

**BEFORE THE HEARING EXAMINER
FOR SKAGIT COUNTY**

In the Matter of the Appeal of)	No. PL16-0097; No. PL16-0098
)	Appeal No. PL22-0142
)	
Central Samish Valley Neighbors)	Concrete Nor'West/Miles Sand
)	and Gravel
)	
)	
Of a Mitigated Determination)	
<u>of Nonsignificance</u>)	PRE-HEARING ORDERS

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Hearing Examiner
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BACKGROUND

Concrete Nor'West/Miles Sand and Gravel (Applicant) has requested a Special Use Permit (SUP) (PL16-0097) to permit a proposed gravel mine/quarry on properties located approximately 1.5 miles north of Grip Road and south/southwest of the Samish River. The Applicant has also submitted a Forest Practice Conversion application. Skagit County (County) determined that both applications were complete on March 22, 2016.

The County Planning and Development System acted as lead agency and analyzed the environmental impacts of the proposed project as required by the State Environmental Policy Act (SEPA), Chapter 43.21C Revised Code of Washington (RCW). The County reviewed the Applicant's environmental checklist and other information on file and determined that, with mitigation, the proposal would not have a probable significant adverse impact on the environment. Accordingly, the County issued a Mitigated Determination of Nonsignificance

*Pre-Hearing Orders
Skagit County Hearing Examiner
Concrete Nor'West/Miles Sand and Gravel SUP
Appeal No. PL22-0142*

(MDNS) with 19 mitigation measures on February 22, 2022, with a comment deadline of March 11, 2022, and an appeal deadline of March 25, 2022. On March 25, 2022, Attorney Kyle Loring, on behalf of Central Samish Valley Neighbors, filed an appeal of the MDNS.

On April 1, 2022, the Hearing Examiner issued an order, scheduling a pre-hearing conference with the parties on April 11, 2022, to set an appeal hearing date, agree on a briefing schedule, and address any other procedural issues raised by the parties.¹ *Order on Pre-Hearing Conference, dated April 1, 2022.*

At the conference, it was determined that the open record appeal hearing on this matter shall commence on **July 11, 2022, at 9:00 AM**, using remote access technology.² The parties have set aside **July 12, 2022, at 9:00 AM, and July 13, 2022, at Noon**, in case additional hearing time is necessary.

Of note, Washington Administrative Code 197-11-680(3)(v) provides “the appeal shall consolidate any allowed appeals of procedural and substantive determinations under SEPA with a hearing or appeal on the underlying governmental action in a single simultaneous hearing before one hearing officer or body.” In addition, Skagit County Code (SCC) 14.06.070(2)(d) provides: “Any appeals of a determination of nonsignificance shall be combined with and processed at the same time as the hearings or appeals of the underlying development permit.”

Accordingly, the open record SUP hearing will be consolidated with the hearing on the SEPA appeal. The Hearing Examiner has determined that the SUP portion of the hearing will commence first. This “portion” of the consolidated hearing will include the opportunity for members of the public to provide testimony and, where appropriate, for the cross-examination of expert witnesses. To avoid duplication and “streamline” matters as much as possible, the parties are encouraged to submit all their proposed exhibits (as detailed below) during the SUP portion of the hearing and to call all witnesses during this portion of the hearing. The SEPA portion of the hearing, then, will focus more specifically on the parties’ legal arguments.

APPEAL PROCEDURES

In order to facilitate the efficient presentation of issues at the appeal hearing, the following procedures shall be followed:

¹ An additional matter involving a request by an adjacent property owner, Cougar Peak, LLC, was also addressed at the pre-hearing conference. The Hearing Examiner denied the intervention motion, as detailed in a separate order/decision.

² The Clerk to the Hearing Examiner will provide access information to the parties for the virtual hearing. The Hearing Examiner has no issue with a “hybrid” format being used for this hearing, such that members of the public (and the parties) are able to participate from a conference room made available by the County. Given the fluctuating state of the pandemic, the Hearing Examiner suggests the parties revisit the “remote versus ‘in person’ issue approximately one month prior to the scheduled hearing dates.

1. Dispositive Motions: By **4:00 PM, May 13, 2022**, an electronic copy (PDF or Word) of any dispositive motions may be submitted by any party to the Clerk to the Hearing Examiner of the County (who will forward a copy to the Hearing Examiner), with a copy to the other parties. By **4:00 PM, May 20, 2022**, an electronic copy of any response to motions may be submitted by any party to the Clerk to the Hearings Examiner (who will forward a copy to the Hearing Examiner), with a copy to the other parties. Any attachments to dispositive motions shall be labeled as follows: Appellant (A-1, A-2, etc.); Applicant (B-1, B-2, etc.), and County (C-1, C-2, etc.). All attachments shall be submitted in “.pdf”, “.doc”, or “.docx” format unless requested and otherwise approved by the Hearing Examiner. The Hearing Examiner expects to issue a decision on any dispositive motions by June 3, 2022, unless he determines it would be appropriate to hear oral argument on any such motions at the outset of the appeal hearing.
2. Witness and Document Lists: By **4:00 PM, June 13, 2022**, each party shall provide to the other parties, with a copy to the Clerk to the Hearing Examiner (who will forward a copy to the Hearing Examiner), the following in electronic (PDF or Word) format:
 - a. a witness list
 - b. a documents list
 - c. copies of the documents

The witness list shall include the name, email address, and telephone number of each witness. If the witness will be providing expert testimony, the witness list shall also identify the area of expertise of the witness. Only those witnesses and documents identified in advance of the hearing shall be considered as part of the record at the hearing. Members of the public may watch the hearing but, again, only those people identified by any party as a witness, in the exchanged witness lists, will be allowed to testify at the hearing. Objections to the admission of proposed exhibits may be made at the hearing. The representatives of all parties to the appeal shall have an opportunity to cross-examine witnesses. Copies of documents should be designated as follows: Appellant (A-1, A-2, etc.), Applicant (B-1, B-2, etc.), and County (C-1, C-2, etc.). Any documents previously submitted as attachments to dispositive motions should retain the same numbering (i.e., if the County submits a dispositive motion with attachments C-1 and C-2, those same numbers should be used in its document list and additional documents should begin with C-3).

The County shall include a copy of the Applicant’s SUP application, and the County’s decision as part of its document submittal. The Appellant shall include the appeal statements as part of its document submittal. The Clerk to the Hearing Examiner shall forward one set of copies to the Hearing Examiner.

In addition to submission of the materials identified above, the parties may submit a hearing brief by **4:00 PM, July 1, 2022**.

Pre-Hearing Orders
Skagit County Hearing Examiner
Concrete Nor’West/Miles Sand and Gravel SUP
Appeal No. PL22-0142

3. Hearing: The issues that may be addressed at the appeal hearing are limited to those identified in the appeal statement(s). The order of presentation shall be:
 - a. Introductory remarks by the Hearing Examiner
 - b. Presentation of Appellant witnesses, and cross-examination of those witnesses by the Applicant, and County
 - c. Presentation of County witnesses, and cross-examination of those witnesses by the Applicant and Appellant
 - d. Presentation of Applicant witnesses, and cross-examination of those witnesses by the County and Appellant
 - e. Closing arguments, if any, by the County, Applicant, and Appellant.
4. Settlement: The parties are encouraged to discuss settlement and to notify the Clerk to the Hearing Examiner of any settlement reached prior to the scheduled hearing.

So ordered and decided this 13th day of May 2022.



ANDREW M. REEVES
Hearing Examiner
Sound Law Center