

**SKAGIT COUNTY PLANNING AND DEVELOPMENT SERVICES
FINDINGS OF FACT**

Hearing Authority: Skagit County Hearing Examiner

Hearing Date: December 7, 2016

Application Number: Special Use Permit Application PL16-0097

Applicant: Concrete Nor'West
Mr. Dan Cox
PO Box 280
Mount Vernon, WA 98273

Zoning/Comprehensive Plan: The property is located within the Rural Resource-Natural Resource Lands zoning/comprehensive plan designated area as indicated in the Skagit County Comprehensive Plan and associated zoning maps. The subject property is within the Mineral Resource Overlay.

Assessor's Account Numbers: 360427-4-003-0100, 360427-4-003-0200 & 360427-4-002-0003.

Parcel Numbers: P125644, P125645 & P50155

Project Location: The proposal is located north of Grip Road and south of the Samish River, within a portion of the southeast quarter of Section 27, Township 36 North, Range 4 East, Skagit County, WA (Parcels *P50155*, *P125644* & *P125645*).

General Project Description: Concrete Nor'West filed an application for a mining special use permit (PL16-0097) to develop a gravel mining operation on three parcels comprising approximately 68 acres. The gravel mining operation will remove approximately 4,280,000 cubic yards of gravel from the site over an approximately 25 year period. Gravel will be removed from the site by truck and trailer, generating about 46 truck trips per day. The material will be either sold directly to market or transported to one of Concrete Nor'West's nearby facilities for processing. Operations onsite will be limited to excavation and removal from the site. No processing is proposed onsite at this time. The site is accessed from Grip Road on an existing private gravel road.

Exhibits:

1. Staff Report.
2. Special Use Application and narrative received March 7, 2016.
3. Skagit County Zoning and Assessor's map.
4. Site Plan Maps.
5. SEPA Checklist dated March 2, 2016
6. Fish and Wildlife Site Assessment by Graham Bunting Associates, dated August 20, 2015.

7. Hydrogeologic Site Assessment by Associated Earth Sciences, dated August 21, 2015.
8. Fugitive Dust Control Plan by Concrete Nor'West.
9. Notice of Development Application, published March 31, 2016.
10. Mitigated Determination of Non-significance (MDNS) dated May 24, 2016.
11. Traffic plan
12. List of neighboring property owners and parties of record being notified of the Public Hearing.

Correspondence:

13. A letter comment was received from Mr. Tim Hyatt of the Skagit River System Cooperative, dated April 5, 2016, expressing concern over potential impact to the Samish River and the adequacy of the bridge over Swede Creek for the proposed truck traffic. (Address: PO Box 368, LaConner, WA 98257-0368; Email: Thyatt@skagitcoop.org)
14. An email comment was received from Doug Gresham of the Washington Department of Ecology, sent on April 7 2016. Mr. Gresham's comment expressed concern about mining within the buffer of the Samish River. (Address: 3190 160th Ave SE, Bellevue, WA 98008; Email: doug.gresham@ecy.wa.gov)
15. An email comment was received from Mrs. Martha Bray, sent on April 7, 2016, requesting information on the proposal. (Address:6368 Erwin Lane, Sedro-Woolley, WA 98284; Email: mbray1107@gmail.com)
16. An email comment was received from Mrs. Martha Bray, sent on April 14, 2016, expressing concern over impact to wetlands, the Samish river, fragmentation of habitat, noise and volume of truck traffic. (Address:6368 Erwin Lane, Sedro-Woolley, WA 98284; Email: mbray1107@gmail.com)
17. An email comment was received from Robert & Linda Walsh, sent on April 15, 2016, expressing concern over noise, traffic, dust and pollution, impact of water runoff and erosion, traffic, any blasting of rock onsite, wildlife impacts, and a negative impact on property values. (Email: walshL2006@hotmail.com)
18. An email comment was received from Mr. Steve Garey, sent on April 15, 2016, expressing concern over a short comment period duration, traffic and environmental impacts to the Samish River. (Email:swgarey@gmail.com)
19. An email comment was received from Mr. Jim Swift, sent on April 15, 2016, requesting notification of public hearings. (Address: PO Box 4227, Bellingham, WA 98227; Email: juliette@raptorgroup.com)
20. A letter was received from Doug Gresham of the Washington Department of Ecology dated June 1, 2016, including recommendations and conditions for approval of the project. (Address: 3190 160th Ave SE, Bellevue, WA 98008; Email: doug.gresham@ecy.wa.gov)
21. An email comment was received from Ray McEwan of the Washington Department of Transportation (WDOT), sent on June 15, 2016, requesting a copy of the traffic analysis. The traffic analysis was provided to WDOT for review. (Address:1043 Goldenrod Rd, Ste 101, Burlington, WA 98233; Email mcewanr@wsdot.wa.gov)

22. An email comment was received from Ray McEwan of the WDOT, sent on June 21, 2016. Mr. McEwan has no further comments but reserves the right to comment should any changes to the project be proposed. (Address:1043 Goldenrod Rd, Ste 101, Burlington, WA 98233; Email mcewanr@wsdot.wa.gov)
23. An email comment was received from Mrs. Martha Bray, sent on June 10, 2016, expressing concern over impact to fish and wildlife habitat, the quality of life in the area and the impact of truck traffic to Grip and Prairie Road. (Address:6368 Erwin Lane, Sedro-Woolley, WA 98284; Email: mbray1107@gmail.com)

GENERAL PROPERTY/PROJECT INFORMATION:

Development schedule - The project proposal will consist of dry mining limited to excavation and removal from the site. The project will consist of one phase of excavation from the surface grade extending down to a depth approximately 10 feet above the groundwater table with a finished elevation ranging from 154 to 163 feet in elevation. Mining is anticipated to yield approximately 4,280,000 cubic yards of sand and gravel over an approximate 25 year period. The applicant proposes to mine to an elevation above the reclamation contours indicated on the Reclamation Plan.

The initial phase of the mining operation will include installation of site drainage facilities and designating stockpiling areas. Reclamation will be ongoing throughout the mining process, but is not anticipated to be completed until final mining. Timber harvest will be required and the applicant has applied for and received a forest practice conversion permit, PL16-0098. After removal of timber, the area will be stripped of topsoil and stockpiled onsite for use in final reclamation of the site. After reclamation, the subject site will be reforested.

Project Access – Access to the proposed mining area is from the existing private gravel road extending north from Grip Road.

Traffic and Parking - Truck trips generated by the proposal is anticipated as an average of 46 daily trips during mining operations not to exceed 30 trucks per hour (potential of 720 truck trips per day). Parking for employees, trucks, and operations vehicles will be available on-site. Traffic haul routes from the mine on public roads will include west on Grip Road to Prairie Road, west on Prairie Road to Old Highway 99, then south on Old Highway 99 to the existing Concrete Nor'West gravel mining operation south of the Samish River. Sand and gravel obtained from the Grip Road Mining site will be sold directly to market or processed at the existing Concrete Nor'West gravel mining operation.

Surrounding Land Use- The parcels located adjacent and to the north, south and west of the subject site are zoned as Rural Resource Natural Resource Lands (RRc-NRL) and are utilized as low density residential developments and forestry. RRc-NRL lands allow residential development of 1 residence per 40 acres or 4 residences per 40 acres under the provisions of the Conservation and Reserve Development subdivision criteria, SCC 14.18.300. Properties adjacent to the east of the subject site are zoned as Agricultural-

Natural resource Lands (AG-NRL) and are utilized for agriculture, low density residential developments and forest lands. Rural Reserve (RRv) zoned areas are located approximately ¼ of a mile to the east and west of the site and 1 mile to the south of the subject site.

Aesthetic Impacts – the remote geographic location and topography of the site including perimeter buffers will largely prevent views into the mining site. Lights from trucks and equipment may be visible from Grip Road or Prairie Road in the early morning and early evening hours of the winter months. Perimeter vegetated buffers to the north, south, east and west will control most of the potential light and glare impacts.

Site Buffers and Setbacks - As per SCC 14.16.440 (10) (b) (iii), a 100-foot buffer will be maintained around the perimeter of the mining site. Once the extraction and transportation operations have been completed, the material in the buffer may be utilized during reclamation. The applicant has volunteered a 50 foot setback from the mining area around the north, south, and west perimeter of the mining area. A 200 foot critical area buffer is proposed on the east perimeter of the subject site.

Employees - The applicant has indicated that up to 1 to 2 employees would be working on the site at maximum operation. No groundwater will be used for mining purposes. Restrooms for the employees are provided by an onsite portable sanitation facility.

Proposed Hours and Days of Operation – The applicant proposes that the days and hours of operation will generally be limited to Monday through Saturday, from dawn till dusk. The applicant proposes that the hours of operation maybe expanded based on market conditions and seasonal demands.

Skagit County Code 14.16.440 (10)(i) states: *Hours of operation shall vary according to the location of the site as stated below and may be shortened by the Hearing Examiner based on site-specific circumstances.*

- (i) *Within designated natural resource lands, the hours of operation may be unlimited. The Hearing Examiner may limit hours of operation to daylight hours or to such other reasonable limitation deemed necessary to address potential significant adverse impacts to existing adjacent land uses, on any portion of the mining site where mining activity is proposed to occur less than 1/4 mile from existing Rural Intermediate, Rural Village, or Urban Growth Area designated lands;*

The proposed mining site is within the Rural Resource-Natural Resource Lands designation and is greater than ¼ mile from Rural intermediate, Rural Village and Urban Growth Area designated lands.

Storage of Hazardous Materials – No hazardous materials or fuels are proposed to be stored onsite. The primary potential contaminant would be relatively minor volumes of petroleum related fuels (diesel and/or gasoline) contained in a fuel tank for the on-site machinery and vehicles. The ongoing site fuel sources combined with the increased

susceptibility of the aquifer due to mining would result in a low risk to water quality. The Department recommends that the applicants develop and adhere to a Spill Response Plan and BMPs of the Storm Water Pollution Prevention Plan.

Noise/Emissions/Odors – The applicant has indicated that the mining operation is anticipated to be in compliance with both day and night Skagit County noise regulations. The proposed use would not be expected to generate excessive emissions or odors with the exception of dust generation. The applicant has provided a Fugitive Dust Control Plan (Exhibit 8) which includes spraying water on roads and equipment to control fugitive dust. The Department recommends that the applicant implement the Fugitive Dust Control Plan and during operations, if necessary, modify the plan as necessary to control dust emissions. At no time shall dust emissions exceed standards established by the Northwest Clean Air Agency (NWCAA).

DEPARTMENTAL FINDINGS:

1. **Zoning/Comprehensive Plan Designations.** The property is located within the Rural Resource-Natural Resource Lands zoning/comprehensive plan designated area as indicated in the Skagit County Comprehensive Plan and associated zoning maps. The subject property is located within the Mineral Resource Overlay (MRO) zoning designation.
2. **Processing.** Pursuant to SCC 14.06.100 of the Skagit County Code, the application was deemed complete on March 22, 2016. A Notice of Development Application was posted onsite and published in the Skagit Valley Herald on March 31, 2016, as required by SCC 14.06.150 (Exhibit 9). Notification was provided to all property owners and occupants within 300 feet of the subject property. Seven comment letters and emails were received during the comment period, Exhibits 13 through 19.
3. **State Environmental Policy Act.** The application has been reviewed in accordance with the State Environmental Policy Act guidelines (WAC 197-11 and RCW 43.21C). A Mitigated Determination of Non-significance (MDNS) was issued on May 24, 2016, and became effective following the fifteen-day comment period that ended on June 10, 2016, and a fourteen-day appeal period that ended on June 24, 2016, Exhibit 10. Four comment letters were received during the comment period, Exhibits 20 through 23. The following conditions were placed on the threshold determination:
 - The public right-of-way shall be kept clean. Tracking of mud and debris off site shall not be allowed.
 - The applicant shall comply with Northwest Clean Air Agency (NWCAA) requirements, including all dust control requirements both on and offsite.
 - The applicant shall comply with the provisions of Skagit County Code 14.24, Critical Areas Ordinance. No development or disturbance of soil, vegetation or water may occur within critical areas and associated buffers.

- Temporary erosion/sedimentation control measures, as approved by the Skagit County Department of Public Works, shall be in place prior to the initiation of the project pursuant to Skagit County Code (SCC) 14.32, Drainage Ordinance. The applicant shall maintain all temporary erosion/sedimentation control measures in accordance with the Skagit County Drainage/Erosion/Sedimentation Control Ordinance. Said measures shall remain in place until completion of the project.
- The project shall comply with noise, vibration, and light/glare limitations as per SCC 14.16.840.
- The project is limited to those activities described in the SEPA checklist and supporting documents. Significant deviation from the proposal may require additional review and approval by Skagit County Planning and Development Services.
- The applicant shall comply with the provisions of Washington State Administrative Code (WAC) 173-200 & 173-201A as required to prevent surface water quality and groundwater impacts. Best management practices shall be utilized to prevent interference and/or degradation of water quality.
- No gravel mining operations shall occur within 10 feet of the groundwater table as established by the Hydrogeologic Site Assessment report by Associated Earth Sciences, dated August 21, 2015.

The SEPA threshold determination was not appealed during the appeal period.

4. **Flood Hazard Area Review.** The proposed mining area is not located within a flood hazard zone.
5. **Critical Areas Review:** A Fish and Wildlife Site Assessment report which included wetland delineations have been submitted by the applicant, dated August 20, 2015 (Exhibit 6). The report indicates the eastern portion of the subject site is adjacent to the Samish River and associated wetlands. The Samish River is classified as a Type S (shorelines) water body and the adjacent wetlands were rated as Category II wetlands. Both the wetlands and the Samish river have been provided with a 200 foot buffer as per SCC 14.24.230 (1)(b) and SCC 14.24.530 (1)(c). The Department recommends that a Protected Critical Areas (PCA) agreement be recorded for the wetlands and Samish River and include a 200 foot vegetated buffer between the wetlands/stream and any mining activity. The PCA may be recorded with approval of this special use permit.

The proposed gravel mine is located on an alluvial terrace approximately 50 to 75 feet above the Samish River. The applicant proposes to excavate to a final mining depth of 154 feet, above msl, approximately 10 feet above the existing ground water level for the site (144 feet above msl). Excavation of the gravel mine as proposed will result in a berm approximately 50 to 75 feet high and approximately 350 feet wide at the base. The berm is anticipated to separate the Samish River from the mine and prevent avulsion by the Samish River. The berm

will also include an undisturbed 200 foot critical areas buffer to preserve wetlands and fish & wildlife habitat conservation areas adjacent to the Samish River.

As required by SCC 14.16.440, the applicant submitted a Hydrogeologic Report prepared by Associated Earth Sciences, Inc. dated August 21, 2015 (Exhibit 7). The report discusses water quality and quantity impacts resulting from the mine expansion and concludes that mining activities on the subject site will not have an adverse impact on local groundwater or surface water quality or quantity.

6. Health Department Review:

Water Supply

No well or water source is currently present onsite. Limited volumes of potable water (bottled water) for employees will be brought in from an offsite source. A water truck will be brought in for dust suppression. Water for dust suppression will be obtained from offsite sources. If the operation should change to include gravel washing or other uses (over 5000 gallons per day or irrigation of over ½ acre of ground), a water right from the Washington State Department of Ecology Water Resources section will be required.

Restrooms and Sewage Disposal

The application states that portable toilets will be provided for employee's onsite.

Control of Petroleum Products and other Toxics

The application states that a portable double walled diesel fuel tank may be brought onsite for fueling heavy equipment. The following mitigations are recommended conditions of approval and should be incorporated into the day to day operating practices.

1. Department of Ecology "Best Management Practices need to be followed.
2. Develop and follow a storm water control plan which includes BMP's for Mobile fueling of vehicles and heavy equipment and a spill cleanup plan.
3. Off-site discharge of surface water (if any) may require a NPDES permit from the Department of Ecology or discharge permit from the Skagit County Public Works Surface Water Division.

Noise and Vibration

Noise: The maximum allowable noise level per Chapter 173-60 WAC allowed to be emitted from this property, a Class C EDNA property, onto a Class A EDNA property (residential) is 60 decibels and between the hours of 10:00 PM and 7:00 AM levels must be reduced by 10 decibels (or 50 decibels). Sound levels generated by the operation shall comply with 173-60 WAC "Maximum Environmental Noise Levels. The operator needs to be aware that minor changes in operation (e.g. Type of Equipment, location of equipment, state of equipment repair and maintenance, screening, presence or lack of berms, presence of reflective surfaces, weather conditions and etc.) can allow additional noise which can interfere with the peace and repose of neighbors. Limiting noise impacts on

neighbors, therefore should be a constant goal. If noise complaints do occur in the future the operator of the pit may be required to hire a noise consultant to evaluate and recommend mitigation procedures. When major noise events such a blasting take place, neighbors need to be adequately notified in advance.

Vibration: Vibration from equipment will not be transmitted into the ground and will be indistinguishable beyond a few feet.

7. Public Works Department Review:

Skagit County Public Works has reviewed the above referenced Special Use application and has the following items to add as a condition of approval:

- The applicant shall purchase and install at their expense, a traffic loop activated flashing beacon system in the area of the Grip Road and Prairie Road intersection. The items will include a loop on Grip Road at the intersection and a loop on Prairie Road for left turns onto Grip Road. Additionally, one beacon shall be required for each direction on Prairie Road approaching Grip Road. All equipment and signage that is to be installed shall meet the standards and specifications promulgated by Skagit County Public Works.
- The applicant shall be required to submit for a right-of-way permit to install all the items.
- The applicant shall have the beacons and all necessary signage installed and accepted by Public Works prior to the applicant hauling material out of the pit, or within 1 year of the date of approval of the application.

8. Fire Marshal Review: No comments were received from the Fire Marshal.

9. Current Planning review: Skagit County PDS current Planning has reviewed the above referenced Special Use application and has no concerns with the proposal.

10. Special use permit requirements: The applicant is requesting a Special Use permit pursuant to Skagit County Code 14.16.430 Rural Resource-Natural Resource Lands (4)(g) and SCC 14.16.440 Mineral Resource Overlay (7). Hearing Examiner Special Use permits are processed as a Level II permit as outlined in SCC 14.06.120 Level II Review Procedures.

SPECIAL USE CRITERIA: Skagit County Code Section 14.16.900 (1)(b)(v) Special Uses indicates that certain items will be reviewed when approving or denying Special Use permits. Those items are as follows:

A. The proposed use will be compatible with existing and planned land use and comply with the Comprehensive Plan.

The proposed land use, including reclamation, is consistent with the goals and policies of the Comprehensive Plan and Growth Management Act (GMA)

protecting and preserving Natural Resource Land of long-term commercial significance. In addition, many of the Skagit County Comprehensive Plan's goals and policies that support the development of mining operations in the Mineral Resource Overlay zone were specifically created to meet the criteria outlined in the Comprehensive Plan. The Comprehensive Plan states in Chapter 4 Natural Resource Lands Element that:

Skagit County supports environmentally responsible and safe mineral resource extraction and processing activities. Mineral resource lands of long-term commercial significance are to be designated to conserve the mineral resource. These designations apply to areas where mining and processing activities are economically and environmentally feasible and where conflicts with other land uses can be minimized. Because mineral resources cannot be replaced or relocated, Skagit County designates all commercially significant mineral resources to ensure that these lands are available for resource production far into the future.

The proposal is consistent with Goal's D-2, D-3, D-4, D-5 and D-6 of the Comprehensive Plan, Natural Resource Lands Element.

GENERAL POLICY GOALS: MINERAL RESOURCE OVERLAY

Maintain and enhance conservation of long-term commercially significant mineral resource lands so that use of and access to these lands is not precluded by conflicting land uses through the designation of a Mineral Resource Overlay. These principles shall guide Skagit County's actions to:

- *Maintain and enhance conservation of long-term commercially significant mineral resource lands.*
- *Maximize compatibility between mineral extraction operations and other land uses.*
- *Reduce conflicts between mining operations and adjacent land uses so that access to mineral lands is not precluded by conflicting land uses; and*
- *Promote the economic and regulatory stability of the mining industry.*

The proposal is consistent with the following Comprehensive Plan policies and objectives:

GOAL D-2: CONSERVE MINERAL RESOURCE LANDS

Protect and conserve mineral resource lands of long-term commercial significance.

Policy 4D-2.1 Designate Mineral Resource Overlay

Areas meeting the criteria for mineral lands of long-term commercial significance shall be identified as Mineral Resource Overlay on the Comprehensive Plan Land Use and Zoning Map.

Policy 4D-2.2 Allowable Mineral Extraction Activities

Activities associated with mineral extraction operations are those activities that further develop the base product of the mineral being extracted. Examples of these activities include washing, crushing, asphalt plants, and concrete batch plants. Associated activities shall be allowed as a hearing examiner special use within the Mineral Resource Overlay or in areas designated Natural Resource Industrial – NRI. Those associated activities must meet the requirements of the Special Use Permit specific to those areas and must be listed as permitted uses in those Districts. Temporary activities associated with construction projects may be permitted as part of the related construction permit review and may be conditioned as necessary to address applicable mining regulations.

GOAL D-3: REDUCE LAND USE CONFLICTS

Discourage incompatibility and reduce conflicts between mineral extraction operations and other land uses.

Policy 4D-3.1 Exclusive Mineral Resource Overlay

The Mineral Resource Overlay adds additional uses and related requirements to the Industrial Forest, Secondary Forest, Rural Resource, and Natural Resource Industrial districts of the Comprehensive Plan/Zoning Map. New mining is limited to the MRO, subject to applicable permits. However, pre-existing, permitted mining operations outside the Mineral Resource Overlay may operate subject to the terms of the existing approval(s). Such operations may expand beyond the scope of the original permit but within the existing parcel provided that they receive a mining special-use permit.

Policy 4D-3.2 Right to Manage Mineral Resource Lands

The provisions of Right-to-Manage Natural Resource Lands shall apply to all lands designated Mineral Resource Overlay (MRO) to protect mineral resource landowner rights to manage their lands for mining uses.

Policy 4D-3.6 Mining Site Buffer Standards

Mining buffer standards shall maintain the purpose and functions of mineral resource lands. These standards shall require equivalent buffers on mining sites and on adjacent properties with the exception of mines adjacent to mines. Excavation shall not occur within the buffer of any mine except during

reclamation and on mines adjacent to mines. Storage of topsoil and excavation associated with reclamation area may be allowed in buffers.

Policy 4D-3.7 Mining Activities Buffer Standards

Buffers and setbacks should be provided for all activities associated with mineral extraction operations in addition to those required for mineral resource areas.

GOAL D-4: EFFECTIVE REGULATORY ENVIRONMENT

Coordinate and implement administrative procedures that encourage consistency among permitting jurisdictions and simplify permitting procedures for the applicants and Skagit County.

Policy 4D-4.1 Coordinate State and Local Regulations

Development regulations for mineral resource lands in the county shall be consistent with applicable Washington State mining regulations and Department of Natural Resources rules. Overlap in the regulatory authority between Skagit County and the DNR may occur to ensure public health and safety in matters not under the DNR’s jurisdiction.

GOAL D-5: SAFE OPERATIONS

Ensure safety and minimize off site disturbances associated with operating equipment, noise, dust, glare, vibrations and truck traffic.

Policy 4D-5.1 Noise Impacts

Sound levels, as measured on properties adjacent to the mining site, shall conform to the provisions of WAC Section 173-60-040, Maximum Permissible Environmental Noise Levels.

Policy 4D-5.2 Traffic Impacts

Potential effects of truck traffic from mining operations shall be reviewed as part of the permitting process.

Policy 4D-5.3 Roads and Bridges

New public roads and bridges accessing designated Mineral Resource Overlay Areas shall be designed to sustain the necessary traffic for mineral extraction operations. Existing roads and bridges shall be improved as needed as each new extraction operation is developed. Cost sharing for the improvement of roads and bridges shall be negotiated between the permitting authorities and the applicant.

Policy 4D-5.4 Operation Hours

Standards for hours of operations, appropriate for the underlying land-use designation, shall be established for mineral extraction operations. In determining appropriate hours of operation, consider traffic impacts and requirements, nearby uses, and noise impacts. Project-specific circumstances that demand non-standard or ‘off-peak’ hours may also be considered.

Policy 4D-5.6 Noise and Blasting Mitigation

Site-specific studies shall be conducted to determine appropriate mitigation of noise and blasting for new operations and expansion areas of existing operations. Standards shall be maintained to implement existing and accepted methods by which vibrations and noise shall be measured and appropriate mitigation established to alleviate incompatibilities.

GOAL D-6: WATER QUALITY

Ensure that water quality protection standards associated with mining operations comply with best management practices.

Policy 4D-6.1 Reclamation Plan

Support the Washington Department of Natural Resources (DNR) requirement that reclamation plans specify how overburden and spoil material is to be handled and placed in a manner which will control erosion, dust, sedimentation or leaching of material and hazardous substances into surface or ground waters.

Policy 4D-6.2 Storage Ponds

Storage pond systems for holding mineral processing waters should be designed to preclude untreated discharge as required by federal and state laws.

Policy 4D-6.3 Erosion Prevention

The flow of natural or process runoff from mineral extraction sites shall be dispersed or regulated such that soil erosion on receiving lands is prevented. Natural runoff includes: Any water that runs on disturbed ground, including stormwater and ‘process water’ that flows through operation.

Policy 4D-6.4 Aquifer Barriers

Surface mining shall be vertically limited to only one aquifer unless specifically approved by the Washington State Department of Ecology. Hydrological barriers separating aquifers shall not otherwise be destroyed.

Policy 4D-6.5 Aquifer Reclamation

Reclamation of disturbed aquifers shall be in accordance with federal, state and local law. Disturbed aquifers should be reclaimed as ponds or lakes. On-site material is preferred where an aquifer has been breached.

Policy 4D-6.6 Aquifer Protection

Activities related to mineral extraction and processing operations in the vicinity of open aquifers must provide safeguards including containment, to prevent contamination to the open aquifer.

Policy 4D-6.8 Groundwater Study

Before a new sand and gravel mine is permitted, the area ground water shall be characterized by a licensed geologist, hydrogeologist or engineer.

Policy 4D-6.9 Aquifer Monitoring

Where a proposed mine will breach an aquifer, monitoring shall be established to measure the impact of the mining activity on water quality and supply to wells relying on the aquifer to be breached.

B. The proposed use complies with Skagit County Code.

The subject parcel is designated as Rural Resource-Natural Resource Lands with a Mineral Resource Overlay. The proposed use is allowed by special use permit in this zoning designation. The zone is designed to protect and encourage resource utilization. The proposal complies with SCC 14.16.430 by providing site reclamation including re-vegetation. Some possibility of low density residential use is anticipated in the future. As per SCC 14.16.440, the proposal meets the requirements of the Mineral Resource Overlay and will comply with the requirements of the Surface Mining Act, Chapter 78.44 RCW.

C. The proposed use will not create undue noise, odor, heat, vibration, air and water pollution impacts on surrounding, existing, or potential dwelling units, based on the performance standards of SCC 14.16.840.

Rural residential development is present near the site. Potential residential development is limited to one home per 10 acres in the Rural Reserve zoning designation and one home per forty acres in the Rural Resource (NRL) zoning designation unless a CaRD design is proposed (4/40). Areas farther west, east and south are also zoned as Rural Reserve (RRv) which allows for a residential development of one residence per 10 acres. Potential impacts from noise, dust and

traffic to surrounding, existing or potential dwelling units from the proposed operation are possible and exceed those currently experienced in the area.

Noise and Vibration

The applicant has indicated that the proposal would not result in noise or vibration impact beyond the site boundaries.

Odor and Heat

No odors or heat are projected to occur with the proposed activities that would impact surrounding residential land uses or the environment.

Air

The Department concludes that fugitive dust emission is an environmental concern at the subject site and mitigation shall be necessary to continue mining operations. The Department recommends that the site operator be responsible for controlling dust impacts during operations and shall utilize both the “Fugitive Dust Control Plan” provided by the applicant and “Reasonably Available Control Technology” specified by the Northwest Clean Air Agency to abate dust emissions. All project related activities will use appropriate BMP’s to meet ambient air quality standards enforced by the Northwest Air pollution Authority.

Water Pollution

Potential water pollutants associated with operations at the subject site are primarily limited to those materials associated with the operation of heavy equipment. These materials generally consist of fuel, oil, and associated equipment fluids. There would be a slight risk of spill during operation and maintenance of the equipment and subsequent release of these materials to waters on the subject site. It would be unlikely that waste materials would enter ground or surface waters due to the project proposal. As previously mentioned, BMP’s will be used to minimize potential water pollution impacts.

Staff finds that conformance to the local and state environmental regulations and mitigation measures outlined in the staff report, as well as proposed permit conditions, will ensure that water pollution will not result from project implementation.

D. The proposed use will not generate intrusions on privacy of surrounding uses.

The applicant has indicated the noise at receiving properties is expected to be relatively low and that excessive noise will be eliminated through equipment operation limitation. Potential visual impacts would primarily be mitigated by the maintenance of a 100 foot vegetated buffer around the mining site. Native vegetation will be maintained or enhanced as necessary to provide a visual and noise barrier along the site boundaries throughout the life of the mining operation.

E. The proposed use will not cause potential adverse effects on the general public health, safety, and welfare.

Based on a review of the environmental documentation and the proposed mining operational plan, the general welfare of Skagit County or the surrounding area will not be negatively affected by the proposed mining operation as conditioned. The proposal is located in a designated Mineral Resource Overlay and is substantially compatible with surrounding land uses. The operation will provide needed resources for projects within Skagit County and will contribute to the area's economic base. Mitigation and project conditions have been designed to address any identified issues/concerns related to the public health, safety and general welfare.

Compliance with local, state and federal environmental regulations, as well as permit conditions, will ensure that the general welfare of Skagit County citizens is protected.

F. For special uses in Industrial Forest – Natural Resource Lands, Secondary Forest – Natural Resource Lands, and Rural Resource – Natural Resource Lands, the impacts on long-term natural resource management and production will be minimized.

The proposed site is located in a Rural Resource-Natural Resource Lands designated area. The proposed special use is in compliance with the intent of the Mineral Resource Overlay and its designation as Natural Resource Land. Such designation indicates that the proposed site has been through preliminary land use review during the County's comprehensive planning process to determine the suitability of the parcel as a mining resource site. The proposed site will be re-vegetated and upon completion of mining activities, long-term natural resource use such as timber production may resume.

G. The proposed use is not in conflict with the health and safety of the community.

The approval of a Special Use permit for the proposed use would not impact the health and safety of the community, provided that best management practices are maintained, and all permit conditions and environmental mitigation measures are implemented.

Staff anticipates that the proposed mitigation will be sufficient to protect groundwater resources from the proposed mining activities. However, any activity in close proximity to groundwater resources may represent a risk of impairment to the resource.

H. The proposed use will be supported by adequate public facilities or services and will not adversely affect public services to the surrounding areas, or conditions can be established to mitigate adverse impacts on such facilities.

Staff review indicates that the proposed land uses will be supported by adequate public facilities and services with no adverse effects on the services of the surrounding areas. County services are adequate to serve the proposed use.

The applicant has indicated relatively high truck traffic volumes during mining operations. The applicant indicates that the truck traffic would not significantly increase traffic volumes and would not require mitigation. No significant impact to the provision of public services in surrounding areas has been identified and the project can be served by adequate public facilities and services as proposed.

I. The proposed use will maintain the character, landscape and lifestyle of the rural area. For new uses, proximity to existing businesses operating via special use permit shall be reviewed and considered for cumulative impacts.

The proposed use area is not proximal to any existing businesses, except forest practice activities. As there are no ongoing mining activities in the area, it is anticipated that the proposed land use may temporarily disrupt the existing character and landscape of this rural area. Noise from mining operation and truck traffic may slightly alter the quiet lifestyle of this rural area. However mining operations is not inconsistent with the allowed uses in this zoning district. After completion of mining operations, it is anticipated that the character, landscape and lifestyle will return to its previous functions.

11. Specific Criteria for Special Use Permits for Mining Operations Pursuant to SCC 14.16.440

The Mineral Resource Overlay (MRO) overlaps with Natural Resource Lands (NRL) zoning districts and imposes regulations in addition to those normally required in the underlying NRL zoning district. Mineral extraction and processing activities are allowed as a Hearing Examiner Special Use, and must comply with the Surface Mining Act, RCW 78.44. The MRO recognizes those areas that are designated to protect long-term, commercially viable mineral Natural Resource Lands and recognizes that mineral resources must be in close and economic proximity to the market to be served.

The applicant submitted all application materials required for a Mining Special Use Permit under SCC 14.16.440(8). The proposal meets the purpose of the MRO zoning overlay and all of the special criteria related to mining operation special use permits outlined in SCC 14.16.440(1).

The purpose of the Mineral Resource Overlay designation is to maintain and enhance natural resource-based industries by conserving mineral resource lands, allowing continued operation of existing legally established uses, and by assuring that use of adjacent lands does not interfere with the extraction and quarrying of minerals. Adjacent land uses should not interfere with the processing of sand and gravel at this site.

The location of the project site should keep noise levels in compliance with the provisions of the WAC 173-60, Maximum Environmental Noise Levels. There will be no blasting at this mining site.

The applicant's proposal is in compliance with the operation standards criteria outlined in SCC 14.16.440. Surface mining at this site is proposed to be vertically limited to only one aquifer and hydrological barriers separating aquifers are not proposed to be disturbed.

Surface water protection will be accomplished through project design and compliance with the minimum requirements of SCC 14.32, as well as all pertinent requirements of the Washington State Department of Ecology, the Department of Natural Resources, Department of Fish & Wildlife, and other state and federal regulations regarding surface water protection.

Reclamation of surface mining sites shall be in accordance with the requirements of the State Department of Natural Resources. Reclamation activities shall not include land filling.

Chemical leach or metal mining are not proposed in this Special Use application.

All special use criteria relating to mining operations have been met by the proposal.

12. Hearing Examiner Review Criteria

Pursuant to SCC 14.16.440(9), the following criteria must be reviewed by the Hearing Examiner: Except as may be provided herein to the contrary, all applications for a mining operation special use permit shall be reviewed by the Hearing Examiner under the procedures set forth in SCC 14.06. The Hearing Examiner shall make a decision as to whether or not it should be approved based upon the special use approval criteria and the following provisions:

- (a) When reviewing an application for mining operations special use permit, the Hearing Examiner should recognize that surface mining is an essential economic activity and that it is not possible to extract minerals without producing some environmental impacts. The Hearing Examiner shall consider all relevant evidence and conditions that will mitigate detrimental impacts to the environment and conditions that protect the general welfare, health and safety. The permit shall be granted if the impacts are mitigated.**

The burden of proof shall be on the applicant. Mitigating conditions shall be performance based, objective standards that:

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

The MDNS issued reflects an environmental analysis and review resulting in multiple mitigation measures that meet the intent of the review criteria.

- (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.**

Permit conditions listed should be considered by the Hearing Examiner to further protect the public health, safety, and the environment.

- (c) Appropriate site-specific conditions shall be required to mitigate existing and potential incompatibilities between the mineral extraction operation and adjacent parcels. Such limitations shall reflect the differences in potential impacts based on the mineral extraction operation's location in resource, rural or urban growth areas and recognize that the purpose of designating mineral resource lands is to conserve mineral resource lands, allow continued operation of existing legally established mining operations, and assure that use of adjacent lands does not interfere with the extraction of minerals. The Hearing Examiner shall take into consideration the January 1996 publication *Best Management Practices for Reclaiming Surface Mines in Washington and Oregon*, published jointly by the Oregon Department of Geology and Mineral Industries and the Washington State Department of Natural Resources, Ch. 3, Operation and Reclamation Strategies, in determining appropriate mitigation requirements for operational impacts.**

Skagit County Code 14.16.870 Notification of Development Activities on or Adjacent to Designated Natural Resource Lands is implemented to protect Natural Resource Lands from adjacent land uses. Reclamation will be done in accordance with an approved Department of Natural Resources Reclamation Permit.

- (d) Appropriate site-specific conditions shall be required to mitigate stormwater runoff and erosion impact. The Hearing Examiner shall take into consideration the January 1996 publication *Best Management Practices for Reclaiming Surface Mines in Washington and Oregon*, published jointly by the Oregon Department of Geology and Mineral Industries and the Washington State Department of Natural Resources, Ch. 2, Storm Water and Erosion Control, and the National Pollutant Discharge Elimination**

System (NPDES) Surface Water Protection requirements in determining appropriate conditions for mitigating stormwater and erosion impacts.

Staff notes that compliance with existing regulations and plans reviewed by the Skagit County Department of Public Works in conjunction with the Washington Department of Ecology NPDES program will address these issues.

- (e) The Hearing Examiner shall consider public interests such as fishing, boating, hiking and camping when reviewing a mining operation special use permit, and may impose mitigating measures as necessary and appropriate.**

Staff does not recommend any mitigating measures related to surrounding recreational activities with the exception of installing secure gates and warning signage on the subject property near the boundary of the subject site notifying the public of ongoing mining activities. No substantial impacts to such activities have been identified.

STAFF RECOMMENDATION

Based on a review of all associated environmental studies, special use criteria and the above findings, Planning and Development Services staff recommends XXXXX of the requested Special Use Permit PL16-0097 with the following conditions:

1. The applicant shall obtain all necessary land use approvals and comply with the conditions of the MDNS.
2. Prior to operation of the proposed mine expansion, the applicant will be required to record a title notification with the Skagit County Auditor as per SCC 14.16.870.
3. A Department of Natural Resources (DNR) Surface Mine Reclamation Permit shall be applied for and obtained prior to mining, as per RCW 78.44. No mining may take place prior to obtaining a reclamation permit from the DNR.
4. The applicant shall develop and implement a Spill Prevention and Control Plan and a Storm Water Pollution Prevention Plan.
5. The applicant shall implement the Fugitive Dust Control Plan submitted with this application and utilize “Reasonably Available Control Technology” specified by the Northwest Clean Air Agency. During operations, the plan may be modified as necessary to control dust emissions. At no time shall dust emissions exceed standards established by the Northwest Clean Air Agency (NWCAA).
6. A Protected Critical Areas (PCA) agreement shall be approved and recorded for the wetlands onsite and include a 200 foot vegetated buffer. The PCA may be recorded with approval of this special use permit.

7. The maximum allowable noise level per Chapter 173-60 WAC allowed to be emitted from this property, a Class C EDNA property, onto a Class A EDNA property (residential) is 60 decibels. Between the hours of 10:00 PM and 7:00 AM noise levels must be reduced by 10 decibels and not exceed 50 decibels. Noise levels continuously exceeding maximum allowable noise levels allowed under Chapter 173-60 WAC may be considered a violation of permit conditions and result in revocation, suspension, or modification of this special use permit by the Hearing Examiner.
8. Appropriate permits will be obtained from Skagit County Public Works prior to construction activity occurring within the County right-of-way.
9. The applicant shall purchase and install at their expense, a traffic loop activated flashing beacon system in the area of the Grip Road and Prairie Road intersection. The items will include a loop on Grip Road at the intersection and a loop on Prairie Road for left turns onto Grip Road. Additionally, one beacon shall be required for each direction on Prairie Road approaching Grip Road. All equipment and signage that is to be installed shall meet the standards and specifications promulgated by Skagit County Public Works. Truck trips shall not exceed an average of 46 truck trips per day or exceed 30 truck trips per hour.
10. The applicant shall have the beacons and all necessary signage installed and accepted by Public Works prior to the applicant hauling material out of the pit, or within 1 year of the date of approval of the application.
11. Concrete Nor'West shall notify Skagit County Public Works at least two weeks before pit operations are forecast to meet or exceed the 46 daily truck trips as initially described in their traffic report. This will allow Public Works to issue an informational public notice of the increased operation to warn the public of the growth in truck traffic and determine if any additional roadway traffic measures are necessary.

Date: September 12, 2016

Prepared By: John Cooper, Senior Planner

Reviewed By: Brandon Black

Senior Planner, Current Planning Team Supervisor