

**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)	DECISION ON MOTION
<u>of Nonsignificance</u>)	TO INTERVENE

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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

*Decision on Motion to Intervene
Skagit County Hearing Examiner
Concrete Nor'West/Miles Sand and Gravel SUP
Appeal No. PL22-0142*

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 (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. *Order on Pre-Hearing Conference, dated April 1, 2022.*

MOTION TO INTERVENE

On April 8, 2022, Attorney Tom Ehrlichman, on behalf of Cougar Peak, LLC ("Cougar Peak"), filed a "Motion to Intervene" with the County related to this matter. Cougar Peak owns land adjacent to the proposed project site and requested intervention in the SEPA appeal to ensure that its concerns over impacts from the proposal, especially in relation to traffic, are adequately addressed. As part of its motion, Cougar Peak requested the opportunity to participate in the scheduled pre-hearing conference related to the SEPA appeal. As detailed further below, the Hearing Examiner ruled that it would be appropriate to allow Cougar Peak to participate in the scheduled pre-hearing conference.

PRE-HEARING CONFERENCE

Representatives from the County, the Applicant, the Appellant, and Cougar Peak participated in the pre-hearing conference on April 11, 2022. At the conference, the parties discussed several matters, including the manner in which the open record hearing on the underlying Special Use Permit would proceed in conjunction with the SEPA appeal.¹ The parties generally concurred that, were the open record hearing "portion" of the consolidated hearing related to the underlying SUP to occur first, Cougar Peak would have the opportunity to cross-examine expert witnesses (as would the other parties), thereby obviating the need for it to participate in the SEPA "portion" of the hearing. Ultimately, however, the Hearing Examiner ruled that it would be appropriate to allow Cougar Peak to submit a revised intervention motion addressing this issue and, further, to allow the other parties to respond (if desired).

¹ 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."

DECISION ON MOTION TO INTERVENE

As discussed at the pre-hearing conference, Cougar Peak submitted an additional pleading, on April 12, 2022, entitled “Revised Motion to Intervene Following Pre-Hearing Conference.” In its revised motion, Cougar Peak notes that, if the Hearing Examiner establishes an order of proceeding for the combined open-record hearing on the SUP and SEPA appeal such that all traffic safety exhibits and witness testimony are presented first, during the SUP “portion” of the hearing, and Cougar Peak has the “full rights afforded to the public under the Hearing Examiner rules to present witnesses and cross examine witnesses,” then its request for intervenor status related to the SEPA appeal would be unnecessary. *Revised Motion to Intervene Following Pre-Hearing Conference, dated April 12, 2022.*

The other parties were given the opportunity to respond to Cougar Peak’s revised motion. The County noted that it had no objection to Cougar Peak’s participation in the SEPA appeal. The Appellant did not provide a response. The Applicant timely submitted a pleading opposing Cougar Peak’s motion to intervene, dated April 22, 2022. The Applicant noted, however, that “if the combined hearing is organized so that the Special Use Permit is first and SEPA appeal second” then the intervention request would be moot as the Applicant “intends to call its traffic witnesses as part of the hearing on the Special Use Permit.” *Applicant’s Opposition to Motion to Intervene.* The Applicant also argued that Cougar Peak’s request to intervene must be denied because any appeal of the County’s SEPA determination had to have been made within 14 days, under SCC 14.06.110 and SCC 14.02.070(8), and because Cougar Peak’s interests will be adequately represented by the existing Appellant, Central Samish Valley Neighbors. *Applicant’s Opposition to Motion to Intervene.*

Having considered the argument of the parties and submitted pleadings, the Hearing Examiner concurs with the Applicant. There is no authority under the municipal code—or SEPA and its accompanying regulations—that would allow for intervention in this appeal as requested by Cougar Peak.

Nevertheless, the Hearing Examiner concurs that it would be appropriate to structure the consolidated hearing on this matter such that the SUP “portion” of the consolidated hearing will occur first and the SEPA appeal “portion” of the hearing will follow thereafter. By structuring the matter this way, Cougar Peak will have an opportunity to cross-examine expert witnesses presented by the other parties. Moreover, any members of Cougar Peak will have an opportunity to testify (just as all members of the public are afforded such opportunity) during the SUP portion of the hearing.

Cougar Peak and its representatives may watch the SEPA portion of the consolidated hearing (again, just as all members of the public are afforded such opportunity) but it will not have “intervenor status” for this portion of the hearing and will not have an opportunity to participate in this portion of the hearing unless requested to do so by one of the remaining parties (i.e., the County, the Applicant, and the Appellant).

*Decision on Motion to Intervene
Skagit County Hearing Examiner
Concrete Nor’West/Miles Sand and Gravel SUP
Appeal No. PL22-0142*

ORDER

Cougar Peak's request to intervene in the SEPA appeal brought by Central Samish Valley Neighbors is **DENIED**. The open record hearing on the underlying SUP permit shall commence first, on July 11, 2022, at 9:00 AM, followed by the SEPA appeal. Cougar Peak shall have the full rights afforded to the public under the Hearing Examiner rules to present witnesses and cross-examine expert witnesses during the SUP portion of the hearing. Cougar Peak will not, however, be afforded an opportunity to actively participate in the SEPA appeal unless such participation is requested by one of the remaining parties.²

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



ANDREW M. REEVES
Hearing Examiner
Sound Law Center

² The Hearing Examiner will be issuing pre-hearing orders specific to the SEPA appeal. Cougar Peak will receive a copy of said orders out of courtesy.