

Exhibit B-40: CNW (Lynn) letter
to Prosecutor's office (January
29, 2019)

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

January 29, 2019

Julie Nicoll
Deputy Prosecuting Attorney
Skagit County Prosecuting Attorney's Office
605 S. Third
Mount Vernon, WA 98273

RE: Concrete Nor'west/Miles Sand & Gravel
PL16-0097 – Mining Special Use Permit

Dear Ms. Nicoll:

This is a follow up to our recent telephone conversation regarding my letter of December 7, 2018, which provided further information on this application. While you indicated you would be writing a letter, I am taking this opportunity to reply to your comments I heard by telephone. As you will see below, the "supplemental" information in this letter has either already been provided before or could have been obtained through a simple phone call from Skagit County staff or you.

To make this as clear as possible, this letter follows the format of the December 7 letter, quoting what was set forth in that letter and then providing supplemental information.

"1. Special Use Narrative. This is being resubmitted with a few minor changes:

a. We have updated the references to the Ramboll US Corporation Noise and Vibrations Study to the version submitted with this letter dated November 21, 2018.

b. On page 13, an additional sentence is added explaining the term SWMM.

c. On page 4 under (D) a minor clarification was made to the prior sentence that referenced equipment operation."

Supplemental Information. You identified no specific further questions as to the special use narrative but continue to want clarification about issues in the City's March 14, 2017 letter regarding fueling and processing.

Reply to:
Tacoma Office
1201 Pacific Ave., Suite 2100 (253) 620-6500
Tacoma, WA 98402 (253) 620-6565 (fax)

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

Fueling. This question was answered definitively on May 15, 2017 in a letter from Miles Sand & Gravel to John Cooper on page 3:

So to answer the questions posed in your letter, yes fuel “may” be stored on-site, and if it is will be done in compliance with the Sand & Gravel General Permit which authorizes this activity and protects water quality.

Additional information on this is set forth in the Site Management Plan submitted to the County in September 2018. The Special Use Narrative submitted in September and then again in December identifies specific BMPs from the General Sand & Gravel Permit that would be applicable to any fueling station. The County should have everything it needs on fueling.

Processing. Again, the May 15, 2017 letter from Miles Sand & Gravel to the County makes clear that no processing is proposed.

“2. Updated Noise and Vibration Study. (November 18, 2018)

a. Notes were added to Table 3 to explain potential reasons for high readings in current noise conditions.

b. The noise monitoring locations on Figure 1 have been corrected.

c. You asked about the analysis of vibration impacts at 50 feet from the road. Page 11 states that is a standard practice and consistent with the applicable measures.

d. You had expressed a concern about the speed of vehicles for which a vibration assessment was made. As written (page 12) it is clear that adjustments were made to reflect the higher speed limits here (40 and 50 mph) and so no revision to the language was made.

e. Page 12 was revised to make clear that, even if there were more truck trips, the threshold for vibration impact would not be met.”

Supplemental Information. You have asked additional questions about the standards utilized in the Updated Noise and Vibration Study. The July 18, 2018 Noise and Vibration Study specifically referenced the Federal Transit Administration (FTA) Standards and that was further clarified in the November 21, 2018 report in Footnote 1 on page 3 where the specific PTA document relied upon, “Transit Noise and Vibration Impact Analysis” Federal Transit Administration, was specifically cited. This is an available public document,

but we have enclosed with this letter the cover pages and Chapters 8, 9 and 10, which address vibration. Most of the discussion about the vibration screening process is in Chapter 9 but the staff may find Figure 9-1 and Table 9-2 most helpful. The general assessment methods are found in Chapter 10, and attention should be focused on Figure 10-1 and Table 10-1. The noise and vibration analysis itself, and the FTA document, make it clear that there is no meaningful impact associated with this project.

“3. Plan Set. You had raised a concern about the fact that several of the plan sheets did not show the buffer. Each plan page has a different function and not all of them show all of the information. That is by design. In fact, it is what the Department of Natural Resources requires. Further, plans with less than all of the information are simpler and easier to read. The fact that the buffer is not depicted on each plan page does not mean it is not proposed. The plan set must be reviewed as a whole.”

Supplemental Information. The County apparently continues to have a concern about the fact that the buffer is not shown on every plan. This is a very surprising concern and we expect the plans in County files routinely show some and not all detail. The buffer is proposed as part of the Application and is required by code. It is shown on some of the plans and we have stated in my letter of December 7, 2018 that the fact that it is not depicted on each page does not mean it is not proposed. I am not sure what more we can do. We certainly should not be required to do any more to make clear that this buffer is required and proposed at the 200 foot level, with the final buffer number to be determined by the Hearing Examiner.

“4. Road Issues. We have previously submitted an as-built drawing of the existing logging access road. I understand the County has made its own inspection.”

Supplemental Information. There was an on-site meeting in December. As far as I know we have still not heard a response from the County. In addition, we have not heard anything about any work done by Gibson on behalf of the County to evaluate traffic.

Conclusion.

We understand that this is a controversial project and that will not change. At this point, we are confident that we have answered every conceivable question, often times by referring to information the County already has received. It is not realistic for the County to expect that some further information or some additional report will satisfy all public concerns. It seems safe to assume at this point that there will continue to be some public objections to this project no matter how much information is provided. We request that this matter be set for hearing before the Hearing Examiner on the merits of this requested permit. Should you

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have any further questions about this, please let me know and either you and I can have a call, or we can set a broader conference call/meeting with additional people as necessary.

Very truly yours,



William T. Lynn

WTL:lb

Enclosures

cc: Hal Hart, Director, Planning & Development Services
Betsy Stevenson, Senior Planner/Team Supervisor, Planning & Development Services
Dan Cox
Brad Barton
Mike Schuh
Patricia Larson

[4828-6869-9526]

John Cooper

From: Martha Bray <mbray1107@gmail.com>
Sent: Thursday, January 31, 2019 2:51 PM
To: Lisa Janicki
Cc: Hal Hart
Subject: follow-up per requested meeting re. proposed gravel mine

Dear Commissioner Janicki,

Thank you for your voicemail message yesterday responding to my request for a meeting with me and other community members regarding the permitting process for the proposed Grip Road Gravel Mine. I appreciate your prompt reply. And, I do understand your reluctance to meet since the County Commissioners act as a judicial body in the case of land use appeals. However, I do want to make sure you understand that we are asking for this meeting as your constituents -- to discuss what has transpired with Planning and Development Services (PDS) and the permit and subsequent appeal process, not to discuss substantive issues related to the Mining Special Use Application. We are asking this of you because, despite repeated requests to PDS for clarification and information, we have had virtually no answers to even our most basic questions for more than nine months.

As you may know, the County denied the permit in April 2018, and the applicant subsequently appealed the denial. Several deadlines for resolution of this appeal have long since passed, yet there is still no public information about the status or substance of the appeal. We are basically told over and over by PDS that the lawyers are handling it and PDS staff can't give us any information. We have managed to read between the lines that PDS is apparently asking the applicant for additional information about the proposal, and that these additional materials have not yet been provided. If this is the case, the effect of the settlement negotiations has been simply to give the applicant seemingly an endless amount of time to meet the County's application requirements, and to put all of the discussion behind closed doors. This additional time provided to the applicant is despite the fact that their application was already extended several times prior to permit denial last April. (And those prior application extensions were already on very questionable legal grounds.) We are now going on Year 3 -- the application was originally filed in the spring of 2016, and yet somehow it still seems to be active!

Whether it is intentional or not, this incredibly protracted appeal process has had the effect of keeping the community completely in the dark. Planning staff are unwilling to answer questions; and now, you too are saying you can't speak with us. We have simple straight forward questions such as: When will the public process start up again? What will happen when the process starts up again? And especially: Isn't there some sort of hard deadline for resolving the appeal?

We have tried very hard to be respectful, patient and to play by the rules through this entire process. It seems the County could make a reasonable effort to address our questions and concerns and to follow its own rules and regulations. So, at this point, I ask you what recourse do we have to get some answers and get this permit process back into the daylight?

Thank you,
Martha Bray