



# Skagit County Planning & Development Services

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April 5, 2018

Via E-mail Only: [john@semrau.com](mailto:john@semrau.com); [BLynn@gth-law.com](mailto:BLynn@gth-law.com)

William Lyn  
Gordon Thomas Honeywell LLP  
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Via Certified Mail and E-Mail: [danc@gravelpits.com](mailto:danc@gravelpits.com)

Dan Cox  
Concrete Nor'West/Miles Sand & Gravel  
P.O. Box 280  
Mount Vernon, WA 98273

RE: Denial of Application for Failure to Timely Submit Requested Information (PL16-0097)

Gentlemen:

We are in receipt of your correspondence dated February 23, 2018. Your project application materials continue to be incomplete as discussed in person with Planning & Development Services on November 20, 2017 and as noted in our prior correspondence. Courtesy copies of our prior correspondence are enclosed for your convenience. To summarize, dating back to our March 14, 2017 letter, we asked you to update your application materials and all supporting documentation to address numerous factual inaccuracies and to ensure consistency with your current project plans. We reiterated our request for this additional information in our July 6, 2017 letter. As discussed at the November 20, 2017 meeting, we specifically requested new, updated versions of these documents, which we have not received.

In our July 6, 2017 letter, we asked you to revise your application and plans to indicate a 300-foot buffer from the edge of the wetlands to the gravel mining operation. We also asked you to amend your application to ensure the access road is in compliance with the private road standards. However, your submittal on February 23, 2018 did not include this information. The revised application form recently transmitted fails to address the access road.

Our July 6, 2017 letter also requested a site-specific Spill Control Plan to address potential water pollution impacts under Skagit County Code ("SCC") 14.16.900(1)(b)(v)(C). Via letter on October 24, 2017 and again in person on November 20, 2017, we informed you that the Spill Control Plan was incomplete. The revised Spill Control Plan submitted on February 23, 2018 remains incomplete since it fails to address on-site operations and site-specific equipment, and does not contain a site plan.

With respect to the Noise Study submitted on February 23, 2018, several underlying assumptions in the study appear to be incorrect. For example, page 7 of the study states the primary noise source will be a “front-end loader excavating material from the floor of the pit.” However, a front-end loader is not used to excavate material. In addition, the Noise Study fails to analyze other heavy equipment (excavator, dozer and dump trucks) that may be used at the site according to your application. The Noise Study also inaccurately states that the proposed mine “would be situated in the middle of 726 acres of continuously owned property” and presumes that “most of the existing buffers would remain intact.” It is our understanding that your surrounding properties may be harvested and buffers de-forested, which may impact noise transmission off-site. It is unclear whether this was addressed in the Noise Study. Accordingly, we find the Noise Study to be inaccurate and incomplete for the operations proposed.

Concrete Nor’West’s revised application materials also failed to provide sufficient evidence showing compliance with the criteria in SCC 14.16.900(1)(b)(v) as noted in the March 14, 2017 letter. Specifically, there have been numerous public comments on the “potential adverse effects on the general public health, safety and welfare” of the proposed operations, which Concrete Nor’West has failed to address.

Since the additional information requested on March 14, 2017 and again on July 6, 2017 was not provided (despite an extension through the end of February, 2018), Skagit County Planning & Development Services is denying your application (PL16-0097) at this time pursuant to SCC 14.06.105. A denial for failure to timely submit requested information is a Level I decision that may be appealed to the Hearing Examiner. Pursuant to SCC 14.06.105(4), Concrete Nor’West may only reinitiate review by submitting a new application consistent with all current requirements.

If you have any questions, please contact me at (360) 416-1328.

Sincerely,



Hal Hart  
Director of Planning & Development Services

Enclosures

1. March 14, 2017 letter from Skagit County
2. July 6, 2017 letter from Skagit County
3. October 24, 2017 letter from Skagit County

cc: John Cooper  
Betsy Stevenson  
Board of County Commissioners  
Tim Holloran  
Julie Nicoll



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March 14, 2017

Via E-mail: Dan.Cox@miles.rocks; john@semrau.com; BLynn@gth-law.com

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RE: Request for Additional Information (PL16-0097)

Gentleman:

As you know, the second public comment period for Concrete Nor'West's gravel mining application has resulted in over one hundred comment letters. The comments indicated great concern about truck traffic and road safety. To address these concerns, Skagit County Public Works will run additional traffic models and road tests to ensure compliance.

Comment letters also indicated concern about noise and the facility's hours of operation. Per SCC 14.16.900 (Special Use Permit Requirements), the proposed use shall "not create undue noise, odor, heat, vibration, air or water pollution impacts" to its surroundings and shall "not cause potential adverse effects on the general public health, safety and welfare." To achieve compliance with this rule, the maximum number of truck trips per day and hours of operation will be conditioned. Based on the information you provided us, 46 truck trips per day is a reasonable limit. In addition, operations will be limited to Monday through Friday, 7:00 a.m. to 5:00 p.m. (except holidays).

In order for Skagit County to further evaluate the public's concerns, the following information is required:

- The Upper Skagit Tribe and Washington Department of Archaeology and Historic Preservation have indicated that the area proposed for mining has been inhabited by the Nuwaha band of the Upper Skagit Tribe. In order to confirm that mining activities do not disturb archaeological resources, please submit a professional archaeological survey for the project area.
- Comment letters stated that improvements to the access road are required to meet private road standards. Skagit County Public Works Department confirmed the access road is insufficient to meet private road standards and the Fire Marshal's Office requires improvements to the access road to meet private road standards. For example, 20 feet of driving surface is required for emergency access. See SCC 15.040.030(2)(f) (Section D103.2 Fire Department Vehicle Access Roads) and

"Helping You Plan and Build Better Communities"

Skagit County Road Standards. Please provide a plan indicating the proposed improvements to the access road to achieve private road standards. Also include verification that the bridge over Swede Creek is rated as HS-25. In the event that the improvements to the access road are required within 200 feet of Swede Creek or other critical areas, additional critical areas review may be necessary.

- The application indicates that a 2,000 gallon fuel tank *may* be stored on-site. However, the Hydrogeologic Site Assessment indicated that a mobile fuel truck may be used and no permanent fueling or maintenance facilities are proposed on-site. Please verify whether a fuel storage tank will be placed on-site or if a mobile fuel system will be used. Comment letters have also indicated a concern about potential fuel, hydraulic fluid, and oil spills on-site and potential impacts to water quality. Please include all plans to contain and prevent hazardous material spills, including the spill control plan and a clean-up plan in the event of a spill.
- The application indicates that no processing of material, including dry screening will occur on-site. However, the Hydrogeological Site Assessment indicates that dry screening of material (page 4, second paragraph) may occur. Accordingly, please verify whether processing or screening will occur on-site.
- Comment letters indicated that a full review of Endangered Species Act (ESA)-listed species, such as the Oregon spotted frog and Washington State sensitive species, was not addressed in the fish & wildlife/wetland site assessment per SCC 14.24.220 and SCC 14.24.520. Comment letters also indicate a 300 foot buffer should be applied due to the high intensity use. Currently, your fish & wildlife/site assessment plan includes a 200 foot buffer. Please update your fish & wildlife/wetland site assessment to address these comments.

Finally, as noted above and in the public comment letters received to date, there are numerous factual discrepancies in your Application, Project Description, SEPA Checklist, Traffic Study, and Fish & Wildlife Site Assessment. While we understand these materials were prepared at different times throughout the planning process, we ask that you update these materials to include the supplemental information requested above and to ensure consistency with your current project plans.

After receiving your updated materials, the County will issue a Revised SEPA Determination for public comment. Since certain neighbors were inadvertently excluded from the original notice list you prepared, we will update the list and ensure that proper notice is provided. Subsequently, the Staff Report for the Special Use Permit will be revised and published for public comment and hearing.

Thank you for your patience in this matter. If you have any questions, please contact my office at (360) 416-1334.

Sincerely,



John Cooper, LG  
Planner/Geologist



# Planning & Development Services

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July 6, 2017

*Via E-mail Only: Dan.Cox@miles.rocks; john@semrau.com; BLynn@gth-law.com*

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RE: Response to Concrete Nor'West May 15, 2017 Letter (PL16-0097)

Gentlemen:

Thank you for your response letter dated May 15, 2017. Your revised application materials are incomplete, as described below. Accordingly, additional information is necessary before we can continue processing your application.

1. With respect to the proposed hours of operations, SCC 14.16.440 states:
  - (i) Hours of operation shall vary according to the location of the site as stated below and may be shortened by the Hearing Examiner based on site-specific circumstances:
    - (i) Within designated natural resource lands, the hours of operation *may be* unlimited. The Hearing Examiner may limit hours of operation to daylight hours or to such other reasonable limitation deemed necessary to address potential significant adverse impacts to existing adjacent land uses, on any portion of the mining site where mining activity is proposed to occur less than 1/4 mile from existing Rural Intermediate, Rural Village, or Urban Growth Area designated lands[.]

While the Hearing Examiner is the decision-maker with respect to the hours of operation, Planning & Development Services (PDS) provides the Hearing Examiner with recommendations based on its review and analysis of the proposed project and its potential impacts. Based on the limited information received to date from Concrete Nor'West, we initially recommended that operations be limited to Monday through Friday, 7:00 a.m. to 5:00 p.m. (except holidays). It is unclear what evidence Concrete Nor'West relies on to support its position of unlimited operations pursuant to SCC 14.16.440.

2. Furthermore, there are additional general special use permit criteria that Concrete Nor'West must comply with as set forth in SCC 14.16.900(1)(b)(v). To date, Concrete Nor'West's application materials have failed to provide sufficient evidence to support the following criteria in SCC 14.16.900(1)(b)(v):

- (A) The proposed use will be compatible with existing and planned land use and comply with the Comprehensive Plan.
- (B) The proposed use complies with the Skagit County Code.
- (C) The proposed use will not create undue noise, odor, heat, vibration, air and water pollution impacts on surrounding, existing, or potential dwelling units, based on the performance standards of SCC 14.16.840.
- (D) The proposed use will not generate intrusions on privacy of surrounding uses.
- (E) The proposed use will not cause potential adverse effects on the general public health, safety, and welfare.
- (F) For special uses in Industrial Forest—Natural Resource Lands, Secondary Forest—Natural Resource Lands, Agricultural—Natural Resource Lands, and Rural Resource—Natural Resource Lands, the impacts on long-term natural resource management and production will be minimized.
- (G) The proposed use is not in conflict with the health and safety of the community.
- (H) The proposed use will be supported by adequate public facilities or services and will not adversely affect public services to the surrounding areas, or conditions can be established to mitigate adverse impacts on such facilities.
- (I) The proposed use will maintain the character, landscape and lifestyle of the rural area. For new uses, proximity to existing businesses operating via special use permit shall be reviewed and considered for cumulative impacts.

**To show compliance with the above criteria, a noise and vibration study should be conducted and your application materials should be updated to include all supporting evidence.** This type of assessment will identify any potential noise and vibration impacts to the surrounding community and will support a final determination on the proposed hours of operations and any limitations to address potential impacts.

3. Concrete Nor'West's proposed operation includes an average of 46 truck trips per day, with a potential maximum limit of 720 truck trips per day. These figures have resulted in significant public concern about traffic and noise impacts to local residents. Per SCC 14.16.900 (Special Use Permit Requirements), the proposed use shall "not create undue noise, odor, heat, vibration, air or water pollution impacts" to its surroundings and shall "not cause potential adverse effects on the general public health, safety and welfare." As previously noted, to achieve compliance with Skagit County Code, we initially recommended that the number of truck trips be limited to 46 per day based on the information provided by Concrete Nor'West to date. Based on the results

of the additional traffic study that will be conducted as described below, we may revisit this proposed limitation.

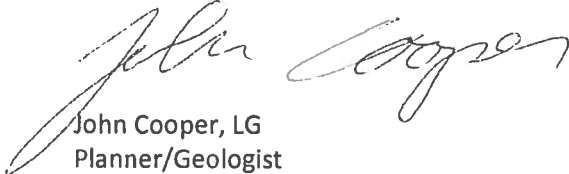
Additionally, existing traffic reports from DN Traffic Consultants have not alleviated public concern. As a result, Skagit County Public Works is in the process of retaining a third party traffic consultant to further evaluate potential traffic impacts of the proposed project, including safety concerns relating to pedestrians, bicycle riders, and school bus stops. Pursuant to SCC 14.16.440(8)(i), the consultant will also determine whether the "roads or bridges are capable of sustaining the necessary traffic for the proposed mineral extraction operation, and that the proposed operation meets level-of-service, safety, and other standards as outlined in the Skagit County Transportation Systems Plan, the Skagit County Comprehensive Plan, and applicable State and local regulations." Finally, the consultant will evaluate the sufficiency of the proposed mitigation and may propose additional mitigation if necessary to reduce or eliminate potential traffic impacts.

4. While the access road is currently being used for forest practice activities, the road will need to be upgraded to Skagit County private road standards to accommodate the commercial gravel operations pursuant to SCC 14.36.010, the County Road Standards adopted by Resolution 17930, and the Fire Marshal Standards set forth in SCC 15.04.030(2)(f) (Section D103.2 Fire Dept. Vehicle Access Roads). Accordingly, **please amend your application to ensure compliance with these requirements.** In the event that the improvements to the access road are required within 200 feet of Swede Creek or other critical areas, additional critical areas review may be necessary.
5. Thank you for confirming that your proposal includes the potential of storing a 2,000 gallon fuel tank on-site. Your application will be processed reflecting the possibility of potential fuel, hydraulic fluid, and oil spills on-site and potential impacts to water quality. You have indicated that you will include this mining location into Miles' Sand and Gravel General Permit and will apply certain provisions of the Sand and Gravel General Permit as your procedures for managing fuel and other hazardous materials onsite. It is our understanding that the Sand and Gravel General Permit does not include a site-specific Spill Control Plan for the proposed operations. Accordingly, **please submit a copy of your site-specific Spill Control Plan.**
6. The Fish and Wildlife Site Assessment prepared by Graham Bunting and Associates discusses land use impacts in Section 5.2.2 and concludes that the gravel mining operation is a moderate impact land use, thus a 200-foot buffer is adequate to protect the Samish River and associated wetlands. However, comment letters received from the Washington Department of Ecology (dated June 1, 2016 and December 27, 2016) and other local wetland professionals conclude that the gravel mining operation is a high impact land use and will require a 300-foot buffer from the edge of the wetland to the gravel mine. SCC 14.04 defines High Impact Land Use as *"land uses which are associated with high levels of human disturbance or substantial habitat impacts including, but not limited to, medium- and high-density residential (more than one home per five acres), multifamily residential, some agricultural practices, and commercial and industrial land uses."* Since your proposal is both a commercial and industrial land use that involves the extraction of approximately 4,280,000 cubic yards of material over 20 years, the proposed operations are a high impact land use. **Please amend your application and plans to indicate a 300-foot buffer from the edge of the wetlands to the gravel mining operation.**

7. Although the information you provided included many supporting documents, your submittal did not include updated application materials, as requested in our March 14, 2017 letter, resolving the numerous factual discrepancies in your Application, Project Description, and SEPA Checklist. **Please update these materials to include the supplemental information requested and to ensure consistency with your current project plans.**

After receiving your updated materials, the County will determine if your application is complete and proceed accordingly. Thank you for your patience in this matter. If you have any questions, please contact my office at (360) 416-1334.

Sincerely,



John Cooper, LG  
Planner/Geologist





# Planning & Development Services

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October 24, 2017

*Via E-mail Only: Dan.Cox@miles.rocks; john@semrau.com; BLynn@gth-law.com*

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**RE: Response to Concrete Nor'West September 20, 2017 Letter (PL16-0097)**

Gentlemen:

We are writing to respond to your letter dated September 20, 2017. Your revised application materials remain incomplete as described in our prior letters dated March 14, 2017 and July 6, 2017 (copies of which are enclosed). Skagit County Planning & Development Services (PDS) requested additional information pursuant to Skagit County Code (SCC) 14.06.100(5), and we cannot continue processing your application without this information. In addition, the Spill Control Plan submitted with your September 20, 2017 letter is incomplete and should be re-submitted.

Pursuant to SCC 14.06.105(1), you have 120 days to submit the information requested on July 6, 2017. Accordingly, please submit the additional information **on or before November 3, 2017**. If all of the requested information is not received by PDS within 120 days, PDS will deny the application for failure to timely submit the requested information.

If you have any questions regarding this matter, please contact me directly at (360) 416-1328.

Sincerely,

Dale Permula, AICP  
Director

Enclosures