



Appeal or Request for Reconsideration

Planning & Development Services · 1800 Continental Place · Mount Vernon WA 98273
voice 360-416-1320 · inspections 360-416-1330 · www.skagitcounty.net/planning

File #: PL18-0200
RECEIVED
APR 16 2018
SKAGIT COUNTY Received PDS

Appeal

What are you appealing?

- Appeal of an Administrative Interpretation/Decision/Action to the Hearing Examiner
- Appeal of an Administrative Order to Abate (code enforcement order) to the Hearing Examiner
- Appeal of Impact Fees to the Hearing Examiner (impact fees must be paid) (SCC 14.30.070)
- Appeal of Hearing Examiner Decision/Action to the Board of County Commissioners
- Request for Reconsideration of a Hearing Examiner Decision (SCC 14.06.180)

File # of Appealed Decision or Permit	PL16-0097	Appeal Fee	\$ 1000. ⁰⁰	PDS will calculate
Date of Appealed Decision or Permit	4-5-2018	Publication Fee	\$ 280.-	PDS will calculate

PDS staff: do not accept appeal form without full payment of fees

74- REC Sec

Appellant

Standing to appeal	<input checked="" type="checkbox"/> Permit applicant <input type="checkbox"/> Party of Record <input type="checkbox"/> Party subject to code enforcement order <input type="checkbox"/> Other			
Name	miles Sand & Gravel		Dan COX (Contact)	
Address	PO Box 280			
City, State	Mount Vernon	98273	Phone	(360) 757-3121
Email	dan.cox@miles.rocks	Signature		

Attorney or Representative

None

Name	William T Lynn				
Address	1201 Pacific Ave Ste 2100				
City, State	Tacoma, WA	Zip	98402	Phone	253-620-6416
Email	blynn@gth-law.com				

Attachments

For any of the **appeals** listed above, please attach a concise statement with numbered responses to the following questions.

1. What is your interest in this decision?
2. How are you aggrieved by the decision you are appealing?
3. What are the specific reasons you believe the decision is wrong?
e.g. erroneous procedures, error in law, error in judgment, discovery of new evidence
4. Describe any new evidence.
5. List relevant sections of Skagit County Code.
6. Describe your desired outcome or changes to the decision.

For a request for **reconsideration** of a Hearing Examiner decision, attach a statement identifying the specific errors alleged.



PL18-0200
RECEIVED
APR 16 2018
SKAGIT COUNTY
PDS

William T. Lynn
Direct: (253) 620-6416
E-mail: blynn@gth-law.com

April 12, 2018

Skagit County Hearing Examiner
1800 Continental Place
Mount Vernon, WA 98273

RE: Concrete Nor'west
PC16-0097 – County Decision to Deny Application dated April 5, 2018

This letter shall serve as the Appeal by Miles Sand & Gravel Company and Concrete Nor'west of the Skagit County Planning and Development Services Department Decision April 5, 2018 to deny the above-referenced Miles' application for failure to submit timely requested information. A copy of the Decision appealed from is attached.

This Appeal is filed under Skagit County Code (SCC) 14.06.105 and .110. The following statements are set forth to meet the requirements of SCC 14.06.110(8)(a-e)

a) *The Decision Being Appealed.* The Decision being appealed is the letter dated April 5, 2018 a copy of which is attached as Exhibit A.

b) *The Name and Address of the Appellant and His Interest(s) in the Matter.* The Appellant is Miles Sand & Gravel Company and Concrete Nor'west, c/o Dan Cox, P.O. Box 280, Mt. Vernon, Washington 98273. The Appellant's Attorney is William T. Lynn, Gordon Thomas Honeywell, 1201 Pacific Avenue, Suite 2100, Tacoma, Washington 98402. Appellant has standing in this matter because it is the owner of the property that is the subject of the application and is the applicant for the permit at issue.

c) *The specific reasons why the appellant believes the decision to be wrong.* See attached Exhibit B.

d) *Desired outcome or changes to the decision.* The appellant requests that the decision be reversed and the application processed. Alternatively, the Appellant requests that the matter be remanded by the Examiner so that the Appellant has a fair opportunity to cure any defects.

Reply to:
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Tacoma, WA 98402 (253) 620-6565 (fax)

Seattle Office
600 University, Suite 2100 (206) 676-7500
Seattle, WA 98101 (206) 676-7575 (fax)

Gordon Thomas Honeywell^{LLP}

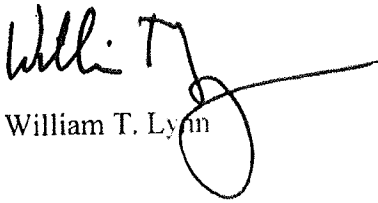
April 12, 2018

Page 2

e) *Any Skagit County Code Section(s) the appellant deems relevant.*
Relevant Code Sections are included on Exhibit B. In general, this is based on SCC 14.06 chapter which implements RCW 36.70B chapter

We submit this appeal with a filing fee in the amount of \$1,000.00. If anything further is necessary to perfect this appeal please notify me immediately.

Very truly yours,



William T. Lynn

WTL:lb

Enclosures

cc: Client

Approved this 16 day of April, 2018.

Miles Sand & Gravel Company
(Concrete Nor'west)


By: 
Dan Cox

EXHIBIT B

The Appellant alleges that the County Decision dated April 5, 2018 is incorrect for the following reasons:

1. Brief Procedural History. A brief procedural history will help provide context for the additional allegations set forth below. The Special Use Permit Application (Application) was filed March 7, 2016, assigned permit number PL16-0097, and deemed complete by the County on March 22, 2016. Notice of the Application was published March 31, 2016. The SEPA review process was completed, the SEPA MDNS was issued May 24, 2016, and the matter was set to go before the Hearing Examiner for public hearing. The Examiner actually convened the Hearing on November 16, 2016. The published staff report presented to the Examiner (attached here as Exhibit C) found that the Application met the requirements of applicable County codes, and that all findings necessary for the approval by the Examiner could be made. The staff report recommended approval subject to conditions.

Near the time of the public hearing, the County determined that notice of the Application had not been properly given. As a result, the hearing was opened by the Hearing Examiner, but then continued to a date to be set in the future. The County then recirculated a Notice of the Application for public comment and provided an opportunity for additional public comment with a deadline of December 30, 2016.

Since that time, the County has essentially treated the Application as being in an unending public comment period. In place of codes that formed the basis of its prior staff determination, the County has requested information seemingly based on “whatever the public wants”, and has required the Appellant to meet a standard of “whatever will satisfy objecting parties.”

The County has disregarded its own previous determinations made as to the completeness of the Application, and has disregarded the analysis of its own experts in reviewing Application materials, particularly related to wetlands, public works and traffic. In some cases (the noise and vibration study) the Appellant has been given no County comments and no real opportunity to respond to public comments. In some cases (traffic) the Appellant is still awaiting County comments. In other cases, the County has completely ceded its review authority to others (agencies or the public) without exercising the review discretion that the County staff is provided by code and statute. In still other cases, the County has ignored important mitigation measures provided by other agency permitting, in contravention of SEPA. More specific allegations are set forth below.

2. The first cited basis for denial in the letter is the Appellant’s failure to show a 300-foot buffer from the edge of the wetland to the gravel mining operation. This ignores the previous County determination that a 200-foot buffer was consistent with County standards (see staff report attached as Exhibit B, p. 6). Moreover, this so-called defect does not affect the sufficiency of the Application. An application is complete if the submittal standards are met and requested information is provided SCC 14.06.090, .100 and .105. Here, the County is not requesting “information” but rather substantive changes to the proposal. The Application should go to the Examiner for his review. If the Hearing Examiner should determine that a 300-foot buffer is

required, that condition can be imposed at the time of the public hearing on the Application and the plan can be simply revised.

3. The County asserts that the Application must be modified to ensure the access road is in compliance with the private road standards that it deems applicable. This again does not affect the adequacy of the Application, which was previously deemed complete. And again, this is not a request for “information”. If the Hearing Examiner determines that the project has to meet the private road standards, then a condition to that effect can be imposed. The most recent application materials submitted by the Appellant (February 23, 2018) specifically suggest a condition of approval to this effect if deemed necessary.

4. The County then requests a “site-specific Spill Control Plan” to address potential water pollution impacts. The County is required by SEPA to take into account mitigation provided by other permits to which an application is also subject. WAC 197-11-330(1)(c). The Appellant has advised the County on several occasions that the Department of Ecology has authority under the Clean Water Act to protect water quality and will require the applicant to comply with the provisions of the Sand and Gravel General Permit issued by the Department of Ecology under the National Pollution Discharge Elimination System process and the requirements of the State Waste Discharge General Permit. This includes the requirement for a Spill Control Plan. The County erred in failing to consider the requirements of these permit requirements administered by the State agency with primary authority with respect to water quality.

The County further asserts that the Spill Control Plan is inadequate because it fails to address “on-site operations and site-specific equipment and does not contain a site plan.” This ignores the fact that a surface mine by its very nature is a land use that evolves over time. The various features that have the potential to adversely affect water quality move throughout the site as the mining proceeds. That is the reason that, as a generally accepted practice in the field, spill control plans are written generically so that the required measures (BMPs) apply wherever on the site activities with potential impact might occur. Nothing in the County Code including the provision cited by the County in its letter (SCC 14.16.900(1)(b)(v)(C) requires the details requested by the County, and the absence of those certainly has no bearing on the completeness of the Application. In fact a site specific plan would defeat the purpose of the measures by tying them to a specific location.

5. The County’s comments regarding the noise study are particularly disturbing for several reasons. First, there was no evidence presented to the County to support the need for a study. The County should have adhered to its staff report finding of no adverse impact unless presented with facts to overcome that. Community displeasure is not a basis for land use decision-making. *Marantha Mining v. Pierce County*, 59 Wn. App. 795 (1990). The County’s finding is supported by adopted noise standards (SCC Chapter 9.50) that apply to the proposal.

Second, the noise report was submitted on February 23, 2018 at the County’s request, and the Appellant was never provided any County comments about the alleged “defects” until the application was denied. The only comments the Appellant received from the County were those forwarded from a neighbor on March 29th, four business days before the County denied the Application as incomplete. It is arbitrary and capricious and an erroneous process to summarily reject a noise study prepared by the professional without any opportunity to respond to

comments. We are confident that none of the bases cited in the County's April 5th letter would change the conclusions of the noise expert. In any event, the standard practice in this County and elsewhere (and the only process consistent with the rights of an applicant) is to provide comments and then allow an opportunity for correction or modification.

Moreover, the alleged deficiencies in the April 5 letter are exactly the same as those identified by the objecting neighbor in the comment forwarded by email on March 29th. The County is clearly not providing its own analysis and applying its own expertise. It is simply forwarding comments of neighbors and asking the Appellant to respond. In this case, the County went a step further and determined that the Appellant's failure to respond to the neighbor concerns within 4 business days was a reason to deny the Application altogether. This is completely inconsistent with any fair and objective process and unlawfully delegates the County's duties and powers to the public.

6. The County asserts that the Appellant failed to provide sufficient evidence showing that the criteria for the issuance of the Special Use Permit have been met. Of course, this first ignores the County's own previous findings that the criteria were met (see staff report). Second, it is not a request for "information". Third, it ignores the fact that the County staff's role here is to merely provide a recommendation and input to the Hearing Examiner. The Hearing Examiner's role is to make these determinations. Though this Appellant certainly makes every effort to do so, it is not required to satisfy the staff as to the merit of the proposal. The Appellant's burden is to satisfy the Hearing Examiner, and in denying the Application on the basis of incompleteness, the staff has usurped the Examiner's authority.

It is particularly troublesome that the staff's assertion here is that there were "numerous public comments" as to adverse effects that the applicant failed to address. It is not the Appellant's responsibility to respond to every public concern (though the Appellant certainly attempts to respond to all legitimate comments). The County staff's responsibility is to analyze the public comments and discern which of those require further analysis and then to advise the Appellant of that in due course. The staff is not to simply pass along every public comment and determine as a gate-keeper that all must be satisfied prior to advancing the Application to the Hearing Examiner process.

7. Although not mentioned in the letter, the Appellant is also concerned about the County's review of traffic impacts. We were advised some months ago that the County has retained a third party expert to review and comment upon the traffic study submitted to support the Application. To date, the Appellant has received no communications regarding the third party experts' conclusions. Based upon the history of this County review, the Appellant is justifiably concerned that, should this Application move forward as requested, the County will at some later point present a new list of comments requiring a response. The County should be required to provide all of its comments, including any as to the traffic report, in a specified period of time, well in advance of the hearing on this appeal. And, an extension of the Application time is appropriate for this. The County has specific authority to extend the time when needed to get input from another reviewer. SCC 14.06.105(5).

8. The staff has opened this Application to what seems to be unending public comment, and has changed its views about the proposal based upon those comments, even when they consisted of statements of opinion or mere conclusions. Many if not most comments do not present facts,

and certainly not facts based on expertise. The staff has set impossible goals for the Appellant: to address all public comments even from those who would never be satisfied. It would be bad enough if these public comments simply affected the staff's recommendation to the Hearing Examiner, but here, they are being used as a screen to deny the Appellant an opportunity to present its case to the Hearing Examiner. That is not a lawful process. It is arbitrary and capricious and contrary to the Appellant's right to have its proposal heard fairly before the Hearing Examiner. It also denies the Appellant the due process the U.S. and State Constitutions require.

9. On these bases, the Appellant will be requesting that the Hearing Examiner either overturn the staff's decision altogether and bring the matter on for hearing, or at the very least, remand the application for specific information requests consistent with the requirements of law.



Skagit County Planning & Development Services

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April 5, 2018

Via E-mail Only: john@semrau.com; BLynn@agth-law.com

William Lyn
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John Semrau, PE & PLS
2118 Riverside Drive, Suite 208
Mount Vernon, WA 98273

Via Certified Mail and E-Mail: 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.

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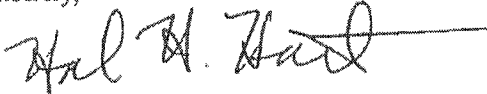
With respect to the Noise Study submitted on February 23, 2018, several underlying assumptions in the study appear to be incorrect. For example, page 7 of the study states the primary noise source will be a "front-end loader excavating material from the floor of the pit." However, a front-end loader 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 reinstate review by submitting a new application consistent with all current requirements.

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

Sincerely,

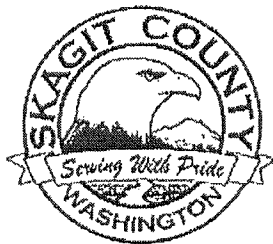


Hal Hart
Director of Planning & Development Services

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



Skagit County Planning & Development Services

1800 Continental Place ♦ Mount Vernon, WA 98273 ♦ Phone (360) 336-9410 ♦ Fax (360) 336-9416
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March 14, 2017

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

Dan Cox
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P.O. Box 280
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John Semrau, PE & PLS
2118 Riverside Drive, Suite 208
Mount Vernon, WA 98273

William Lyn
1201 Pacific Avenue, Suite 2100
Tacoma, WA 98402

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

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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

Dan Cox
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John Semrau, PE & PLS
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Mount Vernon, WA 98273

William Lynn
1201 Pacific Avenue, Suite 2100
Tacoma, WA 98402

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.

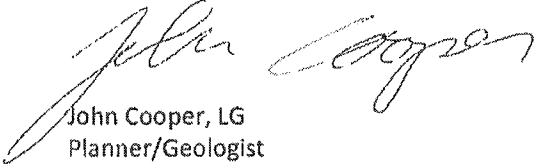
Additionally, existing traffic reports from DN Traffic Consultants have not alleviated public concern. As a result, Skagit County Public Works is in the process of retaining a third party traffic consultant to further evaluate potential traffic impacts of the proposed project, including safety concerns 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 Pernula, AICP
Director

Enclosures