



County

Planning & Development Services

MEMORANDUM:

DATE: February 11, 2025

TO: Skagit County Board of Commissioners

FROM: Kevin Cricchio, AICP, ISA
Senior Planner
Skagit County's Planning & Development Services Department

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

Landowner: Pit I LLC
C/O Lake Erie Trucking
13540 Rosario Rd
Anacortes, WA 98221

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

RE: Closed-record appeal (PL24-0198) of the Hearing Examiner's May 22, 2024, decision denying Special Use Permit application (PL16-0556) to permit a proposed expansion of an existing gravel mine/quarry on the subject property.

PROJECT DESCRIPTION:

Special Use Permit application to permit the expansion of an existing gravel mining operation from 17.78 acres to 53.5 acres. The gravel mining operation will remove approximately 2,250,000 cubic yards of gravel over an approximately 60-year period and extend to a depth of approximately 50 feet below existing grade. Gravel will be removed from the site by truck and trailer, generating an average of 13 loads per day or 26 truck trips per day. The mining operation will process material onsite with a screen and rock crusher. The site is accessed from Rosario Road on an existing private gravel driveway. No offices or structures are proposed to be built onsite. The subject site is located within the Rural Resource-Natural Resource Land (RRc-NRL) and mineral resource overlay (MRO) zoning/comprehensive plan designated area.

ZONING/COMPREHENSIVE PLAN: 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.

PROJECT LOCATION: Intersection of Rosario Road and Marine Drive, Fidalgo Island; located in a portion of Section 11, Township 34 North, Range 01 East, Willamette Meridian

SUBJECT PARCELS: Existing mine: P19108, P19162, & P19165; Expansion to mine: P19158, P90028, P19164, P19155, P19161; Contiguous parcels (same ownership): P19168, & P19163

PROJECT CHRONOLOGY:

1. On December 2, 2016, the applicant Bill Wooding/Lake Erie Pit LLC submitted to Skagit County's Planning and Development Services Department.
2. Planning Department staff deemed the application complete on January 5, 2017. A Notice of Development Application (NODA) was published on February 2, 2017, mailed to neighboring landowners located within 300-feet of the subject parcel(s), and posted onsite.
3. After the public comment period ended, the Department requested additional information. After this material was submitted, a SEPA Mitigated Determination of Non-Significance (MDNS) was issued on December 3, 2018.
4. The Hearing Examiner conducted an open-record public hearing on August 26, 2020, and October 14, 2020. The Hearing Examiner approved the subject Special Use Permit subject to conditions on November 30, 2020.
5. On appeal, the Board of County Commissioners remanded the matter (Resolution: R20210038) to the Hearing Examiner to determine if a Geologically Hazardous Site Assessment was needed.
6. On March 9, 2021, the Hearing Examiner ordered PDS to direct Wooding to provide such an assessment. After review by PDS another hearing would be held on whether additional conditions would be necessary.
7. PDS asked Wooding to 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 on March 23, 2021.
8. On May 27, 2021, PDS reiterated to Wooding that additional information had been requested, that the deadline to provide this information was July 21, 2021, and that failure to provide the information would result in the denial of his application. The requested information was not timely received, and the application was denied as a result on July 21, 2021.
9. The applicant appealed this decision. The Hearing Examiner granted the applicant's appeal and ordered that the site assessment be submitted by the end of September 2022.

10. On August 12, 2022, the applicant submitted a Geologic Hazard Site Assessment to PDS.
11. This Geologic Hazard Site Assessment (and letter from Evergreen Islands responding to the assessment), was forwarded to the Watershed Company (the county's Third-Party Review consultant) for review.
12. On January 19, 2023, the Watershed Company provided PDS with their Third-Party Review findings and response to Evergreen Island's letter.
13. On March 31, 2023, Skagit County Planning and Development Services received a revised Third-Party Review and response to Evergreen Island letter. It was revised per Skagit County's request for formatting and clarity reasons. Accordingly, it was a non-substantive revision.
14. On June 28, 2023, the Hearing Examiner conducted an open-record public hearing to review the remanded item.
15. On July 13, 2023, the Hearing Examiner issued his decision approving the application with an additional five conditions of approval.
16. On July 20, 2023, a Notice of Decision was published in the Skagit Valley Herald. The appeal period ended on July 27, 2023. On July 14, 2023, the Notice of Decision was emailed to parties of record consistent with SCC 14.06.110.
17. During the appeal period, Skagit County's Planning and Development Services Department received two (2) timely appeals of the Hearing Examiner's approval/decision. The first appeal received was from Evergreen Islands (PL23-0363) while the second appeal received was from Sunset Lane Association (PL23-0380).
18. On September 29, 2023, the Board of County Commissioners (BOCC) conducted a Closed-Record Public Hearing regarding the two (2) appeals received. Following public testimony and deliberation on the matter, on October 6, 2023, the Board of County Commissioners issued a remand order (Resolution # R20230197) to the Hearing Examiner (See Exhibit #46). The BOCC remand to the Skagit County Hearing Examiner was the for preparation of a GHSA 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. 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. All other issues raised by the Appellant on this appeal are hereby DENIED, and the Hearing Examiner in all other respects is AFFIRMED.
19. On October 6, 2023, the Hearing Examiner after considering of the above directions, determined that the appropriate course now is to refer this matter to Planning and Development Services (PDS), with instructions to direct the applicant to have another Geologically Hazardous Site Assessment be prepared and submitted to PDS, in accordance with the Board of County Commissioners' October 6 instructions

20. On October 10, 2024, Planning and Development Services Department wrote, emailed, and mailed a letter via USPS to the applicant requiring a Geologically Hazardous Site Assessment be prepared and submitted to PDS, in accordance with the Hearing Examiner/Board of County Commissioners' October 6 instructions. The applicant had 120-days to provide this information to Skagit County PDS per SCC 14.16.105(1).
21. On January 4, 2024, the applicant submitted to Skagit County PDS a request for additional time to submit the requested items to Skagit County. A ninety (90) day extension to this 120-day deadline was granted on January 4, 2024. The requested additional items requested by the Hearing Examiner/Board of County Commissioners were now due by 4:30 PM on May 10, 2024, instead of February 10, 2024.
22. On February 29, 2024, the applicant submitted the requested Geohazard Site Assessment (GHSA) prepared by Northwest Groundwater Consultants to Skagit County's Planning and Development Services as had been requested. The new GHSA included a physical investigation and analysis performed assessing the north/northwest groundwater flow and potential impacts under different mine development scenarios as was requested by the Hearing Examiner and Board of County Commissioners.
23. Following a review of the submitted GHSA, Skagit County Planning and Development Services Department forwarded this report to the department's third-party review consultant- Facet (DCG/Watershed Company) for peer review. The DCG/Watershed Company recently merged with Facet.
24. On April 1, 2024, Skagit County Planning and Development Services received a peer review/third-party review by Facet of the Lake Erie Pit Groundwater Evaluation that was done by Northwest Groundwater Consultants, LLC. According to the peer review report performed by Facet, Facet did not have any suggested revisions or modifications to the Northwest Groundwater Consultant's Geohazard Site Assessment (GHSA) report that assessed/evaluated the north/northwest groundwater flow and potential impacts under different mine development scenarios. Furthermore, Facet believes that the Northwest Groundwater Consultant's report meets the requirement for assessment of potential impacts on bluff retreat rates and slope stability required under SCC 14.24.420 and the Board of County Commissioners and Hearing Examiner remands.
25. Following this most recent third-party review, another Notice of Public Hearing was published in the Skagit Valley Herald on April 18, 2024, 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 emailed/mailed to all parties of record.
26. On May 8, 2024, the matter went back before the Hearing Examiner during an open-record public hearing to review the remanded items requested. O
27. On May 22, 2024, Skagit County Planning & Development Services Department

received a decision from the Hearing Examiner regarding the most recent open-record public hearing on remand. The Hearing Examiner denied the request for a mining special use permit to allow the expansion of an existing gravel mine located in the vicinity of Lake Erie, off Rosario Road on Fidalgo Island, from its current 17.78 acres to the proposed 53.5 acres. According to the Hearing Examiner's decision, the application was denied as the applicant failed to provide the information required in the Board of County Commissioners' second remand order, dated October 6, 2023.

28. On May 23, 2024, a Notice of Decision was published in the Skagit Valley Herald Newspaper. On May 22, 2024, the Notice of Decision was emailed to parties of record. The appeal period ended on June 5, 2024.
29. On June 4, 2024, Skagit County Planning & Development Services Department received a timely appeal (PL24-0198) from the applicant of the Hearing Examiner decision. This matter now goes back before the Skagit County Board of Commissioners for consideration.

JURISDICTION OF THE BOARD OF COUNTY COMMISSIONERS:

The permit applied for here required Level II review. SCC 14.06.050(b); SCC 14.06.120. The Appellants timely filed their appeal pursuant to SCC 14.06.120(9). Thus, the Board has jurisdiction to hear this appeal. SCC 14.06.170(1)(a).

STANDARD OF REVIEW & BURDEN OF PROOF:

The Appellants "bear the burden of demonstrating that the decision of the Hearing Examiner is clearly erroneous." SCC 14.16.120(11); SCC 14.06.170(3). Review is limited to the Record. SCC 14.06.170(9). To find the Hearing Examiner's decision clearly erroneous, the Commissioners must be "left with the definite and firm conviction that a mistake has been committed." *Lauer v. Pierce County*, 173 Wn.2d 242, 253 (2011) (quoting *Phoenix Dev., Inc. v. City of Woodinville*, 171 Wn.2d 820, 829 (2011)). Based on the record and the arguments of the parties the Board may:

- A. Deny the appeal and affirm the Hearing Examiner's decision, SCC 14.06.170(10)(b);
or
- B. Remand the matter back to the Hearing Examiner for further consideration, SCC 14.06.170(10)(a); or
- C. Adopt its own findings, conclusions, and decision, SCC 14.06.170(10)(a).

RESPONSE TO APPEAL:

The Applicant's appeal asserts that he submitted the additional information required by R20230197, yet the Hearing Examiner determined it was insufficient and denied the Application. The Applicant asserts this is clear error for two reasons. First, the Hearing Examiner found the information lacking, although the Department had determined it complete. Second, the remand order specifically directed the Hearing Examiner to determine if any conditions were necessary, and not to reconsider the approval of the special use permit.

The Department's determination of completeness does not bind the Hearing Examiner's obligation to exercise independent judgment in finding facts and reaching legal conclusions. Here, the Hearing Examiner, in light of the BOCC's direction, found the evidence lacking and failing the BOCC's directive to evaluate the northerly or northeasterly flow path—not simply to evaluate it. Decision at p. 26–27. As such the Hearing Examiner concluded that the applicant was unable to meet his burden of proving the impacts of the mine could be mitigated as required by SCC 14.16.440(9)(a). That the Hearing Examiner here disagreed with staff is not clear error, this is how the system is supposed to work.

The Applicant also argues that the Hearing Examiner could not deny the application, he could only impose conditions. But given the Hearing Examiner's determination that the Applicant failed to provide the necessary information, it was not clear error for him to determine that it was impossible to properly condition the project to insure the protection of the public's health, safety, and welfare. As the Hearing Examiner concluded:

The Applicant has had three chances now to demonstrate that its mine will not increase the landslide risk to the coastal bluffs and has failed at each turn to provide sufficient evidence. The Hearing Examiner concludes that a third remand (and a fourth hearing) to gather more evidence is not warranted, because the evidence was already ordered to be produced at this hearing. Because the evidence that was produced is not sufficient to demonstrate compliance with SCC 14.24.420 and does not satisfy the terms of the BOCC's second remand order, the proper action at this point is denial.

Decision at p. 27–28. That the Hearing Examiner find the information presented to him lacking does not require a request for additional information. The Applicant has had numerous opportunities to satisfy his burden that the expansion of the mine will not endanger the public health, safety, and welfare and failed. Explanations and opportunities to get it right must end at some point, and the Hearing Examiner determination that they had ended was not clear error.

PDS RECOMMENDATION/DESIRED OUTCOME:

Based on review of the Record, Skagit County Planning and Development Services Department recommends that the Board of County Commissioners uphold the decision of the Hearing Examiner (Special Use Permit, PL16-0556) and deny appeal PL24-0198.



Kevin Cricchio, AICP, ISA, Senior Planner



Jack Moore, Planning Director