

BEFORE THE HEARING EXAMINER FOR SKAGIT COUNTY

**RE: DENIAL OF SPECIAL
USE PERMIT FOR FAILURE
TO TIMELY PROVIDE
INFORMATION**

WILLIAM WOODING,
Appellant,

v.

SKAGIT COUNTY,
Respondent.

APPEAL NO. PL21-0421

Application No. PL16-0556

RESPONSE

Skagit County respectfully submits this Response to William Wooding's appeal of the decision by Skagit County Planning and Development Services to deny the special permit use permit for failure to timely provide required information. The County respectfully requests the Hearing Examiner deny this appeal.

1. INTRODUCTION

This appeal is straightforward: it was not clear error for the County to deny William Wooding's special use permit to expand the Lake Erie gravel mine when he failed to timely provide the required Geologically Hazardous Site Assessment. Following the previous appeal to the Board of County Commissioners, Wooding was required to obtain a Geologically Hazardous Site Assessment. This request for additional information was governed by SCC 14.06.105(1), which requires the applicant to provide the information within 120 days. Nevertheless, PDS may grant an extension if the applicant,

RESPONSE
PL21-0421

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requests one at least 21 days prior to the deadline.¹ Wooding failed to timely provide the information and failed to timely request an extension of the deadline. As a result, the Code required the application to be denied.²

2. QUESTION ON APPEAL

Was it clear error for the County to deny Wooding's application for a special use permit to expand the Lake Erie gravel mine because he failed to timely provide a Geologically Hazardous Site Assessment and did not timely request an extension?

3. JURISDICTION OF THE HEARING EXAMINER

The denial of the special use permit for failure to provide information is a Level I decision,³ which is subject to an open record appeal to the Hearing Examiner.⁴

4. STANDARD OF REVIEW

Wooding "bear[s] the burden of demonstrating that the decision of the Administrative Official is clearly erroneous."⁵ To find the County's decision clearly erroneous, the Hearing Examiner must be "left with the definite and firm conviction that a mistake has been committed."⁶

5. HISTORY OF CASE

Wooding filed his application for a special use permit to expand the Lake Erie Mine on December 2, 2016.⁷ The application came before the Hearing Examiner for a public hearing on August 26 and October 14, 2020.⁸ The Hearing Examiner issued his decision on November 30, 2020, approving the application with conditions.⁹

¹ SCC 14.06.105(1)(a).

² SCC 14.06.105(1).

³ SCC 14.06.105(3).

⁴ SCC 14.06.110(7); SCC 14.06.160.

⁵ SCC 14.06.160(3)(a).

⁶ *Lauer v. Pierce County*, 173 Wn.2d 242, 253 (2011) (quoting *Phoenix Dev., Inc. v. City of Woodinville*, 171 Wn.2d 820, 829 (2011)).

⁷ Skagit Co. Hearing Examiner, Notice of Decision at 1, PL16-0556 (Nov. 30, 2020), available at <https://www.skagitcounty.net/OfficeOfLandUseHearings/Documents/decisions/PL16-0556-%20Decision.pdf>.

⁸ *Id.* at 1, 2.

⁹ *Id.* at 13.

This decision was appealed to the Board of County Commissioners by Evergreen Islands based on the lack of a geological hazardous site assessment.¹⁰ The Commissioners remanded to the Hearing Examiner to determine if such an assessment was needed.¹¹ On remand the Hearing Examiner ordered PDS to direct Wooding to provide the assessment.¹²

In response to this directive on March 23, 2021, the then-Assistant Director for PDS sent a letter to Wooding that a geological hazardous site assessment and a geological hazardous mitigation area plan would be required.¹³ And on May 27, 2021, the Assistant Director send another letter to make clear that this was considered a request for information under SCC 14.06.105 and Wooding has 120 days to provide the information, with that time expiring on July 21, 2021, at 4:30 pm.¹⁴

On July 20, 2021, one day before the 120 days expired, Stephen Taylor on behalf of Wooding, sent an email stating they had contracted with a consulted but requesting an extension due to the difficulty in finding a qualified consultant to conduct the study.¹⁵ PDS denied the request, and necessarily the application, under SCC 14.06.105.¹⁶ This appeal followed.

6. ARGUMENT

Wooding did not timely provide geological hazardous site assessment, nor did he timely request an extension to submit the assessment. Thus, it follows that the application was properly denied as required by the Code.

Section 16.06.105(1) provides that “[i]f 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... unless” an extension of time has been granted. That is what occurred here.

¹⁰ Skagit Co. Board of Commissioners, Resolution R20210038 at 1, available at, <http://www.skagitcounty.net/Common/Documents/LFDocs/COMMISSIONERS000017/00/00/1a/00001a5d.pdf>.

¹¹ *Id.* at 2.

¹² Skagit Co. Hearing Examiner, Referral to Planning & Development Services at 1 (March 9, 2021).

¹³ Exhibit 1 (Letter from Michael Cerbone, Assistant Director, Planning & Development Services, to William Wooding, Lake Erie Pit, LLC (March 23, 2021)).

¹⁴ Exhibit 2 (Letter from Michael Cerbone, Assistant Director, Planning & Development Services, to William Wooding, Lake Erie Pit, LLC (May 27, 2021)).

¹⁵ Exhibit 3 (Email from Stephen Taylor, McLucus & Associates, to Kevin Cricchio, Sr. Planner, Planning & Development Services (July 20, 2021)).

¹⁶ Exhibit 4 (Letter from Kevin Cricchio, Sr. Planner, Planning & Development Services to William Wooding, Lake Erie Pit, LLC (July 21, 2021)); Exhibit 5 (Skagit Co. Planning & Development Services, Notice of Decision, PL16-0556 (July 21, 2021)).

Following the appeal to the Board of County Commissioners that Wooding had to submit the assessment and mitigation plan was clear from the Hearing Examiner's Order on March 9, 2021, and clear from letter sent to Wooding on March 23, 2021.¹⁷ That this additional information was governed by SCC 14.06.105 was made explicit in the May 27th letter, as was the fact that a failure to timely provide the information consequence would result in a denial of the application.¹⁸ When PDS did not receive the requested information it was required by the Code to deny the application.

Wooding could have avoided such a denial with a timely and proper request for an extension, but that did not occur. Section 16.06.105(1)(a) allows an applicant to request an extension of time, but the request must meet the following requirements:

- (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.

Wooding's request for an extension did not meet these requirements. It was untimely as it was sent the day before the deadline.¹⁹

Notably, even if the request for an extension was timely, it still did not meet the requirements of SCC 14.06.105(1)(a). First, it did not demonstrate that the tardiness of the assessment was beyond Wooding's control. The request merely stated "[i]t was very difficult in [sic] finding a qualified group to provide the study."²⁰ Without an explanation as to why it was so difficult it cannot be determined that it was beyond his control.²¹ Second, the request did not contain anything related to a schedule for receiving the information.²²

7. CONCLUSION

For the above reason, the Hearing Examiner should deny the appeal as Wooding has not carried his burden of establishing a clear error.

¹⁷ See Exhibit 1.

¹⁸ See Exhibit 2.

¹⁹ See Exhibit 3 ("We are a day from the deadline and request an extension to finish the project properly.").

²⁰ *Id.*

²¹ The County acknowledges that in his appeal documents Wooding has provided some explanation has been provided in this appeal that speaks to the difficulty. But the time for such explanation under SCC 14.06.105(1)(a) was at the time of the request.

²² See Exhibit 3.

DATED this 6th day of October, 2021.

RICHARD A. WEYRICH
PROSECUTING ATTORNEY
FOR SKAGIT COUNTY



JASON C. D'AVIGNON, WSBA #44259
Civil Deputy Prosecuting Attorney
Attorney for Skagit County


CERTIFICATE OF SERVICE

I hereby certify that on September 7, 2021, I filed the foregoing original document with the Skagit County Hearing Examiner via email to Stevee Kivi, Hearing Coordinator, at skivi@co.skagit.wa.us and served the foregoing document via email to the following parties at the addresses stated below:

William Wooding 13540 Rosario Road Anacortes, WA 98221 <i>Appellant/Applicant</i>	bwooding21@comcast.com
Stephen Taylor P.O. Box 5352 Lacy, WA 98221 <i>Appellant Representative</i>	s.l.taylor7117@gmail.com

I declare under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

Dated this 6th day of October, 2021, at Mount Vernon, Washington.



JASON C. D'AVIGNON, WSBA #44259
Civil Deputy Prosecuting Attorney
Attorney for Skagit County

Exhibit 1



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

Exhibit 2



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

Exhibit 3

Jason D`Avignon

From: Stephen Taylor <s.l.taylor7117@gmail.com>
Sent: Tuesday, July 20, 2021 11:17 AM
To: Kevin Cricchio; William Wooding
Subject: Lake Erie Pit, LLC - Referral of PL16-0556

Mr. Cricchio,

We have contracted with Jeff Ninnemann of Canyon Environmental Group to assist in the Hydrologic Critical Review. It was very difficult in finding a qualified group to provide this study. Mr. Cerbone had given us until July 21st to have this report filed with the County. We are a day from the deadline and request an extension to finish the project properly. I have been working with Bill for seven years on this project and we are trying to finish it.

**Sincerely,
Stephen Taylor
McLucas & Associates**

Exhibit 4



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 kcricchio@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 5

**SKAGIT COUNTY PLANNING AND DEVELOPMENT SERVICES
NOTICE OF DECISION**

**For
SKAGIT COUNTY CASE #PL16-0556**

Notice is hereby given that on July 21, 2021, Skagit County's Planning & Development Services Department denied the applicant's request for an extension to obtain a Geologically Hazardous Site Assessment within 120 days (per Skagit County Code 14.06.105) from the department's formal written request per the Hearing Examiner's remand order dated March 9, 2021.

Accordingly, the application for a Special Use Permit (#PL16-0556) by Lake Erie Pit LLC to expand the existing gravel mine from 17.78 acres to approximately 53.5 acres, allowing for the removal of approximately 60,000 tons of gravel per year for 60 years was also denied as a result. The subject property is located at the intersection of Rosario Road and Marine Drive, within a portion of Northwest ¼ of Section 11, Township 34 North, Range 1 East, Willamette Meridian, within unincorporated Skagit County, WA. (Subject Parcels: P19108, P19155, P19158, P90028, P19161, P19164, & P19162).

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

Pursuant to Skagit County Code 14.06.200, the Notice of Decision shall be forwarded to parties of record, the applicant and other applicable parties of interest.

The applicant and/or a party of record may appeal the decision of Planning & Development Services to the Hearing Examiner as a level 1 decision pursuant to the provisions of Section 14.06.110(7). Parties with standing to appeal must submit the appeal form and appeal fees to the Planning and Development Services Department within 14 calendar days of the date of the Decision.

Transmitted to the Skagit Valley Herald: July 27, 2021
Please publish: July 29, 2021
Appeals must be submitted by: August 4, 2021

Kevin Cricchio, AICP, ISA
Senior Planner
Skagit County Planning and Development Services
1800 Continental Place
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