

Exhibit C-1: PDS Staff
Memorandum to Hearing
Examiner on Special Use Permit
with (a) Exhibit List (links) and (b)
"Exhibit 1: Staff Report" (SUP
Findings of Fact)



PLANNING & DEVELOPMENT SERVICES

HEARING EXAMINER'S STAFF REPORT:

APPEAL HEARING

DATE:

July 11, 2022 (9:00 AM to 5:00 PM)
July 12, 2022 (9:00 AM to 5:00 PM)
July 13, 2022 (If needed, from noon to 5:00 PM)

TO:

Skagit County Hearing Examiner

FROM:

Kevin Cricchio, AICP, Senior Planner
Skagit County Planning & Development Services Department
1800 Continental Place
Mount Vernon, Washington 98273

APPLICANT:

Concrete Nor'West / Miles Sand & Gravel
C/O: Dan Cox, General Manager
P.O. Box 280
Mount Vernon, Washington 98273
Email: Dan.Cox@miles.rocks

LANDOWNER:

Lisa Inc.
Attention: Concrete Nor'West
400 Valley Avenue Northeast
Puyallup, Washington 98372

**AGENT/ LAND:
SURVEYOR:**

John Semrau, PLS, PE
Semrau Engineering & Surveying
2118 Riverside Drive, Suite 208
Mount Vernon, Washington 98273
Email: john@semrau.com

**APPLICANT'S
ATTORNEY:**

William T. Lynn and Reuben Schutz
Gordon Thomas Honeywell
600 University, Suite 2100
Seattle, WA 98101
Email: blynn@gth-law.com, rschutz@gth-law.com

APPELLANTS: Central Samish Valley Neighbors
Martha Bray, et al.
6368 Erwin Lane
Sedro Woolley, WA 98284
Email: mbray1107@gmail.com, jday0730@gmail.com

**APPELLANT'S
ATTORNEY:** Kyle Loring, Loring Advising PLLC
PO Box 3356
Friday Harbor, WA 98250
Email: kyle@loringadvising.com

RE: Appeal # PL22-0142, by Central Samish Valley Neighbors of the SEPA Mitigated Determination of Non-Significance (MDNS) Threshold Determination issued by Skagit County Planning and Development Services (PDS) on February 22, 2022, in conjunction with an application for both a Special Use Permit and Forest Practice Conversion to permit a gravel mine.

PROPERTY LOCATION:

The proposed properties subject to the mining operation are located approximately 1.5 miles north of Grip Road and south/southwest of the Samish River, within a portion of the Southeast Quarter of Section 27; Township 36 North; Range 04 East; Willamette Meridian within unincorporated Skagit County, Washington.

ASSESSOR'S PARCEL NUMBERS:

- o **Proposed Mine/Quarry:**
P125644, P125645, & P50155
- o **Haul Road (Under Same Ownership Providing Access to Mine):**
P125646, P125647, P125626, P125627, P125628, P125629, P125630, P125631, P125623, P125624, P125632, P125633, & P35704
- o **Contiguous Subject Parcels (Under Same Ownership for Noticing Purposes):**
P125648, P125649, P50087, P125618, P125634, P125640, P125619, P125635, P125641, P125620, P125636, P125642, P125621, P125637, P125643, P125622, P125638, P125639, & P125625

I. DECISION BEING APPEALED:

This is an Appeal of the Mitigated Determination of Non-Significance (MDNS) that was issued on February 22, 2022, in regards to an application for both a Special Use Permit and Forest Practice Conversion to allow the development of gravel mine.

II. DEPARTMENTAL NARRATIVE:

1. The property proposed for development is zoned Rural Resource Natural Resource Lands (RR-NRL) as indicated in the Skagit County Comprehensive Plan and associated maps.

2. The subject properties are also a designated Mineral Resource Overlay (MRO).
3. Gravel mines are allowed in RR-NRL/MRO with a hearing examiner special use permit under SCC 14.16.430(4)(g).

4. **Project Chronology:**

- A. On March 7, 2016, PDS received applications for both a Special Use Permit and Forest Practice Conversion Permit.
- B. The subject applications were deemed technically complete on March 22, 2016, under SCC 14.06.100(2).
- C. A “Notice of Development Application” was published in the Skagit Valley Herald on March 31, 2016. This notice was posted onsite and mailed to neighboring landowners located within 300 feet of the subject properties. The public comment period ended on April 15, 2016.
- D. A SEPA Mitigated Determination of Non-Significance (MDNS) was issued on May 26, 2016.
- E. A “Notice of Public Hearing” was issued, and the matter went before the Hearing Examiner on November 16, 2016. PDS however determined that proper notice of the subject applications was not given. Accordingly, the Hearing Examiner opened the hearing but decided to continue it for a future date due to the need to perform proper noticing.
- F. PDS issued a second “Notice of Development Application” which was published on the Skagit Valley Herald on December 15, 2016. This notice was also posted onsite and mailed to neighboring landowners located within 300 feet of the subject property. The public comment period ended on December 30, 2016.
- G. The County received numerous comment from the public. Consequently, PDS requested additional information on March 14, 2017. The applicant provided some additional information, which PDS did not believe was sufficient or complete.

PDS made an Administrative Decision on April 5, 2018, to deny the subject applications for failure to timely submit requested information pursuant to SCC 14.06.105.

The applicant appealed this administrative decision (PL18-0200) on April 16, 2018.

On October 17, 2019, the Hearing Examiner denied the County’s Motion for Summary Judgment, reversing PDS’s denial, and ordering the application to go before the hearing examiner for decision on the merits.

- H. Following the appeal, the Applicant continued to provide additional information.

On April 15, 2021, PDS withdrew the MDNS and issued a new, more substantial, MDNS addressing the concerns raised about this particular project.

On May 11, 2021, the County withdrew the Second MDNS. That County action was not appealed.

- I. On June 17, 2021, Skagit County’s Planning & Development Services Department informed the applicant that they were required to obtain Critical Areas review for the entire private haul road that would be used to access the proposed mine/quarry.

On June 24, 2021, an appeal (PL21-0348) from the applicant was received requesting the Hearing Examiner reverse this decision/requirement by the county requiring critical area review of the haul road.

On August 30, 2021, the Hearing Examiner upheld the County's decision.

J. 2022 SEPA MDNS:

A SEPA Mitigated Determination of Non-Significance (MDNS) was issued on February 22, 2022. This SEPA MDNS was published in the Skagit Valley Herald newspaper on February 24, 2022. Additionally, this MDNS was mailed and emailed to all parties of record and the applicant.

During the appeal period, one appeal (**PL22-0142**) of the issued SEPA MDNS was received on March 25, 2022, by Skagit County's Planning & Development Services Department.

K. NOTICE OF PUBLIC HEARING: A Notice of Public Hearing was published in the Skagit Valley Herald newspaper on June 23, 2022, posted on the subject property, and mailed to both parties of record and landowners located within 300 feet of the subject property as is required per Skagit County Code 14.06.150(3).

L. PUBLIC COMMENTS: During the public comment periods associated with SEPA environmental review and the project as a whole, numerous comments were received. Most of the comments opposed the development and expressed concerns related to perceived impacts to county roadways from truck traffic and environmental degradation associated with the proposed gravel mine/quarry.

5. The appellants who appealed the SEPA MDNS issued on February 22, 2022, concerns can be largely grouped as concerns about environmental and/or traffic impacts that the proposed gravel mine/ quarry may have.
6. In response to the issues raised in the appeal, **Skagit County Planning & Development Service's Department submits the following:**

The project and associated reports and addendums was routed to Skagit County's Planning and Development Services Department along with agencies of jurisdiction for review.

A. TRAFFIC IMPACT ANALYSIS / REVIEW:

Regarding potential traffic impacts of the project, the applicant submitted the following:

- "Preliminary Traffic Information Memorandum" dated February 8, 2016
- Maximum Daily Truck Traffic Memorandum dated November 30, 2016
- Memorandum, Traffic Study Summary dated June 6, 2019
- Traffic Impact Analysis dated September 10, 2020
- Response to Additional Information Request Letter dated October 8, 2020.
- On behalf of Skagit County, consultants Gibson Traffic Consultants and HDR, performed third party review of the applicant's traffic information, memorandums, and analysis. Their recommendations resulted in revisions to the applicant's traffic analysis/memos and ultimately in the submittal of a Traffic Impact Analysis. The recommendations listed in the TIA were

incorporated as mitigation measures in the issued SEPA MDNS and as conditions of approval listed for the subject Special Use Permit's Findings of Fact/Staff Report.

The appellant **Central Samish Valley Neighbors** who is appealing Skagit County Planning & Development Services Departments February 22, 2022 issued SEPA MDNS also submitted a Traffic Impact Analysis Peer Review dated April 30, 2021 prepared by **Transportation Solutions** during the SEPA comment period.

B. SHORELINE JURISDICTION:

The Samish River flows along the eastern border of the project site. There are shoreline associated riparian wetlands that have been delineated. The shoreline environment designation for this portion of the Samish River is Rural.

All proposed mining activities will be located outside of shoreline jurisdiction. No development is being proposed within shoreline jurisdiction and thus no shoreline permit is required. The subject Special Use Permit has been conditioned below accordingly

C. CRITICAL AREA(S) REVIEW:

Aquifer Recharge Area:

As part of the submittal, the applicant included a "**Hydrogeologic Site Assessment & Maps**" that was prepared by: Associated Earth Sciences, dated August 21, 2015. According to this report, the following conclusions were set as follows:

- *"Ground water is present beneath the site at a depth of approximately 70 feet, at an elevation of approximately 145 to 155 feet (msl).*
- *Ground water beneath the site generally flows to the north and/or northeast and presumably discharges to Samish River, located a minimum of 200 feet from the proposed mine boundary.*
- *There are no water supply wells located down gradient of the proposed mine, between the mine boundary and the Samish River.*
- *The proposal is for a dry, surface mining operation, with limited on-site processing. The potential for a negative impact to ground water quantity and/or quality from the proposed mining activities is low."*

Geologically Hazardous Area /Steep Slopes:

The applicant submitted a "**Response to Skagit County Geologic Hazard Requirement**" regarding geologic hazards of the haul road that was prepared by: Associated Earth Sciences, dated: December 16, 2021. According to this geologic report, the following conclusion and recommended mitigation is as follows:

"The proposed gravel mine will utilize the existing haul road to transport aggregate from the mine to Grip Road and will propose asphalt surfacing for a portion of the haul road north of Swede Creek. This section of haul road is located near a geologic hazard area which includes landslide and erosion hazards. No alteration through grading, stripping, or mining to the geologic hazard areas is proposed. The change in use of the existing gravel-surfaced road from a logging haul road to an aggregate mine haul road is considered by the County a form of site disturbance, and therefore is

subject to the County's critical areas review. From a geotechnical standpoint, the haul road will have a similar function and will be subject to similar truck loads compared to its past use. Review of the geologic mapping indicates the steep slope areas have a core of dense glacially consolidated sediments, which is consistent with our on-site observations. No evidence of significant slope instability, road instability, past deep-seated land sliding, or groundwater seepage, was observed on the steep slopes near the haul road or on the haul road itself. This is also consistent with review of LIDAR imagery of the site. Given these factors, it is our opinion that the impact to the identified geologic hazards near the haul road caused by the change in haul road usage based on truck type can be avoided. This conclusion is predicated on the project following the mitigation recommendations..."

"Mitigation for using the existing haul road near the geologic hazard areas for mining operation shall include:

- No clearing of vegetation within the geologic hazard areas.*
- Maintain roadside swales and check dams. Clean out material that has*
- sloughed into the swale that could potentially block surface water. Avoid*
- concentrated surface water discharge onto the steep slopes.*
- Do not place uncontrolled fill, strippings, or other debris over the top of steep slopes."*

Wetlands / Fish & Wildlife Habitat Assessment:

As part of the submittal, the applicant included a "**Samish River Ordinary High Water Mark (OHWM) /Wetland Edge**" determination that was prepared by: Graham-Bunting Associates, dated: May 18, 2015. The report concluded that "*It is our opinion that the area of shoreline management jurisdiction extends 200 feet landward of the OHWM as identified in the field and depicted on the site plan prepared by Semrau Engineering and Surveying.*"

The applicant further submitted a "**Fish and Wildlife Site Assessment**" prepared by Graham-Bunting Associates, dated: August 20, 2015.

On page 7, this report provided reasoning for allowing use of the **moderate land use intensity buffer rather than the high land use intensity buffer** pursuant to SCC 14.24.240(3)(a). The measures proposed to mitigate the impacts from the proposed mine include:

- The mine site is located greater than 200 horizontal feet landward of the OHWM
- The mine site is also separated vertically approximately 90 feet above the OHWM
- Mining activities will be separated from the OHWM by a protective berm
- The dry mine floor will maintain a maximum depth of 10 feet above the underlying water table
- All surface water will drain through the gravel floor of the mine site – no surface water will drain directly to the Samish River
- The mine site is located in an area logged during the 1990s by a previous landowner
- No processing or industrial activity is proposed in conjunction with the project
- Aggregate extraction will be maintained at a relatively low volume level

- The project will utilize an interior road system
- The area contiguous to the berm will be mined first and reclaimed pursuant to a reclamation plan to be approved by the Washington State Department of Natural Resources. The goal of the reclamation plan will be to return the site to forest management or low density residential which are considered low and moderate land use intensities respectively.

The Assessment **recommended the following mitigation measures:**

- The Samish River and associated wetland should be provided with the optional 200 foot buffer required for Type S Waters of the state and Category II wetlands with moderate intensity land uses and a habitat score of 30.
- The buffer should be measured on a horizontal plane landward of the OHWM/associated wetland edge located at the toe of slope east of the proposed mine site.
- The riparian buffer and associated wetland and 200 foot buffer should be designated as a Protected Critical Area to assure identification and long term protection. The site plan included as Attachment C is prepared in a format suitable for recording with the Skagit County Auditor.
- Because the riparian and associated wetland buffers are also coexistent with the jurisdictional area regulated under the Shoreline Management Act (90.58 RCW) and Shoreline Master Program (14.26 SCC), consultation with Skagit County Planning and Development services should occur prior to initiating the application process for a Special use Permit.

On April 18, 2017, the applicant submitted an “**Addendum to Fish & Wildlife Site Assessment,**” prepared by Graham-Bunting Associates. According to this Addendum:

“With the exception of identification of critical habitat associated with the [Oregon Spotted Frog] OSF, no additional endangered, threatened or sensitive species or habitats were identified. Application of the standard riparian buffer requirement established under SCC 14.24.530 is generally recognized as the preferred method of avoiding project impacts consistent with the mitigation sequence listed under SCC 14.24.080-(5)-(b). In our opinion establishment of a no disturb buffer of 200 feet is sufficient to protect aquatic life in the river and associated wetland.

Lacking a request for additional biological information from a federal agency of jurisdiction, it is our opinion that the analysis prepared by GBA and submitted by the applicant provides an appropriate level of detail to address Skagit County Code requirements.”

Lastly, in December 2021, the applicant submitted an “**Impact Assessment & Mitigation Plan**” prepared by Northwest Ecological Services” with regard to the haul road. The Assessment states as follows:

“The project does not include any direct wetland, stream, or buffer impact. Therefore, traditional mitigation measures such as wetland or buffer enhancement have not been presented. The use of the haul road to transport material from the proposed gravel mine will result in a greater number of trips per day compared to the existing forestry practice. This may potentially result in indirect impacts to water quality and potentially wildlife functions associated with site critical areas or their buffers. For the reasons previously mentioned these indirect impacts are anticipated to be minor. However, the following mitigation measures have been recommended:

- *During resurfacing- establish erosion control and BMP's to ensure protection of downstream waters.*
- *Haul trucks shall be maintained in good working condition such that petroleum products or other harmful chemicals are not leaked into adjacent critical areas.*
- *During operation of the mine, maintain existing forested vegetation adjacent to the roadway, particularly in wetlands and buffers. This forested buffer along the road provides water quality filtration of surface waters prior to entering adjacent wetlands and streams and provides a buffer and screening for wildlife using the interior of the site.*
- *Review the proposal for compliance with applicable County/State stormwater management requirements."*

Floodplain:

The proposed mining area is not located within a flood hazard zone.

7. SCC Chapter 16.12 & WAC 197.11; State Environmental Policy Act (SEPA) Review:

PDS determined that the proposed gravel mine is not exempt from SEPA environmental review. Accordingly, PDS required the applicant to submit a SEPA environmental checklist with their application for a Special Use Permit and Forest Practice Conversion Permit.

PDS thoroughly reviewed and routed the applicant's environmental checklist, environmental reports, traffic impact analysis/ memos, associated addendums, and other relevant application material for comment to both agencies and departments of jurisdiction.

Following a review of the application material submitted and internal and external comments that were received, PDS issued a SEPA Mitigated Determination of Non-Significance (MDNS).

Based on the reviews conducted, the Department notes that the proposal can be completed with no significant adverse impact on the environment or traffic provided that all respective SEPA MDNS mitigation measures, best management practices (BMPs), and Special Use Permit's conditions of approval are adhered to and met. A comprehensive evaluation was conducted by PDS which resulted in the issuance of a MDNS as a threshold determination. The appropriate reviews of the project for any probable significant adverse environmental impacts were appropriately conducted, and the determination was made that an Environmental Impact Statement (EIS) is not required.

III. RECOMMENDATION/DESIRED OUTCOME:

Based on review of the filed Notice of Appeal, Skagit County Planning and Development Services Department **recommends that the Hearing Examiner uphold the Departments decision(s) and deny appeal #PL21-0142.**



Brandon Black,
Current Planning Manager



Hal H. Hart
Planning and Development Services Director

Date: **June 13, 2022**

Prepared by: KC