

September 27, 2023

To: Skagit County Board of Commissioners

From: Sunset Lane Association

RE: Rebuttal to Skagit County Planning & Development Services Memorandum dated September 22, 2023. PL23-0363,

Mr. Cricchio misrepresents the mining activity proposed in the special use permit PL16-0556 by stating that the mining will “extend to a depth of approximately 50 feet below existing grade.” As a reference point consider that the elevation for the observation well (BJF103) is 445.6 ft msl and represents the existing grade. In an attachment to the PDS fact sheet, received by PDS December 22, 2016, that Mr. Wooding submitted he states that “we will be expanding the mining depth from 300’ msl to 250’ msl.” Our calculation, 445.6 minus 250 equals 195.6 ft below grade.

In Mr. Cricchio’s response regarding Sunset Lane Association Board’s input to the Board of Commissioners he focuses on the Hearing Examiner’s decision to reverse the County’s denial for failure to provide additional information; he states that it is “a final decision . . .not part of this appeal.” We are not appealing that decision as we understand that fact. However, we feel it is important for the Commissioners to understand the background that brings us to this point putting into context the other arguments we presented which Mr. Cricchio does not reference.

Our concerns follow.

1. Regarding the order granting appeal of October 15, 2021:
  - a. The Hearing Examiner in his Discussion section stated, “Continuation of the mining operation near Lake Erie is not now subject to any explicit regulatory oversight.” This is incorrect. Mr. Wooding provides evidence of the explicit regulatory oversight in his application describing his business as “a permitted mine operation with Skamania County Special Use Permit and a Washington State Department of Natural Resources (DNR) reclamation Permit. The permit includes Parcels 19108, P19162, and P19165.” Mr. Wooding acknowledges oversight in his application, therefore, the Hearing Examiner’s argument that the permit must be approved to gain oversight of the mine is unfounded.
  - b. The hearing Examiner goes on to state
  - c. In addition, in the Conclusion of Law section, the Hearing Examiner states, “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.”

*SCC 14.06.105(3) A denial of an application for failure to timely submit requested information is a Level 1 decision pursuant to this Chapter, regardless of the application level of the original application. A denial for failure to timely submit requested information shall be sent via certified mail to the applicant at the address given on the application or the mailing address on record with the Assessor’s Office as appropriate. The failure of an applicant to receive the denial letter shall not affect the validity of the denial. The decision is appealable as a Level 1 decision.*

As you can see from the code above, the Hearing Examiner's interpretation is a complete fabrication to support his bias previously commented on. Had the Hearing Examiner had been objective and thorough in his review of Skagit County Code the very next section would have provided him with explicit guidance without need for interpretation.

***SCC 14.06.105(4) If an application is denied for failure to timely submit requested information, an application may only reinstate review by submitting a new application consistent with all current requirements. The application is no longer vested.***

We ask, how can an application that is no longer "vested" remain in good standing through September 2022? The appealable issue is whether PSD erred in denying the extension. As PDS did not err in denying the extension there was no avenue for the permit to remain in good standing.

The hearing Examiner stepped outside the code to render this decision.

2. Mr. Wooding's reasoning for the extra time, stated in his appeal dated July 21, 2021, was that there was "not adequate time to find a qualified hydrologist to provide the drilling then schedule a driller." Mr. Taylor, Mr. Wooding's representative, filed an affidavit dated September 22, 2021, in which he provided a schedule of drilling and monitoring by Canyon Environmental Group described as "12 MONTH DRILLING PROJECT." Clearly, Mr. Wooding understood that to satisfy the Commissioners Remand Order there needed to be additional information gathered to produce a Geologically Hazardous Site Assessment directed to "the steep area to the west/northwest of the Mine."
3. This brings us to the report prepared by Wood Environmental.
  - a. The Wood report does not reference any reports from Canyon Environmental Group. This is the firm which Mr. Taylor indicated having contracted with to "assist in the Hydrologic Critical Review" in an email to Mr. Cricchio. Instead, Wood repeats and at times expands on the assertions of hydrogeologist, Mr. Thomas Mullin. Mr. Mullin is the author of the Maul Foster Alongi reports, 2016 and 2017, and the Northwest Groundwater report, 2019. These are the same reports the Commissioners found deficient. To clearly state the issue Skagit County Resolution #20210038 states:

***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*

***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 14.24.412, and*

The Commissioners resolve:

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 preparation of a Geologically Hazardous Site Assessment, consistent with SCC 14.24.400-.420.*

*If so required, directing the Applicant to prepare a Geologically Hazardous Site Assessment, all consistent with Scc 14.24.400-.420 and the Hearing Examiner's discretion: . . .*

- b. The Wood report does make a very important point with regard to the steep coastal bluff to the west of the mine. After a review of the Skagit County LIDAR map, in section 2.2, Site Research, the report states: "The map clearly depicts evidence of landslides along the coastal bluff west of the site and grading due to the mining on the site."

Let us repeat that. **"The map clearly depicts evidence of landslides along the coastal bluff west of the site and grading due to the mining on the site."**

The current Mine has been the cause of landslides. This along with the appeal referenced above, the Commissioners' remand and Mr. Wooding's contract with Canyon Environmental confirm that all parties recognized the need for additional information. Yet, there is no new information in the Wood report.

- c. Section 2.2 of the Wood report goes on: "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." Calculating for a 100-foot buffer, this head scarp is approximately 200 feet from parcel P19108.

Would it not stand to reason that prior to the mining activities at Pit 1 that the head scarp would have been further away? We submit that the distance was in the neighborhood of 600 feet from the mine sidewall prior to the commencement of mining.

- d. In section 4.3, Coastal Bluffs, the Wood report states: “The proposed mining will not have any impact on the coastal bluffs because the excavations will be too far away (300-800 feet).” Based on the reasoning above the head scarp of the bluff at the south end of Sunset Lane was right in the middle of this 300-800 foot range that the Wood report states “will not have any impact.”
4. Please refer back to the section 2.2 of the Wood report which states “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.” We have been focusing on the effects the mine will have to the west/northwest of the mine. All parties have failed to recognize that the Dodson Canyon head scarp is only 125 feet from the southwest property line of the proposed mine expansion. All reports to date have referenced the Dodson Canyon Spring; however, all have failed to mention the head scarp which the South Fidalgo Stormwater Management Plan (2010) describes Dodson Canyon this way: **“The very steep slopes of the canyon are the headscarps of an active landslide area.”** It goes on to say “The headscarp of Dodson Canyon is only several feet from the western edge of Rosario Road.” The plan also states, “Miller’s slope stability map classifies the lower part of Dodson Canyon as Class 3, the most unstable category, and the upper part as Class 2, the intermediate stability category. The Coastal Zone Atlas indicates that Dodson Canyon is Unstable.”

The Commissioners’ resolution references SCC 14.24.400-420. In accordance with SSC 12.24.410(1) Dodson Canyon is classified as a known or suspected erosion hazard.

Further landslide activity would pose great threat to the safety of citizens around the canyon, including potential loss of a main transportation artery, loss of utilities to the homes south of the canyon, increase of response times for first responders, loss of economic activity for the city of Anacortes and Skagit County and the potential for enormous monetary settlements as a result of the County’s negligence.

Again, all parties have been silent on this fact. All for the failure of the hearing Examiner to insist that the proper studies, with complete information, be presented for evaluation.

5. Which brings us to the Hearing Examiner’s Decision on Remand. We will forgo a full discussion and focus on his conclusions.
  - a. Notice of Public Hearing on Remand Proper was “mailed to neighboring landowners within 300 feet of the subject parcel.” This did not fulfil the requirements of SSC 14.06.150(2)(d)(iii) *“For mineral extraction activities, notice must be provided within 1,320 feet of all subject property lines.”*
  - b. “The Hearing Examiner exercises his discretion to conclude that the geologically hazardous area site assessment is compliant with the Board of

County Commissioners' order on remand." The Hearing Examiner erred in applying his discretion. The assessment was not compliant with the Commissioners' order on remand.

- c. "Wood does not, strictly speaking, comply with SCC 14.24.420" We agree; in addition, the Commissioners' Remand states "*If so required, directing the Applicant to prepare a Geologically Hazardous Site Assessment, all consistent with SCC 14.24.400-.420 and the Hearing Examiner's discretion*". This statement does not give the Hearing Examiner the discretion to disregard the requirements of SCC 14.24.420. The Hearing Examiner's discretion was outside of his authority.
- d. The Hearing examiner places great emphasis on the work of hydrologist Mr. Mullen, who is actually a hydrogeologist. The Hearing Examiner states "Mr. Mullen is the only person who has performed a physical investigation of groundwater flow at the mine site. He drilled three test wells in and around the mine pit." This is incorrect and demonstrates that the Hearing Examiner has only made a rudimentary review of the particulars of this application. In fact, Mr. Mullen only drilled one well, Observation Well BJJ-103. The other two wells were existing wells, one on Mr. Wooding's property and another on parcel P127. This exaggeration of the facts is again evidencing the Hearing examiner has lost objectivity and has a bias toward approving the application.

Further, we submit that the methodology used to make the determination that the general direction of groundwater flow is north/northeast is flawed. When all the data obtained and evaluated is from the north/northeast, the only conclusion available is that the flow is from the north/northeast. There is a complete absence of data regarding the groundwater flow west and northwest of the mine **The absence of data does not, in and of itself, reflect the absence of groundwater flow.** The Hearing Examiner also places great emphasis on the Third Party Review performed by the Watershed Company. He states that they "reviewed the three groundwater analyses that the Wood Assessment relied upon." There was only one analysis performed by Mr. Mullen which was repeated in three reports. He repeats the Watershed Company's memorandum of January 18, 2023, that they found no "discrepancies or inaccuracies." The memorandum goes on to state "groundwater levels were developed from a comprehensive mass well measurement." This "massive well measurement" was actually a review of well log reports. Only three wells were measured. Again, an over statement of the facts to support a preconceived outcome.

The Watershed Company first provided a review dated November 22, 2022. In that review they hedged their opinion by stating "The general direction of groundwater discharge in the local aquifer is north/northwest" and the conclusion is "Based on project information available to date." You can infer from these statements that the data set is incomplete.

- e. The Hearing Examiner goes on to state "in the absence of evidence showing a substantial likelihood that northwestern flow will occur, it is not reasonable to require the Applicant or the County to conduct offsite, physical investigations to rebut speculation that it might occur." We refer you back to the statement in the Wood report regarding the landslide resulting from the excavation in the current mine.

**“The map clearly depicts evidence of landslides along the coastal bluff west of the site and grading due to the mining on the site.”**

It is not speculation. The statement above, along with inferred groundwater flow on figure 2 of the Wood report depicting a northerly flow from the western and central portions of the expansion, are irrefutable evidence of the “Substantial likelihood that northwestern flow will occur.”

6. Referring to the Wood report, in section 4.3 the Wood report goes on to cite the Maul Foster report (2016) “The studies concluded the proposed site development *will not impact* the groundwater table or the stability of the coastal bluffs . . .” This is a very strong assessment of the effects of the site excavation and incorrect. The Maul Foster Alongi report (2016) report actually stated in their Groundwater Quantity section that “ground water flow beneath the mine *should have no effect* on slope stability.” What new information did Wood Environmental possess that enabled them to change the prediction from “SHOULD not” to the absolute “WILL” not?

Today, we are experiencing slope instability on Sunset Lane due to springs. The possibility of these springs being fed from surface water infiltration is a possibility as noted by Mr. McShane, a Licensed Engineering Geologist. A review of the Canyon Environmental proposal to Mr. Wooding indicated that they were prepared to do the work gathering the information the Commissioners sought. No such information appears in the Wood report.

The Wood report in section 3.2, Groundwater Conditions, reiterates the ground water flow analysis in the Maul Foster reports of 2016 and 2017, “Groundwater flows north, toward Lake Erie, as shown in Figure 2.” This statement is factually incorrect. Figure 2 depicts the inferred groundwater flow with solid blue lines. The lines that originate in parcels P19158 and P19164 do indeed flow north. However, north of these points is Sunset Lane, NOT Lake Erie. The Wood report also fails to mention the statement in the Maul Foster 2016 report that reads, “a smaller groundwater flow component appears to be to the north-northwest.” Is this northerly flow the cause of the springs on Sunset Lane? Will the mine expansion increase the flow to these springs? Also, figures 3 & 4 indicate that the “inferred water table” is at its highest point, 200 feet, approximately 2000 feet east of the west property line. Then the “inferred water table” slopes downward to 180 feet at the west property line inferring an east to west flow. The north south flow is depicted in figure 5.

7. Mr. McShane makes notes that there is a discrepancy between the water levels reported in the Maul Foster report (2016) and the Northwest Groundwater Consultants report, Mr. Mullen authored both reports. This has not been explained. Our investigation has revealed that the water levels reported in the Maul Foster report (2016) were derived from well reports. Reviewing the well reports in Maul Foster (2016) attachment A, we found that these well reports were from the time of well installation and ranged from 1968 to 2013 (we could find no report for Mr. Wooding’s well). Both Figure 2 in the Wood report and figure 6 in the Maul Foster report, were not accurate representations of water levels at the time the report was written. This may explain the discrepancy. This data was not sufficient to make the assumptions these reports made.

Looking strictly at the data presented by Mr. Mullen in the Northwest Groundwater Consultants report, the changes reported are BJF-103 down 1.7 feet, the Wooding well down 52.5 feet, the Reisner well down 26.7 feet. The question is, where has the water gone? Could more water be flowing toward Sunset Lane?

8. Mr. Cricchio refers to the Watershed Company report as evidence that the appellants concerns were “adequately addressed.” The Watershed report makes no mention of the issues we raise above. They bring up several interesting points though.
  - a. The project proposes to manage stormwater by capturing site runoff for infiltration.” This conflicts with the South Fidalgo Stormwater Management Plan which recommends limiting infiltration in the following areas: “East of Rosario Road (south of Marine Drive).” This is the very location of the Lake Erie Gravel Pit.
  - b. Regarding observation BJF-103 the Watershed report states, “The well log documents the approximately 20-foot-thick layer of semi-consolidated brown to gray clay, at depths of 189 to 209 ft. (259.4-239.4 msl) overlaying water bearing strata at various depths (WDOE, 2017).” He goes on to state that “This clay layer, or aquitard, serves as a protective element for the underlying aquifer and reduces the risk of groundwater contamination from surface sources.” He is saying that surface water should not penetrate the clay layer. Where does the surface water flow if not into the aquifer? Note the depth of the clay layer is 259.4-239.4 msl. Mr. Wooding states in his Critical Area Checklist that “we will expand the mining depth from 300’ msl to 250’ msl.” He plans to excavate down to the clay layer. He will be removing soil and vegetation, which will alter groundwater behavior. We contend that from the evidence these reports have shown there is a high probability that much of this water will flow toward Sunset Lane.

It is interesting to note that in the Maul Foster Alongi (2017) Observation Well Report the Attachment Geological Borehole Log/Well Construction section lists the soil description at 189 feet as “Sandy Silt (ML)” and at 200-209 feet “Silt (ML)”. Why is there a conflict between the Maul Foster (2107) report and the Water Well Report filed by Aquatech Well Drilling and Pumps, Inc., with WDOE which lists “Brown Clay 189-202”, “Gray Clay 202-209”?

9. Mr. Cricchio states that “PDS believes the items requested of the applicant by the former Assistant Planning Director Michael Cerbone in his letter dated March 23, 2021, required by the Hearing Examiner and Board of County Commissioners have been met fully.” We respectfully disagree with Mr. Cricchio. This conclusion defies logic. The referenced letter specified three specific elements.
  - a. *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.*

Here the assessment contradicts itself stating “The map clearly depicts evidence of landslides along the coastal bluff west of the site and grading due to the mining on the site.” Then it goes on to state “The proposed mining will not have any impact on the coastal bluffs because the excavations will be too far away (300-800 feet).”

The inferred groundwater flow indicated on figure 2 clearly shows that groundwater will flow toward Sunset Lane, which increases the risk of landslides.

- b. *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 only reference which could possibly be related to springs states “The site is too far away from the coastal bluffs to cause any changes in these conditions except possibly groundwater seepage . . .”

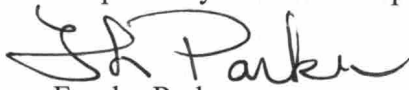
There has been no analysis of the springs on the coastal bluff to the northwest of the mine.

- c. *Respond to the testimony of the professional geologist who identified that the proposed mine expansion will create an increased landslide risk.*

The testimony of Mr. McShane, *the professional geologist who identified that the proposed mine expansion will create an increased landslide risk*, was not addressed anywhere in the Geologic Hazard Site Assessment prepared by Wood Environmental & Infrastructure Solutions, Inc.

We, the Sunset Lane Association request that the Board of County Commissioners pursuant to SCC 14.06.170(10) find the Hearing Examiner’s decision clearly erroneous, adopt your own findings and conclusions. Then, based on the record deny the application for Special Use Permit PL 16-0556.

Respectfully submitted September 27, 2023



Franky Parker  
President  
Sunset Lane Association