are consistent with the special use criteria and
22 that they are mitigatable and have been properly conditioned to mitigate their impacts.

23 4.5. SCC 14.16.440(9)(b) directs the Hearing Examiner to consider the requirements
24 of Chapter 14.16 SCC as minimum standards based on unique site-specific factors or conditions
25 as appropriate to protect public health, safety, and the environment. The mine proposal does not
26 offer sufficient information to determine whether it meets the minimum standards of Chapter

1 14.16 to protect public health, safety, and the environment. For example, the application does
2 not acknowledge the directly adjacent unstable slope or evaluate the impacts of deforestation,
3 soil, and rock removal on those slopes.

4 4.6. SCC 14.16.440(9)(c) states that appropriate site-specific conditions shall be
5 required to mitigate existing and potential incompatibilities between the mineral extraction
6 operation and adjacent properties. The lack of information about the mine's potential impacts on
7 the adjacent unstable slope prevented the identification and application of mitigating conditions
8 to address that risk.

9 4.7. SCC 14.16.440(9)(d) requires appropriate site-specific conditions to mitigate
10 stormwater runoff and erosion impact. The absence of sufficient accurate information about the
11 hydrogeologic regime at the mining site prevented the requisite examination and application of
12 mitigating conditions.

13 4.8. SCC 14.16.900. Special use permits. A special use permit must demonstrate
14 that the proposed activity will not adversely affect or prevent those uses normally allowed
15 within the respective district. The applicant bears the burden of proving through evidence in the
16 application that:

- 17 (A) The proposed use will be compatible with existing and planned land use.
18
19 (B) The proposed use complies with the Skagit County Code.
20
21 (C) The proposed use will not create undue noise, odor, heat, vibration, air and
22 water pollution impacts on surrounding, existing, or potential dwelling units,
23 based on the performance standards of SCC 14.16.840.
24
25 (D) The proposed use will not generate intrusions on privacy of surrounding
26 uses.
27
28 (E) The proposed use will not cause potential adverse effects on the general
29 public health, safety, and welfare.
30
31 (F) For special uses in Industrial Forest—Natural Resource Lands, Secondary
32 Forest—Natural Resource Lands, Agricultural—Natural Resource Lands, and
33 Rural Resource—Natural Resource Lands, the impacts on long-term natural

1 resource management and production will be minimized.

2 (G) The proposed use is not in conflict with the health and safety of the
3 community.

4 (H) The proposed use will be supported by adequate public facilities or services
5 and will not adversely affect public services to the surrounding areas, or
6 conditions can be established to mitigate adverse impacts on such facilities.

7 (I) The proposed use will maintain the character, landscape and lifestyle of the
8 rural area. For new uses, proximity to existing businesses operating via special
9 use permit shall be reviewed and considered for cumulative impacts.

10 Due to the project's potential adverse impacts on unstable slopes and unexamined traffic impacts
11 at significant intersections, the application does not demonstrate that the proposed mine complies
12 with the Skagit County Code, that it will not cause potential adverse effects on the general public
13 health, safety, and welfare, that it is not in conflict with the health and safety of the community,
14 that it is supported by adequate public facilities and services in the nearby roadways, and that it
15 will maintain the character, landscape, and lifestyle of the rural area that has grown up around
16 the site.

17 4.9. SCC 14.24.410(2). The slopes immediately to the west of the mine property
18 qualify as landslide hazard areas pursuant to SCC 14.24.410(2) because they are: (a) areas
19 designated in the Department of Ecology, Coastal Zone Atlas of Washington as Unstable, with a
20 recent slide; (b) slopes with a gradient of 15% or greater than intersect geologic contacts with
21 permeable sediments overlying low-permeability sediment or bedrock with springs or
22 groundwater seepage; (c) slopes of 40% or steeper with a vertical relief of 10 feet or more; (d)
23 areas of previous failure such as landslides or failures as observed in the field or as indicated by
24 official maps; and (e) potentially unstable areas resulting from rapid stream incision, stream bank
25 erosion, and undercutting by wave action. SCC 14.24.410(2)(a), (b)(i), (c), (d), and (e).

26 4.10. SCC 14.24.420. This section requires the preparation by a qualified professional
of a geologic hazard site assessment for the mine because it lies within 200 feet of an area of
known or suspected risk for geologically unstable condition and the geologic condition may pose

1 a risk to life and property, or other critical areas on and off the project area. SCC 14.24.420(1).
2 Notwithstanding this express directive, the application did not include a geologically hazardous
3 area site assessment for the unstable bluff directly adjacent to the western boundary of the mine
4 property. Nor did the application generally evaluate the potential for the mine expansion to alter
5 drainage even though it proposes to remove a substantial amount of vegetation and soil,
6 including low permeable glacial till. That action will increase groundwater recharge in a manner
7 that has the potential to impact the deep-seated landslide areas to the west because the mine site
8 likely lies within the groundwater recharge area for the slide areas.

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

11 Evergreen Islands respectfully requests the following relief:

12 5.1. that the Board of County Commissioners reverse the Hearing Examiner's
13 November 30, 2020 Decision approving Special Use Permit PL16-0556 as clearly erroneous,
14 vacate the permit, and adopt its own findings, conclusions, and decision based on the record
15 before the Hearing examiner; or

16 5.2. that the Board reverse the Hearing Examiner Decision and remand the matter to
17 the Hearing Examiner to ascertain the project's impacts on the adjacent unstable bluff and State
18 Route 20 intersections; and

19 5.3. Such other and further relief as the Board deems just and equitable.

20
21 Dated this 14th day of December, 2020.

22 Respectfully submitted,

23 LORING ADVISING PLLC

24
25 By 

26 Kyle A. Loring, WSBA No. 34603
Attorney for Evergreen Islands

ATTACHMENT A

NOTICE OF DECISION

BEFORE THE SKAGIT COUNTY HEARING EXAMINER

- Applicant:** Bill Wooding
Lake Erie Pit LLC
13540 Rosario Road
Anacortes, WA 98221
- Agent:** Stephen Taylor
McLucas & Associates, Inc.
P. O. Box 53352
Lacey, WA 98509
- Request:** Special Use Permit, PL16-0556
- Location:** South of the intersection of Rosario Road and Marine Drive,
within a portion of NW1/4 Sec. 11, T34N, R1E, W.M.
- Land Use Designation:** Rural Resource-Natural Resource Lands (RRc-NRL) –
Mineral Resource Overlay
- Summary of Proposal:** To expand an existing gravel mine from 17.78 acres to about 53.5
acres, allowing removal of approximately 60,000 tons of gravel
per year for approximately 60 years.
- Public Hearing:** Commenced August 26, 2020, and continued on October 14, 2020,
via telephone and GoToMeeting. Testimony by Planning and
Development Services Staff, Applicant’s agent, and Applicant.
Testimony by 12 members of the public at first hearing, and by 34
members of the public at continued hearing.
- Decision/Date:** The application is approved, subject to conditions.
November 30, 2020
- Reconsideration/Appeal:** Reconsideration may be requested by filing with Planning and
Development Services (PDS) within 10 days of this decision,
Appeal is the Board of County Commissioners by filing with PDS
within 14 days of this decision, or decision on reconsideration if
applicable.
- Online Text:** The entire decision can be viewed at:
www.skagitcounty.net/hearingexaminer

PROCEDURE

1. The site is zoned Rural Resource-Natural Resource Lands and is within a designated Mineral Resource Overlay (MRO). The MRO was enlarged in 2016 at the applicant's instigation to include the increased acreage he now seeks to mine.
2. The subject application for a Mining Special Use Permit was filed on December 2, 2016, after approval of the expanded Mineral Resource Overlay (MRO).
3. An Environmental Checklist under the State Environmental Policy Act accompanied the Comprehensive Plan amendment that increased the size of the MRO. This checklist was updated on June 6, 2017, to accompany the request for a Special Use Permit.
4. A Mitigated Determination of Non-Significance (MDNS) was entered on January 4, 2019. The MDNS was not appealed.
5. The public hearing was held telephonically and by GoToMeeting. It was initially convened on August 26, 2020. The Examiner then heard testimony from Staff, the Applicant's consultant, the Applicant and 12 members of the public. The Examiner continued the hearing to October 14, 2020, on motion of Evergreen Islands to insure that public notice was properly given.
6. The public hearing concluded on October 14, 2020. The Staff, Applicant's consultant and Applicant testified again. Then 34 members of the public were heard. The public testimony was overwhelmingly against granting the permit. A number of speakers urged doing more study before reaching a decision.
7. The Examiner held the record open through October 16, 2020, to allow for responses to the oral testimony given at the hearing.

FINDINGS OF FACT

The Setting

1. Bill Wooding, for Lake Erie Pit LLC, seeks to expand operation of an existing gravel mine from 17.78 acres to approximately 53.5 acres. The proposed expansion of mining would all occur within a recently enlarged Mineral Resource Overlay (MRO).
2. The site has been mined for sand and gravel since at least the 1960's
3. The pit is south of the intersection of Rosario Road and Marine Drive in the southwestern part of Fidalgo Island. It is legally described as within a portion of NW1/4 Sec. 11, T34N, R1E, W.M. To the north is Mount Erie and the city of Anacortes. To the east is Campbell Lake. To the south is Deception Pass. To the west is the salt water of Burrows Bay.

Is that right about a ridge?
It's not on the maps.

Slopes steeply

4. In the immediate neighborhood, Lake Erie is across the road to the northeast. Devil's Elbow Lake, part of a large wetland area, is to the southeast over a rise and at a higher elevation than the present pit.

5. A substantial ridge on the west side of the mine property forms a steep bank separating the pit, physically and visually, from Rosario Road as it runs north-south. Across the road from this bank, the topography slopes downward to Burrows Bay.

6. Along Rosario Road and downhill toward the shore are residences. To the southwest is the Sunset Lane residential area. The two closest residences are 200 feet from the western portion of the existing and proposed mining operation. Residences are located within a quarter mile west, north, south and east of the project site.

7. Adjacent zoning is predominantly Rural Intermediate, and Rural Reserve.

8. The larger vicinity encompasses Campbell Lake, Mount Erie, and Deception Pass and includes a number of parks and recreation areas. The area is a major attraction for tourists.

The Proposal

9. The permit request is for permission to mine up to approximately 60,000 tons of gravel per year for approximately 60 years -- a total of approximately 3,600,000 tons (2,250,000 cubic yards). The proposal would extend mining over an area that is now almost completely forested.

10. The proposed mining will take the floor of the site from a 375-foot elevation down to a 250-foot mine base. Mining will stop at about 50 feet above the regional water table which at this location is at an elevation of approximately 200 feet. The mining plan has four phases.

11. The initial phase of the operation will involve removing timber from the mining areas. Once timber is removed, topsoil will be stripped off and stockpiled for eventual use in site reclamation.

12. Northeast from the mine Lake Erie is about 1000 feet down gradient. Within the northerly section of mining site, all surface runoff is to be captured in an armored trench from which it will be conveyed to a catch basin.

13. The mining plan is to remove gravel from the site in a counter-clockwise progression to the southwest, south and east of the present pit.

14. Mining operations will be conducted with an excavator and front end loader. Sand and gravel will be screened periodically using a power screen. It is proposed to crush large rocks using a portable crusher brought into the site once or twice a year (spring and fall).

15. The proposal calls for a 100-foot setback from property lines for all excavation and a 200-foot setback for all processing (screening/crushing).

Will it? This is part of the question given the lack of confirmed groundwater data.

16. Under the proposal, gravel will be loaded into trucks onsite and hauled out via a single exit which is to the north of the present pit. To handle peak requirements, the production sought will require 13 truckloads or 26 trips per day.

17. The applicant has advised that up to three employees will be working onsite during maximum operation. No offices or buildings are proposed. Water for workers will be brought in. Portable sanitation facilities will be used. Employee parking will occur offsite to the north at Lake Erie Trucking, which is also owned and operated by the applicant, Bill Wooding.

18. Fueling, truck maintenance, and storage of oil, lubricants and chemicals will not occur on site. Such operations will be carried out across the road at Lake Erie Trucking.

19. Proposed hours of operation are Monday through Friday from 8 a.m. to 5 p.m., and Saturdays from 8 a.m. to noon.

20. Changes in visual aesthetics will be minimized to the west by the existing perimeter berm and by the construction of new berms. Mining operations will continue to be visible from the north and this visibility will increase with clearing and expanded mining.

21. One purpose of the present application is to get a comprehensive reclamation plan into effect. When mining is finished, the plan is to bring in clean fill to raise the ground level to 300 feet and then to plant native grasses and other plants. The filling process will occur progressively, after each phase of mining is completed. The reclamation activities will be overseen by the State Department of Natural Resources.

Environmental Review

22. A Mitigated Determination of Non-Significance (MDNS) was issued on January 4, 2019, accompanied by an 18-page narrative entitled "SEPA Environmental Review Staff Report." The narrative reviewed impacts and mitigations for various elements of the environment. A paraphrased summary follows:

Earth -- *potential impact*: Destabilizing of slopes and increased erosion.

-- *analysis/mitigation*: Due to permeability of geologic formation, no significant erosion anticipated. Potential for shallow surficial landslides offset by 100 foot setback from the property line to provide a buffer to prevent failures from encroaching on neighboring property.

Air -- *potential impact*: Excavation/transport equipment will generate dust

--*analysis/mitigation*: Dust controlled through best management practices control plan which includes spraying water on road and equipment. Dust shall not exceed Northwest Clean Air Agency, state and federal regulations.

Water – *potential impact*: Increased surface water runoff and impacts to ground water. Potential effects on perched and unconfined aquifers; draining of surface waters and wetlands.

analysis/mitigation: All surface water runoff from mining operations will be directed into the interior of the mine, collected in a detention pond and infiltrated on site. High infiltration rates minimize risk of runoff leaving site. Based on Hydrogeologic Report, mining activities will not adversely affect groundwater quality or quantity or result in draining surface water resources adjacent to the mine.

Plants and Animals – *potential impact*: Encroachment on wildlife habitat, wetlands

analysis/mitigation: No critical areas identified onsite, nearest wetland buffer does not extend onto mine site.

Energy/Health – *potential impact*: Use of petroleum fuels/possible spills

analysis/mitigation: Fueling and equipment maintenance done off site on impermeable surfaces. No toxic materials stored on site

Noise – *potential impact*: Operations may produce noise in excess of Washington State residential noise standards.

analysis/mitigation: Noise generated by mining operations will be muffled by topography except to the north. Noise control mitigation measures consistent with noise study shall be implemented, including:

- 100 foot mining setback from Rosario Road and all property lines.
- No mining on parcel P19108 (the most northerly parcel which borders the road.)
- Prior to mining on parcels P19158 and P90028 construct a 14 foot high earthen berm or equivalent to shield excavation equipment on western side of parcel.
- Prior to mining on parcel P19161 construct a 16 foot high earthen berm or equivalent to shield excavation equipment on north and east sides of parcel.
- Prior to mining on parcel P19164 construct a 12 foot high earthen berm or equivalent to shield excavation equipment on the north and east sides of the site.
- Rock crushing and screening operations are limited to the processing area indicated on the site plan.

The effect of these measures is anticipated to be compliance with state and county noise regulations.

Land & Shoreline Use – *potential impact*: Effects on nearby residential use of noise, traffic and dust associated with gravel mining.
analysis/mitigation: Proposed mine expansion is 850 feet from nearest shore and 200 feet from nearest housing. Noise, emissions, dust generation and traffic are not anticipated to be exceed standards if mitigation measures are implemented.

Aesthetics/Light and Glare – *potential impact*: Changes in appearance from removing trees, creating more exposed mining area; effects of truck headlights.
analysis/mitigation: Topography will minimize aesthetic impacts; berms will control some light and glare; reclamation will restore vegetation.

Recreation – *potential impact*: Staff finds no known recreational opportunities on or in the immediate vicinity of the proposed mine expansion, other than occasional target shooting in the pit. This reportedly only occurs with the permission of the mine owner and is not available to the general public. No recreational shooting will occur during mining operations.

Historic and Cultural Preservation – *potential impact*: None known,
analysis: Staff recommends a condition regarding action to take if cultural materials are discovered during operation of the mine.

Transportation – *potential impact*: Expanded gravel mining will increase truck and trailer traffic, generating an average of 13 outgoing loads per day or 3,380 truck trips per year. Eight new truck trips are anticipated during peak hour traffic. Hours of operating are to be Monday-Friday: 8 am to 5 pm, Saturday: 8 am to 12 pm. Rosario Road, Marine Drive and Havekost Road will be used during mining operations.
Analysis/mitigation: Upon review of professional traffic study and the County's existing regulations, Staff concluded that there will be no adverse impacts from traffic created by the mining expansion.
Analysis/mitigation: Site distance to the west of the access road should be made to meet AASHTO guidelines and the existing site access should be upgraded by placement of an asphalt apron with rumble strips to prevent tracking of mud and debris off site.

Utilities and Public Services – *potential impact*: None

23. The MDNS contained the following conditions:

(1) The public right-of-way shall be kept clean. Tracking of mud and debris off site shall not be allowed. An asphalt apron, with rumble strips, shall be constructed from the asphalt edge of Rosario Road 100 feet into the property on the existing/proposed gravel mine access road to prevent tracking mud and debris off site.

(2) The applicant shall comply with Northwest Clean Air Agency (NWCAA) requirements, including all dust control requirements both on and offsite. Visible dust generation shall require immediate best management plan (BMP) implementation as described in the Lake Erie Pit air quality best management practices recommendations by Maul Foster Alongi dated September 15, 2016.

(3) Temporary erosion/sedimentation control measures, as approved by the Skagit County Planning and Development Services, shall be in place prior to the initiation and maintained for the duration of the project pursuant to Skagit County Code (SCC) 14.32, Stormwater Management Ordinance.

(4) The project shall comply with noise, vibration, and light/glare limitations as per SCC 14.16.840. Noise control mitigation measures, consistent with the noise study, shall include:

- a. Maintain a 100 foot mining setback from Rosario Road and all property lines,
- b. No mining shall occur on parcel P19108.
- c. Prior to mining on parcels P19158 and P90028, a 14 foot high earthen berm or equivalent noise barrier shall be constructed to shield the excavation equipment on the western side of the parcel.
- d. Prior to mining on parcel P19161, a 16 foot high earthen berm or equivalent noise barrier shall be construct to shield the excavation equipment on the northern and eastern side of the parcel.
- e. Prior to mining on parcel P19164, a 12 foot high earthen berm or equivalent noise barrier shall be constructed to shield the excavation equipment on the northern and eastern side of the site.
- f. Rock crushing and screening operations are limited to the processing area as indicated on the site plan.

(5) The project is limited to those activities described in the SEPA checklist and supporting documents. Significant deviation from the proposal may require additional review and approval by Skagit County Planning and Development Services.

(6) The site distance to the west of the access road to the mine does not meet AASHTO guidelines for intersection sight distance. The applicant shall clear parcel P19108 of brush, trees and perform site grading as necessary to increase the site distance to Marine Drive.

(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) Gravel mining operations shall not extend to a depth closer than 10 feet above the seasonal high groundwater as established by the Hydrogeologic Site Assessment report by Maul Foster Alongi, dated September 28, 2016.

(9) All soil imported for reclamation of the parcel must be certified as “clean soils,” as defined by WAC 173-350-100, by a consulting environmental geologist and independent testing laboratory. Written certification of the clean soils for each source of soil shall be provided to Skagit County Planning and Development Services and the Skagit County Health Department prior to transportation and placement of soil material onsite. The certification shall indicate the source of the soil tested, locations of the samples obtained, laboratory test results for each source of soil, and the soil sampling data forms.

(10) All fill soil imported to the site for the purpose of raising the mine base floor elevation to 300 feet mean sea level shall be placed in lifts not to exceed 8 inches in depth and compacted to 95% of ASTM D-1557 modified proctor. Soils compaction test reports from a licensed geotechnical engineer verifying compaction shall be provided to the Skagit County PDS annually. The report shall indicate the source of the soil tested, locations of the compaction tests onsite, depth of fill at time of testing, proctor test results for each source of soil, and the soil compaction test data form.

(11) A class IV general forest practice permit shall be obtained from the Washington Department of Natural Resources prior to harvest of any timber onsite.

(12) A Construction Stormwater General or Industrial Permit may be required by the Department of Ecology (WSDOE) for this project. Contact the WSDOE Bellingham Field Office to determine if a permit is required.

(13) Should any human remains, archaeological, historic or cultural materials be discovered during construction, work in the affected area shall cease immediately and the area shall be secured. Within 24 hours of the discovery, or as soon thereafter as possible, the developer shall notify the Skagit County Sheriff’s office, Skagit County Planning and Development Services, the Washington State Department of Archeology and Historic Preservation and affected tribes. If following consultation with the above parties it is determined that an archaeological and cultural resource assessment is required, the project developer shall retain the services of a professional archaeologist to prepare such an assessment. Project work in the affected area shall only continue when in

conformance with applicable state and federal laws.

24. The MDNS was not appealed.

Discussion

25. The Mineral Resource Overlay (MRO) was enlarged in 2016 to encompass the area of mining contemplated by the subject permit application.

26. The application describes the Lake Erie Pit as currently being in operation, producing 20-30,000 tons of sand and gravel per year. At the hearing, numerous persons testified that no operations have been observed at the pit for several years.

27. The preponderance of evidence is that the mining operation has been essentially moribund in recent times. Over the years of the mine's existence, residential development of the surrounding area has increased. The neighborhood context today has changed from when mining at the site began. This probably accounts for the significant outpouring of opposition to this application.

28. Be this as it may, the question of the appropriate use of the site has been legislatively resolved by the approval of an enlarged Mineral Resources Overlay (MRO) which encompasses the area of the applicant's mining proposal. Under SCC 14.16.400(1) the purpose of the overlay is to

maintain and enhance natural resource-based industries by . . . allowing continued operation of existing legally established uses, and by assuring that use of adjacent lands does not interfere with the extraction and quarrying of minerals.

29. The MRO code provisions explicitly provide for the expansion of pre-existing mining operations through the mechanism of a Mining Special Use Permit. SCC 14.16.400(3)(c).

30. The criteria for Mining Special Use permits are weighted towards approval. Under SCC 14.16.440(9), site-specific conditions are mandated to mitigate "incompatibilities between mineral extraction operations and adjacent parcels." The County Staff Report endeavors to fulfill this requirement through the recommendation of 15 conditions of approval.

31. Analysis provided by the applicant indicates surface and ground water flow toward Lake Erie is to the north and northeast of the site. Submissions from the public, including evaluation by professionals, call this into question. There is widespread concern that with more mining to the south some infiltrating water is likely to flow to the west and that slope and bank stability in that direction may be adversely affected. The Del Mar water line, Rosario Road and a number of homes lie to the west.

32. The Examiner finds that the preponderance of evidence supports the analysis of the applicant as to surface and groundwater flow. Three hydrogeologic analyses were completed by the applicant to evaluate groundwater conditions onsite. The Examiner finds that the preponderance of evidence supports the view that the flow (surface and ground) is to the northeast and away from Dodson Canyon and Sunset Lane.

33. Concern was also expressed at the hearing and in correspondence about the potential dewatering of wetlands in the vicinity. The applicant installed an observation well to assist evaluation of whether a perched aquifer exists between Devil's Elbow Lake and the mining area. The evaluation concluded that a perched aquifer is not present in the area. There appears to be no hydraulic connection between Devil's Elbow Lake and the units to be mined,

34. A professional traffic analysis commissioned by the applicant indicates that the added truck trips will not adversely affect the level of service or safety in the immediate vicinity. There appears to be no solid evidence that the relatively modest addition of truck traffic from the mine will cause congestion or measurably affect safety on the surrounding roads. The Washington State Department of Transportation did not comment on this proposal.

35. The County's Department of Public Works reviewed the applicant's traffic study and essentially concurred with its findings. A sight distance issue at the entrance was identified, but found to be curable by clearing and grading. The condition of roads in the area was found to be excellent and thus able withstand the anticipated truck traffic. Possible conflicts with school busses, pedestrian or bicycle use were not found significant.

36. A noise study prepared by professionals in acoustics analyzed noise from future noise sources around the site. The study determined that without noise control, future operations would exceed State standards at nearby residences. The study recommended seven control measures which are reflected in conditions of the MDNS. These consist of setbacks and a requirement for berms at various locations. It was estimated that the noise control measures would reduce residential noise levels to below 60 dbA, which is the regulatory limit here.

37. Modernly, the character, landscape and lifestyle of this rural area is that which supports the scenic and recreational uses nearby. The local outcry about this project is essentially the expression of an opinion that the expansion of this mine conflicts with the character of the area. However, the adoption of the MRO around the mining site appears to foreclose this argument as a legal matter.

38. The applicant's testimony was that he has no immediate plans for significantly expanding the operation of the mine. He is elderly and said that the current application represents part of an attempt to get his affairs in order. He has no plans to sell the property.

39. Any finding herein which may be deemed a conclusion is hereby adopted as such.

CONCLUSIONS OF LAW

1. The Hearing Examiner has jurisdiction over this proceeding. SCC 14.16.440(9).
2. The provisions of Chapter 43.21C RCW, the State Environmental Policy Act (SEPA), have been met. The time to appeal the MDNS has long-since passed. Therefore, the preparation of an Environmental Impact Statement cannot not now be required.
3. Nonetheless, the Examiner concludes that likely environmental consequences of the proposal have been adequately evaluated.
4. The question of issuance of a Mining Special Use Permit was essentially decided by inclusion of the site within a Mineral Resources Overlay (MRO). See SCC 14.16.440. Under these code provisions a permit is to be issued “if the impacts are mitigatable.” SCC 14.16.440(9).
5. Mitigation is not a legally defined term in this context. It must therefore be taken to carry its ordinary meaning. Mitigation does not mean the elimination of all impacts. Rather it means the moderation or reduction of impacts.
6. The Examiner concludes that the conditions of approval imposed here are appropriate site-specific conditions which mitigate existing and potential incompatibilities between the mineral extraction operation and adjacent parcels. The conditions imposed are reasonable, practicable and generally capable of being achieved by the mine operator.
7. In sum, the requirements for approval of a Mining Special Use Permit have been met.
8. The proposal is also consistent with the general Special Use Permit requirements of SCC 14.16.900(1)(b)(v). In particular, the activities, as conditioned, will not unduly intrude on residential uses; cause adverse effects on public health, safety and welfare; nor interfere with the character, landscape and lifestyle of the particular rural area.
9. Were the pit not already in existence, this would be a different case. The application is essentially concerned with the continuation of a long-time pre-existing use. The character of the particular rural area already includes this mine.
10. However, it is vital to the success of this undertaking, that the permittee closely follow the conditions that have been imposed. Therefore the Examiner has added a provision for review of this approval at five year intervals.
11. Any conclusion herein which may be deemed a finding is hereby adopted as such.

CONDITIONS

1. The development and operation of the gravel mine shall be as described in the application materials, the SEPA checklist, and supporting documents, except as the same may be modified by these conditions.
2. A Department of Natural Resources (DNR) Surface Mine Reclamation Permit shall be applied for and obtained prior to mining as per Chapter 78.44 RCW. No mining may take place prior to obtaining a reclamation permit from DNR.
3. The applicant shall obtain all other required permits and shall abide by the conditions of same.
4. The applicant shall comply with all conditions set forth in the Mitigated Determination of Non-Significance (MDNS) entered on December 3, 2018 (See Finding 23 above).
5. Significant deviation from the proposal will require additional review and approval by Skagit County Planning and Development Services (PDS).
6. The operation of the mine shall be limited to daylight hours only.
7. Rock crushing shall be limited to twice a year in the spring and fall. Any such operations shall be limited to daylight hours and no more than a month in duration.
8. In the event that cut slopes from the mining operation exceed 50%, the top of the slope shall be fenced or otherwise marked to prevent access.
9. PDS shall be notified within 30 days of any change in ownership of the affected parcels by submitting a letter to the Planning Director referencing the permit number (PL16-0556).
10. The proposal shall be commenced within two year of the permit approval per SCC 14.16.900(d).
11. This permit shall be void if the use is abandoned for more than a year.
12. Activities under this permit shall be reviewed by the County every five years, commencing with 2025. Prior to this review, the permittee shall submit a report to PDS detailing operations during the previous five-year period. If any failures to comply with these conditions or other problems are noted, the County shall take such action as is appropriate.

13. Failure to comply with any permit condition may result in permit revocation.
SCC14.16.900(1)(b)(iii).

ORDER

The requested Special Use Permit (PL16-0556) is approved, subject to the conditions set forth above.

SO ORDERED, this 30th day of November, 2020.



Wick Dufford, Hearing Examiner

Transmitted to Applicant, County staff, interested parties, November 30, 2020.