



DYKES EHRlichman LAW FIRM

Land Use, Real Estate, & Environmental Law

June 21, 2022

Via Electronic Mail:
sofiabc@co.skagit.wa.us
corir@co.skagit.wa.us

Mr. Andrew Reeves
Skagit County Hearing Examiner
c/o Anastasia White, Dept. of Community Development
223 East 4th Street
Port Angeles, WA. 98362

Re: PL16-0097, PL16-0098, Appeal No. PL22-0142
Concrete Nor'West/Miles Sand and Gravel SUP

Dear Examiner Reeves:

As you know from the prehearing conference, Cougar Peak, LLC appears in this case through my office and we will be their sole representative at the Special Use Permit (SUP) hearing in opposition to the application before you. We appear on their behalf because our client owns the land on Grip Road adjacent to the proposed mine, and they assert that their ingress and egress to their private driveway will be directly affected by the level of proposed gravel truck traffic entering and exiting the mine. We are on record with your office limiting our examinations and presentation of witnesses and evidence to issues of traffic safety on Grip and Prairie Roads.

The Special Use Permit proceeding is a contested matter, and our client has a due process right to cross examine witnesses, as pointed out in your prior order – rights also enumerated in County code subject to your administration under the County Commissioners' adopted Hearing Examiner Rules. We are writing because the *process* for the presentation of witnesses and evidence in this contested matter materially affects our client's ability to prepare effectively for cross-examination of witnesses and to organize rebuttal evidence on traffic safety issues.

That process needs clarification. Your pre-hearing order invited but did not require the parties to present their traffic witnesses and evidence in the opening SUP "portion" of the hearing, rather than during the closed SEPA "portion" of the hearing. To date, all counsel have agreed in email exchanges to follow that course, but all have left the door open to modification. Additionally, by early last week, all agreed to copy me on all communications to your office, including filing of pleadings. As of Friday, I understand, one party has requested a prehearing conference in the SEPA appeal, but we were not copied. To the extent the other parties or your office responded, we have not been copied as of this writing. This process seems to be excluding our law firm and your clarification to ensure a transparent single, open-record hearing format is needed.

P.O. Box 3308
Sequim, WA 98382
(425) 268-5553
tom@dykesehrlichman.com
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Because issues related to presentation of evidence and testimony for the SEPA appeal hearing necessarily affect our ability to participate fully in the SUP hearing on traffic safety issues affecting our client, we respectfully request a directive from your office at this time that includes three requirements:

1. That all parties (and County support staff) copy Cougar Creek through my law office contemporaneously on all pre-hearing communications and filings with your office related to traffic safety evidence or testimony in the now-combined SUP and SEPA Appeal hearing; this should include copying us on orders, pleadings, correspondence and motions practice;
2. That Cougar Peak has continuing status as a represented party in a contested SUP matter, with the right of notice and participation in pre-hearing conferences for any portion of the combined SUP and SEPA Appeal hearing; and
3. Confirmation that all exhibits submitted by the parties in the SEPA appeal “portion” of the hearing are also automatically considered exhibits in the Special Use Permit “portion” of the hearing.

In making these requests, we respect your earlier ruling denying our participation as an intervening party to the SEPA appeal “portion” of the combined open-record hearing. We do not seek any opportunity to present SEPA procedural or substantive arguments or to participate in SEPA appeal motions practice.¹

Thank you for considering the above requests. We urge you to provide these clarifications swiftly in light of the apparent current request for additional shifts in process affecting the presentation of traffic testimony and evidence.

Respectfully submitted,



Tom Ehrlichman

cc: Counsel for all Parties
Mr. Neal McLeod, Cougar Peak, LLC

¹ Cougar Peak sought intervention in the SEPA appeal and preserves its right of appeal including its asserted right to cross examine all experts and rebut all evidence related to traffic safety that may be allowed during any closed “portion” of a single, open-record hearing.