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**BEFORE THE HEARING EXAMINER  
FOR SKAGIT COUNTY**

In the Matter of the Application for a  
Special Use Permit

No. PL16-0097, No. PL16-0098

**Concrete Nor'West/Miles Sand  
and Gravel SUP**

COUGAR PEAK LLC'S  
PREHEARING BRIEF

**I. INTRODUCTION**

Cougar Creek LLC ("Cougar Creek") appears through it legal counsel herein and offers the following for its prehearing brief. As an adjacent property owner, Cougar Peak addresses only the application for a Special Use Permit, No. PL16-0097 as it relates to traffic safety.

The proposed mine operation is of gigantic scale and the proposed increases in traffic are high in both volume of traffic and intensity of loaded gravel trucks. Cougar Peak requests that the final decision on the permit include corrections to conditions recommended by County staff and a strict condition defining the daily maximum number of trucks traveling to and from the mine, as the limit necessary to meet applicable standards for protection of public safety .

The Hearing Examiner is authorized to condition the project under Skagit County's adopted code criteria for review of Mining Special Use Permit applications. Absent those mitigating conditions as part of the Special Use Permit, Concrete Nor'West and Miles Sand and Gravel have failed to meet their burden of proof to show no deaths or serious injury will result from approval of their proposed mine under that permit.

## II. STANDARD OF REVIEW

Cougar Peak will contend at hearing that the criteria for approval of the Special Use Permit under County Code have not be met by the proposed application and that additional traffic safety conditions are necessary to meet applicable requirements at law. The standards and criteria for approval are as follows.

### A. Burden of Proof.

Under County law, the applicant has the burden of proof in this Special Use Permit hearing:

#### 2.09 Burden of Proof

The burden of proof shall be on the applicant to establish by a preponderance of the evidence that the request is consistent with applicable legal standards.

Skagit County Resolution 20080511 (Nov. 25, 2008), adopting *Rules of Procedure for Hearings*. Similarly:

#### 14.06.160 Open record public hearing procedures

##### (3) Burden of Proof.

\* \* \*

- (b) In the case of open record predecision hearings for Level II or Level III decisions, the applicant for the development permit shall bear the burden of demonstrating that the project complies with applicable goals and policies of the Comprehensive Plan and the applicable criteria and requirements of the Skagit County Code and other applicable law.

Skagit County Code (SCC) § 14.06.160 Open Record Public Hearing Procedures. Under these adopted standards for the conduct of the hearing, it is not the job of the Hearing Examiner, County Staff or the public to prove anything. The entire burden of rests with the applicant to prove that the project complies with “applicable goals and policies of the Comprehensive Plan and the applicable criteria and requirements of the Skagit County Code . . . “

### B. The Hearing Examiner’s Lens for Reviewing Adequacy of Conditions.

The County Code code contains very specific standards for Hearing Examiner review of mining proposals within the Mineral Resource Overlay district. The most important of these

1 from Cougar Peak's perspective is the mandate requiring the Hearing Examiner to consider  
2 conditions that will mitigate detrimental impacts and "protect the general welfare, health and  
3 safety"

4 **14.16.440 Mineral Resource Overlay (MRO).**

5 . . . .

6 (9) Hearing Examiner Review.

7 (a) . . . . **The Hearing Examiner shall consider all relevant evidence and**  
8 **conditions that will mitigate detrimental impacts to the environment**  
9 **and conditions that protect the general welfare, health and safety.** The  
10 permit shall be granted if the impacts are mitigatable. The burden of proof  
11 shall be on the applicant. Mitigating conditions shall be performance-  
12 based, objective standards that:

- 13 (i) Are directly and proportionately related to limiting surface mining  
14 impacts;
- 15 (ii) Are reasonable, practicable and generally capable of being achieved  
16 by the mine operator; and
- 17 (iii) Take into consideration existing and available technologies  
18 applicable to mining operations.

19 SCC § 14.16.440(9) (emphasis added). In the context of traffic safety, the Examiner "shall"  
20 look for conditions that protect the safety of neighboring residents on Grip Road. This code  
21 mandate reinforces that the burden is on the applicant to prove the proposal is adequate to  
22 protect public safety.

23 **C. The Requirement for an Articulate and Specific Applicant Operations Plan.**

24 Under subsection (8)(f) of this same code section, the applicant has the burden to  
25 present a detailed operations plan that describes the exact number of haul trucks that will enter  
26 and exit the mine entrance during specified hours of operation, as well as a full and accurate  
27 description of the roadways in the vicinity capable of supporting the truck traffic, in light of  
28 adjacent land uses on the Cougar Peak property:

(8) **Application For Mining Special Use Permit.** An applicant for a mining  
operations special use permit shall submit:

- (a) The following information on maps in an 11-inch by 17-inch format size:

- (i) 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;

. . . .

- (f) An operations proposal detailing estimated frequency of blasting, **estimated truckloads per day**, what provisions for screening and fencing are proposed, **and estimated hours of operation.**

SCC § 14.16.440(8)(a)(i), (f) (emphasis added). This burden of proof for an applicant submittal package and approval will be shown at hearing to be fundamentally important to Cougar Peak's case.

**D. The Necessity for Staff Review Concurring That Road Safety Standards are met.**

This code section also requires the applicant to obtain a report from Skagit County Public Works affirming that Grip Road and other local roads are capable of sustaining the heavy truck traffic serving the mining operation and that the mine operation meets County road safety standards set forth in the Comprehensive Plan:

- (i) A review from Skagit County Public Works Department or Washington State Department of Transportation **demonstrating that roads or bridges are capable of sustaining the necessary traffic for the proposed mineral extraction operation, and that the proposed operation meets level-of-service, safety, and other standards as outlined in the Skagit County Transportation Systems Plan, the Skagit County Comprehensive Plan,** and applicable State and local regulations.

SCC § 14.16.440(8)(i) (emphasis added).

**E. The Mandate to Impose Conditions Necessary to Protect Public Safety.**

The section of code governing Hearing Examiner approval of a mine operation mandates that the Hearing Examiner treat the requirements of SCC ch. 14.16 as minimum standards and impose conditions necessary to protect public safety:

- (b) **The Hearing Examiner shall consider the requirements of this Chapter as minimum standards** based on unique site-specific factors or

conditions as appropriate to protect public health, safety, and the environment.

SCC § 14.16.440(9)(b) (emphasis added).

### III. SCOPE OF ARGUMENT AT HEARING

At hearing, Cougar Peak intends to present argument, evidence and testimony limited to the traffic safety dangers of this proposal at Grip Road and Prairie Road, which are the primary roads for access to and from Cougar Peak's property and the proposed mine. The record will show that these rural roads are narrow, without shoulders in most locations, bordered by steep slopes and ditches, and have insufficient sight distance.

Cougar Peak will show that, either through lack of sufficient data and analysis or failure to propose adequate conditions, the applicant has failed to meet its high burden of demonstrating compliance with applicable all policies and code requirements for approval of the Mining Special Use Permit related to protection of public safety. Through questioning of witnesses for the applicant and the County who testify that these policies and requirements have been met, Cougar Peak intends to identify where the applicant's burden, described above, has not been met. Cougar Peak also intends to present further oral or written testimony and argument identifying specific comprehensive plan policies that have not been satisfied by the current proposal and proposed conditions.

Under the standard of review governing Hearing Examiner review of this type of permit, the Hearing Examiner is mandated to impose conditions that ensure public safety and compliance with adopted comprehensive plan policies. Unlike other proceedings and types of permit reviews, the Mining Special Use Permit requires the applicant to comply with both the adopted regulations *and* the comprehensive plan.

County staff have proposed a number of conditions for the Mining Special Use Permit related to traffic safety that staff believe allow the Examiner to fulfill that duty. At hearing, Cougar Peak will identify which of these proposed conditions are adequate, which provide

1 insufficient clarity and must be corrected prior to approval, and which are inadequate to  
2 protect public safety from heavy truck traffic on the roads.

3 In the absence of additional conditions and reform of certain other proposed conditions,  
4 Cougar Peak, its employees, invitees and caretaker will be directly harmed by the high volume  
5 of proposed truck transport associated with the operation. Cougar Peak has a unique status as  
6 owner of land directly adjacent to the proposed mine entrance on Gripp Road. Cougar Peak's  
7 caretakers, their family, employees and invitees regularly access Gripp Road closer to the  
8 proposed mine entrance than any other party.

9 In conclusion, Cougar Peak will demonstrate at hearing that the criteria for approval of  
10 the Special Use Permit under County Code will not be met without additional traffic safety  
11 conditions. As an adjacent landowner, Cougar Peak's interests are protected by the standard  
12 of review explained herein, adopted under County Code.

13 Respectfully submitted this 1st day of July,

14 DYKES EHRLICHMAN LAW FIRM

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17  
18 Tom Ehrlichman, WSBA No. 20952  
19 Counsel for Cougar Creek LLC

20 **CERTIFICATE OF FILING**

21 I, Tom Ehrlichman, am a partner at the Dykes Ehrlichman Law Firm and hereby certify that I caused  
22 this *Prehearing Brief* to be filed with the Clerk for the Skagit County Hearing Examiner and counsel  
23 for all parties of record in the above-captioned matter, all via electronic mail on July 1, 2022.

24 Signed, July 1, 2022:

25 

26  
27 Tom Ehrlichman, WSBA No. 20952