

Exhibit A-33: Mahaffie critical areas report

Matt Mahaffie
22031 Grip Road
Sedro Woolley, WA 98284

June 9, 2022

Skagit County Hearing Examiner
Skagit County Planning and Development Services
1800 Continental Place
Mount Vernon, WA 98273

RE: PL16-0097 & PL16-0098 & February 22, 2022 MDNS

Dear Mr. Examiner:

As requested by the appellants in this MDNS appeal, I am providing this document as a summary of my review of the critical areas review and SEPA Mitigated Determination of NonSignificance (MDNS) that Skagit County issued for PL16-0097 and PL16-0098, a proposal to clear 68 acres and install a gravel mine on 51 acres. Since 2006 I have been an independent critical areas consultant (Skagit Wetlands & Critical Areas, LLC), having performed hundreds of site assessments in Skagit County, all of which have been approved. Additionally, for over 7 years I have been a Natural Resource Planner/Critical Area Specialist with Whatcom County, reviewing proposals and associated documents for compliance with local ordinances, including the Critical Areas Ordinance, Shoreline Master Program, and State Environmental Policy Act review. I'm writing this letter to express my expert opinion in my consulting capacity.

These comments describe the deficiencies in the application materials regarding critical areas and in Skagit County's review process in issuing the MDNS. I have great familiarity with this particular property, having spent over 20 years traversing all portions of it when it was open for public access (under previous owners) as well as reviewing it professionally as a wetland/critical areas specialist under previous development proposals (also under previous ownership). I have reviewed application materials associated with critical areas like wetlands and streams on the site, and this letter explains that the applicant and County have not conducted an adequate review of impacts to critical areas across the site.

In addition to the MDNS and its stated conditions, I also reviewed the following five documents that the applicant submitted to Skagit County to discuss critical areas:

- *Re: Samish River (Ordinary High Water Mark/Wetland Edge)*, letter by Graham-Bunting Associates May 18, 2015.
- *Fish and Wildlife Site Assessment: Parcels 50155, 125644 125645* prepared by Graham-Bunting Associates August 20, 2015.
- *Addendum to Fish and Wildlife Site Assessment: Parcels 50155, 125644 125645* prepared by Graham-Bunting Associates April 18, 2017.

- *Impact Assessment and Mitigation Plan* prepared by Northwest Ecological Services December 2021.
- *Critical Areas Assessment (Wetland Delineation & Fish and Wildlife Assessment)* prepared by Northwest Ecological Services December 2021.

The first four of these documents were apparently cursorily reviewed by Skagit County staff as well as being provided to the public through the permitting process, including during several applicable comment periods. The final document in the list above, *Critical Areas Assessment* (NES 2021), a 418-page technical document, was not provided to the public until the week of June 6, 2022, well after the February 22 issuance of the MDNS and expiration of the comment periods, and only upon repeated requests by myself. Additionally, there has been no indication that Skagit County staff has in any way reviewed this document for accuracy. When I first inquired about it prior to issuance of the MDNS in preparing a comment letter, staff told me they were unaware of its existence, a statement repeated in the end of May 2022, and it was not even downloaded to the record/file until June of 2022 after repeated requests for the document. This is highly relevant as it is the baseline condition document that the subsequent *Impact Assessment* draws from; without consideration of the validity of existing conditions it would be unlikely that any findings from the *Impact Assessment* could be given weight on their subsequent accuracy.

Insufficient Information in the Applicant's Critical Areas Documents

While I have not had direct access to the site to verify specific findings put forward by the supplied assessments, I offer the following summaries to address the necessary information that is lacking from those assessments and the significant errors therein
Re: Samish River (Ordinary High Water Mark/Wetland Edge), letter by Graham-Bunting Associates May 18, 2015.

- This simple letter describes the Ordinary High-Water Mark (OHWM) and wetland edge in layman's terms. The description of the OHWM would be a common and acceptable submittal document for such a feature. However, the identification of the wetland herein does not; Skagit County Code (SCC 14.24.200.2) lays out the proper procedure to document wetland presence, relying heavily on the application of the appropriate United States Army Corps of Engineers manual and applicable Regional Supplement. This document does not satisfy SCC to document wetland presence in any way.

Fish and Wildlife Site Assessment: Parcels 50155, 125644 125645 prepared by Graham-Bunting Associates August 20, 2015.

&

Addendum to Fish and Wildlife Site Assessment: Parcels 50155, 125644 125645 prepared by Graham-Bunting Associates April 18, 2017.

- The singular wetland rating put forth for the riparian wetland associated with the Samish River appears accurate (Graham-Bunting, 2015) under the rating form in effect in 2015, even if current wetland rating standards were applied. However, the land use intensity (moderate) put forth does not conform to the land use intensity description put forth in Appendix 8C of WA DOE Publication No. 05-06-008 as required if using the alternative buffers in SCC 14.24.230(1)(b). This was verified via contact with the applicable regional wetland specialists with the Washington State Department of Ecology (Doug Gresham, DOE, personal conversation 12/23/16 and Chris Luerkens 3/11/2021). The Department of Ecology created the wetland buffer system and established the criteria for the different land use intensities, and both of the WA DOE specialists I spoke with have also commented to Skagit County that this proposal qualifies as high intensity (see record).

I agree with the WA DOE officials that the land use intensity for a full-time gravel mining operation is unquestionably **high**. Based on the high intensity land use, and the high habitat score that Graham Bunting identified in their wetland rating, SCC 14.24.230 requires a 300ft wetland buffer rather than the applicant's proposed 200ft buffer (300 also being the standard buffer). This was required in review by Skagit County (discussed later in this letter).

- In addition, the Graham-Bunting mine site review/assessment neglected SCC 14.24.230(2), where in general, buffers are to extend 25 feet past the top of sloping areas that are 25% or greater. The site plan as indicated shows areas where this provision is applicable (when utilizing a 200ft buffer as shown). Regardless of the aforementioned land use intensity issue, the buffer likely should still extend past the 200ft line indicated in such areas unless there is a rational reason put forth not to, which does not appear to have been provided specific to this project.
- A wetland assessment is required for the mine site portion of the project as proposed (regardless of the land use intensity) per SCC 14.24.220. A complete wetland assessment has not been submitted for this project even though the Graham-Bunting Fish & Wildlife Assessment made it clear that a wetland was present. Neither of the Graham-Bunting reports meets the standards put forth by Skagit County Code for a Wetland Assessment as outlined in SCC 14.24.220. It is lacking a delineation performed to the applicable standards put forth by Skagit County and lacks the appropriate documentation required by SCC for determination (wetland data points).

Critical Areas Assessment (Wetland Delineation & Fish and Wildlife Assessment)
prepared by Northwest Ecological Services December 2021.

As this voluminous document was provided only days before the writing of this review, I was able to make only a cursory review of it. Based on that review, I found the following deficiencies:

- Forest Practice Applications (FPAs) issued by WA DNR for these parcels over the years directly contradict the findings of the NES report in that a number of the streams noted to be seasonal non-fish (Type Ns) in the NES document were shown by DNR to be, in fact, fish-bearing (Type F). The streams noted onsite within the review area were Swede Creek and 21 separate stream segments. All of the 21 stream segments were noted as seasonal non-fish streams, however, there is no indication of how NES arrived at this conclusion. Skagit County defers to the Washington Department of Natural Resources' stream typing system, set forth at WAC 222-16-030 and WAC 222-016-031, to define the physical criteria for such a determination. NES's very minimal stream descriptions indicate that such criteria were not met by the physical standards applied (specifically noted stream width and photographic documentation appeared to indicated streams were, in fact, Type F by the physical criteria put forth in WAC 222-16-031).

Based on my review of WA DNR FPA #2817147, FPA #2814605, and FPA #2814718, those documents indicate that numerous streams onsite are Type F, not Type Ns as put forward by NES with no supporting documentation. Pursuant to SCC 14.24 Type F streams require a 100-150ft buffer, not the 50ft buffer asserted by NES. Such designations directly affect consideration of potential impacts (i.e. protection of riparian function such as shading, erosion control, large woody debris contribution, and organic litter contribution essential to aquatic life), both to the feature itself as well as to buffers by spatial intrusion. Any stream determinations should provide the methodology and documentation for how that determination was made (i.e. WA DNR Water Typing Worksheet or similar methodology) which was not done.

- Several of the wetlands onsite are known to be fish-bearing (Type F) waters, specific to the review area Wetland "JJ" and additionally considered fish and wildlife habitat conservation areas pursuant to SCC. These were not addressed as such in the document, or accurately described generally, and the impacts therefore were not assessed.
- The documents did not address numerous questions regarding the supplied wetland ratings. A large number of wetland ratings were provided and should have been individually reviewed by Skagit County and/or another appropriate reviewer. The County did not know of the existence of the delineation document and could not have reviewed same.

Impact Assessment and Mitigation Plan prepared by Northwest Ecological Services December 2021.

- Initially, critical area review, and to a lesser extent SEPA review, were limited to the proposed mine site only. However, a Northwest Ecological Services "Impact

Assessment and Mitigation Plan” noted the presence of, presumably, all wetlands and streams within the haul route. While the document was noted to not be a complete Wetland or Fish & Wildlife Assessment as required by Skagit County Code, it does appear to provide a baseline for the site conditions along the haul route. However, notable discrepancies include:

- As with the mine itself, the proposed internal haul road was stated to be a moderate intensity land use (the NES report referenced Graham-Bunting for such, not an individual finding/analysis). Skagit County and WA DOE have previously stated that the proposed mine constitutes a high intensity land use, and it follows that the internal haul road should be considered a high intensity land use as well. WA DOE has also now issued rules requiring that roads accessing such high intensity land use projects be considered as high intensity land use themselves. I have reviewed dozens of NES projects, and all of them indicate a high intensity land use rating for roads that will have as much traffic as is projected here; NES and their assessment need to conduct their own analysis rather than rely upon the Graham-Bunting analysis, which was previously rejected by Skagit County as discussed below. (see Figure 1 for other instances where NES identified surface mining projects as high intensity). The haul route is a high intensity use and should have the appropriate buffers for that consideration
- No consideration was seriously given in the assessment to the change of use. This road has expanded notably after applying for special use permit, both in width of the roadbed and in maintained width of the road corridor. Such road upgrades reflect the proposed change of use. Forest roads may have less impact on critical areas when used for forestry, a use that is basically episodic in nature; a short time of harvest and then let rest for possibly decades with only minimal use until the next harvest. One can see from aerial photos that the road, which was largely vegetated over 10 years ago, is now a significant, visible scar on the landscape. This continual maintenance for new use, and the proposed 25 years of continual use for hauling gravel will affect all of the wildlife that would still use these critical area/buffers under forest management only. As it was clear that this road expansion was for the permit at hand, any spatial impacts should be addressed with compensatory mitigation.

Additionally, no serious consideration was given to such wildlife use or impacts evaluated; migration, water access, shelter, etc. The NES *Impact Assessment* stated both that there would be impacts to wildlife but also that there wouldn't be impacts, contradicting itself, and provides no mitigating measures for same. This will be a distinct habitat break in what is presently one of the largest undeveloped tracts remaining in lowland Skagit County, home to deer, bear, cougar, and elk as well as many avian and small mammal species, in addition to the more water-dependent amphibians found within the wetlands that depend on being able to traverse wetland buffer areas as part of their life cycles. Heavily trafficked corridors are well known to affect the habits of such wildlife and no assessment was made for this. Wetland specialists such as NES staff (who are not trained

terrestrial wildlife biologists) should still be familiar with these concerns through the application of the Wetland Rating System for Western Washington (WA DOE Publication 14-06-030). There is ample literature available, best available science as it were, that could be drawn upon. However, none was cited or referenced in the essential lack of analyzing this change in regards to the minimum standards of Critical Area compliance, but more importantly the authors declined to analyze these potential impacts at the holistic level SEPA review can provide.

- The road crosses one of the most productive tributaries in the Samish River basin (Swede Creek) as well as being within the buffer of many wetlands and small streams. Light, noise, and dust are all measurable impacts (and noted within Skagit County Code) as impacts to be mitigated for, however, Northwest Ecological Services did not address any of these. Northwest Ecological has been observed to more properly address such impacts, including those noted above, on numerous other projects they have reviewed. It is unclear why the scope of this proposal has been so minimized and does not actually address any of the potential impact that the proposed amount of truck traffic will produce or the habitat it will undeniably fragment. The fact that the significant road improvements (grading, surfacing, and vegetation clearing) occurred after submission of the forest practice conversation and gravel mine applications indicates that they were not made for forest management.

Project Review

The most apparent discrepancy with the proposal from a critical areas standpoint has been the continual interpretation of the proposal as a moderate land use intensity. This was clearly and concisely put to rest by Mr. John Cooper of Skagit County on July 6, 2017 in his letter to the applicants regarding the incomplete nature of the application at that time and the further requirements needing to be fulfilled. Excerpt of Item 6 of that letter below. This requirement was not appealed. Any assertion by Miles Sand & Gravel that a moderate land use intensity was approved by Skagit County prior to the issuance of the February 22, 2022 MDNS appears to be blatantly false, and reliance upon that assertion by submissions by the applicant cannot be accepted.

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.**

The consultants preparing documents for Miles at this time also clearly contradict an assignment of Moderate Land Use through past reviews (see again Figure 1). It is extremely difficult to trust the documents put forth by Northwest Ecological Services that have relied upon this finding when they themselves consistently state such land use activities are not moderate, but high.

Review of the proposal also did not demonstrate compliance with the following criteria in the Skagit County Critical Areas Ordinance (SCC 14.24):

- No meaningful protective measures have been assessed to the buffer of the critical area adjacent to the mine operations, or those features along the haul route for that matter. SCC 14.24.090 requires the designation of PCA's and protective measures. This has been completely ignored throughout this permitting process, both by the applicant as well as the County in apparent contradiction to SCC. While recording of a Protected Critical Area (PCA) site plan is standard and generally adequate for a single-family home, a commercial operation with employees on heavy equipment, no oversight, and no vested interest in the observation of the buffer is a recipe for disregard of said buffer (not to mention a PCA is required by SCC). Glaringly as well, there is no reference on the ground for the buffer. If there is no survey or mapping of the properly delineated wetland edge at the mine site, how will anyone know where the buffer is? The buffer should be required to be demarcated in the field, an absolute standard practice, and in reality, should be fenced as well (absolutely another standard industry practice) and as noted in SCC 14.24.090.
- As proposed, the mine extraction boundary is proposed to go to exactly the 200ft line from the Samish River. No consideration was made to the impacts to the buffer from this action. By not maintaining root zones or similar, adverse impacts to the buffer will occur, this is why SCC 14.24.080(4)c requires a 15ft maintenance corridor outside of buffers. Nor is it understood how such a working boundary line will be maintained at such a fine level from the documents

provided. Any work, even minor vegetation management or inadvertent activities, within 200ft of the Samish River would require permitting under SCC 14.26, the Skagit County Shoreline Management Master Program, and again, such is not addressed.

- In addition to the inadequate assessment along the haul route, I noted that environmental impacts outside of the haul route were not addressed either in the applicant's submittals or in any County reviews. Water quality impacts to the tributaries of Swede Creek and the Samish River are already noted by the continually failing shoulder of Grip Road; truck traffic has been observed to affect this by failing to stay fully upon the pavement, and the great increase in truck trips will continue to exacerbate this issue. Particulate emission as well as dust/sediment dispersal will also occur into the adjacent waterways, several of which (roadside ditches) are designate fish bearing/regulated waterways themselves, with the remaining ditches having direct surface water connectivity. Additionally, the increase of noise in rural areas by such projects, onsite or on haul routes, has been noted to affect the habits of local wildlife populations, another impact not addressed in any way, although noted through numerous public comments.

Conclusions

As previously noted, I consider this review to be a summary of easily observable discrepancies in this application's compliance with applicable regulations, and with no documentation from Skagit County (staff report or similar), even that level of review is difficult. I do not intend this to be a comprehensive review of the submitted documents, but rather a showing that such comprehensive review is still needed and warranted. As it appears that Skagit County is unable to conduct such technical review at this time, it should be completed by a third party that specializes in such, both for the specifics of review of technical reports as well as broader environmental review under the SEPA process.

Thank you for your time and consideration on this matter.

Respectfully,

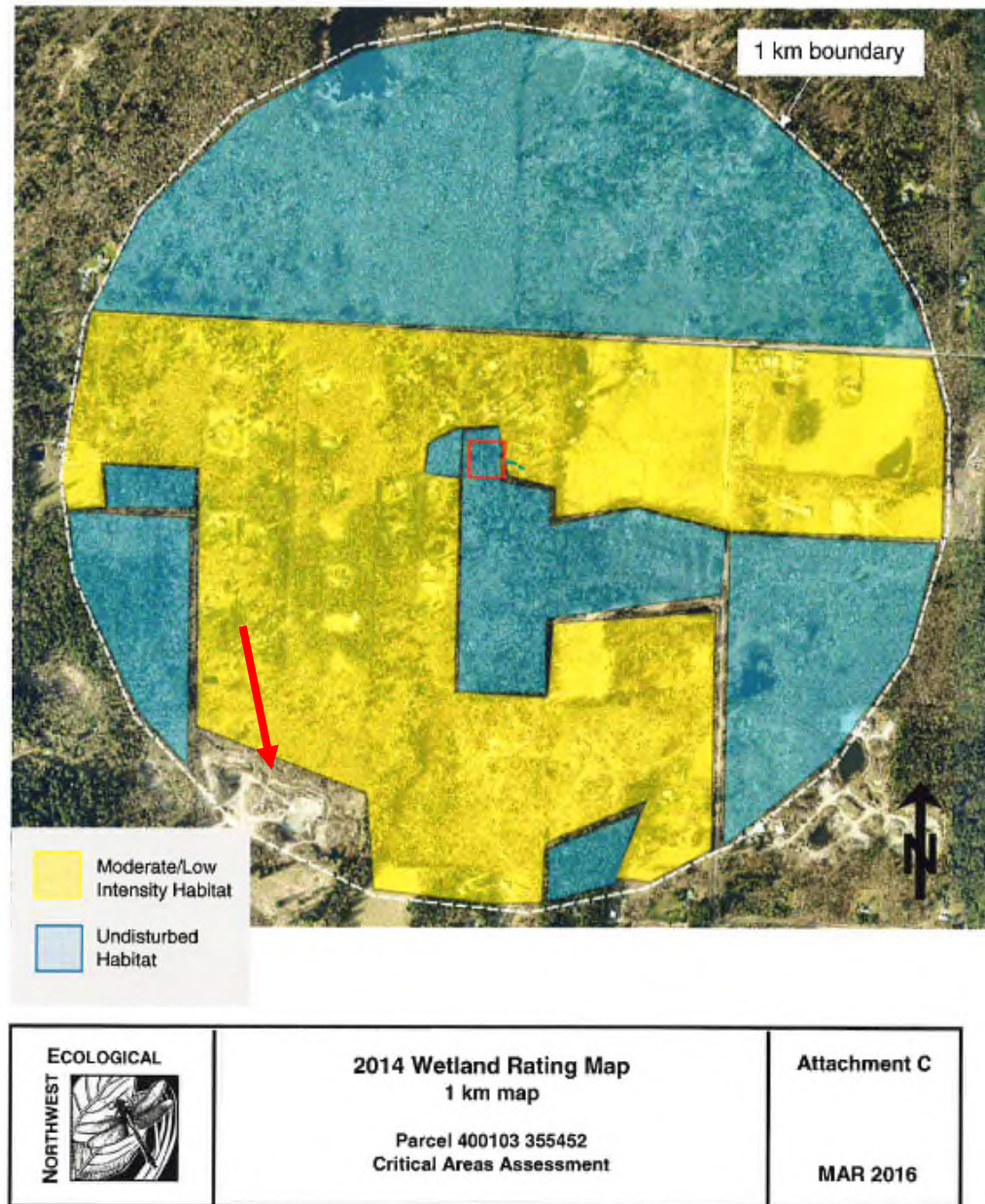


Matt Mahaffie

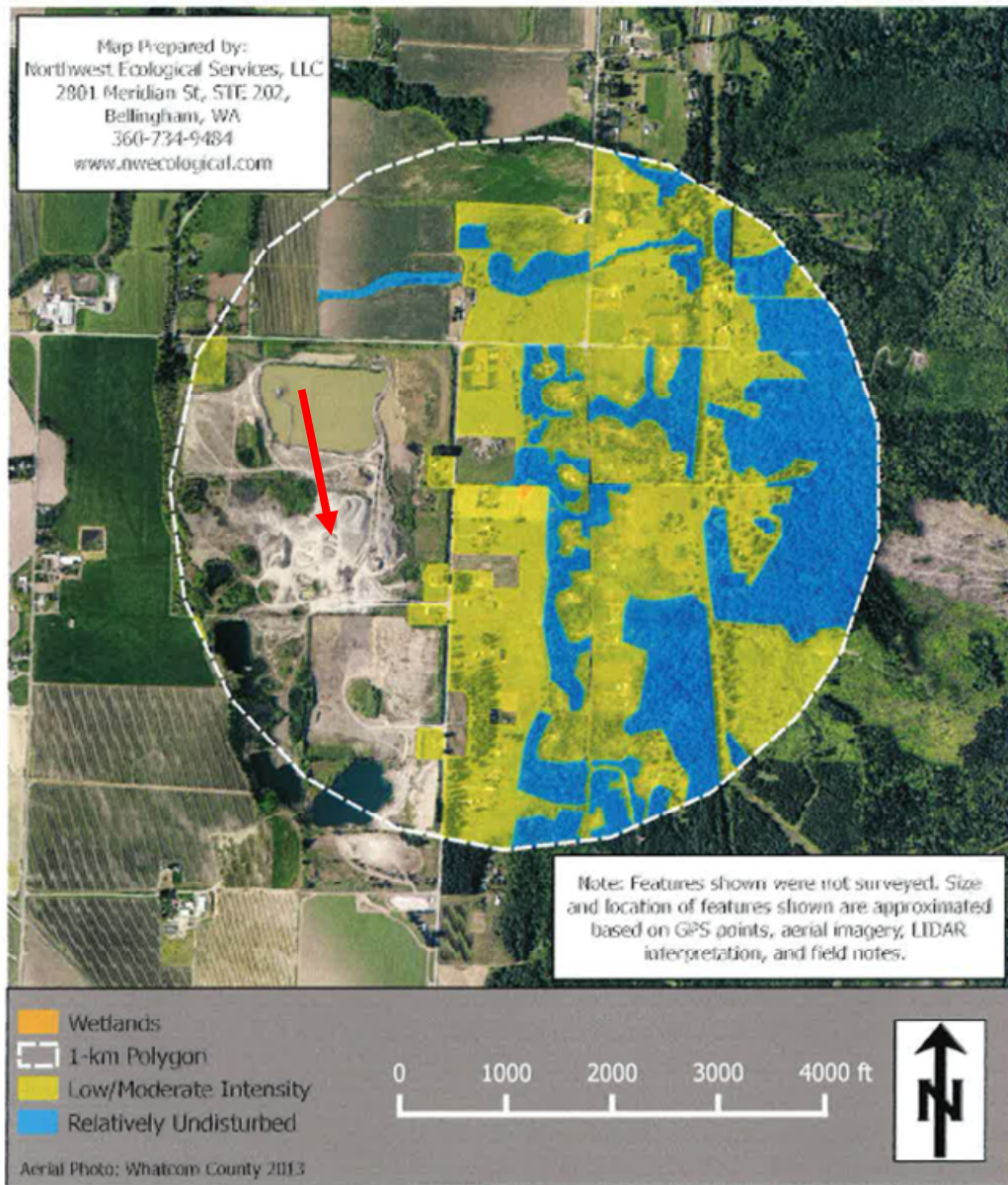
Encl.


Figure 1

Figure 1



Wetland Rating Map indicating land use intensity prepared by Northwest Ecological as available in the public record (Whatcom County). High land use intensity indicated by lack of colored shading. Note gravel pit at red arrow noted as high intensity land use by Northwest Ecological.



<p>ECOLOGICAL</p>  <p>NORTHWEST</p>	<p>Land Use Map</p> <p>Goodwin Road - Parcel #390409 500116 Natural Resource Assessment</p>	<p>Attachment C</p> <p>JAN 2019</p>
--	---	-------------------------------------

Wetland Rating Map indicating land use intensity prepared by Northwest Ecological as available in the public record (Whatcom County). High land use intensity indicated by lack of colored shading. Note gravel pit at red arrow noted as high intensity land use by Northwest Ecological.