



Memo to Hearing Examiner:

Meeting Date: June 28, 2023

Subject: Lake Erie Gravel/Sand Mine Expansion, Special Use Permit, PL16-0556

Staff Contact: Kevin Cricchio, AICP, ISA, Senior Planner

Approved for Submittal to Hearing Examiner by	
X	Brandon Black, Current Planning Manager

Action Type	
X	Public Hearing
X	Discussion
X	Possible Action

Summary & Background:

At 1:00 PM on Wednesday, June 28, 2023, an open-record public hearing will be conducted by the Hearing Examiner to review the remanded items required by the Hearing Examiner on March 9, 2021 for Special Use Permit Application PL16-0556 submitted by Lake Erie Pit 1, LLC requesting the expansion of an existing gravel/sand mining operation from 17.78 acres to approximately 53.5 acres. Per the direction of the Hearing Examiner, the applicant was required to prepare a Geologically Hazardous Area Site Assessment associated with the steep coastal area located to the west/northwest of the mine and prepare a Geologically Hazardous Mitigation Area Plan. The requested items were submitted on August 12, 2022 and determined complete on January 18, 2023 following a third-party review by The Watershed Company. The subject site is located within the Rural Resource-Natural Resource Lands (RRc-NRL) Zoning/Comprehensive Plan Designated Area and designated within the Mineral Resource Overlay.

Recommendation:

Based on a review of the application material submitted, special use permit criteria, environmental checklist, environmental studies, Third Party review, issued SEPA Mitigated Determination of Non-Significance, and the Findings of Fact, staff recommends to the Hearing Examiner that the subject Special Use Permit application be approved subject to conformance with staff's suggested conditions of approval (as is listed in the Exhibit #1 and above/Exhibit #38).

Attachments:

OLD EXHIBITS #1-#23 have already been provided to the Hearing Examiner's office

NEW EXHIBITS #24-#38:

Exhibit #24, Hearing Examiner's Approval of Special Use Permit, PL16-0556, ([Click Here](#))

Exhibit #25, Appellant's Appeal of Hearing Examiner Decision, ([Click Here](#))

Exhibit #26, Board of County Commissioners Remand/Resolution to the Hearing Examiner, [\(Click Here\)](#)

Exhibit #27, Hearing Examiner Referral to Skagit County Planning & Development Services, [\(Click Here\)](#)

Exhibit #28, March 23, 2021 Letter from PDS to the Applicant Requesting Additional Info; May 27, 2021 Letter from PDS to Applicant with deadline for Additional Info; July 21, 2021 Letter from PDS Denying Special Use Permit Application, [\(Click Here\)](#)

Exhibit #29, Applicant's Appeal of Planning & Development Services Denial of Special Use Permit, [\(Click Here\)](#)

Exhibit #30, Hearing Examiner's Order Granting Appeal & Reversing County's Denial, [\(Click Here\)](#)

Exhibit #31, Geologic Hazard Site Assessment (Received August 12, 2022), [\(Click Here\)](#)

Exhibit #32, Evergreen Island's Letter Dated: 11/18/2022 + Stratum Group Review of Geologic Hazard Site Assessment (Dated November 15, 2022), [\(Click Here\)](#)

Exhibit #33, Third Party Review of Geologic Hazard Site Assessment & Response to Evergreen Island's Letter dated 11/18/2022 (Received January 19, 2023), [\(Click Here\)](#)

Exhibit #34, Evergreen Island Email & Letter Regarding Watershed Company Response to Evergreen Island's Communication of 11/18/2022 + Stratum Group Letter, [\(Click Here\)](#)

Exhibit #35, Revised Third Party Review of Geologic Hazard Site Assessment & Response to Evergreen Island's Letter dated 11/18/2022 (Received March 31, 2023), [\(Click Here\)](#)

Exhibit #36, Notice of Public Hearing (Published on 6/8/2023), Neighbor Labels, & Parties of Record, [\(Click Here\)](#)

Exhibit #37, Skagit County GIS Map of Subject Parcels & 300-Foot Buffer, [\(Click Here\)](#)

Exhibit #38, Addendum to Staff Report, [\(Click Here\)](#)



Planning & Development Services

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ADDENDUM TO STAFF REPORT (EXHIBIT 38):

DATE: JUNE 28, 2023

TO: HEARING EXAMINER

FROM: KEVIN CRICCHIO, AICP, SENIOR PLANNER

RE: LAKE ERIE SPECIAL USE PERMIT APPLICATION, EXPANSION OF SAND & GRAVEL MINE, PL16-0556

SUBJECT PARCELS: EXISTING MINE: P19108, P19162, & P19165; EXPANSION TO MINE: P19158, P90028, P19164, P19155, P19161; CONTIGUOUS PARCELS (SAME OWNERSHIP): P19168, & P19163

**LOCATION: INTERSECTION OF ROSARIO ROAD & MARINE DRIVE, FIDALGO ISLAND;
LOCATED IN A PORTION OF SECTION 11, TOWNSHIP 34 NORTH, RANGE 01
EAST, WILLAMETTE MERIDIAN**

Dear Mr. Hearing Examiner:

This addendum to the August 26, 2020 staff report serves as both a chronology and update on the status of the Lake Erie Special Use Permit application, PL16-0556 that the applicant Bill Wooding/Lake Erie Pit LLC submitted to Skagit County's Planning and Development Services Department on December 2, 2016. The Special Use Permit application is to permit the expansion of an existing gravel mine located on the subject parcel(s) from approximately 17.78 acres to approximately 53.5 acres in size.

Following a review of the application, Planning Department staff deemed the application complete on January 5, 2017. A Notice of Development Application (NODA) was published in the Skagit Valley Herald on February 2, 2017, mailed to neighboring landowners located within 300-feet of the subject parcel(s), and posted onsite as is required by Skagit County Code. The public comment period ended on February 17, 2017.

After the public comment period ended, additional information was requested of the applicant. After this material was submitted to Skagit County as was requested, a SEPA Mitigated Determination of Non-Significance (MDNS) was issued on December 3, 2018. The SEPA comment period ended on December 21, 2018 and the appeal period ended on January 4, 2019. The SEPA MDNS was posted onsite, published in the Skagit Valley Herald and

mailed/mailed to parties of record in accordance with Skagit County Code. No appeals were received.

A Notice of Public Hearing was published in the Skagit Valley Herald on August 6, 2020, posted onsite, and emailed/mailed to both neighboring properties within 300-feet of the subject parcel(s) and parties of record. Another Notice of Public Hearing advertising the continuation of the public hearing was published in the Skagit Valley Herald on September 24, 2020. This notice was also posted onsite, and emailed/mailed to both neighboring properties within 300-feet of the subject parcel(s) and parties of record.

The Hearing Examiner conducted an open-record public hearing on August 26, 2020 which was continued to October 14, 2020. The Hearing Examiner approved the subject Special Use Permit (**See Exhibit #24**) subject to conditions on November 30, 2020.

On appeal (**See Exhibit #25**), the Board of County Commissioners remanded (**See Exhibit #26**) the matter (Resolution: R20210038) to the Hearing Examiner to determine if a Geologically Hazardous Site Assessment is needed.

On March 9, 2021, the Hearing Examiner ordered Planning and Development Services (PDS) (**See Exhibit #27**) to direct Wooding to provide such an assessment. The Examiner determined that the appropriate course was to refer the matter to Planning and Development Services (PDS) with instructions to direct the applicant to prepare a Geologically Hazardous Area Site Assessment consistent with Skagit County Code 14.24.200 – 14.24.420. On receipt of such assessment, PDS shall review it and provide an amended staff report to the Hearing Examiner containing the department's analysis and recommendations in light of the report. Thereafter, the Examiner shall schedule and hold a supplementary public hearing in this matter, limited to comment on the Geologically Hazardous Site Assessment. Following this hearing, based on the record made, the Examiner shall issue a decision imposing such additional conditions, if any, as may be necessary to mitigate risks that have been identified.

On March 23, 2021, a letter written by Skagit County Planning and Development Services Department (**See Exhibit 28**) requesting the applicant prepare a Geologically Hazardous Area Site Assessment and Geologically Hazardous Mitigation Area Plan consistent with Skagit County Code 14.24.420 and 14.24.430 respectively.

On May 27, 2021, another letter (**See Exhibit 28**) was written by Skagit County Planning and Development Services Department reiterating additional information was requested of the applicant on March 23, 2021 and that the deadline to provide this information was 4:30 PM on July 21, 2021. Failure to provide this information would result in the Special Use Permit being denied by Skagit County Planning and Development Services Department.

The 120-days provided by Skagit County Code 14.06.105 for submittal of the information expired on July 21, 2021. On July 20, 2021, the day before the expiration date, Wooding's agent sent an email stating that a contract with a consultant had been entered and requesting a further extension of time for submitting the required information.

On July 21, 2021, Skagit County Planning and Development Services Department denied the extension request and denied the applicant's (Wooding's) Special Use Permit application (**See Exhibit #28**) for failure to timely supply requested information.

The applicant appealed (**See Exhibit #29**) this decision by Skagit County. On October 15, 2021, the Hearing Examiner granted the applicant's appeal of the county's decision thereby reversing it (**See Exhibit #30**). According to the Examiner's decision, the application shall remain in good standing through September 2022. During this time the applicant shall have a Geologically Hazardous Site Assessment prepared and shall submit the same prior to the end of September 2022.

On August 12, 2022, the applicant submitted a Geologic Hazard Site Assessment (**See Exhibit #31**) to Skagit County Planning and Development Services Department that was prepared by Wood Environmental and Infrastructure Solutions, Incorporated.

This Geologic Hazard Site Assessment (and subsequent letter from Evergreen Islands) [**See Exhibit 32**] dated November 18, 2022 was forwarded to the county's Third Party Review consultant -the Watershed Company for review.

On January 19, 2023, the Watershed Company provided Skagit County with their Third Party Review findings and response to Evergreen Island's November 18, 2022, letter (**See Exhibit #33**).

On March 3, 2023, Skagit County Planning and Development Services Department received both an email and letter from Evergreen Islands along with a response letter from the Stratum Group (**See Exhibit 34**).

On March 31, 2023, Skagit County Planning and Development Services received a revised Third Party Review and response to Evergreen Island November 18, 2022 letter (**See Exhibit #35**). It was revised per Skagit County's request for formatting and clarity reasons.

Now that the required Geologic Hazard Site Assessment is complete along with the county's Third Party Review, this matter will now go back to the Hearing Examiner. The purpose of the hearing is to review the remanded item(s) required by the Hearing Examiner on March 9, 2021 for Special Use Permit Application PL16-0556 submitted by the applicant.

A new Notice of Public Hearing (**See Exhibit #36**) was published in the Skagit Valley Herald on June 8, 2023, posted onsite, and mailed to neighboring landowners located within 300-feet of the subject parcels as is required by Skagit County Code. Additionally, the notice of record was both mailed and emailed to all parties of record.

Exhibit 37 prepared by Skagit County's Geographic Information Systems (GIS) graphically depicts the subject parcels of the existing mine, proposed expansion thereto, contiguous

parcels under the same ownership of the applicant, and the 300-foot buffer for noticing purposes.

Exhibit #38 is the subject Addendum to Staff Report.

ADDITIONAL STAFF SUGGESTED CONDITIONS OF APPROVAL:

In addition to the suggested conditions of approval that can be found in the Staff Report/Findings of Fact dated August 26, 2020 (**See Exhibit #1**), Skagit County staff suggests below the following conditions of approval after a review of the Geologic Hazard Site Assessment and Third Party Review as follows:

1. Development shall comply with all recommendations and requirements of the Geologic Hazard Site Assessment dated August 11, 2022 prepared by Wood Environment and Infrastructure Solutions, Inc.
2. Development shall comply with all recommendations and requirements of the Third Party Review performed by the Watershed Company.
3. All applicable permits (local, state, and federal) must be secured before any mining/excavation activities begin onsite. Copies of permits shall be provided to the Skagit County Planning & Development Services Department.
4. The applicant shall be responsible for reimbursement to Skagit County Planning & Development Services Department for the full cost of mailing(s) and newspaper publication associated with the Notice of Development Application, Notice of Issuance of SEPA MDNS, Notice of Hearing, and Notice of Decision. Payment shall be made prior to any work beginning onsite and grading permit application submittal &/or issuance.
5. The applicant shall be responsible for reimbursement to Skagit County Planning & Development Services Department for the full cost of Third Party Review of their Geologic Hazard Site Assessment. Payment shall be made prior to any work beginning onsite and grading permit application submittal &/or issuance.

STAFF RECOMMENDATION:

Based on a review of the application material submitted, special use permit criteria, environmental checklist, environmental studies, Third Party review, issued SEPA Mitigated Determination of Non-Significance, and the Findings of Fact, staff recommends to the Hearing Examiner that the subject Special Use Permit application be approved subject to conformance with staff's suggested conditions of approval (as is listed in the Exhibit #1 and above/Exhibit #38).

EXHIBITS:

OLD EXHIBITS:	
Exhibit #1	Staff Report/Findings of Fact (Dated: August 26, 2020)
Exhibit #2	Special Use Permit Application and Narrative received December 2, 2016
Exhibit #3	Skagit County Zoning and Assessor's map
Exhibit #4	Site Plans and aerial photographs
Exhibit #5	Notice of Development Application, published February 2, 2017
Exhibit #6	SEPA Environmental Checklist, dated June 8, 2017
Exhibit #7	SEPA Mitigated Determination of Non-Significance (MDNS), dated December 3, 2018, and associated SEPA staff report
Exhibit #8	Critical Areas Reconnaissance by Skagit Wetlands and Critical Areas, dated February 24, 2017
Exhibit #9	Hydrogeologic Site Assessment Report by Maul Foster Alongi, dated September 28, 2016
Exhibit #10	Observation Well Installation letter report by Maul Foster Alongi, dated September 28, 2017
Exhibit #11	Letter from McLucas and Associates, responding to the Del Mar comment letter, dated December 19, 2018
Exhibit #12	Letter from Northwest Groundwater Consultants, responding to the Del Mar Comment letter, dated January 3, 2019
Exhibit #13	Lake Erie Pit Well Reconnaissance by Northwest Groundwater Consultants LLC, dated March 11, 2019
Exhibit #14	Lake Erie Gravel Pit Traffic Impact Analysis by Gibson Traffic Consultants, Inc., dated September 2016
Exhibit #15	Addendum to the Lake Erie Gravel Pit Traffic Impact Analysis by Gibson Traffic Consultants, Inc., dated May 12, 2017
Exhibit #16	Traffic Memorandum by Skagit County Public Works, Dated March 1, 2018.
Exhibit #17	Supplemental (traffic) Memorandum by Skagit County Public Works, dated May 2, 2018
Exhibit #18	Lake Erie Pit air quality best management practices by Maul Foster Alongi, dated September 15, 2016
Exhibit #19	Lake Erie Pit Expansion Noise Study by Acoustics Group, Inc.,, dated September 16, 2016
Exhibit #20	List of neighboring property owners and parties of record notified of the Public Hearing.
Exhibit #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

OLD EXHIBITS:

	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.
Exhibit #22	The fourteen (14) comment letters received during the NODA comment period were provided to McLucas 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.
Exhibit #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 RH.2 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).

NEW EXHIBITS:

Exhibit #24	Hearing Examiner's Approval of Special Use Permit, PL16-0556
Exhibit #25	Appellant's Appeal of Hearing Examiner Decision
Exhibit #26	Board of County Commissioners Remand/Resolution to the Hearing Examiner
Exhibit #27	Hearing Examiner Referral to Skagit County Planning & Development Services
Exhibit #28	-March 23, 2021 Letter from PDS to the Applicant Requesting Additional Info; -May 27, 2021 Letter from PDS to Applicant with deadline for Additional Info; -July 21, 2021 Letter from PDS Denying Special Use Permit Application
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Exhibit #30	Hearing Examiner's Order Granting Appeal & Reversing County's Denial
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Exhibit #33	Third Party Review of Geologic Hazard Site Assessment & Response to Evergreen Island's Letter dated 11/18/2022 (Received January 19, 2023)

NEW EXHIBITS:

Exhibit #34	Evergreen Island Email & Letter Regarding Watershed Company Response to Evergreen Island's Communication of 11/18/2022 + Stratum Group Letter
Exhibit #35	Revised Third Party Review of Geologic Hazard Site Assessment & Response to Evergreen Island's Letter dated 11/18/2022 (Received March 31, 2023)
Exhibit #36	Notice of Public Hearing (Published on 6/8/2023), Neighbor Labels, & Parties of Record
Exhibit #37	Skagit County GIS Map of Subject Parcels & 300-Foot Buffer
Exhibit #38	Addendum to Staff Report

If you have any questions, please let me know. I can be reached by phone at (360) 416-1423 or via email at kcricchio@co.skagit.wa.us. Thank you.



Kevin Cricchio, AICP, ISA,
Senior Planner

EXHIBIT #24
HEARING EXAMINER'S APPROVAL OF
SPECIAL USE PERMIT, PL16-0556

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.

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).

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.

EXHIBIT #25
APPELLANT'S APPEAL OF HEARING
EXAMINER DECISION



Appeal or Request for Reconsideration

Planning & Development Services · 1800 Continental Place · Mount Vernon WA 98273
voice 360-416-1320 · inspections 360-416-1330 · www.skagitcounty.net/planning

File #:
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.

1
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 1.2. Evergreen is represented in this appeal by Kyle Loring, who can be reached as
7 follows:

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

14 1.3. Evergreen Islands has an interest as a party of record in this matter because
15 organizational representatives and members provided written and oral testimony to the Hearing
16 Examiner prior to the Decision. The Skagit County Code ("Code") defines a "party of record"
17 as "any person who has testified at a hearing or has submitted a written statement related to a
18 development action and who provides the County with a complete address, or a person who has
19 formally requested to receive information via a written statement with a complete mailing
20 address." SCC 14.04.020. Consequently, because Evergreen testified at the hearing and
21 submitted a written statement related to the mine application, it has standing to appeal the
22 Decision pursuant to SCC 14.06.170(2).

23 1.4. In addition, Evergreen Islands has an interest in environmental conservation and
24 in safeguarding local communities from unnecessary and unexamined risks of development
25 proposals. Evergreen Islands is a public interest, membership organization that works to
26 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

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

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).

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.

EXHIBIT #26
BOARD OF COUNTY COMMISSIONER'S
REMAND/RESOLUTION TO THE
HEARING EXAMINER

RESOLUTION # _____

A Resolution Pertaining to the Closed Record Appeal Before the Skagit County Board of Commissioners Of Special Use Permit PL16-0556

WHEREAS, Evergreen Islands (“**Appellant**”) timely filed this closed record appeal to the Board of Skagit County Commissioners (hereinafter, the “**Board**”), pursuant to Skagit County Code (“**SCC**”) 14.06, challenging the Skagit County Hearing Examiner’s Decision approving Special Use Permit PL16-0556 (the “**Permit**”); and

WHEREAS, the Permit authorizes the expansion of an existing 17.78 acre gravel mine located on the west side of Fidalgo Island to an ultimate size of 53.5 acres (hereinafter, the “**Mine**”); and

WHEREAS, County Planning staff did not require a Geologically Hazardous Site Assessment associated with the steep coastal area located to the west/northwest of the Mine, based principally on an inference derived from reports furnished by a professional hydrogeologist on the Applicant’s behalf to the effect that groundwater at the Mine flows to the northeast, toward Lake Erie; and

WHEREAS, the Appellant timely raised concerns before the Hearing Examiner regarding potential landslide risk arising from the potential for increased groundwater migration to the west/northwest, due to the Mine’s expansion and attendant removal of soil and vegetation, which, the Appellant contends, will alter groundwater behavior in the vicinity of the Mine; and

WHEREAS, the Appellant furnished evidence to the Hearing Examiner regarding the presence of springs on the coastal bluff to the northwest of the Mine at an elevation downgradient of the inferred groundwater level, and the testimony of a geologist who opined that the expanded Mine will create an increased landslide risk; and

WHEREAS, the Appellant contends that the coastal bluff area to the west/northwest of the Mine is a geologically hazardous area pursuant to SCC 14.24.410; and

WHEREAS, in light of the foregoing, the Appellant contends on this appeal that the Hearing Examiner erred, in part, by failing to require a Geologically Hazardous Site Assessment pursuant to SCC 14.24.420; and

WHEREAS, pursuant to SCC 14.06.170(10), the Board may take one of the following actions:

- (1) Deny the appeal and affirm the decision of the Hearing Examiner;
- (2) Find the Hearing Examiner’s decision clearly erroneous, adopting its own findings, conclusions and decision based on the record before it; or
- (3) Remand the matter for further consideration by the Hearing Examiner.

NOW, THEREFORE, BE IT RESOLVED:


1. Pursuant to SCC 14.60.170(10)(3), this matter is hereby REMANDED to the Skagit County Hearing Examiner for further consideration of the following matters:
 - Whether the steep area to the west/northwest of the Mine requires the preparation of a Geologically Hazardous Area Site Assessment, consistent with SCC 14.24.400-.420.
 - If so required, directing the Applicant to prepare a Geologically Hazardous Area Site Assessment, all consistent with SCC 14.24.400-.420 and the Hearing Examiner's discretion; and
 - Any additional proceedings as may be necessary to take additional evidence related to the Geologically Hazardous Area Site Assessment, to be managed at the Hearing Examiner's discretion; and
 - The imposition of such additional conditions as may be necessary to mitigate risks identified by the supplemental proceedings hereby ordered, to the extent such risks can be reasonably mitigated.

2. All other issues raised by the Appellant on this appeal are hereby DENIED, and the Hearing Examiner in all other respects is AFFIRMED.

**WITNESS OUR HANDS AND THE OFFICIAL SEAL OF OUR OFFICE this
23rd day of February 2021.**

**BOARD OF COUNTY COMMISSIONERS
SKAGIT COUNTY, WASHINGTON**





Lisa Janicki, Chair

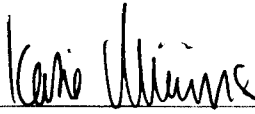


Peter Browning, Commissioner



Ron Wesen, Commissioner

ATTEST:



Clerk of the Board

APPROVED AS TO FORM:



Will Honea, Senior Civil Deputy
Skagit County Prosecutor's Office

EXHIBIT #27
HEARING EXAMINER REFERRAL TO SKAGIT
COUNTY PLANNING & DEVELOPMENT SERVICES

BEFORE THE SKAGIT COUNTY HEARING EXAMINER

In the Matter of a Special Use Permit) PL16-0556
To Expand an Existing Gravel Mine)
)
BILL WOODING) **REFERRAL TO PLANNING**
LAKE ERIE PIT, LLC) **AND DEVELOPMENT SERVICES**
Applicant.)
_____)

On the appeal of Evergreen Islands, the Skagit County Commissioners remanded this matter to the Skagit County Hearing Examiner for further consideration of the following:

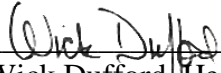
- Whether the steep area to the west northwest of the Mine requires the preparation of a Geologically Hazardous Area Site Assessment, consistent with SCC 14.24.400-.420.
- If so required, directing the Applicant to prepare a Geologically Hazardous Area Site Assessment, all consistent with SCC 14.24.200-.420 and the Hearing Examiner’s discretion; and
- Any additional proceedings as may be necessary to take additional evidence related to the Geologically Hazardous Area Site Assessment, to be managed at the Hearing Examiner’s discretion; and
- The imposition of such additional conditions as may be necessary to mitigate risks identified by the supplemental proceedings hereby ordered, to the extent such risks can be reasonably mitigated.

After consideration of the above directions, the Examiner has determined that the appropriate course now is to refer this matter to Planning and Development Services (PDS) with instructions to direct the Applicant to cause a Geologically Hazardous Site Assessment to be prepared and submitted to PDS.

On receipt of such assessment, PDS shall review it and provide an Amended Staff Report to the Hearing Examiner containing the department’s analysis and recommendations in light of the report.

Thereafter, the Examiner shall schedule and hold a supplementary public hearing in this matter, limited to comment on the Geologically Hazardous Site Assessment. Following this hearing, based on the record made, the Examiner shall issue a decision imposing such additional conditions, if any, as may be necessary to mitigate risks that have been identified.

SO ORDERED, this 9th day of March, 2021.



Wick Dufford, Hearing Examiner

Transmitted to: County Commissioners, Applicant, Planning and Development Services,
Evergreen Islands on March 9, 2021.

EXHIBIT #28

- MARCH 23, 2021 LETTER FROM PDS TO THE APPLICANT REQUESTING ADDITIONAL INFO;**
- MAY 27, 2021 LETTER FROM PDS TO APPLICANT WITH DEADLINE FOR ADDITIONAL INFO;**
- JULY 21, 2021 LETTER FROM PDS DENYING SPECIAL USE PERMIT APPLICATION**



SKAGIT COUNTY PLANNING & DEVELOPMENT SERVICES

Bill Wooding
Lake Erie Pit, LLC

March 23, 2021

RE: Hearings Examiner Referral of PL16-0556 to Skagit County Planning & Development Services

Mr. Wooding,

Please find attached a copy of the remand from the Board of County Commissioners as well as a copy of the Order that the Hearings Examiner sent deferring the next steps to Skagit County Planning and Development Services (PDS). Per the direction of the Hearings Examiner the applicant shall prepare a Geologically Hazardous Area Site Assessment associated with the steep coastal area located to the west/northwest of the mine pursuant to Skagit County Code (SCC) 14.24.420 and prepare a Geologically Hazardous Mitigation Area Plan pursuant to Skagit County Code 14.24.430.

SCC 14.24.420(2)(g) allows the Administrative Official to require additional site assessment elements as may be required. In addition to the elements required by SCC 14.24.420, PDS is requesting the assessment specifically address the concerns raised by the Board of County Commissioners' in their remand. Those specific site assessment elements to be addressed within the assessment are as follows:

- Analyze the landslide risk arising from the potential for increased groundwater migration to the west/northwest of the mine due to the proposed expansion and attendant removal of soil and vegetation which could alter groundwater behavior in the vicinity of the mine.
- Analyze the presence of springs on the coastal bluff to the northwest of the mine that are at an elevation down gradient of the inferred groundwater level.
- Respond to the testimony of the professional geologist who identified that the proposed mine expansion will create an increased landslide risk.

Please let me know if you have any questions.

Respectfully,

Michael Cerbone
Assistant Director
Skagit County Planning and Development Services

Cc: Parties of record, Skagit County Hearings Examiner, Skagit County Board of County Commissioners



SKAGIT COUNTY PLANNING & DEVELOPMENT SERVICES

Bill Wooding
Lake Erie Pit, LLC

May 27, 2021

RE: Hearings Examiner Referral of PL16-0556 to Skagit County Planning & Development Services

Mr. Wooding,

Please note the County requested additional information from you to assist with the review of your application. The specific request for additional information was put in writing to you and your representative on March 23, 2021. Please accept this letter as formal notification that the additional information needs to be provided by 4:30 PM on July 21, 2021 ([SCC 14.06.105](#)). Failure to submit the additional information requested within this timeframe will result in your application being denied.

Please let me know if you have questions or would like to discuss this in more detail.

Respectfully,

Michael Cerbone
Assistant Director
Skagit County Planning and Development Services



Planning & Development Services

1800 Continental Place ▪ Mount Vernon, Washington 98273
office 360-416-1320 ▪ pds@co.skagit.wa.us ▪ www.skagitcounty.net/planning

CERTIFIED MAIL

July 21, 2021

William W. Wooding
Lake Erie Pit, LLC
13540 Rosario Road
Anacortes, Washington 98221

RE: Lake Erie Trucking Gravel Pit 1, Special Use Permit Application, PL16-0556

Dear Mr. Wooding:

On December 2, 2016, you submitted an application for a Special Use Permit to permit the expansion to your existing Lake Erie gravel mine. Since then, your application has undergone SEPA environmental review and a public comment period.

Your application for a Special Use Permit went before the Hearing Examiner who approved it. This decision by the Hearing Examiner however was appealed by the appellant Evergreen Islands to the Board of County Commissioners.

The Board of County Commissioners remanded this matter back to the Hearing Examiner to determine if a Geologically Hazardous Site Assessment addressing landslide risk and subsurface water flow was necessary. The Hearing Examiner then ordered the assessment to be completed.

On March 23, 2021, former Assistant Planning Director Michael Cerbone mailed you a copy of the remand from the Board of County Commissioners as well as a copy of the order that the Hearing Examiners sent listing the next steps that are required (See Attached).

Then on May 27, 2021, Assistant Planning Director Michael Cerbone wrote you another letter identifying that additional information has been requested of you in correspondence dated March 23, 2021, and that this additional information needs to be provided to the Planning & Development Services Department by 4:30 PM on July 21, 2021 per Skagit County Code (SCC) 14.06.105. Mr. Cerbone further stated that failure to submit the requested information within this timeframe would result in your application being denied.

Yesterday (July 20, 2021), we received an email from your representative Stephen Taylor stating that you have contracted with a consultant [Canyon Environmental Group] to assist with the requested Geologically Hazardous Site Assessment but that you were requesting an extension past the expiration date of July 21, 2021 as was listed in Michael Cerbone's letter.

Please note however that per SCC 14.06.150(1), "*If additional information is requested pursuant to SCC 14.06.100(5), an applicant has 120 days to submit the required information. If all of the requested information is not received within 120 days, the Administrative Official or designee shall deny the application for failure to timely submit requested information consistent with Subsection (3) of this Section, unless the following exception applies:*

(a) The Department may grant 1 or more (although not exceeding 3) 3-month extensions to this time frame if the following criteria are met:

(i) A written request for extension is submitted at least 21 days prior to the expiration date; and

(ii) The applicant demonstrates that circumstances beyond the control of the applicant prevent timely submittal of the requested information; and

(iii) The applicant provides a reasonable schedule for submittal of the requested information."

Since the request for additional information has been greater than 120 days and we don't believe you meet the criteria above for an exception, your request for an extension is hereby denied along with your application for a Special Use Permit per Skagit County Code 14.06.105(3).

You may appeal this decision to the Skagit County Hearing Examiner as a Level 1 decision pursuant to Skagit County Code 14.06.110(7).

If you have any questions, please let me know. I can be reached by phone at (360) 416-1423 or via email at kricchio@co.skagit.wa.us. Thank you.

Sincerely,



Kevin Cricchio, AICP, ISA
Senior Planner

Enclosures: Hearing Examiner Remand
Michael Cerbone's May 27, 2021 letter
SCC 14.06.105 & SCC 14.06.110(7)

EXHIBIT #29
APPLICANT'S APPEAL OF PLANNING &
DEVELOPMENT SERVICES DENIAL OF
SPECIAL USE PERMIT



Appeal or Request for Reconsideration

Planning & Development Services · 1800 Continental Place · Mount Vernon WA 98273
voice 360-416-1320 · inspections 360-416-1330 · www.skagitcounty.net/planning

File #:
PL21-0421
RECEIVED
AUG 03 2021
SKAGIT COUNTY
PDS
Received by: **alex C**

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	\$1,360.00	PDS will calculate
Date of Appealed Decision or Permit	July 21, 2021	Publication Fee	\$ 203.50	PDS will calculate

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

Appellant

Standing to appeal Permit applicant Party of Record Party subject to code enforcement order Other

Name Willam Wooding *Willam Wooding*

Address 13540 Rosario Road

City, State Anacortes **Zip** 98221 **Phone** 360-708-8559

Email bwooding31@comcast.net **Signature** *Willam Wooding*

Attorney or Representative

None

Name Stephen Taylor - Mining Consultant

Address P.O. Box 5352

City, State Lacey **Zip** 98509 **Phone** 360-456-8248

Email s.l.taylor7117@gmail.com *Stephen Taylor 8/2/2021*

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.

McLUCAS & ASSOCIATES, INC.
CONSULTING GEOLOGIST
INDUSTRIAL MINERALS AND AGGREGATE SPECIALISTS

“IT’S ALL ABOUT THE ROCK QUALITY – PERMITS – MARKETAREA”

P.O. Box 5352, LACEY, WA 98509 * (360) 456-8248 * FAX (360) 456-8248 *

mclucastaylor@qwestoffice.net

LAKE ERIE PIT 1, LLC – PL 16-0556
APPEAL & REQUEST FOR RECONSIDERATION

ATTACHMENTS:

8/3/2021

#1. What is your interest in this decision?

McLucas & Associates, Inc. is a registered corporation since the 1980’s. The company concentrates on Permitting Mines and providing mining clients Mineral Valuations (see attached brochure). McLucas has been working with Bill Wooding, owner of Lake Erie Pit 1, LLC, in preparing the expansion documents for the Lake Erie Pit for the past 7 years. Due to the three hospitalizations this year of Stephen Taylor, (mining consultant on this project), the difficulty of finding a qualified Hydrologist in Skagit County to provide the necessary required drilling and evaluation for the site and the necessary time to schedule the required drilling of the site, so that we had the necessary data for review by the Hearings Examiner and Skagit County Planning Commission. Due to these complications, we were not able to meet the Skagit County timeline for submittal. We therefore request additional time for reconsideration, so we can complete the required document submittal.

#2. How are you aggrieved by the decision you are appealing?

Both Bill Wooding, owner of Lake Erie Pit and Stephen Taylor, mining consultant are aggrieved by the decision of cancelling our 6-year plight to expand the Lake Erie Mine to accommodate the growing need for construction aggregates in Skagit County. We both feel that the time limit imposed to complete this goal was not adequate.

#3. What are the specific reasons you believe the decision is wrong?

(a) Not adequate time to find a qualified hydrologist to provide the drilling and then schedule a driller. (90-days minimum for scheduling).

(b) A set time for completion of task, dictated by Skagit County Code, without any means for extending the completion time. Drilling should happen between the months of November through March (wet months). We received notice and time limitation in March 2021. There wasn't any way we could have met the allowed schedule and preformed a quality drilling program and submittal.

(c) It appears, Skagit County Planning Codes do not have the means for exceptional times or events that have happened with this project with the injury of the Mining Consultant, Covid Pandemic and the difficulty of finding a Qualified Hydrologist for the very difficult task.

(d) We feel that the Hearing Examiner should not have given Evergreen Island an extension by declaring that the Property Owners had not been given notice of the hearing, under oath! Skagit County confirmed that all property owners had been given notice of the Hearing.

#4. Describe any new evidence?

(a) We have attached the summary of the Hydrologist McLucas had contacted in finding one that would do the Required Drilling and Critical Area Report. Each one had to be contacted 8 previous Special Use reports sent to them for review and consideration, which was very time consuming.

(b) The same Summary also has the Hospitalization (3 hospitals) of Stephen Taylor, Mining Consultant, the first half of this year.

(c) Both Mr. Wooding and Mr. Taylor also feel that Skagit County erred when they gave Evergreen Islands an extension. Evergreen Islands stated at the Hearing, that adjoining Property Owners had not been Notified of the Hearing date and issues. The Hearing Examiner gave "Evergreen Islands an Extension to Prepare New Testimony". John Cooper, Skagit County, went and checked this immediately. John Cooper returned within 30 minutes, to inform the Hearing Participants and Hearing Examiner that all Residents had been Notified of the hearing date and issues. Evergreen Islands, "Under Oath" stated the Property Owners had not been notified! We feel that the Hearing Examiner should have Retracted the Extension to Evergreen Islands to prepare new testimony.

#5. List relevant sections of the code.


(a) For review of the codes, we would require an attorney but, we do not wish to do so. Both Bill Wooding and Stephen Taylor are "Working Stiffs". Mr. Wooding has run the Lake Erie Mine and a Construction Company for 40-years and Stephen Taylor has spent 25 years providing permits and mineral valuation for miners in Washington, Oregon and other Northwest States.

(b) We do feel that Evergreen Islands should not have been given an extension to prepare new testimony! Lying under oath should be immediate dismissal of their case!

#6. Describe your desired outcome.

Bill Wooding and Stephen Taylor are hoping that Skagit County will provide the necessary time for McLucas to finish this project as directed by Skagit County and the Hearing Examiner. We estimate this will take approximately 6-months depending on the drilling. We have a Hydrologist aboard, Canyon Environmental Group and hope to get started immediately.

Sincerely,

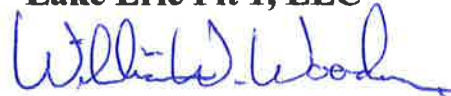


**Stephen Taylor
McLucas & Associates, Inc.**

Sincerely,



**Bill Wooding
Lake Erie Pit 1, LLC**



Attachments:

- (1) McLucas Brochure
- (2) Summary of Hydrologists contacted & Mr. Taylor's Hospitalizations



Stephen Taylor <s.l.taylor7117@gmail.com>

Hydrologists I contacted

1 message

Stephen Taylor <s.l.taylor7117@gmail.com>
To: William Wooding <bwooding31@comcast.net>

Thu, Jul 22, 2021 at 11:49 AM

Bill, I contacted the Geologic Companies looking for Hydrologist in Skagit County:

- (1) Canyon Environmental Group
- (2) Saturnah 2o Group
- (3) Sound Geology
- (4) Coastal Geologic Services
- (5) Cooper & Associates

Hospitals & Doctors I spent time with this year in repairing my knee and complications:

- (1) CHI Franciscan Rehabilitation Hospital, Tacoma
- (2) Providence Centralia Hospital
- (3) Providence St. Peter Hospital, Olympia
- (4) Sea Mar Community Health Center

Stephen Taylor

McLUCAS AND ASSOCIATES, INC.



**CONSULTING GEOLOGISTS, INDUSTRIAL
MINERALS, AGGREGATE, AND
MINERAL VALUATION SPECIALISTS**



Glenda McLucas-Taylor

**Cradle to Grave Industrial Minerals Mining
25 YEARS OF EXPERIENCE**

**ASSOCIATES: U.S.G.S. Trained Field Mappers, Mineral
Economist, Hydrogeologist, Geophysicist, Air Quality,
Noise, Traffic Specialists, and Real Estate Appraisers**

P.O. Box 5352 Lacey, WA 98509 * (360) 456-8248 * FAX (360) 438-1881

E-mail mclucastaylor@qwestoffice.net

Mineral Resource & Mine Development



LOOKING SOUTH AT PROCESSING PLANT AND DOT PARCEL

Geologic field evaluation of all Burlington Northern Railroad subsidiary company lands in the northwest States of Idaho, Oregon, and Washington for the purpose of determining the occurrence, quantity and quality of sand & gravel and bedrock aggregate sources on BNRR land. The project spanned 18 months from June, 1987 through December, 1988, and involved 2,040 hours of geologic services. June and July of 2003, geologic reconnaissance of Plum Creek Timber Company ownership in Kalispell and Missoula region of Montana to evaluate the bedrock formations in terms of their value in the decorative rock and dimension stone industry.

1) Geologic and geophysical exploration; 2) reserve calculation through AutoCADD analysis; 3) laboratory aggregate-quality determination; 4) phased mine and reclamation plan development, involving computerized design; 5) coordination of all subcontract work necessary for preparation of complex environmental impact statements; 6) environmental controls, including: equipment petroleum product containment and disposal; storm water control; reclamation stockpile stabilization; visual, dust and noise impact control; and wash-water fines settling and disposal; 7) gravel washing production, well development, and associated hydro geologic investigation; 8) aggregate product market investigations.

Detailed information on all projects available on request

Clients:

Ashgrove Cement
Pope Resources
Cadman Gravel Co.
Comico American
Concrete Nor'West
J.R. Hayes & Sons
Kiewit Pacific Corp.
Lafarge Concrete
Lakeside Sand & Gravel
Longview Fibre Co.
Holnam Corp.
Menasha Corp.
Plum Creek Timber Co.

US Oil & Refining
Trillium Corp.
Scarsella Brothers
Mine Management
Industrial Mineral Prod.
Mine Permit Procurement.
Manke Lumber Company
City Transfer of Kent
CSR/Associated/Linker
Port Blakely Timber Co.
Central Reddi-Mix
Stoneway Concrete
Shamrock Lands

Kennedy Creek Quarry
Mineral Waste Disposal Utilizst.
Phoenix Resources Recovery
Coal Mine Hazard Studies
Great Northern Resources
Cascade Security Bank
Palmer Coking Coal Co.
Mineral Inventories
Meridian Aggregates
Plum Creek Timber Co.
Weyerhaeuser Company

McLucas has permitted 9 mines that are currently in operation

Mineral Valuation Clientele

Government Agencies

U.S. Bankruptcy Court
U.S. Department of Justice
U.S. Fish & Wildlife Department
Washington State Attorney General
WA State Dept. of Parks & Recreation
Clallam County Public Works Dept.
Snohomish County Public Works Dept.
Skagit County Public Works Dept.
City of Everett, Public Works Dept.
City of Lacey, Public Works Dept.
Port of Shelton, WA
Port of Bremerton, WA
Seattle City Light
Nature Conservancy
Aggregate Production Companies
General Electric
Ashgrove Cement, Seattle, WA
City Transfer of Kent, Dieringer, WA
Cominco American, Spokane, WA
Friend and Bikalo, Aberdeen, WA

Kennedy Creek Quarry, Shelton, WA
Lafarge Concrete, Vancouver, B.C.
Lake Industries, Marysville, WA
Mahaffey Enterprises, Kennewick, WA
Mark Haugebak, Boise, ID
Mark Litchman, Honolulu, HI
Menasha Corporation, Centralia, WA
Pope Resources, Poulsbo, WA
Romineco, L.L.C., Lake Stevens WA
***Tilbury Cement Products, Delta B.C.**
Toledo Sand and Gravel, Toledo, WA
W.H. Gregory, Dallesport mine, Gresham, OR
Wilder Construction Co., Everett, WA (11 mines)
US Oil & Refining
Real Estate Appraisers & Lending Institutions
Seafirst Bank (Butler Mine, estate valuation)
Security Pacific Bank, Bellevue, WA
U.S. Bank of Washington, Seattle, WA
Strickland, Heischman, Hoss, Inc., Tacoma, WA
W.R. Coffin & Assoc., Appraiser, Redmond, WA
Ith, Boydston & Associates



Mineral Resources Assessment and Valuation

In association with several government agencies, private, and lending institution Real Estate Appraisers (MAI's), McLucas has completed many mineral land valuations (including estate valuations) of industrial mineral deposits (including sand & gravel and quarry rock) for government agencies, lending institutions, the U.S. Bankruptcy Court, and private mining companies and resource land owners. In the process, the full range of geologic, geophysical, and hydrogeologic exploration, market and royalty surveys, aerial photography, and computer-aided drafting services have been used. As a result, McLucas has become a unique specialist in this work in the northwest states. The most comprehensive project to date was commissioned in 1999 by Wilder Construction Company, which retained McLucas and W.R. Coffin, MAI, to determine the mineral value and reversionary land value for all 11 of the company's surface mines in Alaska and Washington. Granite Corporation, the largest road construction company in the U.S., invested in Wilder, partially on the basis of these valuations.

In the arena of highway condemnation cases, McLucas was fully involved as an expert witness for two sand & gravel mines in the Boise, Idaho area. This work resulted in awards to the miners of \$2,700,000 and \$1,000,000, respectively.

McLucas and Associates Qualifications

Clientele listed represent only a portion of the total project output of McLucas and Associates over the past 25 years. Most work was devoted to geologic, geophysical, and hydrogeologic exploration for determination of mineral reserves and quality; mine management; environmental assessment and remediation; mine and reclamation design; mine permit procurement; geologic reconnaissance of rock formations, containing decorative rock and dimension stone; and mineral economic valuations for clay, silica sand, quartz, limestone, sand and gravel, quarry rock, and other industrial mineral deposits in the states of Washington, Oregon, Idaho, Montana, Arizona, California, New Jersey, and Canada.

Clients for which McLucas has served as expert witness

Washington State Attorney General:

Department of Natural Resources

Washington Department of Transportation

Clallam County Public Works Department, highway condemnation, Port Angeles WA

Mark Haugebak, Prime Earth Mine highway condemnation case, Boise, Idaho

Idaho Sand and Gravel highway condemnation case, Boise, Idaho

City Transfer of Kent, Dieringer, Washington

Glenda McLucas-Taylor's professional experience

McLucas and Associates

4/81 to 6/86: Industrial Mineral Products, Ravensdale, WA

9/77 to 4/80: Washington State Geologic Survey

Education

B.S. Geology, 1971, Missouri School of Mines, Rolla & K.C., MO

M.S. Geology, 1977, University of Washington, Seattle, WA

Past Professional Society Affiliations

American Concrete Institute, Seattle Chapter

Washington Aggregate and Concrete Association

American Institute of Mining and Metallurgical Engineers

Professional Registration

Washington State Geologist License No. 678

Oregon Board of Geologist Registration No. G-834

Washington State Women's Business Enterprise, Registration No. W2S4817046

EXHIBIT #30
HEARING EXAMINER'S ORDER GRANTING APPEAL
& REVERSING COUNTY'S DENIAL

BEFORE THE SKAGIT COUNTY HEARING EXAMINER

In the Matter of the Appeal of)	
)	
WILLIAM WOODING,)	PL21-0421
)	
Appellant,)	ORDER GRANTING APPEAL
)	
SKAGIT COUNTY,)	
)	
Respondent.)	
_____)	

This matter was presented through written submissions. Steven Taylor, Mining Consultant, represented the Appellant. Jason D’Avignon, Deputy Prosecuting Attorney, represented the County.

The appeal is of the County’s denial of a Special Use Permit application to expand a gravel mine near Lake Erie. The denial was based on the Appellant’s failure to provide a Geologically Hazardous Site Assessment within 120 days as provided by SCC 14.06.105(1).

FINDINGS

1. William Wooding filed Application No. PL16-0556 for a special use permit to expand his Lake Erie gravel mine on December 2, 2016, almost five years ago. In the interim substantial technical information has been submitted and reviewed. After a hearing on August 26 and October 14, 2020, the Hearing Examiner approved the application with conditions.
2. On appeal, the Board of County Commissioners remanded the matter to the Hearing Examiner to determine if a Geologically Hazardous Site Assessment is needed. The Hearing Examiner ordered Planning and Development Services (PDS) to direct Wooding to provide such an assessment.
3. The 120 days provided by SCC 14.06.105 for submittal of the information expired on July 21, 2021. On July 20, 2021, the day before the expiration date, Wooding’s agent sent an email stating that a contract with a consultant had been entered and requesting a further extension of time for submitting the required information.
4. PDS denied the extension request and denied Wooding’s special use permit application for failure to timely supply requested information.
5. In arguing on Wooding’s behalf his consultant stated that he had been hospitalized three times in 2021 and that this had made it difficult for him to pursue the application.

6. He said that when the information was asked for in March of 2021, no one was available to provide the requested assessment. Thereafter, experts he consulted advised him that such an assessment would need to cover all of the seasons of the year. Another year was requested to complete the work.

7. Wooding's consultant further noted that the proposed mining would be conducted in phases with fill and replanting occurring after each phase, thus limiting the open areas of the mine and controlling surface water absorption. He explained that the purpose was for a gradual expansion of the mine, not an increase in production.

8. He also noted that six reports referencing the hydrology of the site have already been produced, supporting the conclusion that the site has no perched aquifers and that the groundwater flow is to the northeast.

9. The County simply stated that their denial was based on a failure to supply requested information within the time allowed under SCC 14.06.105(1). The County emphasized that the denial could have been avoided by a timely request for extension and that no such request was timely made.

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

DISCUSSION

This case is a classic example of "coming to a nuisance," where the character of an area has been changed by recent development that is arguably at odds with the traditional allowed land use. Under this circumstance the historic use is not required to cease.

Continuation of the mining operation near Lake Erie is not now subject to any explicit regulatory oversight. Significantly, no reclamation program presently governs the operation.

Allowing the mining to proceed essentially unregulated presents obvious risks. The issuance of a Special Use Permit for the mine would lead to resolution of presently unanswered questions about what is to occur in the future. The answers would essentially remove environmental concerns about the end state of the property.

If the preparation of a Geologically Hazardous Site Assessment reveals risks that need to be and can be addressed, the applicant can do so in prosecuting his permit. If the assessment reveals risks that cannot be avoided, then the permit can be denied.

Given the amount of time and effort that has been expended on this application and the large amount of information that has been generated, it seems unnecessarily punitive to require the applicant to submit a new application.

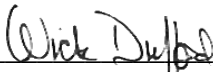
CONCLUSIONS OF LAW

1. The Hearing Examiner has jurisdiction over this appeal. SCC 14.16.050(1)(a).
2. A dismissal for failure to meet the 120 day time limit for submitting additional information is explicitly made appealable by SCC 14.06.105(3). This must mean that a compelling explanation can excuse the lateness.
3. The Examiner is persuaded that such an explanation has been provided in this case and concludes that the time limit should be extended as set forth in the Order below.

ORDER

The denial of Application No. PL16-0556 is reversed. The application shall remain in good standing through September 2022. During this time the Applicant shall have a Geologically Hazardous Site Assessment prepared and shall submit the same prior to the end of September 2022.

SO ORDERED, this 15th, day of October, 2021.



Wick Dufford, Hearing Examiner

Transmitted to: Interested parties on October 18th, 2021.

EXHIBIT #31
GEOLOGIC HAZARD SITE ASSESSMENT
(RECEIVED AUGUST 12, 2022)



Geologic Hazard Site Assessment

Lake Erie Pit 1 Expansion

Southeast corner of Rosario Road & Marine Drive

Project # PS2220529-0

Prepared for:

Lake Erie Trucking, LLC

13540 Rosario Road, Anacortes, WA 98221

August 11, 2022

Geologic Hazard Site Assessment

Lake Erie Pit 1 Expansion
Southeast corner of Rosario Road & Marine Drive
Project # PS2220529-0

Prepared for:

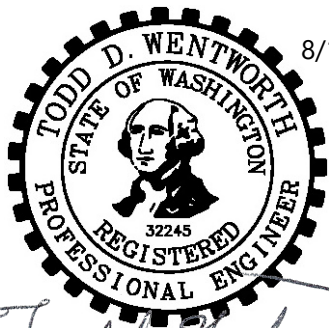
Lake Erie Trucking, LLC
13540 Rosario Road, Anacortes, WA 98221

Prepared by:

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August 11, 2022

Wood Environment & Infrastructure Solutions, Inc.



8/11/2022

A handwritten signature in black ink that reads "Todd D. Wentworth".

Todd D. Wentworth, P.E., L.G.
Principal Geotechnical Engineer

A handwritten signature in blue ink that reads "Milan Radic".

Milan Radic, P.E.
Senior Geotechnical Engineer

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FS	factor of safety
msl	mean sea level
Wood	Wood Environment and Infrastructure Solutions, Inc.

1.0 Introduction

Wood Environment and Infrastructure Solutions, Inc. (Wood) understands that Lake Erie Trucking, LLC is seeking a permit to expand operations of the Lake Erie Pit 1 gravel mine towards the south. The expansion area includes tax parcels: P19161, P19164, P19158, P90028, and P19155. The goal is to gain access to more resources in order to continue mine operations further into the future. Various studies have been completed already as part of the permitting process (Skagit County 2020). A Special Use Permit was approved by Skagit County on November 30, 2020 (Skagit County, 2020); however, upon appeal, the Hearing Examiner determined that a geologic hazard site assessment is needed in order to fulfill Section 14.24.400 of the Skagit County Critical Areas Ordinance (Skagit County, 2021). This report is intended to meet the requirement for a geologic hazard site assessment.

2.0 Site and project description

The site is located on Fidalgo Island just south of Lake Erie, near 13500 Rosario Road, Township 34 North, Range 1 East, Section 11, Northwest ¼, as shown on Figure 1. The site contains a local high point in elevation between the coastline of Burrows Bay to the northwest, Lake Erie to the northeast, and Devil's Elbow Lake to the south. The surface elevation ranges from 420 feet down to 290 feet above mean sea level (msl) at the current base of mining operations. The surface slopes moderately over most of the area, except where mining excavations have created near-vertical and very steep slopes. The proposed expansion area has been graded with access roads and small excavations for mining aggregates and for controlling surface water runoff.

The current mining area is bare or vegetated with pioneering grasses, bushes, and saplings, and the proposed expansion area is fully vegetated with second-growth trees and shrubs.

The proposed use of the expansion area is displayed in Figures 2 through 5. Dry mining will consist of excavating the bank run sand and gravel, loading it into trucks, and transporting to construction sites. Excavation could extend down to elevation 250 feet above msl. The final reclamation plan consists of backfilling the excavated bank to form a prism of fill with 2H:1V (horizontal:vertical) slopes, and backfilling excavations in the northern portion to raise grades and form 2H:1V fill slopes, as shown in Figures 3 through 5.

2.1 Site Reconnaissance

Wood visited the site March 18, 2022. We met with Brandt Wooding of Lake Erie Trucking, LLC, who gave us a tour of the Lake Erie Pit 1 and answered questions. The photographs in Appendix A were taken during the site visit.

There were no ongoing operations occurring at Pit 1 and there was no evidence of recent mining (grass and shrubs were encroaching onto the access roads). First, Wood visited the most recent mining area of Pit 1, accessed from Rosario Road on the north near Marine Drive. The excavated sidewalls of Pit 1 were near-vertical for the upper 30 feet, and sloughed soil formed steep slopes of about 1.3H:1V down to the level base of Pit 1 (see photographs 1 through 3 in Appendix A).

The upper slope exposed on the east side appeared to consist of glacial till because the soil was able to stand vertical and consisted of a well-graded mixture of grain sizes with a large percentage of fines (silt and clay). The south and east sidewalls of Pit 1 appeared to consist of advance outwash because the soil was also able to stand vertical and stratification of sand was clearly visible (the grain sizes were stratified into thin layers).

No groundwater seepage was observed through the excavated slopes and no evidence of significant erosion was observed.

Second-growth vegetation of young conifers and deciduous trees and shrubs surrounded the Pit 1 mining area, both directly at the top of the cut slopes and forming a buffer to the north between the excavation area and Rosario Road.

Wood also visited the proposed expansion area to the south of the existing Pit 1 via an access road from Rosario Road on the west near Edith Point Road. This area was less developed, with some grading for access roads, and ditches and stormwater ponds for drainage and erosion control. Minor excavations for mining gravel may have occurred in the past. Wood observed monitoring well BJT-103, recently installed for the hydrogeologic studies related to the permit application for the expansion (see Photograph 4 in Appendix A). The surface of the expansion area slopes gently to moderately (less than 40 percent) from a high point near the middle of the area to the south, west, and east. Most of the expansion area is well-vegetated with second growth trees and brush. We did not notice any signs of slope instability or significant erosion.

2.2 Site Research

Wood reviewed previous relevant studies of the site. The following documents provided information on the existing conditions, site geology and groundwater, the proposed expansion, and the final reclamation plan:

- Lake Erie Pit Well Reconnaissance (NWGC, 2019);
- Observation Well Installation (Maul Foster, 2017); and
- Hydrogeologic Site Assessment Report (Maul Foster, 2016).

Wood also reviewed the Skagit County LIDAR map created using Lidar2016Hillshade encompassing the site, which is reproduced as Figure 6. The map clearly depicts evidence of landslides along the coastal bluffs west of the site and grading due to the mining on the site. The head scarp of the nearest coastal bluff is approximately 300 feet northwest of the northwest sidewall of the existing Pit 1 and is approximately 800 feet northwest of the proposed expansion. Rosario Road runs between the site and the coastal bluffs, and the cut slope between Rosario Road and the site is clearly visible. The cut slope graded for Rosario Road is not considered a geologic hazard as it is not a natural slope but is an engineered and maintained slope.

3.0 Subsurface Conditions

The subsurface conditions at the site have been described thoroughly in the previous hydrogeologic studies (Maul Foster, 2016 and 2017; and NWGC, 2019). The conditions are summarized in this section and incorporated into our slope stability modeling in Section 4.0.

3.1 Geologic Conditions

Based on available published maps, the geology of the site generally consists of glacial till overlying glacial advance outwash soils. Ophiolite rock outcrops are present nearby to the north and east, and are probably present below the glacial soils at an undetermined depth (Miller and Pessel, 1986).

The mapped geology is consistent with the well drilling observations (Maul Foster, 2017) which interpreted the soil stratigraphy to consist of glacial till in the upper 35 feet below ground surface, overlying glacial advance outwash to the full depth of drilling of 277 feet below ground surface.

Additionally, Wood observed glacial till and advance outwash in the mining sidewalls during our site reconnaissance, confirming the mapped stratigraphy.

Glacial till is generally defined as an over-consolidated mixture of gravel, sand, silt, and clay that was deposited and overridden by a prehistoric glacial ice mass, thereby over-consolidating the soils to densities ranging from dense to very dense. Thus, these materials possess relatively high shear strengths, low compressibility, and low permeability.

Advance outwash is characterized by moderately sorted sands and gravels deposited by streams associated with the advancing glacier. Advance outwash, deposited in front of the advancing glacial ice mass, has been compacted (over-consolidated) by the overriding glacier resulting in dense to very dense deposits and is found below glacial till.

A relatively thin layer of glacial lacustrine soils was encountered near elevation 250 feet above msl while drilling observation well BJF-103. Glacial lacustrine soils form when sediments are deposited in lakes in front of advancing glaciers and then overridden by the glacier, resulting in very stiff to hard deposits of silt, fine sand, and clay.

3.2 Groundwater Conditions

The previous hydrogeologic studies (Maul Foster, 2016 and 2017; and NWGC, 2019) provide detailed information regarding the groundwater elevation, groundwater flow direction, and conclude that the mining operation is unlikely to have any impact on the groundwater.

To summarize, the regional unconfined groundwater table was interpreted to be near elevation 190 feet above msl, which is approximately 60 feet below the proposed mining excavation level. Groundwater flows north, toward Lake Erie, as shown in Figure 2. Due to concerns that Devil's Elbow Lake (elevation 363 feet above msl) could be a source of water seepage into the Pit 1 sidewalls, a groundwater observation well, BJF-103, was installed in the proposed expansion area, between the existing gravel pit and Devil's Elbow Lake (Figure 2). Only the deep regional groundwater at elevation 190 feet above msl was encountered and no evidence of shallower groundwater was found.

The previous hydrogeologic studies concluded that the proposed mine operations and reclamation plan would not affect the water levels in Devil's Elbow Lake. Additionally, because there will be no groundwater withdrawals and stormwater will infiltrate into the subsurface, there will be no impact on the downgradient groundwater conditions.

4.0 Slope Stability

Because the site has relatively steep slopes (50 percent grades), we analyzed the slope stability for these site conditions. The following sections describe results of geotechnical engineering analyses for the proposed reclaimed slopes. The analytical models are based on the slopes presented in the Hydrogeologic Site Assessment Report (Maul Foster, 2016) as cross sections A–A' and B–B', and Wood's interpretation of the soil stratigraphy and strengths. The soil stratigraphy is based on the updated cross section B–B' presented in the observation well installation letter (Maul Foster, 2017), which included the soils log for observation well BJF-103. The interpreted geologic cross sections are presented in Figures 3 through 5.

4.1 Soil Strength Parameters

Table 1 presents the interpretation of geological units (supplied by Maul Foster [2016]), and correlated soil properties selected from the range provided in Engineering Geology in Washington (Koloski et al., 1989). For the fill to be used to create the final reclaimed slopes, we assumed Common Borrow per

Washington State Department of Transportation (WSDOT) Standard Specification 9-03.14(3) (WSDOT, 2022a) would be applicable, and the soil strength properties for the Common Borrow were correlated with Table 5-2 in the *Geotechnical Design Manual* (WSDOT, 2022b).

Table 1. Correlated Soil Strength Properties

Material	USCS Soil Type	Soil Friction Angle (degrees)	Cohesion (psf)	Apparent Cohesion ¹ (psf)	Moist Unit Weight (pcf)
Common Borrow	SM, GM	34	0	100	125
Glacial Outwash	SW, GW	38	0	200	130
Glacial Lacustrine	ML, SM	32	200	0	120

Note:

1. Apparent cohesion used only to evaluate stability for the seismic pseudostatic case.

Abbreviations

pcf = pounds per cubic foot
 psf = pounds per square foot

USCS = Unified Soil Classification System

By modeling the existing slope conditions at cross section A–A', Wood back-calculated soil properties of the advance outwash, a dominant soil unit, to match a factor of safety 1.0 under current static condition. The resulting soil strength required a friction angle of 42 degrees and 200 pounds per square foot apparent cohesion. These values are plausible but rather high, so to be more conservative, Wood reduced the soil strength of the advance outwash to correlated values reported in Engineering Geology in Washington (Koloski et al., 1989).

4.2 Slope Stability Analyses

Wood performed two-dimensional, limit equilibrium overall (global) stability analyses based on the method of slices according to Morgenstern-Price method, using the Slope/W software module in GeoStudio 2016 (Geo-Slope, 2016). This program employs limit equilibrium methods widely used in geotechnical engineering practice.

Wood modeled critical cross sections for slope geometry as summarized below:

1. Cross section A–A' (west to east) current west slope condition, Static Case;
2. Cross section A–A' (west to east) 2H:1V reclaimed west slope condition, Static Case;
3. Cross section A–A' (west to east) 2H:1V reclaimed west slope condition, Pseudostatic Case;
4. Cross section A–A' (west to east) reclaimed east slope condition, Static Case;
5. Cross section A–A' (west to east) reclaimed east slope condition, Pseudostatic Case;
6. Cross section B–B' (north to south) reclaimed south slope condition, Static Case; and
7. Cross section B–B' (north to south) reclaimed south slope condition, Pseudostatic Case.

We selected a target factor of safety (FS) for static and pseudo-static conditions of 1.3 and 1.1, respectively, for slip surfaces anywhere near the slope (no designated buffer) to verify the stability of the proposed final slopes. The static FS of 1.3 is what WSDOT uses for embankment and cut slopes that are not supporting structures. WSDOT does not require slopes without structures to be stable under seismic conditions, but they use an FS of 1.1 for slope that support structures.

Relative to the proposed 50-foot buffer between the top of the final slopes and the property line, all of the models for potential slip surfaces behind the buffer resulted in an FS greater than the 1.5 for static and 1.25 for seismic, as required by the Skagit County Critical Areas Code.

Global stability analyses of the reclaimed slopes considered shallow slip surfaces as well as deep-seated slip surfaces penetrating below the weaker glacial lacustrine layer and the groundwater table, defined at elevation 190 feet above msl per the previous hydrogeologic studies (Maul Foster, 2016 and 2017; and NWGC, 2019). The broad range cases demonstrate that deep-seated landslides are not likely.

Wood determined a pseudo-static horizontal seismic acceleration equivalent to one-half of site adjusted peak ground acceleration based on 7 percent probability of exceedance in 75 years, accessed via BEToolbox (WSDOT, 2022c). The pseudo-static horizontal seismic acceleration is 0.22g.

The results are presented in Table 2 and shows that reclaimed slopes meet or exceed the target FS. Slope stability results are shown in Appendix B.

Table 2. Overall Stability Evaluation Results

Cross Section	Location	Condition	Case	Target FS	Calculated FS	Exhibit ¹
A-A'	West Slope	Current ²	Static	1.0	1.0	B.1
A-A'	West Slope	Reclaimed	Static	1.3	1.9	B.2
			Static – Broad Range		1.9	B.3
			Pseudo Static	1.1	1.3	B.4
			Pseudo Static – Broad Range		1.3	B.5
A-A'	East Slope	Reclaimed	Static	1.3	1.4	B.6
			Static – Broad Range		1.4	B.7
			Pseudo Static	1.1	1.1	B.8
			Pseudo Static – Broad Range		1.1	B.9
B-B'	South Slope	Reclaimed	Static	1.3	1.7	B.10
			Static – Broad Range		1.7	B.11
			Pseudo Static	1.1	1.3	B.12
			Pseudo Static – Broad Range		1.3	B.13

Note:

1. Exhibits can be found in Appendix B.
2. Model used to back-calculate soil strength of glacial outwash

Abbreviations:

FS = factor of safety

4.3 Coastal Bluffs

The proposed mining operations will not have any impact on the coastal bluffs because the excavations will be too far away (300 to 800 feet).

The instability of coastal bluffs is usually related to (listed from major to minor causation): over-steepened slope; waves eroding the toe and creating over-steepened slopes; erosion from surface water flowing over

the slopes; groundwater seepage through the face of the slope; and occasionally due to over-loading at the top of the slope (such as roads and buildings).

The site is too far away from the coastal bluffs to cause any changes in these conditions except for possibly groundwater seepage and the previous hydrogeologic studies for the site (Maul Foster, 2016 and 2017; and NWGC, 2019) addressed this possibility. The studies concluded the proposed site development will not impact the groundwater table or the stability of the coastal bluffs because groundwater flows from the site towards the northeast, away from the bluffs; excavations at the site will not extend down into the groundwater table; and stormwater will be managed and infiltrated on site.

5.0 Conclusions and recommendations

The geologically hazardous areas on the site consist of landslide hazards due to slopes steeper than 40 percent and higher than 10 feet. These slopes are present due to the mining excavations and the final mine reclamation will include slopes graded to 2H:1V (50 percent). Quantitative engineering analyses of these slopes has determined that they will be stable with FSs that meet the Skagit County critical area code requirements and the standard of engineering practice.

Adjacent to the west of the site is the road cut for Rosario Road, which is steeper than 40 percent and higher than 10 feet. However, this is an engineered slope that was designed and is maintained by Skagit County, and therefore is considered stable. Additionally, the proposed expansion of Pit 1 will not affect this slope.

Coastal bluffs are located 300 to 800 feet west of the site and the proposed expansion of Pit 1 will not affect these slopes, because the proposed expansion plans will not change the regional groundwater conditions.

6.0 Limitations

1. The work performed in the preparation of this report and the conclusions presented herein are subject to the following:
 - a. The contract between Wood and the Client, including any subsequent written amendment or Change Order duly signed by the parties (hereinafter together referred as the "Contract");
 - b. Any and all time, budgetary, access and/or site disturbance, risk management preferences, constraints or restrictions as described in the Contract, in this report, or in any subsequent communication sent by Wood to the Client in connection to the Contract; and
 - c. The limitations stated herein.
2. **Standard of care:** Wood has prepared this report in a manner consistent with the level of skill and care ordinarily exercised by reputable members of Wood's profession, practicing in the same or similar locality at the time of performance, and subject to the time limits and physical constraints applicable to the scope of work, and terms and conditions for this assignment. No other warranty, guaranty, or representation, expressed or implied, is made or intended in this report, or in any other communication (oral or written) related to this project. The same are specifically disclaimed, including the implied warranties of merchantability and fitness for a particular purpose.
3. **Limited locations:** The information contained in this report is restricted to the site and structures evaluated by Wood and to the topics specifically discussed in it, and is not applicable to any other aspects, areas, or locations.

4. **Information utilized:** The information, conclusions, and estimates contained in this report are based exclusively on: i) information available at the time of preparation, ii) the accuracy and completeness of data supplied by the Client or by third parties as instructed by the Client, and iii) the assumptions, conditions and qualifications/limitations set forth in this report.
5. **Accuracy of information:** No attempt has been made to verify the accuracy of any information provided by the Client or third parties, except as specifically stated in this report (hereinafter "Supplied Data"). Wood cannot be held responsible for any loss or damage, of either contractual or extra-contractual nature, resulting from conclusions that are based on reliance on the Supplied Data.
6. **Report interpretation:** This report must be read and interpreted in its entirety, as some sections could be inaccurately interpreted when taken individually or out of context. The contents of this report are based on the conditions known and information provided as of the date of preparation. The text of the final version of this report supersedes any other previous versions produced by Wood.
7. **No legal representations:** Wood makes no representations whatsoever concerning the legal significance of its findings, or as to other legal matters touched on in this report, including but not limited to ownership of any property, or the application of any law to the facts set forth herein. With respect to regulatory compliance issues, regulatory statutes are subject to interpretation and change. Such interpretations and regulatory changes should be reviewed with legal counsel.
8. **Decrease in property value:** Wood shall not be responsible for any decrease, real or perceived, of the property or site's value or failure to complete a transaction, as a consequence of the information contained in this report.
9. **No third-party reliance:** This report is for the sole use of the party to whom it is addressed unless expressly stated otherwise in the report or Contract. Any use or reproduction that any third party makes of the report, in whole or in part, or any reliance thereon or decisions made based on any information or conclusions in the report is the sole responsibility of such third party. Wood does not represent or warrant the accuracy, completeness, merchantability, fitness for purpose, or usefulness of this document, or any information contained in this document, for use or consideration by any third party. Wood accepts no responsibility whatsoever for damages or loss of any nature or kind suffered by any such third party as a result of actions taken or not taken or decisions made in reliance on this report or anything set out therein, including without limitation, any indirect, special, incidental, punitive or consequential loss, liability or damage of any kind.
10. **Assumptions:** Where design recommendations are given in this report, they apply only if the project contemplated by the Client is constructed substantially in accordance with the details stated in this report. It is the sole responsibility of the Client to provide to Wood changes made in the project, including but not limited to details in the design, conditions, engineering, or construction that could in any manner whatsoever impact the validity of the recommendations made in the report. Wood shall be entitled to additional compensation from Client to review and assess the effect of such changes to the project.
11. **Time dependence:** If the project contemplated by the Client is not undertaken within a period of 18 months following the submission of this report, or within the time frame understood by Wood to be contemplated by the Client at the commencement of Wood's assignment, and/or if any changes are made—for example, to the elevation, design or nature of any development on the site, its size and configuration, the location of any development on the site and its orientation, the use of the site, performance criteria, and the location of any physical infrastructure—the conclusions and recommendations presented herein should not be considered valid unless the impact of the said

changes is evaluated by Wood, and the conclusions of the report are amended or are validated in writing accordingly.

Advancements in the practice of geotechnical engineering, engineering geology and hydrogeology and changes in applicable regulations, standards, codes, or criteria could impact the contents of the report, in which case, a supplementary report may be required. The requirements for such a review remain the sole responsibility of the Client or their agents.

Wood will not be liable to update or revise the report to take into account any events or emergent circumstances or facts occurring or becoming apparent after the date of the report.

12. **Limitations of visual inspections:** Where conclusions and recommendations are given based on a visual inspection conducted by Wood, they relate only to the natural or man-made structures, slopes, etc. inspected at the time the site visit was performed. These conclusions cannot and are not extended to include those portions of the site or structures that were not reasonably available, in Wood's opinion, for direct observation.
13. **Limitations of site investigations:** Site exploration identifies specific subsurface conditions only at those points from which samples have been taken and only at the time of the site investigation. Site investigation programs are a professional estimate of the scope of investigation required to provide a general profile of subsurface conditions.

The data derived from the site investigation program and subsequent laboratory testing are interpreted by trained personnel and extrapolated across the site to form an inferred geological representation, and an engineering opinion is rendered about overall subsurface conditions and their likely behavior with regard to the proposed development. Despite this investigation, conditions between and beyond the borehole/test hole locations may differ from those encountered at the borehole/test hole locations and the actual conditions at the site might differ from those inferred to exist, since no subsurface exploration program, no matter how comprehensive, can reveal all subsurface details and anomalies.

Final sub-surface/bore/profile logs are developed by geotechnical engineers based on their interpretation of field logs and laboratory evaluation of field samples. Customarily, only the final bore/profile logs are included in geotechnical engineering reports.

Bedrock, soil properties, and groundwater conditions can be significantly altered by environmental remediation and/or construction activities, such as the use of heavy equipment or machinery, excavation, blasting, pile-driving, or draining or other activities conducted either directly on site or on adjacent terrain. These properties can also be indirectly affected by exposure to unfavorable natural events or weather conditions, including freezing, drought, precipitation, and snowmelt.

During construction, excavation is frequently undertaken that exposes the actual subsurface and groundwater conditions between and beyond the test locations, which may differ from those encountered at the test locations. It is recommended that Wood be retained during construction to confirm that the subsurface conditions throughout the site do not deviate materially from those encountered at the test locations, that construction work has no negative impact on the geotechnical aspects of the design, to adjust recommendations in accordance with conditions as additional site information is gained, and to deal quickly with geotechnical considerations if they arise.

Interpretations and recommendations presented herein may not be valid if an adequate level of review or inspection by Wood is not provided during construction.

14. **Factors that may affect construction methods, costs and scheduling:** The performance of rock and soil materials during construction is greatly influenced by the means and methods of construction.

Where comments are made relating to possible methods of construction, construction costs, construction techniques, sequencing, equipment or scheduling, they are intended only for the guidance of the project design professionals, and those responsible for construction monitoring. The number of test holes may not be sufficient to determine the local underground conditions between test locations that may affect construction costs, construction techniques, sequencing, equipment, scheduling, operational planning, etc.

Any contractors bidding on or undertaking the works should draw their own conclusions as to how the subsurface and groundwater conditions may affect their work, based on their own investigations and interpretations of the factual soil data, groundwater observations, and other factual information.

15. **Groundwater and dewatering:** Wood will accept no responsibility for the effects of drainage and/or dewatering measures if Wood has not been specifically consulted and involved in the design and monitoring of the drainage and/or dewatering system.
16. **Environmental and hazardous materials aspects:** Unless otherwise stated, the information contained in this report in no way reflects on the environmental aspects of this project, since this aspect is beyond the scope of work and the Contract. Unless expressly included in the scope of work, this report specifically excludes the identification or interpretation of environmental conditions such as contamination, hazardous materials, wildlife conditions, rare plants, or archeology conditions that may affect use or design at the site. This report specifically excludes the investigation, detection, prevention, or assessment of conditions that can contribute to moisture, mold or other microbial contaminant growth, and/or other moisture-related deterioration, such as corrosion, decay, or rot in buildings or their surroundings. Any statements in this report or on the boring logs regarding odors, colors, and unusual or suspicious items or conditions are strictly for informational purposes.
17. **Effect of iron minerals:** This report does not address issues related to the discovery or presence of iron minerals, such as pyrite, or the effects of iron minerals, if any, in the soil or to be used in concrete. Should specific information be required, additional testing may be requested by the Client for which Wood shall be entitled to additional compensation.

7.0 References

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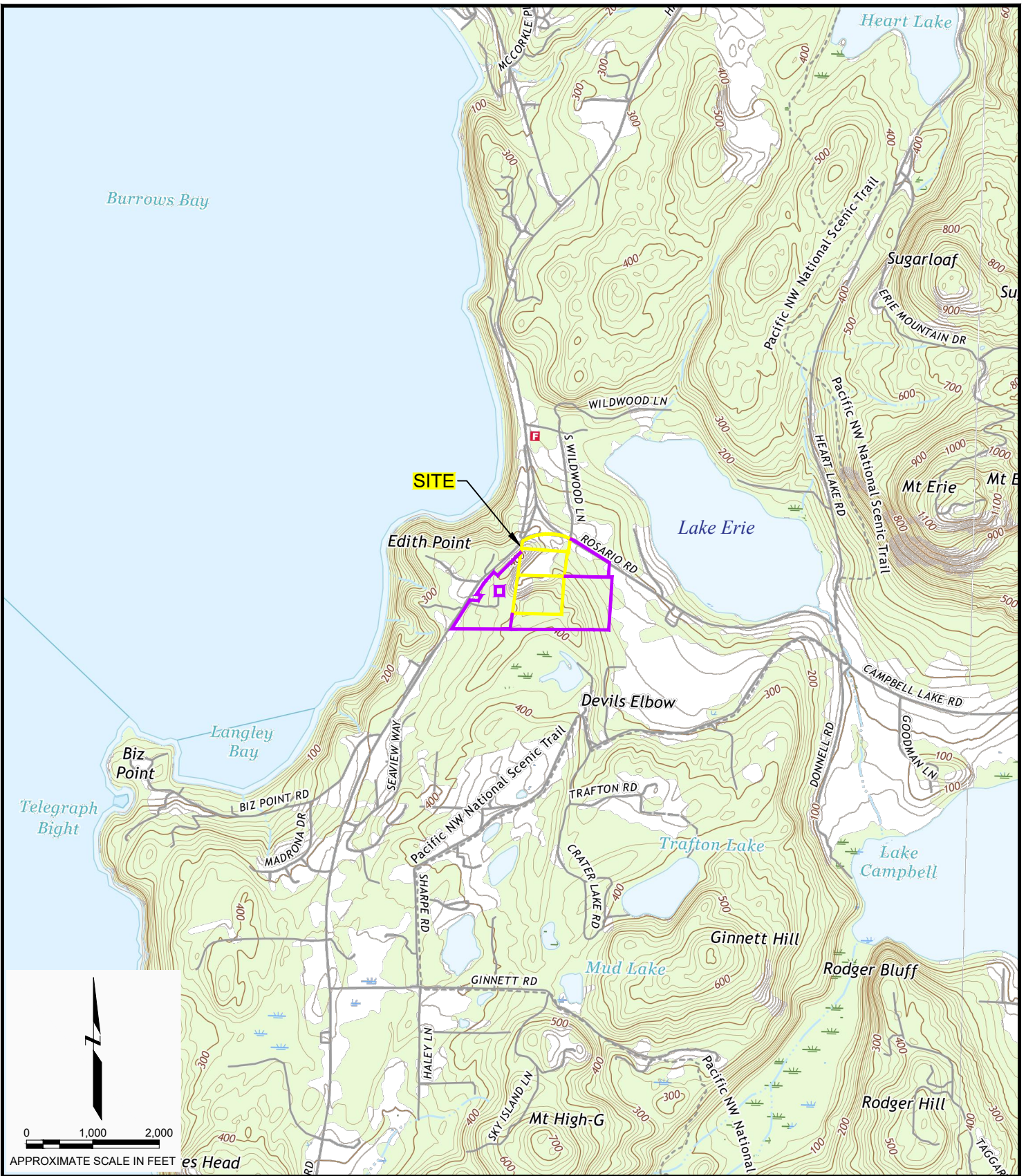
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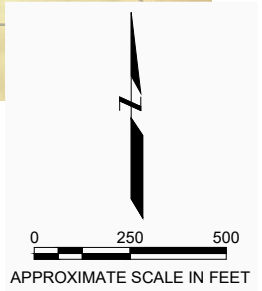
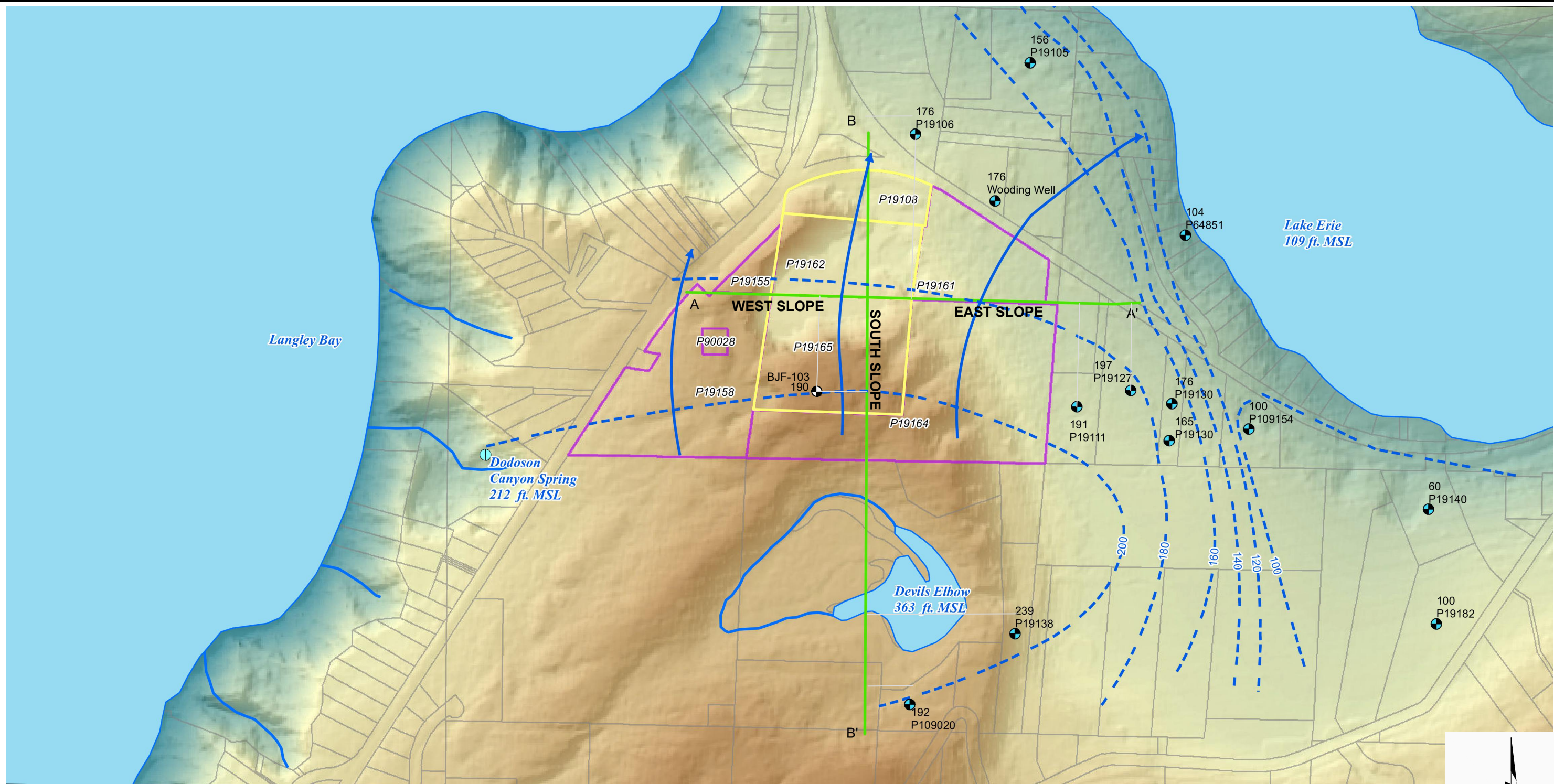
Figures





CLIENT LAKE ERIE TRUCKING, LLC		PROJECT LAKE ERIE PIT 1 EXPANSION Anacortes, Washington	DATE MAY 2022	
Wood Environment & Infrastructure Solutions, Inc. 4020 Lake Washington Blvd NE, Suite 200 Kirkland, Washington 98033		TITLE SITE VICINITY	SCALE AS SHOWN	PROJECT NO. PS22-20529-0 FIGURE 1

DRAWN BY: APS, CHECKED BY: JKH



- Legend**
- Inferred Groundwater Surface Elevation Contour (MSL)
 - Inferred Groundwater Flow Direction
 - Parcel #
 - MSL Well
 - Approximate Groundwater Elevation (MSL)
 - Cross Section Transect
 - Current Permitted Parcels
 - Expansion Parcels
 - Parcels
- Elevation (Feet MSL)**
- High : 1270.8
 - Low : -6.7

CLIENT	LAKE ERIE TRUCKING, LLC
	wood.
	Wood Environment & Infrastructure Solutions, Inc. 4020 Lake Washington Blvd NE, Suite 200 Kirkland, Washington 98033

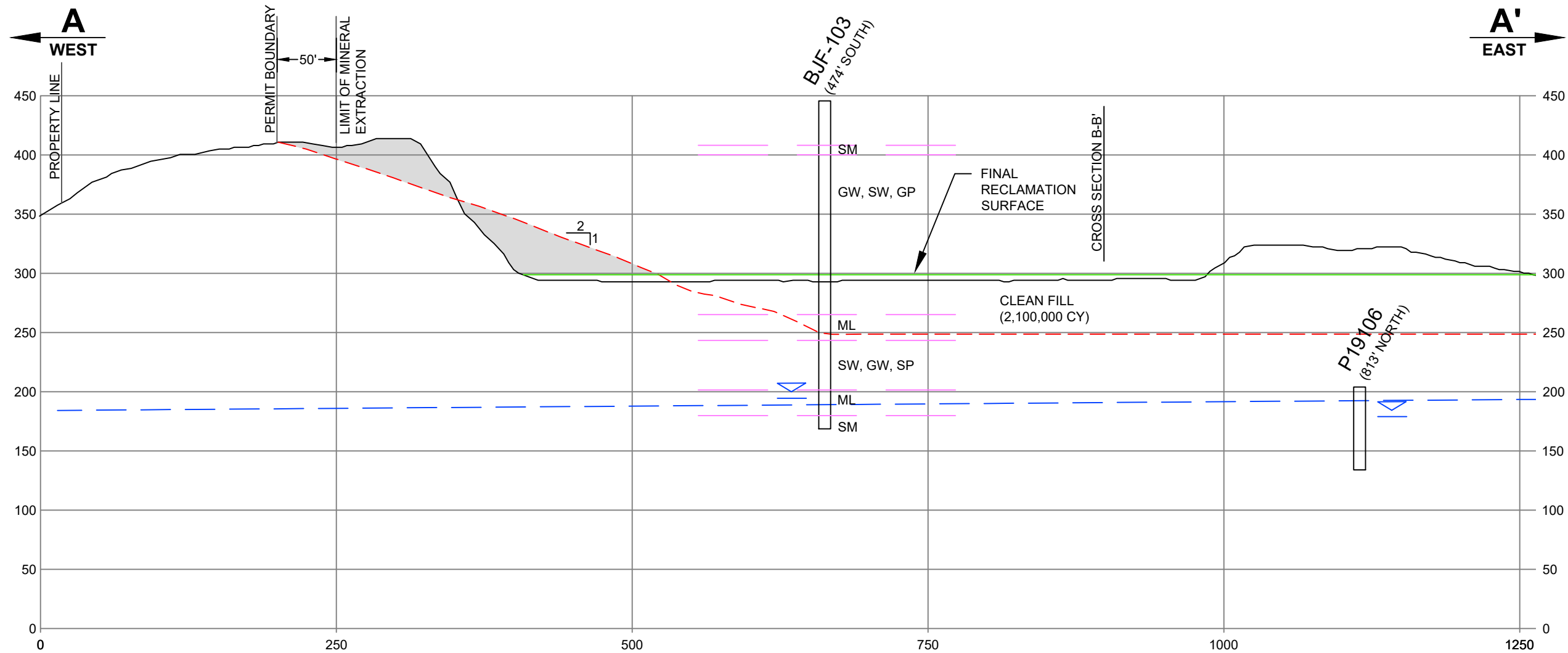
PROJECT	LAKE ERIE PIT PIT 1 EXPANSION Anacortes, Washington
TITLE	PLAN VIEW OF EXPANSION AREA WITH CROSS SECTION LOCATIONS

DATE	MAY 2022
SCALE	AS SHOWN
PROJECT NO.	PS22-20529-0
FIGURE	2

DRAWN BY: PM, CHECKED BY: JKH

SOURCE:
HYDROGEOLOGIC SITE
ASSESSMENT REPORT

MAUL FOSTER ALONGI
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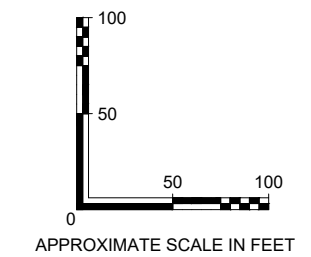


KEY

- CL = CLAY
- GC = CLAYEY GRAVEL
- SC = CLAYEY SAND
- SM = SILTY SAND
- SW = WELL GRADED SAND
- GW = WELL GRADED GRAVEL
- ML = SILT
- SP = POORLY GRADED SAND

LEGEND

- EXISTING GRADE
- FINAL RECLAMATION SURFACE
- BOTTOM OF MINING SURFACE
- LITHOLOGY CONTACT
- AREA TO BE REGRADED AT FINAL RECLAMATION
- INFERRED WATER TABLE

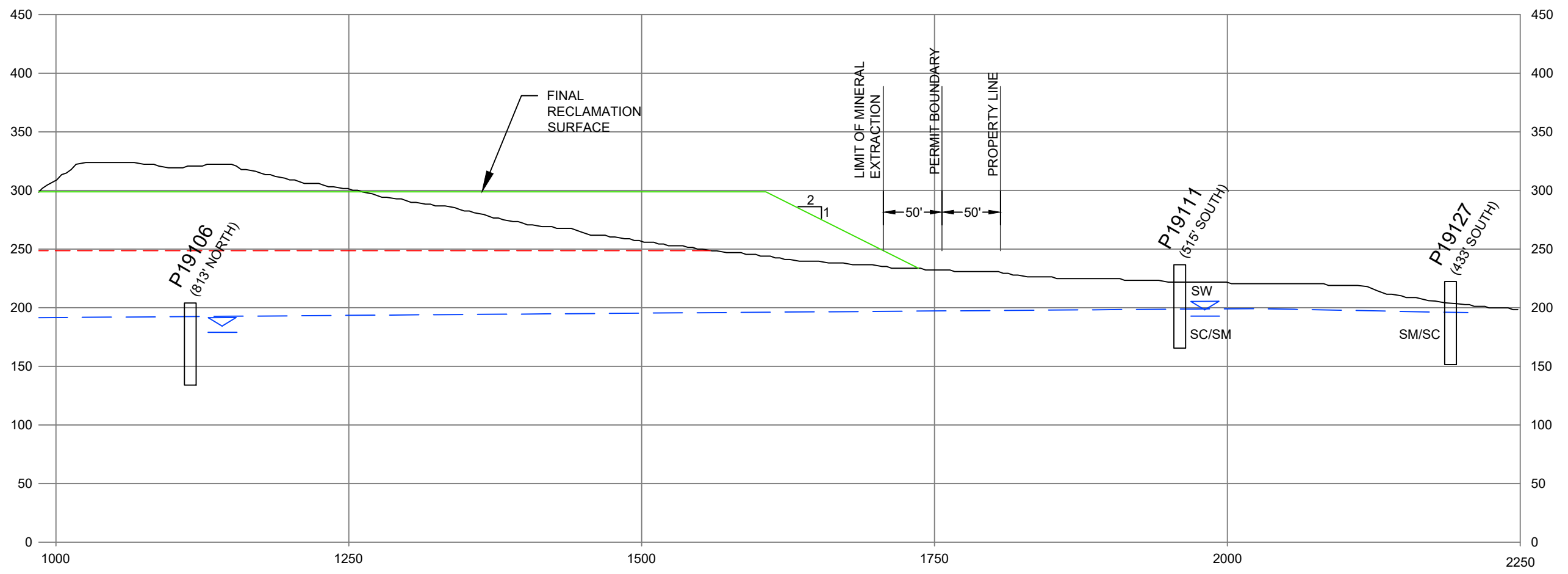


NOTES:

1. 100-FT SETBACK TO FINAL RECLAMATION SURFACE IS ONLY APPLICABLE TO PARCEL 19108. ALL OTHER PARCELS WILL MAINTAIN A 50-FT SETBACK TO FINAL RECLAMATION SURFACE.
2. MINE TO 10 FEET ABOVE WATER TABLE
3. MINE FLOOR RAISED TO 300 FEET WITH 85% COMPACTION
4. MSL = MEAN SEA LEVEL
5. CY = CUBIC YARDS

CLIENT LAKE ERIE TRUCKING, LLC		PROJECT LAKE ERIE PIT PIT 1 EXPANSION Anacortes, Washington	DATE MAY 2022
		TITLE WEST SLOPE CROSS SECTION A-A'	SCALE AS SHOWN
Wood Environment & Infrastructure Solutions, Inc. 4020 Lake Washington Blvd NE, Suite 200 Kirkland, Washington 98033		PROJECT NO. PS22-20529-0	FIGURE 3

A WEST **A'** EAST

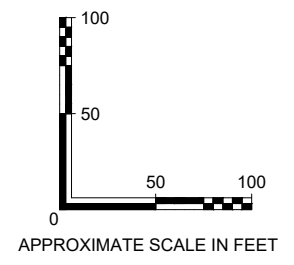


KEY

- CL = CLAY
- GC = CLAYEY GRAVEL
- SC = CLAYEY SAND
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- SW = WELL GRADED SAND
- GW = WELL GRADED GRAVEL
- ML = SILT
- SP = POORLY GRADED SAND

LEGEND

- EXISTING GRADE
- FINAL RECLAMATION SURFACE
- BOTTOM OF MINING SURFACE
- LITHOLOGY CONTACT
- AREA TO BE REGRADED AT FINAL RECLAMATION
- INFERRED WATER TABLE



NOTES:

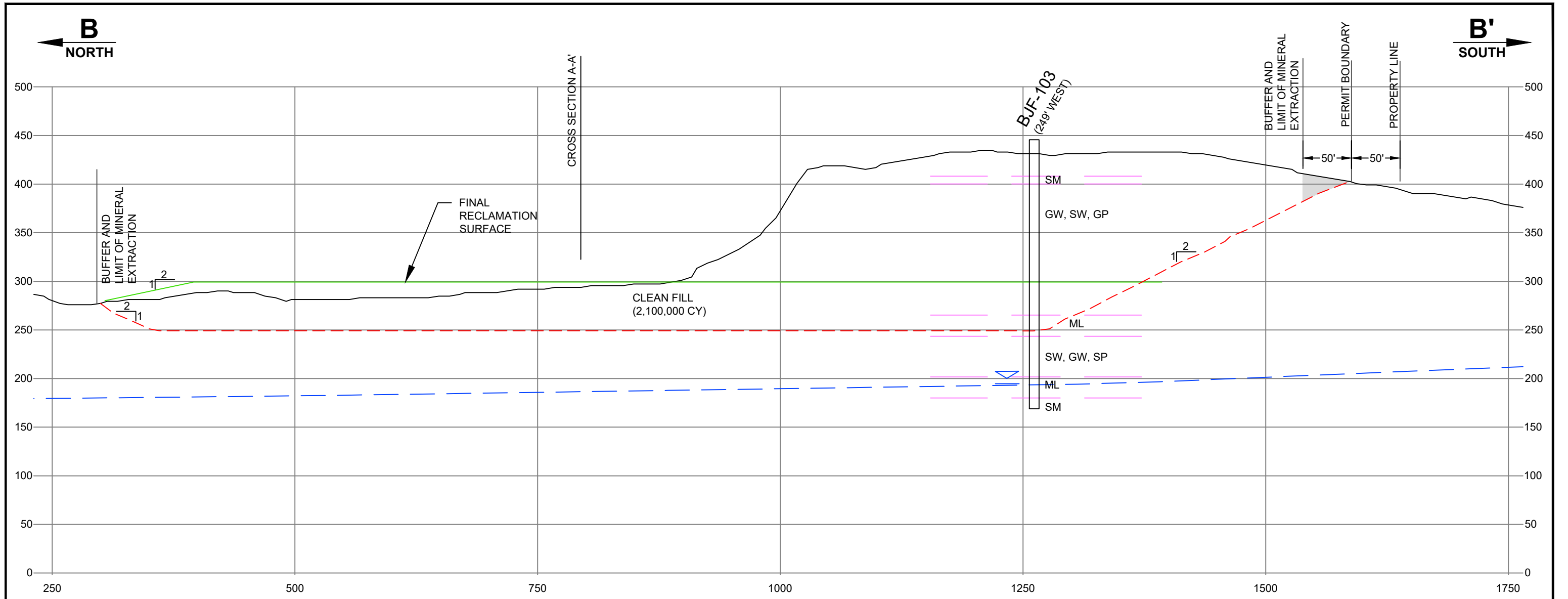
1. 100-FT SETBACK TO FINAL RECLAMATION SURFACE IS ONLY APPLICABLE TO PARCEL 19108. ALL OTHER PARCELS WILL MAINTAIN A 50-FT SETBACK TO FINAL RECLAMATION SURFACE.
2. MINE TO 10 FEET ABOVE WATER TABLE
3. MINE FLOOR RAISED TO 300 FEET WITH 85% COMPACTION
4. MSL = MEAN SEA LEVEL
5. CY = CUBIC YARDS

CLIENT LAKE ERIE TRUCKING, LLC		PROJECT LAKE ERIE PIT PIT 1 EXPANSION Anacortes, Washington	DATE MAY 2022
		TITLE EAST SLOPE CROSS SECTION A-A'	SCALE AS SHOWN
Wood Environment & Infrastructure Solutions, Inc. 4020 Lake Washington Blvd NE, Suite 200 Kirkland, Washington 98033		PROJECT NO. PS22-20529-0	FIGURE 4

SOURCE:
HYDROGEOLOGIC SITE
ASSESSMENT REPORT

MAUL FOSTER ALONGI
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DRAWN BY: PM CHECKED BY: JKH



KEY

- CL = CLAY
- GC = CLAYEY GRAVEL
- SC = CLAYEY SAND
- SM = SILTY SAND
- SW = WELL GRADED SAND
- GW = WELL GRADED GRAVEL
- ML = SILT
- SP = POORLY GRADED SAND

LEGEND

- EXISTING GRADE
- FINAL RECLAMATION SURFACE
- - - BOTTOM OF MINING SURFACE
- LITHOLOGY CONTACT
- AREA TO BE REGRADED AT FINAL RECLAMATION
- - - INFERRED WATER TABLE

NOTES:

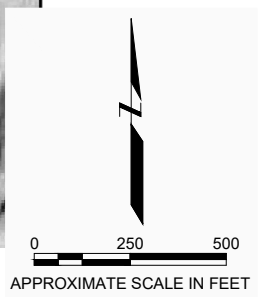
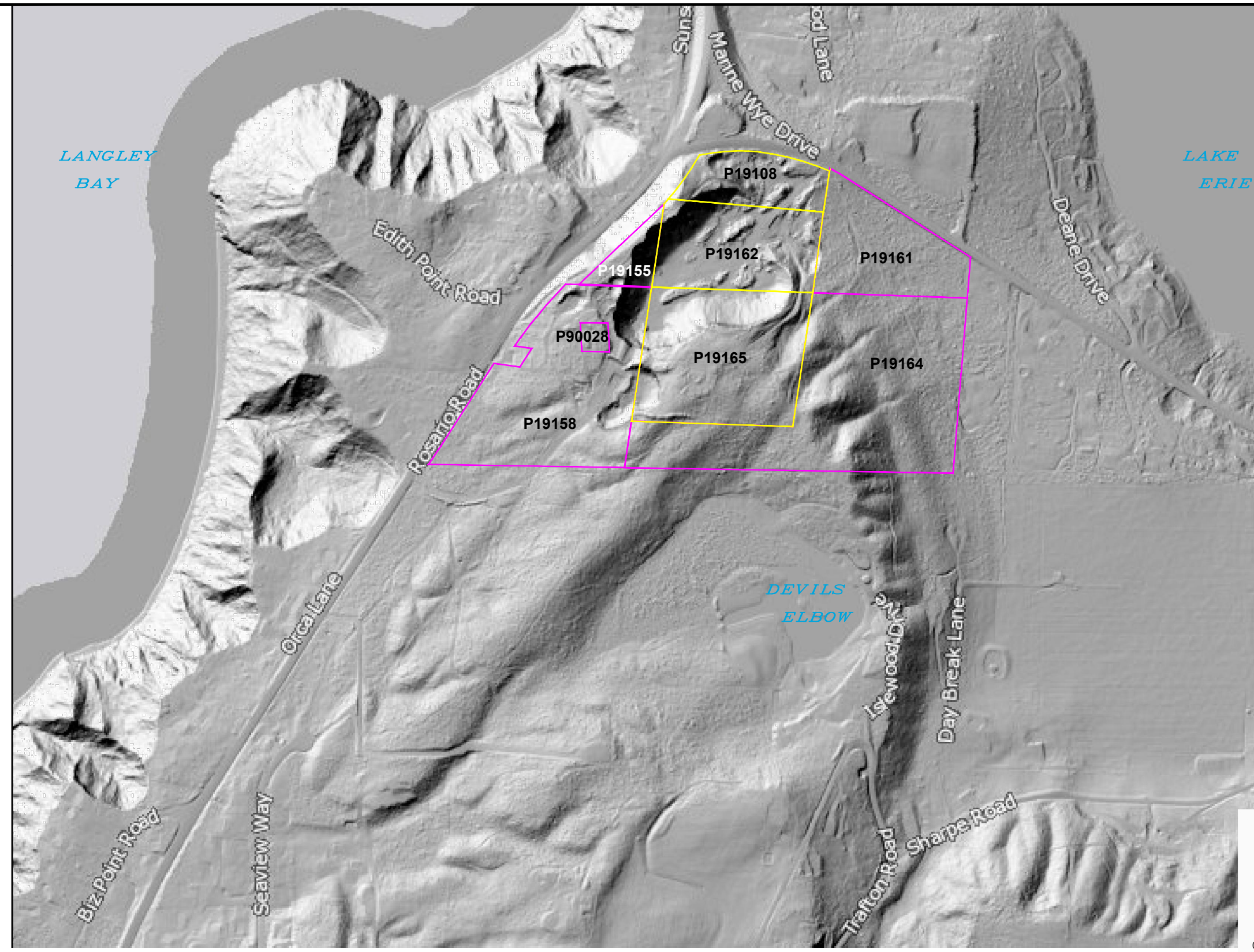
1. 100-FT SETBACK TO FINAL RECLAMATION SURFACE IS ONLY APPLICABLE TO PARCEL 19108. ALL OTHER PARCELS WILL MAINTAIN A 50-FT SETBACK TO FINAL RECLAMATION SURFACE.
2. MINE TO 10 FEET ABOVE WATER TABLE
3. MINE FLOOR RAISED TO 300 FEET WITH 85% COMPACTION
4. MSL = MEAN SEA LEVEL
5. CY = CUBIC YARDS

SOURCE:
HYDROGEOLOGIC SITE
ASSESSMENT REPORT

MAUL FOSTER ALONGI
p. 971 544 2139 | www.maulfooster.com

CLIENT LAKE ERIE TRUCKING, LLC		PROJECT LAKE ERIE PIT PIT 1 EXPANSION Anacortes, Washington	DATE MAY 2022
		TITLE SOUTH SLOPE CROSS SECTION B-B'	SCALE AS SHOWN
Wood Environment & Infrastructure Solutions, Inc. 4020 Lake Washington Blvd NE, Suite 200 Kirkland, Washington 98033		PROJECT NO. PS22-20529-0	FIGURE 5

DRAWN BY: PM CHECKED BY: JKH



LEGEND

	Current Permitted Parcels
	Expansion Parcels

SOURCE:
SKAGIT COUNTY
LIDAR 2016 HILL SHADE.

<p>CLIENT</p> <p style="text-align: center;">LAKE ERIE TRUCKING, LLC</p>		<p>PROJECT</p> <p style="text-align: center;">LAKE ERIE PIT PIT 1 EXPANSION Anacortes, Washington</p>	<p>DATE</p> <p style="text-align: center;">MAY 2022</p>
<p style="text-align: center;">Wood Environment & Infrastructure Solutions, Inc. 4020 Lake Washington Blvd NE, Suite 200 Kirkland, Washington 98033</p>	<p>TITLE</p> <p style="text-align: center;">LIDAR MAP</p>	<p>SCALE</p> <p style="text-align: center;">AS SHOWN</p>	
		<p>PROJECT NO.</p> <p style="text-align: center;">PS22-20529-0</p>	
		<p>FIGURE</p> <p style="text-align: center;">6</p>	

DRAWN BY: PM CHECKED BY: JKH



wood.

Appendix A



Appendix A Site Photographs



Photograph 1. Lake Erie Pit looking east



Photograph 2. Lake Erie Pit looking south



Photograph 3. Lake Erie Pit looking southwest



Photograph 4. New well looking east



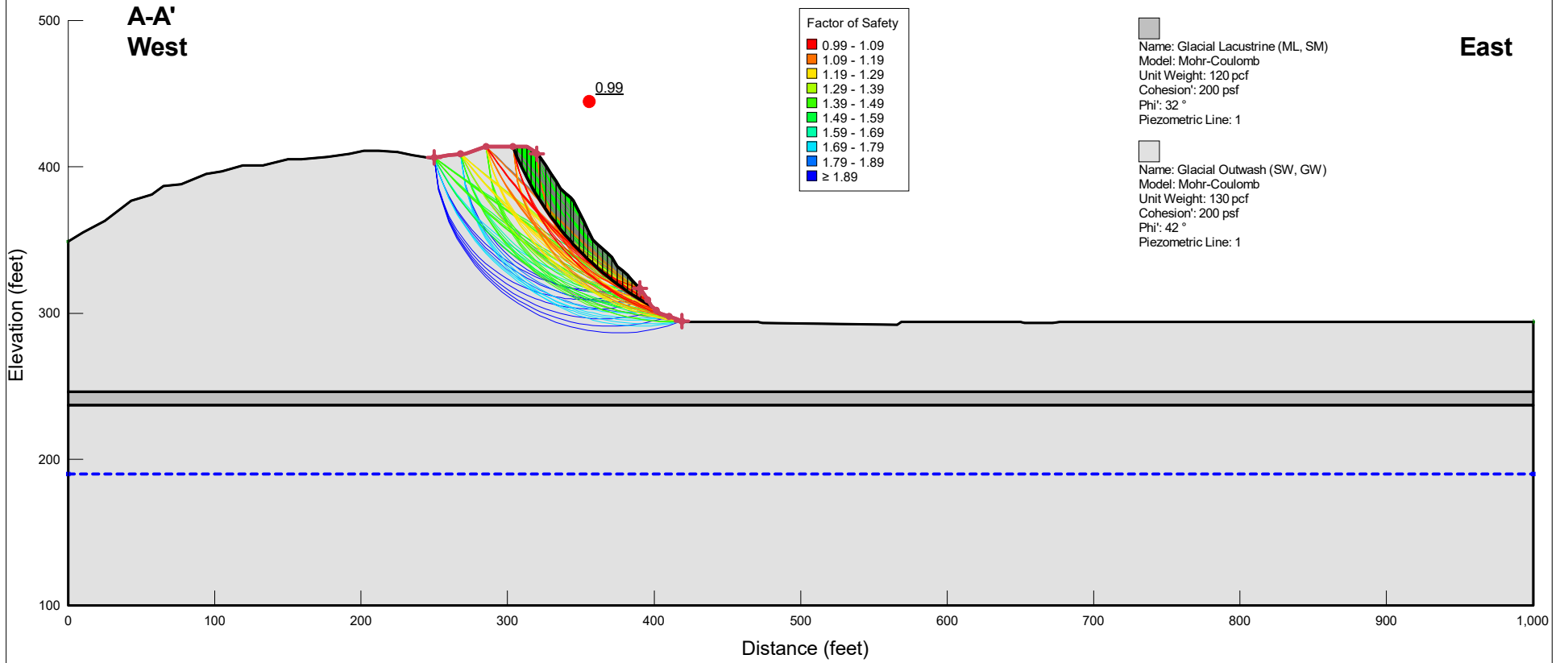
wood.

Appendix B



**Lake Erie Pit 1 Expansion
Anacortes, Washington**

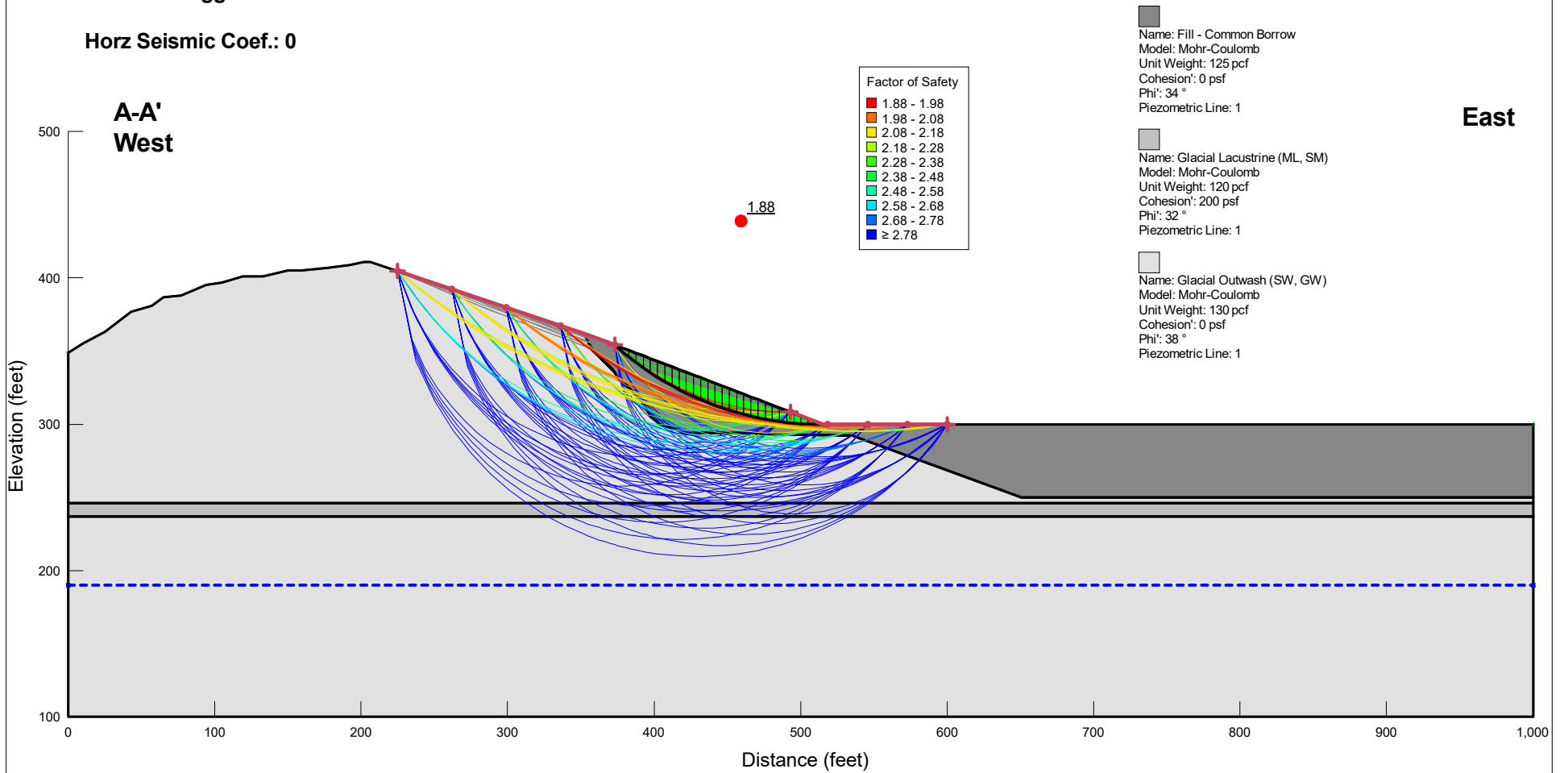
**Current Slope Condition
Name: A-A' West to East - 1H:1V Current
Method: Morgenstern-Price
Date: 4/8/2022
Vertical Exaggeration: 1**



**Lake Erie Pit 1 Expansion
Anacortes, Washington**

**Reclaimed West Slope Condition
Name: A-A' West to East - 2H:1V Cut/Fill
Method: Morgenstern-Price
Date: 4/8/2022
Vertical Exaggeration: 1**

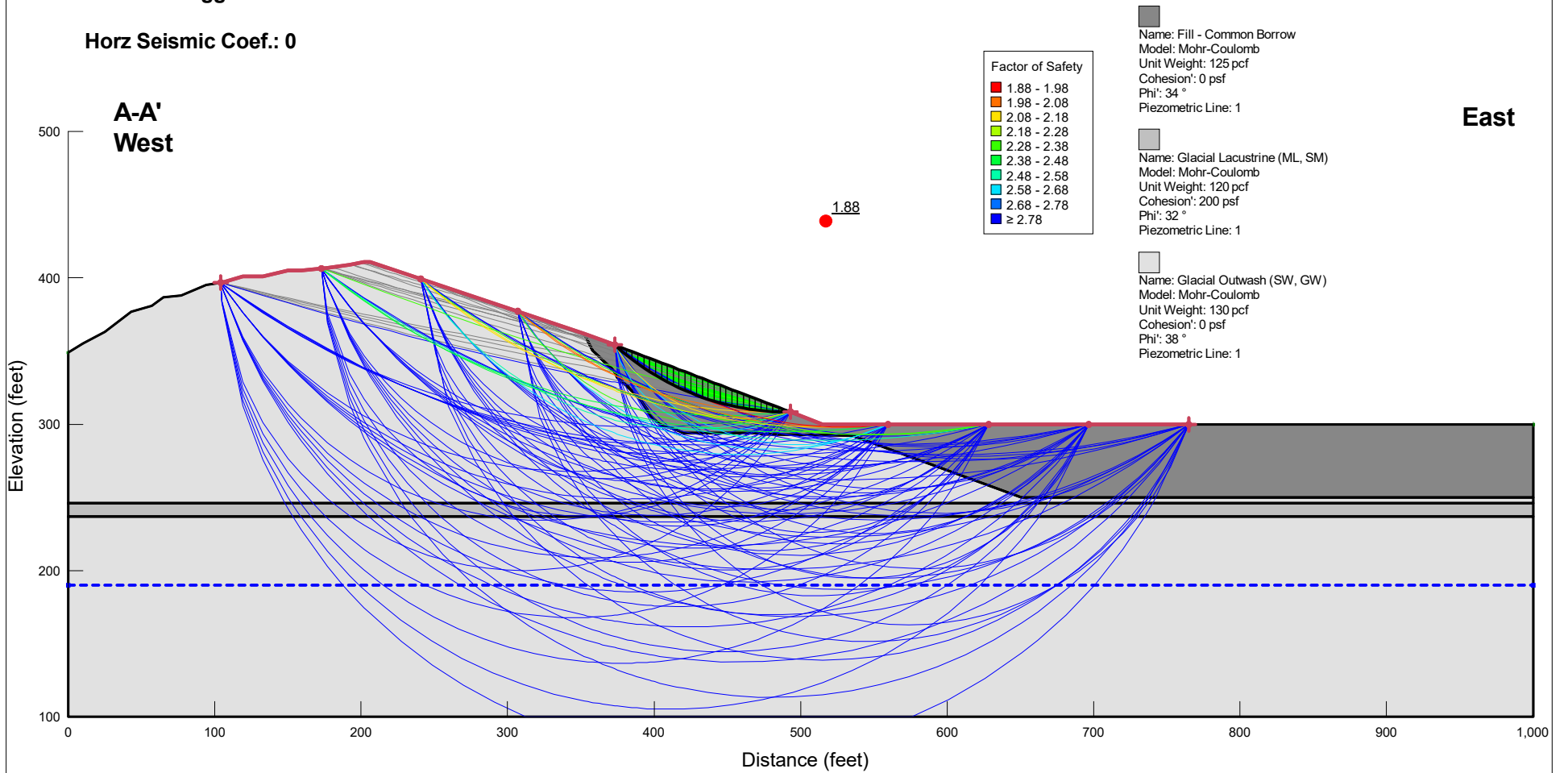
Horz Seismic Coef.: 0



**Lake Erie Pit 1 Expansion
Anacortes, Washington**

**Reclaimed West Slope Condition - Broad Range
Name: A-A' West to East - 2H:1V Cut/Fill
Method: Morgenstern-Price
Date: 4/8/2022
Vertical Exaggeration: 1**

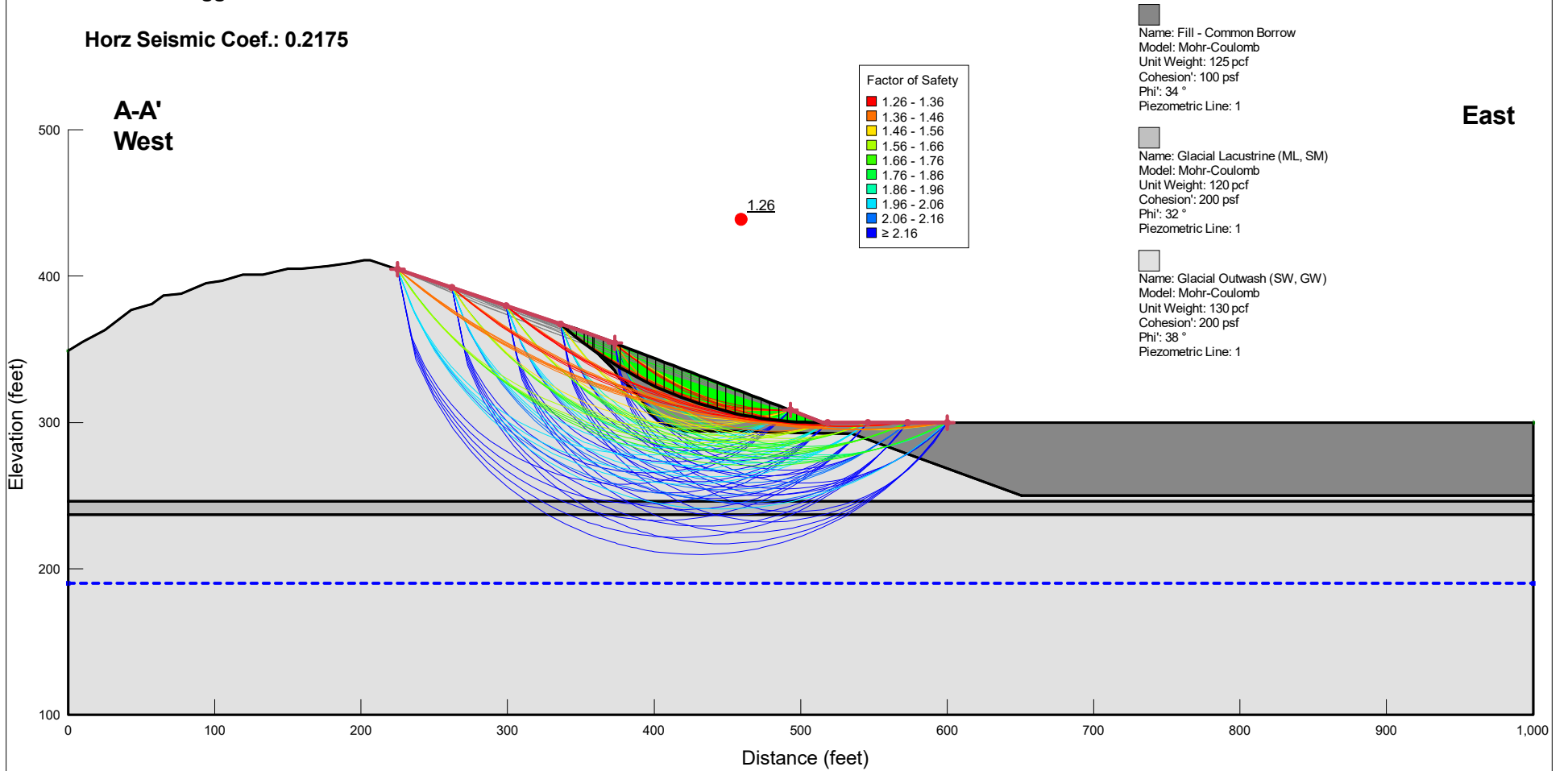
Horz Seismic Coef.: 0



**Lake Erie Pit 1 Expansion
Anacortes, Washington**

**Reclaimed West Slope Condition
Name: A-A' West to East - 2H:1V Cut/Fill
Method: Morgenstern-Price
Date: 4/8/2022
Vertical Exaggeration: 1**

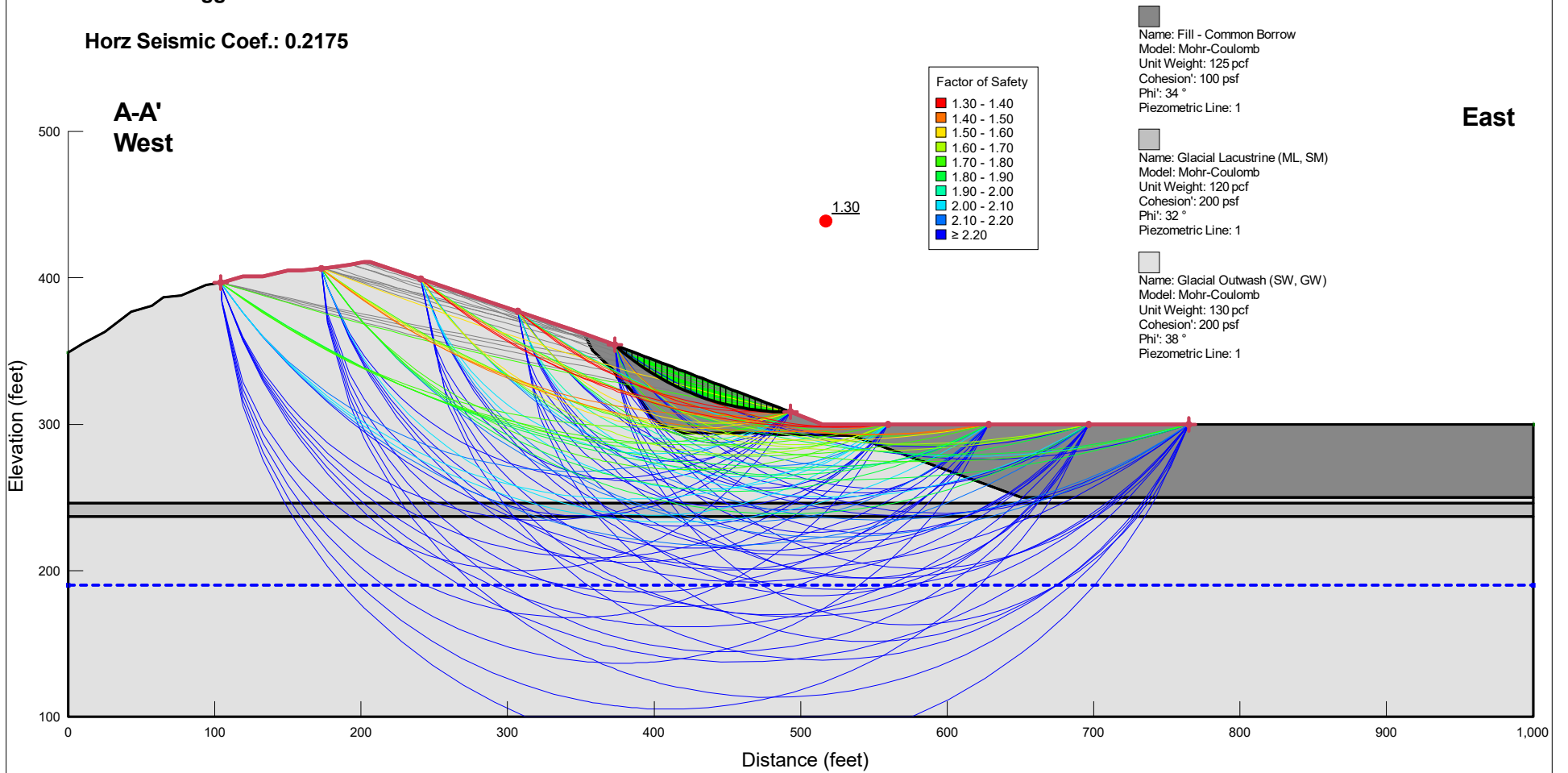
Horz Seismic Coef.: 0.2175



**Lake Erie Pit 1 Expansion
Anacortes, Washington**

**Reclaimed West Slope Condition
Name: A-A' West to East - 2H:1V Cut/Fill
Method: Morgenstern-Price
Date: 4/8/2022
Vertical Exaggeration: 1**

Horz Seismic Coef.: 0.2175



**Lake Erie Pit 1 Expansion
Anacortes, Washington**

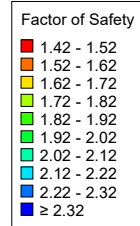
**Reclaimed East Slope Condition
Name: A-A' West to East - 2H:1V Cut/Fill
Method: Morgenstern-Price
Date: 4/8/2022
Vertical Exaggeration: 1**

Horz Seismic Coef.: 0

- Name: Fill - Common Borrow
 Model: Mohr-Coulomb
 Unit Weight: 125 pcf
 Cohesion: 0 psf
 Phi: 34 °
 Piezometric Line: 1

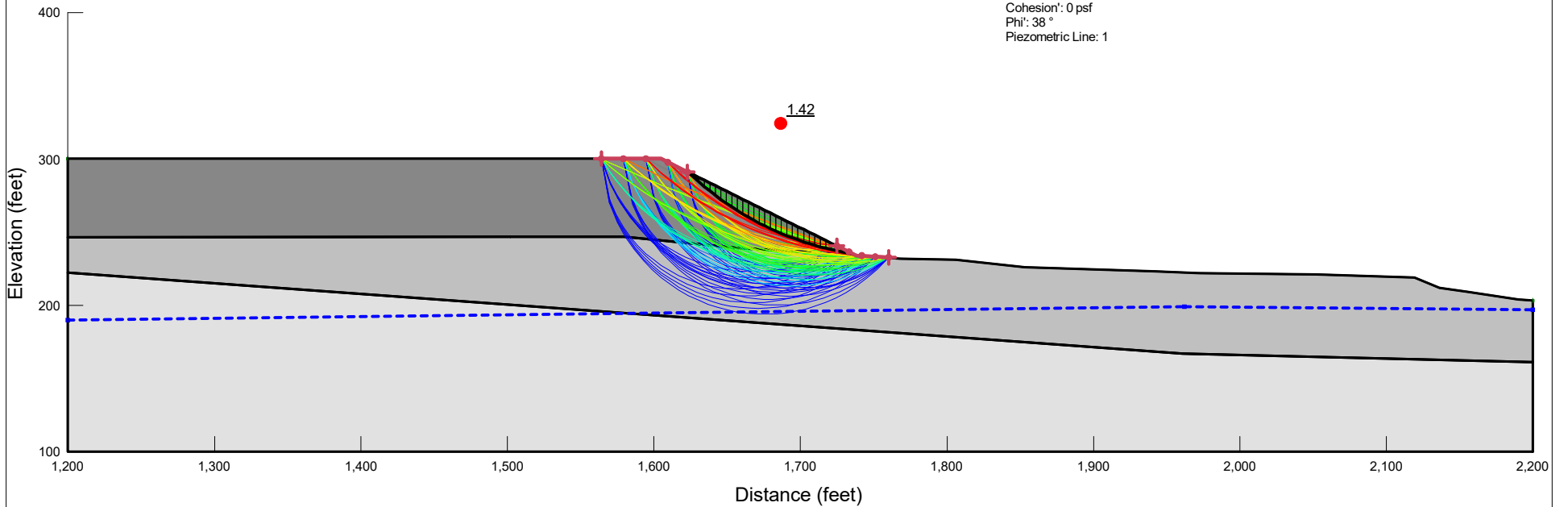
- Name: Glacial Lacustrine (ML, SM)
 Model: Mohr-Coulomb
 Unit Weight: 120 pcf
 Cohesion: 200 psf
 Phi: 32 °
 Piezometric Line: 1

- Name: Glacial Outwash (SW, GW)
 Model: Mohr-Coulomb
 Unit Weight: 130 pcf
 Cohesion: 0 psf
 Phi: 38 °
 Piezometric Line: 1



**A-A'
West**

East

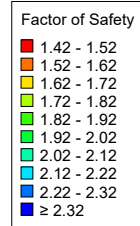


**Lake Erie Pit 1 Expansion
Anacortes, Washington**

**Reclaimed East Slope Condition
Name: A-A' West to East - 2H:1V Cut/Fill
Method: Morgenstern-Price
Date: 4/8/2022
Vertical Exaggeration: 1**

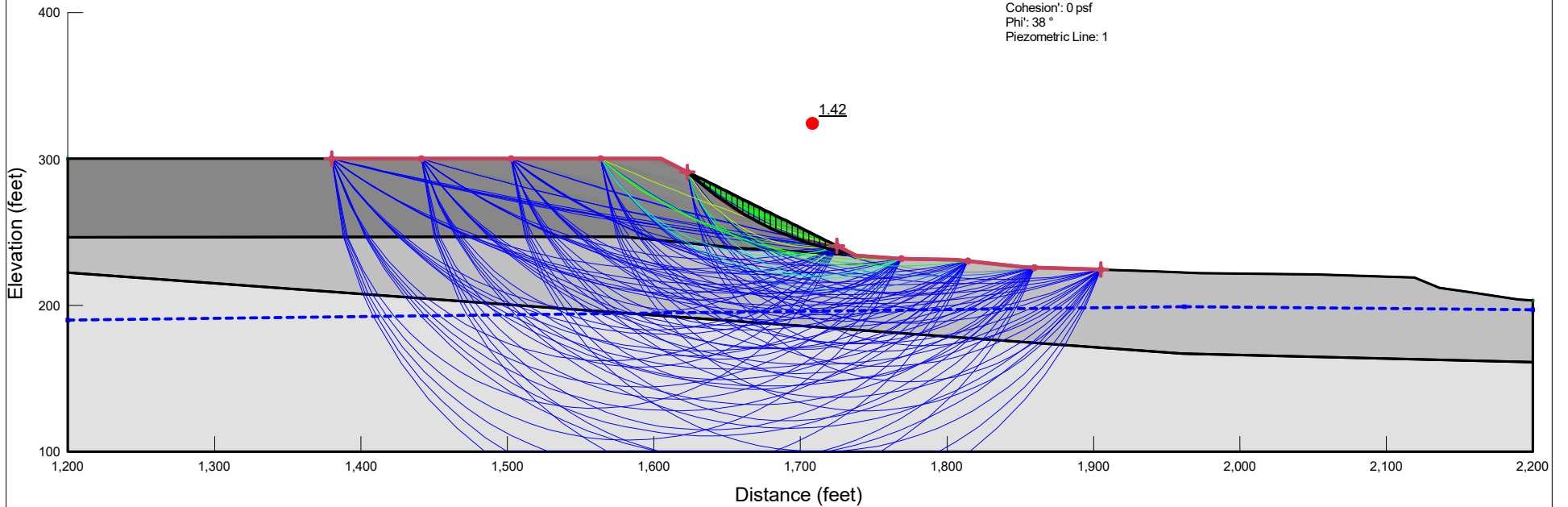
Horz Seismic Coef.: 0

- Name: Fill - Common Borrow
Model: Mohr-Coulomb
Unit Weight: 125 pcf
Cohesion: 0 psf
Phi: 34 °
Piezometric Line: 1
- Name: Glacial Lacustrine (ML, SM)
Model: Mohr-Coulomb
Unit Weight: 120 pcf
Cohesion: 200 psf
Phi: 32 °
Piezometric Line: 1
- Name: Glacial Outwash (SW, GW)
Model: Mohr-Coulomb
Unit Weight: 130 pcf
Cohesion: 0 psf
Phi: 38 °
Piezometric Line: 1



**A-A'
West**

East

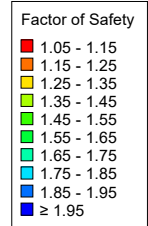


**Lake Erie Pit 1 Expansion
Anacortes, Washington**

**Reclaimed East Slope Condition
Name: A-A' West to East - 2H:1V Cut/Fill
Method: Morgenstern-Price
Date: 4/8/2022
Vertical Exaggeration: 1**

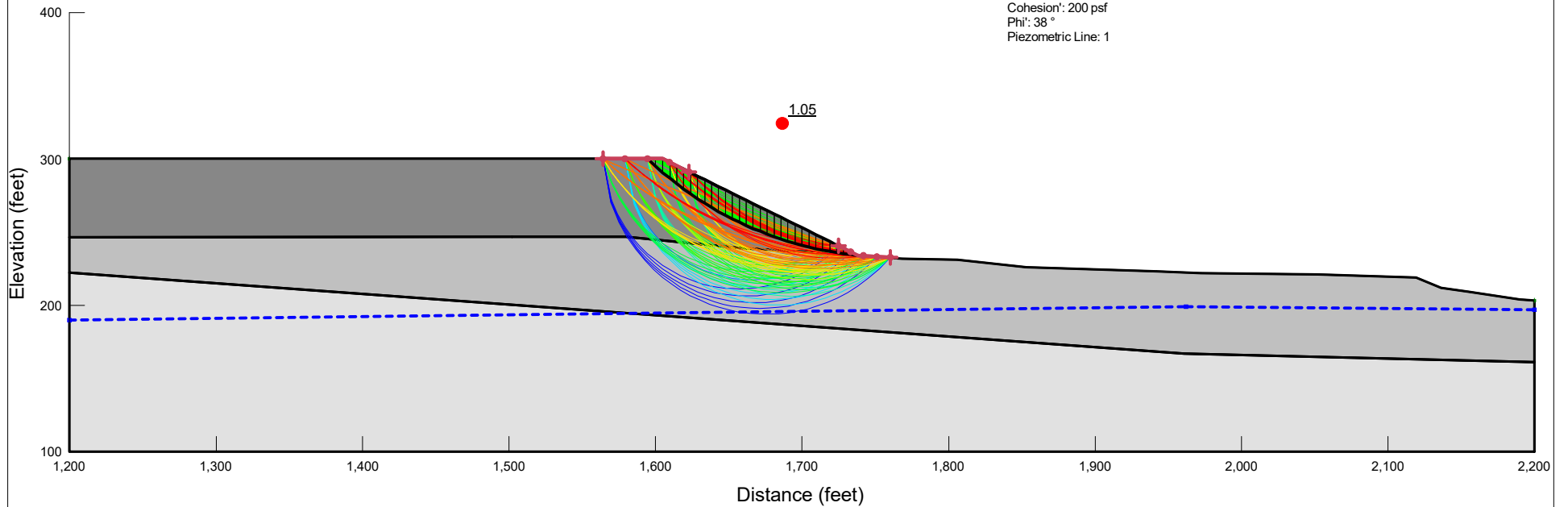
Horz Seismic Coef.: 0.2175

- Name: Fill - Common Borrow
Model: Mohr-Coulomb
Unit Weight: 125 pcf
Cohesion: 100 psf
Phi: 34 °
Piezometric Line: 1
- Name: Glacial Lacustrine (ML, SM)
Model: Mohr-Coulomb
Unit Weight: 120 pcf
Cohesion: 200 psf
Phi: 32 °
Piezometric Line: 1
- Name: Glacial Outwash (SW, GW)
Model: Mohr-Coulomb
Unit Weight: 130 pcf
Cohesion: 200 psf
Phi: 38 °
Piezometric Line: 1



**A-A'
West**

East

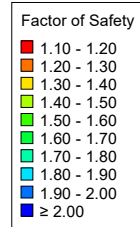


**Lake Erie Pit 1 Expansion
Anacortes, Washington**

**Reclaimed East Slope Condition
Name: A-A' West to East - 2H:1V Cut/Fill
Method: Morgenstern-Price
Date: 4/8/2022
Vertical Exaggeration: 1**

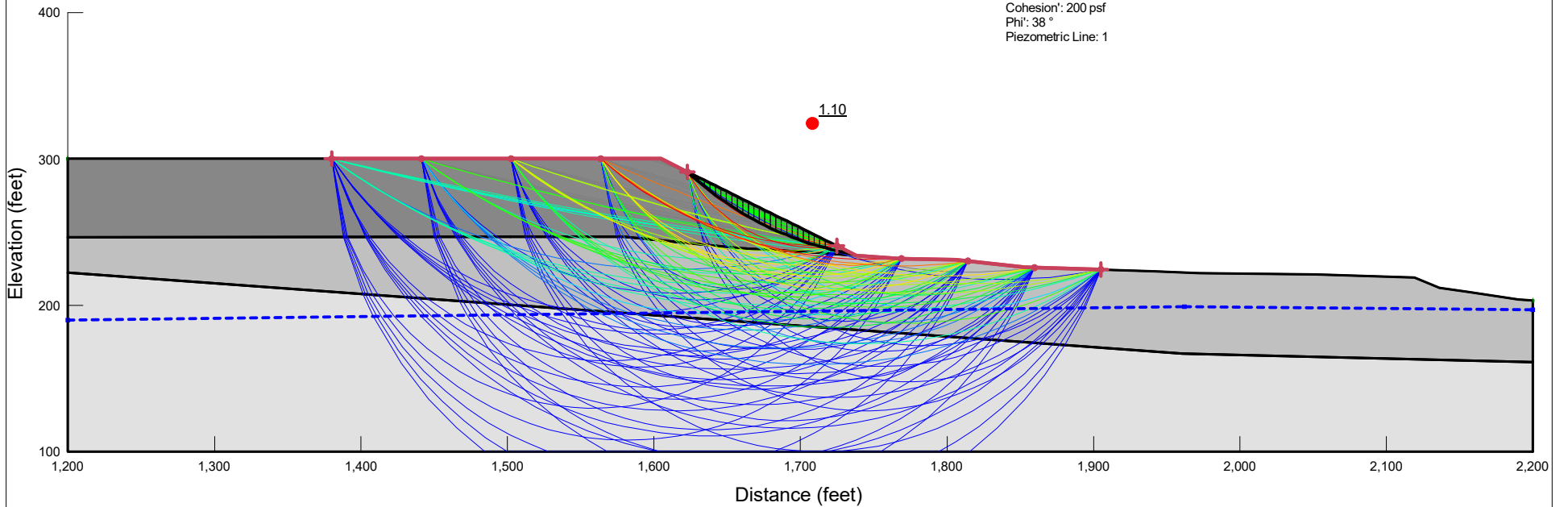
Horz Seismic Coef.: 0.2175

- Name: Fill - Common Borrow
Model: Mohr-Coulomb
Unit Weight: 125 pcf
Cohesion: 100 psf
Phi: 34 °
Piezometric Line: 1
- Name: Glacial Lacustrine (ML, SM)
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Phi: 32 °
Piezometric Line: 1
- Name: Glacial Outwash (SW, GW)
Model: Mohr-Coulomb
Unit Weight: 130 pcf
Cohesion: 200 psf
Phi: 38 °
Piezometric Line: 1



**A-A'
West**

East



**Lake Erie Pit 1 Expansion
Anacortes, Washington**

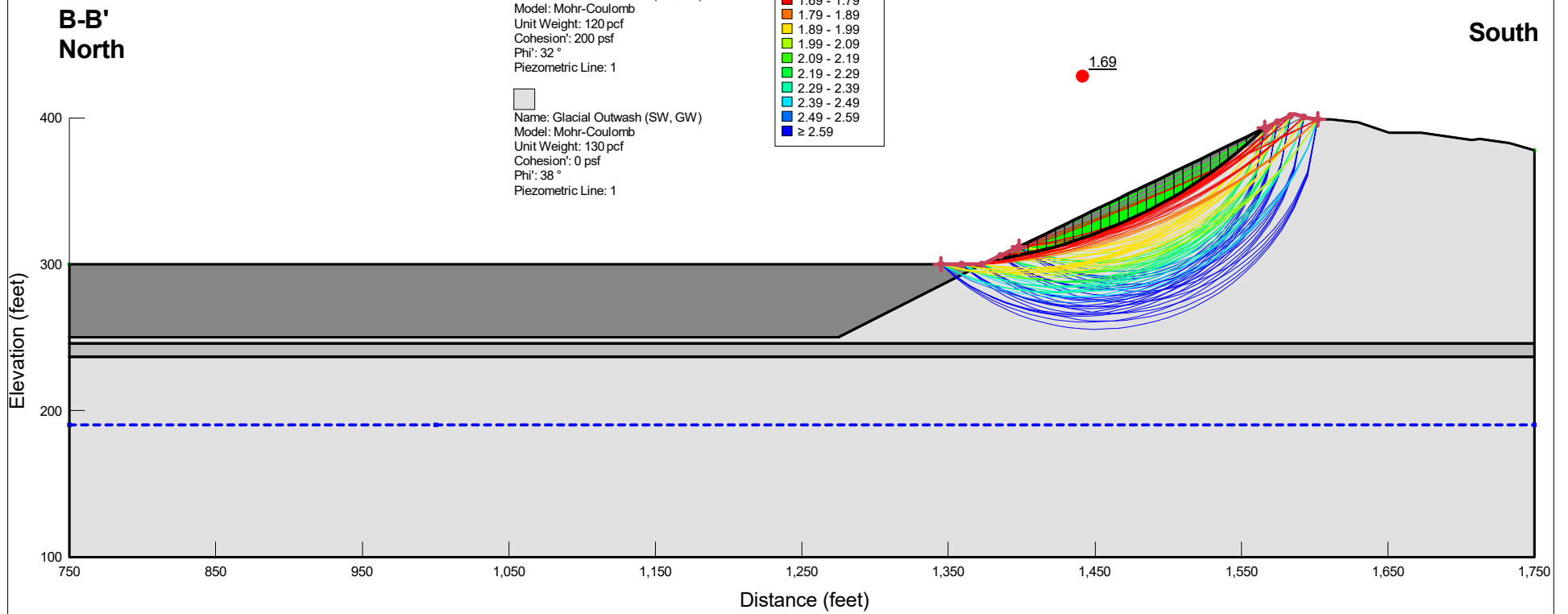
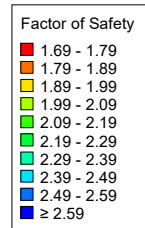
**Reclaimed South Slope Condition
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Method: Morgenstern-Price
Date: 4/8/2022
Vertical Exaggeration: 1**

Horz Seismic Coef.: 0

- Name: Fill - Common Borrow
Model: Mohr-Coulomb
Unit Weight: 125 pcf
Cohesion: 0 psf
Phi: 34 °
Piezometric Line: 1

- Name: Glacial Lacustrine (ML, SM)
Model: Mohr-Coulomb
Unit Weight: 120 pcf
Cohesion: 200 psf
Phi: 32 °
Piezometric Line: 1

- Name: Glacial Outwash (SW, GW)
Model: Mohr-Coulomb
Unit Weight: 130 pcf
Cohesion: 0 psf
Phi: 38 °
Piezometric Line: 1



**Lake Erie Pit 1 Expansion
Anacortes, Washington**

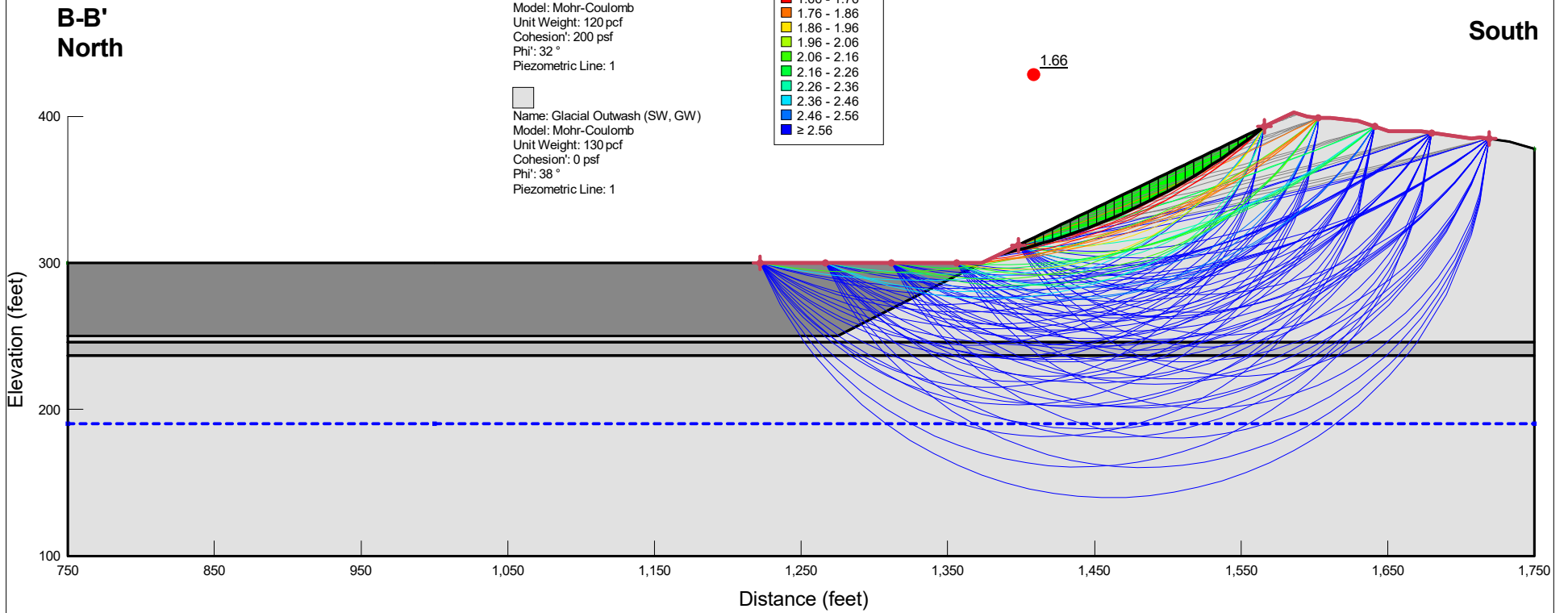
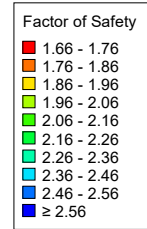
**Reclaimed South Slope Condition
Name: B-B' North to South - 2H:1V Fill
Method: Morgenstern-Price
Date: 4/8/2022
Vertical Exaggeration: 1**

Horz Seismic Coef.: 0

- Name: Fill - Common Borrow
Model: Mohr-Coulomb
Unit Weight: 125 pcf
Cohesion: 0 psf
Phi: 34 °
Piezometric Line: 1

- Name: Glacial Lacustrine (ML, SM)
Model: Mohr-Coulomb
Unit Weight: 120 pcf
Cohesion: 200 psf
Phi: 32 °
Piezometric Line: 1

- Name: Glacial Outwash (SW, GW)
Model: Mohr-Coulomb
Unit Weight: 130 pcf
Cohesion: 0 psf
Phi: 38 °
Piezometric Line: 1



**Lake Erie Pit 1 Expansion
Anacortes, Washington**

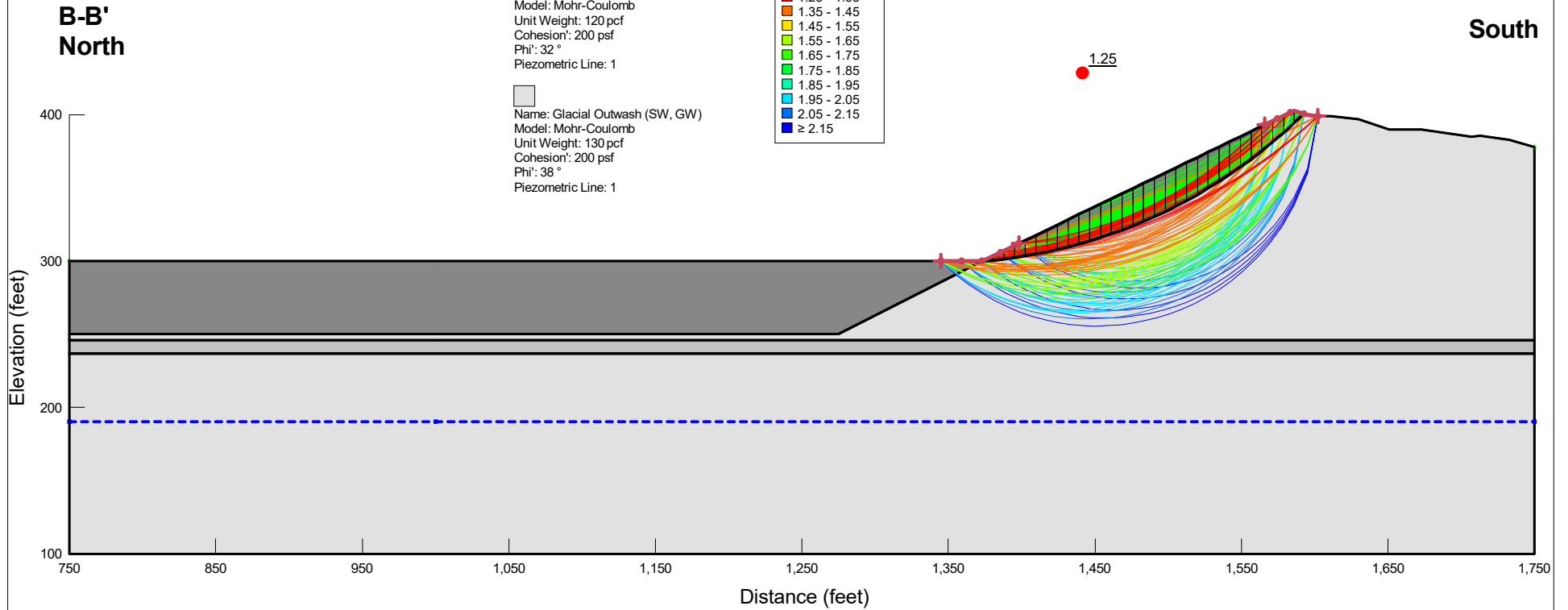
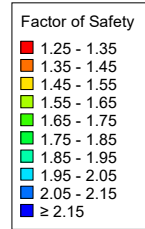
Reclaimed South Slope Condition
Name: B-B' North to South - 2H:1V Fill
Method: Morgenstern-Price
Date: 4/8/2022
Vertical Exaggeration: 1

Horz Seismic Coef.: 0.2175

- Name: Fill - Common Borrow
 Model: Mohr-Coulomb
 Unit Weight: 125 pcf
 Cohesion: 100 psf
 Phi: 34 °
 Piezometric Line: 1

- Name: Glacial Lacustrine (ML, SM)
 Model: Mohr-Coulomb
 Unit Weight: 120 pcf
 Cohesion: 200 psf
 Phi: 32 °
 Piezometric Line: 1

- Name: Glacial Outwash (SW, GW)
 Model: Mohr-Coulomb
 Unit Weight: 130 pcf
 Cohesion: 200 psf
 Phi: 38 °
 Piezometric Line: 1



**Lake Erie Pit 1 Expansion
Anacortes, Washington**

**Reclaimed South Slope Condition
Name: B-B' North to South - 2H:1V Fill
Method: Morgenstern-Price
Date: 4/8/2022
Vertical Exaggeration: 1**

Horz Seismic Coef.: 0.2175

- Name: Fill - Common Borrow
 Model: Mohr-Coulomb
 Unit Weight: 125 pcf
 Cohesion: 0 psf
 Phi: 34 °
 Piezometric Line: 1

- Name: Glacial Lacustrine (ML, SM)
 Model: Mohr-Coulomb
 Unit Weight: 120 pcf
 Cohesion: 200 psf
 Phi: 32 °
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- Name: Glacial Outwash (SW, GW)
 Model: Mohr-Coulomb
 Unit Weight: 130 pcf
 Cohesion: 200 psf
 Phi: 38 °
 Piezometric Line: 1

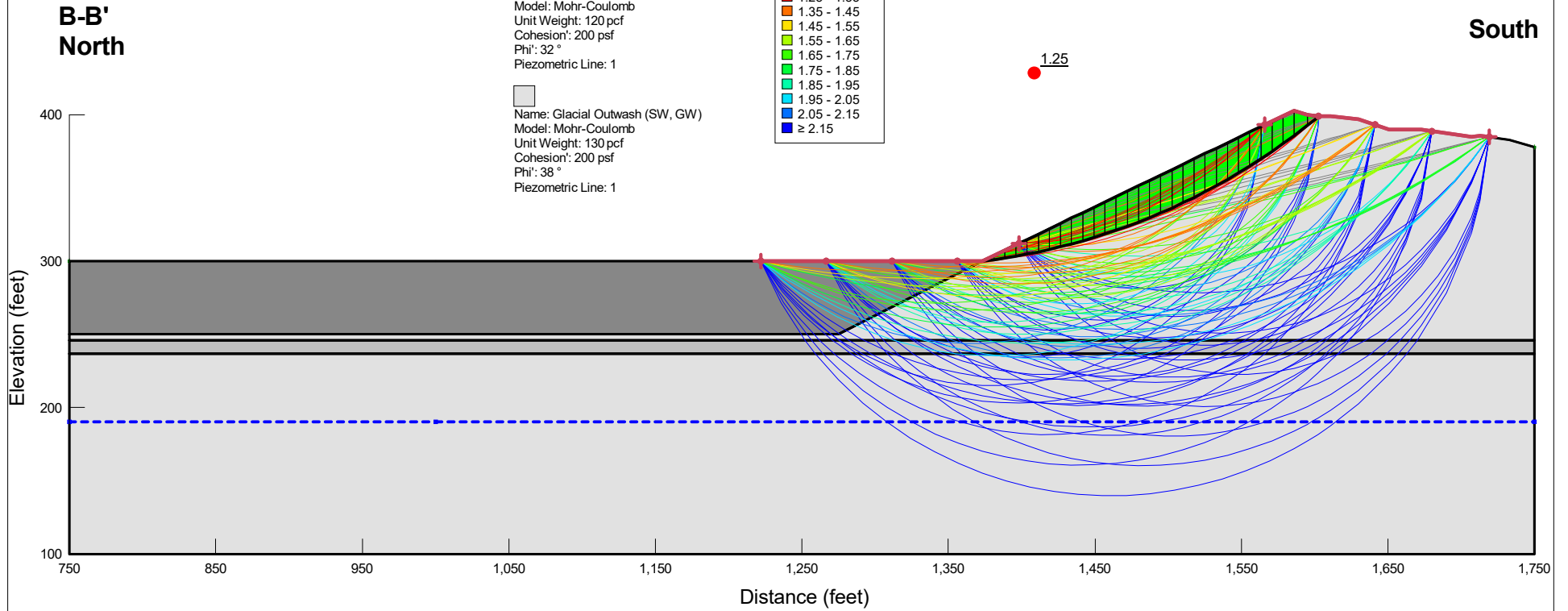
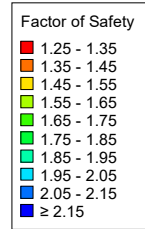


EXHIBIT #32

**EVERGREEN ISLAND'S LETTER DATED: 11/18/2022
+ STRATUM GROUP REVIEW OF GEOLOGIC
HAZARD SITE ASSESSMENT
(DATED NOVEMBER 15, 2022)**



By Email

November 18, 2022

Kevin Cricchio, Senior Planner
Skagit County Planning and Development Services
1800 Continental Place
Mount Vernon, WA 98273
kcricchio@co.skagit.wa.us

Re: File No. PL16-0056 -- Lake Erie Pit LLC Gravel Mine Expansion Special Use Permit

Dear Mr. Cricchio,

I'm writing on behalf of Evergreen Islands ("Evergreen") to address the inapposite Geologic Hazard Site Assessment ("Assessment") that Wood Environment & Infrastructure Solutions, Inc. submitted on behalf of the Lake Erie Pit 1 Expansion in August 2022. As explained in the attached letter from Dan McShane, a licensed engineering geologist, the Assessment did not provide the analyses requested by Skagit County Planning and Development Services ("PDS") in its March 21, 2021 letter to Lake Erie LLC. It is frustrating that a year after the Hearing Examiner granted an extension on the permit application, these analyses have not yet been conducted. But given the lack of new, applicable information, Evergreen requests that PDS set aside the Assessment and reiterate its requests to Lake Erie.

As you will see in the comments from Mr. McShane, he determined that the Assessment did not address the central question posed to Lake Erie after the Board of Commissioners remanded the application decision – would it impact groundwater that decreased bluff stability for the residential neighborhoods to the west and northwest of the mine site? Mr. McShane's review found that "[t]he potential groundwater flow direction was not analyzed in the report" and that "[t]he springs on the shoreline bluffs to the west and northwest of the pit were not analyzed." He concludes that, "[r]egrettably, the geology hazard assessment does not address the groundwater flow and slope stability of the nearby shoreline bluff as requested by Skagit County."

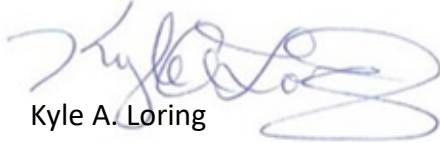
It is possible that Lake Erie would have been able to supply PDS with the requested analysis if it had continued to engage Canyon Environmental Group ("Canyon") for the work they proposed in September 2021. At that time, Lake Erie supplied the Hearing Examiner with a Proposed Hydrogeology and Groundwater Characterization Timeline from Canyon that expressly stated that the scope of the services was to "help characterize the groundwater and groundwater flow directions related to existing conditions and the proposed mine expansion."

That proposal was signed by a hydrogeologist/wetland ecologist/environmental geologist. Yet the Assessment was authored by a different consultant--geotechnical engineers who conducted a more generic geologic hazard site assessment that did not acknowledge the documented shortcomings of the prior reports, and instead relied on them for the same unsupported assertion that groundwater at the site does not flow toward the nearby marine bluffs.

Because the Assessment does not offer information responsive to PDS' requests, it thus does not provide information necessary to determine the mine's risks on the residential neighborhood to the west and northwest of the proposed mine. Consequently, Evergreen is forced to request that PDS reiterate its request to Lake Erie to investigate groundwater flow at the site and its potential impact on the bluffs' slope stability.

If you have any questions, please do not hesitate to contact me at 360-622-8060 or kyle@loringadvising.com.

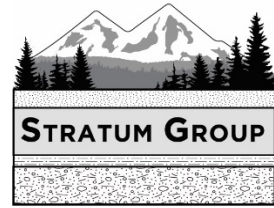
Sincerely,

A handwritten signature in blue ink, appearing to read "Kyle A. Loring", with a large, stylized flourish at the end.

Kyle A. Loring

Cc: Marlene Finley

Attachment: Stratum Group Comments Regarding Geologic Hazard Site Assessment



PO Box 2546, Bellingham, Washington 98227

November 15, 2022

Re: **Proposed Lake Erie Pit Expansion**
Comments Regarding Geologic Hazard Site Assessment

I reviewed the Wood Geologic Hazard Site Assessment for the proposed Lake Erie Pit expansion (dated August 11, 2022). The assessment does not address any of the areas outlined in the Skagit County Planning and Development Services (PDS) letter to Lake Erie LLC (dated March 21, 2021).

PDS requested that the assessment include three specific items:

1) “Analyze the landslide risk arising from the potential for increased groundwater migration to the west/northwest of the mine due to the proposed expansion and attendant removal of soil and vegetation which could alter groundwater behavior in the vicinity of the mine.”

The potential groundwater flow direction was not analyzed in the report. The report only references the previous reports that also did not analyze the groundwater flow direction towards the shoreline bluff.

2) “Analyze the presence of springs on the coastal bluff to the northwest of the mine that are at an elevation down gradient of the inferred groundwater level.”

The springs on the shoreline bluffs to the west and northwest of the pit were not analyzed. There is no discussion that the elevation of the springs are estimated to be at elevations that are lower than the groundwater measured near the pit and thus are likely down gradient to the pit such that groundwater from the pit area will flow towards the springs.

3) “Respond to the testimony of the professional geologist who identified that the proposed mine expansion will create an increased landslide risk.”

My testimony was never referenced and the report is not responsive to the issue of increased groundwater flow towards the shoreline bluff.

No where in the report is the stability of the shoreline bluff assessed and no bluff observations were made. The potential for altering groundwater, and the stability of the shoreline bluff from that alteration, have not been addressed.

Stratum Group appreciates the opportunity to comment on the adequacy of the geology hazard assessment. Regrettably, the geology hazard assessment does not address the groundwater flow and slope stability of the nearby shoreline bluff as requested by Skagit County.

Sincerely yours,
Stratum Group



Dan McShane, L.E.G., M.Sc.
Licensed Engineering Geologist



DANIEL McSHANE

EXHIBIT #33

**THIRD PARTY REVIEW OF GEOLOGIC HAZARD SITE
ASSESSMENT & RESPONSE TO EVERGREEN
ISLAND'S LETTER DATED 11/18/22
(RECEIVED JANUARY 19, 2023)**

MEMORANDUM



Date: January 18, 2023
To: Kevin Cricchio, Skagit County Planning
From: Alan Wald, LHG. The Watershed Company
Project Name: Skagit County Lake Erie Pit Review
Project Number: 210231.9

**Subject: Response to Evergreen Island communication of 11/18/2022 re:
Lake Erie Pit**

As per your request of 12/20/22, I have reviewed the comment letters from Loring Advising and the Stratum Group concerning potential groundwater issues and proposed expansion of the Lake Erie Pit. I have included (below) the 11/25/2022 report we provided Skagit County regarding the proposed project.

The main concerns raised in the Evergreen Island communication appear to be the adequacy of the groundwater flow assessment and potential impacts to bluff stability west and northwest of the proposed pit expansion.

The methods and results of the groundwater flow assessment are presented in several reports:

Maul, Foster, Alongi (MFA). Hydrogeologic Site Assessment Report. Lake Erie Pit Expansion. Bellingham, WA. December 2, 2016.

Maul, Foster, Alongi (MFA). Observation Well Installation. Lake Erie Pit Expansion. Bellingham, WA. September 28, 2017.

Northwest Groundwater Consultants (NGC). Lake Erie Pit Well Recommendations. Coeur d'Alene, Idaho. March 11, 2019. And

WA Dept of Ecology (WDOE). Water Well Report. Resource Protection Well BJF103. <https://ecology.wa.gov/wellconstruction>. September 25, 2017.

The Wood Environment & Infrastructure Solutions, Inc (Wood). Geologic Hazard Site Assessment. Lake Erie Pit 1 Expansion. Kirkland, WA. August 11, 2022, uses the aquifer properties and groundwater flow characterization from these reports.

I revisited the methods and results of the aquifer characterization and groundwater flow analysis in the groundwater flow assessment and found no significant discrepancies or

inaccuracies in the data collection, hydrogeologic analysis, or discussion that would question the study results. The lithology is reasonably consistent with the well logs, the groundwater levels were developed from a comprehensive mass well measurement, and the flow paths were plotted perpendicular to the groundwater surface contours. The aquifer is well characterized at recorded depths and static water levels. The prevailing groundwater flow path is to the north and northeast of the proposed project.

Bluff areas to the west and southwest of the proposed project, including the Dodoson Canyon Springs, are 800 to 1,000 feet from the project with base elevations (below the scarps) of about 200 ft. msl. Based on documented groundwater surface elevations and local stratigraphy, it is likely that groundwater seepage is from the regional aquifer. I found no apparent reason to conclude the proposed project would change the rate or volume of groundwater discharge from seepage on the bluffs.

Attachment.

P#: **19164** Site Address: **13500 Rosario Road (Fidalgo Island)**

Property Owner(s): **Lake Erie Trucking, LLC**

Project Description: **Lake Erie Gravel Pit (Surface Mine)**

Notes:

Reviewed the hydrogeologic reports provided (see references), NRCS local soils descriptions, and water well logs of record for the general vicinity.

Project is a proposed expansion of gravel pit excavation (surface mine) and hauling in the vicinity of Lake Erie on Fidalgo Island, Skagit County. The project proposes to manage stormwater by capturing site runoff for infiltration. Proposed excavation is planned to be above the inferred ground water elevation of a local aquifer and no dewatering is anticipated. There are approximately 70 wells of record within a one-mile radius of the proposed surface mine, approximately 16 wells appear to be downgradient of the site (MFA, 2016). There is no record of existing contamination at the site.

A resource protection well (BJF103) was drilled for the project in 2017. The ground surface elevation for the well is 445.6 ft msl (MFA, 2017). The top of casing elevation for the well is 448.4 ft msl (NGC, 2019). The well log documents the approximately 20-foot-thick layer of semi-consolidated brown to gray clay, at depths of 189 to 209 ft. (259.4 to 239.4 msl) overlying water bearing strata at various depths (WDOE, 2017). This clay layer, or aquitard, serves as a protective element for the underlying aquifer and reduces the risk of groundwater contamination from surface sources. Static water level in the well was 255.4 ft btc (193 ft msl) on 9/19/2017 (MFA, 2017). The observed water level reflects commingled hydraulic heads in a resource protection well without screening (open hole at a depth of 277 ft) and undeveloped hydraulic continuity with the aquifer.

The inferred groundwater surface elevation in the aquifer, based on comparisons of static water levels in surrounding wells, is about 190 feet msl (MFA, 2016). The proposed project includes excavation to a bottom elevation of 250 ft. msl (Wood, 2022). The general direction of groundwater discharge in the local aquifer is north/northeast.

Surface soils in the project area include the Catla, Keystone, and LaConner soil series and topsoil depths generally range from 16 to 24 inches, grading into granular subsoils (NRCS, 2007)

SCC 14.24.340: Aquifer recharge areas impact mitigation

Based on project information available to date, the risk of impacts to aquifer recharge and groundwater quality due to the proposed surface mine appears to be generally low. Given some uncertainties in using inferred water level observations of commingled hydraulic heads, variability in land elevations, and different surface mine operations, several mitigations measures should be considered to further reduce potential impacts to aquifer recharge and groundwater quality. These proposed mitigation measures are as follows:

1. Surface soils, particularly topsoil, excavated at depths of 24 inches or more from mined areas should be stockpiled and replaced on exposed areas as excavation is completed. Topsoil and subsoils should be stockpiled and applied separately to avoid mixing different soil fertilities. Stockpiled soils should not be sold, or given away, or otherwise removed, or used for screening

berms. These soils provide important functions for protecting water quality of surface infiltration and promoting revegetation of the site.

2. The elevation of subsurface strata may vary across the site and excavation to elevations of 250 ft. msl may encounter the brown/gray clay aquitard overlying the deeper aquifer. This layer should not be excavated or disturbed in order to maintain protection of aquifer storage and existing wells from potential disturbance or contamination.
3. It is recommended that resource protection well BJF103 be monitored over the life of the project by measuring water level and submitting a water quality sample (drinking water standards) at least once a year. This information provides an essential baseline for evaluating future changes in groundwater conditions.
4. It is recommended that the project area, particularly haul roads, have secure site access controls, including fencing and gates as needed, to prevent unauthorized or illegal dumping on the property. Given relatively shallow groundwater levels in the project area, disposal of demolition materials, wood waste, solid waste, or contaminated soils in the project area should be prohibited.

References:

- Maul, Foster, Alongi (MFA). Hydrogeologic Site Assessment Report. Lake Erie Pit Expansion. Bellingham, WA. December 2, 2016.
- Maul, Foster, Alongi (MFA). Observation Well Installation. Lake Erie Pit Expansion. Bellingham, WA. September 28, 2017.
- Northwest Groundwater Consultants (NGC). Lake Erie Pit Well Recommendations. Coeur d'Alene, Idaho. March 11, 2019
- WA Dept of Ecology (WDOE). Water Well Report. Resource Protection Well BJF103. <https://ecology.wa.gov/wellconstruction>. September 25, 2017.
- Wood Environment & Infrastructure Solutions, Inc (Wood). Geologic Hazard Site Assessment. Lake Erie Pit 1 Expansion. Kirkland, WA. August 11, 2022.

Date: 11/22/22

Reviewer: Alan Wald, LHg

EXHIBIT #34

**EVERGREEN ISLAND EMAIL & LETTER REGARDING
WATERSHED COMPANY RESPONSE TO EVERGREEN
ISLAND'S COMMUNICATION OF 11/18/2022 +
STRATUM GROUP LETTER**

From: [Kyle Loring](#)
To: [Kevin Cricchio](#)
Cc: [Marlene Finley](#)
Subject: PL16-0056 -- Evergrn Isls response to Watershed Co memo
Date: Friday, March 3, 2023 11:01:25 AM
Attachments: [Evergrn Isls rspnse to TWC response.pdf](#)

CAUTION: This email originated from an external email address. Do not click links or open attachments unless you recognize the sender, you are expecting this email and attachments, and you know the content is safe.

Dear Mr. Cricchio,

I've attached a letter on behalf of Evergreen Islands that addresses the memo that The Watershed Company ("TWC") submitted to Skagit County to respond to Evergreen Islands' November 2022 communication. Attached to that letter is a memo from Dan McShane, the licensed engineering geologist who concludes that, like the earlier Wood consultant report, TWC overlooks that the purpose of the remand from the Board of County Commissioners was to evaluate the proposed mine's potential impacts on the unstable bluffs northwest of the mine site. The TWC document does not mention these bluffs. Instead, it continues to focus on unstable bluffs to the west and southwest of the proposed mine site. Consequently, the applicant hasn't provided a response to Michael Cerbone's March 23, 2021 letter, and that work must yet be completed.

I was surprised that your office didn't notify Evergreen Islands that you had requested, and then received a memo from TWC, and that we had to learn about it through an incidental visit to the County's project website. Since Evergreen Islands is the party that filed the appeal that led to the County's request for a review of the mine's groundwater impacts on bluffs to the northwest, I ask that you keep Evergreen informed of such developments in the future.

Best,
Kyle

Kyle A Loring (*he/him*)
LORING ADVISING PLLC
PO Box 3356 | Friday Harbor, WA 98250
360-622-8060 | www.loringadvising.com

CONFIDENTIALITY NOTICE--The information contained in this email message may be privileged, confidential, and protected from disclosure and is intended for the use of the addressee(s) only. If you are not an intended addressee, please be advised that any dissemination, distribution or copying of this e-mail is prohibited. If you receive this communication in error, please notify the sender by reply email and delete the message and any attachments.

By Email

March 3, 2023

Kevin Cricchio, Senior Planner
Skagit County Planning and Development Services
1800 Continental Place
Mount Vernon, WA 98273
kcricchio@co.skagit.wa.us

Re: File No. PL16-0056 – The Watershed Company Response to Evergreen Islands communication of 11/18/2022 re: Lake Erie Pit

Dear Mr. Cricchio,

I'm submitting this letter and attached analysis from Dan McShane on behalf of Evergreen Islands ("Evergreen") to respond to a memorandum that you received from The Watershed Company ("Response") in response to Evergreen's November 2022 missive. Before addressing the Response, I should mention that Evergreen was disappointed to have to learn about it through the Skagit County Planning & Development Services ("PDS") website. As the party that successfully appealed the inadequate original groundwater reports for the site, Evergreen has a reasonable expectation that it would be informed when the applicant and the County prepare or receive new reports regarding the site's groundwater characteristics. This is particularly true of documents expressly titled "Response to Evergreen Island [sic] communication." We ask that PDS ensure that it communicates such materials to Evergreen in the future.

With regard to the substance of the Response, we have attached a letter from Dan McShane, a licensed engineering geologist and the expert who diagnosed the flaws in the initial groundwater review for the proposed Lake Erie gravel pit, that explains that the Response also ignores the potential for the mine to increase the risk of landslides for the neighborhood to the northwest. Mr. McShane concludes that "I remain very concerned about the potential impacts to groundwater levels and the stability of the bluffs to the northwest of the mine in the absence of an assessment of the mine's impacts on those areas."

Mr. McShane reached this conclusion after identifying the following flaws in the Response and earlier groundwater reviews:

- The Response does not identify or discuss the springs on the bluffs to the northwest of the proposed mine in its review of the earlier reports. These springs, which have never

been evaluated notwithstanding that they lie downgradient of the mine, were the primary reason that the Skagit Board of Commissioners reversed Hearing Examiner approval of the mine. Mr. McShane notes that if recharge to groundwater that feeds these springs is increased, the frequency and magnitude of groundwater-driven landslides will increase. Nonetheless, the Response makes no reference to them, instead discussing unstable slopes to the west and southwest of the proposed mine.

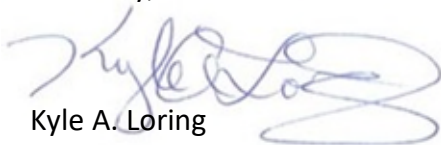
- There are significant discrepancies in the groundwater elevations identified by different applicant reports. While the Response asserts that no significant discrepancies or inaccuracies were found in the data, the water levels measured directly by Northwest Groundwater Consultants were 50 feet and 35 feet lower than those identified on the groundwater contour map produced by Maul Foster Alongi in 2016 and 2017. This large discrepancy casts doubt on the accuracy of the elevations the application presumed for the other wells that were not directly measured.
- The groundwater flow and potential changes to the groundwater flow toward the unstable bluffs has not been evaluated. Ultimately, there are no data regarding groundwater elevations between the proposed mine and the unstable bluffs to the northwest of the mine. The County requested this information nearly two years ago in its March 23, 2021 letter to Bill Wooding, which required an assessment of the following specific site elements:
 - Analysis of the landslide risk arising from the potential for increased groundwater migration to the west/northwest of the mine due to the proposed expansion and attendant removal of soil and vegetation which could alter groundwater behavior in the vicinity of the mine.
 - Analysis of the presence of springs on the coastal bluff to the northwest of the mine that are at an elevation down gradient of the inferred groundwater level.
 - Respond to the testimony of the professional geologist [Dan McShane] who identified that the proposed mine expansion will create an increased landslide risk.

The Canyon Environmental Group (“Canyon”) proposal that the applicant had obtained to answer these questions could have done so. The applicant inexplicably chose a different consultant who did not carry out the scope Canyon had proposed, and who declined to conduct the analyses that PDS had requested. The Response likewise omits any analysis of groundwater impacts on the bluffs to the northwest.

Absent this requested information, which is essential for answering whether the mine will increase the likelihood that residents to the northwest will suffer from increased landslides, the project cannot move forward. Evergreen therefore requests that PDS reiterate its request to Lake Erie to investigate groundwater flow between the site and the downgradient springs in the bluffs to the northwest, and, if studies conclude that the mine will increase the groundwater flow to those bluffs, whether the increased flow will increase the instability of those bluffs.

If you have any questions, please do not hesitate to contact me at 360-622-8060 or kyle@loringadvising.com.

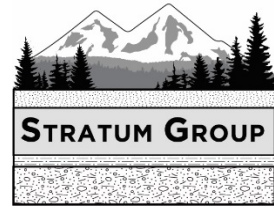
Sincerely,

A handwritten signature in blue ink, appearing to read "Kyle A. Loring". The signature is stylized and cursive.

Kyle A. Loring

Cc: Marlene Finley, Evergreen Islands

Attachment: Stratum Group Response to The Watershed Company Response



PO Box 2546, Bellingham, Washington 98227

March 2, 2023

Re: **Response to:**

The Watershed Company Response to Evergreen Islands communication of 11/18/2022

As a licensed engineering geologist who has been part of the Lake Erie gravel pit review for three years, I am offering feedback on The Watershed Company's review of the original groundwater flow assessment that the Board of Commissioners deemed inadequate. Regrettably, The Watershed Company response letter listed as a 'Geologic-Hazard Site Assessment Third Party Review' on the County website does not support moving forward with project review. The Watershed Company did not identify or discuss the springs on the bluffs to the northwest of the proposed mine in the review of the reports. Furthermore, in the review of the groundwater elevations, The Watershed Company did not identify a very large discrepancy in the groundwater elevations between the groundwater reports prepared by Maul Foster Alongi (2016 and 2017) and Northwest Groundwater Consultants (2019). The review also failed to discuss that the Wood (2022) geology hazard site assessment was not responsive to the County's specific requests to "Analyze the landslide risk arising from the potential for increased groundwater migration to the west/northwest of the mine due to the proposed expansion." These notable omissions prevent the response from being relevant to the necessary review.

Springs northwest of mine

The Commissioners determined that the groundwater flow to the springs located to the northwest of the mine was essential for evaluating project impacts, but it has not been addressed. Maul Foster Alongi provided a Hydrogeologic Site Assessment Report (September 28, 2016). The purpose of that report was to meet the requirements of Skagit County Code 14.16.440(8)(b):

- (b) A report by a qualified geologist, hydrogeologist or licensed engineer characterizing the area's ground water including, but not limited to, the following information:*
 - (i) A description of the geology and hydro-geology of the area including the delineation of aquifer, aquitards, or aquicludes (confining layers), hydrogeologic cross-sections, porosity and horizontal and vertical permeability estimates;*
 - (ii) Determination of the direction and velocity of ground water movement, water table contour and potentiometric surface maps (for confined aquifers), if applicable; and*
 - (iii) A map containing the limits of the mine, buffer zones, location of all ground water wells within 1 mile distance down gradient from the property boundaries,*

location of all perennial streams and springs, and definition or specification of locations of aquifer recharge and discharge areas.

But the Maul Foster Alongi report (2016) did not identify the springs or streams located to the northwest of the property. Subsequent reports by Maul Foster Alongi (2017) and Northwest Groundwater Consultants (2019) also did not identify these springs.

In my comments on the project dated October 12, 2020, I pointed out that groundwater fed springs are located on the slopes to the northwest that were not identified in the Maul Foster Alongi (2016 and 2017) and Northwest Groundwater Consultants (2019) reports. Based on previous work I had done on these slopes, I noted that elevated groundwater levels were a factor in the landslides on these slopes.

Role of groundwater on the stability of the slopes to the northwest

The Wood Geology Hazard Site Assessment (2022) did not identify the springs and made no attempt to assess the groundwater flow to the springs even though this was a specific item requested by Skagit County Planning and Development Services. Wood appears to have been unaware of the groundwater springs. The Wood report used the same groundwater contour map as the Maul Foster Alongi (2017) report. The Wood assessment provided no assessment of the steep bluff areas to the northwest of the mine. The rationale for not assessing the slope was based on the assumption that groundwater does not flow to the bluff. The role of groundwater flow to the bluff remains unevaluated.

I submitted my original comments (October 12, 2020) because I have been on the slopes to the northwest and recognized that groundwater levels from a mid slope area of springs have been and are a major driver of slope instability along the slope area to the northwest of the mine (pictures attached). Groundwater impacts to the stability of the slope to the northwest of the mine is why the headwall of the landslide scarp along the bluff northwest of the mine has recessed approximately 300 feet into the upland area (attached lidar image). The potential change to groundwater flow towards these springs by the removal of the glacial till cover within the proposed mine expansion has still not been evaluated. These springs were not identified in the groundwater assessment, the geology hazard site assessment or the response document.

If recharge to groundwater that feeds these springs is increased, the frequency and magnitude of groundwater driven landslides will increase on these slopes.

Discrepancy in water elevations

While the letter by The Watershed Company stated that they found “no significant discrepancies or inaccuracies in the data”, the letter did not discuss the very large groundwater elevation discrepancy reported between the Maul Foster Alongi (2016 and 2017) reports and the water directly measured at two wells by Northwest Groundwater Consultants (2019). The water levels

measured directly by Northwest Groundwater Consultants were 50 feet and 35 feet lower than the groundwater contour map produced in 2016 and 2017. This large discrepancy strongly suggests that the groundwater elevations of the all of the other wells that were not directly measured are inaccurate and therefore the groundwater contour map is not an accurate portrayal of the groundwater elevations.

The significant difference in groundwater elevations between the 2016/2017 report and the measured elevations in the 2019 report, as well as the lack of recognition of the groundwater discharge locations on the slopes to the northwest, should have been noted in The Watershed Company review, particularly given that the County may be considering the review as a third party review.

Groundwater flow and potential changes of groundwater flow towards the bluffs has not been evaluated

There are no data regarding the groundwater elevations between the proposed mine expansion and the bluffs to the northwest of the mine.

The areas of springs on the slopes to the northwest of the mine have still not been analyzed despite the specific request by Skagit County Planning and Development Services. The proposed scope of work prepared by Canyon Environmental Group and submitted to the County as part of the application process by the applicant has not been completed.

I remained very concerned about the potential impacts to groundwater levels and the stability of the bluffs to the northwest of the mine in the absence of an assessment of the mine's impacts on those areas.

Sincerely yours,
Stratum Group



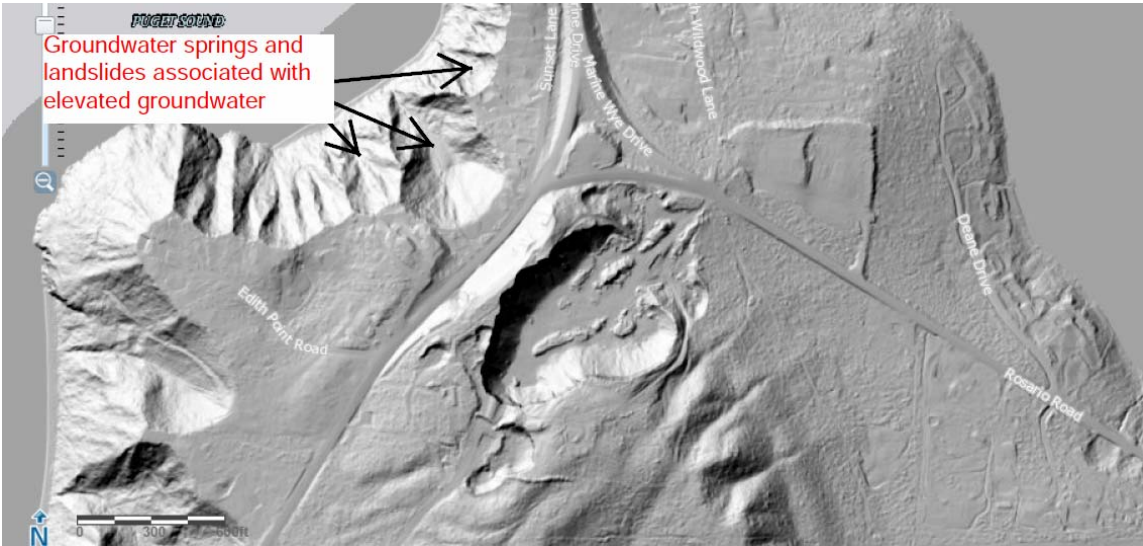
Dan McShane, L.E.G., M.Sc.
Licensed Engineering Geologist



DANIEL McSHANE



Site of recent sand blowout from perched groundwater just above the silt clay layer at bluff northwest of the mine.



Lidar image of groundwater induced slide areas and mine area

EXHIBIT #35

**REVISED THIRD PARTY REVIEW OF GEOLOGIC
HAZARD SITE ASSESSMENT & RESPONSE TO
EVERGREEN ISLAND'S LETTER DATED 11/18/2022
(RECEIVED MARCH 31, 2023)**

Lake Erie Gravel Pit – Third Party Review

P#: 19164 Site Address: **13500 Rosario Road (Fidalgo Island)**
Property Owner(s): **Lake Erie Trucking, LLC**
Project Description: **Lake Erie Gravel Pit (Surface Mine)**

Notes:

Reviewed the hydrogeologic reports provided (see references), NRCS local soils descriptions, and water well logs of record for the general vicinity.

Project is a proposed expansion of gravel pit excavation (surface mine) and hauling in the vicinity of Lake Erie on Fidalgo Island, Skagit County. The project proposes to manage stormwater by capturing site runoff for infiltration. Proposed excavation is planned to be above the inferred ground water elevation of a local aquifer and no dewatering is anticipated. There are approximately 70 wells of record within a one-mile radius of the proposed surface mine, approximately 16 wells appear to be downgradient of the site (MFA, 2016). There is no record of existing contamination at the site.

A resource protection well (BJF103) was drilled for the project in 2017. The ground surface elevation for the well is 445.6 ft msl (MFA, 2017). The top of casing elevation for the well is 448.4 ft msl (NGC, 2019). The well log documents the approximately 20-foot-thick layer of semi-consolidated brown to gray clay, at depths of 189 to 209 ft. (259.4 to 239.4 msl) overlying water bearing strata at various depths (WDOE, 2017). This clay layer, or aquitard, serves as a protective element for the underlying aquifer and reduces the risk of groundwater contamination from surface sources. Static water level in the well was 255.4 ft btc (193 ft msl) on 9/19/2017 (MFA, 2017). The observed water level reflects commingled hydraulic heads in a resource protection well without screening (open hole at a depth of 277 ft) and undeveloped hydraulic continuity with the aquifer.

The inferred groundwater surface elevation in the aquifer, based on comparisons of static water levels in surrounding wells, is about 190 feet msl (MFA, 2016). The proposed project includes excavation to a bottom elevation of 250 ft. msl (Wood, 2022). The general direction of groundwater discharge in the local aquifer is north/northeast.

Surface soils in the project area include the Catla, Keystone, and LaConner soil series and topsoil depths generally range from 16 to 24 inches, grading into granular subsoils (NRCS, 2007)

SCC 14.24.340: Aquifer recharge areas impact mitigation

Based on project information available to date, the risk of impacts to aquifer recharge and groundwater quality due to the proposed surface mine appears to be generally low. Given some uncertainties in using

inferred water level observations of commingled hydraulic heads, variability in land elevations, and different surface mine operations, several mitigations measures should be considered to further reduce potential impacts to aquifer recharge and groundwater quality. These proposed mitigation measures are as follows:

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2. The elevation of subsurface strata may vary across the site and excavation to elevations of 250 ft. msl may encounter the brown/gray clay aquitard overlying the deeper aquifer. This layer should not be excavated or disturbed in order to maintain protection of aquifer storage and existing wells from potential disturbance or contamination.
3. It is recommended that resource protection well BJF103 be monitored over the life of the project by measuring water level and submitting a water quality sample (drinking water standards) at least once a year. This information provides an essential baseline for evaluating future changes in groundwater conditions.
4. It is recommended that the project area, particularly haul roads, have secure site access controls, including fencing and gates as needed, to prevent unauthorized or illegal dumping on the property. Given relatively shallow groundwater levels in the project area, disposal of demolition materials, wood waste, solid waste, or contaminated soils in the project area should be prohibited.

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- Wood Environment & Infrastructure Solutions, Inc (Wood). Geologic Hazard Site Assessment. Lake Erie Pit 1 Expansion. Kirkland, WA. August 11, 2022.

Date: 11/22/22

Reviewer: Alan Wald, LHg



MEMORANDUM



Date: January 18, 2023
To: Kevin Cricchio, Skagit County Planning
From: Alan Wald, LHG. The Watershed Company
Project Name: Skagit County Lake Erie Pit Review
Project Number: 210231.9

RECEIVED

MAR 31 2023

SKAGIT COUNTY
PDS

**Subject: Response to Evergreen Islands communication of 11/18/2022 re:
Lake Erie Pit**

As per your request of 12/20/22, I have reviewed the comment letters from Loring Advising and the Stratum Group concerning potential groundwater issues and proposed expansion of the Lake Erie Pit. I have included (attached) the 11/22/2022 third-party review report we provided Skagit County regarding the proposed project.

The main concerns raised in the Evergreen Island communication appear to be the adequacy of the groundwater flow assessment and potential impacts to bluff stability west and northwest of the proposed pit expansion.

The methods and results of the groundwater flow assessment are presented in several reports:

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The Wood Environment & Infrastructure Solutions, Inc (Wood). Geologic Hazard Site Assessment. Lake Erie Pit 1 Expansion. Kirkland, WA. August 11, 2022, uses the aquifer properties and groundwater flow characterization from these reports.

I revisited the methods and results of the aquifer characterization and groundwater flow analysis in the groundwater flow assessment and found no significant discrepancies or

inaccuracies in the data collection, hydrogeologic analysis, or discussion that would question the study results. The lithology is reasonably consistent with the well logs, the groundwater levels were developed from a comprehensive mass well measurement, and the flow paths were plotted perpendicular to the groundwater surface contours. The aquifer is well characterized at recorded depths and static water levels. The prevailing groundwater flow path is to the north and northeast of the proposed project.

Bluff areas to the west and southwest of the proposed project, including the Dodoson Canyon Springs, are 800 to 1,000 feet from the project with base elevations (below the scarps) of about 200 ft. msl. Based on documented groundwater surface elevations and local stratigraphy, it is likely that groundwater seepage is from the regional aquifer. I found no apparent reason to conclude the proposed project would change the rate or volume of groundwater discharge from seepage on the bluffs.

Attachment.

EXHIBIT #36
NOTICE OF PUBLIC HEARING (PUBLISHED
ON 6/8/2023), NEIGHBOR LABELS,
& PARTIES OF RECORD

NOTICE OF PUBLIC HEARING

THE SKAGIT COUNTY HEARING EXAMINER WILL HOLD A PUBLIC HEARING ON WEDNESDAY, June 28, 2023, AT 1:00 PM OR SOON THEREAFTER FOR THE FOLLOWING:

PUBLIC HEARING

Hearing to review the remanded items required by the Hearing Examiner on March 9, 2021 for Special Use Permit Application PL16-0556 submitted by Lake Erie Pit 1, LLC requesting the expansion of an existing gravel/sand mining operation from 17.78 acres to approximately 53.5 acres. Per the direction of the Hearing Examiner, the applicant was required to prepare a Geologically Hazardous Area Site Assessment associated with the steep coastal area located to the west/northwest of the mine and prepare a Geologically Hazardous Mitigation Area Plan. The requested items were submitted on August 12, 2022 and determined complete on January 18, 2023 following a third-party review by The Watershed Company. The subject site is located within the Rural Resource-Natural Resource Lands (RRc-NRL) Zoning/Comprehensive Plan Designated Area and designated within the Mineral Resource Overlay.

LOCATION OF PROPOSED DEVELOPMENT:

The proposed mining expansion is located south of the intersection of Rosario Road and Marine Drive, Fidalgo Island, within a portion of Section 11, Township 34 North, Range 01 East, Willamette Meridian situated within unincorporated Skagit County, Washington.

SUBJECT PARCELS: Existing Mine: P19108, P19162, & P19165; Expansion to Mine: P19158, P90028, P19164, P19155, P19161; Contiguous Parcels (Same Ownership): P19168, & P19163

APPLICANT/ CONTACT:

Lake Erie Pit 1 LLC
Attn: Bill Wooding
13540 Rosario Road
Anacortes, WA 98221

**SKAGIT COUNTY PLANNING AND DEVELOPMENT SERVICES
1800 CONTINENTAL PLACE
MOUNT VERNON, WASHINGTON 98273
(360) 416-1320**

Hearings are now being held hybrid, meaning in-person and virtual (via Zoom). To participate in the public hearing virtually you can call +1(253)215-8782, US (Tacoma), or +1(719)359-4580 US, **Meeting ID: 812 7077 5954# US (Passcode: 728120)**, or to join via video please visit:

<https://us06web.zoom.us/j/81270775954?pwd=YzdWSmxLeXp6cDdCbmlkZS9VWNRdz09>

Log in information is also available on the Hearing Examiner website located at www.skagitcounty.net under the "Department Directory," "Hearing Examiner."

If you would like to speak at the hearing, please contact either Maria Reyna at (360) 416-1150, email mariar@co.skagit.wa.us; Keith Luna at (360) 416-1152, email kluna@co.skagit.wa.us; or Russell Walker at (360) 416-1154, email russow@co.skagit.wa.us to sign up.

Comments must be received by Planning and Development Services **no later than 4:30 PM Tuesday, June 27, 2023, or be presented at the public hearing.** E-mail comments may be submitted with the PDS website under the *"Public Notices and Comment Opportunities"* tab or to the Office of the Hearing Examiner. **Staff contact:** Kevin Cricchio, AICP, ISA, Senior Planner; (360) 416-1423

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PIT I LLC	MULLEN BRUCE 13840 EAGLECREST LANE ANACORTES, WA 98221	PERANTEAU NICHOLAS 13736 SEAVIEW WAY ANACORTES, WA 98221
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WEEKS ANNETTE M TRUST 13746 ROSARIO ROAD ANACORTES, WA 98221	DENT LIVING TRUST	LAKE ERIE SHOP LLC
LAKE ERIE SHOP LLC	MERRIFIELD FAMILY TRUST & MERRIFIELD WILLIAM F TRUSTEE	BILLOW ROBERT & BILLOW LORA 13630 ORCA LANE ANACORTES, WA 98221
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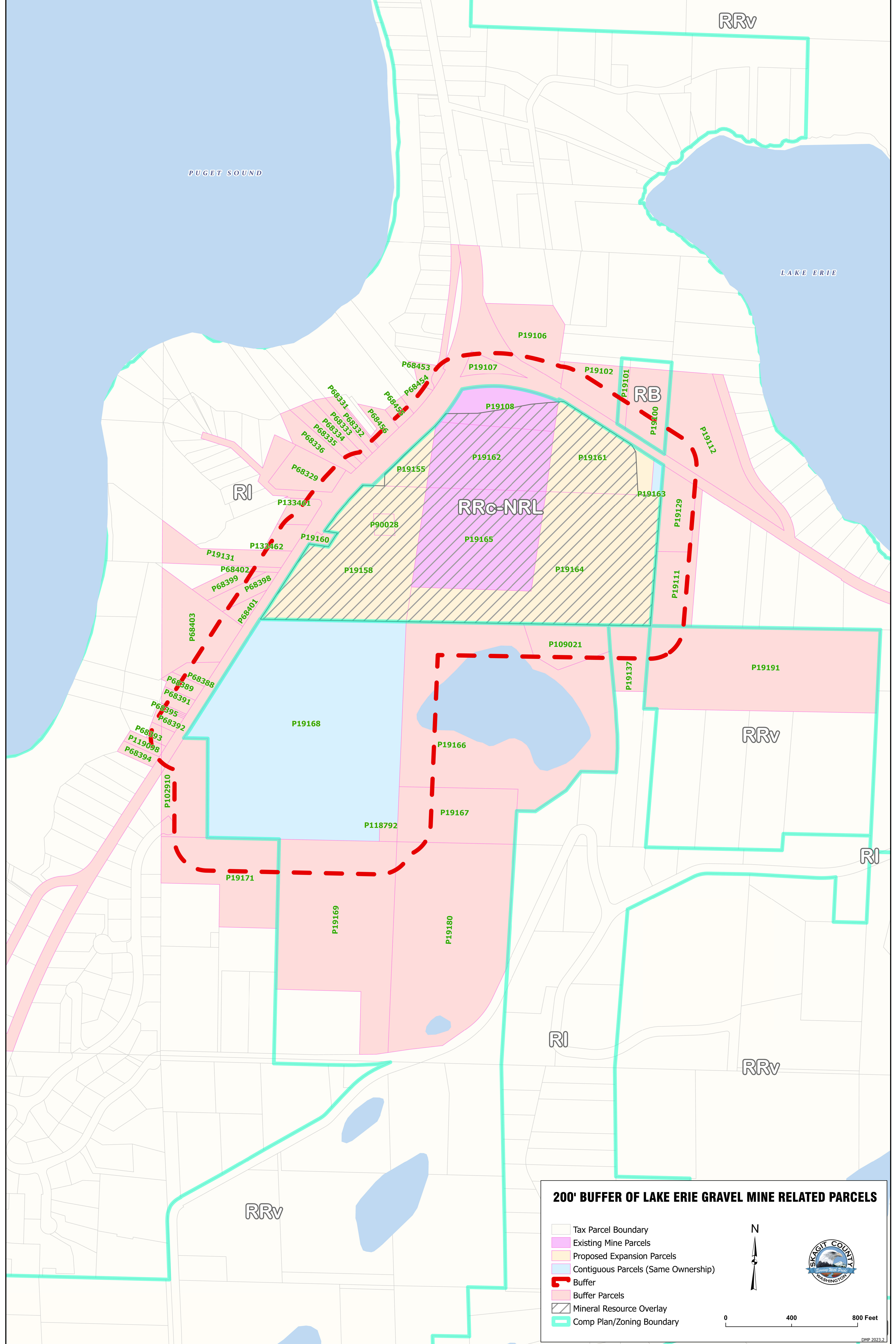
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EXHIBIT #37
SKAGIT COUNTY GIS MAP OF SUBJECT PARCELS
& 300-FOOT BUFFER



200' BUFFER OF LAKE ERIE GRAVEL MINE RELATED PARCELS

- Tax Parcel Boundary
- Existing Mine Parcels
- Proposed Expansion Parcels
- Contiguous Parcels (Same Ownership)
- Buffer
- Buffer Parcels
- Mineral Resource Overlay
- Comp Plan/Zoning Boundary

N

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