

BEFORE THE HEARING EXAMINER
FOR SKAGIT COUNTY

In the Matter of the Appeal of
Central Samish Valley Neighbors
*A Mitigated Determination of
Nonsignificance*

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

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

MOTION TO INTERVENE

I. INTRODUCTION

Cougar Peak LLC (“Cougar Peak”) owns land directly adjacent to the proposed project at issue here and now appears through its legal counsel to respectfully request an order in the above-captioned case granting Cougar Peak the right to participate fully in the prehearing conference scheduled for Monday, April 11, 2022 at 1:00 p.m.¹ Cougar Peak also requests an order granting it dual status as an intervenor in the SEPA appeal portion of the combined open-record hearing, and “represented-party” status in the Special Use Permit pre-decision hearing, as provided in the Skagit County Hearing Examiner Rules of Procedure (“Rules”). Some introductory information on Cougar Peak’s interests and the importance of full participation as a party in this combined proceeding is provided as follows.

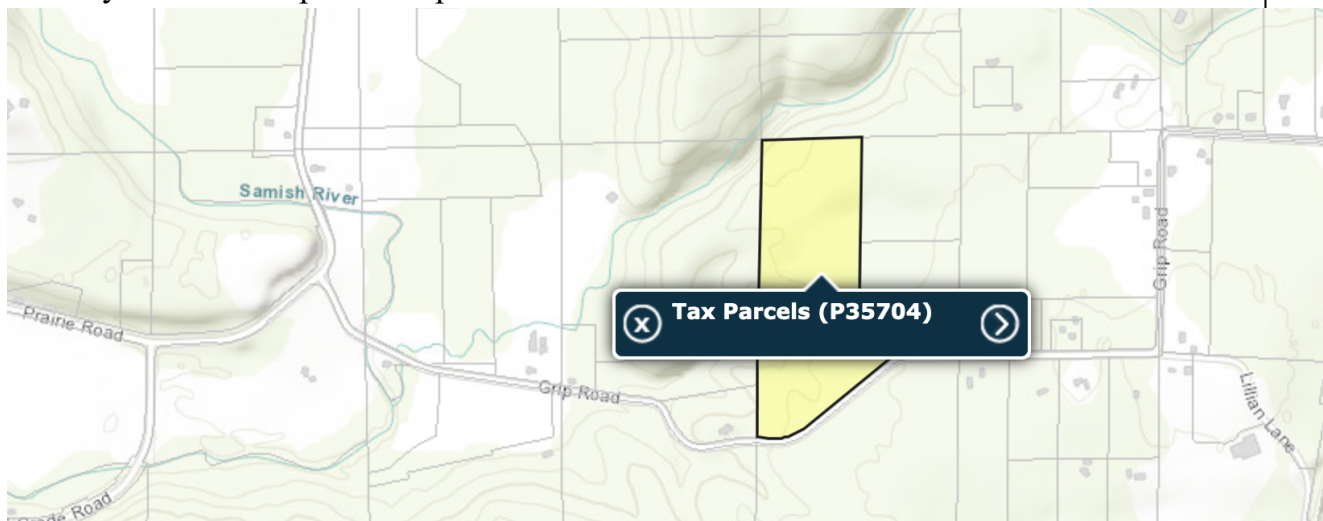
According to application documents on file at Skagit County, the applicant proposes to haul gravel from a mine, by dump truck through a parcel that it owns or controls, out onto Grip Road and thence to Prairie Road, and then onward to a plant for crushing and refining the rock further. Grip Road is a narrow, two-lane rural road with no shoulders and deep ditches,

¹ Cougar Peak’s legal counsel learned of the Hearing Examiner’s *Order on Pre-Hearing Conference* at 4:10 p.m. on Thursday, April 7, 2022. This motion was prepared and filed as soon as possible on the following day.

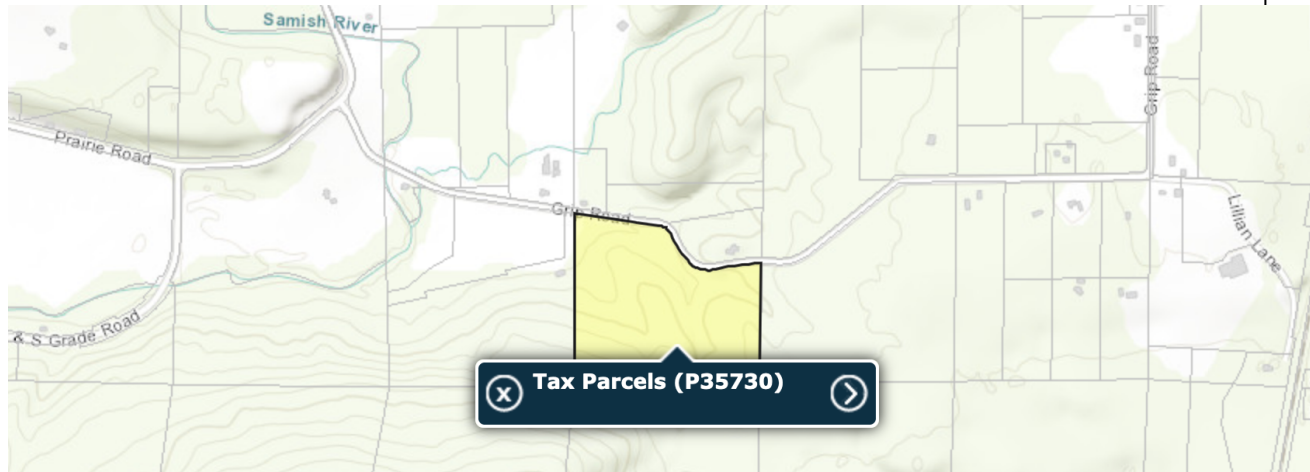
1 making maneuverability difficult for passing vehicles and trucks. As will be shown at
2 hearing, it is not an exaggeration to state that parties entering and exiting the Cougar Peak
3 property will experience traffic safety problems with potentially life-threatening consequences
4 as a result of the proposal, even with conditions proposed by Skagit County staff and the
5 County Engineer.

6 Cougar Peak owns approximately four hundred acres directly adjacent to the south of
7 the mining operation's proposed haul-out route onto Grip Road. The Cougar Peak property is
8 rural forest land accessed through a driveway gate at Grip Road. The fourteen parcels owned
9 by Cougar Peak are inter-connected and serviced by maintained forest roads. Cougar Peak's
10 property includes several buildings and appurtenances, including a caretaker's home, barns,
11 and equipment buildings. As part of its operations and as a residential property, Cougar
12 Peak's ownership is routinely accessed from Grip Road by the caretakers, their family
13 members, employees, contractors, and other invitees. (Together, these users of Grip Road and
14 Cougar Peak are referred to hereinafter in this motion collectively as "Cougar Peak").

15 The mining applicant's parcel containing their haul-out entrance to Grip Road is shown
16 in the County's online tax parcel map as follows:



26 The Cougar Peak parcel containing the gated driveway to the Cougar Peak ownership
27 is shown on the County's online tax parcel map as follows:



Cougar Peak also owns the frontage to Grip Road directly across from the mine entrance (Skagit County Tax Parcel No. P35722). The physical address for the Cougar Peak property ownership is 21454 Grip Road, Sedro Wooley, WA and the contact information is as follows:

Cougar Peak LLC
c/o Neal McLeod
Email: quickblackie@gmail.com
Tel: (360) 303-4831
Mailing Address: PO Box 4227, Bellingham, WA 98227

Cougar Peak is represented by the undersigned attorney; a Notice of Appearance has been served upon all parties to ensure pleadings served on Cougar Peak LLC in this proceeding are through their attorney of record.

The adverse traffic safety impacts of the proposed mining operation will be experienced uniquely by Cougar Peak. Cougar Peak's single driveway and access to Grip Road is uniquely located approximately 300 yards northwest of the entrance to the proposed mine from Grip Road. The Cougar Peak driveway is located near the top of a rise with a sharp corner. Heavy load trucks exiting the gravel mine onto Grip Road are proposed to travel past the Cougar Peak driveway in the direction of Prairie Road. Those heavy trucks will encounter Cougar Peak's driveway at the blind curve. They will have enough distance to get up to travel speed but very limited sight distance prior to encountering the Cougar Peak driveway. Similarly, Cougar Peak will have very little warning when exiting their driveway onto Grip

1 Road.

2 In this motion, Cougar Peak asserts a unique interest and a right to participate fully in
3 the Special Use Permit pre-decision hearing through legal counsel, including participation in
4 all aspects of the scheduling, briefing and exchange of pleadings, as well as the right of full
5 participation in all aspects of the SEPA appeal proceeding, where appellate findings and
6 conclusions about the adequacy of traffic mitigation will necessarily affect the decision on the
7 Special Use Permit. The findings and conclusions of concern involve the entire range of
8 traffic safety facts and conclusions related to this mining proposal.

9 **II. RELIEF REQUESTED**

10 Cougar Peak appears through its legal counsel herein and respectfully requests an
11 order(s) granting three requests:

12
13 (a) The right to participate fully in the prehearing conference scheduled for
14 Monday, April 11, 2022 at 1:00 p.m., as to both the SEPA Appeal and the Special Use Permit,
15 and an order subsequent to the prehearing conference requiring all parties to copy counsel on
16 all future submittals to the Hearing Examiner or Skagit County in both matters;²

17 (b) Status as an intervenor in the above-referenced SEPA Appeal No. PL22-0142,
18 pursuant to Hearing Examiner Rule 3.07; and

19 (c) Full status as a represented party in the Special Use Permit hearing, in the same
20 manner as the County, and all other represented parties, with time allotted to Cougar Peak
21 during the hearing to present witnesses and cross examine other witnesses.

22 **III. GROUNDS AND APPLICABLE LAW**

23 The Skagit County Hearing Examiner conducts hearings based on Rules of Procedure
24 adopted under Skagit County Code, 14.06.240(8) “to help secure the fair and efficient conduct
25 of matters . . . to ensure that the essentials of due process are an integral part of every
26

27 ² See for example the elements of the case, which will be described in the Hearing Examiner’s order following the
28 prehearing conference, described in Rule § 3.11. Cougar Peak seeks participation in all aspects outlined therein. See also
Rule § 2.04.

1 hearing conducted.” *Skagit County Hearing Examiner Rules of Procedure* (“Rules”) at 5.
2 Here, the SEPA Appeal and Special Use Permit hearings are combined in a single, open-
3 record hearing. Cougar Peak seeks the right to create its record with respect to traffic safety
4 issues in the combined SEPA Appeal and all issues with respect to the Special Use Permit
5 hearing. Cougar Peak therefore seeks a prehearing order at this time allowing it time to
6 present expert testimony and to cross examine expert witnesses, the applicant’s representative,
7 and County staff in all aspects of the combined hearing before the Hearing Examiner.

8 A. Participation in the Prehearing Conference. Because the prehearing order
9 will set in place the parameters for creating a record, including any pre-hearing filing of
10 exhibit and witness lists and prehearing briefs and motions concerning evidence or subject
11 matter, Cougar Peak should be entitled to participate fully in the prehearing conference
12 through the undersigned counsel.

13 B. Intervention in the SEPA Appeal. Cougar Peak’s request for intervention
14 in the SEPA appeal is based on the unique nature of its interests. The Skagit County Rules
15 allow intervention by a non-appellant in a SEPA appeal hearing:

16 **3.07 Intervention**

17 Upon a showing of a significant interest not otherwise adequately represented,
18 the Examiner may permit an individual or entity who has not filed a timely
19 appeal to intervene, either as an appellant or as a respondent. In ruling on an
20 intervention request the Examiner shall ensure that the intervention will not
21 interfere with the orderly and prompt conduct of the proceedings or otherwise
22 prejudice the rights of any of the original parties. Conditions may be imposed
 upon the intervenor’s participation, including precluding the intervenor from
 expanding the issues in the appeal.

23 Rules § 3.07 at 19.

24 Cougar Peak meets these tests for intervention. First and foremost, Cougar Peak’s
25 participation will not disrupt the proceedings or rights of other parties. Cougar Peak seeks
26 only limited intervention in the SEPA Appeal, focusing on issues, evidence and testimony
27 related to traffic safety.

28 Cougar Peaks’ interests are unique from those of the general public or any of the SEPA

1 appellants. As discussed above, Cougar Peak will experience greater difficulty entering and
2 exiting Grip Road from the Cougar Peak driveway and thus will experience added risk from
3 the project at that location. Those risks and interests in safe transit are site-specific. Any
4 increased risks that are not adequately mitigated will regularly and directly affect Cougar
5 Peak. While the SEPA Appeal does include traffic safety issues of concern to Cougar Peak, it
6 does not cite specific facts of concern to Cougar Peak or its specific driveway location in
7 proximity to the mine entrance/exit, nor can one assume that the SEPA Appellants would
8 spend their time and resources to argue the facts and the law in the same way Cougar Peak
9 will. Cougar Peak's rights are best preserved by allowing it to formally intervene in the SEPA
10 appeal. Cougar Peak's interests in the development of the record related to the SEPA Appeal
11 also are not adequately represented by County staff or the County Engineer. Cougar Peak
12 continues to have concerns with the wording of certain SEPA conditions proposed by staff and
13 is greatly concerned with the omission of what it feels are obvious mitigation conditions that
14 should be imposed on the project under SEPA in order to address the adverse traffic safety
15 impacts identified in the MDNS. The applicant is on record citing legal precedent to oppose
16 the imposition of any further traffic safety conditions. Cougar Peak is entitled to offer its
17 interpretation of the law in response through its legal counsel, including in response to any
18 written legal analysis of the applicant or the County and during any briefing authorized by the
19 Hearing Examiner. In light of these facts, Cougar Peak has "a significant interest not
20 otherwise adequately represented." *Id.*

21 To comply with the other portions of the intervention rule, Cougar Peak proposes the
22 following parameters with respect to the SEPA Appeal Intervention:

- 23 • Designation as an "appellant" rather than as a "respondent;";
- 24 • Ensure intervention will not interfere with the proceeding by placing Cougar
25 Peak's presentations last in order of traffic safety presentations (subject to
26 rebuttal), thus minimizing duplication at hearing,;
- 27 • Ensure the rights of original parties are not prejudiced by limiting Cougar Peak's
28 participation to the issue of traffic safety and proposed mitigation;
- Preclude Cougar Peak from raising any non-traffic issues in the SEPA Appeal.

1 Cougar Peak's interest in intervention stems from: (a) its concern about making a good
2 record that will include its interests in any subsequent SEPA appellate proceedings; and (b) its
3 ability to defend its interests in the Special Use Permit proceeding. On this latter point, as is
4 routinely the case in a combined single-record hearing, the SEPA arguments will necessarily
5 involve discussion of whether compliance with Special Use Permit criteria and code
6 requirements are adequate to reduce traffic impacts to an acceptable level in terms of safety
7 for Cougar Peak. Findings and conclusions by the Hearing Examiner on the adequacy of the
8 MDNS SEPA Conditions will necessarily be intertwined with the question of whether Special
9 Use Permit safety criteria have been met and that permit will issue. Cougar Peak's ability to
10 defend its interests in the Special Use Permit case will necessarily require full participation in
11 any aspect of the combined hearing that is devoted to the SEPA Appeal, as it relates to traffic
12 safety. Cougar Creek respectfully submits that its request intervention in the SEPA Appeal is
13 the best way for Cougar Peak to be allowed to create its record with respect to the adequacy of
14 proposed traffic safety conditions in a single, open-record hearing.

15 C. Full Participation as a Represented Party in the Special Use Permit Case.
16 Separate from the issue of the adequacy of SEPA MDNS conditions, Cougar Peak will
17 contend at hearing that the criteria for approval of the Special Use Permit under County Code
18 cannot be met without additional traffic safety conditions, incorporated as part of the
19 conditions to the Special Use Permit. With respect to the segment of the hearing and decision
20 devoted to the Special Use Permit criteria, Cougar Peak's unique interests are best protected
21 by granting it full-party status through legal representation, including the right to presentation
22 of evidence and expert witness testimony, the right of cross examination as authorized by the
23 Hearing Examiner, the right to file and respond to procedural motions and objections, and the
24 right to participate in pre- or post-hearing briefing. Cougar Peak's right to make a record
25 based on County code requirements will be adversely prejudiced without a right of full
26 participation in the Special Use Permit case in the same manner as the applicant, including an
27 allotment of time sufficient to allow the undersigned counsel to present expert witness
28 testimony, provide oral argument and cross examine witnesses.

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IV. CONCLUSION

Cougar Peak respectfully requests an order granting Cougar Peak and its legal counsel:

(a) The right to participate fully in the prehearing conference to be held April 11, 2022 so as to participate in the scheduling of the hearing date and time for presentations at hearing, as well as the exchange of exhibit and witness lists and other pleadings in both the SEPA Appeal and the Special Use Permit proceedings;

(b) Intervention in the SEPA Appeal, as contemplated by the Rules, limited to traffic safety issues; and

(c) Full represented-party status to present a record on the Special Use Permit criteria under adopted County ordinances, including full participation in all procedural aspects of the hearing as a main party, including but not limited to a reasonable allotment of time to present evidence, witness testimony, cross examination and argument at hearing.

The requested order will ensure that Cougar Peak's unique status as a landowner with a driveway directly affected by proposed heavy truck traffic on Grip Road will be afforded representation and due process as contemplated by the Hearing Examiner Rules.

Respectfully submitted this 8th day of April,

DYKES EHRLICHMAN LAW FIRM



Tom Ehrlichman, WSBA No. 20952
Counsel for Cougar Peak LLC

CERTIFICATE OF FILING

23 I, Tom Ehrlichman, am a partner at the Dykes Ehrlichman Law Firm and hereby certify that I caused
24 this *Motion to Intervene* and Cougar Peak's *Notice of Appearance* to be filed with the Clerk for the
25 Skagit County Hearing Examiner and counsel for all parties of record in the above-captioned matter,
all via electronic mail on April 8, 2022. Signed, April 8, 2022:



Tom Ehrlichman, WSBA No. 20952