

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, grounded principally on an inference derived from a hydrogeologic site assessment submitted by the Applicant, based on observation of existing wells located on the easterly side of the proposed project, to the effect that groundwater at the Mine flows to the north/northeast, toward Lake Erie. The hydrogeologic site assessment acknowledged that some quantity of groundwater flows to the north/northwest:

The groundwater flow direction in the Mine area is interpreted to be generally from south to north and northeast toward Lake Erie. A smaller groundwater flow component appears to be to the north/northwest.

...

Because the Mine will not be generating any additional water and that all stormwater will be contained within the Mine boundary, groundwater flow beneath the proposed mine expansion should have no effect on nearby slope stability.

Maul Foster Alongi Hydrogeologic Site Assessment Report for Lake Erie Pit Expansion, dated September 28, 2016 (“**Maul Foster Report**”), at page 3,5 (Hearing Examiner [“**HE**”] Record at 00208, 00210); and

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

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

operations, including potential removal of a clay layer, will create an increased landslide risk, arguing that the coastal bluff area to the west/northwest of the Mine is a geologically hazardous area pursuant to SCC 14.24.410, thus requiring a Geologically Hazardous Site Assessment; and

WHEREAS, on February 3, 2021, the Board remanded this matter to the Hearing Examiner for further consideration as to whether the steep area to the north/northwest of the Mine requires preparation of a Geologically Hazardous Site Assessment per SCC 14.24.400-.420 (“**GHSA**”), as well as a directive to prepare a GHSA is so required; further proceedings as necessary to take evidence; and any additional permit conditions arising from the foregoing; and

WHEREAS, the Hearing Examiner found that a GSHA was required, and directed the Applicant to prepare a GSHA; and

WHEREAS, on August 11, 2022 a GHSA was prepared for the Applicant by Wood Environment and Infrastructure Solutions (the “**Wood GSHA Report**”). The Wood GSHA Report affirms the Maul Foster Report’s conclusion that potential instability to the north/northwest of the Mine expansion poses no risk, reasoning that (1) Rosario Road “was designed and is maintained by Skagit County, and therefore is considered stable”; and (2) “because the proposed expansion plans will not change the regional groundwater conditions,” relying on the Maul Foster Report for the latter conclusion. Wood GSHA Report, 5.0 Conclusions and Recommendations, page 6 (HE Record 00756); and

WHEREAS, Skagit County Planning and Development Services (“**SCPDS**”) thereafter commissioned a third-party review, which concluded that the Wood GSHA report used appropriate methodologies. *See*, Watershed Company Report dated January 18, 2023 (HE Record 00791-00794). Although seemingly acknowledging that it is a potential issue, the Watershed Company Report did not appear to conduct any specific analysis regarding the unstable area to the north/northwest of the Mine; and

WHEREAS, on June 28, 2023, the Hearing Examiner held an open record hearing on remand to consider whether the foregoing actions and analyses met the requirements of Skagit County Code and the Board’s February 3, 2021 remand order; and

WHEREAS, after reviewing the materials, the Hearing Examiner noted the following:

The Geologically Hazardous Area Site Assessment does not, strictly speaking, comply with SCC 14.24.420.

...

Here, the [Wood GSHA Report] does not include an estimate of the coastal bluff retreat rate (criterion (e)), nor an estimate of the coastal bluff’s slope stability over the life of the structures placed on top of the bluff (criterion (f)). The proposed mine expansion is not being built within 200 feet of a known or a suspected risk, as contemplated in SCC 14.24.420(1), nor within “a distance from the base of a landslide hazard area equal to the vertical relief,” as also contemplated in SCC

14.24.420(1). The existing mine is approximately 300 feet from the bluffs; the proposed expansion is approximately 800 feet.

....

Given that the trigger for the assessment falls outside the strict requirements of the code, the Hearing Examiner will exercise the discretion afforded him by Resolution R20210038 not to require strict adherence to the elements of an assessment.

Hearing Examiner Conclusion 2, at page 17.

WHEREAS, on this basis, the Hearing Examiner concluded that Skagit County Code and the intent of the Board’s February 3, 2021 remand order had been fulfilled, denying the appeal and approving the Permit; and

WHEREAS, pursuant to SCC 14.24.420(1), a GHSA is required in areas where a “proposed development activity is located within 200 feet of an area of known or suspected risk,” where a “geologic condition may pose a risk to life and property, or other critical areas on and off the project area,” and

WHEREAS, the term “known and suspected risk” is defined by SCC 14.24.410(1) and (2), and includes, per SCC 14.24.410(2)(a), those areas designated as “(U) Unstable” by the Department of Ecology Coastal Zone Atlas, Washington, Volume Two, Skagit County (1978); and

WHEREAS, the area immediately adjacent to the Mine footprint, to the northwest, is designated as “Unstable” by the Department of Ecology’s Coastal Atlas, including Rosario Road, and for this reason the Board concurs with the Hearing Examiner’s conclusion that a GSHA is required; and

WHEREAS, under the circumstances, having found that a GSHA is required, it is beyond the discretion of the Hearing Examiner to modify code requirements and conclude the GSHA need only be performed in part; and

WHEREAS, the Board is furthermore unpersuaded by the Wood Report’s apparent conclusion that Rosario Road forms an effective or regulatory barrier between the Mine operation and the designated Unstable area immediately adjacent to the Mine; 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 preparation of a GSHA consistent with the requirements of SCC 14.24.400-.420, including but not limited to SCC 14.24.420(e) and (f), with the Hearing Examiner considering any necessary evidence and imposing any additional conditions warranted by the foregoing analysis.
2. In issuing this remand order, it is the Board's intention that additional physical investigation and analysis will be performed to assess the north/northwest groundwater flow and potential impacts under different mine development scenarios, rather than mere validation of the inferences and methodologies used in the original Maul Foster report; and
3. 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
6th day of October 2023.**

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



Ron Wesen, Chair



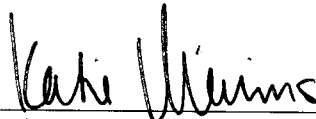
Lisa Janicki, Commissioner



Peter Browning, Commissioner



ATTEST:



Clerk of the Board

APPROVED AS TO FORM:



Will Honea, Senior Deputy
Skagit County Prosecuting Attorney