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BEFORE THE BOARD OF COUNTY COMMISSIONERS
IN AND FOR THE COUNTY OF SKAGIT, WASHINGTON

**In the Matter of the Appeal of Special
Use Permit, PL16-0556, for the
expansion of a gravel mine.**

APPEAL NO. PL23-0363
WRITTEN REBUTTAL OF
APPELLANT EVERGREEN
ISLANDS

On September 22, 2023, Skagit Planning and Development Services’ (“PDS”) submitted a terse memorandum in this appeal that omits any meaningful explanation for the applicant’s failure to evaluate the proposed mine’s hydrogeological impacts on residential bluffs at serious risk of landsliding.

In fact, PDS’ memo does not even address the issue at hand, and may be disregarded. Rather than discussing the applicable landsliding risk to the Sunset Lane community to the west/northwest of the mine, the memo mistakenly alleges that Evergreen Islands has asserted that the mine will impact landslide risk to the west and southwest of the site. **This appeal does not involve the landslide risk to areas west and southwest of the mine.** Further, the third-party reviewer that PDS relies upon made the same mistaken assumption, ignoring the Board of Commissioners’ 2021 decision, which expressly states that this appeal involves “**the coastal bluff area to the west/northwest of the Mine.**” That reviewer references bluffs areas “to the west and southwest of the proposed project, including the Dodson Canyon Springs...with base elevations (below the scarps) of about 200 ft. msl.” Neither PDS’ prehearing memo nor the

1 third-party reviewer opinion about upgradient springs to the west/southwest are relevant to the
2 issue on remand – whether the removal of trees, shrubs, soils, and glacial till across 36 acres of
3 mine and infiltrating stormwater in that location will direct additional groundwater
4 downgradient to the residential community along landsliding bluffs to the northwest of the site.

5 Moreover, PDS’ reliance on the third-party reviewer in this matter is misplaced because
6 there is no evidence in the record that the reviewer was aware of downgradient springs in the
7 bluffs to the northwest, just as the original hydrogeological study failed to evaluate groundwater
8 levels in that direction. Indeed, the third-party reviewer’s reference to bluffs 800-1,000 feet
9 from the project demonstrates that they were contemplating bluffs other than the ones to the
10 northwest that lie within 275 feet of the northern part of the mine site. As explained in detail in
11 Evergreen Islands’ Opening Brief, and as already determined by the Board of Commissioners,
12 the only expert to review groundwater levels to the west/northwest of the mine was Dan
13 McShane, a licensed engineering geologist who concluded based on direct observations that
14 groundwater discharges from springs in the bluffs at an elevation between 165 and 175 feet.¹
15 Based on the applicant’s hydrogeological studies, which found groundwater in the southern part
16 of the mine site at a height of 190 feet above mean sea level, Mr. McShane concluded that some
17 portion of the groundwater at the site flows from the higher mine site elevation to the lower
18 shoreline bluff elevation. Consequently,
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22 [t]he expansion of the mine will increase groundwater recharge and groundwater
23 flow from the mine area will increase. At least some of that increase will be
24 towards the unstable bluffs where the sand formations are located over very low
25 permeability silt/clay. An increase in groundwater flow will increase the
26 frequency and magnitude of landslides.²

¹ 2021 HEX Record, at 859, Ex. 27, Stratum Group Report, at 8.

² 2021 HEX Record, at 858-59, Ex. 27, Stratum Group Report, at 7-8.

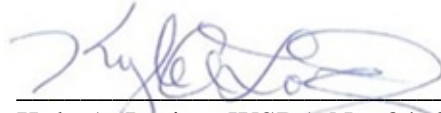
1 This conclusion has not been rebutted, and the Commissioners must remand this matter
2 yet again so that the applicant can evaluate the risk that his mine will contribute to landsliding
3 in the bluffs northwest of the mine.
4

5 Dated this 27th day of September, 2023.
6

7 Respectfully submitted,

8 LORING ADVISING PLLC

9
10 By



11 Kyle A. Loring, WSBA No. 34603
12 Attorney for Evergreen Islands
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DECLARATION OF SERVICE

I declare under penalty of perjury under the laws of the State of Washington, that on the date and in the manner indicated below, I caused the following:

- **Written Rebuttal of Appellant Evergreen Islands**
- **Declaration of Service**

to be served on:

Bill Wooding [] By United States Mail
Applicant [x] By Electronic mail
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and filed with:

Amber Erps, CMC
Skagit County Commissioners Office, Clerk of the Board
ambere@co.skagit.wa.us

DATED this 27th day of September, 2023, at Friday Harbor, Washington.



Kyle A. Loring