

Exhibit B-41: Prosecutor's office
letter to CNW (Lynn) (February
22, 2019)



Skagit County Prosecuting Attorney

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February 22, 2019

Via E-Mail Only: BLynn@gth-law.com

William Lynn
Gordon Thomas Honeywell LLP
1201 Pacific Avenue, Suite 2100
Tacoma, WA 98402

RE: Concrete Nor'West/Miles Sand & Gravel Mining Special Use Permit (PL16-0097)

Dear Mr. Lynn,

We are in receipt of your correspondence dated September 14, 2018, December 7, 2018, and January 29, 2019. As noted in our April 5, 2018 letter and as discussed subsequently in person and by phone on numerous occasions, Concrete Nor'West failed to submit the information requested by Skagit County Planning & Development Services necessary to process the permit application. This list of outstanding items supports the continuing denial of application PL16-0097. Despite our best efforts to settle this matter, it appears we must proceed to hearing on the appeal of the denial of the incomplete application. We suggest setting a pre-hearing conference with the Hearing Examiner and preparing for a hearing as discussed further below.

In summary, below is a list of outstanding items supporting the denial of the application:

- 1) Skagit County Planning & Development Services cannot evaluate the potential impacts from the proposed project because the application materials contain conflicting information about the scope of the project. For example:

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PO Box 1226, 208 E Blackburn Rd Ste 203
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- The application form, narrative, and SEPA checklist contain conflicting information as to the proposed hours of operation and are silent as to the anticipated number of truck trips per day; these documents also fail to discuss potential traffic impacts;
 - The traffic report, traffic report addendum, and Noise and Vibration Study contain conflicting information as to the proposed hours of operation and the number of truck trips per hour:
 - The traffic report evaluates operations for off-peak hours only (9 am to 3 pm), 8 truck trips per hour;
 - The traffic report addendum evaluates up to 60 truck trips per hour or 720 truck trips per day;
 - The updated Noise and Vibration Study assumes less than 70 truck trips per day from 7 am to 5 pm;
 - As noted in the prior letters dated March 14, 2017, July 6, 2017, and April 5, 2018, Skagit County requested the application materials be updated to address numerous factual inaccuracies and to ensure consistency with current project plans. Concrete Nor'West has failed to submit this additional information as requested.
- 2) As previously mentioned by phone, none of the map sets provided contain the 100 foot mining buffer as required by SCC 14.16.440(10)(b)(iii). SCC 14.16.440(8)(a)(ii)-(iv) also requires buffers to be shown on pre-mining maps, reclamation sequence maps, and final reclamation maps. Map sheets C3, C4, and C5 submitted by Concrete Nor'West failed to include the 100 foot buffer.
- 3) Additionally, Concrete Nor'West failed to submit a proper vicinity map pursuant to SCC 14.16.440(8)(a)(i). SCC 14.16.440(8)(a)(i) requires "a vicinity map with a north arrow indicating the area on which the extraction operation is proposed including a legal description, showing right-of-way width of access roads to the proposed site from the nearest community and any roads proposed on the site, and showing zoning of adjacent properties and land uses within 5 miles of the area proposed for mineral extraction and related activities";
- 4) As previously mentioned by phone, the on-site study to determine appropriate mitigation requirements for noise, vibration and dust levels remains incomplete pursuant to SCC 14.16.440(8)(e). For example, insufficient explanation was provided on how the "speed adjustments" were calculated in the vibration analysis. While your December 7, 2018

letter referenced the FTA guidance as a basis for the adjustments, no additional explanation was provided. Based on the FTA guidance, it appears that further adjustments may be necessary to address the type of vehicle and suspension system. Furthermore, the locations of the residential properties analyzed along Grip Road and Prairie Road were not specifically identified, making it difficult to evaluate the report's findings. Additionally, the geographic scope of the vibration study was not addressed in the report. The study fails to analyze potential vibration impacts along the known haul routes to other local gravel pits. In addition, it is unclear how the model was analyzed based on "northern and southern scenarios." No explanation was provided as to what these terms refer to. The report also lacks basic information such as the limits of the mine in Figure 1 of the report. Finally, it should be noted that the report is not signed by a qualified professional, so it is unclear who the author of the report is and what qualifications they have.

- 5) As referenced in the April 5, 2018 letter and in prior letters dated March 14, 2017, July 6, 2017, and October 24, 2017, potential water pollution impacts have not been sufficiently analyzed under SCC 14.16.900(1)(b)(v)(C). Your letter dated May 11, 2018 stated that a conceptual drawing showing implementation of measures to protect water quality and sensitive areas would be provided. To date, the County has not received this information. As noted above, inconsistencies in the application materials need to be addressed. For example, the Hydrogeological Site Assessment states that only mobile fueling will take place, but the project narrative and special use application discuss a fueling station. However, the SEPA checklist fails to reference fueling operations.
- 6) As referenced in the April 5, 2018 letter, the application materials were not updated to ensure the access road is in compliance with the private road standards pursuant to SCC 14.16.440(8)(i). In a letter dated March 14, 2017, we asked you to provide a plan indicating the proposed improvements to the access road to achieve private road standards. In a letter dated July 6, 2017, this issue was raised again. However, this plan was never received. To date, the County has only received as-builts of the access road.
- 7) In response to the inquiry in your January 29, 2019 letter about the status of Gibson Traffic Consultants' third party review of the traffic study, Skagit County will not proceed with this task until the application is deemed complete and this appeal is resolved.

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A pre-hearing conference should be scheduled with the Hearing Examiner to finalize a hearing date and associated case schedule deadlines (briefing schedule, witness disclosures, etc.). The Hearing Examiner is available on the 2nd and 4th Wednesdays of the month. I will also be out of town March 11-15.

Finally, it should be noted that this matter cannot be "set for hearing before the Hearing Examiner on the merits of the requested permit" as stated your January 29, 2019 letter because the application has been denied for failure to timely submit requested information. Accordingly, it is premature to discuss the merits of the requested permit.

Please feel free to contact me with any questions and let me know about your availability for a prehearing conference.

Sincerely,

A handwritten signature in dark ink, appearing to read 'Julie Nicoll', with a stylized, flowing script.

Julie Nicoll

cc: Hal Hart

John Cooper

Betsy Stevenson

Paul Randall-Grutter

Dan Cox

Brad Barton