

**SKAGIT COUNTY PLANNING AND DEVELOPMENT SERVICES
FINDINGS OF FACT**

Hearing Authority: Skagit County Hearing Examiner

Hearing Date: August 26, 2020

Application Number: Special Use Permit Application PL16-0556

Applicant: Mr. Bill Wooding
Lake Erie Pit LLC
13540 Rosario Road
Anacortes, WA 98221

Representative: Mr. Stephan Taylor
McLucas & Associates, Inc.
PO Box 5352
Lacey, WA 98509

Zoning/Comprehensive Plan: The property is located within the Rural Resource-Natural Resource Lands zoning/comprehensive plan designated area as indicated in the Skagit County Comprehensive Plan and associated zoning maps. The subject property is within the Mineral Resource Overlay designated area.

Assessor's Account Numbers: 340111-0-004-0101
340111-2-001-0001
340111-2-003-0009
340111-2-003-0306
340111-2-004-0008
340111-2-005-0007
340111-2-005-0106
340111-2-004-0107

Parcel Numbers: P19108, P19155, P19158, P90028, P19161, P19164, P19165 & P19162

Project Location: The subject site is located south of the intersection of Rosario Road and Marine Drive, within a portion of the northwest quarter of Section 11, Township 34 North, Range 1 East, Skagit County, WA.

General Project Description: The proposal includes the expansion of an existing mining operation from 17.78 acres to approximately 53.5 acres. The site is accessed from Rosario Road on an existing private gravel driveway. The gravel mining operation proposes to remove approximately 60,000 tons of gravel per year for approximately 60 years, for a total of approximately 3,600,000 tons (2,250,000 cubic yards). The base elevation of the mine will be 250 feet above mean sea level (msl). Gravel will be

removed from the site by truck and trailer, generating an average of 13 loads per day or 26 truck trips per day. Reclamation is proposed to include filling the pit with imported clean soil to return the base elevation of the mine to 300 feet above mean sea level.

The mining operation will process material onsite with a screen and rock crusher. Material will be screened onsite and stockpiled. Once or twice a year, spring and/or fall, a rock crusher will be brought onsite to process larger rocks generated by the screening process. No offices or structures are proposed to be built onsite. A scale and weigh station is currently located on parcel P19162. Processing equipment, including screening equipment, conveyor belts and portable/temporary rock crushers will be located greater than 200 feet from the property boundaries, near the center of the site (see Figure 3, Mining Sequence Map, included in exhibit 4).

PROJECT AREA DESCRIPTION: The project area is approximately 53.5 acres in size and consists of a sand and gravel terrace above Lake Erie. The site has been mined for sand and gravel resources since prior to 1969. The terrace consists of glacial outwash deposit composed of gravelly sand with some silt. This formation represents the southern extent of a glacial recessional outwash complex deposited during the Vashon Stade of the Fraser glaciation period. The glacial formation at this location is unconformably underlain by the Jurassic to Cretaceous age Fidalgo rock complex.

Topographically, the northeast corner of the property is at an elevation of approximately 240 feet above msl. The elevation rises to an elevation of approximately 440 feet along the southern boundary of the proposed mining area for a site relief of 200 feet. The hydrogeology report indicates the groundwater table elevation is approximately 192.2 feet near the southern boundary of the parcel with a groundwater down gradient direction to the north to northeast. The finished elevation of the base of the mine, as indicated on Figure 2 of the Hydrogeology report is 250 feet. No structures are present on the site.

Exhibits:

1. Staff Report.
2. Special Use Application and narrative received December 2, 2016.
3. Skagit County Zoning and Assessor's map.
4. Site Plans and aerial photographs.
5. Notice of Development Application, published February 2, 2017.
6. SEPA Checklist dated June 8, 2017
7. State Environmental Policy Act (SEPA) Mitigated Determination of Non-significance (MDNS), dated December 3, 2018, and associated SEPA staff report.
8. Critical Areas Reconnaissance by Skagit Wetlands and Critical Areas, dated February 24, 2017.
9. Hydrogeologic Site Assessment Report by Maul Foster Alongi, dated September 28, 2016.
10. Observation Well Installation letter report by Maul Foster Alongi, dated September 28, 2017.
11. Letter from McLucas and Associates, responding to the Del Mar comment letter, dated December 19, 2018.

12. Letter from Northwest Groundwater Consultants, responding to the Del Mar Comment letter, dated January 3, 2019.
13. Lake Erie Pit Well Reconnaissance by Northwest Groundwater Consultants LLC, dated March 11, 2019.
14. Lake Erie Gravel Pit Traffic Impact Analysis by Gibson Traffic Consultants, Inc., dated September 2016.
15. Addendum to the Lake Erie Gravel Pit Traffic Impact Analysis by Gibson Traffic Consultants, Inc., dated May 12, 2017.
16. Traffic Memorandum by Skagit County Public Works, Dated March 1, 2018.
17. Supplemental (traffic) Memorandum by Skagit County Public Works, dated May 2, 2018.
18. Lake Erie Pit air quality best management practices by Maul Foster Alongi, dated September 15, 2016.
19. Lake Erie Pit Expansion Noise Study by Acoustics Group, Inc., dated September 16, 2016.
20. List of neighboring property owners and parties of record notified of the Public Hearing.

Correspondence:

21. A total of eighteen (18) comment letters were received during the comment periods. Fourteen (14) comment letters were received during the notice of development application (NODA) comment period, an additional three (3) comment letters were received during the Notice of Public Hearing (NoPH), and one (1) comment during the SEPA comment period. Comment letters and emails from the NODA, NoPH & SEPA comment periods are attached as Exhibit 21 and are in chronological order of receipt. Comments letters generally expressed concern about aesthetics, a decrease in water quality of the area, a decrease in slope stability adjacent to Rosario Road, impacts to wetlands found offsite, impacts to fish and wildlife habitat conservation areas, impacts to potential perched/shallow groundwater conditions, increases in traffic, increases in noise and dust generation. Two of comment letters were in support of the proposal. The SEPA comment letter is discussed under Department Findings #6 and the response to the comments is include as Exhibit 9 & 10.
22. The fourteen (14) comment letters received during the NODA comment period were provided to Mc Lucas and Associates, Inc., representing Lake Erie Pit LLC. McLucas and Associates responded to each of the comment letters. The applicants responses are included as Exhibit 22.
23. An additional five (5) comment letters were received outside of the comment periods. All 5 comment letter were from Mr. Andy Dunn, a hydrogeologist with RH2 Engineering. Mr. Dunn represents Bill & Pam Doddridge residing on parcel P19166 to the south of the proposed mine expansion area. The comments are specific to a concern that the gravel mining activities may breach a perched aquifer onsite resulting in subsurface draining Devils Elbow Lake, located on the Doddridge property. The comment letters are included as Exhibit 23. Investigation of their concern included advancing a boring and installation of an observation well near the southern property line, between the lake and the gravel

mine. The boring was logged by the hydrogeologist of record and by Mr. Andy Dunn, LHg of RH2 Engineering. A perched aquifer was not encountered during advancement of the boring to a depth of 277 feet below site grade, an elevation of 168.6 above MSL (see Exhibit 8).

GENERAL PROPERTY/PROJECT INFORMATION:

Development schedule – As described by the applicant in Exhibit 2, mining is anticipated to yield approximately 3,600,000 tons of sand and gravel over an approximate 60 year period with an expected extraction rate of 60,000 tons per year. Preparation for mining expansion operations is proposed to begin the fall of 2019.

The initial phase of the mining operation will include removal of timber from the mining areas. Any timber harvest will require the applicant to obtain a class IV general forest practice conversion permit from the Washington Department of Natural Resources. After removal of timber, the area will be stripped of topsoil and stockpiled on parcel P19161 for use in final reclamation of the site. Prior to mining, the applicant will implement any necessary site drainage facilities, construct the noise reduction berms and designate stockpile areas. All surface water runoff/drainage from mining operations will be directed into the gravel mining basin. Reclamation will be ongoing throughout the mining process, but is not anticipated to be completed until final stages of mining. Once a base elevation of 250 feet above msl is achieved, the applicant proposes to import soil from offsite sources to backfill the mine. The mine will be backfilled to raise the elevation to approximately 300 feet above msl. After reclamation, the subject site will be reforested.

Gravel mining will proceed in a counter clockwise pattern as indicated on Figure 3, Mining Sequence Map (exhibit 4), and will maintain a 100 foot buffer from the property boundaries. Initially, gravel mining operations will begin within parcels P19162 and P 19155 (phase 1) on the northern portion of the mining site within the limits of the current mining operation. Outgoing truck traffic will increase to 13 per day as the market demands. Once a mining has advanced to a depth of 250 feet msl in the phase 1 area, mining activities will be expanded to the southwest on parcel P19158 (phase 2). As mining occurs in subsequent phases, progressive reclamation will be ongoing including the placement of fill from outside sources within those areas that have achieved an excavation depth of 250 feet msl. After removal of the sand and gravel deposits from the phase 2 area, reaching a depth of 250 feet msl, mining operations will extend to the east on parcels P19165 and P19164 (phase 3). The final phase of mining will include extending mining operations to the north on parcel 19161 (phase 4).

Upon cessation of mining, the mine floor will be reclaimed and returned to an elevation of 300 feet by importing soil from outside sources. Stormwater runoff best management practices will remain active. Once an elevation of 300 feet msl is achieved, top soil will be replaced in the mine floor and the mining buffer will be reduced to 50 feet to facilitate reclamation of the mined slopes. The scale weigh station complex will be dismantled and removed from the site. The mine floor and slopes will be progressively planted with Douglas fir seedlings and returned to a commercial forestry use.

Project Access – The existing access to the mining area is from Rosario Road, on parcel P19108.

Traffic and Parking - The traffic impact analysis (Exhibit 12 & 13) prepared for the gravel pit operation assumes 60,000 tons of gravel would be processed from the pit on an annual basis which would require an estimated 4,056 full trucks leaving the mine per year. Truck trips generated by the proposal are anticipated to average 13 full trucks leaving per day (or 26 round trips) for 312 work days per year. Currently the mine is producing approximately 35,000 cubic yards (approximately 49,000 tons) of gravel annually.

Project related traffic, including aggregate transport trucks will be observed entering and exiting the access road at its intersection. Mining operations will be visible from within the east-west trending Rosario Road but not visible from the north-south trending portion of Rosario Road. Approximately two to three employees will be onsite during the work day.

The applicant has indicated that there may be times in which market demands exceed average production. Under high market demand conditions, the gravel mining operation is proposed to be increased, but will not to exceed the county road standard LOS (level of service) D.

Parking for employees, trucks, and operations vehicles will be available on-site. Traffic haul routes from the mine on public roads may include traveling east or south on Rosario Road, and traveling north on Marine Drive, depending on the delivery location. The traffic report anticipates that market demand may require that 40% of the gravel trucks leaving the site to be headed north on Marine Drive, 25% of the trucks headed east on Rosario Road, and 35% of the trucks headed south on Rosario Road (Exhibit 12). Sand and gravel obtained from the mine will be sold directly to market.

Additional traffic generation, as outlined in the Traffic Analysis (Exhibit 12), may be noticeable in the vicinity, but should not create any significant impacts. Projected traffic generation will be consistent with the County's current Level of Service for transportation.

Surrounding Land Use- Aerial photographs (Exhibit 4) indicate several residential properties occur in the mine's vicinity, from the west around to the south. The two closest residences are located 200 feet from the western portion of the proposed and existing mining operation and numerous residences are located within one quarter mile west, north, south and east of the project site.

The land use to the south and southeast of the mine site is zoned as Rural Reserve. The lands to the east, west and north, are zoned as Rural Intermediate. Aerial photographs indicate the lands surrounding the mine site are primarily occupied by moderately spaced residential developments.

Aesthetic Impacts – The topographic location of the existing mining site will continue to minimize aesthetic impacts by ongoing mining operations due to the presence of an

existing perimeter berm. However mining operations will continue to be visible from the north. Additional aesthetic impacts are anticipated due to an increase in scale of the mining operation and the removal of trees and vegetation from the areas proposed for expanded mining operations. Lights from trucks may be visible when trucks are accessing or traveling down Rosario Road and Marine Drive in the early morning and early evening hours of the winter months.

Perimeter vegetated buffers and the proposed noise perimeter berms to the north, south, east and west will control some of the potential light and glare impacts. It is anticipated that the aesthetic impacts of operating trucks and equipment will decrease as the operational mining depth decreases. After completion of sand and gravel extraction, the area will be graded (reclamation) to simulate the natural topography of the area, the topsoil initially stripped from the mine area will be returned, and the mine area will be reforested.

Site Buffers and Setbacks - SCC 14.16.440 (10) (b) (iii) requires a 100-foot buffer be maintained around the perimeter of the mining site during mining operations. Once the extraction and transportation operations have been completed, the 100-foot buffer may be utilized for reclamation of the parcel. The applicant has volunteered a 20 year, 200-foot critical area buffer on parcel P19164 at the southern perimeter of the mining site as a buffer to the existing residential development. Under an agreement with the neighboring property owner, the 200 foot buffer area may be reduced by 100 feet, after a 20 year period.

Employees - The applicant has indicated that up to 3 employees would be working onsite during maximum operation. Although a scale is present onsite, no offices or buildings for the employees are proposed to be constructed onsite. Potable water for employees will be brought onsite from offsite sources. Restrooms for the employees will be provided onsite by portable sanitation facilities. Parking for the employees will be available at the existing Lake Erie Trucking office located offsite to the north.

Proposed Hours and Days of Operation – The applicant proposes that the days and hours of operation will generally be limited to Monday through Friday, from 8:00 am to 5:00 pm and on Saturdays from 8:00 am to noon. Skagit County Code 14.16.440 (10)(i) requires that hours of operation vary according to the zoning designation of the site, but may be shortened by the Hearing Examiner based on site-specific circumstances.

The proposed mine is located within the Rural Resource-Natural Resource Land (RRc-NRL) designated area. Mining operations on RRc-NRL designated land may be granted unlimited hours of operation. However, 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 one quarter mile from existing Rural Intermediate, Rural Village, or Urban Growth Area designated lands.

As the proposed mining site is located adjacent to and within one quarter mile from Rural Intermediate designated lands, the Hearing Examiner may limit hours of operation to daylight hours or a reasonable limitation as necessary to address potential significant adverse impacts to adjacent land uses.

Storage of Hazardous Materials – There will be no refueling or the storage of hazardous materials onsite. All fueling and maintenance will occur at the Lake Erie Trucking operation located across the street to the north which is an existing heavy equipment and truck maintenance/storage facility.

Surface water is considered to have a low risk of impact from onsite fuel/oil leaks or spills. As one may expect, the sand and gravel resources onsite are highly permeable minimizing the risk of hazardous material surface water runoff to receiving surface water bodies (Lake Erie) located approximately 800 feet to the north of the proposed gravel mine. Surface water runoff is less likely as the gravel mining pit deepens.

Sand and Gravel Mines are regulated by the Washington Department of Ecology and require a Sand and Gravel General permit for mining operations. The Sand and Gravel General Permit requires the applicant to comply with the provisions of the Washington State Model Toxics Control Act (RCW 70.105D), Washington State Water Pollution Control law (RCW 90.48) and the Federal Water Pollution Control Act (Clean Water Act), Title 33 United States Code, Section 1251.

Noise/Emissions/Odors – The maximum allowable noise level per Chapter 173-60 WAC allowed to be emitted from this property, a Class C EDNA property, onto a Class A EDNA property (residential) is 60 decibels and between the hours of 10:00 PM and 7:00 AM levels must be reduced by 10 decibels (or 50 decibels). The Lake Erie Pit Expansion Noise Study (exhibit 15) has indicated that the mining operation is anticipated to be in compliance with both day and night Washington State and Skagit County noise regulations provided the recommendations included in the Lake Erie Pit Expansion Noise Study (exhibit 12) are fully implemented. The noise study recommends:

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

The operator needs to be aware that minor changes in operation (e.g. Type of Equipment, location of equipment, state of equipment repair and maintenance, screening, presence or lack of berms, presence of reflective surfaces, weather conditions and etc.) can allow additional noise which can interfere with the peace and repose of neighbors. Limiting noise impacts on neighbors, therefore should be a constant goal. If noise complaints do occur in the future, the operator of the pit may be required to hire a noise consultant to evaluate and recommend mitigation procedures.

The proposed use would not be expected to generate excessive emissions or odors with the exception of dust generation. The applicant has provided an air quality best management practices control plan (exhibit 14) which includes spraying water on roads and equipment to control fugitive dust. The Department recommends that the applicant implement the air quality best management practices during operations, and if necessary, modify the plan as necessary to control dust emissions. At no time shall dust emissions exceed standards established by the Northwest Clean Air Agency (NWCAA).

DEPARTMENTAL FINDINGS:

1. **Zoning/Comprehensive Plan Designations.** The property is located within the Rural Resource-Natural Resource Lands zoning/comprehensive plan designated area as indicated in the Skagit County Comprehensive Plan and associated zoning maps. The subject property is located within the Mineral Resource Overlay (MRO) zoning designation.
2. **Processing.** Pursuant to SCC 14.06.100 of the Skagit County Code, the application was deemed complete on January 5, 2017. A Notice of Development Application (Exhibit 9) was posted onsite and published in the Skagit Valley Herald on February 2, 2017, as required by SCC 14.06.150. Notification was provided to all property owners and occupants within 300 feet of the subject property. Eighteen (18) comment letters and emails were received during the comment periods (Exhibit 21). An additional seven (5) comment letters were received after the comment period (Exhibit 23).
3. **Other required permits:** Including, but not limited to Department of Natural Resources Surface Mining Reclamation Permit, Northwest Air Pollution Control Authority Permit, and the Washington Department of Ecology sand and gravel mining permit.
4. **State Environmental Policy Act.** The application has been reviewed in accordance with the State Environmental Policy Act guidelines (WAC 197-11 and RCW 43.21C). A Mitigated Determination of Non-significance (MDNS) was issued on December 3, 2018 and became effective following the fifteen-day comment period that ended on December 21, 2018, and a fourteen-day appeal period that ended on January 4, 2019 (Exhibit 14). No appeals were received. One comment letter was received from the Del Mar Community Service, Inc. during

the comment period. The following conditions were placed on the threshold determination:

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 of 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 recommendation memorandum by Maul Foster Alongi dated September 15, 2016.
3. Temporary erosion/sedimentation control measures, as approved by the Skagit County Department of Public Works, shall be in place prior to the initiation of the project pursuant to Skagit County Code (SCC) 14.32, Stormwater Management Ordinance. The applicant shall maintain all temporary erosion/sedimentation control measures in accordance with the Skagit County Drainage/Erosion/Sedimentation Control Ordinance. Said measures shall remain in place until completion of the project.
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 parcels P19161, a 16-foot high earthen berm or equivalent noise barrier shall be constructed to shield the excavation equipment on the northern and eastern side of the parcel,
 - e. Prior to mining on parcels 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 table 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 the 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 above 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 Resource 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.

5. **Flood Hazard Area Review.** The proposed mining area is not located within a flood hazard zone as per Federal Insurance Rate Map (FIRM) Panel 530151 0225C, date January 3, 1985.
6. **Critical Areas Review:** A Critical Areas Reconnaissance report was submitted by the applicant, dated February 24, 2017 (Exhibit 6). The report states that no critical areas were identified onsite. However, the critical areas reconnaissance identified a wetland offsite 170 feet south of the southern property boundary. The reconnaissance rated the wetland as a category III which would require a 150-foot buffer. The wetland and associated buffer are located offsite to the south.

As required by SCC 14.16.440, the applicant submitted a Hydrogeologic Report prepared by Maul Foster Alongi, dated September 28, 2016 (Exhibit 7). The report addresses water quality and quantity impacts resulting from the mine expansion and concludes that mining activities on the subject site will not have an adverse impact on local groundwater or surface water quality or quantity.

Following the NODA comment period, a hydrogeologist with RH2 Engineering, representing the property owner of parcel P19166 to the south, submitted comment letters (Exhibit 23) alleging that the September 28, 2016 hydrogeologic report did not evaluate for the presence of a perched aquifer. The allegation is, in part, supported by the presence of Devils Elbow Lake on parcel P19166. Shallow groundwater reported in well logs for parcels P19138 & P109020 further support the possible presence of a perched aquifer in this location.

In response to the concern, the applicant commissioned further hydrogeologic investigations and submitted an Observation Well Installation letter (Exhibit 8). The letter represents a hydrogeologic evaluation for the presence of a perched aquifer between Devil's Elbow Lake and the mining area. The evaluation included advancing a boring and installing an observation well near the southern property boundary, adjacent to Devil's Elbow Lake and evaluating the area for the presence of a perched aquifer. The results of the evaluation concluded that a perched aquifer is not present in the area. Regardless, the applicant voluntarily increased the buffer along the southern boundary of the property to 200 feet for 20 years to minimize disturbance to the neighboring property owner to the south.

Another comment letter (Exhibit 21) was received from the Del Mar Community Service, Inc. during the SEPA comment period. The comment letter expressed three issues of concern about the hydrogeologic conditions in the vicinity of the site.

- The potentiometric groundwater surface is inaccurate due to incompatible data.
- The gravel mine and the proposed expansion area is the point of recharge for springs located within Dodson Canyon. Interruption of the geologic stratigraphy and groundwater flow regime may disrupt the slope stability of Dodson Canyon.
- A perched aquifer is present on the subject site which directs groundwater to Dodson Canyon located approximately 650 feet southwest of the site. The well log of the observation well indicates the presence of a perched aquifer but was misinterpreted by Mr. Thomas Mullen, hydrogeologist from Northwest Groundwater Consultants (formerly of Maul Foster Alongi) and by Mr. Andy Dodd, Hydrogeologist, of RH2 Engineering.

In response to the comment letter, an additional groundwater assessment (Lake Erie Pit Well Reconnaissance, Exhibit 10) was completed by Northwest Groundwater Consultants. The assessment used compatible data, verified the groundwater depths and confirmed a groundwater down gradient flow direction to the north, towards Lake Erie.

The Del Mar Community letter suggests that a perched aquifer is present on the Lake Erie mine expansion area that may direct groundwater to Dodson Canyon. The well log for the observation well (Exhibit 8) indicates the presence of a silt formation at a depth of 189 feet below site grade. As silt generally has lower permeability than the overlying sand and gravel deposits, groundwater may accumulate above the silt formation resulting in a perched aquifer. However, boring logs included in the Observation Well Installation report (Exhibit 8), as well as anecdotal information from the well driller and both hydrogeologists, confirmed that groundwater was not present at or above the silt formation.

As Dodson Canyon is to the south and the groundwater down gradient direction is to the north, including the lack of evidence of a perched aquifer onsite, precludes the mining site as a point of hydrogeologic recharge for Dodson Canyon.

7. Health Department Review:

Water Supply

No well or water source is proposed onsite. Limited volumes of potable water (bottled water) for employees will be brought in from an offsite source. A water truck will be brought in for dust suppression. Water for dust suppression will be obtained from offsite sources. If the operation should change to include gravel washing or other uses (over 5000 gallons per day or irrigation of over ½ acre of

ground), a water right from the Washington State Department of Ecology Water Resources section will be required.

Restrooms and Sewage Disposal

The application states that portable toilets will be provided for employee's onsite.

Control of Petroleum Products and other Toxics

No petroleum products or other toxic materials will be stored onsite. Refueling of equipment will be performed offsite.

8. Public Works Department Review:

Skagit County Public Works reviewed this Special Use application. The results of the review are included as memorandums (Exhibits 14 & 15). The following are recommended conditions of approval:

- 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.
- 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 of mud and debris off site.

9. Fire Marshal Review: No comments were received from the Fire Marshal.

10. Current Planning review: Skagit County PDS current Planning has reviewed the above referenced Special Use application and has no concerns with the proposal.

11. Special use permit requirements: The applicant is requesting a Special Use permit pursuant to Skagit County Code 14.16.430 Rural Resource-Natural Resource Lands (4)(g) and SCC 14.16.440 Mineral Resource Overlay (7). Hearing Examiner Special Use permits are processed as a Level II permit as outlined in SCC 14.06.120 Level II Review Procedures.

SPECIAL USE CRITERIA: Skagit County Code Section 14.16.900 (1)(b)(v) Special Uses indicates that certain items will be reviewed when approving or denying Special Use permits. Those items are as follows:

A. The proposed use will be compatible with existing and planned land use and comply with the Comprehensive Plan.

The proposed land use, including reclamation, is consistent with the goals and policies of the Comprehensive Plan and Growth Management Act (GMA) protecting and preserving Natural Resource Land of long-term commercial significance. In addition, many of the Skagit County Comprehensive Plan's goals and policies that support the development of mining operations in the Mineral

Resource Overlay zone were specifically created to meet the criteria outlined in the Comprehensive Plan. The Comprehensive Plan states in Chapter 4 Natural Resource Lands Element that:

Skagit County supports environmentally responsible and safe mineral resource extraction and processing activities. Mineral resource lands of long-term commercial significance are to be designated to conserve the mineral resource. These designations apply to areas where mining and processing activities are economically and environmentally feasible and where conflicts with other land uses can be minimized. Because mineral resources cannot be replaced or relocated, Skagit County designates all commercially significant mineral resources to ensure that these lands are available for resource production far into the future.

The proposal is consistent with Goal's D-2, D-3, D-4, D-5 and D-6 of the Comprehensive Plan, Natural Resource Lands Element.

GENERAL POLICY GOALS: MINERAL RESOURCE OVERLAY

Maintain and enhance conservation of long-term commercially significant mineral resource lands so that use of and access to these lands is not precluded by conflicting land uses through the designation of a Mineral Resource Overlay. These principles shall guide Skagit County's actions to:

- *Maintain and enhance conservation of long-term commercially significant mineral resource lands.*
- *Maximize compatibility between mineral extraction operations and other land uses.*
- *Reduce conflicts between mining operations and adjacent land uses so that access to mineral lands is not precluded by conflicting land uses; and*
- *Promote the economic and regulatory stability of the mining industry.*

The proposal is consistent with the following Comprehensive Plan policies and objectives:

GOAL D-2: CONSERVE MINERAL RESOURCE LANDS

Protect and conserve mineral resource lands of long-term commercial significance.

Policy 4D-2.1 Designate Mineral Resource Overlay

Areas meeting the criteria for mineral lands of long-term commercial significance shall be identified as Mineral Resource Overlay on the Comprehensive Plan Land Use and Zoning Map.

Policy 4D-2.2 Allowable Mineral Extraction Activities

Activities associated with mineral extraction operations are those activities that further develop the base product of the mineral being extracted. Examples of these activities include washing, crushing, asphalt plants, and concrete batch plants. Associated activities shall be allowed as a hearing examiner special use within the Mineral Resource Overlay or in areas designated Natural Resource Industrial – NRI. Those associated activities must meet the requirements of the Special Use Permit specific to those areas and must be listed as permitted uses in those Districts. Temporary activities associated with construction projects may be permitted as part of the related construction permit review and may be conditioned as necessary to address applicable mining regulations.

GOAL D-3: REDUCE LAND USE CONFLICTS

Discourage incompatibility and reduce conflicts between mineral extraction operations and other land uses.

Policy 4D-3.1 Exclusive Mineral Resource Overlay

The Mineral Resource Overlay adds additional uses and related requirements to the Industrial Forest, Secondary Forest, Rural Resource, and Natural Resource Industrial districts of the Comprehensive Plan/Zoning Map. New mining is limited to the MRO, subject to applicable permits. However, pre-existing, permitted mining operations outside the Mineral Resource Overlay may operate subject to the terms of the existing approval(s). Such operations may expand beyond the scope of the original permit but within the existing parcel provided they receive a mining special-use permit.

Policy 4D-3.2 Right to Manage Mineral Resource Lands

The provisions of Right-to-Manage Natural Resource Lands shall apply to all lands designated Mineral Resource Overlay (MRO) to protect mineral resource landowner rights to manage their lands for mining uses.

Policy 4D-3.6 Mining Site Buffer Standards

Mining buffer standards shall maintain the purpose and functions of mineral resource lands. These standards shall require equivalent buffers on mining sites and on adjacent properties with the exception of mines adjacent to mines. Excavation shall not occur within the buffer of any mine except during reclamation and on mines adjacent to mines. Storage of topsoil and excavation associated with reclamation area may be allowed in buffers.

Policy 4D-3.7 Mining Activities Buffer Standards

Buffers and setbacks should be provided for all activities associated with mineral extraction operations in addition to those required for mineral resource areas.

GOAL D-4: EFFECTIVE REGULATORY ENVIRONMENT

Coordinate and implement administrative procedures that encourage consistency among permitting jurisdictions and simplify permitting procedures for the applicants and Skagit County.

Policy 4D-4.1 Coordinate State and Local Regulations

Development regulations for mineral resource lands in the county shall be consistent with applicable Washington State mining regulations and Department of Natural Resources rules. Overlap in the regulatory authority between Skagit County and the DNR may occur to ensure public health and safety in matters not under the DNR's jurisdiction.

GOAL D-5: SAFE OPERATIONS

Ensure safety and minimize off site disturbances associated with operating equipment, noise, dust, glare, vibrations and truck traffic.

Policy 4D-5.1 Noise Impacts

Sound levels, as measured on properties adjacent to the mining site, shall conform to the provisions of WAC Section 173-60-040, Maximum Permissible Environmental Noise Levels.

Policy 4D-5.2 Traffic Impacts

Potential effects of truck traffic from mining operations shall be reviewed as part of the permitting process.

Policy 4D-5.3 Roads and Bridges

New public roads and bridges accessing designated Mineral Resource Overlay Areas shall be designed to sustain the necessary traffic for mineral extraction operations. Existing roads and bridges shall be improved as needed as each new extraction operation is developed. Cost sharing for the improvement of roads and bridges shall be negotiated between the permitting authorities and the applicant.

Policy 4D-5.4 Operation Hours

Standards for hours of operations, appropriate for the underlying land-use designation, shall be established for mineral extraction operations. In determining appropriate hours of operation, consider traffic impacts and requirements, nearby uses, and noise impacts. Project-specific circumstances that demand non-standard or 'off-peak' hours may also be considered.

Policy 4D-5.6 Noise and Blasting Mitigation

Site-specific studies shall be conducted to determine appropriate mitigation of noise and blasting for new operations and expansion areas of existing operations. Standards shall be maintained to implement existing and accepted methods by which vibrations and noise shall be measured and appropriate mitigation established to alleviate incompatibilities. No blasting is proposed for this mining proposal.

GOAL D-6: WATER QUALITY

Ensure that water quality protection standards associated with mining operations comply with best management practices.

Policy 4D-6.1 Reclamation Plan

Support the Washington Department of Natural Resources (DNR) requirement that reclamation plans specify how overburden and spoil material is to be handled and placed in a manner which will control erosion, dust, sedimentation or leaching of material and hazardous substances into surface or ground waters.

Policy 4D-6.2 Storage Ponds

Storage pond systems for holding mineral processing waters should be designed to preclude untreated discharge as required by federal and state laws.

Policy 4D-6.3 Erosion Prevention

The flow of natural or process runoff from mineral extraction sites shall be dispersed or regulated such that soil erosion on receiving lands is prevented. Natural runoff includes: Any water that runs on disturbed ground, including stormwater and 'process water' that flows through operation.

Policy 4D-6.4 Aquifer Barriers

Surface mining shall be vertically limited to only one aquifer unless specifically approved by the Washington State Department of Ecology. Hydrological barriers separating aquifers shall not otherwise be destroyed.

Policy 4D-6.5 Aquifer Reclamation

Reclamation of disturbed aquifers shall be in accordance with federal, state and local law. Disturbed aquifers should be reclaimed as ponds or lakes. On-site material is preferred where an aquifer has been breached.

Policy 4D-6.6 Aquifer Protection

Activities related to mineral extraction and processing operations in the vicinity of open aquifers must provide safeguards including containment, to prevent contamination to the open aquifer.

Policy 4D-6.8 Groundwater Study

Before a new sand and gravel mine is permitted, the area ground water shall be characterized by a licensed hydrogeologist.

Policy 4D-6.9 Aquifer Monitoring

Where a proposed mine will breach an aquifer, monitoring shall be established to measure the impact of the mining activity on water quality and supply to wells relying on the aquifer to be breached.

B. The proposed use complies with Skagit County Code.

The subject parcel is designated as Rural Resource-Natural Resource Lands with a Mineral Resource Overlay. The proposed use is allowed by special use permit in this zoning designation. The zone is designed to protect and encourage resource utilization. The proposal complies with SCC 14.16.430 by providing site reclamation including re-vegetation. As per SCC 14.16.440, the proposal meets the requirements of the Mineral Resource Overlay and will comply with the requirements of the Surface Mining Act, Chapter 78.44 RCW.

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.

Rural residential development is present near the site. Potential residential development is limited to one home per 10 acres in the Rural Reserve zoning designation and one home per forty acres in the Rural Resource (NRL) zoning designation unless a CaRD design is proposed (4/40). Areas farther west, east and North are zoned as Rural Intermediate which allows for a residential development of one residence per 2.5 acres. Potential impacts from noise, dust and traffic to surrounding, existing or potential dwelling units from the proposed operation are possible and exceed those currently experienced in the area.

Noise and Vibration

24. **Noise.** A noise study for the Lake Erie Pit Expansion was prepared by Acoustics Group, Inc., dated September 16, 2016 (exhibit 12). The principal existing sources of noise in the vicinity of the site are automobile and truck traffic on Rosario Road, aircraft overflights, and the Lake Erie trucking business located across Rosario road north of the site.

Noise will be produced on-site as a result of mining and mineral-processing operations, and aggregate truck loading and transport. This noise will be produced by trucks, front-end loaders, bulldozers, and screening/crushing equipment. Hours will be largely dependent on market demand and seasonal influences. Because the resource to be mined is sand and gravel, not bedrock, use of explosives will not be required during mining.

At the beginning of operations, mining equipment will be placed within the phase 1 area. An existing north-south trending, approximately 50-foot high natural berm separates the site from Rosario Road and residential developments to the west. Operations on the north side of the site will begin with excavation. This will be followed by extraction of sand and gravel using front-end loaders and a bulldozer. As a noise-mitigation measure, a berm will be constructed on top of the existing natural-materials prior to the beginning of aggregate processing.

Trucks and equipment will have approved muffler systems. Excavation and processing equipment will be located behind berms throughout the mine life, which will become taller with progressively greater mining depths.

The noise study concludes that based on operational characteristics, site characteristics, and other factors, the noise increase will be below the threshold of significant noise impacts. Therefore, the proposed mining and aggregate processing operations are expected to not produce any significant noise impacts.

The maximum allowable noise level per Chapter 173-60 WAC allowed to be emitted from this property, a Class C EDNA property, onto a Class A EDNA property (residential) is 60 decibels and between the hours of 10:00 PM and 7:00 AM levels must be reduced by 10 decibels (or 50 decibels). The applicant has indicated that the mining operation is anticipated to be in compliance with both day and night Washington State and Skagit County noise regulations provided the recommendations included in the Lake Erie Pit Expansion Noise Study (exhibit 12) are fully implemented. The noise study recommends:

- Maintain a 100 foot mining setback from Rosario Road and all property lines,
- No mining shall occur on parcel P19108,
- 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,
- Prior to mining on parcels P19161, a 16 foot high earthen berm or equivalent noise barrier shall be constructed to shield the excavation equipment on the

- northern and eastern side of the parcel,
- Prior to mining on parcels 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, and
 - Rock crushing and screening operations are limited to the processing area as indicated on the site plan.

The operator needs to be aware that minor changes in operation (e.g. Type of Equipment, location of equipment, state of equipment repair and maintenance, screening, presence or lack of berms, presence of reflective surfaces, weather conditions and etc.) can allow additional noise which can interfere with the peace and repose of neighbors. Limiting noise impacts on neighbors, therefore should be a constant goal. If noise complaints do occur in the future, the operator of the pit may be required to hire a noise consultant to evaluate and recommend mitigation procedures.

Vibration

Since this is sand and gravel mining, no blasting will occur. Bulldozers will be used and will generate minimal local vibration in earth moving. No vibrations are projected to occur with the project that would be noticeable to neighboring property owners or that would impact land uses in the surrounding area.

Air, Odor and Heat

The primary pollutants resulting from the project are particulate matter associated with soil stripping, sand and gravel mining, and aggregate processing and transport. No concrete batch plant or asphalt plant is proposed. Aggregate transport trucks will generate small amounts of CO, VOC and NOx but the impact of these emissions is not expected to be measurable or dangerous. Emissions of VOC and NOx are only significant on a regional scale and will have no impact on surrounding land uses. A Northwest Clean Air Agency permit will be required for the operation. Permit acquisition will insure compliance with air quality standards. PDS finds that the project will have no significant impacts on air quality in the surrounding area.

The proposed use would not be expected to generate excessive emissions or odors with the exception of dust generation. The applicant has provided an air quality best management practices control plan (Exhibit 16) which includes spraying water on roads and equipment to control fugitive dust. The Department recommends that the applicant implement the air quality best management practices during operations, and if necessary, modify the plan as necessary to control dust emissions. At no time shall dust emissions exceed standards established by the Northwest Clean Air Agency (NWCAA).

Water Pollution

Potential water pollutants associated with operations at the subject site are primarily limited to those materials associated with the operation of heavy

equipment. These materials generally consist of fuel, oil, and associated equipment fluids. There would be a slight risk of spill during operation and maintenance of the equipment and subsequent release of these materials to the ground on the subject site. Although a risk of hazardous material impact to groundwater resources may be present on the subject site, the risk is minimal and that does not represent a significant concern. It would be unlikely that waste materials would enter ground or surface waters due to the project proposal. As previously mentioned, BMP's will be used to minimize potential water pollution impacts.

The potential for water pollution is addressed through the numerous prevention and mitigation plans related to the mining operation. Staff finds that conformance to the local and state environmental regulations and mitigation measures outlined in the staff report and as well as proposed permit conditions will insure that water pollution will not result from project implementation.

D. The proposed use will not generate intrusions on privacy of surrounding uses.

The applicant has indicated the noise at receiving properties is expected to be relatively low and that excessive noise will be eliminated through equipment operation limitation and mitigation measures. Potential visual impacts would primarily be mitigated by the maintenance of a 100 foot vegetated buffer around the mining site. Native vegetation will be maintained or enhanced as necessary to provide a visual and noise barrier along the site boundaries throughout the life of the mining operation.

Lights from aggregate transport trucks and mining equipment will be produced during early morning and early evening hours of winter months. No light or glare from the finished project will be a safety hazard or interfere with neighboring views.

E. The proposed use will not cause potential adverse effects on the general public health, safety, and welfare.

Based on a review of the environmental documentation and the proposed mining operational plan, the general welfare of Skagit County or the surrounding area will not be negatively affected by the proposed mining operation expansion as conditioned. The proposal is located within a designated Mineral Resource Overlay and is substantially compatible with surrounding land uses. The operation will provide needed resources for projects within Skagit County and will contribute to the area's economic base. Mitigation and project conditions have been designed to address any identified issues/concerns related to the public health, safety and general welfare.

Compliance with local, state and federal environmental regulations, as well as permit conditions, will ensure that the general welfare of Skagit County citizens is protected.

F. For special uses in Industrial Forest – Natural Resource Lands, Secondary Forest – Natural Resource Lands, and Rural Resource – Natural Resource Lands, the impacts on long-term natural resource management and production will be minimized.

The proposed site is located within a Rural Resource-Natural Resource Lands designated area and the Mineral Resource Overlay. The proposed special use is compliant with the intent of the Mineral Resource Overlay and its designation as Natural Resource Land. Such designation indicates that the proposed site has been through preliminary land use review during the County's comprehensive planning process to determine the suitability of the parcel as a mining resource site. The proposed site will be re-vegetated and upon completion of mining activities, restored to long-term natural resource use such as timber production.

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

The approval of a Special Use permit for the proposed use would not impact the health and safety of the community, provided that best management practices are maintained, and all permit conditions and environmental mitigation measures are implemented. Best Management Practices, including stormwater detention, erosion and sediment controls, and spill prevention and containment plans will be implemented. No water from mine excavation areas will be discharged outside of the mine's perimeter.

The proposed mitigation will be sufficient to protect groundwater resources from the proposed mining activities. Although any activity in close proximity to groundwater resources may represent a risk of impairment to the resource, the 20 to 30-foot separation between the mining activity and the aquifer should minimize the risk of impairment.

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.

The application indicates that the proposed land uses will be supported by adequate public facilities and services with no adverse effects on the services of the surrounding areas. County services are adequate to serve the proposed use.

The applicant has indicated relatively high truck traffic volumes during mining operations. The applicant indicates that the truck traffic would not significantly increase traffic volumes over what currently exists and would not require mitigation. No significant impact to the provision of public services in surrounding areas has been identified and the project can be served by adequate public facilities and services as proposed.

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.

The proposed use area is not proximal to any existing businesses, except Lake Erie trucking which is under the same ownership as the mining operation. As there are no other ongoing mining activities in the area except Lakeside Industries located 1.25 miles to the north, it is anticipated that the proposed land use may temporarily disrupt the existing character and landscape of this rural area. Noise from expanded mining operations and increased truck traffic may slightly alter the quiet lifestyle of this rural area. However, mining operations are consistent with the current allowed uses in this zoning district.

10. Specific Criteria for Special Use Permits for Mining Operations Pursuant to SCC 14.16.440

The Mineral Resource Overlay (MRO) overlaps with Natural Resource Lands (NRL) zoning districts and imposes regulations in addition to those normally required in the underlying NRL zoning district. Mineral extraction and processing activities are allowed as a Hearing Examiner Special Use, and must comply with the Surface Mining Act, RCW 78.44. The MRO recognizes those areas that are designated to protect long-term, commercially viable mineral Natural Resource Lands and recognizes that mineral resources must be in close and economic proximity to the market to be served.

The applicant submitted all application materials required for a Mining Special Use Permit under SCC 14.16.440(8). The proposal meets the purpose of the MRO zoning overlay and all of the special criteria related to mining operation special use permits outlined in SCC 14.16.440(1).

The purpose of the Mineral Resource Overlay designation is to maintain and enhance natural resource-based industries by conserving mineral resource lands, 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. Adjacent land uses should not interfere with the processing of sand and gravel at this site.

The proposal meets the operating standards or requirements for mining special use permits outlined in SCC 14.16.440(10) including site area (larger than 20 acres), lot width (greater than 500 feet) and buffers including a minimum 200-foot buffer required between on-site crushing, processing, or recycling activities and adjacent properties. Adjacent properties are required to maintain a 200-foot buffer from the mineral resource designated land or sign a nuisance waiver to reduce the 200-foot buffer. This proposal has established the appropriate buffers on the mineral resource land as required when pre-existing structures (3) are located in the buffer of adjacent properties pursuant to SCC 14.16.440(10)(iii). A

minimum 100-foot buffer has been designated on site where operations are limited to the extraction and transportation of minerals. After Phase 1 of the extraction and transportation operations have been completed, the material in the buffer may be utilized during reclamation.

The location of the project site should keep noise levels in compliance with the provisions of the WAC 173-60, Maximum Environmental Noise Levels. There will be no blasting at this mining site.

The applicant's proposal is in compliance with the operation standards criteria outlined in SCC 14.16.440. Surface mining at this site is proposed to be vertically limited to only one aquifer. Hydrogeologic barriers separating aquifers are not proposed to be disturbed. The hydrologic reports provided to staff included a summary of "depth to water" in monitoring/water wells on and surrounding the subject site. The summary indicated groundwater depth and elevation at the proposed mining site as verified by a monitoring well advanced within the proposed mining area. Since there is no anticipated disturbance of an aquifer, there will be no reclamation as a pond or lake. The property will be returned to commercial forest upon cessation of mining operations.

Surface water protection will be accomplished through project design and compliance with the minimum requirements of SCC 14.32, as well as all pertinent requirements of the Washington State Department of Ecology, the Department of Natural Resources, Department of Fish & Wildlife, and other state and federal regulations regarding surface water protection.

Reclamation of surface mining sites shall be in accordance with the requirements of the State Department of Natural Resources. Pursuant to RCW 78.44.141(4)(h), all grading and backfilling shall be made of nonnoxious, noncombustible and relatively incompactible solids.

No storage pond systems for holding processing waters are proposed with this application. All runoff from the site expansion will be contained within the excavation pit. No detention or regional infiltration is planned.

No benching or terracing will be done in this proposal pursuant to Department of Natural Resource recommendations.

Reclamation of surface mining sites shall be in accordance with the requirements of the State Department of Natural Resources. Reclamation activities shall not allow land filling unless sites comply with WAC 304, WAC 173-351, SCC 12.16, other relevant State, and Federal regulations.

Chemical leach or metal mining are not proposed in this Special Use application.

All special use criteria relating to mining operations have been met by the proposal.

12. Hearing Examiner Review Criteria

Pursuant to SCC 14.16.440(9), the following criteria must be reviewed by the Hearing Examiner: Except as may be provided herein to the contrary, all applications for a mining operation special use permit shall be reviewed by the Hearing Examiner under the procedures set forth in SCC 14.06. The Hearing Examiner shall make a decision as to whether or not it should be approved based upon the special use approval criteria and the following provisions:

- (a) When reviewing an application for mining operations special use permit, the Hearing Examiner should recognize that surface mining is an essential economic activity and that it is not possible to extract minerals without producing some environmental impacts. The Hearing Examiner shall consider all relevant evidence and conditions that will mitigate detrimental impacts to the environment and conditions that protect the general welfare, health and safety. The permit shall be granted if the impacts are mitigated. The burden of proof shall be on the applicant. Mitigating conditions shall be performance based, objective standards that:**
 - (i) Are directly and proportionately related to limiting surface mining impacts;**
 - (ii) Are reasonable, practicable and generally capable of being achieved by the mine operator; and**
 - (iii) Take into consideration existing and available technologies applicable to mining operations.**

The MDNS issued reflects an environmental analysis and review resulting in multiple mitigation measures that meet the intent of the review criteria.

- (b) The Hearing Examiner shall consider the requirements of this Chapter as minimum standards based on unique site-specific factors or conditions as appropriate to protect public health, safety, and the environment.**

Permit conditions listed should be considered by the Hearing Examiner to further protect the public health, safety, and the environment.

- (c) Appropriate site-specific conditions shall be required to mitigate existing and potential incompatibilities between the mineral extraction operation and adjacent parcels. Such limitations shall reflect the differences in potential impacts based on the mineral extraction operation's location in resource, rural or urban growth areas and recognize that the purpose of designating mineral resource lands is to conserve mineral resource lands, allow continued operation of existing legally established mining operations, and assure that use of adjacent lands does not interfere with the extraction of minerals. The Hearing Examiner shall take into consideration the January 1996 publication *Best Management Practices for Reclaiming Surface Mines in***

***Washington and Oregon*, published jointly by the Oregon Department of Geology and Mineral Industries and the Washington State Department of Natural Resources, Ch. 3, Operation and Reclamation Strategies, in determining appropriate mitigation requirements for operational impacts.**

Skagit County Code 14.16.870 Notification of Development Activities on or Adjacent to Designated Natural Resource Lands is implemented to protect Natural Resource Lands from adjacent land uses. Reclamation will be done in accordance with an approved Department of Natural Resources Reclamation Permit.

- (d) Appropriate site-specific conditions shall be required to mitigate stormwater runoff and erosion impact. The Hearing Examiner shall take into consideration the January 1996 publication *Best Management Practices for Reclaiming Surface Mines in Washington and Oregon*, published jointly by the Oregon Department of Geology and Mineral Industries and the Washington State Department of Natural Resources, Ch. 2, Storm Water and Erosion Control, and the National Pollutant Discharge Elimination System (NPDES) Surface Water Protection requirements in determining appropriate conditions for mitigating stormwater and erosion impacts.**

Staff notes that compliance with existing regulations and plans reviewed by the Skagit County Department of Public Works in conjunction with the Washington Department of Ecology NPDES program will address these issues.

- (e) The Hearing Examiner shall consider public interests such as fishing, boating, hiking and camping when reviewing a mining operation special use permit, and may impose mitigating measures as necessary and appropriate.**

Staff does not recommend any mitigating measures related to surrounding recreational activities with the exception of installing secure gates and warning signage on the subject property near the boundary of the subject site notifying the public of ongoing mining activities. No substantial impacts to such activities have been identified.

STAFF RECOMMENDATION

Based on a review of all associated environmental studies, special use criteria and the above findings, Planning and Development Services staff recommends Approval of the requested Special Use Permit PL16-0556 with 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 of 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 recommendation memorandum 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. The maximum allowable noise level per Chapter 173-60 WAC allowed to be emitted from this property, a Class C EDNA property, onto a Class A EDNA property (residential) is 60 decibels. Between the hours of 10:00 PM and 7:00 AM noise levels must be reduced by 10 decibels and not exceed 50 decibels. Noise levels continuously exceeding maximum allowable noise levels allowed under Chapter 173-60 WAC may be considered a violation of permit conditions and result in revocation, suspension, or modification of this special use permit. 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 parcels P19161, a 16 foot high earthen berm or equivalent noise barrier shall be constructed to shield the excavation equipment on the northern and eastern side of the parcel,
 - e) Prior to mining on parcels 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 table 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 the 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 Resource prior to harvest of any timber onsite.
12. The application shall comply with the provisions of the Construction Stormwater General or Industrial Permit required by the Department of Ecology (WSDOE) for this project. Contact the WSDOE Bellingham Field Office to modify the permit as necessary for expansion.
13. Should any human remains, archaeological, historic or cultural materials be discovered during mining operations, 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.

14. A Department of Natural Resources (DNR) Surface Mine Reclamation Permit shall be applied for and obtained prior to mining, as per RCW 78.44. No mining may take place prior to obtaining a reclamation permit from the DNR.
15. 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.

Date: July 8, 2019

Prepared By: John Cooper, Senior Planner
Reviewed By: Michael Cerbone, Assistant Director

