

BEFORE THE SKAGIT COUNTY HEARING EXAMINER

In the Matter of the Appeal of

**Central Samish Valley Neighbors**

re: Mitigated Determination of  
Nonsignificance

NO. PL22-0142 (Application Nos. PL16-0097 & PL16-0098)

OPPOSITION TO MOTION TO INTERVENE

**OPPOSITION**

Cougar Peak's interest would be protected by the procedure discussed at the pre-hearing conference – i.e., if the combined hearing is organized so that the Special Use Permit is first and the SEPA appeal second. The Applicant intends to call its traffic witnesses as part of the hearing on the Special Use Permit. Cougar Peak will have the opportunity to cross examine the County and Applicant's witnesses as to traffic impacts and create a record to fully advise the Examiner and protect its rights. Cougar Peak's concerns as to its ability to defend its interests in the Special Use Permit proceeding are fully addressed if the combined hearing is organized this way.

As to the balance of the motion, there is no authority that would permit Cougar Peak to "intervene" in the SEPA appeal when it failed to follow the appeal procedures under the

Skagit County Code (SCC). The cutoff for appealing an MDNS under the Code is 14 days.<sup>1</sup> This is a firm deadline and there are no exceptions.

To the extent that Hearing Examiner Rule of Procedure 3.07 could be read to allow intervention by a party that fails to appeal a SEPA determination, it conflicts with the Code and is invalid. The Code authorizes the adoption of procedural rules but states they may not conflict with any part of the Code:

The Hearing Examiner may, from time to time, adopt such procedural rules as are reasonably necessary to carry out the duties and responsibilities of the office, provided such rules shall not be in conflict with this Chapter, or any other relevant provisions of the Skagit County Code. Such rules shall not take effect until they have been reviewed and approved by the Board of County.<sup>2</sup>

The Code governs in this case. Intervention for parties that fail to appeal is not allowed. This is fully consistent with long-standing principles of finality and standing in land-use law.

Even if Cougar Peak could seek intervention under the procedural rules, it still would not qualify for intervention, as its interests are already adequately represented by the Appellants Central Samish Valley Neighbors (CSVN). According to Cougar Ridge, it is concerned with trucks traveling on Grip Road, particularly as they pass Cougar Ridge's access drive.<sup>3</sup> This concern is not unique.

The representatives for CSVN are all immediate neighbors of the mine property. They have challenged the MDNS as to traffic on Grip Road. Their SEPA appeal states:

All of the Appellants live near and travel frequently along potential haul routes and are aggrieved by the lack of adequate review of traffic impacts... Appellants all share a concern for their own safety and the safety of their family, friends, and neighbors who frequently travel the proposed haul route.<sup>4</sup>

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<sup>1</sup> SCC 16.12.210; SCC 14.06.110.

<sup>2</sup> SCC 14.02.070(8) (emphasis added).

<sup>3</sup> Mot. to Intervene, p. 3.

<sup>4</sup> Notice of Appeal, pp. 3-4.

A number of the CSVN representatives live adjacent to the mine property. Several have access drives off Grip Road. They have raised in their appeal the exact same concerns that Cougar Peak cites in its motion.<sup>5</sup> The issue of truck traffic on Grip Road and the purported impact to those living on Grip Road will be specifically and adequately addressed by CSVN and their counsel.

For the reasons discussed above, the Hearing Examiner should deny Cougar Peak's motion to intervene and follow the procedure discussed by the parties and the Examiner earlier.

Dated this 22nd day of April, 2022.

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<sup>5</sup> *Id.* at pp. 4-6.