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5 **BEFORE THE HEARING EXAMINER**  
6 **FOR SKAGIT COUNTY**

7 In the Matter of the Appeal of  
8 **Central Samish Valley Neighbors**  
9 of a Mitigated Determination of  
10 Nonsignificance,

No. PL16-0097; No. PL16-0098  
Appeal No. PL22-0142

**APPELLANT CENTRAL SAMISH  
VALLEY NEIGHBORS’  
HEARING BRIEF**

11 **I. INTRODUCTION**

12 In 2016, Concrete Nor’West (“CNW”) applied to Skagit County (“County”) for  
13 approval to clear 68 forested acres and to excavate 51 of those acres for gravel and sand. From  
14 the start, the application and environmental review were beset by self-inflicted troubles. County  
15 initially failed to notify several neighboring residents of its first State Environmental Policy Act  
16 (“SEPA”) threshold determination, an oversight that required five (5) years to correct.  
17 Eventually, even after three (3) threshold determinations, County left numerous impacts  
18 unexplored. For its part, CNW regularly battled against requests from the public, and  
19 occasionally County, to provide information sufficient to evaluate the project’s environmental  
20 impacts. CNW has never acknowledged or evaluated the potential impacts of the mine’s carbon  
21 emissions or conversion of a large swath of important wildlife corridor, or the noise at property  
22 boundaries or generated by compression brakes, or the traffic risks of hauling gravel on two  
23 anticipated routes or from hauling gravel on narrow, substandard roads with recreational users,  
24 school buses, and local commuters. When potential impacts were grudgingly acknowledged,  
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1 such as when CNW acceded to a hearing examiner order to study the impacts of its gravel  
2 hauling over the first 2.2 miles of the haul route (nearly six (6) years after submission of the  
3 application), the ensuing report regularly provided no analysis of impacts. In that instance, the  
4 report disclosed the existence of an incredibly rich ecosystem along that route, including 36  
5 wetlands and 25 streams and seeps, yet failed to examine the impacts of converting that rustic  
6 forestry road in 2018 to a wider gravel road or of the more intense use of that road by large  
7 gravel trucks and trailers. Notwithstanding such omissions, County issued a Mitigated  
8 Determination of NonSignificance (“MDNS”) for the mine in 2022. While the MDNS added a  
9 conditional limitation on mine operating hours and average daily truck hauling, it did not  
10 address the unevaluated impacts.  
11

12 SEPA requires agencies to conduct environmental due diligence before issuing a  
13 decision on a project application. County has not completed that due diligence for CNW’s  
14 proposed surface mine in the Samish River Valley’s rich ecosystem, its narrow, substandard  
15 roadways, or its quiet rural setting. Instead, County has occasionally sought additional  
16 information about project impacts, but has more frequently ignored requests by Central Samish  
17 Valley Neighbors (“CSVN”), the Department of Ecology, Skagit River System Cooperative,  
18 and numerous public commenters to review the project’s full environmental impacts.  
19 Consequently, CSVN respectfully requests that the hearing examiner invalidate the MDNS and  
20 direct County to obtain and review information about the project’s full impacts, as detailed  
21 below.  
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23

## 24 II. STATEMENT OF FACTS

25 Neighbors will adduce the following facts at hearing:

### 26 A. Procedural History and Project Summary.

1 In 2016, CNW submitted two applications: (1) PL16-0097 to request a special use  
2 permit to develop a gravel mine; and (2) PL16-0098 to request approval for a forest practice  
3 conversion. The latter application, PL16-0098, would involve the removal of approximately  
4 50,000 board feet of timber and stumps across 68 acres. PL16-0097 requests approval to mine  
5 approximately 4.28 million cubic yards of gravel from three parcels on a site along the Samish  
6 River. Approximately 68 acres of the 77-acre site would be cleared, with 51 of those acres  
7 excavated for gravel and sand in a surface mine. Gravel trucks with trailers would haul the  
8 material from the site to a different facility for processing, or from the site directly to market.  
9 An unspecified number of trips would occur each day, averaging 46 trips per day over  
10 approximately 25 years. A private haul road accesses the mine site approximately 2.2 miles  
11 from Grip Road, a narrow, rural public road. CNW owns all of the private property that the haul  
12 road crosses. Mine operations would be conducted from 7:00am to 5:00pm Monday through  
13 Friday, with notice to be sent to the County prior to expanding operations for longer hours and  
14 through the weekend, and increasing the hauling traffic accordingly. During the pendency of the  
15 applications, in the summer of 2018, CNW conducted road work that graveled and widened the  
16 2.2-mile-long internal haul road and cleared back vegetation along its sides.  
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19 Since the date of filing the initial applications, project review has been marked by  
20 periods of activity, lengthy delays, and staff turnover, with three different employees working as  
21 the lead planner on the project for County. In May 2016, County issued its first Mitigated  
22 Determination of NonSignificance for the project under SEPA. In December 2016, County held  
23 a brief permit hearing for the project before continuing the hearing after CSVN provided  
24 information that County sent notice of the SEPA determination and project application to only 8  
25 of the 34 landowners required to receive it. In April 2018, County issued an administrative  
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1 decision denying the special use permit application as incomplete. Miles appealed the decision  
2 and CSVN moved to intervene. The Hearing Examiner denied intervention and continued the  
3 appeal hearing to provide time for settlement discussions. Approximately 18 months later, in  
4 October 2019, the Hearing Examiner issued an order directing County to process the  
5 application. In October 2020, CNW submitted a level 1 Traffic Impact Analysis. In April 2021,  
6 County issued a new MDNS that drew numerous public comments, including those from  
7 CSVN. In May 2021, County withdrew that MDNS, and later requested review of critical areas  
8 in and around the internal haul road. CNW appealed this request and in August 2021, the  
9 hearing examiner denied this appeal. In December 2021, CNW submitted two new reports in  
10 response to County's request. In February 2022, CSVN transmitted a letter identifying  
11 deficiencies in those reports. County did not respond to that letter.  
12

13  
14 In March 2022, County issued the MDNS that is the subject of this appeal. That MDNS  
15 contains conditions that: (1) require compliance with existing laws; (2) set the mine's regular  
16 hours of operations from 7am-5pm Monday through Friday; (3) direct CNW to submit a request  
17 for temporary deviation when it desires to mine over extended hours and weekends; (4) limit  
18 further expansion of the internal haul road; (5) direct CNW to install flashing beacons in two  
19 locations; (6) require road improvements to allow trucks with trailers to stay within their lanes  
20 at sharp turns on Prairie Road; (7) establish an overall average of 46 "daily trips" during regular  
21 operations and 30 "trucks" per hour under extended hours operations; (8) authorize mining to  
22 within 10 feet of the groundwater table; (9) direct CNW to maintain drainage infrastructure like  
23 roadside swales and check dams; (10) rely on the Shoreline Master Program to impose 200-foot  
24 wetland buffers that conflict with the 300+ foot buffers that the Critical Areas Ordinance  
25 requires for wetlands; and (11) redirect stormwater runoff into the mine from runoff. CSVN  
26

1 submitted comments identifying the deficiencies in the environmental review on March 9, 2022.  
2 On March 25, 2022, CSVN submitted a Notice of Appeal to request invalidation of the MDNS  
3 and a complete review of the proposed mine's environmental impacts.

4 **B. Site Characteristics and Environmental Sensitivity.**

5 The mine excavation and frequent gravel hauling would occur within a rich ecological  
6 setting. The 51 acres to be deforested, stripped, and mined lie within an overall property of  
7 approximately 735 acres that has been managed for forestry for decades. The site is bounded by  
8 residential development to the west and north, CNW's forested properties to the south, and the  
9 Samish River and associated, undelineated wetlands on the east. The site sits on a terrace about  
10 100 feet above the Samish River, which hosts hatchery-raised Chinook salmon, chum salmon,  
11 coho salmon, coastal cutthroat trout, bull trout and Puget Sound steelhead, the latter two of  
12 which are listed as threatened under the federal Endangered Species Act, and the Oregon  
13 spotted frog, which is listed as threatened federally and endangered under Washington law.

14 The gravel truck and trailers would travel along a 2.2-mile-long private haul road on the  
15 property that traverses a biologically-rich landscape. Thirty-six (36) wetlands lie within just 300  
16 feet of that haul road. Those wetlands range from Category II to Category IV wetlands and  
17 score at the moderate or high level for wildlife habitat. In addition to these wetlands, the haul  
18 road passes over or reaches within 300 feet of Swede Creek, 21 smaller streams, and three  
19 seeps. Limited observation for listed species by the applicant's consultant found one wetland  
20 suitable for the Oregon spotted frog, as well as pileated woodpecker excavations.

21 The property is one of the largest undeveloped tracts of privately-owned, forested land  
22 remaining in lowland Skagit County. It serves as valuable wildlife habitat due to the rural nature  
23 of the site and surrounding area, its connectivity to a large undisturbed corridor, and the  
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condition of the property. The applicant's consultant observed beavers and amphibian breeding habitat, and noted that it contains suitable breeding and foraging habitat for a variety of mammals. In response to the lack of information in application materials, local residents have commented that the site hosts bears, cougars, and elk, as well as small mammal species, many species of birds, and water-dependent amphibians.

### **C. Unreviewed Environmental Impacts.**

The application materials number in the hundreds of pages, but did not evaluate a substantial amount of likely significant environmental impacts of the mine. The following bulleted list summarizes these unreviewed impacts.

#### Earth

- the landslide and erosion hazard consisting of the slope along the haul road in the vicinity of Swede Creek;

#### Air

- carbon emissions associated with large equipment mining and hauling rock at the site, or with removing trees, shrubs, and soils at the site that would otherwise absorb carbon;

#### Water

- the impacts associated with likely unstable slopes along the haul road where it may erode into Swede Creek. A report submitted in December 2021 concluded that there was no landslide risk but did not evaluate non planar slopes at the site or possible old slides in the glacial marine drift at the site;
- Swede Creek's stream processes and the possibility that active erosion is occurring there;
- light, noise, and dust impacts to Swede Creek and other streams and wetlands along the internal haul road; and
- the impacts associated with redirecting surface water away from the Samish River and its wetlands and into the mine site.

#### Plants and Animals

- the impacts associated with a 200-foot buffer for the undelineated Samish River wetlands at the excavation site and with similarly undersized buffers for other wetlands along the internal haul road, rather than the 300+-foot buffer required by the Skagit County Critical Areas Ordinance for Category II wetlands and the standard buffers required for other wetlands. These impacts include those to the Oregon spotted frog listed as endangered in Washington and threatened federally;
- the ecological and biological impacts associated with widening and graveling the 2.2-mile-long internal haul road in 2018 and with converting it from infrequent logging use to frequent gravel hauling use, including impacts to high value wetlands and fish-bearing streams. A December 2021 report provided by the applicant overlooked the 2018, post-application road development and vegetation cutting to conclude that the lack of vegetation cutting or road development for the project would avoid water quality impacts along the road. That report also acknowledged increased traffic from the new use but did not quantify the amount of increased traffic or examine its impacts, or evaluate the difference in vehicles between any current traffic and the proposed gravel truck and trailer combinations;
- the ecological and biological impacts of converting a portion of a forested corridor used by bears, cougars, bobcats, and other species;

#### Noise

- the noise impacts of loaded gravel-hauling trucks and trailers applying compression brakes when traveling down the 8% average grade of the hill on Grip Road;
- the noise impacts at the property line 100 feet from mining activities;
- the additional noise impacts, including both mining and hauling activity, generated by a maximum production scenario;

#### Transportation and Recreation

- impacts associated with hauling gravel east of the intersection of the internal haul road and Grip Road or of using F&S Grade Road;
- the impact to recreational users, like cyclists, of driving an unlimited number of gravel trucks and trailers on substandard roads without shoulders;
- the impacts associated with gravel truck and trailer use of Grip Road and its unstable shoulder and the costs associated with more frequent repairs of that frail section of roadway;
- the impacts associated with extended hours mining and gravel hauling;
- conflict analysis to predict or measure accident potential. This analysis could determine the number of conflict points, frequency of conflicts, and severity of conflicts based on

1 expected traffic volumes and mix of traffic; and

- 2 • the impacts of potential interference with school buses.

3 **D. County Received Numerous Public Comments Identifying Deficiencies in the SEPA**  
4 **Review.**

5 In addition to CSVN comments that identified the flaws enumerated above, numerous  
6 public comments identified deficiencies in the SEPA review, as well as project documents  
7 generally. Included in the public comments were the following.

8 The Washington Department of Ecology (“Ecology”) submitted at least four comments,  
9 culminating in a March 11, 2022 letter that expressed concerns that: (1) the application  
10 materials did not identify whether the Samish River wetland had been delineated as required by  
11 the Skagit County Code; (2) the Samish River wetland had been rated using outdated  
12 methodology; and (3) the Samish River wetland requires a 300-foot buffer due to the proposed  
13 gravel mine’s high impact use.

14 The Skagit River System Cooperative commented that: (1) impacts due to the  
15 development of the internal haul road had not been considered or approved by Skagit County;  
16 (2) the internal haul road passes through a ravine with over-steepened slopes and failure of that  
17 slope could lead to sediment delivery that impacts the salmon-bearing Swede Creek; (3) the  
18 application should include a road maintenance plan; and (4) a mine reclamation plan should be  
19 made available to the public.

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22 **III. QUESTIONS PRESENTED**

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24 A. Did PDS clearly err in issuing the MDNS without evaluating the full range of environmental  
25 impacts associated with the proposal to clear 68 acres and mine 51 acres and haul that  
26 material to a processing facility via large gravel truck and trailer combinations on narrow,



1 substandard County roads?

2 B. Did PDS clearly err in issuing the MDNS rather than a Determination of Significance given  
3 the reasonable likelihood that the 51-acre mine and its projected 25-year lifespan hauling  
4 4.28 million cubic yards of gravel will have more than a moderate adverse effect on  
5 transportation, critical areas, climate, noise, and water quality?

#### 6 **IV. LEGAL AUTHORITY**

7  
8 In 1971, the Washington Legislature adopted SEPA for the purpose of encouraging a  
9 productive harmony between humankind and the environment and to promote efforts to prevent  
10 damage to the environment. RCW 43.21C.010. The Legislature recognized the profound  
11 impacts that human activity can have on the natural environment, including industrial expansion  
12 and resource exploitation, and the critical importance of restoring and maintaining  
13 environmental quality for the overall welfare and development of Washingtonians. RCW  
14 43.21C.020(1). The Legislature also recognized that each person has a fundamental and  
15 inalienable right to a healthful environment and a responsibility to contribute to the preservation  
16 and enhancement of the environment. RCW 43.21C.020(3). To carry out SEPA's policy, all  
17 agencies of the state have a responsibility to use all practical means to safeguard the interests of  
18 citizens in: (a) fulfilling their responsibilities as trustees of the environment for future  
19 generations; (b) enjoying safe, healthful, productive, and aesthetically and culturally pleasing  
20 surroundings; (c) attaining the widest range of beneficial uses of the environment without  
21 degradation, risk to health or safety, or other undesirable and unintended consequences; and (d)  
22 achieving a balance between population and resource use that will permit high standards of  
23 living. RCW 43.21C.020(2).

24 In issuing the MDNS, Skagit County failed to discharge its responsibility to obtain and  
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1 evaluate sufficient information about the proposed mine’s environmental impacts to ensure that  
2 it complies with SEPA. Moreover, County failed to acknowledge the significant environmental  
3 impacts likely to occur and require adequate analysis of those impacts. As detailed below, the  
4 absence of information about the impacts of noncompliant buffers, unstable riparian slopes,  
5 carbon emissions, and gravel hauling on substandard roads mandates withdrawal of the MDNS.  
6 Further, the likely significant environmental impacts of the heavy industrial gravel and sand  
7 excavation and hauling operations warrant review pursuant to an Environmental Impact  
8 Statement.  
9

10 **A. Standard of Review.**

11 In an appeal of a negative threshold determination under SEPA, a hearing examiner applies  
12 a broad standard of review to determine whether that determination was clearly erroneous.  
13 *Boehm v. City of Vancouver*, 111 Wn. App. 711, 718, 47 P.3d 137 (2002); *Norway Hill*  
14 *Preservation and Protection Ass’n v. King County*, 87 Wn.2d 267, 271-72, 552 P.2d 674 (1976).  
15 While an agency’s decision receives deference, the decision is clearly erroneous if a  
16 decisionmaker is left with a definite and firm conviction that a mistake has been made. *Polygon*  
17 *Corp. v. Seattle*, 90 Wn.2d 59, 69, 578 P.2d 1309 (1978). Judicial review under the clearly  
18 erroneous standard also requires consideration of SEPA’s public policy, thereby making the  
19 environmental protection policy part of the standard of review. *Norway Hill*, 87 Wn.2d at 275.  
20  
21

22 **B. Skagit County Has Adopted the SEPA Regulations That Require a Thorough**  
23 **Review of a Project’s Environmental Impacts.**

24 Skagit County has adopted policies and procedures to implement and supplement SEPA.  
25 Chapter 16.12 SCC. Skagit County expressly restates SEPA’s declaration of responsibility and  
26 “recognizes that each person has a fundamental and inalienable right to a healthful environment  
and that each person has a responsibility to contribute to the preservation and enhancement of

1 the environment.” SCC 16.12.200(4)(b) (quoting RCW 43.21C.020(3)).

2 Therefore, agencies must “carefully consider the range of probable impacts, including  
3 short-term and long-term effects. Impacts shall include those that are likely to arise or exist over  
4 the lifetime of a proposal or, depending on the particular proposal, longer.” SCC 16.12.020  
5 (incorporating WAC 197-11-060(4)(c) (content of environmental review)). A proposal may to a  
6 significant degree, “adversely affect environmentally sensitive or special areas, such  
7 as...wetlands” or “adversely affect endangered or threatened species or their habitat.” WAC  
8 197-11-330(3)(e). Where a proposal may have a probable significant adverse environmental  
9 impact, the responsible official must issue a Determination of Significance that identifies items  
10 that must be discussed in an Environmental Impact Statement. WAC 197-11-369(1). And the  
11 lead agency “shall make its threshold determination based upon information reasonably  
12 sufficient to evaluate the environmental impact of a proposal.” SCC 16.12.070 (incorporating  
13 the threshold determination process at WAC 197-11-335).

14  
15  
16 As explained at Section II above, the MDNS was issued without an evaluation of all of  
17 the short-term and long-term impacts, including wetland and stream impacts, impacts to  
18 roadway users, impacts to rural residential quality of life, and long-term impacts to a wildlife  
19 corridor in rural Skagit County.  
20

21 **C. County Did Not Satisfy the SEPA Requirement to Review the Proposal’s Total**  
22 **Environmental Impacts.**

23 SEPA functions as an environmental full disclosure law that requires local governments  
24 to “consider total environmental and ecological factors to the fullest extent when taking ‘major  
25 actions significantly affecting the quality of the environment.’” *Lassila v. City of Wenatchee*, 89  
26 Wn.2d 804, 814, 576 P.2d 54 (1978) (quoting *Sisley v. San Juan County*, 89 Wn.2d 822, 830,

1 567 P.2d 1125 (1977)). Thus, a government agency has a duty to assemble and review full  
2 environmental information before rendering a decision. *Davidson Series & Assocs. v. City of*  
3 *Kirkland*, 159 Wn. App. 616, 634-35, 246 P.3d 822 (2011). After that assembly and review, a  
4 responsible official renders a threshold determination as to the significance of the action.  
5 *Lassila*, 89 Wn.2d at 814. This determination is documented in either a determination of  
6 nonsignificance (“DNS”) or determination of significance (“DS”). WAC 197-11-310(5). A  
7 DNS is appropriate where a review of a project’s full impacts indicates that it will not result in  
8 probable significant adverse impacts. WAC 197-11-340(1). A mitigated DNS may apply where  
9 an applicant clarifies or changes features of the proposal to mitigate impacts that would  
10 otherwise have given rise to a DS. WAC 197-11-350. Where a proposal continues to have a  
11 probable significant adverse environmental impact notwithstanding mitigation measures,  
12 however, the official must issue a threshold DS and an EIS must be prepared. RCW  
13 43.21C.030(c); WAC 197-11-350(2).

14  
15  
16 A major action significantly affects the environment when there is a reasonable  
17 likelihood of more than a moderate adverse effect on environmental quality. WAC 197-11-  
18 794(1); *Boehm*, 111 Wn. App. at 717 (citing *Norway Hill*, 87 Wn.2d at 278). Significance  
19 involves a proposal’s context and intensity; an impact may be significant if its chance of  
20 occurrence is low but the resulting impact would be severe. WAC 197-11-794(2). In addition,  
21 the SEPA Rules set forth the following criteria for determining an impact’s significance:

22  
23 (a) The same proposal may have a significant adverse impact in one location but not in  
24 another location;

25 (b) The absolute quantitative effects of a proposal are also important, and may result in a  
26 significant adverse impact regardless of the nature of the existing environment;

(c) Several marginal impacts when considered together may result in a significant adverse  
impact;

1 (d) For some proposals, it may be impossible to forecast the environmental impacts with  
2 precision, often because some variables cannot be predicted or values cannot be quantified.

3 (e) A proposal may to a significant degree:

4 (i) Adversely affect environmentally sensitive or special areas, such as loss or destruction  
5 of historic, scientific, and cultural resources, parks, prime farmlands, wetlands, wild and scenic  
6 rivers, or wilderness;

7 (ii) Adversely affect endangered or threatened species or their habitat;

8 (iii) Conflict with local, state, or federal laws or requirements for the protection of the  
9 environment; and

10 (iv) Establish a precedent for future actions with significant effects, involves unique and  
11 unknown risks to the environment, or may affect public health or safety.

12 WAC 197-11-330(3).

13 A governmental body that determines that a proposal will not result in a significant  
14 impact bears the burden of demonstrating “that environmental factors were considered in a  
15 manner sufficient to be prima facie compliance with the procedural dictates of SEPA.” *Bellevue*  
16 *v. Boundary Rev. Bd.*, 90 Wn.2d 856, 867, 586 P.2d 470 (1978) (quoting *Lassila*, 89 Wn.2d at  
17 814). An incorrect threshold determination thwarts SEPA’s policy to ensure the full disclosure  
18 of environmental information so that environmental matters can be given proper consideration  
19 during decisionmaking. *Norway Hill*, 87 Wn.2d at 273. Hence, the threshold determination must  
20 be based on information sufficient to evaluate the proposal’s environmental impact. *Boehm*, 111  
21 Wn. App. at 718. A court will not uphold a threshold determination unless the record  
22 demonstrates that the government gave actual consideration to the environmental impact of the  
23 proposed action or recommendation. *Id.*

24 **1. The MDNS must be withdrawn because County did not give actual**  
25 **consideration to all of the proposed mine’s environmental impacts.**

26 County clearly erred by issuing the MDNS without considering all of the proposed  
mine’s likely environmental impacts to determine their significance. *See Boehm*, 111 Wn. App.

1 at 718. While the applicant has submitted a significant volume of paperwork, and while six  
2 years have passed since the submission of the initial application, neither that volume nor that  
3 time period substitute for an actual review of all environmental factors associated with clearing  
4 68 acres and excavating 51 acres of land and hauling the mined material in highly sensitive and  
5 valuable wetland buffers and over streams and their buffers.

6 As set forth above and as will be adduced through testimony and evidence at hearing,  
7 these unevaluated impacts include:  
8

- 9 • traffic impacts – impacts associated with hauling gravel east of the intersection of the  
10 internal haul road and Grip Road or of using F&S Grade Road;
- 11 • traffic impacts to recreational users -- the impact to recreational users like cyclists of  
12 running an unlimited number of gravel trucks and trailers on substandard roads  
without shoulders;
- 13 • traffic impacts for unstable road – the impacts associated with gravel truck and  
14 trailer use of Grip Road and its unstable shoulder and the costs associated with more  
frequent repairs of that frail section of roadway;
- 15 • traffic impacts for maximum production – the impacts associated with extended  
16 hours mining and gravel hauling;
- 17 • traffic impacts – potential interference with school buses.
- 18 • critical area impacts – the impacts associated with a 200-foot buffer for the  
19 undelineated Samish River wetlands at the excavation site and for other wetlands  
20 along the internal haul road, rather than the 300-foot buffer required by the Skagit  
County Critical Areas Ordinance, including impacts to the Oregon spotted frog listed  
21 as endangered in Washington and threatened federally;
- 22 • critical area impacts – the ecological and biological impacts associated with  
23 widening and graveling the 2.2-mile-long internal haul road in 2018 and with  
converting it from infrequent logging use to frequent gravel hauling use;
- 24 • wildlife impacts – the ecological and biological impacts of converting a portion of a  
25 forested corridor used by bears, cougars, bobcats, and other species, in addition to  
sedimentation in fish habitat from slope failure along Swede Creek;
- 26 • water pollution impacts – the impacts associated with likely unstable slopes along  
the haul road where it may slough into Swede Creek, as well light, noise, and dust

1 impacts to Swede Creek and other streams and wetlands along the internal haul road,  
2 and redirecting surface water away from the Samish River and its wetlands;

- 3 • carbon emissions –carbon emissions associated with heavy equipment mining and  
4 moving material at the site, trucks hauling material for processing or direct to  
5 market, or with removing trees, shrubs, and soils at the site that would otherwise  
6 absorb carbon;
- 7 • noise impacts
  - 8 ○ the noise impacts of loaded gravel-hauling trucks and trailers applying  
9 compression brakes when traveling down the 8% average grade of the hill on  
10 Grip Road;
  - 11 ○ the noise impacts at the property line 100 feet from mining activities; and
  - 12 ○ the noise impacts generated by a maximum production scenario.

13 Absent an evaluation of these impacts for their likely significance, the issuance of a  
14 threshold determination violated SEPA, and the MDNS must be invalidated.

15 **2. An EIS must be conducted to evaluate the proposed mine’s significant  
16 environmental impacts.**

17 In addition, there is a reasonable likelihood that several project impacts would cause  
18 more than a moderate adverse effect on environmental quality and thus must be studied with an  
19 EIS. WAC 197-11-794(1); *see Boehm*, 111 Wn. App. at 717. These include at least the effects  
20 caused by the noncompliant, 200-foot buffer along undelineated wetlands, the impacts  
21 associated with the internal haul road development and use, the impacts associated with  
22 converting part of a wildlife corridor, the carbon impacts, and traffic impacts for recreational  
23 users, rural residents, school children, and commuters.

24 First, an EIS is required for the significant impacts that would result from allowing a  
25 200-foot wetland buffer without delineation along the Samish River wetlands in violation of the  
26 Skagit County CAO requirement for a 300-foot-plus buffer measured from the delineated  
landward edge of the wetland. WAC 197-11-330(3)(e)(iii) (whether proposal “[c]onflict[s] with

1 local, state, or federal laws or requirements for the protection of the environment.”). A buffer of  
2 at least 300 feet applies to the Mine as a high intensity land use adjacent to a Category II  
3 wetland. SCC 14.2.4.230. According to the Skagit County Code, “high intensity land uses”  
4 include “land uses which are associated with high levels of human disturbance or substantial  
5 habitat impacts including, but not limited to, medium- and high-density residential (more than  
6 one home per five acres), multifamily residential, some agricultural practices, and commercial  
7 and industrial land uses.” SCC 14.04.020 (emphasis added). The Mine qualifies as a commercial  
8 and industrial use of the land, and the clear-cutting of existing forest and conversion to a sand  
9 and gravel mine qualifies as a high level of human disturbance and substantial habitat impacts.  
10 In addition, the Application does not evaluate the angle of the slope in the buffer to determine  
11 whether it is greater than 25%, and thus warrants an extension of the buffer 25 feet past the top  
12 of the slope. SCC 14.24.230(2).  
13  
14

15 Second, as set forth above, evidence at hearing will show that the mine construction,  
16 internal haul road expansion and use, and mine operation and gravel hauling will cause  
17 significant transportation, ecological, wildlife, and carbon impacts that require review through  
18 an Environmental Impact Statement. This detailed statement must address: (1) the  
19 environmental impact of the proposed action; (2) any adverse environmental effects that cannot  
20 be avoided if the proposal is implemented; (3) alternatives to the proposed action; (4) the  
21 relationship between local short-term uses of the environment and the maintenance and  
22 enhancement of long-term productivity; and (5) any irreversible and irretrievable commitments  
23 of resources that would be involved if the proposed action is implemented. *Id.*  
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## V. CONCLUSION

County clearly erred when it issued the MDNS notwithstanding the substantial amount

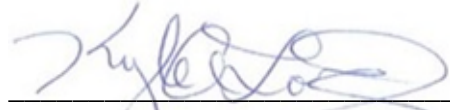


1 of unreviewed, significant environmental impacts. The MDNS must be invalidated and County  
2 must be directed to evaluate the impacts identified above.

3  
4 RESPECTFULLY SUBMITTED this 1st day of July, 2022.

5  
6 LORING ADVISING PLLC

7  
8 By



9 Kyle A. Loring, WSBA No. 34603  
10 Attorney for Appellants  
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## DECLARATION OF SERVICE

I declare under penalty of perjury under the laws of the State of Washington, that on the date and in the manner indicated below, I caused the following:

- **Appellant Central Samish Valley Neighbors' Hearing Brief**
- **Declaration of Service**

to be served on:

Hal Hart [ ] By United States Mail  
Skagit PDS Director [x] By Electronic mail  
hhart@co.skagit.wa.us

Jason D'Avignon [ ] By United States Mail  
Skagit County Civil Deputy [x] By Electronic mail  
Prosecuting Attorney  
jasond@co.skagit.wa.us

William T. Lynn [ ] By United States Mail  
Reuben Schutz [x] By Electronic mail  
Attorneys for Miles Sand and Gravel  
blynn@gth-law.com  
rschutz@gth-law.com

with courtesy copy to:

Tom Ehrlichman [ ] By United States Mail  
Attorney for Cougar Peak [x] By Electronic mail  
tom@dykesehrlichman.com

and filed with:

Cori Russell  
Skagit County Hearing and Records Management Coordinator  
corir@co.skagit.wa.us

DATED this 1st day of July, 2022, at Friday Harbor, Washington.

  
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Kyle A. Loring