

Exhibit B-73: Reply to Public
Comments regarding February
24, 2022 SEPA MDNS
Comments (3/18/22)



March 18, 2022

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

Attn: Kevin Cricchio, Senior Planner

RE: Reply to Public Comments regarding February 24, 2022 SEPA MDNS Comments

Dear Mr. Cricchio,

We have reviewed the public comments received relative to the February 22, 2022 SEPA MDNS prepared by Skagit County Planning & Development Services for File #'s PL16-0097 and PL16-0098 and are providing our reply below.

1. **Public comments and process:** I wanted to address an overarching theme with regard to some of the public comments and the appropriate weight and consideration that they are given. As required by Skagit County Code in preparation of this application for Mining Special Use, Concrete Nor'West has retained independent third party professionals and technical experts to study, evaluate, assist in the design of the proposal and ultimately document compliance with all of the various requirements to obtain a permit to mine. In addition, in some cases Skagit County has retained third party experts to review our expert's reports. These studies are all a part of the application and record and can be found on the County's website: <https://www.skagitcounty.net/Departments/PlanningAndPermit/gravelmine.htm>
When a member of the public elects to comment, they are speaking from their experience and perspective, and rightfully so. They may or may not have the background needed to offer a technical opinion on the subject at hand. Many of the comments present generally valid concerns and suggestions that should be and in fact were taken into account. The process of public comment on this application has been extensive and ongoing for over 6 years, with most every conceivable concern being raised. As required, additional studies have been prepared to evaluate, address and mitigate concerns that were raised. Given the long history of public participation with this application, I believe the technical experts have addressed the wide range of issues that have been raised. At this point in the process, Skagit County must rely primarily upon the technical experts and those conclusions supported by science with regard to environmental impacts, hydrology, noise, dust, vibration, cultural resources, traffic and other items where subject matter experts have been required to evaluate the issue. When public comments urge technical conditions or outcomes of decision makers that are unsupported by the science and data they must be rejected.
2. **Zoning / Land Use:** This project area consists of 3 parcels totaling 68 acres, of which 51 acres is proposed to be disturbed by mining. These parcels are all within a larger ownership of approximately 728 acres. The proposed mine site is zoned Rural Resource – Natural Resource Land and is designated and protected with a Mineral Resource Overlay (MRO) by Skagit



County Code 14.16.440. It is worth reviewing the purpose of the MRO from Skagit County Code as follows: **14.16.440 Mineral Resource Overlay (MRO):**

“(1) Purpose. The purpose of the Mineral Resource Overlay (MRO) is to maintain and enhance natural resource-based industries by conserving mineral resource lands, allowing continued operation of existing legally established uses, and by assuring that use of adjacent lands does not interfere with the extraction and quarrying of minerals. A MRO overlays Natural Resource Lands (NRL) zoning districts and imposes regulations in addition to those normally required in the underlying NRL zoning district. Mineral extraction and processing activities are allowed as a Hearing Examiner special use, and must comply with the Surface Mining Act, Chapter 78.44 RCW. The MRO recognizes those areas that are designated to protect long-term, commercially viable mineral Natural Resource Lands and recognizes that mineral resources must be in close and economic proximity to the market to be served.”

Long before Concrete Nor’West acquired the property, this site was set aside and protected by Skagit County in the Comprehensive Plan and Zoning Maps as an area that should be protected and utilized to supply the essential sand and gravel resources that Skagit County residents and businesses require. Concrete Nor’West acquired the property with the intent and understanding that mining is an allowed use with Hearing Examiner approval and continues to have an expectation of permit approval once all requirements have been met. Some of the public comments acknowledge the legal right for this essential use of the property for mining and we appreciate that recognition.

3. **Traffic:** There are many public comments stating that the proposed conditions to mitigate traffic impacts are insufficient to protect the public. As stated above, these are issues that have been previously raised in earlier comments. Based on those comments and requirements of Skagit County Code, these issues have now been thoroughly studied by technical experts. This proposal has been evaluated not only by Concrete Nor’West’s consultant, DN Traffic Consultants, but also independently reviewed by HDR Traffic Consultants and the professional staff of Skagit County Public Works. The cumulative result of all of this work are conditions reflected in the MDNS that range from restrictions and limitations on hours of operations, daily limits on truck trips, applicant-funded flashing amber beacon for the Mine Entrance and the Grip/Prairie Intersection, applicant-funded road widening and others. Collectively these conditions have been determined by the County to meet all County requirements. The public comments to the contrary are not supported by the science and the record for this project.
4. **Hours of Operation:** Skagit County has presented a condition in the MDNS to limit hours of operation to Monday through Friday from 7:00a.m to 5:00p.m with an exception for temporary demand. Concrete Nor’West has voluntarily agreed to this condition although it is actually not supported in the code or necessary to comply with maximum allowable noise levels per WAC Chapter 173-60. This has generated a lot of public comments, some

demanding that hours be further restricted. It is worth noting what Skagit County Code (SCC) has to say about this. The ability to limit hours of operation lies with the Hearing Examiner, but only in certain situations. SCC 14.16.440(10)(i) states: Hours of operation shall vary according to the locations on the site as stated below and may be shortened by the HE 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;

Three significant facts are presented in this code section. First is that the Hearing Examiner is the authority charged with imposing limits to hours of operation. The Planning Department staff are to make recommendations and act as the SEPA Official. Based on the noise study, there is no basis for a finding of a probable significant noise impact to support the proposed MDNS condition limiting hours of operation. Second, in Natural Resource Lands, like the property here, hours of operation may be unlimited. That is the default standard. Third, the Hearing Examiner may consider limiting hours of operation on “any portion of the mine site where mining activity is less than ¼ mile from Rural Intermediate, Rural Village, or Urban Growth Area designated lands.” Since our project is not within ¼ mile from any of those zones, our hours of operation are not required to be limited. Concrete Nor’West has voluntarily agreed to the proposed limits on the hours of operations, but will resist any further unsubstantiated restrictions.

5. **Critical Areas and Buffers / Medium vs. High Impact Land Use:** Critical Areas Assessments for the mine site and the proposed haul road have been completed and are a part of the record. Beyond the general concern for critical areas identification and protection, which has been addressed through conditions requiring compliance with the Critical Areas Ordinance, a recurring public comment is related to Medium vs. High Impact Land Use for the purposes of determining the appropriate buffer between the mine site and the wetlands to the east along the Samish River. The Washington State Growth Management Act (GMA) provides a framework for zoning and development in Washington. Mining, Agriculture and Forestry comprise the three Resource Based Industries (RBI’s). While all of these RBI’s are commercial in nature, the GMA and local regulations recognize that they must be managed differently than other commercial and industrial zoned properties where paving and complete build out of the site is expected. RBI’s, on the other hand, rely on making the best use of the land, in perpetuity, to productively produce the natural resources that we all require to sustain daily life. So with regard to this application and the appropriate Land Use Impact under SCC 14.24.230(1)(a), we have previously presented our rationale for a Medium Impact Land Use in the August 20, 2015 Fish & Wildlife Site Assessment prepared by Graham-Bunting Associates (GBA). This Medium Impact Land Use has been previously accepted by Skagit County and relied upon in prior approvals for this project, including the Forest Practice Conversion PL16-0098. Comments urging the County to require a High Impact Land Use are scientifically unsupported and unnecessary. The Medium Impact Land Use and the associated 200’ buffer



will provide a high level of habitat protection to the wetland and riparian area as documented by GBA. Actual mining activities in the area nearest the wetland will occur for a relatively brief period. After mining and reclamation are complete, the topsoil will be replaced and the mine site will be replanted with trees, returning to a rural resource and forestry use. I believe everyone can recognize how different that is from a permanent commercial type development such as a mall, gas station, or similar "Commercial" High Impact Land Use.

6. **Request for Environmental Impact Statement:** Some commenters repeat the demand for the County to withdraw the Mitigated Determination of Non Significance (MDNS) and issue a Determination of Significance (DS) and preparation of an Environmental Impact Statement (EIS). The public comments have not raised any new questions or issues not previously considered by Skagit County. An EIS would, under the applicable regulations, would focus on the same areas that have already been the subject of extensive expert analysis and public comment. Based on the extensive expert analysis and record of public comment in this application and the robust conditions of the MDNS addressing these comments, the potential for significant adverse environmental impacts have been mitigated and the requirements of SEPA have been met.

In closing, Concrete Nor'West division of Miles Sand & Gravel Company has been engaged in this application process since 2015 on property that is designated as a Mineral Resource Land and protected from other incompatible land uses with the intent to be mined. We have selected and pursued permitting on this site due to the fact that it is appropriately zoned and designated for this purpose and is able to meet all other criteria for special use. This site is unique in that it contains a pre-existing forest road that is adequate to provide access to the mine so that no new road will need to be built, further reducing impacts. We have voluntarily limited hours of operation and self-restricted annual mine production, which results in fewer daily truck trips. In addition, we have chosen not to pursue aggregate processing facilities on-site such as washing or crushing plants. To date we have met every application requirement, provided every response to requests for information, submitted all additional studies and complied with all other requests for information that have been asked of us by Skagit County. We have agreed to accept and comply with all of the conditions requested and proposed by Skagit County. Because the environmental impacts have been fully considered and mitigated, we ask this application be allowed to move forward to public hearing before the Skagit County Hearing Examiner. In this way the merits of the application can be heard and this matter can be brought to resolution without further delay. Please contact me if you require any additional information or to discuss any of the items above.

Sincerely,

A handwritten signature in cursive script that reads 'Dan Cox'.

Dan Cox

General Manager