

Exhibit A-01: CSVN Notice of SEPA Appeal

BEFORE THE HEARING EXAMINER

IN AND FOR THE COUNTY OF SKAGIT, WASHINGTON

**In the Matter of the Appeal of Skagit
County SEPA Mitigated
Determination of NonSignificance for
File Nos. PL16-0097 & PL16-0098.**

No. PL16-0097
No. PL16-0098

NOTICE OF APPEAL

I. INTRODUCTION AND DECISION BEING APPEALED

Appellant Central Samish Valley Neighbors and its representatives Martha Bray, John Day, Linda Walsh, Larry Hedgepeth, Josie Hedgepeth, Wallace Groda, Brian Bowser, Jedidiah Holmes, Kathy Reim, Robert Reim, Jim Wiggins, and Abbe Rolnick (“Appellants”), respectfully file this Notice of Appeal pursuant to SCC 14.06.110(8) to request that the Skagit County Hearing Examiner reverse the Mitigated Determination of NonSignificance (“MDNS”) that the Skagit County Planning & Development Services (“PDS”) issued on February 24, 2022 for Applications No. PL16-0097 and PL16-0098. That MDNS erroneously concludes that the clearing of 68 forested acres nestled against the Samish River and its associated wetlands, and the extraction of 4,280,000 cubic yards of gravel from across 51 mining acres, will occur without significantly affecting the natural environment and local traffic. While the mine applicant, Concrete Nor’West (“Applicant” or “CNW”), has submitted several consultant reports since first applying for a Special Use Permit to create and operate the mine, the reports have yet to adequately evaluate the ecological impacts of a substantially undersized wetland buffer, the expansion of a 2.2-mile-long internal haul road amidst 36 wetlands, 21 seasonal streams, and Swede Creek, converting 68 acres of forested wildlife corridor to gravel mine, the

1 carbon emissions generated by industrial trucking, sight distance impacts and other traffic
2 hazards along several potential public roads that might serve as haul routes, geological
3 instabilities that could lead to sediment pollution of Swede Creek, and more.

4 Washington's State Environmental Policy Act ("SEPA") mandates that a lead agency
5 obtain reasonably sufficient information to evaluate the environmental impacts of a proposal
6 before issuing a threshold determination. PDS' decision to issue the MDNS before obtaining all
7 of the necessary information was clearly erroneous, and the modest conditions attached to the
8 MDNS fail to correct that error. Consequently, Appellants respectfully request that the Hearing
9 Examiner reverse and vacate the MDNS, a copy of which is attached hereto as Attachment A.

10 **II. NAME, ADDRESS, AND INTEREST OF APPELLANT.**

11 2.1 Appellants' names and addresses are as follows:

12 Martha Bray
13 6368 Erwin Ln.
14 Sedro-Woolley, WA 98284

Brian Bowser
21110 Parson Cr. Rd.
Sedro-Woolley, WA 98284

15 John Day
16 6368 Erwin Ln.
17 Sedro-Woolley, WA 98284

Jedidiah Holmes
7691 Delvan Hill Rd.
Sedro-Woolley, WA 98284

18 Linda Walsh
19 21710 Prairie Rd.
20 Sedro-Woolley, WA 98284

Kathy Reim
23262 Meadow View Lane
Sedro-Woolley, WA 98282

21 Larry Hedgepeth
22 5809 Brookings Rd.
23 Sedro-Woolley, WA 98284

Robert Reim
23262 Meadow View Lane
Sedro-Woolley, WA 98282

24 Josie Hedgpeth
25 5809 Brookings Rd.
26 Sedro-Woolley, WA 98284

Jim Wiggins
21993 Grip Rd.
Sedro-Woolley, WA 98284

Wallace Groda
6386 Lillian Ln.
Sedro-Woolley, WA 98284

Abbe Rolnick
21993 Grip Rd.
Sedro-Woolley, WA 98284

2.2. Appellants are represented in this appeal by Kyle Loring, who can be reached as

1 follows:

2 Kyle Loring
3 Loring Advising, PLLC
4 PO Box 3356
5 Friday Harbor, WA 98250
6 360-622-8060
7 kyle@loringadvising.com

8 2.3. Appellants have a direct interest in the proposed development of a gravel mine
9 because they are parties of record and because they live and recreate in the vicinity of the
10 proposal and would be affected by the traffic, noise, pollution, and ecological impacts it would
11 generate. As an initial matter, Appellants have submitted numerous comment letters to address
12 the flaws in PDS' State Environmental Policy Act ("SEPA") review of the proposed gravel
13 mine, as individuals, as Central Samish Valley Neighbors, and through representation by Loring
14 Advising, PLLC. The Skagit County Code ("Code") defines a "party of record" as "any person
15 who has testified at a hearing or has submitted a written statement related to a development
16 action and who provides the County with a complete address, or a person who has formally
17 requested to receive information via a written statement with a complete mailing address." SCC
18 14.04.020. Appellants qualify as parties of record because they have submitted written
19 statements related to the applications for PL16-0097 and PL16-0098 and the SEPA review for
20 those applications. As parties of record, they have standing to appeal the MDNS in an open
21 record public hearing pursuant to SCC 14.06.160(2).

22 2.4. In addition, Appellants live, commute, recreate, run errands, and observe and
23 enjoy fish and wildlife and their natural surroundings, all in the vicinity of the proposed Grip
24 Road gravel mine, and will be significantly harmed by the MDNS. As explained below,
25 Appellants all have a clear and direct interest in a proper SEPA review of the proposed mine's
26 impacts and in efforts to ameliorate those impacts so that they do not suffer them. All of the
Appellants live near and travel frequently along potential haul routes and are aggrieved by the
lack of adequate review of traffic impacts described below. Appellants are aggrieved by the lack

1 of adequate review of the impacts of the mine operations, including those of its heavy gravel
2 hauling trucks, on the local wildlife that they observe in their own backyards and that ply the
3 waters of the Samish River and Swede Creek, where some of them volunteer and recreate.
4 Appellants all share a concern for their own safety and the safety of their family, friends and
5 neighbors who frequently travel the proposed haul route. And Appellants who live directly
6 adjacent to the mine site are aggrieved by the inadequate review of mine site pollution and
7 habitat degradation.

8 2.5. Martha Bray and John Day have an interest in traveling safely along the same
9 Grip Road that would be traveled by the project's large trucks and trailers, which they also
10 travel frequently. They regularly ride their bikes along the likely haul route and are concerned
11 that the increased truck traffic along the narrow rural roads will harm their safety and
12 enjoyment. They also have an interest in maintaining and restoring wildlife habitat in the
13 vicinity of the proposed mine. They chose to live within their rural surroundings so that they
14 could enjoy the peace and quiet and live close to nature, and are actively restoring wildlife
15 habitat on their property. In addition, they have an interest in the preservation and restoration of
16 salmon runs in Swede Creek and the Samish River, which border and traverse the mine
17 property. Mr. Day serves as a volunteer steward of Skagit Land Trust's Tope Ryan
18 Conservation Area, which is located at the confluence of Swede Creek and the Samish River,
19 just downstream of the mine property.

20 2.6. Jedediah Holmes has an interest in safely commuting and cycling along the same
21 roads that gravel trucks and trailers from the mine may use. He is interested in his daughter
22 safely waiting for the school bus along that same route. He has an interest in being able to
23 continue to observe the same abundant wildlife that currently visits his family's lands, and in
24 being able to observe salmon where he volunteers to survey them in the Samish River basin.
25 And he is concerned that other mineral resource overlay properties near his home be held to a
26 high standard when applying to establish new, intensive mines.

1 2.7. Wallace Groda owns a farm less than ½ mile from the Grip Road entrance to the
2 proposed mine and has an interest in safely traveling along Grip Road and in maintaining his
3 property value and quality of life. He hauls farm equipment along the haul route and
4 understands firsthand the hazards related to encountering truck traffic on it.

5 2.8. Linda Walsh lives directly adjacent to the mine parcels that would be stripped
6 and excavated just 100 feet from her property line. She and her family have lived in this
7 location for many years, long before the mine was proposed, or even before the current owners
8 purchased the property. Ms. Walsh has an interest in ensuring safe travel along Grip and Prairie
9 Roads at the same time as the mine traffic. Ms. Walsh has an interest in avoiding noise impacts
10 from the neighboring mine, as well as dust wafting onto her property and into the Samish River
11 that runs through her property. Ms. Walsh also has an interest in preserving the wildlife that
12 travel across her property and onto the mine property, and preventing impacts to them from the
13 mine's heavy truck traffic and associated pollution, noise, erosion, and other impacts. She
14 wishes to continue the quiet enjoyment of her property along the Samish River for her family
15 and grandchildren.

16 2.9. Kathy and Robert Reim have an interest in preserving the safety of their growing
17 residential area from the proposed mine operations. They have experienced traffic impacts and
18 observed automobile crashes on the narrow, rural roads that the mine's gravel trucks and trailers
19 would have to negotiate.

20 2.10. Jim Wiggins and Abbe Rolnick live directly adjacent to the mine property. They
21 have an interest in safely navigating intersections like Grip Road and Prairie Road when gravel
22 truck and trailers from the mine would be negotiating that same intersection, especially in light
23 of increased vehicular traffic there in recent years. They also have an interest in maintaining the
24 quantity and quality of water in Swede Creek and the Samish River in their neighborhood while
25 the mine operates. And they have an interest in continuing to enjoy the peace and tranquility of
26 their rural home at the same time that the mine operators propose to generate significant heavy

1 truck traffic. When the applicant conducted work on the haul road during the summers of 2018
2 and 2019, the experienced significant noise.

3 2.11. Larry and Josie Hedgpeth are concerned about traffic safety along the likely haul
4 route. Their grandson lives with them and attends nearby public school. They are particularly
5 concerned about his safety riding his bike and traveling to and from school. They also have
6 participated in stream enhancement projects on their property to restore fish habitat in Swede
7 Creek, and are concerned about impacts to this important aquatic habitat from the mine
8 operations.

9 2.12. Brian Bowser has lived in the Prairie Road/Parson Creek road area for more than
10 forty years. He has an interest in ensuring that the proposed mine does not significantly lower
11 the quality of life in the community. Mr. Bowser has an interest in ensuring that traffic
12 generated by the mine does not cause undue repair needs for Grip Road and that the gravel
13 shipping does not create safety hazards on the road. Mr. Bowser also has an interest in ensuring
14 that the mine operations do not cause excessive noise

15 **III. SPECIFIC REASONS WHY THE DECISION IS WRONG**

16 3.1. The decision to issue the MDNS is clearly erroneous because PDS did not first
17 obtain reasonably sufficient information to evaluate the environmental impacts of the mine
18 before issuing that threshold determination.

19 3.2. On February 24, 2022, PDS issued the MDNS for a proposed gravel mine that
20 would remove approximately 4,280,000 cubic yards of gravel from three parcels over an
21 unlimited time period, though estimated to span approximately 25 years. The MDNS notes that
22 the three parcels total approximately 77 acres, of which 68 acres would be cleared and 51 of
23 those acres would be mined. The mine would employ large gravel truck and trailer
24 combinations to transport the gravel from the mine to a separate CNW processing facility.
25 Neither the application materials nor the MDNS prescribe the use of a specified haul route for
26 this shipping. The MDNS allows up to 30 trucks per hour during extended hour operations, and

1 an average of 46 daily trips over the 25-year life of the quarry. The MDNS does not define
2 “trucks per hour” or “daily trips” or identify the time frame used to calculate the average daily
3 trips. If demand cannot be satisfied by operating 7:00 AM to 5:00 PM Monday through Friday,
4 the applicant can request approval for extended hours or weekend operations. The MDNS does
5 not specify review criteria for determining whether to authorize evening or weekend operations.

6 3.3. The mine would be developed in a rich ecological setting in a forested landscape
7 along the Samish River and its associated wetlands. An internal haul road winds through and
8 within 300 feet of 36 wetlands and 21 seasonal streams and crosses Swede Creek, a fish-bearing
9 tributary of the Samish River.

10 3.4. Against this background, the issuance of the MDNS was clearly erroneous
11 because it was issued absent an acknowledgment and evaluation of the environmental impacts
12 identified below and thus was not based on sufficient information.

13 3.5. Lack of transportation impact information. PDS issued the MDNS without
14 specifying a haul route and without information about potential traffic impacts along the various
15 roads that CNW could use to haul road between its two locations and that private users who
16 purchase gravel at the site would use to transport that material. These unevaluated issues
17 include an evaluation of site distance impacts for intersections like that at Grip Rd and the site
18 access road, modeling with speeds anticipated by Skagit County’s Road standards, mitigation
19 for site distance impacts, the impact of truck-trailers crossing the centerline at all locations
20 along routes that could be used for mine hauling, including the likely use of F & S Grade Road
21 instead of I-5 South, traffic east of the intersection of the mine access road and Grip Road, and
22 traffic redistributed to Cook Road.

23 3.6. No review of impacts of internal haul road development. Although CNW
24 eventually acknowledged that the use of the 2.2-mile-long internal haul road was connected
25 with the operation of the mine, it has not provided an evaluation of the impacts of the road work
26 that occurred in approximately 2018 to develop the haul road with gravel, and, on information

1 and belief, to widen the road. These impacts to the numerous wetlands and streams in the
2 vicinity of the road likely would have been significant.

3 3.7. Inadequate review of undersized buffer. Without requiring a variance and
4 without explanation, the MDNS unilaterally shrinks the Samish River wetland buffer for the
5 proposal to 200 feet, surrendering 100 feet of the standard 300-foot buffer for a high intensity
6 land use like stripping everything from the soil up. In addition, although there is some
7 ambiguity in the materials, the application suggests that CNW did not physically delineate and
8 survey the wetland edge near the Samish River, but instead relied on LIDAR to estimate the
9 edge. The undersized buffers, measured without a delineated wetland edge, likely will impact
10 essential habitat for the Oregon spotted frog, listed as endangered by Washington in 1997 and
11 threatened federally in 2014.

12 3.8. No review of wildlife impacts. Notwithstanding the MDNS-acknowledged
13 clearing of 68 acres of forested land, the application did not evaluate the impacts of that
14 conversion on bears, cougars, bobcats, and other species that have been reported to use those
15 lands as a wildlife corridor between Butler Hill to the south and the Samish River Valley and
16 Anderson Mount to the north. The SEPA Checklist provided by CNW asserts that the property
17 is not an animal migration route. Acknowledging and understanding the impacts of the mine on
18 the species that use that corridor is necessary to adequately review project impacts under SEPA.

19 3.9. No review of carbon emissions. Notwithstanding the carbon-intensive nature of
20 the industrial mining and transport of gravel, as well as the removal of more than 51 acres of
21 carbon absorbing trees, shrubs, and soils, the application does not evaluate its carbon emission
22 impacts over the approximately 25-year life of the mine.

23 3.10. Incomplete review of water pollution impacts. The application does not identify
24 or evaluate slope instabilities in the vicinity of the road where it crosses Swede Creek, and thus
25 does not evaluate potential water pollution from sediment that could erode into the creek.

26 3.11. Incomplete review of noise impacts. While the application contemplates both

1 normal operations at the mine and increased mine operations depending on level of demand for
2 the product, a noise and vibration study assumed a single operating scenario involving one
3 front-end loader, dozer, and excavator and does not appear to have studied the noise generated
4 by a maximum production scenario. The review also did not cite the source for the noise levels
5 it used. The lack of modeling of all likely scenarios, including those likely to generate
6 maximum noise and vibration levels, failed to satisfy the requisite review.

7 3.12. Lack of evaluation of trucking impacts on recreational users. The application's
8 traffic studies overlooked recreational use of roads on the likely haul routes, such as federal and
9 regional bicycle routes. This error is compounded by the fact that significant portions of these
10 roads are narrow and lack adequate shoulders, including shoulders shrunk further by guard rails.

11 3.13. The mitigation measures identified in the MDNS do not address the potential
12 impacts above and thus cannot render the impacts non-significant.

13 3.14. Furthermore, the applicant can deviate from its proposal without additional
14 review if it decides that such deviation would not qualify as "significant." The MDNS does not
15 attempt to define that term.

16 **IV. RELEVANT SECTIONS OF SKAGIT COUNTY CODE**

17 The legal framework for this appeal involves SEPA, Chapter 43.21C RCW and Chapter
18 197-11 WAC, as well as the following sections of the Skagit County Code and related
19 jurisprudence:

20 4.1. SCC 14.06.110(11). The appellant bears the burden of proving that the decision
21 of the administrative official was clearly erroneous.

22 4.2. SCC 14.06.070(2) (Integration of SEPA review with development permit
23 review). Requires developments to be reviewed in accordance with the policies and procedures
24 of Chapter 16.12 SCC, SEPA, and Chapter 197-11 WAC.

25 4.3. Chapter 16.12 (State Environmental Policy Act). This Chapter incorporates
26 SEPA, which requires agencies to "consider total environmental and ecological factors to the

1 fullest extent when taking ‘major actions significantly affecting the quality of the
2 environment.’” *Lassila v. City of Wenatchee*, 89 Wn.2d 804, 814, 576 P.2d 54 (1978) (quoting
3 *Sisley v. San Juan County*, 89 Wn.2d 822, 830, 567 P.2d 1125 (1977)). A major action
4 significantly affects the environment when it is reasonably probable that the action will have
5 more than a moderate effect on the quality of the environment. WAC 197-11-794; *Boehm*, 111
6 Wn. App. at 717 (citing *Norway Hill Pres. & Prot. Ass’n v. King County Council*, 87 Wn.2d
7 267, 278, 552 P.2d 674 (1976)). Significance involves a proposal’s context and intensity; an
8 impact may be significant if its chance of occurrence is low but the resulting impact would be
9 severe. WAC 197-11-794. An agency that determines that a proposal will not result in a
10 significant impact bears the burden of demonstrating “that environmental factors were
11 considered in a manner sufficient to be prima facie compliance with the procedural dictates of
12 SEPA.” *Bellevue v. Boundary Rev. Bd.*, 90 Wn.2d 856, 867, 586 P.2d 470 (1978) (quoting
13 *Lassila*, 89 Wn.2d at 814). For example, the threshold determination must be based on
14 information sufficient to evaluate the proposal’s environmental impact. *Boehm*, 111 Wn. App.
15 at 718. In addition, a court will not uphold a DNS unless the record demonstrates that the
16 government gave actual consideration to the environmental impact of the proposed action or
17 recommendation. *Boehm*, 111 Wn. App. at 718. An incorrect threshold determination will be
18 vacated because it thwarts SEPA’s policy to ensure the full disclosure of environmental
19 information so that environmental matters can be given proper consideration during decision-
20 making. *Norway Hill Pres. & Prot. Ass’n v. King County Council*, 87 Wn.2d 267, 273, 552 P.2d
21 674 (1976)). Last, a lead agency must adequately consider the environmental factors, “in a
22 manner sufficient to be a prima facie compliance with the procedural dictates of SEPA.” *Lassila*
23 *v. City of Wenatchee*, 89 Wn.2d 804, 814, 576 P.2d 54 (1978).

24 4.4. SCC 16.12.020, incorporating WAC 197-11-060 (content of environmental
25 review). Agencies must “carefully consider the range of probably impacts, including short-term
26 and long-term effects. Impacts shall include those that are likely to arise or exist over the

lifetime of a proposal or, depending on the particular proposal, longer.” WAC 197-11-060(4)(c). As explained at Section III above, the MDNS issued without an evaluation of all of the short-term and long-term impacts, including the long-term loss of a wildlife corridor in rural Skagit County. A proposal’s effects also including “direct and indirect impacts caused by a proposal,” such as growth caused by a proposal or the precedential value of a proposal. WAC 197-11-060(4)(d).

4.5. SCC 16.12.070 (Purpose). This section incorporates WAC 197-11-330, which establishes the threshold determination process, and notes that “[a]n EIS is required for proposals for legislation and other major actions significantly affecting the quality of the environment.” The lead agency “shall make its threshold determination based upon information reasonably sufficient to evaluate the environmental impact of a proposal.” WAC 197-11-335. In addition, a proposal may to a significant degree, “adversely affect environmentally sensitive or special areas, such as...wetlands” or “adversely affect endangered or threatened species or their habitat.” WAC 197-11-330(3)(e). Where a proposal may have a probable significant adverse environmental impact, the responsible official must issue a Determination of Significance that identifies items that must be discussed in an Environmental Impact Statement. WAC 197-11-369(1).

4.6. SCC 16.12.200(4)(a). The County has established policies to ensure that it and its citizens may:

- (i) Fulfill the responsibilities of each generation as trustee of the environment for succeeding generations;
- (ii) Assure for all people of Washington State safe, healthful, productive, and aesthetically and culturally pleasing surroundings;
- (iii) Attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences;
- (iv) Preserve important historic, cultural, and natural aspects of our national heritage;

1 (v) Maintain, wherever possible, an environment which supports diversity and variety
2 of individual choice;

3 (vi) Achieve a balance between population and resource use which will permit high
4 standards of living and a wide sharing of life's amenities; and

5 (vii) Enhance the quality of renewable resources and approach the maximum attainable
6 recycling of depletable resources.

7 4.7. SCC 16.12.200(4)(b). The County "recognizes that each person has a
8 fundamental and inalienable right to a healthful environment and that each person has a
9 responsibility to contribute to the preservation and enhancement of the environment."

10 **V. DESIRED OUTCOME/RELIEF REQUESTED**

11 Appellants respectfully request the following relief:

12 5.1. An Order reversing the MDNS and requiring that:

13 5.1.1. PDS withdraw the MDNS;

14 5.1.2. the applicant submit complete information about the impacts of the
15 following aspects of the project: (1) ambiguous maximum number of truck-trailer trips
16 per hour under regular hours operations, (2) extended hours operations, including the
17 lack of specified conditions for allowing such operations, unidentified additional safety
18 measures, and lack of definition for seasonal duration, (3) applying a 200-foot buffer
19 rather than the standard 300-foot buffer, (4) haul road widening and hardening on the
20 wetlands and water courses in its vicinity, (5) the carbon emissions from excavating and
21 transporting the mined gravel, (6) clearing 68 acres of forestland and wildlife habitat, (7)
22 unexamined site distances and haul routes, (8) geological instability and potential
23 sediment pollution along Swede Creek, (9) potentially redirecting water from its natural
24 flow in the outer 100-foot of the standard buffer toward the center of the mine, (10)
25 noise and vibration at maximum operations, and (10) heavy trucks traveling along a
26 well-used recreational route; and

5.2. Such other and further relief as the Hearing Examiner deems just and equitable.

1 Dated this 25th day of March, 2022.

2 Respectfully submitted,

3 LORING ADVISING PLLC

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5 By



6 Kyle A. Loring, WSBA No. 34603
7 Attorney for Appellants
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